

CALIFORNIA COASTAL COMMISSION

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

W3b**RECORD PACKET COPY****ADMINISTRATIVE PERMIT NUMBER 3-05-022**

Applicant.....Mark De Mattei

Project location.....End of Beach Drive in the Aptos area of unincorporated Santa Cruz County (see location map and photos in exhibit A).

Project description...Construct paved driveway access fronted by a faux bluff concrete seawall seaward of a recently approved single-family residence. Project includes an access gate/fence, utility laterals, beach access pathway, landscaping, and related structures (see site plan and cross sections in exhibit B).

Local approvalsSanta Cruz County permit 04-0044.

NOTE: Public Resources Code Section 30624 provides that this administrative coastal development permit shall not become effective until it is reported to the Commission at its next meeting. If one-third or more of the appointed membership of the Commission so request, the application will be removed from the administrative calendar and set for public hearing at a subsequent Commission meeting. Our office will notify you if such removal occurs. This permit will be reported to the Commission at the following time and place:

**May 11, 2005, 9:00 AM
Bechtel Conference Center, Encina Hall
Stanford University, Palo Alto, CA**

IMPORTANT: Before you may proceed with development, the following must occur: You must sign the enclosed duplicate copy acknowledging the permit's receipt and accepting its contents, including all conditions, and return to our office (Title 14, California Code of Regulations, Sections 13150(b) and 13158). Following the Commission's meeting, and once we have received the signed acknowledgment and evidence of compliance with all special conditions, if applicable, we will send you a Notice of Administrative Permit Effectiveness. **Before you can proceed with development, you must have received both your administrative permit and the notice of permit effectiveness from this office.**

PETER DOUGLAS
Executive Director

A handwritten signature in cursive script that reads "Diane Landry".

By: DIANE LANDRY
Central Coast District Manager

EXECUTIVE DIRECTOR'S DETERMINATION: THE FINDINGS FOR THIS DETERMINATION, AND FOR ANY SPECIAL CONDITIONS, APPEAR BELOW.

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I. 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. Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
- 4. 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.
- 5. 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.

II. SPECIAL CONDITIONS

- 1. Final Plans.** WITHIN SIXTY DAYS OF ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit Final Plans (in full-size and 11" x 17" formats with a graphic scale (two sets of each)) to the Executive Director for review and approval. The Final Plans shall be

prepared by a licensed civil engineer with experience in coastal structures and processes and shall be substantially in conformance with the plans submitted to the Coastal Commission (originally submitted plans as modified by updated site plan and cross section dated received in the Coastal Commission's Central Coast District Office on March 22, 2005 and April 22, 2005 respectively) but shall show the following changes and clarifications to the project via plan notes and/or direct modification:

- (a) **Concrete Surfacing.** All concrete surfaces above an elevation of +3.0 NGVD that are exposed and/or are located on the seaward and/or beachward side of the seawall shall be faced with a sculpted concrete surface that mimics natural undulating bluff landforms in the vicinity in terms of integral mottled color, texture, and undulation. Any protruding concrete elements (e.g., corners, edges, etc.) shall be contoured in a non-linear manner designed to evoke natural bluff undulations.
- (b) **Planter Boxes.** The portion of the four-foot wide landscape area (i.e., the landscape area located inland of the seawall's top edge) nearest to the seawall's top edge shall incorporate a planter box designed to raise the soil elevation nearest the seawall to the elevation at the top of the seawall. The planter box shall be no less than 1.5 feet wide.
- (c) **Landscaping.** All landscaping in the planter box system atop the seawall shall be non-invasive native bluff species capable of trailing vegetation that can screen the exposed portion of the seawall as seen from the beach and Monterey Bay (e.g., Carmel creeper, *Ceanothus griseus* var. *horizontalis*). The plans shall include certification from a licensed landscape professional experienced with native species indicating that all plant species to be used are native and non-invasive. A permanent irrigation system shall be included. The cascading planter box system shall provide for a dense cascading screen of vegetation covering the exposed portion of the seawall above beach sand, or when more than five feet are so exposed, the top five feet of the seawall. All plants shall be replaced as necessary to maintain the required dense cascading screen of vegetation over the life of the project. To allow for initial growth, the required screening shall be initially achieved within at least two years of completion of construction.
- (d) **Drainage.** All drainage within the sculpted concrete shall be camouflaged (e.g., randomly spaced, hidden with overhanging or otherwise protruding sculpted concrete, etc.) so as to be hidden from view and/or inconspicuous as seen from the beach.
- (e) **Existing Rock and Rubble.** All existing rip-rap rock and concrete rubble located within the retained lot that is uncovered during the course of constructing the new seawall (except that that is part of the existing revetment along the side of the existing house to the southwest of the seawall location) located seaward and/or beachward of the seawall location shall be retrieved and used for the seawall back fill or properly disposed of off-site.
- (f) **Signs and Access Obstructions.** The Permittee shall not place signs or access obstructions in the vicinity of the proposed accessway, except as provided for by subsection (h) below and special condition 3.
- (g) **Benchmarks.** One or more permanent surveyed benchmarks inland of the seawall (e.g., a permanently embedded brass cap) shall be installed for use in future monitoring efforts.

Benchmark elevation shall be described in relation to National Geodetic Vertical Datum (NGVD).

- (h) **New Signs.** Any and all signs proposed to be located near the beach path and/or seawall shall be identified on the plans with details on materials, colors, size, location, and text. Any such signs shall not interfere with or otherwise discourage use of the accessway (that extends from the eastern end of Beach Drive to the beach) or the beach itself, and shall be designed so that they are inconspicuous and blend seamlessly into the beach aesthetic.
- (i) **Plan Notes.** Plan note number 1 on the site plan received April 22, 2005 shall be modified by replacing "access to beach" with "access to or from beach." Plan note number 2 on the site plan received April 22, 2005 shall be replaced in its entirety with the following:

2. Guardrails, fences, walls, and gates shall be designed to maximize through views (e.g., spaced metal bars), and shall be designed to minimize visual intrusion through their configuration and materials (i.e., flat-black paint or integral color, weathered metal, etc.). Guardrails atop the seawall shall be cable-rail or equivalent.

All requirements of this condition above shall be enforceable components of this coastal development permit. The Permittee shall undertake development in accordance with the approved Final Plans. Any proposed changes to the approved Final Plans shall be reported to the Executive Director. No changes to the approved Final Plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is necessary

- 2. **Construction Plan.** PRIOR TO COMMENCEMENT OF CONSTRUCTION, the Permittee shall submit a Construction Plan (in full-size and 11" x 17" formats with a graphic scale (two sets of each)) to the Executive Director for review and approval. The Construction Plan shall, at a minimum, include the following:

- (a) **Construction Areas.** The Construction Plan shall identify the specific location of all construction areas, all staging areas, all storage areas, all construction access corridors (to the construction sites and staging areas), and all public access corridors in site plan view. All such areas within which construction activities and/or staging are to take place shall be minimized to the maximum extent feasible in order to minimize construction encroachment on the beach area located seaward and/or beachward of the seawall perimeter, Monterey Bay, and all shoreline access points, and to have the least impact on public access. Unobtrusive fencing (or equivalent) shall be provided to enclose the construction area in a closed polygon (as seen in site plan view).
- (b) **Construction Methods and Timing.** The Construction Plan shall specify the construction methods to be used, including all methods to be used to keep the construction areas separated from Monterey Bay waters and public recreational use areas (including using Beach Drive right-of-way space for staging, storage, and construction activities to the maximum extent feasible). All erosion control/water quality best management practices to be implemented during construction and their location shall be noted.

- (c) **Property Owner Consent.** The Construction Plan shall be submitted with evidence indicating that the owners of any properties on which construction activities are to take place, including any properties to be crossed in accessing the site, consent to the use of their properties in these manners.
- (d) **Construction Coordinator.** The Construction Plan shall identify a designated construction coordinator to be contacted during construction should questions arise regarding the construction (in case of both regular inquiries and in emergencies). The coordinator's contact information (i.e., address, phone numbers, etc.) including, at a minimum, a telephone number that will be made available 24 hours a day for the duration of construction, shall be provided. The Construction Plan shall require that the construction coordinator record the name, phone number, and nature of all complaints received regarding the construction, and that the construction coordinator investigate complaints and take remedial action, if necessary, within 24 hours of receipt of the complaint or inquiry.
- (e) **Construction Requirements.** The Construction Plan shall, at a minimum, include the following construction requirements specified via written notes on the Plan. Minor adjustments to the following construction requirements may be allowed by the Executive Director if such adjustments: (1) are deemed necessary due to extenuating circumstances; and (2) will not adversely impact coastal resources.
- All work shall take place during daylight hours; lighting of the beach and Monterey Bay waters is prohibited.
 - All construction activities shall take place inland of Monterey Bay waters and the intertidal area (i.e., the beach area between high and low tides); contact with Monterey Bay waters and/or intertidal areas is prohibited with one exception for intertidal contact (only) as follows: existing rip-rap rock that is naturally exposed in the intertidal area when Monterey Bay waters have receded, and that can be retrieved without contact with Monterey Bay waters and without substantial excavation of the surrounding sediments, shall be retrieved and reused or removed to an appropriate disposal site offsite. Any existing rock retrieved in this manner shall be recovered by excavation equipment positioned as far landward of the waterline as possible (i.e., excavator equipment with mechanical extension arms).
 - Only rubber-tired construction vehicles are allowed on the beach, except track vehicles may be used if the Executive Director agrees that they are required to safely carry out construction. When transiting on the beach, all such vehicles shall remain as high on the upper beach as possible and avoid contact with ocean waters and intertidal areas.
 - All construction materials and equipment placed on the beach area located seaward and/or beachward of the seawall perimeter during daylight construction hours shall be stored beyond the reach of tidal waters. All construction materials and equipment shall be removed in their entirety from the beach area located seaward and/or beachward of the seawall perimeter by sunset on each day that work occurs. The only exceptions shall be for erosion and sediment controls (e.g., a silt fence at the base of the wall) as necessary to contain sediments at the site, where such controls are placed as close to the toe of the seawall as possible, and are minimized in their extent.

