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Staff: CAC-SF
Staff Report: July 28, 2005
Hearing Date: August 12, 2005

STAFF REPORT AND FINDINGS FOR CEASE AND DESIST ORDER AND RESTORATION ORDER

**CEASE AND DESIST ORDER AND
RESTORATION ORDER:**

CCC-05-CD-08 and CCC-05-RO-05

RELATED VIOLATION FILE:

V-4-92-030

PROPERTY LOCATION:

The property is located at 2100 McReynolds Road, off of Latigo Canyon Road, in the Santa Monica Mountains area of unincorporated Los Angeles County (**Exhibit 1**).

DESCRIPTION OF PROPERTY:

Approximately 43 acres, located within a wildlife corridor and containing a United States Geological Survey-recognized blue-line stream as well as environmentally sensitive chaparral, oak woodlands, and riparian oak woodland habitat (APNs 4464-024-020; -021; -022; -023; -024; 4465-006-054; -055).

PROPERTY OWNER:

Madalon Witter

**PERSONS SUBJECT
TO ORDERS:**

Madalon Witter, Douglas Richardson

VIOLATION DESCRIPTION:

Unpermitted grading; removal of major vegetation; four attempted subdivisions; placement of solid materials and erection of structures including, but not limited to: twenty-three trailers and/or mobile homes; four single-family residences; four areas

with stables, barns, pens, and horses; two concrete structures; one large garage; seven storage sheds; one outhouse; one yurt; numerous storage containers; six lean-tos attached to trailers or motor homes; four wooden or metal fences; power transmission and distribution lines; telephone lines; numerous driveways and/or roads; pipes; abandoned vehicles including cars, boats, trucks, and buses; tents; trash (including five large deposit areas); construction materials (including wood, metal, glass, and concrete materials); construction equipment including one bulldozer; water wells and water tanks.

SUBSTANTIVE FILE DOCUMENTS:

1. Notice of Violation File No. CCC-05-NOV-08
2. Cease and Desist Order and Restoration Order Files No. CCC-05-CD-08 and CCC-05-RO-05;
3. Claim of Vested Rights File No. VR-4-97-1;
4. CDP No. P-2-17-78-2706
5. CDP No. 5-82-377
6. Site Visit Photographs File (526 photographs taken from 6/2/92 to 6/28/05)
7. Exhibits 1 through 32.

CEQA STATUS:

Exempt (CEQA Guidelines (CG) §§ 15060(c)(2)), and Categorically Exempt (CG §§ 15061(b)(2), 15307, 15308, and 15321).

I. SUMMARY OF STAFF RECOMMENDATION

The property at issue in this enforcement matter is 43-acres located at 2100 McReynolds Road, off of Latigo Canyon Road, in the Santa Monica Mountains area of unincorporated Los Angeles County. The property is located within a wildlife corridor¹, and contains large, contiguous areas of chaparral and oak woodlands, as well as an intermittent blue-stream, recognized by the United States Geological Survey (USGS), and associated riparian oak woodland habitat. Madalon Witter is the owner of the property, identified as APNs 4464-024-020, 4464-024-021, 4464-024-022, 4464-024-023, 4464-024-024, 4465-006-054, and 4465-006-055. Douglas Richardson, a

¹ The Malibu/Santa Monica Mountains Land Use Plan designates certain areas as wildlife migration corridors, and considers them to be "Sensitive Environmental Resources".

prior owner of the property, is also subject to these orders because he undertook unpermitted development activities on the property. In addition, since conveying the property to Ms. Witter in 1987, Mr. Richardson has actively managed the property by collecting rents and representing Ms. Witter with respect to alleged Coastal Act violations on the property.

Unpermitted development on the property consists of grading; removal of major vegetation; four attempted subdivisions; placement of solid materials and erection of structures including, but not limited to: twenty-three trailers and/or mobile homes; four single-family residences; four areas with stables, barns, pens, and horses; two concrete structures; one large garage; seven storage sheds; one outhouse; one yurt; numerous storage containers; six lean-tos attached to trailers or motor homes; four wooden or metal fences; power transmission and distribution lines; telephone lines; numerous driveways and/or roads; pipes; abandoned vehicles including cars, boats, trucks, and buses; tents; trash (including five large deposit areas); construction materials (including wood, metal, glass, and concrete materials); construction equipment including one bulldozer; water wells and water tanks.

In addition to being unpermitted, development on parcels identified as APNs 4465-006-054 and 4465-006-055 was conducted in violation of an existing Coastal Development Permit (CDP) and associated deed restriction, limiting future development and prohibiting further subdivisions. Furthermore, the 43-acres property is divided into four legal lots. However, four attempted unpermitted subdivisions have occurred. Some of these are longstanding violations, and all are causing extensive damage to wildlife, habitat, and water and soil quality.

Staff recommends that the Commission approve Cease and Desist Order CCC-05-CD-08 (CDO) and Restoration Order CCC-05-RO-05 (RO) (as described below, and hereinafter referred to as "the proposed orders"), directing Ms. Witter and Mr. Richardson to: 1) cease and desist all construction and/or maintenance of development activities on the property that are unpermitted and subject to Coastal Act permit requirements, 2) remove all unpermitted development from the property, or submit a CDP to retain or remove development existing on the property in 1998, at the time of a previous settlement agreement (discussed further below) and remove unpermitted development that has occurred since the settlement agreement, 3) restore areas of the property that have been negatively impacted by unpermitted development, to the condition they were in before Coastal Act violations occurred, and 4) record three mergers to restore all parcels on the property to the configuration that existed before Coastal Act violations occurred.

Commission staff first became aware of the presence of unpermitted development on the property on May 19, 1992. Subsequent site visits confirmed that extensive development had been undertaken on the property and a search of Commission records concluded that no CDPs were obtained for the development. Since 1992, Commission staff has made efforts to address unpermitted development. In October 1998, the Commission, Ms. Witter and Mr. Richardson entered into a settlement agreement, to avoid further enforcement action and litigation, which directed Ms. Witter and Mr. Richardson to file complete CDP applications to remove or retain the unpermitted development and to correct the unpermitted subdivision of the property. Despite this, applications were not submitted until October 29, 2002, remained incomplete for almost a

year, were never completed as required, and were ultimately returned to Ms. Witter on September 18, 2003.

The unpermitted development remains on the property to this date, and Ms. Witter and Mr. Richardson have taken no steps to remedy these violations. Therefore, Commission staff has initiated CDO and RO proceedings to finally bring the property into compliance with the Coastal Act.

The activities that have occurred on the property constitute development, as defined in Coastal Act Section 30106. The development was all undertaken without a CDP, in violation of Coastal Act Section 30600. Moreover, the unpermitted development on parcels identified as APNs 4465-006-054 and 4465-006-055 violates CDP No. P-2-17-2706 and the deed restriction recorded pursuant to the CDP, which prohibits future subdivision of the lots and restricts development to one single-family residence per lot. Thus, the Commission has the authority, under Coastal Act Section 30810, to issue a Cease and Desist Order in this matter.

Furthermore, the unpermitted development is inconsistent with the resource protection policies of Chapter 3 of the Coastal Act, including Sections 30231 (Biological Productivity; Water Quality), 30240 (Environmentally Sensitive Habitat Areas), 30251 (Scenic and Visual Qualities), and 30253 (Minimization of Adverse Impacts), and is causing continuing resource damage, as defined in Section 13190 of the Commission's regulations. The property contains native chaparral and riparian oak woodlands, components of the region's rare and valuable Mediterranean ecosystem and part of a larger, healthy habitat area that extending into state and national parklands. Grading and vegetation removal has disturbed or eradicated portions of this valuable habitat and the placement of structures as well as soil compaction from road creation has hindered revegetation. Furthermore, discharges of waste materials from residences and trailers leak directly onto the ground and impact the soil and water quality onsite and potentially in surrounding areas. Consequently, the Commission has the authority, under Coastal Act Section 30811, to issue a Restoration Order in this matter.

The Coastal Commission has jurisdiction to take enforcement action to remedy this violation because the property lies within the Coastal Zone, in an unincorporated area of Los Angeles County, which is not covered under a certified Local Coastal Program.

II. HEARING PROCEDURES

The procedures for a hearing on a proposed Cease and Desist Order and Restoration Order are set forth in Section 13185 and 13195 of the California Code of Regulations (CCR), Title 14, Division 5.5, Chapter 5, Subchapter 8.

For a Cease and Desist and Restoration Order hearing, the Chair shall announce the matter and request that all alleged violators or their representatives present at the hearing identify themselves for the record, indicate what matters are already part of the record, and announce the rules of the proceeding including time limits for presentations. The Chair shall also announce the right of any speaker to propose to the Commission, before the close of the hearing, any

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

The Commission will receive, consider, and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceedings, as specified in CCR Section 13185, 13186, and 13195, incorporating by reference Sections 13185, 13186 and 13065. The Chair will close the public hearing after the presentations are completed. The Commissioners may ask questions to any speaker at any time during the hearing or deliberations, including, if any Commissioner chooses, any questions proposed by any speaker in the manner noted above. Finally, the Commission shall determine, by a majority vote of those present and voting, whether to issue the Cease and Desist and Restoration Orders, either in the form recommended by the Executive Director, or as amended by the Commission. Passage of two separate motions, corresponding to the Cease and Desist Order and the Restoration Order respectively, per staff recommendation or as amended by the Commission, will result in issuance of the Orders.

III. STAFF RECOMMENDATION

1.A. Motion - Cease and Desist Order:

I move that the Commission issue Cease and Desist Order No. CCC-05-CD-08 pursuant to the staff recommendation.

1.B. Recommendation of Approval:

Staff recommends a YES vote. Passage of this motion will result in the issuance of Cease and Desist Order CCC-05-CD-08. The motion passes only by an affirmative vote of the majority of Commissioners present.

1.C. Resolution to Issue Cease and Desist Order:

The Commission hereby issues Cease and Desist Order No. CCC-05-CD-08, as set forth below, and adopts the findings set forth below on grounds that development has occurred without a CDP.

2.A. Motion - Restoration Order:

I move that the Commission issue Restoration Order No. CCC-05-RO-05, pursuant to the staff recommendation.

2.B. Recommendation of Approval:

Staff recommends a **YES** vote. Passage of this motion will result in the issuance of Restoration Order CCC-05-RO-05. The motion passes only by an affirmative vote of a majority of Commissioners present.

2.C. Resolution to Issue Restoration Order:

The Commission hereby issues Restoration Order No. CCC-05-RO-05, as set forth below, and adopts the findings set forth below on grounds that development has occurred without a CDP, the development is inconsistent with the Coastal Act, and the development is causing continuing resource damage.

IV. FINDINGS FOR CEASE AND DESIST ORDER CCC-05-CD-08 AND RESTORATION ORDER CCC-05-RO-05

A. History of Violation

The property is an approximately 43-acre site in the Santa Monica Mountains area of unincorporated Los Angeles County, and is characterized by mountainous terrain with elevations ranging from 1800 feet to 2200 feet above sea level. The property is identified as APNs 4464-024-020, 4464-024-021, 4464-024-022, 4464-024-023, 4464-024-024, 4465-006-054, and 4465-006-055 (**Exhibit 2**).² The site is accessible by a series of private, unpermitted dirt roads and McReynolds Road, which connects the south-east boundary of the property to Latigo Canyon Road. A USGS-recognized blue-line intermittent stream bisects the southern portion of the property and the entire site is located within a designated Wildlife Migration Corridor (**Exhibit 3**).

On May 19, 1992, Commission staff received reports that grading and vegetation clearance had occurred on the property. Additional reports of unpermitted development on the property were submitted by Los Angeles County Department of Building and Safety, Los Angeles County Department of Regional Planning, Los Angeles County Fire Department, and California Department of Fish and Game. Staff confirmed these reports by comparing aerial photographs of the property from 1975, 1979, 1986, and 1993 and by conducting site visits. The first site visit was conducted on October 27, 1993. Commission staff was required to obtain a court-issued inspection warrant to conduct this site visit due to Ms. Witter and Mr. Richardson's refusal to allow access to the property (**Exhibit 4**). An additional site visit, conducted on October 31, 2002, confirmed the continuing presence of the cited unpermitted development on the property. During site visits, Commission staff observed that tenants residing on the property in unpermitted trailers and motor homes were discharging their solid and liquid wastes either directly onto the ground or barely underground, using basic drainage tubing buried to a shallow depth, without any permits. These waste materials leach into the environment, potentially contaminating the groundwater, surface water runoff, and the blue-line stream that bisects the property. The contamination has the clear potential to harm wildlife on the property, adjacent private properties, and public parklands, and to pose a public health risk.

² As discussed further herein, only four of these parcels are actually legal parcels under the Coastal Act.

Staff made numerous attempts to resolve this matter administratively, including, but not limited to, letters dated June 18, 1992, August 3, 1992, September 9, 1992, and March 5, 1993, and telephone calls on January 12, 1993, February 25, 1993, and June 6, 1993. Staff repeatedly requested that Ms. Witter and Mr. Richardson voluntarily submit CDP applications for the cited development and made multiple attempts to schedule meetings with Ms. Witter and Mr. Richardson to discuss a course of action to bring the property into compliance with the resource protection policies of Chapter 3 of the Coastal Act. In addition to being extremely difficult to contact, Ms. Witter and Mr. Richardson did not voluntarily submit CDP applications and did not meet with Commission staff or allow Commission staff access to the property until November 16, 1993, when the Los Angeles Superior Court issued an inspection warrant, allowing Commission staff to conduct a site inspection of the property.³

Cease and Desist Order No. CCC-93-CD-03

On June 4, 1993, after numerous unsuccessful attempts to reach an amicable resolution in this matter, Commission staff finally decided to commence CDO proceedings. The Executive Director issued a Notice of Intent to Commence Cease and Desist Order Proceedings to address the unpermitted development on the property, pursuant to Section 30810 of the Coastal Act (**Exhibit 5**). Cease and Desist Order No. CCC-93-CD-03 ("the 1993 order"), unanimously approved by the Commission on November 16, 1993, directed Ms. Witter and Mr. Richardson to cease and desist all unpermitted development and to submit a complete CDP application seeking to either remove the development and restore the site or receive after-the-fact authorization for the development (**Exhibit 6**). The complete CDP application was to be filed within sixty days of the date of issuance of the 1993 order, or by January 15, 1994. Ms. Witter and Mr. Richardson applied to amend the 1993 order to grant the Executive Director of the Commission the discretion to extend the deadline for filing the CDP application. The Commission approved the amendment to the 1993 order on January 13, 1994, to provide more time for Ms. Witter and Mr. Richardson to comply with the order, with a showing of good cause (**Exhibit 7**). The amendment was nullified on February 1, 1994, however, because Witter and Richardson filed a petition for writ of mandate, challenging the 1993 order (**Exhibit 8**).⁴

Writ of Mandate

On January 19, 1994, Ms. Witter and Mr. Richardson filed a Petition for Writ of Administrative Mandamus (Writ of Mandate), challenging the Commission's issuance of the 1993 order (Los Angeles County Superior Court No. BS026924, included as **Exhibit 9**). One of the allegations made in the petition was that Commission staff failed to provide adequate notice of the Commission hearing on the order to Ms. Witter and Mr. Richardson. The court determined that substantial evidence to support the findings of the Commission existed, but concluded that notice

³ Additional correspondence between Commission staff, Ms. Witter, and Mr. Richardson took place from November 16, 1993 to the present and is included in the following sections, in chronological order.

⁴ Section B.4 of the amended order states that, "Said delegation of authority [of the Executive Director to grant a filing extension] shall terminate upon the initiation of any legal proceeding challenging this order" (see Exhibit 7 at page 2).

was technically insufficient. Although the court directed the Commission to rescind the order, the court also directed the Commission to "to conduct further proceedings" (**Exhibit 10**, at page 1). The Commission rescinded the order on February 5, 1997, including the following language as part of its findings:

*The Commission notes that its decision to vacate CCC-93-CD-03 does not prevent it from considering and issuing a new cease and desist order to bring the subject property into conformity with the Coastal Act (**Exhibit 11**, at page 3).*

The Executive Director issued a Notice of Intent to Commence Cease and Desist Order Proceedings with respect to a second cease and desist order on February 18, 1997, less than two weeks after the 1993 order was rescinded on technical grounds, as described below (**Exhibit 12**).

Complaint Filed by Commission

On January 23, 1995, the Attorney General's Office, on behalf of the Commission, responded to the filing of the Writ of Mandate, by filing a Complaint for Declaratory Relief, Preliminary and Permanent Injunction, Civil Penalties, and Fines (Los Angeles County Superior Court No. SC034859, included as **Exhibit 13**). The complaint sought to compel Ms. Witter and Mr. Richardson to comply with the 1993 order, which at that time had not yet been rescinded, and to impose fines resulting from noncompliance with the order. In an effort to prevent further litigation as well as the new cease and desist order proceedings described below, the Commission, Ms. Witter, and Mr. Richardson began settlement negotiations. All parties entered into a settlement agreement on October 23, 1998 (**Exhibit 14**).

1997 Cease and Desist Order

Following the advice of the Superior Court to "conduct further proceedings" in this matter, the Executive Director issued a new Notice of Intent to Commence Cease and Desist Order Proceedings to Ms. Witter and Mr. Richardson on February 18, 1997. Commission staff decided to discontinue these proceedings when a settlement agreement was ultimately reached, as described below. In doing so, the Commission relied in good faith that by entering into a settlement agreement with the Commission, Ms. Witter and Mr. Richardson would finally address the unpermitted development and associated resource impacts on the property.

Vested Rights Determination

Commission staff also notes that the Commission previously made a vested rights determination with regards to development on the property. Ms. Witter and Mr. Richardson had continually asserted that unpermitted development activities were conducted on the property before the enactment of the Coastal Act. Finally, on September 2, 1997, more than five years after enforcement action began in this matter, Ms. Witter and Mr. Richardson submitted a vested rights claim (VR-4-97-1), asserting that the unpermitted development on the property existed prior to 1964, and therefore, under Coastal Act Section 30608, the development did not require a CDP. On August 11, 1998, the Commission heard and partially approved and partially denied

Ms. Witter and Mr. Richardson's claim. That decision is final and binding in this proceeding. Thus, any further claim of a vested right to development that was denied during the 1998 proceeding is precluded in the present proceeding, since all vested development has already been identified.

a. Physical Development

The Commission determined that a vested right existed for the following development, which, accordingly, is not addressed by this report and is not be subject to the proposed orders⁵:

1. Private domestic water well and pump
2. One single-family residence (16' x 24' cabin)
3. One storage structure (168 square feet)
4. Garage (600 square feet)
5. All electrical services with valid permits, so long as use is restricted to support development that has a valid development permit

The Commission denied the vested right claim with respect to the following development, which therefore is addressed in this report:

1. Mobile Home Park consisting of :
 - i. 39 developed mobile home sites, including 11 occupied mobile homes
 - ii. several large areas of grading and vegetation removal
 - iii. expansion of the roadway system on the property
 - iv. electrical, septic, and water services for each of the 39 sites
2. One single-family residence
3. Two concrete structures
4. One house site graded and cleared for future development
5. 6 stables and corrals
6. 2 water wells and 8 water tanks

b. Subdivision of Lots

⁵ Any vested development that has been substantially changed is no longer considered vested development under Coastal Act Section 30608 and is subject to the proposed orders.

In addition to the development listed above, the Commission considered whether Ms. Witter and Mr. Richardson had a vested right to the configuration of parcels in the northern portion of the property, now identified as APNs 4464-024-020, 4464-024-022 and APN 4464-024-023, 4464-024-024.⁶ The Commission denied Ms. Witter and Mr. Richardson's claim of a vested right to the four-parcel configuration, because not only had the Commission previously approved only a three-parcel subdivision of this area under CDP No. 5-82-377, but in doing so, the Commission specifically denied the proposed four-parcel subdivision that was the subject of the vested rights claim (**Exhibit 15**). The Commission concluded that Ms. Witter and Mr. Richardson should merge APNs 4464-024-22 and 4464-024-023 to bring the parcel configuration into compliance with the existing permit and resolve this additional violation.

Despite the Commission's decision, the current assessor's parcel map shows that Ms. Witter and Mr. Richardson did not merge the parcels as suggested, and in fact, through a complicated series of grant deeds, boundary line adjustments, and Certificates of Compliance obtained through the Los Angeles County Department of Regional Planning, and without any authorization in a CDP have created six illegal parcels (see **Exhibit 2**). Therefore, the current parcel configuration constitutes unpermitted development and is subject to the proposed orders. The proposed orders direct Ms. Witter and Mr. Richardson to submit a complete application to merge the parcels at issue with the Los Angeles County Department of Regional Planning and to take all necessary steps to successfully merge the parcels, into the configuration that is legal under the Coastal Act. The fourth subdivision created the parcel identified as APN 4464-024-019, which is not owned by Ms. Witter and is not subject to the proposed orders. Therefore, only three of the four subdivisions can be remedied under the proposed orders.

Settlement Agreement

In order to facilitate settlement and in good faith reliance on Ms. Witter and Mr. Richardson's promise to comply with an executed settlement agreement, Commission staff decided not to pursue the second cease and desist order mentioned above. On October 23, 1998, the Commission, Ms. Witter, and Mr. Richardson entered into a settlement agreement. Like CCC-93-CD-03, the settlement agreement required Ms. Witter and Mr. Richardson to submit CDP applications to either remove or retain the unpermitted development on the property.⁷ Additionally, Section 3.0 of the settlement agreement directed Ms. Witter and Mr. Richardson to pay a \$15,000 fine. In lieu of immediate payment of the fine, Section 3.0.1 of the settlement agreement allowed Ms. Witter and Mr. Richardson the option of deferring payment of the fine and any interest that accrued during deferral until such time as the property was sold, through the use of a promissory note secured by a deed of trust.

⁶ The Commission did not consider the legality of parcels identified as APNs 4465-006-054 and 4465-006-055 in the Vested Right Determination because Ms. Witter and Mr. Richardson did not claim a vested right to the parcels and therefore, did not include the parcels in their application.

⁷ Section 4.2 of the settlement agreement required the submittal of a complete CDP application pertaining to the attempted unpermitted subdivision of the property and a separate complete CDP application to remove and restore or retain the other unpermitted development on the property.

Unfortunately, Ms. Witter and Mr. Richardson violated the settlement agreement by failing to submit complete CDP applications. On February 23, 1999, Commission staff met with Ms. Witter and Mr. Richardson's attorney and Mr. Petrovsky. At that meeting, Ms. Witter and Mr. Richardson submitted three documents: (1) a copy of an Approval in Concept issued by LA County for the lot line adjustment, (2) a set of general site plans (to support lot line adjustment), and (3) a conceptual site restoration plan. Commission staff informed Ms. Witter and Mr. Richardson that the submittal did not constitute a CDP application and suggested that a formal CDP application be submitted. In addition, Commission staff informed Ms. Witter and Mr. Richardson that the restoration plan was inadequate as submitted and advised them to hire a restoration specialist to prepare the restoration plan. Ms. Witter and Mr. Richardson were advised to contact Commission staff upon hiring the specialist so that a meeting could be scheduled at the site and mutual agreement could be reached as to the necessary components of the restoration plan. No phone call was received, and a meeting with a specialist at the property did not occur.

Ms. Witter and Mr. Richardson submitted a formal but incomplete CDP applications on October 29, 2002. Commission staff notified Ms. Witter and Mr. Richardson of the incomplete status of these applications, and clearly outlined the nineteen separate items that Ms. Witter and Mr. Richardson needed to submit to complete the applications, in letters, dated November 26, 2002 (one pertaining to each of the two incomplete CDP application that were submitted) (**Exhibit 16**). Despite this, however, the materials required to complete the applications, as outlined in the letters, were never submitted and the applications were finally returned to Ms. Witter, the applicant listed on the applications, on September 18, 2003 (**Exhibit 17**). Ms. Witter and Mr. Richardson also failed to either pay the prescribed fine or execute a promissory note, as required under the settlement agreement.

Cease and Desist Order No. CCC-05-CD-08 and Restoration Order No. CCC-05-CD-05

After thirteen years of repeated attempts by Commission staff to resolve the Coastal Act violations on the property, the violations remain, and as discussed below, continue to cause resource damage. Given the need to address this, Commission staff finally concluded that it was necessary to commence cease and desist and restoration order proceedings in an effort to finally compel removal of the extensive unpermitted development on the property and restoration of the severely impacted and extremely valuable habitat on the property.

On January 25, 2005, to ensure proper service, Commission staff contacted Mr. Richardson by telephone to confirm a valid address for Ms. Witter and Mr. Richardson. Mr. Richardson confirmed that he and Ms. Witter regularly accept mail at the 2100 McReynolds Road address and that they would both be present on the property to receive mail during the month of February 2005. Accordingly, on February 25, 2005, a Notice of Intent to Commence Cease and Desist Order and Restoration Order Proceedings (NOI) was sent to Ms. Witter and Mr. Richardson at the 2100 McReynolds address (**Exhibit 18**). This letter was not returned to Commission staff as undeliverable. However, in an exercise of caution, Commission staff called Mr. Richardson on March 17, 2005 to confirm his receipt of the NOI. Mr. Richardson stated that he did not receive the NOI and a second copy, with adjusted deadlines reflecting the later mailing date, was sent to

Ms. Witter and Mr. Richardson on March 18, 2005 (**Exhibit 19**). After the NOI was resent, a Notice of Intent to Record a Violation of the Coastal Act (NOV NOI) was also sent to Ms. Witter and Mr. Richardson, via regular and certified mail, in accordance with Coastal Act Section 30812(a) (**Exhibit 20**).

During a March 18, 2005 telephone conversation with Commission staff, Mr. Richardson requested that all future correspondence to Ms. Witter and Mr. Richardson be directed to Peter Petrovsky. Mr. Richardson designated Mr. Petrovsky as the representative for Ms. Witter and Mr. Richardson and the agent for service of documents with respect to all Commission enforcement action concerning the property. On March 22, 2005, pursuant to Mr. Richardson's request, Commission staff contacted Mr. Petrovsky. Commission staff then sent a third copy of the NOI and a second copy of the NOVA NOI to Mr. Petrovsky on May 18, 2005, again extending the deadline for response a third time to allow for a twenty-day response period as provided by Section 13181(a) of the Commission Regulations(**Exhibit 21**).⁸ During subsequent telephone conversations with Mr. Petrovsky, including but not limited to March 22, 2005, April 1, 2005, April 26, 2005, May 17, 2005, May 18, 2005, and June 8, 2005, and in a letter sent on May 18, 2005, Commission staff repeatedly informed him that the unpermitted development at the site violated the Coastal Act and stated that both cease and desist and restoration orders are necessary to facilitate removal of unpermitted development from the property and restoration of impacted areas.

Commission staff included a Statement of Defense (SOD) form with the numerous copies of the NOI sent to Ms. Witter, Mr. Richardson, and Mr. Petrovsky. As noted above, under the applicable regulations, violators have twenty days to respond to an NOI, which in this case was June 8, 2005, for the third NOI. Despite this, no SOD has been submitted.⁹ The NOI provided the requisite twenty-day deadline for submittal of the SOD, adjusted depending upon when the copy was sent to consistently provide a full twenty-day response period. Furthermore, although the prescribed time period for submittal of a SOD elapsed, Commission staff sent a letter to Ms. Witter, Mr. Richardson, and Mr. Petrovsky on July 22, 2005, providing yet another opportunity to submit materials in response to the NOI above and beyond what is required under the Commission's regulations. The deadline for this final submittal was July 27, 2005. No SOD form was submitted on or before the deadline.

Ms. Witter and Mr. Richardson have had ample time to submit any defenses regarding the unpermitted development addressed in the proposed cease and desist and restoration orders. Commission staff first contacted Ms. Witter and Mr. Richardson to resolve the violations in 1992. They have had since at least May 18, 2005 (the date that the third NOI was sent) to respond specifically to the allegations in this proceeding, yet they failed to do so.

⁸ During the initial conversation with Mr. Petrovsky, Commission staff also notified Mr. Petrovsky of the potential for recordation of a Notice of Violation, as required by Coastal Act Section 30812(g).

⁹ On June 3, 2005, Commission staff received copies of Mr. Petrovsky's files on this matter. No SOD form was submitted with the files.

The SOD form requirement serves an important function. (See, e.g., *Horack v. Franchise Tax Board* (1971) 18 Cal.App.3d 363, 368) ("Where administrative machinery exists for resolution of differences, such procedures must be "fully utilized and exhausted"). The Commission's cease and desist hearings are "quasi-judicial." Thus, if the Commission is to make findings of fact and conclusions at law in the form of an adopted Staff Report, Ms. Witter and Mr. Richardson must inform the Commission, precisely and in writing, which defenses they wish the Commission to consider. The SOD form has six categories of information that Ms. Witter and Mr. Richardson should have provided to the Commission: (1) facts or allegations contained in the cease and desist order or the notice of intent that are admitted by respondent; (2) facts or allegations contained in the cease and desist order or the notice of intent that are denied by respondent; (3) facts or allegations contained in the cease and desist order or the notice of intent of which the respondent has no personal knowledge; (4) facts and/or a description of any documents, photographs or other physical evidence that may exonerate the respondent; (5) any other information, statement, etc. that respondent desires to make; and (6) a listing of any documents, exhibits, declarations or other materials that are being attached by respondent to the statement of defense form.

The Commission should not be forced to guess which defenses Ms. Witter and Mr. Richardson want the Commission to consider and which defenses they may have raised informally prior to the hearing but now wish to abandon. Section 13181, subdivision (a) is specifically designed to serve this function of clarifying the issues to be considered and decided by the Commission. (See *Bohn v. Watson* (1954) 130 Cal.App.2d 24, 37 ("It was never contemplated that a party to an administrative hearing should withhold any defense then available to him or make only a perfunctory or 'skeleton' showing in the hearing...The rule compelling a party to present all legitimate issues before the administrative tribunal is required...to preserve the integrity of the proceedings before that body and to endow them with a dignity beyond that of a mere shadow-play").)

Late addition:

On July 28, 2005 enforcement staff received a copy of a letter (apparently sent on July 27, 2005) from Sherman Stacey, on behalf of Ms. Witter and Mr. Richardson. This letter was apparently sent in lieu of a Statement of Defense. This letter does not raise any significant new issues or warrant alteration of the staff recommendation. In an attempt to be fully protective of Respondents' rights, the letter is included as the last exhibit to this staff report. Several things should be noted with regard to the issues Mr. Stacey raises.

First, in his letter of July 27, Mr. Stacey requests a postponement of this matter for several reasons: because he was only lately retained in this matter and purportedly hasn't had time to prepare fully, and because they would like to attempt some resolution of this matter. Although Mr. Stacey, according to his letter, has apparently not yet been retained by Ms. Witter to represent her with respect to these Orders, and therefore, does not have the apparent authority to request a continuance on her behalf, Commission staff notes that Mr. Stacey has apparently been retained by and represented Ms. Witter and Mr. Richardson for some years with regard to this matter, and in fact, has appeared as counsel on pleadings filed on their behalf at recently as the last two months. Enforcement staff has been in constant contact with the formally identified

representatives of Ms. Witter and Mr. Richardson and has repeatedly requested that they provide a timely Statement of Defense as required by the regulations. However, staff remains interested here as always in an amicable resolution, and plans to send Mr. Stacey a letter requesting that they submit a colorable settlement offer in the very near future to allow us evaluate whether settlement is in fact a viable option here, and if so, whether a postponement would be helpful to reach a settlement.

Second, Mr. Stacey raises a couple of points to which we have already responded in the staff report. He raises the issue of notice to Ms. Witter. As noted in the staff report, the Notice of Intent and other letters have been sent to the several addresses we have been assured are her correct addresses, and these letters in fact, have not been returned as undeliverable. In addition, Mr. Petrovsky was identified as her agent for service and he has also been sent copies of all relevant documents. Furthermore, Mr. Stacey states in his letter that he has had no contact with Ms. Witter, and in fact, he offers no support for his assertion that Witter has not received notice of these proceedings.

Mr. Stacey also questioned whether Mr. Richardson is a proper recipient of this order, since he no longer has legal title to the property. As noted herein, Mr. Richardson has performed development without a coastal development permit at the site, and therefore is subject to the terms of orders issued under Section 30810 and 30811 of the Coastal Act.

Finally, Mr. Stacey raises issues regarding the relevance of the 1998 Settlement Agreement to this administrative proceeding. Without here addressing any issues regarding that Settlement Agreement, we note that this Settlement Agreement did not even address all the unpermitted development at the site, and moreover, insofar as there is any overlap between the unpermitted development addressed in that Agreement and that addressed in these Cease and Desist and Restoration Orders, we have specifically drafted the Orders to be consistent with the Settlement Agreement.

Notice of Violation No. CCC-05-NOV-08

A Notice of Violation was recorded in this matter, in accordance with Coastal Act Section 30812. Ms. Witter, Mr. Richardson, and Mr. Petrovsky were provided notice of the potential for recordation of a Notice of Violation in this matter in compliance with all legal requirements, and chose not to object within the time period prescribed under Section 30812(b).¹⁰ A Notice of Violation was recorded in the Los Angeles County Recorder's Office on June 17, 2005 (**Exhibit 22**).

B. Description of Unpermitted Development

¹⁰ Commission staff notified Ms. Witter and Mr. Richardson of the potential for recordation of a Notice of Violation in the NOI sent by certified and regular mail to the 2100 McReynolds address as well as to their second residence in Belize. Once Mr. Richardson designated Mr. Petrovsky as agent for service of documents in this matter, Commission staff provided oral notice to Mr. Petrovsky before sending him both the NOI, containing written notification of the potential for recordation, and the NOV NOI.

The unpermitted development located on the property consists of grading; removal of major vegetation; four attempted subdivisions; placement of solid materials and erection of structures including, but not limited to: twenty-three trailers and/or mobile homes; four single-family residences; four areas with stables, barns, pens, and horses; two concrete structures; one large garage; seven storage sheds; one outhouse; one yurt; numerous storage containers; six lean-tos attached to trailers or motor homes; four wooden or metal fences; power transmission and distribution lines; telephone lines; numerous driveways and/or roads; pipes; abandoned vehicles including cars, boats, trucks, and buses; tents; trash (including five large deposit areas); construction materials (including wood, metal, glass, and concrete materials); construction equipment including one bulldozer; water wells and water tanks. (**Exhibit 23**, providing photographs of some of the unpermitted development on the property). The size of the property, the extremely large number of items of unpermitted development, and the topography and the canopy created by vegetated areas make generating a complete inventory of unpermitted development difficult. However, no CDPs have been obtained for any development on the property.¹¹ Therefore, the only development legally present at the site are the specific items the Commission previously determined to be vested, as discussed above in the Vested Rights Section of this report. Therefore, all additional development that is present on the property and not specified in the description of unpermitted development is also unpermitted and subject to the proposed orders.

Items of Unpermitted Development

This section of the report will describe the different items of unpermitted development on the property. This inventory was compiled through examination of site visit photographs and aerial photographs of the property, and due to the extent of the unpermitted development and the size of the site and the continuing use and movement of unpermitted development occurring at the site, it may not represent an exhaustive list. Additional unpermitted development, not visible in the photographs, may exist on the property and is also subject to removal under the proposed orders.

The proposed orders will require Ms. Witter and Mr. Richardson to submit complete inventories of all development on the property and will allow Commission staff periodic access to the property, upon provision of sufficient notification to Ms. Witter and Mr. Richardson, to verify the inventory and to evaluate removal and restoration efforts. Removal of the following development and restoration of areas impacted by this development represent the minimum work required to bring the property into compliance with the resource protection policies of Chapter 3 of the Coastal Act. Any additional unpermitted development on the property must also be removed pursuant to the proposed orders and any areas impacted by the additional unpermitted development, or through removal activities, must be restored. Figures 1 - 4 are included for reference and provide an aerial view of the entire property (**Exhibits 24-27**).

¹¹ CDP No. P-2-17-2706 authorized the construction of a 600 square-foot single-family residence on one of the three parcels created under the permit. However, according to the staff report prepared for the Commission meeting on the permit application, the residence was to be built on "parcel 3", which is identified as APN 4465-006-049. Ms. Witter does not own this parcel, and therefore, the residence approved in CDP No. P-2-17-2706 is not located on the property and is not at issue in this matter.

<u>Item of Unpermitted Development</u>	<u>Number of Items on the Property</u>
* Trailers/Mobile Homes	23
* Single-family residences	4
* Large garage	1
* Storage sheds	7
* Yert	1
* Outhouse	1
* Metal storage containers	4
* Lean-tos attached to trailers or motor homes	6
* Storage containers including metal drums	numerous
* Wooden and metal fences	3
* Concrete structures	2
* Stables, containing pens, barns, and horses	4
* Power and telephone lines	numerous
* Roads and driveways	numerous
* Abandoned vehicles, including cars, buses, trucks, and boats	numerous
* Trash and debris, including metal and wood construction materials, vehicle parts, metal drums, and glass	scattered; 5 large deposit areas
* Construction equipment	1 bulldozer
* Water Wells and Tanks	numerous

Four Attempted Unpermitted Subdivisions

Subdivision clearly constitutes development, and is specifically included in the definition of development in Coastal Act Section 30106. The property consists of seven purported parcels, three of which are the product of an attempted unpermitted subdivision and are subject to merger under this order in an effort to bring the property into compliance with existing CDPs and the resource protection policies of Chapter 3 of the Coastal Act and the 1986 Malibu/Santa Monica Mountains Land Use Plan (SMM LUP), as discussed below. The property only has four legal parcels under the Coastal Act.

On April 10, 1978, the Commission conditionally approved CDP No. P-2-17-78-2706, authorizing the subdivision of a 15.33-acre parcel identified into three, approximately 5-acre parcels (**Exhibit 28**). The Commission, to address its concerns regarding increased residential density on the parcels and in the surrounding area, imposed a special condition requiring recordation of a deed restriction limiting development on the parcels to one-single family residence per parcel, and prohibiting future subdivision of the parcels. The deed restriction was recorded, with Mr. Richardson as a signatory (**Exhibit 29**).

Parcel Map No. 7155 was recorded pursuant to CDP No. P-2-17-78-2706, creating three 5-acre parcels identified as APNs 4465-006-047, 4465-006-048, and 4465-006-049. A current Assessor's Parcel Map indicates that one of the original 5-acre parcels, APN 4465-006-048, has been illegally subdivided into two parcels: APN 4465-006-054, a 4.32-acre parcel; and 4465-006-055, a .14-acre parcel (see **Exhibit 2**). This subdivision was not approved under P-2-17-78-2706, and neither Ms. Witter nor Mr. Richardson applied for or obtained an additional CDP for the subdivision. Therefore, the creation of 4465-006-054 and 4465-006-055 constitutes an attempted unpermitted subdivision undertaken in violation of the Coastal Act, the existing CDP, and the deed restriction, recorded pursuant to the CDP as a means of curtailing the density of development in the area. The proposed orders will direct Ms. Witter and Mr. Richardson to merge parcels to return the portion of the property to the original parcel configuration approved by the Commission.

On March 12, 1980, Chris Brookes and Richard Brookes Jr. submitted a CDP application to subdivide a 39.41-acre parcel, identified as APN 4464-024-004, into three 12-acre parcels and one 6-acre parcel. Upon his request, Mr. Richardson was added to the application as a co-applicant. On August 25, 1982, the Commission approved CDP No. 5-82-377, authorizing the subdivision of the parcel into three parcels (see **Exhibit 15**). The applicants, including Mr. Richardson, recorded Parcel Map Waiver No. 7154 on March 8, 1984, in accordance with the CDP (**Exhibit 30**).

A current Assessor's Parcel Map shows that, in addition to the three parcel-subdivision that was authorized under CDP No. 5-82-337, the original parcel, APN 4464-024-004, has been subject to three attempted unpermitted subdivisions, resulting in division of the original parcel into six parcels, three illegally created (see **Exhibit 2**). This illegal subdivision will potentially result, if the parcels are not restored to the legal configuration, in a 3-fold increase in development potential of this property and, consequently, a 3-fold increase of coastal impacts.

The proposed orders will direct Ms. Witter and Mr. Richardson to merge APNs 4464-024-020 and 4464-024-021, APNs 4464-024-022 and 4464-024-023, and APNs 4465-006-054 and 4465-006-055, to restore the approved parcel configuration.¹² The proposed orders will also direct Ms. Witter and Mr. Richardson not to transfer any portion of the property until the parcel configuration has been returned to what was approved under existing CDPs. The approved parcel configuration will reduce the amount of development that can occur on the property, the

¹² The final parcel, created through the attempted unpermitted subdivision, APN 4464-024-019, is currently owned by Michael Burrett.

very concern that caused the Commission to specifically condition approval of the existing CDPs mentioned above on fewer subdivisions and the recordation of a deed restriction as a condition of CDP No. P-2-17-78-2706. In addition, the proposed orders will protect potential innocent purchasers while merger takes place.

C. Basis for Issuance Orders

1. Basis for Issuance of Cease and Desist Order

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

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

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

Development is defined in Coastal Act Section 30106, which states:

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

The activities conducted on the property clearly constitute development as defined in Coastal Act Section 30106 and, as such, are subject to the following permit requirements provided in Coastal Act Section 30600(a):

(a) Except as provided in subdivision (e), and in addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency,

any person, as defined in Section 21066, wishing to perform or undertake any development in the coastal zone... shall obtain a coastal development permit.

No CDP was obtained for the development on the property, as required under Coastal Act Section 30600(a). In addition, some of the unpermitted development violates existing CDPs, as discussed below. Consequently, the Commission is authorized to issue CCC-05-CD-08 pursuant to Section 30810(a)(1). The proposed Cease and Desist Order will direct Ms. Witter and Mr. Richardson to: 1) cease and desist all construction and/or maintenance of development activities on the property that are unpermitted and subject to Coastal Act permit requirements, 2) remove all unpermitted development from the subject property or submit a CDP to retain or remove development existing on the property at the time of the settlement agreement while removing development that has occurred since the settlement agreement, 3) restore areas of the property that have been negatively impacted by unpermitted development, to the condition they were in before Coastal Act violations occurred, and 4) record three mergers to restore all parcels on the property to the configuration that existed before Coastal Act violations occurred.

2. Basis for Issuance of Restoration Order

The statutory authority for issuance of this Restoration Order is provided for in Coastal Act Section 30811, which states, in relevant part:

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

a. Development Has Occurred Without a Coastal Development Permit

As previously presented in Section D.1. of this report, Commission staff has verified, and Ms. Witter and Mr. Richardson do not dispute, that the cited development on the property was conducted without a CDP. As noted above, in 1998, the Commission found that none of the development covered by these proposed orders was vested, and therefore none of this development is exempt from the permit requirements of the Coastal Act. The following paragraphs provide evidence that the unpermitted development is inconsistent with the Coastal Act and is causing continuing resource damage.

b. Unpermitted Development Also Violates Existing Permits

As discussed above, the Commission approved two CDPs authorizing subdivisions of the property. Additional, attempted, unpermitted subdivisions have occurred in violation of these existing CDPs. Furthermore, a special condition of CDP No. P-2-17-78-2706 required the recordation of a deed restriction limiting development on the parcels to one single-family residence per parcel and prohibiting future subdivision of the parcels. The attempted, unpermitted subdivision of APN 4465-006-048 occurred, creating APNs 4465-006-054 and 4465-006-055 in violation of the existing CDP. In addition, all of the unpermitted development

on the land identified as APNs 4465-006-054 and 4465-006-055 is in violation of the deed restriction.

b. Unpermitted Development is Inconsistent with the Coastal Act

The unpermitted development is inconsistent with the following resource protection policies of the Chapter 3 of the Coastal Act:

i. Section 30240 - Environmentally Sensitive Habitat Areas

Environmentally Sensitive Habitat Areas (ESHA) are defined by Coastal Act Section 30107.5 as:

... area[s] in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

The property is surrounded by the Santa Monica Mountains National Recreation Area (SMMNRA), which comprises the largest and most pristine example of a Mediterranean ecosystem on the Southern California coast. This ecosystem is rare and valuable because of the high level of biodiversity it supports. Coastal Commission staff biologist Dr. John Dixon has viewed aerial and site visit photographs of the site and has confirmed that the area is predominantly native mixed chaparral with riparian oak woodlands common to the Santa Monica Mountains' Mediterranean ecosystem, and that these native habitats meet the definition of ESHA under the Coastal Act Section 30107.5 (**Exhibit 31**). Although significant vegetation removal has taken place on the property and vegetation has been further degraded by unpermitted development activities, the property still supports patches of relatively undisturbed native habitat. The chaparral on the property is part of a much larger, contiguous area of native vegetation.

Coastal Act Section 30240(a) states:

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

As explained above in Section B, three attempted unpermitted subdivisions have occurred on the property, resulting in the creation of three illegal parcels, thus, increasing the development potential of the property 3-fold. The increased intensity and density of use - vegetation removal, grading, and placement of structures, septic systems, water tanks and other infrastructure to support the increased development of the property - would cause resource impacts approximately three times greater than would otherwise occur if only the three legal lots were developed.

In addition, unpermitted grading and vegetation removal has degraded or eradicated ESHA on the property and the placement of structures has discouraged regrowth of the vegetation (see

Exhibit 23). The reduction in the amount and quality of the habitat is significant, given the value of the habitat and the large area affected.

Coastal Act Section 30240(b) states:

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

As previously stated, the property lies immediately adjacent the Castro Crest area of the SMMNRA, a popular public recreation destination.¹³ This region is of great public importance, as it provides large contiguous areas of native vegetation and an extensive network of publicly-owned lands containing open space areas, vistas, and public trails. Contaminated runoff and sedimentation from unpermitted development on the property impacts the water quality of adjacent and surrounding public parklands. Moreover, grading, vegetation removal, and the placement of structures in areas of high elevation on the property degrade the scenic quality of adjacent and surrounding parklands. Furthermore, contamination from unregulated waste discharges on the property poses a public health risk (see **Exhibits 5**).

Ms. Witter and Mr. Richardson have not only failed to protect the ESHA on the property, they have removed a large amount of it. The placement of structures has hindered regeneration of vegetation (see **Exhibit 23**). The unpermitted development has impacted, and continues to impact, valuable and significant habitat, and is therefore inconsistent with Coastal Act Section 30240(a). Furthermore, the property lies immediately adjacent to a National Park, which is a popular visitor destination because of the beautiful, pristine habitat. Ms. Witter and Mr. Richardson have failed to prevent impacts to the water and soil quality as well as scenic value of these resources, and the unpermitted development on the property is incompatible with the continuance of adjacent recreation areas. Therefore, the unpermitted development on the property is inconsistent with Coastal Act Section 30240(b).

In addition to being inconsistent with Coastal Act Section 30240(a), the unpermitted development is inconsistent with the resource protection policies of the SMM LUP. These policies include:

- P68 Environmentally sensitive habitat areas (ESHAs) shall be protected against significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas. Residential use shall not be considered a resources dependent use.

Unpermitted development has significantly degraded the habitat on the property and water quality impacts from contaminated runoff will impact adjacent and surrounding ESHA. No

¹³ The property is also located less than five miles from the Malibu Creek State Park, another popular visitor destination in the area.

resource dependent uses have been proposed for the property. Much of the unpermitted development, including placement of residences, trailer and mobile homes, and creation of private access roads and driveways constitutes residential development, which is specifically not a resource dependent use under the SMM LUP.

- P84 In ESHAs and Significant Watersheds and other areas of high potential erosion hazard, require site design to minimize grading activities and reduce vegetation removal based on the following guidelines:
- Structures should be clustered.
 - Grading for access roads and driveways should be minimized...
 - Designate building and access envelopes on the basis of site inspection to avoid particularly erodible areas...

Although the property consists of seven purported parcels, only four are legal parcels. However, even if all of the parcels were legal, the development does not conform to the Coastal Act or the SMM LUP. Furthermore, development is not even limited to seven residential structures and is not clustered to reduce impacts to ESHA. Instead, there are approximately four residential structures and twenty-three trailers or mobile homes used as residences, scattered throughout the property on multiple graded pads, which required significantly more vegetation removal than clustered development (see **Exhibit 23**). Additional unpermitted development is not clustered around these residential structures and graded areas, thereby requiring additional vegetation removal and grading. Numerous roads and driveways were constructed on the property to facilitate access to and movement between the scattered development (see **Exhibit 23**). Additionally, scattered development on the property required more telephone and electrical lines than clustered development would have.

The main access road to the property is McReynolds Road. The unpermitted development is not situated close to McReynolds Road, and therefore, numerous, long, private access roads from McReynolds Road through ESHA to the development are required. Increased vegetation removal was necessary to create the roads. If these roads were legal roads, more vegetation would be removed from either side of each road in order to comply with Los Angeles County Fire Department fuel modification standards. Moreover, increased traffic to outlying development will prevent regeneration of vegetation and will continually compact soil, increasing surface runoff.

Attachment 2 of the LUP is a map of "Sensitive Environmental Resources in the Malibu Coastal Zone area (see **Exhibit 3**). According to the map, the property lies within a Wildlife Migration Corridor, which constitutes a Significant Environmental Area. The significance of these areas is stated in LUP Section 3.i.:

This [Wildlife Migration Corridor] designation was suggested originally by the Department of Fish and Game for the purpose of linking the Significant Watersheds into an unbroken chain of resource protection areas extending nearly the length of the Malibu/Santa Monica Mountains coastal zone. ... Standards for development are the same as those recommended for Significant Watersheds...

The development standards in the LUP for land located within Significant Watersheds, and therefore, for Wildlife Migration Corridors, are stated in Attachment 3 of the LUP (**Exhibit 32**). These standards mandate clustered development, minimal grading, and site access roads of no longer than the lesser of 300 feet or 1/3 the depth of the parcel. Unpermitted development on the property is not clustered, extensive grading has occurred, and many if not all of the access roads on the property exceed the prescribed maximum length.

ii. Section 30231 - Water Quality

Coastal Act Section 30231 states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams. (emphasis added)

The Los Angeles County Department of Health Services has not reviewed plans or approved any septic systems on the property. The residents of the unpermitted trailers and motor homes on the property discharge their solid and liquid wastes either directly onto the ground or barely underground, using basic drainage tubing buried to a shallow depth, without any permits (see **Exhibit 5**). These waste materials leach into the environment and potentially contaminating the groundwater, surface water runoff, and the blue line stream that bisects the property. The contamination has the clear potential to harm wildlife on the property, adjacent private properties, and public parklands, and to pose a public health risk.

In addition, unpermitted grading and vegetation removal on the property, especially the removal of native chaparral habitat, increases erosion. Increased runoff resulting from compacting soil to create roads and pads also increases erosion. The sedimentation resulting from increased erosion on the property impacts the water quality of the blue-line stream running through the property as well as the surrounding coastal waters. The contamination and increased erosion resulting from the unpermitted development is inconsistent with Coastal Act Section 30231.

iii. Section 30251 - Scenic and Visual Qualities

Coastal Act Section 30251 states, in relevant part:

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, [and] to be visually compatible with the character of surrounding areas.

The property contains valuable scenic qualities that are continually degraded by the presence of the unpermitted development found throughout the 43-acre property. The property is located immediately adjacent to the Castro Crest area of the SMMNRA, one of the most visible landmarks in the Santa Monica Mountains and a popular destination for the public. The property is located off of Latigo Canyon Road, a major route used by the public to access the extensive network of state and national parks in the surrounding areas. Much of these surrounding areas are covered with native vegetation – chaparral, and coastal sage scrub. Unpermitted grading and creation of unpermitted roads and driveways has altered the natural landforms on the property and the massive amounts of unpermitted development scattered throughout the property are not visually compatible with the character of surrounding areas.

Unpermitted roads, driveways, graded pads, and other unpermitted development is visible from nearby trails. This unpermitted development adversely impacts the scenic and visual resources of the property as viewed from nearby parklands. The unpermitted development on the property is therefore inconsistent with Coastal Act Section 30251.

iv. Section 30253 – Minimization of Adverse Impacts

The unpermitted development is also inconsistent with Coastal Act Section 30253, which provides in relevant part:

New development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs...*
- (5) Where appropriate, protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses.*
(emphasis added)

Trailers, mobile homes, and other unpermitted development on the property are located in designated flood hazard areas. In addition, electrical lines are located in designated high fire hazard areas. Therefore, the unpermitted development does not minimize risks, as required under Section 30253(1).

