

## CALIFORNIA COASTAL COMMISSION

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



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## RECORD PACKET COPY

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-04 and CCC-05-CD-06

**RELATED VIOLATION FILE:** V-4-05-031

**PROPERTY LOCATION:** 26520 Latigo Shore Drive, Malibu, Los Angeles County (APN 4460-019-145) (**Exhibit 1**)

**DESCRIPTION OF PROPERTY:** A .20-acre parcel located between the seaward side of Latigo Shore Drive and the beach, containing a 3,519 square-foot single-family residence built on an artificial fill slope that fronts an approximately 61 linear foot-long stretch of sandy beach

**PROPERTY OWNER:** Sepideh Homayun

**PERSON SUBJECT TO THIS ORDER:** Sepideh Homayun and Michael Homayun

**VIOLATION DESCRIPTION:** Unpermitted grading (cut and fill) of the beach and construction of a rock revetment using mechanized equipment.

**SUBSTANTIVE FILE DOCUMENTS:** 1. Executive Cease and Desist Order No. ED-05-CD-02;

2. Notice of Violation and Cease and Desist Order files No. CCC-05-NOV-04 and CCC-05-CD-06;
3. Coastal Development Permit No. 4-97-168 and 5-88-794;
4. Amendment Application No. 4-97-168-A1, 4-97-168-A2;
5. Exhibits 1 through 20.

**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**

This violation involves the construction of a rock revetment on the sandy beach seaward of the Homayun residence located at 26520 Latigo Shore Drive in Malibu ("subject property"). A contractor acting on behalf of Sepideh Homayun and her husband, Michael Homayun (hereinafter, Sepideh and Michael will be collectively referred to as "the Homayuns"), arranged for the use of mechanized equipment to remove sand from the beach, creating at least one large trench. He then constructed a revetment by placing rocks in the trench and replacing the sand. This activity constitutes development, as defined in Coastal Act Section 30106, and requires a Coastal Development Permit ("CDP") pursuant to Coastal Act Section 30600. The Homayuns did not apply for or obtain a CDP from the Commission. Furthermore, the revetment violates conditions of previously issued CDP No. 5-88-794 and 4-97-168-A2. In particular, CDP No. 4-97-168-A2 provided for a deed restriction prohibiting the use of shoreline protective devices on the subject property.

The subject property consists of a .20-acre beachfront parcel located on Latigo Shore Drive, southwest of the Latigo Shore Drive/Pacific Coast Highway intersection in Malibu. A 3,519 square foot single-family residence built on caisson foundations is located on the property. Between the residence and the beach is a slope comprised of fill materials that were imported and placed on the beach by Caltrans in approximately 1927. The property fronts an approximately 90 linear foot stretch of beach, known as Latigo Beach.

The unpermitted development on the subject property addressed by the Order consists of grading (cut and fill) and construction of a rock revetment on the sandy beach below the residence. In addition, the construction of the rock revetment involved the unpermitted use of mechanized equipment on the beach.

The Coastal Commission has jurisdiction to take enforcement action to remedy these violations because the violation involves development that is 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.

On March 3, 2005, enforcement staff at the South Central Coastal District Office received a report, including photographs, from an anonymous source that mechanized equipment was being used on the sandy beach area seaward of the subject residence. In the photographs, a bulldozer is clearly visible on the beach, removing sand and creating a large trench. Rocks were then placed in the trench to form the revetment. Staff visited the site later that day and confirmed that this unpermitted development was in place. By the tracks still present on the sandy beach, it was evident that the work had recently been performed. To prevent further unpermitted development, and 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") to Sepideh Homayun as the owner of record of the subject property. When no satisfactory response was received, 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 Sepideh Homayun to immediately cease and desist all unpermitted development activity at the subject property and to contact Commission staff to discuss removal and restoration. The EDCDO also notified Sepideh Homayun, as required by Coastal Act Section 30812(g), of the potential for recordation of a Notice of Violation.

In order to obtain removal of the unpermitted development, on March 15, 2005, 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") to Sepideh Homayun. On March 18, 2005, Alan Block contacted staff by telephone and stated that both Michael and Sepideh Homayun had retained him to represent them in this matter. Upon speaking with Mr. Block, staff learned that, although Sepideh Homayun owns the subject property, Michael Homayun authorized the grading and construction of the revetment. Therefore, on April 8, 2005, the Executive Director issued a separate CDO NOI for Michael Homayun. The Homayuns submitted a joint Statement of Defense on April 13, 2005.

Staff recommends that the Commission approve Cease and Desist Order No. CCC-05-CD-06 ("Order", as described below) directing the Homayuns to: 1) cease and desist from conducting any further development on the subject property without a Coastal Development Permit, 2) cease and desist from conducting development that violates Coastal Development Permits No. 5-88-794 and No. 4-97-168, 3) remove the rock revetment in accordance with the terms and conditions of the Order, and 4) restore the disturbed sandy beach area seaward of the residence through restorative grading. Although Sepideh Homayun owns the subject property, Michael Homayun is also subject to this Order because he authorized the grading and construction of the revetment.

Staff also recommends that the Commission find that a violation of the Coastal Act has occurred on the subject property. The Homayuns violated the Coastal Act by undertaking development on the subject property without obtaining a CDP, and in direct conflict with the special conditions of existing CDPs for the property, No. 5-88-794 and No. 4-97-168-A2. On March 15, 2005, the

Executive Director notified the Homayuns of his intent to record a Notice of Violation, as required under Coastal Act Section 30812. The Homayuns objected to the recordation of a Notice of Violation by submitting a written objection by the April 5, 2005 deadline. If the Commission finds that a violation has occurred, the Executive Director shall record a Notice of Violation at the Los Angeles County Recorder's Office.

## **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 the Executive Director's proposed recordation of a notice of violation 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 of the Coastal Act has occurred, as described in the staff recommendation for CCC-05-NOV-04.*

#### **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-04. 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 below, and adopts the findings set forth below on the grounds that development has occurred without a coastal development permit and development has occurred that is inconsistent with a permit previously issued by the Commission, in violation of the Coastal Act.

#### **2.A. Motion re: Cease and Desist Order:**

*I move that the Commission issue Cease and Desist Order No. CCC-05-CD-06, 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 Cease and Desist Order CCC-05-CD-06. 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-06, 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-04 AND CEASE AND DESIST ORDER CCC-05-CD-06**

**A. Permit History**

**1. CDP No. 5-88-794**

On December 13, 1988, the Commission approved CDP 5-88-794 subject to ten special conditions. The permit authorized the subdivision of a .85-acre parcel (APN 4460-019-026) into three parcels (APNs 4460-019-143, -144, -145) and the construction of three single-family residences (**Exhibit 2**). The subject property (APN 4460-019-145) is a .20-acre parcel that was created pursuant to this subdivision. Special conditions relevant to CCC-05-CD-06 are described in Section D2 below.

The permit runs with the land and is binding on Sepideh Homayun as a successor owner. Moreover, a deed restriction and an accepted offer to dedicate a lateral access easement were recorded pursuant to the permit (**Exhibits 3-5**). Therefore, Sepideh Homayun had notice of the restrictions on development when she purchased the subject property on April 30, 2002.

**2. CDP No. 4-97-168-A2**

Although CDP No. 5-88-794 authorized the construction of a single-family residence on the subject property, the residence was never built. In 1997, the previous owner applied for a coastal development permit for a residence, in accordance with the deed restriction recorded pursuant to Special Condition 7 of CDP No. 5-88-794, requiring a new coastal development permit for all future development (all development not included in CDP No. 5-88-794). The Commission approved CDP No. 4-97-168 on November 5, 1997, subject to conditions, authorizing the construction of the 3,406 square-foot single-family residence that currently exists on the property (**Exhibit 6**).

The permit, approved in 1997, incorporated the conditions of CDP No. 5-88-794 by reference, stating:

**IV. Note**

*The standard and special conditions attached to the Permit for the subdivision that created the subject parcels [5-88-794 Lachman] remain in effect and are attached for reference as Exhibit 7.*

Moreover, when CDP No. 4-97-168 was amended on April 12, 2002, a revised condition prohibiting shoreline protection was added as follows<sup>1</sup>:

*(5) No shoreline protective devices shall be constructed, now or in the future, for the purpose of protecting the residential development approved pursuant to coastal development permits 4-97-168 and 4-97-169 ... in the event that these structures are threatened with imminent damage or destruction from waves, erosion, storm conditions, or other natural hazards in the future and by acceptance of this permit, the applicant hereby waives, on behalf of itself and all successors and assigns, any rights to construct such devices that may exist under [Coastal Act] Section 30235 (Exhibit 7).*

*A. Prior to the issuance of the coastal development permit, the applicant shall execute and record a deed restriction...incorporating all of the above terms of this condition.*

The previous owner recorded the above-mentioned deed restriction on March 25, 2002, in accordance with the amended permit, CDP No. 4-97-168-A2 (**Exhibit 8**). As with the deed restrictions recorded in accordance with CDP No. 5-88-794, this document runs with the land and binds Sepideh Homayun as a successor owner.

Both CDP No. 5-88-794 and No. 4-97-168-A2 run with the land and bind all successor owners. Therefore, Sepideh Homayun is bound by the terms and conditions of both permits. Sepideh Homayun is also bound by the two deed restrictions and offer to dedicate recorded prior to issuance of the permits or permit amendments: 1) the deed restriction prohibiting shoreline protective structures; 2) the deed restriction assuming the risk of damage to the property from shoreline erosion, flooding and bluff erosion and requiring subsequent coastal development permits for future development; and 3) the offer to dedicate the lateral access easement seaward of the residence. These recorded documents were in the chain of title before Sepideh Homayun purchased the property, thus putting her on notice that development would require a coastal development permit prior to construction and that shoreline protection was prohibited.

**B. History of Violations**

**1. Description of Subject Property**

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<sup>1</sup> This was the second amendment to CDP No. 4-97-168. The previous amendment, 4-97-168-A1 increased the square footage of the residence 50 square feet to 3,456 square feet. 4-97-168-A1 was deemed immaterial and became effective on June 16, 1999. Staff is unaware of any authorization for the apparent increase in the size of the residence from 3,456 square feet to 3,519 square feet.

The subject property consists of a .20-acre beachfront parcel located on Latigo Shore Drive, southwest of the Latigo Shore Drive/Pacific Coast Highway intersection in Malibu. The parcel extends approximately 61 linear feet across the seaward side of Latigo Shore Drive and 143 linear feet from the seaward edge of the pavement of Latigo Shore Drive to the sandy beach below. A 3,519 square foot single-family residence built on caisson foundations is located on the property. Between the residence and the beach is a slope comprised of fill materials that were imported and placed on the beach by Caltrans in approximately 1927.

## **2. Initial Violation Report 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 the Homayun residence (**Exhibit 9**). The photographs show a bulldozer 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, two large mounds of sand on the beach at the base of the artificial fill slope on the subject property, and a rock revetment (**Exhibit 10**). Commission staff confirmed that the reported unpermitted development was in place. By the tracks still present on the sandy beach, it was evident that the work had recently occurred. On March 4, 2005, in an effort to halt any 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") to Sepideh Homayun, which was hand-delivered to the Homayun residence by Commission staff and sent via regular and certified mail on March 4, 2005 (**Exhibit 11**).

The EDCDO NOI stated, "I [Executive Director] intend to issue a Cease and Desist Order against you unless you respond to this letter in a 'satisfactory manner'...no later than 5:00 pm today." Neither Sepideh or Michael Homayun, nor an agent or representative speaking on their behalf, 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.<sup>2</sup> 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-02 (EDCDO) (**Exhibit 12**). The EDCDO was also hand-delivered to the Homayun residence and sent via regular and certified mail.

## **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**

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<sup>2</sup> 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 Sepideh Homayun both oral notice and hand-delivered written notice when they went to the residence. However, the Homayuns were not home when staff delivered the Notice of Intent and the Executive Cease and Desist Order, so oral notice was impossible. Instead, the documents were delivered to the residence by staff.

The EDCDO directed Sepideh Homayun to cease from conducting or maintaining unpermitted development on the subject property and not to remove the revetment without further instruction from Commission staff, due to the fact that the revetment was installed through the use of mechanized equipment on the beach and that an unknown quantity of rock was placed in trenches of unknown depth. The EDCDO requires that removal be conducted in accordance with the terms and conditions of a Commission-approved order, to ensure appropriate removal and restoration procedures, to ensure compliance with the policies of Chapter 3 of the Coastal Act, and to minimize additional impacts to the beach.

On March 15, 2005, in order to address appropriate 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") to Sepideh Homayun via regular and certified mail (**Exhibit 13**).<sup>3</sup> On March 18, 2005, staff received a telephone call from Alan Block, stating that he had been retained to represent both Michael and Sepideh Homayun in this matter.<sup>4</sup> Upon discussion with Mr. Block, staff learned that, although Sepideh Homayun owns the subject property, Michael Homayun authorized the grading and construction of the revetment. Therefore, on April 8, 2005, the Executive Director issued a separate CDO NOI for Michael Homayun (**Exhibit 15**).

#### **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.*

On April 4, 2005, staff received a letter from Mr. Block objecting to the recordation of a Notice of Violation, on behalf of the Homayuns (**Exhibit 16**).

In addition, the CDO NOI stated:

*In accordance with Sections 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 [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.*

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<sup>3</sup> 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.

<sup>4</sup> Mr. Block alerted staff that Sepideh Homayun's name appeared on the CDO NOI as "Homayun Sepideh", but that the Homayuns had received the CDO NOI and understood that it pertained to them. Staff corrected the mistake and sent an amended copy of the CDO NOI to Sepideh Homayun on April 8, 2005 (**Exhibit 14**).

As a courtesy to Sepideh Homayun, staff agreed to extend the deadline for submittal of her Statement of Defense until April 8, 2005. Michael Homayun received a separate CDO NOI, with an April 28, 2005 deadline for submittal of a Statement of Defense. However, Mr. Block agreed to submit a joint Statement of Defense on behalf of both Sepideh and Michael Homayun. In recognition of this offer and to provide Mr. Block with adequate time to complete a joint statement, staff agreed to further extend the deadline for to submittal of Sepideh Homayun's Statement of Defense to April 12, 2005 (**Exhibit 17**). Staff received the joint Statement of Defense on April 13, 2005 (**Exhibit 18**).

Repeated attempts were made to resolve this matter administratively. Unfortunately, these efforts have been unsuccessful.

**C. Description of Unpermitted Development**

Unpermitted development located on the subject property consists of grading (cut and fill) of the beach and construction of a rock revetment on the beach. In addition, the unpermitted construction of the revetment involved the unpermitted use of mechanized equipment on the beach.

**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-06 pursuant to Section 30810(a)(1) because the work conducted on the subject property constitutes development as defined in Coastal Act Section 30106 (as discussed below) and therefore requires a CDP under Coastal Act Section 30600. No CDP has been issued for the development. Additionally, Section 30810(a)(2) authorizes the Commission to issue CCC-05-CD-06 for actions taken inconsistent with permits issued by the Commission. Here, the development was undertaken in direct violation of the Special Conditions of CDP No. 5-88-794 and No. 4-97-168-A2.

Furthermore, grading the beach and constructing the revetment constitute unpermitted development that is inconsistent with the policies of Chapter 3 of the Coastal Act. Although, staff is not required to address Chapter 3 inconsistencies when seeking a Cease and Desist Order, information regarding Chapter 3 policies as they pertain to this unpermitted development is provided 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 a rock revetment 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 required a CDP under Section 30600(a). The Homayuns did not apply for or obtain a permit from the Commission or from the City of Malibu. Additionally, no exemption to the permit requirement applies to the development. Therefore, 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.

In addition to undertaking unpermitted development activity at the subject property, Michael Homayun hired a contractor to use mechanized equipment, without a CDP or other authorization, to grade the sandy beach seaward of the residence, place large rocks in the resulting trench, and back-fill the sand. The use of such equipment impacted the sandy beach in front of the residence and is inconsistent with the Commission's regulations regarding the use of mechanized equipment.

The revetment has the potential to cause scouring of neighboring properties due to erosion at the ends of the revetment, and may impact sand movement and sand supply within a larger area of the coast. The rocks in front of the Homayun residence were buried to an undefined depth. Therefore, until Commission-approved removal efforts begin, although the revetment will impact the beach, the extent of this impact is unknown. Consequently, staff recommends that CCC-05-CD-06 direct the Homayuns to remove the revetment in accordance with the terms and conditions of the Order and to 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 undertaken that is inconsistent with a previously-issued CDP. Here, the unpermitted development undertaken at the subject property is inconsistent with the special conditions of CDP No. 5-88-794, as described below, which was issued by the Commission on December 1, 1988. The permit runs with the land, binding Sepideh Homayun as a successor owner of the subject property.

The unpermitted development is inconsistent with several of 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.*

As stated above, the previous owner recorded a joint deed restriction, satisfying the requirements of Special Conditions 1 and 7. The deed restriction runs with the land and binds Sepideh Homayun, as a successor owner. The Homayuns did not obtain additional CDPs for the cited development, in violation of the deed restriction and of Special Condition 7.

As explained above, the residence authorized by CDP No. 5-88-794 was never built and that the Homayun residence was constructed pursuant to CDP No. 4-97-168. However, in addition to the fact that both the deed restriction and CDP No. 5-88-794 run with the land and are perpetual in nature, CDP No. 4-97-168 specifically incorporated Special Condition 7. Therefore, the Homayun residence is an "existing structure" for purposes of Special Condition 7 and this report.

**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.*

The Commission's findings for CDP No. 5-88-794 express concerns regarding the stability of the artificial fill slope that was chosen as the location of the proposed development, citing 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 (**Exhibit 19**). These findings specifically mentioned revetments, expressing a concern that such a large parcel could require 200 feet of revetments to protect the residences if they were not engineered to withstand wave action and storms ("the whole beach will be occupied by the revetments"<sup>5</sup>). Due to these concerns, the Commission attached the Special Condition discussed above as well as Special Condition 5 to ensure that the development was designed to withstand hazardous conditions without the use of protective structures.

The Homayuns assert that the revetment was constructed in order to protect their residence from wave action generated during heavy storms. However, the residence was built on caissons that are anchored in bedrock, and according to the Commission-approved elevation and setback standards set in CDP No.4-97-168, specifically to comply with the permit and to obviate the need for any revetments or other shoreline protection. Moreover, the Homayuns are bound by Special Condition 8, which provided that no protective structures would be needed to shield the residence from wave action.

**3. Development is Inconsistent with Existing Coastal Development Permit No. 4-97-168-A2**

As discussed above, CDP No. 4-97-168-A2, as amended on April 12, 2002, incorporated the special conditions of CDP No. 5-88-794 by reference and included a provision (labeled "Note") confirming that the conditions remained in effect. The permit also included a special condition prohibiting the construction of shoreline protection devices and required the recordation of a deed restriction to that effect.

The recorded deed restriction and permit conditions run with the land, bind Sepideh Homayun as a successor owner of the subject property, and serve as legal notice that the construction of shoreline protective devices on the subject property are prohibited.

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

Michael Homayun asserts that due to concern about the structural integrity of the residence, he authorized the construction of the revetment, a shoreline protection device. In addition to being unpermitted development, this development clearly violated CDP No. 4-97-168-A2 and the deed restriction recorded pursuant to the permit.

**4. Development is 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 that unpermitted development occurred at the subject property. Although a showing of inconsistency with Chapter 3 of the Coastal Act is not required under Section 30810, staff provides this section as 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 residence is built on caissons and is specifically designed to not need shoreline protection. Additionally, the revetment was not designed to eliminate or mitigate adverse impacts on local shoreline supply. In fact, the scouring effects of the revetment may actually increase beach erosion seaward of the revetment and at either end of the revetment. Furthermore, 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 likely adversely impact sand movement and supply.

**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 land forms....*

Grading the beach and constructing the revetment altered the beach in front of the subject property. The continued presence of the revetment will likely cause erosion at the ends of the revetment and may impede natural sand movement and supply, continually altering the beach. Furthermore, scouring of the area seaward of the revetment may cause continuing resource damage to the public beach that extends from the mean high tide line to the ocean, thereby decreasing the public's enjoyment of the beach. Even if the rocks are currently not visible,

additional adverse visual and public access impacts will result if wave action uncovers the allegedly buried rocks. The public will have to step over or around the revetment.

**c. 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 seaward of the residence and in surrounding areas. Erosion of surrounding properties may lead neighboring property owners to construct seawalls or revetments. In fact, it was in order to comply with this Coastal Act provision that CDP No. 4-97-168 required the residence on the subject property to be built in such a way that construction of protective devices, such as the revetment, that substantially alter the sandy beach in front of the residence, would not be necessary. This concept is also reflected in Special Condition 8 of CDP No. 5-88-794, which required assurances that no such shoreline protection devices would be necessary.

**5. Provisions of Cease and Desist Order CCC-05-CD-06**

The Homayuns arranged for the use of mechanized equipment 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 Sepideh Homayun not to remove the revetment until authorized by the Commission, so as to ensure that removal is done in conformity with the policies of Chapter 3 of the Coastal Act. Staff recommends that the Commission issue CCC-05-CD-06 to facilitate appropriate removal of the revetment and restoration of the site.

Therefore, CCC-05-CD-06 requires the submittal of a removal plan, for approval by the Executive Director, before removal can commence. This plan will include provisions regulating the use of mechanized equipment, providing a contingency plan for potential release of toxic substances from the equipment, addressing water quality issues, determining a location for the removed materials, and providing a contingency plan for the potential removal of liners and other unknown materials from the trench. The purpose of the removal plan is to ensure protection of natural resources and conformity of removal and restoration activities with the policies of Chapter 3 of the Coastal Act. The plan will ensure that removal is conducted in a way that minimizes adverse impacts to water quality, as required by Sections 30230 and 30231, and

minimizes interference with public use and enjoyment of the beach, as required by Sections 30210, 30211, and 30251.

**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 and requires a CDP pursuant to Coastal Act Section 30600. The Homayuns did not obtain a CDP to authorize any of the cited development. Therefore, it constitutes unpermitted development, in violation of Coastal Act Section 30600. In addition, the unpermitted development is inconsistent with Coastal Act Sections 30235, 30251, and 30253.

**2. All Existing Administrative Methods of Resolving the Violation Have Been Exhausted and the Homayuns Have 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.*

On March 4, 2005, the Executive Director notified the Homayuns of the potential for recordation of a Notice of Violation in this matter, as required under Section 30812(g). On March 15, 2005, the Executive Director notified the Homayuns of his intent to record a Notice of Violation and provided them with an opportunity to submit a written objection to such recordation. The Homayuns submitted a written objection to the recordation of a Notice of Violation on April 4, 2005. The Homayuns have been notified that the hearing on this matter will accompany the hearing regarding CCC-05-CD-06.

As discussed above, staff made repeated attempts to resolve this matter administratively. Unfortunately, these attempts proved 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 recordation of the Notice of Violation, if the Homayuns resolve the violation and remove the unpermitted development from the subject property in accordance with the terms and conditions of CCC-05-CD-06, the Executive Director 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-06 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. Sepideh Homayun is the owner of property located at 26520 Latigo Shore Drive in Malibu, Los Angeles County. Michael Homayun is her husband.
2. Michael Homayun undertook activities on the subject property that constitute development as defined in Coastal Act Section 30106.
3. Michael Homayun undertook this development without obtaining a coastal development permit.
4. On March 3, 2005, Commission staff confirmed that mechanized equipment was used to grade the beach and to construct a rock revetment on the beach seaward of the Homayun residence.
5. The Homayuns did not apply for or obtain an emergency permit to grade the beach and construct the revetment from either the Commission or the City of Malibu.
6. On March 4, 2005, the Executive Director issued a Notice of Intent to Issue an Executive Cease and Desist Order ("EDCDO NOI") to Sepideh Homayun. Mrs. Homayun 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. The Executive Director then issued an Executive Cease and Desist Order ("EDCDO"), requiring Mrs. Homayun to 1) immediately cease from further unpermitted development activity, 2) immediately cease from maintaining unpermitted development on the property or on adjacent properties, and 3) immediately contact the Commission to discuss removal of the revetment and site restoration.
7. 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") to Sepideh Homayun, to address the grading of the beach and the construction of the rock revetment. The Executive Director issued a separate CDO NOI to Michael Homayun on April 8, 2005.
8. Alan Block contacted Commission staff on March 18, 2005 to confirm that he had been retained to represent the Homayuns in this matter, and that the Homayuns had ceased all development activities at the subject property. Commission staff advised Mr. Block that a

Commission-approved cease and desist order was necessary to facilitate appropriate removal and restoration.

9. Substantial evidence exists that violations of the Coastal Act have occurred.

10. Through his March 15, 2005 letter, the Executive Director made the Homayuns aware of his intent to record a Notice of Violation. On April 4, 2005, Mr. Block submitted a written objection to such recordation on behalf of the Homayuns. Commission staff attempted to resolve the violation administratively, but was unsuccessful.

11. All of the unpermitted development listed in the CDO NOI and addressed in this report (grading of the beach and construction of rock revetment) remains on Sepideh Homayun's property.

12. Coastal Act Section 30810 authorizes the Commission to issue a cease and desist order after holding a public hearing, and Coastal Act Section 30812 authorizes the Executive Director to record a notice of violation after holding a public hearing.

#### **H. Respondents' Defenses and Commission Staff's Response**

On April 13, 2005, Mr. Block submitted a joint Statement of Defense ("SOD") on behalf of Sepideh and Michael Homayun. The following paragraphs present the Homayuns' defenses and the Commission staff's response to those statements.

##### **1. Homayun's Defense:**

*The Homayuns deny that their residence was constructed pursuant to CDP No. 5-88-794, but rather constructed pursuant to CDP No. 4-97-168.*

##### **Response:**

The Homayuns are bound by the terms and conditions of both permits. The Homayun residence was constructed pursuant to CDP No. 4-97-168, and the Homayuns are bound by the terms and conditions of the amended version of this permit, CDP No. 4-97-168-A2. However, the subdivision that created the subject property was authorized by CDP No. 5-88-794, which states:

*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 term and conditions.*

Therefore, Sepideh Homayun is bound, as a successor owner of the subject property, to the terms and conditions of CDP No. 5-88-794 as well as CDP No. 4-97-168-A2. Furthermore, CDP No. 4-97-168-A2 incorporates CDP No. 5-88-794 by reference, stating that the special conditions of the later permit "remain in effect" and attaching CDP No. 5-88-794 as an exhibit for reference.

Moreover, when CDP No. 4-97-168 was amended on April 11, 2002, a special condition was added that prohibited the construction of shoreline protective devices. On March 25, 2002, the previous owner recorded a deed restriction, incorporating this special condition. The deed restriction runs with the land, binds Sepideh Homayun as a successor owner of the subject property, and serves as legal notice that the construction of shoreline protection on the subject property is prohibited.

2. **Homayun's Defense:**

*The Homayuns deny that they constructed a rock revetment on their property. Only 6-8 rocks were placed on their property prior to the receipt of the Commission's Notice of Intent to Issue Executive Cease and Desist Order on March 4, 2005.*

*A visit to the Homayun property on April 4, 2005, evidenced that the rocks placed on the property were not visible on the beach seaward of their residence. In addition, the beach profile on the Homayun property was identical to the beach profile on the immediately adjacent properties...*

*The beach elevation only changes visually, as well as topographically, at the Kelley property.*

**Response:**

A coastal revetment is not characterized by a certain number of rocks, but rather by the placement of rocks on the beach for the purpose of shoreline protection. In any event, whether or not the term "revetment" is utilized to describe the activities undertaken at the subject property, the activities still constitute unpermitted development, and therefore violate both the Coastal Act and the terms and conditions of CDP No.s 5-88-794 and 4-97-168-A2. The use of any shoreline protection device on the subject property is prohibited under CDP No. 4-97-168-A2 and any other development on the sandy beach requires a CDP under the Coastal Act. The Homayuns admit that the rocks were placed in a trench on the beach in front of their residence to protect their residence without a CDP.

The fact that the rocks are not currently visible on the beach is not conclusive evidence that the rocks are no longer there or that they are no longer causing adverse impacts. In fact, since there is no evidence that the rocks were removed from the property, the rocks are most likely buried under the sand, rendering removal more difficult and increasing the potential for impacts to the sandy beach from removal. Regardless of the whether or not the development is visible at any given time, the Commission is authorized to issue a cease and desist order pursuant to Coastal Act Section 30810(a) to remove the unpermitted development and resolve the matter. In this case, the Order will serve to facilitate appropriate removal of the revetment and restoration of the site.

3. **Homayun's Defense:**

***The Homayuns deny that they brought mechanical equipment onto the beach. Said equipment was already on the beach and was being used at the Kelley residence...***

**Response:**

The Homayuns admit that Michael Homayun authorized the use of mechanized equipment on the beach in front of the residence. Whether the Homayuns brought the equipment to the beach is irrelevant. The Commission does not assert that the Homayuns transported the mechanized equipment to the beach. The use of mechanized equipment on the beach is cited in this report as the means used to facilitate unpermitted development, and presumably the means that will be employed to remove the development. The unpermitted development is the violation of the Coastal Act.

4. **Homayun's Defense:**

***The Homayuns deny that the repair and maintenance activities on their property were [sic] inconsistent with CDP No. 5-88-794. Rather, the Homayuns believed that the repair and maintenance activities were necessary as a temporary emergency measure to protect their property and residence.***

**Response:**

The grading of the beach and construction of the revetment occurred seaward of the residence and therefore do not constitute repair and maintenance of the residence. Moreover, there is no evidence that the revetment was necessary to protect the existing residence. In addition, the development did not repair or maintain an existing, permitted revetment. Thus, staff interprets this portion of the Statement of Defense to imply that the development was undertaken to repair and maintain the artificial bluff in front of the residence. The residence was constructed on caissons in anticipation of the erosion of the slope. Both CDP No. 5-88-794 and No. 4-97-168-A2 specifically prohibit shoreline protective devices. No exception is made in either permit to allow for "repair and maintenance" of the artificial fill slope.

Even if the development constituted repair and maintenance, a coastal development permit would be required under Coastal Act Section 30610(d), which states that repair and maintenance activities require a permit if the activities involve a risk of substantial adverse impact. The following types of repair and maintenance, as defined in Section 13252(3), involves such a risk:

*Any repair or maintenance to facilities or structures or work located in an environmentally sensitive habitat area, any sand area, within 50 feet of the edge of a coastal bluff or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams that include:*

*(A) The placement or removal, whether temporary or permanent, of rip-rap, rocks, sand or other beach materials or any other forms of solid materials;*

*(B) The presence, whether temporary or permanent, of mechanized equipment or construction materials (emphasis added).*

Here, the grading and construction of the revetment took place on a sandy area, involved the placement of rocks, and required the presence of mechanized equipment. Therefore, the development requires a coastal development permit under Coastal Act Section 30610(d) and Section 13252(3) of the Commission's regulations.