- Particular care shall be exercised to prevent foreign materials (e.g., construction scraps, concrete, concrete rinsate, etc.) from getting onto the beach area located seaward and/or beachward of the seawall perimeter and/or into Monterey Bay waters.
- Construction (including but not limited to construction activities, and materials and/or equipment storage) is prohibited outside of the defined construction, staging, and storage areas.
- No work shall occur on the beach area located seaward and/or beachward of the seawall perimeter during weekends or holidays.
- Equipment washing, refueling, and/or servicing shall not take place on the beach.
- The construction site shall maintain good construction site housekeeping controls and procedures (e.g., clean up all leaks, drips, and other spills immediately; keep materials covered and out of the rain (including covering exposed piles of soil and wastes); dispose of all wastes properly, place trash receptacles on site for that purpose, and cover open trash receptacles during wet weather; remove all construction debris from the beach).
- All erosion and sediment controls shall be in place prior to the commencement of construction as well as at the end of each work day. At a minimum, silt fences and/or equivalent apparatus shall be installed at the perimeter of the construction site to prevent construction-related runoff and/or sediment from entering into the Monterey Bay.
- All beach areas located seaward and/or beachward of the seawall perimeter and all shoreline access points impacted by construction activities shall be restored to their pre-construction condition or better within three days of completion of construction. Any beach sand in the area located seaward and/or beachward of the seawall perimeter that is impacted by construction shall be filtered as necessary to remove all construction debris.
- All contractors shall insure that work crews are carefully briefed on the importance of observing the construction precautions given the sensitive work environment. Construction contracts shall contain appropriate penalty provisions sufficient to offset the cost of retrieval/clean up of foreign materials not properly contained.
- The Permittee shall notify planning staff of the Coastal Commission's Central Coast District Office at least 3 working days in advance of commencement of construction, and immediately upon completion of construction and required beach-area restoration activities. If planning staff should identify additional reasonable measures necessary to restore the beach and beach access points, such measures shall be implemented immediately.

All requirements of this condition above shall be enforceable components of this coastal development permit. The Permittee shall undertake construction in accordance with the approved Construction Plan. Any proposed changes to the approved Construction Plan shall be reported to the Executive Director. No changes to the approved Construction Plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is necessary.

- 3. Construction Site Documents.** DURING ALL CONSTRUCTION, copies of each of the following shall be maintained in a conspicuous location at the construction job site at all times (where such copies shall be available for public review) and all persons involved with the construction shall be briefed on the content and meaning of each prior to commencement of construction: (a) the signed coastal development permit; (b) the approved final plans (see special condition 1); and (c) the approved construction plan (see special condition 2). In addition, the designated construction coordinator's contact information (including their address and 24-hour phone number at a minimum) shall be conspicuously posted at the job site where such contact information is readily visible from public viewing areas, along with indication that the construction coordinator should be contacted in the case of questions regarding the construction (in case of both regular inquiries and emergencies).
- 4. As-Built Plans.** WITHIN SIX-MONTHS OF COMPLETION OF CONSTRUCTION, the Permittee shall submit As-Built Plans (in full-size and 11" x 17" formats with a graphic scale (two sets of each)) to the Executive Director for review and approval. The As-Built Plans shall clearly identify in site plan and cross-section: all development completed pursuant to this coastal development permit; all property lines; and all residential development inland of the seawall structure. The As-Built Plans shall include color photographs (in hard copy and jpg format) that clearly show the as-built project, and that shall be accompanied by a site plan that notes the location of each photographic viewpoint and the date and time of each photograph. At a minimum, the photographs shall be from upcoast, seaward, and downcoast viewpoints, and from a sufficient number of beach viewpoints as to provide complete photographic coverage of the seawall and residence at a scale that allows comparisons to be made with the naked eye between photographs taken in different years and from the same vantage points. The As-Built Plans shall be submitted with certification by a licensed civil engineer with experience in coastal structures and processes, acceptable to the Executive Director, verifying that the project has been constructed in conformance with the approved project plans described by special condition 1 above.
- 5. Monitoring and Reporting.** The Permittee shall ensure that the condition and performance of the as-built project is regularly monitored by a licensed civil engineer with experience in coastal structures and processes. Such monitoring evaluation shall at a minimum address whether any significant weathering or damage has occurred that may adversely impact performance, or that may reduce the effectiveness of the camouflaging treatment applied (i.e., the sculpted concrete and/or vegetation). Monitoring reports prepared by a licensed civil engineer with experience in coastal structures and processes, and covering the above-described evaluations, shall be submitted to the Executive Director for review and approval at five year intervals by May 1st of each fifth year (with the first report due May 1, 2010, and subsequent reports due May 1, 2015, May 1, 2020, and so on) for as long as the approved project exists at this location. The reports shall identify any recommended actions necessary to maintain the approved project in a structurally sound manner and its approved state, and shall include photographs taken from each of the same vantage points as required in the as-built plans (see special condition 4) with the date and time of the photographs and the location of each photographic viewpoint noted on a site plan.
- 6. Future Maintenance Authorized.** This coastal development permit authorizes future maintenance subject to the following:

- (a) **Maintenance.** "Maintenance," as it is understood in this special condition, means development that would otherwise require a coastal development permit whose purpose is to repair, reface, and/or otherwise maintain the approved seawall structure in its approved configuration.
- (b) **Maintenance Parameters.** Maintenance shall only be allowed subject to the approved construction plan required by special condition 2. Any proposed modifications to the approved construction plan associated with any maintenance event shall be identified in the maintenance notification (described below), and such changes shall require a coastal development permit amendment unless the Executive Director deems the proposed modifications to be minor in nature (i.e., the modifications would not result in additional coastal resource impacts).
- (c) **Construction Coordinator.** A construction coordinator shall be identified, and their contact information (i.e., address, phone numbers, etc.) including, at a minimum, a telephone number that will be made available 24 hours a day for the duration of construction, shall be provided with the maintenance notification (described below).
- (d) **Other Agency Approvals.** The Permittee acknowledges that these maintenance stipulations do not obviate the need to obtain permits from other agencies for any future maintenance and/or repair episodes.
- (e) **Maintenance Notification.** At least two weeks prior to commencing any maintenance event, the Permittee shall notify, in writing, planning staff of the Coastal Commission's Central Coast District Office. The notification shall include a detailed description of the maintenance event proposed, and shall include any plans, engineering and/or geology reports, proposed changes to the maintenance parameters, other agency authorizations, and other supporting documentation describing the maintenance event. The maintenance event shall not commence until the Permittee has been informed by planning staff of the Coastal Commission's Central Coast District Office that the maintenance event complies with this coastal development permit. If the Permittee has not received a response within 30 days of submitting the notification, the maintenance event shall be authorized as if planning staff affirmatively indicated that the event complies with this coastal development permit. The notification shall clearly indicate that the maintenance event is proposed pursuant to this coastal development permit, and that the lack of a response to the notification within 30 days constitutes approval of it as specified in the permit.
- (f) **Maintenance Coordination.** Maintenance events shall, to the degree feasible, be coordinated with other maintenance events proposed in the immediate vicinity with the goal being to limit coastal resource impacts, including the length of time that construction occurs in and around the beach area, Monterey Bay area, and shoreline access points. As such, the Permittee shall make reasonable efforts to coordinate the Permittee's maintenance events with other adjacent events, including adjusting maintenance event scheduling as directed by planning staff of the Coastal Commission's Central Coast District Office.
- (g) **Non-compliance Proviso.** If the Permittee is not in compliance with the conditions of this permit at the time that a maintenance event is proposed, then the maintenance event that might otherwise be allowed by the terms of this future maintenance condition shall not be allowed by this condition until the Permittee is in full compliance with this permit.

- (h) **Emergency.** Nothing in this condition shall serve to waive any Permittee rights that may exist in cases of emergency pursuant to Coastal Act Section 30611, Coastal Act Section 30624, and Subchapter 4 of Chapter 5 of Title 14, Division 5.5, of the California Code of Regulations (Permits for Approval of Emergency Work).
 - (i) **Duration of Covered Maintenance.** Future maintenance under this coastal development permit is allowed subject to the above terms for five (5) years from the date of approval (i.e., until May 11, 2010). Maintenance can be carried out beyond the 5-year period if the Permittee requests an extension prior to May 11, 2010 and the Executive Director extends the maintenance term. The intent of the permit is to regularly allow for 5-year extensions of the maintenance term unless there are changed circumstances that may affect the consistency of the development with the policies of Chapter 3 of the Coastal Act and thus warrant a re-review of the permit.
7. **Shoreline Development Stipulations.** By acceptance of this permit, the Permittee acknowledges and agrees to, on behalf of itself and all successors and assigns, the following:
- (a) **Maintenance Required.** It is the Permittee's responsibility: (1) to maintain the approved project in a structurally sound manner and its approved state; (2) to repair any damage to the camouflaging treatment applied (i.e., the sculpted concrete and/or planter box system and vegetation screen) as soon as is feasibly possible; (3) to ensure that the accessway (from Beach Drive to the beach) fronting the seawall remains passable by pedestrians, including repairing any damage to the accessway as soon as is feasibly possible; and (4) to immediately remove all debris that may fall from the residential area inland of the seawall onto the seawall, accessway, beach, or Monterey Bay.
 - (b) **Native Non-Invasive Plant Species Only.** Non-native and/or invasive plant species shall be prohibited in the planter boxes atop the seawall.
 - (c) **No Further Seaward Encroachment.** Any future development, as defined in Section 30106 ("Development") of the Coastal Act, including but not limited to modifications to the seawall, shall be constructed inland of, and shall be prohibited seaward of, the seaward plane of the approved concrete facing with the following development excepted from this prohibition: (1) appropriately permitted construction activities associated with construction, maintenance, and/or repair of the project approved by this coastal development permit; and (2) standard shoreline access maintenance activities.
 - (d) **Assumption of Risk, Waiver of Liability and Indemnity Agreement.** The Permittee acknowledges and agrees, on behalf of itself and all successors and assigns: (1) that the site is subject to extreme coastal hazards including but not limited to episodic and long-term shoreline retreat and coastal erosion, high seas, ocean waves, storms, landsliding, and coastal flooding; (2) to assume the risks to the Permittee and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (3) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; (4) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement

arising from any injury or damage due to such hazards; and (5) that any adverse effects to property caused by the permitted project shall be fully the responsibility of the landowner.