Unpermitted grading activities, creating pads and roads, and unpermitted vegetation removal has resulted in large areas of bare soil (see **Exhibit 23**). These areas will erode more quickly than vegetated areas. Therefore, the unpermitted development also fails to satisfy Section 30253(2). Ms. Witter and Mr. Richardson have undertaken no proactive revegetation of graded areas on the site to control erosion or to stabilize disturbed areas.

As stated above, the SMMNRA is a popular visitor destination point for recreational uses. Its Mediterranean ecosystem is rare and valuable because of the biodiversity it supports. Areas of native vegetation, such as those found on the property, meet the definition of ESHA stated in Coastal Act Section 30107.5. Ms. Witter and Mr. Richardson have failed to protect the property, which is part of this special community, thereby also failing to satisfy Section 30253(5).

c. Unpermitted Development is Causing Continuing Resource Damage

The unpermitted development is causing continuing resource damage, as defined in Section 13190 of the Commission's regulations:

'Continuing', when used to describe 'resource damage', means such damage which continues to occur as of the date of issuance of the Restoration Order.

'Resource' means any resource which is afforded protection under the policies of Chapter 3 of the Coastal Act, including but not limited to public access, marine and other aquatic resources, environmentally sensitive wildlife habitat, and the visual quality of coastal areas.

'Damage' means any degradation or other reduction in quality, abundance, or other quantitative or qualitative characteristic of the resource as compared to the condition the resource was in before it was disturbed by unpermitted development. (emphasis added)

As of the date of this report, the unpermitted development continues to exist at the subject property, and, as described above, continues to cause adverse impacts to ESHA, water and soil quality, and scenic resources that are protected under Chapter 3 of the Coastal Act. Thus, the resource damage is "continuing" as required by Coastal Act Section 30811, enabling the Commission to issue Restoration Order CCC-05-RO-05.

3. Provisions of CCC-05-CD-08 and CCC-05-RO-05

The 43-acre property contains extensive amounts of unpermitted development, some of which has existed on the property for years. The resulting resource impacts to the property and to the surrounding Santa Monica Mountains area are inconsistent with the resource policies of Chapter 3 of the Coastal Act. Given the long history of this case, the magnitude of the violations, the extent of resource damage caused by unpermitted development on the property, issuance of the proposed orders is essential to resolving the violations.

D. California Environmental Quality Act (CEQA)

The Commission finds that the issuance of Commission Cease and Desist Order CCC-05-CD-08 and Restoration Order CCC-05-RO-05 to compel removal of the unpermitted development and restoration of the property to the condition that existed prior to the unpermitted development, is exempt from any applicable requirements of the California Environmental Quality Act (CEQA)

of 1970 and will not have significant adverse effects on the environment, within the meaning of CEQA. The Cease and Desist Order and Restoration Order are exempt from the requirement of preparation of an Environmental Impact Report, based on Sections 15061(b)(2), 15307, 15308 and 15321 of the CEQA Guidelines.

E. Findings of Fact

1. Madalon Witter owns the 43-acre property located off of McReynolds Road in the Santa Monica Mountains area of unincorporated Los Angeles County, identified as APNs 4464-024-020; -021; -022; -023; -024; 4465-006-054; -055.
2. Douglas Richardson previously owned the property and conveyed title to Madalon Witter on December 8, 1987. He undertook unpermitted development on the site, and he continues to manage the property and represents Ms. Witter with regard to Commission enforcement matters.
3. Unpermitted development exists on the property consists of grading; removal of major vegetation; four attempted subdivisions; placement of solid materials and erection of structures including, but not limited to: twenty-three trailers and/or mobile homes; four single-family residences; four areas with stables, barns, pens, and horses; two concrete structures; one large garage; seven storage sheds; one outhouse; one yurt; numerous storage containers; six lean-tos attached to trailers or motor homes; four wooden or metal fences; power transmission and distribution lines; telephone lines; numerous driveways and/or roads; pipes; abandoned vehicles including cars, boats, trucks, and buses; tents; trash (including five large deposit areas); construction materials (including wood, metal, glass, and concrete materials); construction equipment including one bulldozer; water wells and water tanks.
4. No CDP was applied for or obtained prior to the undertaking any of the large number of items of development, in violation of Coastal Act Section 30600(a).
5. Some of the unpermitted development is located on parcels 4465-006-054 and 4465-006-055, covered by a CDP, a special condition of which prohibits future development, and by a deed restriction recorded pursuant to the CDP. The unpermitted development on this parcel is a violation of both the permit and the recorded deed restriction.
6. On May 19, 1992, Commission staff received a report that grading and vegetation clearance had occurred on the property. Additional reports of unpermitted development followed.
7. Staff obtained a court-issued inspection warrant in order to conduct a site visit of the property on October 27, 1993. An additional site inspection was conducted on October 31, 2002, confirming the continuing presence of the cited unpermitted development on the property.
8. Commission staff made repeated attempts to resolve this matter administratively, as evidenced by correspondence to Ms. Witter and Mr. Richardson, dated June 18, 1992, August 3, 1992, September 9, 1992, March 5, 1993, January 12, 1993, and June 6, 1993.

8. The Commission issued CCC-93-CD-03 on November 16, 1993, directing Ms. Witter and Mr. Richardson to apply for a CDP to remove or retain the unpermitted development on the property. CCC-93-CD-03 was rescinded on February 5, 1997.

9. The Executive Director authorized the issuance of a Notice of Intent to Commence Cease and Desist Proceedings on February 18, 1997. Commission staff discontinued these proceedings due to the fact that Ms. Witter, Mr. Richardson, and the Commission entered into a settlement agreement on October 23, 1998.

10. The 1998 settlement agreement directed Ms. Witter and Mr. Richardson to submit CDP applications to remove or retain the unpermitted development on the property. In addition, the agreement required Ms. Witter and Mr. Richardson to pay a \$15,000 fine or submit a promissory note secured by a deed of trust.

11. Ms. Witter and Mr. Richardson submitted incomplete CDP applications on February 23, 1999 and October 29, 2002. The first submittal did not constitute a formal CDP application. The second submittal was inadequate, and Commission staff requested additional materials on November 26, 2002. The materials were not received and the CDP applications were finally returned to Ms. Witter on September 18, 2003.

12. Ms. Witter and Mr. Richardson did not submit complete CDP applications, the prescribed payment, or the promissory note.

13. On February 25, 2005, the Executive Director issued an NOI, including a SOD form, for the proposed orders. The NOI was resent on March 18, 2005. The NOV NOI was also sent on March 18, 2005.

14. On March 18, 2005, Mr. Richardson designated Mr. Petrovsky as the agent for Ms. Witter and Mr. Richardson in this matter and as the agent for service of documents.

15. Commission staff sent the NOI, including an SOD form, and the NOV NOI to Mr. Petrovsky on May 18, 2005. No SOD has been submitted.

16. The unpermitted development listed in the Notice of Intent and addressed in this report remains on the property.

17. The unpermitted development is inconsistent with Chapter 3 of the Coastal Act, including Sections 30240, 30231, 30251, and 30253.

18. The unpermitted development is causing continuing resource damages.

19. Substantial evidence, as that term is used in Coastal Act Section 30812, exists that a Coastal Act violation has occurred.

20. Commission staff made Ms. Witter and Mr. Richardson aware of the possibility of the recordation of a Notice of Violation in this matter, as required by Coastal Act Section 30812(g), through the NOI dated February 25, 2005. The Executive Director notified Ms. Witter and Mr. Richardson of his intent to record a Notice of Violation pursuant to Coastal Act Section 30812 in the NOV NOI, dated March 18, 2005.

21. Once Mr. Richardson designated Mr. Petrovsky as the agent in this matter, Commission staff contacted Mr. Petrovsky and notified him of the potential for the recordation of a Notice of Violation. Subsequent notification occurred on April 1, 2005, May 18, 2005, May 16, 2005, June 8, 2005, The NOV NOI was sent to Mr. Petrovsky on May 18, 2005.

22. No objection to the recordation of a Notice of Violation in this matter was submitted, and a Notice of Violation was recorded in Los Angeles County on June 17, 2005.

CEASE AND DESIST ORDER CCC-05-CD-08, Witter/Richardson

Pursuant to its authority under Public Resource Code Section 30810, the California Coastal Commission hereby orders and authorizes Madalon Witter and Douglas Richardson (hereinafter referred to as "Respondents") to cease and desist from conducting or maintaining unpermitted development on the subject property by complying with the following:

1. Immediately cease and desist from engaging in any further development on the property not authorized by a coastal development permit.
2. Within 45 days of issuance of this Order, Cease and Desist from using, occupying, leasing or renting any unpermitted structures on the property.
3. Plans, Submittals, and Work to be Performed

A. Inventories of Development and Disturbed Areas

Within 30 days of the issuance of this Order, Respondents shall submit comprehensive inventories of all development and disturbed areas on the property for review and approval by the Executive Director. The inventories of development must, at an absolute minimum, provide the locations of each item of vested development, according to the Vested Rights Determination made by the Commission on August 11, 1998, and all unpermitted development listed in the attached document entitled "Staff Report and Findings for Cease and Desist Order and Restoration Order". The inventory of disturbed areas shall provide all locations of grading activity and vegetation clearance on the property, which constitutes unpermitted development and is subject to this Order. Any additional unpermitted development not specified in the attached document entitled "Staff Report and Findings for Cease and Desist Order and Restoration Order" but located on the property must be included in these inventories. The inventories shall provide enough visual and verbal descriptive information to enable a person who is unfamiliar with the site to understand the type and location of each item of development, vested and unpermitted, as well as the location of disturbed areas on the property.

If Respondents choose to utilize Option 2, as explained below in Section B.2 of this Order, the inventories shall indicate (and include evidence that demonstrates to the satisfaction of the Executive Director) whether or not the unpermitted development existed on the property at the time of the execution of the October 23, 1998 settlement agreement was reached between the Commission, Ms. Witter, and Mr. Richardson. The inventory shall clearly state that Option 2 has been chosen.

B. Removal Plan

- i) Option 1: Removal of All Unpermitted Development

Within 30 days of approval of the inventories by the Executive Director, Respondents shall submit a plan, for review and approval by the Executive Director, to remove all unpermitted development on the property not demonstrated to be in existence prior to the settlement agreement. Respondents shall also have the option of including in this removal plan all unpermitted development on the site. Within 10 days of the approval of the removal plan, Respondents shall begin removal of the unpermitted development, in accordance with the terms and schedule provided in the approved removal plan, subject to any extensions provided by the Executive Director pursuant to Section IX of this Order. The removal plan shall be prepared by a certified civil engineer or other qualified professional, licensed by the State of California. The plan shall contain the following provisions:

- (a) Detailed description of removal activities.
- (b) Timetable for removal activities.
- (c) Mechanized Equipment.
 - (i) Type of mechanized equipment required for removal activities;
 - (ii) Length of time equipment must be used;
 - (iii) Routes utilized to bring equipment to and from the property;
 - (iv) Storage location for equipment when not in use during removal process;
 - (v) Hours of operation of mechanized equipment;
 - (vi) Contingency plan in case of a spill of fuel or other hazardous release from use of mechanized equipment that addresses clean-up and disposal of the hazardous materials and water quality concerns;
- (d) Measures to be taken to protect water quality.
- (e) Disposal site for removed development. The site must be a licensed disposal facility located outside of the Coastal Zone. Any hazardous materials must be transported to a licensed hazardous waste disposal facility.
- (f) If the Executive Director determines that any modifications or additions to the submitted plan are necessary, he shall notify Respondents. Respondents shall complete requested modifications and resubmit the plan for approval within 10 days of the notification.
- (g) Removal shall commence no later than 10 days after the approval of the removal plan by the Executive Director. Removal shall be completed according to the time schedule provided in the approved plan.

ii) Option 2: Submittal of CDP Application and Removal of "New" Development

The Executive Director's approval of the inventories will notify Respondents regarding what unpermitted development the Executive Director has determined existed at the time of the execution of the Settlement Agreement and that development which did not exist on the property until after the execution of the Settlement Agreement.

a) Submittal of CDP Application and Removal of Denied Development

Within 30 days of notification by the Executive Directors pursuant to this section of the Order, Respondents have the option of submitting a complete CDP application to retain or remove only development which was existing on the property at the time of the Settlement Agreement for which Respondents want to apply under this section. Within 20 days after the Commission acts on the CDP application, Respondents shall submit plans for removal of all development that was denied by the Commission in that action. The removal plan will contain the elements outlined in Section 3.b.i of this Order. If the Executive Director determines that any modifications or additions to the submitted removal plan are necessary, he shall notify Respondents. Respondents shall complete requested modifications and resubmit the removal plan for approval within 10 days of the notification. Removal shall commence no later than 10 days after the approval of the removal plan by the Executive Director. Removal shall be completed according to the time schedule provided in the approved removal plan.

b) Removal of Development if Respondents Fail to Meet CDP Conditions

Within 60 days after the Commission acts on the CDP application, if the Commission approved the application subject to conditions that must be met prior to issuance of the permit, if Respondents have not complied with all such conditions, Respondents shall submit plans for removal of all the unpermitted development that was conditionally approved in the Commission's action. The removal plan will contain the elements outlined in Section 3.b.i of this Order. If the Executive Director determines that any modifications or additions to the submitted removal plan are necessary, he shall notify Respondents. Respondents shall complete requested modifications and resubmit the removal plan for approval within 10 days of the notification. Removal shall commence no later than 10 days after the approval of the removal plan by the Executive Director. Removal shall be completed according to the time schedule provided in the approved removal plan.

c) Removal of Post-1998 Development or Development Not Included in CDP Application

Any unpermitted development for which Respondents do not apply for with a complete and timely CDP application or which has not been demonstrated to predate the 1998 settlement agreement shall be removed under Option 1 in Section B.1 of this Order. The removal plan will contain the elements outlined in Section 3.b of this Order. If the Executive Director determines that any modifications or additions to the submitted removal plan are necessary, he shall notify

Respondents. Respondents shall complete requested modifications and resubmit the removal plan for approval within 10 days of the notification. Removal shall commence no later than 10 days after the approval of the removal plan by the Executive Director. Removal shall be completed according to the time schedule provided in the approved removal plan.

C. Removal Completion Report

Within 20 days of the completion of removal of all new unpermitted development, all unpermitted development for which Respondents did not chose to apply for with a CDP application, all unpermitted development denied by the Commission in an action on a CDP application filed according to Section B.2 of this Order, and all unpermitted development that was authorized but where the conditions necessary for issuance of the permit were not met within 60 days of the Commission's action on the permit application, Respondents shall submit, for review and approval by the Executive Director, a report documenting removal activities and confirming complete removal of unpermitted development as specified above in this section of the Order. The report shall include a site plan prepared by a licensed surveyor, showing all development retained on the property after removal is completed. The report shall also include photographs of removal activities being undertaken on the property as well as photographs of the property after removal was completed, marked to correspond to the inventories submitted pursuant to Section A of this Order.

D. Modifications and/or Additions Requested by the Executive Director

If the Executive Director determines that any modifications or additions to the inventories, the CDP application, or the removal plan are necessary, including submittal of additional evidence as to when unpermitted development activities were conducted on the property, he shall notify Respondents. Respondents shall complete requested modifications and resubmit the item for approval within 10 days of the notification.

If the Executive Director determines that removal was inadequate, notice will be provided to Respondents outlining the deficiencies and the steps required to complete removal, and a time schedule for additional removal efforts. Respondents shall commence additional removal as required and shall complete removal according to the time schedule provided.

4. Cease and Desist from maintaining as separate parcels the property identified as APNs 4464-024-020, 4464-024-021, 4464-024-022, 4464-024-023, 4465-006-054, and 4465-006-055. In addition, cease and desist from any attempt to transfer as separate parcels, the property identified as APNs 4464-024-020, 4464-024-021, 4464-024-022, 4464-024-023, 4465-006-054, and 4465-006-055, until the Executive Director has determined that all appropriate actions have been taken to effectuate and record mergers to restore the original, approved parcel configuration of the property consisting of only four separate parcels, as set forth in the attached document entitled "Staff Report and Findings for Cease and Desist Order and Restoration Order" (hereafter "approved parcel configuration").

Within 45 days of issuance of this Order submit for the review and approval of the Executive Director all documents necessary to effectuate merger of the parcels identified as APNs 4464-024-020 and 4464-024-021, 4464-024-022 and 4464-024-023, and 4465-006-054 and 4465-006-055 so they are recombined with adjacent property to restore the original parcel configuration and to establish that the forty-three acres subject to this Order consists of only four separate parcels.

Within 30 days of Executive Director approval of the documents: (1) submit copies of the documents recorded to effectuate the mergers; (2) take all actions required to cause the records of the County Assessor to reflect the mergers.

I. Persons Subject to the Order

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

II. Identification of the Property

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

Approximately 43 acres, located within a wildlife corridor and containing a USGS-recognized blue-line stream as wells as environmentally sensitive chaparral, oak woodlands, and riparian oak woodland habitat (APNs 4464-024-020; -021; -022; -023; -024; 4465-006-054; -055).

III. Description of Unpermitted Development

Unpermitted development located on the property consists of grading; removal of major vegetation; four attempted subdivisions; placement of solid materials and erection of structures including, but not limited to: twenty-three trailers and/or mobile homes; four single-family residences; four areas with stables, barns, pens, and horses; two concrete structures; one large garage; seven storage sheds; one outhouse; one yurt; numerous storage containers; six lean-tos attached to trailers or motor homes; four wooden or metal fences; power transmission and distribution lines; telephone lines; numerous driveways and/or roads; pipes; abandoned vehicles including cars, boats, trucks, and buses; tents; trash (including five large deposit areas); construction materials (including wood, metal, glass, and concrete materials); construction equipment including one bulldozer; water wells and water tanks. Such unpermitted development does not include the development for which the Commission determined there is a vested right in its decision dated August 11, 1998.

IV. Commission Jurisdiction and Authority to Act

The Coastal Commission has jurisdiction to take enforcement action to remedy the Coastal Act violations on the property due to the fact that the property lies within the Coastal Zone, in an unincorporated area of Los Angeles County, not covered under a certified Local Coastal

Program. The Commission issues this order pursuant to its authority under Coastal Act Section 30810.

V. Effective Date and Terms of the Order

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

VI. Submittal of Documents

All documents submitted pursuant to this Order must be sent to:

California Coastal Commission
Attn: Christine Chestnut
45 Fremont St., Suite 2000
San Francisco, CA 94105-2219.

with a copy sent to:
California Coastal Commission
Attn: Pat Veasart
89 S. California Street Suite 200
Ventura, CA 93001-2801

VII. Findings

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

VIII. Compliance Obligation

Strict compliance with the Order by all parties subject thereto is required. Failure to comply strictly with any term or condition of the Order including any deadline contained in the Order will constitute a violation of this Order and may result in the imposition of civil penalties, under Coastal Act Section 30821.6, of up to SIX THOUSAND DOLLARS (\$6,000) per day for each day in which the violation persists, in addition to any other penalties authorized under Chapter 9 of the Coastal Act, including exemplary damages under Section 30822.

IX. Extension of Deadlines

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

X. Site Access

Respondents shall provide access to the property, at all reasonable times, including when work is being conducted pursuant to this order, for Commission staff and any agency having jurisdiction over the work being performed under this order. Commission staff shall provide 24-hour notice before entering the property. Nothing in this order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law.

XI. Modifications and Amendments to this Consent Order

Except as provided in Section IX of this order, this order may be amended or modified only in accordance with the standards and procedures set forth in Section 13188(b) of the Commission's administrative regulations.

XII. Appeal

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

XIII. Government Liability

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

XIV. Successors and Assigns

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

XV. No Limitation on Authority

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

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

By: _____ Peter Douglas, Executive Director

RESTORATION ORDER CCC-05-RO-05, Witter/Richardson

Pursuant to its authority under Public Resource Code Section 30811, the California Coastal Commission hereby orders and authorizes Madalon Witter and Douglas Richardson (hereinafter referred to as "Respondents") to restore the property as directed by this order to the condition it was in prior to the undertaking of the unpermitted development activity that is the subject of this order. Accordingly, the persons subject to this order shall fully comply with the following conditions:

A. Inventories of Development and Disturbed Areas

Within 30 days of the issuance of this Order, Respondents shall submit comprehensive inventories of all development and disturbed areas on the property for review and approval by the Executive Director. The inventories of development must, at an absolute minimum, provide the locations of each item of vested development, according to the Vested Rights Determination made by the Commission on August 11, 1998, and all unpermitted development listed in the attached document entitled "Staff Report and Findings for Cease and Desist Order and Restoration Order". The inventory of disturbed areas shall provide all locations of grading activity and vegetation clearance on the property, which constitutes unpermitted development and is subject to this Order. Any additional unpermitted development not specified in the attached document entitled "Staff Report and Findings for Cease and Desist Order and Restoration Order" but located on the property must be included in these inventories. The inventories shall provide enough visual and verbal descriptive information to enable a person who is unfamiliar with the site to understand the type and location of each item of development, vested and unpermitted, as well as the location of disturbed areas on the property.

If Respondents choose to utilize Option 2, as explained below in Section B.2 of this Order, the inventories shall indicate (and include evidence that demonstrates to the satisfaction of the Executive Director) whether or not the unpermitted development existed on the property at the time of the execution of the October 23, 1998 settlement agreement was reached between the Commission, Ms. Witter, and Mr. Richardson. The inventory shall clearly state that Option 2 has been chosen.

B. Removal Plan

1) Option 1: Removal of All Unpermitted Development

Within 30 days of approval of the inventories by the Executive Director, Respondents shall submit a plan, for review and approval by the Executive Director, to remove all unpermitted development on the property not demonstrated to be in existence prior to the settlement agreement. Respondents shall also have the option of including in this plan all unpermitted development on the site. Within 10 days of the approval of the removal plan, Respondents shall begin removal of the unpermitted development, in accordance with the terms and schedule provided in the approved removal plan, subject to any extensions provided by the Executive Director pursuant to Section IX of this Order. The removal plan shall be prepared by a certified

civil engineer or other qualified professional, licensed by the State of California. The plan shall contain the following provisions:

- a) Detailed description of removal activities.
- b) Timetable for removal activities.
- c) Mechanized Equipment.
 - i) Type of mechanized equipment required for removal activities;
 - ii) Length of time equipment must be used;
 - iii) Routes utilized to bring equipment to and from the property;
 - iv) Storage location for equipment when not in use during removal process;
 - v) Hours of operation of mechanized equipment;
 - vii) Contingency plan in case of a spill of fuel or other hazardous release from use of mechanized equipment that addresses clean-up and disposal of the hazardous materials and water quality concerns;
- d) Measures to be taken to protect water quality.
- e) Disposal site for removed development. The site must be a licensed disposal facility located outside of the Coastal Zone. Any hazardous materials must be transported to a licensed hazardous waste disposal facility. If a disposal location lies within the Coastal Zone and is not an existing sanitary landfill, a coastal development permit shall be required.
- f) If the Executive Director determines that any modifications or additions to the submitted plan are necessary, he shall notify Respondents. Respondents shall complete requested modifications and resubmit the plan for approval within 10 days of the notification.
- g) Removal shall commence no later than 10 days after the approval of the removal plan by the Executive Director. Removal shall be completed according to the time schedule provided in the approved plan.

2) Option 2: Submittal of CDP Application and Removal of "New" Development

The Executive Director's approval of the inventories will notify Respondents regarding what unpermitted development the Executive Director has determined existed at the time of the

execution of the Settlement Agreement and that development which did not exist on the property until after the execution of the Settlement Agreement.

a) Submittal of CDP Application and Removal of Denied Development

Within 30 days of notification by the Executive Directors pursuant to this section of the Order, Respondents have the option of submitting a complete CDP application to retain or remove only development which was existing on the property at the time of the Settlement Agreement for which Respondents chose to apply for with a CDP application under this Section. Within 20 days after the Commission acts on the CDP application, Respondents shall submit plans for removal of all development that was denied by the Commission in that action. The removal plan will contain the elements outlined in Section 3.b of this Order. If the Executive Director determines that any modifications or additions to the submitted removal plan are necessary, he shall notify Respondents. Respondents shall complete requested modifications and resubmit the removal plan for approval within 10 days of the notification. Removal shall commence no later than 10 days after the approval of the removal plan by the Executive Director. Removal shall be completed according to the time schedule provided in the approved removal plan.

b) Removal of Development if Respondents Fail to Meet CDP Conditions

Within 60 days after the Commission acts on the CDP application, if the Commission approved the application subject to conditions that must be met prior to issuance of the permit, if Respondents have not complied with all such conditions, Respondents shall submit plans for removal of all the unpermitted development that was conditionally approved in the Commission's action. The removal plan will contain the elements outlined in Section 3.b of this Order. If the Executive Director determines that any modifications or additions to the submitted removal plan are necessary, he shall notify Respondents. Respondents shall complete requested modifications and resubmit the removal plan for approval within 10 days of the notification. Removal shall commence no later than 10 days after the approval of the removal plan by the Executive Director. Removal shall be completed according to the time schedule provided in the approved removal plan.

c) Removal of Post-1998 Development or Development Not Included in CDP Application

Any unpermitted development for which Respondents do not apply for with a complete and timely CDP application or which has not been demonstrated to predate the 1998 settlement agreement shall be removed under Option 1 in Section B.1 of this Order. The removal plan will contain the elements outlined in Section 3.b of this Order. If the Executive Director determines that any modifications or additions to the submitted removal plan are necessary, he shall notify Respondents. Respondents shall complete requested modifications and resubmit the removal plan for approval within 10 days of the notification. Removal shall commence no later than 10 days after the approval of the removal plan by the Executive Director. Removal shall be completed according to the time schedule provided in the approved removal plan.

C. Removal Completion Report

Within 20 days of the completion of removal of all new unpermitted development, all unpermitted development for which Respondents did not chose to apply for with a CDP application, all unpermitted development denied by the Commission in an action on a CDP application filed according to Section B.2 of this Order, and all unpermitted development that was authorized but where the conditions necessary for issuance of the permit were not met within 60 days of the Commission's action on the permit application, Respondents shall submit, for review and approval by the Executive Director, a report documenting removal activities and confirming complete removal of unpermitted development as specified above in this section of the Order. The report shall include a site plan prepared by a licensed surveyor, showing all development retained on the property after removal is completed. The report shall also include photographs of removal activities being undertaken on the property as well as photographs of the property after removal was completed, marked to correspond to the inventories submitted pursuant to Section A of this Order.

D. Modifications and/or Additions Requested by the Executive Director

If the Executive Director determines that any modifications or additions to the inventories, the CDP application, or the removal plan are necessary, including submittal of additional evidence as to when unpermitted development activities were conducted on the property, he shall notify Respondents. Respondents shall complete requested modifications and resubmit the item for approval within 10 days of the notification.

If the Executive Director determines that removal was inadequate, notice will be provided to Respondents outlining the deficiencies and the steps required to complete removal, and a time schedule for additional removal efforts. Respondents shall commence additional removal as required and shall complete removal according to the time schedule provided.

E. Restoration Plan

Within 30 days of the completion of removal of all new unpermitted development, all unpermitted development for which Respondents did not chose to apply for with a CDP application, all unpermitted development denied by the Commission in an action on a CDP application filed according to Section B.2 of this Order, and all unpermitted development that was authorized but where the conditions necessary for issuance of the permit were not met within 60 days of the Commission's action on the permit application, Respondents shall submit, for the review and approval of the Executive Director, a Restoration, Revegetation and Monitoring Plan ("the Plan"). The Executive Director may extend this time for good cause.

The Plan shall be prepared by a qualified restoration ecologist and a qualified geologic engineer, as described in section (d), below and shall include the following:

- 1) Goals and Performance Standards. Section A of the Plan shall present the following goals of the Restoration and Revegetation Project.

- a) Restoration of the property to the condition that existed prior to the unpermitted development through restorative grading of the topography in the areas impacted by the unpermitted development. Restorative grading plans should include sections showing original and finished grades, and quantitative breakdown of grading amounts (cut/fill), drawn to scale with contours that clearly illustrate the original topography of the subject site prior to any grading disturbance. The location for any excavated material to be removed from the site as a result of the restoration of the impacted areas shall be identified. If the dumpsite is located in the Coastal Zone and is not an existing sanitary landfill, a coastal development permit shall be required.
- b) Revegetation of all areas impacted by unpermitted development activities or by the removal of the unpermitted development, with the result that disturbed areas have a similar plant density, total cover and species composition as that typical of undisturbed chaparral vegetation in the surrounding area within 5 years from the initiation of revegetation activities.
- c) Eradication of non-native vegetation within the areas subject to revegetation and those areas that are identified as being subject to disturbance as a result of the restoration and revegetation activities.
- d) Minimization of the amount of artificial inputs such as watering or fertilizers that shall be used to support the revegetation of the impacted areas. The Restoration and Revegetation Project will not be successful until the revegetated areas meet the performance standards for at least three years without maintenance or remedial activities other than nonnative species removal.
- e) Stabilization of soils so that soil is not transported off the property or into the chaparral or riparian ESHA and so that slumping, gullyng, or other surficial instability does not occur.
- f) Section A of the Plan shall also include specific ecological and erosion control performance standards that relate logically to the restoration and revegetation goals. Where there is sufficient information to provide a strong scientific rationale, the performance standards shall be absolute (e.g., specified average height within a specified time for a plant species).
- g) Where absolute performance standards cannot reasonably be formulated, clear relative performance standards will be specified. Relative standards are those that require a comparison of the restoration site with reference sites. The performance standards for the plant density, total cover and species composition shall be relative. In the case of relative performance standards, the rationale for the selection of reference sites, the comparison procedure, and the basis for judging differences to be significant will be specified. Reference sites shall be located on adjacent areas vegetated with chaparral undisturbed by development or vegetation removal, within 2000 feet of the subject property with similar

slope, aspect and soil moisture. If the comparison between the revegetation area and the reference sites requires a statistical test, the test will be described, including the desired magnitude of difference to be detected, the desired statistical power of the test, and the alpha level at which the test will be conducted. The design of the sampling program shall relate logically to the performance standards and chosen methods of comparison. The sampling program shall be described in sufficient detail to enable an independent scientist to duplicate it. Frequency of monitoring and sampling shall be specified for each parameter to be monitored. Sample sizes shall be specified and their rationale explained. Using the desired statistical power and an estimate of the appropriate sampling variability, the necessary sample size will be estimated for various alpha levels, including 0.05 and 0.10.

- 2) Restoration and Revegetation Methodology. Section C of the Plan shall describe the methods to be used to stabilize the soils and revegetate the impacted areas. Section C shall be prepared in accordance with the following directions:
- a) The plan shall be designed to minimize the size of the area and the intensity of the impacts from disturbances caused by the restoration of the impacted areas. Other than those areas subject to revegetation activities, the areas of the site and surrounding areas currently vegetated with chaparral, oak woodlands, or riparian oak woodlands, shall not be disturbed by activities related to this restoration project. Prior to initiation of any activities resulting in physical alteration of the property, the disturbance boundary shall be physically delineated in the field using temporary measures such as stakes or colored tape.
 - b) Specify that the restoration of the property shall be performed using hand tools wherever possible, unless it has been demonstrated to the satisfaction of the Executive Director that heavy equipment will not contribute significantly to impacts to resources protected by the Coastal Act, including, but not limited to geological instability, minimization of landform alteration, erosion and impacts to native vegetation and the stream.
 - c) The qualified geologic engineer and restoration ecologist shall specify the methods to be used after restoration to stabilize the soil and make it capable of supporting native vegetation. Such methods shall not include the placement of retaining walls or other permanent structures, grout, geogrid or similar materials. Any soil stabilizers identified for erosion control shall be compatible with native plant recruitment and establishment. The Plan shall specify the erosion control measures that shall be installed on the project site prior to or concurrent with the initial grading operations and maintained until the impacted areas have been revegetated to minimize erosion and transport of sediment outside of the disturbed areas. The soil treatments shall include the

use of mycorrhizal inoculations of the soil, unless it can be demonstrated to the satisfaction of the Executive Director that such treatment will not likely increase the survival of the plants to be used for revegetation.

- d) Describe the methods for revegetation of the site. All plantings shall be the same species, or sub-species, if relevant, as those documented as being located in the reference sites. The planting density shall be at least 10% greater than that documented in the reference sites, in order to account for plant mortality. All plantings shall be performed using native plants that were propagated from plants as close as possible to the property, in order to preserve the genetic integrity of the flora in and adjacent to the revegetation area.
- e) Describe the methods for detection and eradication of nonnative plant species on the site. Herbicides shall only be used if physical and biological control methods are documented in peer-reviewed literature as not being effective at controlling the specific nonnative species that become established in the revegetation area. If herbicides are to be used in the revegetation area, specify the precautions that shall be taken to protect native plants and workers, consistent with all applicable laws and regulations.
- f) Specify the measures that will be taken to identify and avoid impacts to sensitive species. Sensitive species are defined as: (a) species which are listed by state or federal agencies as threatened or endangered or which are designated as candidates for such listing; (b) California species of special concern; (c) fully protected or "special animal" species in California; and (d) plants considered rare, endangered, or of limited distribution by the California Native Plant Society.

- 3) Monitoring and Maintenance. Section C of the Plan shall describe the monitoring and maintenance methodology and shall include the following provisions:
- 4) Respondents shall submit, on an annual basis for a period of five years (no later than September 1st each year after restoration is completed) a written report, for the review and approval of the Executive Director, prepared by a qualified restoration ecologist and qualified geologic engineer, evaluating compliance with the performance standards. 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. These reports shall also include photographs taken from pre-designated locations (annotated to a copy of the site plans) indicating the progress of recovery at the site.

- 5) 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 two 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 two years, so that the success and sustainability of the restoration of the project site are ensured.
- 6) At the end of the 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, Respondents shall be required to submit a revised or supplemental plan to compensate for those portions of the original program that were not successful. The Executive Director will determine if the revised or supplemental plan must be processed as a CDP, a new Restoration Order, or modification of Restoration Order CCC-05-RO-08.
 - a) Appendix A shall include a description of the education, training and experience of the qualified geologic engineer and restoration ecologist who shall prepare the Restoration Plan. A qualified restoration ecologist for this project shall be an ecologist, arborist, biologist or botanist who has experience successfully completing restoration or revegetation of chaparral habitats. If this qualified restoration ecologist does not have experience in creating the soil conditions necessary for successful revegetation of chaparral vegetation, a qualified soil scientist shall be consulted to assist in the development of the conditions related to soils in the Revegetation and Monitoring Plan. A qualified A qualified geologic engineer for this project shall be a geologic engineer who has experience evaluating and designing soil stabilization projects in the Santa Monica Mountains area.
- 7) Submit interim erosion control plans for the review and approval of the Executive Director. The Interim Erosion Control Plan shall be prepared by a qualified restoration ecologist and shall include the following:
 - a) The Interim Erosion Control Plan shall demonstrate that:
 - i) The following temporary erosion control measures shall be used unless it can be demonstrated to the satisfaction of the Executive Director that such measures will not be beneficial, or other methods that are acceptable to the Executive Director are more appropriate: hay bales, wattles, silt fences.
 - ii) Erosion on the site shall be controlled to avoid adverse impacts on adjacent properties and resources.
 - b) The Interim Erosion Control Plan shall include, at a minimum, the following components:

- i) A narrative report describing all temporary runoff and erosion control measures to be used and any permanent erosion control measures to be installed for permanent erosion control.
 - ii) A detailed site plan showing the location of all temporary erosion control measures.
 - iii) A schedule for installation and removal of temporary erosion control measures, in coordination with the long term restoration, revegetation and monitoring plan discussed below.
- F. Within 30 days of the approval by the Executive Director of the documents submitted under Section E of this Order, or within such additional time as the Executive Director may grant for good cause, Respondents shall complete the following actions, in compliance with the plans approved under Section E of this Order:
 - 1) Restore the topography consistent with the Plan, as required by Section E of this order and as approved by the Executive Director.
 - 2) Submit to the Executive Director a report documenting the restoration of the topography. This report shall include photographs that show the restored site. This report shall include a topographic plan that is prepared by a licensed surveyor, shows two-foot contours, and represents the topographic contours after removal of the development and grading to achieve restoration of the topography to the maximum extent possible.
- F. Within 15 days of the approval by the Executive Director of the documents submitted under paragraph E above, or within such additional time as the Executive Director may grant for good cause, revegetate the disturbed areas with native plants, following the specifications of the Plan approved by the Executive Director, pursuant to Section E above.
- G. In accordance with the schedule set forth in the Plan, approved by the Executive Director pursuant to Section E above, submit to the Executive Director monitoring reports.
- H. After approval of the monitoring reports by the Executive Director, implement within such timeframe as the Executive Director may specify all measures specified by the Executive Director to ensure the health and stability of the restored areas, as required by the Plan.
- I. For the duration of the restoration project, including the monitoring period, all persons subject to this order shall allow the Executive Director, Commission staff, and any other agency having jurisdiction over the work being performed under this order to access the property to assess compliance with the Restoration Order. Nothing in this order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. Twenty-four hours advance notice shall be provided to Respondents prior to any site visit, except in exigent circumstances.

Within 45 days of issuance of this Order submit for the review and approval of the Executive Director all documents necessary to effectuate merger of the parcels identified as APNs 4464-024-020 and 4464-024-021, 4464-024-022 and 4464-024-023, and 4465-006-054 and 4465-006-

055 so they are recombined with adjacent property to restore the original parcel configuration and to establish that the forty-three acres subject to this Order consists of only four separate parcels.

Within 30 days of Executive Director approval of the documents: (1) submit copies of the documents recorded to effectuate the mergers; (2) take all actions required to cause the records of the County Assessor to reflect the mergers.

I. Persons Subject to the Order

Persons subject to this Restoration Order are Respondents, their agents, contractors and employees, and any persons acting in concert with any of the foregoing.

II. Identification of the Property

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

Approximately 43 acres, located within a wildlife corridor and containing a USGS-recognized blue-line stream as well as environmentally sensitive chaparral, oak woodlands, and riparian oak woodland habitat (APNs 4464-024-020; -021; -022; -023; -024; 4465-006-054; -055).

III. Description of Unpermitted Development

Unpermitted development located on the property consists of grading; removal of major vegetation; four attempted subdivisions; placement of solid materials and erection of structures including, but not limited to: twenty-three trailers and/or mobile homes; four single-family residences; four areas with stables, barns, pens, and horses; two concrete structures; one large garage; seven storage sheds; one outhouse; one yurt; numerous storage containers; six lean-tos attached to trailers or motor homes; four wooden or metal fences; power transmission and distribution lines; telephone lines; numerous driveways and/or roads; pipes; abandoned vehicles including cars, boats, trucks, and buses; tents; trash (including five large deposit areas); construction materials (including wood, metal, glass, and concrete materials); construction equipment including one bulldozer; water wells and water tanks. The unpermitted development does not include development for which the Commission determined there is a vested right in its decision dated August 11, 1998.

IV. Commission Jurisdiction and Authority to Act

The Coastal Commission has jurisdiction to take enforcement action to remedy the Coastal Act violations on the property due to the fact that the property lies within the Coastal Zone, in an unincorporated area of Los Angeles County, not covered under a certified Local Coastal Program. The Commission issues this order pursuant to its authority under Coastal Act Section 30810.

V. Effective Date and Terms of the Order

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

VI. Submittal of Documents

All documents submitted pursuant to this Order must be sent to:

California Coastal Commission
Attn: Christine Chestnut
45 Fremont St., Suite 2000
San Francisco, CA 94105-2219.

with a copy sent to:
California Coastal Commission
Attn: Pat Veasart
89 S. California Street Suite 200
Ventura, CA 93001-2801

VII. Findings

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

VIII. Compliance Obligation

Strict compliance with the Order by all parties subject thereto is required. Failure to comply strictly with any term or condition of the Order including any deadline contained in the Order will constitute a violation of this Order and may result in the imposition of civil penalties, under Coastal Act Section 30821.6, of up to SIX THOUSAND DOLLARS (\$6,000) per day for each day in which the violation persists, in addition to any other penalties authorized under Chapter 9 of the Coastal Act, including exemplary damages under Section 30822.

IX. Extension of Deadlines

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

X. Modifications and Amendments to this Consent Order

Except as provided in Section IX of this order, this order may be amended or modified only in accordance with the standards and procedures set forth in Section 13188(b) of the Commission's administrative regulations.

XI. Appeal

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

XII. Government Liability

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

XIII. Successors and Assigns

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

XIV. No Limitation on Authority

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

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

By: _____ Peter Douglas, Executive Director

**CCC-05-CD-08 and CCC-05-RO-05
Exhibit List**

**Exhibit
Number**

Description

1. Site Map and Location.
2. Assessor's Parcel Maps, Book 4464/Page 024 and Book 4465/Page 006.
3. Malibu/Santa Monica Mountains Land Use Plan, Attachment 2: "Sensitive Environmental Resources", dated December 11, 1986.
4. Inspection Warrant, filed in Superior Court of California, Los Angeles County on October 22, 1993.
5. Notice of Intent to Commence Cease and Desist Order Proceedings, dated June 4, 1993.
6. Staff Report, "Adopted Findings for Issuance of Cease and Desist Order" for CDO No. CCC-93-CD-03, approved by the Commission on November 16, 1993.
7. Staff Report, "Adopted Findings for Amendment to Commission Cease and Desist Order", dated January 13, 1994.
8. Letter from Commission staff to Ms. Witter and Mr. Richardson, dated February 1, 1994.
9. Petition for Writ of Mandate, file on behalf of Ms. Witter and Mr. Richardson in Superior Court of California, Los Angeles County on January 19, 1994.
10. Decision of the Superior Court of California, Los Angeles County, dated December 4, 1996. References to the document made in this report can be found on page 1 of the document.
11. Staff Report, "Staff Recommendations for Rescission of Cease & Desist Order", dated February 5, 1997. Reference to the document made in this report can be found on page 3 of the document.
12. Notice of Intent to Commence Cease and Desist Order Proceedings, dated February 18, 1997.
13. Complaint for Declaratory Relief, Preliminary and Permanent Injunction, Civil Penalties and Fines, filed on behalf of the Commission in Superior Court of California, Los Angeles County on January 23, 1995.
14. Agreement to Compromise and Settle Disputed Claims and Mutual Release of Claims, signed by all parties on October 8, 9, and 23, 1998. Section 4.0, concerning filing of CDP applications, which is referenced in this report, can be found on page 3 of the document.
15. CDP No. 5-82-377, issued by the Commission on March 2, 1984 and the Staff Report, "Revised Staff Report and Recommendations for CDP No. 5-82-377", approved by the Commission per revised recommendation on August 24, 1982.
16. Letters, regarding incomplete status of submitted CDP applications No. 4-02-233 and 4-02-234, sent by Commission staff to Ms. Witter and Mr. Richardson on November 26, 2002.
17. Letters, accompanying returned CDP applications No. 4-02-233 and 4-02-234, sent by Commission staff to Ms. Witter and Mr. Richardson on September 18, 2003.

18. Notice of Intent to Commence Cease and Desist and Restoration Order Proceedings, dated February 25, 2005.
19. Notice of Intent to Commence Cease and Desist and Restoration Order Proceedings, dated March 18, 2005.
20. Notice of Intent to Record a Notice of Violation of the Coastal Act, dated March 18, 2005.
21. Cover letter accompanying Notice of Intent to Commence Cease and Desist and Restoration Order Proceedings and Notice of Intent to Record a Notice of Violation of the Coastal Act, sent by Commission staff to Mr. Petrovsky on May 18, 2005.
22. Notice of Violation of the Coastal Act, recorded at Los Angeles County Recorder's Office on June 17, 2005.
23. Photographs taken by Commission staff during site visits on October 31, 2002 and March 24, 2005.
- 24-27. Aerial photographs of the property and surrounding area, provided by the County of Los Angeles.
28. CDP No. P-2-17-78-2706, issued by the Commission on July 7, 1978.
29. Deed Restriction, Document No. 78-739532, recorded by Douglas Richardson, Karen Richardson, Michael Burrett, and Norman E. Fisher in the Los Angeles County Records Office on July 7, 1978.
30. Parcel Map Waiver No. 7154, document No.84-285673, recorded by Douglas Richardson, reproduced as Exhibit 27 in the staff report, "Claim of Vested Rights" heard by the Commission on August 11, 1998.
31. Memorandum from Commission staff biologist, Dr. John Dixon, to Christine Chestnut on July 27, 2005.
32. Malibu/Santa Monica Mountains Land Use Plan, Attachment 3: "Permitted Uses and Development Standards in Environmentally Sensitive Habitat Areas, Disturbed Sensitive Resource Area[s], Significant Watersheds, Resource Management Areas, Wildlife Corridors, and Significant Woodlands", dated December 11, 1986.
33. Letter from Sherman Stacey to Commission staff, dated July 27, 2005.

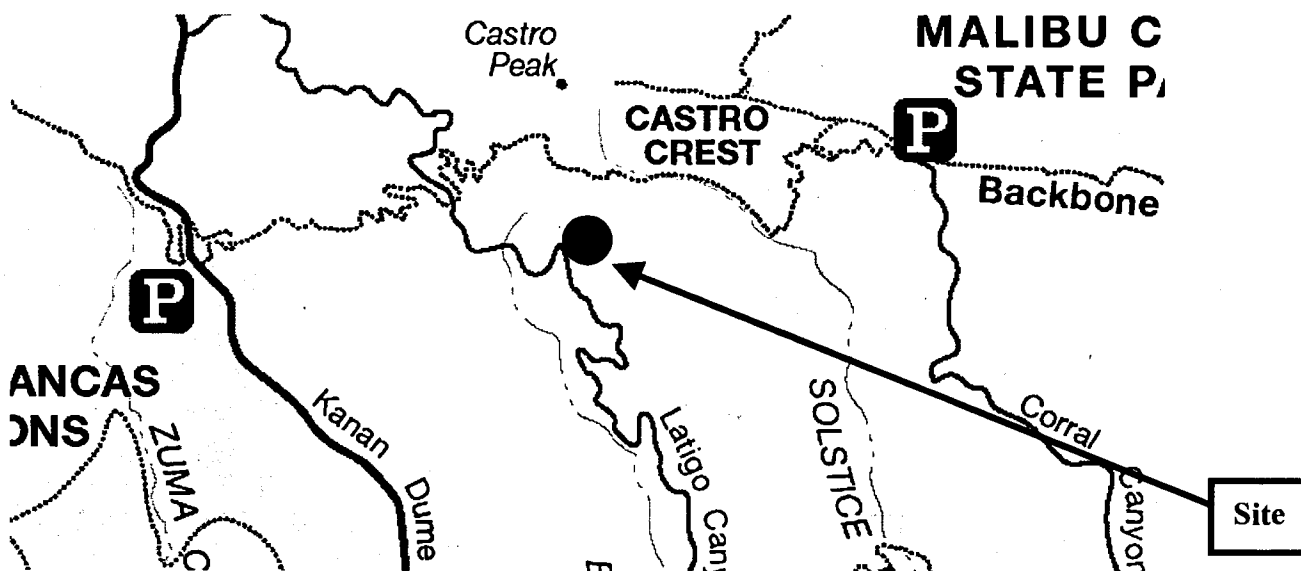
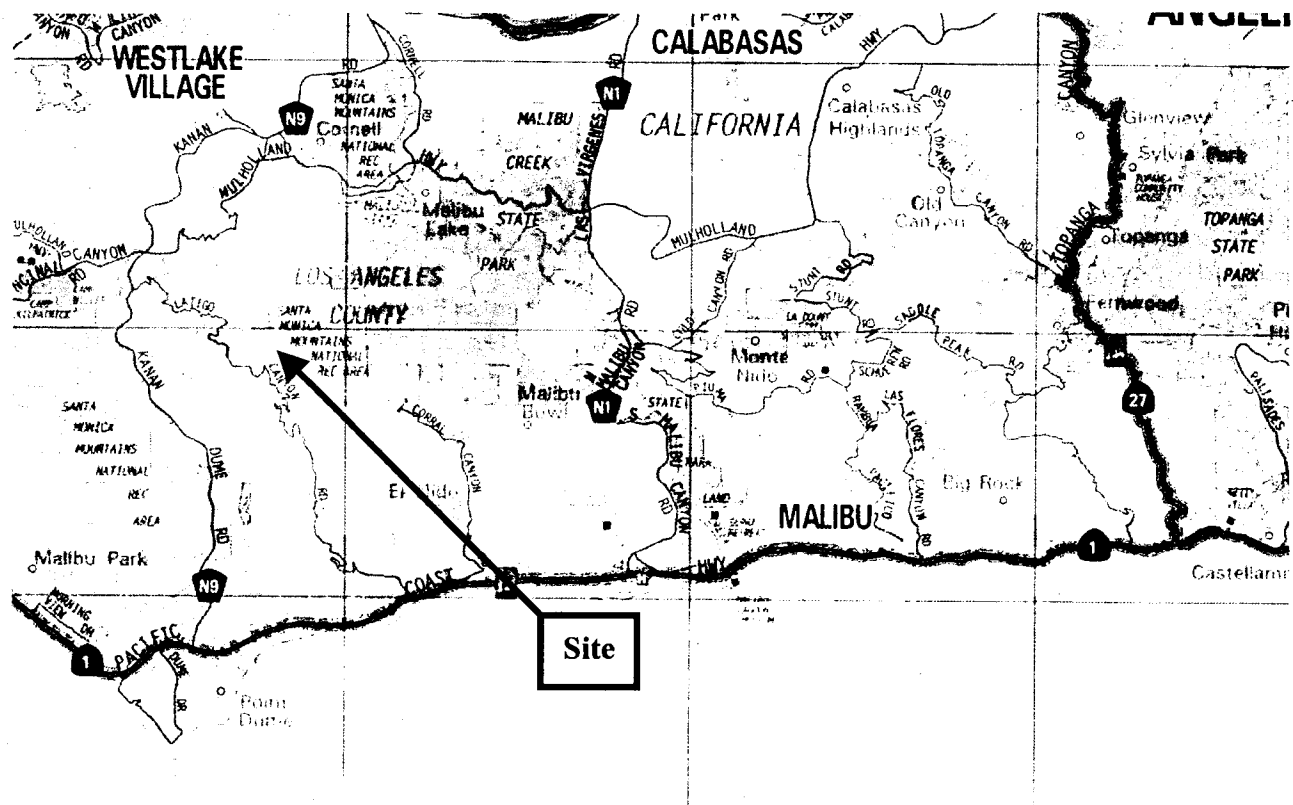
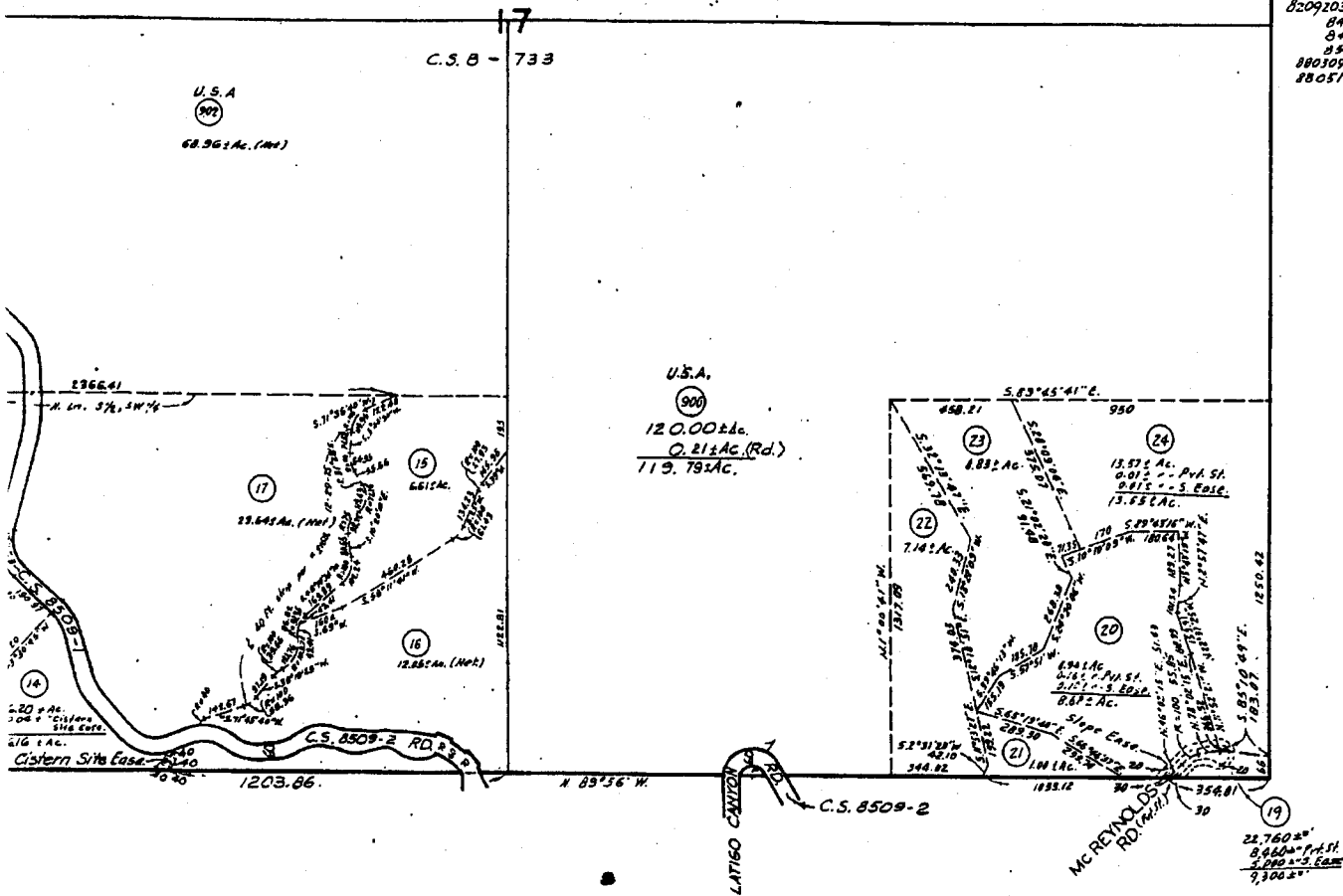
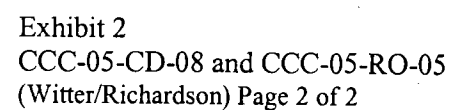


Exhibit 1: Site Map and Location

REVISED
 3-26-63
 671101115
 681119605
 691005605
 700415810
 711078112
 720217
 7304112
 820920301
 830302103-84
 840726-85
 850717103-86
 88030903005001
 88051706002001





EX-10302 ON
10/27/93

ORIGINAL FILED
OCT 22 1993
COUNTY CLERK

1 DANIEL E. LUNGREN, Attorney General
of the State of California
2 JAN S. STEVENS,
Assistant Attorney General
3 G. R. OVERTON (Bar No. 67057),
DANIEL A. OLIVAS (Bar No. 130405)
4 300 South Spring Street, Suite 5212
Los Angeles, California 90013
5 Telephone: (213) 897-2703

6 Attorneys for the California Coastal Commission

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

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PEOPLE OF THE STATE OF CALIFORNIA,
ex rel., CALIFORNIA COASTAL COMMISSION,

Plaintiff,

v.