The Homayuns also assert that the revetment was constructed as a temporary emergency measure. Photographs of the site taken on March 3, 2005 show mechanized equipment on the beach digging trenches and placing rocks in the trenches. This work does not appear temporary in nature. Even if the revetment was intended as a temporary emergency measure, the Homayuns did not follow the procedures for undertaking such development and neither applied for nor obtained an emergency permit from the Commission or the City of Malibu.

**Procedures Used by Commission to Issue Emergency Permits:**

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. The Homayuns did not submit an application by mail or facsimile to the Commission, did not contact staff by telephone, and did not appear in person to apply for an emergency permit.

**Procedures Used by the City of Malibu to Issue Emergency Permits:**

Even assuming that the Homayuns 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 Section 13.14 of the City of Malibu Local Coastal Program Implementation Plan. Section 13329.1 requires the submittal of applications for emergency permits to the appropriate local official 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 20**). 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"<sup>6</sup>.

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<sup>6</sup> See *City of Malibu Local Coastal Program, Local Implementation Plan*, dated September 13, 2002, at page 10.

The Homayuns did not submit an application and did not obtain a permit from the City of Malibu. Furthermore, even if they had, under these facts, 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.

**5. Homayun's Defense:**

*The Homayuns were informed by both Bert Kelley and Gene Densen, and in good faith believed, that Mr. Densen had had conversations with City of Malibu Department of Building and Safety personnel [Craig George] ... and had been advised that emergency measures could be undertaken to protect their residences as long as a subsequent application for an emergency CDP was made to the City.*

**Response:**

The actions taken by the Homayuns constituted a violation of the conditions of CDP No. 4-97-168. However, even if they could have received an emergency permit, the Homayuns did not apply for or obtain a coastal development permit, as stated in staff's response to statement # 4 above.

The Homayuns did not contact Commission staff or the City of Malibu, but instead apparently relied on Mr. Kelley and Mr. Densen, the contractor who allegedly facilitated the grading and construction of the revetment, for assurances that the "emergency development" was allowed without prior authorization from a CDP. The Homayuns did not contact staff or officials at the City of Malibu until preparing for these proceedings. Regardless of the potentially incorrect information received by the Homayuns from third parties, the Homayuns are responsible for complying with Coastal Act requirements with regards to their property. The deed restrictions recorded pursuant to existing CDPs put the Homayuns on notice that shoreline protective structures were prohibited and any other development required a CDP.

Even if Mr. George orally endorsed undertaking emergency development without prior permit authorization, his statements are irrelevant, because under the Malibu Local Coastal Program, a written application and a written permit is issued. It was the Homayuns' responsibility to secure the appropriate authorization to conduct development on their property. Furthermore, the City could not issue an emergency permit for the revetment because such a permit would conflict with the conditions of existing permits and the deed restrictions recorded pursuant to these permits.

In their response to this proceeding, the Homayuns submitted a letter from Craig George, Environmental and Building Safety Division Manager for the City of Malibu, dated April 13, 2005. In his letter, Mr. George states that he does not recall receiving a call from Mr. Kelley or Mr. Densen. He also states that, "the City may authorize the issuance of emergency EDCP for temporary rock revetment" and outlines the showing that is required when a property owner applies for such a permit. However, as already noted, the Homayuns did not comply with the required steps, as outlined in Mr. George's letter: the Homayuns did not apply for a permit, did not make the required showing, and did not obtain an emergency permit. Moreover, Mr.

George's letter does not in any way substantiate the Homayuns claim that the City misinformed Mr. Densen as to the applicable rules governing emergency action.

6. **Homayun's Defense:**

*[A]s soon as Mr. Densen had completed the placement of the rocks in front of my residence I would have submitted an application to the City of Malibu for a temporary emergency CDP (from Declaration of Michael Homayun, included in Exhibit 17.)*

*I thereafter spoke with Mr. Lamport ... and he also told me that the Coastal Commission told him that we should not apply to the City of Malibu for an emergency Coastal Development Permit. Based on Mr. Lamport's representation I did not apply to the City for the emergency permit (from Declaration of Michael Homayun, included in Exhibit 17).*

**Response:**

As discussed above, the actions taken by the Homayuns constituted a violation of CDP No. 4-97-168. However, even if the Commission would have issued an emergency permit for the actions taken by the Homayuns, the Homayuns did not apply for or obtain a permit. The Homayuns state that, but for advice from Mr. Lamport, they would have applied for an emergency permit after the development was completed. An emergency permit application is required *prior* to undertaking the unpermitted development. Pursuant to Sections 13138 and 13329.1(a) of the Commission's regulations, the application may be provided to Commission staff or local government officials in person or by telephone, if time does not allow for the submittal of a written application. The Homayuns did not submit any form of application.

It appears that staff's comments to the Homayuns may not have been correctly relayed. At the time of the Homayuns conversation with Mr. Lamport, staff had determined that the unpermitted development on the subject property had not been permitted, and in fact, was inconsistent with the Coastal Act and existing permit conditions. Thus, staff had begun enforcement action to resolve the violation at the subject property. Regardless of whether the Homayuns would have applied for a permit after the development was completed, the development was undertaken without *prior* coastal development permit authorization and constitutes a violation of the Coastal Act.

7. **Homayun's Defense:**

*The Homayuns deny that their repair and maintenance activities were inconsistent with any of the following: ... Section 30235, in that placement of the 6-8 rocks on that portion of their property immediately adjacent to the lost slope will not prevent natural shoreline alteration; Section 30251, in that placement of the 6-8 rocks on their property does not obstruct the scenic and visual qualities of the area; and/or Section 30253(2), in that placement of the 6-8 rocks on their property will not have adverse impacts on and/or cause landform alteration.*

**Response:**

Section D.4 of this report explains why the unpermitted development is inconsistent with these Chapter 3 policies. However, regardless of whether grading the beach and constructing the revetment were inconsistent with these Chapter 3 policies, the activities constitute development and clearly required a CDP. No CDP was applied for or obtained. Additionally, the development conflicts with conditions of existing CDPs and deed restrictions recorded pursuant to the CDPs. Therefore, the Commission may issue a cease and desist order directing the Homayuns to remove the development and restore the site.

**8. Homayun's Defense:**

*The Homayuns were legitimately concerned in good faith about the structural integrity of their residence and their own safety.*

**Commission's Response:**

Staff does not refute the Homayuns' concern for their property. Nevertheless, the Homayuns should have followed the emergency procedures provided by the Coastal Act, the Commission's regulations, and the City of Malibu Local Coastal Program, which facilitate review of proposed development in emergency situations to ensure that development proposed during often chaotic and unexpected emergency situations conforms to the policies of Chapter 3 of the Coastal Act. In addition, the deed restriction that prohibits shoreline protective devices still applies and is in effect.

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

**CEASE AND DESIST ORDER CCC-05-CD-06, HOMAYUN**

**I. GENERAL PROVISION**

Pursuant to its authority under Public Resource Code Section 30810, the California Coastal Commission hereby orders and authorizes Sepideh Homayun and Michael Homayun (hereinafter referred to as "Respondents") to:

- A. Cease and desist from engaging in any further development on the subject property not authorized by a coastal development permit.
- B. Cease and desist from maintaining unpermitted development on the subject property, including but not limited to grading (cut and fill) of the beach and the rock revetment.
- C. Cease and desist from engaging in any further development on the subject property that violates Coastal Development Permits No. 5-88-794 and No. 4-97-168-A2.
- D. Within 20 days of the issuance of this Order, submit a plan to the Executive Director for approval, governing the removal of the rock revetment and the restoration of the site to its pre-violation condition.

The removal plan should provide for:

1. Restorative grading of the sandy beach;
2. Appropriate operation of mechanized equipment necessary to complete removal and restoration work, including but not limited to the following:
  - a. Hours of operation of mechanized equipment shall be limited to weekdays between sunrise and sunset, excluding the Memorial Day and Fourth of July Holidays;
  - b. Equipment shall be stored in an approved location inland from the beach when not in use;
  - c. A contingency plan shall be established in case of a spill of fuel or other hazardous release from use of mechanized equipment, addressing clean-up and disposal of the hazardous materials and water quality concerns.
3. Revetment materials and any imported fill materials shall be disposed of at a Commission-approved location outside of the Coastal Zone. If a disposal location within the Coastal Zone is selected, a coastal development permit will be required.

4. Liners and other imported materials shall be disposed of at a Commission-approved location outside of the Coastal Zone. If a disposal location within the Coastal Zone is selected, a coastal development permit will be required. Any hazardous materials shall be disposed of according to the contingency plan provided in D.2.c.
  5. Measures to protect against impacts to water quality from removal and restorative grading shall be provided.
- E. If the Executive Director determines that any modifications or additions to the submitted plan are necessary, he shall notify the Homayuns. Requested modifications shall be completed and the plan resubmitted by the Homayuns within 10 days of the notification for approval by the Executive Director.
- F. Within 10 days of the approval of the plan by the Executive Director, the Homayuns 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.
- G. 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, the Homayuns shall submit photographic evidence of the completion of the work required under this section to the attention of Christine Chestnut in the Commission's Headquarters office.
- H. All materials submitted pursuant to this Order must be made to 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

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

Persons subject to this Cease and Desist Order are Sepideh Homayun and Michael Homayun, their agents, contractors and employees, and any persons acting in concert with any of the foregoing.

## **III. Identification of the Property**

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

A .20-acre parcel located between the seaward side of Latigo Shore Drive and the beach, containing a 3,519 square-foot single-family residence built on an artificial fill slope that fronts an approximately 61 linear foot-long stretch of sandy beach (APN 4460-019-145).

#### **IV. Description of Unpermitted Development**

Unpermitted development located on the subject property consists of grading (cut and fill) of the beach and construction of a rock revetment on the beach in front of the residence. In addition, the unpermitted construction of the revetment involved the unpermitted use of mechanized equipment on the beach.

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

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

#### **VI. 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".

#### **VII. 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.

#### **VIII. Deadlines**

The Executive Director may extend 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.

#### **IX. 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 the Homayuns 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 the Homayuns 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 the Homayuns. 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.

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

By: \_\_\_\_\_ Peter Douglas, Executive Director

CCC-05-NOV-04 & CCC-05-CD-06

Homayun

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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

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

DOCUMENT TITLE:

NOTICE OF VIOLATION OF THE COASTAL ACT

Re: Assessor's Parcel No. 4460-019-145

Property Owners:

Sepideh Homayun

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 .20-acre parcel located at 26520 Latigo Shore Drive, Malibu, CA 90265 in Los Angeles County (Assessor's Parcel Number 4460-019-145)**

**Owner of Record: Sepideh Homayun**

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: Sepideh Homayun.
5. The violation of the Coastal Act (Violation File No. V-4-02-032) consists of the following unpermitted development: grading (cut and fill) of the beach and construction of a rock revetment on the beach in front of the residence. 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, Sepideh Homayun, 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 4, 2005 and conducted a public hearing. The Commission determined that the unpermitted development on Sepideh Homayun'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-04 and CCC-05-CD-06**

**Exhibit List**

**Exhibit**

**Number**

**Description**

1. Site Map and Location.
2. Coastal Development Permit No. 5-88-794.
3. Deed Restriction, with attachments, recorded pursuant to Special Conditions 1 and 7 of CDP No. 5-88-794.
4. Offer to Dedicate a Lateral Access Easement with attachments recorded December 13, 1989.
5. Certificate of Acceptance of Lateral Access Easement, recorded by Access for All on September 23, 2004.
6. Coastal Development Permit No. 4-97-168.
7. Amendment to Coastal Development Permit No. 4-97-168-A2.
8. Deed Restriction with attachments recorded pursuant to Special Condition of CDP No. 4-97-168 A2.
9. Photograph from anonymous source, submitted to staff on March 3, 2005.
10. Photographs (10a-10c) taken by Commission staff during site visit on March 3, 2005.
11. EDCDO NOI, with declaration of service, issued on March 4, 2005.
12. EDCDO, issued on March 4, 2005.
13. CDO NOI, issued on March 15, 2005.
14. Amended CDO NOI with cover letter for Sepideh Homayun, issued on April 8, 2005.
15. CDO NOI with cover letter for Michael Homayun, issued on April 8, 2005.
16. April 4, 2005 letter from Alan Block, re: objection to recordation of Notice of Violation and confirming extension of deadline to submit Statement of Defense.
17. April 8, 2005 letter from staff to Alan Block re: extension of deadline to April 12, 2005 in recognition of agreement to submit joint Statement of Defense.
18. Joint Statement of Defense for Michael and Sepideh Homayun with attachments, dated April 13, 2005.
19. Staff Report with attachments prepared for Coastal Development Permit No. 5-88-794.
20. Excerpt from City of Malibu Local Coastal Program Implementation Plan: Chapter 13, Section 13.14.

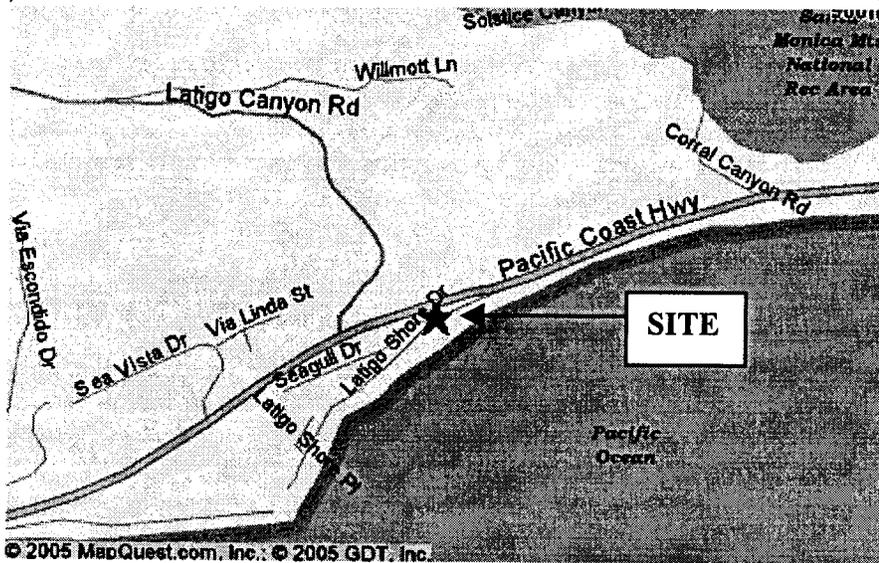
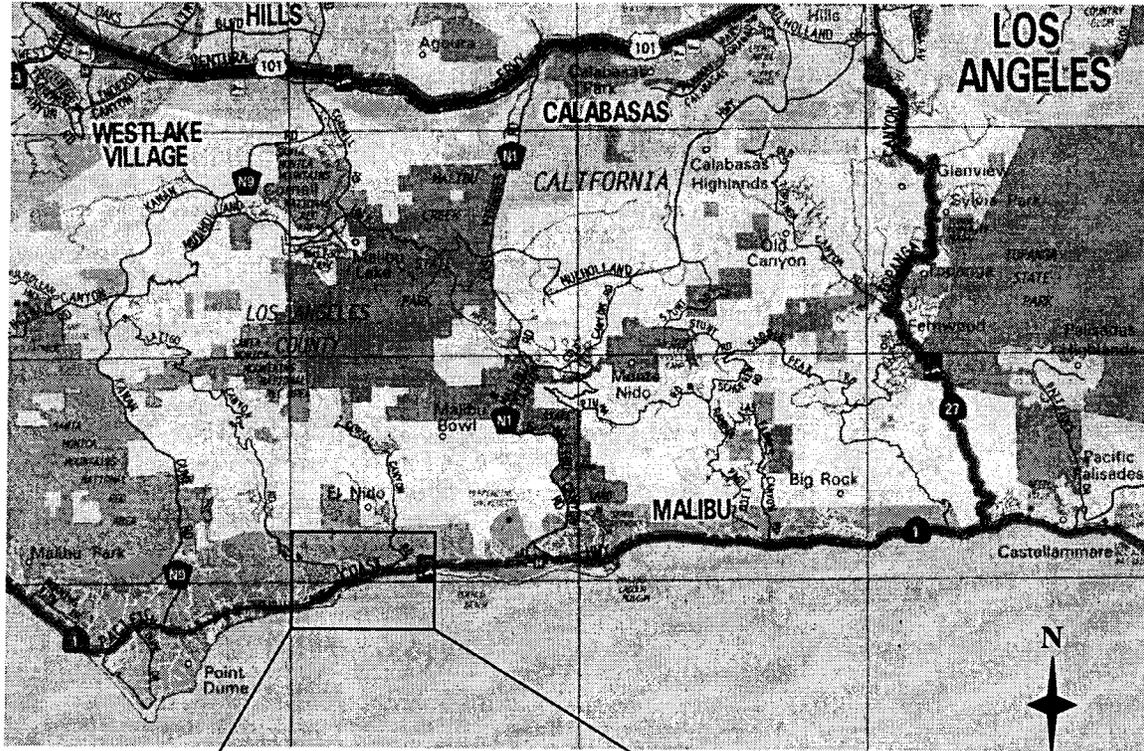
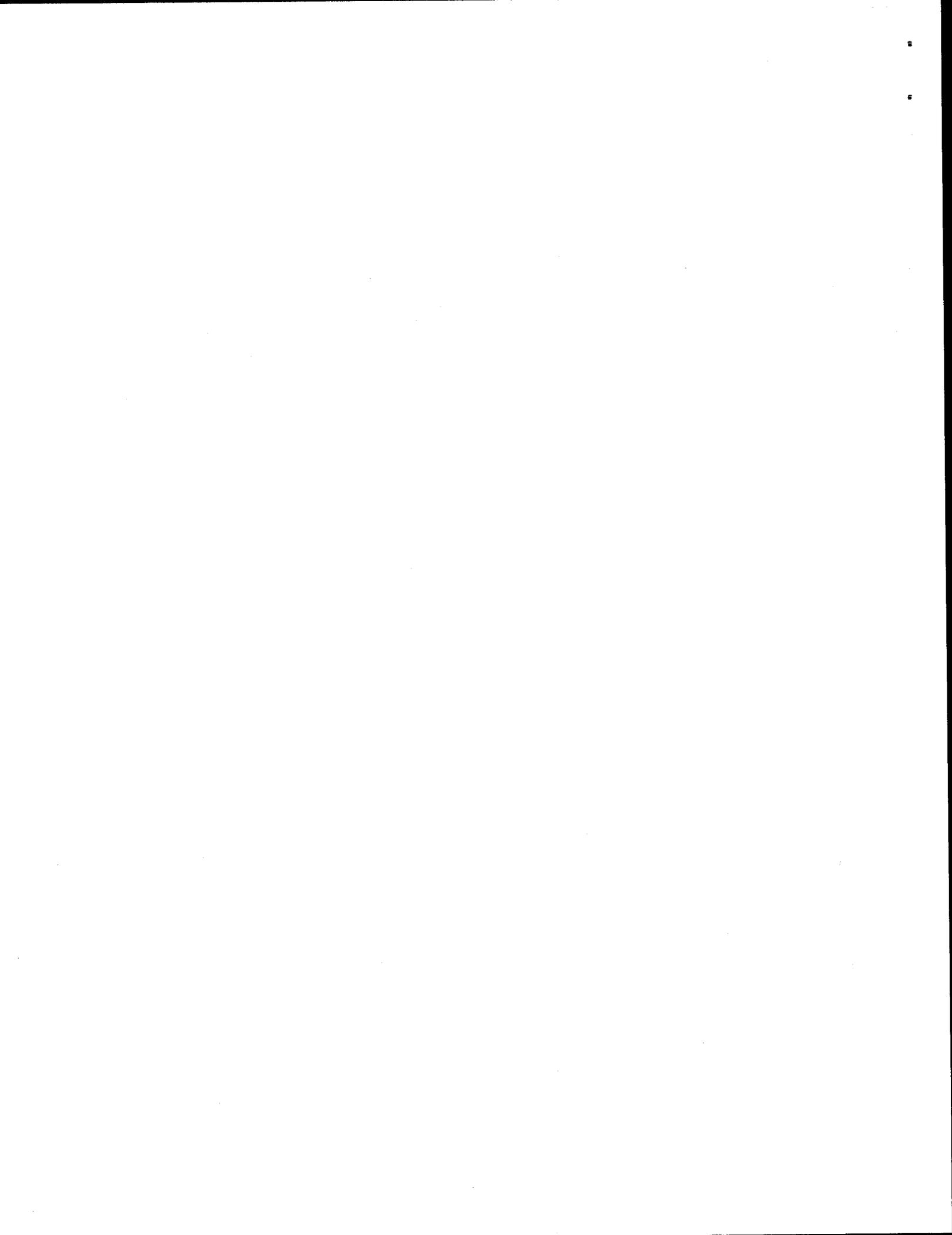


Exhibit 1. Site Map

Exhibit 1  
 CCC-05-NOV-04 and CCC-05-CD-06  
 (Homayun)



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: *Pamela D...*

Title: Staff Analyst

ACKNOWLEDGMENT

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 ACKNOWLEDGMENT 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

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  
1 MIN. 2 P.M. DEC 12 1989

DEED RESTRICTION

FEE \$ 19

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 only  
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 seaward  
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: 3-31, 1980

16  
 17 SIGNED: *Carl J. Goldbaum*  
 18  
 19 Carl J. Goldbaum

20 PRINT OR TYPE NAME OF ABOVE

21  
 22  
 23 SIGNED: *Jeanette Goldbaum*  
 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  
17

NOTARY PUBLIC IN AND FOR SAID  
COUNTY AND STATE

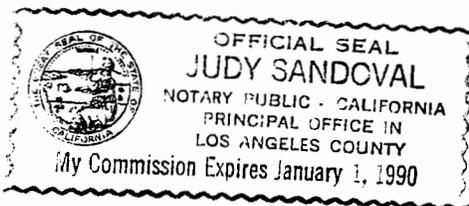
18 State of California, County of LOS ANGELES, ss

19 On this 31<sup>ST</sup> day of MARCH, in the  
20 year 1989, before me JUDY SANDOVAL, a

21 Notary Public, personally appeared CARL I. 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.

25  
26  
27



*Judy Sandoval*  
NOTARY PUBLIC IN AND FOR SAID  
COUNTY AND STATE

89-1993988

Exhibit 3  
CCC-05-NOV-04 and CCC-05-CD-06  
(Homayun) Page 5 of 8

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.

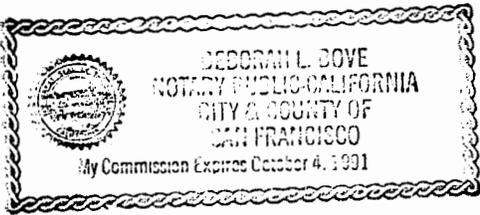
8 Dated: November 9, 1989

John Bowers  
John Bowers, Staff Counsel  
California Coastal Commission

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

14 On 11/9/89, before me DEBORAH L. BOVE  
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 Northwesterly 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"**

89-1993989

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

RECORDED IN OFFICIAL RECORDS  
RECORDER'S OFFICE  
LOS ANGELES COUNTY  
CALIFORNIA  
1 MIN. PAST 2 P.M. DEC 12 1989

IRREVOCABLE OFFER TO DEDICATE PUBLIC LATERAL ACCESS EASEMENT

AND

DECLARATION OF RESTRICTIONS

FREE 14 M

THIS IRREVOCABLE OFFER TO DEDICATE PUBLIC ACCESS EASEMENT AND  
DECLARATION OF RESTRICTIONS (hereinafter referred to as the "Offer") is made  
this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by Carl J. Goldbaum and  
Jeanette Goldbaum, (hereinafter referred to as the  
"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, and described in the attached EXHIBIT A (hereinafter referred to  
as the "Property"); and

II. WHEREAS, all of the 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, pursuant to the Act, Grantor applied to the California  
Coastal Commission for a permit to undertake development as defined in  
§30106 of the Public Resources Code on the Property within the coastal zone

1 of Los Angeles County; and

2 V. WHEREAS, a coastal development permit number 5-88-794 (hereinafter  
3 referred to as the "Permit") was granted on December 13, 1988, by the  
4 Commission in accordance with the provision of the Staff Recommendation and  
5 Findings, attached hereto as EXHIBIT B and hereby incorporated by reference,  
6 subject to the following condition:

7 See Attached Exhibit "E"

8 Lateral Access Condition  
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19 VI. WHEREAS, the Property is a parcel located between the first public  
20 road and the shoreline; and

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

25 VIII. WHEREAS, the Commission found that but for the imposition of the  
26 above condition, the proposed development could not be found consistent with  
27 the public access policies of §30210 through §30212 of the Public Resource

own at 25620 Latigo Shores, Malibu, Los Angeles County, APN 4460-019-145 ("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 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 west 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 Three 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 west of the subject property (APNs 4460-019-144 and 4460-019-143) and extends from the toe of the bluff seaward of the subject property to the mean high tide line.<sup>1</sup> 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 an adjacent property to the west of the subject property (4460-019-143). Any unpermitted development, such as the westernmost portion of the rock revetment, that lies within the vertical easement constitutes a violation of the Coastal Act.

### **Violation History**

On March 4, 2005, Commission staff confirmed that mechanized equipment had been used on the beach in front of the subject property to remove sand from the base of the bluff, deposit large rocks at the base of the bluff, 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,

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<sup>1</sup> The western portion of the revetment, in front of APN 4460-019-143, abuts an unpermitted fill slope, not a natural bluff.

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, Stanley Lampert called Commission staff and stated that he was in the process of being retained to represent you in this matter. Mr. Lampert 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 grading and construction of the revetment clearly constitute "development" as defined in Section 30106 of the Coastal Act. This development requires a coastal development permit under Section 30600(a) of the Coastal Act. No coastal development permit has been issued for the development on the subject property. Additionally, even if you applied for a CDP in this matter, Commission staff could not recommend approval of a CDP to authorize the unpermitted development because the development is inconsistent with the policies of Chapter 3 of the Coastal Act and with the conditions required by CDP 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) Unpermitted development consisting of grading and construction of a revetment 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 lies 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, grading and the construction of the revetment altered the bluff and the beach below the bluff. 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 described above.

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 Palo Alto. 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,



Peter Douglas  
Executive Director

cc:

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  
Alan Block, Law Offices of Alan Robert Block , attorney for Mrs. Homyun

## 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 REGULAR AND CERTIFIED MAIL  
(Article No. 7001 0320 0004 6449 7563)

April 8, 2005

Mr. Mike Homyun  
26520 Latigo Shore Drive  
Malibu, CA 90265

Dear Mr. Hoymun,

I spoke with your representative, Alan Block, on April 1, 2005. Mr. Block confirmed that you and your wife, Sepideh, received 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 that was sent to you on March 15, 2005. Mr. Block advised me that your wife's name appeared incorrectly on the document (as "Homyun Sepideh"). In order to clarify the situation, I am sending an amended Notice of Intent to Sepideh and have updated our records to reflect the correction.

Furthermore, because your name was not listed on the March 15, 2005 Notice of Intent, I have enclosed a Notice of Intent specifying you as a party subject to these enforcement actions. I have notified Mr. Block and a copy of the enclosed Notice of Intent will be sent to him. This new Notice of Intent does not affect Sepideh, and I expect a response from Mr. Block on her behalf on or before April 12, 2005 as previously established. I apologize for any inconvenience. Thank you for your patience and consideration.

Sincerely,

A handwritten signature in cursive script that reads "Christine A. Chestnut".

Christine Chestnut  
Headquarters Enforcement Officer

Encl.: Notice of Intent to Commence Cease and Desist Order and Restoration Order Proceedings  
Statement of Defense Form for Cease and Desist and Restoration Orders

cc: Lisa Haage, Chief of Enforcement  
Sandy Goldberg, Staff Counsel  
Pat Veasart, Southern California Enforcement Team Leader  
Steve Hudson, Southern California Enforcement Supervisor

cc w/enclosure: Alan Block, Law Offices of Alan Robert Block, attorney for Mr. Homyun

## 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**  
(Article No. 7001 1140 0000 0784 7563)

April 8, 2005

Mr. Mike Homyun  
26520 Latigo Shore Drive  
Malibu, CA 90265

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

**Violation No.:** V-4-05-031

**Location:** 26520 Latigo Shores, Malibu, Los Angeles County  
(APN 4460-019-145)

**Violation Description:** Unpermitted operation of mechanized equipment on the beach; unpermitted development, including, but not limited to grading on the beach (cut and fill) and construction of a rock revetment.

Dear Mr. Homyun:

The purpose of this letter is to notify you of my intent, as the Executive Director of the California Coastal Commission ("Commission"), to commence proceedings for issuance of a Cease and Desist Order and a Restoration Order for unpermitted development consisting of grading on the beach (cut and fill), and construction of a rock revetment. The unpermitted development is located at 25620 Latigo Shores, Malibu, Los Angeles County, APN 4460-019-145 ("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.

### **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 the subject property as well as to two adjacent properties located west 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 Three 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 west of the subject property (APNs 4460-019-144 and 4460-019-143) and extends from the toe of the bluff seaward of the subject property is located to the mean high tide line.<sup>1</sup> 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 an adjacent property to the west of the subject property (4460-019-143). Any unpermitted development, such as the westernmost portion of the rock revetment, that lies within the vertical easement constitutes a violation of the Coastal Act.

### **Violation History**

On March 4, 2005, Commission staff confirmed that mechanized equipment had been used on the beach in front of the subject property to remove sand from the base of the bluff, deposit large rocks at the base of the bluff, 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 the subject 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, Stanley Lamport called Commission staff and stated that he was in the process of being retained to represent 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.

---

<sup>1</sup> The western portion of the revetment, in front of APN 4460-019-143, abuts an unpermitted fill slope, not a natural bluff.

### 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 grading and construction of the revetment clearly constitute "development" as defined in Section 30106 of the Coastal Act. This development requires a coastal development permit under Section 30600(a) of the Coastal Act. No coastal development permit has been issued for the development on the subject property. Additionally, even if you applied for a CDP in this matter, Commission staff could not recommend approval of a CDP to authorize the unpermitted development because the development is inconsistent with the policies of Chapter 3 of the Coastal Act and with the conditions required by CDP 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) Unpermitted development consisting of grading and construction of a revetment 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 lies 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, grading and the construction of the revetment altered the bluff and the beach below the bluff. 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 described above.

