

**CALIFORNIA COASTAL COMMISSION**

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**RECORD PACKET COPY****Item F 5.5**

**Staff:** ANM-SF  
**Staff Report:** 7/27/05  
**Hearing Date:** 8/12/05

**STAFF RECOMMENDATIONS AND FINDINGS  
FOR CEASE AND DESIST ORDER**

**CEASE AND DESIST ORDER:** CCC-05-CD-09

**RELATED VIOLATION FILE:** V-4-02-097

**PROPERTY LOCATION:** Broad Beach, Malibu, Los Angeles County

**DESCRIPTION OF PROPERTY** An approximately 5800 foot (1.1 miles) stretch of beach both above and below the Mean High Tide Line, including both public and private property, and on private property subject to lateral public access easements and deed restrictions.

**SUBJECT PROPERTY:** Assessor's Parcel Numbers: 4470-017-061 through 4469-026-009 (parcel numbers and addresses are listed in Appendix A)

**VIOLATION DESCRIPTION:** Unpermitted placement of "private property" signs, metal and wood fencing on the sandy beach seaward of and/or adjacent to two County-owned, operated, and maintained vertical access ways, and use of private security guards on All-Terrain-Vehicles or other mechanized vehicles, all of which discourages or prevents public access along Broad Beach.

**PERSONS SUBJECT TO THIS ORDER:** Trancas Property Owners Association

**SUBSTANTIVE FILE DOCUMENTS:**

1. Notice of Violation letter, June 23, 2004
2. Notice of Intent to Commence Cease and Desist Order Proceedings, August 18, 2004 (as re-sent on March 10, 2004).
3. Coastal Development Permits as listed in

Exhibit #6 of this staff report.

4. Public records contained in Violation File No. V-4-02-097
5. Exhibits to this Staff Report #1 - #18

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**CEQA STATUS:**

Exempt (CEQA Guidelines (CG) §§ 15060(c)(2) and (3)) and Categorically Exempt (CG §§ 15061(b)(2), 15307, 15308 and 15321).

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**I. SUMMARY OF STAFF RECOMMENDATION**

Staff recommends that the Commission approve a Cease and Desist Order (as described below) which would require the Trancas Property Owners Association (hereinafter "TPOA") to 1) cease and desist from performing or maintaining unpermitted development including private property signs located along an approximately 5800-foot long stretch of Broad Beach and fencing on the sandy beach located seaward of and/or adjacent to the two County owned and operated vertical public access ways; 2) to cease and desist from operating private security guards patrols; and 3) and to cease and desist from conducting further unpermitted development along Broad Beach. This unpermitted development discourages or prevents public access to and along Broad Beach.

Trancas Property Owners Association

The TPOA is an unincorporated association whose members own property along Broad Beach. The TPOA are represented by a Board of Directors including their president, Arnold Palmer, Secretary and Director, Winefred Lumsden, and agent, Helmut Martinek. The TPOA has confirmed, through numerous correspondence and their Statement of Defense form (Exhibit #4) that they have placed "private property" signs and have hired private security guards either on foot or on all-terrain vehicles or other motorized equipment (hereinafter "ATVs") to patrol the sandy beach area of Broad Beach (see Exhibit #7 for an example of the private security guard patrols).

Public Tidelands

Broad Beach, located in the City of Malibu, is an approximately 1.1 mile stretch of beach located immediately west (upcoast) of Zuma County Beach Park, which is one of the most popular and heavily used beaches in Los Angeles County. There are approximately 108 residences located along Broad Beach (Exhibit #5).<sup>1</sup> At Broad

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<sup>1</sup> The TPOA includes properties between APN 4470-017-061 through APN 4469-026-002. There are approximately 7 properties downcoast of APN 4469-026-002 that are apparently not included in the

Beach, as with the rest of the coast of California, the seaward property line (the general line between private and public property) is the Mean High Tide Line (hereinafter "MHTL"). All lands seaward of the MHTL are State tidelands, held in trust for the public. Tidelands include, "those lands lying between the lines of mean high tide and mean low tide which are covered and uncovered successively by the ebb and flow thereof."<sup>2</sup> The State owns all tidelands and holds such lands in trust for the public. "The owners of land bordering on tidelands take to the ordinary high watermark. The high water mark is the mark made by the fixed plane of high tide where it touches the land; as the land along a body of water builds up or erodes, the ordinary high water mark necessarily moves, and thus the mark or line of mean high tide, i.e., the legal boundary, also moves."<sup>3</sup> Therefore, the boundary between private property and public tidelands is an ambulatory line.

Furthermore, the California Constitution contains certain absolute prohibitions on alienation of public tidelands.<sup>4</sup> Article 10, section 4 of the California Constitution states, in part:

*"No individual, partnership, or corporation, claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this State, shall be permitted to exclude the right of way to such water whenever it is required for a public purpose, nor to destroy or obstruct the free navigation of such water..."*

### Access-ways and Easements

The public can access Broad Beach by two County-owned and operated vertical access ways (which run from Broad Beach Road to the beach and ocean) identified by the Los Angeles County Department of Beaches and Harbors as 31344 and 31200 Broad Beach Road.<sup>5</sup> The public can also access Broad Beach by walking upcoast along the beach from Zuma County Beach Park. In addition, of the 108 properties, approximately half received Coastal Development Permits for the construction of homes or

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TPOA membership but are included in this Cease and Desist Order proceeding. These properties are included because the TPOA has placed unpermitted "private property" signs on the beach on or seaward of these properties; and therefore the Order also requires the TPOA to cease and desist from performing or maintaining unpermitted development on these properties, as well.

<sup>2</sup> California Constitution Article 10, section 3.

<sup>3</sup> Id.

<sup>4</sup> See footnote 2, Supra.