MADALON K. WITTER, and DOUGLAS
RICHARDSON,

Defendants,

No. SS005085

INSPECTION WARRANT
(Code of Civ. Proc.,
§1822.50 et seq.)

THE PEOPLE OF THE STATE OF CALIFORNIA TO:

Any authorized agent or agents of the California
Coastal Commission. Upon cause shown to the court:

YOU ARE HERE BY COMMANDED to conduct an inspection
which shall include the taking of evidence for the purpose of
determining whether development has occurred within the terms of
the California Coastal Act, California Public Resources Code
section 30000 et seq., and regulations promulgated thereunder on
property located at 2100 McReynolds Road and Latigo Canyon Road,
Malibu, California, further described by Assessor Parcel Numbers:
4464-024-020, 4464-024-021, 4464-024-022, 4464-024-023, 4464-

1 024-024, 4465-006-054, and 4465-006-055 located in an
2 unincorporated area of Los Angeles County.

3 This warrant authorizes the entry upon the above-
4 described property, inspection, measurement and taking of
5 photographs of the property and the conditions found upon it
6 without limitation, except that the agents authorized hereby may
7 not enter any structure which may be or is currently used as a
8 residence unless such entry and inspection is consented to by a
9 person or persons in control of the residence. Agents authorized
10 hereby may enter and inspect any structures which do not appear
11 to be residences when entry is necessary to determine the nature
12 and purpose of the structure. The agents hereby authorized may
13 perform any and all other acts reasonably necessary to determine
14 whether conditions on the specified property are in compliance
15 with the California Coastal Act.

16 This warrant is effective from the date hereof for a
17 period not to exceed fourteen (14) days, and it shall be returned
18 to the judge whose signature is affixed below.

19 The inspection pursuant to this warrant may commence
20 only after the applicant gives Madalon K. Witter, the owner of
21 the property, or her agent, Douglas Richardson, telephonic notice
22 of the impending inspection at least twenty-four (24) hours prior
23 to the execution of this warrant. Applicant is not required to
24 make more than five attempts to give telephonic notice. For
25 cause shown, applicant is relieved of any obligation to give
26 written notice. When applicant returns the warrant to the
27 issuing judge, it shall provide a declaration describing its

1 efforts to give notice.

2 The applicant and its employees or agents are not
3 authorized to use forced entry to obtain access to the property
4 under this warrant. The inspection shall not be made between the
5 hours of 6:00 p.m. of any day and 8:00 a.m. of any succeeding
6 day.

7 DATE: OCT 22 1990

11 ~~RECEIVED~~ 3 PEREL
12 JUDGE OF THE SUPERIOR COURT

27 wit1.gro

CALIFORNIA COASTAL COMMISSION

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



June 4, 1993
REGULAR AND CERTIFIED MAIL

Madalon K. Witter
515 West Front Street
Findlay, Ohio 45840

Douglas W. Richardson
2100 McReynolds Road
Malibu, California 90265

SUBJECT: NOTICE OF INTENT TO COMMENCE CEASE AND DESIST ORDER PROCEEDINGS;
Violation File No. V-4-MAL-92-030 (WITTER & RICHARDSON)

Dear Ms. Witter and Mr. Richardson:

The above referenced violation of the California Coastal Act involves development consisting of: (1) grading; (2) vegetation clearance; (3) placement of trailers, mobile homes, automobiles, debris and other materials; (4) construction of storage sheds and other structures; and (5) subdivision, all without benefit of an approved coastal development permit, at properties located at 2100 McReynolds Road, APNs 4464-024-020; 4464-024-021; 4464-024-022; 4464-024-023; and 4464-024-024, and off of Latigo Canyon Road, APNs 4464-006-054 and 4464-006-055, in an unincorporated area of Los Angeles County, which are in the Coastal Zone.

By communications which include but are not limited to letters dated June 18, 1992, August 3, 1992, September 9, 1992, and March 5, 1993, and by telephone on January 12, 1993, February 25, 1993, and June 6, 1993, staff has recommended that, in order to resolve this matter administratively, you submit a coastal development permit application for either the restoration of the property to its pre-violation state or for the after-the-fact authorization of the subject unpermitted development. As of the date of this notice, staff has received no indication that you are willing to voluntarily resolve this matter in the suggested manner. Therefore, staff has decided to commence a proceeding to request that the Commission issue a Cease and Desist Order pursuant to PRC section 30810 requiring you to cease and desist from engaging in any further development activity at the subject property without first obtaining a coastal development permit which authorizes such activity, and from continuing to maintain any development at the property that violates the California Coastal Act.

In accordance with Commission regulations, you have the opportunity to respond to the staff's violation allegations as set forth in this notice by completing the enclosed Statement of Defense Form. The completed Statement of

P 316 019 798



Receipt for Certified Mail

No Insurance Coverage Provided
Do not use for International Mail
(See Reverse)

Sent to MADALON K. WITTER	
Street and No. 515 WEST FRONT STREET	
P.O., State and ZIP Code FINDLAY, OHIO 45840	
Postage	\$ 0.52
Certified Fee	1—
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	1—
Return Receipt Showing to Whom, Date, and Addressee's Address	
TOTAL Postage & Fees	\$ 2.52
Postmark or Date C. Kern 6-4-93	

PS Form 3800, June 1991

P 316 019 799



Receipt for Certified Mail

No Insurance Coverage Provided
Do not use for International Mail
(See Reverse)

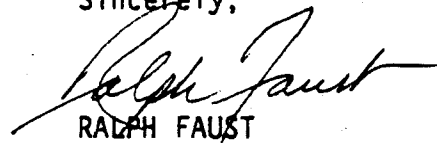
Sent to MADALON K. WITTER	
Street 2100 McREYNOLDS ROAD	
P.O., State and ZIP Code MALIBU, CA 90265	
Postage	\$ 0.52
Certified Fee	1—
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	1—
Return Receipt Showing to Whom, Date, and Addressee's Address	
TOTAL Postage & Fees	\$
Postmark or Date C. Kern 6-4-93	

PS Form 3800, June 1991

WITTER & RICHARDSON
June 4, 1993
Page Two

Defense Form must be received by this office no later than June 25, 1993.
Should you have any questions regarding this matter, please feel free to
contact Chris Kern at (415) 904-5294.

Sincerely,



RALPH FAUST
Chief Counsel

cc: John Ainsworth, Coastal Commission South Central Coast Enforcement
Supervisor
Michael Bleacher, Los Angeles County Department of Regional Planning

enclosure

5240p

P 316 019 800



**Receipt for
Certified Mail**

No Insurance Coverage Provided
Do not use for International Mail
(See Reverse)

To: DOUGLAS RICHARDSON	
Address: 2100 McREYNOLDS ROAD	
City, State, ZIP Code: MALIBU, CA 90265	
Postage:	\$ 2.52
Certified Fee:	1-
Special Delivery Fee:	
Restricted Delivery Fee:	
Return Receipt Showing to Whom & Date Delivered:	1-
Return Receipt Showing to Whom Date and Addressee's Address:	
TOTAL Postage & Fees:	\$ 2.52
Postmark or Date: C. Kern E-4-93 01-	

PS Form 3800, June 1991

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-3200



Staff: CK-SF
Staff Report: November 5, 1993
Hearing Date: November 16, 1993
Commission Action: Approved 11-0

ADOPTED FINDINGS FOR ISSUANCE OF CEASE AND DESIST ORDER

CEASE AND DESIST ORDER: CCC-93-CD-03

RELATED VIOLATION FILE: V-4-MAL-92-030

ALLEGED VIOLATORS: Madalon K. Witter
Douglas W. Richardson
2100 McReynolds Road
Malibu, California 90265

PROPERTY: Approximately 42 acres, located at 2100 McReynolds Road off of Latigo Canyon Road, in an unincorporated area of Los Angeles County, which is in the Coastal Zone and more specifically described as:

The Southeast Quarter of the Southeast Quarter of Section 17, Township 1, South, Range 18 West, San Bernardino Base and Meridian (hereinafter Lot A); and

A portion of the Northeast Quarter of the Northeast Quarter of Section 20, Township 1 South, Range 18 West, San Bernardino Meridian (hereinafter Lot B).

APNs: 4464-024-020; 4464-024-021; 4464-024-022;
4464-024-023; 4464-024-024; 4465-006-054 and
4465-006-055.

VIOLATION DESCRIPTION: Grading, removal of major vegetation, subdivision, and placement of solid materials and erection of structures, including: at least 18 trailers and/or mobile homes, power transmission and distribution lines, telephone lines, buildings, roads, pipes, septic systems, livestock corrals, abandoned vehicles, trash, and construction materials and equipment.

SUBSTANTIVE FILE
DOCUMENTS:

Coastal Development Permit File 5-82-377

I. SUMMARY OF STAFF RECOMMENDATION

Staff recommends that, in order to resolve this significant violation of the Coastal Act, the Commission issue a permanent cease and desist order requiring the alleged violators to cease and desist from: (1) engaging in any further development activity on the subject property without first obtaining a coastal development permit (CDP); and (2) continuing to maintain on the property development that violates the California Coastal Act. Therefore, the cease and desist order will require the alleged violators to remove and abate all unpermitted development from the property and submit a complete coastal development permit application for the restoration of the property to its pre-violation state within 60 days from the date of the Commission's action.

II. MOTION

Staff recommends adoption of the following motion:

I move that the Commission issue Cease and Desist Order No. CCC-93-CD-03 as proposed by staff.

Staff recommends a YES vote. An affirmative vote by a majority of the Commissioners present and voting is necessary to pass the motion.

III. PROPOSED FINDINGS

Staff recommends that the Commission adopt the following findings in support of its action:

A. Synopsis

This violation consists of development, within the meaning of that term set forth in Coastal Act section 30106, including grading, removal of major vegetation, subdivision, and placement and erection of solid materials and structures, without benefit of an approved coastal development permit as required by Coastal Act section 30600.

In order to resolve this matter, staff has encouraged the alleged violators to submit a coastal development permit (CDP) application for the removal of the unpermitted development and the restoration of the site to its pre-violation state, or, in the alternative, for an after-the-fact permit to legitimize said development. As of the date of this report, the alleged violators have failed to submit the requested CDP application. Therefore, because the alleged violators have failed to resolve this violation voluntarily, the Commission finds it necessary to issue this cease and desist order to cause the alleged violators to comply with the requirements of the Coastal Act.

B. Background of the Alleged Violation

1. On June 27, 1979, Karen Richardson filed with the Los Angeles County Recorder Parcel Map No. 7155, Book 113, Pages 46 and 47, for the subdivision of Lot 8 into three lots. This subdivision was undertaken without benefit of an approved coastal development permit authorizing such development (Exhibit 6).

2. On August 25, 1982, the Commission granted to Douglas Richardson, Richard Brooke Jr., and Christopher Brooke, Coastal Development Permit No. 5-82-377 for the subdivision of Lot A into three lots.
3. On December 7, 1987, by five grant deeds recorded as Instrument Nos. 87-1940502, 87-1940503, 87-1940504, 87-1940505, and 87-1940506, Douglas Richardson granted to Madalon Witter, five lots described as separate portions of Lot A. Such conveyances comprise subdivision pursuant to the Subdivision Map Act (Govt. Code section 66424) and thus under section 30106 of the Coastal Act (Exhibits 2 and 7).
4. On May 19, 1992, Commission Malibu Area Enforcement Officer Susan Friend received an anonymous report of grading and vegetation clearance at the subject property.
5. Further reports of unpermitted development, including grading, vegetation clearance, and placement of trailers and mobile homes have been provided to staff by Los Angeles County Departments of Building and Safety District Engineer Associate James Safarik, Los Angeles County Department of Regional Planning Planning Assistant II Michael Blecher, Los Angeles County Fire Department Captain James Montoya, and California Department of Fish and Game Warden Jon Willcox.
6. Commission staff confirmed these reports by examining aerial photographs taken of the property in 1975, 1979, 1986, and 1993, and through an inspection of the property conducted on October 27, 1993 (Exhibits 4 and 5).
7. By communications which include but are not limited to letters dated June 18, 1992, August 3, 1992, September 9, 1992, (to Witter) and March 5, 1993, (to Witter and Richardson) and by telephone on January 12, 1993, and June 6, 1993, (with Witter) and February 25, 1993, (with Richardson), staff has requested that, in order to resolve this matter administratively, the alleged violators submit a coastal development permit application for either the restoration of the property to its pre-violation state or for the after-the-fact authorization of the subject unpermitted development. As of the date of this report, the alleged violators have refused to voluntarily resolve this matter in the suggested manner.

C. Staff Allegations

The staff alleges the following:

1. Madalon K. Witter (hereinafter "Witter") is the current owner of the real property at 2100 McReynolds Road and off of Latigo Canyon Road, unincorporated Los Angeles County, Assessor's Parcel Numbers: 4464-024-020; 4464-024-021; 4464-024-022; 4464-024-023; 4464-024-024; 4465-006-054 and 4465-006-055 (hereinafter "the property").
2. Douglas W. Richardson (hereinafter "Richardson") owned a portion of the property until he conveyed it to Madalon Witter in 1987, and since that time has actively managed the property in respects which include, but are not limited to collecting rent and is acting as Witter's representative with respect to alleged Coastal Act violations on the property.

Exhibit 6

CCC-05-CD-08 and CCC-05-RO-05

(Witter/Richardson) 3 of 7

3. Development, consisting of grading, removal of major vegetation, subdivision, and placement of solid materials and erection of structures, including: at least 18 trailers and/or mobile homes, power transmission and distribution lines, telephone lines, buildings, roads, pipes, septic systems, livestock corrals, abandoned vehicles, trash, and construction materials and equipment has been undertaken at the property.

4. The above described activities fall within the definition of development set forth in Coastal Act section 30106. Because such development was undertaken without benefit of a coastal development permit, it constitutes a violation of Coastal Act section 30600. In order to resolve this Coastal Act violation, Witter and Richardson must either obtain Commission approval of a coastal development permit authorizing the development "after-the-fact", or restore the site to its pre-development state in accordance with an approved coastal development permit authorizing such restoration.

5. Witter and Richardson have neither obtained "after-the-fact" Commission approval of the unpermitted development nor restored the property to its pre-development state in accordance with an approved coastal development permit.

D. Alleged Violators' Defense

The alleged violators have failed to submit any defensive statements in response to staff's allegations of Coastal Act violations on the property. However, in telephone conversations with Commission staff, Richardson has maintained that the subject development pre-dates any CDP requirements.

E. Rebuttal to Alleged Violators' Defense

While the alleged violators contend that the subject development pre-dates any CDP requirements, they have made no attempt to substantiate this contention. Aerial photographs reveal that extensive grading and vegetation removal has occurred at the property since at least 1975. CDP No. 5-82-377 indicates that two residences existed on Lot A in 1982, and that Lot A consisted of one 42-acre lot for which the Commission approved a subdivision into three lots. However, this property was conveyed in 1987, as five separate parcels, and staff has confirmed at least 18 residences currently on the property. In 1979 Lot B was subdivided into three lots without benefit of an approved CDP. On the basis of this evidence, the Commission finds that substantial development has been undertaken at the property since the State of California requirement to obtain a coastal development permit prior to undertaking such development took effect on January 1, 1977.

F. Unresolved Issues

Staff does not believe that any issues remain unresolved as to whether the Commission should issue this cease and desist order.

G. Resource Damage

Because the alleged violators have not submitted a CDP application for the subject unpermitted development for Commission review, it is unclear to what extent this development may be found consistent with the Chapter 3 policies of

the Coastal Act. However, the alleged unpermitted subdivision and placement of 18 trailers and/or mobile homes on the property is inconsistent with the density of development approved for the property in CDP No. 5-82-377, and would not likely be found consistent by the Commission with section 30250(a). Further, based on the evidence discovered during staff's investigation of the alleged violation, it appears that other aspects of the development as performed are not consistent with Chapter 3 policies of the Coastal Act and are causing continuing damage to coastal resources, including:

1. Several mobile homes or trailers on the property employ waste disposal systems which do not appear to be designed to minimize adverse effects of waste water discharges as required by section 30231;
2. The property has been graded to create roads and pads on areas for which no development exists or has been approved in apparent conflict with section 30251 which requires that development shall be sited and designed to minimize the alteration of natural landforms; and
3. Trailers and mobile homes have been placed on the property in a designated flood hazard area, and electrical power lines run on the ground and through brush throughout the property which is an area of high fire hazard. The development therefore fails to minimize the risks to life and property in areas of high flood and fire hazard as required by section 30253(1).

Section 30821.6 of the Coastal Act provides for a penalty of up to \$6,000 per day for any violation of a cease and desist order issued under the Act. That section further provides that the sum of any civil penalty imposed for the violation of this cease and desist order should be commensurate with the damage suffered as a consequence of that violation.

Additional adverse impacts resulting from the subject unpermitted development will be prevented by the restoration project required pursuant to this order. A violation of this order would result in the continuation of the significant resource damage described above.

IV. CEASE AND DESIST ORDER

Staff recommends that the Commission issue the following cease and desist order:

CEASE AND DESIST ORDER

Pursuant to its authority under California Public Resources Code section 30810, the California Coastal Commission hereby orders Madalon K. Witter and Douglas W. Richardson, all their agents, and any other persons acting in concert with any of the foregoing to cease and desist from: (1) engaging in any further development activity at the property without first obtaining a coastal development permit which authorizes such activity; and (2) continuing to maintain any development at the property that violates the California Coastal Act. Accordingly, all persons subject to this order shall fully comply with paragraphs A, B, and C as follows:

Exhibit 6

CCC-05-CD-08 and CCC-05-RO-05

(Witter/Richardson) Page 5 of 7

DESCRIPTION OF UNPERMITTED DEVELOPMENT

Grading, removal of major vegetation, subdivision, and placement of solid materials and erection of structures, including: at least 18 trailers and/or mobile homes, power transmission and distribution lines, telephone lines, buildings, roads, pipes, septic systems, livestock corrals, abandoned vehicles, trash, and construction materials and equipment.

TERM

This order shall remain in effect permanently unless and until rescinded by the Commission.

FINDINGS

This order is issued on the basis of the findings adopted by the Commission on November 16, 1993, as set forth in the attached document entitled "Adopted Findings."

COMPLIANCE OBLIGATION

Strict compliance with this order by all parties subject thereto is required. Failure to comply strictly with any term or condition of this order may result in the imposition of civil penalties of up to SIX THOUSAND DOLLARS (\$6,000) per day for each day in which such compliance failure persists.

APPEAL

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

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A. Refrain from engaging in any development activity at the property without first obtaining a coastal development permit which authorizes such activity.

B. (1) Within 60 days of the date of this order, submit to the Commission for its review and approval a complete coastal development permit application for either: (a) the restoration of the property to its pre-violation state, or (b) the after-the-fact authorization of the subject unpermitted development (as described below).

(2) Within 60 days of the date of Commission denial, in whole or in part, of an application for after-the-fact authorization of the subject unpermitted development, submit a complete coastal development permit application for the restoration of that development which remains unpermitted.

(3) Subject to the action of the Commission on any application for after-the-fact authorization of the unpermitted development, the restoration application shall include: (a) a grading plan for the restoration of the property to its pre-violation topography; (b) a revegetation plan designed to provide 90-percent coverage of all disturbed areas of the property with native vegetation within 90 days of completion of the restorative grading; and (c) an implementation and monitoring schedule which shall provide for follow-up planting should the initial revegetation fail to provide 90-percent coverage of all disturbed areas of the property within 90 days of completion of the restorative grading.

C. (1) Within such period of time as the Commission may specify in any permit it may grant for restoration of the property, remove all unpermitted development (as defined below), including all unpermitted land divisions from the property, except that development for which the Commission grants after-the-fact authorization shall not be required to be removed.

(2) Fully comply with such other terms, conditions, and deadlines of said restoration permit as the Commission may impose.

IDENTIFICATION OF THE PROPERTY

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

Approximately 42 acres, located at 2100 McReynolds Road off of Latigo Canyon Road, in an unincorporated area of Los Angeles County, which is in the Coastal Zone, and further described as:

The Southeast Quarter of the Southeast Quarter of Section 17, Township 1, South, Range 18 West, San Bernardino Base and Meridian; and

A portion of the Northeast Quarter of the Northeast Quarter of Section 20, Township 1 South, Range 18 West, San Bernardino Meridian;

APNs: 4464-024-020; 4464-024-021; 4464-024-022; 4464-024-023;
4464-024-024; 4465-006-054 and 4465-006-055, as further described in attached Exhibit 2.

CALIFORNIA COASTAL COMMISSION

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



Staff: CK-SF
Staff Report: December 29, 1993
Hearing Date: January 13, 1994
Commission Action:

STAFF REPORT: AMENDMENT TO COMMISSION CEASE AND DESIST ORDER

CEASE AND DESIST ORDER: CCC-93-CD-03 (WITTER/RICHARDSON)

RELATED VIOLATION FILE: V-4-MAL-92-030

ALLEGED VIOLATORS: Madalon K. Witter
Douglas W. Richardson
2100 McReynolds Road
Malibu, California 90265

ATTORNEY: Morton C. Devor
11150 Olympic Boulevard, Suite 1150
Los Angeles, California 90064

PROPERTY: Approximately 42 acres, located at 2100 McReynolds Road off of Latigo Canyon Road, in an unincorporated area of Los Angeles County, which is in the Coastal Zone and more specifically described as:

The Southeast Quarter of the Southeast Quarter of Section 17, Township 1, South, Range 18 West, San Bernardino Base and Meridian; and

A portion of the Northeast Quarter of the Northeast Quarter of Section 20, Township 1 South, Range 18 West, San Bernardino Meridian.

APNs: 4464-024-020; 4464-024-021; 4464-024-022;
4464-024-023; 4464-024-024; 4465-006-054 and
4465-006-055.

DESCRIPTION OF PROPOSED
AMENDMENT:

The alleged violators propose an amendment to Cease and Desist Order No. CCC-93-CD-03 in order to grant to the Executive Director the discretion to extend the period provided within the order for the filing of a coastal development permit application for the

after-the-fact authorization and/or removal of all development on the subject property constructed, performed or installed without a required coastal development permit and thus in violation of the California Coastal Act (Exhibit 1).

[PROCEDURAL NOTE: Pursuant to the Commission's Administrative Regulations, only the Commission, after a public hearing, may modify a cease and desist order that it has issued (section 13188(b), Title 14 California Code of Regulations). Commission Cease and Desist Order CCC-93-CD-03 requires the alleged violators to complete filing of the subject CDP application within 60 days of issuance of the order (January 15, 1994), and does not provide for any extension of this deadline. Thus, unless the order is amended to delegate this discretion to the Executive Director, only the Commission may grant an extension to the permit application filing period specified within the cease and desist order. Although the Commission could at this time extend the permit application filing period, the alleged violators have not established good cause for such extension, and staff would not, therefore, recommend approval of such an amendment. However, if amended as proposed, CCC-93-CD-03 would provide to the Executive Director the discretion to extend the application filing period at such time that good cause may be established.]

I. SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission amend Cease and Desist Order No. CCC-93-CD-03 to include subparagraph B(4) as follows:

B. (4) The Executive Director may extend the permit application filing period specified herein for good cause shown. Any request for extension must be submitted in writing prior to the expiration of the subject deadline.

II. MOTION

Staff recommends approval of the following motion:

I move that the Commission amend Cease and Desist Order No. CCC-93-CD-03 to delegate to the Executive Director the authority to extend the period for the filing of a complete coastal development permit application pursuant to said cease and desist order for good cause shown.

Staff recommends a YES vote. An affirmative vote by a majority of the Commissioners present and voting is necessary to pass the motion.

III. PROPOSED FINDINGS

Staff recommends that the Commission adopt the following findings in support of its action:

By issuing Cease and Desist Order No. CCC-93-CD-03, the Commission required the alleged violators to file a coastal development permit (CDP) application for either after-the-fact authorization or removal of all unpermitted development on the subject property (Exhibit 2). The Commission further

specified within the order a schedule by which the required CDP application must be filed. At the time of its action on the order, the Commission believed the specified application filing schedule to be reasonable, and as of the date of this report, the alleged violators have failed to demonstrate otherwise.

[STAFF NOTE: In attempt to facilitate filing of the required CDP application, staff agreed to meet with Douglas Richardson and his attorney, Morton Devor at the subject property on December 16, 1993. Prior to this meeting, staff clarified in a telephone conversation with Devor that the purpose of the meeting would be to discuss the requirements for completion of the CDP application and not to debate whether any development exists on the property in violation of the Coastal Act (or whether all of the development on the property was completed before January 1, 1977). Staff asserted that the proposed meeting was not the proper forum for such a challenge to the Commission's action in issuing the cease and desist order. Devor concurred with staff that any disagreement regarding the history of the subject development should be resolved within the context of the permit application. In spite of this agreement, upon the commencement of the meeting, Richardson demanded that staff verify the allegations set forth in the cease and desist order. Staff attempted to specify the information that would be required in order to file the permit application. However, Richardson became extremely agitated and verbally abusive. At this point, staff discontinued the meeting.]

The alleged violators' attorney has indicated that Witter and Richardson have recently hired an engineer to assist in filing their permit application, and that said engineer may require additional time to complete filing. Although the alleged violators have not established that the 60-day period provided by the cease and desist order was not adequate to complete filing of the required CDP application, the Commission acknowledges that, should the alleged violators demonstrate to the satisfaction of the Executive Director "good cause" for an extension of the aforementioned application deadline, such extension may be deemed appropriate. In determining whether "good cause" exists, the Executive Director shall consider all relevant factors, including, but not necessarily limited to: (1) a showing that the alleged violators are at the time of their application acting in good faith to comply with the terms of the cease and desist order; and (2) whether they could not have reasonably complied with the application filing schedule specified in the order. The Commission therefore finds the proposed amendment to the cease and desist order is warranted.

2948L

CALIFORNIA COASTAL COMMISSION

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



February 1, 1994

Morton Devor, Esq.
11150 Olympic Boulevard, Suite 1150
Los Angeles, California 90064

SUBJECT: Request for extension to permit application filing deadline
pursuant to Commission Cease and Desist Order No. CCC-93-CD-03.

Dear Mr. Devor:

As you are aware, on January 13, 1994, the Commission granted an amendment to the above referenced cease and desist order to provide the Executive Director the discretion to extend the period provided for the filing of a coastal development permit application for the after-the-fact authorization and/or removal of all development on the subject property constructed, performed or installed without a required coastal development permit. In addition to approving the proposed amendment to the cease and desist order as recommended by staff, the Commission further specified that said delegation of authority shall terminate upon the initiation of any legal proceeding challenging the cease and desist order.

You have informed Commission staff that you have filed a Petition for Writ of Mandate with the Los Angeles County Superior Court protesting CCC-93-CD-03. In light of this action, the Executive Director lacks the authority necessary to grant the extension of the permit application filing period that you have requested in your January 12, 1994, letter. As such, the permit application filing period ended on January 18, 1994, and your clients are now in violation of the cease and order.

Coastal Act section 30821.6 provides that any person who intentionally or negligently violates any cease and desist order issued by the Commission may be civilly liable in a sum of not to exceed \$6,000 for each day in which that violation persists. Pursuant to Commission enforcement procedure, we have referred this violation of the Commission's cease and desist order to the State Attorney General's office in pursuit of appropriate legal action. As we have discussed, notwithstanding the fact that the filing deadline has expired, I encourage you to continue to work with Commission staff to complete a coastal development permit application in compliance with the terms of the cease and desist order.

Sincerely,

A handwritten signature in dark ink, appearing to read "Chris Kern", written over a horizontal line.

CHRIS KERN
Statewide Enforcement

cc: Nancy Cave
John Ainsworth
Susan Friend

2994L

Exhibit 8
CCC-05-CD-08 and CCC-05-RO-05
(Witter/Richardson)

1 Law Office of
2 MORTON C. DEVOR
3 SHERMAN STACEY
4 11150 Olympic Boulevard
Suite 1150
Los Angeles, California 90064-1828
(310) 477-0221
State Bar No. 30084

6 Attorney for Petitioners
MADALON K. WITTER and DOUGLAS W. RICHARDSON BY P. OFFORD, DEPUTY

FILED
LOS ANGELES SUPERIOR COURT

JAN 19 1994
EDWARD M. KRITZMAN, CLERK

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

11 MADALON K. WITTER and DOUGLAS)
12 W. RICHARDSON,)

13 Petitioners,)

14 vs.)

15 CALIFORNIA COASTAL COMMISSION,)
16 PETER DOUGLAS, and DOES 1 through)
100, Inclusive,)

17 Respondents.)

CASE NO.

BS026924

PETITION FOR WRIT OF
MANDATE (CCP §1094.5);
STAY OR ORDER (PUB. RES.
CODE §30809)

19 COMES NOW Petitioners MADALON K. WITTER and DOUGLAS W.
20 RICHARDSON, who seek a Writ of Mandate directed to Respondents
21 CALIFORNIA COASTAL COMMISSION and its executive officer, PETER
22 DOUGLAS, ordering them to set aside Cease and Desist Order No. CCC-
23 93-CD-03 issued on November 16, 1993, against Petitioners, and who
24 allege as follows:

25
26 1. Petitioner MADALON K. WITTER is the owner of 48
27 acres of real property located in the Santa Monica Mountains area
28 of the County of Los Angeles. WITTER acquired title to the

Exhibit 9
CCC-05-CD-08 and CCC-05-RO-05
(Witter/Richardson) Page 1 of 17

CENTRAL COURTHOUSE
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1 property in 1987 from Petitioner DOUGLAS W. RICHARDSON who had
2 owned the property since 1964.

3
4 2. Respondent California Coastal Commission is an
5 agency of the State of California charged with the administration
6 of the California Coastal Act of 1976, California Public Resources
7 Code §§30,000, et seq. Respondent Commission maintains its main
8 offices in the City and County of San Francisco, California. The
9 Property is located within the Respondent Commission's South
10 Central Coast Area which is administered from the Respondent
11 Commission's offices located in the City of San Buenaventura,
12 County of Ventura, California.

13
14 3. Respondent PETER DOUGLAS is the executive officer of
15 the Respondent Commission.

16
17 4. Petitioners do not know the true names and
18 identities of Respondents named as Does 1 through 100, Inclusive.
19 When Petitioners have ascertained said true names and identities of
20 said Respondents, Petitioners will amend this Petition setting
21 forth said true names and identities.

22
23 5. The Property was not subject to the jurisdiction of
24 the Respondent Commission or its predecessor prior to January 1,
25 1977.

26
27 6. Prior to 1977, Petitioner RICHARDSON and his
28 predecessors had performed improvements on the property by grading

1 roadways and pads, putting trailers on the pads, making
2 improvements for ranching purposes, erecting fences, installing
3 power transmission poles and lines, installing pipes, installing
4 septic tanks, constructing buildings, and other improvements.
5 Since at least 1950, the Property has been used by Petitioners and
6 their predecessors for a ranch.
7

8
9 7. On November 16, 1993, the Respondent Commission
10 approved a cease and desist order directed to Petitioners which
11 ordered Petitioners to do the following:

12 "Pursuant to its authority under California Public
13 Resources Code section 30810, the California Coastal
14 Commission hereby orders MADALON K. WITTER and DOUGLAS W.
15 RICHARDSON, all their agents, and any other persons
16 acting in concert with any of the foregoing to cease and
17 desist from: (1) engaging in any further development
18 activity at the property without first obtaining a
19 coastal development permit which authorizes such
20 activity; and (2) continuing to maintain any development
21 at the property that violates the California Coastal Act.
22 Accordingly, all persons subject to this order shall
23 fully comply with paragraphs A, B, and C as follows:

24 "A. Refrain from engaging in any development
25 activity at the property without first
26 obtaining a coastal development permit which
27 authorizes such activity.

28 "B. (1) Within 60 days of the date of this order,
submit to the Commission for its review and approval a

1 complete coastal development permit application for
2 either: (a) the restoration of the property to its pre-
3 violation state, or (b) the after-the-fact authorization
4 of the subject unpermitted development (as described
5 below).

6 " (2) Within 60 days of the date of Commission
7 denial, in whole or in part, of an application for after-
8 the-fact authorization of the subject unpermitted
9 development, submit a complete coastal development permit
10 application for the restoration of that development which
11 remains unpermitted.

12 " (3) Subject to the action of the Commission on any
13 application for after-the-fact authorization of the
14 unpermitted development, the restoration application
15 shall include: (a) a grading plan for the restoration of
16 the property to its pre-violation topography; (b) a
17 revegetation plan designed to provide 90-percent coverage
18 of all disturbed areas of the property with native
19 vegetation within 90 days of completion of the
20 restorative grading; and (c) an implementation and
21 monitoring schedule which shall provide for follow-up
22 planting should the initial revegetation fail to provide
23 90-percent coverage of all disturbed areas of the
24 property within 90 days of completion of the restorative
25 grading.

26 "C. (1) Within such period of time as the Commission
27 may specify in any permit it may grant for restoration of
28 the property, remove all unpermitted development (as

1 defined below), including all unpermitted land divisions
2 from the property, except that development for which the
3 Commission grants after-the-fact authorization shall not
4 be required to be removed.

5 " (2) Fully comply with such other terms, conditions,
6 and deadlines of said restoration permit as the
7 Commission may impose."
8

9
10 8. Said Cease and Desist Order described the
11 development which Respondent Commission claims is unpermitted as
12 follows:

13 "Grading, removal of major vegetation,
14 subdivision, and placement of solid materials
15 and erection of structures, including: at
16 least 18 trailers and/or mobile homes, power
17 transmission and distribution lines, telephone
18 lines, buildings, roads, pipes, septic
19 systems, livestock corrals, abandoned
20 vehicles, trash, and construction materials
21 and equipment."
22

23 9. Respondent Commission adopted findings in support of
24 its decision to issue a cease and desist order to Petitioners which
25 findings are set forth in Exhibit "A" to this Petition.
26

27 10. On or about November 23, 1993, Respondent Commission
28 sent Petitioner notice of the Cease and Desist Order under cover of
a letter dated November 23, 1993, executed by Respondent DOUGLAS.

1 A true and correct copy of said letter is attached hereto as
2 Exhibit "B".
3

4 11. Pursuant to Public Resources Code §30810 and 14
5 Cal.Adm.Code §13182, Respondent Commission is required to hold a
6 hearing prior to the issuance of the Cease and Desist Order and to
7 give notice of said hearing to Respondent prior to such hearing.
8

9 12. Respondent Commission did not proceed in the manner
10 required by law in approving the Cease and Desist Order, as
11 follows:

- 12 a. Respondent failed to provide written notice to
13 Petitioners of the hearing held on November 16,
14 1993, at least ten days prior to that date as
15 required by 14 Cal.Adm.Code §13182.
16 b. Respondent failed to provide Petitioners with a
17 Notice of Intent to commence a cease and desist
18 order proceeding which was not identical to the
19 Cease and Desist Order which was issued as required
20 by 14 Cal.Adm.Code §13181.
21 c. The Notice of the hearing which was issued by
22 Respondent DOUGLAS was inadequate in that it failed
23 to place Petitioners on any reasonable notice of
24 what activities Respondent DOUGLAS claims violate
25 the prohibition against development.
26

27 13. Respondent Commission failed to provide to
28 Petitioners a fair hearing in approving the Cease and Desist Order,

1 as follows:

- 2 a. Respondent Commission failed to grant a request for
- 3 continuance of the hearing to provide Petitioners
- 4 adequate notice and an adequate opportunity to
- 5 prepare to defend against the claims of Respondent
- 6 DOUGLAS.
- 7 b. Respondent Commission did not provide adequate
- 8 notice in advance of the hearing date.
- 9 c. Respondent Commission does not operate under any
- 10 rules of evidence.
- 11 d. The charges made by Respondent DOUGLAS against
- 12 Petitioners are vague and ambiguous and do not
- 13 fairly apprise Petitioners of the activities which
- 14 Respondent DOUGLAS claims violate the prohibition
- 15 against development.
- 16 e. Respondent Commission did not allow sufficient time
- 17 at the hearing to respond to the charges.
- 18 f. Respondent Commission did not require, and does not
- 19 require by rule and practice, the persons employed
- 20 by Respondent DOUGLAS to personally appear at the
- 21 hearing, to be placed under oath, or to be
- 22 confronted by Petitioners.
- 23 g. Respondent Commission did not allow to Petitioners,
- 24 and does not allow by rule and practice, the cross-
- 25 examination by Petitioners of Respondent DOUGLAS or
- 26 persons employed by Respondent DOUGLAS who give
- 27 evidence before the Respondent Commission.
- 28 h. The Cease and Desist Order issued by Respondent

1 Commission is vague and ambiguous and does not
2 fairly apprise Petitioners, or any reasonable
3 person, of what Petitioners must do or not do in
4 order to comply with the Cease and Desist Order.
5

6
7 14. Respondent Commission abused its discretion in
8 approving the Cease and Desist Order in that Respondent adopted
9 findings in support of the Cease and Desist Order which are not
10 supported by the weight of the evidence.

11 a. The finding that the development described in
12 Paragraph 8, above, was performed in violation of the prohibition
13 on development is not supported by substantial evidence or the
14 weight of the evidence in that there was no evidence that the
15 Property was developed not with trailers prior to 1977 and there
16 was no evidence that substantial changes to the Property had taken
17 place since 1977.

18 b. The finding that there were 18 trailers on the
19 property and that this was unpermitted development was not
20 supported by substantial evidence or by the weight of the evidence
21 in that the evidence was that there were only 11 trailers and two
22 mobile homes on the Property, each of which existed or replaced a
23 trailer which existed prior to 1977.

24 c. The finding that the recordation of Parcel Map No.
25 7155 was unpermitted development is not supported by substantial
26 evidence or by the weight of the evidence in that the South Coast
27 Regional Commission approved permit no. P-2-17-78-2706 authorizing
28 such subdivision.

d. The finding that the recordation of 5 deeds from

1 Petitioner RICHARDSON to Petitioner WITTER was unpermitted
2 development is not supported by substantial evidence or by the
3 weight of the evidence in that the parcels described in such deeds
4 had been lawfully subdivided, but even if such parcels were not
5 lawfully subdivided parcels, all of such parcels are under the same
6 ownership and there has been no subdivision at all.

7 e. The finding of anonymous reports of grading and
8 vegetation clearance at the Property is not substantial evidence of
9 anything.

10 f. The finding that reports of unpermitted development
11 came from various County and State officers is not supported by
12 substantial evidence or by the weight of the evidence in that there
13 is no evidence of what each said officer stated was alleged to have
14 reported that had been done on the Property, where it was alleged
15 to have been done, or when it was alleged to have been done. The
16 only evidence before the Commission was that an employee of
17 Respondent DOUGLAS claimed to have had conversations in which
18 unspecified allegations were made.

19 g. The finding that major vegetation was removed and
20 that such removal was unpermitted development was not supported by
21 substantial evidence or by the weight of the evidence in that the
22 only location in which Respondent DOUGLAS claimed that vegetation
23 was removed, the sole evidence was that such vegetation was removed
24 as a result of a wildfire on the Property.

25 h. The finding that power transmission lines and
26 telephone lines were unpermitted development is not supported by
27 substantial evidence or by the weight of the evidence in that there
28 was no evidence that such power transmission and telephone lines

1 did not exist in 1977.

2 i. The finding that buildings on the Property are
3 unpermitted development is not supported by substantial evidence or
4 by the weight of the evidence in that there was no evidence of the
5 location of such buildings, the date or dates when they were
6 constructed, the nature of such building or that such buildings did
7 not exist prior to 1977.

8 j. The finding that roads on the Property are
9 unpermitted development is not supported by substantial evidence or
10 by the weight of the evidence in that there was no evidence that
11 such roads did not exist prior to 1977.

12 k. The finding that pipes on the Property are
13 unpermitted development is not supported by substantial evidence or
14 by the weight of the evidence in that there was no evidence where
15 these alleged pipes were located, when the alleged pipes were
16 placed, what the alleged pipes consisted of, or that the pipes were
17 not existing prior to 1977 or replaced pipes which had existed
18 prior to 1977.

19 l. The finding that septic systems on the Property were
20 unpermitted development is not supported by substantial evidence or
21 the weight of the evidence in that there was no evidence where such
22 septic systems were located, when such septic systems were
23 installed, or that such septic systems had not existed prior to
24 1977.

25 m. The finding that livestock corrals on the Property
26 were unpermitted development is not supported by substantial
27 evidence or by the weight of the evidence in that there was no
28 evidence of the location of the livestock corrals, when the

1 livestock corrals were erected, or that the livestock corrals had
2 not existed prior to 1977 or replaced livestock corrals which
3 existed prior to 1977.

4 n. The finding that abandoned vehicles, trash, and
5 construction materials and equipment on the Property were
6 unpermitted development is not supported by substantial evidence or
7 by the weight of the evidence in that there was no evidence that
8 the Property had not been used for such purposes continuously since
9 prior to 1977.

10
11 15. Respondent Commission abused its discretion in
12 approving the Cease and Desist Order in that Respondents decision
13 was not supported by adequate findings.

14 a. The findings fail to specify what grading took place
15 without a permit since 1977, the dates when such grading took
16 place, or the location of such grading.

17 b. The findings fail to specify what major vegetation
18 was removed without a permit since 1977, the dates when such major
19 vegetation was removed, or where the major vegetation was located.

20 c. The findings fail to specify the location of power
21 transmission lines which the Respondent claims were erected on the
22 Property without a permit since 1977 or when such power and
23 telephone lines were erected.

24 d. The findings fail to specify what buildings were
25 erected on the Property without a permit since 1977 or when such
26 buildings were erected.

27 e. The findings fail to specify what roads were
28 constructed on the Property without a permit since 1977 or when

1 such roads were constructed.

2 f. The findings fail to specify what pipes were
3 installed on the Property without a permit since 1977 or when such
4 pipes were installed.

5 g. The findings fail to specify what septic systems
6 were installed on the Property without a permit since 1977 or when
7 such septic systems were installed.

8 h. The findings fail to specify what livestock corrals
9 were erected on the Property without a permit since 1977 or when
10 such livestock corrals were installed.

11 i. The finding that there are abandoned vehicles,
12 trash, construction materials and equipment on the Property does
13 not support the decision in that no permit is required for such
14 activity.

15
16 16. Respondent Commission abused its discretion or
17 exceeded its jurisdiction in approving the Cease and Desist Order
18 in that the Cease and Desist Order is unconstitutionally vague and
19 does not specify the activities which Respondent Commission claims
20 violate the prohibition on development contained in Public
21 Resources Code §30600 from those activities on the Property which
22 do not violate Public Resources Code §30600. The Respondent
23 Commission claims only that between 1975 and 1992 development
24 described in the most vague terms took place on the Property. The
25 Cease and Desist Order orders Petitioners to restore or make
26 applications to restore changes on the Property which have existed
27 prior 1977 when Respondent Commission obtained jurisdiction over
28 the Property. Petitioners are unable to comply with the Cease and

1 Desist Order because they are unable to know what they are ordered
2 to do. Petitioners cannot prepare an application for an "after-
3 the-fact" permit for development which Respondent Commission has
4 not specified. Even if violations had occurred, which Petitioners
5 deny, Petitioners cannot "restore" the Property to its pre-
6 violation condition without Respondent Commission specifying what
7 the pre-violation condition was.
8

9
10 17. Respondent Commission abused its discretion or
11 exceeded its jurisdiction in approving the Cease and Desist Order
12 in that Respondent Commission has waived any claim that the
13 development which exists on the Property is not exempt from the
14 permit requirements of the Coastal Act of 1976 pursuant to Public
15 Resources Code §30608 because Respondent Commission has not
16 asserted that the permit is required for any such development for
17 more than fifteen years and Respondent Commission should be
18 equitably barred from asserting that development which has existed
19 for more than 15 years required a permit from Respondent Commission
20 by the doctrine of laches.

21
22 18. Petitioners have requested the preparation of an
23 administrative record by the Respondent Commission but such record
24 has not been delivered to Petitioners at this date. Petitioners
25 reserve the right to amend this Petition to set forth further
26 allegations or causes of action after such time as Petitioners have
27 had the opportunity to examine the administrative record.
28

19. Petitioners have exhausted all administrative

1 remedies available to them.

2
3 20. Petitioners have no speedy or adequate remedy in the
4 ordinary course of the law.
5

6
7 21. On January 13, 1994, Coastal Commission held another
8 hearing at the request of Petitioner for an extension of time
9 within which to file a complete Application for Coastal Permit. At
10 this hearing, the Commission delegated the right to extend the time
11 within which Petitioner may file the Application for Permit at the
12 discretion of the district director, but at the same time placed
13 the limiting condition that such right would automatically
14 terminate upon Petitioners' filing of a Petition for Writ of
15 Mandate. Thus, the Commission arbitrarily, unfairly and
16 capriciously abused its discretion by not unconditionally granting
17 this Request for an extension of time to file the Permit
18 Application. Such extension was not guaranteed because only the
19 executive director could grant it, and therefore it could be
20 granted only if Petitioners waived their constitutional and legal
21 rights to file this Petition for Writ of Mandate and to protect
22 their vested interest by doing so.

23 WHEREFORE, PETITIONERS PRAY JUDGMENT AS FOLLOWS:

24 1. For an alternative and peremptory writ of mandate
25 directed to Respondent California Coastal Commission and PETER
26 DOUGLAS ordering them to set aside Cease and Desist Order No. CCC-
27 93-CD-03 approved on November 16, 1993.

28 2. For a stay in the enforcement of Cease and Desist

1 Order No. CCC-93-CD-03.

2 3. For costs of suit.

3 4. For reasonable attorney's fees as provided by
4 Government Code §800.

5 5. For such other and further relief as the Court deems
6 proper.

7 LAW OFFICES OF MORTON C. DEVOR

8
9 Dated: January 14, 1993

10 By: _____
11 MORTON C. DEVOR,
12 Attorney for Petitioner
13
14
15
16
17
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20
21
22
23
24
25
26
27
28

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I have read the foregoing PETITION FOR WRIT OF MANDATE (CCP §1094.5); STAY OR ORDER (PUB. RES. CODE §30809) and know its contents.

☒ CHECK APPLICABLE PARAGRAPH

☒ I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☐ I am ☐ an Officer ☐ a partner ☐ a _____ of _____

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. ☐ I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. ☐ The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☐ I am one of the attorneys for _____, a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on January 14, 1994, at Los Angeles, California.

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

DOUGLAS W. RICHARDSON

Type or Print Name

Douglas W. Richardson
Signature

PROOF OF SERVICE

1013A (3) CCP Revised 5/1/88

STATE OF CALIFORNIA, COUNTY OF

I am employed in the county of _____, State of California.

I am over the age of 18 and not a party to the within action; my business address is: _____

On _____, 19____, I served the foregoing document described as _____

☐ _____ on _____ in this action
☐ by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:
☐ by placing ☐ the original ☐ a true copy thereof enclosed in sealed envelopes addressed as follows:

☐ BY MAIL

☐ *I deposited such envelope in the mail at _____, California.
The envelope was mailed with postage thereon fully prepaid.

☐ As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at _____ California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on _____, 19____, at _____, California.

☐ *(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on _____, 19____, at _____, California.

☐ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Type or Print Name

Signature

STUART'S EXBROOK TIMESAVER (REVISED 5/1/88)

NEW DISCOVERY LAW 2030 AND 2031 CCP

(May be used in California State or Federal Courts)

*BY MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT BOX OR BAG)

**FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER

IN SAN DIEGO COUNTY LOCAL RULE 57 REQUIRES ALL PROOFS OF SERVICE FILED WITH THE COURT AS OF JULY 1, 1990, MUST SPECIFY THE NAME OF THE PARTY SERVED, THE NATURE AND STATUS OF HIS/HER INVOLVEMENT IN THE CASE (E PLAINIFF DEFENDANT CROSS COMPLAINANT, ETC.) AND THE NAME, ADDRESS AND PHONE NUMBER OF HIS/HER COUNSEL OF RECORD

Exhibit 9
CCC-05-CD-08 and CCC-05-RO-05
(Witter/Richardson) Page 16 of 17

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I have read the foregoing PETITION FOR WRIT OF MANDATE (CCP §1094.5); STAY OR ORDER (PUB. RES. CODE §30809) and know its contents.

☒ CHECK APPLICABLE PARAGRAPH

☒ I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☐ I am ☐ an Officer ☐ a partner ☐ a _____ of _____

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. ☐ I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. ☐ The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☐ I am one of the attorneys for _____, a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on January 14, 1994, at Los Angeles, California.

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

MADALON K. WITTER

Type or Print Name

Signature

PROOF OF SERVICE

1013A (3) CCP Revised 5/1/88

STATE OF CALIFORNIA, COUNTY OF _____

I am employed in the county of _____, State of California.

I am over the age of 18 and not a party to the within action; my business address is: _____

On _____, 19____, I served the foregoing document described as _____

☐ _____ on _____ in this action
by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:
☐ by placing ☐ the original ☐ a true copy thereof enclosed in sealed envelopes addressed as follows:

☐ BY MAIL

☐ *I deposited such envelope in the mail at _____, California
The envelope was mailed with postage thereon fully prepaid.

