

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

RECORD PACKET COPY

Filed: 1/14/05  
180th Day: 7/13/05  
Staff: J. Johnson  
Staff Report: 5/24/05  
Hearing Date: 6/10/05  
Commission Action:



## STAFF REPORT: PERMIT AMENDMENT

**APPLICATION NO.:** 4-98-202-A1

**APPLICANT:** Rust Trust

**AGENT:** Alan Block, Esq.

**PROJECT LOCATION:** 33526 Pacific Coast Highway, City of Malibu; Los Angeles County

**DESCRIPTION OF PROJECT PREVIOUSLY APPROVED:** The Commission granted "after the fact" approval for a 528 sq. ft. detached garage, conversion of an existing 421 sq. ft. non-habitable studio to a second residential unit, a 750 gallon septic tank, and approximately 18 cu. yds. of grading (9 cu. yds. cut and 9 cu. yds. fill) with conditions, and denied approval for other existing, unpermitted development on the site. In a settlement of a lawsuit by Rust Trust challenging the Commission's action, the Commission agreed not to require a permit for an existing 330 sq. ft. cabana, 580 sq. ft. wooden deck, bluff stairway, and wooden retaining walls for the stairway.

**DESCRIPTION OF AMENDMENT:** 1) Complete revegetation of the ocean facing slope between the cabana and beach; 2) Implementation of a 5 year monitoring program with a landscape consultant; 3) change color of roof and façade of the existing cabana to blend with the soil; 4) construction of a drainage collection and filtering system; 5) change roof and façade color of the main residence to blend with the soil; and 6) provide a viewing corridor along PCH equal to 20% of the entire width of property. Rust Trust is required to undertake this development pursuant to the settlement agreement with the Commission.

<b>Lot area:</b>	31,020	sq. ft.
<b>Building coverage:</b>	3,365	sq. ft.
<b>Pavement coverage:</b>	9,053	sq. ft.
<b>Landscape coverage:</b>	18,022	sq. ft.

### SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission determine that the proposed project is consistent with the requirements of the City of Malibu Local Coastal Program with a revised special condition no. 2 and five additional special conditions requiring a deed restriction to inform future buyers of the property of all restrictions, a view corridor requirement, roof and façade color restrictions, native landscaping on the bluff and

condition compliance. This proposed project is the result of a settlement of litigation between the California Coastal Commission and Rust Trust in 2004.

### **STAFF NOTE**

***DUE TO PERMIT STREAMLINING ACT REQUIREMENTS THE COMMISSION MUST ACT ON THIS PERMIT APPLICATION AT THE JUNE 2005 COMMISSION HEARING.***

**LOCAL APPROVALS RECEIVED:** None

**SUBSTANTIVE FILE DOCUMENTS:** Coastal Development Permit No. 4-98-202 (Rust Trust).

### **STAFF RECOMMENDATION:**

**MOTION:** I move that the Commission approve the proposed amendment to Coastal Development Permit No. 4-98-202 pursuant to the staff recommendation.

### **STAFF RECOMMENDATION OF APPROVAL:**

Staff recommends a **YES** vote. Passage of this motion will result in approval of the amendment as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

#### **I. Resolution for Approval with Conditions**

The Commission hereby approves a coastal development permit amendment for the proposed development and adopts the findings set forth below on the grounds that the development as conditioned will be in conformity with the policies of the City of Malibu Local Coastal Program. Approval of the permit amendment complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

#### **II. Approval with Conditions**

Staff Note: The standard and special conditions required for approval of the original permit, unless revised by the additional special conditions stated below, shall remain in effect and are attached in **Exhibit A** and incorporated herein.

### **III. Special Conditions**

#### **REVISED SPECIAL CONDITION NO. 2 (FUTURE DEVELOPMENT)**

Pursuant to Title 14 California Code of Regulations section 13250(b)(6) and 13253(b)(6) any improvements to the structures approved in CDP 4-98-202, as amended by CDP 4-98-202-A1, are not exempt under Public Resources Code sections 30610(a) and (b) from the requirement for a coastal development permit. Accordingly, any future improvements to such structures shall require an amendment to CDP 4-98-202-A1 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government. In addition, pursuant to Title 14 California Code of Regulations section 13253(b), improvements to the structures that are allowed to remain on the property pursuant to paragraph 4 of the Agreement to Compromise and Settle Disputed Claims and Mutual Release of Claims between Rust Trust and the Coastal Commission, dated February 25, 2004, are not exempt from the requirement for a coastal development permit. Accordingly, any future improvements to such structures shall require an amendment to CDP 4-98-202-A1 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

#### **5. DEED RESTRICTION**

***Prior to issuance of the coastal development permit*** the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to these permits, 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 (hereinafter referred to as the "Standard and Special Conditions"); and (2) imposing all Standard and Special Conditions of these permits as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the applicant's entire parcel or parcels. 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.

#### **6. CONDITION COMPLIANCE**

Within 90 days of Commission action on this coastal development permit application, or within such additional time as the Executive Director may grant for good cause, the

applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

#### 7. VIEW CORRIDOR

**Prior to the issuance of the coastal development permit**, the applicant shall submit, for the review and approval of the Executive Director, evidence that a view corridor along Pacific Coast Highway equal to twenty percent (20%) of the entire width of the property has been provided. No structures, vegetation, or other development which result in an obstruction of public views of the ocean from Pacific Coast Highway shall be permitted within the public view corridor.

#### 8. COLOR RESTRICTION

**Prior to the issuance of the coastal development permit**, the applicant shall submit, for the review and approval of the Executive Director, a color palette and material specifications for the roof and façade of the existing cabana and main residence authorized by the approval of coastal development permit 4-98-202-A1. The palette samples shall be presented in a format not to exceed 8½" X 11" X ½" in size. The palette shall include the colors proposed for the roof and façade of the existing cabana and main residence. Acceptable colors shall be limited to colors which aesthetically blend with the color of indigenous soil.