<sup>5</sup> The two County-owned, operated and maintained vertical access ways are approximately 20-foot wide and run from Broad Beach Road to the MHTL. The unpermitted fencing is located along the boundary of the access ways toward the ocean, thereby blocking lateral public access from the County access ways and across Broad Beach. At times, the fences may be seaward of the MHTL on State Tidelands.

improvements to homes, which included the provision of lateral public access a certain distance inland of the seaward property line (MHTL), either through a recorded deed restriction or easement for public access and recreational use.<sup>6</sup>

### Unpermitted Development

The unpermitted development that is the subject of this proceeding includes the placement of "private property" signs along the length of Broad Beach (see Exhibit #3 and #9 for photographs of signs), and the construction of wooden and metal fencing on the sandy beach seaward of and/or adjacent to the two County owned and operated vertical access-ways (see Exhibit #8 for photographs of fences) both without a Coastal Development Permit and inconsistent with previously issued Coastal Development Permits. In addition, the unpermitted development includes the use of private security guards on ATVs (see Exhibit #7 for photographs of security guard patrols). At times, the signs were placed directly within the public access easements or within the areas deed restricted for public access and passive recreation. In addition, the signs incorrectly purport to measure a certain distance seaward of the unpermitted signs as private property, which, in many cases, has been located in several feet into the ocean (Exhibit #3 and #9). Therefore, not only are the signs unpermitted, but the language on the signs is incorrect, misleading, and has the clear and foreseeable effect of privatizing public areas. Furthermore, even if the signs were not placed within any public access way or deed restricted area, the appearance of a line of "private property/no trespassing" signs installed along the length of Broad Beach gives the impression that the entire beach is private, which it clearly is not. Such activity clearly discourages or prevents public access to and along the beach.

In addition, the use of unpermitted security guard patrols on ATVs was also undertaken without a CDP. The guards on ATVs have directed the public (whether on a public area or not) where they can and cannot sit or walk. In addition, the mere presence of private guards patrolling the beach creates the appearance of a private beach, again, where it is not. These unpermitted guards have also not honored the deed restrictions and easements across the beach by both driving across them as if they were private and not available for public use, and by directing the public away from the public property and public access areas provided for by the deed restrictions and easements.

In order to issue a Cease and Desist Order under Section 30810 of the Coastal Act, the Commission must find that the activity that is the subject of the Order has occurred either without a required coastal development permit (CDP) or in violation of a previously granted CDP.

As addressed more fully within, the unpermitted activity that has occurred on the subject properties clearly meets the definition of "development" set forth in Section 30106 of the Coastal Act. The development was clearly undertaken without a coastal development

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<sup>6</sup> For specific information regarding which properties have easements and deed restrictions and regarding the width and depth of the public access area, see Exhibit #2 and #6.

permit, in violation of Public Resources Code 30600. In addition, and as explained in more detail below, the unpermitted development is also inconsistent with numerous CDPs issued for the construction of single family homes and other development on individual properties along this stretch of Broad Beach, including CDPs that includes lateral public access across portions of their property a certain distance inland of the Mean High Tide Line and/or conditions that explicitly prohibited the placement of "private property" signs on the sandy beach.

## **II. HEARING PROCEDURES**

The procedures for a hearing on a Cease and Desist Order are outlined in Title 14, Division 5.5, Section 13185 of the California Code of Regulations (CCR). For a Cease and Desist Order hearing, the Chair shall announce the matter and request that all parties 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, at his or her discretion, to ask of any other party. Staff shall then present the report and recommendation to the Commission, after which the alleged violator(s) or their representative(s) may present their position(s) with particular attention to those areas where an actual controversy exists. The Chair may then recognize other interested persons after which time Staff typically responds to the testimony and to any new evidence introduced.

The Commission should receive, consider, and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceedings, as specified in Title 14, California Code of Regulations (CCR) Section 13186, incorporating by reference Section 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 Order, either in the form recommended by the Executive Director, or as amended by the Commission. Passage of a motion, per Staff recommendation or as amended by the Commission, will result in issuance of the Cease and Desist Order.

## **III. STAFF RECOMMENDATIONS**

Staff recommends that the Commission adopt the following motion:

**Motion:**

***I move that the Commission issue Cease and Desist Order No. CCC-05-CD-09 pursuant to the staff recommendation.***

**Staff Recommendation of Approval:**

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

**Resolution to Issue Cease and Desist Order:**

The Commission hereby issues Cease and Desist Order No. CCC-05-CD-09, as set forth below, and adopts the findings set forth below on grounds that development has occurred without a coastal development permit and that development has occurred in violation of the terms and conditions of CDPs.

**IV. FINDINGS FOR CEASE AND DESIST ORDER NO. CCC-05-CD-09**

Staff recommends the Commission adopt the following findings of fact in support of its action.

**A. Description of Unpermitted Development**

The unpermitted development, which is the subject matter of this Cease and Desist Order, includes the placement of "private property" signs along the length of Broad Beach, construction of fencing on the sandy beach seaward of and/or adjacent to the two County operated public vertical access ways (perpendicular to the ocean) at 31344 and 31200 Broad Beach Road, and the use of private security guard patrols on ATVs. This unpermitted development discourages or prevents public access along the beach.

**B. Background: Commission's Actions and History of Violation**

During the summers of 2001 to 2003, Commission staff received complaints from beachgoers that they were harassed, intimidated, and, at times, forced to leave Broad Beach by the private security guard patrols on ATVs employed by TPOA. Commission staff reviewed the complaints and it became evident that many of these beachgoers were either on public tidelands, on public access easements, or on land deed restricted for public access. Under State law, all lands seaward of the MHTL are owned by the state and held in trust for the public. As a result, the public has the legal right to use and enjoy the beach seaward of the MHTL. In addition, TPOA has placed unpermitted "private property" signs along Broad Beach that state, "Private Property/Do Not Trespass" and purport to measure private property a certain distance seaward of the

signs (generally 20 to 60 feet seaward).<sup>7</sup> In addition to being unpermitted, as discussed above, the placement of the signs violates public access easements and areas deed restricted for public access as required by numerous CDPs. Furthermore, several CDPs issued for development along Broad Beach explicitly prohibited the placement of signs on the beach without a CDP. The placement of the "private property" signs by the TPOA was in direct violation of those CDPs.