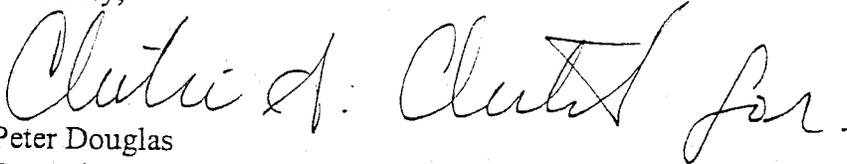
Please be advised that Coastal Act Sections 30803 and 30805 authorize the Coastal Commission to initiate litigation to seek injunctive relief and an award of civil penalties in response to any violation of the Coastal Act. Coastal Act Section 30820(a) provides that any person who violates any provision 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 28, 2005.**

Commission staff has tentatively scheduled the hearing for the proposed Cease and Desist and Restoration Orders during the May 11-13, 2005 Commission meeting in Palo Alto. 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,



Peter Douglas  
Executive Director

Encl.: Statement of Defense Form for Cease and Desist and Restoration Orders

cc without enclosure: Lisa Haage, Chief of Enforcement  
Sandy Goldberg, Staff Counsel  
Pat Veesart, Southern California Enforcement Team Leader  
Steve Hudson, Southern California Enforcement Supervisor  
Christine Chestnut, Headquarters Enforcement Officer

cc with enclosure: Alan Block, Law Offices of Alan Robert Block, attorney for Mr. Homayun

LAW OFFICES

**ALAN ROBERT BLOCK**

A PROFESSIONAL CORPORATION

ALAN ROBERT BLOCK

OF COUNSEL  
MICHAEL N. FRIEDMAN

1901 AVENUE OF THE STARS, SUITE 470  
LOS ANGELES, CALIFORNIA 90067-6006

E-MAIL alanblock@pacbell.net  
TELEPHONE (310) 552-3336  
TELEFAX (310) 552-1850

April 4, 2005

VIA FAX & FIRST CLASS MAIL

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

***Re: Violation No. V-4-05-031 (26520 Latigo Shore Drive, Malibu)  
Objection To Recordation of Notice of Violation***

Dear Ms. Chestnut:

This office has been retained to represent the property owner, Sepideh Homayun, and her husband, Dr. Michael Homayun, with regard to the above captioned alleged violation.

This correspondence is submitted in response to California Coastal Commission correspondence, dated March 15, 2005, advising the property owner of the Commission's intent to record a Notice of Violation of the Coastal Act against the property pursuant to Public Resources Code Section 30812.

Pursuant to page 3 of the Commission's correspondence, dated March 15, 2005, this letter is intended to provide legal notice to the Commission that the property owner objects to the recordation of the Notice of Violation and requests the opportunity to present evidence to the Commission on the issue as to whether a violation occurred.

Further, pursuant to our conversation of last week, this correspondence shall also confirm the fact that you graciously agreed to extend the time in which the property owner must return the Statement of Defense Form to the Commission to April 8, 2005.

Ms. Christine Chestnu

*Re: Violation No. V-4-05-031 (26520 Latigo Shore Drive, Malibu)*

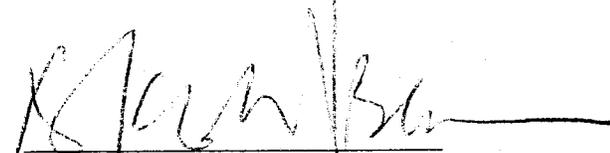
April 4, 2005

Page 2

Thank you for your courtesy and cooperation.

Very truly yours,

LAW OFFICES OF  
ALAN ROBERT BLOCK  
A Professional Corporation



ALAN ROBERT BLOCK

ARB:dm

cc: Dr. Michael Homayun

## 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 FAX AND REGULAR MAIL

Mr. Alan Block  
Law Offices of Alan Robert Block  
1901 Avenue of the Stars, Suite 470  
Los Angeles, CA 90067-6006

Dear Mr. Block,

Staff originally sent a Notice of Intent to Commence a Notice of Violation of the Coastal Act and to Commence Cease and Desist Proceedings to your client, Mrs. Sepideh Homyun, on March 15, 2005. You notified us that Mrs. Homyun's name was incorrectly listed on the Notice of Intent as "Homyun Sepideh". We later discovered that, although Mrs. Homyun is the owner of record of the property at 26520 Latigo Shore Drive, that her husband, Mr. Mike Homyun, authorized and conducted the unpermitted development at issue. Therefore, we have amended the original Notice of Intent to correctly state Mrs. Homyun's name, and we have mailed a new Notice of Intent to Mr. Homyun.

When I spoke to you on April 6, 2005, you indicated your intent to prepare a joint Statement of Defense for both Mr. and Mrs. Homyun. In order to provide you with adequate time to prepare this joint statement, I have extended the deadline for Sepideh Homyun to submit the statement until the close of business on April 12, 2005.

If you have any questions, please call me at (415) 272-6141. Thank you for your time and consideration.

Sincerely,

A handwritten signature in cursive script that reads "Christine Chestnut".

Christine Chestnut  
Headquarters Enforcement Officer

cc: Lisa Haage, Chief of Enforcement  
Sandy Goldberg, Staff Counsel  
Pat Veesart, Southern California Enforcement Team Leader

Exhibit 17  
CCC-05-NOV-04 and CCC-05-CD-06  
(Homyun)

LAW OFFICES

**ALAN ROBERT BLOCK**

A PROFESSIONAL CORPORATION

1901 AVENUE OF THE STARS, SUITE 470  
LOS ANGELES, CALIFORNIA 90067-6006

E-MAIL alanblock@pacbell.net  
TELEPHONE (310) 552-3336  
TELEFAX (310) 552-1850

ALAN ROBERT BLOCK

OF COUNSEL  
MICHAEL N. FRIEDMAN

April 13, 2005

VIA FAX & FIRST CLASS MAIL

Ms. Christine Chestnut  
California Coastal Commission  
45 Freemont Street, Suite 2000  
San Francisco, CA 94105-2219

**Re: *Violation No. V-4-05-031 (26520 Latigo Shore Drive, Malibu)  
Statement of Defense***

Dear Ms. Chestnut:

Enclosed please find the Michael and Sepideh Homayuns' Statement of Defense, Declaration of Michael Homayun, and Exhibits 1-4 in support of the Statement of Defense.

As stated in the enclosed Statement of Defense, the Homayuns will agree to remove the rocks placed on their property as reasonably directed by the Commission.

I look forward to working with you to resolve this matter in an amicable fashion.

Thank you for your continued courtesy and cooperation.

Very truly yours,

LAW OFFICES OF  
ALAN ROBERT BLOCK  
A Professional Corporation

  
ALAN ROBERT BLOCK

ARB:dm

cc: Dr. Michael Homayun

**CALIFORNIA COASTAL COMMISSION  
STATEMENT OF DEFENSE FORM**

Violation No. V-4-05-031

Project Address: 26520 Latigo Shore Drive, Malibu  
Property Owners: Michael and Sepideh Homayun

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

Page 1, Paragraph 1: The Homayuns admit that on or about March 3, 2005, in order to protect their home from possible structural damage due to on-going winter storms, they retained a contractor already working at the Burt Kelly property located at 26530 Latigo Shore Drive, to place rocks on that portion of their property immediately adjacent (landward) to the slope on their property lost during the recent storms. To the best of the Homayuns' knowledge, their contractor, Gene Densen, dug a trench on the beach, landward of the previously existing toe of the slope, on March 3, 2005, and placed 6-8 rocks within this area on March 4, 2005.

Page 2, Paragraph 4: The Homayuns admit that they received the Commission's Notice of Intent To Issue Executive Cease and Desist Order on March 4, 2005, and immediately ceased any and all repair and maintenance activities taking place on their property.

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

Page 1, Paragraph 2: The Homayuns deny that they constructed a rock revetment on their property.

Page 2, Paragraph 1: Although the Homayuns admit that the Special Conditions of CDP No. 5-88-794 are applicable to their property, the Homayuns deny that their residence was constructed pursuant to CDP No. 5-88-794, but rather constructed pursuant to CDP No. 4-97-168.

Page 2, Paragraph 2: The Hodayuns deny that the 6-8 rocks placed on their property on or about March 4, 2005, are located within the lateral easement recorded on their property.

Page 2, Paragraph 6: The Hodayuns deny that they brought mechanical equipment onto the beach. Said equipment was already on the beach and was being used at the Kelly residence located at 26530 Latigo Shore Drive.

Page 3, Last Paragraph: The Hodayuns deny that the repair and maintenance activities on their property was inconsistent with CDP No. 5-88-794. Rather, the Hodayuns believed that the repair and maintenance activities were necessary as a temporary emergency measure to protect their property and residence.

Page 4, Numbers 1: The Hodayuns deny that they constructed a rock revetment on their property. Only 6-8 rocks were placed on their property prior to their receipt of the Commission's Notice of Intent To Issue Executive Cease and Desist Order on March 4, 2005.

Page 4, Number 2: The Hodayuns deny that their repair and maintenance activities were inconsistent with any of the following: The resource policies of the Coastal Act, including Section 30211, in that rocks were not placed within the area of the dedicated lateral access; Section 30235, in that the placement of the 6-8 rocks on that portion of their property immediately adjacent to the lost slope will not prevent natural shoreline alteration; Section 30251, in that placement of the 6-8 rocks on their property does not obstruct the scenic and visual qualities of the area; and/or Section 30253(2), in that the placement of the 6-8 rocks on their property will not have adverse impacts on and/or cause landform alternation.

Page 4, Number 3: The Hodayuns deny that their repair and maintenance activities is causing continuing resource damage on the beach as defined in Section 13190 of the Commission's regulations.

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

Unknown at this time.

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:**

The Homayuns purchased the subject property at 26520 Latigo Shore Drive in May 2002. In all the time they owned their property, the Homayans never experienced storm-related damage and destruction as brought on by the exceptionally heavy rains of late 2004 through early 2005. Winter storms washed out approximately 10 feet of beach, and destroyed the entire slope adjacent to the ocean side of their residence. The Homayuns were legitimately concerned in good faith about the structural integrity of their residence and their own safety, particularly since the rainy season in 2005 extended well beyond that of typical years.

The Homayuns' neighbors, Burt and Sharon Kelly, the owners of the property one lot removed to the west from the Homayun property, located at 26530 Latigo Shore Drive, also sustained significant damage from the storms. To repair the damage, they brought mechanical equipment onto the beach to, among other things, construct what appeared to be a rock revetment on their property. Given that earth moving equipment was already on the beach in close proximity to their residence, the Homayuns inquired about the possibility of the Kellys' contractor, Gene Densen, placing rocks in front of their property in order to provide some protection to the slope above the beach, which was being washed away from heavy rain and surf activity.

The Homayuns were informed by both Burt Kelly, and Gene Densen, and in good faith believed, that Mr. Densen had had conversations with City of Malibu Department of Building and Safety personnel regarding the placement of rocks on the beach and had been advised that emergency measures could be undertaken to protect their residence as long as a subsequent application for an emergency CDP was made to the City. Burt Kelly further advised the Homayuns that both of their homes, as well as David and Roberta Walski's residence located in between their two properties located at 26524 Latigo Shore Drive, were the only properties on the beach built without protective seawalls. The Homayuns knew for a fact that their residence did not have a protective seawall, and the damage sustained to the slopes above the beach on which these residences were constructed appeared to support that the other two homes were also not protected by a seawall.

Contrary to the allegations contained in the Commission's Notice of Intent To Record A Notice of Violation of the Coastal Act and to Commence Cease and Desist Order and Restoration Order Proceedings, dated March 15, 2005, the Homayuns are certain that the rocks placed immediately seaward of their residence (within the area of the previously existing slope which was lost in the storms), were placed on the property landward of the lateral easement which had previously been offered for dedication to the public on their property.

Two (2) photographs taken in or about 2001, which evidence the previously existing slope seaward of 26520 Latigo Shore Drive, are collectively attached hereto as **Exhibit 1** and incorporated herein by reference. The lateral easement on the Homayun property is located seaward of the bottom of the previously existing slope, along the shore, which is well seaward of the location where 6-8 rocks were placed on the Homayuns' property.

A site visit to the Homayun property on April 4, 2005, evidenced that the rocks placed on the property were not visible on the beach seaward of their residence. In addition, the beach profile on the Homayun property was identical to the beach profile on the immediately adjacent properties to the west and east, as was the setback of the cliffs on the oceanside of the properties resulting from the storm-damaged slopes.

Two (2) photographs of the beach, seaward of the Homayun residence, taken from both east and west of the Homayun property, are collectively attached hereto as **Exhibit 2** and incorporated herein by reference. Said photographs evidence that the 6-8 rocks placed on the Homayun property are not presently visible and that the beach profile and existing topography, both seaward and adjacent to the Homayun property, are identical to that existing on the Homayun property.

The beach elevation only changes visually, as well as topographically, at the Kelly property. Photographs taken on April 4, 2005, evidence the placement of numerous layers of rocks seaward of the Kellys' property at 26530 Latigo Shore Drive.

Five (5) photographs of the beach, seaward and adjacent to the Kellys' property at 26530 Latigo Shore Drive, are collectively attached hereto as **Exhibit 3** and hereby incorporated by reference. Said photographs clearly evidence the visual difference in beach profiles seaward of the Kellys' property, the Walskis' property adjacent thereto, and the Homayuns' property, one lot removed to the east.

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

The Hodayuns agree to remove the rocks placed on their property as directed by the Coastal Commission.

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).**

- A. Declaration of Michael Hodayun, dated April 11, 2005;
- B. Two (2) photographs taken in or about 2001, evidencing the previously existing slope seaward of 26520 Latigo Shore Drive, are collectively attached hereto as **Exhibit 1** and incorporated herein by reference;
- C. Two (2) photographs of the beach seaward of the Hodayun residence, taken from both the east and west of the Hodayun property, are collectively attached hereto as **Exhibit 2** and incorporated herein by reference; and
- D. Five (5) photographs of the beach area seaward and adjacent to the Kellys' residence located at 26530 Latigo Shore Drive, are collectively attached hereto as **Exhibit 3** and incorporated herein by reference.
- E. Letter to Alan Robert Block, dated April 13, 2005, from Craig George, Environmental and Building Safety Division Manager/Deputy Building Official for the City of Malibu, attached hereto as **Exhibit 4** and incorporated herein by reference.

LAW OFFICES OF  
ALAN ROBERT BLOCK  
A PROFESSIONAL CORPORATION  
1901 AVENUE OF THE STARS, SUITE 470  
LOS ANGELES, CALIFORNIA 90067-6006  
TELEPHONE (310) 552-3336  
FACSIMILE (310) 552-1850

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DECLARATION OF MICHAEL HOMAYUN

I, MICHAEL HOMAYUN, declare and say as follows:

1. At all times relevant herein since May 2002 my wife Sepideh Homayun and I have owned the single family residence located at 26520 Latigo Shore Drive, in the City of Malibu, State of California. I have personal knowledge of the facts stated in this declaration and, if called as a witness to testify regarding the facts set forth herein, I could and would testify competently thereto.

2. In all the time my wife and I owned our home on the beach, we never experienced the storm-related damage and destruction brought on by the exceptionally heavy rains of late 2004 through early 2005. The winter storms washed out approximately 10 feet of beach, and destroyed the entire slope adjacent to the ocean side of our residence. My wife and I were legitimately concerned in good faith about the structural integrity of our residence and the safety of our family, particularly since the rainy season in 2005 extended well beyond that of typical years.

3. Our neighbors, Burt and Sharon Kelly, the owners of the property one lot removed to the west from our property, located at 26530 Latigo Shore Drive, also sustained significant damage from the storms. To repair their damage, the Kellys brought mechanical equipment onto the beach to, among other things, construct what appeared to be a rock revetment on their property.

4. Given that earth moving equipment was already on the beach in close proximity to our residence, I inquired about the possibility of the Kellys' contractor, Gene Densen, placing rocks in front of our property in order to provide some protection to the slope above the beach, which was being washed away from heavy rain and surf activity.

5. I was informed by both Burt Kelly, and Gene Densen, and in good faith believed, that Mr. Densen had had conversations with City of Malibu Department of Building and Safety personnel regarding the placement of rocks on the beach and had been advised that temporary emergency measures could be undertaken to protect our residence as long as a

1 subsequent application for an emergency CDP was made to the City. Burt Kelly further  
2 advised me that only our homes, as well as David and Roberta Walski's residence located in  
3 between our two properties located at 26524 Latigo Shore Drive, were the only properties on  
4 the beach built without protective seawalls.

5 6. I thereafter hired Mr. Densen to place rocks immediately seaward of my  
6 residence, as close as possible to the remains of the shear bluff, landward of the previously  
7 existing toe of the slope, in order to protect my residence against continued storm wave action.

8 7. I was advised by Mr. Densen that he dug a trench on the beach, landward of the  
9 previously existing toe of the slope on March 3, 2005, and only started to place rocks seaward  
10 of the toe of the slope, as close as possible to the seaward side of my residence, on the morning  
11 of March 4, 2005. Mr. Densen told me that he only had been working at the property for less  
12 than 2 hours on March 4, 2005, when I advised him to cease all further work upon my receipt  
13 of the Coastal Commission's Notice of Intent To Issue an Executive Cease and Desist Order.  
14 Mr. Densen told me that he only had placed 6-8 on my property prior to my advising him to  
15 stop all work.

16 8. Once I received the Notice of Intent To Issue an Executive Cease and Desist  
17 Order, on March 4, 2004, I advised Mr. Densen to discontinue any further work on my  
18 property. No work of any kind has taken place on the property since March 4, 2005.

19 9. At no time did I knowingly or intentionally perform development activities  
20 on my property in violation of either the Coastal Act and/or Coastal Development Permits  
21 Issued for my property, and as soon as Mr. Densen had completed the placement of rocks in  
22 front of my residence I would have submitted an application to the City of Malibu for a  
23 temporary emergency CDP.

24 10. Immediately after I received the Notice of Intent To Issue an Executive Cease  
25 and Desist Order, on March 4, 2004, I spoke with Burt Kelly who also received a similar  
26 notice, and he suggested I speak with attorney Stanley Lamport.

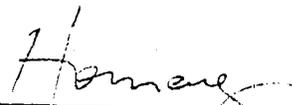
27 11. I thereafter spoke with Mr. Lamport who stated he would be in contact with the  
28 Coastal Commission regarding the notice of violation and would be back in contact with me.

1 Mr. Lamport thereafter called me and told me that he had assured the Coastal Commission  
 2 that no further work would be taking place our property. He also told me that the Coastal  
 3 Commission told him that we should not apply to the City of Malibu for an emergency Coastal  
 4 Development Permit. Based on Mr. Lamport's representation I did not apply to the City for  
 5 the emergency permit.

6 12. My wife and I thereafter decided that it might not be in our best interests to be  
 7 represented by the same attorney that was representing Burt Kelly and his wife, and we  
 8 decided to retain the services of Alan Robert Block.

9 I declare under the penalty of perjury that the foregoing is true and correct to the best  
 10 of my knowledge.

11 Executed on April 11, 2005, in Los Angeles, California.

12  
 13  
 14  
 15   
 16 MICHAEL HOMAYUN

LAW OFFICES OF  
 ALAN ROBERT BLOCK  
 A PROFESSIONAL CORPORATION  
 1301 AVENUE OF THE STARS, SUITE 410  
 LOS ANGELES, CALIFORNIA 90067-6006  
 TELEPHONE (310) 562-3336  
 FACSIMILE (310) 562-1850

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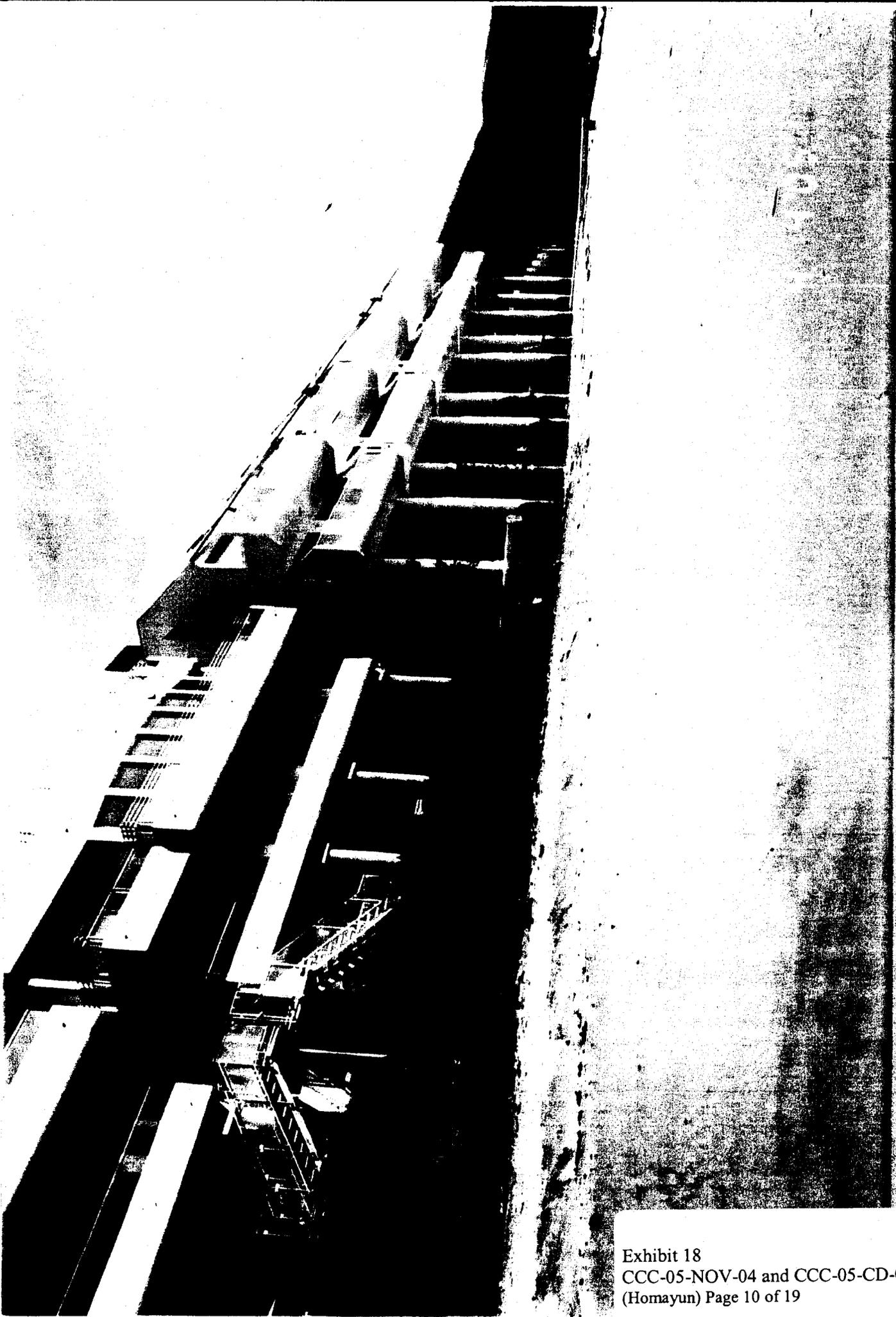


Exhibit 18  
CCC-05-NOV-04 and CCC-05-CD-06  
(Homayun) Page 10 of 19



Exhibit 18  
CCC-05-NOV-04 and CCC-05-CD-06  
(Homayun) Page 11 of 19



Exhibit 18  
CCC-05-NOV-04 and CCC-05-CD-06  
(Homayun) Page 12 of 19

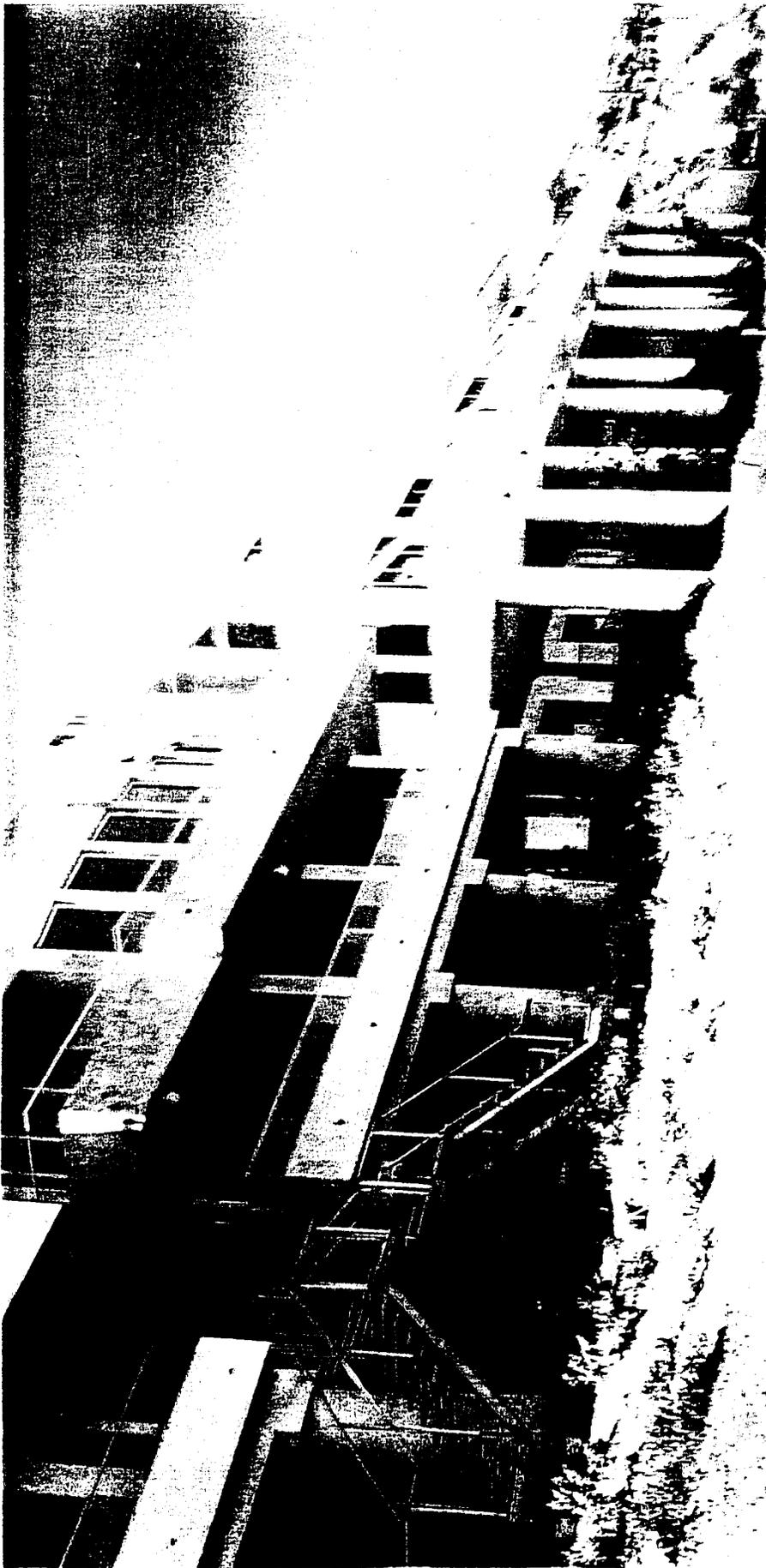


Exhibit 18  
CCC-05-NOV-04 and CCC-05-CD-06  
(Homayun) Page 13 of 19



Exhibit 18  
CCC-05-NOV-04 and CCC-05-CD-06  
(Homayun) Page 14 of 19



Exhibit 18  
CCC-05-NOV-04 and CCC-05-CD-06  
(Homayun) Page 15 of 19



Exhibit 18  
CCC-05-NOV-04 and CCC-05-CD-06  
(Homayun) Page 16 of 19



Exhibit 18  
CCC-05-NOV-04 and CCC-05-CD-06  
(Homayun) Page 17 of 19



Exhibit 18  
CCC-05-NOV-04 and CCC-05-CD-06  
(Homayun) Page 18 of 19



# City of Malibu

23815 Stuart Ranch Road • Malibu, California • 90265-4861  
Phone (310) 456-2489 • Fax (310) 456-7650 • www.ci.malibu.ca.us

April 13, 2005

Alan Block  
1901 Avenue of the Stars, Suite 470  
Los Angeles, CA 90067

RE: Temporary Rock Revetments

Mr. Block:

You had inquired as to whether I had received an inquiry from a contractor representing 26500 Latigo Shore Drive. You also inquired as to whether an Emergency Coastal Development Permit (ECDP) could be issued for the placement of a temporary rock revetment to protect a residence during emergency conditions.

As to your first question, I do not recall specifically receiving a call from a contractor representing that address, however I did receive numerous calls regarding protection of residences on Latigo Shore Drive during the winter months and storms. One such call may well have been the person to whom you reference.

The City may authorize the issuance of a ECDP for a temporary rock revetment if it can be demonstrated that this is the least intrusive temporary device to protect the residence, and acknowledge that the rock revetment would either be removed or a Coastal Development Permit would be applied for within 90 days. Protection of private property during these significant storm events is essential, and the measures utilized may be limited by the availability of materials and contractors to perform these protective measures.

Please contact me at your earliest convenience should you have any questions regarding this matter.

Sincerely,

Craig George  
Environmental and Building Safety Division Manager / Deputy Building Official



CALIFORNIA COASTAL COMMISSION

COAST AREA  
 1500 WEST BROADWAY, SUITE 360  
 LONG BEACH, CA 90802  
 (213) 590-5071

Filed: 11/22/88  
 49th Day: 1/10/89  
 180th Day: 5/21/89  
 Staff: Emerson /<sup>2</sup>  
 Staff Report: 11/29/88  
 Hearing Date: 12/13/88  
 Commission Action:



RECEIVED

APR 24 1989

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 5-88-794

APPLICANT: Red Iachman, Preferred Financial Corp

CALIFORNIA  
 COASTAL COMMISSION  
 AGENTS, SOUTH COAST DISTRICT  
 Alan Block

PROJECT LOCATION: 26520 26524 Pacific Coast Highway, Malibu, Los Angeles County, APN 4460-19-26

PROJECT DESCRIPTION: Subdivision of 37,130 sq. ft. lot into three parcels and construction of three single family houses.

Lot Area	37,130 sq. ft.
Building Coverage	13,725 sq. ft. ( %)
Floor area	3 x 4,085 = 12,255
Parking Spaces	9
Zoning	R3
Plan Designation	9A 6 8 du/A Certified IUP
Project Density	3.2 du/A
Ht abv ext grade	36 feet

LOCAL APPROVALS RECEIVED: Tentative Tract Map 44993, Los Angeles County, May 15, 1987; Approval in Concept Health Department, 7/8/87; Plot Plan 35163

SUMMARY OF STAFF RECOMMENDATION:

Staff is recommending approval with conditions to provide lateral and vertical public access, assume the risk of the development, control the effects of the development process on the beach, limit improvements on the bluff face, and limit the development to three stories.

SUBSTANTIVE FILE DOCUMENTS:

1. Certified Malibu Land Use Plan, County of Los Angeles certified December 11, 1986; Coastal Commission findings for Denial, 1983, Findings for Denial and Suggested Modifications 1985, 1986,

EXHIBIT A

2. Coastal Commission Determination of Substantial Issue and Commission Action on Certification on Malibu Land Use Plan (March 24, 1983).