(e) **Future Shoreline Planning.** The Permittee agrees, on behalf of itself and all successors and assigns, to participate in future shoreline armoring planning efforts that involve the seawall approved pursuant to this coastal development permit. Such planning efforts may involve consideration of a shoreline armoring management entity meant to cover the larger shoreline that includes the seawall, and may involve consideration of potential modifications and/or programs designed to reduce public viewshed and shoreline access impacts due to shoreline armoring. Agreeing to participate in no way binds the Permittee (nor any successors and assigns) to any particular outcome of such planning efforts or to any financial commitment; and in no way limits his/her ability to express his/her viewpoint during the course of such planning efforts.

(f) **Use of the Accessway.** The Permittee shall not interfere with or otherwise discourage use of the accessway (that extends from the eastern end of Beach Drive to the beach) or the beach itself.

8. **MBNMS Review.** PRIOR TO CONSTRUCTION, the Permittee shall submit to the Executive Director written evidence that all necessary permits, permissions, approvals, and/or authorizations for the project as approved by this coastal development permit have been granted by the Monterey Bay National Marine Sanctuary. Any changes to the approved project required by the Sanctuary shall be reported to the Executive Director. No changes to the approved project shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is necessary.

9. **Deed Restriction.** WITHIN SIXTY DAYS OF ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit to the Executive Director for review and approval documentation demonstrating that the Permittee has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the special conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the property. The deed restriction shall include a legal description and site plan of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

III. EXECUTIVE DIRECTOR'S DETERMINATION

The Executive Director hereby determines that the proposed development is a category of development that qualifies for approval by the Executive Director through the issuance of an administrative permit (Public Resources Code Section 30624). Subject to Standard and Special Conditions as attached, said development is in conformity with the provisions of Chapter 3 of the Coastal Act of 1976, and will not

have any significant adverse effects on the environment within the meaning of the California Environmental Quality Act.

IV. FINDINGS FOR EXECUTIVE DIRECTOR'S DETERMINATION

1. Project Location

The proposed development is located at Hidden Beach (i.e., the area roughly bounded by the Beach Drive and Via Gaviota residential communities) directly adjacent to the end of Beach Drive in the unincorporated Aptos area of south Santa Cruz County (see location maps and project area photos in exhibit A). Beach Drive is not a through road, and is partially public (on the upcoast portion) and partially private, marked by a locked gate, on its downcoast side. The pre-Coastal Act Beach Drive and Via Gaviota neighborhoods are located at the base of the coastal bluff on an area that was historically beach. Shoreline armoring fronts the entire seaward side of the Beach Drive and Via Gaviota developments. Upcoast is Aptos Creek and State Parks' Seacliff State Beach unit, and downcoast is the Seascape Resort area. Offshore is the Monterey Bay National Marine Sanctuary – the largest of the twelve such federally protected marine sanctuaries in the nation.

2. Project Background

The proposed development site is part of Hidden Beach, an area accessed inland from Hidden Beach County Park via a beach access trail just downcoast of the site, and accessed up and downcoast from along the beach itself (again, see exhibit A). This beach area has historically been a very popular visitor destination. When significant residential development and an extension of Beach Drive were proposed onto Hidden Beach in the late 1990s, the Commission's Public Access Program began an investigation into whether an implied dedication or prescriptive right of access had been established on part or all of the subject property.¹ The investigation showed that Hidden Beach, the bluffs, and portions of the arroyo along the beach access trail appeared to have been used by the public for many years as if public. Based on this information, the Commission pursued formal prescriptive rights litigation through the courts. Ultimately, the Commission and the then property owners entered into a settlement agreement on June 16, 2003 (see exhibit C). Sometime thereafter the current property owner (i.e., the project Applicant) acquired the property.

Pursuant to the terms of the settlement agreement, development is to be confined on a single L-shaped retained parcel (primarily bluff and beach, and a portion of the existing road) of 12,400 square feet (8,400 sq.ft. of bluff and beach, and 4,000 sq.ft. of existing Beach Drive), with all other property subject to the agreement (including the Hidden Beach sandy beach area and a portion of the adjacent arroyo) to be conveyed to the public in return (about 10 acres of undeveloped beach, bluff, and arroyo); see settlement agreement in exhibit C, and see annotated area plan on page 3 of exhibit A for identification of the retained (private) and conveyed (public) properties). In sum, and in return for dedicating the 10

¹ California law provides that, under certain conditions, public access across privately owned property may result in the establishment of a permanent public easement. This easement is variously characterized as being established by "prescriptive rights" or an "implied dedication." The goal of a prescriptive rights investigation is to gather enough information about the subject property to accurately detail the property's history and use status. The initiation of a prescriptive rights investigation is not a judgment that a "prescriptive right" exists or probably exists. Rather, the outcome of such investigation will determine whether there is a sound factual basis for making a claim of prescriptive rights.

acres to the public, the settlement allowed for a single-family home to be constructed within the bluff with a driveway extension from Beach Drive to gain access to it; armoring to protect the driveway was also allowed. Because the coastal permit jurisdictional boundary runs roughly along the toe of the coastal bluff at this location, the settlement thus provided for development both in the Commission's retained coastal permit jurisdiction (essentially the driveway and related development on the beach) and development in the County's jurisdiction (the residence).

3. Project Description

In March 2005 Santa Cruz County approved a residential project including an extension of Beach Drive to gain access to it. That approval was appealed to the Commission on the basis that the project was inconsistent with both the settlement agreement and the LCP (appeal number A-3-SCO-05-023; see exhibit D). Also in March, the Applicant submitted the related coastal development permit application to the Commission for the portion of the project located in the Commission's retained jurisdiction. Shortly thereafter, Commission staff began a series of meetings with the Applicant designed to address the appeal and settlement agreement issues. Those meetings culminated with the Applicant modifying his project application to the Commission, including agreeing to the conditions of approval now included in this administrative permit (see exhibit E); conditions that are similar to those generally applied in Santa Cruz County by the Commission in cases involving shoreline armoring.

The project as now proposed in the Commission's jurisdiction retains all development within the confines of the retained private parcel by means of a faux bluff faced concrete seawall (see site plan and cross section in exhibit C). The project also includes parameters for ensuring the seawall will be screened with native vegetation and made to look as natural as possible, and includes provisions for: construction and maintenance by the Permittee of a beach access pathway to and from Beach Drive; restrictions against interfering with public use of the pathway; minimizing visual intrusion of fences, gates, guardrails, etc.; maintenance to take place on an as needed basis, subject to construction and restoration criteria; long-term monitoring; assumption of risk by the property owner; construction criteria to limit impacts on beach area resources during construction; and recordation of a deed restriction.

The seawall should be only minimally visible during most times of the year (due to sand elevations), and it will be further camouflaged by concrete facing made to look like the surrounding bluffs and by non-invasive native landscaping designed to trail down over the top of the wall. The project also includes provisions for a beach access pathway and for see-through minimally intrusive fencing at the driveway boundary itself.

4. Coastal Act Consistency

The main issues raised by this application are consistency with the shoreline hazards and public access policies of the Coastal Act (Sections 30210-30214 and 30235). The project proposes a concrete seawall in a beach area for a house that is not yet built, although Santa Cruz County has approved a coastal development permit for the residence that is currently on appeal to the Commission. As discussed above, the project is the result of a negotiated settlement agreement between the Commission and the previous property owners that provides for over 10 acres of beach and uplands to be transferred to public ownership (again see exhibit C and page 3 of exhibit A). In exchange, the Commission agreed to the construction of a single family residence with, to the extent necessary to support the development of a

home in this location, a driveway extension from Beach Drive and a minimal protective structure extended from the existing rock revetment immediately upcoast of the project site. There is also a public sewer line under the beach where the driveway will be constructed that already has rip-rap protecting a manhole. The proposed wall will extend from the existing adjacent revetment to and just beyond the rock protecting the sewer facility. This project thus implements a part of the settlement agreed to by the Commission. To the extent that there are any resource impacts from the proposed wall construction necessary to support the driveway, these are mitigated by the dedication of the ten acres of beach and uplands to the public, as well as the special conditions agreed to by the Applicant. Thus, as conditioned, and in the context of the settlement agreement that provides for the public dedication, the project can be found consistent the Coastal Act.

5. California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) 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 effect which the activity may have on the environment.

The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. This staff report has discussed the relevant coastal resource issues with the proposal, and has recommended appropriate suggested modifications to avoid and/or lessen any potential for adverse impacts to said resources. All public comments received to date have been addressed in the findings above. All above Coastal Act findings are incorporated herein in their entirety by reference.