After conducting several site visits, researching the history of the unpermitted activity, and reviewing the numerous complaints and reports from members of the public, Commission staff opened a violation case in September 2002. During these site visits at Broad Beach, Commission staff surveyed the number and location of the unpermitted "private property" signs. Commission staff noted that the signs were, and continue to be, moved periodically both laterally and vertically across the beach. In addition, the distance of land the signs purport to measure as private property changes and have been observed to range between 15 and 70 feet and change from month to month.

In addition, Commission staff discovered that the language of the signs inaccurately describes the area of public property by claiming that a certain distance seaward of the signs is private. During site visits, Commission staff measured the purported distance (again, ranging between 15 to 70 feet) indicated on the unpermitted signs and found that at most times the measurement included beach areas that were under ocean water. Any such sign placed on or seaward of properties where there is a public access easement or deed restriction, would clearly misrepresent such lands as private. As noted above, several CDPs for development on properties along Broad Beach included conditions explicitly prohibiting signs on the beach (Exhibit #15). Any placement of "private property" signs on or seaward of these properties is in violation of those CDP requirements.

On June 23, 2004, in response to numerous reports from the public and based on Commission staff research, that private property signs and security guards on ATVs have been used at Broad Beach, which discourage or prohibit the public's right to use Broad Beach, the Executive Director sent the TPOA a letter addressing the unpermitted activity at Broad Beach (Exhibit #11).<sup>8</sup> The letter provided background information

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<sup>7</sup> Commission staff has observed during numerous site visits that the unpermitted "private property" signs are removed entirely, replaced, and moved to from property to property from one month to the next. At times there are no signs on the beach and at other times, typically during the summer months (a time of heaviest public beach use) there are up to approximately 35 signs. For example, in June 2003 there were 29 signs, in July 2004 there were 35 signs, in April 2004 there were 15 signs, in January 2005 there were 2 signs, and during other times there are no signs located on Broad Beach. The placement of signs also changes location from property to property from month to month and year to year. For example, there was no sign on or seaward of 31316 Broad Beach Road in June 2003 and April 2004 but there was a sign there in September 2002. From observations and site visits over time, it is evident that many properties have had signs in some years, and not in others. It is not clear why TPOA has put up signs at any place at any time, but it is clear that the locations have varied widely.

<sup>8</sup> A similar letter was sent to eight individual property owners who, at the time of writing, had an unpermitted "private property" sign on or seaward of their property which was also inconsistent with the

regarding the Coastal Act's protection of coastal resources, including public access, and discussed Commission staff's concern that the placement of these "private property" signs and the use of private security guards patrolling the beach on ATVs discourage and sometimes prohibit the public's right to enjoy this stretch of beach. The letter explained that there are numerous public access easements along Broad Beach in addition to the public land that the public has the right to enjoy and use below the MHTL, the State tidelands held in trust for the public. Finally, the letter requested the removal of such signs and that the TPOA discontinue the practice of employing ATVs to discourage public use at Broad Beach.

In a June 28, 2004 letter, instead of responding directly to the Executive Director, Marshall Grossman, Board Member of the TPOA, and acting as a representative for the TPOA, sent a letter to Commissioner Steve Kram requesting a meeting to discuss the enforcement matter (Exhibit #13).<sup>9</sup>

In a letter of July 1, 2004 in response to the June 23, 2004 letter, Mr. Grossman raised many of the same defenses that are raised in the Statement of Defense form submitted for this proceeding (Exhibit #3), including the assertions that the "private property" signs and use of private security patrols on ATVs predate the Coastal Act, that there is a confusion over where private property and public property is located, and that the private security guards do not impact public access (Exhibit #17).<sup>10</sup> Mr. Grossman's letter also indicated that the TPOA would like to resolve the issues amicably.

Subsequent to this time, Commission staff and representatives of the TPOA, including Mr. Grossman, met to discuss the possibilities of reaching an overall settlement agreement to resolve the violations. In addition, several correspondences were exchanged regarding a possible settlement and draft settlement proposals. During most of this time, however, unpermitted signs remained on the beach and security patrols on ATVs continued to drive across the beach (including areas restricted for public access and passive recreation).

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public access easements or deed restrictions which were recorded on their property pursuant to their CDP requirements. These property owners were not included in this proceeding because we have discovered that the TPOA was the entity that placed the unpermitted development. However, individual property owners are responsible for actions that occur on their property and for complying with CDP conditions and the Coastal Act, and may be subject to future enforcement action, including potential fines and penalties under Chapter 9 of the Coastal Act for violating the Coastal Act and for violating terms and conditions of previously issued CDPs.

<sup>9</sup> It should be noted that this is an enforcement matter and the rules and procedures applying to such matters are different from those for permitting matters, and restrict Ex Parte communications.

<sup>10</sup> This report responds to these defenses, as well as other defenses raised by the TPOA in their Statement of Defense, in Section F, below.



Therefore, Pursuant to Section 13181, Title 14, Division 5.5 of the California Code of Regulations, on August 18, 2004<sup>11</sup>, the Executive Director provided the TPOA a *Notice of Intent to Commence Cease and Desist Order Proceedings* (NOI) (Exhibit #12).<sup>12</sup>The NOI sent to TPOA responded to the allegations raised in Mr. Grossman's July 1, 2004 letter, including a thorough explanation of why the TPOA has no vested right to the unpermitted "private property" signs and the unpermitted private security guard patrol and the reasons why the subject activity is development under the Coastal Act and was undertaken without a CDP.