☐ As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at _____ California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on _____, 19____, at _____, California.

☐ *(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on _____, 19____, at _____, California.

☐ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Type or Print Name

Signature

STUART'S EXBROOK TIMESAYER (REVISED 5/1/88)

NEW DISCOVERY LAW 2030 AND 2031 CCP

(May be used in California State or Federal Courts)

*BY MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX OR BAG)

**FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER

IN SAN DIEGO COUNTY LOCAL RULE 67 REQUIRES ALL PROOFS OF SERVICE FILED WITH THE COURT AS OF JULY 1, 1990* MUST SPECIFY THE NAME OF THE PARTY SERVED, THE NATURE AND STATUS OF HIS/HER INVOLVEMENT IN THE CASE (E. PLAINIFF, DEFENDANT, CROSS COMPLAINT, ETC.) AND THE NAME, ADDRESS AND PHONE NUMBER OF HIS/HER COUNSEL OF RECORD

Exhibit 9
CCC-05-CD-08 and CCC-05-RO-05
(Witter/Richardson) Page 17 of 17

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Date: December 4, 1996

Honorable DIANE WAYNE

, Judge

I.R. MATTHEWS-DOTY

, Deputy Clerk

/s/

NONE

, Deputy Sheriff

H. RAMIREZ

, Court Reporter

BS026924

MADALON K. WITTER, ET AL

(Parties and Counsel checked if present)

Counsel For
PlaintiffMORTON DEVOR (x)
and SHERMAN L. STACEY (x)

VS

Counsel For
Defendant

G.R. OVERTON (x)

CALIFORNIA COASTAL COMMISSION

NATURE OF PROCEEDINGS:

PETITION FOR WRIT OF MANDATE

OSC RE: DISMISSAL FOR FAILURE TO PROSECUTE CASE;

The petition comes on for trial and is argued.

Administrative Record, read and considered by the court is received into evidence and returned to offering party in open court this date.

- (1) Petition for writ of mandate: Grant in part.
- (2) OSC re dismissal: Moot. OSC is discharged.

The petition for writ of mandate is granted in part pursuant to CCP § 1094.5. The issue of whether petitioner was afforded a fair trial is determined by the court's independent review of the administrative record. Bekiaris v. Board of Education (1972) 6 Cal.3d 575. After independent review, the court finds that petitioners have demonstrated that respondent denied them a fair hearing. Under the substantial evidence test this court determines that otherwise there was substantial evidence to support the findings of the Commission.

A writ of mandate shall issue to compel respondent to set aside its Cease and Desist Order and to conduct further proceedings in accordance with this ruling and applicable law.

I. Exhaustion not required.

Exhibit 10

CCC-05-CD-08 and CCC-05-RO-05

De (Witter/Richardson) Page 1 of 6

Witter/Richardson

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Date: December 4, 1996

Honorable DIANE WAYNE

, Judge

I.R. MATTHEWS-DOTY

, Deputy Clerk

#19

NONE

, Deputy Sheriff

H. RAMIREZ

, Court Reporter

BS026924

MADALON K. WITTER, ET AL

(Parties and Counsel checked if present)

Counsel For
PlaintiffMORTON DEVOR (x)
and SHERMAN L. STACEY (x)

VS

Counsel For
Defendant

G.R. OVERTON (x)

CALIFORNIA COASTAL COMMISSION

NATURE OF PROCEEDINGS:

PETITION FOR WRIT OF MANDATE

OSC RE: DISMISSAL FOR FAILURE TO PROSECUTE CASE;

Petitioners' failure to return a Statement of Defense form, does not preclude them from raising any defenses.¹

14 Cal. Code of Regs. § 13181(a) provides in relevant part: "The person(s) to whom such notice [of intent to commence a cease and desist order proceeding] is given shall complete and return the statement of defense form to the Commission by the date specified therein. . . ."

Nowhere in Section 13181(a) is it stated that by failing to return a statement of defense, a party waives all defenses.²

¹ In their reply brief, petitioners contend that they were not given the 6/93 Notice of Intent and Statement of Defense form. However, issues raised in for the first time in a reply brief to an appeal will not be considered because it would deprive respondent of an opportunity to respond to the new issues. American Drug Stores, Inc. v. Stroh (1992) 10 Cal.App.4th 1446, 1453 (citation omitted).

² Cf. Government Code §§ 11505, 11506. In failure to file a notice of defense within 15 days of the accusation constitutes a waiver of the accused's

Dept. 86 December 4,

EXHIBIT NO. 4 p. 2 of 7
APPLICATION NO.
CCC-93-CD-03
Witter/Richardson

DEPT. 86

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Date: December 4, 1996

Honorable DIANE WAYNE
#19 NONE

, Judge
, Deputy Sheriff

I.R. MATTHEWS-DOTY
H. RAMIREZ

, Deputy Clerk
, Court Reporter

BS026924

MADALON K. WITTER, ET AL

(Parties and Counsel checked if present)

Counsel For
Plaintiff

MORTON DEVOR (x)
and SHERMAN L. STACEY (x)

VS

Counsel For
Defendant

G.R. OVERTON (x)

CALIFORNIA COASTAL COMMISSION

NATURE OF PROCEEDINGS:

PETITION FOR WRIT OF MANDATE

OSC RE: DISMISSAL FOR FAILURE TO PROSECUTE CASE;

Moreover, the procedures for hearing on a proposed cease and desist order do not provide for such waiver. 14 Cal. Code of Regs. § 13185. Rather, the hearing procedures permit alleged violators to present his or her positions regarding the matters relevant to the alleged violations, and allow presentation of evidence which could have been but was not set forth in the statement of defense. Id.

II. Fair hearing.

In administrative proceedings, due process is met if reasonable notice and opportunity to be heard are given. Drummev v. State Bd. of Funeral Directors & Embalmers (1939) 13 Cal.2d 75, 80; Horn v. County of Ventura (1979) 24 Cal.3d 605, 616.

In the instant case, petitioners did not receive sufficient notice of the 11/16/93 hearing. 14 Cal. Code of Regs. § 13181 requires that the executive director mail to alleged violators by regular mail a written notice of hearing at least 10 days prior to the hearing on the proposed cease and desist order. However, the Notice of Public Hearing contained in the administrative record does not state that it was mailed by the executive director nor does it indicate to whom it was mailed. Admin. Record, p. 91.

hearing on the merits.

Dept. 86 December

EXHIBIT NO. 4
APPLICATION NO.

CCC-93-CD-10
Witter/Richardson

Exhibit 10
CCC-05-CD-08 and CCC-05-RO-05
(Witter/Richardson) Page 3 of 6

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Date: December 4, 1996

Honorable

DIANE WAYNE

, Judge

I.R. MATTHEWS-DOTY

, Deputy Clerk

#19

NONE

, Deputy Sheriff

H. RAMIREZ

, Court Reporter

BS026924

MADALON K. WITTER, ET AL

(Parties and Counsel checked if present)

Counsel For
PlaintiffMORTON DEVOR (x)
and SHERMAN L. STACEY (x)

VS

Counsel For
Defendant

G.R. OVERTON (x)

CALIFORNIA COASTAL COMMISSION

NATURE OF PROCEEDINGS:

PETITION FOR WRIT OF MANDATE

OSC RE: DISMISSAL FOR FAILURE TO PROSECUTE CASE;

And, while there is a separate Mailing List included in the record, this list is not attached to any document. Id., p. 90.

Moreover, petitioners raised the notice issue at the administrative hearing. Petitioners requested a continuance because they did not receive timely notice of the hearing but the continuance was denied. Admin. Record, p. 116. Whether or not the continuance was requested to the staff or chairperson is not relevant as petitioners position was made clear.

And, contrary to their claims, petitioners did not ask any questions to be posed to the staff. Admin. Record, pp. 114-123.

Nor was there any "new" evidence presented after the close of the public hearing. The comment regarding a possible subsequent permit application does not constitute "new" evidence regarding the alleged violations. See Admin. Record, pp. 126-127.

III. Hearsay.

Petitioner has objected to the evidence relied upon by respondent on the grounds that the documents are both hearsay and not introduced at the administrative hearing.

There is no necessity to introduce and admit each

-Dept. 86 December 4,

EXHIBIT NO.
APPLICATION

CCC-93-02-00

Witter/Richardson

Exhibit 10

CCC-05-CD-08 and CCC-05-RO-05
(Witter/Richardson) Page 4 of 6

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Date: December 4, 1996

Honorable DIANE WAYNE

, Judge

LR. MATTHEWS-DOTY

, Deputy Clerk

#19

NONE

, Deputy Sheriff

H. RAMIREZ

, Court Reporter

BS026924

MADALON K. WITTER, ET AL

(Parties and Counsel checked if present)

Counsel For
PlaintiffMORTON DEVOR (x)
and SHERMAN L. STACEY (x)

VS

Counsel For
Defendant

G.R. OVERTON (x)

CALIFORNIA COASTAL COMMISSION

NATURE OF PROCEEDINGS:

PETITION FOR WRIT OF MANDATE

OSC RE: DISMISSAL FOR FAILURE TO PROSECUTE CASE;

into evidence. This is an administrative proceeding in which formal rules of procedure and evidence need not be strictly followed. 14 Cal. Code of Regs. § 13065; McCoy v. Board of Retirement (1986) 183 Cal.App.3d 1044, 1053 (citing Jenner v. City Council (1958) 164 Cal.App.2d 490, 496).

And, hearsay evidence is admissible in hearings before respondent. 14 Cal. Code of Regs. § 13065. In non-APA cases, the more liberal evidentiary rules allow hearsay admitted without objection to be sufficient. See Frudden Enterprises v. ALRB (1984) 153 Cal.App.3d 262, 270; Fox v. San Francisco Unified School Dist. (1952) 11 Cal.App.2d 885, 891.

There was ample evidence presented to support the findings of development without a coastal permit. It is permissible to rely on the staff report which contained numerous violations of the Act. AR pp 26-28. Aerial photographs substantiated the charges. Id.

III. Charges are not vague.

Though the charges are numerous, they are not vague and provide petitioners with sufficient information to defend themselves. The charges indicate that at various times and during several years development occurred on the property while no permit was obtained.

EXHIBIT NO.
APPLICATION

Dept. 86 December 4, 1

CCC-93-CD-03

Witter/Richardson

Exhibit 10
CCC-05-CD-08 and CCC-05-RO-05
(Witter/Richardson) Page 5 of 6

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Date: December 4, 1996

Honorable DIANE WAYNE

, Judge

I.R. MATTHEWS-DOTY

, Deputy Clerk

#19

NONE

, Deputy Sheriff

H. RAMIREZ

, Court Reporter

BS026924

- MADALON K. WITTER, ET AL

(Parties and Counsel checked if present)

Counsel For

MORTON DEVOR (x)

Plaintiff

and SHERMAN L. STACEY (x)

VS

Counsel For

G.R. OVERTON (x)

Defendant

CALIFORNIA COASTAL COMMISSION

NATURE OF PROCEEDINGS:

PETITION FOR WRIT OF MANDATE

OSC RE: DISMISSAL FOR FAILURE TO PROSECUTE CASE;

Counsel for petitioner to prepare the judgment.

Dept. 86 December 4

EXHIBIT NC

APPLICATION

ccc-93-

Witter/Rich

Exhibit 10
CCC-05-CD-08 and CCC-05-RO-05
(Witter/Richardson) Page 6 of 6

CALIFORNIA COASTAL COMMISSION

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

W10

Staff: NC-SF
Staff Report: January 15, 1997
Hearing Date: February 5, 1997
Commission Action:

STAFF RECOMMENDATION FOR RESCISSION OF CEASE & DESIST ORDER

CEASE AND DESIST ORDER: CCC-93-CD-03(as amended)

DATE ORDER ISSUED: November 16, 1993; order amended on January 13, 1994

RELATED VIOLATION FILE: V-4-92-030

PROPERTY DESCRIPTION
AND LOCATION: Approximately 42 acres, located at 2100 McReynolds Road off of Latigo Canyon Road, in an unincorporated area of Los Angeles County, which is in the Coastal Zone and more specifically described as:

The Southeast Quarter of the Southeast Quarter of Section 17, Township 1, South, Range 18 West, San Bernardino Base and Meridian (hereinafter Lot A); and

A portion of the Northeast Quarter of the Northeast Quarter of Section 20, Township 1 South, Range 18 West, San Bernadino Meridian (hereinafter Lot B).

APNs: 4464-024-020; 4464-024-021; 4464-024-022; 4464-024-023; 4464-024-024; 4465-006-054 and 4465-006-055

ALLEGED VIOLATORS: Madalon K. Witter
Douglas W. Richardson
2100 McReynolds Road
Malibu, CA 90265

VIOLATION DESCRIPTION: Grading, removal of major vegetation, subdivision, and placement of solid materials and erection of structures, including: at least 18 trailers and/or mobile homes, power transmission and distribution lines, telephone

lines, buildings, roads, pipes, septic systems, livestock corrals, abandoned vehicles, trash, construction materials and equipment

SUBSTANTIVE FILE
DOCUMENTS:

Coastal Development Permit File No. 5-82-377
Cease and Desist Order File No. CCC-93-CD-03

I. SUMMARY OF STAFF RECOMMENDATION:

Pursuant to the preemptory writ of mandate issued by L.A. Superior Court in Case No. BS026924, *Witter, et al. v. California Coastal Commission*, staff recommends that the Commission rescind Commission Cease and Desist Order No. CCC-93-CD-03.

II. MOTION:

Staff recommends adoption of the following motion:

I move that the Commission rescind Cease and Desist Order No. CCC-93-CD-03(as amended).

Staff recommends a YES vote. An affirmative vote by a majority of the Commissioners present and voting is necessary to pass the motion.

III. PROPOSED FINDINGS:

Staff recommends that the Commission adopt the following findings in support of its action:

A. Commission Rescission Authority

The Commission has the legal authority to modify or rescind a cease and desist order pursuant to section 13188(b) of the California Code of Regulations (Title 14). Section 13188(b) provides:

The commission, after public hearing may rescind or modify a cease and desist order that it has issued. A proceeding for such a purpose may be commenced by (1) any person to whom the cease and desist order is directed, (2) the executive director or (3) any two members of the commission. Upon receipt of a request pursuant to this subsection (b) for rescission or modification of a cease and desist order issued by the Commission, a hearing on the request shall be held at the next regularly scheduled meeting or as soon thereafter as is practicable after notice to all persons subject to the order or whom the executive director otherwise has reason to believe would be interested in the matter.

B. Alleged Violation Description

This alleged violation consists of development, as defined in Coastal Act section 30106, including grading, removal of major vegetation, subdivision, and placement and erection of solid

materials and structures, without benefit of an approved coastal development permit as required by Coastal Act section 30600.

C. Background on Cease and Desist Order No. CCC-93-CD-03

On November 16, 1993, the Commission, by a vote of 11-0, issued Cease and Desist Order No. CCC-93-CD-03 against Madalon K. Witter and Douglas W. Richardson (hereinafter "the alleged violators"). The Commission found it necessary to issue the order because the alleged violators had failed to resolve voluntarily a violation of the Coastal Act permitting requirements. CCC-93-CD-03 ordered the alleged violators to cease and desist from: 1) engaging in any further development activity on the property site without first obtaining a coastal development permit (CDP); and 2) continuing to maintain on the property development that violates the Coastal Act. CCC-93-CD-03 ordered the alleged violators to submit by January 18, 1994, a complete coastal development permit application for either: 1) the restoration of the property; 2) after-the-fact permit approval of the unpermitted development; or 3) a determination of vested rights. Exhibit No. 2 includes the Commission's adopted findings of fact and a copy of the order issued.

On January 13, 1994, the Commission voted to amend its previous order to delegate to the Executive Director authority for granting an extension of time to file a CDP application on the condition that the alleged violators not file a lawsuit challenging the validity of CCC-93-CD-03. Exhibit 3 includes the Commission's adopted findings of fact and a copy of the amended order issued.

On January 19, 1994, the alleged violators filed a petition for a writ of mandate, challenging Cease and Desist Order No. CCC-93-CD-03, thus nullifying the above-described amendment.

D. Litigation History

On January 23, 1995, the Attorney General's Office filed a complaint for Declaratory Relief, Preliminary and Permanent Injunction, Civil Fines and Penalties against the alleged violators for violating the Coastal Act.

On December 4, 1996, the Superior Court heard the alleged violators' petition for writ of mandate. The Court determined that the Coastal Commission's notice of the Commission hearing to Ms. Witter and to Mr. Richardson was defective in that there was no evidence in the administrative record of the proceedings that such notice was ever served. The Court further ruled that the administrative record contained substantial evidence to support the issuance of a cease and desist order. The Court's statement of decision thus requires the Commission to rescind CCC-93-CD-03 for failure to give Ms. Witter and Mr. Richardson adequate notice. The Court's decision is contained in Exhibit 4.

The Commission has decided not to appeal this decision and to comply with the Court's decision. The Commission notes that its decision to vacate CCC-93-CD-03 does not prevent it from considering and issuing a new cease and desist order to bring the subject property into conformity with the Coastal Act.

E. Violation Resolution Status

As of this date the alleged violators have failed to file a complete CDP application to retain any of the unpermitted development found on the property. The alleged violators have twice attempted to file a claim for a vested rights (first attempt: March 1994; second attempt: October 1996). Both applications were determined to be incomplete by Commission legal staff.

CALIFORNIA COASTAL COMMISSION

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



REGULAR AND CERTIFIED MAIL

February 18, 1997

Madalon K. Witter [Z 778 711 801]
515 West Front Street
Findlay, Ohio 45840

Douglas W. Richardson [Z 778 711 804]
2100 McReynolds Road
Malibu, CA 90265

SUBJECT: Notice of Intent to Commence Cease and Desist Order Proceedings;
Violation File No. V-4-MAL-92-030 (WITTER/RICHARDSON)

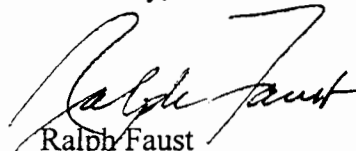
Dear Ms. Witter and Mr. Richardson:

The above referenced violation of the California Coastal Act involves development consisting of: (1) grading; (2) vegetation clearance; (3) placement of trailers, mobile homes for residential purposes, automobiles, debris and other materials; (4) construction of storage sheds and other structures; and (5) subdivision, all without the benefit of an approved coastal development permit (CDP), at properties located at 2100 McReynolds Road, APNs 4464-024-020; 4464-024-021; 4464-024-022; 4464-024-023; and 4464-024-024; and off of Latigo Canyon Road, APNs 4464-006-054; 4464-006-055, in an unincorporated area of Los Angeles County, in the Coastal Zone.

By communications which include, but are not limited to, letters dated June 18, 1992, August 3, 1992, September 9, 1992, and March 5, 1993, by telephone on January 12, 1993, February 25, 1993, and June 6, 1993, and by public hearing on November 16, 1993, in San Diego and on January 13, 1994, in Santa Barbara, the Commission or its staff have recommended that, in order to resolve this matter administratively, you submit either: 1) a complete vested rights determination application; or 2) a CDP application for restoration of the property to its pre-violation state; or 3) a CDP application for the after-the-fact authorization of the subject unpermitted development. As of the date of this notice, staff has received very little indication that you are willing to voluntarily resolve this matter in the suggested manner. Therefore, staff has decided to commence a proceeding to request that the Commission issue a Cease and Desist Order pursuant to PRC Section 30810 requiring you to cease and desist from engaging in any further development activity at the subject property and from continuing to maintain any development at the property that violates the California Coastal Act, without first obtaining a CDP which authorizes such activity.

In accordance with Commission regulations, you have the opportunity to respond to the staff's violation allegations as set forth in this notice by completing the enclosed Statement of Defense Form. The completed Statement of Defense Form must be received by this office no later than March 20, 1997. Failure to return the Notice of Defense Form may result in a waiver by you of valuable rights. California Code of Regulations, Title 14, Section 13181(a) makes return of a completed Notice of Defense Form mandatory. Court decisions require full disclosure of defenses prior to action by administrative agencies like the Coastal Commission. (Bohn v. Watson (1954) 130 Cal.App.2d 24, 37.) Should you have any questions regarding this matter, please contact Darryl Rance at (415) 904-5248.

Sincerely,


Ralph Faust
Chief Counsel

cc: G.R. Overton, Deputy Attorney General
John Ainsworth, Coastal Commission South Central Coast Enforcement Supervisor
Susan Friend, Coastal Commission South Central Coast Enforcement Officer
Michael Bleacher, Los Angeles County Department of Regional Planning
Law Offices of Morton C. Devor
Law Offices of Sherman L. Stacey

enclosure

enforce\wittrich\c&dnote.doc

DANIEL E. LUNGREN, Attorney General
of the State of California
JAN S. STEVENS,
Assistant Attorney General
G.R. OVERTON (Bar #67057),
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DANIEL A. OLIVAS (Bar #130405),
Deputy Attorneys General
300 South Spring Street, Suite 5212
Los Angeles, California 90013
Telephone: (213) 897-2703

ORIGINAL FILED
JAN 23 1995
COUNTY CLERK

Attorneys for Plaintiff 1725 MAIN ST. SANTA MONICA RM. 203
CALIFORNIA COASTAL COMMISSION

TIME

9:30

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

SC034859

CALIFORNIA COASTAL COMMISSION,

Plaintiff,

v.

MADALON K. WITTER, and DOUGLAS
RICHARDSON, AND DOES 1 THROUGH 100,
inclusive,

Defendants.

No.

COMPLAINT FOR DECLARATORY
RELIEF, PRELIMINARY AND
PERMANENT INJUNCTION,
CIVIL PENALTIES AND
FINES

[California Coastal Act
of 1976, Public Resources
Code §§ 30000 et seq.]

Plaintiff California Coastal Commission files this
complaint pursuant to the California Coastal Act of 1976, and
alleges as follows:

SUMMARY OF ALLEGATIONS

1. This suit arises from Defendants' violation of the
California Coastal Act (Pub. Res. Code sections 30000 et seq.),

1 by failing to comply with Cease and Desist Order No. CCC-93-CD-
2 03 ("Cease and Desist Order"), issued by Plaintiff to Defendants
3 in an effort to cure Defendants' underlying and numerous Coastal
4 Act violations involving a pattern of unpermitted development
5 occurring continuously on the subject properties over a number of
6 years.

7 2. Plaintiff determined in the Cease and Desist
8 public hearing that Defendants engaged in unpermitted development
9 including but not limited to:

- 10 a. grading;
- 11 b. removal of major vegetation;
- 12 c. subdivision;
- 13 d. placement of solid materials; and
- 14 e. erection of structures, including at least 18
15 trailers or mobile homes, power transmission and distribution
16 lines, telephone lines, buildings, roads, pipes, septic systems,
17 livestock corrals, abandoned vehicles, trash, construction
18 materials and equipment.

19 3. The Cease and Desist Order requires Defendants to
20 refrain from further development on the Subject Properties
21 without first obtaining a coastal development permit ("CDP"), and
22 to submit within sixty (60) days after issuance of the Cease and
23 Desist Order a completed CDP application for either restoration
24 of the Subject Properties to pre-violation condition or for an
25 after-the-fact authorization of the unpermitted development.
26 Defendants have failed to comply with the Cease and Desist Order.
27 Plaintiff institutes the instant equitable proceeding to enforce

1 the Cease and Desist Order as well as the provisions of the
2 Coastal Act.

3 COMMON COASTAL ACT ALLEGATIONS

4 4. Section 30600(a) of the Coastal Act requires that,
5 "on or after January 1, 1977, any person wishing to perform or
6 undertake any development in the coastal zone . . . shall obtain
7 a coastal development permit." (Emphasis added.)

8 5. The "coastal zone" is that land specified on maps
9 identified and set forth in section 17 of Chapter 1330 of the
10 Statutes of 1975-1976 Regular Session enacting Division 20 of the
11 Public Resources Code and subsequent amendments. The properties
12 that are the subject of the instant Complaint are located in the
13 coastal zone.

14 6. "Development" subject to the permit requirements
15 of the Coastal Act is defined therein at section 30106 as
16 including the following:

17 ". . . placement or erection of any solid
18 material or structure; discharge or disposal
19 of any . . . liquid, solid, or thermal waste;
20 grading, removing, dredging, mining, or
21 extraction of any materials; change in
22 density or intensity of use of land,
23 including, but not limited to, subdivision
24 pursuant to the Subdivision Map Act . . . and
25 any other division of land, including lot
26 splits, . . . construction, reconstruction,
27 demolition, or alteration of the size of any
structure, . . . and the removal or
harvesting of major vegetation other than for
agricultural purposes."

7. Section 30106 of the Coastal Act defines
"structure" as including but not limited to "any building, road,

1 the meaning of section 30111 of the Public Resources Code,
2 Plaintiff may bring actions for injunctive relief (Pub. Res. Code
3 section 30803), civil fines and penalties (Pub. Res. Code
4 sections 30805, 30820), exemplary damages (Pub. Res. Code section
5 30822), and to enforce cease and desist orders (Pub. Res. Code
6 section 30821.6) in response to violations of the permit
7 requirements of the Coastal Act.

8 12. Plaintiff is informed and believes and thereupon
9 alleges that Defendant MADALON K. WITTER ("WITTER") is an
10 individual who currently owns the subject properties, and whose
11 actions alleged herein occurred in whole or in part within the
12 County of Los Angeles, California.

13 13. Plaintiff is informed and believes and thereupon
14 alleges that Defendant DOUGLAS W. RICHARDSON ("RICHARDSON") is an
15 individual, who previously owned a portion of the subject
16 properties until he conveyed it to Defendant WITTER. Plaintiff
17 is also informed and believes and thereupon alleges that at the
18 present time, Defendant RICHARDSON actively manages the subject
19 properties, whose duties include, but are not limited to,
20 collecting rent and acting as Defendant WITTER's representative
21 with respect to alleged Coastal Act violations on the subject
22 properties, and whose actions alleged herein occurred in whole or
23 in part within the County of Los Angeles, California.

24 14. The true names, whether corporate, individual or
25 otherwise of Defendants named herein as Does 1 through 100,
26 inclusive, are unknown to Plaintiff who, therefore, sues these
27 defendants by such fictitious names. Plaintiff will seek leave

1 to amend this Complaint to show their true names and capacities
2 when they have been ascertained.

3 15. Plaintiff is informed and believes and thereupon
4 alleges that Does 1 through 50 include individuals, corporations,
5 contractors or operators of machinery and equipment, or other
6 forms of business entities and personnel who worked in concert
7 with or at the direction of Defendants or independently of
8 Defendants to violate the Coastal Act as alleged herein.
9 Plaintiff does not know the identity of Does 1 through 50, but
10 upon ascertaining the identity or identities of these individuals
11 or business entities, Plaintiff will seek leave to amend this
12 Complaint to identify more specifically Does 1 through 50.

13 16. Plaintiff is informed and believes and thereupon
14 alleges that Does 51 through 75 include individuals,
15 corporations, or other forms of business entities who, sometime
16 in the future, may obtain an equitable or other interest in the
17 subject properties. Plaintiff does not know the identity of Does
18 51 through 75, but upon ascertaining the identity or identities
19 of these individuals or business entities, Plaintiff will seek
20 leave to amend this Complaint to identify more specifically Does
21 51 through 75.

22 17. Plaintiff is informed and believes and thereupon
23 alleges that Does 76 through 100 include individuals,
24 corporations, or other forms of business entities who,
25 unbeknownst to Plaintiff, currently have an equitable or other
26 interest in the subject properties. Plaintiff does not know the
27 identity of Does 76 through 100, but upon ascertaining the

1 identity or identities of these individuals or business entities,
2 Plaintiff will seek leave to amend this Complaint to identify
3 more specifically Does 76 through 100.

4 18. As used herein, the term "Defendants" means
5 Defendants and each of them, and any reference to an act of a
6 Defendant means that such act was done by all Defendants and each
7 of them, unless otherwise specifically stated.

8 FACTUAL ALLEGATIONS

9 19. This action involves properties consisting of
10 approximately 42 acres, located at 2100 McReynolds Road (near
11 Latigo Canyon Road), Malibu, California 90265, in an
12 unincorporated area of Los Angeles County, which is in the
13 Coastal Zone and are more specifically described by the following
14 Assessor Parcel Numbers (APN): 4464-024-020; 4464-024-021; 4464-
15 024-022; 4464-024-023; 4464-024-024; 4465-006-054; and 4465-006-
16 055 ("Subject Properties").

17 20. On or about May 19, 1992, Plaintiff received a
18 violation report of illegal grading and vegetation clearance at
19 the Subject Properties.

20 21. Between June 1992 and June 1993, Plaintiff
21 requested Defendants to submit a CDP application for either the
22 restoration of the Subject Properties to pre-violation state or
23 for the after-the-fact authorization of the subject unpermitted
24 development. Defendants refused to resolve voluntarily the
25 matter in the manner suggested by Plaintiff.

26 22. In April 1993, Plaintiff obtained further evidence
27 of Coastal Act violations, including the placement of trailers or

1 mobile homes on the Subject Properties, grading, and vegetation
2 removal.

3 23. Plaintiff again attempted contact with Defendants
4 numerous times requesting permission to go on the Subject
5 Properties to inspect current conditions, but permission was
6 continually denied, the latest refusal occurring on or about
7 September 24, 1993.

8 24. Having been denied permission to enter the Subject
9 Properties in order to inspect current conditions, Plaintiff
10 obtained an Inspection Warrant from the Superior Court for the
11 County of Los Angeles, and on or about October 27, 1993,
12 Plaintiff conducted an inspection pursuant to that warrant. The
13 inspection confirmed the reports of unpermitted development,
14 which were also supported by examination of aerial photographs.

15 25. Prior to recommending that Plaintiff issue a cease
16 and desist order, Plaintiff's enforcement staff attempted on
17 several occasions to persuade Defendants to submit voluntarily a
18 CDP application in order to resolve the violations, but
19 Defendants failed to do so.

20 26. On or about November 16, 1993, after a duly-
21 noticed public hearing at which Defendants testified, Plaintiff
22 issued the Cease and Desist Order. Plaintiff found that
23 Defendants' activities on the Subject Properties (which included
24 grading, removal of major vegetation, subdivision, placement of
25 solid materials, erection of structures, including at least 18
26 trailers or mobile homes, power transmission and distribution
27 lines, telephone lines, buildings, roads, pipes, septic systems,

1 livestock corrals, abandoned vehicles, trash, construction
2 materials and equipment) constituted "development" within the
3 meaning of Public Resources Code section 30106 without benefit of
4 a CDP, and that, therefore, Defendants violated Public Resources
5 Code section 30600. In addition, Plaintiff found that the
6 alleged unpermitted development is inconsistent with the density
7 of development approved for the Subject Properties under an
8 earlier Coastal Development Permit, CDP No. 5-82-377. The
9 development is not consistent with Chapter 3 polices of the
10 Coastal Act and is causing continuing damage to coastal
11 resources, including:

- 12 a. Inadequate septic systems;
- 13 b. Grading to create roads and pads on areas for
14 which no previous development existed or has been approved; and
- 15 c. Trailers and mobile homes have been placed on the
16 Subject Properties in a designated flood hazard area, and
17 electrical power lines run on the ground and through brush
18 throughout the Subject Properties which are located in an area of
19 high fire hazard. The development, therefore, fails to minimize
20 the risks to life and property in areas of high flood and fire
21 hazard as required by Public Resources Code section 30253(1).

22 27. On or about November 23, 1993, Plaintiff served
23 Defendants, via certified mail, Cease and Desist Order No. CCC-
24 93-CD-03, and a copy of Plaintiff's Adopted Findings. The return
25 receipt establishes that the Cease and Desist Order was received
26 by Defendants on or before December 13, 1993.

1 28. The Cease and Desist Order requires Defendants to
2 refrain from engaging in any development activity on the Subject
3 Properties without first obtaining a CDP authorizing such
4 activity, and that within sixty (60) days of the date of the
5 Cease and Desist Order, Defendants submit to Plaintiff for its
6 review and approval a complete CDP application for either the
7 restoration of the Subject Properties to pre-violation condition,
8 or obtain after-the-fact authorization for the unpermitted
9 development.

10 29. The Cease and Desist Order issued by Plaintiff to
11 Defendants also advised Defendants that failure to comply
12 strictly with any term or condition of the order may result in
13 the imposition of civil penalties of up to six thousand dollars
14 (\$6,000) per day for each day in which such compliance failure
15 persists, as well as advising Defendants that pursuant to Public
16 Resources Code section 30803(b), any person or entity against
17 whom the order is issued may file a petition with the Superior
18 Court for a stay of the order.

19 30. As of the date of this Complaint, Defendants have
20 failed to comply with the Cease and Desist Order in any respect.
21 Furthermore, the physical conditions on the Subject Properties
22 continue to violate the Coastal Act because such conditions
23 remain unabated. Since the date of service of the Cease and
24 Desist Order on the defendants, plaintiff is informed and
25 believes and thereupon alleges that the defendants have
26 encourage, allowed, acquiesced and permitted the placement of
27 additional trailers on the property and permitted or allowed

1 other development to occur on the property, as that term is
2 defined in the Coastal Act.

3 31. Plaintiff is informed and believes and thereupon
4 alleges that all Defendants have acted in concert with,
5 acquiesced in or otherwise performed, supervised, permitted,
6 contracted for, or otherwise allowed or aided all of the unlawful
7 activities as alleged herein.

8 32. Each defendant is jointly and severally liable for
9 the unlawful activity which has taken place on the Subject
10 Properties as alleged herein, and for the failure to comply with
11 the requirements of the Cease and Desist Order.

12 33. Each unpermitted act of development constitutes a
13 separate and continuous violation of the Coastal Act.

14 FIRST CAUSE OF ACTION

15 (Injunctive Relief Under California
16 Coastal Act Against All Defendants)

17 34. Plaintiff incorporates by reference the
18 allegations contained in paragraphs 1 through 34, inclusive, of
19 this Complaint as though set forth in full.

20 35. Plaintiff has no adequate remedy at law to require
21 Defendants to reverse the consequences of their unlawful
22 activities and monetary penalties and fines alone will not remedy
23 the wrong about which Plaintiff complains. Defendants have
24 failed to comply with the Cease and Desist Order and the Subject
25 Properties remain in violation of the Coastal Act.

1 36. Unless this Court grants the equitable relief
2 sought by Plaintiff, Plaintiff and the public at large will be
3 irreparably harmed in that:

4 a. The activities at issue will have proceeded and
5 will continue to proceed without compliance with the policies and
6 requirements of the Coastal Act;

7 b. Other persons along California's 1000-mile
8 coastline who are unwilling to abide by the provisions of the
9 Coastal Act will be encouraged to commence activities similar to
10 those described herein and, as a consequence thereof, the
11 effective enforcement of the Coastal Act will be undermined; and

12 c. The benefit conferred upon the public by
13 Plaintiff's Cease and Desist Order will be irretrievably lost.

14 37. The Coastal Act provides pursuant to Public
15 Resources Code section 30803(a) as follows:

16 "Any person may maintain an action for
17 declaratory and equitable relief to restrain
18 any violation of this division, of a cease
19 and desist order issued pursuant to Section
20 30809 or 30810, On a prima facie
21 showing of a violation of this division,
22 preliminary equitable relief shall be issued
23 to restrain any further violation of this
24 division. No bond shall be required for an
25 action under this section."

26 38. As a consequence of Defendants' activities,
27 Plaintiff is entitled to a preliminary and permanent injunction
prohibiting violation of the Coastal Act and requiring immediate
compliance with all aspects of the Coastal Act, the Cease and
Desist Order, and all relevant regulations.

27 \ \ \

1 SECOND CAUSE OF ACTION

2 (Declaratory Relief Under California
3 Coastal Act Against All Defendants)

4 39. Plaintiff incorporates by reference the
5 allegations contained in paragraphs 1 through 34, inclusive, of
6 this Complaint as though set forth in full.

7 40. The Coastal Act provides pursuant to Public
8 Resources Code section 30803(a) as follows:

9 "Any person may maintain an action for
10 declaratory and equitable relief to restrain
11 any violation of this division, of a cease
12 and desist order issued pursuant to Section
13 30809 or 30810, On a prima facie
14 showing of a violation of this division,
15 preliminary equitable relief shall be issued
16 to restrain any further violation of this
17 division. No bond shall be required for an
18 action under this section."

19 41. An actual controversy exists between the Plaintiff
20 and Defendants in that the Defendants have violated the Coastal
21 Act and Plaintiff's Cease and Desist Order.

22 42. Because of the controversy that exists among the
23 parties, a declaration of the rights and responsibilities of the
24 parties with respect to the issues is necessary.

25 THIRD CAUSE OF ACTION

26 (Civil Penalties Under California Coastal Act
27 Against All Defendants for Unpermitted Development)

28 43. The Plaintiff incorporates by reference the
29 allegations contained in paragraphs 1 through 34 inclusive, of
30 this Complaint as though set forth in full.

1 44. Prior to January 1, 1993, the Coastal Act,
2 pursuant to former Public Resources Code section 30820, repealed
3 by Stats. 1992, c. 955 (S.B. 1449), § 1, provided as follows:

4 "Any person who violates any provision
5 of this division shall be subject to a civil
6 fine of not to exceed ten thousand dollars
7 (\$10,000)."

8 45. Effective January 1, 1993, the Coastal Act
9 provides pursuant to Public Resources Code section 30820(a)(1) as
10 follows:

11 "Civil liability may be imposed by the
12 superior court in accordance with this
13 article on any person who performs or
14 undertakes development that is in violation
15 of this division . . . in an amount that
16 shall not exceed thirty thousand dollars
17 (\$30,000) and shall not be less than five
18 hundred dollars (\$500)."

19 46. During the public hearing in which it issued the
20 Cease and Desist Order, Plaintiff found that "development," as
21 defined by Coastal Act section 30106, had taken place on the
22 Subject Properties on numerous occasions since January 1, 1977.
23 The development included:

- 24 a. grading;
- 25 b. removal of major vegetation;
- 26 c. subdivision;
- 27 d. placement of solid materials; and
- e. erection of structures, including at least 18
trailers or mobile homes, power transmission and distribution
lines, telephone lines, buildings, roads, pipes, septic systems,

1 livestock corrals, abandoned vehicles, trash, construction
2 materials and equipment.

3 47. Plaintiff seeks as against Defendants up to
4 \$10,000 in civil penalties, for each separate violation of the
5 Coastal Act, under the former statute for violations occurring
6 before January 1, 1993; and in an amount of up to \$30,000 in
7 civil penalties for each violation occurring after December 31,
8 1992.

9 48. Unless Defendants are heavily fined and assessed
10 penalties, other persons will be encouraged to violate the
11 Coastal Act, knowing that any fines that may be imposed will be
12 minimal and that they may, in effect, purchase a violation of the
13 Coastal Act by proceeding with the activities defined herein and
14 thereafter paying a nominal or de minimis fine.

15 FOURTH CAUSE OF ACTION

16 (Daily Fines Under California Coastal Act Against
17 All Defendants for Unpermitted Development)

18 49. Plaintiff incorporates by reference the
19 allegations contained in paragraphs 1 through 34, inclusive, of
20 this Complaint as though set forth in full.

21 50. Prior to January 1, 1993, the Coastal Act,
22 pursuant to former Public Resources Code section 30821, repealed
23 by Stats. 1992, c. 955 (S.B. 1449), § 3, provided as follows:

24 "In addition to any other penalties, any
25 person who intentionally and knowingly
26 performs any development in violation of this
27 division shall be subject to a civil fine of
not less than fifty dollars (\$50) nor more
than five thousand dollars (\$5,000) per day
for each and every day in which such
violation occurs."

1 51. Effective January 1, 1993, the Coastal Act
2 provides pursuant to Public Resources Code section 30820(b) as
3 follows:

4 "Any person who performs or undertakes
5 development that is in violation of this
6 division . . . , when the person
7 intentionally and knowingly performs or
8 undertakes the development in violation of
9 this division . . . , may, in addition to any
10 other penalties, be civilly liable in
11 accordance with this subdivision. Civil
12 liability may be imposed by the superior
13 court in accordance with this article for a
14 violation as specified in this subdivision in
15 an amount which shall not be less than one
16 thousand dollars (\$1,000), nor more than
17 fifteen thousand dollars (\$15,000), per day
18 for each day in which the violation
19 persists."

20 52. Defendants have "knowingly and intentionally"
21 undertaken development in violation of the Coastal Act, at least
22 since 1980. In 1980, Plaintiff approved a CDP application
23 submitted by Defendant RICHARDSON and others to subdivide one of
24 the subject lots. The permit was denied on appeal and the
25 applicants were ultimately granted CDP No. 5-82-377 on August 25,
26 1982. Defendant RICHARDSON was aware, as of 1980, that CDP's are
27 required for development within the coastal zone.

28 53. All unpermitted development which has occurred on
29 the Subject Properties since 1980 thus constitutes a knowing,
30 intentional, and continuing violation of the Coastal Act.
31 Defendants are liable for daily fines of up to \$5,000 per day,
32 for each separate violation, for each day the violations
33 persisted after 1980 but before January 1, 1993; and for daily
34 fines of up to \$15,000 per day, for each separate violation, for

1 each day the violations persisted and continue to persist after
2 December 31, 1992, up to and including the date Defendants end
3 their practices in violation of the Coastal Act.

4 FIFTH CAUSE OF ACTION

5 (Daily Fines Under California Coastal Act
6 Against All Defendants for Violation
7 of the Cease and Desist Order)

8 54. The Plaintiff incorporates by reference the
9 allegations contained in paragraphs 1 through 34 inclusive, of
10 this Complaint as though set forth in full.

11 55. The Coastal Act provides pursuant to Public
12 Resources Code section 30821.6(a) as follows:

13 "Any person . . . who intentionally or
14 negligently violates any cease and desist
15 order issued, reissued, or amended by . . .
16 the commission . . . may be liable civilly in
17 a sum of not to exceed six thousand dollars
(\$6,000) for each day in which that violation
persists. Any actual penalty imposed shall
be reasonably proportionate to the damage
suffered as a consequence of the violation."

18 56. Defendants failed to comply with the Cease and
19 Desist Order.

20 57. In light of Defendants' disregard of the Cease and
21 Desist Order, Defendants are liable for daily fines in the amount
22 of \$6,000 for each day of noncompliance since January 18, 1994,
23 up to and including the date Defendants comply with the Cease and
24 Desist Order.

25 WHEREFORE, Plaintiff prays for judgment against the
26 Defendants, and each of them, as follows:

27 / / /

engaging in or permitting activities in violation of the Coastal Act concerning the Subject Properties;

FOURTH CAUSE OF ACTION

6. For daily fines in the amount of up to \$5,000 per day against each Defendant for each day violations of the Coastal Act persisted after 1980 but before January 1, 1993;

7. For daily fines in the amount of up to \$15,000 per day against each Defendant for each day violations of the Coastal Act persisted and continue to persist after December 31, 1992, up to and including the date Defendants restore the Subject Properties to their pre-violation condition;

FIFTH CAUSE OF ACTION

8. For a daily civil fine of \$6,000 against each Defendant for each day from the commencement of the violation of the Cease and Desist Order issued November 16, 1993, up to the date Defendants submit a complete CDP application to either restore the Subject Properties to their pre-violation condition or after-the-fact authorization of the unpermitted development;

ON ALL CAUSES OF ACTION

9. For Plaintiff's attorneys' fees and other costs of suit incurred in defending and prosecuting the above-captioned action;

10. For interest as allowed by law; and

/ / /

/ / /

/ / /

1 11. For such other and further relief as the Court
2 deems just and proper.

3 DATED: January 20, 1995.

4
5 DANIEL E. LUNGREN, Attorney General
6 of the State of California
7 JAN S. STEVENS,
8 Assistant Attorney General
9 G.R. OVERTON,
10 PATRICK T. BROOKS,
11 DANIEL A. OLIVAS
12 Deputy Attorneys General

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G.R. OVERTON
Deputy Attorney General

Attorneys for Plaintiff
California Coastal Commission

witer2.gro

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

SHORT CASE TITLE

CASE NUMBER

CCC v. WITTER & RICHARDSON, et al.

CERTIFICATE OF ASSIGNMENT

File this certificate with all cases presented for filing in all districts of the Los Angeles Superior Court.

- ☐ The undersigned declares that the above entitled matter is filed for proceedings in the WEST District of the Los Angeles Superior Court under Section 392 et seq., Code of Civil Procedure and Rule 2 (c) and (d) of this court for the reasons checked below. The address of the accident, performance, party, detention, place of business, or other factor which qualifies this case for filing in the above designated district is (not required for non-tort cases filed in Central District):

NAME: (INDICATE TITLE OR OTHER QUALIFYING FACTOR) Property location			ADDRESS: 2100 McReynolds Road (near Latigo Canyon Road)
(CITY) Malibu	(STATE) CA	(ZIP CODE) 90265	

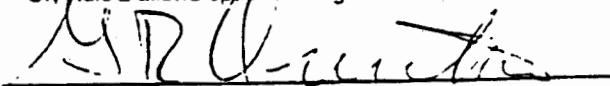
☐ JURY TRIAL ☐ NON-JURY TRIAL TIME ESTIMATED FOR TRIAL _____ ☐ HOURS / ☐ DAYS.

CHECK ONLY ONE NATURE OF ACTION.

NATURE OF ACTION	GROUND	NATURE OF ACTION	GROUND
<input type="checkbox"/> A7100 Vehicle Accident <input type="checkbox"/> A7210 Med Malpractice <input type="checkbox"/> A7200 Other Personal Inj. <input type="checkbox"/> A7220 Product Liability <input type="checkbox"/> A6050 Other Malpractice <input type="checkbox"/> A6012 Collection/Note <input checked="" type="checkbox"/> A6040 Injunct Relief <input type="checkbox"/> A6030 Declar Relief <input type="checkbox"/> A6170 Late Claim Relief <input checked="" type="checkbox"/> A6000 Other Complt. (Specify): <u>Civ. Penalties</u>	(The cause of action arose within the district.) or (One or more defendants resides within the district.) or Rule 2 allows filing in Central District (non-torts only).	<input type="checkbox"/> A5520 Regular Dissolution <input type="checkbox"/> A5525 Summary Dissolution <input type="checkbox"/> A5530 Nullity <input type="checkbox"/> A5510 Legal Separation <input type="checkbox"/> A6135 Foreign Support <input type="checkbox"/> A6136 Foreign Custody <input type="checkbox"/> A6122 Domestic Violence <input type="checkbox"/> A6130 Family Law Complaint-Other <input type="checkbox"/> A6132 Paternity <input type="checkbox"/> A6131 DA Paternity (DA use only) <input type="checkbox"/> A6133 DA Agreement (DA use only)	One or more of the party litigants resides within the district. ** (Not a requirement for filing in Central District—Rule 2) Child resides or deceased father's probate would be filed in the district. **
<input type="checkbox"/> A6011 Contract <input type="checkbox"/> A7300 Eminent Domain <input type="checkbox"/> A6020 Landlord/Tenant <input type="checkbox"/> A6060 Real Property Rights <input type="checkbox"/> A6140 Admin Award <input type="checkbox"/> A6160 Abstract <input type="checkbox"/> A6141 Sister State Judgment <input type="checkbox"/> A7221 Asbestos <input type="checkbox"/> A6134 R.E.S.L. <input type="checkbox"/> A6111 Minor's Contract <input type="checkbox"/> A6190 Election Contest <input type="checkbox"/> A6110 Name Change <input type="checkbox"/> A6121 Civil Harassment <input type="checkbox"/> A6100 Other Petition (Specify): _____	Performance in the district is expressly provided for. ** The property is located within the district. ** The administrative tribunal is located within the district ** The judgment debtor holds property within the district ** Must be filed in the Central District One or more of the party litigants resides within the district. ** The defendant functions wholly within the district. **	<input type="checkbox"/> A6101 Agency Adoption <input type="checkbox"/> A6102 Independent Adoption <input type="checkbox"/> A6104 Stepparent Adoption <input type="checkbox"/> A6103 Adult Adoption <input type="checkbox"/> A6106 Sole Custody Petition <input type="checkbox"/> A6105 Abandonment <input type="checkbox"/> A6210 Probate Will-Letters Testamentary <input type="checkbox"/> A6211 Probate Will-Letters Administration <input type="checkbox"/> A6212 Letters of Administration <input type="checkbox"/> A6213 Letters of Special Administration <input type="checkbox"/> A6215 Spousal Property <input type="checkbox"/> A6216 Succession to Real Property <input type="checkbox"/> A6217 Summary Probate <input type="checkbox"/> A6218 Small Estate (13200 PC) <input type="checkbox"/> A6230 Conservatorship P & E <input type="checkbox"/> A6231 Conservatorship Person <input type="checkbox"/> A6232 Conservatorship Estate <input type="checkbox"/> A6233 Medical Treatment without Consent <input type="checkbox"/> A6240 Guardianship P & E <input type="checkbox"/> A6241 Guardianship Person <input type="checkbox"/> A6242 Guardianship Estate <input type="checkbox"/> A6243 Spouse Lacks Capacity <input type="checkbox"/> A6254 Trust Proceedings <input type="checkbox"/> A6200 Probate Other (Specify): _____	Petitioner resides within the district. ** or Consent to out-of-state adoption, consensor resides within the district. ** Decedent resided within the district ** or Decedent resided out of the district, but held property within the district. ** or Petitioner, conservatee or ward resides within this district. **
<input type="checkbox"/> A6151 Mandamus* <input type="checkbox"/> A6152 Prohibition* <input type="checkbox"/> A6150 Other Writ* (Specify) _____	Child is held within the District **	<input type="checkbox"/> A6260 Comp Minor's Claim (Specify): _____	

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and this declaration was executed on Jan. 20, 1995 at Los Angeles, California

**Or, Rule 2 allows optional filing in Central District.



(SIGNATURE OF ATTORNEY FILING PARTY)

* Perogative writs concerning a court of inferior jurisdiction shall be filed in Central District.

ATTORNEY MAY BE PENALIZED OR OTHER PENALTIES FOR FAILURE TO FILE IN THE PROPER DISTRICT.

Exhibit 13
CCC-05-CD-08 and CCC-05-RO-05
(Witter/Richardson) 21 of 21

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

1.0 This agreement is made and entered into by and between the CALIFORNIA COASTAL COMMISSION (hereinafter referred to as "COMMISSION") and MADALON K. WITTER and DOUGLAS RICHARDSON (hereinafter collectively referred to as "DEFENDANTS").

RECITALS

2.0 THE COMMISSION has instituted an action against the DEFENDANTS in the Superior Court of the County of Los Angeles and that action is currently pending under the caption of CALIFORNIA COASTAL COMMISSION, Plaintiff v. MADALON K. WITTER, et al., Defendants, Los Angeles Superior Court Case No. SC034859 (hereinafter referred to as "THE PENDING ACTION"). A copy of the complaint in THE PENDING ACTION is attached hereto as EXHIBIT 1.

2.1 All of the parties to this agreement are entering into it for the primary purpose of establishing a peaceful relationship free of any ongoing hostilities which result from continued litigation.

2.2 The COMMISSION and the DEFENDANTS are desirous of amicably settling the dispute which has led to the filing of THE PENDING ACTION on the terms and conditions set out below.

2.3 In entering this agreement neither defendant admits to any responsibility for the condition of the subject property as described in the complaint in THE PENDING ACTION.

AGREEMENT

3.0. **AGREED TO PAYMENTS TO THE COMMISSION:**

In consideration for the agreement of the COMMISSION to dismiss all claims without prejudice in THE PENDING ACTION arising out of alleged violations of the California Coastal Act (Public Resources Code section 30000 et seq.), the DEFENDANTS, on their own behalf, agree to pay fines in the sum of FIFTEEN THOUSAND DOLLARS AND NO CENTS (\$15,000.00) to be paid to the COMMISSION on the terms and conditions that follow:

3.0.1. **METHOD OF PAYMENT:**

At the election of the DEFENDANTS, payments on the fines may be made in one lump sum or by installments at anytime by the DEFENDANTS, but no more frequently than once every six months commencing from the last date appearing on the signature page of this agreement. DEFENDANT, at their election, may defer payment of the fines and any interest until sale of the property by

entering into a promissory note secured by a deed of trust satisfactory to the COMMISSION and secured by the property that is the subject of THE PENDING ACTION or other property satisfactory to the COMMISSION.