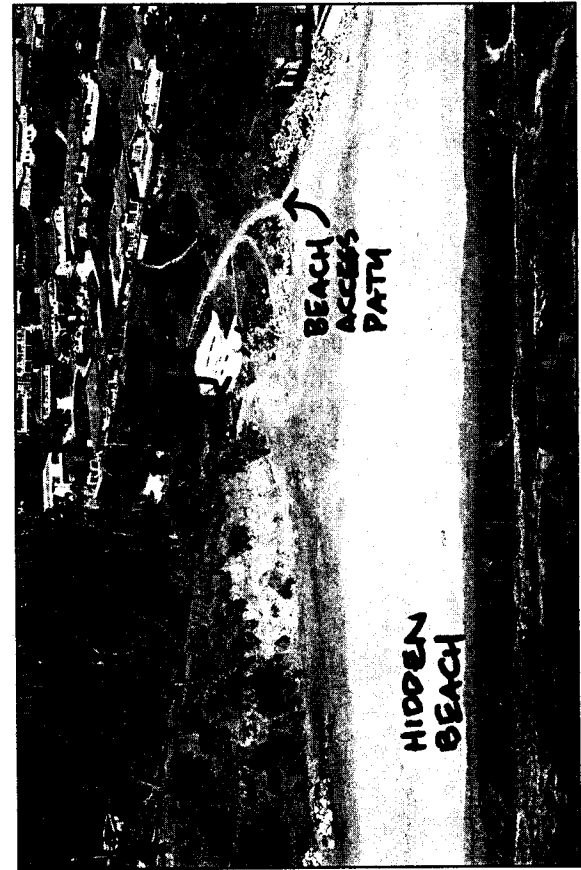
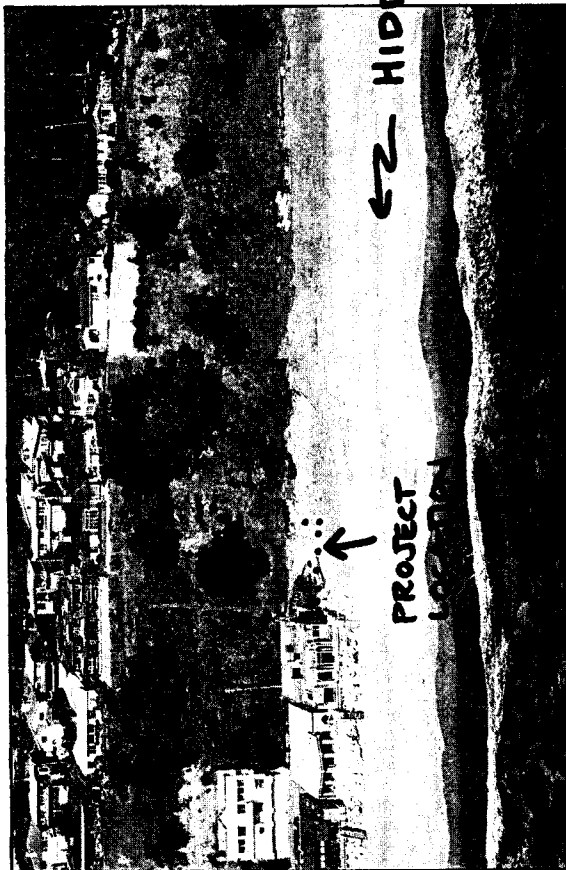
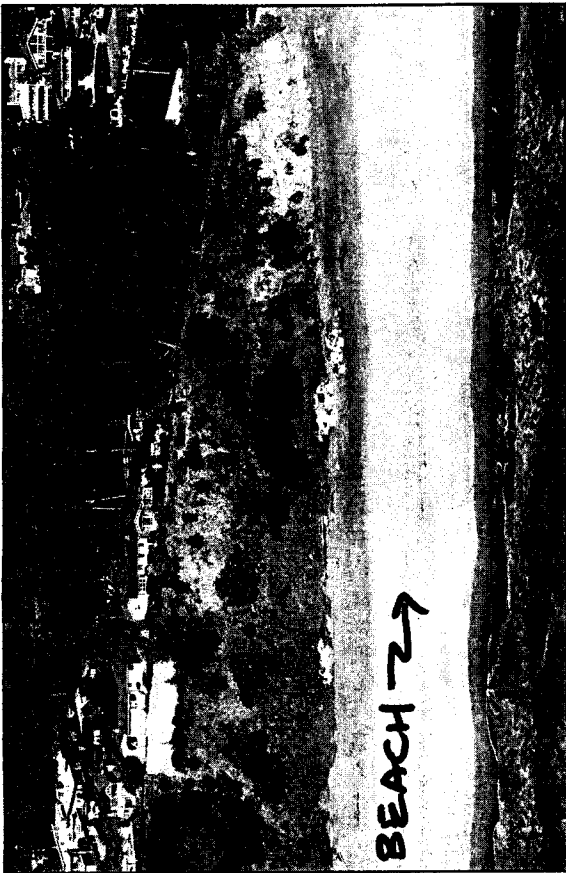
As such, there are no additional feasible alternatives nor feasible mitigation measures available which would substantially lessen any significant adverse environmental effects which approval of the proposed project, as modified, would have on the environment within the meaning of CEQA. Thus, if so modified, the proposed project will not result in any significant environmental effects for which feasible mitigation measures have not been employed consistent with CEQA Section 21080.5(d)(2)(A).

V. ACKNOWLEDGMENT OF PERMIT RECEIPT/ACCEPTANCE OF CONTENTS

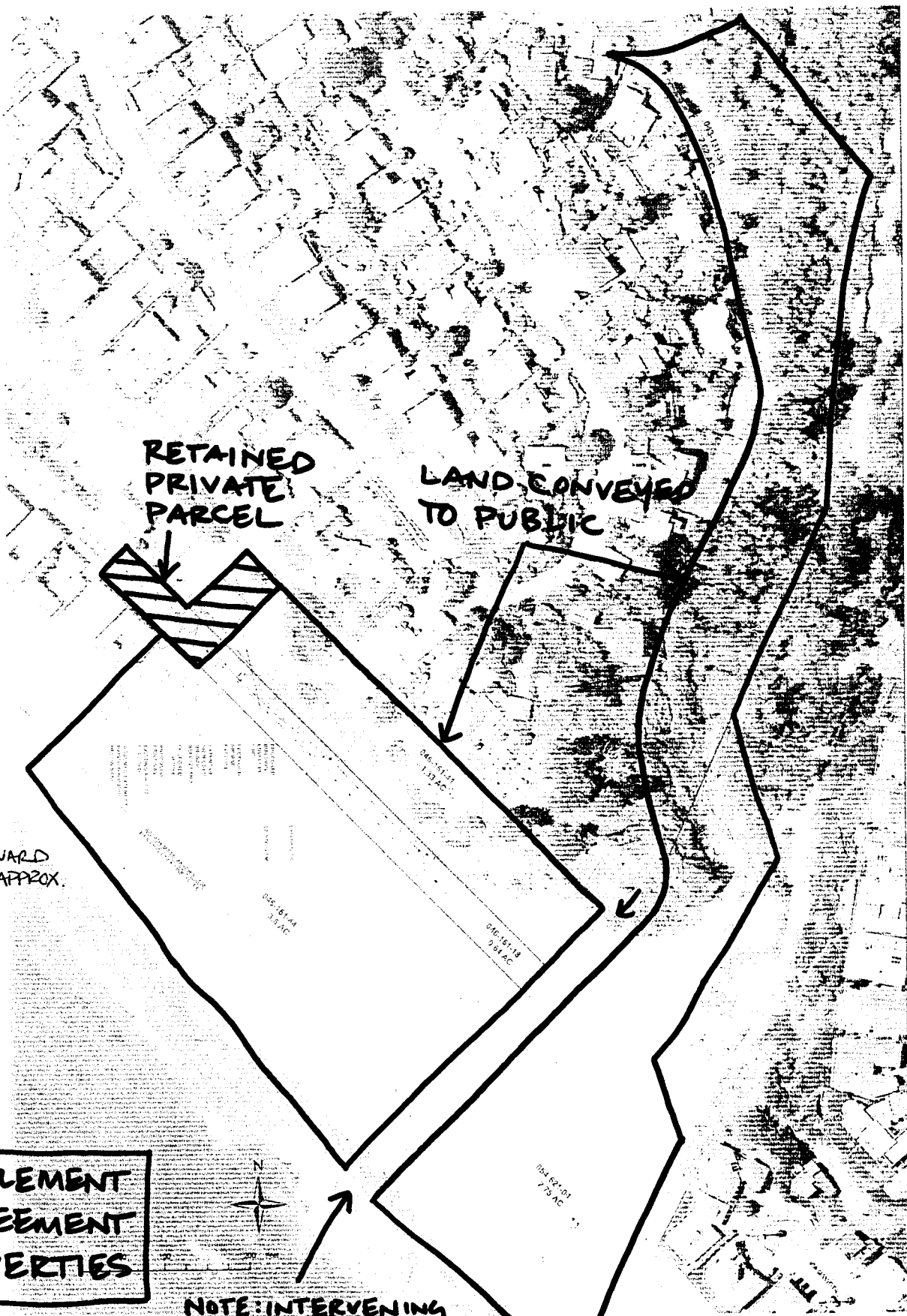
I/We acknowledge that I/we have received a copy of this permit and have accepted its contents including all conditions.

Signature of Applicant

Date of signing



← BEACH DRIVE SFDs



RETAINED
PRIVATE
PARCEL

LAND CONVEYED
TO PUBLIC

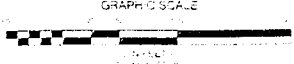
NOTE: SEAWARD
BOUNDARY APPROX.