The NOI states:

*This letter is to also notify you of my intent, as the Executive Director of the California Coastal Commission ("Commission"), to commence proceedings for issuance of a Cease and Desist Order for unpermitted development, should this not be resolved in a timely fashion. As noted above, the unpermitted development consists of private property signs, fencing seaward of the two County vertical access easements, and use of private security guards on All-Terrain-Vehicles on and along Broad Beach.*

*The purpose of this enforcement proceeding is to resolve outstanding issues associated with the unpermitted development activities that have occurred on and along Broad Beach. The Cease and Desist Order will direct you to cease and desist from performing or maintaining any development that is inconsistent with a previously issued CDP and/or subject to the permit requirements of the Coastal Act without a CDP and to compel the removal of the private property signs and fencing from the beach and to discontinue the use of private security guards on ATVs.*

In accordance with Sections 13181(a) of the Commission's regulations, the TPOA was provided the opportunity to respond to the Commission staff's allegations as set forth in NOI by completing a Statement of Defense form (hereinafter "SOD"). The TPOA was required to submit the SOD form by no later than September 7, 2004. Subsequent to this time, Commission staff and the TPOA entered ongoing settlement discussions. Throughout this time the TPOA submitted several requests to extend the deadline to

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<sup>11</sup> After reviewing the enforcement files, Commission staff discovered that the "Domestic Return Receipt" from the August 18, 2004 NOI to the TPOA was not signed and returned to our office. Therefore, in an excess of caution and to ensure formally that Commission staff properly notified the TPOA of the possibility of a Cease and Desist Order proceeding, on March 10, 2005, Commission staff re-sent the NOI. Commission staff updated the dates and revised the deadline to submit the Statement of Defense form (SOD). Commission staff noted in the cover letter to the NOI that this was merely a formality and did not represent any new action by the Commission.

<sup>12</sup> In addition to the TPOA, the Executive Director sent a *Notice of Intent to Commence Cease and Desist Order Proceedings* to six individual property owners to address unpermitted "private property" signs on or seaward of their property, which were inconsistent with public access easements or restrictions recorded on their property. This Cease and Desist Order proceeding only addresses the TPOA as the party who conducted the unpermitted development.

submit the SOD. The Executive Director granted seven deadline extensions to allow for continued discussions to occur, in the attempt to resolve the violations amicably.

Because it became clear that Commission staff and the TPOA could not resolve the violations through a consensual agreement, Commission staff eventually notified the TPOA that the proceedings for a cease and desist order would occur at the Commission's August 2005 hearing. On June 25, 2005, Commission staff received a Statement of Defense from the TPOA in response to the NOI (Exhibit #3). These defenses and Commission staff's response to those defenses are addressed in *Section F* of this Staff Report.

#### Commission Action on Coastal Development Permits along Broad Beach

As a condition to CDPs for remodeling existing homes or constructing new homes on Broad Beach, many property owners provided lateral public access and passive recreation across their property from the MHTL or daily high water mark a specified distance<sup>13</sup> inland by recording either Offers to Dedicate a public easement (hereinafter "OTDs"), deed restrictions, or Quit Claim deeds, or by acceptance of public access requirements. The California State Lands Commission has accepted all 38 OTDs and the one Quit Claim deed. Once accepted, these became legal easements benefiting the public. In addition, deed restrictions on other properties provide public access and passive recreation automatically and, like the public access easements, were recorded in the chain of title for each property.

It should be noted that any aggrieved person has the right to seek judicial review of any decision or action by the Commission by filing a petition for writ of mandate within 60 days after the decision or action of the Commission has become final. If the challenge is not made in a timely manner (within 60 days after the decision or action of the Commission has become final) the Commission action is final and is barred from court challenge. No property owner along Broad Beach challenged the Commission decision on his or her CDP (including those permits involving public access provisions or "no sign" conditions) within the 60 days.<sup>14</sup> Therefore, all CDPs issued for development along Broad Beach and any conditions, including those that included public access easements and deed restrictions on property landward of the MHTL or daily high water

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<sup>13</sup> For detailed description of each individual public access easement or deed restriction, see Exhibit #2 and #6 of this Staff Report.

<sup>14</sup> TPOA, along with several individual property owners, filed a lawsuit against the Commission challenging the access easements and to date, this suit has been unsuccessful. In July 2004, the Superior Court ruled that challenges to the lateral access easements on Broad Beach are barred by the statute of limitations because the property owners accepted the coastal permits and recorded the required offer to dedicate an easement, without filing a timely legal challenge to the easement requirement. (*Trancas Property Owners Assn. et al. v. State of California, et al.* (Los Angeles Superior Court, Case BC 309893). TPOA is appealing this decision. As discussed further intra, there are other court decisions holding as did the TPOA trial court.

mark and the conditions that explicitly prohibited signs on or seaward of properties, are final and binding and can no longer be challenged.

The signs on Broad Beach purport to denote private property a certain distance seaward of the unpermitted signs (Exhibit #3). The MHTL that constitutes the boundary between public and private property is ambulatory, due to the fact that the elevation of the land in the intertidal zone of the beach is constantly changing. Accordingly, the location where the MHTL (an elevation above sea level) intersects with the beach changes over time. The signs that purport to identify the location of the MHTL on the beach are therefore inaccurate and misleading. Although the MHTL may have been at the designated location when the sign was placed, after hours or days have gone by, the sign will no longer accurately identify the location of the MHTL. We note that the State Lands Commission has not designated a fixed location of the boundary between public tidelands and private property on Broad Beach and the State Lands Commission has not approved or authorized the placement of the "private property" signs along Broad Beach.

During a September 10, 2003 site visit, Commission staff measured the distance indicated on every unpermitted sign on Broad Beach to determine how far seaward the TPOA was purporting to designate land as private. In many cases, the measurement terminated in beach area covered in approximately one to two feet of ocean water. Based on observations of the signs on numerous dates and at various tide conditions, it appears that land that the signs purport to identify as private ownership includes land that constitutes public tidelands (i.e. seaward of the MHTL) and/or is land subject to the public access easements and deed restrictions identified above. TPOA has placed private property signs on parcels where there is a public access easement or deed restriction for public access.