The approved structures shall be colored with only the colors authorized pursuant to this special condition. Alternative colors or materials for future repainting or resurfacing may only be applied to the structures authorized by coastal development permit 4-98-202 - A1 if such changes are specifically authorized by the Executive Director as complying with this special condition.

#### 9. LANDSCAPING / REVEGETATION

**By acceptance of the coastal development permit** the applicant agrees to implement a landscaping and revegetation plan for the ocean facing slope located between the cabana and the beach in accordance with the Revegetation/Restoration Plan and Monitoring Protocol for the Lower Slope Restoration prepared by Thomas A. Zink Soil Ecology and Restoration Group dated December 2, 2004; and the Lower Slope Restoration Landscape Plan prepared by Robert A.M. Stern Architects dated April 21, 2004.

A five-year monitoring program shall be implemented to monitor the project for compliance with the goals and performance standards outlined in the Revegetation/Restoration Plan. The applicant shall submit, on an annual basis, a written report, prepared by an environmental resource specialist acceptable to the Executive Director, indicating the success or failure of the revegetation/restoration

project. The annual reports shall include further recommendations and requirements for additional restoration activities in order for the project to meet the goals and performance standards specified in the plan.

During the monitoring period, all artificial inputs shall be removed except for the purposes of providing mid-course corrections or maintenance to ensure the long-term survival of the restoration of the project site. If any such inputs are required beyond the first three years, then the monitoring program shall be extended by an amount of time equal to that time during which inputs were required after the first three years, so that the success and sustainability of the revegetation/restoration plan is ensured.

At the end of a five-year period, a final detailed report shall be submitted for the review and approval of the Executive Director. If this report indicates that the restoration project has in part, or in whole, been unsuccessful, based on the approved performance standards, the applicant shall be required to submit a revised or supplemental program to implement revised provisions for those portions of the original program which were not successful.

The revegetation/restoration plan shall be implemented by qualified biologists, ecologists, or resource specialists who are experienced in the field of restoration ecology. The plan may be implemented prior to or concurrently with the construction of the project, taking into account the optimal timing for the various components. The monitoring plan shall be implemented immediately following the completion of the restoration plan.

#### **IV. Findings and Declarations**

The Commission hereby finds and declares:

##### **A. Project Site and History**

The subject site is a 0.71 acre bluff top lot located in the western portion of Malibu between Pacific Coast Highway to the north and the Pacific Ocean to the south. Slopes descend from the existing single family residence at an average angle of 40 degrees to the beach. The bluff face where the proposed development is located was designated as an environmentally sensitive habitat area (ESHA) by the 1986 Malibu/Santa Monica Mountains Land Use Plan. However, upon adoption of the City's Local Coastal Program in 2002, the subject site was not designated as ESHA on the City's ESHA and Marine Resources Map 1, dated 9/02. Observation of the subject site by staff has indicated that the bluff slope vegetation was severely degraded due to development and the presence of ornamental and invasive plant species used for landscaping.

The properties on either side of the subject site have been developed with single family residences and cabanas. However, the two cabanas which are located on the bluff slope of the two adjacent properties to the east and west of the project site were

constructed prior to the Coastal Act and the Coastal Zone Conservation Act and, therefore, did not require a coastal permit.

In March 1997, staff became aware that development had occurred on the project site without the benefit of a coastal development permit. Staff analysis of aerial photography indicates that the development located on the bluff face (cabana, deck, retaining walls, stairway, sewage ejector pump system, and approximately 98 cu. yds. of grading) was originally constructed by a previous property owner between 1975 and March 1977, without the required coastal development permit. The subject site was within the California Coastal Zone Conservation Commission's permit jurisdiction under the California Coastal Zone Conservation Act of 1972 when the proposed development was constructed and is within the Coastal Commission's permit jurisdiction under Section 30600 of the California Coastal Act of 1976. Thus, the construction of these improvements required a coastal development permit at the time they were constructed. Further, during review of the applicant's original coastal permit application, staff discovered other development on the subject site which had also occurred without the required coastal development permit including the conversion of an existing non-habitable garage/studio with no plumbing into a habitable third residential unit with plumbing, installation of a 750 gallon septic tank, and a new detached garage. The conversion of the non-habitable studio to a habitable second residential unit was carried out by the applicant between 1996 and 1997. Although the applicant received a permit from the City of Malibu for the conversion, the applicant did not apply for or receive a coastal development permit. Analysis of aerial photography indicated that the proposed garage was constructed between 1988 and 1995.

Coastal Development Permit (CDP) Application 4-97-174 seeking "after-the-fact" approval of the proposed cabana, wooden deck, stairway, retaining walls, and approximately 98 cu. yds. of grading on the bluff slope was previously submitted by the applicant on September 2, 1997. The application was scheduled for the May 1998 Commission hearing and a staff report was prepared which recommended denial of the proposed development; however, the application was withdrawn by the applicant on April 27, 1998, before being heard by the Commission. The other development which has occurred on site, including the conversion of a non-habitable studio to a second residential unit and the construction of a new detached garage were discovered by staff during the processing of CDP Application 4-97-174 were included in development approved in Coastal Permit No. 4-98-202.

In CDP 4-98-202, the Commission granted "after the fact" approval with conditions for a 528 sq. ft. detached garage, conversion of an existing 421 sq. ft. non-habitable studio to a second residential unit, a 750 gallon septic tank, and approximately 18 cu. yds. of grading (9 cu. yds. cut and 9 cu. yds. fill), and denied approval for other existing, unpermitted development on the site. In a settlement of a lawsuit by Rust Trust challenging the Commission's action, the Commission agreed not to require a permit for an existing 330 sq. ft. cabana, 580 sq. ft. wooden deck, bluff stairway, and wooden retaining walls for the stairway. A copy of the settlement is attached as Exhibit B. The settlement requires Rust Trust to undertake the development that is proposed in this

amendment application. Coastal permit no. 4-98-202 has not yet been issued because the required special conditions have not yet been complied with.