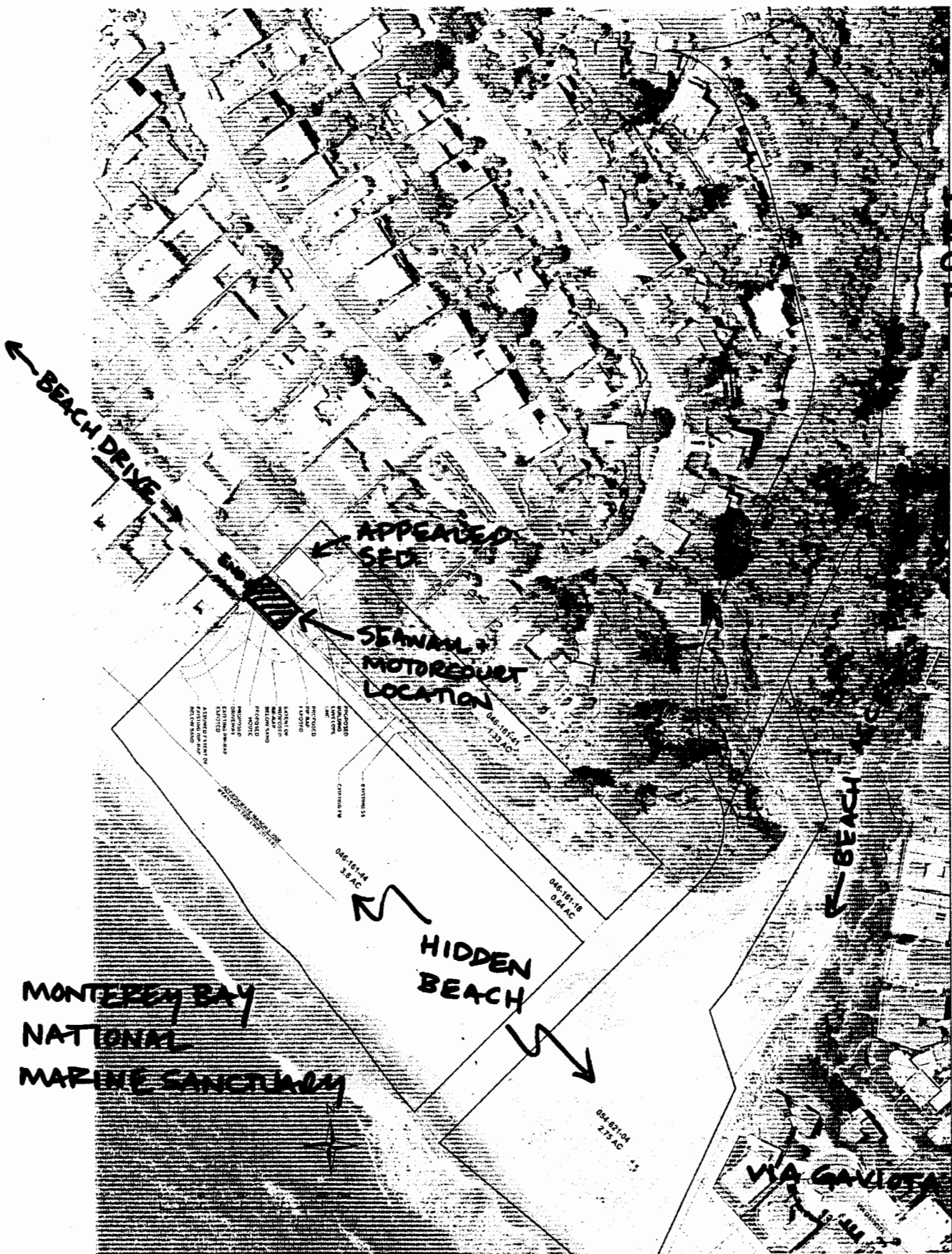
SETTLEMENT
AGREEMENT
PROPERTIES

NOTE: INTERVENING
LAND OWNED BY STATE
OF CALIFORNIA

PROJECT AERIAL
FROM COUNTY OF SANTA CRUZ

Residence
Beach
Engineering, Inc.





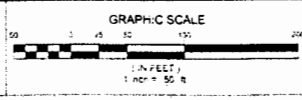
PROJECT AERIAL
FROM COUNTY OF SANTA CRUZ

HOWELL MCNEIL DE MATTE'S RESIDENCE
BEACH DRIVE

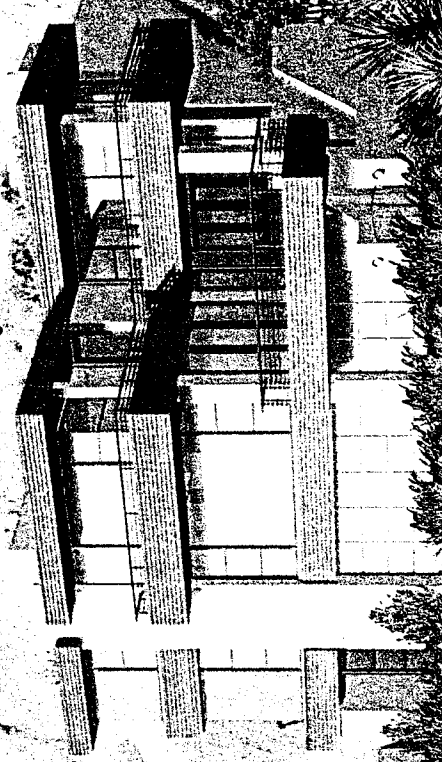
Exhibit A

(page 4 of 5 pages)

Meati-Miller Engineering, Inc.
Engineering
1000 S. 10th St.
San Jose, CA 95128



APPEALED SFD (A-3.SCO-05-023)



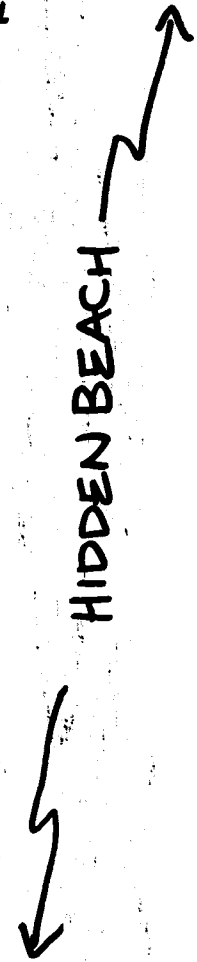
APPROXIMATE TOP EDGE OF
SEAWALL LOCATION (NOTE:
ROCK NOT PROPOSED)

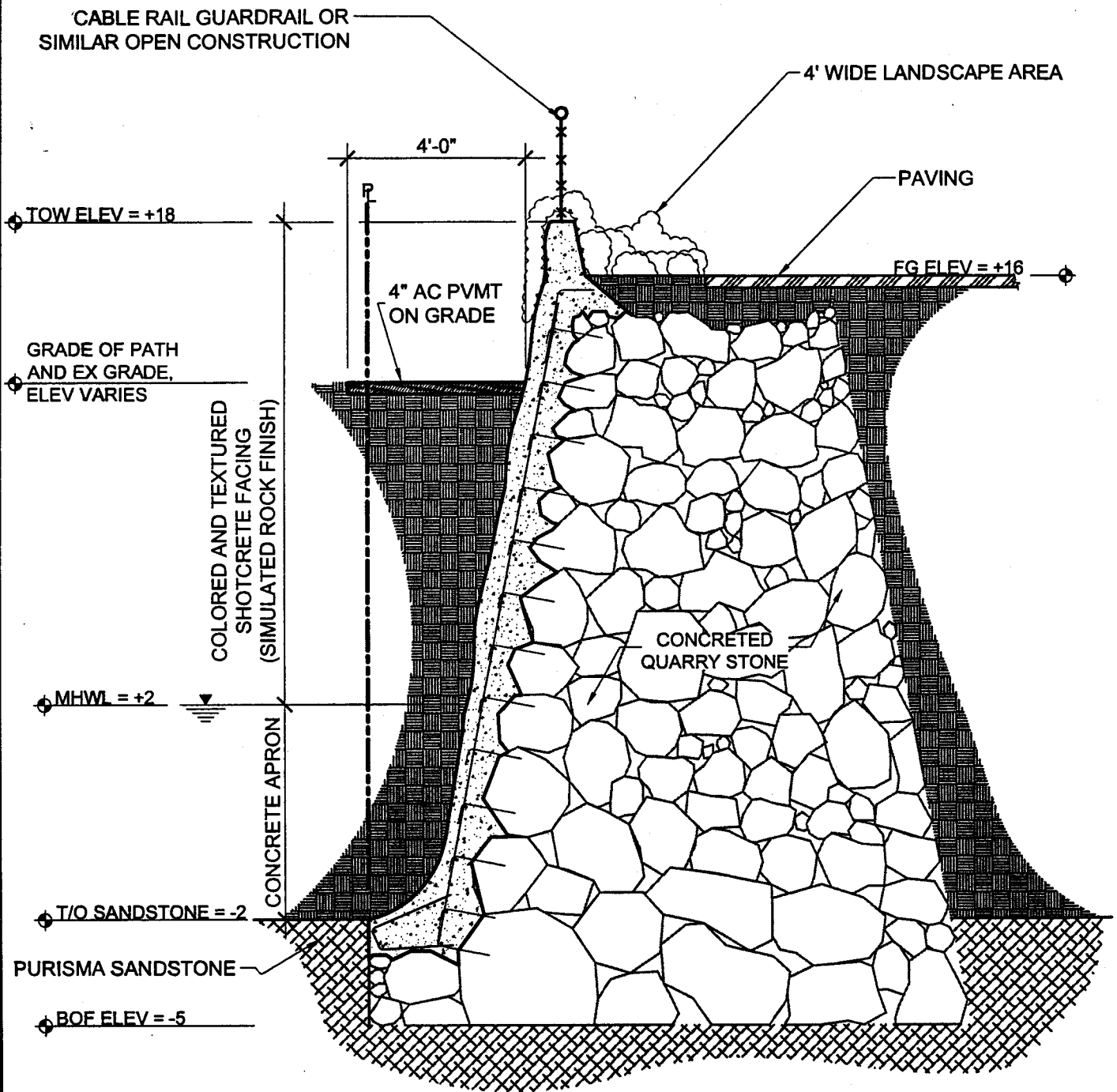


END OF
BEACH
DRIVE



HIDDEN BEACH





CONCRETED STACKED-STONE RETAINING WALL

SCALE: NOT TO SCALE

CCC Exhibit B
(page 2 of 2 pages)