#### Malibu Local Coastal Program

The Commission adopted the City of Malibu's Local Coastal Program (hereinafter "LCP") in September 2002 and it became legally applicable. Within this LCP, section 3.16 provides in relevant part that on environmentally sensitive dune habitat, vehicle traffic is "strictly prohibited". In areas not located in the identified dune habitat, section 3.17 states, in part:

*"Access to beach areas by motorized vehicles, including off-road vehicles shall be prohibited, except for beach maintenance, emergency or lifeguard services. Emergency services shall not include routine patrolling by private security forces." (emphasis added)*

The unpermitted private security guard patrols on ATVs or other motorized vehicles driven along a beach area with sensitive dune habitat violates this section of the Malibu LCP. Even if the private security guard patrols did not drive within the dunes, the Malibu LCP explicitly prohibits motorized vehicles on the beach for "patrolling by private

security forces". In areas outside of the coastal zone governed by Malibu's LCP, local and State laws also restrict ATVs on the beach.

The Malibu Municipal Code, section 12.08.110 provides that no person shall "bring to or operate in any park any motor vehicle" except as permitted in writing from the city manager or by permit. In any beach areas under the jurisdiction of the City of Malibu, this restriction on vehicle use applies. Specifically regarding beach rules and regulations, the City in Municipal Code section 12.08.020 incorporated by reference the Los Angeles County Code of Regulations Title 17.

The City of Malibu adopted the Los Angeles County Code of Regulations Title 17, which effectively make the County regulations of vehicle use on beach the law governing Malibu beaches. Malibu Municipal Code 12.08.202. Effectively, the code restricts ATVs on a Malibu beach to only those permitted by the city manager. Therefore, unless a property owner possesses a permit from the City of Malibu for operating their ATV on the beach, usage is prohibited. No such permit has been issued.<sup>15</sup>

In addition, the State of California Department of Parks and Recreation regulates the state beaches of Malibu Lagoon and Malibu Creek. California Code of Regulations Title 14 section 4355 restricts vehicle operation within state parks to roads and parking areas. Section 4352 further regulates off-highway vehicles, providing "no person shall operate an off-highway vehicle ... except in designated units or portions thereof." The only "designated units" wherein such off-road vehicles are permitted are listed in the California Department of Motor Vehicles Title 13, section 2415. No beaches in Malibu are listed in section 2415.

### **C. Basis for Issuance of Cease and Desist Order**

The statutory authority for issuance of this Cease and Desist Order is provided in §30810 of the Coastal, 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 first 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...*

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<sup>15</sup> Even if it had, however, Title 17 does not supersede the absolute provision within the LCP of restricting ATV use nor does it supersede the provisions of the Coastal Act.

The following paragraphs set forth the basis for the issuance of the Cease and Desist Order by providing substantial evidence that the development meets all of the required grounds listed in Section 30810 for the Commission to issue a Cease and Desist Order.

**i. Development has Occurred without a Coastal Development Permit**

Section 30600(a) of the Coastal Act states that, in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the coastal zone must obtain a coastal development permit ("CDP"). "Development" is defined by Section 30106 of the Coastal Act as follows:

*"Development" means, on land, in or under water, **the placement or erection of any solid material or structure**; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; **change in the density or intensity of use of land...change in the intensity of use of water, or of access thereto**...and the removal or harvesting of major vegetation other than for agricultural purposes... (emphasis added).*

The unpermitted development that is the subject of this Cease and Desist Order meets the definition of "development" contained in Section 30106 of the Coastal Act. In this case, the placement of "private property" and/or "no trespassing signs that purport to denote private property, the placement of fencing on the sandy beach seaward of and/or adjacent to the two County-owned, operated, and maintained vertical access easements at 31344 and 31200 Broad Beach Road, are the placement of a solid material or structure. In addition, the placement of "private property" and/or "no trespassing signs that purport to denote private property, the placement of fencing seaward of the two County-owned, operated, and maintained and the use of private security guard patrols on ATVs, which impede or prevent public access to and along the ocean, change the intensity of use of land and change the intensity of use of water or of access thereto. Therefore all the subject unpermitted development constitutes "development" as defined by Section 30106 of the Coastal Act and therefore may not be installed, maintained, or used unless such development is authorized in a CDP.

Many of the reports occurring between 2001 and 2003 have indicated that the private security guard patrols that drive ATVs on the beach have directed the public to leave the beach, claiming that the entire beach is private property. This action changes the intensity of use of the beach and ocean by affecting access to State waters and the public access easements and deed restricted areas. In addition, the guards appear to instruct people to leave the beach without regard to whether they are on state tidelands, public access easements owned by the State, or land deed restricted for public access. This activity prevents the public from using areas of the beach where there is a right to public beach access provided by CDPs issued by the Commission and by state law. This activity constitutes a change in the ability of the public to access public tidelands and to use Broad Beach for recreation.

Moreover, the use of the security guards on ATVs adversely impacts the use of the beach by visitors who are on public tidelands or in areas where there is a right to use the beach inland of the MHTL, even if they are not told to relocate or leave. The use of the security guards on ATVs creates noise that reduces enjoyment of the beach by the public and causes concern over being in the pathway of an oncoming ATV that may not be able to see a person lying on the sand. The use of the security guard patrols on ATVs creates an unwelcoming atmosphere for non-resident visitors that reduce a visitor's enjoyment of the beach and may be a deterrent to use of Broad Beach in the future.

Section 30600(a) of the Coastal Act requires that any person wishing to undertake "development" must obtain a coastal development permit. In this case, TPOA has undertaken all of the above-mentioned development without applying for or obtaining a coastal development permit.

The above-mentioned unpermitted development is not exempt from the Coastal Act's permitting requirements under Section 30610 of the Coastal Act and Section 13250-13253, California Code of Regulations, Title 14 (hereinafter "Commission's Regulations"). Section 30610 of the Coastal Act provides that certain types of development are exempt from the CDP requirements. In this case, the only potentially applicable exemption is Section 30610(a) regarding improvements to existing single-family homes. However, this exemption does not apply here because the subject properties are located in an area that is explicitly excluded from these exemption policies since they are located on a beach. Therefore, pursuant to Section 13250(b)(1) of the Commission's regulations, no exemption applies for the unpermitted development.

