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Staff: CAC-SF
Staff Report: April 25, 2005
Hearing Date: May 12, 2005

STAFF REPORT AND FINDINGS FOR NOTICE OF VIOLATION AND CEASE AND DESIST ORDER

CEASE AND DESIST ORDER: CCC-05-NOV-03 and CCC-05-CD-05

RELATED VIOLATION FILE: V-4-05-030

PROPERTY LOCATION: 26530 Latigo Shore Drive, Malibu, Los Angeles County (APN 4460-019-143) (**Exhibit 1**)

DESCRIPTION OF PROPERTY: A .29-acre parcel located between the seaward side of Latigo Shore Drive and the beach, containing a 4,615 square-foot single-family residence built on an artificial fill slope that fronts an approximately 90 linear foot stretch of sandy beach

PROPERTY OWNER: Bert Kelley

VIOLATION DESCRIPTION: Construction of a rock revetment using mechanized equipment, a front yard wall, a path with stairs, a non-structural concrete slab, twenty below grade "soldier piles", and a wall built on top of the soldier piles; grading (cut and fill); importation of fill and construction of a fill slope.

SUBSTANTIVE FILE DOCUMENTS:

1. Executive Cease and Desist Order No. ED-05-CD-01;
2. Notice of Violation and Cease and Desist Order files No. CCC-05-NOV-03 and CCC-05-CD-05;

3. Coastal Development Permit No. 5-88-794;
4. Amendment Applications No. 5-88-794-A1, 5-88-794-A2, 5-88-794-A3, and 5-88-794-A4;
5. Exhibits 1 through 18.

CEQA STATUS:

Exempt (CEQA Guidelines (CG) §§ 15060(c)(2)), and Categorically Exempt (CG §§ 15061(b)(2), 15037, 15038, and 15321).

I. SUMMARY OF STAFF RECOMMENDATION

The Kelley property, located at 26530 Latigo Shore Drive in Malibu ("subject property"), consists of a .29-acre parcel located on the seaward side of Latigo Shore Drive, southwest of the Latigo Shore Drive/Pacific Coast Highway intersection in Malibu. A 4,615 square-foot single-family residence supported by caissons is located in the middle of the subject property. The subject property was established, and the residence was constructed, pursuant to Coastal Development Permit ("CDP") No. 5-88-794. Bert Kelley is the owner of the subject property.

Unpermitted development on the subject property includes grading (cut and fill), importation of fill and construction of a fill slope, and construction of a rock revetment, a front yard wall, a path with stairs, a non-structural concrete slab, twenty below grade "soldier piles", and a wall built on top of the soldier piles ("soldier pile-wall").

On March 3, 2005, Commission staff confirmed an anonymous report that mechanized equipment was used on the beach to grade the beach and construct an approximately 90-foot long rock revetment on the sandy beach. Pursuant to his authority under Coastal Act Section 30809, the Executive Director issued a Notice of Intent to Issue an Executive Director Cease and Desist Order ("EDCDO NOI"). When Mr. Kelley failed to provide a timely and satisfactory response, as required by Coastal Act Section 30809(b) and as defined by Section 13180 of the Commission's Regulations, the Executive Director issued Executive Cease and Desist Order No. ED-05-CD-01 ("EDCDO"). The EDCDO directed Mr. Kelley to immediately cease and desist all unpermitted development activity and to contact Commission staff to discuss a Commission-approved remedy, due to the risk of additional resource damage during removal. The EDCDO also notified Mr. Kelley, as required by Coastal Act Section 30812(g), of the potential for recordation of a Notice of Violation.

On March 15, 2005, Commission staff sent a Notice of Intent to Record a Notice of Violation of the Coastal Act and to Commence Cease and Desist Order and Restoration Order Proceedings ("CDO NOI") to Mr. Kelley. In addition to the revetment observed by staff during the March 3, 2005 site visit, the CDO NOI included additional unpermitted development that is present at the site. Mr. Kelley has submitted an application, which is incomplete, to amend CDP No. 5-88-794 to obtain after-the-fact authorization for some of this development. Staff addresses this

amendment application, CDP No. 5-88-794-A4 ("Amendment A4"), in CCC-05-CD-05, as discussed further herein.

The activity that has occurred at the subject property constitutes development, as defined in Section 30106 of the Coastal Act. The development was undertaken without a Coastal Development Permit, in violation of Coastal Act Section 30600. The unpermitted development is also inconsistent with CDP No. 5-88-794. In addition, although not a required finding for the issuance of a cease and desist order, the grading of the beach and construction of the rock revetment are inconsistent with the policies of Chapter 3 of the Coastal Act.

The Coastal Commission has jurisdiction to take enforcement action to remedy these violations because the violation involves development that is specifically prohibited by a CDP previously approved by the Commission. In addition, it appears that the rock revetment may be located on public tidelands that remain subject to the Commission's jurisdiction even after certification of a local coastal program.

Staff recommends that the Commission approve Cease and Desist Order No. CCC-05-CD-05 ("the Order", as described below) directing Bert Kelley, as owner of property at 26530 Latigo Shore Drive ("subject property"), to: 1) cease and desist from conducting any further development without a Coastal Development Permit, 2) remove the rock revetment in accordance with the terms and conditions of the Order, 3) restore the disturbed sandy beach area seaward of his residence through restorative grading, 4) complete amendment application 5-88-794-A4 ("Amendment A4") in accordance with the terms of the Order, and 5) remove any unpermitted development that remains on the subject property after the Commission has taken action on said amendment application.

Staff also recommends that the Commission find that a violation of the Coastal Act has occurred on the subject property. Staff asserts that Mr. Kelley violated the Coastal Act by undertaking development on the subject property without obtaining a coastal development permit ("CDP") and in direct conflict with the special conditions of an existing CDP, CDP No. 5-88-794. On March 15, 2005, the Executive Director notified Mr. Kelley of his intent to record a Notice of Violation, as required under Coastal Act Section 30812, and provided Mr. Kelley with an opportunity to object to the recordation of a Notice of Violation. On April 14, 2005, staff received a written objection from Kelley. If the Commission finds that a violation has occurred, the Executive Director shall record a Notice of Violation in the office of the Los Angeles County Recorder.

II. HEARING PROCEDURES

A. Cease and Desist Order

The procedures for a hearing on a proposed Cease and Desist Order are set forth in Section 13195 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 alleged violators or their representatives present at the hearing identify themselves for the record, indicate what matters are already part of the record, and announce the rules of the proceeding including time limits for presentations. The Chair shall also announce the right of any speaker to propose to the Commission, before the close of the hearing, any question(s) for any Commissioner, in his or her discretion, to ask of any person, other than the violator or its representative. Staff shall then present the report and recommendation to the Commission, after which the alleged violator(s) or their representative(s) may present their position(s) with particular attention to those areas where an actual controversy exists. The Chair may then recognize other interested persons after which staff typically responds to the testimony and to any new evidence introduced.

The Commission will receive, consider, and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceedings, as specified in CCR section 13185 and 13186 incorporating by reference section 13065. The Chair will close the public hearing after the presentations are completed. The Commissioners may ask questions of any speaker at any time during the hearing or deliberations, including, if any Commissioner chooses, any questions proposed by any speaker in the manner noted above. Finally, the Commission shall determine, by a majority vote of those present and voting, whether to issue the Cease and Desist Order, either in the form recommended by the Executive Director, or as amended by the Commission. Passage of a motion, per staff recommendation or as amended by the Commission, will result in issuance of the order.

B. Notice of Violation

The procedures for a hearing on whether a violation has occurred are set forth in Coastal Act Section 30812 (c) and (d) as follows:

(c) If the owner submits a timely objection to the proposed filing of the notice of violation, a public hearing shall be held at the next regularly scheduled commission meeting for which adequate public notice can be provided, at which the owner may present evidence to the commission why the notice of violation should not be recorded. The hearing may be postponed for cause for not more than 90 days after the date of the receipt of the objection to recordation of the notice of violation.

(d) If, after the commission has completed its hearing and the owner has been given the opportunity to present evidence, the commission finds that, based on substantial evidence, a violation has occurred, the executive director shall record the notice of violation in the office of each county recorder where all or part of the real property is located. If the commission finds that no violation has occurred, the executive director shall mail a clearance letter to the owner of the real property.

The Commission shall determine, by a majority vote of those present and voting, whether a violation has occurred. Passage of a motion, per staff recommendation or as amended by the

Commission, will result in the Executive Director's recordation of a Notice of Violation in the Los Angeles County Recorder's Office.

III. STAFF RECOMMENDATION

1.A. Motion Re: Notice of Violation:

I move that the Commission find that a violation has occurred, as described in the staff recommendation for CCC-05-CD-05.

1.B. Recommendation of Approval:

Staff recommends a YES vote. Passage of this motion will result in the Executive Director recording Notice of Violation No. CCC-05-NOV-03. The motion passes only by an affirmative vote of the majority of Commissioners present.

1.C. Resolution That a Violation of the Coastal Act Has Occurred:

The Commission hereby finds that a violation of the Coastal Act has occurred, as described in the findings below, and adopts the findings set forth below in the grounds that development has occurred without a coastal development permit and that development has occurred that is inconsistent with a permit previously issued by the Commission.

2.A. Motion Re: Cease and Desist Order:

I move that the Commission issue Cease and Desist Order No. CCC-05-CD-05 pursuant to the staff recommendation.

2.B. Recommendation of Approval:

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

2C. Resolution to Issue Cease and Desist Order:

The Commission hereby issues Cease and Desist Order No. CCC-05-CD-05, as set forth below, and adopts the findings set forth below on grounds that development has occurred without a coastal development permit, development has occurred that is inconsistent with a permit previously issued by the Commission, in violation of the Coastal Act, and the requirements of the Order are necessary to ensure compliance with the Coastal Act.

IV. FINDINGS FOR NOTICE OF VIOLATION CCC-05-NOV-03 AND CEASE AND DESIST ORDER CCC-05-CD-05

A. Permit History

On December 13, 1988, the Commission approved CDP No. 5-88-794 subject to ten special conditions. The permit was issued on July 3, 1990, authorizing the subdivision of APN 4460-019-026 into three parcels (APNs 4460-019-143, -144, -145) and construction of three single-family residences (**Exhibit 2**). The subject property (APN 4460-019-143) is a .29-acre parcel that was created pursuant to this subdivision. Special conditions relevant to this Cease and Desist Order are described in Section D2 below.

The permit runs with the land and is binding on Kelley, as a successor owner. Moreover, the permit required the recordation of deed restrictions pertaining to assumption of risk and future development, as well as offers to dedicate both vertical and lateral easements. These documents were recorded, and therefore, Mr. Kelley had legal notice of them when he purchased the subject property on February 28, 1997. Mr. Kelley has extensive knowledge of the permit and its conditions, and in fact, has applied to amend the permit three times.

1. Previous Applications to Amend CDP No. 5-88-794

Mr. Kelley has submitted three separate applications to the Commission, each seeking to amend CDP No. 5-88-794.¹ As of the date of this report, the Commission has approved no amendment.

a. Amendment Application No. 5-88-794-A2

Mr. Kelley submitted amendment application No. 5-88-794-A2 on January 9, 1998. The application sought after-the-fact approval for the following development:

1. Relocation of the single-family residence on the subject property 10 feet seaward from the plan approved by the Commission under CDP No. 5-88-794;
2. Installation of 20 below grade soldier piles along the western boundary of the subject property;²
3. Construction of a vertical boundary wall built on top of the soldier piles extending from Latigo Shore Drive to the "25-foot contour line"; and
4. Construction of a wall extending across the entire northern (landward) boundary of the subject property.

Staff deemed this application complete, and the matter was scheduled to be heard by the Commission during the November 1998 Commission hearing. The matter was postponed until

¹ A previous amendment application, No. 5-88-794-A1, was submitted by Jeanette Goldbaum on April 2, 1990. Staff deemed the application incomplete and returned it to Mrs. Goldbaum on April 25, 1990.

² Staff notes that at least four of these soldier piles extend under the sandy beach seaward of the residence.

the April 1999 Commission hearing. However, Mr. Kelley withdrew this application prior to the hearing.

b. Amendment Application 5-88-794-A3

On October 13, 1988, Mr. Kelley once again sought to amend CDP No. 5-88-794. He submitted application No. 5-88-794-A3, requesting the removal of Special Condition No. 3, which established the vertical access easement, from the permit. Staff deemed this application complete and the matter was scheduled to be heard at the November 1998 Commission hearing. As with 5-88-794-A2, this matter was postponed, rescheduled for the April 1999 Commission hearing, and withdrawn by Mr. Kelley prior to the hearing.

2. Current Amendment Application: No. 5-88-794-A4

On August 19, 1999, Kelly submitted a third application to amend CDP No. 5-88-794 (**Exhibit 3**). This application requests after-the-fact approval for much of the same development listed in application No. 5-88-794-A2:

1. Relocation of the single-family residence on the subject property 10 feet seaward from the plan approved by the Commission under CDP No. 5-88-794;
2. Installation of 20 below grade soldier piles along the western boundary of the subject property;
3. Construction of a vertical boundary wall (6-foot maximum height), built on top of the soldier piles extending from Latigo Shore Drive to the "25-foot contour line"; and
4. Construction of a wall (6-foot maximum height), extending across the entire northern (landward) boundary of the subject property.

Mr. Kelley also seeks after-the-fact approval for the following development that was not included in previous amendment applications:

1. Extension of the existing building pad along with the repair of the artificial slope (125 cu. yards cut on-site and 225 cu. yards of fill from caisson installation on adjacent property);
2. Placement of sod atop artificial bluff mentioned in #1;
3. Installation of a non-structural slab; and
4. Installation of non-structural framing around existing structural caissons.

In addition to requesting after-the-fact authorization for the above development, Mr. Kelley also requests the following:

1. Approval to abandon the existing vertical easement established pursuant to Special Condition No. 3 of CDP No. 5-88-794; and
2. Approval to modify the existing lateral access easement established pursuant to Special Condition No. 2 of CDP No. 5-88-794.

Staff determined that additional materials were required to complete this application, and sent a letter to Mr. Kelley on September 17, 1999 (**Exhibit 4**). The letter informed him of this determination and listed the required materials.

On November 24, 1999, Darren Domingue, representative for Mr. Kelley with regards to Amendment A4, submitted additional materials in response to staff's September 17, 1999 letter. After reviewing the materials, staff concluded that the application remained incomplete. A second letter was sent to Mr. Kelley on January 20, 2000, again listing the materials required to complete the permit (**Exhibit 5**).

On April 12, 2000, Mr. Domingue submitted additional materials in response to the January 20, 2000 letter from staff. Despite the third submittal, materials that staff required to make an informed decision regarding the proposed amendment were not provided. On July 21, 2000, staff sent Mr. Kelley a letter specifying which required materials were still missing from the application (**Exhibit 6**). An October 19, 2000 response by Mr. Domingue failed to provide the information necessary to complete the application. Subsequently, Commission staff spoke with Mr. Kelley on numerous occasions, including but not limited to May 31, 2001 and June 1, 2001, reminding him of the incomplete status of his application. As of the date of this report, Amendment A4 remains incomplete. During a phone conversation with staff on April 15, 2005, Kelley's attorney stated that Mr. Kelley was willing to complete Amendment A4 in order to schedule the matter for action by the Commission at a Commission hearing.

Commission staff and Mr. Kelley attempted to resolve this matter administratively. Ultimately, these repeated attempts were unsuccessful.

B. History of Violations

1. Unpermitted Revetment and EDCDO

On March 3, 2005, enforcement staff at the Commission's South Central Coast District office received a report, including photographs, from an anonymous source that mechanized equipment was being used on the sandy beach seaward of Kelley's residence (**Exhibit 7**). In the photographs, a bulldozer is removing sand from the beach, creating a trench. Rocks placed in the trench are clearly visible in the photographs, presumably forming the toe of the rock revetment. Staff visited the site later that day and observed tread marks from mechanized machinery, and a rock revetment (**Exhibit 8**). The revetment extends approximately 90 linear feet across the sandy beach area at the base of the fill slope on the subject property and reaches a height of approximately one-third the height of the fill slope. Commission staff visited the site

and confirmed that this unpermitted development was in place. By the tracks still present on the beach, it was evident that the work had recently occurred. On March 4, 2005, in an effort to halt further unpermitted development activity and resource damage, the Executive Director issued a Notice of Intent to Issue an Executive Director Cease and Desist Order ("EDCDO NOI"), which was hand-delivered to Kelley's residence by Commission staff on that day and was also sent via regular and certified mail (**Exhibit 9**).

The EDCDO NOI stated, "I [Executive Director] intend to issue a Cease and Desist Order against you unless you respond to letter in a 'satisfactory manner'...no later than 5:00 pm today." Neither Mr. Kelley nor an agent or representative speaking on behalf of Mr. Kelley responded in a "satisfactory manner", as defined in Coastal Act Section 30809(b) and Section 13180 of the Commission's Regulations, before the 5:00 pm deadline. Consequently, on March 4, 2005, pursuant to his authority under Coastal Act Section 30809, the Executive Director issued Executive Cease and Desist Order No. ED-05-CD-01 (EDCDO) (**Exhibit 10**). The EDCDO was also hand-delivered to Kelley's residence and sent to Mr. Kelley via regular and certified mail.³ Mr. Kelley asserts that no additional work on the revetment was undertaken after he received the order. However, the revetment appears to have been completed before the order was issued on March 4, 2005.

2. Response to the EDCDO

Commission staff received a telephone call from Kelley's attorney on March 7, 2005, confirming that Mr. Kelley received the EDCDO NOI and EDCDO. He indicated that Mr. Kelley was willing to remove the revetment, and was told by Commission staff that removal is itself "development" as defined in the Coastal Act, and would have to be undertaken pursuant to a cease and desist order in order to ensure appropriate removal and restoration and to minimize additional environmental impacts.

3. Notice of Intent to Record a Notice of Violation of the Coastal Act and to Commence Cease and Desist Order and Restoration Order Proceedings

The EDCDO directed Mr. Kelley not to remove the revetment without further instruction from Commission staff to ensure that removal does not cause added environmental damage, due to the fact that the revetment was constructed through the use of mechanized equipment on the beach and that an unknown quantity of rock was placed in trenches of unknown depth. Removal of the revetment must be conducted in accordance with the terms and conditions of CCC-05-CD-04, to

³ Coastal Act Section 30809(b) states:

The Cease and Desist Order shall be issued only if the person or agency has failed to respond in a satisfactory manner to an oral notice given in person or by telephone, followed by a written confirmation, or a written notice given by certified mail or hand delivered to the landowner....

Commission staff attempted to give Mr. Kelley both oral notice and hand-delivered written notice when they went to Kelley's residence. The Notice of Intent and the Executive Cease and Desist Order were hand delivered to the residence. Mr. Kelley was apparently not home when staff hand delivered the documents.

ensure appropriate removal and restoration procedures, ensure compliance with the policies of Chapter 3 of the Coastal Act, and minimize additional impacts to the sandy beach.

In order to address removal of the violation, the Executive Director issued a Notice of Intent to Record a Notice of Violation of the Coastal Act and to Commence Cease and Desist Order and Restoration Order Proceedings ("CDO NOI"), which was sent to Mr. Kelley via regular and certified mail on March 15, 2005 (**Exhibit 11**).⁴ The CDO NOI pertained to all unpermitted development on the subject property observed on the subject property by staff during the March 3, 2005 site visit, including that which is contained in Amendment A4. Although Mr. Kelley seeks after-the-fact approval from the Commission for this unpermitted development, the application is still incomplete. Therefore, no Commission hearing on the amendment application has occurred, the Commission has taken no action in the matter, and the development is unpermitted. This development is included in the CDO NOI in an effort to address all unpermitted development at the site. Amendment A4 does not address the revetment or grading of the beach. However, the Order is drafted to recognize the pending application for Amendment A4 and to allow for a timely Commission decision on the application.

On March 28, 2005 Kelley's attorney stated that Mike Cheap, "a friend of Mr. Kelley's and a contractor", constructed the revetment as a temporary emergency measure to protect Kelley's property from heavy storms in the area. Mr. Kelley asserts that Mr. Cheap was told by staff at the Commission's South Central Coast District office to contact the City of Malibu, and was then given oral assurances from an official at the City of Malibu Environmental Building and Safety Department that he could proceed with implementation of shoreline protective structures prior to obtaining an emergency permit. City officials and Commission staff disagree with this account and deny making such statements regarding the emergency procedures at the subject property. Mr. Kelley cannot produce any written record of such authorization.

In fact, as early as November 20, 1997, in a phone conversation with Commission staff, Mr. Kelley specifically stated that he wanted to build a seawall in front of his residence and was told that such action was prohibited by Special Condition 10 of CDP No. 5-88-794, which required assurances that no beach structures would be necessary to protect the residence. Mr. Kelley was informed by staff that staff would not be able to recommend approval of any such application for a permit to construct a seawall, and that the permit application would most likely be denied pursuant to Section 13166(a) of the Commission's Regulations, which provide:

(a) The executive director shall reject an application for an amendment to an approved permit if he or she determines that the proposed amendment would lessen or avoid the intended effect of an approved or conditionally approved permit unless the applicant presents newly discovered material information, which he could not, with reasonable diligence, have discovered and produced before the permit was granted.

⁴ Commission staff has determined that all relief sought in this enforcement action can be accomplished through a cease and desist order, and that consequently, no restoration order is required.

Commission staff in the South Central Coast District office also informed Mr. Kelley on numerous occasions that construction of any form of shoreline protection structure seaward of his residence would be inconsistent with the Coastal Act, because such a structure was not necessary to protect the residence, which had been constructed on an engineered caisson grade-beam foundation in order to avoid the necessity of shoreline protective devices. In addition, staff also informed Kelly on several occasions that although the unpermitted fill slope seaward of the residence was expected to erode from wave action, construction of a shoreline protective device to protect the unpermitted fill slope would be clearly inconsistent with the policies of Chapter 3 of the Coastal Act, including Coastal Act Section 30235.

On March 29, 2005, Commission enforcement staff spoke with Kelley's attorney about the unpermitted development at the subject property and the possibility of resolving the matter administratively. Despite subsequent discussions on March 31, April 5, April 12, April 14, April 15, and April 18, 2005, staff was unable to reach a settlement in this matter.

4. Objection to Recordation of Notice of Violation and Statement of Defense

The CDO NOI stated:

If you object to the recordation of the Notice of Violation in this matter and wish to present evidence on the issue of whether a violation has occurred, you must respond in writing... no later than April 5, 2005.

Staff received a written objection to recordation of a Notice of Violation from Mr. Kelley on April 14, 2005. The objection was included in the cover letter submitted with the Statement of Defense pertaining to the revetment (**Exhibit 12**), as described below. This objection was timely, due to numerous extensions provided as a courtesy to Kelley.

In accordance with Sections 1318(a) and 13191(a) of the Commission's regulations, you have the opportunity to respond to the Commission staff's allegations as set forth in this [CDO NOI] by completing the enclosed Statement of Defense form. The Statement of Defense form must be returned to the Commission's San Francisco office... no later than April 5, 2005.

On March 28, 2005, Mr. Kelley requested more time to complete the Statement of Defense. Staff advised him that a written request and showing of good cause were required in order to receive an extension, in accordance with Section 13181(b) of the Commission's regulations. Staff received Kelley's written request for an extension on March 30, 2005, and agreed to extend the deadline for submittal of the Statement of Defense to April 8, 2005.⁵ As a further courtesy to Kelley, staff extended the deadline for submittal to April 13, 2005. An third extension for the portion of the Statement of Defense pertaining to the unpermitted development included in

⁵ All deadlines for submittal of a Statement of Defense also pertain to submittal of an objection to the recordation of a Notice of Violation. Mr. Kelley submitted an objection with his Statement of Defense on April 18, 2005. This objection was timely, as it was submitted by the final deadline.

Amendment A4 was granted pursuant to Section 13181(b) of the Commission's regulations, setting April 18, 2005 as the final deadline for submittal of that portion of the Statement of Defense. This last extension was granted in order to provide Kelley's attorney the opportunity to view archived documents pertaining to the CDP No. 5-88-794 and Kelley's previous amendment applications. The final deadline for the Statement of Defense pertaining to the revetment and grading of the beach remained April 13, 2005. Kelley's attorney submitted the Statement of Defense pertaining to the revetment and grading violations on April 14, 2005 (**See Exhibit 12**). Staff received the remaining portion of the Statement of Defense on April 18, 2005 (**Exhibit 13**). The defenses and staff's responses to those defenses are addressed below, in Section H.

C. Description of Unpermitted Development

Unpermitted development located on the subject property includes grading (cut and fill), importation of fill and construction of a fill slope, construction of an approximately 90-foot long rock revetment using mechanized equipment, a gate linking two segments of an approximately 6-foot high front yard wall, a path with stairs, a non-structural concrete slab, twenty below grade "soldier piles", and a soldier-pile wall.

D. Basis for Issuance of Cease and Desist Order

The statutory authority for issuance of this Cease and Desist Order is provided in Coastal Act Section 30810, which states:

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

(b) The cease and desist order may be subject to such terms and conditions as the commission may determine are necessary to ensure compliance with this division, including immediate removal of any development or material or the setting of a schedule within which steps shall be taken to obtain a permit pursuant to this division.

The Commission is authorized to issue CCC-05-CD-05 pursuant to both Section 30810(a)(1) and 30810(a)(2). Kelley's activities on the subject property constitute development as defined in Coastal Act Section 30106 and therefore required a Coastal Development Permit under Coastal Act Section 30600. Additionally, the development was undertaken in direct violation of the Special Conditions of CDP No. 5-88-794.

Mr. Kelley has applied to amend CDP No. 5-88-794, seeking after-the-fact authorization for the construction of the front yard wall, path with stairs, concrete slab, soldier piles, and soldier-pile wall. Should the Commission amend CDP No. 5-88-794 to grant after-the-fact authorization for any or all of this development, said development will no longer be unpermitted or in violation of

the permit. However, at the time of this report, the Commission has granted no such authorization. The proposed Order provides that Mr. Kelley must submit all materials required to complete amendment application No. 5-88-794-A4 within 30 days of the issuance of the Order. Neither this report nor the proposed Order will prejudice any forthcoming Commission hearing on application No. 5-88-794-A4.⁶ The Commission will evaluate the amendment application on the merits.

The construction of the revetment and grading of the beach constitute unpermitted development that is inconsistent with the policies of Chapter 3 of the Coastal Act. Although, a showing of Chapter 3 inconsistency is not required when seeking issuance a Cease and Desist Order, this information is provided below, as background.