3.03 INTEREST:

Simple interest shall accrue on the declining balance of fines to be paid at the rate of 6% per year.

3.1. DISMISSALS:

Dismissals without prejudice will be entered by the COMMISSION as follows:

3.1.1. DISMISSAL WITHOUT PREJUDICE:

Upon execution of this agreement by DEFENDANTS and approval of this agreement by the COMMISSION, THE PENDING ACTION will be dismissed without prejudice by the COMMISSION.

3.2. REINSTATEMENT OF ACTION:

The DEFENDANTS and each of them agree that if the COMMISSION fails to approve a restoration application or any other application submitted pursuant to this agreement, that:

3.2.1. REINSTATEMENT OF ACTION:

The COMMISSION may, at its discretion for cause as described in section 3.2.2, reinstate the enforcement action hereby dismissed without prejudice under a new case number as if the action had never been dismissed and DEFENDANTS agree that the COMMISSION may have up to three (3) years to bring the action to trial unless the time limit is extended by a court upon noticed motion. DEFENDANTS shall retain all other defenses not otherwise expressly waived herein.

3.2.1.1 NO ADMISSION:

Nothing herein shall be construed as an acknowledgement or admission by the COMMISSION that the DEFENDANTS have any defenses.

3.2.1.2 WAIVER OF REINSTATEMENT:

Reinstatement of the action shall occur no later than the ninetieth day (90th) following discovery of grounds for reinstatement specified in 3.2.2. Failure to file within ninety (90) days shall be treated as a waiver of the COMMISSION's right to reinstate the action on the specific facts which would have supported reinstatement. Subsequent acts or omissions by

DEFENDANTS which meet the criteria of section 3.2.2 shall give rise to independent grounds for the COMMISSION to reinstate THE PENDING ACTION.

3.2.1.3 DISPOSITION OF SETTLEMENT FUNDS:

Any sums paid by DEFENDANTS on the fines prior to reinstatement of the action shall be held by the COMMISSION as a credit towards any subsequent fines due the COMMISSION or, should the COMMISSION not prevail ultimately in the reinstated action, those sums shall be refunded to the DEFENDANTS with interest at the rate of 6% per year, simple interest.

3.2.2. GROUNDS FOR REINSTITUTING THE ACTION:

Grounds for reinstituting the action shall be:

3.2.2.1. The failure of the COMMISSION to approve the DEFENDANTS' restoration application or after the fact application seeking to resolve the issues specified in section 4.1.2;

3.2.2.2. The failure or inability of DEFENDANTS to commence implementation of a COMMISSION approved permit aimed at restoring and permitting features on the property that is the subject of THE PENDING ACTION within twenty-four (24) months from the date the COMMISSION approves a permit aimed at restoring and permitting features on the property that is the subject of THE PENDING ACTION or failure to complete implementation of that permit within forty-two (42) months after approval of the plan by the COMMISSION; and,

3.2.2.3 Grounds specified in section 4.2.4.

3.2.3 ADDITIONAL TIME:

The COMMISSION may, at its discretion, extend the periods set out in sections 3.2.2.2.

4.0. RESTORATION AND AFTER-THE-FACT PERMITS:

In return for the agreements made by the COMMISSION, DEFENDANTS agree to file coastal development permit applications aimed at restoring the property and legalizing, after-the-fact, certain features on the property as described in 4.1 et seq..

4.1. CONTENT OF THE RESTORATION PLAN:

4.1.1 GENERAL PRINCIPLES:

The restoration or after-the-fact applications shall propose reasonably feasible remediation or legalization of development listed in section 4.1.2 et seq. on the subject property for which

the DEFENDANTS do not have Coastal Commission Permits and for which conditions or features the COMMISSION did not confirm as being vested in the DEFENDANTS and any subsequent owners in determining vested rights application No. VR-4-97-1. Nothing herein shall limit the discretion of any party to this settlement concerning the content of any application or the granting, denial of or conditions imposed on any permit(s) applied for arising out of or because of this settlement. All applications made by the DEFENDANTS pursuant to the terms of this settlement shall be considered by the COMMISSION under the same standards as any other similar application without prejudice due to past disagreements between the COMMISSION and the DEFENDANTS settled and disposed of by this agreement. Nothing herein shall be construed to limit the DEFENDANTS to request after-the-fact permits for any feature on the property. Nothing herein shall control the discretion of the COMMISSION concerning after-the-fact permits sought by DEFENDANTS.

4.1.2 **MATTERS TO BE ADDRESSED:**

4.1.2.1 Existing mobile homes, trailers or other similar dwellings.

4.1.2.2 Graded pads to the extent reasonably feasible.

4.1.2.3 Elimination and restoration of any unpermitted septic or sewage disposal sites or systems to the extent reasonably feasible, except septic systems serving vested residence and dwellings for which after the fact permits are obtained.

4.1.2.4 The removal of waterlines and systems for which there are no permits, except those water facilities supporting other permitted or vested development on the property or water facilities for ranch use or fire suppression.

4.1.2.5 Reconfigure the five parcels owned by DEFENDANTS to conform with permits previously issued by the COMMISSION and seek approval from all necessary authorities for lot line adjustment to conform parcels to permitted legal descriptions as necessary.

4.1.2.6 Existing roads on the property.

4.1.2.7 Dwellings on each legal parcel in conformance with the Land Use Plan (LUP) and Coastal Act other than the vested residence.

4.1.2.8 Electrical service other than vested or permitted service.

4.1.2.9 Authorization for existing animal enclosures and shelters, i.e., stables, corrals, pens, etc., in existing location or alternative locations or removal of all animal facilities.

4.1.2.10 Authorization for one water tank site per legal parcel consistent with LUP, local government standards and the Coastal Act. Removal and restoration of all other water tank sites.

4.1.2.11 Restoration to the extent reasonably feasible of all graded areas not specifically permitted or linked to a permitted or vested use by some form of vegetation.

4.2. TIME FOR FILING NECESSARY APPLICATIONS:

4.2.1. A complete application seeking boundary, lot line or subdivision adjustments shall be filed within six (6) months from the date the COMMISSION's representative signs this agreement.

4.2.2. A complete application relating to any restoration or after-the-fact permit issues not involving boundary, lot line or subdivision adjustments shall be filed no later than three (4) months from the date the COMMISSION's representative signs this agreement.

4.2.2.1. "A complete application" shall mean an application, including all addenda and supporting materials, that meets the filing criteria of the COMMISSION and for which the applicants have, prior to filing with the COMMISSION, obtained all required local government approvals.

4.2.3. The time periods set out in sections 4.2.1 and 4.2.2 may be extended by the COMMISSION's staff upon a showing of good cause.

4.2.3.1 "Good cause" for purposes of Section 4.2 shall mean any delay caused by another governmental agency in providing any authorizations needed by DEFENDANTS to complete their applications for filing with the COMMISSION or any other facts explaining delays that are not the fault of DEFENDANTS, but shall not include financial problems of any kind.

4.2.4. Failure to file completed applications within the times specified by sections 4.2.1 and 4.2.2 or extensions of those time limits granted by the COMMISSION's staff shall be grounds for the COMMISSION reinstituting THE PENDING ACTION.

5.0. ADDITIONAL AGREEMENTS:

The parties make the following additional agreements:

5.1 DUTIES RUN WITH THE LAND

This agreement and any permits approved by the COMMISSION arising out of or because of this agreement or related to the resolution of THE PENDING ACTION shall run with the land and are binding upon DEFENDANTS' successors in interest in the property that is subject to THE PENDING ACTION. In order to give effect to the intent of the parties expressed in the foregoing sentence, this agreement and any permits approved by the COMMISSION arising out of or because of this agreement or related to the resolution of THE PENDING ACTION shall be recorded in the chain of title for the properties that are the subject of THE PENDING ACTION.

5.2. TOLLING OF THE ACCRUAL OF FINES:

Upon signature of this agreement by all of the DEFENDANTS, further accrual of fines as alleged in the complaint shall be tolled pending the approval of the agreement by the COMMISSION and affixing the signature of its authorized representative to the agreement. Should the COMMISSION fail to approve the agreement, this tolling provision will expire automatically on the next day. In the event that the action is reinstated, tolling of the accrual of fines shall expire automatically on the day after the action is refiled.

5.3. ATTORNEY'S FEES AND COSTS:

Each side shall bear its own attorney's fees and costs.

5.4. VIOLATION OF THIS AGREEMENT BY THE DEFENDANTS:

5.4.1 FINES FOR BREACH:

Should DEFENDANTS or any of them violate or fail to meet any deadline or due date set by this agreement, any subsequent agreement or in any permit approved by the COMMISSION, a fine may be imposed upon the responsible¹ DEFENDANTS or each of them in the amount of \$100 for each day they are in violation of any deadline or due date.

1. "Responsible" defendant means the defendant or defendants who are most culpable for the breach of this agreement or related agreements and permits as designated by the Coastal Commission or its staff at the time of giving notice of the breach.

5.4.2 PROCEDURE FOR ASSESSMENT OF FINES:

Before any fine is imposed, the COMMISSION or its staff shall give the responsible DEFENDANTS or each of them ten (10) days written notice (by regular and certified mail, return receipt requested) of the COMMISSION'S intent to assess a fine. If at the end of the ten days the responsible DEFENDANTS are still in violation of this agreement or of any permits approved by the COMMISSION arising out of this agreement, the COMMISSION may assess a fine. The responsible DEFENDANTS shall pay the COMMISSION the fine assessed within seven (7) days of receipt of plaintiff's written notice of the assessment and amount assessed. Payment of the fine shall be made in the manner prescribed in the letter from the COMMISSION sent both by regular and certified mail. Payment shall be computed from the first day the DEFENDANTS or each of them stood in default or violation of any provision of the agreement or related permits. Payment of the fine will not relieve the DEFENDANTS or their successors in interest of their duties under this agreement or permits approved by the COMMISSION. In the event the DEFENDANTS fail or refuse to pay the fine assessed or the DEFENDANTS dispute the facts giving rise to the fine or the amount of the fine, either party may, by noticed motion, have the dispute determined by a judge of the Superior Court for the County of Los Angeles who is authorized by this agreement to review the facts supporting the assessment and the amount of the assessment and to exercise his or her discretion in determining whether the assessment is fair or if the assessment should be made under the facts presented.

5.4.3 EXCEPTIONS:

The responsible DEFENDANTS or their successors in interest shall not be liable for any fine described in sections 5.4.1 or 5.4.2 if failure to perform pursuant to the settlement or issued permits was the result of no fault of the DEFENDANTS or their successors in interest, but was the result of an Act of God, *force majeure* or the fault of third parties not under the DEFENDANTS' influence or control. Any waiver of a fine, default or violation by the COMMISSION or its staff cannot be construed as a waiver of its rights as to any other fine, default or violation of the settlement. Delays in compliance with the provisions of this agreement or any permits approved by the COMMISSION arising out of or because this agreement authorized in advance in writing by the COMMISSION or its staff will not be subject to fines.

5.4.1. The election by the COMMISSION to proceed under section 5.4 to enforce this agreement or permits approved by the COMMISSION arising out of or because of this agreement shall not bar the COMMISSION from electing to act pursuant to the provision stated above concerning renewal or reinstatement of THE PENDING ACTION.

5.5. ADDITIONAL MEANS TO ENFORCE THE AGREEMENT:

Any failure or refusal of DEFENDANTS to pay fines assessed by the COMMISSION or its staff in accordance with sections 5.4 et seq. or other failure to comply with or carry out the terms of this agreement or of any permits approved by the COMMISSION arising out of or because of this agreement may be punishable as a civil contempt at the election of the COMMISSION upon appropriate application by the COMMISSION to the court. All parties acknowledge that the court having jurisdiction over THE PENDING ACTION shall retain jurisdiction to enforce this agreement or any permits approved by the COMMISSION arising out of or because of this agreement and to impose any order of contempt authorized by law to secure compliance with this agreement and implementation of or compliance with the permits arising out of or because of this agreement.

5.6. TIME FOR IMPLEMENTATION OF AGREEMENT:

The parties agree that time is of the essence in implementing this agreement.

5.7. WAIVER OF THE BENEFITS OF CIVIL CODE SECTION 1542:

All of the parties having been fully apprised of the nature and effect of the provisions of Section 1542 of the California Civil Code waive all rights which they may have against the other, both known and unknown which might otherwise exist by virtue of the provisions of Section 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."

5.8. COMPROMISE, RELEASE AND SETTLEMENT OF ALL CLAIMS:

This agreement effects the compromise and settlement of disputed and contested claims between the parties regardless of the nature of the claim so long as the claim was related to THE PENDING ACTION or the facts underlying THE PENDING ACTION as alleged in the complaint.

5.9. COURT TO RETAIN JURISDICTION TO ENFORCE THE AGREEMENT:

The COMMISSION and the DEFENDANTS agree that this agreement shall be enforceable by any Judge of the Superior Court of the County of Los Angeles as if the agreement is a judgement enforceable

pursuant to *California Code of Civil Procedure* section 128(4) and 664.6.

5.10. **REPRESENTATIONS:**

All parties to this agreement represent and warrant that they have been afforded adequate opportunity to and have in fact reviewed the contents of this agreement with Counsel of their own choosing or voluntarily waive such review and accept the terms and conditions hereof.

5.11. **SEPARABILITY:**

The invalidity, either in whole or in part or the unenforceability of one or more 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.

5.12. **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, which apply in all respects. The paragraph headings have been inserted for convenience of reference only and shall not affect the meaning or context in which this agreement is interpreted.

5.13. **INTEGRATION:**

This agreement constitutes the entire agreement of the parties pertaining to the dispute which gave rise to the filing of THE PENDING ACTION 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. 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, except for any permits approved by the COMMISSION arising out of or because of this agreement.

5.14. **EXECUTION IN COUNTERPART:**

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 WHEREFORE the parties have caused this agreement consisting of eight (10) pages to be executed:

DATE: October 23, 1998

Nancy Cave
CALIFORNIA COASTAL COMMISSION
By NANCY CAVE, Supervisor
Statewide Enforcement Program

DATE: Oct 9, 1998

Madalon K. Witter
MADALON K. WITTER
Defendant

DATE: Oct 9, 1998

Douglas Richardson
DOUGLAS RICHARDSON
Defendant

APPROVED AS TO FORM:

DATE: Oct 8, 1998

G. R. Overton
G. R. OVERTON,
Deputy Attorney General
Attorney for the California
Coastal Commission, Plaintiff.

DATE: Oct 9, 1998

Morton C. Devor
MORTON C. DEVOR
Attorney for Madalon K. Witter
and Douglas Richardson

witer2.set

5-82-377

CALIFORNIA COASTAL COMMISSION
631 Howard Street, San Francisco 94105 - (415) 543-2555

COASTAL DEVELOPMENT PERMIT

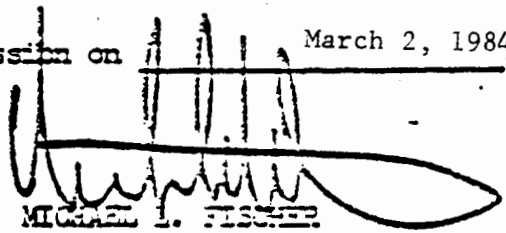
On August 25, 1982, by a vote of 8 to 2, the California Coastal Commission granted to Douglas Richardson, Richard Brooke, Jr., Christopher Bro Permit A- 5-82-377, subject to the conditions set forth below, for development consisting of Subdivision of 42 acre parcel into four parcels of 11.9, 6.25, 11.99 and 12 acres. Property currently contains two houses and two wells.

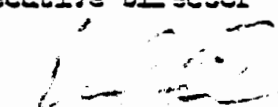
more specifically described in the application file in the Commission offices.

The development is within the coastal zone in Los Angeles County at 2100 McReynolds Road, Malibu, California

After public hearing held on August 25, 1982, the Commission found that, as conditioned, the proposed development is in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976; will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976; is between the sea and the public road nearest the sea, is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act of 1976; and either (1) will not have any significant adverse impact on the environment, or (2) there are no feasible alternatives or feasible mitigation measures available that would substantially lessen any significant adverse impact that the development as approved may have on the environment.

Issued on behalf of the California Coastal Commission on March 2, 1984.


MICHAEL I. FISCHER
Executive Director

By 
Randal Friedman
Permit Analyst

The undersigned permittee acknowledges receipt of the California Coastal Commission Permit A- 5-82-377, and fully understands its contents, including all conditions imposed.

Exhibit 15
CCC-05-CD-08 and CCC-05-RO-05
(Witter/Richardson) Page 1 of 12

Date

Permittee

A. Standard Conditions.

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

B. Special Conditions.

1. Revised Plans. Prior to the issuance of permit the applicant shall submit for the review and approval of the Executive Director a revised tentative tract map, approved by Los Angeles County, reducing the subdivision to three (3) lots, and identifying building sites acceptable to the Executive Director.
2. Transfer of Development Credit. Prior to issuance of permit applicant shall submit for the review and approval of the Executive Director one (1) transfer of development credit pursuant to Section VII of the Malibu/Santa Monica Mountains Interpretive Guidelines.
3. Waiver of Liability. Prior to issuance of permit, applicant shall submit to the Executive Director a deed restriction for recording free of prior liens

except for tax liens, that bind the applicant and any successors in interest. The form and content of the deed restriction shall be subject to the review and approval of the Executive Director. The deed restriction shall provide (a) that the applicants understand that the site may be subject to extraordinary hazard from fire damage, and the applicants assume the liability from those hazards; (b) the applicants unconditionally waive any claim of liability on the part of the Commission or any other public agency for any damage from such hazards; and (c) the applicants understand construction in the face of these possible known hazards may make them ineligible for public disaster funds or loans for repair, replacement, or rehabilitation of the property in the event of fire damage.

California Coastal Commission
631 Howard Street, 4th floor
San Francisco, California 94105
(415) 543-8555

Date filed: 6/16/82
49th Day: 8/4/82
180th Day: 12/10/82
Staff Analyst: RF [initials]
Staff Report: 9/3/82
Hearing Date: 9/22-24/82

PROPOSED FINDINGS

Application No. 5-82-377

Applicant: Douglas Richardson, Richard Brooke, Jr., Christopher Brooks

Description: Subdivision of 42 acre parcel into four parcels of 11.9, 6.25, 11.99, and 12 acres. Property currently contains two houses and two wells. (Exhibit 2)

Site: 2100 McReynolds Road, Malibu, Los Angeles County (Exhibit 1)
APN 4464-24-4

Substantive File Documents:

1. Malibu/Santa Monica Mountains Area Plan
2. Santa Monica Mountains Comprehensive Plan
3. Malibu/Santa Monica Mountains Interpretive Guidelines
4. Appeal No. 132-80, 196-81, 170-79

Vote Taken: August 25, 1982

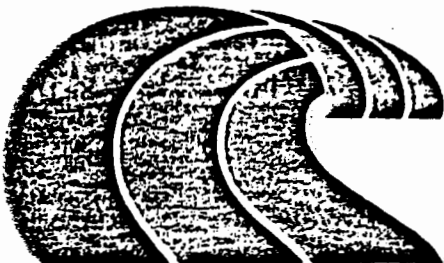
Prevailing Side: Flynn, King, McCarthy, McNeil, Ramos, Corbett, Shipp and Wornum

STAFF RECOMMENDATION

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions

The Commission hereby grants, subject to the conditions below, a permit for the proposed development on the grounds that, as conditioned, the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program in conformity with the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.



(9/22-24/82)

II. Standard Conditions

1. Notice of Receipt and Acknowledgement. The permit is not valid and construction 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 construction has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Construction 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 construction must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. Special Conditions

This permit is subject to the following special conditions:

1. Revised Plans. Prior to the issuance of permit the applicant shall submit for the review and approval of the Executive Director a revised tentative tract map, approved by Los Angeles County, reducing the subdivision to three (3) lots, and identifying building sites acceptable to the Executive Director.
2. Transfer of Development Credit. Prior to issuance of permit applicant shall submit for the review and approval of the Executive Director one (1) transfer of development credit pursuant to Section VII of the Malibu/Santa Monica Mountains Interpretive Guidelines.
3. Waiver of Liability. Prior to issuance of permit, applicant shall submit to the Executive Director a deed restriction for recording free of

prior liens except for tax liens, that bind the applicant and any successors in interest. The form and content of the deed restriction shall be subject to the review and approval of the Executive Director. The deed restriction shall provide (a) that the applicants understand that the site may be subject to extraordinary hazard from fire damage, and the applicants assume the liability from those hazards; (b) the applicant's unconditionally waive any claim of liability on the part of the Commission or any other public agency for any damage from such hazards; and (c) the applicants understand construction in the face of these possible known hazards may make them ineligible for public disaster funds or loans for repair, replacement, or rehabilitation of the property in the event of fire damage.

IV. Findings and Declarations

The Commission finds and declares as follows:

1. Project Description. The proposed development consists of the division of a 42.6 - acre site into approximately three 12-acre parcels and one 6-acre parcel off of Latigo Canyon Road approximately 4 miles inland of the intersection of Latigo Canyon Road and Pacific Coast Highway, Malibu, Los Angeles County (Exhibits 1, 2). The project site can be characterized as undeveloped mountainous terrain bisected by a U.S.G.S. recognized intermittent creek. The project site contains slopes ranging from 2,200 feet above sea level to 1,825 feet. Access to the site is provided by private dirt roads, none of which have a defined location on record with the County. Wells exist on two of the proposed lots; the nearest water line is adjacent to Latigo Canyon Road. The subject property is not located in an existing developed area as designated by the Malibu/Santa Monica Mountains Regional Interpretive Guidelines. A 3-way land division was approved by the the Regional Committee in 1980. This approval was denied on appeal by the Commission (Appeal 132-80). With public acquisition of three surrounding parcels, which remove them from consideration, the proposed land division is now consistent with the technical criteria of the Coastal Act.

2. Land Division Analysis. Section 30250(a) of the Coastal Act provides:

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

a. Concentration of Development. The Commission has repeatedly found that the goal of Section 30250(a) is first to promote the infilling of existing developed areas and then, if appropriate, the orderly expansion of such developed areas, thereby concentrating development and avoiding sprawl into areas with significant

resources value. In general, the Malibu/Santa Monica coastal zone is not able to accommodate substantially intensified development due to the constrained road network, severe geologic, fire, and flood hazards, a large diversity of special and sensitive habitat areas and a growing importance as a recreational and scenic resource to the metropolitan Los Angeles area. Of the portion of the carrying capacity which is allocated to allow further residential development, the highest priority should go to existing parcels within the existing developed areas designated in the Malibu/Santa Monica Mountains Regional Interpretive Guidelines. Exceptions to this policy have been allowed only if the effects of the land division are mitigated by offsetting elimination of the development potential of existing parcels in the area pursuant to the Commission's Transfer of Development Program. The Commission has found that allowance of rural land divisions without mitigation would be inconsistent with the policies of the Coastal Act of 1976.

While the project site is in a remote portion of the Santa Monica Mountains the site itself comprises a generally self-contained mountain valley. This valley is already served by roads, and contains two wells and two existing homes. Furthermore, this area does not represent a presently undeveloped and uncommitted area. Directly to the south is a three lot subdivision on 15 acres, approved by the South Coast Regional Commission in 1978. Houses exist on surrounding parcels as well as the two homes on the subject parcel. As a result, approval of this application would not represent commitment of a new, environmental sensitive area as was the case when the Commission considered Application No. 5-82-164 (Rabkin et al). That application proposed development that would have significantly extended road and water service, and would have introduced a large residence at the edge of environmentally sensitive habitat where no development presently existed in the immediate area; the subject application does not contain any environmentally sensitive habitat, and can be characterized as more of large lot infilling in a previously committed area.

The Commission further notes that there can be no further subdivision in the surrounding mountains as the National Park Service has acquired land on three sides of the subject parcel. The remaining side is the existing three lot subdivision referenced above. As the National Park Service holdings are located in different watersheds, this project will not adversely affect any of these park lands.

The Commission therefore finds that approval of this project will not lead to a sprawling of development in the interior Santa Monica Mountains, and represents the last portion of rural subdivision in an area already committed to such uses. The Commission therefore finds the proposed project, as conditioned, is consistent with Section 30250(a) of the Coastal Act.

b. Plan Density. The Los Angeles County Department of Regional Planning in 1976 began a local planning program as part of its General Plan Revision Program for the unincorporated land within Los Angeles County in the Santa Monica Mountains.

As a means of keeping open planning options prior to the adoption of the Los Angeles County LCP, and in order to protect the years of on-going planning efforts by Los Angeles County to prepare a new County Area Plan, the land division guidelines for Malibu/Santa Monica Mountains require that all proposed subdivisions not exceed the density designations in the County's Area Plan completed by their Citizens' Advisory Committee.

Under the proposed Malibu/Santa Monica Mountains Area Plan of Los Angeles County dated December 4, 1979, the subject 42-parcel has been classified in part as Rural Land I and in part as Mountain Land II.

Roughly 35% of the 42-acre site, or 14.7 acres, is classified as Rural Land I. The proposed County Development Policy Map describes Rural Land a generally low intensity, rural area characterized by rolling to steep terrain usually outside established rural communities. Typical land uses include: Large lot residential, low intensity commercial recreational uses, agricultural activities, and less intensively developed or open space portions of urban and rural developments. The following maximum residential density standard shall apply:

Rural Land I - one dwelling unit per ten acres average.

Roughly 65% of the 42-acre site, or 27.3 acres, is classified as Mountain Land II. The proposed County Development Policy Map describes Mountain Land as generally very rugged terrain and/or remote land characterized by extremely low intensity rural development. Typical uses could include: very low intensity residential development; low intensity recreational uses, and the undeveloped or open space portions of rural and urban developments. The following maximum residential density standard shall apply:

Mountain Land II - one dwelling unit per 20 acres average.

Based on these designations, the draft Area Plan would allow a maximum of 2.8 units on the applicant's property. Given the approximation on which this estimate is based, the proposed subdivision is consistent with this plan.

The Malibu/Santa Monica Mountains Interpretive Guidelines adopted by the Commission contain a provision whereby new land divisions cannot exceed the density recommendations of the Area Plan, an implicit recognition of the soundness of the resource based planning effort utilized in preparation of the plan. Commission staff has submitted detailed comments to the Los Angeles County Department of Regional Planning that while the Malibu/Santa Monica Mountains Area Plan was not done pursuant to the Local Coastal Program requirements of the Coastal Act, the plan nevertheless provides a foundation for the preparation of a Local Coastal Program if certain deficiencies are corrected. These deficiencies include, but are not limited to, a program to mitigate the cumulative impacts of new land divisions and protection of environmental sensitive habitat areas. The staff comments note that with the exception of these deficiencies, the density shown in the plan completed by the Citizens' Committee is adequate to prevent the on-site impacts of new subdivisions.

Therefore, approval of this application would not undercut the Area Plan, and would not be inconsistent with the Malibu Interpretive Guidelines which use the Area Plan as a density ceiling for new land divisions.

The Commission finds that the original Malibu/Santa Monica Mountains Area Plan is based on sound environmental planning principles and does represent a dramatic improvement in Los Angeles County planning efforts to protect the many unique resources found in the Santa Monica Mountains coastal zone. The Commission finds that the Area Plan does provide a firm foundation for the preparation of the Local Coastal Program as it does contain policies and land use recommendations that

recognize these resources, and to a large extent protects the resources of the Santa Monica Mountains. The Commission therefore finds that the subject application at this time can be approved as conditioned so as to not prejudice the ability of Los Angeles County and the Commission to objectively consider the use of this plan as fulfilling the Local Coastal Program requirements of the Coastal Act.

c. Cumulative Impacts. Section 30250(a) requires that new development, including subdivisions, can only occur where public services are adequate and only where coastal access and resources will not be cumulatively affected by such development. In previous permit actions, the Commission has found that subdivisions in the Santa Monica Mountains will cause adverse direct and cumulative impacts on the ability of Pacific Coast Highway and narrow trans-mountain roads providing access to beach and mountain recreation areas. The Commission has recognized that the creation of new building sites in the area, thus committing the land to more intense development, while a very large number of undeveloped lots already exist, would cause adverse effects on wildlife habitat, scenic and visual resources, natural landforms and potential future recreational use of the mountains. Development on new parcels would also cause an increase in the risks to life and property due to high geologic and flood hazards common to the entire region and would increase the amount of erosion due to grading for roads, utilities and building pads.

The Commission has instituted the Transfer of Development Credit (TDC) program to allow the applicant for a land division (in an area appropriate for increased densities), to mitigate the adverse cumulative effects of the land division by eliminating the potential for development on existing subdivided lots in small lot subdivisions, Appeal No. 196-81 (Malibu Pacifica).

While normally a three way subdivision of a single parcel would require two (2) TDC's, the Commission notes that there are two existing residences on the property. It has been the Commission's past policy to not require TDC's for subdivision of property already containing more than one residential unit, so long as there is not a net increase in the number of units. As such, only one TDC is required for this project. As conditioned, the applicant must acquire one TDC to mitigate the third home which can be constructed on the property. Therefore, the Commission finds that the proposed division of land, as it will not cumulatively impact coastal resources, is consistent with the resource protection policies of Chapter 3 of the Coastal Act of 1976.

MAP I-

Development Potential

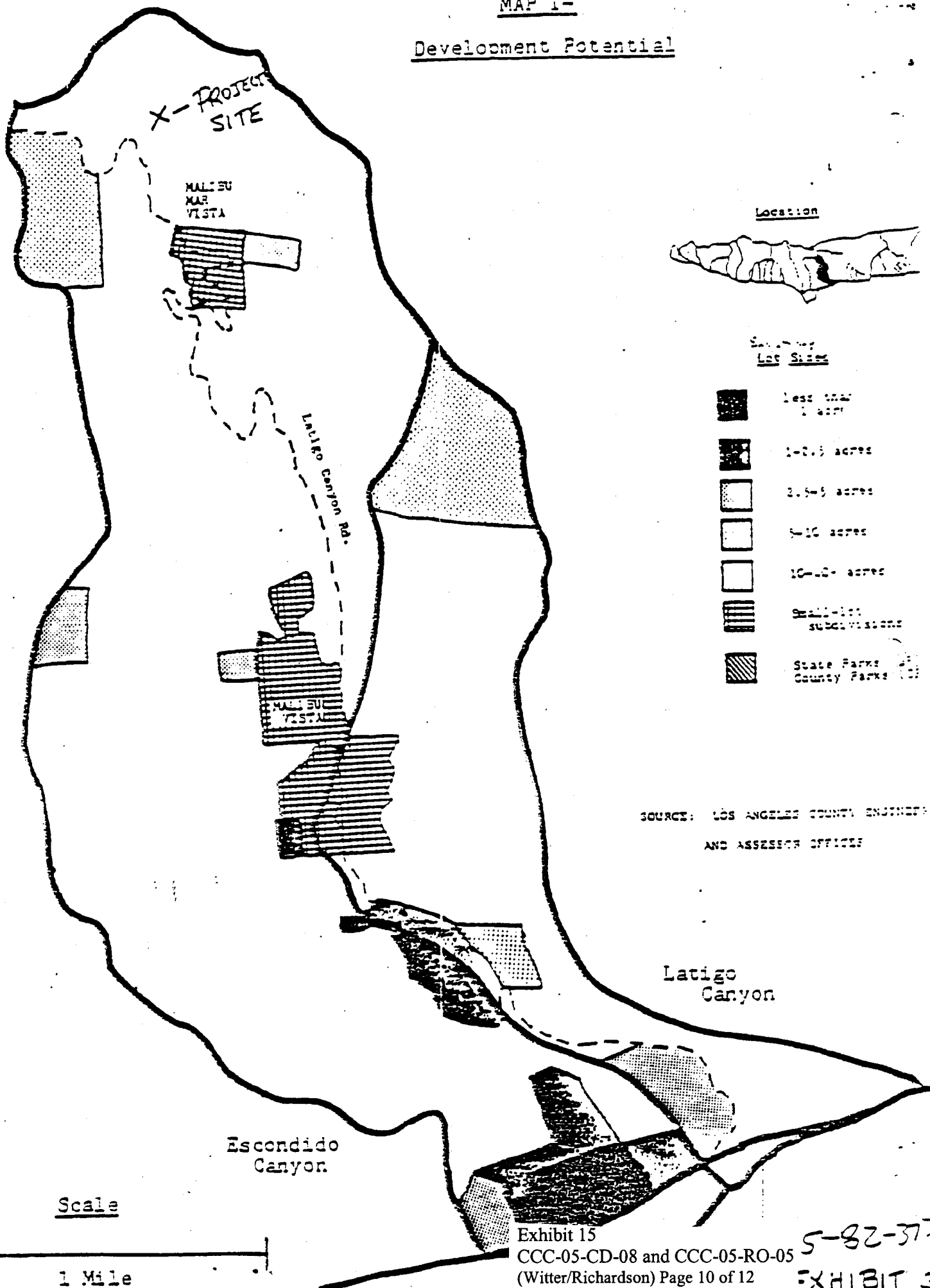


Exhibit 1
5-82-377

**los angeles county
coastal zone**

malibu

Revised April 1964

Approved for release by NSA on 08-29-2014 pursuant to E.O. 13526

Exhibit 15
CCC-05-CD-08 and CCC-05-RO-05
(Witter/Richardson) Page 11 of 12

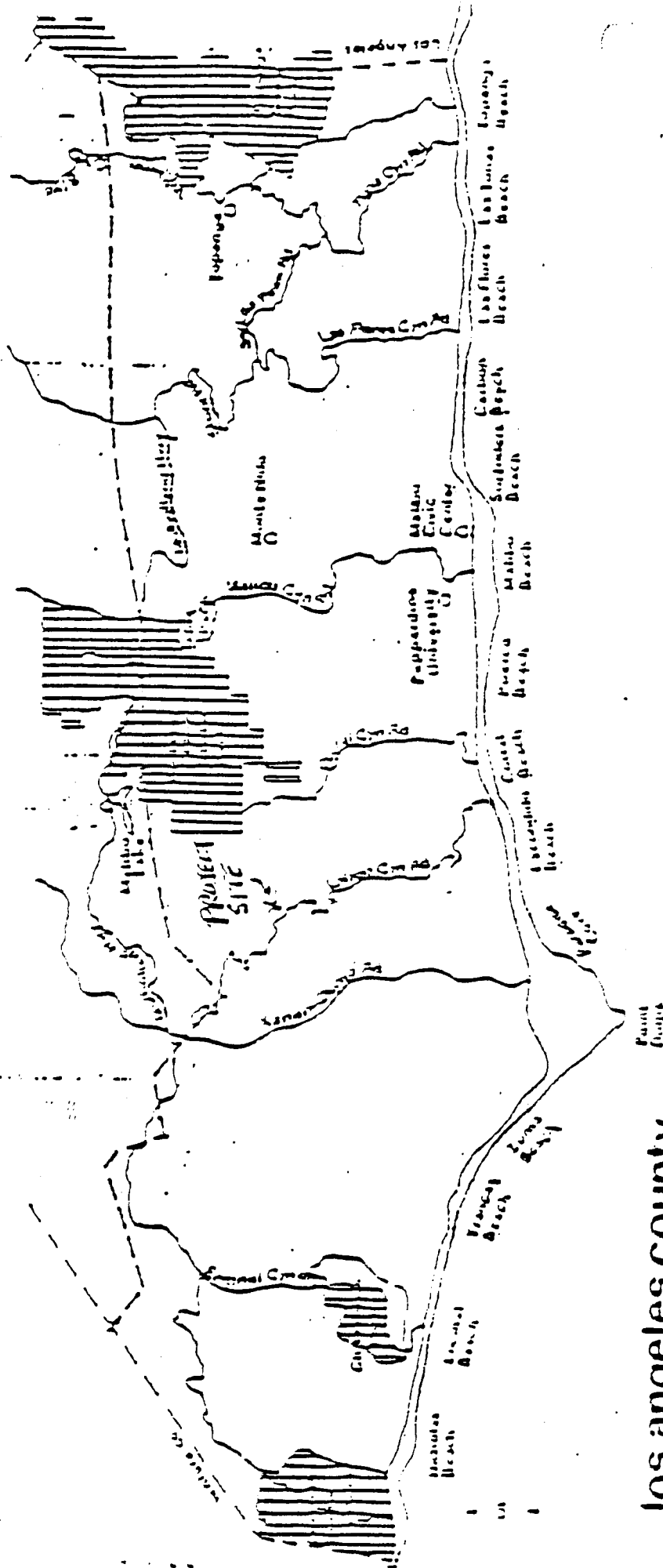


EXHIBIT 2

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
219 SOUTH CALIFORNIA STREET, SUITE 200
VENTURA, CA 93001
(805) 5-1800



DATE: November 26, 2002

Madalon Witter
2100 Mc Reynolds Road
Malibu, CA 90265

RE: Application No. 4-02-233

Dear Mr./Ms. Witter:

Your Coastal Commission application is incomplete and cannot be filed or processed until the following items have been received. These items must be received in our office by March 2, 2003.

PLEASE SEE ATTACHED CORRESPONDENCE

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

Sincerely,

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

JULIE REVELES
Office Technician

cc: Diversified Engineering Of Westlake, Inc., Attn: L. Peter Petrovsky, P E

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA

SOUTH CALIFORNIA ST., SUITE 200

FURCA, CA 93001

(805) 585-1800

4-02-235

(File No.)

MADALON WITTER

(Applicant)

PETER PETROVSKY

(Agent)

2100 McREYNOLDS ROAD, MALIBU

(Project Street and City)



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

☒ 1. Filing fee is \$ to be determined based upon the estimated cost valuation requested in item no. 7. Payable by check or money order to the California Coastal Commission. Amount due \$ to be determined.

☐ 2. Proof of the applicant's legal interest in the property. (A copy of any of the following will be acceptable: current tax bill, recorded deed, signed Offer-to-Purchase along with a receipt of deposit, signed final escrow document, or current policy of title insurance. Preliminary title reports will not be accepted.)

☒ 3. Assessor's parcel numbers as indicated on a property tax statement. The property legal description as contained in a Grant Deed is not the assessor's parcel number.

☐ 4. Assessor's parcel map(s) showing the applicant's property and all other properties within 100 feet (excluding roads) of the property lines of the project site. (Available from the County Assessor). Drawings or facsimiles are not acceptable.

☐ 5. Stamped envelopes addressed to each property owner and occupant of property situated within 100 feet of the property lines of the project site (excluding roads), along with a list containing the names, addresses and assessor's parcel numbers of same. The envelopes must be plain (i.e., no return address), and regular business size (9 1/2 x 4 1/8"). Include a first class postage stamp on each one. Metered envelopes are not acceptable. Mailing list must be on the format shown on page C-1 of the application packet.

☐ 6. Enclose appropriate map(s) indicating location of property in relation to the coastline. Thomas-Brothers map, road map or area maps prepared by local governments may provide a suitable base map.

☒ 7. Cost valuation by restoration ecologist for the development.

☐ 8. Copies of required local approvals for the proposed project, including zoning variances, use permits, etc. Include minutes of any public hearing.

- __9. Verification of all other permits, permissions or approvals applied for or granted by public agencies (e.g., Dept. of Fish and Game, State Lands Commission, U.S. Army Corps of Engineers, U.S. Coast Guard).
- __10. Where septic systems are proposed, percolation test prepared by a qualified sanitarian or soils engineer.
- __11. County or City Health Department review of septic system.
- __12. Where water wells are proposed, evidence of County or City review and approval.
- X__13. 2 set(s) of project drawings including site plans, floor plans, and all elevations. Drawing must be to scale with dimensions shown. Trees to be removed must be marked on the site plan. All oak trees and riparian vegetation (canopy), streams and drainages, wetlands, easements, and public hiking and equestrian trails (including existing offers to dedicate trails) must be identified on the site plan. Plans must be approved by the planning department and stamped "Approval-in-Concept." We need 2 more set(s). See STAFF NOTES PG. 4
- __14. ___ set(s) of detailed grading and drainage plans with cross-sections through all proposed structures and quantitative breakdown of grading amounts (cubic yards of cut and fill). Plans must be to scale and prepared by a registered engineer. We need ___ more set(s).
- __15. A comprehensive, current (not more than 1 year old), site-specific geology and soils report (including maps) prepared in accordance with the Guidelines for Engineering Geologic Reports, prepared by the State Board of Registration for Geologists & Geophysicists (11/93).
- __16. A current (not more than 1 year old) City or County "Approved" Geologic Review Sheet.
- __17. "Approval-in-Concept" form completed by the planning department or other responsible department.
- __18. Current zoning for project site.
- X__19. A reduced set of legible drawings to 8 1/2 x 11" in size. The reduced set shall include a site plan, grading plan, ~~floor plans, elevations~~ and topography if required for submittal.
- __20. For projects which include demolition, two copies of a site plan and elevations or photographs of the structure to be demolished. Demolition must be included in the "Approval-in-Concept" project description.
- __21. Remodel projects must include percent of walls to be demolished (interior and exterior), and indicate walls to be demolished and retained on-site plans.
- X__22. City or County Environmental Review Board Approval. *Site located in designated wildlife corridor.*
- __23. A copy of any Final Negative Declaration, Draft of Final Environmental Impact Report (FIR) or Final Environmental Impact Statement (FEES) prepared, for the project. Comments of all reviewing agencies and responses to comments must be included.
- __24. All projects in or adjacent to a Stream, Wetland, or possible Wetland - California Department of Fish and Game and U.S. Fish and Wildlife Service approvals.

- __25. Fire Department stamped & approved fuel (vegetation) modification plans.
- __26. Driveways, access roads, and turn-around areas - plans with preliminary Fire Department stamped approval.
- __27. Preliminary approval from the Regional Water Quality Control Board. Single family dwellings and additions to existing structures are excluded.
- __28. An archaeological report developed by a qualified archaeologist regarding the presence and significance of archaeological and cultural resources.

The Application Form

- __1. The application must be signed by the applicant (original signature) and the applicant's representative, if representative is authorized to represent applicant. *Pgs. 8 + 9 Attached*
- __2. If application is not signed by the applicant(s), a letter executed by the applicant(s) which authorizes the representative to act in his /her behalf and to bind the applicant(s) in all matters concerning his/her application or the authorization page of the application form must be completed by the applicant.
- __3. Section 1.a. page 4 of the application must be completed. *Attached*

Development On A Beach Or Bluff

- __1. All projects on a beach require State Lands Commission determination of location of most landward property line. (State Lands Commission, 100 Howe Street, Suite 100, Sacramento, CA 95825-8202, phone (916) 574-1800. Please make reference to your Coastal Development Permit file number when contacting the State Lands Commission.
- __2. For projects on a coastal bluff or shoreline - a stringline map showing the existing, adjacent structures, decks and bulkheads in relation to the proposed development. The stringline is to be prepared in accordance with the Coastal Commission's Interpretive Guidelines.
- __3. For shoreline development and/or protective devices (seawalls, bulkheads, groins & rock blankets) - project plans with cross-sections prepared by a registered engineer. The project plans must show the project foot-print in relation to the applicant's property boundaries (include surveyed benchmarks), septic system, Mean High Tide Line (winter and summer), and the Wave Uprush Limit Line.
- __4. For shoreline development and/or protective devices a geotechnical report and wave uprush study prepared in accordance with the Commission guidelines. Copies of guidelines are available from the District Office.

Subdivision Of Property

- __1. Approved tentative tract/parcel maps with list of conditions and minutes for subdivisions and condominium projects. Maps must include location of proposed building sites (2 copies).

- __2. Comprehensive site specific geologic/soils report indicating that all lots are buildable. For Malibu/Santa Monica Mountains, must have a current (not more than one year old) Geologic Review Sheet from the city or county and two copies of a geologic and/or soils report.
- __3. Detailed grading and drainage plans with cross-sections showing all roads, building pads, and remedial grading with a quantitative break down of grading amounts.
- __4. Map showing all parcels and their sizes within a 1/4 mile radius of the property.
- __5. Percolation test results indicating lots are capable of accommodating a septic system.

Development In Small Lot Subdivisions

- __1. Surveyed topography map and gross structural area calculations for Malibu/Santa Monica Mountains small lot subdivisions. See Policy 271(b)(2) of the Malibu/Santa Monica Mountains Land Use Plan-copies available from district office.
- __2. Statement of Water Service and Access Certificate for Building Permit signed by Los Angeles County Fire Department. If Fire Department requirements include road or water installation or modifications, submit plans stamped and approved by Los Angeles County Fire Department (not required for minor additions to single family dwellings).

Staff Comments

Under certain circumstances, additional material, not previously indicated, may be required before an application can be deemed complete. The following describes additional material required for the completion of this application or provides comments on items checked above:

- ✓ *CLARIFY PROJECT PROPOSAL, INCLUDING WRITTEN DETAILED DESCRIPTION AND SITE PLAN CLEARLY ILLUSTRATING AREAS TO BE RESTORED AND BUILDING PADS/SITES TO REMAIN FOR FUTURE DEVELOPMENT. INCLUDE AN INVENTORY OF ALL STRUCTURES, DEBRIS, MATERIALS TO BE REMOVED, SUCH AS TRAILERS, ABADNONED VEHICLES, EQUIPMENT, SEPTIC SYSTEMS, ANIMAL ENCLOSURES, ETC.*
- ✓ *ACCURATE, CURRENT SITE PLAN/SURVEY PREPARED BY A LICENSED, REGISTERED SURVEYOR OR CIVIL ENGINEER ILLUSTRATING EXISTING DEVELOPMENT, INCLUDING ROADS, PADS, AND ALL STRUCTURES (I.E.: TRAILERS, POWER LINES, WATER WELLS, ETC.).*
- ✓ *A RESTORATION, REVEGETATION AND MONITORING PLAN PREPARED BY A QUALIFIED RESTORATION ECOLOGIST AND A QUALIFIED GEOLOGIST, AND POSSIBLY A QUALIFIED SOILS SCIENTIST, AS DESCRIBED IN SECTION (D), BELOW AND SHALL INCLUDE THE FOLLOWING:*
 - a) Goals and Performance Standards. Section A of the Restoration Plan shall present the following goals of the Restoration and Revegetation Project.
 1. Restoration of the property to the condition that existed prior to the unpermitted development through restorative grading of the topography in the areas impacted by the unpermitted development. Restorative grading plans should include sections showing original

and finished grades, and quantitative breakdown of grading amounts (cut/fill), drawn to scale with contours that clearly illustrate the original topography of the subject site prior to any grading disturbance. The location for any excavated material to be removed from the site as a result of the restoration of the impacted areas shall be identified. If the dump site is located in the Coastal Zone and is not an existing sanitary landfill, a Coastal Development Permit shall be required.

2. Revegetation of all graded areas and areas impacted by the removal of major vegetation so that disturbed areas have a similar plant density, total cover and species composition as that typical of undisturbed chaparral or oak woodland vegetation, as appropriate, in the surrounding area within 5 years from the initiation of revegetation activities.
3. Eradication of non-native vegetation within the areas subject to revegetation and those areas which are identified as being subject to disturbance as a result of the restoration and revegetation activities.
4. Minimization of the amount of artificial inputs such as watering or fertilizers that shall be used to support the revegetation of the impacted areas. The Restoration and Revegetation Project will not be successful until the revegetated areas meet the performance standards for at least three years without maintenance or remedial activities other than nonnative species removal.
5. Stabilization of soils so that soil is not transported off the subject property or into the chaparral or oak woodland ESHA and so that slumping, gullying, or other surficial instability does not occur.
6. Section A of the Restoration Plan shall also include specific ecological and erosion control performance standards that relate logically to the restoration and revegetation goals. Where there is sufficient information to provide a strong scientific rationale, the performance standards shall be absolute (e.g., specified average height within a specified time for a plant species).
7. Where absolute performance standards cannot reasonably be formulated, clear relative performance standards will be specified. Relative standards are those that require a comparison of the restoration site with reference sites. The performance standards for the plant density, total cover and species composition shall be relative. In the case of relative performance standards, the rationale for the selection of reference sites, the comparison procedure, and the basis for judging differences to be significant will be specified. Reference sites shall be located on adjacent areas vegetated with chaparral or oak woodland undisturbed by development or vegetation removal, within 2000 feet of the subject property with similar slope, aspect and soil moisture. If the comparison between the revegetation area and the reference sites requires a statistical test, the test will be described, including the desired magnitude of difference to be detected, the desired statistical power of the test, and the alpha level at which the test will be conducted. The design of the sampling program shall relate logically to the performance standards and chosen methods of comparison. The sampling program shall be described in sufficient detail to enable an independent scientist to duplicate it. Frequency of monitoring and sampling shall be specified for each parameter to be monitored. Sample sizes shall be specified and their rationale explained. Using the desired statistical power and an estimate of the appropriate sampling variability, the necessary sample size will be estimated for various alpha levels, including 0.05 and 0.10.

b) Restoration and Revegetation Methodology. Section B of the Restoration Plan shall describe the methods to be used to stabilize the soils and revegetate the impacted areas. Section B shall be prepared in accordance with the following directions:

1. The plan shall be designed to minimize the size of the area and the intensity of the impacts from disturbances caused by the restoration of the impacted areas. Other than those areas subject to revegetation activities, the areas of the site and surrounding areas currently vegetated with chaparral or oak woodland shall not be disturbed by activities related to this restoration project. Prior to initiation of any activities resulting in physical alteration of the subject property, the disturbance boundary shall be physically delineated in the field using temporary measures such as stakes or colored tape.
2. Specify that the restoration of the site shall be performed using hand tools wherever possible, unless it can be demonstrated to the satisfaction of the Executive Director that heavy equipment will not contribute significantly to impacts to resources protected by the Coastal Act, including, but not limited to geological instability, minimization of landform alteration, erosion and impacts to native vegetation.
3. The qualified geologist and restoration ecologist or soil scientist shall specify the methods to be used after restoration to stabilize the soil and make it capable of supporting native vegetation. Such methods shall not include the placement of retaining walls or other permanent structures, grout, geogrid or similar materials. Any soil stabilizers identified for erosion control shall be compatible with native plant recruitment and establishment. The plan shall specify the erosion control measures that shall be installed on the project site prior to or concurrent with the initial grading operations and maintained until the impacted areas have been revegetated to minimize erosion and transport of sediment outside of the disturbed areas. The soil treatments shall include the use of mycorrhizal inoculations of the soil, unless it can be demonstrated to the satisfaction of the Executive Director that such treatment will not likely increase the survival of the plants to be used for revegetation.
4. Describe the methods for revegetation of the site. All plantings shall be the same species, or sub-species, if relevant, as those documented as being located in the reference sites. The planting density shall be at least 10% greater than that documented in the reference sites, in order to account for plant mortality. All plantings shall be performed using native plants that were propagated from plants as close as possible to the subject property, in order to preserve the genetic integrity of the flora in and adjacent to the revegetation area.
5. Describe the methods for detection and eradication of nonnative plant species on the site. Herbicides shall only be used if physical and biological control methods are documented in peer-reviewed literature as not being effective at controlling the specific nonnative species that become established in the revegetation area. If herbicides are to be used in the revegetation area, specify the precautions that shall be taken to protect native plants and workers, consistent with all applicable laws and regulations.