#### **ii. Development has Occurred that Violates Coastal Development Permits**

TPOA has undertaken development that also violates Commission approved CDPs authorizing development on Broad Beach. Approximately one half of the property owners along the subject properties have CDPs with conditions which explicitly provide for lateral public access at least 25 feet inland of the MHTL (Exhibit #6). Approximately 15 of these CDPs also included conditions that explicitly prohibit the placement of "private property" signs on the beach, or require a CDP or CDP amendment for posting of any signs on the property (Exhibit #15). The use of signs, fencing, and private security guards on properties that are subject to conditions that grant a public right to use the beach inland of the MHTL or which prohibited signs or require CDPs for signs are in direct conflict with the access conditions of these CDPs. As noted above, TPOA has placed "Private Property/Do Not Trespass" signs on property where there is a public right to use the beach inland of the MHTL. At times, TPOA has placed as many as 30 to 40 "Private Property/Do Not Trespass" signs along this approximately one-mile stretch of Broad Beach. This continuous row of signs -- even if none of them were located on parcels subject to a permit condition for lateral public access -- has and would convey the message that the entire length of Broad Beach is private and no

public use of the beach is allowed (For an example of this, see Exhibit #10). The continuous row of signs conveys this message for all properties along Broad Beach, including the properties where there is a right to public lateral access inland of the MHTL. Accordingly, these signs interfere with and prevent public use of the areas adjacent to and inland of the MHTL that the CDPs provide are to be available for public use. Therefore, the signs appear to constitute a violation of these CDPs, even if the signs themselves are not located on parcels where there are rights to access.

Additionally, it appears that the practice of TPOA has been to periodically relocate the "Private Property/Do Not Trespass" signs to different properties along Broad Beach, without regard to specific conditions of the CDP applicable to the property. This practice has and can result in placement of signs in violation of the CDPs containing conditions that prohibit private property signs on the beach or require a CDP or CDP amendment for posting any signs on the property.

Finally, use of private security guards on ATVs has interfered with and prevented use of areas adjacent to and inland of the MHTL where the CDPs grant a right to public use. Therefore this activity violates the public access conditions of these CDPs. The signs, fencing and private security guard patrols are in direct conflict with the intent of the CDP conditions that were imposed to protect the public's ability to access public tidelands and the sea.

#### Vested Rights Analysis

The TPOA has alleged in their SOD (discussed further, herein) and in several correspondence that they have a "vested right" to place "Private Property/Do Not Trespass" signs and operate private security guards on ATVs along the beach. Initially, to make the determination that development was conducted prior to the Coastal Act, the person making such an assertion must submit a Claim of Vested Rights to the Commission. In such a proceeding, the claimant has the burden of proving the facts that are necessary to establish a vested right. (See Title 14, California Code of Regulations, sections 13200 and 13201). Neither the TPOA nor any other party has ever submitted such a claim. However, the following analysis is provided to address the TPOA's allegation and to apply the legally applicable criteria to the facts in this case. This discussion is explained further in the responses to the SOD, *Section F* of this report.

When the Commission considers a claim of vested rights, it must apply certain legal criteria to determine whether a property owner has a vested right for a specific development. For background purposes, these criteria are described below:

1. The claimed development must have received all applicable governmental approvals needed to complete the development prior to the effective date of the Coastal Act. Typically this would be a building permit, grading permit, Final Map, Health Department approval for a well or septic system, etc. or evidence that no permit was required for the

claimed development. (*Billings v. California Coastal Commission* (1988) 103 Cal.App.3d 729, 735).

2. If work was not completed prior to the Coastal Act, the claimant must have performed substantial work and/or incurred substantial liabilities in good faith reliance on the governmental authorization received prior to that date (or lack of a required governmental authorization). (*Tosh v. California Coastal Commission* (1979) 99 Cal.App. 3d 388, 393; *Avco Community Developers, Inc. v. South Coast Regional Commission* (1976) 17 Cal.3d 785).

3. The burden of proof is on the claimant to substantiate the claim of vested right. (Title 14, California Code of Regulation, Section 13200). If there are any doubts regarding the meaning or extent of the vested rights exemption, they should be resolved against the person seeking the exemption. (*Urban Renewal Agency v. California Coastal Zone Conservation Commission* (1975) 15 Cal.3d 577, 588).

4. A narrow, as opposed to expansive, view of vested rights should be adopted to avoid seriously impairing the government's right to control land use policy. (*Charles A. Pratt Construction Co. v. California Coastal Commission* (1982) 128 Cal.App.3d 830, 844). In evaluating a claimed vested right to maintain a nonconforming use (i.e., a use that fails to conform to current zoning), courts "follow a strict policy against extension or expansion of those uses." (*Hansen Bros. Enterprises v. Board of Supervisors* (1996) 12 Cal.4<sup>th</sup> 533, 568). "It is the general purpose to eventually end all nonconforming uses and to permit no improvements or rebuilding which would *extend the normal life* of nonconforming structures." (*Sabek, Inc. v. County of Sonoma*, (1987) 190 Cal.App.3d 163, 168).

5. Section 30608 of the Coastal Act does not allow a substantial change to a vested development without obtaining prior approval pursuant to the requirements of the Coastal Act.

6. If a vested right for development is found, then a question may arise whether recent activities to repair, replace or reconstruct such development qualify for the Coastal Act exemption for repair and maintenance to existing development in Section 30610(d). Under the Commission's regulations, exempt repair and maintenance is distinguished from replacement with new development, which is *not* exempt. Title 14, California Code of Regulations, section 13252(b) states: "the replacement of 50 percent or more of a single family residence, seawall, revetment, bluff retaining wall, breakwater, groin or any other structure *is not repair and maintenance under Section 30610(d) but instead constitutes a replacement structure requiring a coastal development permit.*" (emphasis added).

These detailed standards and criteria demonstrate that numerous issues are involved in a vested rights determination. The Commission should reject the respondents' attempt to raise a claim of vested rights as a defense in this enforcement action, when they



have failed to follow the procedures for seeking such a determination by the Commission. If TPOA wished to submit a Vested Rights application, they have had years to do so and failed to do so.