DATE: 4/21/2005

SHEET:

Sk-A1

DE MATTEI - HOWELL - MCNEIL RESIDENCE
BEACH DRIVE, APTOS CALIFORNIA

PREPARED AT THE REQUEST OF

MARK DE MATTEI
1794 THE ALAMEDA
SAN JOSE, CA 95126



Mesiti-Miller Engineering, Inc.
Civil and Structural Engineering
254 Viand Avenue, Suite B - Santa Cruz, CA 95060
Phone 831-426-3186 - Fax 831-426-9807

DRAWN BY:

PD

CHECKED BY:

CH

JOB NUMBER:

103247

**SETTLEMENT AGREEMENT
AND
GENERAL MUTUAL RELEASE**

This Settlement Agreement and General Mutual Release (hereinafter "Agreement") is made by and between Howell and McNeil Development, LLC, a California limited liability company, and Los Gatos-Saratoga Development and Investments, LLC, a California limited liability company (collectively, "Owners"), and State of California ex rel. California Coastal Commission ("State").

Recitals

A. Howell and McNeil Development, LLC, owns the real property commonly known as APNs 43-161-41, -18 & -44 in Santa Cruz County, a legal description of which is attached hereto as Exhibit A (the "Beach Parcel").

B. Los Gatos-Saratoga Development & Investment, LLC, owns the real property commonly known as APNs 54-191-57 and 43-131-34, a legal description of which is attached hereto as Exhibit B (the "Southern Parcel").

C. Disputes have arisen between the parties concerning public rights in and to the Beach Parcel and the Southern Parcel, as set forth in Action Number CV 143286 filed in the Superior Court, County of Santa Cruz, State of California (the "Action"). The parties desire

to settle all disputes between them concerning public rights in and to the Beach Parcel and the Southern Parcel and development of such parcels, all as set forth below.

Agreement

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

1. **Conveyance of Property:** Owners shall retain the real property described in the legal description attached hereto as Exhibit C (consisting of a single lot located at the north-eastern end of the Beach Parcel, being 60-feet wide and 140-feet long, plus a portion of Beach Drive (the "Retained Parcel"). Subject to satisfaction of the conditions precedent described in Paragraph 2, below, Owners shall record an Offer to Dedicate to the State, or to any public entity designated by the State, fee title, free of any liens or encumbrances, to all of the Southern Parcel and all of the Beach Parcel excepting the Retained Parcel (the property to be conveyed shall be referred to as the "Conveyed Land"). The Offer to Dedicate shall be irrevocable for a period of ten years from the date of its recordation and shall state that it is offered in consideration of settlement of the dispute between the parties regarding the public rights in and to the Beach Parcel and the Southern Parcel, as set forth in the Action. The Offer to Dedicate shall be recorded within ten (10) days of final issuance, following any applicable appeal period, of any and all necessary building and development permits (including rezoning, General Plan/Local Coastal Plan amendments, and/or variances, if necessary) required to be obtained from the County of Santa Cruz or State, or any agency

of the State, for construction of a single family residence on the Retained Parcel, meeting the specifications set forth in Paragraph 2.

A map depicting the Parcels described in this agreement is attached hereto as Exhibit D for illustrative purposes.

2. **Specifications for Development on Retained Parcel:** Owners' obligation to offer for dedication the Conveyed Land shall be contingent on final issuance of all necessary building and development permits (including a rezoning, General Plan/Local Coastal Plan amendments and/or variances, if necessary) authorizing construction of a single family residence on the Retained Parcel with the following specifications: the dwelling shall be 3 levels with a garage and non-habitable storage space on the ground level; the entire structure shall have a minimum of 2,500 and a maximum of 3,500 square feet of habitable floor area (as defined by Section 13.10.700-H of the Santa Cruz County Code) excluding deck and balcony areas; the residence shall not exceed thirty (30) feet in height, as building height is defined by the County of Santa Cruz on the date that this Agreement is fully executed; the residence, excluding the access road, shall result in no more than forty percent (40%) lot coverage of the Retained Parcel; the residence shall comply with all FEMA requirements for construction in an area subject to flooding; and the access road and driveway for the dwelling shall be via a driveway extending from Beach Drive, which shall be no longer than the minimum extension necessary for access to the residence. There shall be no extension of the existing seawall, or additional rip rap, or revetments beyond those existing on the date

of this Agreement other than the minimum extension necessary to protect the driveway serving the residence; the residence shall be set back a minimum of eight (8) feet from the southeasterly boundary of the parcel. The development permits shall include those conditions that are generally consistent with the conditions imposed on other developments that have been approved along Beach Drive since the enactment of FEMA requirements.

3. **Dismissal of Lawsuit:** Within ten (10) days of the recordation of the Offer to Dedicate described in Paragraph 1, above, State shall dismiss with prejudice the Action.

4. **Appeal of Development Permits:** State shall not initiate on its own behalf, nor shall any Coastal Commissioner or Coastal Commission staff person initiate, any administrative appeal to the Coastal Commission or any judicial challenge to development permits or building permits issued by the County of Santa Cruz related to development of the Retained Property unless the development permits or building permits issued by the County of Santa Cruz are inconsistent with the specifications set forth in Paragraph 2, above. If any third party files an administrative appeal to the Coastal Commission or a judicial challenge to any of the development permits or building permits issued for the development of the Retained Parcel consistent with the specifications set forth in Paragraph 2, above, Owners shall be entitled to defend such appeal or judicial challenge. If Owners are not successful in defending any such appeal or challenge, this Agreement shall terminate, and all action taken hereunder shall be rescinded, unless the parties otherwise agree in writing. The restrictions in this Paragraph shall not apply to any development approved by the County of Santa Cruz

that is inconsistent with the specifications set forth in Paragraph 2 of this Agreement. This Agreement, and the restrictions in this Paragraph, shall only apply to the initial development of a single-family residence on the Retained Parcel as set forth in Paragraph 2 of this Agreement. This Agreement does not apply to future development on the Retained Parcel following construction of the single-family residence and does not apply to any future development on the private driveway extending from Beach Drive described in Paragraph 2 of this Agreement.

5. **Restriction on Conveyed Land:** The Conveyed Land shall, upon execution of this agreement, remain as open space land for public recreational use, with no new structures or improvements constructed or placed on the land. This restriction shall be included in the Offer to Dedicate and in its acceptance. Owners agree that they will not interfere with public recreational use of the Conveyed Land pending final decisions on their application for development of a single family residence on the Retained Parcel.

6. **Release by State:** State, on behalf of itself, and its agencies, commissions, boards, departments, officers, directors, appointees, and employees, hereby releases and forever discharges Owners, and any and all of Owners' members, officers, directors and employees, from any and all causes of action, claims, demands, rights, damages, costs, suits, contracts, agreements, promises, liability claims, (hereinafter collectively referred to as "Claims") which State now has or may hereafter have against Owners arising out of, based upon, or relating to the facts alleged in the Action.

7. **Owners' Release:** Owners, on behalf of themselves and their members, officers, directors and employees, hereby release and forever discharge State and any and all of its agencies, commissions, boards, officers, directors, appointees, and employees, from any and all causes of action, claims, demands, rights, damages, costs, suits, contracts, agreements, promises, liability claims, (hereinafter collectively referred to as "Claims") which Owners now have or may hereafter have against State arising out of, based upon, or relating to the facts alleged in the Action.

8. **Section 1542 Waiver:** The parties to the Agreement fully understand and hereby relinquish and waive any and all rights conferred upon them by the provision of Section 1542 of the Civil Code of the State of California which reads as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

9. **Binding Effect:** This Agreement and each and all of the representations, warranties, and covenants of the parties hereto are binding upon the successors, assigns, heirs, and representatives of the parties and each and all of their respective successors, assigns, heirs and representatives.

10. **Voluntary Execution:** The parties have read and understand this Agreement and warrant and represent that this Agreement is executed voluntarily and without duress and undue influence on the part of or on behalf of any party hereto. The parties hereby acknowledge that they have been represented in negotiations and in the preparation of this

Agreement by counsel of their own choice, that they have read this Agreement and have had it fully explained to them by counsel, and that they are fully aware of the contents of this Agreement and of the legal effect of each and every provision hereof.

11. **Entire Agreement:** This Agreement contains the sole and entire agreement and understanding of the parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are merged in this Agreement. No representations, oral or otherwise, express or implied, other than those contained herein, have been made by any party. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the parties.

12. **Waiver:** No provision of this Agreement may be waived unless in writing signed by all parties. Waiver of any one provision shall not be deemed to be a waiver of any other provision. This Agreement may be modified or amended only by written agreement executed by all of the parties hereto.

13. **California Law:** This Agreement shall be deemed to have been entered into in the State of California. All questions concerning the validity, interpretation, or performance of any of its terms or provisions, or any rights or obligations of the parties hereto shall be given by and resolved in accordance with the laws of the State of California in effect at the date of execution of this Agreement.

14. **Counterparts:** The parties agree that this Agreement may be signed in counterparts.