## **B. Proposed Amendment**

In this amendment application, the applicant proposes to amend Coastal Permit No. 4-98-202 to:

- a. complete revegetation of the ocean facing slope between the cabana and beach pursuant to a revegetation plan approved by the Executive Director;
- b. enter into a 5 year monitoring program with a landscape consultant approved by the Executive Director to assure that the revegetation of the ocean facing slope is completed pursuant to the approved restoration plan;
- c. change the color of roof and façade of the existing cabana to aesthetically blend with the color of the indigenous soil pursuant to an aesthetics plan to be approved by the Executive Director;
- d. construction of a drainage system to collect all drainage and storm water on the subject property and filter it through the water collection system approved by the adjacent property located at 33528 Pacific Coast Highway, as provided for in Coastal Permit No. 4-97-103;
- e. change roof and façade color of the main residence to aesthetically blend with the color of the indigenous soil pursuant to an aesthetics plan to be approved by the Executive Director; and
- f. provide a viewing corridor along Pacific Coast Highway equal to 20% of the entire width of the subject property.

The Executive Director has reviewed the information and plans submitted by the applicant to meet the above proposals in the applicant's project description and has found that all of the applicant's proposals meet each of the above criteria of the proposal. The above proposals were submitted by the applicant to satisfy paragraph 6 of the Agreement to Compromise and Settle Disputed Claims and a Mutual Release of Claims entered into between the California Coastal Commission and the Rust Trust in 2004.

## **B. Blufftop Development/Geologic Stability**

The City of Malibu coastal zone includes beachfront areas subject to hazards that present substantial risks to life and property. On September 13, 2002, the Commission adopted the Malibu Local Coastal Program (LCP). After the adoption of the LCP the standard of review for permit applications located within the City of Malibu is the City of Malibu LCP. The Malibu Local Coastal Program (LCP) includes the following Coastal Act policies and City LCP development policies related to blufftop development and hazards that are applicable to the proposed development:

Section **30253** of the Coastal Act states in part that 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.**

In addition, the following LCP policies are applicable in this case:

**4.2 All new development shall be sized, designed and sited to minimize risks to life and property from geologic, flood, and fire hazard.**

**4.10 New development shall provide adequate drainage and erosion control facilities that convey site drainage in a non-erosive manner in order to minimize hazards resulting from increased runoff, erosion and other hydrologic impacts to streams.**

**3.5 Cut and fill slopes and other areas disturbed by construction activities (including areas disturbed by fuel modification or brush clearance) shall be landscaped or revegetated at completion of grading. Landscaping plans shall provide that:**

- **Plantings shall be native, drought-tolerant plant species, and blend with the existing natural vegetation and natural habitats on the site, except as noted below.**
- **Invasive plant species that tend to supplant native species and natural habitats shall be prohibited.**
- **Landscaping or revegetation shall provide 90 percent coverage within five years, or that percentage of ground cover demonstrated locally appropriate for a healthy stand of the particular native vegetation type chosen for restoration. Landscaping or revegetation that is located within any required fuel modification thinning zone (Zone c, if required by the Los Angeles County Fire Department) shall provide 60 percent coverage within five years.**
- **Any landscaping, or revegetation shall be monitored for a period of at least five years following the completion of planting. Performance criteria shall be designed to measure the success of the plantings. Mid-course corrections shall be implemented if necessary. If performance standards are not met by the end of five years, the monitoring period shall be extended until the standards are met.**

The proposed development is located along the Malibu coastline, an area which is generally considered to be subject to an unusually high amount of natural hazards. Geologic hazards common to the Malibu/Santa Monica Mountains area include landslides, erosion, and flooding. In addition, fire is an inherent threat to the indigenous



chaparral community of the coastal mountains. Wild fires often denude hillsides in the Santa Monica Mountains of all existing vegetation, thereby contributing to an increased potential for erosion and landslides on property.

Section 30253 of the Coastal Act and City of Malibu LCP policy 4.2 requires that new development minimize risk to life and property in areas of high geologic, flood and fire hazard, and assure stability and structural integrity. City of Malibu LCP policies 3.5 and 4.1 require that new development provide adequate drainage and erosion control facilities that convey site drainage in a non-erosive manner and that slopes and other areas disturbed by construction activities be landscaped or revegetated at completion of grading according to certain criteria required in landscaping plans.

Coastal bluffs, such as this one, are unique geomorphic features that are characteristically unstable. By nature, coastal bluffs are subject to erosion from sheet flow across the top of the bluff and from wave action at the base of the bluff. The bluffs along this section of the coast are not subject to substantial erosion from wave action due to the presence of volcanic rock which is exposed at the base of the bluff; however, these bluffs are subject to erosion from runoff at the top of the slope. Further, due to geologic structure and soil composition, these bluffs are susceptible to surficial failure, especially with excessive water infiltration.

The Commission notes that bluff slopes in the surrounding area of the project site have been subject to severe ongoing bluff erosion. The property located to the west and immediately adjacent to the project site at 33528 Pacific Coast Highway, which is also owned by the applicant, (and which contains a cabana, stairway, and retaining walls on the bluff face constructed prior to the California Coastal Zone Conservation Act of 1972) has experienced severe bluff erosion and that the Commission recently approved Coastal Development Permit 4-97-103 for bluff restoration in 1998. Further, the applicant had also submitted a new amendment application to Coastal Development Permit 5-86-500 for a different bluff top property located at 33550 Pacific Coast Highway, approximately 120 ft. to the west of the project site, to restore the bluff slope which has also been subject to severe erosion from past development.