1. Development Requiring a Coastal Development Permit Occurred at the Subject Property

Development is defined in Coastal Act Section 30106 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 of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of 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... (emphasis added)

Placement or erection of the rock revetment, walls, stairs, soldier piles, concrete slab, and fill slope; importation of fill materials; and grading of the sandy beach seaward of the residence clearly constitute development under Section 30160.

Once development has been identified, Section 30600(a) provides:

(a) Except as provided in subdivision (e), and in addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency, any person, as defined in Section 21066, wishing to perform or undertake any development in the coastal zone... shall obtain a coastal development permit.

The development at the subject property requires a coastal development permit under Section 30600(a). Mr. Kelley did not obtain a coastal development permit prior to

⁶ A determination that the development included in Amendment A4 is unpermitted is uncontroversial and uncontested by any party to this matter, as Mr. Kelley seeks after-the-fact authorization for the development.

conducting the development. Although Mr. Kelley has submitted incomplete applications for after-the-fact approval for some of the unpermitted development, no application has proceeded to a Commission hearing for action by the Commission, and no coastal development permit has been issued granting authorization for any of the unpermitted development. Therefore, all of the cited development on the subject property constitutes unpermitted development. Section 30810(a)(1) authorizes the Commission to issue the proposed Cease and Desist Order to address this unpermitted development.

Resource damage caused by this unpermitted development includes increased erosion at the ends of the revetment and seaward of the revetment. In addition, the revetment may impact sand movement and sand supply in the surrounding area. Consequently, the proposed Order directs Mr. Kelley to remove the revetment in accordance with the terms and conditions of the Order and undertake restorative grading to return the sandy beach to the grade that existed prior to the cited unpermitted development activities.

2. Development is Inconsistent with Existing Coastal Development Permit No. 5-88-794

Coastal Act Section 30810(a)(2) authorizes the Commission to issue a cease and desist order if development is inconsistent with a previously-issued coastal development permit. The Commission issued CDP No. 5-88-794 on December 1, 1988. The permit and its conditions run with the land, binding Kelley, as a successor owner of the subject property. The following paragraphs explain the manner in which the unpermitted development is inconsistent with the special conditions of CDP No. 5-88-794.

a. Special Condition 7 – Future Improvements:

Prior to transmittal of the Coastal Development Permit the applicant shall provide a deed restriction for recording...which provides that Coastal Development Permit 5-88-794 is for the approved development only, and that any future additions or improvements to the property will require a Coastal Development Permit from the Coastal Commission or it's successor agency.

The document should note that no permanent improvements with the exception of one public path or stairway noted on the present plans shall be constructed within the geologic set back area or under the floors or seaward of the existing structures.

The deed restriction shall run with the land, binding all successors and assigns. ... It shall remain in effect for the life of the development approved in this permit.

Ms. Goldbaum recorded the deed restriction required under Special Condition 7 on December 12, 1989 (**Exhibit 14**). As with the offer to dedicate the vertical access easement discussed below, the deed restriction runs with the land and binds Kelley, as a successor owner. Mr. Kelley did not obtain additional coastal development permits for the cited development, in violation of Special Condition 7. As noted above, the deed restriction prohibits any permanent

improvements "seaward of the existing structures". The revetment lies seaward of the existing residence that was authorized by CDP No. 5-88-794.

b. Special Condition 8 – No Beach Level Development:

Prior to issuance the applicant shall agree that this approval is based upon his assertions that no beach development, including leachfields or seawalls will be necessary to protect the development.

In the staff report prepared for CDP No. 5-88-794, the Commission raised concerns regarding the stability of the artificial bluff (what Commission staff refers to in this report as the "fill slope") that was chosen as the location of the proposed development, citing potential exposure to wave action and susceptibility to erosion from storms such as the 1988 storm that caused an eight-foot recession of the bluff at issue. The Commission stated that if the proposed development was not properly engineered to withstand wave action and storms, such a large parcel would require 200 feet of revetments to protect it ("the beach will be occupied entirely by the revetments"). Accordingly, the Commission attached Special Condition 8 to the permit to specifically ensure that the proposed development would not require revetments and other shoreline protective devices. Special Condition 5 was also attached to the permit to ensure that the proposed development was specifically designed to withstand hazardous storm conditions.

Mr. Kelley asserts that the revetment was constructed in order to protect his residence from wave action generated during heavy storms. There is no evidence that the revetment was necessary since the residence was built on caissons. Moreover, Special Condition 8 required assurances that no protective structures would be needed to shield the residence from wave action. Mr. Kelley is bound by this condition.

c. Special Condition 3 - Vertical Access:

Prior to the transmittal of the permit...[t]he applicant shall execute and record a document...irrevocably offering to dedicate to a public agency or a private association approved by the Executive Director as easement for public access for pass and repass from Pacific Coast Highway to the shoreline.

The easement be described in metes and bounds and shall extend from the Pacific Coast Highway to the ordinary high tide of the Pacific Ocean, generally within the geological setback along the western property line. The easement shall not be less than 10 feet in width, and shall be sited and designed to accommodate reasonable and safe pedestrian access from the highway to the area along the beach dedicated in [Special] condition 2.

⁷ See Staff Report, prepared for CDP No. 5-88-794, dated 11/29/88, at page 23.

The easement shall enable a private or public agency accepting maintenance and liability to enter, improve and maintain the access in order to provide pedestrian access to the shoreline.

The offer shall run with the land in favor of the People of the State of California, binding successors and assigns of the applicant or landowner.

The Goldbaums executed an offer to dedicate a vertical easement, as required under Special Condition 3, on July 11, 1989 and recorded it at the Los Angeles County Recorder's Office on December 12, 1989 (**Exhibit 15**). This easement was accepted by Access for All on September 23, 2004. A portion of the revetment lies within the vertical access easement, effectively blocking the bottom portion of the access. In addition, the front yard wall and path with stairs may also lie within the vertical access easement. This development is included in Kelley's Amendment A4 and will be addressed through a forthcoming permit action by the Commission.

3. Grading of the Beach and Construction of the Revetment are Inconsistent with Policies of Chapter 3 of the Coastal Act

The Commission may issue a Cease and Desist Order under Section 30810 of the Coastal Act solely based on a finding of unpermitted development on the subject property. Although a showing of inconsistency with Chapter 3 of the Coastal Act is not required under Section 30810, this discussion is provided for background.

a. Section 30235 – Construction Altering Natural Shoreline

Section 30235 states in relevant part:

Revetments, ... and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline supply.

The revetment neither serves a coastal dependent use, nor protects existing structures or public beaches from erosion. In fact, the scouring effects of the revetment will actually increase beach erosion seaward of the revetment and at either end of the revetment. The revetment was not designed to eliminate or mitigate adverse impacts on local shoreline supply. Mechanized equipment was used to grade the beach and bury the lower portion of the revetment in the sand to an undetermined depth. Thus, the revetment is a static structure placed within a dynamic environment and will most likely have adverse impacts on sand movement and supply, in violation of Coastal Act Section 30235. Moreover, there is no evidence that the revetment is necessary to protect the residence, which is built on an engineered caisson grade-beam foundation.

b. Section 30251 – Scenic and Visual Qualities

Section 30251 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 landforms....

Grading the beach and construction of the artificial fill slope altered the beach in front of the subject property. The continued presence of the revetment may increase beach erosion and may impede the natural sand movement and supply, continually altering the beach. Furthermore, movement of rocks making up the revetment may litter the public beach that extends from the mean high tide line to the ocean and create obstacles that the public must walk around, thereby decreasing the public's enjoyment of the beach.

d. Section 30253 – Minimization of Adverse Impacts, Assure Stability and Structural Integrity

Section 30253 states:

New Development shall:

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

Grading of the beach and construction of the revetment are inconsistent with Section 30253 for the same reasons discussed above with regards to Section 30235: the development increases erosion and impedes natural movement of sand on the beach in front of the subject property and in surrounding areas. The revetment may cause accelerated erosion of surrounding properties, which would lead neighboring property owners to construct seawalls or revetments.

4. Provisions of CCC-05-CD-05

Mechanized equipment was used to dig a trench on the beach and to bury rocks in the trench to an unknown depth. In an effort to adequately address the potential impacts to the beach and ocean from removal of the revetment, the Executive Director issued ED-05-CD-02 and directed Mr. Kelley to cease and desist all unpermitted development and to cooperate with the Commission to get the appropriate authorization to remove the revetment. Issuance of CCC-05-CD-05 will ensure appropriate removal of the revetment and restoration of the site.

CCC-05-CD-05 requires the submittal of a removal plan, for approval by the Executive Director, before removal can commence. The plan must include provisions that regulate the use of mechanized equipment, provide a contingency plan for potential release of toxic substances from the equipment, address water quality issues, establish a location for the removed materials, and

address the potential removal and disposal of liners and other unknown materials from the trench. The plan will ensure that removal is conducted in a manner that avoids excessive noise and interference with public recreation, as required by Coastal Act Sections 30210, 30211, and 30251, restores the natural contours of the beach, as required by Sections 30251, and avoids introduction of pollutants into the ocean, as required by Sections 30230 and 30231. The purpose of the removal plan is to protect natural resources and to ensure that removal and restoration activities are conducted in conformity with the policies of Chapter 3 of the Coastal Act.

E. Basis for Recordation of Notice of Violation

1. A Violation of the Coastal Act Has Occurred

The cited development, described in Section C above, constitutes development as defined in Coastal Act Section 30106. This development requires a CDP pursuant to Coastal Act Section 30600. Mr. Kelley did not obtain a CDP to authorize any of the cited development. Therefore, the cited development constitutes unpermitted development, in violation of the Coastal Act.

2. All Existing Administrative Methods of Resolving the Violation Have Been Exhausted and Mr. Kelley Has Been Made Aware of the Potential for Recordation

Coastal Act Section 30812(g) provides:

(g) The executive director may not invoke the procedures of this section until all existing administrative methods for resolving the violation have been utilized and the property owner has been made aware of the potential for the recordation of a notice of violation. For purposes of this subdivision, existing methods for resolving the violation do not include the commencement of an administrative or judicial proceeding.

The Executive Director notified Mr. Kelley of the potential for recordation of a Notice of Violation in this matter on March 15, 2005. Additionally, staff informed Mr. Kelley on numerous occasions that he had the opportunity to submit a written objection to the recordation and to request a hearing on the issue of whether a violation occurred. Mr. Kelley was therefore made aware of the potential for recordation of a Notice of Violation, as required under Section 30812(g). Mr. Kelley has confirmed this by submitting a written objection to the recordation of a Notice of Violation. Mr. Kelley has been notified that the hearing on this matter will accompany the hearing regarding CCC-05-CD-05, at the May Commission hearing.

As outlined in Section B.3 above, staff made repeated attempts to resolve this matter administratively. Unfortunately, these attempts were unsuccessful. Staff concludes that all existing administrative methods for resolving the violation have been utilized, as required under Section 30812(g).

3. Rescission of the Notice of Violation

After the recordation of the Notice of Violation, if Mr. Kelley resolves the violation and removes the unpermitted development from the subject property in accordance with the terms and conditions of CCC-05-CD-05, the Commission shall record a notice of rescission of the Notice of Violation pursuant to Section 30812(f).

F. California Environmental Quality Act (CEQA)

The Commission finds that the issuance of CCC-05-CD-05 to compel compliance with the Coastal Act and to remove unpermitted development is exempt from any applicable requirements of the California Environmental Quality Act of 1970 (CEQA) and will not have any significant adverse effects on the environment, within the meaning of CEQA. The Order is exempt from the requirements for the preparation of an Environmental Impact Report, based on Sections 15060(c)(2), 15061(b)(2), 15037, 15038, and 15321 of the CEQA Guidelines.

G. Findings of Fact

1. Bert Kelley is the owner of property located at 26530 Latigo Shore Drive in Malibu, Los Angeles County.
2. Mr. Kelley undertook activities on the subject property that constitute development as defined in Coastal Act Section 30106.
3. Mr. Kelley undertook this development without obtaining a CDP. No permit exemption applies to these actions.
4. The unpermitted development is inconsistent with the terms and conditions of CDP No. 5-88-794.
5. Substantial evidence, as that term is used in Coastal Act Section 30812, exists that a Coastal Act violation has occurred.
6. The Executive Director has made Mr. Kelley aware of his intent to record a Notice of Violation pursuant to Coastal Act Section 30812. Mr. Kelley has submitted a written objection to such recordation.
7. On March 3, 2005, Commission staff confirmed that mechanized equipment was used to grade the beach and to construct an approximately 90-foot long rock revetment on the sandy beach seaward of Mr. Kelley's residence.
8. Mr. Kelley did not obtain an emergency permit to grade the beach and construct the revetment from the Commission or the City of Malibu.
9. A 10-foot wide vertical access easement extends along the western boundary of Mr. Kelley's property from Latigo Shore Drive to the sandy beach below Mr. Kelley's residence. Mr. Kelley

constructed a rock revetment, the westernmost portion of which extends across the entire seaward boundary of the vertical access easement.

10. On March 4, 2005, the Executive Director issued a Notice of Intent to Issue an Executive Cease and Desist Order ("EDCDO NOI"). Mr. Kelley did not respond to the EDCDO NOI in a "satisfactory manner" as required by Coastal Act Section 30809(b) and as defined by Section 13180(a) of the Commission's regulations.

11. The Executive Director issued an Executive Cease and Desist Order ("EDCDO") on March 4, 2005, requiring Mr. Kelley to immediately cease from conducting or maintaining further unpermitted development activity on the subject property and to immediately contact the Commission to discuss removal of the revetment and site restoration.

12. Commission staff advised Mr. Kelley on March 7, 2005 that a Commission-approved cease and desist order was necessary to ensure appropriate removal of the revetment and site restoration.

13. On March 15, 2005, the Executive Director issued a Notice of Intent to Record a Notice of Violation and to Commence Cease and Desist Order and Restoration Order Proceedings ("CDO NOI"), addressing grading of the beach (cut and fill), importation of fill and construction of a fill slope, construction of a rock revetment, a front-yard wall, a path with stairs, a non-structural concrete slab, twenty below grade "soldier piles", and a wall located on top of the soldier piles.

14. On August 19, 1999, Mr. Kelley applied to amend the existing CDP No. 5-88-794, seeking after-the-fact authorization for the following development: relocation of the residence ten feet seaward, extension of the building pad and repair of the artificial fill slope, addition of sod to the top of the fill slope, installation of twenty soldier piles, and construction of a soldier pile wall, a front yard wall, a non-structural slab, and caisson framing. As of the date of this report, the permit application remains incomplete and the development remains unpermitted.

15. All of the unpermitted development listed in the CDO NOI and addressed in this report remains on Mr. Kelley's property.

16. Coastal Act Section 30810 authorizes the Commission to issue a cease and desist order after holding a public hearing.

H. Violator's Defenses and Commission Staff's Response

Mr. Kelley submitted a Statement of Defense ("SOD"), pertaining solely to construction of the revetment and grading of the beach, on April 15, 2005. Commission staff received an additional SOD from Kelley, addressing the remaining unpermitted development, on April 18, 2005. The following paragraphs present statements made by Mr. Kelley and the Commission staff's response to those statements.

1. Kelley's Defense:

The "revetment" referenced in the NOI is a temporary emergency placement of rock and soil that was put in place to address conditions that resulted from the extreme storm events that occurred prior to and around the time of its construction.

Response:

A revetment is a facing of stone, rock, or concrete supported on and built to protect a scarp, embankment, or shore structure against wave action or currents.⁸ According to this definition, the "placement of rock and soil... to address... extreme storm events" described in the above statement constitutes a revetment. Regardless of the word or phrase used to describe the work undertaken on the subject property, the work constitutes unpermitted development under the Coastal Act. The Commission has the authority, under Coastal Act Section 30810, to issue a cease and desist order if development, including placement of solid materials, occurred without a CDP.

Staff presumes that the "soil" mentioned in the above statement was removed from the fill slope through unpermitted grading and used to backfill the revetment. If the soil was imported solely for use in the revetment, any such unpermitted importation also constitutes a Coastal Act violation.

Photographs from an anonymous source show mechanized equipment on the beach digging trenches and placing rocks in the trenches. This work does not appear temporary in nature, and most likely the use of mechanized equipment will be required to remove the rocks. Even if the revetment was intended as a temporary emergency measure, which it does not appear to be, Mr. Kelley did not follow the applicable procedures for obtaining an emergency permit for such development. These procedures are outlined below in Commission staff's response to Kelley's defense #3.

2. Kelley's Defense:

The work was performed by Mike Cheap, a friend of Mr. Kelley's, a contractor...who Mr. Kelley asked to check on the Property. Mr. Cheap was not involved in the construction of the residence on the Property and is not familiar with all of its structural features. During this time Mr. Kelley and Mr. Cheap were not able to be in regular contact and Mr. Kelley was not able to advise Mr. Cheap about the work he was performing.

Mr. Kelley learned about what Mr. Cheap installed after the fact.

Response:

⁸ California Coastal Commission, *Beach Erosion and Response Guidance Document*, December 1999.

Mr. Kelley is the owner of record of the subject property and is bound by CDP No. 5-88-794 and the documents recorded in accordance with the permit. It was the responsibility of Kelley, not Mr. Cheap, to ensure that CDPs were obtained for any new development on the subject property, and that the development was conducted in conformity with the existing CDP and the conditions pertaining thereto. Mr. Kelley asserts that he only told Mr. Cheap to "check on the property". If there is a dispute between Mr. Kelley and Mr. Cheap about what Mr. Cheap was authorized to do, Mr. Kelley may have legal recourse against Mr. Cheap. However, that does not provide Mr. Kelley with a defense to issuance of a cease and desist order that requires removal of the unpermitted development.⁹ Regardless of who conducted the unpermitted development activities, Mr. Kelley is accountable because the work occurred on his property on his behalf. The Coastal Act does not exempt unpermitted development activities simply because a friend conducted the activities for the property owner.

3. **Kelley's Defense:**

Mr. Cheap initially called the Coastal Commission's Ventura office to find out what he would have to do to prevent further damage and loss of the stairway. He spoke to Steve Hudson, who informed him that he would have to contact the City of Malibu for an emergency permit. Mr. Cheap then spoke with Craig George at the City of Malibu. Mr. George told Mr. Cheap to take actions necessary to protect life and property and come in afterwards for an emergency permit. These conversations, while initiated out of concern for the stairway, were very general in nature. Mr. Cheap understood that he was being told what the procedure was in emergency situations in general.

Following these conversations, Mr. Cheap began to observe a dramatic loss of sand below the Property. In a very short period, Mr. Cheap observed that over 20 feet of beach adjacent to the property had eroded away, exposing house foundations on the Property. More storms were coming, Mr. Cheap was concerned that the erosion could reach a point where the septic system on the Property might fail. There was a 12-foot high unstable and rain saturated cliff resulting from the erosion that appeared poised to fail in the coming storms. Mr. Cheap was concerned that people on the beach passing near the cliff could be injured if the cliff had failed.

Based on the conversations that he had had with Mr. Hudson to contact the City of Malibu and the conversation that he had with Mr. George to protect life and property first and then apply for an emergency permit, Mr. Cheap proceeded in what he believed was the appropriate emergency course of action.

Response:

Mr. Hudson is familiar with Mr. Kelley and the subject property, having worked on previous enforcement and permitting matters involving the subject property. In addition, Mr. Hudson

⁹ In general, contractors performing this type of work would not undertake the work without the property owner's prior approval, and knowledge that he would receive compensation.

worked on Kelley's previous permit amendment applications and is personally aware of the fact that the Commission has permit jurisdiction over the property due to the existing CDP. He is also aware that the permit conditions prohibit construction seaward of the residence. Mr. Hudson did not speak with Mr. Cheap regarding any development on Mr. Kelley's property, including constructing shoreline protection on the subject property. However, in an apparent unrelated matter, Mr. Hudson was contacted by a man who claimed to represent a Homeowner's Association along this portion of Latigo Shores Drive, regarding the unpermitted closure of the exiting public access stairway located approximately 300 ft. downcoast of the Kelly property. Mr. Hudson informed the caller that, closure of the public accessway constituted a Coastal Act violation and that, in addition to any required coastal development permit or emergency permit from the City of Malibu repair of the stairs, a coastal development permit, permit amendment and/or emergency permit would also be required from the California Coastal Commission.

With regards to Mr. George, the statement above indicates that "Mr. Cheap understood that he was being told what the procedure was in emergency situations in general." Even if Mr. George made the alleged statements, obtaining oral advice regarding "emergency situations in general" did not provide Mr. Kelley or Mr. Cheap with the authorization required to conduct emergency development activity at the subject property. Mr. Kelley did not follow the procedures for undertaking such development and did not obtain an emergency permit from the Commission or the City of Malibu.

Coastal Act Section 30624 authorizes the Executive Director to issue emergency permits, in accordance with the procedures and criteria set forth in Section 13136 et seq. of the Commission's regulations. Section 13138 requires the submittal of applications for emergency permits to the Executive Director by letter or facsimile, and by telephone or in person if time does not allow a written application. Mr. Kelley did not submit an emergency permit application by mail or facsimile, did not contact staff by telephone, and did not appear in person to apply for an emergency permit.

Even assuming that Mr. Kelley could have alternatively obtained an emergency permit for the development from the City of Malibu, no such permit was applied for or obtained. The procedures for obtaining a permit from the City of Malibu are set forth in Section 13329 et seq. of the Commission's regulations and in Section 13.14 of the Malibu Local Coastal Program Implementation Plan ("Malibu LCP IP"). Section 13329.1 requires the submittal of applications for emergency permits by mail or facsimile. Alternatively, applications may be made over the telephone or in person, if time does not allow for a written submittal.

Section 13.14 of the Malibu LCP IP states that applications for emergency permits must be submitted, by any of the means described in Section 13329.1, to the Planning Director (**Exhibit 16**). To issue an emergency permit, the Director must find that an emergency exists, as defined in Chapter 2.1 of the Malibu LCP IP as: "a sudden unexpected occurrence, demanding immediate action to prevent or mitigate loss or damage to life, health, property or essential public services"¹⁰.

¹⁰ See *City of Malibu Local Coastal Program, Local Implementation Plan*, dated September 13, 2002, at page 10.

Mr. Kelley did not submit an application and did not obtain a permit from the City of Malibu. Furthermore, an emergency did not exist as defined in the Malibu LCP IP, due to the fact that the residence was built to withstand severe storms.

4. **Kelley's Defense:**

Mr. Cheap initially attempted to stop the erosion with sandbags and plastics, which quickly failed. Mr. Cheap then decided that [sic] put in a temporary system of rocks to prevent further erosion and stabilize the cliff.... The whole system was temporary. Mr. Cheap intended to remove the rocks when the storms ended.

Response:

As stated above (see Commission staff's response to statement #1), the revetment does not appear to be a temporary structure. Even if the revetment was intended to be a temporary structure, it requires an emergency permit, and Mr. Kelley did not follow the procedures to obtain an emergency permit from the Commission or even from the City of Malibu (as outlined in Commission staff's response to statement #3). Moreover, the revetment is inconsistent with CDP No. 5-88-794, as explained above.

5. **Kelley's Defense:**

Contrary to the NOI, Mr. Cheap did not remove sand from the beach or from the adjacent land when he installed the temporary measures, nor did he attempt to "bury" the rocks. Rather he placed the rocks at the base of the cliff. After placing the rocks, the cliff was trimmed down to assure stability, with the dirt from this overhang falling onto the rocks. There was no attempt to "bury" the system.

Response:

Information provided to staff from an anonymous source stated that a bulldozer was excavating sand from the beach in front of the subject property, and that rocks were placed in the resulting trenches. Photographs taken during staff's March 3, 2005 site visit confirm this general observance. If dirt from the existing fill slope "fell" onto the rock revetment as Mr. Kelley asserts, this would have only occurred as a result of grading the trench. More importantly, whether the fill materials "fell" or were used to back-fill behind the revetment, grading of the fill slope and placement of fill materials (including the rocks) on the beach constitutes development that was conducted without a coastal development permit. CCC-05-CD-05 directs Mr. Kelley to remove the entire revetment, regardless of how it was constructed.

6. **Kelley's Defense:**

Mr. Kelley denies that he failed to respond satisfactorily to the Commission's March 4, 2005 notice. Mr. Kelley did not receive the notice until the evening of March 4. He immediately contacted legal counsel, who informed Commission staff on Monday March 7 that no work was occurring or would occur on the property.

Response:

The EDCDO Notice of Intent and ED-05-CD-01 itself were both hand delivered to the residence of Mr. Kelley, in full compliance with the Coastal Act and the Commission's regulations.

Coastal Act Section 30809(b) states:

(b) The cease and desist order shall be issued only if the person or agency has failed to respond in a satisfactory manner to ... a written notice given by certified mail or hand-delivered to the landowner or person performing that activity.

Since Commission staff was concerned that further unpermitted development would occur on the subject property over the weekend of March 5-6, 2005, in an attempt to provide notice as quickly as possible, the notice was hand delivered to the Mr. Kelley residence. In an effort to stop any continuing development activity as quickly as possible, a 5:00 pm March 4, 2005 deadline was established for Mr. Kelley to respond to the EDCDO NOI. Mr. Kelley states that he received the EDCDO NOI and EDCDO in the evening of March 4, 2005, yet no response was made on that date. He did not provide any information to Commission staff in response to either document until March 7, 2005.

It should also be noted that whether or not an EDCDO, which is only effective for 90 days, was validly executed is wholly irrelevant to the issuance of CCC-05-CD-05 by the Commission.¹¹

7. Kelley's Defense:

Mr. Kelley denies that the temporary system is a violation of the CDP, the Coastal Act as implemented through the Local Coastal Program for the City of Malibu, or the practices and procedures of the Commission or the City of Malibu for addressing emergency situations.

Response:

As stated in the response of Commission staff to statement #1, the revetment does not appear to be a temporary structure, given the method with which it was constructed. Even if the revetment

¹¹ We note that there have been no concerns raised re: the Notice of Intent to Record a Notice of Violation and to Commence Cease and Desist Order and Restoration Order Proceedings, and that Mr. Kelley has responded to the notices by submitting a Statement of Defense.

were intended to be "temporary", it constitutes development under the Coastal Act and requires the appropriate authorization.

Moreover, as explained above in Sections D.2 and D.3, grading the beach and constructing the revetment violated CDP No. 5-88-794 and is inconsistent with numerous Chapter 3 policies of the Coastal Act. These policies are incorporated into the Malibu Local Coastal Plan.

Grading the beach and constructing the revetment violated the Coastal Act because the work constituted unpermitted development that is not exempt from permitting requirements of the Coastal Act.