3. Malibu/Santa Monica Mountains Preliminary Area Plan (August 4, 1980, Dept. of Regional Planning).

4. Coastal Development Permits this and adjacent parcels: 5 87-706 (Lachman), 5-85 299, 5 85 299A; 5 85 299A2, 5 85 299A3, 5 85 546 (Young and Golling), 5 82 580 (Blumberg), 5 82 638 (Pepperdine), P 78 2312 (Pepperdine), P 77 985 (Pepperdine), 5 86 855 (Lachman), 5 84 137 (Stoul), 5 84 732 (Stoul), 5 85 459; 5 84 754 (Ackerberg), 5 83-136 (Geffen), 5 83-242 (Singleton), 5 83 871 (Diamond).

5. Beach subdivisions P 81 7642 (Evans), 5 81 6 (Landy), 5 81 7 (Trancas Development) Appeal 55 79 (Feldman), 5 82 659 (Leanse), 79-5163 (Armstrong), 5 83 712 G (Malibu Point Homeowners), P 878 (Blumberg) 5 82 370 (Siegal), 5 85 758 (Norred), Prop 20 P 8961 (Kraft), 5 85-107 (Measer), 5 85 635 (Broad Beach Partners), 5 85 309 (Jackson), 05-88-170 (Black Tor), 5 87-706 (Lachman)

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants a permit, subject to the conditions below, for the proposed development on the grounds that the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, is located between the sea and the first public road nearest the shoreline and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions. (see attachment X)

III. 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 d) evidence that plans for this erosion prevention conform to applicable County ordinances, e) 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.

IV. FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

A. Project Description

The applicant proposes to construct three single family houses on a long narrow lot located between a stub of Pacific Coast Highway and the beach. A previous project for five houses on the face of the bluff between the road and the beach was denied by the Commission on June 8, 1988. The Executive Director has accepted this proposal for review before six months elapsed because it is a substantially changed project.

The property in question contains a small amount of level area, a bluff face and sandy beach. The bluff is composed of sandy fill and rises on a 1.7:1 slope 35 feet above a narrow sandy beach. The lot extends from the edge of the pavement of a stub of Pacific Coast Highway to mean high tide. It is 200 feet long. The property is one of four privately owned parcels on an undeveloped, eleven acre, 1531 linear foot stretch of beach. There is one approved permit on this stretch of beach, for a five unit project on the lot immediately to the east, 5 85 299 (Young and Golling), which is under construction.

The lot is 37,130 square feet based on the latest recorded mean high tide line, 1928. The land use plan designation of 9A Residential, 6-8 dwelling units per acre, would allow a gross density of six units on this lot if the commission counted the beach in the area. If the beach were not counted, two units would be permitted. The land use plan establishes a gross density for every parcel that may be further reduced by the site constraints found in the plan policies. In this case the site constraints are the presence of the beach and the bluff face.

The proposed structures are four levels, rising 63 feet above the beach; three full stories and a mezzanine. They average less than 35 feet in height although the front corners are 36 feet above the existing grade.

Unlike the recently denied proposal, 5-87-706 (Lachman) which extended to the toe of the bluff, the structures are constructed on the top and upper half of the bluff face. The pilings on unit C extend to elevation 26, ten feet above and eleven feet inland of the approximate toe of the bluff on the eastern side of the property and to elevation 38, 22 feet above and 21 feet inland of the approximate toe of the bluff on the western boundary of the property, where the bluff top is wider.

The previous (denied) proposal extended 63 feet seaward of the Caltrans encroachment line, as did the seaward face of the adjoining structure, Young and Golling. The pilings of the project approved in 5 85 299 (Young and Golling) and denied in the Commission's previous action on this parcel are located 58 feet seaward of property line; in the present proposal the pilings are located 33 feet seaward of the Caltrans encroachment line. The 1928 mean high tide line is 98 feet seaward of the proposed development on the east

property line and 122 feet on the west property line. The applicant's engineer estimates that these figures for the winter beach are forty feet less, or 58 and 82 feet. (figures derived by adding 16 feet to the distances noted in the letter of June 6, 1986 to take into account the increased setback from beach in the present proposal)

The crucial question is whether the project now conforms to standards limiting encroachment on the seaward face of the bluff. Because most of the lot is either bluff face or beach, some encroachment on the bluff face will be occur in almost any development on the lot

#### B. Development

Section 30250(a) of the Coastal Act regulates new development, and requires that development be located in existing developed areas, and that in permitting development the Commission review direct and cumulative impacts of development on access and on resources.

Section 30250(a) states:

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have a significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

(b) Where feasible, new hazardous industrial development shall be located away from existing developed areas.

(c) Visitor serving facilities that cannot feasibly be located in existing developed areas shall be located in existing isolated developments or at selected points of attraction for visitors.

To carry out the development strategy of this section, the certified Malibu Santa Monica Mountains Land Use Plan includes policy 271, which establishes development patterns and density designations, policy 272 which addresses the cumulative impacts of the creation of additional lots and and policy 273 which clearly states that while single family houses may be developed on lots in which some compromise is necessary with plan policies, new subdivisions shall occur only if development conforms to all plan policies. The most relevant plan policies state:

P273b On beachfront parcels, land divisions shall be permitted consistent with the density designated by the Land Use Plan Map only if all parcels to be created contain sufficient area to site a dwelling or other principal structure, on site sewage disposal system, if necessary, and any other necessary facilities without development on sandy beaches, consistent with all other policies of the LUP, including those regarding geologic and tsunami hazard.

P273d In all other instances, land divisions shall be permitted consistent with the density designated by the Land Use Plan Map only if all parcels to be created contain sufficient area to site a dwelling or other principal structure consistent with the LCP. All land divisions shall be considered to be a conditional use.

P271 New development in the Malibu Coastal Zone shall be guided by the Land Use Plan Map and all pertinent overlay categories. The land use plan map is inserted in the inside back pocket. All properties are designated for a specific use. These designations reflect the mandates of the California Coastal Act, all policies contained in this Local Coastal Plan, and the constraints and sensitivities of resources present in the coastal zone. All existing zoning categories will be modified as necessary to conform with and carry out the LCP land use plan.

The land use plan map presents a base land use designation for all properties. Onto this are overlaid three resource protection and management categories: (a) significant environmental resource areas, (b) significant visual resource areas, and (c) significant hazardous areas. For those parcels not overlaid by a resource management category, development can normally proceed according to the base land use classification and in conformance with ALL POLICIES AND STANDARDS contained herein. [emphasis added] Residential density shall be based on an average for the project; density standards and other requirements of the plan shall not apply to lot line adjustments. In those areas in which a resource management overlay applies development of the underlying land use designation must adhere to the special policies, standards, and provisions of the pertinent designation....

This property is overlaid by a resource management category, Hazardous areas. With respect to Hazardous areas, the Land Use Plan states:

Hazardous Areas These areas exhibit conditions which may present significant hazards to land use development. The underlying land use designation can be implemented provided that the effects of the hazard are successfully mitigated, according to prescribed engineering standards, as determined by the County Engineer. Pertinent standards and conditions of development are defined in Section 4.2.4 of this Plan. The standards shall apply to the following subcategories:

Flood Hazard Areas  
 Potential Landslides and Unstable Soils  
 Fault Areas  
 Tsunami Inundation Areas

(7) Discretionary Review

All development subject to coastal permits within the coastal zone is subject to findings by the coastal permit issuing agency of Los Angeles County that it is consistent with the Local Coastal Program.

The Land Use Plan does have a balancing policy with respect to development. This policy contains special protection for applicants who intend to develop single family residences on existing lots, and language that indicates that it is the County's intention to regulate new subdivisions more strictly than the construction of houses on lots that happen to be too small. It states:

Nothing in this Coastal Plan shall be construed to prevent the construction of a single family home on an existing lot because of the size of the lot.

This lot is designated on the density maps to accommodate no more than six units. However, in order to determine how many units may be accommodated and the conditions under which they may be allowed, the Commission must turn to the policies relating to siting hazards, public access cumulative impacts and design to decide if the development proposed by the applicant conforms to the development policies of the Coastal Act as carried out in the Land Use Plan.

1) Direct impacts on resources

a) Hazards

The previous application for five units on this lot was denied by the Commission because the location of the proposed condominiums on the face of a sea bluff was inconsistent with the wave hazard and geologic safety policies of the Land Use Plan. (policy 165)

The Commission determined that the reason that the plan prevented new development on the faces of coastal bluffs was that these bluffs were subject to wave hazard. The applicant reminded the Commission that the bluff in question was a fill slope, constructed by Calltrans. The Commission found that if the bluff was artificial fill constructed out over the sandy beach, it would be even more subject to wave hazard than a natural bluff, because the toe of a wave cut bluff ordinarily represents the landward limit of storm waves, most of a sandy beach is subject to inundation. Based on this topographic fact, any structure seaward of the toe of the previous bluff would be well within the area of wave attack during storm events, and subject to more hazard than the original wave cut bluff.

The applicant proposes to reduce the exposure to wave hazard by siting the project at a higher elevation, moving it so that the floors are above the area of wave action, and setting the caissons back further into the bluff slope. The applicant now proposes three structures where the decks are sixteen feet inland of the previous proposal. Unlike the recently denied proposal, 5 87 706 (Lachman) the structures are constructed on the top and upper curve of the bluff face. As noted above, the seaward edge of the decks on the previous proposal extended 63 feet seaward of the Calltrans encroachment line, and the pilings of the previous denied proposal and the approved adjacent structure are located 58 feet seaward of the Calltrans encroachment line, the property line; in the present proposal the structure extends 44 feet seaward of the Calltrans encroachment line, and the pilings are located 33 feet seaward of the Calltrans encroachment line.

Instead of placing the caissons at the toe of the slope, on the inner edge of the sandy beach, the applicant proposes to place the caissons about halfway up the slope, laterally 27.32 feet inland of the toe (estimate of toe). Instead of extending the decks seaward of the toe of the bluff nine feet over the beach, the applicant proposes to limit to the cantilever to a line 8 to 18 feet inland of the toe of the bluff.

The applicant contends that in this location, the vulnerability of the structures to wave hazards will be significantly reduced and the project will conform to Section 30253 of the Coastal Act and policy 165 of the Land Use Plan.

Section 30253 of the Coastal act addresses hazards to development:

Section 30253:

New development shall:

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(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.

(5) Where appropriate, protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses.

Three hazard related LUP policies prevent approval of development on the face of the bluff, and possible location of septic systems and revetments on the beach. In the Land Use Plan there is one policy that prevents development on the face of a coastal bluff:

P165 No further permanent structures shall be permitted on a bluff face [emphasis added] except for engineered staircases or accessways to provide public beach access where no feasible alternative means of public access exists.

Policy 150 prevents subdivisions that create building sites at a greater than 2:1 slope:

P150 Continue Hillside Management procedures as contained in Ordinance No. 82 0003 for proposed development on sites with an average slope greater than 25 percent (4:1). Grading and/or development related vegetation clearance shall be prohibited where the slope exceeds 2:1, except that driveways and/or utilities may be located on such slopes where there is no less environmentally damaging feasible alternative means of providing access to homesites located on slopes of less than 50%, where no alternative homesites exist on the property, and where maximum feasible mitigation measures are taken.

Policy 273(b) cited above prevents subdivisions that would require physical development on beaches.

According to these IUP policies no subdivision may be approved that results in development on the bluff face and the beach, increasing cumulatively the number of projects that are subject to wave hazard. The applicant has now provided three detached single family units. The top of the bluff is at elevation 44. These units extend to elevation 38 for unit one and two, and encroach more for the third unit to elevation 28.

This development does not occupy the major part of the face of the bluff, although structure C does extend 16 feet down the bluff at its greatest encroachment. Since the bluff extends from elevation 44 to elevation 16, this covers a little more than half the bluff. The other two units cover no more than a third of the bluff face. The applicant contends that although there is an encroachment, it is much less that was previously proposed, and the development is has been significantly removed from the area of wave hazards.

In addition to the units, the applicant has proposed one staircase down to the toe of the bluff for the use of all three houses. The applicant contends that by consolidating stairways he is reducing impacts on the beach. The IUP in policy 165 permits stairways down the bluff if they are dedicated to public use.

Building on the bluff face is prevented by the IUP because seabluffs, like beaches are subject to wave attack. This beach is subject to wave erosion, and experiences a seasonal "oscillation" of about half its normal width, regularly losing forty to sixty feet in the winter time. The detritus line in December, 1987 was about five feet seaward of the toe of the bluff, so the 1928 line may not reflect erosion of the beach that has occurred over time.

In January, 1988, heavy storms removed about eight feet from the toe of the bluff, and left seaweed and driftwood at the toe of the newly cut bluff.

This beach and this bluff face are subject to wave attack. In the January 1988 storms, waves attacked this beach and cut six to eight feet off the toe of the bluff, removing some of the old highway fill.

Although the last recorded mean high tide line is well seaward of the development, the wider beach line is regarded by the applicant as located 56 feet seaward of the proposed decks.

According to the 1977 DNOD study cited in the substantive file documents, Solstice Canyon beach is to be regarded as critical "present development is in danger and future development is in need of control." The document states:

Solstice Canyon Beach. Narrow sandy beach with offshore rocks backed by wave cut eroding cliff and highway bench. Houses and apartments built on piles subject to damage during high wave conditions.

Santa Monica Bay Sand Cell Point Dume to Redondo Canyon, current sources of sand lacking because of dams and channelization.

The result of an eroding coast on a narrow lot like this one, which is essentially a wet beach lot, backed by a low bluff, is that the seaward extent of the toe of the bluff cannot be established with any reliability. Not only is the bluff likely to recede, but because the bluff is not a natural feature, but is instead fill that was placed on the beach in 1927, even ordinary storms waves will reach its toe. Some beaches have experienced erosion, and a line of wave attack that is closer and closer to the highway. In this case, even without erosion, much of the beach and the fill is subject to wave action. The beach extended farther inland in before 1927, which indicates that storm waves had built it. The applicant's geologist has found beach sand under the fill. For this reason, the applicant's coastal engineer recommends that the caissons be placed below scour level.

Policy 165 is designed to reduce vulnerability of structures to wave attack, and to protect beaches from the revetments that are likely to be needed to protect structures that are located on the bluffs.

Similar, nearby structures have required revetments. In 1973, the Regional Commission approved a four unit condominium about 1500 feet to the east, P 73 511 (Ransocchini). This structure on the east end of Corral State Beach was constructed on pilings on what was a low bluff over the beach. Immediately after construction, waves removed much of the bluff, so that it now appears to be built over the sand. After 1983, the resident owners were forced to install a revetment on State Park Property to protect the building (5 83 721 Malibu Point Homeowners)

Storm waves have caused significant erosion of the toe of the bluff on this property. Because of the toe of the bluff erodes, it is impossible to make

definite findings on the location of the development with respect to the bluff and the toe of the bluff. Therefore all measurements in this report will be based on the landward property line.

The applicant has designed this project so that the pilings intersect the bluff face at the line where elevation 38 and elevation 26 were on the day the topography was surveyed. The basement floors at elevation 32 are well above the area of wave action. The design of this project minimizes wave damage because of the increased set back of the pilings (29 32 feet) from the toe of the bluff. However, there is still potential for wave erosion and scour during occasional erosive storm events. Because of this danger the applicant intends to sink the pilings beneath the wave scour line. However, at its new location, it is set back 23 feet from the 1988 storm line ( eight feet inland of the toe of the bluff based on the survey.)

The Commission concludes that there is now 28 feet of bluff face between the raissions and the beach and the project does not include significant excavation of the bluff face. Therefore the project has been removed from the area of constant wave hazard. Moreover it has been designed to withstand occasional inundation and scour. Therefore the project as redesigned and as conditioned conforms with policy 30253 as carried out in policy 165.

Slope instability. The applicant contends that issues of landslide do not apply to these structures. This conclusion is based on extensive geologic review and discussions.

The project is located on an old road fill that was not constructed to current standards. The fill is not uniform, there are pieces of rock, debris and concrete embedded in it, and some of the fill located on an adjacent lot has moved. Because of these problems, extensive investigation of this lot, and its geology has been necessary.

There are two major landslides located above Latigo Shores Drive. One is some distance to the west, the other is an active slide that occupies most of the three lots directly to the west of the property. An edge of the landslide cuts off the south western corner of this property at the toe of the slope, on the beach. The area of active slide is not significant, but the applicant's geologist advises a fifty foot set back from the slide.

The status of the rest of the property has been subject to extensive investigation on the part of the applicant's geologist because reports on three earlier projects by another geologist, John Merrill, identified a plane of older landslide debris underneath the remainder of the property. According to Merrill, the major portion of this property is underlain by an ancient slide plane. (Merrill, 1972, 1984, 1979). The Merrill reports showed an ancient slide directly to the east of the active slide on the adjacent property. The Commission notes that Merrill later changed his opinion, and declared that there is no slide.

Tucker, investigated that slide in 1984, and determined the active slide extends over the three lots to the west of the applicant's property and was caused by filling a coastal canyon to build Pacific Coast Highway. (Tucker, of file 1964) There is no disagreement that this landslide exists and that its edge is on the applicant's property. The applicant's geologist has mapped it, set up a fifty foot wide setback area, and has advised pouring bentonite into a trench along the landslide to confine the effects of the slide. The applicant has set back development four feet from the edge of this setback area, so that no development extends onto the active slide. The applicant proposes only a light replaceable staircase in the set back area.

The applicant's most recent geology reports show show no underlying layer of landslide debris. The earlier reports advise excavation and reconstruction of the fill slope and required that sewage disposal be located on the beach. The current report does not claim the fill is competent, but asserts that with the use of pilings the buildings would be safe, and that the sewage could be disposed of in seepage pits to the north of the structures.

The applicant has not had full review of these geology reports by Los Angeles County, but in addition to conceptual review, the applicant has submitted letters from the Engineer Facilities Department that concur with the most recent geology reports and state that there is no slide on this property.

#### Leachfields on the beach.

One fact that had great significance in the previous review of the project was that the geology report stated that it would be necessary to excavate the entire property to make it safe, and that the leachfield could not be located in the slide, but must be located on the beach. Since the nearest beach leachfield, approved in P 2312 (Pepperdine), but later reviewed in 5 84 137 (Stout), occupies the entire sandy beach and reduces the recreational value of nearby beach areas because of odors, the Commission could not approve another beach leachfield consistent with the recreation, hazard, or development policies of the Coastal Act.

The Commission notes that the high level of failure of beach front leachfields was cited in the Malibu Beach Sewer FIR, and in the hazard and public service sections of the background document to the Land Use Plan.

In this case, the applicant has included a letter from a consulting engineer that has been "reviewed by the undersigned for concurrence of items within their purview." The undersigned is Carl I. Blum, the Assistant Deputy Director of the Land Development Division of the Los Angeles County Department of public works. According to the letter:

Sewage disposal... a preliminary Private Disposal system layout ... [was] approved by the Department of Health Services excluding an evaluation of geological problems. The feasibility of a PDS from a geological stand point was evaluated in the Geo System report dated 3.4.86 and deemed to be acceptable. That same report was revised by the Department of Public Works and approved as demonstrating the

basic feasibility of Tract 44993... approval does not preclude... DPW  
...asking for additional geology... data.

landslides. No known landslides exist which would alter the design  
of Tract 44993.....

The geology report states:

Seepage pits may be constructed between the road and a break in  
slope provided the space meets the Los Angeles County Health  
Department "Daylight" criteria. The soil and beach sand provides  
adequate permeability to percolate sewage effluent. In accordance  
with Los Angeles County Regulations, seepage pits must be a minimum  
of 8 feet from piles and 15 horizontal feet to a descending slope  
face.

As an alternative to seepage pits, leach fields may be utilized  
on the beach beach area of the site. There is an adequate thickness  
of permeable beach above the mean high tide level to facilitate  
leach fields to percolate sewage effluent.

It is the opinion of this firm that the long term sustained use  
of a private sewage disposal system will not have a significant  
effect on the stability of the subject property or of off-site  
property. There are no known groundwater bodies affected by the  
proposed disposal system. [Gensystems GS86 143R]

The Commission, to approve the project, must ask whether the feasible private  
disposal system will eliminate sandy beach, be subject to wave hazard, or  
otherwise interfere with use and enjoyment of public property.

The applicant asserts that there will be no beach level leach field. He  
asserts seepage pits have been approved in the fill slope on the property to  
the east, for Young and Golling, and the geology reports for both this  
property and Young and Golling are now identical. While the applicant only  
has conceptual approval for the seepage pits, Young and Golling have received  
a grading permit, and have commenced construction of seepage pits.

The Commission notes that it did not face this negative evidence in approving  
the project on the adjacent lot to the east, 5 85 299 (Young and Golling), but  
the Commission finds that it can accept the most recent report with respect to  
stability. The Commission also notes that in fact, the adjacent owner  
excavated from beach level and stockpiled sand and fill dirt in the surf  
zone. The present applicant asserts that such construction methods are not  
necessary. The Commission has imposed a condition controlling the  
construction methods and requiring that the project include no beach  
leachfield.

If the applicant can provide approved working drawings for seepage pits that  
conform to the Los Angeles County Plumbing Code, and can agree that approval  
of this project is only possible if construction of the structure and design

of the septic system can proceed as represented by the applicant, the commission can approve this project. The Commission notes that if the leachfields were on the beach the project would not conform to important policies of the Coastal Act and of the Land Use Plan (development on the beach, reduction in recreational opportunities) and therefore would not be approved.

The Commission further finds that the project is located in an area subject to wave attack and geologic instability, and the Commission's approval is based on the applicant's representations with respect to the safety and stability of development. Therefore the Commission can only approve the development if the applicant assumes the risk of development. If at a later time, the applicant demonstrates that the hazards identified in this report were incorrectly identified, the applicant may apply for an amendment to remove the condition for an assumption of risk.

The Commission finds that the applicant has demonstrated geologic stability and has provided substantial evidence that it will be possible to construct without a leachfield on the beach or other damage to the beach environment. As conditioned, the development is consistent with section 30253 of the Coastal Act and the policies adopted to carry this out.

b. Visual Impact

This development represents a conversion from an open beach to one that is backed by development. It will substitute a wall of development along a public road where there is now an ocean view. The open beach will appear smaller because the condominiums will extend 63 feet or more above the sand level, about half the width of a summer beach, making the beach appear narrower. At the moment the beach is an isolated beach, there is no development next to it. Beach visitors interviewed commented that they had "found" the beach and that it was "isolated." A narrow beach, backed by a row of ten condominiums will not be "isolated."

In 5 RR 299 (Young and Golling) the Commission examined this same set of facts and found that the applicant could mitigate the impacts by an aggressive beach access program. The Commission found that the visual impacts were impacts on access, because they reduced the ability of the public to use the areas of the beach and bluff that were tidelands and that were subject to customary use, and changed the quality of the experience. The Commission found that even if it was still possible to reach the waterline the project converted the open beach to a developed beach.

Young and Golling, as part of their project, offered to keep this beach open by accepting this maintenance as part of the obligations of condominium ownership, and to ensure, either through participation in a cooperative program to open the State Beach, or by providing vertical access, that public use of the beach was maintained and not reduced as a result of their development. The applicant does not propose to open the beach or the vertical accessway.

Recent court decisions limit the ability of the Commission to allow a visual impact and to mitigate it with another program such as an access dedication. Therefore the visual impact permitted in Young and Golling cannot be approved under the identical rationale of an aggressive access program.

Section 30251 requires the Commission to protect natural landforms and to protect existing views.

#### Section 30251

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

The land use plan carries out this policy with several policies relating to bluffs and open beaches.

Some of the policies include qualitative standards, where the decision maker is required to look at the visual environment, the existing views and preserve them.

P24 Design public recreation facilities to minimize the impact on neighboring communities. Similarly, design new land divisions to minimize impacts of residential use on neighboring recreational land. (emphasis added)

P125 New development shall be sited and designed to protect public views from ICP designated scenic highways to and along the shoreline and to scenic coastal areas, including public parklands. Where physically and economically feasible, development on sloped terrain should be set below road grade.

P128 In addition to that required for safety, further bluff setbacks may be required for oceanfront structures to minimize or avoid impacts on public views from the beach. Blufftop structures should be set back from the bluff edge sufficiently far to insure that the structure does not infringe on views (emphasis added) from the beach except in areas where existing structures on both sides of the proposed structure already impact public views from the beach. In such cases, the new structure should be located no closer to the bluff's edge than the adjacent structures.

- P129 Structures should be designed and located so as to create an attractive appearance and harmonious relationship with the surrounding environment.
- P130 In highly scenic areas and along scenic highways, new development (including buildings, fences, paved areas, signs, and landscaping) shall:
- be sited and designed to protect views to and along the ocean and to and along other scenic features, as defined and identified in the Malibu LCP.
  - minimize the alteration of natural landforms.
  - be landscaped to conceal raw cut slopes.
  - be visually compatible with and subordinate to the character of its setting.
  - be sited so as not to significantly intrude into the skyline as seen from public viewing places.
- P133 Encourage the use of architectural design for new construction which reflects the unique visual and environmental character of the Malibu Coastal Zone. At the same time, encourage within the design idiom sufficient diversity in the design character (i.e., scale, height, density, etc.) so that visual monotony does not result. Some differentiation among structures should be encouraged to promote the establishment of a limited number of visual landmarks, except in highly scenic areas where new development should be subordinate to the character of its setting.
- P134 Structures shall be sited to conform to the natural topography, as feasible. Massive grading and reconfiguration of the site shall be discouraged.

The project has an enormous visual impact because there is only one other structure on this beach right now for 1400 feet. Other standards contain policies include measurable standards for bulk and height.

P138b Buildings located outside of the Malibu Civic Center shall not exceed three (3) stories in height, or 35 feet above the existing grade, whichever is less.

P138c Buildings located on the ocean side of and fronting Pacific Coast Highway shall occupy no more than 80% of the lineal frontage of the site. In the case of Planned Developments which occupy more than one parcel, a structure may occupy 100% of the lineal frontage of any parcel, provided that the 20% open area of the overall project is incorporated elsewhere on the highway frontage of the development project.

This development does not conform to the measurable standards developed in the IUP to reduce visual impact, because it is a four level structure. One corner of the structure extends 36 feet above existing grade, but most of the structure is less than 35 feet above existing grade. It conforms to the eighty percent rule, does not intrude in the line of sight from Pacific Coast Highway, and does not extend more than 36 feet above the existing natural grade. The Commission found in 5 87 576 (Miser and Cooper) that a story, for purposes of the height limit was any level of the property, including, mezzanines basements and parking levels. Therefore the Commission imposes condition 8 that reduces the scale of the building to three stories, no greater than the scale of other buildings approved by the Commission.

Whether or not the project is approvable for other reasons, the visual impacts of the structure are severe. It interrupts an existing panoramic view from the frontage road and from bluff top paths, it is not subordinate to its setting, because the buildings are higher than the bluffs, and will supplant the bluffs in the visual field from the beach. It will necessarily occupy a significant fraction of the view shed, extend into the view from Pacific Coast highway and eliminate the current rural beach backdrop of the bluff face. It is this visual impact that was mitigated by an access condition in Young and Golling. The view that is being interrupted is being replaced, incidentally by the replacement of the highway easement with the beach access easement and requiring a way to get to the beach from the highway. The public can still get to the view over the Corral beach cove, by walking to and along the beach over the accessways dedicated to preserve existing foot access.

In order to conform to the bluff face standards of the IUP, the development is now set farther back on the bluffs. They will loom over the beach less than the adjacent project, Young and Golling, but will be commensurately higher over the beach, the finished roof of the top of the mezzanine level will be at elevation 73, 60 feet above the beach, 39 feet above the frontage road, and level with the pavement of Pacific Coast Highway.

This residential development will convert an open beach from an undeveloped wilderness appearance to that of a suburban residential neighborhood.

The impacts on visual quality of development, when development changes from open land to developed land are significant to a large number of residents of the State. Available studies show that this change in perception affects users' perceptions of the nature and value of the recreational experience. These studies are quoted at length in another report on this agenda, 5-87-588 (Plesko). They conclude that development reduces the recreational value of an area by changing the visual quality. The conclusion is not new, but in the studies cited in Plesko, and found in the substantive file documents, the conclusion is based on numerous surveys and interviews of visitors to recreational areas.

The studies include: "The Assessment of Environmental Aesthetics in Scenic Highway Corridors" (Evans and Wood) that stated "even slight changes in

adjacent roadside development affect significant changes in perception of roadside quality. People felt that with increasing human intrusion the corridor became proportionately more worthless, useless, cluttered, unpleasant, ugly, and drab. Increased development also reduced ratings of scenic quality and preferences but in a non linear fashion. Both sympathetic and unsympathetic development were equally potent in depressing preference and scenic quality."

Visitors to this beach were attracted by the present undeveloped nature of the beach. Development would significantly reduce the recreational value of the use of public tidelands. This is addressed more fully below in the access section, but on an undeveloped beach, the issues of access and visual quality are interrelated.

The development on this beach will significantly change the visual and therefore the recreational experience. To the adjacent property, this change was mitigated by an access conditions.

The Commission finds that the changes in the visual nature of the beach are irrevocable and cannot be mitigated. However, the reduction in height will reduce the impacts and bring the development into conformance with the height and bulk standards of the Land Use Plan.

#### c. Public Shoreline Access and Recreation

The Coastal Act contains strong policy provisions in Sections 30210 and 30212, requiring public access to and along the shore. However, the requirements for the provision of access for the public to California's shoreline is not limited to the Coastal Act. The California Constitution in Article X, Section 4 provides:

No individual, partnership, or corporation claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this state shall be permitted to exclude the right of way to such water whenever it is required for any public purposes. . . . and the legislature shall enact such law as will give the most liberal construction to this provision so that access to the navigable waters of this state shall always be attainable for the people thereof. (Emphasis added).

The Coastal Act contains more specific policies regarding the provision of public access to the state's shoreline. Coastal Act Section 30210 as set forth below, stipulates that in meeting the requirements of Section 4 Article X of the Constitution maximum public access, conspicuously posted shall be provided subject to certain conditions. Section 30211 requires that no development shall interfere with access. They state:

Section 30210

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211

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

Other sections require that public facilities, be distributed throughout an area, lower cost visitor and recreational facilities provided. Developments providing public recreational opportunities are preferred and

Section 30252

The location and amount of new development should maintain and enhance public access to the coast by ( ... by (6) assuring the that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of on-site recreational facilities to serve the new development. (emphasis added)

Section 30530

There is a need to coordinate public access programs so as to minimize costly duplication and conflicts and to assure that, to the extent practicable, different access programs complement one another and are incorporated within an integrated system of public accessways to and along the state's coastline. (emphasis added)

All projects requiring a Coastal Development Permit must be reviewed for compliance with the public access provisions of Chapter 3 of the Coastal Act. Based on the access, recreation and development sections of the coastal act the Commission has required public access to and along the shoreline in new development projects and has required design changes in other projects to reduce interference with access to and along the shoreline.