The applicant's proposal to revegetate the ocean facing slope between the cabana and the beach pursuant to an Executive Director approved revegetation plan with a 5 year monitoring program will minimize erosion on the subject parcel. In addition, the applicant's proposal for a drainage system to collect the drainage and storm water on the subject parcel and filter it through an adjoining property's water collection system will further minimize erosion and minimize pollution off site and in the ocean. Therefore, the Commission finds that the proposed development as conditioned, is consistent with Section 30253 of the Coastal Act

### **C. Visual Resources**

The Malibu Local Coastal Program (LCP) includes the following Coastal Act policies and City LCP development policies related to visual resources:

Section 30251 of the Coastal Act states that:

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

In addition, the following LCP policies are applicable in this case:

***6.1 The Santa Monica Mountains, including the City, contain scenic areas of regional and national importance. The scenic and visual resources of these areas shall be protected and, where feasible, enhanced.***

***6.3 Roadways traversing or providing views of areas of outstanding scenic quality, containing striking views of natural vegetation, geology, and other unique natural features, including the ocean shall be considered Scenic Roads. The following roads within the City are considered Scenic Roads:***

- ***Pacific Coast Highway ...***

***6.13 New development in areas visible from scenic road or public viewing areas, shall incorporate colors and exterior materials that are compatible with the surrounding landscape. The use of highly reflective materials shall be prohibited.***

***6.15 Fences, walls, and landscaping shall not block views of scenic areas from scenic roads, parks, beaches, or other public viewing areas.***

***6.18 For parcels on the ocean side of and fronting Pacific Coast Highway, Malibu Road, Broad Beach Road, Birdview Avenue, or Cliffside Drive where it is not feasible to design a structure located below the road grade, new development shall provide a view corridor on the project site, that meets the following criteria:***

- ***Buildings shall not occupy more than 80 percent maximum of the lineal frontage of the site.***
- ***The remaining 20 percent of lineal frontage shall be maintained as one contiguous corridor.***
- ***No portion of the structure shall extend into the view corridor.***

- ***Any fencing across the view corridor shall be visually permeable and any landscaping in this area shall include only low-growing species that will not obscure or block bluewater views.***

Section 30251 of the Coastal Act and City of Malibu LCP policy 6.1 require that visual qualities of coastal areas shall be considered and protected and degraded areas shall be enhanced and restored. Malibu LCP policies 6.13, 6.15, 6.18, and 6.3 require that new development in areas visible from scenic roads incorporate colors and exterior materials that are compatible with the surrounding landscape, that landscaping not block views of the beach from scenic roads, and that a 20 percent view corridor be maintained as one contiguous corridor of the lineal frontage on Pacific Coast Highway.

The applicant is requesting to: complete the revegetation of the ocean facing slope between the cabana and beach; enter into a 5 year monitoring program with a landscape consultant; change the color of roof and façade of the existing cabana; construct a drainage system; change the roof and façade color of the main residence; and provide a viewing corridor along PCH equal to 20% of the entire width of property.

The subject site is located approximately ¼ mile from Nicholas Canyon County Beach and that beachgoers who access the beach from Nicholas Canyon County Beach often walk along the shoreline passing directly in front of the subject site. The proposed revegetation with native landscaping on the coastal slope would serve to enhance or restore public views from the public areas of the sandy beach, thereby restoring and enhancing visual resources in a degraded area.

The applicant's project proposes to: change the color of roof and façade of the existing cabana to aesthetically blend with the color of the indigenous soil pursuant to an aesthetics plan to be approved by the Executive Director; change the roof and façade color of the main residence to aesthetically blend with the color of the indigenous soil pursuant to an aesthetics plan to be approved by the Executive Director; and provide a viewing corridor along Pacific Coast Highway equal to 20% of the entire width of the subject property. The proposal to change the roof and façade colors of the cabana and main residence will aesthetically blend with the color of the indigenous soil and the view corridor along Pacific Coast Highway equal to 20% of the entire width of the subject property will meet the requirements of the scenic and visual quality policies of the Malibu LCP.

Therefore, for the reasons discussed above, the Commission finds that the proposed project is consistent with the Malibu LCP and the Coastal Act. Therefore, additional Special Conditions Five (5) through Nine (9) have been required to ensure that the applicant's proposed development will be carried out and maintained and that any future owner of the subject property will be aware of the applicant's proposal and the special conditions of approval. Thus, the Commission finds that the proposed development, as conditioned, is consistent with the Malibu LCP and the Coastal Act.

#### **D. Violation**

Various developments have been carried out on the subject site without the required coastal development permits. The applicant has proposed to resolve these violations with the proposed project improvements in this permit amendment application.

In order to ensure that the violation aspect of this project is resolved in a timely manner, Special Condition Six (6) requires that the applicant satisfy all conditions of this permit which are prerequisite to the issuance of this permit within 90 days of Commission action.

Consideration of this application by the Commission has been based solely upon the Malibu LCP. Review of this permit does not constitute a waiver of any legal action with regard to the alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

#### **E. CEQA**

Section 13096(a) of the Commission's administrative regulations requires Commission approval of 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)(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 Commission finds that, the proposed project, as conditioned, will not have significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970 and there are no feasible alternatives or additional mitigation measures that would substantially lessen any significant adverse effect the project may have on the environment. Therefore, the proposed project, is the environmentally preferred alternative and as proposed has been adequately mitigated to be consistent with CEQA and the policies of the Malibu LCP.

## CALIFORNIA COASTAL COMMISSION

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



Exhibit A

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Date: May 18, 1999

Permit Application No. 4-98-202

NOTICE OF INTENT TO ISSUE PERMIT

On May 11, 1999, the California Coastal Commission granted to Rust Trust, permit 4-98-202, subject to the attached conditions, for development consisting of: The applicant is requesting "after the fact" approval for the unpermitted construction of a 330 sq. ft. cabana, a 580 sq. ft. wooden deck, a concrete block retaining wall for the cabana, a stairway, wooden retaining walls for the stairway, a 528 sq. ft. detached garage, conversion of an existing 421 sq. ft. non-habitable studio to a second residential unit, a 750 gallon septic tank, sewage ejector pump system, and approximately 116 cu. yds. of grading (58 cu. yds. cut and 58 cu. yds. fill). In addition, the applicant has offered to do the following if the above after-the-fact development is approved: (1) record a deed restriction to restrict the proposed cabana as a non-habitable structure and (2) purchase one-half of a Transferable Development Credit 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 33526 Pacific Coast Hwy., Malibu.