Mr. Kelley did not follow the procedures for obtaining an emergency permit from the Commission or the City of Malibu, as stated in the Commission's response to Statement # 3 above. As explained above, no emergency permit was applied for or issued for the construction of the revetment and grading of the beach.

8. **Kelley's Defense:**

The NOI concerns facts and events that predate Mr. Kelley's involvement with the Property.

Mr. Kelley purchased the Property in 1997, after construction of the residence had already been completed, and was not a party to the 1988 Coastal Development Permit ("CDP") No. 5-88-794 Application.

Response:

The NOI addresses the unpermitted development that has occurred and remains on the subject property in violation of the conditions of existing permits, which apply to Mr. Kelley's property, and the Coastal Act. Regardless of whether Mr. Kelley undertook this development activity, as owner of the property, he is responsible for resolving the violation.

Both the "benefits" and the "burdens" of CDP No. 5-88-794 run with the land and bind Mr. Kelley as a successor owner. In addition, recorded deed restrictions pertaining to future development and the potential for "extraordinary erosion" were in the chain of title when Mr. Kelley purchased the property in 1997.

9. **Kelley's Defense:**

The Commission did not inform Mr. Kelley that it intended to pursue a cease and desist order with respect to the matters that have been the subject of his CDP until he received the March 15, 2005 NOI. Mr. Kelley has informed the Commission that he does not have the information to respond to all of the allegations and present an informed and adequate defense.

On March 22, 2005 Mr. Kelley requested the complete Coastal Development Permit file for the Property from the Coastal Commission's Ventura Office...[d]espite repeated requests for the file, only a portion of that file has been produced to Mr. Kelley to date. There is other information that Mr. Kelley has been seeking to obtain that he has not been able to secure in the extremely limited time frame the Commission has afforded Mr. Kelley to respond.

Response:

The Executive Director informed Mr. Kelley of its intent to pursue a cease and desist order by sending a Notice of Intent to Kelley, in accordance with Section 13181(a) of the Commission's regulations. Mr. Kelley was provided 20 days to submit a Statement of Defense, which is the standard time period stated in Section 13181(a). The original deadline for Kelley's submittal of a Statement of Defense was April 5, 2005. As a courtesy to Kelley, the Executive Director extended this deadline, pursuant to the authority provided in Section 13181(b) of the Commission's regulations, until April 13, 2005 for the portion of the Statement of Defense pertaining to the revetment and until April 18, 2005 for the remaining portion. Ultimately, Mr. Kelley was provided 28 days to complete his first submittal, as described above, and 33 days to complete his subsequent submittal, both of which are in excess of time required by the Commission's regulations.

Mr. Kelley has applied to amend CDP No. 5-88-794 on three separate occasions and is familiar with the development at the site and the permit. His current amendment application, A4, requests after-the-fact authorization for the unpermitted development listed in the NOI with the exception of the revetment. An applicant who seeks after-the-fact approval for unpermitted development generally obtains the information necessary to support the claim. Furthermore, the fact that Mr. Kelley is applying for after-the-fact approval of the unpermitted development is a clear indication that no CDP has been issued for the development. The Commission need only find that development occurred without a permit to issue a cease and desist order under Coastal Act Section 30810.

10. Kelley's Defense:

Mr. Kelley further objects to the inclusion of the "front yard wall" located on APN 4460-019-025, in the NOI relating to 26530 Latigo Shore Drive ("Property"). The two are separate properties and any alleged violations on that property should not be tied to the Property.

The "front yard wall" is not located on the Property and was not properly the subject of the NOI. At staff's request, Mr. Kelley included this wall in ...Application A4.

Response:

The NOI and these Orders pertain only to the front yard wall or portion thereof located on Kelley's property. Photographs of Kelley's property clearly show a wall extending across the

northern boundary of the property, in front of the western portion of the residence. Mr. Kelley has provided no evidence to support his claim that the wall is not located on his property.

11. Kelley's Defense:

Approval for the vertical boundary wall was recommended in the Staff Report for Application A2.

Response:

Mr. Kelley withdrew Application A2 before it was heard by the Commission at the April 1999 Commission hearing. The staff report was not submitted to the Commission and no Commission action was taken on it and, therefore, is irrelevant to these Orders. The vertical boundary wall is included in Kelley's current amendment application, A4. A new staff report will be prepared for A4, if and when this matter comes before the Commission for a hearing.

12. Kelley's Defense:

Mr. Kelley is informed and believes that the soldier pile design was reviewed and approved by the Commission staff in 1990.

Response:

Mr. Kelley has submitted no evidence in support of this statement. Had the Commission approved the soldier pile design in a permit context, a CDP would have been issued for its construction. No CDP has been issued authorizing the soldier piles.

13. Kelley's Defense:

At one time there was a fill slope that was present when [Kelley] purchased the property.

The remaining dirt seaward of the property is part of the original Caltrans fill, which existed prior to the CDP and was acknowledged therein.

Response:

Mr. Kelley has submitted no evidence in support either of these statements. Regardless of whether the fill was imported and placed seaward of the property by a prior owner without a CDP, Mr. Kelley is responsible for resolving the violation, as the owner of the property. CCC-05-CD-05 addresses submittal of evidence pertaining to the origin of the fill. Mr. Kelley proposes grading the slope, regardless of its origin. The grading will constitute development and will be addressed in Application A4 and in accordance with the terms of CCC-05-CD-05.

14. Kelley's Defense:

The Los Angeles County Fire Department required the staircase as a pre-condition to issuance of the certificate of occupancy for the residence.

Mr. Kelley believes that the stairs are not a violation as they were part of the final plans for the Property approved by the County and follow the pattern for the vertical access the Commission approved in the CDP.

Response:

Coastal Act Section 30600 states in relevant part:

[I]n addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency, any person... wishing to perform or undertake any development in the coastal zone...shall obtain a coastal development permit.

Even if required by the Los Angeles County Fire Department or approved by another department of the County under their codes and regulations, the stairs constitute development under the Coastal Act and require a CDP. Moreover, the stairs do not follow the pattern for vertical access addressed in the permit as approved by the Commission, and in fact, are not used for public access at all. The stairs appear to lead from the western edge of the residence, in the middle of the subject property, to the northern boundary of the property, presumably the driveway. The vertical access easement extends along the entire western boundary of the property, from Latigo Shore Drive to the sandy beach below the residence.

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

CEASE AND DESIST ORDER CCC-05-CD-05, KELLEY

Pursuant to its authority under Public Resource Code Section 30810, the California Coastal Commission hereby orders and authorizes Bert Kelley (hereinafter referred to as "Respondent") to:

1. Cease and desist from engaging in any further development on the subject property not authorized by a coastal development permit.
2. Cease and Desist from maintaining unpermitted development on the subject property, consisting of grading (cut and fill), importation of fill and construction of a fill slope, construction of an approximately 90-foot long rock revetment, a 6-foot high front yard wall, a path with stairs, a non-structural concrete slab, twenty soldier piles, and a wall built on top of the soldier piles in accordance with the terms of this Order.
3. Cease and desist from engaging in any further development that violates Coastal Development Permit No. 5-88-794.

4. Regarding the Grading of the Beach and Construction of the Rock Revetment:

A. Within 20 days of the issuance of this Order, Respondent shall submit a plan to the Executive Director for approval to remove the rock revetment described in Section 4 of this Order and restore the site to its pre-violation condition.

The removal plan should provide for:

- a. Restorative grading of the sandy beach;
- b. Appropriate operation of mechanized equipment necessary to complete removal and restoration work, including but not limited to the following:
 - i. hours of operation of mechanized equipment
 - ii. contingency plan in case of a spill of fuel or other hazardous release from use of mechanized equipment that addresses clean-up and disposal of the hazardous materials and water quality concerns;
- c. Removal and disposal of revetment liner materials, should such materials be found during removal of the revetment;
- d. Disposal of revetment and fill materials;
- e. Protection of water quality.

If the Executive Director determines that any modifications or additions to the submitted plan are necessary, he shall notify the Respondent. The Respondent shall complete requested modifications and resubmit the plan for approval within 10 days of the notification.

B. Within 10 days of the approval of said plan by the Executive Director, Respondent shall complete removal of the rock revetment and restoration of disturbed areas of the subject property, in accordance with the approved plan and this Order.

C. Within 10 days of completing the removal of the rock revetment and restoration of disturbed areas of the subject property, in accordance with the approved plan and this Order, Respondent shall submit photographic evidence of the completion of the work required under this section to the attention of Christine Chestnut in the Commission's San Francisco office.

5. Regarding the Installation of Soldier Piles; Importation of Fill; and Construction of the Fill Slope, Front Yard Wall, Wall Built on Top of the Soldier Piles, Path with Stairs, and Concrete Slab:

A. Within 20 days of the issuance of this Order, Respondent shall submit any evidence, including but not limited to geological survey reports and soil analysis, regarding the origin of the fill materials currently comprising the fill slope seaward of the residence located on the subject property. If after this 20-day period, the Executive Director determines that the evidence does not rebut the conclusion that Mr. Kelley imported fill materials and constructed the existing fill slope, the fill slope will be subject to removal under this Order.

B. Within 20 days of the issuance of this Order, Respondent shall submit plans for removal of all unpermitted development on the subject property.

C. Alternatively, if Respondent has, within 20 days of the issuance of this Order, completed Amendment Application 5-88-794-A4 according to the materials requested by Commission permit staff, Sections C and D will apply in lieu of Section B.

D. Within 20 days after the Commission acts on Amendment Application No. 5-88-794-A4, Respondent shall submit plans for removal of all unpermitted development including a schedule for all actions required, as described in this Order, that has not been approved in that action.

If the Executive Director determines that any modifications or additions to the plans are necessary, he shall notify Respondent. Respondent shall complete requested modifications and resubmit the plans for approval within 10 days of the notification.

E. Within 20 days of the approval of said plan by the Executive Director, Respondent shall complete removal of all unpermitted development, in accordance with the approved plan and this Order.

F. Within 10 days of completing the removal of all unpermitted development, as described in this Order, in accordance with the approved plan and this Order, Respondent shall submit photographic documentation of the completion of the work required under this section to the attention of Christine Chestnut in the Commission's Headquarters office.

F. All materials submitted pursuant to this Order must be made to Christine Chestnut at the following address:

California Coastal Commission
Attn: Christine Chestnut
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219
Facsimile: (415) 904-5400

With a copy submitted to:
California Coastal Commission
South Central Coast District Office
Attn: Pat Veasart
89 S. California Street, Suite 200
Ventura, CA 93001-2810
Facsimile: (805) 641-1732

I. Persons Subject to the Order

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

II. Identification of the Property

The property that is subject this Order is described as follows:

A .29-acre parcel located between Latigo Shore Drive and the mean high tide line of the Pacific Ocean, containing an artificial bluff composed of fill materials and an approximately 90-foot long stretch of sandy beach. The property is located at 26530 Latigo Shore Drive (APN 4460-019-143).

III. Description of Unpermitted Development

Unpermitted development located on the subject property includes of grading (cut and fill), importation of fill and construction of a fill slope, construction of an approximately 90-foot long rock revetment, an approximately 6-foot high front yard wall, a path with stairs, a non-structural concrete slab, twenty below-grade "soldier piles", and a soldier pile wall of varying heights. In addition, the mechanized equipment was used to construct of the rock revetment on the beach below the residence.

IV. Effective Date and Terms of the Order

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

V. Findings

The Order is issued on the basis of the findings adopted by the Commission at the May 2005 hearing, as set forth in the attached document entitled "Staff Report and Findings for Notice of Violation and Cease and Desist Order.

VI. Compliance Obligation

Strict compliance with the Order by all parties subject thereto is required. Failure to comply strictly with any term or condition of the Order including any deadline contained in the Order will constitute a violation of this Order and may result in the imposition of civil penalties of up to SIX THOUSAND DOLLARS (\$6,000) per day for each day in which such compliance failure, in addition to any other penalties authorized under Section 30820.

VII. Deadlines

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

VIII. Appeal

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

IX. Government Liability

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

X. Successors and Assigns

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

XI. No Limitation on Authority

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

CCC-05-NOV-03 & CCC-05-CD-05

Kelley

Page 34 of 38

Executed in _____ on _____, on behalf
of the California Coastal Commission.

Peter Douglas, Executive Director

By: _____

CCC-05-NOV-03 & CCC-05-CD-05

Kelley

Page 35 of 38

RECORDING REQUESTED BY:

California Coastal Commission

WHEN RECORDED MAIL TO:

California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219
Attention: Christine Chestnut

[Exempt from recording fee pursuant to Gov. Code § 27383]

DOCUMENT TITLE:

NOTICE OF VIOLATION OF THE COASTAL ACT

Re: Assessor's Parcel No. 4460-019-143

Property Owners:

Bert Kelley

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

CALIFORNIA COASTAL COMMISSION
Attention: Christine Chestnut
45 FREMONT STRET, SUITE 2000
SAN FRANCISCO, CA 94105-2219

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

NOTICE OF VIOLATION OF THE COASTAL ACT
(Public Resources Code Section §30812)

I, Peter Douglas, declare:

1. I am the Executive Director of the California Coastal Commission.
2. A violation of the California Coastal Act of 1976 (Public Resources Code §3000, et seq.) has occurred on a certain parcel situated in Los Angeles County, California, more particularly described as follows:

One .29-acre parcel located at 26530 Latigo Shore Drive, Malibu, CA 90265 in Los Angeles County (Assessor's Parcel Number 4460-019-143)

Owner of Record: Bert Kelley

The Violation consists of the undertaking of development activity without the authorization required by the California Coastal Act of 1976.

3. This property is located within the Coastal Zone as that term is defined in Coastal Act Section 30103.
4. The record owner of said real property is: Mr. Bert Kelley.
5. The violation of the Coastal Act (Violation File No. V-4-02-032) consists of the following unpermitted development: grading (cut and fill), importation of fill and construction of a fill slope, construction of an approximately 90-foot long rock revetment, a gate linking two segments of an approximately 6-foot high front yard wall, a path with stairs, a non-structural concrete slab, twenty below grade "soldier piles", and a soldier-pile wall.

The requirements set forth in Section 30812 for notice and recordation of this Notice Of Violation have been complied with. Recording this notice is authorized under Section 30812 of the California Public Resources Code.

7. The California Coastal Commission notified the record owner, Mr. Bert Kelley, of its intent to record a Notice of Violation in this matter in a letter dated March 15, 2005.
8. The Commission received a written objection to the recordation of the Notice of Violation on April 18, 2005 and conducted a public hearing. The Commission determined that the unpermitted development on Mr. Kelley's property constituted a violation of the Coastal Act. Therefore, the Executive Director is recording the Notice of Violation as provided for under Section 30812 of the California Coastal Act.

Executed in _____, California, on _____.

I declare under penalty of perjury that the foregoing is true and correct.

PETER DOUGLAS, Executive Director

STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

On this _____ day of _____, in the year _____, before me the undersigned Notary Public, personally appeared Peter Douglas, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument as Executive Director of the California Coastal Commission and acknowledged to me that the California Coastal Commission executed it.

Notary Public in and for Said State and County

CCC-05-NOV-03 and CCC-05-CD-05

Exhibit List

Exhibit

Number

Description

1. Site Map and Location.
2. Coastal Development Permit No. 5-88-794.
3. Amendment application No. 5-88-794-A4.
4. September 17, 1999 letter to Kelley, informing Kelley of the incomplete status of amendment application 5-88-794-A2.
5. January 20, 2000 letter to Kelley, informing Kelley of the incomplete status of amendment application 5-88-794-A2.
6. July 21, 2000 letter to Kelley, informing Kelley of the incomplete status of amendment application 5-88-794-A2.
7. Photographs from anonymous source, submitted to staff on March 3, 2005.
8. Photographs taken by staff during site visit on March 3, 2005.
9. EDCDO NOI with declaration of service, issued on March 4, 2005.
10. EDCDO, issued on March 4, 2005.
11. CDO NOI, issued on March 15, 2005.
12. Statement of Defense with regards to the rock revetment, submitted on April 14, 2005 with cover letter objecting to recordation of a Notice of Violation and attachments.
13. Statement of Defense with regards violations other than the rock revetment, submitted on April 18, 2005 with cover letter and attachments.
14. Deed Restriction, recorded pursuant to Special Conditions 1 and 7 of CDP No. 5-88-794.
15. Offer to Dedicate a Vertical Access Easement with attachments, recorded on December 12, 1989.
16. Excerpt from City of Malibu Local Coastal Program Implementation Plan: Chapter 13, Section 13.14.

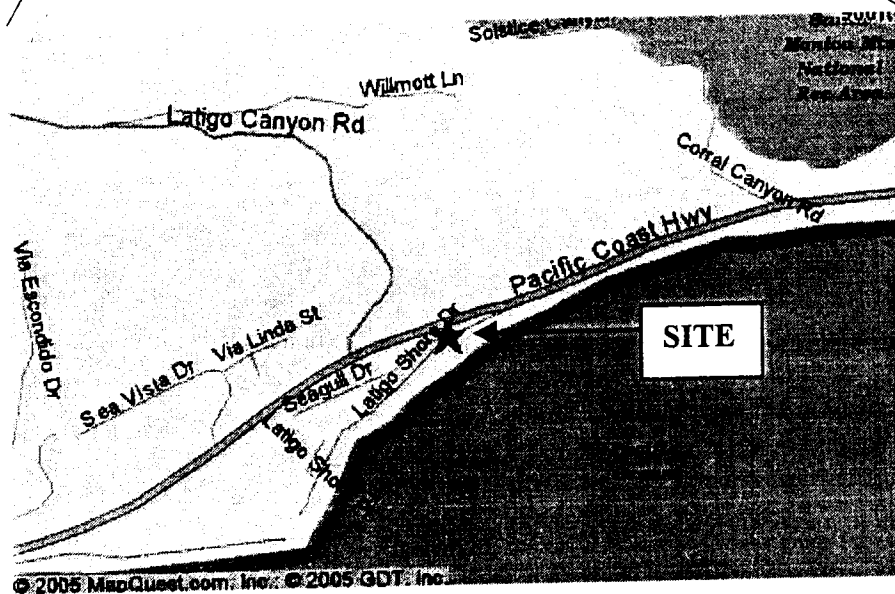
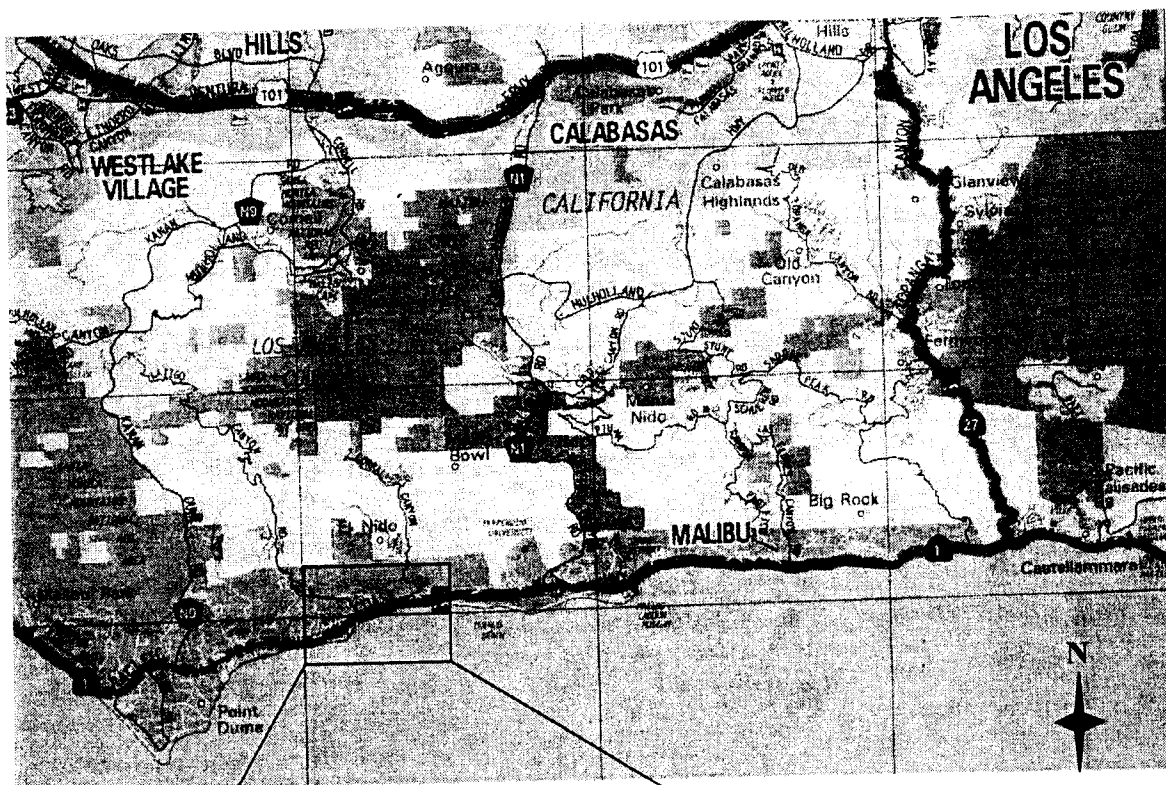


Exhibit 1. Site Map

CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA
245 WEST BROADWAY, SUITE 380
LONG BEACH, CA 90802
(213) 590-5071

RECEIVED

JUL 3 1990

CALIFORNIA
COASTAL COMMISSION
SOUTH COAST DISTRICT

Page 1 of

Date: June 13, 1990

Permit No. 5-88-794

COASTAL DEVELOPMENT PERMIT

On December 13, 1988, the California Coastal Commission granted to

Jeanette Goldbaum

this permit subject to the attached Standard and Special conditions, for development consisting of:

Subdivision of 35,130 sq. ft. lot into three parcels and construction of three single family houses.

more specifically described in the application file in the Commission offices.

The development is within the coastal zone in Los Angeles County at 26520-26524 Pacific Coast Highway, Malibu CA APN 4460-19-26.

Issued on behalf of the California Coastal Commission by

PETER DOUGLAS
Executive Director

By: *Peter Douglas*Title: Staff AnalystACKNOWLEDGMENT

The undersigned permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions thereof.

The undersigned permittee acknowledges that Government Code Section 818.4 which states in pertinent part, that: "A public entity is not liable for injury caused by the issuance. . . of any permit. . ." applies to the issuance of this permit.

IMPORTANT: THIS PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT WITH THE SIGNED ACKNOWLEDGEMENT HAS BEEN RETURNED TO THE COMMISSION OFFICE. 14 Cal. Admin. Code Section 13158(a).

Date 6-28-90*Jeanette Goldbaum*
Signature of Permittee

NOTICE OF INTENT TO ISSUE PERMIT

Page 2 of 6
Permit Application No. 5-88-794

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
1. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

SPECIAL CONDITIONS:

- ✓ 1. Assumption of Risk.

Prior to transmittal of the permit, the applicant as landowner shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide: (a) that the applicant understands that the site may be subject to extraordinary hazard from shoreline erosion, flooding, and bluff erosion, and the applicant assumes the liability from such hazards; (b) that the applicant unconditionally waives any claim of liability on the part of the Commission and its advisors relative to the Commission's approval of the project for any damage due to natural hazards.

The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed.

✓ 2. Lateral Access

Prior to the transmittal of the permit, the Executive Director shall certify in writing that the following condition has been satisfied. The applicant shall execute and record a document, in a form and content approved in writing by the Executive Director of the Commission irrevocably offering to dedicate to a public agency or a private association approved by the Executive Director an easement for public access and passive recreational use along the shoreline. The document shall provide that the offer of dedication shall not be used or construed to allow anyone, prior to acceptance of the offer, to interfere with any rights of public access acquired through use which may exist on the property.

The easement shall extend the entire width of the property from the mean high tide line to the line approximating the toe of the bluff, shown as elevation 16 on the maps provided by the applicant. (Exhibit 3)

The easement shall be recorded free of prior liens except for tax liens and free of prior encumbrances which the Executive Director determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding successors and assigns of the applicant or landowner. The offer of dedication shall be irrevocable for a period of 21 years, such period running from the date of recording.

✓ 3. Vertical Access

Prior to the transmittal of the permit, the Executive Director shall certify in writing that the following condition has been satisfied. The applicant shall execute and record a document, in a form and content approved in writing by the Executive Director of the Commission irrevocably offering to dedicate to a public agency or a private association approved by the Executive Director an easement for public access for pass and repass from Pacific Coast Highway to the shoreline. The document shall provide that the offer of dedication shall not be used or construed to allow anyone, prior to acceptance of the offer, to interfere with any rights of public access acquired through use which may exist on the property.

The easement be described in metes and bounds and shall extend from the Pacific Coast Highway to the ordinary high tide of the Pacific Ocean, generally within the geologic setback along the western property line. The easement shall not be less than 10 feet in width, and shall be sited and designed to accommodate reasonable and safe pedestrian access from the highway to the area along the beach dedicated in condition 2.

A more detailed description may either follow the stairway proposed in exhibit 3, or otherwise follow a potential switch-back within the general area identified as geologic setback in Exhibit 3 if the stairway cannot be feasibly constructed. The exact configuration of the easement shall be determined by the Executive Director. The easement shall enable a private or public agency accepting maintenance and liability to enter, improve and maintain the access in order to provide pedestrian access to the shoreline.

The easement shall be recorded free of prior liens except for tax liens and free of prior encumbrances which the Executive Director determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding successors and assigns of the applicant or landowner. The offer of dedication shall be irrevocable for a period of 21 years, such period running from the date of recording.

In addition to all other recording, there shall be an explanatory note on the final parcel map.

If and when a vertical public access way has been constructed within 500 feet of the applicant's property and such accessway has been opened for public use and either a private association acceptable to the Executive Director or a public agency has accepted the responsibility for operation and maintenance of the accessway, the applicant may request an amendment to this permit to remove the recorded easement. Such amendment must be approved by the California Coastal Commission prior to the removal or revision of the recorded easement.

✓ 4) State Lands

Prior to the transmittal of a permit the applicants shall obtain a written determination from the State Lands Commission that:

(a) No State lands and/or lands subject to the public trust are involved in the development, or

(b) State lands and/or lands subject to the public trust are involved in the development and all permits that are required by the State Lands Commission have been obtained, or

(c) State lands and/or lands subject to the public trust may be involved in the development, but pending a final determination, an agreement has been made with the State Lands Commission for the project to proceed without prejudice to that determination.

✓ 5) Storm Design.

Prior to the transmittal of the Coastal Development Permit, the applicants shall submit certification by a registered civil engineer that the proposed structure is designed to withstand storms comparable to the winter storms of 1982-83.

✓ 6) Construction Methods and Materials.