1. Interference With Access

Section 30211 of the Coastal Act and section 30221 require that development shall not interfere with access, and that lands, including beaches suitable for recreation shall not be used for other purposes. This project will reduce existing public access to and along the shoreline.

This entire property is now used by the public for recreation. People drive and park on the highway easement, use the top of the bluff for viewing and photography, gain access to the beach down two established trails, picnic, sheltered by the toe of the bluff, and walk and fish in the area of the sand beach between the wet sand and the toe of the bluff. The development represents a conversion of an open beach and bluff face to development. If the applicant is not correct, and the development requires a revetment, the beach will be occupied entirely by the revetments.

While the Commission has routinely allowed in fill on beaches where other owners with similarly situated properties had development, it has been the Commission's policy to retain beaches for recreational use and to deny development that occupied lands where access normally occurred. As cited in the previous action on this property, 5 87 706, the Commission has routinely denied beach subdivisions in Malibu, except where in two instances, developers promised an aggressive program to open nearby public beaches. In neither of those cases was it possible for the developer to provide access because there was no agreement between the land owner, State Parks and the maintaining agency, County Beaches and Harbors. This year, Los Angeles County Department of Beaches and Harbors has signed a beach maintenance agreement to maintain Dan Blocker State Beach and is in the process of developing a beach improvement plan to open that beach. It will cost the public about \$305,000 to open Dan Blocker State Beach. Dan Blocker State Beach, 400 feet to the east is not open for use and is fenced. El Sol State Beach, the other beach subject to maintenance agreements was the other beach subject to an in lieu fee arrangement. In that case, Jackson, the developer paid an in lieu fee. This amount, \$9,000, is being applied by the County to the cost of opening El Sol which is \$400,000 plus application fees. (conversation Gregory Woodell, planner County Beaches and Harbors.) In spite of the fee, El Sol State Beach is not open for use and is fenced.

In both of those cases it was evident, after experiment, that a private developer could not open a commensurate beach area to mitigate the conversion of a of beach to private use.

2. Interference with Public Prescriptive Rights

Beach subdivisions are particularly difficult to approve because the land that is being subdivided by the applicants may be actually state lands, or subject to other public rights.

Section 30212 (c) reflects the state's long term public interest in maintaining those rights in subdivisions

Section 30212.

(c) Nothing in this division shall restrict public access nor shall it excuse the performance of duties and responsibilities of public agencies which are required by Sections 66478.1 to 66478.14, inclusive, of the Government Code and by Section 4 of Article X of the California Constitution.

The applicants, like other beach property owners own their property as far as the Mean High Tide line, beyond which starts public land. The nature of private ownership in this area raises two kinds of uncertainty inherent in beach property. The first is that the amount of land that the applicant owns is not constant, but moves with shoreline processes. Secondly, the Commission believes that there are other public rights including prescriptive rights of access.

The physical uncertainty of the location of mean high tide has been investigated by the Commission many times, most recently in the case of Van Ruskirk, 6 87 617, 5 87762 (Monkarsh) and 5 87 321 (Black Tor), adopted by reference. In these cases the Commission reviewed the dynamic nature of the tidal boundary, and the difficulty of evaluating development located on the beach as if the property lines were fixed.

The last known official survey of the beach near the applicants' property was conducted in 1928; this was the survey relied upon by the State Lands Commission in making the determination, referenced above, that the MHTL (and therefore the boundary between private and public property) was between 30 and 110 feet away from the seaward edge of the previously proposed structure, which was sixteen feet seaward of the presently proposed structures.

The Commission notes that three different visits produced differing estimations of the location of the detritus line and the interface between the sand and the face of the bluff. Development found to be "off the beach" on the basis of one survey could be on the beach on the next, interfering with access.

The property is on land that has been subject to public rights, including ownership, use and easements. The bluff is a publicly constructed fill over lands subject to periodic flooding, a beach. It was entirely in public ownership until it was no longer needed as a highway, and even this proposed development is only possible because Caltrans abandoned a slope easement to allow construction of the seepage pits. While it was in public ownership the easement was used for beach parking. Part of this permit request included that approval of the abandonment of the parking easement.

The bluff and beach are subject to prescriptive rights. Both areas have long been used by the public. There were trails over the bluff evident in aerials shot in 1972. The highway parking has been used to park cars to get to the beach and to surf (align point); it has remained in continuous use since the main highway was relocated in 1946, according to the best recollections of surfers. There are two pathways down the bluff, even though the owners have

attempted to fence the land off. There are two holes in the fence at the top of the pathways. The pathway that appears on the topographic map will only be partially blocked by structures and lies for the most part on the geologic setback on the west end of the property, but the other pathway near the eastern end of the property, will be blocked by the proposed condominiums. The public uses the top of the bluff for viewing. They park their cars, get out, and walk the bluff top. This will be blocked. The public uses the toe of the bluffs for shelter and picnicking. This area will be necessarily restricted by the construction of the structures.

Unlike some other "private" beaches in Malibu, there are no organized private security guards patrolling Solstice Beach. The fences at the highway are casually ignored. In addition, local residents commonly use the beach, where, as noted above, they meet the visitors whose behavior is occasionally a cause of complaints.

In addition to climbing through the hole in the fence the public can reach this beach by walking along the beach from Dan Blocker, from Escondido, at low tide, from Solstice Creek, and at low tide, from Corral State Beach. Access from Solstice Creek, where a feeder trail to the trail system leads to the beach is possible except at high tide. During low tide, it is possible to enter the beach at Escondido Creek, and walk around Laligno Point, past the private development at Laligno Shores and reach this beach. During much of the year the rocks placed at the south end of Corral State Beach block lateral access.

Most of this beach is a wet sand beach. The beach is used by surfers, sun bathers, fishermen, frisbee players and walkers. On a site visit on January 20, 1987, there was a family using the beach. The family was on vacation from Utah with six children. They were using the full extent of the beach, sitting with their backs to the bluff face, which had been cut by a recent storm to near vertical. They had been attracted, they said, because it was "isolated", by the abundance of driftwood and midsized rocks, which had been driven to the toe of the bluff, and because a harbor seal was diving around the rocks immediately offshore. The family was under the impression that most of the beach was public, because the sand was wet, but had been told by "a man" that "the owner wouldn't mind if they took the kids down there." Corral Beach, which is publicly owned and open is less than a mile away, but less attractive because it is closer to traffic and large condominiums.

In approving the development on adjacent property the Commission received testimony that there were conflicts between owners of the Laligno Shore development to the west, and visitors to the State Park property. According to neighbors, young men frequently entered the undeveloped portion of the beach and ranged up and down the sand along state tidelands and the other areas of the sandy beach, walking in front of neighboring houses. Complaints centered mainly on the dress and behavior standards of the visitors, but some owners were of the opinion that the central conflict was the presence of the public. Such a debate could not take place unless members of the public, in fact were using the beach openly and frequently.

The Commission finds that there is ample evidence that there is use on this beach, and across and along the bluff both vertically and horizontally. Lateral access and viewing along the existing highway easement and along the top of the bluff would no longer be possible because the view would be blocked and because the development includes conversion of this public easement area to private use for driveways and septic systems. Finally, the residents and guests of the condominiums would add to the number of people on the beach, changing its isolated quality and increasing the competition for public tidelands. In the winter this beach is 200 feet long and forty feet wide, or 8000 sq. feet in the private area and about 1000 square feet in the area below high tide. During the summer it is twice that. An appropriate user density for a public beach is one user per 300 square feet then this beach by 7000 standards would accommodate 26 visitors on the dry sand area and three on the wet sand. If there were only three people from each unit on the beach, they would occupy a third of the beach capacity and effectively, on a beach backed by private houses, force members of the public who had used this beach in the past to find other nearby public beaches or crowd onto the wet sand, and over crowd Dan Blocker.

Because there was not any private use of the beach, the visitors were able to range over the beach in its entirety without interference, or needing to determine the exact line of public and private. With a structure on the lot, this line becomes more relevant to protect the privacy and security of the owners. It is realistic to assume that the presence of the houses will reduce the area of the beach that is usable by the public, simply using these crowding standards.

While the tourists interviewed on Jan 20 1988 claimed that they had received permission to use the beach, permission seems to have been granted by an unidentified person who accurately predicted that there would be no interference with people using the beach. The Commission notes that the lack of conflict with property owners is in part because there are no developed units on the property, and no concern about theft or damage to property.

The proposed development represents a major encroachment of residential development. On the adjacent property this encroachment was mitigated by an aggressive beach access program. The land use plan permits development where there is evidence of public use, but requires that the access be replaced.

- P55b Where evidence of public prescriptive rights or implied dedication (historic public use) is found in reviewing a coastal permit application, an offer of dedication of the accessway or an equivalent public access easement to protect the types, intensity, and areas subject to prescriptive rights shall be required as a condition of permit approval. Development may be sited in an area of historic public use only if equivalent type, intensity and area of replacement public access is provided on or within 100 feet of the project parcel.

The Commission notes that a specific IUP policy addresses public ways used to support access.

P55d The County of Los Angeles shall not close, abandon, or render unusable by the public any existing accessway, either vertical or lateral, which is owned or operated by the County. Any accessway which the County or other managing agency or organization determines cannot be maintained in a condition suitable for public use shall be offered to another public agency or private association, acceptable to the Executive Director of the Coastal Commission.

According to this plan policy, the abandonment of the right of Way along PCH must be denied.

In this case the Commission finds, that the project interferes with access along the bluff and across the bluff at two established pathways and innumerable pioneered scrambleways. The Commission finds that the interference is now minimized because the buildings are set back from the sand area, if access to the sand area, now used informally is guaranteed by right and if one accessway down the bluff is similarly guaranteed at least until an accessway near by can be opened.

The Commission further notes that if and when two nearby accessways are in fact open and in use, the applicant may apply for an amendment to have the vertical access removed, because the LUP limits the number of vertical accessways along this stretch of beach to one every 2000 feet.

As conditioned this development does interfere with access, but the interference is mitigated by guaranteeing access on those portions of the property not occupied by single family houses.

### 3. Provision of Access

New development projects are required in sections 30210 and 30212 to provide public access. In the Certified Land Use Plan, Los Angeles County requires public shoreline access, both lateral, and we will see below, vertical access as a condition of development of shoreline residential properties. Policy 52, and 52b. If this development were otherwise approvable it would be required to provide lateral and vertical access in accordance with the Land Use Plan, which requires the replacement of all existing accessways and development of accessways at certain intervals according to plan standards. On this beach there are to be two vertical accessways.

Latigo/ Solstice has been a high priority recreation area because it represents one of the last extensive strips of undeveloped beach. Although the whole strip appeared on a list, the residential lots were not acquired for the same reason they were not designated commercial—they were narrow, they accommodate little parking and they are expensive for the extremely small amount of developable land actually present. In the 1976 Coastal Acquisition study, the entire Latigo Shores/Solstice Beach was suggested for purchase. The easterly portion, Dan Blocker State Beach was purchased. Recently the Coastal Conservancy purchased two of the three unstable parcels directly to the west. Of the four remaining parcels, one has a landslide, this parcel is proposed for condominiums, Young and Golling have a permit and the parcel to the south has no application pending. This development of residential uses is

proceeding, but in spite of purchases by public agencies, no increased, legal and supervised public use has yet begun.

The applicant asserts that the existence of these publicly owned properties make it possible for the three private properties to build out with no effect on access. The Commission cannot find that this is the case because the private lots are subdividing and developing and the accessways have not been accepted or opened. By permitting these private home to build out, before any commitment to public use occurs, the Commission is accepting the privatization of this beach.

There are several publicly owned, potential vertical accessways in the immediate vicinity. None are opened.

<u>Coastal Permit No.</u>	<u>Street Address/Malibu</u>	<u>Width of Access</u>	<u>Open</u>
5 85-299	26448 Pacific Coast Highway	10'	No
5 84-137	Latigo Shores Drive	10'	No
<b>ACQUISITIONS OTHER THAN PERMITS</b>			
	Latigo shores Coastal Conservancy	60	No
	Dan Blocker State Beach	500	No

Dan Blocker State Beach is located 400 feet east of this project. Although it is subject to uncontrolled use by the public, by 1988 it had not been opened because it did not have a General Plan and there is no budget to keep it open. Without a General Plan, no further personnel years may be allocated to it. A recent County/State agreement will allow development of this beach, but as of this time, opening was awaiting development funds.

Young and Golling, the adjacent property owners proposed a cooperative agreement with the four other potential developers to open and maintain Dan Blocker. They failed. As an alternative they have agreed to open the vertical accessway and to maintain the beach adjacent to their own property, as part of a cooperative endeavor with other homeowners groups. The access has been recorded but the beach is not opened because the requirement is to open the beach at the end of the construction process.

A condominium conversion 300 feet to the west, Stout, now Malibu Cedars, has agreed to provide a 10 foot wide access way from Pacific Coast Highway to the beach. They propose to use the highway stub that passes the applicant's property to do this. It is not yet open.

In 1986, the California Coastal Conservancy purchased a 215 foot wide piece of property 100 feet to the west of this property, adjacent to Stout. It is suitable for parking and other upland support. But this property has no development funds, and no maintenance agreement. Because of the active landslide, the State may find it difficult to arrange for the county to maintain this area. again this parcel allows access, but it is not open, maintained or supervised. This parcel is not yet open.

Therefore the Commission finds that without vertical and lateral dedications, this project will block existing access and will not provide access.

In addition to blocking existing access, this project will have indirect burdens on public access. This project, as a beach subdivision increases the intensification of beach land, and will occupy publicly owned land for driveway. The occupants of three condominiums who have bought a private beach will be competing with the public for use of tidelands, in which the ownerships and the boundaries are unclear. Traffic and other impacts associated with development are exacerbated with beach development, and by permitting the owner of an informally used parcel to develop the Commission reduces available access without the provision of additional access.

It is this burden on the public use of the public lands that cannot be mitigated without the dedication of access.

In addition to direct competition, the privatization of lands next to beaches reduces the public's ability to use state tidelands. In a recent study on visual carrying capacity, "Projecting the Visual Carrying Capacity of Recreation Areas" (Nieman and Futrell), it was shown that "individuals prefer less crowded areas for their recreational experiences...individuals are disturbed by what they perceive as crowded conditions in outdoor recreation areas. This negatively affects their enjoyment level and, thus, the perceptual or visual carrying capacity of the recreation area is decreased or surpassed." It was also shown that "as the incidence of man made elements in the landscape increased the percentage of very disturbed responses increased and vice versa for the non disturbed responses." In other articles, summarized in the findings on Plesko, similar conclusions are drawn. Because this is a conversion of a totally open beach to a developed beach, these findings are particularly applicable.

Research has shown that a major deterrent to public use of recreational areas and similar public recreation areas and facilities is a perception by the public that the areas involved are private. The proposed development, along with the other similar development allowed by the approved land Use Plan, will foster a sense of privatization in at least four ways:

a. Because this development will replace a beach that appears undeveloped, by one backed three houses, 63 feet above the beach, a greatly increased level of private residential development, there will be a substantially strengthened perception that the area is a private residential area. This will apply not only to the area seaward of the development but also to recently purchased, public lands and tidelands adjacent to the development.

As noted in The Cumulative Impacts of Shorezone Development at Lake Tahoe (Phillips Brandt Reddick McDonald and Greife), "private backshore ownership often presents a physical or psychological barrier to (public users') use of a shore area, by implying private controls over the foreshore and nearshore, by

implying private control over the shoreline, concentrations of private structures may act as a psychological deterrent to public use of the foreshore and nearshore." One study of areas of this type, "The Pressure for Shoreline Development: Spatial Concepts in Review" (Harrison), noted on this point that spread development tends to preempt public access, partly due to the 'feeling of trespass' engendered by the predominance of private development.

The Malibu/Santa Monica Mountains Land Use Plan certified by the Commission on December 11, 1986 will allow buildout of 6,582 new residential dwelling units in addition to the approximately 6,000 dwelling units now existing in the planning area. The State Department of Finance estimates a figure of 2.62 persons per household for the year 2000 in Los Angeles County, which will result in an addition of approximately 17,245 persons in the Malibu-Santa Monica Mountains area. The land use plan provides for the development of 998 new dwelling units between the first public road and the sea. The land use plan estimates that these 998 dwelling units will put nine vehicles trips per day on the crowded coastal access routes. This estimate is probably too low. The commission further notes that the number of new units created by any individual subdivision is probably three or fewer. The cumulative impacts of small subdivisions of three units or less will be to commit the rest of the 14 miles of privately owned beach in Malibu to private use, with no opportunity to acquire access. If this project could not provide vertical and lateral access, it must be denied.

Because the public has used the bluffs and the entire beach, the Commission finds that the proposed development would, by physically reducing access to and use of the sandy beach, have an adverse impact both individually and cumulatively on public rights to use the beach both now, based on established historic use, and in the future, if the public/private boundary shifts landward. The Commission notes that the other adverse cumulative effects will also change the quality of the beach experience on this particular beach and will reduce the amount of usable beach.

The Commission finds, therefore, that the proposed development directly reduces public rights of access along the shoreline inconsistent with sections 30210, 30211, 30212, and 30214 of the Coastal Act, and must be denied.

d. Environmentally Sensitive Habitat Areas

Section 30240 of the Coastal Act requires as follows:

Section 30240

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and

designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.

The applicants' property is located adjacent to an Environmentally Sensitive Habitat Area on State Lands. This is a relatively undisturbed intertidal area and an offshore area marked by rocks and by a kelp bed.

Policy 89 requires drainage and erosion control plans be approved prior to commencement of grading for new development in TSHAs and other areas of high potential erosion hazard. Other policies provide as follows:

- P88 In TSHAs and Significant Watersheds and in other areas of high potential erosion hazard, require site design to minimize grading activities and reduce vegetation removal based on the following guidelines:
- P97 Designate as environmentally sensitive those marine and beach habitats shown on Figure 6.
- P98 Permitted land uses or developments shall have no significant adverse impacts on sensitive marine and beach habitat areas.
- P99 Development in areas adjacent to sensitive marine and beach habitats shall be sited and designed to prevent impacts that could significantly degrade the environmentally sensitive habitats. All uses shall be compatible with the maintenance of biological productivity of such areas.
- P103 For proposed development adjacent to or near sensitive marine or beach habitats, the applicant shall evaluate the potential for significant impacts on sensitive marine or beach habitats. When it is determined that significant impacts may occur, the applicant shall be required to provide a report prepared by a qualified professional with expertise in marine or beach biology which provides: (a) mitigation measures which protect resources and comply with the policies of the environmentally sensitive habitats components, and (b) a program for monitoring and evaluating the effectiveness of mitigation measures. An appropriate program shall be adopted to inspect the adequacy of the applicant's mitigation measures.
- P104 When feasible, the restoration of damage to habitat(s) shall be required as a condition of permit approval.

The development as proposed by the applicant has the following potential impacts on these intertidal resources: 1) impacts during construction, 2) reduction of intertidal bird habitat due to increased traffic by foot and increased number of dogs and cats, 3) run off from the project, and occupation of the intertidal areas by leachfields and revetments.

The Commission finds that beach level development can be removed by a condition and construction practices can be similarly controlled, but that there is no way to mitigate the impacts of increased permanent population of humans and domestic pets on the beach which will result from the proposed multi family development. The impacts on seals and on shorebirds of such traffic cannot be reduced.

The most noticeable environmental effect of the adjacent project has been the effect of siltation during construction. The adjacent owner removed all the dirt in the bluff in order to construct his project. It was not on the bluff as shown in the illustrations, but supplanted the bluff. In endeavoring to drill through the fill, which includes broken up sections of concrete highway base, the adjoining neighbor stock applied sand on the beach and used it for coffer dams. The result was siltation.

The developer of this project states that construction can be carried out differently. The Commission has imposed conditions to assure that this care takes place.

The Commission finds that the project can be conditioned to reduce impact on shoreline marine resources if the project had been approvable by other standards. And as conditioned, the proposed development inconsistent with Section 30240 of the Coastal Act.

## 2. Cumulative Impacts of Development

The most difficult test in Section 30250 of the Coastal Act is determining whether or not a new subdivision will, in conjunction with other subdivisions, have adverse cumulative impacts that will overburden the resources and infrastructure of the Malibu/Santa Monica Mountains plan area. Residential subdivisions in the Santa Monica Mountains will have cumulative impacts on, among other things, natural vegetative cover, wildlife habitat, and limited road capacity on Pacific Coast Highway and the cross mountain roads, with associated impacts on the ability of the general public to reach the recreational resources of the Malibu beaches and mountains.

Residential subdivisions in the Santa Monica Mountains recreation area that are also located on the beach, eliminate the possibility of alternative uses of beach front property, and increase competition for limited parking, space on the beach front, traffic and use of nearby public beaches. In addition, cumulatively the loss of pathways to the beach and of open beaches has reduced the public's ability to get to the beach and use a beach that has been subject to historic use. These impacts will be mitigated by the dedication of access. However, the direct and indirect impacts on the highway, the demand for services and other impacts on the mountains as a recreation area must be addressed separately.

The Commission notes that this land was designated for visitor serving commercial in early drafts of the plan, a designation that was changed because of 1) incompatibility with nearby residences, 2) insufficient space for

parking support and sewage disposal. The cumulative effect of 1400 feet of development redirected to private uses will be to eliminate most safe public parking now serving the nearby publicly owned beach, Dan Blocker State Beach, and remove the potential of the public using this beach.

Section 30105.5 of the Coastal Act defines the term "cumulatively", as it is used in Section 30250(a), to mean that:

the incremental effects of an individual project shall be reviewed in conjunction with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

While in the interim guidelines, the Commission distinguished between developed and undeveloped portions of the beach, in the IUP, the entire coastal terrace was designated an existing developed area, and therefore does not require a analysis as a rural land division.

For the purposes of this ICP, the coastal terrace shall be considered to be an existing developed area, as mapped in Attachment 1. The rural villages, significant watersheds, and other mountain areas shall be considered to be outside the developed area.

As an example, each house built in the area requires a significant reduction in vegetative cover for fire protection purposes, which impacts the water quality in streams and reduces habitat available for native species. Furthermore, each residential unit developed in the area will use some of the remaining capacity of Pacific Coast Highway, which is nearing service level F on peak weekends.

The commission notes that beach subdivisions also reduce access opportunities by converting lands, such as this one to private residential use.

Even though fewer than 50% of the parcels in the market area of Malibu were developed, the Commission has in the past allowed land divisions in the Santa Monica Mountains because of the operation of the Transfer of Development Credit (TDC) program which assured that there would be no net increase in undeveloped parcels. The TDC program also worked to consolidate future development into developed areas, notably the coastal terrace.

Most recently, the Commission has found that additional subdivisions in the Santa Monica Mountains are consistent with the cumulative impact requirements of Section 30250(a) only if there is a program that assures there will be no net increase in the number of undeveloped parcels, and that by the creation of an appropriately located development, nonconforming lots in sensitive areas have been retired. In 5 86 592 (Central Diagnostic Lab), the Commission allowed a rural land division that otherwise conformed to the policies of Chapter 3 and of the land use plan to mitigate the inconsistency of the subdivision with the 50% rule. In 5 83 591A4 (Caldwell), the Commission examined the cumulative impacts of subdivisions and multiple units on the coastal terrace, and determined that the cumulative impacts of these developments were felt in traffic, beach access, water quality and resources

and therefore, subdivisions and multiple unit developments on the terrace were required to be mitigated as well. The Commission noted the limited capacity of the resource as a whole, noted the relative advantage falling to landowners on the terrace, the developed area, and determined that the higher densities allowed in the terrace were only compatible with Chapter 3 if they were mitigated by the retirement of lots hereafter designated with lower densities.

As mentioned above, the recently certified Malibu/Santa Monica Mountains Land Use Plan (LUP) does not contain the TDC Program as a means of mitigating the cumulative impacts of the potential buildout of all existing lots. Instead the LUP contains in Policy 272, six alternative mitigation techniques to prevent the buildout of non conforming lots, lots in small lot subdivisions and lots of less than 20 acres in designated Significant Watersheds. These programs allow new land divisions and multiple unit projects are consistent with the requirements of Section 30250(a). The six basic components of Policy 272 are as follows:

1. Application of a residential building cap of 6,582 new units, or which no more than 1,200 units shall be in designated small lot subdivisions;
2. Acquisition, by outright public purchase, non conforming lots and lots in designated Significant Watersheds through the continuing acquisition programs of several agencies;
3. Offering tax delinquent lots to adjoining lot owners, under attractive terms which would provide incentives for acquisition and consolidation into larger conforming parcels;
4. Offering incentives to owners of contiguous legally divided lots to voluntarily consolidate the lots into larger single holdings;
5. Empowering the County Community Redevelopment Agency to redevelop areas in order to achieve more appropriate lot and subdivision configurations and development sites;
6. Providing opportunities to owners of non conforming lots to exchange their property for surplus governmental properties in more suitable development areas inside and outside the Coastal Zone.

With respect to implementation of these programs, the Land Use Plan states:

- Each of the six mitigation programs defined above shall be implemented by development and adoption of enabling ordinances by Los Angeles County, submitted as part of the Phase III LCP. The redevelopment technique authority already exists in the County Community Development Commission and may be exercised on a project by project basis. The five other proposals will require the drafting of new local statutes.

Of the six program components listed above, five are intended to retire

non conforming or environmentally sensitive lots from future development. The sixth component simply establishes a maximum building cap on new residential development which must be applied in conjunction with one of the other program components.

Policy 272 essentially has two elements or goals to be achieved. The first is the recognition that Malibu and the Santa Monica Mountains has a limited infrastructure capacity (sewers, traffic, etc.), the second is to direct development away from nonconforming lots in small lot subdivisions and significant watersheds by retiring lots in these areas.

At its meeting of February 25, 1987, the Commission considered applications for land divisions (5 86 592, Central Diagnostic Labs), multi unit residential projects (5 86 951, Ehrman and Coombs) and amendments to remove or modify the TDC condition on approved permits (5 85 459A2, Ohanian and 5 86 299A2 & A3, Young and Golling) all of which raised the issue of cumulative impact mitigation. The Commission approved the permit and amendment requests with a revised special condition which required that cumulative impacts be mitigated through an alternative means of extinguishing development rights on existing residential building sites in the Malibu Coastal Zone.

The approved condition allows the applicant to choose one of several methods to extinguish development rights including those programs contained in the certified IUP or through continued voluntary participation in the TDC program. In approving these permit requests, the Commission found that none of the County's six mitigation programs contained in the IUP, including the residential building cap were "self implementing" and that mitigation was still required to offset the cumulative impacts created by land divisions and multi unit projects. The Commission found that the TDC program, or a similar technique remained a valid means of mitigating cumulative impacts in the interim period during which the County prepares its implementation program. Without some means of mitigation, the Commission would have no alternative but denial of such projects based on the provisions of Section 30250(a).

The intent of IUP Policy 272 is to extinguish development on nonconforming parcels in small lot subdivisions and significant watersheds by applying one of the five acquisition or retirement policies along with the building cap in order to mitigate the cumulative impacts associated with the potential buildout of the nonconforming lots.

In its previous action the Commission found that it could conditionally approve subdivisions in the Santa Monica Mountains pending completion of an approved implementation plan; however, this approach could delay the proposed development indefinitely. The result could be a "de facto" denial of land divisions and multi family projects until an acceptable program for implementing the IUP policies is developed.

The Commission therefore adopted an alternative to the original Transfer of Development Credit program. The new option that gives the applicant the option of deciding the means to mitigate the cumulative impacts of the proposed development by choosing one of the County's proposed programs to

extinguish development rights on certain lots (which may necessitate waiting until the County adopts an implementation program), another program which accomplishes the same objective or purchasing TDCs as originally required. In this case, the Commission finds it necessary to require the applicant to submit evidence that development rights have been extinguished on an applicable number of legally buildable lots using either one of the five lot retirement programs specified in the certified LUP or any other technique or program acceptable to the Executive Director including, but not limited to, participation in the TDC Program as a special condition of development.

The Commission finds that the proposed subdivision of three lots can be approved with a requirement for mitigation in the form of one of the five acquisition or retirement policies or an alternative technique which accomplishes the same objectives as the TDC condition. In this case, two TDC's are required.

As conditioned to participate in the TDC program and to provide access the proposed development consistent with Section 30250(a) of the Coastal Act.

C. Local Coastal Program Consistency

Section 30604(a) of the Coastal Act states in part:

(a) Prior to certification of the local coastal program, a coastal development permit shall be issued if the issuing agency, or the commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a local coastal program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200)...

The County of Los Angeles Board of Supervisors approved the Land Use Plan portion of the Malibu/Santa Monica Mountains LCP on December 28, 1982. In March of 1983, the Commission denied the Land Use Plan as submitted. Subsequently in January of 1985, and June of 1985, the Commission conducted hearings on Suggested Modifications. At its June 13, 1985 hearing, the Commission adopted extensive "Suggested Modifications" to the County's Land Use Plan. In November 1985, the Commission acted to approve a resubmitted land use plan for the County with Suggested Modifications. In December 1986, the Commission certified the resubmitted land use plan.

D. California Environmental Quality Act.

Section 13096(a) of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(i) of

CEQA prohibits a proposed development from being approved

if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment.

Previous sections of these findings contain extensive documentation of the significant adverse cumulative impacts the development as proposed would have on the environment of the Santa Monica mountains.

The land use plan also provides that :

P67 Any project or use which cannot mitigate significant adverse impacts as defined in the California Environmental Quality Act on sensitive environmental resources (as depicted on Figure 6) shall be denied.

and asserts in the general goals and objectives that in the intention is to follow the policy that is most protective of resources:

As demonstrated above, there are feasible alternatives that have not been presented in this project. The first alternative is the development of a duplex or single family house on the flat land between the roadway and the edge of the bluff.

Section 30105.5 of the Coastal Act defines the term "cumulatively," as it is used in Section 30250(a), to mean that

the incremental effects of an individual project shall be reviewed in conjunction with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

The Court of Appeal has consistently upheld the Commission's use of analysis of cumulative impacts as a basis for either denying or conditionally approving proposed development projects. The case of Coastal S.W. Dev. Corp. v. California Coastal Zone C. C. (1976) 55 Cal.App.3d 525, involved a legal challenge to a denial under Proposition 20 (which had no express requirement for consideration of cumulative impacts analogous to that in Section 30250(a)) of a proposed Holiday Inn near the mouth of the San Luis Rey River in San Diego County. The Commission based its denial in significant part on the finding that "the cumulative effect of this and other projects in the area could adversely affect the valuable wildlife habitat at the mouth of the San Luis Rey River." In upholding the Commission's reliance upon its analysis of the cumulative impact of the proposed development the court held that

careful consideration must be given to the cumulative effect of projects proposed to be undertaken...[, i.e.,] to...[a] single project in relation to the conditions then existing and to conditions that would inevitably or probably result from accelerating or setting in motion a trend productive of adverse impact upon environment and ecology. (Emphasis added.)

More recently, the court has expressly approved the imposition of access conditions as an appropriate method of mitigating the cumulative impacts of proposed development on access to the shoreline.