The actual development permit is being held in the Commission office until fulfillment of the Special Conditions 1-4, imposed by the Commission. Once these conditions have been fulfilled, the permit will be issued. For your information, all the imposed conditions are attached.

Issued on behalf of the California Coastal Commission by,

PETER DOUGLAS  
 Executive Director

By: Steven M. Hudson  
 Coastal Program Analyst

ACKNOWLEDGMENT:

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

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Permittee

Please sign and return one copy of this form to the Commission office at the above address.

4-98-202-A-1

## NOTICE OF INTENT TO ISSUE PERMIT

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Permit Application No. 4-98-202

### 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. Revised Plans

Prior to issuance of the coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, revised project plans, prepared by a qualified civil engineer, which eliminate all proposed development located on the bluff slope including: construction of a 330 sq. ft. cabana, a 580 sq. ft. wooden deck, a concrete block retaining wall for the cabana, a stairway, wooden retaining walls for the stairway, sewage ejector pump system, and approximately 98 cu. yds. of grading (49 cu. yds. cut and 49 cu. yds. fill).

## NOTICE OF INTENT TO ISSUE PERMIT

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Permit Application No. 4-98-202

### 2. Future Development Deed Restriction

- A. This permit is only for: (1) the construction of a 528 sq. ft. detached garage, (2) conversion of an existing 421 sq. ft. non-habitable studio to a second residential unit, (3) a 750 gallon septic tank, and (4) approximately 18 cu. yds. of grading (9 cu. yds. of cut and 9 cu. yds. of fill) for the detached garage as approved by Coastal Development Permit No. 4-98-202. Pursuant to Title 14 California Code of Regulations section 13253(b)(6), the exemptions otherwise provided in Public Resources Code section 30610 (b) shall not apply to the second residential unit permitted by Coastal Development Permit 4-98-202. Accordingly, any future improvements to the permitted second residential unit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Code section 30610(d) and Title 14 California Code of Regulations sections 13252(a)-(b), shall require an amendment to Permit 4-98-202 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.
- B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which reflects the above restrictions on development in the deed restriction and shall include legal descriptions of the applicant's entire parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

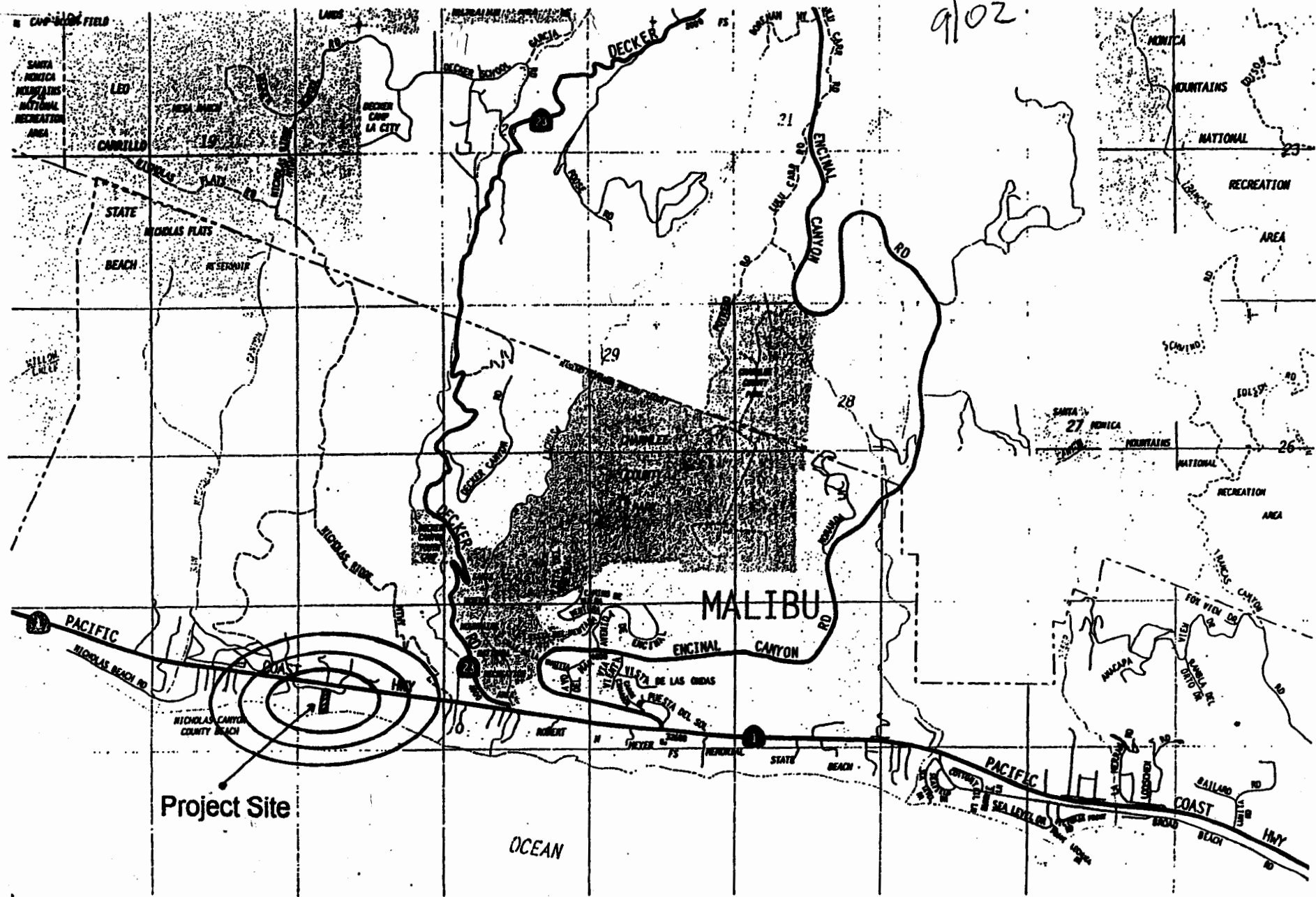
### 3. Wild Fire Waiver of Liability

Prior to the issuance of the coastal development permit, the applicant shall submit a signed document which shall indemnify and hold harmless the California Coastal Commission, its officers, agents and employees against any and all claims, demands, damages, costs, expenses of liability arising out of the acquisition, design, construction, operation, maintenance, existence, or failure of the permitted project in an area where an extraordinary potential for damage or destruction from wild fire exists as an inherent risk to life and property.