Prior to transmittal of the permit the applicant shall provide subject to the review and approval of the Executive Director 1) revised grading plans with plan notes and 2) an agreement with the Executive Director both of which provide a) that no stockpiling of dirt shall occur on the beach, seaward of elevation 20, b) that all grading shall be properly covered, sand bagged and ditched to prevent runoff and siltation, c) that earth-moving operations shall be prohibited between November 1 and March 31, d) that measures to control erosion must be implemented at the end of each day's work, and e) evidence that plans for this erosion prevention conform to applicable County ordinances, f) entry for excavation shall be from Pacific Coast Highway and Latigo Shores Drive and shall not be from the beach.

Pursuant to this agreement, during construction, disturbance to sand and intertidal areas shall be minimized. Beach sand excavated shall be re-deposited on the beach. Local sand, cobbles or shoreline rocks shall not be used for backfill or construction material. No road or ramp shall be constructed to the beach. The applicant shall prevent siltation or discharge of silt, chemicals or waste concrete on the beach.

✓ 7) Future improvements

Prior to transmittal of the permit the applicant shall provide a deed restriction for recording in a form and content acceptable to the Executive Director, which provides that Coastal Development Permit 5-88-794 is for the approved development only, and that any future additions or improvements to the property will require a new Coastal Development Permit from the Coastal Commission or its successor agency. The document should note that no permanent improvements with the exception of one public path or stairway noted on the present plans shall be constructed within the geologic set back area or under the floors or seaward of the existing structures. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed. It shall remain in effect for the life of the development approved in this permit.

✓ 8) No beach level development

Prior to issuance the applicant the applicant shall agree that this approval is based upon his assertions that no beach development, including leachfields or seawalls will be necessary to protect the development. Prior to issuance of the permit the applicant shall present final working drawings for an approved approved by Los Angeles County Health department for a septic system that 1) requires no seawall, 2) involves no waivers of the Los Angeles County Plumbing code, 3) is not located on the beach (below elevation 16 as shown on Exhibit 3)

✓ 9) Revised plans

Prior to transmittal of the permit the applicant shall submit revised plans that limit the development to three levels. For purposes of this condition a mezzanine and a basement are each levels.

✓ 10. Cumulative Impact Mitigation Condition

Prior to issuance of this permit, the applicant shall provide evidence to the Executive Director that development rights for residential use have been extinguished on one building site in the Santa Monica Mountains Coastal zone for each new building site created by the permit. The method used to extinguish the development rights shall be either

- a) one of the five lot retirement or lot purchase programs contained in the Malibu Santa Monica Mountains Land Use Plan (policy 272 2-6),
- b) a TDC-type transaction, consistent with past Commission actions such as 5-84-789 (Miller),
- c) or participation along with a public agency or private nonprofit corporation to retire habitat or watershed land in amounts that the Executive Director determines will retire the equivalent number of potential building sites. Retirement of a site that is unable to meet the County's health and safety standards, and therefore unbuildable under the Land Use Plan, shall not satisfy this condition.

The building site on which residential uses are extinguished must either be a legal lot in a small lot subdivision or a potential building site located in a Significant Watershed. Unsubdivided land within Significant Watersheds may be used to generate building sites in numbers based on densities consistent with the proposed densities of the Land Use Plan; sites that are unable to meet the County's health and safety standards shall not be counted.

The documents needed to comply with Condition(s) 1,2,3 & 7 will be sent to you from our San Francisco office AFTER the Commission meeting. When you receive the documents if you have any questions, please contact the Legal Department at (415)543-8555.

8318A

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA

89 SOUTH CALIFORNIA ST., 2ND FLOOR

VENTURA, CA 93001

(805) 641-0142

APPLICATION FOR AMENDMENT TO COASTAL DEVELOPMENT PERMIT



Application for an amendment to a previously issued coastal development permit may be made by submitting this form, completed and signed, together with the materials described below and the application fee.

Pursuant to 14 Cal. Admin. Code Sections 13164 and 13168, materials to be submitted are

1. Two sets of plans showing the proposed amendment; these must have been approved by the local planning agency and stamped with Approval in Concept. Please submit evidence of approval (Approval in Concept form).
2. Stamped, addressed envelopes for renotification of all property owners and residents within 100 feet of the development and list of same. The envelopes must be plain, business size (9 1/2 X 4 1/8), with first class postage. METERED STAMPED ENVELOPES CANNOT BE ACCEPTED.
3. A minimum application fee of \$200 or 50% of original filing fee, whichever is greater (based on updated fee schedule).

Upon receipt of the above information, the Executive Director will determine whether the amendment request should be rejected on the basis that the proposed amendment would lessen or avoid the intent of a previously approved permit condition. 14 Cal. Admin. Code Section 13168. If the amendment request is filed, the Executive Director will then determine whether the amendment request is immaterial or material. If the Executive Director finds that the proposed amendment is immaterial, notification is sent to surrounding property owners and the site must be posted with a form which will be sent to you. If no objections are received, the amendment is approved, and you will be sent an amended permit. If objections are received, or if the amendment is determined by the Executive Director to be material, the request will be set for a public hearing. You have the right to request that the Commission make a determination of materiality independent of that previously made by the Executive Director. 14 Cal. Admin. Code Section 13166.

Please provide the information below and on the reverse. If you have any questions, contact this office.

APPLICANTNAME: BERT J. KELLEYADDRESS: 26520 LATIGO SHORE DR.PHONE: 213.688.7060COASTAL PERMIT NUMBER: 5-88-794PROJECT ADDRESS: 26530 LATIGO SHORE DR.APPLICANT'S REPRESENTATIVE (If any)DARREN DOMINGUE858 21ST ST. BSANTA MONICA CA 90403310.453.1961DATE OF ISSUANCE: 1989

FOR OFFICE USE ONLY

Date Received: _____

Date Filed: _____

Application Fee Received: _____

Exhibit 3

CCC-05-NOV-03 and CCC-05-CD-05

(Kelley) Page 1 of 7

DESCRIPTION OF PROPOSED AMENDMENT: SEE ATTACHED

CERTIFICATION

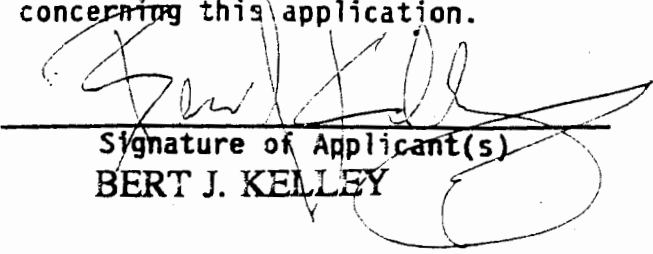
I hereby certify that I or my authorized representative will complete and post the "Notice of Proposed Permit Amendment" form furnished me by the Commission in a conspicuous place on the development property upon receipt of said notice.

I hereby certify that to the best of my knowledge the information in this application and all attached exhibits is full, complete, and correct, and I understand that any misstatement or omission of the requested information or any information subsequently requested may be grounds for denying the application, for suspending or revoking a permit issued on the basis of these or subsequent representations, or for the seeking of such other and further relief as may seem proper to the Commission.

Signature of Applicant(s) or Agent

NOTE: If signed by agent, applicant must sign below.

I hereby authorize DARREN DOMINGUE to act as my representative and bind me in all matters concerning this application.



Signature of Applicant(s)
BERT J. KELLEY

DARREN G. DOMINGUE, AIA
A R C H I T E C T
CALIFORNIA LICENSE C 24691
858 21ST STREET - STUDIO - B
SANTA MONICA, CALIFORNIA 90403

phone 310.453.1961
fax 310.453.1622
e-mail DGDAIA @ AOL . COM

RECEIVED
AUG 19 1999
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

AFTER THE FACT PERMITS FOR THE FOLLOWING:

1. **APPROVAL TO RELOCATE THE PREVIOUSLY APPROVED SINGLE FAMILY RESIDENCE 10 FEET SEAWARD.**
2. **APPROVAL TO INSTALL 20 BELOW GRADE SOLDIER PILES ALONG THE WESTERN BOUNDRY OF THE PROPERTY.**
3. **APPROVAL TO CONSTRUCT A FIVE FOOT TALL(MAX. 6'-0") VERTICAL BOUNDRY WALL ON TOP OF THE SOLDIER PILES FROM LATIGO SHORE DRIVE TO THE 25 FOOT CONTOUR LINE, AND CONSTRUCT A MAXIMUM SIX FOOT HIGH FRONT YARD WALL.**
4. **APPROVAL TO EXTEND OF THE EXISTING BUILDING PAD ALONG WITH THE REPAIR OF AN ARTIFICIAL SLOPE. (225 CU. YARDS FILL FROM CAISSON
* INSTALLATION ON ADJACENT PROPERTY / 125 CU. YARDS CUT ON-SITE)**
5. **PLACEMENT OF SOD ATOP ARTIFICIAL BLUFF, (#6 ABOVE) ADJACENT TO A SANDY BEACH.**
6. **INSTALLATION OF A NON-STRUCTURAL SLAB.**
7. **INSTALL EXTERIOR NON-STRUCTURAL FRAMING AROUND EXISTING STRUCTURAL CAISSONS.**

INCLUDING THE FOLLOWING:

8. **APPROVAL TO ABANDON THE EXISTING 10 FOOT WIDE VERTICAL EASEMENT.**

9.

**APPROVAL TO REWRITE THE EXISTING LATERAL
EASEMENT; DESCRIBE THIS EASEMENT AS A
DISTANCE PARALLEL AND PERPENDICULAR TO THE
EXISTING PROPERTY LINE CORNERS.**

APPLICATION FOR COASTAL DEVELOPMENT PERMIT

APPENDIX B

LOCAL AGENCY REVIEW FORM

RECEIVED
AUG 19 1999

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

SECTION A (TO BE COMPLETED BY APPLICANT)

Applicant MR. DERRON DOMINGUE, AIA

Project Description 0 EXTENSION OF PAD & REPAIR OF SLOPE 0 SOO ARTIFICIAL BLUFF 0 FRAME CAISSONS 0 INSTALL NON-STRUCTURAL SLAB

Location 26530 LATIGO SHORE DRIVE

Assessor's Parcel Number _____

SECTION B (TO BE COMPLETED BY LOCAL PLANNING OR BUILDING INSPECTION DEPARTMENT)

Zoning Designation MF 6/1 du/ac

General or Community Plan Designation SF 1/1 du/ac

Local Discretionary Approvals

- ☐ Proposed development meets all zoning requirements and needs no local permits other than building permits.

- ☒ Proposed development needs local discretionary approvals noted below.

Needed Received

- | | | |
|-------------------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | Design/Architectural review |
| <input type="checkbox"/> | <input type="checkbox"/> | Variance for _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | Rezone from _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | Tentative Subdivision/Parcel Map No. _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | Grading/Land Development Permit No. _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | Planned Residential/Commercial Development Approval |
| <input type="checkbox"/> | <input type="checkbox"/> | Site Plan Review |
| <input type="checkbox"/> | <input type="checkbox"/> | Condominium Conversion Permit |
| <input type="checkbox"/> | <input type="checkbox"/> | Conditional, Special, or Major Use Permit No. _____ |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Other <u>CA. COASTAL COMMISSION</u> |

CEQA Status

- ☒ Categorically Exempt Class 1 Item C
- ☐ Negative Declaration Granted (date) _____
- ☐ Environmental Impact Report Required, Final Report Certified (date) _____
- ☐ Other _____

Prepared for the City/County of MAHESU by Meredith T. Elguera
Date 7/1/99 Title ASSISTANT PLANNER

Exhibit 3
CCC-05-NOV-03 and CCC-05-CD-05
(Kelley) Page 5 of 7

CALIFORNIA COASTAL COMMISSION

So. Central Coast District

Permit Application Fee Receipt

Application No. 5-88-794-A4

Date Received 8-19-99

PAYOR:

Name Darren G. Domingue
Address 858 - 21st St., Studio B
City Santa Monica ZIP 90403 Telephone (310) 453-1961

APPLICANT (if other than Payor):

Name Bert J. Kelley
Address 26520 Latigo Shore Dr.
City Malibu ZIP 90265 Telephone (213) 688-7060

TYPE OF PERMIT:

- ☐ Regular
☐ Administrative
☐ Emergency
☒ Amendment / Extension

FORM OF PAYMENT:

- ☐ Cash
☒ Check # 3157
☐ Other _____

Permit fee \$ 200⁰⁰

Received by MD

1234

CCC-20 (10-88)

ORIGINAL—Payor DUP—Accounting TRIP—District

OSP 98 14033

CALIFORNIA COASTAL COMMISSION

So. Central Coast District

Permit Application Fee Receipt

Application No. 5-88-794-A4

Date Received 11/24/99

PAYOR:

Darren G. Domingue
Name
858-21st St, Studio B
Address
Santa Monica 90403 (310) 453-1961
City ZIP Telephone

APPLICANT (if other than Payor):

Bert J. Kelly
Name
26520 Latigo Shore Dr.
Address
Malibu 213-688-7060
City ZIP Telephone

TYPE OF PERMIT:

- ☐ Regular
☐ Administrative
☐ Emergency
☒ Amendment / Extension

FORM OF PAYMENT:

- ☐ Cash
☒ Check 3234
☐ Other _____

Permit fee \$ 200⁰⁰

BR
Received by

1536

CCC-20 (10-88)

ORIGINAL—Payor DUP—Accounting TRIP—District

OSP 98 14033

Exhibit 3

CCC-05-NOV-03 and CCC-05-CD-05
(Kelley) Page 7 of 7

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA STREET, SUITE 200
VENTURA, CA 93001
(805) 641-0142



DATE: September 17, 1999

Bert J. Kelley
26520 Latigo Shore Drive
Malibu, CA 90265

RE: Application No. 5-88-794-A4

Dear Mr./Ms. Kelley:

Your Coastal Commission application is incomplete and cannot be filed or processed until the following items have been received. These items must be received in our office by December 17, 1999.

SEE ATTACHED PINK SHEETS

If you have any questions regarding your application, please contact me at the address and phone number listed above.

Sincerely,

A handwritten signature in cursive script, appearing to read "Julie Reveles".

JULIE REVELES
Office Technician

cc: Darren Domingue

Exhibit 4
CCC-05-NOV-03 and CCC-05-CD-05
(Kelley) Page 1 of 6

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA

89 SOUTH CALIFORNIA ST., SUITE 200

VENTURA, CA 93001

(805) 641 - 0142

5-88-794-A4
(File No.)BERT KELLEY
(Applicant)DARREN DOMINGUE
(Agent)26520 LATIGO SHORE DR. MALIBU
(Project Street and City)

Your coastal permit application has been reviewed and is incomplete. Before it can be accepted for filing, the information indicated below must be submitted.

- ✓ X 1. Filing fee is \$ 400. Payable by check or money order to the California Coastal Commission. Amount due \$ 200.
2. Proof of the applicant's legal interest in the property. (A copy of any of the following will be acceptable: current tax bill, recorded deed, signed Offer-to-Purchase along with a receipt of deposit, signed final escrow document, or current policy of title insurance. Preliminary title reports will not be accepted.)
3. Assessor's parcel number as indicated on a property tax statement. The property legal description as contained in a Grant Deed is not the assessor's parcel number. See page 2, item 1 of the application packet.
- ✓ X 4. Assessor's parcel map(s) showing the applicant's property and all other properties within 100 feet (excluding roads) of the property lines of the project site. (Available from the County Assessor). Drawings or facsimiles are not acceptable.
- ✓ X 5. Stamped envelopes addressed to each property owner and occupant of property situated within 100 feet of the property lines of the project site (excluding roads), along with a list containing the names, addresses and assessor's parcel numbers of same. The envelopes must be plain (i.e., no return address), and regular business size (9 1/2 x 4 1/8"). Include a first class postage stamp on each one. Metered envelopes are not acceptable. Mailing list must be on the format shown on page C-1 of the application packet.
6. Enclose appropriate map(s) indicating location of property in relation to the coastline. Thomas Brothers map, road map or area maps prepared by local governments may provide a suitable base map.

- ☐ 7. Cost valuation by city/county or contractor for the development.
- ☐ 8. Copies of required local approvals for the proposed project, including zoning variances, use permits, etc. Include minutes of any public hearing.
- ☐ 9. Verification of all other permits, permissions or approvals applied for or granted by public agencies (e.g., Dept. of Fish and Game, State Lands Commission, U.S. Army Corps of Engineers, U.S. Coast Guard).
- ☐ 10. Where septic systems are proposed, percolation test prepared by a qualified sanitarian or soils engineer.
- ☐ 11. County or City Health Department review of septic system.
- ☐ 12. Where water wells are proposed, evidence of County or City review and approval.
- ☒ 13. ^(SEE COMMENTS) 2 set(s) of project drawings including site plans, floor plans, and all elevations. Drawing must be to scale with dimensions shown. Trees to be removed must be marked on the site plan. All oak trees and riparian vegetation (canopy), streams and drainages, wetlands, easements, and public hiking and equestrian trails (including existing offers to dedicate trails) must be identified on the site plan. Plans must be approved by the planning department and stamped "Approval-in-Concept." We need more set(s).
- ☒ 14. 2 set(s) of detailed grading and drainage plans with cross-sections and quantitative breakdown of grading amounts (cubic yards of cut and fill). Plans must be to scale and prepared by a registered engineer.
- ☒ 15. ^(ADDRESS NECESSITY / LOCATION OF CAISSONS & GRADING) Two copies of a comprehensive, current (not more than 1 year old), site-specific geology and soils report (including maps) prepared in accordance with the Guidelines for Engineering Geologic Reports, prepared by the State Board of Registration for Geologists & Geophysicists (11/93). Copies of the guidelines are available from the Coastal Commission District Office.
- ☒ 16. A current (not more than 1 year old) City or County "Approved" Geologic Review Sheet.
- ☐ 17. "Approval-in-Concept" form completed by the planning department or other responsible department.
- ☐ 18. Current zoning for project site.
- ☒ 19. A reduced set of legible drawings to 8 1/2 x 11" in size. The reduced set shall include a site plan, grading plan, elevations and topography if required for submittal.

- ☐ 20. For projects which include demolition, two copies of a site plan and elevations or photographs of the structure to be demolished. Demolition must be included in the "Approval-in-Concept" project description.
- ☐ 21. Remodel projects must include percent of walls to be demolished (interior and exterior), and indicate walls to be demolished and retained on-site plans.
- ☐ 22. City or County Environmental Review Board Approval.
- ☐ 23. A copy of any Final Negative Declaration, Draft of Final Environmental Impact Report (FIR) or Final Environmental Impact Statement (FEES) prepared, for the project. Comments of all reviewing agencies and responses to comments must be included.
- ☐ 24. All projects in or adjacent to a Stream, Wetland, or possible Wetland - California Department of Fish and Game and U.S. Fish and Wildlife Service approvals.
- ☐ 25. Fire Department approved fuel (vegetation) modification plans.
- ☐ 26. Driveways, access roads, and turn-around areas - preliminary Fire Department Approval.
- ☐ 27. Preliminary approval from the Regional Water Quality Control Board. Single family dwellings and additions to existing structures are excluded.
- ☐ 28. An archaeological report developed by a qualified archaeologist regarding the presence and significance of archaeological and cultural resources.

THE APPLICATION FORM

- ☒ 1. The application must be signed by the applicant (original signature) and the applicant's representative. if representative is authorized to represent applicant.
- ☐ 2. If application is not signed by the applicant(s), a letter executed by the applicant(s) which authorizes the representative to act in his /her behalf and to bind the applicant(s) in all matters concerning his/her application or the authorization page of the application form must be completed by the applicant.
- ☐ 3. Section _____ page _____ of the application must be completed.

DEVELOPMENT ON A BEACH OR BLUFF

1. All projects on a beach require State Lands Commission determination of location of most landward property line. (State Lands Commission, 100 Howe Street, Suite 100, Sacramento, CA 95825-8202, phone (916) 574-1800. Please make reference to your Coastal Development Permit file number when contacting the State Lands Commission.
2. For projects on a coastal bluff or shoreline - a stringline map showing the existing, adjacent structures, decks and bulkheads in relation to the proposed development. The stringline is to be prepared in accordance with the Coastal Commission's Interpretive Guidelines.
3. For shoreline development and/or protective devices (seawalls, bulkheads, groins & rock blankets) - project plans with cross-sections prepared by a registered engineer. The project plans must show the project foot-print in relation to the applicant's property boundaries (include surveyed benchmarks), septic system, Mean High Tide Line (winter and summer), and the Wave Uprush Limit Line.
- X 4. ^(UPDATE TO 1988 REPORT ADVISORY) For shoreline protective devices a geotechnical report and wave uprush study prepared in accordance with the Commission guidelines. Copies of guidelines are available from the District Office.

SUBDIVISION OF PROPERTY

1. Approved tentative tract/parcel maps with list of conditions and minutes for subdivisions and condominium projects. Maps must include location of proposed building sites (2 copies).
2. Comprehensive site specific geologic/soils report indicating that all lots are buildable. For Malibu/Santa Monica Mountains, must have a current (not more than one year old) Geologic Review Sheet from the city or county and two copies of a geologic and/or soils report.
3. Detailed grading and drainage plans with cross-sections showing all roads, building pads, and remedial grading with a quantitative break down of grading amounts.
4. Map showing all parcels and their sizes within a 1/4 mile radius of the property.
5. Percolation test results indicating lots are capable of accommodating a septic system.

DEVELOPMENT IN SMALL LOT SUBDIVISIONS

1. Surveyed topography map and gross structural area calculations for Malibu/Santa Monica Mountains small lot subdivisions. See Policy 271(b)(2) of the Malibu/Santa Monica Mountains Land Use Plan-copies available from district office.
2. Statement of Water Service and Access Certificate for Building Permit signed by Los Angeles County Fire Department. If Fire Department requirements include road or water installation or modifications, submit plans stamped and approved by Los Angeles County Fire Department (not required for minor additions to single family dwellings).

STAFF COMMENTS

Under certain circumstances, additional material, not previously indicated, may be required before an application can be deemed complete. The following additional material is required for the completion of this application:

PROJECT PLANS - SHOW LOCATION OF PUBLIC VERTICAL
ACCESS EASEMENT, LATERAL ACCESS EASEMENT, WAVE
UPRUSH LIMIT (MAXIMUM), CROSS SECTION OF PROPOSED
CAISSONS IN RELATION TO MAXIMUM SCOUR BEACH ELEVATION.
FOOTPRINT / DESIGN OF RESIDENCE HAS BEEN MODIFIED FROM
PLANS APPROVED BY COP 5-88-794 - PLEASE SUBMIT
FLOOR PLANS & ELEVATIONS FOR AS-BUILT RESIDENCE.

FAILURE TO PROMPTLY SUBMIT THE INFORMATION REQUESTED ABOVE
WILL RESULT IN THE DELAY OF YOUR PROJECT. PLEASE ADD ANY
COMMENTS TO THE BACK OF THIS SHEET.

By: STEVE HUDSON

Date: 9/17/99

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA STREET, SUITE 200
VENTURA, CA 93001
(805) 641-0142



DATE: January 20, 2000

Bert J. Kelley
26520 Latigo Shore Drive
Malibu, CA 90265

RE: **Application No. 5-88-794-A4**

Dear Mr./Ms. Kelley:

Your Coastal Commission application is incomplete and cannot be filed or processed until the following items have been received. These items must be received in our office by April 20, 2000.

SEE ATTACHED PINK SHEETS

If you have any questions regarding your application, please contact me at the address and phone number listed above.

Sincerely,

A handwritten signature in dark ink, appearing to read "Julie Reveles", with a stylized flourish at the end.

JULIE REVELES
Office Technician

cc: Darren Domingue

Exhibit 5
CCC-05-NOV-03 and CCC-05-CD-05
(Kelley) Page 1 of 7

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 641-0142



5-88-794-A4
(File No.)

BERT KELLEY
(Applicant)

DARREN DOMINGUE
(Agent)

26520 LATIGO SHORE DR., MALIBU
(Project Street and City)

Your coastal permit application has been reviewed and is incomplete. Before it can be accepted for filing, the information indicated below must be submitted.

1. Filing fee is \$ _____. Payable by check or money order to the California Coastal Commission. Amount due \$ _____.
2. Proof of the applicant's legal interest in the property. (A copy of any of the following will be acceptable: current tax bill, recorded deed, signed Offer-to-Purchase along with a receipt of deposit, signed final escrow document, or current policy of title insurance. Preliminary title reports will not be accepted.)
3. Assessor's parcel number as indicated on a property tax statement. The property legal description as contained in a Grant Deed is not the assessor's parcel number.
4. Assessor's parcel map(s) showing the applicant's property and all other properties within 100 feet (excluding roads) of the property lines of the project site. (Available from the County Assessor). Drawings or facsimiles are not acceptable.
5. Stamped envelopes addressed to each property owner and occupant of property situated within 100 feet of the property lines of the project site (excluding roads), along with a list containing the names, addresses and assessor's parcel numbers of same. The envelopes must be plain (i.e., no return address), and regular business size (9 1/2 x 4 1/8"). Include a first class postage stamp on each one. Metered envelopes are not acceptable. Mailing list must be on the format shown on page C-1 of the application packet.
6. Enclose appropriate map(s) indicating location of property in relation to the coastline. Thomas Brothers map, road map or area maps prepared by local governments may provide a suitable base map.

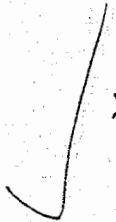
- Sheet for plan - see comments*
- ☐ 7. Cost valuation by city/county or contractor for the development.
 - ☐ 8. Copies of required local approvals for the proposed project, including zoning variances, use permits, etc. Include minutes of any public hearing.
 - ☐ 9. Verification of all other permits, permissions or approvals applied for or granted by public agencies (e.g., Dept. of Fish and Game, State Lands Commission, U.S. Army Corps of Engineers, U.S. Coast Guard).
 - ☐ 10. Where septic systems are proposed, percolation test prepared by a qualified sanitarian or soils engineer.
 - ☐ 11. County or City Health Department review of septic system.
 - ☐ 12. Where water wells are proposed, evidence of County or City review and approval.
 - ☒ 13. *SEE COMMENTS*
2 set(s) of project drawings including site plans, floor plans, and all elevations. Drawing must be to scale with dimensions shown. Trees to be removed must be marked on the site plan. All oak trees and riparian vegetation (canopy), streams and drainages, wetlands, easements, and public hiking and equestrian trails (including existing offers to dedicate trails) must be identified on the site plan. Plans must be approved by the planning department and stamped "Approval-in-Concept." We need 2 more set(s).
 - ☐ 14. set(s) of detailed grading and drainage plans with cross-sections and quantitative breakdown of grading amounts (cubic yards of cut and fill). Plans must be to scale and prepared by a registered engineer.
 - ☒ 15. *SEE COMMENTS*
Two copies of a comprehensive, current (not more than 1 year old), site-specific geology and soils report (including maps) prepared in accordance with the Guidelines for Engineering Geologic Reports, prepared by the State Board of Registration for Geologists & Geophysicists (11/93). Copies of the guidelines are available from the Coastal Commission District Office.
 - ☐ 16. A current (not more than 1 year old) City or County "Approved" Geologic Review Sheet.
 - ☐ 17. "Approval-in-Concept" form completed by the planning department or other responsible department.
 - ☐ 18. Current zoning for project site.
 - ☒ 19. *NEW PLANS ONLY*
A reduced set of legible drawings to 8 1/2 x 11" in size. The reduced set shall include a site plan, grading plan, elevations and topography if required for submittal.