6. Describe the use of artificial inputs, such as watering or fertilization that shall be used to support the plantings becoming established. Specify that only the minimal necessary amount of such inputs shall be used.
 7. Specify the measures that will be taken to identify and avoid impacts to sensitive species. Sensitive species are defined as: (a) species which are listed by state or federal agencies as threatened or endangered or which are designated as candidates for such listing; (b) California species of special concern; (c) fully protected or "special animal" species in California; and (d) plants considered rare, endangered, or of limited distribution by the California Native Plant Society.
- c) Monitoring and Maintenance. Section C of the Restoration Plan shall describe the monitoring and maintenance methodology and shall include the following provisions:
1. The property owner shall submit, on an annual basis for a period of five years (no later than December 31st each year) a written report, for the review and approval of the Executive Director, prepared by a qualified restoration ecologist and qualified geologist, evaluating compliance with the performance standards. 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 Restoration Plan. These reports shall also include photographs taken from pre-designated locations (annotated to a copy of the site plans) indicating the progress of recovery at the site.
 2. 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 restoration of the project site are ensured.
 3. At the end of the 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 plan to compensate for those portions of the original program that were not successful. The Executive Director will determine if the revised or supplemental restoration plan must be processed as a new coastal development permit or permit amendment.
- d) Appendix A shall include a description of the education, training and experience of the qualified geologist, restoration ecologist and soil scientist, if relevant, who shall prepare the Restoration Plan. A qualified restoration ecologist for this project shall be an ecologist, arborist, biologist or botanist who has experience successfully completing restoration or revegetation of chaparral and oak woodland habitats. If this qualified restoration ecologist does not have experience in creating the soil conditions necessary for successful revegetation of chaparral vegetation, a qualified soil scientist shall be consulted to assist in the development of the conditions related to soils in the

Revegetation and Monitoring Plan. A qualified soil scientist for this project shall be a soil scientist who has experience in assessing, designing and implementing measures necessary to create soil conditions to support revegetation and prevent instability or erosion. A qualified geologist for this project shall be a geologist who has experience evaluating and designing soil stabilization projects in the Santa Monica Mountains area.

Please Feel Free To Call With Any Questions Regarding The Items Requested Above.

BY: KARA KEMMLER, COASTAL PLANNER

DATE: NOVEMBER 27, 2002

*Cc: Peter Petrovsky, Agent
Chris Darnell, Enforcement*

Attachments (5) 2

CALIFORNIA COASTAL COMMISSION

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



DATE: November 26, 2002

Madalon K. Witter
2100 Mc Reynolds Road
Malibu, CA 90265

RE: **Application No. 4-02-234**


Dear Mr./Ms. Witter:

Your Coastal Commission application is incomplete and cannot be filed or processed until the following items have been received. These items must be received in our office by March 2, 2003.

PLEASE SEE ATTACHED CORRESPONDENCE

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

Sincerely,


JULIE REVELES
Office Technician

cc: Diversified Engineering Of Westlake, Inc., Attn: L. Peter Petrovsky, P E

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
9 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(55) 585-1800



4-02-234
(File No.)

Madalon Witter
(Applicant)

Peter Petrovsky
(Agent)

2100 McReynolds Rd, unincorp.
(Project Street and City) malibu

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

- ☒ 1. Filing fee is \$ 600. Payable by check or money order to the California Coastal Commission. Amount due \$ 350.
- ☐ 2. Proof of the applicant's legal interest in the property. (A copy of any of the following will be acceptable: current tax bill, recorded deed, signed Offer-to-Purchase along with a receipt of deposit, signed final escrow document, or current policy of title insurance. Preliminary title reports will not be accepted.)
- ☒ 3. Assessor's parcel number as indicated on a property tax statement. The property legal description as contained in a Grant Deed is not the assessor's parcel number. See page 2, item 1 of the application packet.
- ☐ 4. Assessor's parcel map(s) showing the applicant's property and all other properties within 100 feet (excluding roads) of the property lines of the project site. (Available from the County Assessor). Drawings or facsimiles are not acceptable.
- ☐ 5. Stamped envelopes addressed to each property owner and occupant of property situated within 100 feet of the property lines of the project site (excluding roads), along with a list containing the names, addresses and assessor's parcel numbers of same. The envelopes must be plain (i.e., no return address), and regular business size (9 1/2 x 4 1/8"). Include a first class postage stamp on each one. Metered envelopes are not acceptable. Mailing list must be on the format shown on page C-1 of the application packet.
- ☐ 6. Enclose appropriate map(s) indicating location of property in relation to the coastline. Thomas Brothers map, road map or area maps prepared by local governments may provide a suitable base map.

- ___7. Cost valuation by city/county or contractor for the development.
- ___8. Copies of required local approvals for the proposed project, including zoning variances, use permits, etc. Include minutes of any public hearing.
- ___9. Verification of all other permits, permissions or approvals applied for or granted by public agencies (e.g., Dept. of Fish and Game, State Lands Commission, U.S. Army Corps of Engineers, U.S. Coast Guard).
- ___10. Where septic systems are proposed, percolation test prepared by a qualified sanitarian or soils engineer.
- ___11. County or City Health Department review of septic system.
- ___12. Where water wells are proposed, evidence of County or City review and approval.
- ___13. ___set(s) of project drawings including site plans, floor plans, and all elevations. Drawing must be to scale with dimensions shown. Trees to be removed must be marked on the site plan. All oak trees and riparian vegetation (canopy), streams and drainages, wetlands, easements, and public hiking and equestrian trails (including existing offers to dedicate trails) must be identified on the site plan. Plans must be approved by the planning department and stamped "Approval-in-Concept." We need ___more set(s).
- ___14. ___set(s) of detailed grading and drainage plans with cross-sections and quantitative breakdown of grading amounts (cubic yards of cut and fill). Plans must be to scale and prepared by a registered engineer.
- ___15. Two copies of a comprehensive, current (not more than 1 year old), site-specific geology and soils report (including maps) prepared in accordance with the Guidelines for Engineering Geologic Reports, prepared by the State Board of Registration for Geologists & Geophysicists (11/93). Copies of the guidelines are available from the Coastal Commission District Office.
- ___16. A current (not more than 1 year old) City or County "Approved" Geologic Review Sheet.
- ___17. "Approval-in-Concept" form completed by the planning department or other responsible department.
- ___18. Current zoning for project site.
- ___19. A reduced set of legible drawings to 8 1/2 x 11" in size. The reduced set shall include a site plan, grading plan, elevations and topography if required for submittal.

- ___20. For projects which include demolition, two copies of a site plan and elevations or photographs of the structure to be demolished. Demolition must be included in the "Approval-in-Concept" project description.
- ___21. Remodel projects must include percent of walls to be demolished (interior and exterior), and indicate walls to be demolished and retained on-site plans.
- ___22. City or County Environmental Review Board Approval.
- ___23. A copy of any Final Negative Declaration, Draft of Final Environmental Impact Report (FIR) or Final Environmental Impact Statement (FEES) prepared, for the project. Comments of all reviewing agencies and responses to comments must be included.
- ___24. All projects in or adjacent to a Stream, Wetland , or possible Wetland - California Department of Fish and Game and U.S. Fish and Wildlife Service approvals.
- ___25. Fire Department approved fuel (vegetation) modification plans.
- ~~___26. Driveways, access roads, and turn-around areas - preliminary Fire Department Approval.~~
- ___27. Preliminary approval from the Regional Water Quality Control Board. Single family dwellings and additions to existing structures are excluded.
- ___28. An archaeological report developed by a qualified archaeologist regarding the presence and significance of archaeological and cultural resources.

THE APPLICATION FORM

- ___1. The application must be signed by the applicant (original signature) and the applicant's representative. if representative is authorized to represent applicant.
- ___2. If application is not signed by the applicant(s), a letter executed by the applicant(s) which authorizes the representative to act in his /her behalf and to bind the applicant(s) in all matters concerning his/her application or the authorization page of the application form must be completed by the applicant.
- ___3. Section ___ page ___ of the application must be completed.

DEVELOPMENT ON A BEACH OR BLUFF

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

SUBDIVISION OF PROPERTY

1. Approved tentative tract/parcel maps with list of conditions and minutes for subdivisions and condominium projects. Maps must include location of proposed building sites (2 copies).
- X2. Comprehensive site specific geologic/soils report indicating that all lots are buildable. For Malibu/Santa Monica Mountains, must have a current (not more than one year old) Geologic Review Sheet from the city or county and two copies of a geologic and/or soils report.
- X3. Detailed grading and drainage plans with cross-sections showing all roads, building pads, and remedial grading with a quantitative break down of grading amounts. *Grading estimates for as-built pads.*
- X4. Map showing all parcels and their sizes within a 1/4 mile radius of the property.
- X5. Percolation test results indicating lots are capable of accommodating a septic system.

DEVELOPMENT IN SMALL LOT SUBDIVISIONS

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

STAFF COMMENTS

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

Please provide an exhibit illustrating the existing
lot configuration (6 lots) - 85' x 11" in size.
Provide info on source of water

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

By: Kara Kemmler

Date: Nov. 26, 02

CALIFORNIA COASTAL COMMISSION

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



September 11, 2003

Madalon K. Witter
2100 McReynolds Road
Malibu, CA 90265

Re: Application No. 4-02-233 (Witter)

Dear Ms. Witter:

We are returning herewith the above referenced Coastal Commission permit application for reason of incompleteness. The application was received in this office on October 29, 2002. You were subsequently notified in a letter dated November 27, 2002 of items missing from the application necessary to complete it. Having received no response from you, we are returning the application.

Please resubmit a complete coastal permit application as soon as the requested information is available as the matter has been referred to our Enforcement Division. A request has been submitted on your behalf to refund any paid application fees. Once the request is approved this refund will be mailed directly to you. This process could take up to six weeks.

Sincerely,

A handwritten signature in black ink, appearing to read "Kara Kemmler", with a long horizontal flourish extending to the right.

Kara Kemmler
Coastal Planner

Enclosures

cc: Chris Darnell Enforcement Division, SF
Diversified Engineering of Westlake, Inc., Attn: Peter Petrovsky

CALIFORNIA COASTAL COMMISSION

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



September 11, 2003

Madalon K. Witter
2100 McReynolds Road
Malibu, CA 90265

Re: Application No. 4-02-234 (Witter)

Dear Ms. Witter:

We are returning herewith the above referenced Coastal Commission permit application for reason of incompleteness. The application was received in this office on October 29, 2002. You were subsequently notified in a letter dated November 26, 2002 of items missing from the application necessary to complete it. Having received no response from you, we are returning the application.

Please resubmit a complete coastal permit application as soon as the requested information is available as the matter has been referred to our Enforcement Division. A request has been submitted on your behalf to refund any paid application fees. Once the request is approved this refund will be mailed directly to you. This process could take up to six weeks.

Sincerely,

A handwritten signature in black ink, appearing to read "Kara Kemmler", with a long horizontal line extending to the right.

Kara Kemmler
Coastal Planner

Enclosures

cc: Chris Darnell Enforcement Division, SF
Diversified Engineering of Westlake, Inc., Attn: Peter Petrovsky

CALIFORNIA COASTAL COMMISSION

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



VIA CERTIFIED MAIL AND REGULAR MAIL

February 25, 2005

Ms. Madalon K. Witter
Mr. Douglas W. Richardson
2100 McReynolds Road
Malibu, CA 90265

Ms. Madalon K. Witter
Mr. Douglas W. Richardson
Bahia Laguna
Seine Bight Village
Belize

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

Violation No.: V-4-92-030

Location: 2100 McReynolds Road, Malibu, Los Angeles County

APNs: 4464-024-020; 4464-024-021; 4464-024-022; 4464-024-023;
4464-024-023; 4464-024-024; 4465-006-054; 4465-006-55

Violation Description: Grading, removal of major vegetation, subdivision, and placement of solid materials and erection of structures including, but not limited to at least eighteen trailers and/or mobile homes, at least two single-family residences, power transmission and distribution lines, telephone lines, buildings, driveways and/or roads, pipes, septic systems, livestock corrals, abandoned vehicles, trash, construction materials and equipment, water wells and water tanks, conducted without a Coastal Development Permit

Dear Ms. Witter and Mr. Richardson,

The purpose of this letter is to notify you of my intent, as the Executive Director of the California Coastal Commission ("Commission"), to commence proceedings for the issuance of Cease and Desist and Restoration Orders to compel the removal of unpermitted development and restoration of the site. The unpermitted development - consisting of grading, removal of major vegetation, subdivision, placement of solid materials, and erection of structures - is located on your property at 2100 McReynolds Road, in an unincorporated area of Los Angeles County ("subject property"). The subject property is located within a designated wildlife corridor and contains large, contiguous areas of chaparral and oak woodlands. The subject property also contains an intermittent blue-stream recognized by the United States Geological Survey and associated riparian habitat. Accordingly, the entire property constitutes "environmentally sensitive habitat area" ("ESHA"), that must be protected pursuant to Coastal Act Sections 30107.5 and 30240.

The purpose of these enforcement proceedings is to issue both a Cease and Desist Order and a Restoration Order. Collectively, the Cease and Desist and Restoration Orders will direct you to (1) cease and desist all construction and/or maintenance activities on the subject property that are unpermitted and subject to Coastal Act permit requirements, (2) remove all unpermitted development from the subject property, (3) restore areas of the subject property that have been negatively impacted by unpermitted development, to the condition they were in before Coastal Act violations occurred, and 4) record a merger that restores the correct number and/or configuration of the parcels.

The Coastal Act also authorizes the Commission to record a Notice of Violation for the unpermitted development at the subject property. This authority is set forth in Section 30812 of the Coastal Act, which states the following:

(a) Whenever the executive director of the commission has determined, based on substantial evidence, that real property has been developed in violation of this division, the executive director may cause a notification of intention to record a notice of violation to be mailed by regular and certified mail to the owner of the real property at issue, describing the real property, identifying the nature of the violation, naming the owners thereof, and stating that if the owner objects to the filing of a notice of violation, an opportunity will be given to the owner to present evidence on the issue of whether a violation has occurred.

If you object to the recordation of a Notice of Violation, you must respond in writing, within 20 days of the postmarked mailing of the notification of intent to record a Notice of Violation. If, within 20 days of mailing of said notification, you fail to inform the Commission of your objection, the Notice of Violation will be recorded in the Los Angeles County recorder's office as provided under Section 30812 of the Coastal Act. The Notice of Violation will become part of the chain of title of the subject property, and will be subject to review by potential buyers.

History of the Violation

On May 19, 1992, Commission staff received reports that unpermitted development had occurred on the subject property. Staff confirmed these reports by comparing aerial photographs of the property from 1975, 1979, 1986, and 1993 and through an inspection of the property conducted on October 27, 1993 pursuant to a court issued inspection warrant. An additional site inspection was conducted on October 31, 2002, confirming the continuing presence of the cited unpermitted development on the subject property.

Commission staff made numerous attempts to resolve this matter administratively. Communications initiated by staff include, but are not limited to letters dated June 18, 1992, August 3, 1992, September 9, 1992, and March 5, 1993, and telephone calls on January 12, 1993, February 25, 1993, and June 6, 1993. Staff repeatedly requested the voluntary submittal of CDP applications for the cited development and repeatedly tried to schedule meetings to discuss the cited development.

After trying for over a year to reach an amicable resolution in this matter without success, staff finally decided to commence Cease and Desist Order proceedings, pursuant to Section 30810 of the Coastal Act. As you know, the Commission unanimously approved Cease and Desist Order CCC-93-CD-03 on November 16, 1993. The order directed you to cease and desist all unpermitted development and to submit a complete CDP application seeking either to restore the site or to receive after-the-fact authorization of the development. The complete CDP application was to be filed within 60 days of the date of issuance of the order, or by January 15, 1994. As you are well aware, you failed to submit a CDP application by the prescribed deadline. The work required by the order was addressed in litigation and through a subsequent settlement agreement. Unfortunately, you also failed to comply with the terms of the settlement agreement. Enforcement of the settlement agreement is a separate legal matter and does not preclude administrative action by the Commission. In fact, when CCC-93-CD-03 was rescinded by a court order on February 5, 1997, the court noted that substantial evidence existed to support the issuance of a cease and desist order, and the court authorized the Commission to "conduct further proceedings." Furthermore, in its subsequent rescission of CCC-93-CD-03, the Commission adopted the following language as part of its findings:

The Commission notes that its decision to vacate CCC-93-CD-03 does not prevent it from considering and issuing a new cease and desist order to bring the subject property into conformity with the Coastal Act.

At no point during the almost thirteen year history of this violation have you submitted a complete CDP application for the cited development. You submitted incomplete CDP applications on January 18, 1994 and October 29, 2002. Commission staff sent you letters on February 8, 1994 and November 26, 2002 indicating that the applications were incomplete. You have never submitted the information that was requested to complete your applications. You have not removed any of the cited development or conducted any restoration at the subject property. Therefore, the Commission is now forced to initiate Cease and Desist and Restoration

Order proceedings, in order to obtain removal of the unpermitted development on your property and restoration.

Cease and Desist Order

Section 30600(a) of the Coastal Act states that development activity in the coastal zone requires a coastal development permit (CDP) before that development can occur. "Development" is defined in Section 30106 of the Coastal Act as follows:

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

Grading to create roads and pads on areas where no previous development existed or had been approved, removal of major vegetation, subdivision, and placement of solid materials and erection of structures including, but not limited to at least eighteen trailers and/or mobile homes, at least two single-family residences, power transmission and distribution lines, telephone lines, buildings, driveways and /or roads, pipes, septic systems, livestock corrals, abandoned vehicles, trash, water wells and water tanks, construction materials and equipment constitute development under Section 30106 and occurred in the Coastal Zone. The cited development is therefore subject to the permit requirement of Section 30600(a).¹ No complete CDP permit application was submitted for the cited development and, accordingly, no CDP was issued.

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

If the commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity

¹ On August 11, 1998, the Commission denied your claim of vested rights for the majority of the development on the subject property, only granting you a vested right for: 1) the 384 square foot cabin (including electrical, water, and septic services); 2) a 600 square foot garage; 3) a 168 square foot storage structure; and 4) all validly permitted electrical services so long as their service is restricted to the support of validly permitted development. Therefore, the Commission has determined that the unpermitted development identified herein is not exempt from the permit requirements of the Coastal Act. No Cease and Desist or Restoration Order issued in this matter will pertain to vested development, as determined by the Commission, and this Notice of Intent does not include the vested development.

that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person or governmental agency to cease and desist.

As mentioned above, the cited development requires a permit. No permit has been issued for the cited development. Therefore, pursuant to Section 30810(a), I am issuing this notice of intent to commence Cease and Desist Order proceedings to compel removal of existing unpermitted development and to prevent future unpermitted development on the subject property. Please be aware that under Section 30810(b) of the Coastal Act, the Cease and Desist Order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with the Coastal Act, including immediate removal of any development or material.

Restoration Order

Section 30811 of the Coastal Act authorizes the Commission to order restoration of a site under the following terms:

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

I have determined that the cited development meets the criteria of Section 30811 of the Coastal Act, based on the following:

- 1) Unpermitted development, including, but not limited to grading, removal of major vegetation, subdivision, placement of solid materials, and erection of structures has occurred on the subject property.
- 2) This development is inconsistent with the resource protection policies of the Coastal Act, including but not limited to the following:
 - a) Section 30231 [biological productivity and water quality],
 - b) Section 30240 [protection of environmentally sensitive habitat areas],
 - c) Section 30251 [alteration of natural landforms],
 - d) Section 30253(1) [risks to life and property in areas of high geologic, flood, and fire hazard].
- 3) The unpermitted development is causing continuing resource damage, as defined by Section 13190 of the Commission's regulations. The unpermitted development has impacted the resources listed in the previous paragraph (item number two). Such impacts meet the definition of damage provided in Section 13190(b): "any degradation or other reduction in quality, abundance, or other quantitative or qualitative characteristic of the resource as compared to the condition the resource was in before it was disturbed by unpermitted development." All of the impacts from the unpermitted development

continue to occur at the subject property; therefore, the damage to resources protected by the Coastal Act is continuing.

For the reasons stated above, I have decided to commence a Restoration Order proceeding before the Commission, in accordance with Section 13196(e) of the Commission's regulations, which states the following:

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

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

In accordance with Sections 13181(a) and 13191(a) of the Commission's regulations, you have the opportunity to respond to the Commission staff's allegations as set forth in this notice of intent to commence Cease and Desist Order and Restoration Order proceedings by completing the enclosed Statement of Defense form. **The Statement of Defense form must be returned to the Commission's San Francisco office, directed to the attention of Christine Chestnut, no later than March 17, 2005.**

Commission staff intends to schedule the hearings for the Cease and Desist and Restoration Orders for the Commission meeting that is scheduled for April 13-15, 2005 in Santa Barbara. If you have any questions regarding this letter or the enforcement case, please call Christine Chestnut at (415) 904-5294 or send correspondence to her attention at the address provided on the letterhead.

Sincerely,



Peter Douglas
Executive Director

Encl.: Statement of Defense form

cc (without Encl): Lisa Haage, Chief of Enforcement
Sandy Goldberg, Staff Counsel
Pat Veesart, Southern California Enforcement Team Leader
Steve Hudson, Southern California Enforcement Supervisor
Jack Ainsworth, Deputy Director for South Central District
Christine Chestnut, Headquarters Enforcement Analyst

CALIFORNIA COASTAL COMMISSION

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



VIA CERTIFIED MAIL AND REGULAR MAIL
(Article No. 7001 2510 0006 8355 4009)

March 18, 2005

Ms. Madalon K. Witter
Mr. Douglas W. Richardson
2100 McReynolds Road
Malibu, CA 90265

Ms. Madalon K. Witter
Mr. Douglas W. Richardson
Bahia Laguna
Seine Bight Village
Belize

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

Violation No.: V-4-92-030

Location: 2100 McReynolds Road, Malibu, Los Angeles County

APNs: 4464-024-020; 4464-024-021; 4464-024-022; 4464-024-023;
4464-024-023; 4464-024-024; 4465-006-054; 4465-006-55

Violation Description: Grading, removal of major vegetation, subdivision, and placement of solid materials and erection of structures including, but not limited to at least eighteen trailers and/or mobile homes, at least two single-family residences, power transmission and distribution lines, telephone lines, buildings, driveways and/or roads, pipes, septic systems, livestock corrals, abandoned vehicles, trash, construction materials and equipment, water wells and water tanks, conducted without a Coastal Development Permit

Dear Ms. Witter and Mr. Richardson,

The purpose of this letter is to notify you of my intent, as the Executive Director of the California Coastal Commission ("Commission"), to commence proceedings for the issuance of Cease and Desist and Restoration Orders to compel the removal of unpermitted development and restoration of the site. The unpermitted development - consisting of grading, removal of major vegetation, subdivision, placement of solid materials, and erection of structures - is located on your property at 2100 McReynolds Road, in an unincorporated area of Los Angeles County ("subject property"). The subject property is located within a designated wildlife corridor and contains large, contiguous areas of chaparral and oak woodlands. The subject property also contains an intermittent blue-stream recognized by the United States Geological Survey and associated riparian habitat. Accordingly, the entire property constitutes "environmentally sensitive habitat area" ("ESHA"), that must be protected pursuant to Coastal Act Sections 30107.5 and 30240.

The purpose of these enforcement proceedings is to issue both a Cease and Desist Order and a Restoration Order. Collectively, the Cease and Desist and Restoration Orders will direct you to (1) cease and desist all construction and/or maintenance activities on the subject property that are unpermitted and subject to Coastal Act permit requirements, (2) remove all unpermitted development from the subject property, (3) restore areas of the subject property that have been negatively impacted by unpermitted development, to the condition they were in before Coastal Act violations occurred, and 4) record a merger that restores the correct number and/or configuration of the parcels.

The Coastal Act also authorizes the Commission to record a Notice of Violation for the unpermitted development at the subject property. This authority is set forth in Section 30812 of the Coastal Act, which states the following:

(a) Whenever the executive director of the commission has determined, based on substantial evidence, that real property has been developed in violation of this division, the executive director may cause a notification of intention to record a notice of violation to be mailed by regular and certified mail to the owner of the real property at issue, describing the real property, identifying the nature of the violation, naming the owners thereof, and stating that if the owner objects to the filing of a notice of violation, an opportunity will be given to the owner to present evidence on the issue of whether a violation has occurred.

If you object to the recordation of a Notice of Violation, you must respond in writing, within 20 days of the postmarked mailing of the notification of intent to record a Notice of Violation. If, within 20 days of mailing of said notification, you fail to inform the Commission of your objection, the Notice of Violation will be recorded in the Los Angeles County recorder's office as provided under Section 30812 of the Coastal Act. The Notice of Violation will become part of the chain of title of the subject property, and will be subject to review by potential buyers.

History of the Violation

On May 19, 1992, Commission staff received reports that unpermitted development had occurred on the subject property. Staff confirmed these reports by comparing aerial photographs of the property from 1975, 1979, 1986, and 1993 and through an inspection of the property conducted on October 27, 1993 pursuant to a court issued inspection warrant. An additional site inspection was conducted on October 31, 2002, confirming the continuing presence of the cited unpermitted development on the subject property.

Commission staff made numerous attempts to resolve this matter administratively. Communications initiated by staff include, but are not limited to letters dated June 18, 1992, August 3, 1992, September 9, 1992, and March 5, 1993, and telephone calls on January 12, 1993, February 25, 1993, and June 6, 1993. Staff repeatedly requested the voluntary submittal of CDP applications for the cited development and repeatedly tried to schedule meetings to discuss the cited development.

After trying for over a year to reach an amicable resolution in this matter without success, staff finally decided to commence Cease and Desist Order proceedings, pursuant to Section 30810 of the Coastal Act. As you know, the Commission unanimously approved Cease and Desist Order CCC-93-CD-03 on November 16, 1993. The order directed you to cease and desist all unpermitted development and to submit a complete CDP application seeking either to restore the site or to receive after-the-fact authorization of the development. The complete CDP application was to be filed within 60 days of the date of issuance of the order, or by January 15, 1994. As you are well aware, you failed to submit a CDP application by the prescribed deadline. The work required by the order was addressed in litigation and through a subsequent settlement agreement. Unfortunately, you also failed to comply with the terms of the settlement agreement. Enforcement of the settlement agreement is a separate legal matter and does not preclude administrative action by the Commission. In fact, when CCC-93-CD-03 was rescinded by a court order on February 5, 1997, the court noted that substantial evidence existed to support the issuance of a cease and desist order, and the court authorized the Commission to "conduct further proceedings." Furthermore, in its subsequent rescission of CCC-93-CD-03, the Commission adopted the following language as part of its findings:

The Commission notes that its decision to vacate CCC-93-CD-03 does not prevent it from considering and issuing a new cease and desist order to bring the subject property into conformity with the Coastal Act.

At no point during the almost thirteen year history of this violation have you submitted a complete CDP application for the cited development. You submitted incomplete CDP applications on January 18, 1994 and October 29, 2002. Commission staff sent you letters on February 8, 1994 and November 26, 2002 indicating that the applications were incomplete. You have never submitted the information that was requested to complete your applications. You have not removed any of the cited development or conducted any restoration at the subject property. Therefore, the Commission is now forced to initiate Cease and Desist and Restoration

Order proceedings, in order to obtain removal of the unpermitted development on your property and restoration.

Cease and Desist Order

Section 30600(a) of the Coastal Act states that development activity in the coastal zone requires a coastal development permit (CDP) before that development can occur. "Development" is defined in Section 30106 of the Coastal Act as follows:

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

Grading to create roads and pads on areas where no previous development existed or had been approved, removal of major vegetation, subdivision, and placement of solid materials and erection of structures including, but not limited to at least eighteen trailers and/or mobile homes, at least two single-family residences, power transmission and distribution lines, telephone lines, buildings, driveways and /or roads, pipes, septic systems, livestock corrals, abandoned vehicles, trash, water wells and water tanks, construction materials and equipment constitute development under Section 30106 and occurred in the Coastal Zone. The cited development is therefore subject to the permit requirement of Section 30600(a).¹ No complete CDP permit application was submitted for the cited development and, accordingly, no CDP was issued.

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

If the commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity

¹ On August 11, 1998, the Commission denied your claim of vested rights for the majority of the development on the subject property, only granting you a vested right for: 1) the 384 square foot cabin (including electrical, water, and septic services); 2) a 600 square foot garage; 3) a 168 square foot storage structure; and 4) all validly permitted electrical services so long as their service is restricted to the support of validly permitted development. Therefore, the Commission has determined that the unpermitted development identified herein is not exempt from the permit requirements of the Coastal Act. No Cease and Desist or Restoration Order issued in this matter will pertain to vested development, as determined by the Commission, and this Notice of Intent does not include the vested development.

that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person or governmental agency to cease and desist.

As mentioned above, the cited development requires a permit. No permit has been issued for the cited development. Therefore, pursuant to Section 30810(a), I am issuing this notice of intent to commence Cease and Desist Order proceedings to compel removal of existing unpermitted development and to prevent future unpermitted development on the subject property. Please be aware that under Section 30810(b) of the Coastal Act, the Cease and Desist Order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with the Coastal Act, including immediate removal of any development or material.

Restoration Order

Section 30811 of the Coastal Act authorizes the Commission to order restoration of a site under the following terms:

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

I have determined that the cited development meets the criteria of Section 30811 of the Coastal Act, based on the following:

- 1) Unpermitted development, including, but not limited to grading, removal of major vegetation, subdivision, placement of solid materials, and erection of structures has occurred on the subject property.
- 2) This development is inconsistent with the resource protection policies of the Coastal Act, including but not limited to the following:
 - a) Section 30231 [biological productivity and water quality],
 - b) Section 30240 [protection of environmentally sensitive habitat areas],
 - c) Section 30251 [alteration of natural landforms],
 - d) Section 30253(1) [risks to life and property in areas of high geologic, flood, and fire hazard].
- 3) The unpermitted development is causing continuing resource damage, as defined by Section 13190 of the Commission's regulations. The unpermitted development has impacted the resources listed in the previous paragraph (item number two). Such impacts meet the definition of damage provided in Section 13190(b): "any degradation or other reduction in quality, abundance, or other quantitative or qualitative characteristic of the resource as compared to the condition the resource was in before it was disturbed by unpermitted development." All of the impacts from the unpermitted development

continue to occur at the subject property; therefore, the damage to resources protected by the Coastal Act is continuing.

For the reasons stated above, I have decided to commence a Restoration Order proceeding before the Commission, in accordance with Section 13196(e) of the Commission's regulations, which states the following:

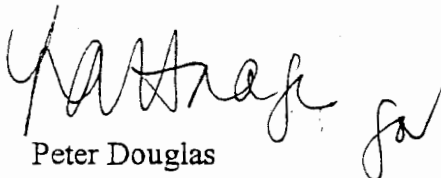
Any term which the Commission may impose which requires the removal of any development or material shall be for the purpose of restoring the property affected by the violation to the condition it was in before the violation occurred.

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

In accordance with Sections 13181(a) and 13191(a) of the Commission's regulations, you have the opportunity to respond to the Commission staff's allegations as set forth in this notice of intent to commence Cease and Desist Order and Restoration Order proceedings by completing the enclosed Statement of Defense form. **The Statement of Defense form must be returned to the Commission's San Francisco office, directed to the attention of Christine Chestnut, no later than April 8, 2005.**

Commission staff intends to schedule the hearings for the Cease and Desist and Restoration Orders for the Commission meeting that is scheduled for April 13-15, 2005 in Santa Barbara. If you have any questions regarding this letter or the enforcement case, please call Christine Chestnut at (415) 904-5294 or send correspondence to her attention at the address provided on the letterhead.

Sincerely,


Peter Douglas
Executive Director

Encl.: Statement of Defense form

cc (without Encl): Lisa Haage, Chief of Enforcement
Sandy Goldberg, Staff Counsel
Pat Veesart, Southern California Enforcement Team Leader
Steve Hudson, Southern California Enforcement Supervisor
Jack Ainsworth, Deputy Director for South Central District
Christine Chestnut, Headquarters Enforcement Analyst

CALIFORNIA COASTAL COMMISSION

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



VIA CERTIFIED MAIL and REGULAR MAIL
(Article No. 7001 2501 0006 8355 4009)

March 18, 2005

Ms. Madalon K. Witter
Mr. Douglas W. Richardson
2100 McReynolds Road
Malibu, CA 90265

Ms. Madalon K. Witter
Mr. Douglas W. Richardson
Bahia Laguna
Seine Bight Village
Belize

Subject: **Notification of Intent to Record a Notice of Violation of the Coastal Act**

Violation No.: V-4-92-030

Location: 2100 McReynolds, Malibu, unincorporated Los Angeles County
(APNs 4464-024-020; -021; -022; -023; -024 & 4465-06-054;-055)

Violation Description: Unpermitted subdivision; grading; removal of major vegetation; and placement of solid materials and erection of structures including, but not limited to at least eighteen trailers and/or mobile homes, at least two single-family residences, power transmission and distribution lines, telephone lines, buildings, driveways and/or roads, pipes, septic systems, livestock corrals, abandoned vehicles, trash, water wells and water tanks, construction materials and equipment

Dear Ms. Witter and Mr. Richardson,

The purpose of this letter is to notify you of my intent, as the Executive Director of the California Coastal Commission ("Commission"), to record a Notice of Violation of the Coastal Act for unpermitted

development consisting of subdivision, grading, removal of major vegetation, placement of solid materials, and erection of structures. The unpermitted development is located on property that you own at 2100 McReynolds Road, Malibu, Los Angeles County APNs 4464-024-020; -021; -022; -023; -024; and APNs 4465-006-054; -055 ("subject property").

"Development" is defined in Section 30106 of the Coastal Act as follows:

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

The cited development that has occurred on the subject property constitutes development under Section 30106 of the Coastal Act, and as such is subject to Coastal Act permit requirements. A search of our records indicates that no complete Coastal Development Permit application has been submitted for the unpermitted development. Consequently, no Coastal Development Permit has been issued.

The subject property is located in the Santa Monica Mountains, in an unincorporated area of Los Angeles County. The subject property lies within a designated wildlife corridor and contains large, contiguous areas of chaparral and oak woodlands, as well as a United States Geological Survey-recognized intermittent blue-stream and associated riparian habitat. Accordingly, the entire property constitutes "environmentally sensitive habitat area" ("ESHA") that must be protected pursuant to Coastal Act Sections 30107.5 and 30240.

All previous attempts to resolve this matter have been unsuccessful. Unpermitted development remains on the subject property in violation of the Coastal Act. Therefore, on February 25, 2005, I sent you a Notice of Intent to Commence Cease and Desist and Restoration Orders and a Statement of Defense form. When I spoke with Mr. Richardson on March 17, 2005 he stated that he was currently residing at the 2100 McReynolds property and regularly receives U.S. mail at this address. Accordingly, I have enclosed a second Notice of Intent and a Statement of Defense form; both with amended deadlines to reply, reflecting this second mailing. Please contact Christine Chestnut immediately at the Commission's San Francisco office at (415) 904-5294 to confirm receipt of these documents and to respond as required below, or a Notice of Violation may be recorded against your property.

Notice of Violation

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

- (a) *Whenever the executive director of the commission has determined, based on substantial evidence, that real property has been developed in violation of this division, the executive*

director may cause a notification of intention to record a notice of violation to be mailed by regular and certified mail to the owner of the real property at issue, describing the real property, identifying the nature of the violation, naming the owners thereof, and stating that if the owner

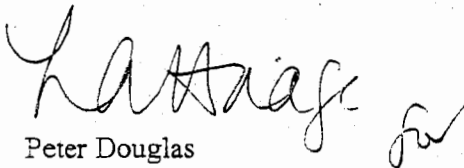
objects to the filing of a notice of violation, an opportunity will be given to the owner to present evidence on the issue of whether a violation has occurred.

I am issuing this notice of intent to record a Notice of Violation because unpermitted development has occurred at the subject property, in violation of the Coastal Act. This determination is based on staff's observations of the subject property made during site visits on October 27, 1993 and October 31, 2002, a search of Los Angeles County and Commission permit records, a vested rights determination made by the Commission on August 11, 1998, and an analysis of both recent and historical aerial photographs of the subject property. If you object to the recordation of a Notice of Violation in this matter and wish to present evidence on the issue of whether a violation has occurred, you must respond in writing, within 20 days of the postmarked mailing of the notification. If, within 20 days of the notification's mailing, you fail to inform the Commission of an objection to the recordation of a Notice of Violation, I shall record the Notice of Violation in the Los Angeles County recorder's office pursuant to Section 30812 of the Coastal Act.

If you object to the recordation of a Notice of Violation in this matter and wish to present evidence on the issue of whether a violation has occurred, you must respond in writing, to the attention of Christine Chestnut, no later than Wednesday, April 8, 2005.

If you have any questions regarding this letter or the enforcement case, please call Christine Chestnut at (415) 904-5294 or send correspondence to her attention at the address provided on the letterhead.

Sincerely,



Peter Douglas
Executive Director

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

cc: Lisa Haage, Chief of Enforcement
Sandy Goldberg, Staff Counsel
Pat Veesart, Southern California Enforcement Team Leader
Steve Hudson, Southern California Enforcement Supervisor
Jack Ainsworth, Deputy Director for Southern Central District
Christine Chestnut, Headquarters Enforcement Analyst

CALIFORNIA COASTAL COMMISSION

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



VIA CERTIFIED AND REGULAR MAIL
(Article No. 7001 2510 0009 2099 7675)

May 18, 2005

Mr. Peter Petrovsky
Diversified Engineering
31157 Lobo Vista Road
Agoura, CA 91301

Re: Violation No. V-4-92-030

Dear Mr. Petrovsky,

On March 18, 2005, Mr. Richardson informed Commission staff that you represent him and Ms. Witter with regards to all Commission enforcement actions involving Coastal Act violations on the Witter property, including receipt of mailed documents on their behalf, a designation you confirmed on March 22, 2005. Accordingly, I have enclosed a copy of the Notice of Intent to Commence Cease and Desist and Restoration Order Proceedings and the Notice of Intent to Record a Notice of Violation of the Coastal Act, which were previously sent to Ms. Witter and Mr. Richardson. The Notice of Intent to Commence Cease and Desist and Restoration Order Proceedings was sent by certified and regular mail to Ms. Witter and Mr. Richardson on February 25, 2005. On March 17, 2005, Mr. Richardson informed me that even though Commission staff mailed the Notice of Intent to the correct address, somehow neither he nor Ms. Witter received the Notice of Intent. He confirmed, on March 18, 2005, that we had the correct address, and Commission staff resent the document, along with the Notice of Intent to Record a Notice of Violation of the Coastal Act to the address he confirmed was correct. Mr. Richardson also suggested that we send the Notices to him and Ms. Witter through you, hence this letter.

A timely response is required to prevent further enforcement action in this matter. Please be advised that the deadlines that appear in the enclosed Notices of Intent correspond to the original mailing dates and so as a courtesy, we have extended them to reflect the date of this letter. **The amended deadline to respond to both Notices of Intent is June 8, 2005.** In accordance with Sections 13181(a) and 13191(a) of the Commission's regulations, Ms. Witter and Mr. Richardson, or you on their behalf, have the opportunity to respond to the allegations set forth in the enclosed Notice of Intent to Commence Cease and Desist and Restoration Order Proceedings, and to identify any issues or materials you wish the Commission to consider, by completing the

enclosed Statement of Defense form. **The completed Statement of Defense form, and any response to the Notice of Intent to Record a Notice of Violation, including identification of issues and materials for Commission consideration, must be returned to the Commission's San Francisco Office, to the attention of Christine Chestnut, no later than June 8, 2005.**

Thank you for your continued cooperation in this matter. Staff looks forward to working with you to reach an amiable resolution in this matter. If you have any questions regarding this letter or its contents, please contact me at (415) 904-5294.

Sincerely,



Christine Chestnut
Headquarters Enforcement Analyst

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

cc: Mr. Douglas Richardson and Ms. Madalon Witter
2100 McReynolds Road
Malibu, CA 90265

Mr. Douglas Richardson and Ms. Madalon Witter
Bahia Laguna
Seine Bight Village
Belize

cc (w/o Encl.): Lisa Haage, Chief of Enforcement
Sandy Goldberg, Staff Counsel
Pat Veesart, Southern California Enforcement Team Leader
Steve Hudson, Southern California Enforcement Supervisor
Jack Ainsworth, Deputy Director for South Central District

This page is part of your document - DO NOT DISCARD

05 1431648

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

3:01 PM JUN 17 2005

TITLE(S) : _____



L E A D S H E E T

FEE

FREE

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D.T.T.

CODE

20

CODE

19

CODE

9

Assessor's Identification Number (AIN)

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

Number of AIN's Shown

Exhibit 22
CCC-05-CD-08 and CCC-05-RO-05
(Witter/Richardson) Page 1 of 4

THIS FORM IS NOT TO BE DUPLICATED

05 1431648

RECORDING REQUESTED BY:

California Coastal Commission

WHEN RECORDED MAIL TO:

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

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

DOCUMENT TITLE:

NOTICE OF VIOLATION OF THE COASTAL ACT

Re: Assessor's Parcel Nos. 4464-024-020; 4464-024-021; 4464-024-022; 4464-024-023; 4464-024-024; 4465-006-054; 4465-006-055

Property Owner: Madalon Witter

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

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

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

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

I, Peter Douglas, declare:

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

**Seven parcels totaling approximately 42 acres, located at 2100 McReynolds Rd. in the Santa Monica Mountains area of unincorporated Los Angeles County:
Assessor's Parcel Numbers 4464-024-020; 4464-024-021; 4464-024-022; 4464-024-023; 4464-024-024; 4465-006-054; 4465-006-055.**

3. The real property is located within the Coastal Zone as that term is defined in Coastal Act Section 30103.
4. The record owner of said real property is: Ms. Madalon Witter.
5. The violation of the Coastal Act (Violation File No. V-4-02-032) consists of the following unpermitted development: grading, removal of major vegetation, subdivision, and placement of solid materials and erection of structures including, but not limited to at least eighteen trailers and/or mobile homes, at least two single-family residences, power transmission and distribution lines, telephone lines, buildings, driveways and/or roads, pipes, septic systems, livestock corrals, abandoned vehicles, trash, construction materials and equipment, water wells, and water tanks. These activities constitute "development" as defined in Section 30601 of the Coastal Act, and Section 30600(a) of the Coastal Act requires a coastal development permit for

development in the coastal zone. The development described above violates the Coastal Act because it is not authorized by a Coastal Development Permit.

6. The requirements set forth in Section 30812 for notice and recordation of this Notice Of Violation have been complied with. Recording this notice is authorized under Section 30812 of the California Public Resources Code.
7. I notified the record owner, Ms. Madalon Witter, of my intent to record a Notice of Violation in this matter in letters dated February 25, 2005 and March 18, 2005. Mr. Douglas Richardson, designated by Ms. Witter as manager of said real property, and Mr. Peter Petrovsky, Ms. Witter's representative in this matter, were also notified of my intent in letters dated March 18, 2005 and May 18, 2005 respectively.
8. As of this date, I have not received a written objection to the recordation of the Notice of Violation within the time frame required by Coastal Act Section 30812. Therefore, I am recording the Notice of Violation as provided for under Section 30812 of the California Coastal Act.

Executed in San Francisco, California, on June 16, 2005.

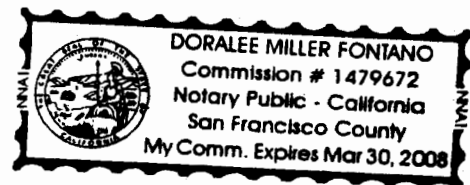
I declare under penalty of perjury that the foregoing is true and correct.

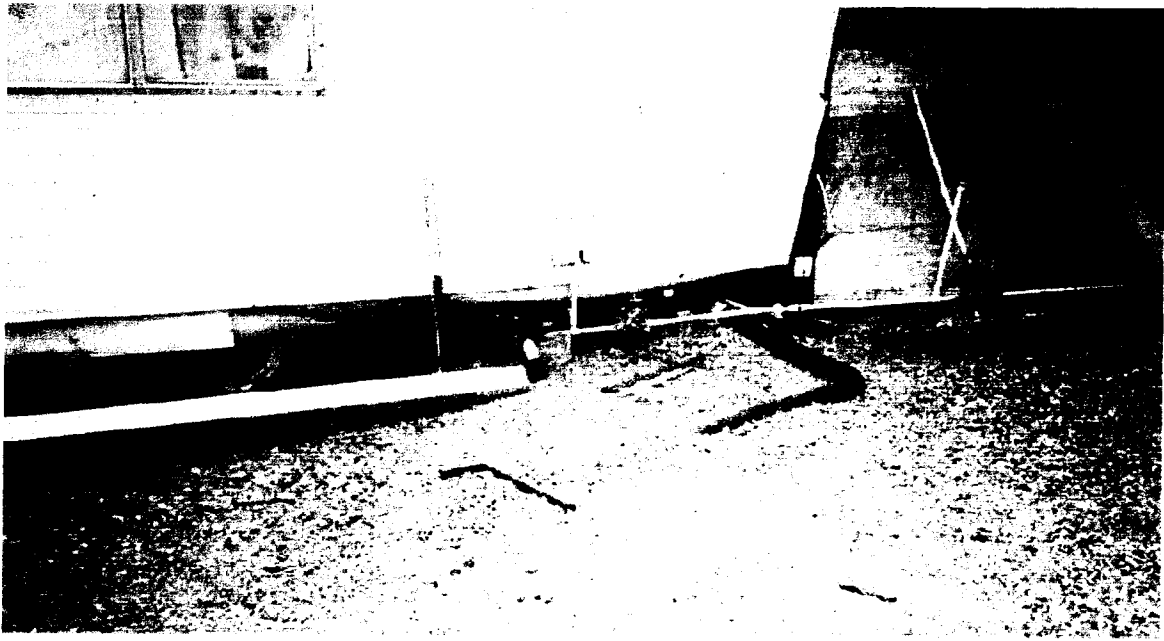
Peter Douglas
PETER DOUGLAS, Executive Director

STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

On this 16th day of June, in the year 2005, before me the undersigned Notary Public, personally appeared Peter Douglas, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument as Executive Director of the California Coastal Commission and acknowledged to me that the California Coastal Commission executed it.

Doralee Miller Fontano
Notary Public in and for Said State and County





Waste from a trailer piped directly into the ground in a heavily graded area.
Commission staff photo: 10/31/02 site visit.



Pipe leaking waste directly onto the ground. Commission staff photo: 10/31/02 site visit.



Waste from trailer leaking piped onto the ground. Commission staff photo: 10/31/02 site visit.



Graded roads, large piles of trash, trailer, horse, and stables. Commission staff photo: 10/31/02 site visit.



Graded road and pad, storage shed, discarded wood, plastic containers. Commission staff photo: 10/31/02 site visit.



Graded road and pad, abandoned vehicles, trailer, and assorted debris. Commission staff photo: 10/31/02 site visit



Graded road and driveway, bulldozer, large plastic containers, metal tank, garage, vehicles, vegetation removal. Commission staff photo: 10/31/02 site visit.



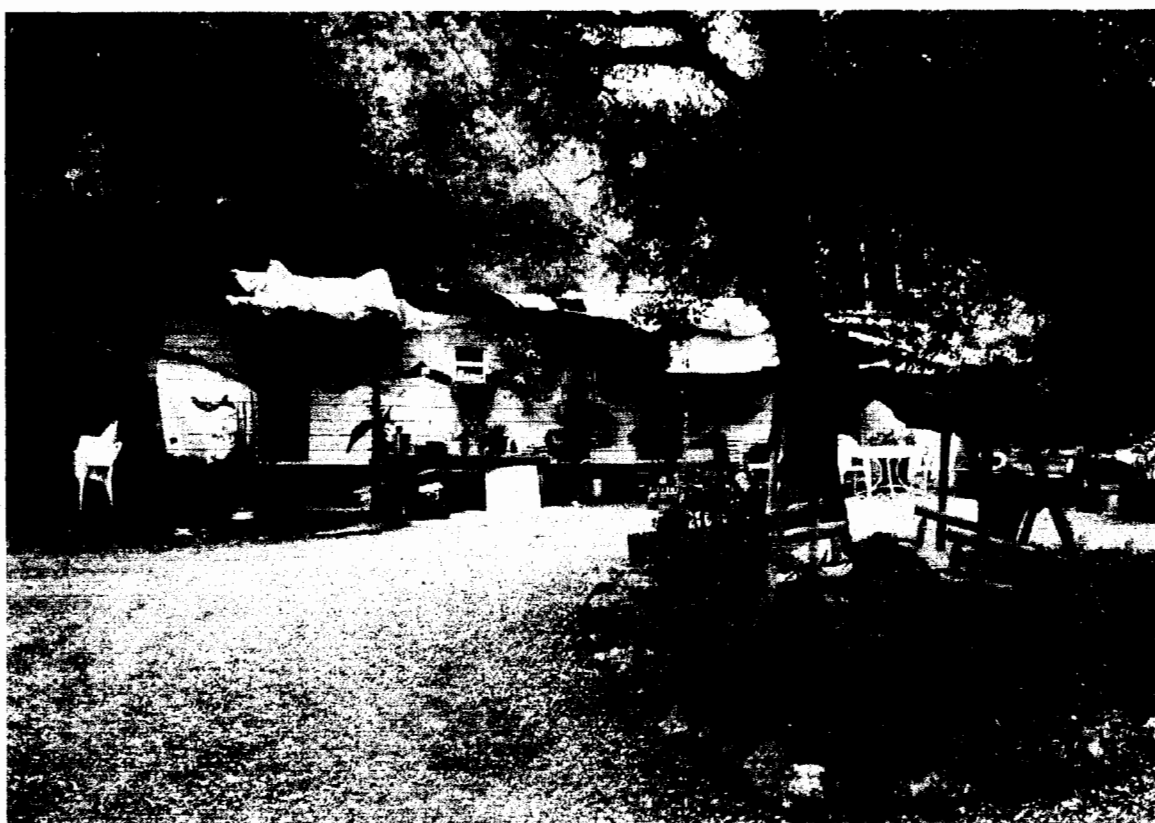
Residence (possibly a trailer), wooden fence, assorted wood, metal, and glass trash. Commission staff photo: 10/31/02 site visit.



Multiple structures, trailers, assorted containers and trash including a refrigerator. Commission staff photo: 10/31/02 site visit.



Graded pad with motor home, assorted wood scraps, and wooden structure in oak woodland area. Commission staff photo: 10/31/02 site visit.



Graded road and driveway, trailer, wooden swings. Commission staff photo: 10/31/02 site visit.



Graded pad with trailer, tent, and two metal storage structures. Commission staff photo: 10/31/02 site visit.