### 4. Condition Compliance

Within 90 days of Commission action on this coastal development permit application, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

9102



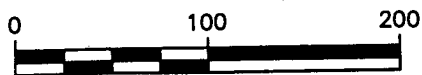
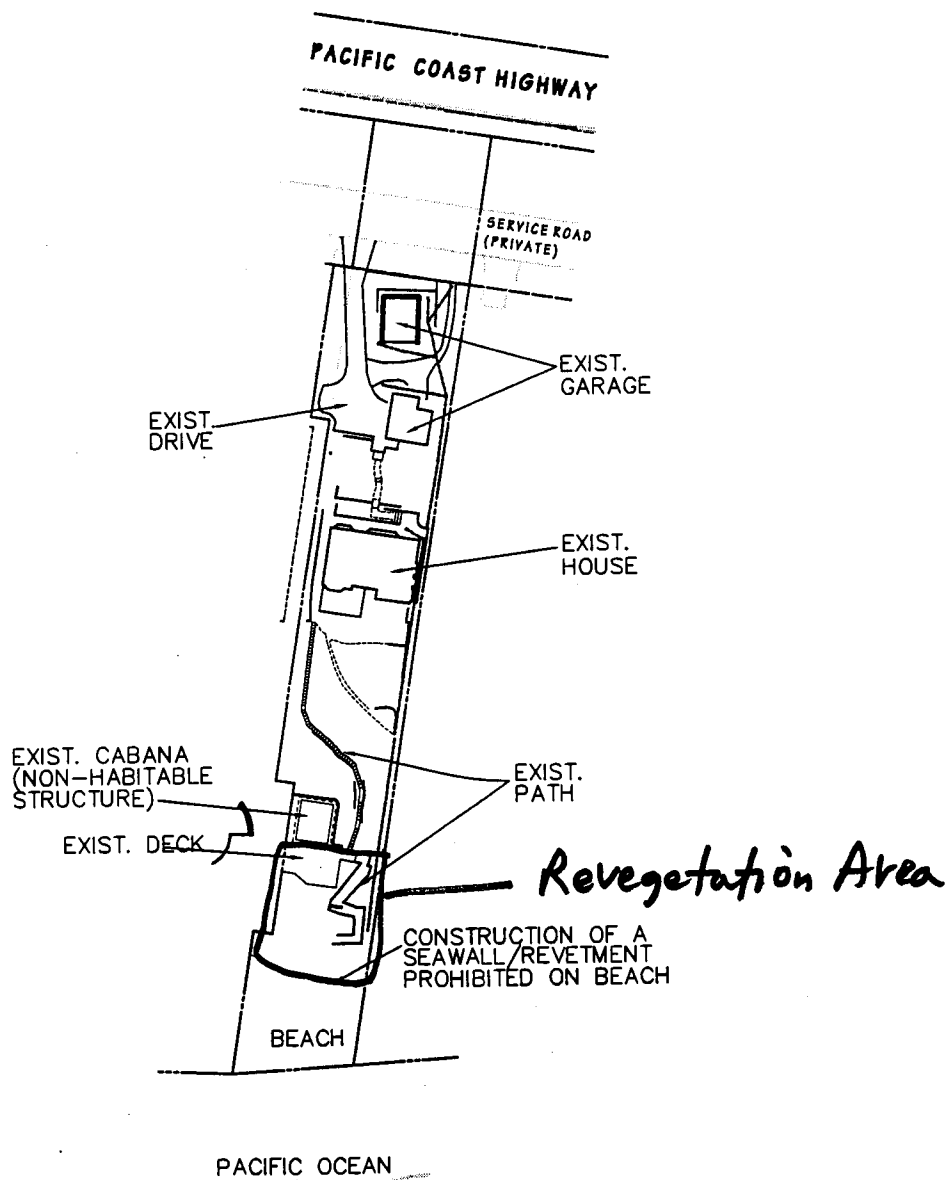
Project Site

EXHIBIT 1  
 CDP 4-98-202 (Rust Trust) A-1  
 Location Map

10



**EXHIBIT 2**  
CDP NO. 4-98-202-A1  
(DEED RESTRICTION)  
33526 PACIFIC COAST HIGHWAY



SCALE: 1"=100'

RECEIVED

JUL 20 2004

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

PREPARED BY  
**PEAK SURVEYS INC.**

CIVIL ENGINEERING & LAND SURVEYING  
2488 TOWNSGATE RD Suite D  
WESTLAKE VILLAGE CA 91361  
(805) 497-0102 Fax: (805) 495-7014  
www.peakinc.com

# EXHIBIT B

## AGREEMENT TO COMPROMISE AND SETTLE DISPUTED CLAIMS AND MUTUAL RELEASE OF CLAIMS

THIS AGREEMENT to Compromise and Settle Disputed Claims and Mutual Release of Claims ("Agreement") is made and entered into by and between the CALIFORNIA COASTAL COMMISSION ("Coastal Commission") and IRWIN E. RUSSELL, as TRUSTEE OF THE RUST TRUST ("THE RUST TRUST").