Provisions of the California Environmental Quality Act (CEQA) and its implementing regulations (CEQA Guidelines) to which the Commission is subject also mandate consideration of the cumulative impacts of a proposed development. Section 13096(a) of the Commission's regulations requires that the Commission's action on a permit application be supported "by written conclusions about the consistency of the application with Public Resources Code, Section...21000 and following,..." i.e., with the provisions of CEQA. Although this certification exempts the Commission from the obligation to prepare an Environmental Impact Report in connection with its permit actions, the Commission remains subject to CEQA's substantive standards of environmental review. One of these standards is the duty to consider cumulative impacts. The statutory basis for CEQA's requirement of cumulative impact analysis is PRC Section 21083(h). That section requires a finding of

significant effect on the environment if...the possible effects of a project are individually limited but cumulatively considerable.

The definition of "cumulative impact" contained in this provision and in Section 15355 of the CEQA Guidelines is substantially similar to that contained in Section 30105.5 of the Coastal Act. Section 15130(b)(3) of the CEQA Guidelines requires an analysis of cumulative impacts to be accompanied by an examination of

reasonable options for mitigating or avoiding any significant cumulative effects of a proposed project.

In emphasizing the importance of the evaluation of cumulative effects which CEQA requires to be performed, the Court of Appeal has said:

No one project may appear to cause a significant amount of adverse effects. However, without a mechanism for addressing the cumulative effects of individual projects, there could never be any awareness of or control over the speed and manner of...development. Without such control, piecemeal development would inevitably cause havoc in virtually every aspect of the...environment. (San Franciscans for Reasonable Growth v. City and County of San Francisco (1984) 151 Cal.App.3d 61.)

In this case the cumulative effect of the creation of additional units in a potentially hazardous area cannot be ignored. Where development has been permitted in wave hazard areas, there has been a cumulative loss of sand, a cumulative visual effect on the beaches, and a public commitment to dealing with the recurrent emergencies created by storms.

The Commission finds that as redesigned the project has significantly fewer cumulative impacts on views and access and may be approved if the loss of access opportunities is mitigated by the guarantee of a vertical access on one

portion of the lot and lateral access along the beach.

As conditioned to mitigate the cumulative impacts of subdivision in this location and to provide access and to limit the height of the building the proposed project is consistent with the requirements of the California Environmental Quality Act.

8031

Additional Substantive File Documents  
used in the preparation of Commission findings

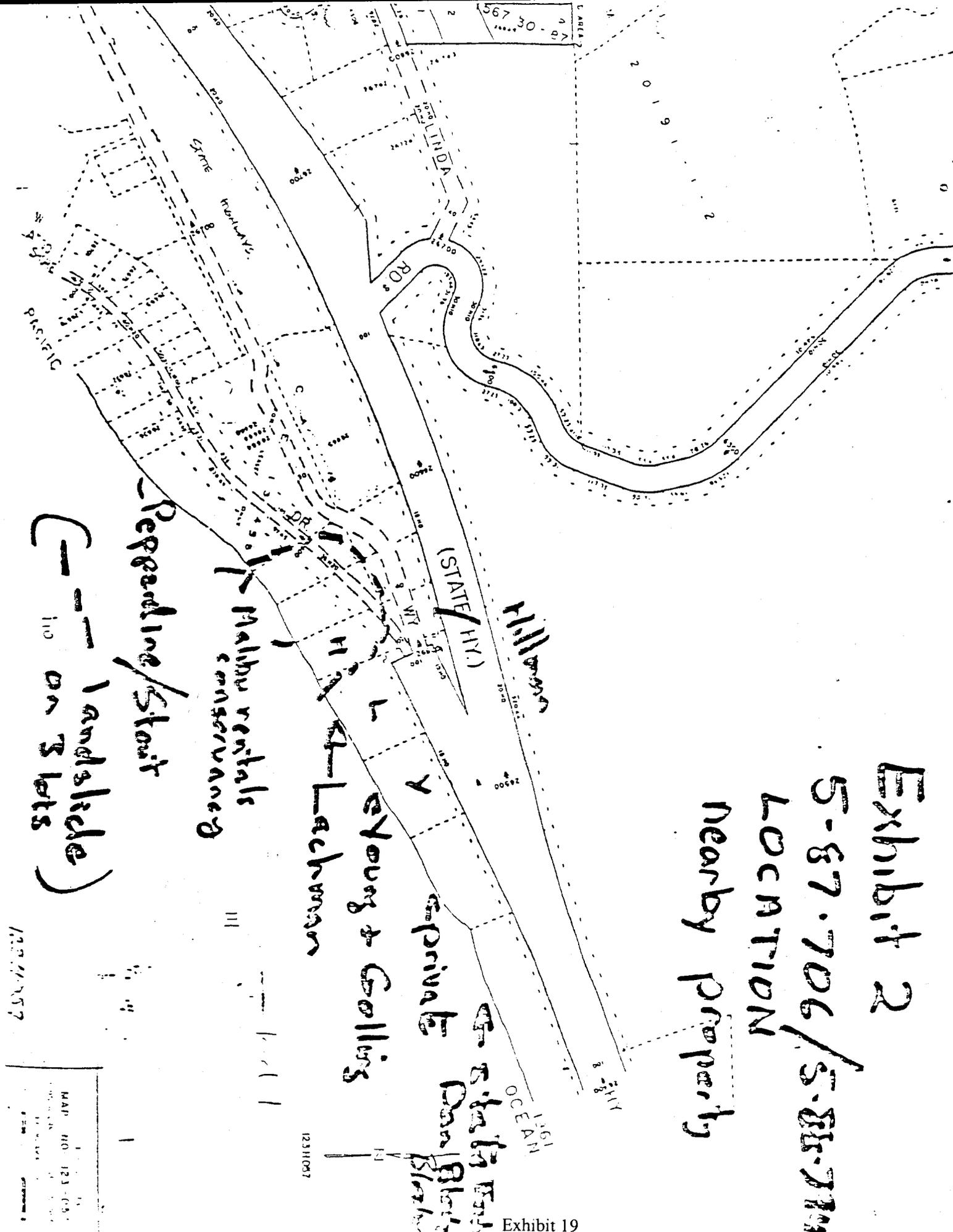
6. Cumulative impacts: Coastal Development Applications: 5 83 3 and 5 83 4 (Quaker); 5 82 223 (Corey); 5 82 57 (Malibu Vista); 5 83 506 (Wendland); 5 83 43 (Heathercliff); 5 85 51 (Quaker); 5 85 59 (Sciarillo), 5 85 214 (Ghosh), 5 86 220 (Quaker), 5 86 59 (Decinces and Vernon), 5 86 366 (Falso) 5 86 592 (Central Diagnostic Lab), 5 83-591A4 (Caldwell); Appeal No. 182 83 (Malibu Deville); 196 81 (Malibu Pacifica); 509 77 (Bel Mar Estates), 5 81-71 (Honofed).
7. Hazards 5 87 547 (Miller), 5 83 963 (Popover), 5 83 589 (Dunne), 5 81 171 (Singer), 5 86 553 (Singer), P 78 3675, 5 84 242 (Moonshadows), 5 84 437 (Design Construction, 5 82 3496 (Tarrets), P 2780 (Frederic), 5 83 258 (Patterson), Prop. 20 P 222 (Chiale), Prop 20 P 6637 (Chiate), 5 83 873 (Lewis), 5 86 831 (Harco), 5 86 760 (Van Buskirk)
8. Bel Mar Estates v Cal Coastal Com'n (1981) 115 Cal. App 3d 936; 5 81 71 (Honofed)
9. Coastal S.W. Dev. Corp. v. California Coastal Zone CC (1976) 55 Cal.App.3d.525; Slanson v. San Diego Coast Reg'l Com'n (1980) 101 Cal.App.3d 38; Bel Mar Estates v. Cal. Coastal Com'n (1981) 115 Cal.App.3d 936; Remmenga v. Cal. Coastal Com'n (1985) 163 Cal.App.3d 623; Whaler's Village Club v. Cal. Coastal Com'n (1986) 173 Cal.App.3d 240;
10. Merrill, John "Supplemental report on Latigo Bay Villas, July 21, 1972"
11. Merrill, John "Dewatering wells control Latigo Shore landslide Malibu California." Submitted for publication, 1984
12. Merrill, John Project 84755, December 18, 1978 "Report on tentative minor land division 10788:" "Report on 26645 Latigo Shores Drive, Cal 23, 1078, "Supplementary engineering geology report, Feb 1, 1979."

13. Merrill, John "Concept analysis for three unit condo at 26542 Latigo Shores Drive."; 1984, "Generalized Geologic map project 26542"
14. Hanson, Wayne, "Tentative minor land division map no 13344", Topography.
15. Tucker, Harley, "Preliminary Engineering Geologic Investigation, ... Latigo Shores," February, 14, 1984
16. Access permits 6 87 471 (de Penalta), 5 87 762 (Monkarsh), 4 87-161 (Pierce family trust), 6 87 311 (Van Buskirk), 5 87 576 (Miser and Cooper), 5 83 996 (Roland), 5 83 288 (Fhringer), Appeal 158 81 162 81 (Mussel Shoals), 5 82 579 (Surfside Colony), 5 84 298 (Polos), 4 84 01 (Griswold), 5 83 395 (Chevron), P 79 5385 (Edison); 5 81 474 (Freshman), Appeal numbers A 27 78 (Benton), 288 78 (Smith), 160 78 (Gershwin), 5 87 588 (Plesko).
17. Saving the American Beach: A Position Paper by Concerned Coastal Geologists (March 1981).
18. "Economic Profiling of Beach Fills" Coastal Sediments ' 77, Richard Silvester.
19. Shore and Sea Boundaries, U.S. Department of Commerce, Aaron Sholowitz.
20. Shore Protection in California (1976) California Department of Boating and Waterways.
21. Georgia Beaches ... California Coastal Commission (1982) 132 Cal. App 3d 678.
22. Assessment and Atlas of Shoreline Erosion Along the California Coast, California Department of Navigation and Ocean Development, July 1977.
23. Variable Sediment Flux and Beach Management, Ventura County, California; Orme and Brown, UCLA, Coastal Zone 83, Volume III.
24. Greenlaw Grupe Junior, et al vs. CCC, Santa Cruz Superior Court 73098, March 1985.
25. Mussel Shoals vs Calif. Coastal Commission; Nollan vs. California Coastal Commission; Whaler's Village Club v. Cal. Coastal Com'n (1986) 173 Cal.App.3d 240
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27. "Coastal Access standards and recommendations," 1980 joint staff report, California Coastal Commission and State Coastal Conservancy

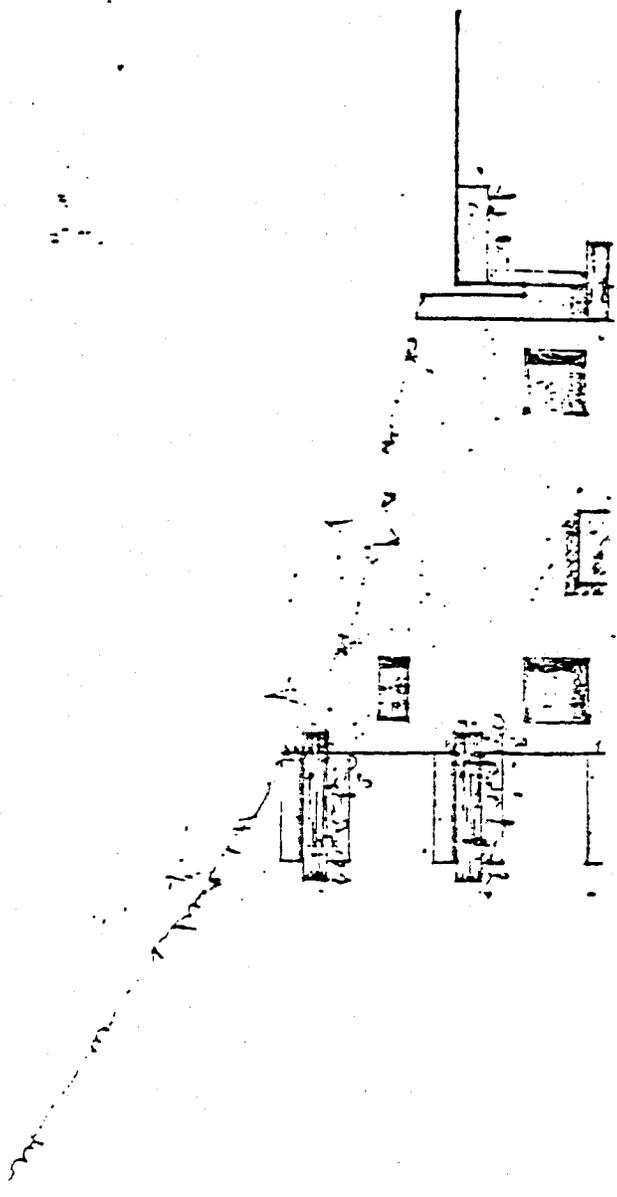
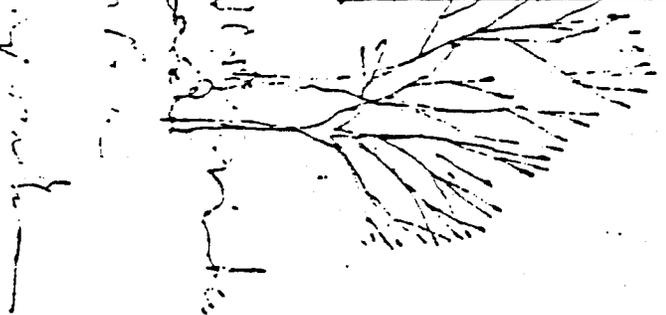
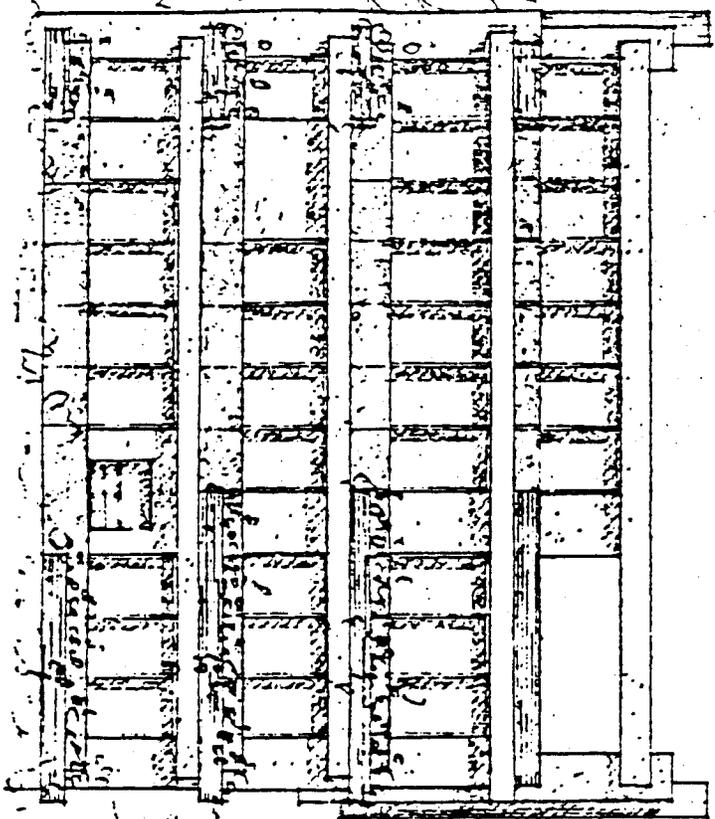
28. Phillips, Brandt, Reddick McDonald and Grefe. The Cumulative Impacts of Shorezone Development at Lake Tahoe February, 1978
29. Carls, I. Glenn. "The Effects of People and Man Induced Conditions on Preferences for Outdoor Recreation Landscapes." Journal of Leisure Research, 1974, 6(Spring) pp. 113-124
30. National Park Service. Santa Monica Mountains National Recreation Area, Draft Land Protection Plan; Acquisition Plan.
31. Los Angeles Department of Regional Planning, "Recreation Access Plan Data Base (draft)," Larry Charness, Sept 15, 1981
32. Cumulative Impacts of Potential Development in the Santa Monica Mountains Coastal Zone (November 1978).
33. April 26, 1981 Memorandum from Cynthia Long, Staff Counsel, to State Commissioners, entitled "Lots Created Without All Necessary Government Approvals;"
34. September 23, 1980 letter from Dennis Fagan, Deputy Attorney General, to Steven Maki, Central Coast Regional Commission.

8031

Exhibit 2  
 5-87-706/5-88-711  
 LOCATION  
 Nearby Property



1231087  
 MAP NO. 123-05  
 1/23/05



5-88794

Exhibit

See

View

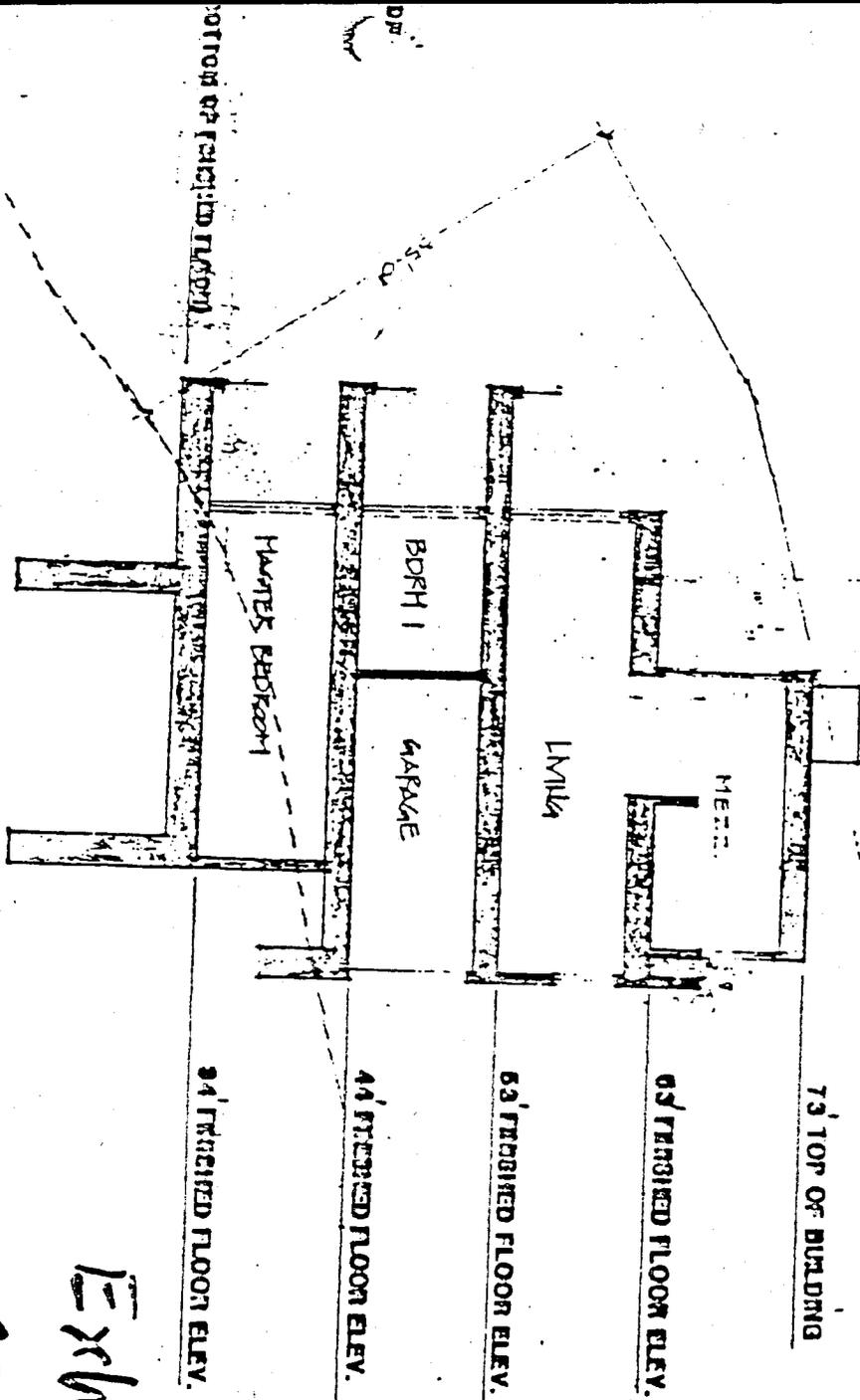
from

Deck

Exhibit 19  
CCC-05-NOV-04 and CCC-05-CD-06  
(Homayun) Page 43 of 51

**BARSOCCHINI and ASSOCIATES**  
MICHAEL E. BARSOCCHINI, AIA  
ARCHITECTURE  
PLANNING  
COAST VIEW DRIVE  
CALIF. 90265 (213) 456-0625

3 SINGLE FAM  
LATIGO SHOR



- SECTION B-B

BUILDING 2

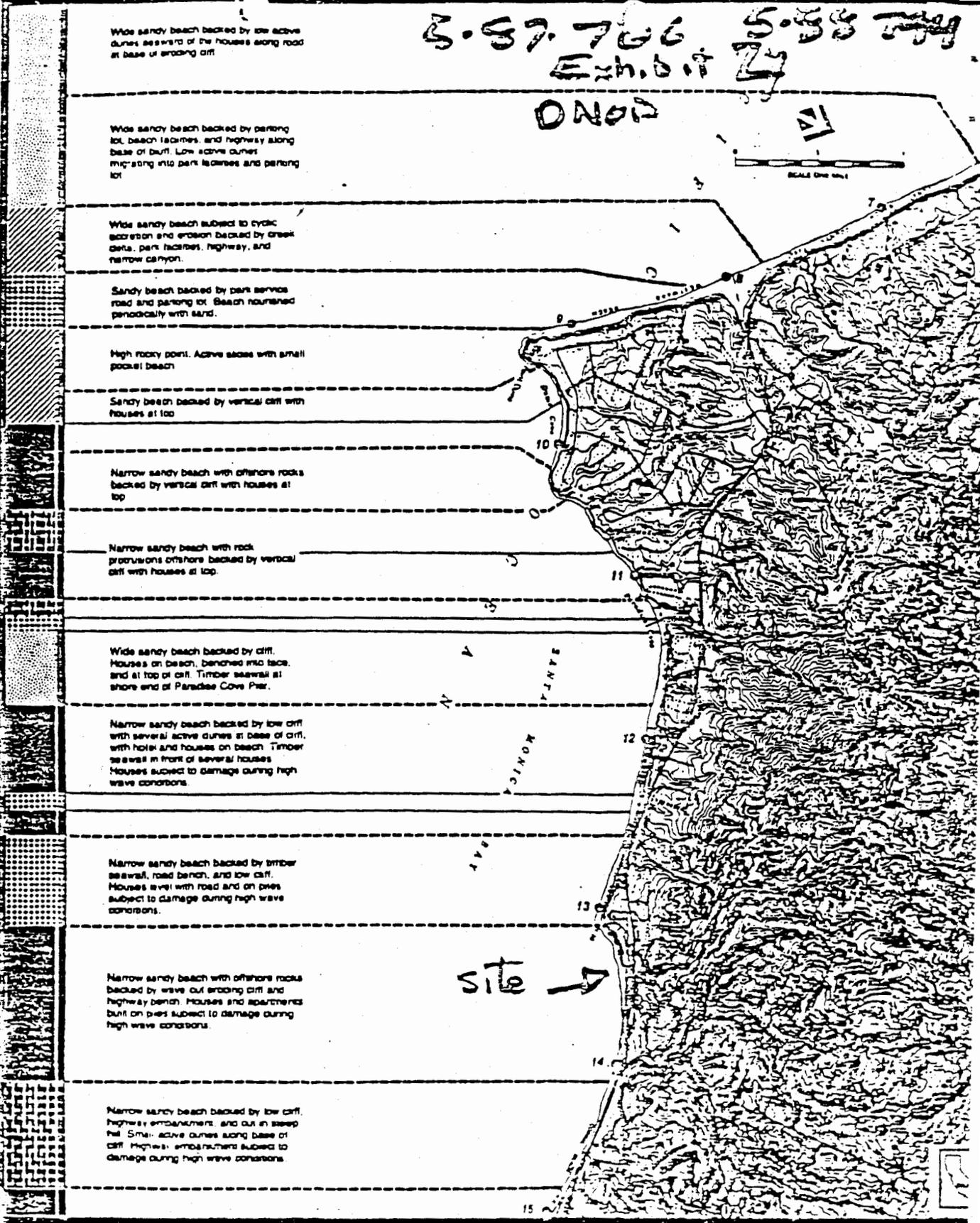
Exhibit 3b  
 Section  
 Building 2

S. 88.794

3-87-706 5-33 THY  
 Exhibit 19

DNOD

SCALE ONE INCH = 100 FEET



Wide sandy beach backed by low active dunes seaward of the houses along road at base of eroding cliff

Wide sandy beach backed by parking lot, beach facilities, and highway along base of bluff. Low active dunes migrating into park facilities and parking lot

Wide sandy beach subject to cyclic accretion and erosion backed by creek delta, park facilities, highway, and narrow canyon.

Sandy beach backed by park service road and parking lot. Beach nourished periodically with sand.

High rocky point. Active slope with small pocket beach

Sandy beach backed by vertical cliff with houses at top

Narrow sandy beach with offshore rocks backed by vertical cliff with houses at top

Narrow sandy beach with rock protrusions offshore backed by vertical cliff with houses at top

Wide sandy beach backed by cliff. Houses on beach, benches into face, and at top of cliff. Timber seawall at shore end of Paradise Cove Pier.

Narrow sandy beach backed by low cliff with several active dunes at base of cliff, with hotel and houses on beach. Timber seawall in front of several houses. Houses subject to damage during high wave conditions.

Narrow sandy beach backed by timber seawall, road bench, and low cliff. Houses level with road and on piers subject to damage during high wave conditions.

Narrow sandy beach with offshore rocks backed by wave cut eroding cliff and highway bench. Houses and apartments built on piers subject to damage during high wave conditions.

Narrow sandy beach backed by low cliff, highway embankment, and out in stepped hill. Small active dunes along base of cliff. Highway embankment subject to damage during high wave conditions.

SHORELINE CONDITION


LOS ANGELES CO. — ML 7-18

106

STATE OF CALIFORNIA THE RESOURCES AGENCY  
 DEPARTMENT OF NAVIGATION & OCEAN DEVELOPMENT



10

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.

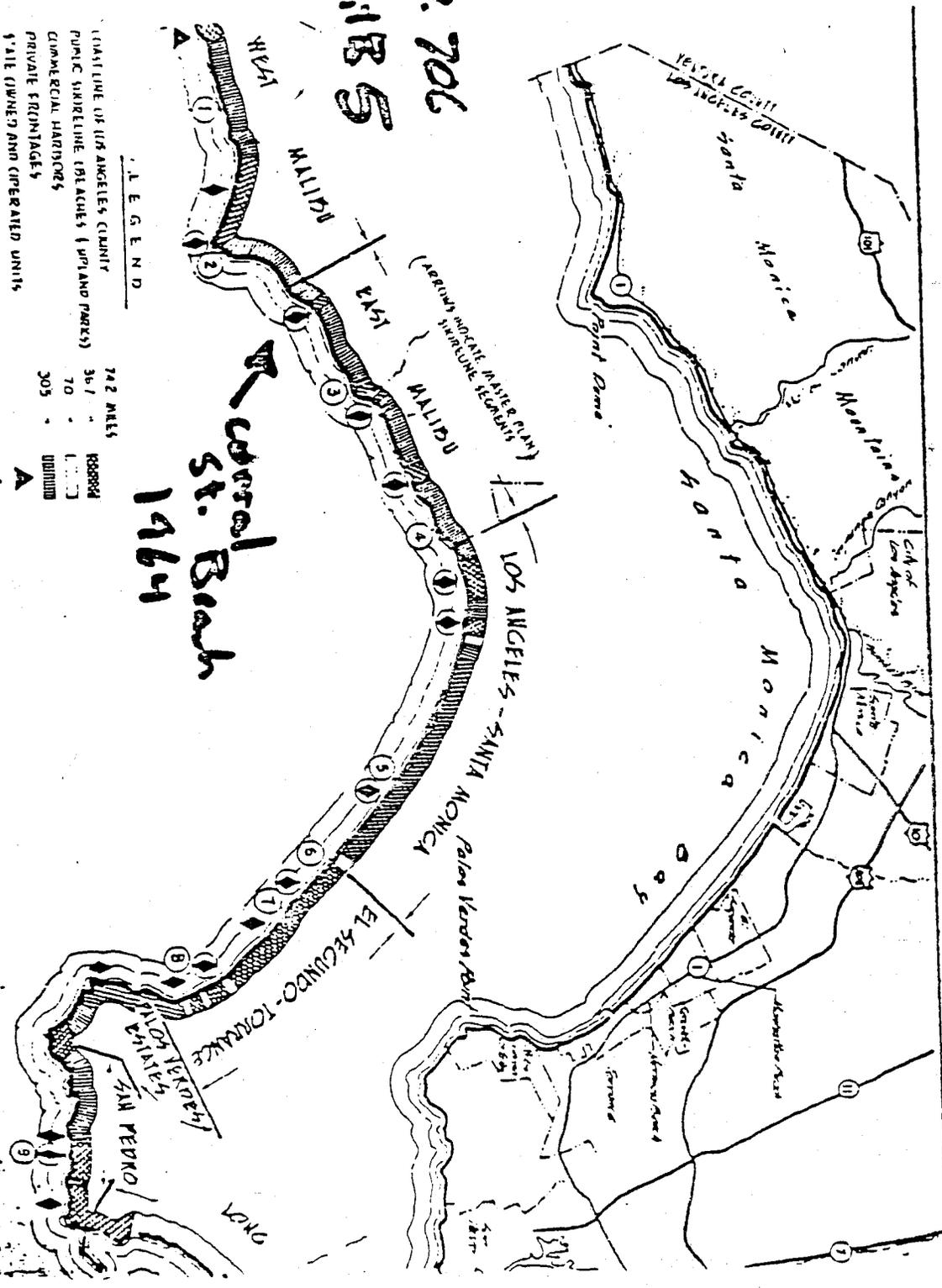
19 If and when a vertical public access way has been constructed within 500  
20 feet of the applicant's property and such accessway has been opened for public  
21 use and either a private association acceptable to the Executive Director  
22 or a public agency has accepted the responsibility for operation 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

# S. 87. 706 Exhibit B 5

## LEGEND

- 742 MILES
- UNIMPROVED
- 361 - PUBLIC SHORELINE BEACHES (WILSON PARKS)
- 70 - COMMERCIAL HARBOURS
- 305 - PRIVATE FRONTAGES
- STATE OWNED CITY OR COUNTY OPERATED UNITS
- CITY OR COUNTY OWNED AND OPERATED UNITS
- SELECTED STUDY AREAS

- (A) ▲
- (B) ◆
- (C) ○



**Corral  
St. Beach  
1964**

DATE OF REVISION 4-66  
UNIT OF 1904

LOS ANGELES COUNTY BEACH STUDY

DEPARTMENT OF PUBLIC WORKS  
DIVISION OF BEACHES AND PARKS

SHORELINE STUDY

Demised  
Part of the (wood)

S-88 114

Exhibit 3  
Plot plan  
d-1000

Proprietary



Attachment X

To: Permit Applicants,  
From: California Coastal Commission  
Subject: Standard Conditions

The following standard conditions are imposed on all permits issued by the California Coastal Commission.