Photo showing scattered, rather than clustered, development and extensive unpermitted network of roads and driveways. Commission staff photo: 3/24/05 site



Exhibit 24
CCC-05-CD-08 and CCC-05-RO-05
(Witter/Richardson)



Exhibit 25
CCC-05-CD-08 and CCC-05-RO-05
(Witter/Richardson)



Exhibit 26
CCC-05-CD-08 and CCC-05-RO-05
(Witter/Richardson)

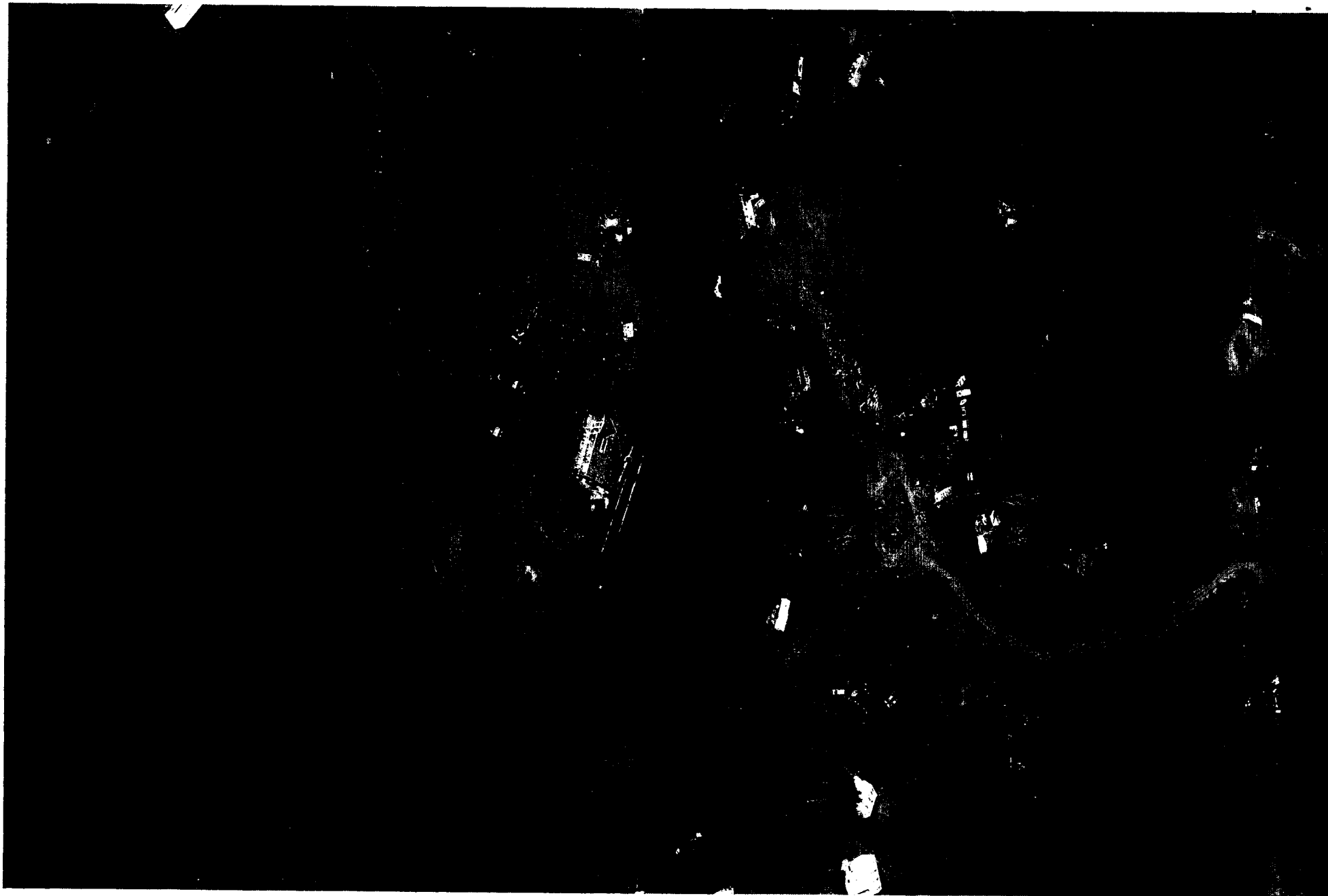


Exhibit 27
CCC-05-CD-08 and CCC-05-RO-05
(Witter/Richardson)

CALIFORNIA COASTAL COMMISSION
SOUTH COAST REGIONAL COMMISSION
666 E. OCEAN BOULEVARD, SUITE 3107
P.O. BOX 1450
LONG BEACH, CALIFORNIA 90801
(213) 590-5071 (714) 846-0648



COASTAL DEVELOPMENT PERMIT

FILE COPY

Application Number: P-2-17-78-2706

Name of Applicant: Michael E. Burrett

P. O. Box 1103, Malibu, CA 90265

Permit Type: ☐ Emergency
☒ Standard
☐ Administrative

Development Location: 2300 McReynolds Road, Malibu, CA

Development Description: Subdivide a 15-acre parcel into three parcels
and construct a 600 square foot, single-family dwelling with no garage,
17 feet above average finished grade, with conditions. Parcels will be
five acres each.

I. The proposed development is subject to the following conditions imposed pursuant to the California Coastal Act of 1976:

Prior to issuance of permit, applicant shall submit a deed restriction for
recording that: 1. there shall be no further subdivision of the three
parcels. 2. limits the use to one single-family dwelling per parcel for
each of the three parcels.

Condition/s Met On July 7, 1978

By cp

II. The South Coast Commission finds that:

A. The proposed development, or as conditioned;

1. The developments are in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976 and will not prejudice the ability of the local government to prepare a local coastal program that is in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976.
2. If located between the nearest public road and the sea or shoreline of any body of water located within the coastal zone, the development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act of 1976.
3. There are no feasible alternatives, or feasible mitigation measures, as provided in the California Environmental Quality Act, available for imposition by this Commission under the power granted to it which would substantially lessen any significant adverse impact that the development, as finally proposed may have on the environment.

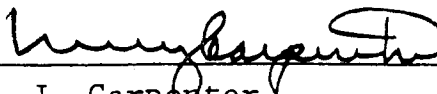
III. Whereas, at a public hearing, held on April 24, 1978 at Torrance by a 8 to 4 vote permit application number P-2-17-78-2706 is approved.

IV. This permit may not be assigned to another person except as provided in Section 13170, Coastal Commission Rules and Regulations.

V. This permit shall not become effective until a COPY of this permit has been returned to the Regional Commission, upon which copy all permittees or agent(s) authorized in the permit application have acknowledged that they have received a copy of the permit and have accepted its contents.

VI. Work authorized by this permit must commence within two years from the date of the Regional Commission vote upon the application. Any extension of time of said commencement date must be applied for prior to expiration of the permit.

VII. Issued on behalf of the South Coast Regional Commission on July 7, 197 8.



M. J. Carpenter
Executive Director

I, _____, permittee/agent, hereby acknowledge receipt of Permit Number P-2-17-78-2706 and have accepted its contents.

Exhibit 28
CCC-05-CD-08 and CCC-05-RO-05
(Witter/Richardson) Page 2 of 2

(date)

(signature)

78- 739532

RECORDED IN OFFICIAL RECORDS
OF LOS ANGELES COUNTY, CA

41 MIN. 11 A.M. JUL 7 1978
PAST

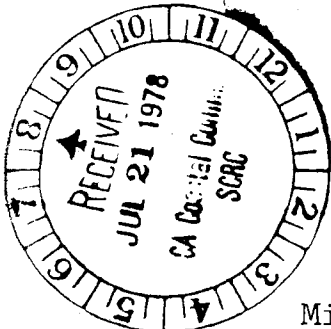
Recorder's Office

RECORDING REQUESTED BY AND MAIL TO

NAME CCC/SCR

STREET PO Box 1450

CITY Long Beach, CA 90801



CALIFORNIA COASTAL COMMISSION

SOUTH COAST REGION

DEED RESTRICTION

FILE COPY

EX-66

This instrument, made this 26 day of June
1978, by Michael Burrett, Karen Richardson
Norman E. Fisher and Douglas Richardson, of the City
or Cities of Los Angeles, State of California, hereinafter
collectively referred to as "the Permittee;"

WHEREAS, pursuant to the California Coastal Act of 1976,
Sections 30000 through 30900 of the California Public Resources Code,
the Permittee has made Application No. P-2706 to the California Coastal
Commission, South Coast Region, for the issuance of a permit for the
construction of subdivision of a 15 acre parcel of real property
and the construction of a single-family residence on on of the
subdivided lots.

(Describe Proposed Project)

on certain real property owned/leased/as to which Karen Richardson is
(Other - state Permittee's
the record owner and Michael Burrett and Norman E. Fisher Jr, are
interest in subject property)
purchasers of portions under land sale contracts as

XXXXXXXXXXXXXXXXXXXX more particularly described below; and

WHEREAS, said Commission has determined to grant said
application and issue a permit for the construction of
one single-family residence and to permit subdivision of the
property into three parcels

(Describe Approved Project)

on said real property, subject to the following conditions, imposed for the benefit of the Public, and without agreement to which by Permittee, said Commission could not grant the permit:

FILL) No further subdivision of the three parcels.
IN)
CONDITIONS) Limits the use to one single-family dwelling per
) parcel for each of three parcels.
)
)

- 1 -

NOW, THEREFORE, in consideration of the issuance of said development permit, and of the benefit conferred thereby on the subject property, Permittee agrees that there shall be, and hereby is, created the following restriction on the use and enjoyment of said property, to be attached to and become a part of the deed to the property: No further subdivision of the three parcels.

Limits the use to one single-family dwelling per parcel
for each of three parcels.

Permittee acknowledges that any violation of this deed restriction shall be constitute a violation of the permit and shall subject Permittee or any other violator thereof to civil action for violation of the terms of said permit and of the Coastal Act of 1976. Said deed restriction shall apply to the subdivision of the subject
(Project)
property and the single-family dwelling now being constructed
thereon.

to be constructed, ~~renovated~~

(other)

on that certain real property in the City of Los Angeles,
County of Los Angeles, State of California, described as:
The North $\frac{1}{2}$ of the Northeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 20
Township 1 South Range 18 West SBB&M. Excepting there from the
 $W\frac{1}{2}$ of the NW $\frac{1}{4}$ pf the NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of said Section 20
(Legal Description/Address of the Property)

Unless specifically modified or terminated by affirmative vote of the issuing Commission, said deed restriction shall remain in full force and effect during the period that said permit, or any modification or amendment thereof, remains effective, and during the

...ation of said development, remains in existence in or upon any part
of, and thereby confers benefit upon, the real property described
herein, and to that extent, said deed restriction is hereby deemed and
agreed by Permittee to be a covenant running with the land, and shall
bind Permittee and all his successors and assigns.

Nothing shall become payable to Permittee, nor to the
successors or assigns of Permittee, for the agreement herein set forth.

Executed the date above written.

-2-

78- 739532

CA (8-74)

Individual)

STATE OF CALIFORNIA

COUNTY OF San Francisco

SS.

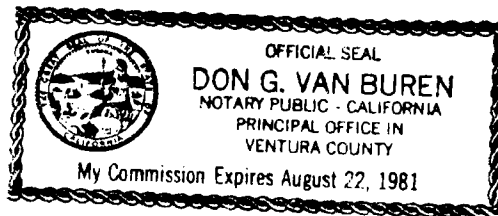
On June 24, 1978 before me, the undersigned, a Notary Public in and for said State, personally appeared

Robert R. [illegible] known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.

WITNESS my hand and official seal.

Signature [illegible]

78- 739532



(This area for official notarial seal)

STATE OF CALIFORNIA

COUNTY OF Los Angeles

SS.

On Juen 23, 1978 before me, the undersigned, a Notary Public in and for said County and State, personally appeared

Michael Burrott

Michael Burrott known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.

Annette Cafaro

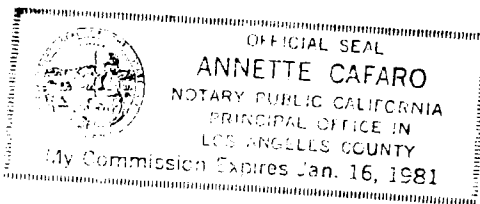
Name (Typed or Printed)

Notary Public in and for said County and State

78- 739532



FOR NOTARY SEAL OR STAMP



INDIVIDUAL ACKNOWLEDGMENT

State of California

County of Los Angeles

SS.

78- 739532

On this 23rd day of June, 1978, before me,

the undersigned, a Notary Public in and for said Los Angeles County,

(SEAL)

personally appeared

NORMAN E. FISHER Jr.

known to me to be the person whose name is subscribed to the within

instrument, and acknowledged that he executed the same.

WITNESS my hand and official seal.



OFFICIAL SEAL
FRIEDA NELSON
NOTARY PUBLIC - CALIFORNIA

LOS ANGELES COUNTY
My comm. expires MAY 14, 1981

Notary Public in and for said

Los Angeles County and State

Exhibit 29
CCC-05-CD-08 and CCC-05-RO-05
(Witter/Richardson) Page 5 of 8

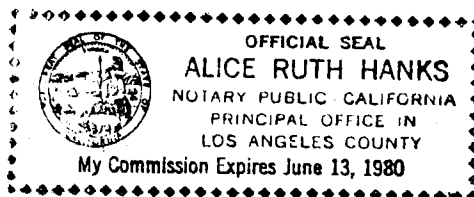
ON 26 June 19 78,
before me, the undersigned, a Notary Public in and for said State, personally appeared

DOUGLAS W. RICHARDSON

known to me,
to be the person whose name IS subscribed to the within instrument,
and acknowledged to me that he executed the same.

WITNESS my hand and official seal.

Alice Ruth Hanks
Notary Public in and for said State.



MICHAEL E. BURRETT Michael E. Burrett

KAREN J. RICHARDSON

STATE OF CALIFORNIA

COUNTY OF NORMAN FISHER

Douglas W. Richardson
ss.

Douglas W. Richardson

Permittee

On _____, 1978, before me, the undersigned
Notary Public, personally appeared Michael Burrett, Norman Fisher
and Douglas Richardson and Karen Richardson, known to me to be the persons
whose names are subscribed to the foregoing instrument and acknowledged
to me that they executed the same.

Witness my hand and official seal the day and year in
this certificate first above written.

Notary Public, in and for the

County of _____,
State of California.

TO BE FILLED IN BY COMMISSION

This is to certify that the deed restriction set forth
above, dated June 26, 1978, and signed by Douglas W.
Richardson Michael Burrett
Fisher, Jr. and Karen Richardson Norman E.
is hereby accepted by order of the California Coastal Commission,
South Coast Region, on June 26, 1978 and said Commission con-
sents to recordation thereof by its Executive Director, its duly
authorized officer.

Date July 6, 1978

By

Michael E. Burrett
Chairman, California Coastal
Commission, South Coast Region

STATE OF CALIFORNIA)
COUNTY OF Los Angeles) ss.

78- 739532

On this 6th day of July, 1978, before me,
the undersigned Notary Public, personally appeared Donald E. Wilson
-----, known to me to be the Chairman of the California
Coastal Commission, South Coast Region, and known to me to be the
person who executed the foregoing instrument on behalf of said Com-
mission, and acknowledged to me that such Commission executed the same.

Witness my hand and official seal the day and year in
the certificate first above written.

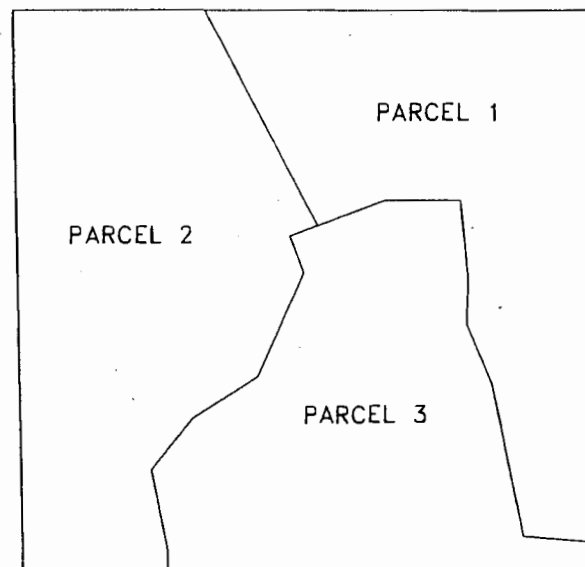


Notary Public in and for the
County of Los Angeles,
State of California.

PARCEL MAP 7154W
LEGAL DESCRIPTION ANALYSIS
VR-4-97-01 (WITTER)

EXHIBIT NO. 27
APPLICATION NO. VR-4-97-1
PM 7154 ANALYSIS
(6 PAGES)

SE QUARTER OF THE SE QUARTER OF SECTION 17, T1S, R18W, SBM



NOTE: This information is preliminary
and subject to revision.



California Coastal Commission
Technical Services Division

SOURCE: GRANT OF WAIVER AND CERTIFICATE OF COMPLIANCE, PARCEL MAP NO. 7154

JVC, 4/98

CALIFORNIA COASTAL COMMISSION

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



MEMORANDUM

FROM: John Dixon, Ph.D.
Ecologist / Wetland Coordinator

TO: Christine Chestnut

SUBJECT: Witter Property

DATE: July 27, 2005

Materials reviewed:

Oblique and vertical aerial photographs of the Witter property at 2100 McReynolds Road.

Ground-level photographs of the Witter property.

Santa Monica Mountains National Recreation Area Map from
www.nps.gov/samo/pdf/files/mainmap.pdf

National Parks Service. July 2002. Final General Management Plan and Environmental Impact Statement, Santa Monica Mountains National Recreation Area, California. [Figure 11 on page 145 is a vegetation map.]

California Coastal Commission. June 24, 1998. Staff report and recommendation on Claim of Vested Rights (VR-4-97-1).

Based on the photographs, the Witter property appears to be in an area dominated by mixed chaparral with riparian vegetation in the canyon bottoms. Although I could not identify individual shrubs from the photographs, the growth form of the dominant vegetation on the property is certainly that of a mixed chaparral community and the National Park Service's 1993 Vegetation Classification map shows mixed chaparral in the general area. In the vested rights determination, the property is described as "...mountainous terrain bisected by a U.S.G.S. recognized blue-line intermittent stream. It is located within a designated wildlife corridor." From the ground level photographs, it appears that a portion of the site may support oak woodland, probably within the riparian corridor. I will visit the site to verify the habitat types that are present.

In their findings for the Malibu Local Coastal Plan, the Commission found that the Mediterranean Ecosystem in the Santa Mountains is rare, and especially valuable because of its relatively pristine character, physical complexity, and resultant unusually

high biological diversity. Therefore, within the Santa Monica Mountains native habitats, including chaparral, that are large and relatively unfragmented may meet the definition of ESHA by virtue of their valuable roles in that ecosystem, regardless of their relative rarity throughout the state. I have attached a memo excerpted from the Commission's findings that provides the scientific background for this conclusion.

In making a determination of whether any specific area within the Santa Monica Mountains constitutes an Environmentally Sensitive Habitat Area as defined in the Coastal Act, we apply three tests: Is the area dominated by native habitat? Is the native habitat for the most part intact and not severely degraded by permitted development or invasion by exotic species? Third, is the habitat part of a large, contiguous block of relatively pristine native vegetation?

The mixed chaparral and riparian vegetation on the Witter property are native habitat types and the property still supports large patches of relatively undisturbed habitat despite the significant removal of vegetation by unpermitted development. The vegetation on this property is part of a much larger, contiguous stand of chaparral and other associated plant communities. The fact that the National Park Service photographed a mountain lion in the adjacent Castro Crest area is testimony to the fact that this area is a connected and functioning part of the larger Santa Monica Mountains Mediterranean ecosystem. The native habitats on the Witter property meet the definition of ESHA under the Coastal Act because of their important roles in that ecosystem and because they are clearly easily degraded by human activities.

CALIFORNIA COASTAL COMMISSION

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



M E M O R A N D U M

FROM: John Dixon, Ph.D.
Ecologist / Wetland Coordinator

TO: Ventura Staff

SUBJECT: Designation of ESHA in the Santa Monica Mountains

DATE: March 25, 2003

In the context of the Malibu LCP, the Commission found that the Mediterranean Ecosystem in the Santa Mountains is rare, and especially valuable because of its relatively pristine character, physical complexity, and resultant biological diversity. Therefore, areas of undeveloped native habitat in the Santa Monica Mountains that are large and relatively unfragmented may meet the definition of ESHA by virtue of their valuable roles in that ecosystem, regardless of their relative rarity throughout the state. This is the only place in the coastal zone where the Commission has recognized chaparral as meeting the definition of ESHA. The scientific background presented herein for ESHA analysis in the Santa Monica Mountains is adapted from the Revised Findings for the Malibu LCP that the Commission adopted on February 6, 2003.

For habitats in the Santa Monica Mountains, particularly coastal sage scrub and chaparral, there are three site-specific tests to determine whether an area is ESHA because of its especially valuable role in the ecosystem. First, is the habitat properly identified, for example as coastal sage scrub or chaparral? The requisite information for this test generally should be provided by a site-specific biological assessment. Second, is the habitat largely undeveloped and otherwise relatively pristine? Third, is the habitat part of a large, contiguous block of relatively pristine native vegetation? This should be documented with an aerial photograph from our mapping unit (with the site delineated) and should be attached as an exhibit to the staff report. For those habitats that are absolutely rare or that support individual rare species, it is not necessary to find that they are relatively pristine, and are neither isolated nor fragmented.

**Designation of Environmentally Sensitive Habitat in the
Santa Monica Mountains**

The Coastal Act provides a definition of "environmentally sensitive area" as: "Any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments" (Section 30107.5).

There are three important elements to the definition of ESHA. First, a geographic area can be designated ESHA either because of the presence of individual species of plants or animals or because of the presence of a particular habitat. Second, in order for an area to be designated as ESHA, the species or habitat must be either rare or it must be especially valuable. Finally, the area must be easily disturbed or degraded by human activities.

The first test of ESHA is whether a habitat or species is rare. Rarity can take several forms, each of which is important. Within the Santa Monica Mountains, rare species and habitats often fall within one of two common categories. Many rare species or habitats are globally rare, but locally abundant. They have suffered severe historical declines in overall abundance and currently are reduced to a small fraction of their original range, but where present may occur in relatively large numbers or cover large local areas. This is probably the most common form of rarity for both species and habitats in California and is characteristic of coastal sage scrub, for example. Some other habitats are geographically widespread, but occur everywhere in low abundance. California's native perennial grasslands fall within this category.

A second test for ESHA is whether a habitat or species is especially valuable. Areas may be valuable because of their "special nature," such as being an unusually pristine example of a habitat type, containing an unusual mix of species, supporting species at the edge of their range, or containing species with extreme variation. For example, reproducing populations of valley oaks are not only increasingly rare, but their southernmost occurrence is in the Santa Monica Mountains. Generally, however, habitats or species are considered valuable because of their special "role in the ecosystem." For example, many areas within the Santa Monica Mountains may meet this test because they provide habitat for endangered species, protect water quality, provide essential corridors linking one sensitive habitat to another, or provide critical ecological linkages such as the provision of pollinators or crucial trophic connections. Of course, all species play a role in their ecosystem that is arguably "special." However, the Coastal Act requires that this role be "especially valuable." This test is met for relatively pristine areas that are integral parts of the Santa Monica Mountains Mediterranean ecosystem because of the demonstrably rare and extraordinarily special nature of that ecosystem as detailed below.

Finally, ESHAs are those areas that could be easily disturbed or degraded by human activities and developments. Within the Santa Monica Mountains, as in most areas of southern California affected by urbanization, all natural habitats are in grave danger of direct loss or significant degradation as a result of many factors related to anthropogenic changes.

Ecosystem Context of the Habitats of the Santa Monica Mountains

The Santa Monica Mountains comprise the largest, most pristine, and ecologically complex example of a Mediterranean ecosystem in coastal southern California. California's coastal sage scrub, chaparral, oak woodlands, and associated riparian areas have analogues in just a few areas of the world with similar climate. Mediterranean ecosystems with their wet winters and warm dry summers are only found in five localities (the Mediterranean coast, California, Chile, South Africa, and south and southwest Australia). Throughout the world, this ecosystem with its specially adapted vegetation and wildlife has suffered severe loss and degradation from human development. Worldwide, only 18 percent of the Mediterranean community type remains undisturbed¹. However, within the Santa Monica Mountains, this ecosystem is remarkably intact despite the fact that it is closely surrounded by some 17 million people. For example, the 150,000 acres of the Santa Monica Mountains National Recreation Area, which encompasses most of the Santa Monica Mountains, was estimated to be 90 percent free of development in 2000². Therefore, this relatively pristine area is both large and mostly unfragmented, which fulfills a fundamental tenet of conservation biology³. The need for large contiguous areas of natural habitat in order to maintain critical ecological processes has been emphasized by many conservation biologists⁴.

In addition to being a large single expanse of land, the Santa Monica Mountains ecosystem is still connected, albeit somewhat tenuously, to adjacent, more inland ecosystems⁵. Connectivity among habitats within an ecosystem and connectivity among ecosystems is very important for the preservation of species and ecosystem

¹ National Park Service. 2000. Draft general management plan & environmental impact statement. Santa Monica Mountains National Recreation Area – California.

² Ibid.

³ Harris, L. D. 1988. Edge effects and conservation of biotic diversity. *Conserv. Biol.* 330-332. Soule, M. E., D. T. Bolger, A. C. Alberts, J. Wright, M. Sorice and S. Hill. 1988. Reconstructed dynamics of rapid extinctions of chaparral-requiring birds in urban habitat islands. *Conserv. Biol.* 2: 75-92. Yahner, R. H. 1988. Changes in wildlife communities near edges. *Conserv. Biol.* 2:333-339. Murphy, D. D. 1989. Conservation and confusion: Wrong species, wrong scale, wrong conclusions. *Conservation Biol.* 3:82-84.

⁴ Crooks, K. 2000. Mammalian carnivores as target species for conservation in Southern California. p. 105-112 in: Keeley, J. E., M. Baer-Keeley and C. J. Fotheringham (eds), 2nd Interface Between Ecology and Land Development in California, U.S. Geological Survey Open-File Report 00-62. Sauvajot, R. M., E. C. York, T. K. Fuller, H. Sharon Kim, D. A. Kamradt and R. K. Wayne. 2000. Distribution and status of carnivores in the Santa Monica Mountains, California: Preliminary results from radio telemetry and remote camera surveys. p 113-123 in: Keeley, J. E., M. Baer-Keeley and C. J. Fotheringham (eds), 2nd Interface Between Ecology and Land Development in California, U.S. Geological Survey Open-File Report 00-62. Beier, P. and R. F. Noss. 1998. Do habitat corridors provide connectivity? *Conserv. Biol.* 12:1241-1252. Beier, P. 1996. Metapopulation models, tenacious tracking and cougar conservation. In: *Metapopulations and Wildlife Conservation*, ed. D. R. McCullough. Island Press, Covelo, California, 429p.

⁵ The SMM area is linked to larger natural inland areas to the north through two narrow corridors: 1) the Conejo Grade connection at the west end of the Mountains and 2) the Simi Hills connection in the central region of the SMM (from Malibu Creek State Park to the Santa Susanna Mountain⁶).

integrity. In a recent statewide report, the California Resources Agency⁶ identified wildlife corridors and habitat connectivity as the top conservation priority. In a letter to governor Gray Davis, sixty leading environmental scientists have endorsed the conclusions of that report⁷. The chief of natural resources at the California Department of Parks and Recreation has identified the Santa Monica Mountains as an area where maintaining connectivity is particularly important⁸.

The species most directly affected by large scale connectivity are those that require large areas or a variety of habitats, e.g., gray fox, cougar, bobcat, badger, steelhead trout, and mule deer⁹. Large terrestrial predators are particularly good indicators of habitat connectivity and of the general health of the ecosystem¹⁰. Recent studies show that the mountain lion, or cougar, is the most sensitive indicator species of habitat fragmentation, followed by the spotted skunk and the bobcat¹¹. Sightings of cougars in both inland and coastal areas of the Santa Monica Mountains¹² demonstrate their continued presence. Like the "canary in the mineshaft," an indicator species like this is good evidence that habitat connectivity and large scale ecological function remains in the Santa Monica Mountains ecosystem.

The habitat integrity and connectivity that is still evident within the Santa Monica Mountains is extremely important to maintain, because both theory and experiments over 75 years in ecology confirm that large spatially connected habitats tend to be more stable and have less frequent extinctions than habitats without extended spatial structure¹³. Beyond simply destabilizing the ecosystem, fragmentation and disturbance

⁶ California Resources Agency. 2001. Missing Linkages: Restoring Connectivity to the California Landscape. California Wilderness Coalition, Calif. Dept of Parks & Recreation, USGS, San Diego Zoo and The Nature Conservancy. Available at: <http://www.calwild.org/pubs/reports/linkages/index.htm>

⁷ Letters received and included in the September 2002 staff report for the Malibu LCP.

⁸ Schoch, D. 2001. Survey lists 300 pathways as vital to state wildlife. Los Angeles Times. August 7, 2001.

⁹ Martin, G. 2001. Linking habitat areas called vital for survival of state's wildlife Scientists map main migration corridors. San Francisco Chronicle, August 7, 2001.

¹⁰ Noss, R. F., H. B. Quigley, M. G. Hornocker, T. Merrill and P. C. Paquet. 1996. Conservation biology and carnivore conservation in the Rocky Mountains. *Conserv. Biol.* 10: 949-963. Noss, R. F. 1995. Maintaining ecological integrity in representative reserve networks. World Wildlife Fund Canada.

¹¹ Sauvajot, R. M., E. C. York, T. K. Fuller, H. Sharon Kim, D. A. Kamradt and R. K. Wayne. 2000. Distribution and status of carnivores in the Santa Monica Mountains, California: Preliminary results from radio telemetry and remote camera surveys. p 113-123 in: Keeley, J. E., M. Baer-Keeley and C. J. Fotheringham (eds), 2nd Interface Between Ecology and Land Development in California, U.S. Geological Survey Open-File Report 00-62. Beier, P. 1996. Metapopulation models, tenacious tracking and cougar conservation. In: *Metapopulations and Wildlife Conservation*, ed. D. R. McCullough. Island Press, Covelo, California, 429p.

¹² Recent sightings of mountain lions include: Temescal Canyon (pers. com., Peter Brown, Facilities Manager, Calvary Church), Topanga Canyon (pers. com., Marti Witter, NPS), Encinal and Trancas Canyons (pers. com., Pat Healy), Stump Ranch Research Center (pers. com., Dr. Robert Wayne, Dept. of Biology, UCLA). In May of 2002, the NPS *photographed* a mountain lion at a trip camera on the Back Bone Trail near Castro Crest – Seth Riley, Eric York and Dr. Ray Sauvajot, National Park Service, SMMNRA.

¹³ Gause, G. F. 1934. The struggle for existence. Baltimore, William and Wilkins 163 p. (also reprinted by Hafner, N.Y. 1964). Gause, G. F., N. P. Smaragdova and A. A. Witt. 1936. Further studies of interaction between predators and their prey. *J. Anim. Ecol.* 5:1-18. Huffaker, C. B. 1958. Experimental studies on

can even cause unexpected and irreversible changes to new and completely different kinds of ecosystems (habitat conversion)¹⁴.

As a result of the pristine nature of large areas of the Santa Monica Mountains and the existence of large, unfragmented and interconnected blocks of habitat, this ecosystem continues to support an extremely diverse flora and fauna. The observed diversity is probably a function of the diversity of physical habitats. The Santa Monica Mountains have the greatest geological diversity of all major mountain ranges within the transverse range province. According to the National Park Service, the Santa Monica Mountains contain 40 separate watersheds and over 170 major streams with 49 coastal outlets¹⁵. These streams are somewhat unique along the California coast because of their topographic setting. As a "transverse" range, the Santa Monica Mountains are oriented in an east-west direction. As a result, the south-facing riparian habitats have more variable sun exposure than the east-west riparian corridors of other sections of the coast. This creates a more diverse moisture environment and contributes to the higher biodiversity of the region. The many different physical habitats of the Santa Monica Mountains support at least 17 native vegetation types¹⁶ including the following habitats considered sensitive by the California Department of Fish and Game: native perennial grassland, coastal sage scrub, red-shank chaparral, valley oak woodland, walnut woodland, southern willow scrub, southern cottonwood-willow riparian forest, sycamore-alder woodland, oak riparian forest, coastal salt marsh, and freshwater marsh. Over 400 species of birds, 35 species of reptiles and amphibians, and more than 40 species of mammals have been documented in this diverse ecosystem. More than 80 sensitive species of plants and animals (listed, proposed for listing, or species of concern) are known to occur or have the potential to occur within the Santa Monica Mountains Mediterranean ecosystem.

The Santa Monica Mountains are also important in a larger regional context. Several recent studies have concluded that the area of southern California that includes the Santa Monica Mountains is among the most sensitive in the world in terms of the number of rare endemic species, endangered species and habitat loss. These studies have designated the area to be a local hot-spot of endangerment in need of special protection¹⁷.

predation: dispersion factors and predator-prey oscillations. *Hilgardia* 27:343-383. Luckinbill, L. S. 1973. Coexistence in laboratory populations of *Paramecium aurelia* and its predator *Didinium nasutum*. *Ecology* 54:1320-1327. Allen, J. C., C. C. Brewster and D. H. Slone. 2001. Spatially explicit ecological models: A spatial convolution approach. *Chaos, Solitons and Fractals*. 12:333-347.

¹⁴ Scheffer, M., S. Carpenter, J. A. Foley, C. Folke and B. Walker. 2001. Catastrophic shifts in ecosystems. *Nature* 413:591-596.

¹⁵ NPS. 2000. op.cit.

¹⁶ From the NPS report (2000 op. cit.) that is based on the older Holland system of subjective classification. The data-driven system of Sawyer and Keeler-Wolf results in a much larger number of distinct "alliances" or vegetation types.

¹⁷ Myers, N. 1990. The biodiversity challenge: Expanded hot-spots analysis. *Environmentalist* 10:243-256. Myers, N., R. A. Mittermeier, C. G. Mittermeier, G. A. B. da Fonseca and J. A. Kent. 2000. Biodiversity hot-spots for conservation priorities. *Nature* 403:853-858. Dobson, A. P., J. P. Rodriguez, W. M. Roberts and D. S. Wilcove. 1997. Geographic distribution of endangered species in the United States. *Science* 275:550-553.

Therefore, the Commission finds that the Santa Monica Mountains ecosystem is itself rare and especially valuable because of its special nature as the largest, most pristine, physically complex, and biologically diverse example of a Mediterranean ecosystem in coastal southern California. The Commission further finds that because of the rare and special nature of the Santa Monica Mountains ecosystem, the ecosystem roles of substantially intact areas of the constituent plant communities discussed below are "especially valuable" under the Coastal Act.

Major Habitats within the Santa Monica Mountains

The most recent vegetation map that is available for the Santa Monica Mountains is the map that was produced for the National Park Service in the mid-1990s using 1993 satellite imagery supplemented with color and color infrared aerial imagery from 1984, 1988, and 1994 and field review¹⁸. The minimum mapping unit was 5 acres. For that map, the vegetation was mapped in very broad categories, generally following a vegetation classification scheme developed by Holland¹⁹. Because of the mapping methods used the degree of plant community complexity in the landscape is not represented. For example, the various types of "ceanothus chaparral" that have been documented were lumped under one vegetation type referred to as "northern mixed chaparral." Dr. Todd Keeler-Wolf of the California Department of Fish and Game is currently conducting a more detailed, quantitative vegetation survey of the Santa Monica Mountains.

The National Park Service map can be used to characterize broadly the types of plant communities present. The main generic plant communities present in the Santa Monica Mountains²⁰ are: coastal sage scrub, chaparral, riparian woodland, coast live oak woodland, and grasslands.

Riparian Woodland

Some 49 streams connect inland areas with the coast, and there are many smaller drainages as well, many of which are "blue line." Riparian woodlands occur along both perennial and intermittent streams in nutrient-rich soils. Partly because of its multi-layered vegetation, the riparian community contains the greatest overall biodiversity of

¹⁸ Franklin, J. 1997. Forest Service Southern California Mapping Project, Santa Monica Mountains National Recreation Area, Task 11 Description and Results, Final Report. June 13, 1997, Dept. of Geography, San Diego State University, USFS Contract No. 53-91S8-3-TM45.

¹⁹ Holland R. F. 1986. Preliminary Descriptions of the Terrestrial Natural Communities of California. State of California, The Resources Agency, Dept. of Fish and Game, Natural Heritage Division, Sacramento, CA. 95814.

²⁰ National Park Service. 2000. Draft: General Management Plan & Environmental Impact Statement, Santa Monica Mountains National Recreation Area, US Dept. of Interior, National Park Service, December 2000. (Fig. 11 in this document.)

all the plant communities in the area²¹. At least four types of riparian communities are discernable in the Santa Monica Mountains: walnut riparian areas, mulefat-dominated riparian areas, willow riparian areas and sycamore riparian woodlands. Of these, the sycamore riparian woodland is the most diverse riparian community in the area. In these habitats, the dominant plant species include arroyo willow, California black walnut, sycamore, coast live oak, Mexican elderberry, California bay laurel, and mule fat. Wildlife species that have been observed in this community include least Bell's vireo (a State and federally listed species), American goldfinches, black phoebes, warbling vireos, bank swallows (State listed threatened species), song sparrows, belted kingfishers, raccoons, and California and Pacific tree frogs.

Riparian communities are the most species-rich to be found in the Santa Monica Mountains. Because of their multi-layered vegetation, available water supply, vegetative cover and adjacency to shrubland habitats, they are attractive to many native wildlife species, and provide essential functions in their lifecycles²². During the long dry summers in this Mediterranean climate, these communities are an essential refuge and oasis for much of the areas' wildlife.

Riparian habitats and their associated streams form important connecting links in the Santa Monica Mountains. These habitats connect all of the biological communities from the highest elevation chaparral to the sea with a unidirectional flowing water system, one function of which is to carry nutrients through the ecosystem to the benefit of many different species along the way.

The streams themselves provide refuge for sensitive species including: the coast range newt, the Pacific pond turtle, and the steelhead trout. The coast range newt and the Pacific pond turtle are California Species of Special Concern and are proposed for federal listing²³, and the steelhead trout is federally endangered. The health of the streams is dependent on the ecological functions provided by the associated riparian woodlands. These functions include the provision of large woody debris for habitat, shading that controls water temperature, and input of leaves that provide the foundation of the stream-based trophic structure.

The importance of the connectivity between riparian areas and adjacent habitats is illustrated by the Pacific pond turtle and the coast range newt, both of which are sensitive and both of which require this connectivity for their survival. The life history of the Pacific pond turtle demonstrates the importance of riparian areas and their associated watersheds for this species. These turtles require the stream habitat during

²¹ Ibid.

²² Walter, Hartmut. Bird use of Mediterranean habitats in the Santa Monica Mountains, Coastal Commission Workshop on the Significance of Native Habitats in the Santa Monica Mountains. CCC Hearing, June 13, 2002, Queen Mary Hotel.

²³ USFWS. 1989. Endangered and threatened wildlife and plants; animal notice of review. Fed. Reg. 54:554-579. USFWS. 1993. Endangered and threatened wildlife and plants; notice of 1-year petition finding on the western pond turtle. Fed. Reg. 58:42717-42718.

the wet season. However, recent radio tracking work²⁴ has found that although the Pacific pond turtle spends the wet season in streams, it also requires upland habitat for refuge during the dry season. Thus, in coastal southern California, the Pacific pond turtle requires both streams and intact adjacent upland habitats such as coastal sage scrub, woodlands or chaparral as part of their normal life cycle. The turtles spend about four months of the year in upland refuge sites located an average distance of 50 m (but up to 280 m) from the edge of the creek bed. Similarly, nesting sites where the females lay eggs are also located in upland habitats an average of 30 m (but up to 170 m) from the creek. Occasionally, these turtles move up to 2 miles across upland habitat²⁵. Like many species, the pond turtle requires both stream habitats and the upland habitats of the watershed to complete its normal annual cycle of behavior. Similarly, the coast range newt has been observed to travel hundreds of meters into upland habitat and spend about ten months of the year far from the riparian streambed²⁶. They return to the stream to breed in the wet season, and they are therefore another species that requires both riparian habitat and adjacent uplands for their survival.

Riparian habitats in California have suffered serious losses and such habitats in southern California are currently very rare and seriously threatened. In 1989, Faber estimated that 95-97% of riparian habitat in southern California was already lost²⁷. Writing at the same time as Faber, Bowler asserted that, "[t]here is no question that riparian habitat in southern California is endangered."²⁸ In the intervening 13 years, there have been continuing losses of the small amount of riparian woodlands that remain. Today these habitats are, along with native grasslands and wetlands, among the most threatened in California.

In addition to direct habitat loss, streams and riparian areas have been degraded by the effects of development. For example, the coast range newt, a California Species of Special Concern has suffered a variety of impacts from human-related disturbances²⁹. Human-caused increased fire frequency has resulted in increased sedimentation rates, which exacerbates the cannibalistic predation of adult newts on the larval stages.³⁰ In addition impacts from non-native species of crayfish and mosquito fish have also been documented. When these non-native predators are introduced, native prey organisms are exposed to new mortality pressures for which they are not adapted. Coast range

²⁴ Rathbun, G.B., N.J. Scott and T.G. Murphy. 2002. Terrestrial habitat use by Pacific pond turtle in a Mediterranean climate. *Southwestern Naturalist*. (in Press).

²⁵ Testimony by R. Dagit, Resource Conservation District of the Santa Monica Mountains at the CCC Habitat Workshop on June 13, 2002.

²⁶ Dr. Lee Kats, Pepperdine University, personal communication to Dr J. Allen, CCC.

²⁷ Faber, P.A., E. Keller, A. Sands and B.M. Massey. 1989. The ecology of riparian habitats of the southern California coastal region: a community profile. U.S. Fish and Wildlife Service Biological Report 85(7.27) 152pp.

²⁸ Bowler, P.A. 1989. Riparian woodland: An endangered habitat in southern California. Pp 80-97 in Schoenherr, A.A. (ed.) *Endangered plant communities of southern California*. Botanists Special Publication No. 3.

²⁹ Gamradt, S.C., L.B. Kats and C.B. Anzalone. 1997. Aggression by non-native crayfish deters breeding in California newts. *Conservation Biology* 11(3):793-796.

³⁰ Kerby, L.J., and L.B. Kats. 1998. Modified interactions between salamander life stages caused by wildfire-induced sedimentation. *Ecology* 79(2):740-745.

newts that breed in the Santa Monica Mountain streams do not appear to have adaptations that permit co-occurrence with introduced mosquito fish and crayfish³¹. These introduced predators have eliminated the newts from streams where they previously occurred by both direct predation and suppression of breeding.

Therefore, because of the essential role that riparian plant communities play in maintaining the biodiversity of the Santa Monica Mountains, because of the historical losses and current rarity of these habitats in southern California, and because of their extreme sensitivity to disturbance, the native riparian habitats in the Santa Monica Mountains meet the definition of ESHA under the Coastal Act.

Coastal Sage Scrub and Chaparral

Coastal sage scrub and chaparral are often lumped together as "shrublands" because of their roughly similar appearance and occurrence in similar and often adjacent physical habitats. In earlier literature, these vegetation associations were often called soft chaparral and hard chaparral, respectively. "Soft" and "hard" refers to differences in their foliage associated with different adaptations to summer drought. Coastal sage scrub is dominated by soft-leaved, generally low-growing aromatic shrubs that die back and drop their leaves in response to drought. Chaparral is dominated by taller, deeper-rooted evergreen shrubs with hard, waxy leaves that minimize water loss during drought.

The two vegetation types are often found interspersed with each other. Under some circumstances, coastal sage scrub may even be successional to chaparral, meaning that after disturbance, a site may first be covered by coastal sage scrub, which is then replaced with chaparral over long periods of time.³² The existing mosaic of coastal sage scrub and chaparral is the result of a dynamic process that is a function of fire history, recent climatic conditions, soil differences, slope, aspect and moisture regime, and the two habitats should not be thought of as completely separate and unrelated entities but as different phases of the same process³³. The spatial pattern of these vegetation stands at any given time thus depends on both local site conditions and on history (e.g., fire), and is influenced by both natural and human factors.

In lower elevation areas with high fire frequency, chaparral and coastal sage scrub may be in a state of flux, leading one researcher to describe the mix as a "coastal sage-chaparral subclimax."³⁴ Several other researchers have noted the replacement of chaparral by coastal sage scrub, or coastal sage scrub by chaparral depending on fire

³¹ Gamradt, S.C. and L.B. Kats. 1996. Effect of introduced crayfish and mosquitofish on California newts. *Conservation Biology* 10(4):1155-1162.

³² Cooper, W.S. 1922. The broad-sclerophyll vegetation of California. Carnegie Institution of Washington Publication 319. 124 pp.

³³ Longcore, T and C. Rich. 2002. Protection of environmentally sensitive habitat areas in proposed local coastal plan for the Santa Monica Mountains. The Urban Wildlands Group, Inc., P.O. Box 24020 Los Angeles, CA 90024. (See attached comment document in Appendix).

³⁴ Hanes, T.L. 1965. Ecological studies on two closely related chaparral shrubs in southern California. *Ecological Monographs* 41:27-52.

history.³⁵ In transitional and other settings, the mosaic of chaparral and coastal sage scrub enriches the seasonal plant resource base and provides additional habitat variability and seasonality for the many species that inhabit the area.

Relationships Among Coastal Sage Scrub, Chaparral and Riparian Communities

Although the constituent communities of the Santa Monica Mountains Mediterranean ecosystem can be defined and distinguished based on species composition, growth habits, and the physical habitats they characteristically occupy, they are not independent entities ecologically. Many species of plants, such as black sage, and laurel sumac, occur in more than one plant community and many animals rely on the predictable mix of communities found in undisturbed Mediterranean ecosystems to sustain them through the seasons and during different portions of their life histories.

Strong evidence for the interconnectedness between chaparral, coastal scrub and other habitats is provided by "opportunistic foragers" (animals that follow the growth and flowering cycles across these habitats). Coastal scrub and chaparral flowering and growth cycles differ in a complimentary and sequential way that many animals have evolved to exploit. Whereas coastal sage scrub is shallow-rooted and responds quickly to seasonal rains, chaparral plants are typically deep-rooted having most of their flowering and growth later in the rainy season after the deeper soil layers have been saturated³⁶. New growth of chaparral evergreen shrubs takes place about four months later than coastal sage scrub plants and it continues later into the summer³⁷. For example, in coastal sage scrub, California sagebrush flowers and grows from August to February and coyote bush flowers from August to November³⁸. In contrast, chamise chaparral and bigpod ceanothus flower from April to June, buck brush ceanothus flowers from February to April, and hoaryleaf ceanothus flowers from March to April.

Many groups of animals exploit these seasonal differences in growth and blooming period. The opportunistic foraging insect community (e.g., honeybees, butterflies and moths) tends to follow these cycles of flowering and new growth, moving from coastal sage scrub in the early rainy season to chaparral in the spring³⁹. The insects in turn are followed by insectivorous birds such as the blue-gray gnatcatcher⁴⁰, bushtit, cactus wren, Bewick's wren and California towhee. At night bats take over the role of daytime insectivores. At least 12 species of bats (all of which are considered sensitive) occur in

³⁵ Gray, K.L. 1983. Competition for light and dynamic boundary between chaparral and coastal sage scrub. *Madrono* 30(1):43-49. Zedler, P.H., C.R. Gautier and G.S. McMaster. 1983. Vegetation change in response to extreme events: The effect of a short interval between fires in California chaparral and coastal sage scrub. *Ecology* 64(4): 809-818.

³⁶ DeSimone, S. 2000. California's coastal sage scrub. *Fremontia* 23(4):3-8. Mooney, H.A. 1988. Southern coastal scrub. Chap. 13 in Barbour, M.G. and J. Majors; Eds. 1988. *Terrestrial vegetation of California*, 2nd Edition. Calif. Native Plant Soc. Spec. Publ. #9.

³⁷ Schoenherr, A. A. 1992. *A natural history of California*. University of California Press, Berkeley. 772p.

³⁸ Dale, N. 2000. Flowering plants of the Santa Monica Mountains. California Native Plant Society, 1722 J Street, Suite 17, Sacramento, CA 95814.

³⁹ Ballmer, G. R. 1995. What's bugging coastal sage scrub. *Fremontia* 23(4):17-26.

⁴⁰ Root, R. B. 1967. The niche exploitation pattern of the blue-gray gnatcatcher. *Ecol. Monog.* 37:317-350.

the Santa Monica Mountains⁴¹. Five species of hummingbirds also follow the flowering cycle⁴².

Many species of 'opportunistic foragers', which utilize several different community types, perform important ecological roles during their seasonal movements. The scrub jay is a good example of such a species. The scrub jay is an omnivore and forages in coastal sage scrub, chaparral, and oak woodlands for insects, berries and notably acorns. Its foraging behavior includes the habit of burying acorns, usually at sites away from the parent tree canopy. Buried acorns have a much better chance of successful germination (about two-fold) than exposed acorns because they are protected from desiccation and predators. One scrub jay will bury approximately 5000 acorns in a year. The scrub jay therefore performs the function of greatly increasing recruitment and regeneration of oak woodland, a valuable and sensitive habitat type⁴³.

Like the scrub jay, most of the species of birds that inhabit the Mediterranean ecosystem in the Santa Monica Mountains require more than one community type in order to flourish. Many species include several community types in their daily activities. Other species tend to move from one community to another seasonally. The importance of maintaining the integrity of the multi-community ecosystem is clear in the following observations of Dr. Hartmut Walter of the University of California at Los Angeles:

"Bird diversity is directly related to the habitat mosaic and topographic diversity of the Santa Monicas. Most bird species in this bio-landscape require more than one habitat for survival and reproduction." "A significant proportion of the avifauna breeds in the wooded canyons of the Santa Monicas. Most of the canyon breeders forage every day in the brush- and grass-covered slopes, ridges and mesas. They would not breed in the canyons in the absence of the surrounding shrublands. Hawks, owls, falcons, orioles, flycatchers, woodpeckers, warblers, hummingbirds, etc. belong to this group. Conversely, some of the characteristic chaparral birds such as thrashers, quails, and wrentits need the canyons for access to shelter, protection from fire, and water. The regular and massive movement of birds between riparian corridors and adjacent shrublands has been demonstrated by qualitative and quantitative observations by several UCLA students⁴⁴."

Thus, the Mediterranean ecosystem of the Santa Monica Mountains is a mosaic of vegetation types linked together ecologically. The high biodiversity of the area results

⁴¹ Letter from Dr. Marti Witter, NPS, dated Sept. 13, 2001, in letters received and included in the September 2002 staff report for the Malibu LCP.

⁴² National Park Service. 1993. A checklist of the birds of the Santa Monica Mountains National Recreation Area. Southwest Parks and Monuments Assoc., 221 N. Court, Tucson, AZ. 85701

⁴³ Borchert, M. I., F. W. Davis, J. Michaelson and L. D. Oyler. 1989. Interactions of factors affecting seedling recruitment of blue oak (*Quercus douglasii*) in California. Ecology 70:389-404. Bossema, I. 1979. Jays and oaks: An eco-ethological study of a symbiosis. Behavior 70:1-118. Schoenherr, A. A. 1992. A natural history of California. University of California Press, Berkeley. 772p.

⁴⁴ Walter, Hartmut. Bird use of Mediterranean habitats in the Santa Monica Mountains, Coastal Commission Workshop on the Significance of Native Habitats in the Santa Monica Mountains. CCC Hearing, June 13, 2002, Queen Mary Hotel.

from both the diversity and the interconnected nature of this mosaic. Most raptor species, for example, require large areas and will often require different habitats for perching, nesting and foraging. Fourteen species of raptors (13 of which are considered sensitive) are reported from the Santa Monica Mountains. These species utilize a variety of habitats including rock outcrops, oak woodlands, riparian areas, grasslands, chaparral, coastal sage scrub, estuaries and freshwater lakes⁴⁵.

When the community mosaic is disrupted and fragmented by development, many chaparral-associated native bird species are impacted. In a study of landscape-level fragmentation in the Santa Monica Mountains, Stralberg⁴⁶ found that the ash-throated flycatcher, Bewick's wren, wrentit, blue-gray gnatcatcher, California thrasher, orange-crowned warbler, rufous-crowned sparrow, spotted towhee, and California towhee all decreased in numbers as a result of urbanization. Soule⁴⁷ observed similar effects of fragmentation on chaparral and coastal sage scrub birds in the San Diego area.

In summary, all of the vegetation types in this ecosystem are strongly linked by animal movement and foraging. Whereas classification and mapping of vegetation types may suggest a snapshot view of the system, the seasonal movements and foraging of animals across these habitats illustrates the dynamic nature and vital connections that are crucial to the survival of this ecosystem.

Coastal Sage Scrub

"Coastal sage scrub" is a generic vegetation type that is inclusive of several subtypes⁴⁸. In the Santa Monica Mountains, coastal sage scrub is mostly of the type termed "Venturan Coastal Sage Scrub." In general, coastal sage scrub is comprised of dominant species that are semi-woody and low-growing, with shallow, dense roots that enable them to respond quickly to rainfall. Under the moist conditions of winter and spring, they grow quickly, flower, and produce light, wind-dispersed seeds, making them good colonizers following disturbance. These species cope with summer drought by dying back, dropping their leaves or producing a smaller summer leaf in order to reduce water loss. Stands of coastal sage scrub are much more open than chaparral and contain a greater admixture of herbaceous species. Coastal sage scrub is generally restricted to drier sites, such as low foothills, south-facing slopes, and shallow soils at higher elevations.

⁴⁵ National Park Service. 1993. A checklist of the birds of the Santa Monica Mountains National Recreation Area. Southwest Parks and Monuments Assoc., 221 N. Court, Tucson, AZ. 85701. and Letter from Dr. Marti Witter, NPS, Dated Sept. 13, 2001, in letters received and included in the September 2002 staff report for the Malibu LCP.

⁴⁶ Stralberg, D. 2000. Landscape-level urbanization effects on chaparral birds: A Santa Monica Mountains case study. p 125-136 in: Keeley, J. E., M. Baer-Keeley and C. J. Fotheringham (eds), 2nd Interface Between Ecology and Land Development in California, U.S. Geological Survey Open-File Report 00-62.