- __20. For projects which include demolition, two copies of a site plan and elevations or photographs of the structure to be demolished. Demolition must be included in the "Approval-in-Concept" project description.
- __21. Remodel projects must include percent of walls to be demolished (interior and exterior), and indicate walls to be demolished and retained on-site plans.
- __22. City or County Environmental Review Board Approval.
- __23. A copy of any Final Negative Declaration, Draft of Final Environmental Impact Report (FIR) or Final Environmental Impact Statement (FEES) prepared, for the project. Comments of all reviewing agencies and responses to comments must be included.
- __24. All projects in or adjacent to a Stream, Wetland, or possible Wetland - California Department of Fish and Game and U.S. Fish and Wildlife Service approvals.
- __25. Fire Department approved fuel (vegetation) modification plans.
- __26. Driveways, access roads, and turn-around areas - preliminary Fire Department Approval.
- __27. Preliminary approval from the Regional Water Quality Control Board. Single family dwellings and additions to existing structures are excluded.
- __28. An archaeological report developed by a qualified archaeologist regarding the presence and significance of archaeological and cultural resources.

THE APPLICATION FORM

- __1. The application must be signed by the applicant (original signature) and the applicant's representative. if representative is authorized to represent applicant.
- __2. If application is not signed by the applicant(s), a letter executed by the applicant(s) which authorizes the representative to act in his /her behalf and to bind the applicant(s) in all matters concerning his/her application or the authorization page of the application form must be completed by the applicant.
- __3. Section _____page_____of the application must be completed.

DEVELOPMENT ON A BEACH OR BLUFF

1. All projects on a beach require State Lands Commission determination of location of most landward property line. (State Lands Commission, 100 Howe Street, Suite 100, Sacramento, CA 95825-8202, phone (916) 574-1800. Please make reference to your Coastal Development Permit file number when contacting the State Lands Commission.
2. For projects on a coastal bluff or shoreline - a stringline map showing the existing, adjacent structures, decks and bulkheads in relation to the proposed development. The stringline is to be prepared in accordance with the Coastal Commission's Interpretive Guidelines.
3. For shoreline development and/or protective devices (seawalls, bulkheads, groins & rock blankets) - project plans with cross-sections prepared by a registered engineer. The project plans must show the project foot-print in relation to the applicant's property boundaries (include surveyed benchmarks), septic system, Mean High Tide Line (winter and summer), and the Wave Uprush Limit Line.
-  X 4. *ADDED - SEE COMMENTS*
For shoreline protective devices a geotechnical report and wave uprush study prepared in accordance with the Commission guidelines. Copies of guidelines are available from the District Office.

SUBDIVISION OF PROPERTY

1. Approved tentative tract/parcel maps with list of conditions and minutes for subdivisions and condominium projects. Maps must include location of proposed building sites (2 copies).
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3. Detailed grading and drainage plans with cross-sections showing all roads, building pads, and remedial grading with a quantitative break down of grading amounts.
4. Map showing all parcels and their sizes within a 1/4 mile radius of the property.
5. Percolation test results indicating lots are capable of accommodating a septic system.

DEVELOPMENT IN SMALL LOT SUBDIVISIONS

1. Surveyed topography map and gross structural area calculations for Malibu/Santa Monica Mountains small lot subdivisions. See Policy 271(b)(2) of the Malibu/Santa Monica Mountains Land Use Plan-copies available from district office.
2. Statement of Water Service and Access Certificate for Building Permit signed by Los Angeles County Fire Department. If Fire Department requirements include road or water installation or modifications, submit plans stamped and approved by Los Angeles County Fire Department (not required for minor additions to single family dwellings).

STAFF COMMENTS

Under certain circumstances, additional material, not previously indicated, may be required before an application can be deemed complete. The following additional material is required for the completion of this application:

SEE ATTACHED COMMENTS

FAILURE TO PROMPTLY SUBMIT THE INFORMATION REQUESTED ABOVE
WILL RESULT IN THE DELAY OF YOUR PROJECT. PLEASE ADD ANY
COMMENTS TO THE BACK OF THIS SHEET.

By: STEVE HUDSON

Date: 1/20/00

STAFF COMMENTS

Project Plans:

- OK except for #4
- ✓(1) Show proposed location for relocation of lateral access easement.
 - ✓(2) Show maximum wave uprush limit on site plan, grading plan, and cross sections.
 - ✓(3) Indicate elevations on grading plan for top of constructed slope and toe of constructed slope.
 - (4) Clearly show proposed retaining wall and privacy wall on site plan. Please indicate whether "chain link fence" shown on architectural survey is proposed.
 - (5) Show cross section of proposed caissons in relation to maximum scour beach elevation and wave uprush limit (submitted plans indicate "March profile" only).
 - ✓(6) Submit plans (*drawn to scale*) of originally approved and as-built footprint for proposed relocation of residence. Show septic system (approved and as-built location). Submitted drawings not to scale.
- Drawn to scale
will show with

Wave Uprush Study Addendum

- ✓(1) Clearly indicate location of maximum wave uprush limit on site.
- ✓(2) Indicate whether the proposed fill slope will be subject to wave action.

Geotechnical Engineering Report Addendum:

- (1) Indicate necessity of the proposed soldier piles and retaining wall.
- (2) Indicate necessity of the proposed grading. Please discuss alternative of removing all previously placed fill seaward of the residence.
- (3) Identify and discuss in detail all alternatives to the use of the proposed soldier piles and retaining walls. Include discussion of previously proposed bentonite slurry trench, relocation of soldier piles further landward, and no soldier pile protection.
- ✓(4) Indicate necessity for proposed seaward relocation of residence.
- ✓(5) Indicate whether proposed project will ensure structural and geologic stability

STILL
NEED
TO ANSWER
#1
#2
#3

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 641-0142



July 21, 2000

Bert Kelley
26520 Latigo Shores Drive
Malibu, CA 90265

Re: Coastal Development Permit 5-88-794-A4 (Kelley)

Dear Mr. Kelley:

Coastal Development Permit Amendment Application 5-88-794-A4 has been reviewed and is incomplete. Before it can be accepted for filing, the following information must be submitted:

PROJECT PLANS:

- As previously discussed with Darren Domingue, please clearly **show footprint of proposed retaining wall and privacy wall on site plan**. Please include legible 8 1/2" x 11" copy of revised site plan.

GEOTECHNICAL ENGINEERING REPORT ADDENDUM:

(1) Indicate necessity of the proposed soldier piles and retaining wall.

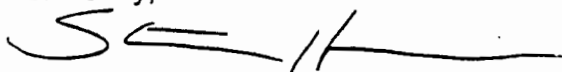
- The Geotechnical Engineering Report Addendum by GeoSystems dated 3/17/00 states that the soldier pile wall is intended to prevent lateral encroachment of the existing landslide located on the property west of the subject site. However, page 2 of Addendum #2 to Updated Soils and Engineering-Geologic Report dated 4/11/90 states, to the contrary, that "the predominant movement of the scarp (landslide) is down and to the south with little or no evidence of lateral extension to the east or west." In addition, the Geologic-Engineering Response to Coastal Commission Staff Report by GeoSystems dated 1/27/88 states "the question of geologic instability has already been answered and no geologic hazard to the proposed condominium development is present." Based on previous reports by GeoSystems, it appears that the existing residence on the project site is not subject to potential lateral extension of the landslide on the adjacent property to the west - please clarify.
- The Geotechnical Engineering Report Addendum by GeoSystems dated 3/17/00 states that "if the soldier piles were not constructed future movement of the landslide could result in enlargement of the slide into the area of the residence foundations. While the residence is supported on deepened pile foundations into stable bedrock, the pile foundations are not designed to support the lateral loading which would be expected if the slide were permitted to encroach in to the area of the residence." However, both the Updated Soils and Engineering-Geologic Report by GeoSystems dated 3/17/97 and the separate Updated Soils and Engineering-Geologic Report by GeoSystems dated 2/9/96 state, to the contrary, that "the soldier piles are not

required to support the existing residential structure. The existing structure is supported on deepened piles embedded in competent bedrock. The soldier piles are designed to prevent lateral extension of the primarily off-site landslide." Please clarify.

- (2) Submit analysis regarding removal of the proposed 225 cu. yds. of fill which has been previously placed seaward of the residence.
- The Geotechnical Engineering Report Addendum by GeoSystems dated 3/17/00 states that it is not possible to remove all fill ever placed on the subject site (including the fill placed prior to 1950) because such removal would result in failure of the road. Please note that Staff's previous question regarding removal of previously placed fill referred only to the proposed project (the previous placement of 225 cu. yds. of fill seaward of the residence by the applicant). Please indicate whether removal of the previously placed 225 cu. yds. of fill seaward of the residence is feasible.
- (3) Identify and discuss in detail all alternatives to the use of the proposed soldier piles and retaining walls. Include discussion of relocation of soldier piles further landward (removal of seawardmost piles) and no soldier pile protection.
- The Geotechnical Engineering Report Addendum by GeoSystems dated 3/17/00 states that relocation "of the piles further landward would result in reduced protection for the residence." However, the addendum does not substantiate or quantify this statement. Please submit written analysis and calculations regarding the calculated Factor of Safety for the residence if piles are: (1) removed completely, (2) removed further landward by 5 ft., 10 ft., 20 ft., etc.

Please submit the above requested information by October 21, 2000. Please call me with any questions regarding this matter.

Sincerely,



Steve Hudson
Coastal Program Analyst

cc: Darren Domingue

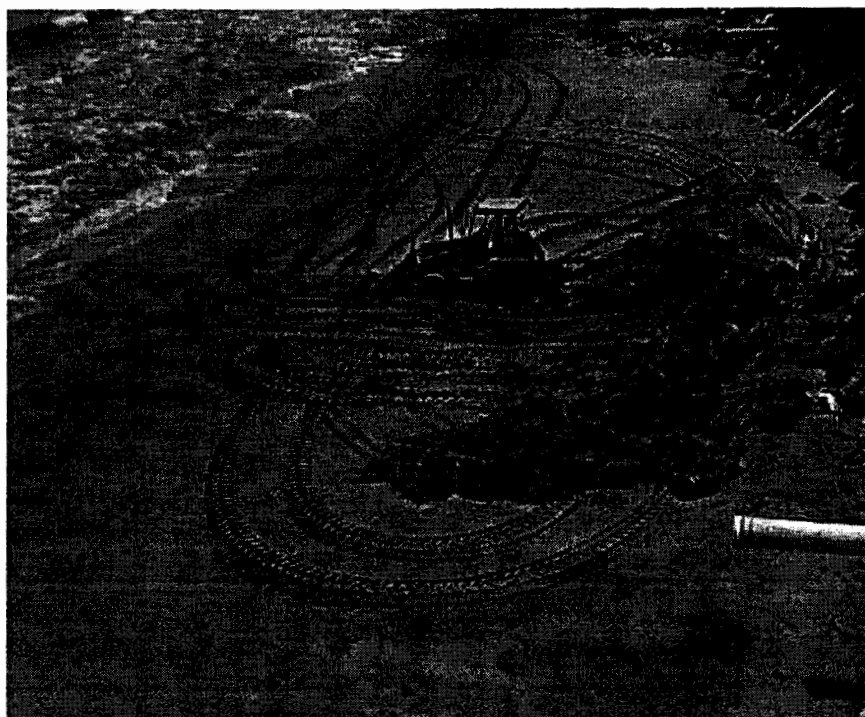


Exhibit 7a. Photograph, taken on March 3, 2005, showing a bulldozer and a trench with rocks on the sandy beach seaward of the Hodayun residence, approximately 60 feet east of the Kelley residence. Staff received a report that this activity was also taking place seaward of the Kelley residence.

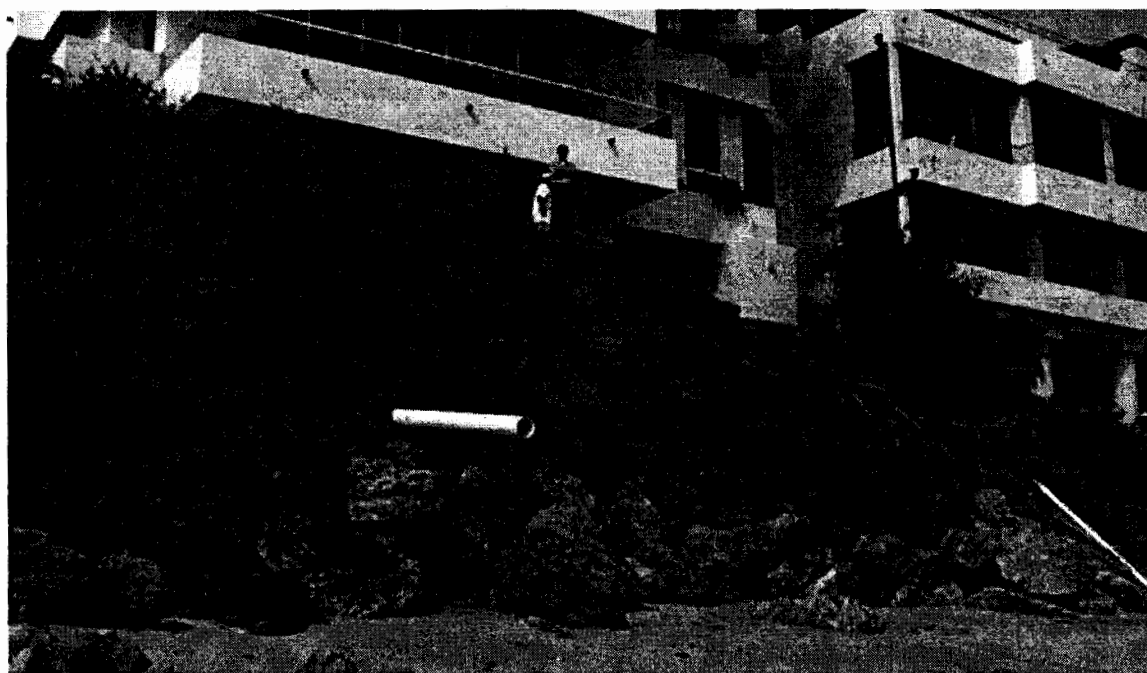


Exhibit 7b. Photograph, taken on March 3, 2005, showing the rock revetment at the base of the artificial fill slope on the Kelley property. Some of the fill has been used to backfill the revetment.

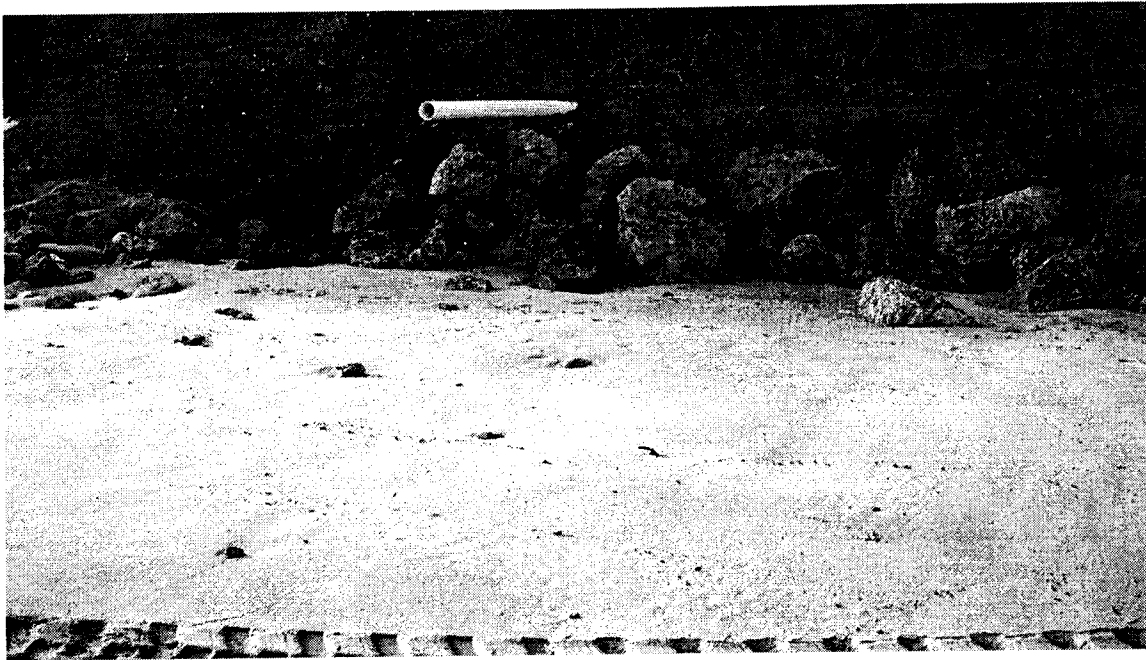


Exhibit 8a. Photograph, taken by Commission staff during the March 3, 2005 site visit, showing the rock revetment and mechanized equipment tracks directly seaward of the Kelly residence.

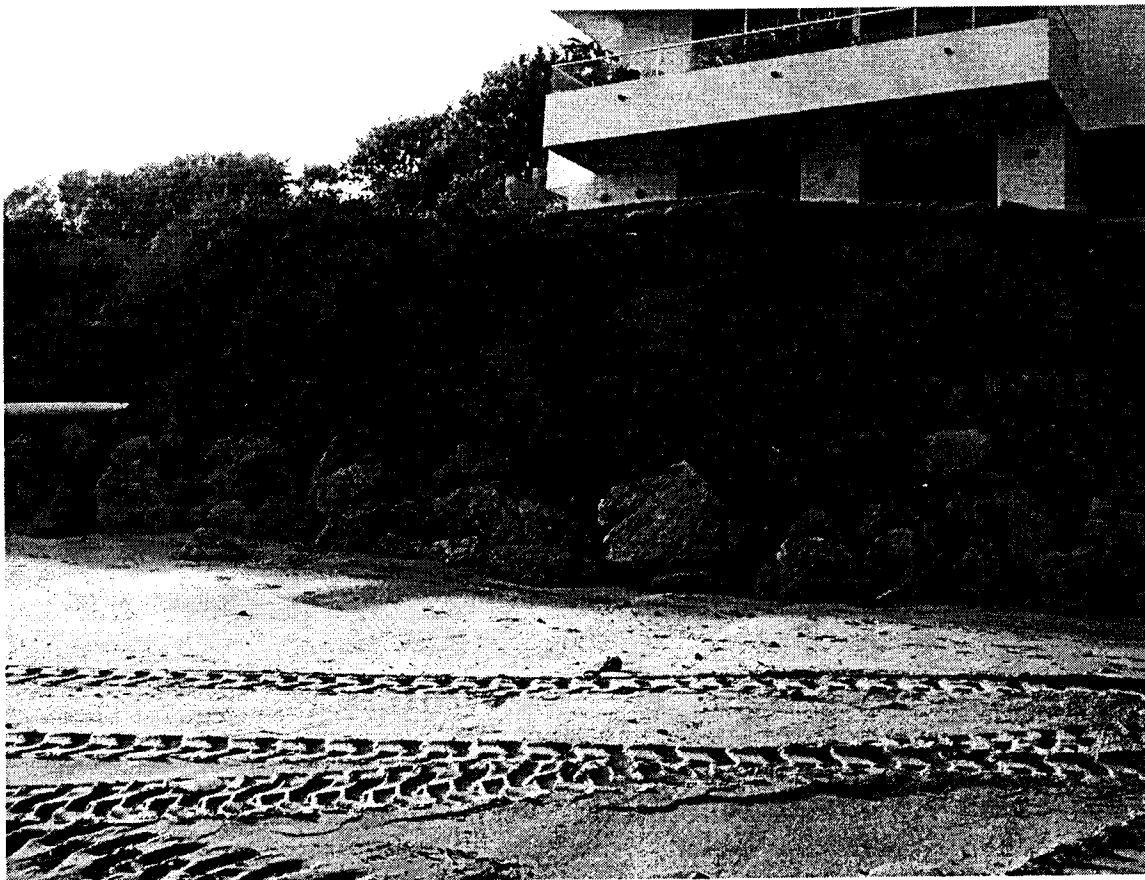


Exhibit 8b. Photograph, taken by Commission staff during the March 3, 2005 site visit, showing mechanized equipment tracks and the rock revetment immediately seaward of the Kelley residence.

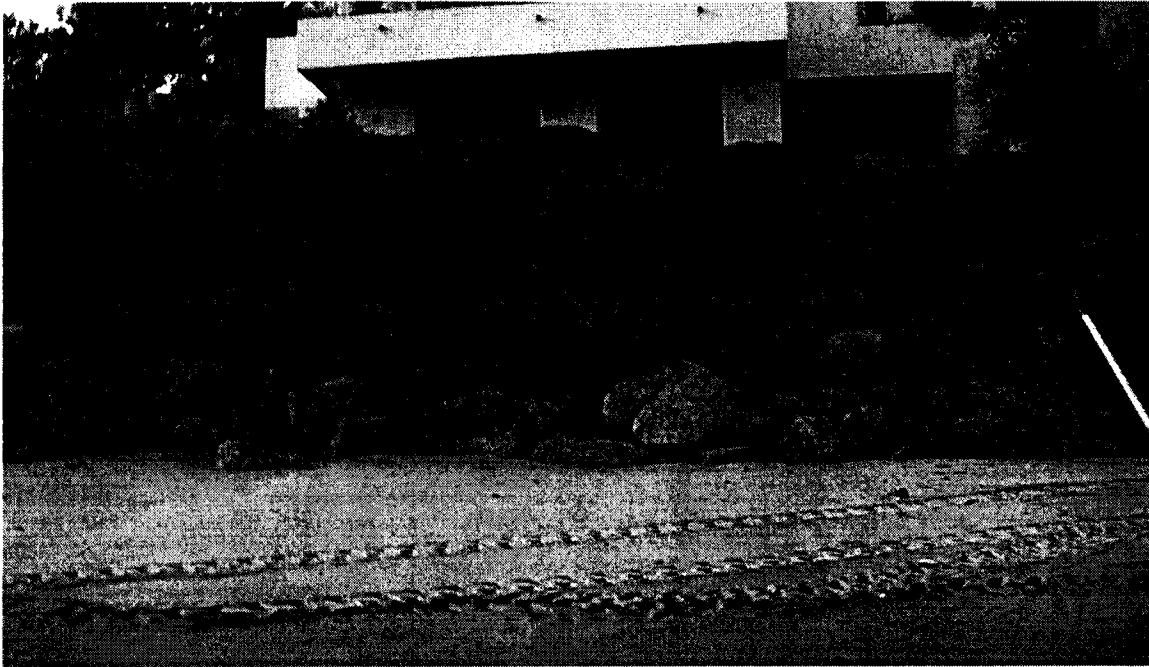


Exhibit 8c. Photograph, taken by Commission staff during the March 3, 2005 site visit, showing mechanized equipment tracks and the rock revetment immediately seaward of the Kelley residence.

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
88 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 585-1800



VIA CERTIFIED MAIL AND HAND DELIVERY

March 4, 2005

NOTICE OF INTENT TO ISSUE AN EXECUTIVE DIRECTOR
CEASE AND DESIST ORDER

Mr. Bert Kelley
26530 Latigo Shores Drive
Malibu, CA 90265

Subject: Coastal Act Violation File No. V-4-05-030 (Kelley)

Property: 26530 Latigo Shores Drive
Malibu Los Angeles County
APN 4460-019-143

Dear Mr. Kelley:

I am writing to you as the legal owner of the subject property to notify you that, pursuant to my authority under 30809(a) of the Coastal Act, I intend to issue you an order requiring you to cease and desist from violating the Coastal Act by performing development without a valid coastal development permit (CDP). The development in question is the operation of heavy equipment and grading on the beach seaward of your property and the adjacent property (26520 Latigo Shores Drive; APN 4460-019-145) and placement of a rock revetment laterally across the base of the properties. No coastal development permit has been applied for or obtained to authorize this development. The unpermitted development is in the California Coastal Commission's retained jurisdiction under Public Resources Code Section 30519.

Additionally, the unpermitted development encroaches into a portion of your property where an Offer To Dedicate a lateral public access easement has been recorded as a condition of the underlying CDP (5-88-794) for the subdivision that created three lots, including your property. The Offer To Dedicate lateral public access easement extends from the MHTL to the toe of the bluff.

Coastal Act Section 30600(a) provides that any person wishing to undertake development in the coastal zone shall obtain a CDP from the Commission or local government in addition to any other permit required by law. Development is defined as "on land, in or under water, the placement or erection of any solid material or structure; [and] grading, removing, dredging or extraction of any materials." Undertaking development without a permit is a violation of the

Exhibit 9

CCC-05-NOV-03 and CCC-05-CD-05

(Kelley) Page 1 of 4

T-534 P.001/006 F-410

Mar-04-05 04:00pm From

Coastal Act and can subject persons undertaking such unpermitted development to orders, penalties and other legal remedies.

In addition, even if you had applied for a Coastal Development Permit for this action, Commission staff could not recommend approval of a CDP to authorize the unpermitted grading and placement of rock revetment because it is not consistent with the Chapter 3 policies of the Coastal Act. The rock revetment does not meet the requirements for approval in Section 30235 of the Coastal Act because it neither serves a coastal dependent use, nor is it required to protect legally existing structures or public beaches in danger from erosion, and it was not designed to eliminate or mitigate adverse impacts on local shoreline sand supply. The rock revetment may also negatively impact the public beach in the intertidal zone by accelerating erosion in front of the seawall and blocking the sand supply to the beach from the coastal bluff and impact public access to the beach.

EXECUTIVE DIRECTOR CEASE AND DESIST ORDER

Section 30809(a) of the Coastal Act provides that "If the Executive Director determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity that (1) may require a permit from the commission without securing a permit... the executive director may issue an order directing that person or governmental agency to cease and desist." Pursuant to Section 30809, the Executive Director Cease and Desist Order may be subject to such terms and conditions as I may determine are necessary to avoid irreparable injury to the area pending the issuance of a Cease and Desist Order by the Commission.