I. STANDARD CONDITIONS

1. Notice of Receipt and Acknowledgement. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date 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.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, 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.

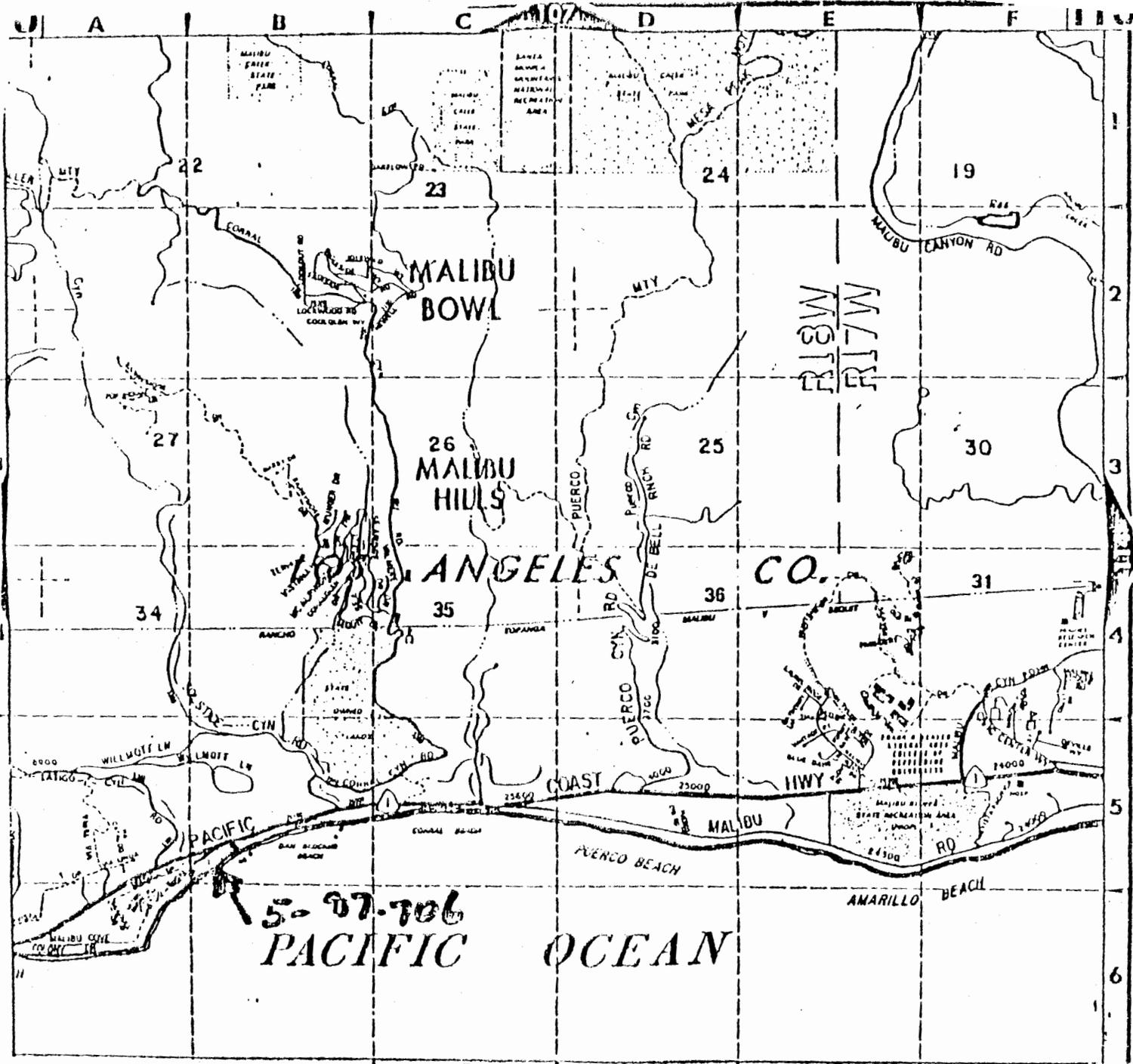


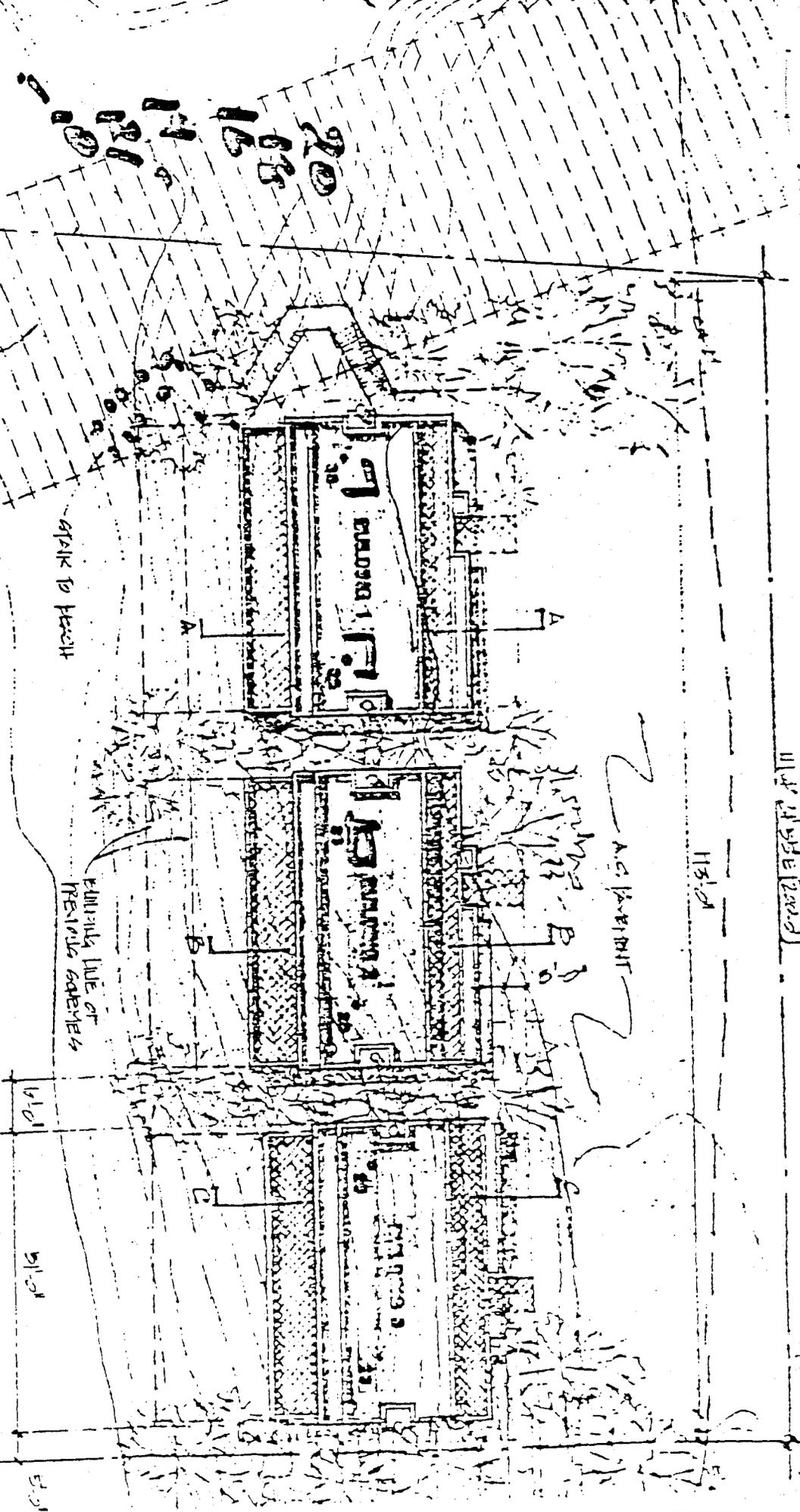
Exhibit 1  
~~5-87-706~~  
 Location  
 5-88-774

11' 1/2" (width of road)

11' 1/2"

A.C. Pavement

11' 1/2" - 11' 1/2"



walk to beach

filling hole of  
residual garden

walk beach

spray

walk beach

APPROXIMATE AREA AND  
PERCENTAGE OF  
RESIDUAL GARDEN  
FROM 1950-1955

20  
15  
10  
5

□ piling

Setback

S-88-794

Exhibit 3

**City of Malibu LCP Local Implementation Plan**  
**Adopted by the California Coastal Commission on September 13, 2002**  
**Page 233**

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:

**City of Malibu LCP Local Implementation Plan**  
**Adopted by the California Coastal Commission on September 13, 2002**  
**Page 234**

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

**City of Malibu LCP Local Implementation Plan**  
**Adopted by the California Coastal Commission on September 13, 2002**  
**Page 235**

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**

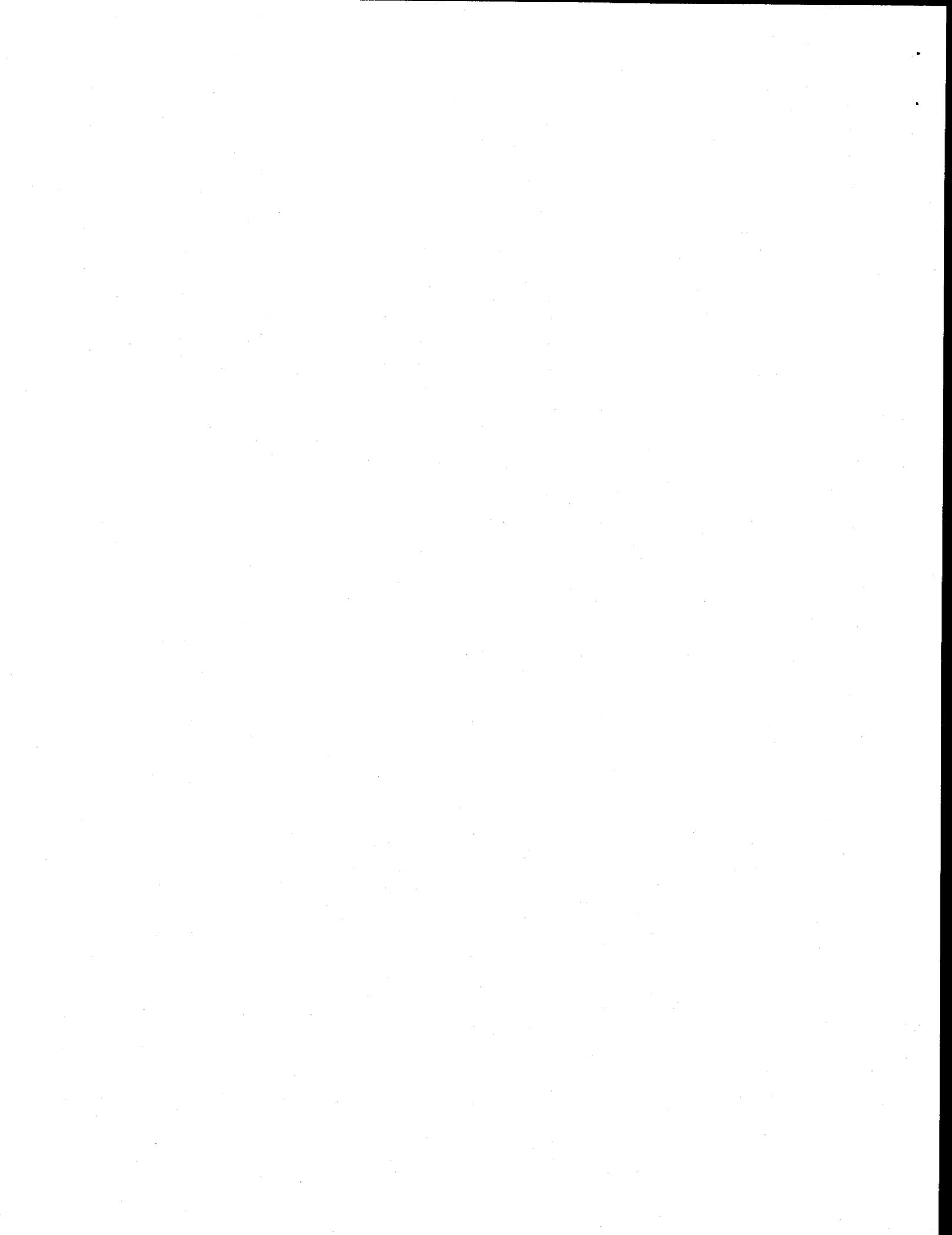
- A. The Planning Director shall report in writing to the City Council and to the California Coastal Commission at each meeting the emergency permits applied for or issued since the last report, with a description of the nature of the emergency and the work involved. Copies of this report shall be available 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



1 Code and that, therefore, in the absence of such a condition, a permit could  
2 not have been granted; and

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

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

10 1. DESCRIPTION. The easement offered hereby affects that portion of  
11 the Property extending the entire width of the property from the mean high  
12 tide line to the line approximately the toe of the bluff, shown as elevation 16 on applicant's map  
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 lateral access and passive recreational use along the shoreline.

17 3. DECLARATION OF RESTRICTIONS. This offer of dedication shall not be  
18 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 the  
21 public's use of the easement nor take any action inconsistent with such use,  
22 including, without limitation, constructing or improving the Property within  
23 the easement area in a manner inconsistent with the public's use or enjoyment  
24 thereof. Grantor shall retain all normal rights and incidents of ownership  
25 of the underlying fee interest in the Property not inconsistent with the  
26 easement. Grantor shall not be bound to undertake any supervision or  
27 maintenance to provide for the public purposes hereunder. Prior to the

1 opening of the accessway, the Grantee, in consultation with the Grantor, may  
2 record additional reasonable terms, conditions, and limitations on the use  
3 of the Property in order to assure that this Offer for public access is  
4 effectuated.

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

22 5. REMEDIES. Any act, conveyance, contract, or authorization by  
23 Grantor whether written or oral which uses or would cause to be used or  
24 would permit use of the easement contrary to the terms of this Offer will be  
25 deemed a breach hereof. The Grantor, any Grantee of this easement and any  
26 offeree of this Offer may pursue any and all available legal and/or equitable  
27 remedies to enforce the terms and conditions of the Offer and easement and

1 their respective interest in the property. In the event of a breach, any  
2 forbearance on the part of any such party to enforce the terms and provisions  
3 hereof shall not be deemed a waiver of enforcement rights regarding any  
4 subsequent breach.

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

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

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

22  
23 Executed on this 11 day of July, 1989, at  
24 TAZZANA CA

25   
26 SIGNATURE OF GRANTOR  
27 CARL J. GOLDBAUM  
TYPE OR PRINT NAME ABOVE

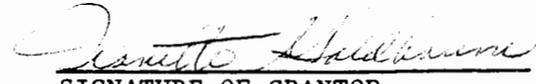
  
SIGNATURE OF GRANTOR  
JEANNETTE GOLDBAUM  
TYPE OR PRINT NAME ABOVE

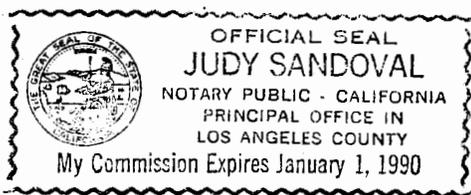
Exhibit 4  
CCC-05-NOV-04 and CCC-05-CD-06  
(Homayun) Page 5 of 14

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

STATE OF CALIFORNIA )  
 )ss  
COUNTY OF LOS ANGELES )

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



Judy Sandoval  
NOTARY PUBLIC IN AND FOR  
SAID COUNTY AND STATE

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(s) whose name is subscribed to this instrument, and acknowledged that he/she/they executed it.

\_\_\_\_\_  
NOTARY PUBLIC IN AND FOR  
SAID COUNTY AND STATE

Exhibit 4  
CCC-05-NOV-04 and CCC-05-CD-06  
(Homayun) Page 6 of 14

**89-1993989**

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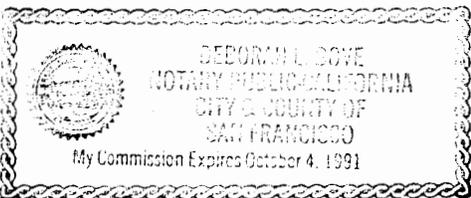
This is to certify that the Offer to Dedicate set forth above is hereby acknowledged by the undersigned officer on behalf of the California Coastal Commission pursuant to authority conferred by the California Coastal Commission when it granted Coastal Development Permit Number 5-88-794 on Dec 13 1988, and the California Coastal Commission consents to recordation thereof by its duly authorized officer.

DATED: 11-9-89

John Bowers  
John Bowers, Staff Counsel  
California Coastal Commission

STATE OF CALIFORNIA )  
                                  )ss  
COUNTY OF SAN FRANCISCO)

On this 9th day of November, 1989, before me Deborah L. Dove, a Notary Public, personally appeared John Bowers, personally known to me to be the person who executed this instrument as STAFF COUNSEL of the CALIFORNIA COASTAL COMMISSION and acknowledged to me that the CALIFORNIA COASTAL COMMISSION executed it.



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

Exhibit 4  
CCC-05-NOV-04 and CCC-05-CD-06  
(Homayun) Page 7 of 14

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 Northwesterly 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"

Exhibit 4  
CCC-05-NOV-04 and CCC-05-CD-06  
(Homayun) Page 8 of 14

89-1993989

## 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.

Exhibit 4  
CCC-05-NOV-04 and CCC-05-CD-06  
(Homayun) Page 9 of 14

**89-1993989**

## BEACH ACCESS EASEMENT

10

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.

**EXHIBIT**

C

Exhibit 4

CCC-05-NOV-04 and CCC-05-CD-06  
(Homayun) Page 10 of 14**89-1993989**

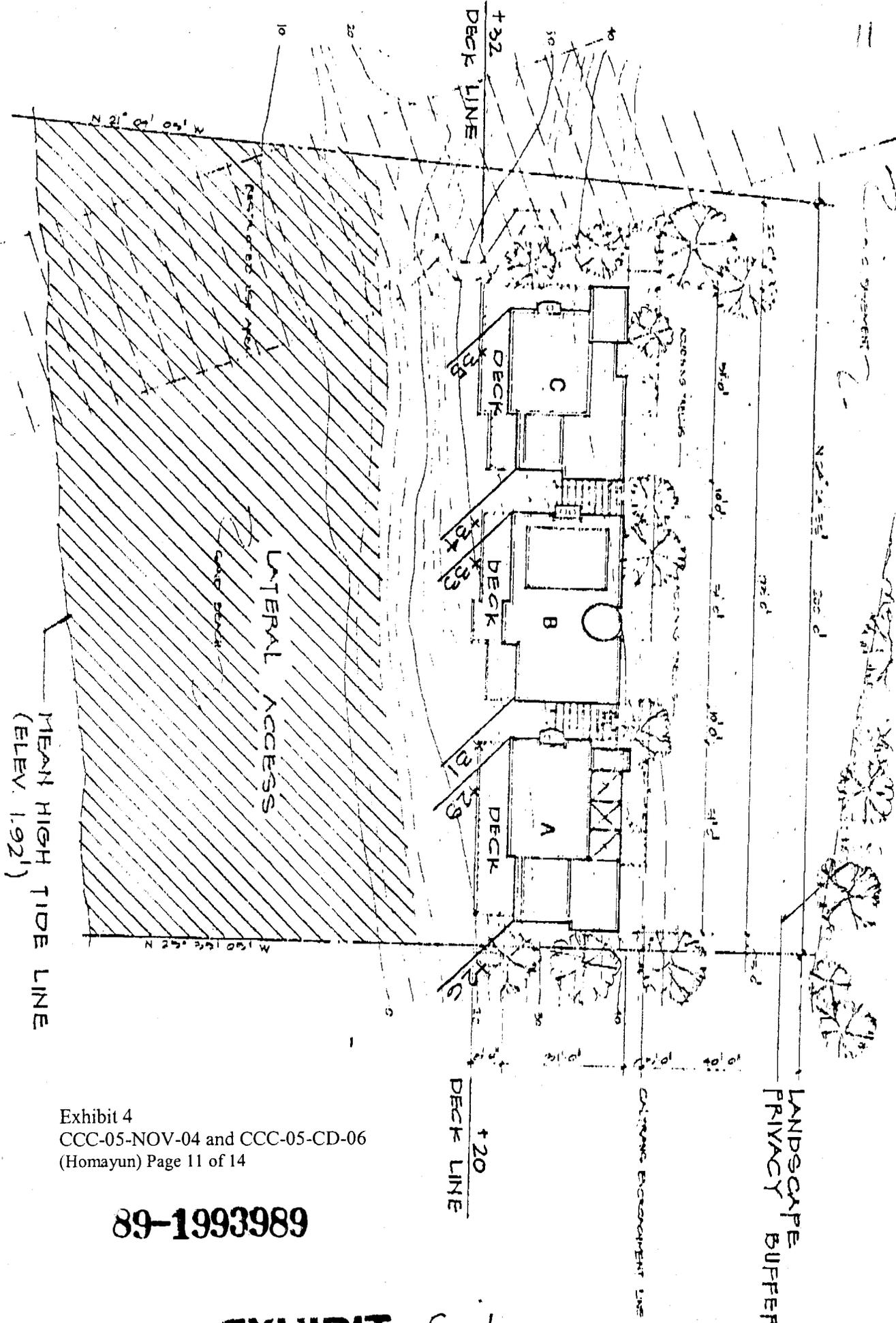


Exhibit 4  
 CCC-05-NOV-04 and CCC-05-CD-06  
 (Homayun) Page 11 of 14

89-1993989

EXHIBIT C-1

SITE PLAN

26520-26530 LATIGO SHORE DRIVE  
 MALIBU, CA 90265

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

17  
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

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

89-1993989

1. 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 approximately 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.

This page is part of your document - DO NOT DISCARD

04 2450143

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

10:41AM SEP 23 2004

TITLE(S) : \_\_\_\_\_



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CODE  
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Assessor's Identification Number (AIN)

To be completed by Examiner OR Title Company in black ink.

Number of AIN's Shown

Exhibit 5  
CCC-05-NOV-04 and CCC-05-CD-06  
(Homayun) Page 1 of 7

THIS FORM NOT TO BE DUPLICATED

2

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:  
CALIFORNIA COASTAL COMMISSION  
89 S. California St., Suite 200  
Ventura, CA 93001-2801  
(Legal Division)

04 2450143

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

5-88-794  
Goldbaum (Lateral)

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the Irrevocable Offer to Dedicate Public Lateral Access Easement and Declaration of Restrictions dated July 11, 1989, executed by Carl J. Goldbaum and Jeanette Goldbaum and recorded on December 12, 1989 as Instrument Number 89-1993989 of the Official Records of Los Angeles County, is hereby accepted by Access For All, a private association, on the date of recording, pursuant to authority conferred by Resolution No. 2004-4 of the Board of Directors of Access For All adopted on June 1, 2004, and the grantee consents to recordation thereof by its duly authorized officer.

Dated: 9/23/04

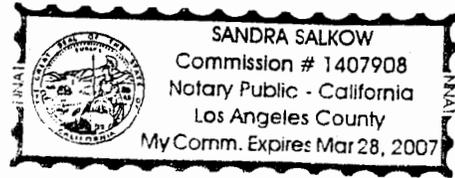
ACCESS FOR ALL  
By: [Signature]  
Steve Hoye, Executive Director

STATE OF CALIFORNIA  
COUNTY OF Los Angeles

On Sept 23, 2004, before me, Sandra Salkow, a Notary Public personally appeared Steve Hoye, 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 the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

[Signature]  
NOTARY PUBLIC



ACKNOWLEDGMENT BY CALIFORNIA COASTAL COMMISSION  
OF ACCEPTANCE OF IRREVOCABLE OFFER TO DEDICATE  
PUBLIC LATERAL ACCESS, EASEMENT AND DECLARATION OF RESTRICTIONS

**THIS CERTIFICATE OF ACKNOWLEDGMENT** acknowledges and certifies the acceptance by Access For All, a private nonprofit corporation, of an Irrevocable Offer to Dedicate Public Lateral Access Easement and Declaration of Restrictions dated July 11, 1989, executed by Carl J. Goldbaum and Jeanette Goldbaum and recorded on December 12, 1989 as Instrument Number 89-1993989, of the Official Records of Los Angeles County (hereinafter the "Offer to Dedicate"), and sets forth conditions of that acceptance with respect to the management and future disposition of the dedicated easement. It is the intention of the California Coastal Commission (hereinafter the "Commission") and Access For All to ensure that the purposes, terms and conditions of the Offer to Dedicate be carried out within a framework established by and among the Commission, Access For All and the State Coastal Conservancy (hereinafter the "Conservancy") in order to implement the Commission's Coastal Access Program pursuant to the California Coastal Act of 1976, Public Resources Code Sections 30000 et seq. (hereinafter the "Coastal Act").

**I. WHEREAS**, the Commission is an agency of the State of California established pursuant to Public Resources Code Section 30300 and is charged with primary responsibility for implementing and enforcing the Coastal Act; and

**II. WHEREAS**, the Conservancy is an agency of the State of California existing under Division 21 of the California Public Resources Code, which serves as a repository for interests in land whose reservation is required to meet the policies and objectives of the Coastal Act or a certified local coastal plan or program; and

**III. WHEREAS**, Access For All is a private nonprofit corporation existing under Section 501(c)(3) of the United States Internal Revenue Code and having among its principal charitable purposes the preservation of land for public access, recreation, scenic and open space purposes; and

**IV. WHEREAS**, as a condition to its approval of Coastal Development Permit Number 5-88-794, the Commission required recordation of the Offer to Dedicate pursuant to Sections 30210-30212 of the Coastal Act; and

**V. WHEREAS**, terms and conditions of the Offer to Dedicate provide, among other things, that (A) the Offer to Dedicate may be accepted by any agency of the State of California, a political subdivision, or a private association acceptable to the Executive Director of the Commission; (B) upon such recordation of acceptance, the Offer to Dedicate and its terms, conditions, and restrictions shall have the effect of a grant of lateral access easement in gross and perpetuity that shall run with the land and be binding on the heirs, assigns, and successors of the Grantor; and (C) acceptance of the Offer to Dedicate is subject to a covenant providing that the Grantee may not abandon the easement until such time as Grantee effectively transfers said easement to an entity which qualifies as a Grantee under the criteria hereinabove stated; and

**VI. WHEREAS**, Access For All desires to accept the Offer to Dedicate and accordingly has requested that the Executive Director of the Commission approve it as an acceptable management agency; and

**VII. WHEREAS**, Access For All is acceptable to the Executive Director of the Commission to be Grantee under the Offer to Dedicate provided that the easement will be transferred to another qualified entity or to the Conservancy in the event that Access For All ceases to exist or is otherwise unable to carry out its responsibilities as Grantee, as set forth in a management plan approved by the Executive Director of the Commission.

**NOW, THEREFORE**, this is to certify that Access For All is a private nonprofit corporation acceptable to the Executive Director of the Commission to be Grantee under the Offer to Dedicate, on the condition that should Access For All cease to exist or fail to carry out its responsibilities as Grantee to manage the easement for the purpose of allowing public pedestrian lateral access and passive recreational use along the shoreline, then all of the right, title and interest of Access For All in the easement shall vest in the State of California, acting by and through the Conservancy or its successor, upon acceptance thereof; provided, however, that the State, acting through the Executive Officer of the Conservancy or its successor agency, may designate another public agency or private association acceptable to the Executive Director of the Commission, in which case vesting shall be in that agency or organization rather than the State. The responsibilities of Access For All to manage the easement shall be those set forth in the Management Plan dated August 30, 2004 and maintained in the offices of the Commission and the Conservancy (and as the Management Plan may be amended from time to time with the written concurrence of the Executive Director of the Commission, the Executive Officer of the Conservancy, and Access For All). Notwithstanding the foregoing, the right, title and interest of Access For All in the easement may not vest in the Conservancy or another entity except upon (1) a finding by the Conservancy, made at a noticed public hearing, that Access For All has ceased to exist or failed to carry out its responsibilities as set forth in the Management Plan; and (2) recordation by the State or another designated agency or entity of a Certificate of Acceptance, substantially in the form set forth in California Government Code §27281. Nothing therein shall prevent Access For All from transferring the easement to a qualified entity pursuant to the Offer to Dedicate, thereby relieving itself of the obligation to manage the easement in accordance with the Management Plan.

IN WITNESS WHEREOF, the Commission and Access For All have executed this  
CERTIFICATE OF ACKNOWLEDGMENT OF ACCEPTANCE OF IRREVOCABLE OFFER TO  
DEDICATE PUBLIC LATERAL ACCESS EASEMENT AND DECLARATION OF RESTRICTIONS  
as of the dates set forth below.

Dated: Sept. 10, 2004

Dated: 9/23/04

CALIFORNIA COASTAL COMMISSION

ACCESS FOR ALL

By: John Bowers

John Bowers, Staff Counsel

By: Steve Hoye

Steve Hoye, Executive Director

NOTARY ACKNOWLEDGMENTS ON NEXT PAGE

04 2450143

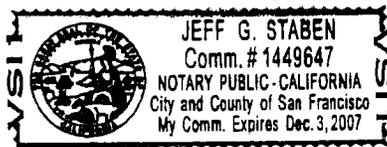
STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

On 09.10.04, before me, Jeff G. Staben, a Notary Public, personally appeared John Bowers, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Jeff G. Staben



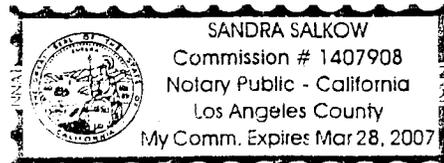
STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On Sept 23, 2004, before me, Sandra Salkow, a Notary Public, personally appeared Steve Hoyer, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Sandra Salkow



Apr-28-05 11:48am From-

STATE OF CALIFORNIA—THE RESOURCES AGENCY

PETE WILSON, Governor

**CALIFORNIA COASTAL COMMISSION**

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



Page 1 of 2  
Date: February 23, 1998  
Permit Application No 4-97-168

**COASTAL DEVELOPMENT PERMIT**

On November 5, 1997, the California Coastal Commission granted to Russ Shears, permit 4-97-168, this permit subject to the attached Standard and Special Conditions, for development consisting of:

Construct 3-story, 28 ft. high, 3,406 sq. ft. single family home with 439 sq. ft. garage, driveway and septic system. 100 cu. yds. of grading (100 cu. yds cut, 100 cu yds fill), and is more specifically described in the application on file in the Commission offices.