### WITNESSETH

WHEREAS The Rust Trust is the owner of that real property located at 33526 Pacific Coast Highway, in the City of Malibu, County of Los Angeles, State of California, and designated as Assessor's Parcel No. 4473-020-023 ("subject property");

WHEREAS The Rust Trust instituted an action against the Coastal Commission in the Los Angeles Superior Court, entitled *Irwin E. Russell, Trustee of The Rust Trust vs. California Coastal Commission*, Case No. BS 058097, seeking a writ of mandate in connection with the Coastal Commission's conditional approval of Coastal Development Permit ("CDP") Application No. 4-98-202, and the Coastal Commission has instituted a cross-action against The Rust Trust for civil penalties and injunctive relief pursuant to Public Resources Code §30820 ("pending action"); and

WHEREAS the Coastal Commission and The Rust Trust wish to settle and compromise the pending action on the terms and conditions hereinafter set forth, without admission by either party of any fault or wrongdoing,

NOW THEREFORE, in consideration of the recitals set forth above and the covenants and agreements contained herein the parties agree as follows:

1. **DISMISSAL OF PENDING ACTIONS:**

Within five (5) days of the execution of this Agreement by all parties, the parties hereto shall execute and cause to be filed all appropriate documents to effectuate the dismissal, with prejudice, of the pending action in its entirety.

2. **PAYMENT TO THE COASTAL HABITAT IMPACT MITIGATION FUND**

Concurrent with the Coastal Commission's filing of the dismissal with prejudice, The Rust Trust shall make a payment to the Coastal Habitat Impact Mitigation Fund in the amount of One Hundred Fifteen Thousand Dollars (\$115,000), payable to the Mountains Recreation and Conservation Authority.

3. **ACCEPTANCE OF PERMITS:**

Within thirty (30) days of the execution of this Agreement by all parties, The Rust Trust shall submit revised plans to the Coastal Commission for CDP No. 4-98-202 deleting the cabana and related bluff face improvements from the approved plans for CDP No. 4-98-202. The Rust Trust shall not be required to obtain a permit for the cabana and related bluff face improvements, including the stairway to the beach, and by this Agreement, the Commission allows said existing bluff face improvements to remain and be maintained permanently on the subject property. The Coastal Commission shall issue CDP No. 4-98-

202 to The Rust Trust upon The Rust Trust's satisfaction of all Special Conditions.

4. **INTERPRETATION OF PERMIT SPECIAL CONDITIONS:**

The Coastal Commission shall find the revised plans as referenced above in paragraph 3 as satisfying the Special Conditions of approval. Special Condition No. 4 of CDP No. 4-98-202 shall be interpreted by the Coastal Commission as permitting The Rust Trust 90 days from the date of the full execution of this Agreement to satisfy all Special Conditions of CDP No. 4-98-202.

5. **RECORDATION OF DEED RESTRICTION**

Within thirty (30) days of the execution of this Agreement by all parties, The Rust Trust, in a form and content acceptable to the Coastal Commission, shall execute and record a deed restriction as an encumbrance against the subject property a) prohibiting the future construction of a seawall/revetment on the beach to protect the subject property; and b) designating the cabana as a non-habitable structure. The deed restriction shall provide that the cabana and related improvements located on the subject property, including the stairway to the beach, which bluff face improvements are delineated in the site plan attached hereto as Exhibit 1, shall be allowed to remain and be maintained permanently on the subject property.

6. **AMENDMENT TO CDP NO. 4-98-202**

Within sixty (60) days of the execution of this Agreement by all parties, The Rust Trust shall file with the Coastal Commission an amendment to CDP No. 4-98-202. The

Coastal Commission shall waive preliminary local approval. The Rust Trust will submit appropriate plans along with the amendment application to the Coastal Commission indicating The Rust Trust's agreement to perform the following acts of development:

- a) Complete revegetation of the ocean facing slope existing between the cabana and the beach pursuant to a revegetation plan approved by the Executive Director;
- b) Entry into a 5 year monitoring program with a landscaping consultant approved by the Executive Director to assure that the revegetation of the ocean facing slope is completed pursuant to the approved restoration plan;
- c) Change of the color of the roof and facade of the existing cabana to aesthetically blend with the color of the indigenous soil pursuant to an aesthetics plan to be approved by the Executive Director;
- d) Construction of a drainage system to collect all drainage and storm water on the subject property and filter it through the water collection system approved by the on the adjacent property located at 33528 Pacific Coast Highway Coastal, as provided for in CDP No. 4-97-103;
- e) Change of the roof and facade color of the main residence to aesthetically blend with the color of the indigenous soil pursuant to an aesthetics plan to be approved by the Executive Director;
- f) Provide a viewing corridor along Pacific Coast Highway equal to twenty

percent (20%) of the entire width of the subject property.

7. **GOOD FAITH**

Each party represents and covenants to the other that it will undertake the obligations set forth in this Agreement in the utmost good faith, and that each will deal fairly with the other. Prior to undertaking any future development (as that term is defined in the Coastal Act, Public Resources Code section 30106) on the subject property, including non-exempt improvements, repairs and maintenance (as defined in the Commission's regulations, Cal. Code Regs., tit. 14, §§ 13250, 13252), The Rust Trust shall obtain a coastal development permit or, if appropriate, an amendment to CDP No. 4-98-202. In the event The Rust Trust submits an application for such a permit amendment, the Commission will process that application in good faith on its own merits.

8. **CDP No. 4-97-103A1**

The Coastal Commission will process in good faith on its merits the pending amendment request in application CDP No. 4-97-103A1, as submitted by The Rust Trust for the cabana area modification on the adjacent property located at 33528 Pacific Coast Highway.

9. **COSTS AND ATTORNEYS' FEES:**

Each party to this Agreement shall bear its own costs, including the cost of attorneys' fees incurred in connection with the prosecution and/or defense of the pending action and any administrative proceeding in connection therewith.