I intend to issue a Cease and Desist Order against you unless you respond to this letter in a "satisfactory manner", as that term is defined in Section 13180 of the Commission's administrative regulations (Title 14, Division 5.5, California Code of Regulations (CCR)). In this case, such a satisfactory response should include:

- 1) An assurance that no further development will be undertaken at the site unless specifically authorized by the Commission, including any further placement of materials, and the use of mechanized equipment on the beach, and;
- 2) A commitment to seek Commission authorization for removal of the materials, and restoration of the site.

Such response should be made by telephone to Headquarters Enforcement Officer Christine Chestnut or Lisa Haage of the San Francisco Commission office no later than 5:00 pm today. They can be reached at (415) 904-5220 or (415) 904-5294. This must be followed up by written confirmation, by close of business today, Friday, March 4, 2005, mailed to Ms. Chestnut at the following address: California Coastal Commission, 45 Fremont Street, Suite 2000, San Francisco, CA 94925 and faxed to 415-904-5235 by close of business today.

The Executive Director Cease and Desist Order will require you to halt all development activity at the site and refrain from undertaking any development on the property not specifically

Exhibit 9

CCC-05-NOV-03 and CCC-05-CD-05
(Kelley) Page 2 of 4

2

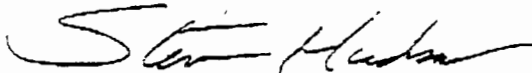
approved by the Commission, and to seek Commission-approved removal and restoration. No effort should be made to remove the existing development without Commission authorization.

Please be advised that Coastal Act Section 30820 provides for daily penalties for violations of the Coastal Act up to \$15,000 a day, and Section 30821.6 authorizes the Commission to seek additional daily penalties for any intentional or negligent violation of a Cease and Desist Order for each day in which the violation persists. The penalty for intentionally and negligently violating an Executive Director Cease and Desist Order or a Restoration Order can be as much as \$6,000 per day for as long as the violation persists. Section 30822 of the Coastal Act enables the Commission to bring an action, in addition to Section 30803 or 30805, for exemplary damages where it can be shown that a person has intentionally and knowingly violated the Coastal Act or any order issued pursuant to the Coastal Act.

The Cease and Desist Order will be effective upon its issuance and a copy will be mailed to you. If you provide a fax number, we will also fax a copy of the Cease and Desist Order to you. A Cease and Desist Order issued by the Executive Director is effective for 90 days. The Commission may also elect to issue a Cease and Desist Order or Restoration Order to you, which has no time limit and may also require you to remove the seawall in order to resolve the violation.

If you have any questions regarding this notice, please contact Headquarters Enforcement Officer Christine Chestnut at 415-904-5294.

Sincerely,



for
PETER M. DOUGLAS
Executive Director

cc: Lisa Haage, Chief of Enforcement
Amy Roach, Deputy Chief Counsel
Steve Hudson, Planning Supervisor
Pat Veasart, Southern California Enforcement Team Leader
Tom Sinclair, South Central District Enforcement Officer

Exhibit 9
CCC-05-NOV-03 and CCC-05-CD-05
(Kelley) Page 3 of 4

DECLARATION OF SERVICE

I, Nolan Patrick Veesart, declare:

I am, and was at the time of the service of the attached paper, over the age of 18 years and not a party to the proceedings involved.

On March 4, 2005, I served the attached:

Notice Prior to Issuance of Executive Director Cease and Desist Order for Violation No. V-4-05-030 and Executive Director Cease and Desist Order No. ED-05-CD-01 on Mr. Bert Kelley, as follows:

☒ By Personal Service, by personally delivering to and leaving a copy at the address set forth below.

☐ By Service by Mail, by placing a true copy in a sealed envelope addressed to the last known address of the employee at the address set forth below, and depositing the envelope in the United States Mail, registered, with return receipt requested and postage thereon fully prepaid, at _____, California.

Address of party served:

☒ Mr. Bert Kelley
26530 Latigo Shores Drive
Malibu, CA 90265
Los Angeles County

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on March 4, 2005 at Ventura, California.



Nolan Patrick Veesart

CALIFORNIA COASTAL COMMISSION

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



SENT VIA REGULAR AND CERTIFIED MAIL AND HAND DELIVERED

March 4, 2005

Mr. Bert Kelley
26530 Latigo Shores Drive
Malibu, CA 90265

Subject: Executive Director Cease and Desist Order No. ED-05-CD-01

Date Issued: March 4, 2005

Expiration Date: June 2, 2005

Violation File No.: V-4-05-030

Violation Description: Unpermitted operation of heavy equipment, grading, and placement of a rock revetment; encroachment of development into lateral access easements

Property: 26530 Latigo Shores, Malibu (Los Angeles County)

I. ORDER

Pursuant to my authority under California Public Resources Code (PRC) Section 30809, I hereby order you, as the legal owner of the property identified below, your employees, agents and contractors, and any other persons acting in concert with you to cease and desist from undertaking further development or maintaining existing unpermitted development on the subject property or adjacent properties, including, but not limited to operation of heavy equipment, grading, and placement of a rock revetment. This development is unpermitted, and also encroaches into the lateral access easements established as a condition of Coastal Development Permit (CDP) 5-88-794 and is therefore both a violation of the Coastal Act and of the permit. The Executive Director Cease and Desist Order is subject to the following terms and conditions to avoid irreparable injury to the subject property pending action by the Commission under Section 30810 and 30811 of the Coastal Act:

1. Bert Kelley, as owner of the subject property, shall immediately and completely cease from all such activities and shall not perform further unpermitted development at the subject property or adjacent properties.
2. Bert Kelley, as owner of the subject property, shall immediately and completely cease from additional maintenance of any unpermitted development on the subject property or adjacent properties including, but not necessarily limited to the use of heavy equipment, grading, and placement of rock revetment materials, at the subject property or adjacent properties until and unless it is authorized by the Commission.
3. Bert Kelley, as owner of the subject property, shall immediately contact Pat Veasart at the Commission's South Central Coast District Office at (805) 585-1816 to discuss Commission-approved removal of the revetment and site restoration. **No effort should be made to remove the existing development without Commission authorization.**

II. IDENTIFICATION OF THE PROPERTY

The property that is the subject of this cease and desist order is located at 26530 Latigo Shores Drive, in the Coastal Zone (APN 4460-019-143).

III. DESCRIPTION OF ACTIVITY

The activity that is the subject of this order consists of the unpermitted operation of heavy equipment and grading on the beach seaward of the subject property and on adjacent properties, including, but not limited to the property located at 26520 Latigo Shores, Malibu (APN 4460-019-145) and the placement of a rock revetment laterally across the base of the properties. No CDP has been applied for or obtained to authorize this development. The unpermitted development is in the California Coastal Commission's retained jurisdiction under Public Resources Code Section 30519.

IV. FINDINGS

The development has occurred and continues to be undertaken without the required authorization in a CDP. 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 CDP. "Development" is defined by Section 30106 of the Coastal Act as follows:

"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 of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land...change in the intensity of use of water, or of access thereto...and the removal or harvesting of major vegetation other than for agricultural purposes...

The unpermitted development clearly constitutes "development" within the meaning of the above-quoted definition. Additionally, even if you had applied for a Coastal Development Permit for this action, Commission staff could not recommend approval of a CDP to authorize the unpermitted grading and placement of rock revetment because this development activity is not consistent with Chapter 3 policies of the Coastal Act, nor with the conditions of the permit for this site. The revetment does not meet the requirements for approval in Section 30235 of the Coastal Act because it neither serves a coastal dependent use, nor is it required to protect legally existing structures or public beaches in danger from erosion, and it was not designed to eliminate or mitigate adverse impacts on local shoreline sand supply. The rock revetment may also negatively impact the public beach in the intertidal zone by accelerating erosion in front of the revetment and blocking the sand supply to the beach from the coastal bluff. Furthermore, the revetment encroaches into an existing lateral access easement, thereby negatively impacting public access in violation of Coastal Act Section 30211.

V. PENALTIES

Coastal Act Section 30820 provides for daily penalties for violations of the Coastal Act up to \$15,000 a day, and Section 30821.6 authorizes the Commission to seek additional daily penalties for any intentional or negligent violation of a Cease and Desist Order for each day in which the violation persists. The penalty for intentionally and negligently violating an Executive Cease and Desist Order or a Restoration Order can be as much as \$6,000 per day for as long as the violation persists. Section 30822 enables the Commission to bring an action, in addition to Section 30803 or 30805, for exemplary damages where it can be shown that a person has intentionally and knowingly violated the Coastal Act or any order issued pursuant to the Coastal Act.

VI. 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 may result in the imposition of civil penalties up to \$6,000 per day for each day in which such compliance failure persists, and other such penalties and relief as provided for in the Coastal Act. In addition, the Executive Director is authorized, after providing notice and the opportunity for a hearing as provided for in section 30812 of the Coastal Act, to record a Notice of Violation against your property.

Should you have any questions regarding this matter, please contact Christine Chestnut, Headquarters Enforcement Analyst, at (415) 904-5294.

March 4, 2005

Page 4

Executed at San Francisco, California on March 4, 2005.

Signed,

A handwritten signature in dark ink, appearing to read "P. Douglas", followed by a small, stylized mark that looks like "FDV".

PETER M. DOUGLAS

Executive Director

California Coastal Commission

cc: Lisa Haage, Chief of Enforcement, CCC
Sandy Goldberg, Staff Counsel, CCC
Pat Veesart, Southern California Enforcement Team Leader
Steve Hudson, Southern CA Enforcement Supervisor, CCC
Tom Sinclair, South Central Coast District Enforcement Officer
Christine Chestnut, Headquarters Enforcement Analyst, CCC

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400
TDD (415) 597-5885



VIA CERTIFIED and REGULAR MAIL

March 15, 2005

Mr. Bert Kelley
26530 Latigo Shores
Malibu, CA 90265

Subject: **Notice of Intent to Record a Notice of Violation of the Coastal Act and to Commence Cease and Desist Order and Restoration Order Proceedings**

Violation No.: V-4-05-030

Location: 26530 Latigo Shores, Malibu, Los Angeles County
(APN 4460-019-143)

Violation Description: Unpermitted operation of mechanized equipment on the beach; unpermitted development, including, but not limited to: grading on the beach (cut and fill); importation of fill and construction of a fill slope; landscaping on top of unpermitted fill slope; construction of a rock revetment, a front-yard wall, a path with stairs, a non-structural concrete slab, twenty low-grade "soldier piles", and a wall located on top of the soldier piles.

Dear Mr. Kelley:

The purpose of this letter is to notify you of my intent, as the Executive Director of the California Coastal Commission ("Commission"), to record a Notice of Violation of the Coastal Act and to commence proceedings for issuance of a Cease and Desist Order and a Restoration Order for unpermitted development, including, but not limited to: grading on the beach (cut and fill); importation of fill and construction of fill slope; landscaping on top of the unpermitted fill slope; and construction of a rock revetment at the base of the unpermitted fill slope, a front-yard wall, a path with stairs, a non-structural concrete slab, twenty low-grade "soldier piles", and a wall located on top of the soldier piles located at the western boundary of the residence. The

unpermitted development is located on property that you own at 25630 Latigo Shores, Malibu, Los Angeles County, APN 4460-019-143 ("subject property").

The purpose of these enforcement proceedings is to obtain a Cease and Desist Order and a Restoration Order to address unpermitted development at the subject property by directing you to: 1) cease and desist from constructing and/or maintaining all unpermitted development, 2) remove the unpermitted development, and 3) restore the impacted areas to their pre-violation condition. The proposed Cease and Desist and Restoration Orders are discussed in more detail in the following sections of this letter. In addition, the Commission also seeks to record a Notice of Violation in this matter.

Permit History and Recorded Documents

On December 13, 1988, the Commission approved Coastal Development Permit ("CDP") No. 5-88-794 ("the permit") subject to ten special conditions. This permit applied to your property as well as to two adjacent properties located to the east of your property. The Commission attached these special conditions to the permit to ensure that the development approved pursuant to the permit would be undertaken in conformity with the policies of Section 3 of the Coastal Act.

Special Conditions Two and Three of the permit required the recordation of Offers to Dedicate ("OTD") vertical and lateral easements on the subject property. These OTDs were recorded pursuant to the permit conditions on May 23, 1989. Access for All, a private nonprofit corporation, accepted the easements on September 23, 2004. Upon this acceptance, the easements became binding property interests, which run with the land and prohibit successor owners from interfering with public use of the easements for access to the coast and ocean. The lateral easement spans the entire length of the subject property and the two adjacent properties to the east of the subject property (APNs 4460-019-144 and 4460-019-145) and extends from the toe of the bluff on which the subject property was built (which has been extended seaward by the placement of unpermitted fill) to the mean high tide line. The rock revetment that you constructed is located within this lateral easement. The vertical easement extends from Pacific Coast Highway to the ordinary high tide line and is located near the western boundary of the subject property. Any unpermitted development, such as the westernmost portion of the rock revetment, that lies within the vertical easement is in violation of both the permit condition and the Coastal Act.

Moreover, Special Condition Seven of the permit required the recordation of a deed restriction verifying that the permit pertained only to development specifically approved by the permit and that any proposed future development would require a new CDP. The deed restriction also prohibited the construction of permanent improvements to the property, with the exception of one public path or stairway noted in the permit, seaward of the approved structures.

In addition, Special Condition Eight prohibited the future construction of protective structures such as seawalls to protect the approved development. This Special Condition ensured that the development authorized by the permit would be undertaken in conformity with Section 30253(2) of the Coastal Act, which states that new development shall not require "the construction of

protective devices that would substantially alter natural landforms along bluffs and cliffs." The unpermitted rock revetment violates this condition.

Violation History

Commission staff sent a Notice of Violation letter to you on November 10, 1997, to address unpermitted development including the construction of a stairway on the beach, a wall on the property, and a chain link fence at the western boundary of the property. A second Notice of Violation was sent to you on June 3, 1998, to address the unpermitted importation and placement of fill materials on the bluff immediately seaward of the residence, landscaping of the newly created fill slope, and construction of a concrete slab located under the residence.

In response to these letters, you filed applications to amend the permit. You withdrew these applications prior to Commission review. On August 19, 1999, you filed yet another application with Commission staff to amend the permit, seeking after-the-fact authorization of some of the unpermitted development on the subject property. Commission staff sent you a letter on July 21, 2000, notifying you that the application was incomplete and reiterated this fact in subsequent telephone conversations with you. As of the date of this notice, the application is still incomplete.

On March 4, 2005, Commission staff confirmed that mechanized equipment had recently been used on the beach in front of the subject property and adjacent properties to remove sand from the base of the fill slope and adjacent bluff, deposit large rocks, and replace the sand, partially burying the rocks. In an effort to halt this significant and unpermitted development activity, I issued a Notice of Intent to Issue an Executive Cease and Desist Order. Commission staff hand-delivered the notice to your property on March 4, 2005. You did not respond in a satisfactory manner as prescribed in Section 30809(b) of the Coastal Act and Section 13180 of the Commission's regulations. Consequently, in my capacity as Executive Director of the Commission, I issued an Executive Cease and Desist Order directing you to cease and desist all development activity at the subject property.

On March 7, 2005, Mr. Stanley Lamport called Commission staff and stated that he represented you in this matter. Mr. Lamport confirmed that you received both the Notice of Intent to Issue an Executive Cease and Desist Order and the Executive Cease and Desist Order and assured us that you had committed to do no further work at the site.

Notice of Violation

The Commission's authority to record a Notice of Violation is set forth in Section 30812 of the Coastal Act, which states the following:

Whenever the executive director of the Commission has determined, based on substantial evidence, that real property has been developed in violation of this division, the executive director may cause a notification of intention to record a notice of violation to be mailed by regular and certified mail to the owner of the real property at issue, describing the real property, identifying the nature of the violation, naming the owners thereof, and

stating that if the owner objects to the filing of a notice of violation, an opportunity will be given to the owner to present evidence on the issue of whether a violation has occurred.

I am issuing this Notice of Intent to record a Notice of Violation because, as discussed above, unpermitted development has occurred at the subject property, in violation of the Coastal Act. If you object to the recordation of a Notice of Violation in this matter and wish to present evidence on the issue of whether a violation has occurred, you must respond in writing, within 20 days of the postmarked mailing of this notice. If you fail to object within that 20-day period, we shall record the Notice of Violation in the Los Angeles County recorders' office pursuant to Section 30812 of the Coastal Act.

If you object to the recordation of a Notice of Violation in this matter and wish to present evidence on the issue of whether a violation has occurred, you must respond in writing, to the attention of Christine Chestnut using the address provided on the letterhead, no later than April 5, 2004.

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 because unpermitted development was undertaken at the subject property without a permit and in a way that is inconsistent with an existing permit, CDP 5-88-794. The unpermitted development described in this notice of intent clearly 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 has been issued for the unpermitted development on the subject property. The unpermitted rock revetment also violates Special Condition Eight of CDP No. 5-88-794.

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.

Restoration Order

Section 30811 of the Coastal Act authorizes the Commission to order restoration of a site as follows:

In addition to any other authority to order restoration, the commission...may, after a public hearing, order restoration of a site if it finds that the development has occurred without a coastal development permit from the commission...the development is inconsistent with this division, and the development is causing continuing resource damage.

I have determined that the specified activities meet the criteria of Section 30811 of the Coastal Act, based on the following:

- 1) The cited development is unpermitted pursuant to Section 30600(a) of the Coastal Act and has occurred on the subject property without a CDP.
- 2) The unpermitted development is inconsistent with the resource protection policies of the Coastal Act, including, but not limited to: Section 30211 (public access); Section 30235 (natural shoreline alteration); Section 30251 (scenic and visual qualities, landform alteration); and Section 30253(2) (adverse impacts, landform alteration).

The revetment, fill extending onto the beach, and a portion of the soldier piles lie within the lateral public access easement established pursuant to CDP No. 5-88-794, thereby impeding public access (Section 30211). The unpermitted development did nothing to minimize the alteration of natural landforms or protect the scenic and visual qualities of the area (Section 30251). In fact, the construction of the fill slope altered the natural bluff in front of the subject property, and grading and the construction of the revetment altered the beach below the fill slope. Additionally, The presence of the revetment may contribute significantly to erosion of the beach in front of and at the ends of the revetment and may adversely impact the natural movement of sand in the area (Section 30235, Section 30253(2)).

- 3) The unpermitted development is causing continuing resource damage, as defined by Section 13190 of the Commission's regulations. The unpermitted development has impacted the resources listed in the previous paragraph (item number two). Such impacts meet the definition of damage provided in Section 13190(b): "any degradation or other reduction in quality, abundance, or other quantitative or qualitative characteristic of the resource as compared to the condition the resource was in before it was disturbed by unpermitted development." All of the impacts from the unpermitted development continue to occur at the subject property; therefore, the damage that said development is causing to resources protected by the Coastal Act is continuing.

For the reasons stated above, I have decided to commence a Restoration Order proceeding before the Commission. The procedures for the issuance of Restoration Orders are described in Sections 13190 through 13197 of the Commission's regulations. Section 13196(e) of the Commission's regulations states the following:

Any term or condition that the commission may impose which requires removal of any development or material shall be for the purpose of restoring the property affected by the violation to the condition it was in before the violation occurred.

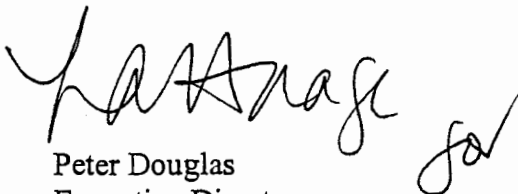
Accordingly, any Restoration Order that the Commission may issue will have as its purpose the restoration of the subject property to the conditions that existed prior to the occurrence of the unpermitted development.

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) and 13191(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 and Restoration 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 Christine Chestnut, no later than April 5, 2005.**

Commission staff has tentatively scheduled the hearing for the proposed Cease and Desist and Restoration Orders (and for the proposed Notice of Violation, should you additionally request **in writing** a hearing on this issue) during the May 11-13, 2005 Commission meeting in Northern California. If you have any questions regarding this letter or the enforcement case, please call Christine Chestnut at (415) 904-5294 or send correspondence to her attention using the address provided on the letterhead.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Douglas", followed by a checkmark.

Peter Douglas
Executive Director

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

cc (without Encl): Lisa Haage, Chief of Enforcement
Sandy Goldberg, Staff Counsel
Pat Veasart, Southern California Enforcement Team Leader
Steve Hudson, Southern California Enforcement Supervisor
Christine Chestnut, Headquarters Enforcement Officer
Stanley Lampert, Cox, Castle & Nicholson



Cox, Castle & Nicholson LLP
2049 Century Park East, 28th Floor
Los Angeles, California 90067-3284
P 310.277.4222 F 310.277.7889

Stanley W. Lamport
310.284.2275
slamport@coxcastle.com

File No. 42866

April 14, 2005

CONFIDENTIAL
VIA FACSIMILE AND U.S. MAIL

Christine A. Chestnut
California Coastal Commission
45 Fremont Street
Suite 2000
San Francisco, CA 91405


Re: **Violation No: V-4-05-030**
Location: 26530 Latigo Shore Drive, Malibu

Dear Ms. Chestnut:

On behalf of our client, Bert Kelley, we submit the following statement of defense in response to the Notice of Intent to Record a Notice of Violation of the Coastal Act and to Commence Cease and Desist Order and Restoration Order Proceedings. As we discussed, the response is limited to the issues regarding the revetment.

If you have any questions, please do not hesitate to contact me.

Very truly yours,



Stanley W. Lamport

SWL/ar
Attachments
42866\1140401v1
cc: Bert Kelley

Exhibit 12
CCC-05-NOV-03 and CCC-05-CD-05
(Kelley) Page 1 of 8

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 YOU COMPLETE THIS FORM OR OTHERWISE CONTACT THE COMMISSION ENFORCEMENT STAFF.

This form is accompanied by a notice of intent to initiate cease and desist and restoration order proceedings before the commission. This document indicates that you are or may be responsible for or in some way involved in either a violation of the commission's laws or a commission permit. The document summarizes what the (possible) violation involves, who is or may be responsible for it, where and when it (may have) occurred, and other pertinent information concerning the (possible) violation.

This form requires you 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. This form also requires you to 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 should complete the form (please use additional pages if necessary) and return it **no later than April 13, 2005** to the Commission's enforcement staff at the following address:

**Christine Chestnut
Headquarters Enforcement Analyst
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, California 94105-2219**

If you have any questions, please contact **Christine Chestnut** at **(415) 904-5294**.

1. Facts or allegations contained in the notice of intent that you admit (with specific reference to the paragraph number in such document):

PLEASE SEE ATTACHED "STATEMENT OF DEFENSE" PARAGRAPH 1

2. Facts or allegations contained in the notice of intent that you deny (with specific reference to paragraph number in such document):

PLEASE SEE ATTACHED "STATEMENT OF DEFENSE" PARAGRAPH 2

3. Facts or allegations contained in the notice of intent of which you have no personal knowledge (with specific reference to paragraph number in such document):

PLEASE SEE ATTACHED "STATEMENT OF DEFENSE" PARAGRAPH 3

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:

PLEASE SEE ATTACHED "STATEMENT OF DEFENSE" PARAGRAPH 4

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

PLEASE SEE ATTACHED "STATEMENT OF DEFENSE" PARAGRAPH 5

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):

PLEASE SEE ATTACHED "STATEMENT OF DEFENSE" PARAGRAPH 6

STATEMENT OF DEFENSE

Bert Kelley provides the following response to the Statement of Defense with respect to a portion of the Notice of Intent to Record Notice of Violation of the Coastal Act and to Commence Cease and Desist Order and Restoration Proceedings with respect to Case Number V-4-05-030 ("NOI"). This response is limited to only the allegation in the NOI regarding construction of a temporary rock revetment. Mr. Kelley's investigation of the facts is continuing. Mr. Kelley does not waive and reserves his rights to present additional information to the Coastal Commission in his defense, including information that supplements the facts set forth in this response and additional facts which Mr. Kelley subsequently discovers or whose significance relative to Mr. Kelley's defense is subsequently ascertained. In submitting this response Mr. Kelley is not waiving any defenses, including, without limitation, with respect to the authority and jurisdiction of the Coastal Commission in this matter.

1. Mr. Kelley acknowledges the following facts. Mr. Kelley is the current owner the property located at 26530 Latigo Shore Drive in the City of Malibu ("Property"). Mr. Kelley does not currently reside at the property was not at the property during the events related to the installation of what the NOI refers to as a revetment.

Mr. Kelley is aware that the Property is subject to Coastal Development Permit No. 5-88-794 ("CDP"). Mr. Kelley is aware that there is a dedicated lateral easement over a portion of the Property, which covers the area contained within the legal description in the document creating the easement. Mr. Kelley believes that the revetment is not within the boundaries of the lateral easement.

The "revetment" referenced in the NOI is a temporary emergency placement of rock and soil that was put in place to address conditions that resulted from the extreme storm events that occurred prior to and around the time of its construction. The work was performed by Mike Cheap, a friend of Mr. Kelley and a contractor, who Mr. Kelley has asked to check on the Property. Mr. Cheap was not involved in the construction of the residence on the Property and is not familiar with all of its structural features. During this time Mr. Kelley and Mr. Cheap were not able to be in regular contact and Mr. Kelley was not able to advise Mr. Cheap about the work he was performing.

It is well documented that Southern California in general, and Malibu in particular, experienced one of the most intense storm seasons on record. The season was recorded as one of the wettest ever and even resulted in a state of emergency being declared for the coastal areas, including Malibu.

South facing beaches were particularly hard hit by the winter storms, including the beach on and adjacent to the Property. The significant amount of beach erosion that occurred on the south facing beaches is also well documented. That was also true for beach on and adjacent to the Property. The loss of sand and the amount of damage surrounding the Property during the storms was dramatic. A portion of the Tivoli Cove roadway just west of the Property failed. There was erosion of the beach in front of the Property and adjacent properties created an unstable cliff.

One of the areas that was hardest hit initially was the existing stairs to the beach east of the Property, which has provided public beach access. That access is an improved concrete stairway leading from Latigo Shore Drive to the beach. Although no agency has yet to accept the accessway, Mr. Kelley and his neighbors have been allowing the public to use the accessway for many years. During the storms, the stairway sustained heavy damage. The loss of sand left the bottom on the stairway hanging in mid air.