⁴⁷ Soule, M. E, D. T. Bolger, A. C. Alberts, J. Wright, M. Soric and S. Hill. 1988. Reconstructed dynamics of rapid extinctions of chaparral-requiring birds in urban habitat islands. *Conserv. Biol.* 2: 75-92.

⁴⁸ Kirkpatrick, J.B. and C.F. Hutchinson. 1977. The community composition of Californian coastal sage scrub. *Vegetatio* 35:21-33; Holland, 1986. op.cit.; Sawyer and Keeler-Wolf, 1995, op.cit.

The species composition and structure of individual stands of coastal sage scrub depend on moisture conditions that derive from slope, aspect, elevation and soil type. Drier sites are dominated by more drought-resistant species (e.g., California sagebrush, coast buckwheat, and *Opuntia* cactus). Where more moisture is available (e.g., north-facing slopes), larger evergreen species such as toyon, laurel sumac, lemonade berry, and sugar bush are common. As a result, there is more cover for wildlife, and movement of large animals from chaparral into coastal sage scrub is facilitated in these areas. Characteristic wildlife in this community includes Anna's hummingbirds, rufous-sided towhees, California quail, greater roadrunners, Bewick's wrens, coyotes, and coast horned lizards⁴⁹, but most of these species move between coastal sage scrub and chaparral during their daily activities or on a seasonal basis.

Of the many important ecosystem roles performed by the coastal sage scrub community, five are particularly important in the Santa Monica Mountains. Coastal sage scrub provides critical linkages between riparian corridors, provides essential habitat for species that require several habitat types during the course of their life histories, provides essential habitat for local endemics, supports rare species that are in danger of extinction, and reduces erosion, thereby protecting the water quality of coastal streams.

Riparian woodlands are primary contributors to the high biodiversity of the Santa Monica Mountains. The ecological integrity of those riparian habitats not only requires wildlife dispersal along the streams, but also depends on the ability of animals to move from one riparian area to another. Such movement requires that the riparian corridors be connected by suitable habitat. In the Santa Monica Mountains, coastal sage scrub and chaparral provide that function. Significant development in coastal sage scrub would reduce the riparian corridors to linear islands of habitat with severe edge effects⁵⁰, reduced diversity, and lower productivity.

Most wildlife species and many species of plants utilize several types of habitat. Many species of animals endemic to Mediterranean habitats move among several plant communities during their daily activities and many are reliant on different communities either seasonally or during different stages of their life cycle. Without an intact mosaic of coastal sage scrub, chaparral, and riparian community types, many species will not thrive. Specific examples of the importance of interconnected communities, or habitats, were provided in the discussion above. This is an essential ecosystem role of coastal sage scrub.

A characteristic of the coastal sage scrub vegetation type is a high degree of endemism. This is consonant with Westman's observation that 44 percent of the species he sampled in coastal sage scrub occurred at only one of his 67 sites, which were

⁴⁹ National Park Service. 2000. Draft: General Management Plan & Environmental Impact Statement, Santa Monica Mountains National Recreation Area, US Dept. of Interior, National Park Service, December 2000.

⁵⁰ Environmental impacts are particularly severe at the interface between development and natural habitats. The greater the amount of this "edge" relative to the area of natural habitat, the worse the impact.

distributed from the San Francisco Bay area to Mexico⁵¹. Species with restricted distributions are by nature more susceptible to loss or degradation of their habitat. Westman said of this unique and local aspect of coastal sage scrub species in California:

"While there are about 50 widespread sage scrub species, more than half of the 375 species encountered in the present study of the sage scrub flora are rare in occurrence within the habitat range. In view of the reduction of the area of coastal sage scrub in California to 10-15% of its former extent and the limited extent of preserves, measures to conserve the diversity of the flora are needed."⁵²

Coastal sage scrub in southern California provides habitat for about 100 rare species⁵³, many of which are also endemic to limited geographic regions⁵⁴. In the Santa Monica Mountains, rare animals that inhabit coastal sage scrub⁵⁵ include the Santa Monica shieldback katydid, silvery legless lizard, coastal cactus wren, Bell's sparrow, San Diego desert woodrat, southern California rufous-crowned sparrow, coastal western whiptail, and San Diego horned lizard. Some of these species are also found in chaparral⁵⁶. Rare plants found in coastal sage scrub in the Santa Monica Mountains include Santa Susana tarplant, Coulter's saltbush, Blockman's dudleya, Braunton's milkvetch, Parry's spineflower, and Plummer's mariposa lily⁵⁷. A total of 32 sensitive species of reptiles, birds and mammals have been identified in this community by the National Park Service.⁵⁸

One of the most important ecological functions of coastal sage scrub in the Santa Monica Mountains is to protect water quality in coastal streams by reducing erosion in the watershed. Although shallow rooted, the shrubs that define coastal sage scrub have dense root masses that hold the surface soils much more effectively than the exotic annual grasses and forbs that tend to dominate in disturbed areas. The native shrubs of this community are resistant not only to drought, as discussed above, but well adapted to fire. Most of the semi-woody shrubs have some ability to crown sprout after

⁵¹ Westman, W.E. 1981. Diversity relations and succession in Californian coastal sage scrub. *Ecology* 62:170-184.

⁵² Ibid.

⁵³ Atwood, J. L. 1993. California gnatcatchers and coastal sage scrub: The biological basis for endangered species listing. pp.149-166 *In: Interface Between Ecology and Land Development in California*. Ed. J. E. Keeley, So. Calif. Acad. of Sci., Los Angeles. California Department of Fish and Game (CDFG). 1993. The Southern California Coastal Sage Scrub (CSS) Natural Communities Conservation Plan (NCCP). CDFG and Calif. Resources Agency, 1416 9th St., Sacramento, CA 95814.

⁵⁴ Westman, W.E. 1981. op. cit.

⁵⁵ Biological Resources Assessment of the Proposed Santa Monica Mountains Significant Ecological Area. Nov. 2000. Los Angeles Co., Dept. of Regional Planning, 320 West Temple St., Rm. 1383, Los Angeles, CA 90012.

⁵⁶ O'Leary J.F., S.A. DeSimone, D.D. Murphy, P.F. Brussard, M.S. Gilpin, and R.F. Noss. 1994. Bibliographies on coastal sage scrub and related malacophyllous shrublands of other Mediterranean-type climates. *California Wildlife Conservation Bulletin* 10:1-51.

⁵⁷ Biological Resources Assessment of the Proposed Santa Monica Mountains Significant Ecological Area. Nov. 2000. Los Angeles Co., Dept. of Regional Planning, 320 West Temple St., Rm. 1383, Los Angeles, CA 90012.

⁵⁸ NPS, 2000, op cit.

fire. Several CSS species (e.g., *Eriogonum cinereum*) in the Santa Monica Mountains and adjacent areas resprout vigorously and other species growing near the coast demonstrate this characteristic more strongly than do individuals of the same species growing at inland sites in Riverside County.⁵⁹ These shrub species also tend to recolonize rapidly from seed following fire. As a result they provide persistent cover that reduces erosion.

In addition to performing extremely important roles in the Mediterranean ecosystem, the coastal sage scrub community type has been drastically reduced in area by habitat loss to development. In the early 1980's it was estimated that 85 to 90 percent of the original extent of coastal sage scrub in California had already been destroyed.⁶⁰ Losses since that time have been significant and particularly severe in the coastal zone.

Therefore, because of its increasing rarity, its important role in the functioning of the Santa Monica Mountains Mediterranean ecosystem, and its extreme vulnerability to development, coastal sage scrub within the Santa Monica Mountains meets the definition of ESHA under the Coastal Act.

Chaparral

Another shrub community in the Santa Monica Mountain Mediterranean ecosystem is chaparral. Like "coastal sage scrub," this is a generic category of vegetation. Chaparral species have deep roots (10s of ft) and hard waxy leaves, adaptations to drought that increase water supply and decrease water loss at the leaf surface. Some chaparral species cope more effectively with drought conditions than do desert plants⁶¹. Chaparral plants vary from about one to four meters tall and form dense, intertwining stands with nearly 100 percent ground cover. As a result, there are few herbaceous species present in mature stands. Chaparral is well adapted to fire. Many species regenerate mainly by crown sprouting; others rely on seeds which are stimulated to germinate by the heat and ash from fires. Over 100 evergreen shrubs may be found in chaparral⁶². On average, chaparral is found in wetter habitats than coastal sage scrub, being more common at higher elevations and on north facing slopes.

The broad category "northern mixed chaparral" is the major type of chaparral shown in the National Park Service map of the Santa Monica Mountains. However, northern mixed chaparral can be variously dominated by chamise, scrub oak or one of several species of manzanita or by ceanothus. In addition, it commonly contains woody vines and large shrubs such as mountain mahogany, toyon, hollyleaf redberry, and sugarbush⁶³. The rare red shank chaparral plant community also occurs in the Santa Monica Mountains. Although included within the category "northern mixed chaparral" in

⁵⁹ Dr. John O'Leary, SDSU, personal communication to Dr. John Dixon, CCC, July 2, 2002

⁶⁰ Westman, W.E. 1981. op. cit.

⁶¹ Dr. Stephen Davis, Pepperdine University. Presentation at the CCC workshop on the significance of native habitats in the Santa Monica Mountains. June 13, 2002.

⁶² Keely, J.E. and S.C. Keeley. Chaparral. Pages 166-207 in M.G. Barbour and W.D. Billings, eds. North American Terrestrial Vegetation. New York, Cambridge University Press.

⁶³ Ibid.

the vegetation map, several types of ceanothus chaparral are reported in the Santa Monica Mountains. Ceanothus chaparral occurs on stable slopes and ridges, and may be dominated by bigpod ceanothus, buck brush ceanothus, hoaryleaf ceanothus, or greenbark ceanothus. In addition to ceanothus, other species that are usually present in varying amounts are chamise, black sage, holly-leaf redberry, sugarbush, and coast golden bush⁶⁴.

Several sensitive plant species that occur in the chaparral of the Santa Monica Mountains area are: Santa Susana tarplant, Lyon's pentachaeta, marcescent dudleya, Santa Monica Mountains dudleya, Braunton's milk vetch and salt spring checkerbloom⁶⁵. Several occurring or potentially occurring sensitive animal species in chaparral from the area are: Santa Monica shieldback katydid, western spadefoot toad, silvery legless lizard, San Bernardino ring-neck snake, San Diego mountain kingsnake, coast patch-nosed snake, sharp-shinned hawk, southern California rufous-crowned sparrow, Bell's sparrow, yellow warbler, pallid bat, long-legged myotis bat, western mastiff bat, and San Diego desert woodrat.⁶⁶

Coastal sage scrub and chaparral are the predominant generic community types of the Santa Monica Mountains and provide the living matrix within which rarer habitats like riparian woodlands exist. These two shrub communities share many important ecosystem roles. Like coastal sage scrub, chaparral within the Santa Monica Mountains provides critical linkages among riparian corridors, provides essential habitat for species that require several habitat types during the course of their life histories, provides essential habitat for sensitive species, and stabilizes steep slopes and reduces erosion, thereby protecting the water quality of coastal streams.

Many species of animals in Mediterranean habitats characteristically move among several plant communities during their daily activities, and many are reliant on different communities either seasonally or during different stages of their life cycle. The importance of an intact mosaic of coastal sage scrub, chaparral, and riparian community types is perhaps most critical for birds. However, the same principles apply to other taxonomic groups. For example, whereas coastal sage scrub supports a higher diversity of native ant species than chaparral, chaparral habitat is necessary for the coast horned lizard, an ant specialist⁶⁷. Additional examples of the importance of an interconnected communities, or habitats, were provided in the discussion of coastal sage scrub above. This is an extremely important ecosystem role of chaparral in the Santa Monica Mountains.

Chaparral is also remarkably adapted to control erosion, especially on steep slopes. The root systems of chaparral plants are very deep, extending far below the surface and

⁶⁴ Ibid.

⁶⁵ Biological Resources Assessment of the Proposed Santa Monica Mountains Significant Ecological Area. Nov. 2000. Los Angeles Co., Dept. of Regional Planning, 320 West Temple St., Rm. 1383, Los Angeles, CA 90012.

⁶⁶ Ibid.

⁶⁷ A.V. Suarez. Ants and lizards in coastal sage scrub and chaparral. A presentation at the CCC workshop on the significance of native habitats in the Santa Monica Mountains. June 13, 2002.

penetrating the bedrock below⁶⁸, so chaparral literally holds the hillsides together and prevents slippage.⁶⁹ In addition, the direct soil erosion from precipitation is also greatly reduced by 1) water interception on the leaves and above ground foliage and plant structures, and 2) slowing the runoff of water across the soil surface and providing greater soil infiltration. Chaparral plants are extremely resistant to drought, which enables them to persist on steep slopes even during long periods of adverse conditions. Many other species die under such conditions, leaving the slopes unprotected when rains return. Since chaparral plants recover rapidly from fire, they quickly re-exert their ground stabilizing influence following burns. The effectiveness of chaparral for erosion control after fire increases rapidly with time⁷⁰. Thus, the erosion from a 2-inch rain-day event drops from 5 yd³/acre of soil one year after a fire to 1 yd³/acre after 4 years.⁷¹ The following table illustrates the strong protective effect of chaparral in preventing erosion.

Soil erosion as a function of 24-hour precipitation and chaparral age.

Years Since Fire	Erosion (yd ³ /acre) at Maximum 24-hr Precipitation of:		
	2 inches	5 inches	11 inches
1	5	20	180
4	1	12	140
17	0	1	28
50+	0	0	3

Therefore, because of its important roles in the functioning of the Santa Monica Mountains Mediterranean ecosystem, and its extreme vulnerability to development, chaparral within the Santa Monica Mountains meets the definition of ESHA under the Coastal Act.

Oak Woodland and Savanna

Coast live oak woodland occurs mostly on north slopes, shaded ravines and canyon bottoms. Besides the coast live oak, this plant community includes hollyleaf cherry, California bay laurel, coffeeberry, and poison oak. Coast live oak woodland is more

⁶⁸ Helmers, H., J.S. Horton, G. Juhren and J. O'Keefe. 1955. Root systems of some chaparral plants in southern California. *Ecology* 36(4):667-678. Kummerow, J. and W. Jow. 1977. Root systems of chaparral shrubs. *Oecologia* 29:163-177.

⁶⁹ Radtke, K. 1983. *Living more safely in the chaparral-urban interface*. General Technical Report PSW-67. U.S. Department of Agriculture, Forest Service, Pacific Southwest Research Station, Berkeley, California. 51 pp.

⁷⁰ Kittredge, J. 1973. *Forest influences — the effects of woody vegetation on climate, water, and soil*. Dover Publications, New York. 394 pp. Longcore, T and C. Rich. 2002. Protection of environmentally sensitive habitat areas in proposed local coastal plan for the Santa Monica Mountains. (Table 1). The Urban Wildlands Group, Inc., P.O. Box 24020 Los Angeles, CA 90024. Vicars, M. (ed.) 1999. *FireSmart: protecting your community from wildfire*. Partners in Protection, Edmonton, Alberta.

⁷¹ Ibid.

tolerant of salt-laden fog than other oaks and is generally found nearer the coast⁷². Coast live oak also occurs as a riparian corridor species within the Santa Monica Mountains.

Valley oaks are endemic to California and reach their southern most extent in the Santa Monica Mountains. Valley oaks were once widely distributed throughout California's perennial grasslands in central and coastal valleys. Individuals of this species may survive 400-600 years. Over the past 150 years, valley oak savanna habitat has been drastically reduced and altered due to agricultural and residential development. The understory is now dominated by annual grasses and recruitment of seedlings is generally poor. This is a very threatened habitat.

The important ecosystem functions of oak woodlands and savanna are widely recognized⁷³. These habitats support a high diversity of birds⁷⁴, and provide refuge for many species of sensitive bats⁷⁵. Typical wildlife in this habitat includes acorn woodpeckers, scrub jays, plain titmice, northern flickers, cooper's hawks, western screech owls, mule deer, gray foxes, ground squirrels, jackrabbits and several species of sensitive bats.

Therefore, because of their important ecosystem functions and vulnerability to development, oak woodlands and savanna within the Santa Monica Mountains met the definition of ESHA under the Coastal Act.

Grasslands

Grasslands consist of low herbaceous vegetation that is dominated by grass species but may also harbor native or non-native forbs.

California Perennial Grassland

Native grassland within the Santa Monica Mountains consists of perennial native needlegrasses: purple needlegrass, (*Nassella pulchra*), foothills needlegrass, (*Nassella lepida*) and nodding needlegrass (*Nassella cernua*). These grasses may occur in the same general area but they do not typically mix, tending to segregate based on slope

⁷² NPS 2000. op. cit.

⁷³ Block, W.M., M.L. Morrison, and J. Verner. 1990. Wildlife and oak-woodland interdependency. *Fremontia* 18(3):72-76. Pavlik, B.M., P.C. Muick, S. Johnson, and M. Popper. 1991. *Oaks of California*. Cachuma Press and California Oak Foundation, Los Olivos, California. 184 pp.

⁷⁴ Cody, M.L. 1977. Birds. Pp. 223-231 in Thrower, N.J.W., and D.E. Bradbury (eds.). *Chile-California Mediterranean scrub atlas*. US/IBP Synthesis Series 2. Dowden, Hutchinson & Ross, Stroudsburg, Pennsylvania. National Park Service. 1993. A checklist of the birds of the Santa Monica Mountains National Recreation Area. Southwest Parks and Monuments Assoc., 221 N. Court, Tucson, AZ. 85701

⁷⁵ Miner, K.L., and D.C. Stokes. 2000. Status, conservation issues, and research needs for bats in the south coast bioregion. Paper presented at *Planning for biodiversity: bringing research and management together*, February 29, California State University, Pomona, California.

and substrate factors⁷⁶. Mixed with these native needlegrasses are many non-native annual species that are characteristic of California annual grassland⁷⁷. Native perennial grasslands are now exceedingly rare⁷⁸. In California, native grasslands once covered nearly 20 percent of the land area, but today are reduced to less than 0.1 percent⁷⁹. The California Natural Diversity Database (CNDDDB) lists purple needlegrass habitat as a community needing priority monitoring and restoration. The CNDDDB considers grasslands with 10 percent or more cover by purple needlegrass to be significant, and recommends that these be protected as remnants of original California prairie. Patches of this sensitive habitat occur throughout the Santa Monica Mountains where they are intermingled with coastal sage scrub, chaparral and oak woodlands.

Many of the raptors that inhabit the Santa Monica Mountains make use of grasslands for foraging because they provide essential habitat for small mammals and other prey. Grasslands adjacent to woodlands are particularly attractive to these birds of prey since they simultaneously offer perching and foraging habitat. Particularly noteworthy in this regard are the white-tailed kite, northern harrier, sharp-shinned hawk, Cooper's hawk, red-shouldered hawk, red-tailed hawk, golden eagle, American kestrel, merlin, and prairie falcon⁸⁰.

Therefore, because of their extreme rarity, important ecosystem functions, and vulnerability to development, California native perennial grasslands within the Santa Monica Mountains meet the definition of ESHA under the Coastal Act.

California Annual Grassland

The term "California annual grassland" has been proposed to recognize the fact that non-native annual grasses should now be considered naturalized and a permanent feature of the California landscape and should be acknowledged as providing important ecological functions. These habitats support large populations of small mammals and provide essential foraging habitat for many species of birds of prey. California annual grassland generally consists of dominant invasive annual grasses that are primarily of Mediterranean origin. The dominant species in this community include common wild oats (*Avena fatua*), slender oat (*Avena barbata*), red brome (*Bromus madritensis* ssp. *Rubens*), ripgut brome, (*Bromus diandrus*), and herbs such as black mustard (*Brassica nigra*), wild radish (*Raphanus sativus*) and sweet fennel (*Foeniculum vulgare*). Annual grasslands are located in patches throughout the Santa Monica Mountains in previously disturbed areas, cattle pastures, valley bottoms and along roadsides. While many of

⁷⁶ Sawyer, J. O. and T. Keeler-Wolf. 1995. A manual of California vegetation. California Native Plant Society, 1722 J St., Suite 17, Sacramento, CA 95814.

⁷⁷ Biological Resources Assessment of the Proposed Santa Monica Mountains Significant Ecological Area. Nov. 2000. Los Angeles Co., Dept. of Regional Planning, 320 West Temple St., Rm. 1383, Los Angeles, CA 90012.

⁷⁸ Noss, R.F., E.T. LaRoe III and J.M. Scott. 1995. Endangered ecosystems of the United States: a preliminary assessment of loss and degradation. Biological Report 28. National Biological Service, U.S. Dept. of Interior.

⁷⁹ NPS 2000. op. cit.

⁸⁰ NPS 2000. op. cit.

these patches are dominated by invasive non-native species, it would be premature to say that they are never sensitive or do not harbor valuable annual native species. A large number of native forbs also may be present in these habitats⁸¹, and many native wildflowers occur primarily in annual grasslands. In addition, annual grasslands are primary foraging areas for many sensitive raptor species in the area.

Inspection of California annual grasslands should be done prior to any impacts to determine if any rare native species are present or if any rare wildlife rely on the habitat and to determine if the site meets the Coastal Act ESHA criteria.

Effects of Human Activities and Development on Habitats within the Santa Monica Mountains

The natural habitats of the Santa Monica Mountains are highly threatened by current development pressure, fragmentation and impacts from the surrounding megalopolis. The developed portions of the Santa Monica Mountains represents the extension of this urbanization into natural areas. About 54% of the undeveloped Santa Monica Mountains are in private ownership⁸², and computer simulation studies of the development patterns over the next 25 years predict a serious increase in habitat fragmentation⁸³. Development and associated human activities have many well-documented deleterious effects on natural communities. These environmental impacts may be both direct and indirect and include the effects of increased fire frequency, of fire clearance, of introduction of exotic species, and of night lighting.

Increased Fire Frequency

Since 1925, all the major fires in the Santa Monica Mountains have been caused by human activities⁸⁴. Increased fire frequency alters plant communities by creating conditions that select for some species over others. Strong resprouting plant species such as laurel sumac, are favored while non-sprouters like bigpod ceanothus, are at a disadvantage. Frequent fire recurrence before the non-sprouters can develop and reestablish a seed bank is detrimental, so that with each fire their chances for propagation are further reduced. Resprouters can be sending up new shoots quickly, and so they are favored in an increased fire frequency regime. Also favored are weedy and invasive species. Dr. Steven Davis in his abstract for a Coastal Commission

⁸¹ Holstein, G. 2001. Pre-agricultural grassland in Central California. *Madrono* 48(4):253-264. Stromberg, M.R., P. Kephart and V. Yadon. 2001. Composition, invasibility and diversity of coastal California grasslands. *Madrono* 48(4):236-252.

⁸² National Park Service. 2000. *Draft: General Management Plan & Environmental Impact Statement*, Santa Monica Mountains National Recreation Area, US Dept. of Interior, National Park Service, December 2000.

⁸³ Swenson, J. J., and J. Franklin. 2000. The effects of future urban development on habitat fragmentation in the Santa Monica Mountains. *Landscape Ecol.* 15:713-730.

⁸⁴ NPS, 2000, op. cit.

Workshop stated⁸⁵ *"We have evidence that recent increases in fire frequency has eliminated drought-hardy non-sprouters from chaparral communities near Malibu, facilitating the invasion of exotic grasses and forbs that further exacerbate fire frequency."* Thus, simply increasing fire frequency from about once every 22 years (the historical frequency) to about once every 12 years (the current frequency) can completely change the vegetation community. This has cascading effects throughout the ecosystem.

Fuel Clearance

The removal of vegetation for fire protection in the Santa Monica Mountains is required by law in "Very High Fire Hazard Severity Zones"⁸⁶. Fuel removal is reinforced by insurance carriers⁸⁷. Generally, the Santa Monica Mountains are considered to be a high fire hazard severity zone. In such high fire hazard areas, homeowners must often resort to the California FAIR Plan to obtain insurance. Because of the high risk, all homes in "brush areas" are assessed an insurance surcharge if they have less than the recommended 200-foot fuel modification zone⁸⁸ around the home. The combination of insurance incentives and regulation assures that the 200-foot clearance zone will be applied universally⁸⁹. While it is not required that all of this zone be cleared of vegetation, the common practice is simply to disk this zone, essentially removing or highly modifying all native vegetation. For a new structure not adjacent to existing structures, this results in the removal or modification of a minimum of three acres of vegetation⁹⁰. While the directly impacted area is large, the effects of fuel modification extend beyond the 200-foot clearance area.

Effects of Fuel Clearance on Bird Communities

The impacts of fuel clearance on bird communities was studied by Stralberg who identified three ecological categories of birds in the Santa Monica Mountains: 1) local and long distance migrators (ash-throated flycatcher, Pacific-slope flycatcher, phainopepla, black-headed grosbeak), 2) chaparral-associated species (Bewick's wren, wrentit, blue-gray gnatcatcher, California thrasher, orange-crowned warbler, rufous-crowned sparrow, spotted towhee, California towhee) and 3) urban-associated species

⁸⁵ Davis, Steven. Effects of fire and other factors on patterns of chaparral in the Santa Monica Mountains, Coastal Commission Workshop on the Significance of Native Habitats in the Santa Monica Mountains. CCC Hearing, June 13, 2002, Queen Mary Hotel.

⁸⁶ 1996 Los Angeles County Fire Code Section 1117.2.1

⁸⁷ Longcore, T and C. Rich. 2002. Protection of environmentally sensitive habitat areas in proposed local coastal plan for the Santa Monica Mountains. The Urban Wildlands Group, Inc., P.O. Box 24020 Los Angeles, CA 90024. Vicars, M. (ed.) 1999. FireSmart: protecting your community from wildfire. Partners in Protection, Edmonton, Alberta.

⁸⁸ Fuel Modification Plan Guidelines. Co. of Los Angeles Fire Department, Fuel Modification Unit, Prevention Bureau, Forestry Division, Brush Clearance Section, January 1998.

⁸⁹ Longcore, T and C. Rich. 2002. Protection of environmentally sensitive habitat areas in proposed local coastal plan for the Santa Monica Mountains. The Urban Wildlands Group, Inc., P.O. Box 24020 Los Angeles, CA 90024.

⁹⁰ Ibid.

(mourning dove, American crow, Western scrub-jay, Northern mockingbird)⁹¹. It was found in this study that the number of migrators and chaparral-associated species decreased due to habitat fragmentation while the abundance of urban-associated species increased. The impact of fuel clearance is to greatly increase this edge-effect of fragmentation by expanding the amount of cleared area and "edge" many-fold. Similar results of decreases in fragmentation-sensitive bird species are reported from the work of Bolger et al. in southern California chaparral⁹².

Effects of Fuel Clearance on Arthropod Communities

Fuel clearance and habitat modification may also disrupt native arthropod communities, and this can have surprising effects far beyond the cleared area on species seemingly unrelated to the direct impacts. A particularly interesting and well-documented example with ants and lizards illustrates this point. When non-native landscaping with intensive irrigation is introduced, the area becomes favorable for the invasive and non-native Argentine ant. This ant forms "super colonies" that can forage more than 650 feet out into the surrounding native chaparral or coastal sage scrub around the landscaped area⁹³. The Argentine ant competes with native harvester ants and carpenter ants displacing them from the habitat⁹⁴. These native ants are the primary food resource for the native coast horned lizard, a California "Species of Special Concern." As a result of Argentine ant invasion, the coast horned lizard and its native ant food resources are diminished in areas near landscaped and irrigated developments⁹⁵. In addition to specific effects on the coast horned lizard, there are other Mediterranean habitat ecosystem processes that are impacted by Argentine ant invasion through impacts on long-evolved native ant-plant mutualisms⁹⁶. The composition of the whole arthropod community changes and biodiversity decreases when habitats are subjected to fuel modification. In coastal sage scrub disturbed by fuel modification, fewer arthropod

⁹¹ Stralberg, D. 2000. Landscape-level urbanization effects on chaparral birds: a Santa Monica Mountains case study. Pp. 125-136 in Keeley, J.E., M. Baer-Keeley, and C.J. Fotheringham (eds.). *2nd interface between ecology and land development in California*. U.S. Geological Survey, Sacramento, California.

⁹² Bolger, D. T., T. A. Scott and J. T. Rotenberry. 1997. Breeding bird abundance in an urbanizing landscape in coastal Southern California. *Conserv. Biol.* 11:406-421.

⁹³ Suarez, A.V., D.T. Bolger and T.J. Case. 1998. Effects of fragmentation and invasion on native ant communities in coastal southern California. *Ecology* 79(6):2041-2056.

⁹⁴ Holway, D.A. 1995. The distribution of the Argentine ant (*Linepithema humile*) in central California: a twenty-year record of invasion. *Conservation Biology* 9:1634-1637. Human, K.G. and D.M. Gordon. 1996. Exploitation and interference competition between the invasive Argentine ant, (*Linepithema humile*), and native ant species. *Oecologia* 105:405-412.

⁹⁵ Fisher, R.N., A.V. Suarez and T.J. Case. 2002. Spatial patterns in the abundance of the coastal horned lizard. *Conservation Biology* 16(1):205-215. Suarez, A.V. J.Q. Richmond and T.J. Case. 2000. Prey selection in horned lizards following the invasion of Argentine ants in southern California. *Ecological Applications* 10(3):711-725.

⁹⁶ Suarez, A.V., D.T. Bolger and T.J. Case. 1998. Effects of fragmentation and invasion on native ant communities in coastal southern California. *Ecology* 79(6):2041-2056. Bond, W. and P. Slingsby. Collapse of an Ant-Plant Mutualism: The Argentine Ant (*Iridomyrmex humilis*) and Myrmecochorous Proteaceae. *Ecology* 65(4):1031-1037.

predator species are seen and more exotic arthropod species are present than in undisturbed habitats⁹⁷.

Studies in the Mediterranean vegetation of South Africa (equivalent to California shrubland with similar plant species) have shown how the invasive Argentine ant can disrupt the whole ecosystem.⁹⁸ In South Africa the Argentine ant displaces native ants as they do in California. Because the native ants are no longer present to collect and bury seeds, the seeds of the native plants are exposed to predation, and consumed by seed eating insects, birds and mammals. When this habitat burns after Argentine ant invasion the large-seeded plants that were protected by the native ants all but disappear. So the invasion of a non-native ant species drives out native ants, and this can cause a dramatic change in the species composition of the plant community by disrupting long-established seed dispersal mutualisms. In California, some insect eggs are adapted to being buried by native ants in a manner similar to plant seeds⁹⁹.

Artificial Night Lighting

One of the more recently recognized human impacts on ecosystem function is that of artificial night lighting as it effects the behavior and function of many different types of organisms¹⁰⁰. For literally billions of years the only nighttime sources of light were the moon and stars, and living things have adapted to this previously immutable standard and often depend upon it for their survival. A review of lighting impacts suggests that whereas some species are unaffected by artificial night lighting, many others are severely impacted. Overall, most impacts are negative ones or ones whose outcome is unknown. Research to date has found negative impacts to plants, aquatic and terrestrial invertebrates, amphibians, fish, birds and mammals, and a detailed literature review can be found in the report by Longcore and Rich¹⁰¹.

Summary

In a past action, the Coastal Commission found¹⁰² that the Santa Monica Mountains Mediterranean Ecosystem, which includes the undeveloped native habitats of the Santa Monica Mountains, is rare and especially valuable because of its relatively pristine

⁹⁷ Longcore, T.R. 1999. Terrestrial arthropods as indicators of restoration success in coastal sage scrub. Ph.D. Dissertation, University of California, Los Angeles.

⁹⁸ Christian, C. 2001. Consequences of a biological invasion reveal the importance of mutualism for plant communities. *Nature* 413:635-639.

⁹⁹ Hughes, L. and M. Westoby. 1992. Capitula on stick insect eggs and elaiosomes on seeds: convergent adaptations for burial by ants. *Functional Ecology* 6:642-648.

¹⁰⁰ Longcore, T and C. Rich. 2002. Protection of environmentally sensitive habitat areas in proposed local coastal plan for the Santa Monica Mountains. The Urban Wildlands Group, Inc., P.O. Box 24020 Los Angeles, CA 90024.

¹⁰¹ Ibid, and Ecological Consequences of Artificial Night Lighting, Conference, February 23-24, 2002, UCLA Los Angeles, California.

¹⁰² Revised Findings for the City of Malibu Local Coastal Program (as adopted on September 13, 2002) adopted on February 6, 2003.

character, physical complexity, and resultant biological diversity. The undeveloped native habitats within the Santa Monica Mountains that are discussed above are ESHA because of their valuable roles in that ecosystem, including providing a critical mosaic of habitats required by many species of birds, mammals and other groups of wildlife, providing the opportunity for unrestricted wildlife movement among habitats, supporting populations of rare species, and preventing the erosion of steep slopes and thereby protecting riparian corridors, streams and, ultimately, shallow marine waters.

The importance the native habitats in the Santa Monica Mountains was emphasized nearly 20 years ago by the California Department of Fish and Game¹⁰³. Commenting on a Draft Land Use Plan for the City of Malibu, the Regional Manager wrote that, "It is essential that large areas of land be reclassified to reflect their true status as ESHAs. One of the major needs of the Malibu LUP is that it should provide protection for entire drainages and not just stream bottoms." These conclusions were supported by the following observations:

"It is a fact that many of the wildlife species of the Santa Monica Mountains, such as mountain lion, deer, and raccoon, have established access routes through the mountains. They often travel to and from riparian zones and development such as high density residential may adversely affect a wildlife corridor.

Most animal species that exist in riparian areas will, as part of their life histories, also be found in other habitat types, including chaparral (sic) or grassland. For example, hawks nest and roost in riparian areas, but are dependent on large open areas for foraging. For the survival of many species, particularly those high on the food chain, survival will depend upon the presence of such areas. Such areas in the Santa Monica Mountains include grassland and coastal sage scrub communities, which have been documented in the SEA studies as supporting a wide diversity of plant and animal life."

This analysis by the Department of Fish and Game is consonant with the findings of the Commission in the case of the Malibu LCP, and with the conclusion that large contiguous areas of relatively pristine native habitat in the Santa Monica Mountains meet the definition of ESHA under the Coastal Act.

¹⁰³ Letter from F. A. Worthley, Jr. (CDFG) to N. Lucast (CCC) re Land Use Plan for Malibu dated March 22, 1983.

Table 1
Permitted Uses and Development Standards in
Environmentally Sensitive Habitat Areas, Disturbed Sensitive Resource Area,
Significant Watersheds, Resource Management Areas, Wildlife Corridors and Significant Woodlands

Habitat Type and Existing Parcel Size (If applicable)	Permitted Uses Within the Habitat Area in Accordance with Section 30240(a) of the Coastal Act	Permitted Uses Adjacent to the Habitat Area in Accordance with Section 30240(b) of the Coastal Act	Development Standards/Stream Protection Policies (Note: The following standards are established for development in sensitive environmental resource areas. Development proposals consistent with these standards shall be subject to normal review procedures. Variations from these standards will be considered on an individual basis according to their potential environmental effects as determined by the Environmental Review Board).
<u>ENVIRONMENTALLY SENSITIVE HABITAT AREAS (ESHAs)</u>	Resource-dependent uses such as: o nature observation o research/education o passive recreation including hiking and horseback riding	Residential uses which are set back a minimum of 100' which are consistent with appropriate erosion control/stream protection standards and which are consistent with LCP policies.	<ul style="list-style-type: none"> o Land alteration and vegetation removal, including brushing, shall be prohibited within undisturbed riparian woodlands, oak woodlands and savannas and any areas designated as ESHAs by this LCP, except that controlled burns and trails or roads constructed for providing access to recreational areas may be permitted consistent with other policies of the LCP. o Trails or roads permitted for recreation shall be constructed to minimize grading and runoff. A drainage control plan shall be implemented. o Streambeds in designated ESHAs shall not be altered except where consistent with Section 30236 of the Coastal Act. Road crossings shall be minimized, and, where crossings are considered necessary, should be accomplished by the installation of a bridge. Tree removal to accommodate the bridge should be minimized. o A minimum setback of 100' from the outer limit of the pre-existing riparian tree canopy shall be required for any structure associated with a permitted use. o Structures shall be located in proximity to existing roadways, services and other development to minimize the impacts on the habitat. Approval of development shall be subject to review by the Environmental Review Board. o In disturbed riparian areas, structures shall be sited to minimize removal of riparian trees. o In disturbed oak woodland and savannah areas, structures shall be sited in accordance with the Los Angeles County Oak Tree ordinance.
<u>DISTURBED SENSITIVE RESOURCES (DSAs)</u>	o Resource-dependent uses such as: nature observation research education passive recreation including hiking	Uses consistent with LCP policies.	

ATTACHMENT #3

and horseback riding

- o Residential or commercial uses if consistent with standards and policies.

SIGNIFICANT WATERSHEDS
a. EXISTING PARCELS
20 ACRES AND
LARGER

- o Resource-dependent uses such as:
 - nature observation
 - research/education
 - passive recreation including hiking and horseback riding
- o Residential in accordance with recommended standards and policies and subject to review by Environmental Review Board.

Uses consistent with LCP policies.

- o Removal of native vegetation and grading shall be minimized.
- o Site grading shall be accomplished in accordance with the stream protection and erosion policies.
- o Streambeds in designated ESIIAs shall not be altered except where consistent with Section 30236 of the Coastal Act. Bridges shall be used for roadway crossings. Tree removal associated with bridge construction shall be minimized.
- o Disturbed, sensitive ravines and canyons at Point Dume shall be retained in their existing condition or restored.
- o Approval of development shall be subject to review by the Environmental Review Board.

- o Structures shall be clustered to minimize the effects on sensitive environmental resources.
- o Structures shall be located as close to the periphery of the watershed as feasible, or in any other location in which it can be demonstrated that the effects of development will be less environmentally damaging.
- o Structures and uses shall be located as close as possible to existing roadways and other services to minimize the construction of new infrastructure.
- o Grading and vegetation removed shall be limited to that necessary to accommodate the residential unit, garage, and one other structure, one access road and minimum brush clearance required by the Los Angeles County Fire Department. Where clearance to mineral soil is not required by the Fire Department, fuel load shall be reduced through thinning or mowing, rather than complete removal of vegetation. The standard for a graded building pad shall be a maximum of 10,000 square feet.
- o New on-site access roads shall be limited to a maximum length of 300 feet or one-third of the parcel depth, whichever is smaller. Greater lengths may be allowed

ATTACHMENT #5 (cont.)

provided that the County Engineer and Environmental Review Board determine that there is not an acceptable alternative and that a significant impact will not be realized and shall constitute a conditional use.

o The cleared area shall not exceed 10% of the area excluding access roads.

o Site grading shall be accomplished in accordance with the stream protection and erosion control policies.

o Designated environmentally sensitive streambeds shall not be filled. Any crossings should be accomplished by a bridge.

o Approval of development shall be subject to review by the Environmental Review Board.

o Allowable structures shall be located in proximity to existing roadways, services and other development to minimize the impacts on the habitat.

o Structures shall be located as close to the periphery of the designated watershed as feasible, or in any other location in which it can be demonstrated that the effects of development will be less environmentally damaging.

o Streambeds in designated ESIAs shall not be altered except where consistent with Section 30236 of the Coastal Act.

o Grading and vegetation removal shall be limited to that necessary to accommodate the residential unit, garage, and one other structure, one access road, and brush clearance required by the Los Angeles County Fire Department. The

Uses consistent with
LCP policies

- o Resource-dependent uses such as:
 - nature observation
 - research/education
 - passive recreation including hiking and horseback riding
- o Residential at existing parcel cuts (buildout of parcels of legal record) in accordance with specified standards and policies and subject to review by the Environmental Review Board

b. EXISTING PARCELS SMALLER THAN 20 ACRES IN PROXIMITY TO EXISTING DEVELOPMENT AND/OR SERVICES, AND/OR ON THE PERIPHERY OF THE SIGNIFICANT WATERSHEDS.

ATTACHMENT #3 (cont.)

standard for a graded building pad shall be a maximum of 10,000 square feet.

- o New on-site access roads shall be limited to a maximum length of 300 feet or one-third of the parcel depth, whichever is smaller. Greater lengths may be allowed through conditional use, provided that the Environmental Review Board and County Engineer determine that there is no acceptable alternative.
- o Site grading shall be accomplished in accordance with the stream protection and erosion control policies.
- o Designated environmentally sensitive streambeds shall not be filled. Any crossings shall be accomplished by a bridge.
- o Approval of development shall be subject to review by the Environmental Review Board.

**o. EXISTING PARCELS
SMALLER THAN 20
ACRES WHICH ARE
SCATTERED AND/OR
AT A SIGNIFICANT
DISTANCE FROM EXIST-
ING DEVELOPMENT AND
SERVICES**

- o Resource-dependent uses such as:
 - nature observation
 - research/education
 - passive recreation including hiking
- o Residential, according to the following: - parcels smaller than 20 acres may be developed provided that habitat disruption can be fully mitigated as determined by the

Uses consistent with LCP policies.

- o If parcels of less than 20 acres are merged, the development standards listed for condition "a", above, shall be applicable.

- o For resource-dependent uses, the established standards for ESIAS shall apply.

- o Streambeds in designated ESIAS shall not be altered
- o except where consistent with Section 30236 of the Coastal Act.

Attachment #5 (cont.)

MALIBU-COLD CREEK
RESOURCE MANAGEMENT AREA

Environmental Review Board.
- parcels for which it is determined that habitat disruption cannot be fully mitigated will be eligible for participation in the lot retirement program (refer to Section 4.5).

- o Resource-dependent uses such as:
 - nature observation
 - research/education
 - passive recreation including hiking and horseback riding

- o Residential according to the following:
 - for parcels less than 20 acres, buildout at existing parcel cuts (buildout of parcels of record) at 1 unit/parcel in accordance with specified standards and policies and subject to review by the Environmental Review Board
 - for parcels greater than 20 acres, land divisions are allowable, but not below 20 acres per parcel.

Uses consistent with LCP policies.

- o Allowable structures shall be located in proximity to existing roadways, services and other development to minimize impacts on the habitat, and clustering and open space easements to protect resources shall be required in order to minimize impacts on the habitat.
- o Grading and vegetation removed shall be limited to that necessary to accommodate the residential unit, garage, and one other structure, one access road, and brush clearance required by the Los Angeles County Fire Department.
- o Stream protection standards shall be followed.

Review
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Board
table

SIGNIFICANT OAK WOODLANDS

- o Resource-dependent uses such as:
 - nature observation
 - research/education
 - passive recreation including hiking and horseback riding
- o Residential uses consistent with recommended development standards/protection policies and approval of the Environmental Review Board.

Uses consistent with LCP policies.

- o Encroachment of structures within an oak woodland shall be limited such that at least 90% of the entire woodland is retained. Leachfields shall be located outside the dripline of existing oak trees.
- o Clustering of structures shall be required to minimize the impacts on natural vegetation.
- o Development shall adhere to the provisions of the County of Los Angeles Oak Tree Ordinance.
- o Land alteration and vegetation removal shall be minimized.
- o Structures shall be located as close to the periphery of the oak woodland, as feasible, including outside the woodland, or in any other location for which it can be demonstrated that the effects of development will be less environmentally damaging.
- o Structures shall be located as close as feasible to existing roadways and other services to minimize the construction of new infrastructure.
- o Site grading shall be accomplished in accordance with the stream protection and erosion policies.
- o To facilitate the clustering of development, Planned Unit Developments (PUD) shall be the method of land divisions. The applicant shall map both proposed building sites and the location of existing oak trees in order to minimize removal of oak trees.
- o Streambeds in Oak Woodlands shall not be altered except where consistent with Section 30236 of the Coastal Act. Bridges shall be used for roadway crossings.

WILDLIFE CORRIDORS

- o Resource-dependent uses such as:
 - nature observation
 - research/education
 - passive recreation including hiking and horseback riding
- o Residential uses consistent with recommended development standards/protection policies and approval of the Environmental Review Board

Uses consistent with LCP policies.

Standards shall be the same (except for densities) as for Significant Watershed parcels with the additional policy that fencing of entire parcels shall be prohibited in order to allow free passage of wildlife.

Approval of development shall be subject to review of the ERB.

ATTACHMENT #5 (cont.)

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JUL 27 2005
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COASTAL COMMISSION

FAX LETTER

To: Ms. Christine Chestnut
Fax No. 415-904-5400
From: Sherman L. Stacey
Re: Witter and Richardson
Cease and Desist and Restoration Order No. CCC-05-RO-05
Date: July 27, 2005
cc: Peter Petrovsky/818-865-9944
Total Pages – 5

Letter dated July 27, 2005 regarding Cease and Desist and Restoration Order No. CCC-05-RO-05.

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July 27, 2005

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BY FAX - 415-904-5400
AND MAIL

Ms. Christine Chestnut
Headquarters Enforcement Analyst
California Coastal Commission
45 Fremont Street, #2000
San Francisco, CA 94105

Re: Witter and Richardson
Cease and Desist Order No. CCC-05-RO-05

Dear Ms. Chestnut:

I am in receipt of your letter dated July 26, 2005. You have stated that any further response must be received by today. Yesterday, I was contacted by Peter Petrovsky and asked to assist in responding to the matter referenced above presently set for hearing on April 12, 2005. About 6 weeks ago I had been contacted by Douglas Richardson to ask if I would be available to assist on matters being handled by Morton Devor if he were not available. At that time the only matter described to me was the Commission's Motion to Vacate Dismissal. I have had no contact with Madalon Witter whom I understand resides in Central America. It is my understanding that the property to which the Order proposed by the Executive Director is directed is owned by Ms. Witter. Therefore, my statements on behalf of Ms. Witter are intended to be precatory to defend her rights but made without any opportunity to consult. Mr. Richardson has authorized me to respond on his behalf.

Yesterday was the first time I saw the Notice of the hearing set for August 12, 2005 on the proposed Cease and Desist and Restoration Order No. CCC-05-RO-05. Although I had been co-counsel with Morton Devor in the matter of *California Coastal Commission v. Witter*, LASC Case No. SC034859 (the "Action"), and I had involvement with Coastal Commission Vested Rights Application No. VR-97-1, my involvement was limited and those matters were concluded in 1998. I have not had involvement since that time. I have received, but have not had an opportunity to review, a portion of the Commission's recent Motion to Vacate Dismissal, its opposition and reply. Mr. Devor had requested that I authorize him to include my name as co-counsel on his reply although I had no participation in the preparation of any of the papers filed by Mr. Devor in that opposition.

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I recite this history because although I have some familiarity with the matter, I was unaware of the present proceeding and was not asked to assist anyone until yesterday. Mr. Petrovsky has sent to me the following correspondence: (1) Notice of Intent to Commence Cease and Desist and Restoration Order Proceedings dated February 25, 2005 addressed to Witter and Richardson at addresses in Malibu and Belize, (2) letter dated March 18, 2005 from Peter Douglas to Witter and Richardson at addresses in Malibu and Belize, (3) letter dated May 18, 2005 from you to Peter Petrovsky, (4) letter dated July 22, 2005 from you to Peter Petrovsky, and (5) public hearing notice for hearing on August 12, 2005.

At this time I am unable to verify whether or not Madalon Witter received any of these notices or communications, and on that basis I object to the hearing proceeding on August 12, 2005 on the grounds that Witter has not received notice or been properly served with the Notices necessary to commence these proceedings or the hold the hearing on August 12, 2005.

I have been unable to consult with Ms. Witter and to obtain her assistance in defending this proceeding and on that separate basis object to the hearing proceeding on August 12, 2005.

As to Richardson, he was a prior owner of the property more than 25 years ago and although he still resides there, he does not have the lawful power to comply with the Cease and Desist Order without the consent of Witter. No Cease and Desist and Restoration Order should be directed to him.

In the February 25, 2005 Notice, the Executive Director states that Witter and Richardson failed to comply with the terms of the settlement agreement. That statement is not true. Evidence which rebuts that statement is contained in (1) the Declaration of Peter Petrovsky filed June 6, 2005 in the Action, (2) the Declaration of Douglas Richardson filed June 6, 2005 in the Action, and (3) Defendants' Madalon K. Witter and Douglas Richardson Surreply to the California Coastal Commission's Reply Brief filed June 17, 2005 in the Action. I incorporate these by reference as a part of the defense of Witter and Richardson to the Cease and Desist Order. Copies of each of these documents are in the possession of your counsel, Deputy Attorney General Sam Overton. I have partial copies and will transmit full copies to you as soon as I receive them.

I believe that the issuance of the proposed Cease and Desist Order is inconsistent with the 1998 Settlement Agreement between Witter and Richardson and the Commission. In that Settlement Agreement there was a full release of Witter and Richardson, a statement that all claims were compromised and settled, and an agreement that the Superior Court shall have jurisdiction over enforcement of the Settlement Agreement. The initiation of a new Cease and Desist Order Proceeding is inconsistent with the Settlement Agreement which settled litigation over Cease and Desist Order No. CCC-93-CD-003.

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At the bottom of page 3 of the February 25, 2005 Notice, it is stated that the "Commission is now forced to initiate Cease and Desist and Restoration Order proceedings." This statement as well is not true. The Commission agreed to the jurisdiction of the Superior Court to enforce the Settlement Agreement. By initiating new Cease and Desist Order proceedings, the Commission breaches that agreement.

The Commission now wishes to avoid Superior Court jurisdiction by using a Cease and Desist Order as a remedy. I believe the Commission gave up the right to do so in the Settlement Agreement. By utilizing the Cease and Desist Order proceeding, the Executive Director seeks to have the Commission act as judge and jury and deprive Witter and Richardson of an independent forum to resolve disputes, a material part of the Settlement Agreement specifically sought by Witter and Richardson to avoid precisely what the Executive Director is seeking now. I would note that despite the claims made in the February 25, 2005 Notice that Witter and Richardson have not complied with the Settlement Agreement, the Commission has never sought the assistance of the Superior Court to enforce those claims.

Indeed the Commission's recent efforts were to set aside the Settlement Agreement, seeking to avoid it rather than to enforce it. The Commission's motion was denied. I can only express concern that the Executive Director and the Commission are unwilling to place the matter before an independent jurist because (1) the Commission lacks evidentiary support for the Executive Director's claims, (2) the Commission is unable to explain the dilatory responses to submissions by Witter and Richardson or the delay for more than two years before seeking action, and (3) the Commission is unable to explain its refusal to employ the mechanism provided for in the Settlement Agreement to pursue the claims of breach. I am advised that on June 21, 2005, before Superior Court Judge Richey, Devor offered to submit the Commission's claims of breach and performance of the Settlement Agreement to Judge Richey for resolution and on behalf of the Commission, Deputy Attorney General Overton refused.

Finally, I object to the assertion of jurisdiction by the Commission on the grounds that the Commission cannot act impartially on the requested Cease and Desist Order. On information and belief, I allege that the Commission has received numerous reports in closed sessions from both the Executive Director or his staff and the Office of the Attorney General. Witter and Richardson have no knowledge of the information imparted in those sessions. However, I do not believe that Witter and Richardson can obtain a fair hearing. At a minimum, a fair hearing would require that the Commission waive attorney-client privilege and disclose to Witter and Richardson all of the communications the Commission has received in executive session.

Finally, I would note that the Settlement Agreement identified in Paragraph 4.1.2, eleven specific matters to be addressed. I would propose that after I have authority on behalf of Witter (which I will seek) I would sit down with designated members of the Staff and determine what

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you wish to be done in each of these areas. If we can reach acceptable terms, I would recommend that Witter and Richardson stipulate to perform those matters. If necessary to have a Cease and Desist Order to carry that out without a permit, I would recommend that Witter and Richardson stipulate to such an order but I would not stipulate to any penalties for non-performance which exceed what is provided in the Settlement Agreement. Finally, some of the items listed in 4.1.2 concern improvements for which the Commission claims a permit is required. If we can reach agreement about the restoration, I would ask the Commission to compromise that claim as to any improvements currently existing for which restoration is not required.

I reserve the right to assert other and additional defenses or evidence on behalf of Witter and Richardson. I request that the hearing set for August 12, 2005, not take place. I would be available for hearing at the Commission's October meeting. There is no prejudice to the Commission from such a delay.

Sincerely


SHERMAN L. STACEY

SLS/sh

cc: Mr. Douglas Richardson
Ms. Madalon Witter
Mr. Peter Petrovsky
Morton Devor, Esq.