15. **No Admission:** The parties acknowledge that this settlement is not an admission by either party of any wrongdoing or any of the allegations of the Complaint in the Action in any manner. This settlement is a settlement of a disputed claim. The parties shall pay their own fees and costs in the pending action.

16. **Headings:** The headings in this Agreement shall be for reference purposes only, and shall have no legal effect.

IN WITNESS WHEREOF, this Agreement is executed by the parties hereto on the dates indicated below.

Dated: 6-4-03

Howell & McNeil Development, LLC
A California limited liability company

By: 

Its: Timothy G. McNeil

Los Gatos-Saratoga Development
And Investments, LLC
A California limited liability company

By: 

State of California ex rel. California
Coastal Commission

By: 

Its: Peter Douglas

Dated: 6/16/03

SITUATE IN THE COUNTY OF SANTA CRUZ, STATE OF CALIFORNIA AND BEING A PORTION OF THE APTOS RANCHO, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEASTERLY CORNER OF THE PARCEL OF LAND AS DESCRIBED IN THE DEED FROM CARLYLE MILLER ET UX TO MARIAN C. VANTRESS, DATED DECEMBER 29, 1971, RECORDED DECEMBER 31, 1971 IN BOOK 2160 OFFICIAL RECORDS OF THE COUNTY OF SANTA CRUZ, AT PAGE 317, AND RUNNING THENCE ALONG THE NORTHEASTERLY LINE OF SAID PARCEL AND THE NORTHWESTERLY PROLONGATION THEREOF

1. NORTH 45° 46' WEST, 100.00 FEET TO A POINT ON THE SOUTHEASTERLY LINE OF THE TRACT AS DESCRIBED IN THE QUIT CLAIM DEED FROM JEANNE WILEMAN TO LOUIS W. WILEMAN, DATED OCTOBER 3, 1973, RECORDED OCTOBER 12, 1973 IN BOOK 2356 OFFICIAL RECORDS AT PAGE 37; THENCE ALONG SAID SOUTHEASTERLY LINE
2. NORTH 44° 30' EAST, 40.00 FEET; THENCE
3. SOUTH 45° 46' EAST, 100.00 FEET; THENCE
4. NORTH 44° 30' EAST 100.00 FEET MORE OR LESS TO A POINT ON THE SOUTHWESTERLY LINE OF BLOCK 107, AS SAID BLOCK IS SHOWN ON THE MAP ENTITLED "TRACT NO. 10, RIO DEL MAR COUNTRY CLUB PROPERTIES SUB NO. 10" FILED FOR RECORD DECEMBER 18, 1936 IN BOOK 26 OF MAPS AT PAGE 10 RECORDS OF THE COUNTY OF SANTA CRUZ; THENCE ALONG SAID SOUTHWESTERLY LINE OF SAID BLOCK
5. SOUTH 45° 30' EAST, 600 FEET MORE OR LESS TO THE MOST NORTHERLY CORNER OF THE PARCEL AS DESCRIBED IN THE DEED FROM DOUGLAS M. HELLER ET UX, TO JEANETTE M. HELLER, DATED JULY 8, 1968, RECORDED JULY 9, 1968 IN BOOK 1891 OFFICIAL RECORDS AT PAGE 118; THENCE ALONG THE NORTHWESTERLY LINE OF SAID PARCEL, AND THE SOUTHWESTERLY PROLONGATION
6. SOUTH 44° 30' WEST, TO THE BAY OF MONTEREY; THENCE
7. WESTERLY ALONG THE BAY OF MONTEREY TO THE MOST SOUTHERLY CORNER OF THE FIRST ABOVE NAMED PARCEL AS DESCRIBED IN 2160 OFFICIAL RECORDS AT PAGE 317; THENCE ALONG THE SOUTHEASTERLY LINE OF SAID PARCEL
8. NORTH 44° 30' EAST, TO THE POINT OF BEGINNING.

APN: 43-161-18
43-161-41
43-161-44

SITUATE IN THE COUNTY OF SANTA CRUZ, STATE OF CALIFORNIA, AND BEING A PORTION OF THE APTOS RANCHO AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWESTERLY CORNER OF PARCEL 9, AS SAID PARCEL IS SHOWN ON THE RECORD OF SURVEY MAP, FILED FOR RECORD APRIL 30, 1962 IN BOOK 38 OF MAPS AT PAGE 30, RECORDS OF THE COUNTY OF SANTA CRUZ; AND RUNNING THENCE ALONG THE WESTERLY LINE OF SAID PARCEL AND THE NORTHERLY PROLONGATION THEREOF

1. NORTH 44° 30' EAST, 137.84 FEET TO THE MOST SOUTHERLY CORNER OF LOT 36, BLOCK 107, AS SAID LOT AND BLOCK ARE SHOWN ON THE MAP ENTITLED "TRACT NO. 10 RIO DEL MAR COUNTRY CLUB PROPERTIES, SUB NO. 10", FILED FOR RECORD DECEMBER 18, 1936, IN BOOK 26 OF MAPS, AT PAGE 10; THENCE ALONG THE EASTERLY LINE OF SAID BLOCK, AS SHOWN ON SAID MAP, TANGENTIALLY
2. 143.47 FEET ALONG THE ARC OF A CURVE TO THE LEFT, THROUGH AN ANGLE OF 82° 12'; ON A RADIUS OF 100.00 FEET TO A POINT OF REVERSE-CURVATURE; THENCE TANGENTIALLY
3. 235.62 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, THROUGH AN ANGLE OF 54° 00', ON A RADIUS OF 250.00 FEET; THENCE TANGENTIALLY
4. NORTH 25° 00' WEST, 243.26 FEET; THENCE TANGENTIALLY
5. 74.17 FEET ALONG THE ARC OF A CURVE TO THE LEFT, THROUGH AN ANGLE OF 17° 00', ON A RADIUS OF 250.00 FEET TO THE MOST EASTERLY CORNER OF THE TRACT OF LAND AS DESCRIBED IN THE DEED FROM THE TI CORPORATION TO CARLYLE MILLER, ET UX, DATED DECEMBER 21, 1971, RECORDED DECEMBER 21, 1971 IN BOOK 2157, OFFICIAL RECORDS OF SANTA CRUZ COUNTY AT PAGE 463; THENCE ALONG THE EASTERLY LINE OF SAID TRACT AND THE NORTHERLY PROLONGATION THEREOF
6. NORTH 14° 38' WEST, 263.31 FEET TO THE MOST EASTERLY CORNER OF THE TRACT AS DESCRIBED IN THE DECLARATION OF HOMESTEAD, BY ECKHART BUSCH, DATED MARCH 2, 1955, RECORDED MARCH 2, 1955 IN VOLUME 1006 OFFICIAL RECORDS AT PAGE 72; THENCE ALONG THE NORTHEASTERLY LINE THEREOF
7. NORTH 22° 15' WEST, 100.00 FEET; THENCE TANGENTIALLY
8. 105.77 FEET ALONG THE ARC OF A CURVE TO THE LEFT, THROUGH AN ANGLE OF 60° 36', ON A RADIUS OF 100.00 FEET TO A POINT OF CUSP, ON THE SOUTHERLY LINE OF CLIFF DRIVE, AS SHOWN ON THE MAP ENTITLED, "TRACT NO. 38, RIO DEL MAR COUNTRY CLUB PROPERTIES", FILED FOR RECORD MARCH 26, 1940 IN BOOK 26 OF MAPS, AT PAGE 38; THENCE ALONG SAID LINE
9. 162.25 FEET ALONG THE ARC OF A CURVE TO THE LEFT, THROUGH AN ANGLE OF 38° 44' ON A RADIUS 240.00 FEET; THENCE TANGENTIALLY
10. NORTH 58° 25' EAST, 14.74 FEET TO THE MOST WESTERLY CORNER OF PARCEL 10 AS SAID PARCEL IS SHOWN ON THE 1ST ABOVE NAMED MAP; THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL
11. SOUTH 38° 35' EAST, 238.51 FEET TO THE SOUTHERLY CORNER OF SAID PARCEL; THENCE ALONG THE WESTERLY LINE OF PARCEL 11 AS SHOWN ON SAID MAP
12. SOUTH 14° 15' WEST, 98.08 FEET; THENCE
13. SOUTH 4° 30' WEST, 287.76 FEET; THENCE

14. SOUTH 23° 45' WEST, 132.00 FEET TO AN ANGLE POINT IN THE WESTERLY LINE OF THE PARCEL SHOWN ON SAID MAP AS "LANDS OF KRAG", THENCE ALONG SAID WESTERLY LINE
15. SOUTH 23° 30' WEST, 132.00 FEET; THENCE
16. SOUTH 15° 30' EAST, 178.20 FEET TO THE MOST NORTHERLY CORNER OF PARCEL 13 AS SHOWN ON SAID MAP; THENCE ALONG THE WESTERLY LINE OF SAID PARCEL
17. SOUTH 15° 19' 55" WEST, 189.97 FEET; THENCE
18. SOUTH 66° 22' 51" WEST, 71.41 FEET; THENCE
19. SOUTH 38° 13' WEST, 37.84 FEET; THENCE
20. SOUTH 17° 11' 42" EAST, 102.67 FEET TO THE MOST WESTERLY CORNER OF LOT 22, AS SHOWN ON THE RECORD OF SURVEY MAP, FILED FOR RECORD SEPTEMBER 15, 1969 IN BOOK 50 OF MAPS, AT PAGE 49 THENCE ALONG THE WESTERLY LINE OF SAID LOT AND THE SOUTHERLY PROLONGATION THEREOF
21. SOUTH 26° 10' 30" WEST, 283.19 FEET TO THE MEAN HIGH TIDE LINE OF THE BAY OF MONTEREY; THENCE
22. WESTERLY ALONG SAID MEAN HIGH TIDE LINE TO A POINT FROM WHICH THE POINT OF BEGINNING BEARS NORTH 44° 30' EAST; THENCE
23. NORTH 44° 30' EAST TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THE LANDS DESCRIBED IN THE DEED FROM CARLYLE MILLER AND DOLORES K. MILLER TO THE SANTA CRUZ COUNTY SANITATION DISTRICT RECORDED APRIL 12, 1979 IN BOOK 3043, PAGE 263, OFFICIAL RECORDS OF SANTA CRUZ COUNTY.