Mr. Cheap initially called the Coastal Commission's Ventura office to find out what he would have to do to prevent further damage and loss of the stairway. He spoke to Steve Hudson, who informed him that he would have to contact the City of Malibu for an emergency permit. Mr. Cheap then spoke with Craig George at the City of Malibu. Mr. George told Mr. Cheap to take the actions necessary to protect life and property and come in afterwards for an emergency permit. These conversations, while initiated out of concern for the stairway, were very general in nature. Mr. Cheap understood that he was being told what the procedure was in emergency situations in general.

Following those conversations, Mr. Cheap began to observe a dramatic loss of sand below the Property. In a very short period, Mr. Cheap observed that over 20 feet of beach adjacent to the Property had eroded away, exposing house foundations on the Property. More storms were coming, Mr. Cheap was concerned that the erosion could reach a point where the septic system on the Property might fail. There was a 12-foot high unstable and rain saturated cliff resulting from the erosion that appeared poised to fail in the coming storms. Mr. Cheap was concerned that people on the beach passing near the cliff could be injured if the cliff failed.

Based on the conversation he had had with Mr. Hudson to contact the City of Malibu and the conversation he had with Mr. George to protect life and property first and then apply for an emergency permit, Mr. Cheap proceeded in what he believed was the appropriate emergency course of action.

Mr. Cheap initially attempted to stop the erosion with sandbags and plastic, which quickly failed. Mr. Cheap then decided that put in a temporary system of rocks to prevent further erosion and stabilize the cliff. That system is the temporary revetment referenced in the NOI. The whole system was temporary. Mr. Cheap intended to remove the rocks when the storms ended. Mr. Kelley learned about what Mr. Cheap installed after the fact.

Contrary to the NOI, Mr. Cheap did not remove sand from the beach or from the adjacent land when he installed the temporary measures, nor did he attempt to "bury" the rocks. Rather he placed the rocks at the base of the cliff. After placing the rocks, the cliff was trimmed down to assure stability, with the dirt from this overhang falling onto the rocks. There was no attempt to "bury" the system.

Shortly after the temporary emergency system was installed, the Commission served its notice on Friday, March 4, 2005. Mr. Kelly denies that he failed to respond satisfactorily to the Commission's March 4, 2005 notice. Mr. Kelley did not receive the notice until the evening of March 4. He immediately contacted legal counsel, who informed Commission staff on Monday March 7 that no work was occurring or would occur on the Property. Mr. Kelley's response since receiving the Commission's March 4 notice is recounted

in Mr. Lamport's March 30, 2005 letter to Ms. Chestnut, which is incorporated by reference into the response. Mr. Kelley continues to inform the Commission that he will remove the revetment and will cooperate with the Commission in that regard. At this juncture, the Commission has informed Mr. Kelley that he cannot remove the revetment without the Commission's permission, that it will not permit him to remove the revetment until there is an agreement on a consent CDO including penalties (which Mr. Kelley maintains the Commission has no right to demand) or the Commission issues a CDO and restoration order. Mr. Kelley has been informed by Commission staff that he cannot apply to the Commission for a CDP to remove the revetment.

2. Mr. Kelley limits this list of denials to issues pertaining to the "revetment". No waiver of Mr. Kelley's right to deny any allegations relating to the other alleged violations should be implied from their omission here. Mr. Kelley denies at this time that the "revetment" is located within the vertical or lateral easements. Mr. Kelley denies that the temporary emergency system is a violation of the CDP, the Coastal Act as implemented through the Local Coastal Program for the City of Malibu, or the practices and procedures of the Commission or the City of Malibu for addressing emergency situations. Mr. Kelley denies that he failed to respond satisfactorily to the Commission's March 4 notice of violation.

Mr. Kelley denies that Special Condition Eight of the Permit prohibits the construction of a temporary emergency structure to protect the home, or that it prevents a protective structure from ever being permissible. Mr. Kelley further disputes the interpretation and application of Coastal Act Section 30253(2) as it relates to his property.

Mr. Kelley denies that sand was removed from the beach or from the adjacent land when the temporary system was put in place, nor was there any attempt to "bury" the rocks.

3. There are no facts or allegations in the Notice of Intent which relate to the "revetment" which Mr. Kelley does not have personal knowledge about.

4. Mr. Kelley incorporates by this reference all the facts contained in Paragraph 1 above. Mr. Kelley reiterates that he was not aware of the installation of the "revetment" as the work was being done and remains willing to immediately remove it. Mr. Kelley continues to investigate this matter and reserve the right to supplement this response as new information becomes available.

5. No other statement or information is offered at this time.

6. No materials or exhibits are offered at this time, however Mr. Kelley and his representatives continue to investigate this matter and reserve the right to supplement this response as new materials become available.

COXCASTLE NICHOLSON

Cox, Castle & Nicholson LLP
2049 Century Park East, 28th Floor
Los Angeles, California 90067-3284
P 310.277.4222 F 310.277.7889

Stanley W. Lamport
310.284.2275
slamport@coxcastle.com

File No. 42866

April 17, 2005

VIA FACSIMILE

Christine A. Chestnut
California Coastal Commission
45 Fremont Street
Suite 2000
San Francisco, CA 91405

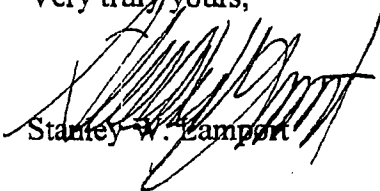
Re: **Violation No: V-4-05-030**
Location: 26530 Latigo Shore Drive, Malibu

Dear Ms. Chestnut:

On behalf of our client, Bert Kelley, we submit the following statement of defense in response to the Notice of Intent to Record a Notice of Violation of the Coastal Act and to Commence Cease and Desist Order and Restoration Order Proceedings. As we discussed, the response is limited to the issues other than the rock revetment.

If you have any questions, please do not hesitate to contact me.

Very truly yours,


Stanley W. Lamport

SWL/ar
42866\1141089v1

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 YOU COMPLETE THIS FORM OR OTHERWISE CONTACT THE COMMISSION ENFORCEMENT STAFF.

This form is accompanied by a notice of intent to initiate cease and desist and restoration order proceedings before the commission. This document indicates that you are or may be responsible for or in some way involved in either a violation of the commission's laws or a commission permit. The document summarizes what the (possible) violation involves, who is or may be responsible for it, where and when it (may have) occurred, and other pertinent information concerning the (possible) violation.

This form requires you 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. This form also requires you to 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 should complete the form (please use additional pages if necessary) and return it no later than **April 13, 2005** to the Commission's enforcement staff at the following address:

**Christine Chestnut
Headquarters Enforcement Analyst
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, California 94105-2219**

If you have any questions, please contact Christine Chestnut at (415) 904-5294.

1. Facts or allegations contained in the notice of intent that you admit (with specific reference to the paragraph number in such document):

PLEASE SEE ATTACHED "STATEMENT OF DEFENSE" PARAGRAPH 1

2. Facts or allegations contained in the notice of intent that you deny (with specific reference to paragraph number in such document):

PLEASE SEE ATTACHED "STATEMENT OF DEFENSE" PARAGRAPH 2

3. Facts or allegations contained in the notice of intent of which you have no personal knowledge (with specific reference to paragraph number in such document):

PLEASE SEE ATTACHED "STATEMENT OF DEFENSE" PARAGRAPH 3

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:

PLEASE SEE ATTACHED "STATEMENT OF DEFENSE" PARAGRAPH 4

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

PLEASE SEE ATTACHED "STATEMENT OF DEFENSE" PARAGRAPH 5

[illegible]

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):

PLEASE SEE ATTACHED "STATEMENT OF DEFENSE" PARAGRAPH 6

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

STATEMENT OF DEFENSE

Bert Kelley provides the following response as part of his Statement of Defense with respect to a portion of the Notice of Intent to Record Notice of Violation of the Coastal Act and to Commence Cease and Desist Order and Restoration Proceedings with respect to Case Number V-4-05-030 ("NOI"). This response is limited to the allegations in the NOI regarding violations other than the "revetment."

Mr. Kelley continues to object to providing a response to the Statement of Defense at this time. The NOI concerns facts and events that predate Mr. Kelley's involvement with the Property. Since becoming aware of the Coastal Commission's prior NOI's with respect to the Property, Mr. Kelley had been working with the Commission to obtain a coastal development permit to address the items to which the NOI pertains. As a result, Mr. Kelley was not required to and did not investigate many of the facts that predate his involvement with the Property. The Commission did not inform Mr. Kelley that it intended to pursue a cease and desist order with respect to the matters that have been the subject of his coastal development permit application until he received the March 15, 2005 NOI. Mr. Kelley has informed the Commission that he does not have the information to respond to all of the allegations and present an informed and adequate defense. On March 22, 2005 Mr. Kelley requested the complete Coastal Development Permit file for the Property from the Coastal Commission's Ventura Office, which Mr. Kelley believes contains much of the information he needs to present his defense. Despite repeated requests for the file, only a portion of that file has been produced to Mr. Kelley to date. There is other information that Mr. Kelley has been seeking to obtain that he has not been able to secure in the extremely limited time frame the Commission has afforded Mr. Kelley to respond.

Accordingly, Mr. Kelley is not in a position to present a complete defense at this time. He objects to the Commission's requirement to provide a statement of defense at this time. Mr. Kelley does not waive and reserves his rights to present additional information to the Coastal Commission in his defense, including information that supplements the facts set forth in this response and additional facts which Mr. Kelley subsequently discovers or whose significance relative to Mr. Kelley's defense is subsequently ascertained. In submitting this response Mr. Kelley is not waiving any defenses, including, without limitation, with respect to the authority and jurisdiction of the Coastal Commission in this matter.

Mr. Kelley further objects to the extent that the NOI purports to pertain to violations that are not specified in the NOI. The violation description in the NOI refers to "unpermitted development, including, but not limited to" specified items. The foregoing language leaves open the possibility that there are violations not specified in the NOI for which the Commission intends to issue a CDO. Mr. Kelley is not in a position to respond to unspecified violations. He objects to the Commission seeking or issuing a CDO with respect to any violations that are not specifically identified in the NOI.

Mr. Kelley further objects to the inclusion of the "front yard wall" located on Assessor's Parcel No: 4460-019-025, in the NOI relating to 26530 Latigo Shore Drive ("Property"). The two are separate properties and any alleged violations on that property should not be tied to the Property.

1. Mr. Kelley is the current owner of the Property located in the City of Malibu. Mr. Kelley does not currently reside at the Property. Mr. Kelley purchased the Property in 1997, after construction of the residence had already been completed, and was not a party to the 1988 Coastal Development Permit No. 5-88-794 ("CDP") Application. Mr. Kelley initially submitted Coastal Development Permit Application 5-88-794-A2 ("Application A2") in 1998 for after the fact approvals of the structure as built. Mr. Kelley also submitted Coastal Development Permit Application 5-88-794-A3 ("Application A3") for vacation of the vertical access easement pursuant to the terms of the CDP and recorded deed restrictions. At the request of Jack Ainsworth of the Coastal Commission, Mr. Kelley withdrew Application A2 and Application A3 and consolidated them into Coastal Development Permit Application 5-88-794-A4 ("Application A4"), filed in 1999.

Application A4 sought to resolve all of the issues being addressed in this statement of defense. Application A4 is still pending before the Commission. In July of 2000, Coastal Commission Staff ("Staff") informed Mr. Kelley that he had to provide additional information to complete Application A4. In October of 2000 Mr. Kelley provided Staff with all of the requested information to complete the application, including geology reports on the necessity of the soldier pile system. Following that submission, the Commission never notified Mr. Kelley in writing that the application was incomplete and Mr. Kelley was never notified in any manner that the application was incomplete within the time for such notice under the Permit Streamlining Act. As a result, the application was deemed complete under the Permit Streamlining Act.

After October 2000, Mr. Kelley and his consultant made numerous attempts to contact Staff. There was a period of time after the October submission when Staff was not returning their calls. At some point Mr. Kelley spoke with Staff, who stated that the application was not complete for unspecified reasons. Mr. Kelley's consultant left Staff several voicemail messages asking Staff to provide a letter outlining what was needed to complete the application. Staff never responded to the request for the letter and neither Mr. Kelley nor his consultant ever received such a letter. Mr. Kelley has had conversations with Staff regarding the status of various issues related to the Application A4. Mr. Kelley has understood that the Commission was continuing to process the Application. A staff report was never prepared on Application A4. Mr. Kelley has requested that processing of Application A4 be completed with the understanding that any items which remain unpermitted items would be removed.

There is a lateral easement over a portion of the Property, which covers the area contained within the legal description in the document creating the easement. Mr. Kelley is aware there is an irrevocable offer to dedicate a vertical easement over a portion of the Property, though the legal description in the document is incorrect. Until Mr. Kelley received the NOI, he was not aware that Access for All accepted the offer to dedicate. Mr. Kelley has not been contacted by Access for All and was not given notice of any proceeding or action to accept the dedication. Mr. Kelley had requested removal of the vertical access in Application A3 and renewed the request in Application A4. Mr. Ainsworth had indicated that removal of the vertical access should not be a problem.

Mr. Kelley was not involved with the Property when the soldier pile system was proposed in 1990. There is a 20 soldier pile system in place on the Property, and that the system

was designed to protect his property, and the two properties immediately to the east of his, against the lateral pressure created by the landslide located on the west edge of the Property. The County of Los Angeles required installation of the soldier piles before a certificate of occupancy would be issued for the residence. Mr. Kelley is informed and believes that the soldier pile design was reviewed and approved by the Coastal Commission Staff in 1990. Nonetheless, at the direction of Staff, approval for this item was sought in Application A2 and was renewed in Application A4. The Staff Report on Application A2 recommended approval of sixteen soldier of the piles.

There is a vertical boundary wall along the western edge of his property but the description of the wall in the NOI is incorrect. The wall is not 6 feet high in any place and steps down as it moves seaward. An after the fact permit for the wall was sought in Application A2 and was renewed in Application A4. Approval for the vertical boundary wall was recommended in the Staff Report on Application A2.

The "front yard wall" is not located on the Property and not properly the subject of the NOI. At Staff's request, Mr. Kelley included this wall in Application A2 and Application A4 as an accommodation and without waiving any of rights and defenses with respect to the location of the wall on another property.

At one time there was a fill slope seaward of the residence that was present when he purchased the Property. Most, if not all, of the fill slope was washed away in this year's Winter storms. The remaining dirt seaward of the property is part of the original Caltrans fill which existed prior to the CDP and was acknowledged therein. At the Commission's request, Mr. Kelley applied for an after the fact permit for the original fill slope in Application A4. As part of that application, Mr. Kelley offered to remove a portion of the Caltrans fill for public safety reasons. There is a non-structural concrete slab located under the string line of the residence. This slab was placed to prevent reoccurrence of a fissure that occurred under the residence on the Property. An after the fact permit for this item was sought in Application A4.

Mr. Kelley denies the allegations that he imported and constructed the fill slope. As stated above, the fill slope was present when he purchased the Property. Mr. Kelley also denies that there is landscaping on top of the unpermitted fill slope. As noted, the vast majority of the slope is no longer present. It is assumed that the Commission is referring to the grassy area seaward of the residence, which is not located on the unpermitted fill slope.

There is a path with stairs on the west side of the Property. The Los Angeles County Fire Department required the staircase a pre-condition to issuance of the certificate of occupancy for the residence. Mr. Kelley was not involved with the Property when the stair design was approved. Mr. Kelley believes that the stairs are not a violation as they were part of the final plans for the Property approved by the County and follow the pattern for the vertical access the Commission approved in the CDP.

Mr. Kelly denies that he failed to respond satisfactorily to the Commission's March 4, 2005 notice. Mr. Kelley did not receive the notice until the evening of March 4. He immediately contacted legal counsel, who informed Commission staff on Monday March 7 that no work was occurring or would occur on the Property. Mr. Kelley's response since receiving

the Commission's March 4 notice is recounted in Mr. Lamport's March 30, 2005 letter to Ms. Chestnut, which is incorporated by reference into the response. Mr. Kelley continues to inform the Commission that he would like to complete its processing of Application A4 and will cooperate with the Commission in that regard.

2. Mr. Kelley limits this list of denials to issues other than the "revetment". No waiver of Mr. Kelley's right to deny any allegations relating to the "revetment" should be implied from their omission here. Mr. Kelley denies any encroachments into the vertical access easement. Mr. Kelley denies any encroachments into the lateral access easement, other than the 4 soldier piles discussed above. Mr. Kelley denies that the vertical easement extends to Pacific Coast Highway, as the grantor of the easement did not own the property between the residence and Pacific Coast Highway. Mr. Kelley denies that the lateral easement is correctly described in the Notice of Intent as extending from the "toe of the bluff".

Mr. Kelley denies that the vertical boundary wall on top of the soldier piles is 6 feet high. Mr. Kelley denies that he failed to respond satisfactorily to the Commission's March 4 notice of violation.

Mr. Kelley incorporates by this reference the denials listed in Paragraph 1 above.

3. Mr. Kelley's personal knowledge is limited to events occurring after he purchased the property in 1997. The Coastal Commission's refusal to allow Mr. Kelley adequate time to investigate the facts to support his defense, including the Coastal Commission's inability to locate and provide the entire Coastal Commission file, has crippled Mr. Kelley's ability to gather the information about the pre-1997 status of the property. Mr. Kelley is unable to get this information from the entity which entitled the property as they went bankrupt in 1997.

4. Mr. Kelley incorporates by this reference all the facts contained in Paragraph 1 above. Mr. Kelley reiterates that most of the alleged violations occurred prior to his purchase of the property and that he attempted to get permits for all of these alleged violations. In the past, Mr. Kelley has not attempted to contest the Commission's contentions regarding the alleged violations, but instead attempted to work with the Commission to address the Commission's concerns through a coastal development permit. Mr. Kelley has and continues to work with the Commission to resolve the concerns the Commission has had with the Property and has attempted to avoid engaging in a dispute with the Commission regarding whether the conditions in question on the Property are violations. Mr. Kelley would like to continue that relationship with the Commission and resolve the pending coastal development permit rather than have a dispute with the Commission over the violations as a result of having to respond to the NOI. Mr. Kelley continues to investigate this matter and reserves the right to supplement this response as new information becomes available.

5. No other statement or information is offered at this time.

6. No materials or exhibits are offered at this time, however Mr. Kelley and his representatives continue to investigate this matter and reserve the right to supplement this response as new materials become available.

Recording Requested By
and Return Original To:
California Coastal Commission
631 Howard Street, Fourth Floor
San Francisco, California 94105

89-1993988

RECORDED IN OFFICIAL RECORDS
RECORDER'S OFFICE
LOS ANGELES COUNTY
CALIFORNIA

DEED RESTRICTION

1 MIN. 2 P.M. DEC 12 1989

FEE \$ 19 11

I. WHEREAS, Carl J. Goldbaum and Jeanette Goldbaum

hereinafter referred to as Owner(s), is/are the
record owner(s) of the following real property:

See Attached Exhibit B

hereinafter referred to as the subject property; and

II. WHEREAS, the California Coastal Commission is acting on
behalf of the People of the State of California; and

III. WHEREAS, the subject property is located within the coastal
zone as defined in Section 30103 of the California Public Resources Code.
(hereinafter referred to as the California Coastal Act); and

IV. WHEREAS, pursuant to the California Coastal Act of 1976, the
Owner applied to the California Coastal Commission for a coastal development
permit for the development on the subject property described above; and

V. WHEREAS, coastal development permit No. 5-88-794 was
granted on December 13, 1988 by the California Coastal Commission
in accordance with the provision of the Staff Recommendation and Findings,
attached hereto as Exhibit A, and herein incorporated by reference; and

1 VI. WHEREAS, coastal development permit No. 5-88-794
2 was subject to the terms and conditions including but not limited
3 to the following conditions:

- 4 1. Prior to transmittal of the permit, the applicant as landowner
5 shall execute and record a deed restriction, in a form and
6 content acceptable to the Executive Director, which shall
7 provide: (a) that the applicant understands that the site may
8 be subject to extraordinary hazard from shoreline erosion,
9 flooding, and bluff erosion, and the applicant assumes the
10 liability from such hazards; (b) that the applicant uncondi-
11 tionally waives any claim of liability on the part of the
12 Commission and its advisors relative the Commission's
13 approval of the project for any damage due to natural hazards.
14 The document shall run with the land, binding all successors
15 and assigns.
- 16 2. Prior to transmittal of the permit, the applicant shall provide
17 a deed restriction for recording in a form and content accept-
18 able to the Executive Director, which provides that Coastal
19 Development Permit 5-88-794 is for the approved development on
20 and that any future additions or improvements to the property
21 will require a new Coastal Development Permit from the Coastal
22 Commission or its successor agency. The document should note
23 that no permanent improvements with the exception of one public
24 path or stairway noted on the present plans shall be constructed
25 within the geologic set back area or under the floors or seawalls
26 of the existing structures. The deed restriction shall run with
27 the land, binding all successors and assigns, and shall be
recorded free of prior liens and encumbrances which the Executive
Director determines may affect the interest being conveyed. It
shall remain in effect for the life of the development approved
in this permit.

18 VII. WHEREAS, the Commission found that but for the
19 imposition of the above conditions the proposed development could
20 not be found consistent with the provisions of the California
21 Coastal Act of 1976 and that a permit could therefore not have
22 been granted; and

23 VIII. WHEREAS, it is intended that this Deed Restriction
24 is irrevocable and shall constitute enforceable restrictions; and

25 IX. WHEREAS, Owner has elected to comply with the
26 conditions imposed by Permit No. 5-88-794 so as to enable
27 Owner to undertake the development authorized by the permit.

1 NOW, THEREFORE, in consideration of the granting of Permit . .
2 No. 5-88-794 to the Owner by the California Coastal Commission,
3 the Owner hereby irrevocably covenants with the California Coastal
4 Commission that there be and hereby is created the following
5 restrictions on the use and enjoyment of said subject property, to
6 be attached to and become a part of the deed to the property. The
7 undersigned Owner, for himself/herself and for his/her heirs,
8 assigns, and successors in interest, covenants and agrees that:

9
10
11 The applicant understands that the site may be subject to extraordinary
12 hazard from shoreline erosion, flooding, and bluff erosion, and the applicant
13 assumes the liability from such hazards; and the applicant unconditionally waives
14 claim of liability on the part of the Commission and its advisors relative in the
15 Commission's approval of the project for any damage due to natural hazards.

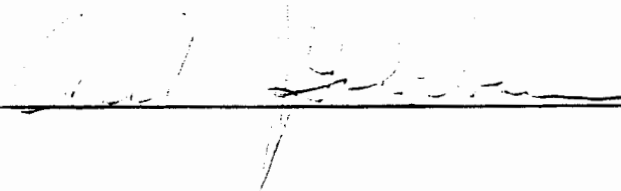
16 Permit 5-88-794 is for the approved development only, and that any future
17 additions or improvements to the property will require a new Coastal Development
18 Permit from the Coastal Commission or its successor agency. No permanent improve-
19 ments with the exception of one public path or stairway that is the subject of a
20 certain Irrevocable Offer To Dedicate Vertical Access executed by the undersigned
21 and recorded concurrently herewith shall be constructed 1) within the geologic
22 set back area specified on Exhibit 3 to the Staff Recommendations and Findings
23 or 2) under the floors or seaward of the existing structures. . . .

24 If any provision of these restrictions is held to be invalid
25 or for any reason becomes unenforceable, no other provision shall
26 be thereby affected or impaired.
27

1 Said deed restriction shall remain in full force and effect
2 during the period that said permit, or any modification or
3 amendment thereof, remains effective, and during the period that
4 the development authorized by said permit or any modification of
5 said development, remains in existence in or upon any part of, and
6 thereby confers benefit upon, the subject property described
7 herein, and to that extent, said deed restriction is hereby deemed
8 and agreed by Owner to be a covenant running with the land, and
9 shall bind Owner and all his/her assigns or successors in interest

10
11 Owner agrees to record this Deed Restriction in the
12 Recorder's office for the County of Los Angeles as
13 soon as possible after the date of execution.

14
15 DATED: 3-5, 1970

16
17 SIGNED: 

18
19 Carl J. Goldbaum

20 PRINT OR TYPE NAME OF ABOVE

21
22
23 SIGNED: 

24
25 Jeanette Goldbaum

26 PRINT OR TYPE NAME OF ABOVE

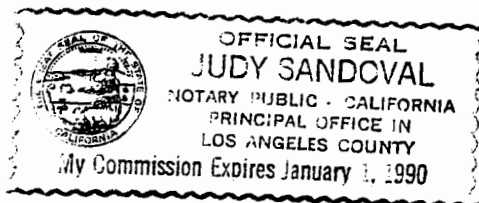
27 (NOTARY ACKNOWLEDGMENT ON NEXT PAGE)

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

5
6 State of California, County of _____, ss
7 On this _____ day of _____, in the
8 year _____, before me _____, a
9 Notary Public, personally appeared _____
10 personally known to me (or proved to me on the basis of
11 satisfactory evidence) to be the person whose name is subscribed
12 to this instrument, and acknowledged that he/she executed it.

13
14
15
16 NOTARY PUBLIC IN AND FOR SAID
COUNTY AND STATE

17
18 State of California, County of LOS ANGELES, ss
19 On this 31ST day of MARCH, in the
20 year 1989, before me JUDY SANDOVAL, a
21 Notary Public, personally appeared CARL J. GOLDBAUM AND JEANETTE GOLDBAUM,
22 personally known to me (or proved to me on the basis of
23 satisfactory evidence) to be the person whose name is subscribed
24 to this instrument, and acknowledged that he/she executed it.




NOTARY PUBLIC IN AND FOR SAID
COUNTY AND STATE

89-1993988

1 This is to certify that the deed restriction set forth above
2 is hereby acknowledged by the undersigned officer on behalf of the
3 California Coastal Commission pursuant to authority conferred by
4 the California Coastal Commission when it granted Coastal
5 Development Permit No. 5-88-794 on December 13, 1988
6 and the California Coastal Commission consents to recordation
7 thereof by its duly authorized officer.

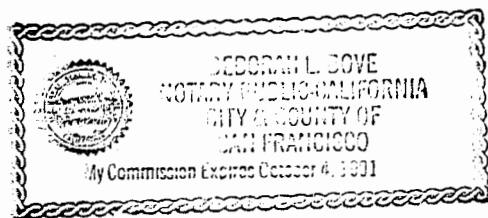
8 Dated: November 9, 1989

John Bowers
John Bowers, Staff Counsel
California Coastal Commission

12 STATE OF California)
13) ss
14 COUNTY OF San Francisco)

14 On 11/1/89, before me DEBORAH L. BOVE the undersigned

15 Notary Public, personally appeared John Bowers,
16 personally known to me to be (or proved to me on the basis of
17 satisfactory evidence) to be the person who executed this
18 instrument as the Staff Counsel and authorized
19 representative of the California Coastal Commission and
20 acknowledged to me that the California Coastal Commission executed
21 it.