10. **SETTLEMENT OF CLAIMS:**

This Agreement effects the compromise and settlement of disputed and contested claims and nothing contained herein shall be construed as an admission by any party hereto of any liability of any kind to any other party or as an agreement to reimburse the other for any expense or costs incurred in connection with this Agreement.

11. **EFFECTIVE DATE OF AGREEMENT:**

Notwithstanding anything contained herein to the contrary, this Agreement shall not be deemed effective or binding upon any of the parties until actual execution by all parties or their agents or attorneys.

12. **RELEASE OF ALL CLAIMS:**

The parties hereto each release and remise all claims, charges, demands, actions, and causes of action that each has against the other, its agents, employees, attorneys, and consultants arising out of the facts alleged in the pending actions. This Agreement is intended as a full release of all claims pertaining to the subject property occurring or arising at any time prior to the effective date of this Agreement and includes all claims, whether known or unknown, by either party hereto. In order to effectuate the intent of this Agreement, the parties hereto knowingly and voluntarily waive the provisions of California Civil Code §1542, which provides 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.”**

13. **REPRESENTATIONS:**

All parties to the Agreement represent and warrant that they have afforded adequate opportunity to and have in fact reviewed the contents of the Agreement with counsel of their own choosing and accept the terms and conditions thereof based upon such advice of counsel, and not upon the advice or representations of the other party to this Agreement. Any representations made in the negotiation of this Agreement that are not incorporated into the express written provisions of this Agreement are non-binding and void.

14. **SEVERABILITY:**

The invalidity, either in whole or in part, or the unenforceability of the remaining clauses or portions of this Agreement shall not detract from the validity or enforceability of the remaining clauses or portions of the Agreement which shall survive in all respects as if the invalid or unenforceable portions were not a part thereof.

15. **INTERPRETATION:**

All parties acknowledge and agree that this Agreement shall be interpreted, construed, governed and enforced under and pursuant to the laws of the State of California, County of Los Angeles, which apply in all respects. The paragraph headings have been inserted for the convenience of reference only and shall not affect the meaning or context in which this Agreement is interpreted.



16. **INTEGRATION:**

This Agreement constitutes the entire agreement of the parties pertaining to the disputes which gave rise to the filing of the pending actions and it supersedes all prior or contemporaneous understandings, representations, warranties and agreements made by the parties hereto or their representatives pertaining to the subject matter hereof. This Agreement is entire in and of itself and may not be modified or amended except by an instrument in writing signed by all the parties. The terms of this Agreement may not be contradicted by evidence of any prior or contemporaneous agreement and the parties hereto further intend and agree that no extrinsic evidence whatsoever may be introduced in any judicial proceeding or quasi-judicial proceeding, if any, in connection with the enforcement or interpretation of this Agreement.

17. **REMEDIES FOR BREACH OF AGREEMENT:**

Should any party to this Agreement violate any term or condition herein, the non-breaching party shall retain all rights and remedies available under the law including, but not limited to, the Coastal Act and remedies arising under contract law. The breaching party shall retain the right to raise all applicable defenses in response to any claim brought by the non-breaching party.

18. **BINDING ON SUCCESSORS-IN-INTEREST:**

This Agreement is binding upon the parties (including their employees and agents), and their successors-in-interest, transferees and assignees.

19. **ATTORNEYS' FEES:**

Should either party be required to enforce any part of this Agreement, the prevailing party shall be entitled to costs including reasonable attorneys' fees expended in such enforcement proceeding.

20. **EXECUTION IN COUNTERPARTS:**

The parties hereto, in order to more expeditiously implement the compromise and settlement terms set forth herein, agree that the Agreement may be executed in two or more counterparts as if all parties signed one document and each executed counterpart shall be regarded as if it is an original document.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement, consisting of ten pages, including signature pages, to be executed:

**THE RUST TRUST**

DATE: February 17, 2004

Irwin E. Russell  
IRWIN E. RUSSELL  
Trustee of THE RUST TRUST

**CALIFORNIA COASTAL COMMISSION**

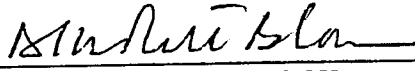
DATE: \_\_\_\_\_

\_\_\_\_\_  
PETER M. DOUGLAS  
Executive Director

APPROVED AS TO FORM AND CONTENT:

LAW OFFICES  
ALAN ROBERT BLOCK  
A Professional Corporation

DATE: February 17, 2004

By:   
ALAN ROBERT BLOCK  
Attorney for Petitioner and  
Cross-Defendant THE RUST TRUST

OFFICE OF THE ATTORNEY GENERAL  
Bill Lockyer, Attorney General  
John A. Saurenman, Deputy Attorney General

By: \_\_\_\_\_  
JOHN A. SAURENMAN  
Attorney for Respondent and  
Cross-Complainant  
CALIFORNIA COASTAL COMMISSION

19. **ATTORNEYS' FEES:**

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement, consisting of ten pages, including signature pages, to be executed:

**THE RUST TRUST**

DATE: \_\_\_\_\_

\_\_\_\_\_  
IRWIN E. RUSSELL  
Trustee of THE RUST TRUST

**CALIFORNIA COASTAL COMMISSION**

DATE: 2/25/04

  
\_\_\_\_\_  
PETER M. DOUGLAS  
Executive Director


**APPROVED AS TO FORM AND CONTENT:**

**LAW OFFICES  
ALAN ROBERT BLOCK  
A Professional Corporation**

DATE: \_\_\_\_\_

By: \_\_\_\_\_  
ALAN ROBERT BLOCK  
Attorney for Petitioner and  
Cross-Defendant THE RUST TRUST

**OFFICE OF THE ATTORNEY GENERAL  
Bill Lockyer, Attorney General  
John A. Saurenman, Deputy Attorney General**

By:   
JOHN A. SAURENMAN  
Attorney for Respondent and  
Cross-Complainant  
CALIFORNIA COASTAL COMMISSION