APN: 54-191-57
43-131-34

USES ONLY

APN
43-131-34

Southern Parcel

10 DEL MAR COUNTRY CLUB SUB 10
6-M-10 12-18-36

NTRY CLUB SUB. 10 M.B. 2

25004

Retained Parcel

Beach Parcel

Conveyed Land

Conveyed Land

MONTEREY CCC Exhibit C

Note - Assessor's Parcel Block & Lot Numbers Shown in Circles.

pages)
EXHIBIT D

CALIFORNIA COASTAL COMMISSION

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

**APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT**

Please review attached appeal information sheet prior to completing this form.

SECTION I. Appellant(s):

Name, mailing address and telephone number of appellant(s):

Commissioner Sara Wan

Commissioner Mary Shallenberger

California Coastal Commission

California Coastal Commission

45 Fremont Street, Suite 2000

45 Fremont Street, Suite 2000

San Francisco, CA 94105-2219

San Francisco, CA 94105-2219

(415) 904-5200

(415) 904-5200

SECTION II. Decision Being Appealed

1. Name of local/port government:

Santa Cruz County

2. Brief description of development being appealed:

Construct +4,900 square foot single-family residence within the bluffs fronting the sandy beach at Hidden Beach.

3. Development's location (street address, assessor's parcel number, cross street, etc.):

Undeveloped bluff and sandy beach area immediately downcoast of the developed end of Beach Drive in the Aptos area of unincorporated Santa Cruz County.

4. Description of decision being appealed:

a. Approval; no special conditions: _____

b. Approval with special conditions: XXX

c. Denial: _____

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-3-SCO-05-023

DATE FILED: 3/24/05

DISTRICT: Central Coast

RECEIVED

MAR 24 2005

CCC Exhibit D CALIFORNIA
(page 1 of 7 pages) COASTAL COMMISSION
CENTRAL COAST AREA

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (PAGE 2)

5. Decision being appealed was made by (check one):

a. ☐ Planning Director/Zoning
Administrator

c. ☐ Planning Commission

b. ☒ City Council/Board of
Supervisors

d. ☐ Other: _____

6. Date of local government's decision: March 8, 2005

7. Local government's file number: 04-0044

SECTION III Identification of Other Interested Persons

Give the names and addresses of the following parties: (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

<u>Mark De Mattei</u>	<u>Rep: Betty Cost, Planning & Permit Services, LLC</u>
<u>1631 University Way</u>	<u>100 Doyle Street, Suite E</u>
<u>San Jose, CA 95126</u>	<u>Santa Cruz, CA 95062</u>

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearings (s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) Tom Burns, Santa Cruz County Planning Department
701 Ocean Street, Room 420
Santa Cruz, CA 95060

(2) Supervisor Ellen Pirie
701 Ocean Street, Room 500
Santa Cruz, CA 95060

(3) _____

(4) _____

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section which continues on the next page.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT
Page 3

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See Attached.

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signed: Mary Challenberger
Appellant or Agent

Date: 3/24/05

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

(Document2)

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

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State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

See Attached.

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signed: Sara J. Law
Appellant or Agent

Date: 3/24/05

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Date: _____

(Document2)

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (PAGE 3)

Reasons for appeal:

Santa Cruz County approved a proposal to construct an approximately 4,900 square foot residential structure within the bluff area fronting the sandy beach at Hidden Beach just downcoast of the end of Beach Drive in south Santa Cruz County. The overall project also includes an extension of Beach Drive, including a rip-rap revetment fronting the extension. The road/rip-rap portion of the overall project is located in the Coastal Commission's retained coastal permitting jurisdiction and thus is not covered by the County's coastal permit decision. That said, although the appeal applies to the main residential structure and related development in the County's jurisdiction, it must be understood in relation to the rest of the project that is located in the Commission's jurisdiction.

The subject site is governed by a Settlement Agreement. The Agreement was by and between the Commission and the previous landowners, and it continues to govern what development is allowed at this location and under what circumstances. The Agreement lays out specific requirements for new development on the site. Although not explicit in the Agreement, the specifications recited in it will, if properly implemented, presumably result in a project that can be found consistent with the certified LCP and the Coastal Act. Per the Agreement, development is to be confined on a single L-shaped retained parcel (primarily bluff and beach, and a portion of the existing road) of 12,400 square feet (8,400 sq.ft. of bluff and beach, and 4,000 sq.ft of existing Beach Drive), with all other property subject to the Agreement (including the sandy beach area and a portion of the adjacent arroyo) to be conveyed to the public (about 10 acres of undeveloped beach, bluff, and arroyo). The approved project raises issues and questions as to its consistency with the Settlement Agreement (and, by extension, with the LCP and Coastal Act) as follows:

The Settlement Agreement allows for the development of a residence and access to it on the retained parcel subject to the terms of the Agreement. The proposed residential structure provides for a 3-car garage on the downcoast side of the residence, furthest away from the end of Beach Drive by which access to the site is made. Access to the garage thus requires an extension of Beach Drive across the entire frontage of the retained parcel through a 60-foot extension of Beach Drive onto the beach. In order to protect this new road extension, the approved project includes a new revetment that is also located on the sandy beach. In contrast, the Settlement Agreement allows for a "driveway extending from Beach Drive, which shall be no longer than the minimum extension necessary for access to the residence." The Agreement goes on to state that "there shall be no extension of the existing seawall, or additional rip-rap, or revetments beyond those existing on the date of this Agreement other than the minimum extension necessary to protect the driveway serving the residence."

The proposed road extension and rip-rap is not the minimum necessary to serve residential development on the retained-parcel. In addition, there is no provision in the Settlement Agreement for the placement of significant amounts of new rip rap on the land to be conveyed to the public; in fact, the Agreement states that there are to be no new structures or improvements

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (PAGE 4)

Reasons for appeal (continued):

on the conveyed land. There are feasible design options for the residential structure that would allow for a reduced amount of driveway and rip-rap (that could be confined on the applicant's retained parcel), and thus less coverage of the sandy beach area and the land to be conveyed to the public. Such design options include placing any garage on the upcoast side of the residence, limiting its size, providing for stacked parking, providing off-site (on existing Beach Drive) parking, minimizing required parking spaces, etc. The approved residential structure configuration will lead to more road and rip-rap coverage of the sandy beach than is necessary, and thus appears to be inconsistent with the LCP and applicable Coastal Act policies protecting public access, public recreational opportunity, the beach viewshed, beaches themselves, natural landforms, long-term stability and structural integrity.

The approved project also raises a number of other LCP consistency questions with respect to its conformance with the Settlement Agreement. Taken individually, these issues may not themselves be of significant resource concern given the Agreement, but taken together, and when considered in light of the primary issues above, they exhibit additional disregard for the terms of the Settlement, and they lead to residential development that is in excess of the maximum allowed by the Agreement. Specifically, the Agreement identifies specific parameters for development of a residence on the retained parcel site with which the project as approved by the County appears to be inconsistent, including that the approved residence appears to:

- exceed the 3,500 square foot maximum allowed habitable floor area;
- include habitable floor area on the lowest floor when such floor area is not allowed;
- allow a zero setback on the southeasterly parcel boundary when an 8-foot setback is required;
- exceed the 30-foot height limit; and
- include development that may be inconsistent with FEMA requirements, such as non-disposable, non-breakaway elements below the base floor wave run-up elevation.

Taken together-with the primary issue above, the result is that the project: exceeds allowable massing; such massing is pushed toward the undeveloped beach area (and not concentrated toward the developed Beach Drive area); includes unnecessary development in the viewshed (such as walls and gates); and includes development that may lead to impacts and other problems during storm and/or hazard events (contrary to FEMA, public nuisance law, etc.). In turn, these project aspects again raise the same LCP and Coastal Act consistency issues identified above.

In addition, and apart from the Settlement Agreement, the approved project raise core LCP and Coastal Act policy questions regarding development in coastal hazard areas and on otherwise constrained property, the mass and scale of development within public beach viewsheds, and installation of shoreline armoring – all of which are relevant in this case. Development in the immediate shoreline like this can adversely alter natural shoreline processes and, as such, have a variety of negative impacts on coastal resources including adverse affects on sand supply, public access, coastal views, natural landforms, and overall shoreline beach dynamics on and off site, ultimately resulting in the loss of beach. As a result, exacting criteria must be met under the LCP, and the Coastal Act, before such structures can be considered or approved, and the LCP requires 100 years of stability (without reliance on shoreline protective structures) for development. The

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Reasons for appeal (continued):

County approved residential project includes a revetment that is required for its protection. In other words, the new residence relies a revetment to ensure its long term stability. This is inconsistent with to the LCP and Coastal Act.

In sum, the approved project appears inconsistent with the Settlement Agreement, and with the LCP and Coastal Act. There appear to be feasible project modifications that can bring the project into consistency with the Settlement Agreement, and with the LCP and Coastal Act to the degree possible in this case. These issues warrant a further analysis and review of the proposed project by the Coastal Commission.



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APR 28 2005

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

April 28, 2005

Dan Carl
Charles Lester
California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, CA 95060-4508

Re: Enclosed Statement

Gentlemen:

I have read and accept the conditions dated April 28, 2005. I would like to move forward.

Thank you for your great work. It is much appreciated.

Kindly,



Mark De Mattei
President

CCC Exhibit E
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