Deborah L. Bove
NOTARY PUBLIC IN AND FOR
SAID STATE AND COUNTY

CALIFORNIA COASTAL COMMISSION

631 HOWARD STREET, 4TH FLOOR

SAN FRANCISCO, CA 94105

(415) 543-8555



7

EXHIBIT A

Due to the insufficient legibility for recording of the Staff Report: Regular Calendar (Exhibit A) of Coastal Development Permit No. 5-88-794, it is on file and may be viewed in the offices of the California Coastal Commission, Long Beach District Office, at 245 W. Broadway, Suite 380, Long Beach, California 90802-4416.

8

A Parcel of land in said county and state being that portion of the Rancho Topanga Malibu Sequit, as confirmed to Matthew Keller by Patent recorded in Book 1, Page 407 et seq., of Patents, in the office of the county recorder of said county, described as follows:

Bounded Northerly by the Southerly line of that certain 80.00 foot wide strip of land described in the Deed to the State of California, recorded in Book 15228, Page 342, Official Records of said county. Bounded Southerly by the line of ordinary high tide of the Pacific Ocean, bounded Westerly by a line that bears South 21 degrees 4' 5" East from a point in the center line of said 80.00 foot strip of land from a point in the center line South 64 degrees 25' 55" West 585.60 feet from Engineer's center line Station 733 plus 12.68 in the center line of said 80.00 foot wide strip of land and bounded Easterly by a line that bear South 11 degrees 47' 57" East from a point in the Southerly line of said 80.00 foot wide strip of land, said last mentioned point being South 5 degrees 22' 55" East 40.00 feet and 443.53 feet Westerly along that arc of a curve concave line Station 759 plus 28.52 in the center line of said 80.00 foot wide strip of land.

EXCEPT therefrom that portion of said land lying Easterly of a line drawn radially from a point in the Southerly line of said 80.00 foot wide strip of land distant Easterly thereon 200.00 feet from the Northwesternly corner of said land.

ALSO EXCEPT therefrom any portion thereof lying outside the Patent lines of the Rancho Topanga Malibu Sequit as such line existed at the time of the issuance of the Patent which was not formed by the deposit of alluvion from natural from natural causes and by imperceptible degrees.

ALSO EXCEPT therefrom any tide and submerged lands of the State of California lying below the elevation of natural ordinary high water mark.

ALSO EXCEPT therefrom all minerals, oil, gas and other hydrocarbon substances but without right of surface entry.

EXHIBIT "B"

89-1993988

RECORDING REQUESTED BY
AND RETURN TO:
California Coastal Commission
631 Howard Street, Fourth Floor
San Francisco, California 94105

89-1993990

IRREVOCABLE OFFER TO DEDICATE EASEMENT FOR VERTICAL PUBLIC ACCESS

AND

DECLARATION OF RESTRICTIONS

FREE 14M

THIS IRREVOCABLE OFFER TO DEDICATE VERTICAL ACCESS EASEMENT and
DECLARATION OF RESTRICTIONS (hereinafter referred to as the "Offer") is
made this 11 day of July, 1989, by Carl J. Goldbaum
and Jeanette Goldbaum, (hereinafter referred to as "Grantor").

I. WHEREAS, Grantor is the legal owner of a fee interest of certain
real property located in the County of Los Angeles, State of
California, legally described as particularly set forth in attached EXHIBIT A
hereby incorporated by reference (hereinafter referred to as the "Property");
and

II. WHEREAS, all of the subject property is located within the
coastal zone as defined in §30103 of the California Public Resources Code
(hereinafter referred to as the "Public Resources Code"); and

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

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

V. WHEREAS, pursuant to the Act, the Grantor applied to the

RECORDED IN OFFICIAL RECORDS

RECORDER'S OFFICE
LOS ANGELES COUNTY
CALIFORNIA

1 MIN. 2 P.M. DEC 12 1989

-1-

Exhibit 15
CCC-05-NOV-03 and CCC-05-CD-05
(Kelley) Page 1 of 14

1 Commission to undertake development as defined in §30106 of the Public
2 Resources Code within the coastal zone of Los Angeles County; and

3 VI. WHEREAS, a coastal development permit number 5-88-794
4 (hereinafter referred to as the "Permit") was granted on December 13,
5 19 88, by the Commission in accordance with the provisions of the Staff
6 Recommendation and Findings attached hereto as EXHIBIT B and hereby
7 incorporated by reference, subject to the following condition:

8 See Exhibit "F"

9 Vertical Access Condition
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18 VII. WHEREAS, the Property is a parcel located between the first public
19 road and the shoreline; and

20 VIII. WHEREAS, under the policies of §30210 through §30212 of the
21 Public Resources Code, public access to the shoreline and along the coast
22 is to be maximized, and in all new development projects located between
23 the first public road and the shoreline shall be provided; and

24 IX. WHEREAS, the Commission found that but for the imposition of
25 the above condition, the proposed development could not be found consistent
26 with the public access policies of §30210 through §30212 of the Public
27 Resources Code and that. therefore, in the absence of such a condition, a

1 permit could not have been granted; and

2 X. WHEREAS, Grantor has elected to comply with the Condition and
3 execute this Offer so as to enable Grantor to undertake the development
4 authorized by the Permit.

5 NOW THEREFORE, in consideration of the granting of the Permit to
6 the Grantor by the Commission, the Grantor hereby irrevocably offers to
7 dedicate to the People of the State of California, an easement in gross and
8 in perpetuity over the Property as follows:

9 1. DESCRIPTION. The easement offered hereby affects that portion of
10 the Property extending from the Pacific Coast Highway to the ordinary high tide of the Pacific
11 Ocean, generally within the geologic setback along the western property line. The easement shall
12 not be less than 10' in width, and shall be sited and designed to accommodate access to the beach
13 and as specifically described in EXHIBIT C, attached hereto and incorporated
14 herein by reference.

15 2. PURPOSE. The easement is for the purpose of allowing public
16 pedestrian ingress and egress to and from the shoreline.

17 3. DECLARATION OF RESTRICTIONS. This offer of dedication shall not
18 be used or construed to allow anyone, prior to acceptance of the Offer, to
19 interfere with any rights of public access acquired through use which may
20 exist on the Property. After acceptance, Grantor shall not interfere with
21 the public's use of the easement nor take any action inconsistent with such
22 use, including, without limitation, constructing or improving the Property
23 within the easement area in a manner inconsistent with the public's use or
24 enjoyment thereof. Grantor shall not be bound to undertake any construction,
25 maintenance or repair to provide for the public purposes hereunder. Grantor
26 shall retain all normal rights and incidents of ownership of the underlying
27 fee interest in the Property not inconsistent with the easement.

4. DURATION, ACCEPTANCE AND TRANSFERABILITY. This irrevocable offer

1 of dedication shall be binding upon the owner and the heirs, assigns, or
2 successors in interest to the Property described above for a period of 21
3 years. This Offer may be accepted by any agency of the State of California,
4 a political subdivision, or a private association acceptable to the Executive
5 Director of the Commission (hereinafter referred to as the "Grantee").
6 Such acceptance shall be effectuated by recordation by the Grantee of an
7 acceptance of this Offer in the form attached hereto as EXHIBIT D. Upon
8 such recordation of acceptance, this offer and terms, condition, and
9 restrictions shall have the effect of a grant of vertical access easement
10 in gross and perpetuity that shall run with the land and be binding on the
11 heirs, assigns, and successors of the Grantor. After acceptance, this
12 easement may be transferred to and held by any entity which qualifies as a
13 Grantee under the criteria hereinabove stated. Acceptance of the Offer is
14 subject to a covenant which runs with the land, providing that the Grantee
15 may not abandon the easement until such time as Grantee effectively transfers
16 said easement to an entity which qualifies as a Grantee under the criteria
17 hereinabove stated.

18 5. REMEDIES. Any act, conveyance, contract, or authorization by
19 Grantor whether written or oral which uses or would cause to be used or
20 would permit use of the easement contrary to the terms of this Offer will
21 be deemed a breach hereof. The Grantor, any Grantee of this easement and
22 any offeree of this Offer may pursue any and all available legal and/or
23 equitable remedies to enforce the terms and conditions of the Offer and
24 easement and their respective interest in the property. In the event of
25 a breach, any forbearance on the part of any such party to enforce the terms
26 and provisions hereof shall not be deemed a waiver of enforcement rights
27 regarding any subsequent breach.

1 6. TAXES AND ASSESSMENTS. Grantor agrees to pay or cause to be paid
2 all real property taxes and assessments levied or assessed against the
3 Property. It is intended that this irrevocable offer and the use
4 restrictions contained herein shall constitute enforceable restrictions
5 within the meaning of a) Article XIII, §8, of the California Constitution;
6 and b) §402.1 of the California Revenue and Taxation Code or successor
7 statute. Furthermore, this Offer, easement and restrictions shall be deemed
8 to constitute a servitude upon and burden to the Property within the meaning
9 of §3712(d) of the California Revenue and Taxation Code, or successor
10 statute, which survives a sale of tax-deeded property.

11 7. SUCCESSORS AND ASSIGNS. The terms, covenants, conditions,
12 exceptions, obligations, and reservations contained in this Offer shall be
13 binding upon and inure to the benefit of the successors and assigns of both
14 the Grantor and the Grantee, whether voluntary or involuntary.

15 8. SEVERABILITY. If any provision of this Offer is held to be invalid
16 or for any reason becomes unenforceable, no other provision shall be
17 thereby affected or impaired.

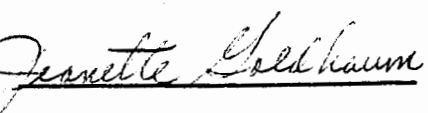
18
19 Executed on this 11 day of July, 1989, at

20 TARZANA, California.

21
22 SIGNED:


CARL J. GOLDBAUM
Type or Print Name of Above

SIGNED:

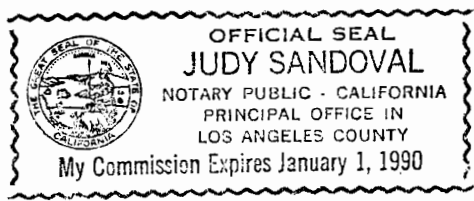

JEANETTE GOLDBAUM
Type or Print Name Above

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*** NOTE TO NOTARY PUBLIC *** If you are notarizing the signatures of persons signing on behalf of a corporation, partnership, or government agency please use the correct notary acknowledgement (jurat) as explained in your Notary Public Law Book.

STATE OF CALIFORNIA)
)ss
COUNTY OF LOS ANGELES)

On this 11TH day of JULY, 1989, before me JUDY SANDOVAL, a Notary Public, personally appeared CARL J. GOLDBAUM AND JEANNETTE GOLDBAUM personally known to me, or proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to this instrument, and acknowledged that he/she/they executed it.



[Signature]
NOTARY PUBLIC IN AND FOR
SAID COUNTY AND STATE

STATE OF _____)
)ss
COUNTY OF _____)

On this _____ day of _____, 19____, before me _____, a Notary Public, personally appeared _____ personally known to me, or proved to me on the basis of satisfactory evidenc, to be the person(s) whose name(s) is/are subscribed to this instrument, and acknowledged that he/she/they executed it.

NOTARY PUBLIC IN AND FOR
SAID COUNTY AND STATE

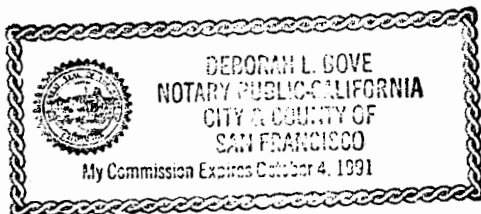
1 This is to certify that the Offer to Dedicate set forth above is
2 hereby acknowledged by the undersigned officer on behalf of the California
3 Coastal Commission pursuant to authority conferred by the California Coastal
4 Commission when it granted Coastal Development Permit No. 5-88-794 on
5 December 13, 1988 and the California Coastal Commission consents to
6 recordation thereof by its duly authorized officer.

7 Dated: 11-9-89

8 John Bowers
9 John Bowers, Staff Counsel
10 California Coastal Commission

11 STATE OF CALIFORNIA)
12)ss
13 COUNTY OF SAN FRANCISCO)

14 On this 9th day of November, 1989, before me
15 DEBORAH L. BOVE, a Notary Public, personally appeared
16 JOHN BOWERS, personally known to me to be the person
17 who executed this instrument as STAFF COUNSEL of the CALIFORNIA COASTAL
18 COMMISSION and acknowledged to me that the CALIFORNIA COASTAL COMMISSION
19 executed it.



Deborah L. Gove
NOTARY PUBLIC IN AND FOR
SAID COUNTY AND STATE

8

A Parcel of land in said county and state being that portion of the Rancho Topanga Malibu Sequit, as confirmed to Matthew Keller by Patent recorded in Book 1, Page 407 et seq., of Patents, in the office of the county recorder of said county, described as follows:

Bounded Northerly by the Southerly line of that certain 80.00 foot wide strip of land described in the Deed to the State of California, recorded in Book 15228, Page 342, Official Records of said county. Bounded Southerly by the line of ordinary high tide of the Pacific Ocean, bounded Westerly by a line that bears South 21 degrees 4' 5" East from a point in the center line of said 80.00 foot strip of land from a point in the center line South 64 degrees 25' 55" West 585.60 feet from Engineer's center line Station 733 plus 12.68 in the center line of said 80.00 foot wide strip of land and bounded Easterly by a line that bear South 11 degrees 47' 57" East from a point in the Southerly line of said 80.00 foot wide strip of land, said last mentioned point being South 5 degrees 22' 55" East 40.00 feet and 443.53 feet Westerly along that arc of a curve concave line Station 759 plus 28.52 in the center line of said 80.00 foot wide strip of land.

EXCEPT therefrom that portion of said land lying Easterly of a line drawn radially from a point in the Southerly line of said 80.00 foot wide strip of land distant Easterly thereon 200.00 feet from the Northwesternly corner of said land.

ALSO EXCEPT therefrom any portion thereof lying outside the Patent lines of the Rancho Topanga Malibu Sequit as such line existed at the time of the issuance of the Patent which was not formed by the deposit of alluvion from natural from natural causes and by imperceptible degrees.

ALSO EXCEPT therefrom any tide and submerged lands of the State of California lying below the elevation of natural ordinary high water mark.

ALSO EXCEPT therefrom all minerals, oil, gas and other hydrocarbon substances but without right of surface entry.

EXHIBIT "A"

CALIFORNIA COASTAL COMMISSION

631 HOWARD STREET, 4TH FLOOR
SAN FRANCISCO, CA 94105
(415) 543-8555

EXHIBIT B

Due to the insufficient legibility for recording of the Staff Report: Regular Calendar (Exhibit B) of Coastal Development Permit No. 5-88-794, it is on file and may be viewed in the offices of the California Coastal Commission, Long Beach District Office, at 245 W. Broadway, Suite 380, Long Beach, California 90802-4416.

LEGAL DESCRIPTION

BEACH ACCESS EASEMENT

AN EASEMENT FOR INGRESS AND EGRESS AND ACCESS PURPOSES OVER THAT PORTION OF THE RANCHO TOPANGA MALIBU SEQUIT, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS CONFIRMED TO MATHEW KELLER BY PATENT RECORDED IN BOOK 1 PAGE 407 ET SEQ. OF PATENTS, RECORDS OF SAID COUNTY INCLUDED WITHIN A STRIP OF LAND 10 FEET WIDE THE EASTERLY LINE OF SAID STRIP OF LAND BEING DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE CENTERLINE OF THE 80.00 FOOT STRIP OF LAND DESCRIBED IN DEED TO THE STATE OF CALIFORNIA, RECORDED IN BOOK 15228 PAGE 342, OFFICIAL RECORDS OF SAID COUNTY, DISTANT ALONG SAID CENTERLINE SOUTH 64°25'55" WEST 585.60 FEET FROM ENGINEER'S CENTERLINE STATION 733 PLUS 12.68 IN THE CENTERLINE OF SAID 80.00 FOOT WIDE STRIP OF LAND; THENCE SOUTH 21°04'05" EAST 40.12 FEET TO THE SOUTHERLY LINE OF SAID 80.00 FOOT WIDE STRIP OF LAND; THENCE ALONG SAID SOUTHERLY LINE NORTH 64°25'55" EAST 22.00 FEET TO THE TRUE POINT OF BEGINNING OF SAID EASTERLY LINE; THENCE SOUTH 25°34'05" EAST 24.00 FEET; THENCE SOUTH 36°42'54" WEST 16.10 FEET; THENCE SOUTH 25°34'05" EAST 5.00 FEET; THENCE SOUTH 83°17'25" EAST 16.86 FEET; THENCE SOUTH 25°34'05" EAST 8.00 FEET; THENCE SOUTH 21°20'18" WEST 7.84 FEET; THENCE SOUTH 69°34'25" EAST 18.67 FEET; THENCE SOUTH 21°04'05" EAST TO THE LINE OF ORDINARY HIGH TIDE OF THE PACIFIC OCEAN.

26520-26530 LATIGO SHORE DRIVE
NANTUCKET

•C-1.

EXHIBIT

Recording Requested by and
When Recorded Mail to:
California Coastal Commission
631 Howard Street, Fourth Floor
San Francisco, California 94105

12
EXHIBIT D
PERMIT NO. _____
Acceptance Certificate
Page one (1) of two (2)

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the Offer
to Dedicate dated _____, executed by _____
_____ and recorded on _____,
as Instrument Number _____ is hereby accepted by _____
_____, a public agency/private
association on _____, pursuant to authority conferred by
resolution of the _____ adopted on _____
_____, and the grantee consents to recordation thereof by its
duly authorized officer.

By: _____

Dated: _____

For: _____

STATE OF CALIFORNIA)
)ss
COUNTY OF _____)

On this _____ day of _____, in the year
19____, before me, _____, a Notary Public,
personally appeared _____, personally known to
me, or proved to me on the basis of satisfactory evidence, to be the person
who executed this instrument as _____ of
_____ and acknowledged to me that the
_____ executed it.

NOTARY PUBLIC IN AND FOR
SAID COUNTY AND STATE

13

ACKNOWLEDGEMENT BY THE CALIFORNIA COASTAL COMMISSION
OF ACCEPTANCE OF OFFER TO DEDICATE

This is to certify that _____
is a public agency/private association acceptable to the Executive Director
of the the California Coastal Commission to be Grantee under the Offer to
Dedicate executed by _____ on
_____, and recorded on _____, in the
office of the County Recorder of _____ County as
Instrument Number _____.

Dated: _____

California Coastal Commission

STATE OF CALIFORNIA)
)ss
COUNTY OF _____)

On this _____ day of _____, in the year
19____, before me, _____, a Notary Public,
personally appeared _____, personally known to
me, or proved to me on the basis of satisfactory evidence, to be the person
who executed this instrument as _____ of
_____ and acknowledged to me that the
_____ executed it.

NOTARY PUBLIC IN AND FOR
SAID COUNTY AND STATE

EXHIBIT "F"

VERTICAL ACCESS CONDITION

1 Prior to the transmittal of the permit, the Executive Director shall certify
2 in writing that the following condition has been satisfied. The applicant
3 shall execute and record a document, in a form and content approved in
4 writing by the Executive Director of the Commission irrevocably offering to
5 dedicate to a public agency or a private association approved by the Execu-
6 tive Director an easement for public access for pass and repass from Pacific
Coast Highway to the shoreline. The document shall provide that the offer
of dedication shall not be used or construed to allow anyone, prior to
acceptance of the offer, to interfere with any rights of public access ac-
quired through use which may exist on the property.

7 The easement be described in metes and bounds and shall extend from the Paci-
8 fic Coast Highway to the ordinary high tide of the Pacific Ocean, generally
9 within the geologic setback along the western property line. The easement
10 shall not be less than 10 feet in width, and shall be sited and designed to
11 accommodate reasonable and safe pedestrian access from the highway to the
12 area along the beach dedicated in condition 2. A more detailed description
13 may either follow the stairway proposed in Exhibit 3, or otherwise follow
a potential switch back within the general area identified as geologic set-
back in Exhibit 3 if the stairway cannot be feasibly constructed. The exact
configuration of the easement shall be determined by the Executive Director.
The easement shall enable a private or public agency accepting maintenance
and liability to enter, improve and maintain the access in order to provide
pedestrian access to the shoreline.

14 The easement shall be recorded free of prior liens except for tax liens and
15 free of prior encumbrances which the Executive Director determines may affect
16 the interest being conveyed. The offer shall run with the land in favor of
the People of the State of California, binding successors and assigns of the
applicant or landowner. The offer of dedication shall be irrevocable for
a period of 21 years, such period running from the date of recording.

17 In addition to all other recording, there shall be an explanatory note on
18 the final parcel map.

19 If and when a vertical public access way has been constructed within 500
20 feet of the applicant's property and such accessway has been opened for public
21 use and either a private association acceptable to the Executive Director
22 or a public agency has accepted the responsibility for operation and main-
23 tenance of the accessway, the applicant may request an amendment to this
24 permit to remove the recorded easement. Such amendment must be approved by
25 the California Coastal Commission or successor agency prior to removal or
26 revision of the recorded easement.
27
28

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included in the report for the next succeeding meeting. If the majority of the appointed membership of the Planning Commission so request, the issuance of an administrative permit governed by this section and Public Resources Code Section 30624 shall not become effective, but shall, if the applicant wishes to pursue the application, be treated as a regular coastal permit application under Section 13.6 of the Malibu LIP, subject to the provisions for hearing and appeal set forth in Sections 13.11 and 13.12 of the Malibu LIP.

13.14. EMERGENCY PERMITS

In the event of an emergency as defined in Chapter 2 of the Malibu LIP (Definitions), an application for an Emergency Coastal Development Permit ("emergency permit") shall be made to the Planning Director. The Planning Director may issue an emergency permit in accordance with Coastal Act Section 30624 and the following:

- A. Applications in cases of emergencies shall be made to the Planning Director by letter or facsimile during business hours if time allows, by telephone or in person if time does not allow.
- B. The information to be included in the application shall include the following:
 - 1. The nature of the emergency
 - 2. The cause of the emergency, insofar as this can be established;
 - 3. The location of the emergency
 - 4. The remedial, protective or preventative work required to deal with the emergency; and
 - 5. The circumstances during the emergency that appeared to justify the course(s) of action taken, including the probable consequences of failing to take action.
- C. The Planning Director shall verify the facts, including the existence and nature of the emergency, insofar as time allows.
- D. Prior to issuance of an emergency coastal development permit, when feasible, the Planning Director shall notify, and coordinate with, the South Central Coast District office of the California Coastal Commission as to the nature of the emergency and the scope of the work to be performed. This notification shall be in person or by telephone.
- E. The Planning Director shall provide public notice of the proposed emergency, with the extent and type of notice determined on the basis of the nature of the emergency itself. The Planning Director may grant an emergency permit upon reasonable terms and conditions, including an expiration date and the necessity for a regular permit application later, if the Planning Director finds that:

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1. An emergency exists and requires action more quickly than permitted by the procedures for administrative permits or for regular permits administered pursuant to the provisions of this chapter and Public Resources Code Section 30600.5 and the development can and will be completed within 30 days unless otherwise specified by the terms of the permit;
2. Public comment on the proposed emergency action has been reviewed if time allows; and
3. The work proposed would be temporary and consistent with the requirements of the City's certified LCP.
4. The work proposed is the minimum action necessary to address the emergency and, to the maximum extent feasible, is the least environmentally damaging temporary alternative for addressing the emergency.
5. The Planning Director shall not issue an emergency permit for any work that falls within the provisions of Public Resources Code Section 30519(b) since a coastal development permit application must be reviewed by the California Coastal Commission pursuant to provisions of Public Resources Code Section 30600.5.

F. The emergency permit shall be a written document that includes the following information:

1. The date of issuance;
2. An expiration date;
3. The scope of work to be performed
4. Terms and conditions of the permit;
5. A provision stating that within 90 days of issuance of the emergency permit, a regular coastal development permit application shall be submitted and properly filed consistent with the requirements of this Chapter;
6. A provision stating that any development or structures constructed pursuant to an emergency permit shall be considered temporary until authorized by a follow-up regular coastal development permit and that issuance of an emergency coastal development permit shall not constitute an entitlement to the erection of permanent development or structures;
7. A provision that states that: The development authorized in the emergency permit must be removed unless a complete application for a regular coastal development permit is filed within 90 days of approval of the emergency permit and said regular permit is approved. If a regular coastal development permit authorizing permanent retention of the development is denied, then the

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development that was authorized in the emergency permit, or the denied portion of the development, must be removed.

- G. The emergency permit may contain conditions for removal of development or structures if they are not authorized in a regular coastal development permit, or the emergency permit may require that a subsequent permit must be obtained to authorize the removal.

13.14.1 Reporting of Emergency Permits

- A. The Planning Director shall report in writing to the City Council and to the California Coastal Commission at each meeting the emergency permits applied for or issued since the last report, with a description of the nature of the emergency and the work involved. Copies of this report shall be available at the meeting and shall have been mailed at the time that application summaries and staff recommendations are normally distributed to all persons who have requested such notification in writing.
- B. All emergency permits issued after completion of the agenda for the meeting shall be briefly described by the Planning Director at the meetings and the written report required by Section 13.14.1 (A) of the Malibu LIP shall be distributed prior to the next succeeding meeting.
- C. The report of the Planning Director shall be informational only; the decision to issue the emergency permit is solely at the discretion of the Planning Director.

13.15. FINALITY OF CITY ACTION.

A City decision on an application for a coastal development permit shall not be deemed complete until (1) the local decision on the application has been made and all required findings have been adopted, including specific factual findings supporting the legal conclusions that the proposed development is or is not in conformity with the certified Local Coastal Program and, where applicable, with the public access and recreation policies of Chapter 3 of the Coastal Act, and (2) when all local rights of appeal have been exhausted.

13.16. NOTICE OF FINAL LOCAL GOVERNMENT ACTION.

- A. Notice after Final City Action. Within seven (7) calendar days of a local government completing its review and meeting the requirements of Section 13.15 of the Malibu LIP, the City shall notify by first class mail the South Central Coast District Office of the Coastal Commission and any persons who specifically requested notice of such action by submitting a self-addressed, stamped envelope to the local government (or, where required, who paid a reasonable fee to receive such notice) of its action. Such