Nevertheless, for the reasons discussed below, even if they has applied for a Vested Rights Determination, which they have not, the facts do not support a claim of vested rights.

#### A. Signs

For example, to qualify as vested, the development must have received all necessary governmental approvals to complete the development prior to February 1, 1973 (the effective date of the Coastal Zone Conservation Act of 1972). The signs at issue purport to delineate the line between State property and private property (the Mean High Tide Line or MHTL). This boundary between public tidelands and private property is moving constantly and a survey can only identify the boundary for any one particular time at any one particular day; and the difference in this boundary from one day to the next could be considerable. It is not possible for the private property signs to accurately depict the mean high tide line at all times, since this boundary is ambulatory from day to day. In California, lands located seaward of the Mean High Tide Line constitute public tidelands that are owned by the State and held in trust for the public. (California Civil Code section 670.). The public has the legal right to use these public tidelands.

Moreover, the State Lands Commission has the regulatory authority over public tidelands and making determinations regarding the location of public tidelands. The signs along Broad Beach were not authorized by the State Lands Commission prior to February 1, 1973, or at any time thereafter. Accordingly, the signs did not receive all required governmental approvals prior to the effective date of the Coastal Act. Therefore, even if the signs existed prior to February 1, 1973, they are not exempt from the permit requirements of the Coastal Act.

Second, another essential criteria for establishing a vested right is that it must be shown that there has not been any "substantial change" in the development (Title 14, California Code of Regulations section 13207; Public Resources Code section 30608). From Commission staff's observations and historic aerial photographs, it is clear that there has been a number of "substantial changes", including the fact that the number and location of the signs along Broad Beach have changed often over time. To establish a vested right, TPOA must prove that a specific number of signs on specific properties existed prior to February 1, 1973; any subsequent increase or decrease in the number of signs placed along the beach or the properties they were placed on would be a "substantial change" that could not occur unless it was authorized in a CDP. TPOA must also establish that signs placed on Broad Beach in recent years contain the same

message that was present on signs that were placed on the beach prior to the Coastal Act.<sup>16</sup>

Another criteria for establishing a vested right is that it must be shown that the claimant incurred substantial liabilities in good faith reliance on the lack of a required governmental authorization prior to the Coastal Act. TPOA cannot establish a vested right because it did not incur substantial liabilities in good faith reliance on the absence of regulation over placement of private property/do not trespass signs on Broad Beach prior to February 1, 1973. TPOA did not incur substantial expenses for purchase or installation of the signs. As noted in the 1966 News Letter, the association income from dues that year was \$1,005 and expenditures were only \$787. If this included expenditures for signs, this is not a substantial investment. In 1969, the annual dues of the association were \$25, which would result in approximately \$2,700 if every one of the 108 parcel owners contributed -- again, this does not represent a substantial sum available for expenditure on signs. In 1971, the association minutes indicate that a surveyor proposed to charge \$400-500 for an initial survey and \$100 for subsequent surveys. This also would not represent a substantial expenditure (particularly since the expenditures came from small dues payments made by numerous property owners). The lack of any substantial expenditure prior to the effective date of the Coastal Act is also supported by the fact that any signs that were purchased before the Coastal Act have already provided full value and had to be replaced with new signs. There is no evidence that TPOA incurred substantial liability that entitles them to rely on the absence of regulation prior to 1973 to re-install signs every year without ever complying with new laws or regulations. Rather, this is a case where continuing the sign placement requires TPOA to incur ongoing, continuing expenses for sign replacement, installation and surveys. In this situation, there are no equitable reasons for finding a vested right. Moreover, given the intermittent, recurring nature of the activity (removal of the signs each year and placement again the next year), TPOA could not reasonably expect to re-install the signs each year and be exempt forever from all new laws or regulations. Basically, once the activity was completed and the signs were removed at the end of the season, placement again the following year constitutes a new activity

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<sup>16</sup> The 1966 News Letter and 1969 letter that TPOA submitted do not establish the number and location of signs that TPOA placed on Broad Beach prior to the Coastal Act. The 1966 document states that ten additional "No Trespassing" signs were put up that year. However, there is no indication of how many signs were already in use. These documents refer to signs that only state "No Trespassing", and therefore this cannot establish a vested right for the signs containing additional information that TPOA has placed on the beach in recent years. The minutes of the homeowners association meeting in 1971 that TPOA provided allude to hiring a "surveyor" and the placement of "markers" every three hundred feet. The minutes do not indicate if or when this placement of markers occurred, or the exact location of any such markers or signs or the number of markers or signs. TPOA also provided minutes of a meeting from April 1972 that was held to "settle on the wording for the signs to be placed on the ocean side of our property..." Likewise, there is no evidence indicating when such placement of signs occurred or where they were placed. TPOA has not provided any photographs showing signs on the beach prior to February 1, 1973. No signs are visible in aerial photographs of Broad Beach from 1972. The documentation that TPOA provided is too vague and ambiguous with respect to both the date of installation, the number of such signs, and their location, to meet TPOA's burden of proving the vested right for the placement of signs that it is asserting.

(i.e., "new development") that is not exempt from the requirements of the Coastal Act in effect at the time of the new placement of signs.

We note that there are approximately 108 separate parcels on Broad Beach Road, but private property signs have never been present on the vast majority of these parcels at any one time. There is no evidence that such signs were present on any one particular parcel prior to February 1, 1973. Rather, the evidence shows that signs have been periodically moved from one parcel to another, and from one location on a particular parcel to another. If TPOA did provide evidence showing that a sign was present on a particular parcel prior to the Coastal Act (which it has not done), it still could not move the sign to a different parcel that did not previously have a sign unless this was authorized in a CDP.