The development is within the coastal zone in Los Angeles County at 26520 Latigo Shore Drive. (Lot 3), Malibu.

Issued on behalf of the California Coastal Commission by

PETER DOUGLAS  
Executive Director

By John Ledbetter  
Coastal Program Analyst

**ACKNOWLEDGMENT:**

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

\_\_\_\_\_  
Permittee

AS: 8/95

Apr-28-05 11:49am From-

**COASTAL DEVELOPMENT PERMIT**Page 2 of 2  
Permit Application No. 4-97-168**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.
3. **Compliance.** All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. **Inspections.** The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
6. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

**SPECIAL CONDITIONS:****1. Plans Conforming to Geologic Recommendation**

Prior to the issuance of permit the applicant shall submit, for review and approval by the Executive Director, evidence of the consultants' review and approval of all project plans. All recommendations contained in Updated Soils and Engineering-Geologic Report, Geosystems, 12/17/96, shall be incorporated into all final design and construction including slope stability, pools, foundations and drainage. All plans must be reviewed and approved by the consultants.

The final plans approved by the consultant shall be in substantial conformance with the plans approved by the Commission relative to construction, grading and drainage. Any substantial changes in the proposed development approved by the Commission which may be required by the consultant shall require an amendment to the permit or a new coastal permit.

**IV. Note**

The standard and special conditions attached to the Permit for the subdivision which created the subject parcels [5-88-794 (Lachman)] remain in effect and are attached for reference as Exhibit 7.

## CALIFORNIA COASTAL COMMISSION

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

RECEIVED

APR 12 2002



CALIFORNIA  
 COASTAL COMMISSION  
 SOUTH CENTRAL COAST DISTRICT

AMENDMENT TO COASTAL DEVELOPMENT PERMIT

Date: April 9, 2002

Permit No: 4-97-168-A2

Issued to: Russell Shears

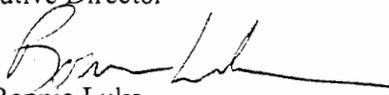
for: Construction of a 3-story, 28 ft. high, 3,406 sq. ft. single family home with 439 sq. ft. garage, driveway and septic system. 100 cu. yds of grading (100 cu. yds. cut, 100 cu. yds. fill).

at: 25420 Latigo Shore Drive, Malibu (Los Angeles County).

has been amended to include the following change: Applicant proposes installation of a concrete erosion control structure underneath the existing residences, consisting of grade beam footings atop existing caissons, with gunite extensions between the grade beam footings; and installation of a stairway from the lower deck of each residence to grade. Grading in the amount of 10 cu. yds. of fill is proposed for the installation of the erosion control structure at 26520 Latigo Shore Drive. Recordation of new assumption of risk deed restriction more specifically described in the application filed in the Commission offices.

This amendment will become effective upon return of a signed copy of this form to the Commission office. Please note that the original permit conditions are still in effect.

PETER M. DOUGLAS  
 Executive Director

  
 By: Bonnie Luke  
 Coastal Planner

ACKNOWLEDGMENT

I have read and understood the above amendment and agree to be bound by the conditions as amended of Permit

No. 4-97-168-A2

Date: 4/11/02

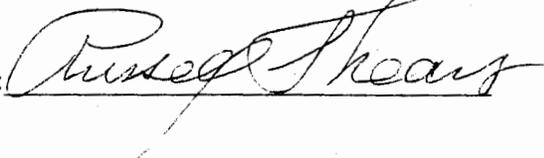
Signature: 

Exhibit 7  
 CCC-05-NOV-04 and CCC-05-CD-06  
 (Homayun)

COPY

1 RECORDING REQUESTED BY:  
2 California Coastal Commission  
3 WHEN RECORDED MAIL TO:  
4 California Coastal Commission  
45 Fremont St., Suite 2000  
5 San Francisco, CA 94105-2219  
Attn: Legal Division  
6

COPY of Document Recorded

~~02-0703736~~

Has not been compared with original.  
The recording of this document  
is fee exempt as it refers to  
processing has been completed.  
public entity (California Coastal  
Commission),  
LOS ANGELES COUNTY REGISTRAR - RECORDER/COUNTY CLERK

MAR 25 2002

7  
8  
9 **DEED RESTRICTION**

11 I. WHEREAS, Russell Shears hereinafter referred to as "Owner" is the record owner of  
12 the real property described in Exhibit B attached hereto and incorporated herein by reference,  
13 hereinafter referred to as the "Property;" and

14 II. WHEREAS, the California Coastal Commission, hereinafter referred to as the  
15 "Commission", is acting on behalf of the People of the State of California; and

16 III. WHEREAS, the subject property is located within the coastal zone as defined in  
17 §30103 of Division 20 of the California Public Resources Code, hereinafter referred to as the  
18 "California Coastal Act of 1976," (the Act); and

19 IV. WHEREAS, pursuant to the Act, Owner applied to the Commission for a coastal  
20 development permit on the Property described above; and

21 V. WHEREAS, coastal development permit number 4-97-168-A2, hereinafter referred to  
22 as the "Permit," was granted February 5, 2002, by the Commission in accordance with the provision  
23 of the Staff Report: Regular Calendar, attached hereto as EXHIBIT A and herein incorporated by  
24 reference; and

25 VI. WHEREAS, the Permit was subject to the terms and conditions including, but not  
26 limited to, the following condition(s):

27 **4. REVISED ASSUMPTION OF RISK/SHORELINE PROTECTION**

28 A. By acceptance of this permit, the applicant acknowledges and agrees to the following:

1 (1) The applicant acknowledges and agrees that the site may be subject to hazards from  
2 liquefaction, storm waves, surges, erosion, landslide, flooding and wildfire;

3 (2) The applicant acknowledges and agrees to assume the risks to the applicant and the  
4 property that is the subject of this permit of injury and damage from such hazards in  
5 connection with this permitted development.

6 (3) The applicant unconditionally waives any claim of damage or liability against the  
7 Commission, its officers, agents, and employees for injury or damage from such hazards.

8 (4) The applicant agrees to indemnify and hold harmless the Commission, its officers,  
9 agents, and employees with respect to the Commission's approval of the project against any  
10 and all liability, claims, demands, damages, costs (including costs and fees incurred in defense  
11 of such claims), expenses, and amounts paid in settlement arising from any injury or damage  
12 due to such hazards.

13 (5) No shoreline protective device shall be constructed, now or in the future, for the  
14 purpose of protecting the residential development approved pursuant to coastal development  
15 permits 4-97-168 and 4-97-169 including, but not limited to, the residence, foundations,  
16 erosion control structures, decks, driveways, staircases, or the septic system in the event that  
17 these structures are threatened with imminent damage or destruction from waves, erosion,  
18 storm conditions, or other natural hazards in the future and by acceptance of this permit, the  
19 applicant hereby waives, on behalf of itself and all successors and assigns, any rights to  
20 construct such devices that may exist under Public Resources Code Section 30235.

21 B. Prior to issuance of the coastal development permit, the applicant shall execute and  
22 record a deed restriction, in a form and content acceptable to the Executive Director  
23 incorporating all of the above terms of this condition. The deed restriction shall include a  
24 legal description of the applicant's entire parcel. The deed restriction shall run with the land,  
25 binding all successors and assigns, and shall be recorded free of prior liens that the Executive  
26 Director determines may affect the enforceability of the restriction. This deed restriction shall  
27 not be removed or changed without a Commission amendment to this coastal development  
28 permit.

VII. WHEREAS, the Commission found that but for the imposition of the above  
condition(s) the proposed development could not be found consistent with the provisions of the  
California Coastal Act of 1976 and that a permit could therefore not have been granted; and

VIII. WHEREAS, Owner has elected to comply with the condition(s) imposed by the Permit  
and execute this Deed Restriction so as to enable Owner to undertake the development authorized by  
the Permit.

NOW, THEREFORE, in consideration of the granting of the Permit to the Owner by the  
Commission, the Owner hereby irrevocably covenants with the Commission that there be and hereby  
is created the following restrictions on the use and enjoyment of said Property, to be attached to and  
become a part of the lease to the property.

1           1.       COVENANT, CONDITION, AND RESTRICTION. The undersigned Owner, for  
2 itself and for its heirs, assigns, and successors in interest, covenants and agrees that:

- 3           A.       The site may be subject to hazards from liquefaction, storm waves, surges, erosion,  
4 landslide, flooding, and wildfire;
- 5           B.       To assume the risks to the applicant and the property that is the subject of this permit  
6 of injury and damage from such hazards in connection with this permitted  
7 development;
- 8           C.       To waive any claim of damage or liability against the Commission, its officers, agents,  
9 and employees for injury or damage from such hazards; and to indemnify and hold  
10 harmless the Commission, its officers, agents, and employees with respect to the  
11 Commission's approval of the project against any and all liability, claims, demands,  
12 damages, costs (including costs and fees incurred in defense of such claims), expenses,  
13 and amounts paid in settlement arising from any injury or damage due to such hazards;
- 14           D.       That no bluff or shoreline protective device shall ever be constructed to protect the  
15 development approved in coastal development permit Nos. 4-97-168 and 4-97-169;
- 16           E.       The applicant hereby waives, on behalf of itself and all successors and assigns, any  
17 rights to construct such device(s) that may exist under Public Resources Code Section  
18 30235.

19           2.       DURATION. Said Deed Restriction shall remain in full force and effect during the  
20 period that said permit, or any modification or amendment thereof remains effective, and during the  
21 period that the development authorized by the Permit or any modification of said development,  
22 remains in existence in or upon any part of, and thereby confers benefit upon, the Property described  
23 herein, and shall bind Lessee and his/her assigns or successors in interest.

24           3.       TAXES AND ASSESSMENTS. It is intended that this Lease Restriction is irrevocable  
25 and shall constitute an enforceable restriction within the meaning of a) Article XIII, §8, of the  
26 California Constitution; and b) §402.1 of the California Revenue and Taxation Code or successor  
27 statute. Furthermore, this Lease Restriction shall be deemed to constitute a servitude upon and burden  
28 to the Property within the meaning of §3712(d) of the California Revenue and Taxation Code or  
successor statute, which survives a sale of tax-deeded property.

          4.       RIGHT OF ENTRY. The Commission or its agent may enter onto the property at times  
reasonably acceptable to the Lessee to ascertain whether the use restrictions set forth above are being  
observed.

          5.       REMEDIES. Any act, conveyance, contract, or authorization by the Owner whether

1 written or oral which uses or would cause to be used or would permit use of the Property contrary to  
2 the terms of this Deed Restriction will be deemed a violation and a breach hereof. The Commission  
3 and the Owner may pursue any and all available legal and/or equitable remedies to enforce the terms  
4 and conditions of this Deed Restriction. In the event of a breach, any forbearance on the part of either  
5 party to enforce the terms and provisions hereof shall not be deemed a waiver of enforcement rights  
6 regarding any subsequent breach.

7 6. SEVERABILITY. If any provision of these restrictions is held to be invalid, or for any  
8 reason becomes unenforceable, no other provision shall be affected or impaired.

9  
10 Dated: February 14 2002.

11  
12 By: Russell Shears  
Russell Shears

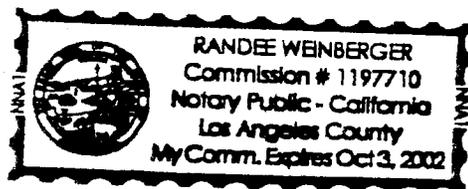
13  
14 By: Evangeline Shears  
Evangeline Shears

15  
16 STATE OF CALIFORNIA  
17 COUNTY OF Los Angeles

18  
19 On 2/14/02, before me Randee Weinberger, a Notary Public personally  
20 appeared Russell Shears and Evangeline Shears, personally known to me (or proved to me on the basis of  
21 ~~satisfactory evidence~~) to be the person(s) whose name(s) ~~is~~ are subscribed to the within instrument  
22 and acknowledged to me that ~~he/she~~ they executed the same in ~~his/her~~ their authorized capacity(ies),  
23 and that by ~~his/her~~ their signature(s) on the instrument the person(s), or the entity upon behalf of  
24 which the person(s) acted, executed the instrument.

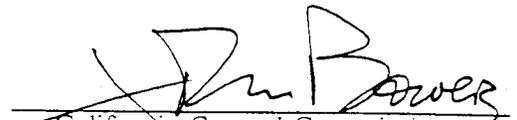
25 WITNESS my hand and official seal.

26  
27 Signature Randee Weinberger



1 This is to certify that the deed restriction set forth above is hereby acknowledged by the  
2 undersigned officer on behalf of the California Coastal Commission pursuant to authority conferred  
3 by the California Coastal Commission when it granted Coastal Development Permit No. 4-97-168-A2  
4 on February 5, 2002, and the California Coastal Commission consents to recordation thereof by its  
5 duly authorized officer.

6  
7 Dated: March 20, 2002

8  
9   
10 California Coastal Commission

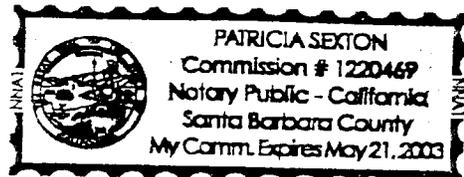
11  
12  
13 STATE OF CALIFORNIA

14 COUNTY OF San Francisco

15  
16 On 3/20/02 before me, Patricia Sexton, a Notary Public personally  
17 appeared John Bowers, personally known to me (or proved to me on the basis of  
18 satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument  
19 and acknowledged to me that he/she /they executed the same in his/her/their authorized capacity(ies),  
20 and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of  
21 which the person(s) acted, executed the instrument.

22  
23 WITNESS my hand and official seal.

24  
25 Signature Patricia Sexton



**EXHIBIT A**

Exhibit 8  
CCC-05-NOV-04 and CCC-05-CD-06  
(Homayun) Page 6 of 10

**CALIFORNIA COASTAL COMMISSION**

14TH CENTRAL COAST AREA  
1400 SOUTH CALIFORNIA ST., SUITE 200  
MALIBU, CA 93001  
(805) 585-1800

Filed: 10/07/01  
49th Day: 11/25/01  
180th Day: 04/05/02  
Staff: BL-V  
Staff Report: 01/09/02  
Hearing Date: 02/08/02  
Commission Action:



**STAFF REPORT: MATERIAL AMENDMENT**

**APPLICATION NO.:** 4-97-168-A2  
4-97-169-A1  
**APPLICANT:** Russell Shears  
**AGENT:** Alan Block  
**PROJECT LOCATION:** 4-97-168-A2 - 26520 Latigo Shore Drive, Malibu  
4-97-169-A1 - 26524 Latigo Shore Drive, Malibu

**DESCRIPTION OF PROJECT PREVIOUSLY APPROVED:**

4-97-168 & 4-97-169 - Construction of two 3,206 sq. ft., 3-story, 28 ft. high, single family residences, with attached 439 sq. ft. garages, driveways, septic systems, and 200 cu. yds. of grading each (100 cu. yds. cut, 100 cu. yds. fill). Revision of existing Assumption of Risk Deed Restriction as required under Coastal Development Permit 5-88-794 (Lachman) to reflect proposed project designs and locations at 26520 and 26524 Latigo Shore Drive, Malibu.

4-97-168-A1 - Increase size of single family residence by 50 sq. ft. to allow for construction of 3, 256 sq. ft. single family residence.

**DESCRIPTION OF AMENDMENT:** Applicant proposes installation of a concrete erosion control structure underneath the existing residences, consisting of grade beam footings atop existing caissons, with gunite extensions between the grade beam footings; and installation of a stairway from the lower deck of each residence to grade. Grading in the amount of 10 cu. yds. of fill is proposed for the installation of the erosion control structure at 26520 Latigo Shore Drive. Recordation of new assumption of risk deed restriction.

**LOCAL APPROVALS RECEIVED:** City of Malibu, Approval in Concept, dated 9/5/01, City of Malibu Geology and Geotechnical Review Sheet, Approval in Concept, dated 9/5/01.

**SUBSTANTIVE FILE DOCUMENTS:** Coastal Development Permits: 4-97-168, 4-97-168-A1, 4-97-169 (Shears), and 5-88-794 (Lachman); GeoSystems Letter to Mr. Russell Shears, dated 8/20/01; Geosystems letter to Mr. Shears, dated 12/19/01, Malibu Santa Monica Mountains certified Land Use Plan

**EXHIBIT B**

Exhibit 8  
CCC-05-NOV-04 and CCC-05-CD-06  
(Homayun) Page 8 of 10

PARCEL A: PARCEL 2 OF PARCEL MAP NO. 22050, IN THE CITY OF MALIBU, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 237 PAGES 74 AND 75 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT ANY PORTION THEREOF LYING OUTSIDE PATENT LINES OF THE RANCHO TOPANGA MALIBU SEQUIT, AS SUCH LINES EXISTED AT THE TIME OF THE ISSUANCE OF THE PATENT WHICH WAS NOT FORMED BY THE DEPOSIT OF ALLUVION FROM NATURAL CAUSES AND BY IMPERCEPTIBLE DEGREES.

ALSO EXCEPT 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, AS PROVIDED FOR IN THE DEED RECORDED NOVEMBER 10, 1964 AS INSTRUMENT NO. 5717 IN BOOK D2694 PAGE 851 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL B: PARCEL 3 OF PARCEL MAP NO. 22050, IN THE CITY OF MALIBU, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 237 PAGES 74 AND 75 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT ANY PORTION THEREOF LYING OUTSIDE PATENT LINES OF THE RANCHO TOPANGA MALIBU SEQUIT, AS SUCH LINES EXISTED AT THE TIME OF THE ISSUANCE OF THE PATENT WHICH WAS NOT FORMED BY THE DEPOSIT OF ALLUVION FROM NATURAL CAUSES AND BY IMPERCEPTIBLE DEGREES.

ALSO EXCEPT 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, AS PROVIDED FOR IN THE DEED RECORDED NOVEMBER 10, 1964 AS INSTRUMENT NO. 5717 IN BOOK D2694 PAGE 851 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

Assessor's Parcel Number 4460-019-145 (parcel 3)

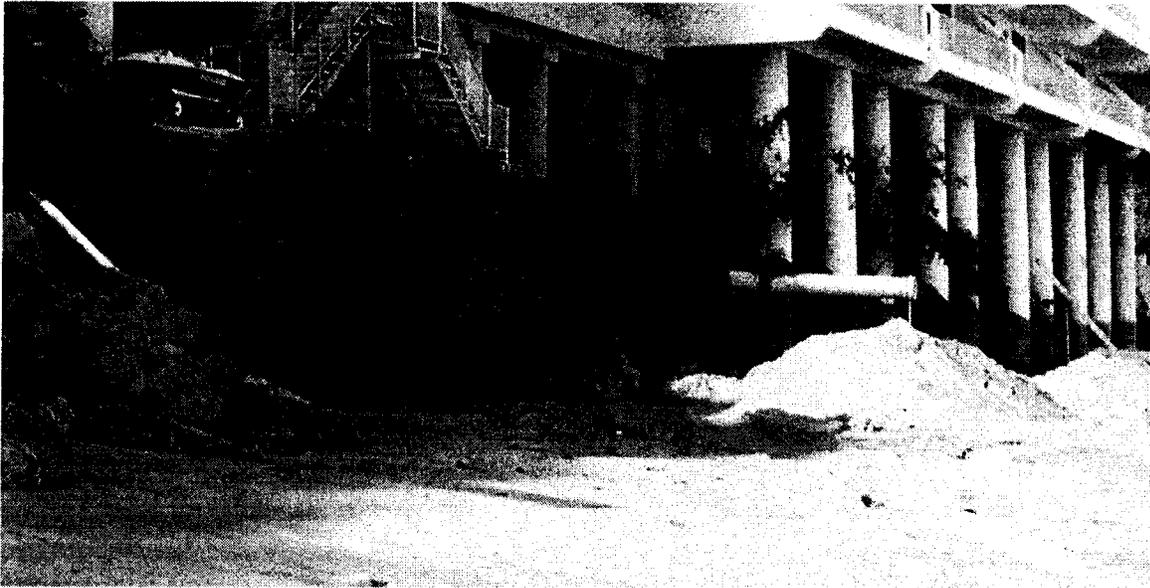
97, 305638

Exhibit 8  
CCC-05-NOV-04 and CCC-05-CD-06  
(Homayun) Page 9 of 10

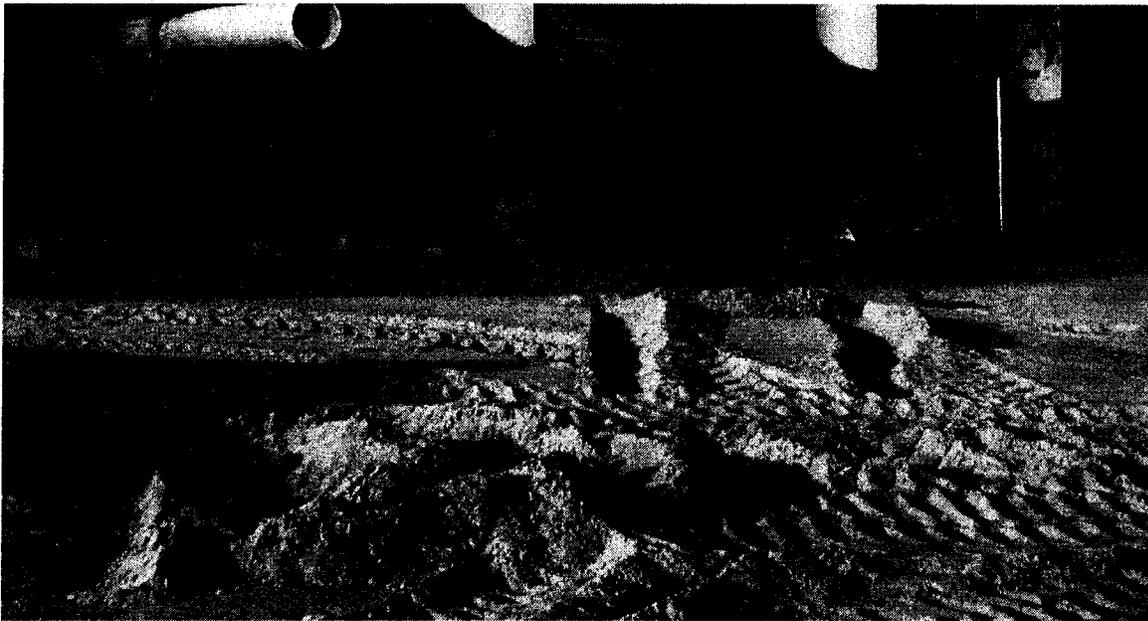




**Exhibit 9.** Photograph, taken March 3, 2005, showing a bulldozer, mechanized equipment tracks, and a trench with rocks, on the sandy beach seaward of the Hodayun residence.



**Exhibit 10a.** Photograph of the area seaward of the Hodayun residence, taken by Commission staff during the March 3, 2005 site visit, showing mechanized equipment tracks leading to two mounds of sand, at least one large rock (to the left of the mounds), and the eastern portion of the Kelley revetment (far left).



**Exhibit 10b.** Photograph, taken by Commission staff during the March 3, 2005 site visit, showing mechanized equipment tracks on the sandy beach seaward of the Hodayun residence.



**Exhibit 10c.** Photograph, taken by Commission staff during the March 3, 2005 site visit, showing mechanized equipment tracks and partially buried rocks on the sandy beach seaward of the Hodayun property.

## CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA  
 89 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. Homyun Sepideh  
 26530 Latigo Shores Drive  
 Malibu, CA 90265

Subject: Coastal Act Violation File No. V-4-05-031 (Sepideh)

Property: 26520 Latigo Shores Drive  
 Malibu Los Angeles County  
 APN 4460-019-145

Dear Mr. Sepideh:

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 I 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 (26530 Latigo Shores Drive; APN 4460-019-143) 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 11  
 CCC-05-NOV-04 and CCC-05-CD-06  
 (Homayun) Page 1 of 4

T-534 P.004/006 F-410

Mar-04-05 04:00pm From-

RECEIVED: 3/ 4/05 3:33PM: ->: #378: PAGE 4

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 13130 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 11  
CCC-05-NOV-04 and CCC-05-CD-06  
(Homayun) Page 2 of 4

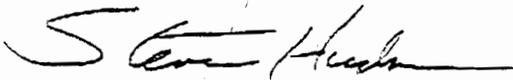
approved by the Commission, and to seek Commission-approved removal and restoration. No effort should be made to remove the existing development without Commission authorization.

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 Veesart, Southern California Enforcement Team Leader  
Tom Sinclair, South Central District Enforcement Officer

Exhibit 11  
CCC-05-NOV-04 and CCC-05-CD-06  
(Homayun) 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-4-05-031 and Executive Director Cease and Desist Order No. ED-05-CD—02 on Mr. Homyun Sepideh, as follows:

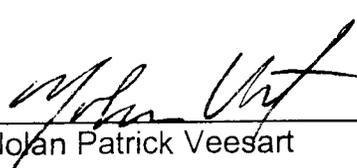
By Personal Service, by personally delivering to and leaving a copy at the address set forth below.

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. Homyun Sepideh  
26520 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. Homyun Sepideh  
26520 Latigo Shores Drive  
Malibu, CA 90265

**Subject: Executive Director Cease and Desist Order No. ED-05-CD-02**

**Date Issued: March 4, 2005**

**Expiration Date: June 2, 2005**

**Violation File No.: V-4-05-031**

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

**Property: 26520 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 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. Homyun Sepideh, 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. Homyun Sepideh, 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. Homyun Sepideh, 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 26520 Latigo Shores Drive, in the Coastal Zone (APN 4460-019-145).

## 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 26530 Latigo Shores, Malibu (APN 4460-019-143) 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...*

March 4, 2005

Page 4

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

Signed,

Handwritten signature of Peter M. Douglas in cursive, followed by the initials "PMD".

PETER M. DOUGLAS  
Executive Director  
California Coastal Commission

cc: Lisa Haage, Chief of Enforcement, CCC  
Sandy Goldberg, Staff Counsel, CCC  
Pat Veasart, Southern CA 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. Homyun Sepideh  
26520 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-4-05-031

Location: 26520 Latigo Shores, Malibu, Los Angeles County  
(APN 4460-019-145)

Violation Description: Unpermitted operation of mechanized equipment on the beach; unpermitted development, including, but not limited to grading on the beach (cut and fill) and construction of a rock revetment.

Dear Mr. Sepideh:

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 consisting of grading on the beach (cut and fill), and construction of a rock revetment. The unpermitted development is located on property that you own at 25620 Latigo Shores, Malibu, Los Angeles County, APN 4460-019-145 ("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 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 west 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 Three 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 west of the subject property (APNs 4460-019-144 and 4460-019-143) and extends from the toe of the bluff seaward of the subject property is located to the mean high tide line.<sup>1</sup> 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 an adjacent property to the west of the subject property (4460-019-143). Any unpermitted development, such as the westernmost portion of the rock revetment, that lies within the vertical easement constitutes a violation of the Coastal Act.

### **Violation History**

On March 4, 2005, Commission staff confirmed that mechanized equipment had been used on the beach in front of the subject property to remove sand from the base of the bluff, deposit large rocks at the base of the bluff, 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, Stanley Lamport called Commission staff and stated that he was in the process of being retained to represent 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.

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<sup>1</sup> The western portion of the revetment, in front of APN 4460-019-143, abuts an unpermitted fill slope, not a natural bluff.

### 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 grading and construction of the revetment clearly constitute "development" as defined in Section 30106 of the Coastal Act. This development requires a coastal development permit under Section 30600(a) of the Coastal Act. No coastal development permit has been issued for the development on the subject property. Additionally, even if you applied for a CDP in this matter, Commission staff could not recommend approval of a CDP to authorize the unpermitted

development because the development is inconsistent with the policies of Chapter 3 of the Coastal Act and with the conditions required by CDP 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) Unpermitted development consisting of grading and construction of a revetment 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 lies 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, grading and the construction of the revetment altered the bluff and the beach below the bluff. 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.*

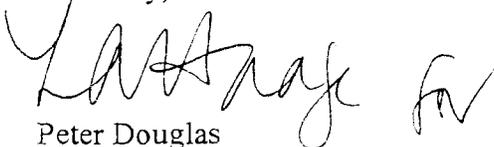
Accordingly, any Restoration Order that the Commission may issue will have as its purpose the restoration of the subject property to the conditions that existed prior to the occurrence of the unpermitted development described above.

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 Palo Alto. 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" with a stylized flourish at the end.

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 Veesart, Southern California Enforcement Team Leader  
Steve Hudson, Southern California Enforcement Supervisor  
Christine Chestnut, Headquarters Enforcement Officer  
Stanley Lamport, Cox, Castle & Nicholson

## 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 REGULAR AND CERTIFIED MAIL  
(Article No.7001 0320 0004 6449 4321)

April 8, 2005

Mrs. Sepideh Homyun  
26520 Latigo Shore Drive  
Malibu, CA 90265

Dear Ms. Homyun,

I spoke with your representative, Alan Block, on April 1, 2005. Mr. Block confirmed that you received 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 that was sent to you on March 15, 2005, and advised me that your name appeared incorrectly on the document (as "Homyun Sepideh"). Pursuant to my conversation with Mr. Block, I have enclosed an amended version of the Notice of Intent, correctly listing you, Sepideh Homyun, as the owner of record of property located at 26520 Latigo Shore Drive in Malibu (APN 4460-019-145). I have updated our records to accurately reflect this information. Mr. Block agreed to submit a statement of defense in response to the original Notice of Intent on your behalf on April 8, 2005. I have extended that deadline to April 12, 2005. This amended Notice of Intent does not affect the April 12, 2005 deadline for the submittal of your statement of defense.

Sincerely,

A handwritten signature in cursive script that reads "Christine A. Chestnut".

Christine Chestnut  
Headquarters Enforcement Officer

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

cc: Lisa Haage, Chief of Enforcement  
Sandy Goldberg, Staff Counsel  
Pat Veesart, Southern California Enforcement Team Leader  
Steve Hudson, Southern California Enforcement Supervisor

cc w/enclosure: Alan Block, Law Offices of Alan Robert Block, attorney for Mrs. Homyun

## CALIFORNIA COASTAL COMMISSION

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



**VIA CERTIFIED and REGULAR MAIL**  
(Article No. 7001 0320 0004 6449 4321)

April 8, 2005

Mrs. Sepideh Homyun  
26520 Latigo Shore Drive  
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-4-05-031

Location: 26520 Latigo Shores, Malibu, Los Angeles County  
(APN 4460-019-145)

Violation Description: Unpermitted operation of mechanized equipment on the beach; unpermitted development, including, but not limited to grading on the beach (cut and fill) and construction of a rock revetment.

Dear Mrs. Homyun:

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