The signs on Broad Beach have been moved vertically and laterally across the beach, at times have been completely removed from the beach, and have also been replaced by new signs at various times since February 1, 1973. For example, during a survey of the signs by Commission staff on April 5, 2004, staff noted that there were 15 signs present on various locations of Broad Beach. Approximately 3½ months later, on July 20, 2004, Commission staff counted 38 signs located on various locations of Broad Beach. At various times all the signs have been removed from Broad Beach. After the signs were removed, any vested right was lost and the signs could not be re-installed on Broad Beach unless this was authorized in a CDP. Both removal of the signs and continual changes in the location, number, and language of the signs constitute "substantial changes" to any vested development and therefore are not exempt. In addition, the signs purport to delineate lands seaward of the signs as private at varying distances throughout the time the signs are on the beach. For example, one month an individual sign might state that land 20 feet seaward of the sign is private property and at another time the same sign might state that land 60 feet seaward is private property.<sup>17</sup> Therefore, even if the signs were not moved vertically and laterally along and across the subject properties, the land that the signs purport to describe as private changes. This further defeats any claim of a vested right, since the change in information on the sign represents a substantial change that is not exempt from the permit requirements of the Coastal Act.

The signs that TPOA placed on Broad Beach in recent years are not the same signs that TPOA asserts were present in 1973. Rather, new signs have been installed subsequent to February 1, 1973. The installation of new signs constitutes "new development" that is not exempt from the CDP requirements of the Coastal Act.

TPOA's claim of vested rights can only be interpreted as a claim of a generalized right to place and replace an unlimited number of signs at various, changing locations on

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<sup>17</sup> Staff notes that even if the language of the signs were consistent and did not change the amount of land purported as private, the signs are still unpermitted and inaccurately and illegally attempt to delineate the boundary between private and public property.

Broad Beach. There cannot be a generalized vested right for development that is undefined and constantly changing over time.

It should also be noted that, for the parcels where the owners granted a right of public access to the public, any vested right that may have existed to post private property signs that purport to apply to such access areas has been superseded by the grant of access. As discussed above, subsequent to February 1, 1973, the owners of approximately 52 parcels on Broad Beach granted a public right of lateral access inland of the MHTL on their property. The grant of access by the property owners in an easement or deed constitutes surrender or abandonment of any pre-existing vested right that may have existed for signs to be placed or maintained on the property purporting to indicate that the beach is private and no public access is allowed since it is clearly inconsistent with the grant of access.

#### B. Fences

There is no evidence that the fences currently in place on the sandy beach seaward of and/or adjacent to the two County vertical access ways were there prior to the Coastal Act. In addition, Commission staff has confirmed that the fencing seaward of and/or adjacent to the County vertical public access ways that impede lateral public access along Broad Beach have been removed, re-installed, added to, and/or extended over the years. Aerial photographs of Broad Beach from 1972 do not show fencing in this location and TPOA has not provided any documents indicating that these fences existed prior to the Coastal Act. (The eastern County access way on Broad Beach was not even opened until after 1973). Also, as noted above, even in cases where there is vested development, which appears not to be the case here, the replacement of vested development, or any substantial change in such development, is not exempt from the permit requirements of the Coastal Act (Public Resources Code section 30608; and Title 14, California Code of Regulations section 13207). The removal, re-installation, extension and addition to the fencing along the County access ways constitutes a substantial change to the vested development and/or new development that is not exempt from the permit requirements of the Coastal Act.

#### C. Private Security Guard Patrols

There is also no evidence that the private security patrols on ATVs existed prior to the Coastal Act. In fact, ATVs were not readily available and did not enter the market until the early 1970's and were not in common usage prior to the Coastal Act. In their SOD, the TPOA states, "[the patrol] was originally on foot and in later years on both foot and all terrain vehicles ('ATVs')." Even the TPOA admits that they did not use private security guard patrols prior to the Coastal Act, which is clearly a threshold requirement to a vested rights claim.

As discussed above, an essential criteria for establishing a vested right is that it must be shown that there has not been any "substantial change" in the development. In this

case, a change from foot patrols to patrols driving along the beach on mechanized equipment clearly is a substantial change in the activity. In addition, during the time the TPOA employed the private security guard patrols, the patrols were infrequently utilized. The TPOA has stated that the private security guard patrols are typically only on the beach during the summer months. Therefore, the TPOA does not have a vested right to use the patrols on ATVs now and the private security guard patrols are not exempt from the permit requirements of the Coastal Act.

In addition, as explained above, even if they had used ATVs prior to the Coastal Act, and even if they had proven they did not make any substantial changes, it must also be shown that a vested right claimant incurred substantial liabilities in good faith reliance on the lack of a required governmental authorization prior to the Coastal Act. TPOA cannot establish a vested right because it did not incur substantial liabilities in good faith reliance on the absence of regulation over use of private security guard patrols along Broad Beach prior to February 1, 1973. TPOA did not incur substantial expenses for the patrols. As noted in the 1966 News Letter, the association income from dues that year was \$1,005 and expenditures were only \$787. If this included expenditures for security guard patrols, this is not a substantial investment. In 1969, the annual dues of the association were \$25, which would result in approximately \$2,700 if every one of the 108 parcel owners contributed -- again, this does not represent a substantial sum available for expenditure on security guard patrols. In 1971, the association minutes indicate that a patrol service would receive \$240 a year to patrol Broad Beach. This also would not represent a substantial expenditure.

Furthermore, for the parcels where the owners granted a right of public access to the public, any vested right that may have existed to patrol that portion of the beach has been superceded by the grant of public access. As discussed above, subsequent to February 1, 1973, the owners of approximately 52 parcels on Broad Beach granted a public right of lateral access inland of the MHTL on their property. The grant of access by the property owners in an easement or deed constitutes surrender or abandonment of any pre-existing vested right that may have existed for private security patrols to impede or prohibit public access in these locations since they are directly in conflict with the public access provisions.

#### Inconsistent with Resource Policies of the Coastal Act

It should be noted that this is not an element which is required for issuance of a cease and desist order. That is, the Commission does not have to find that the unpermitted development is inconsistent with the Malibu Local Coastal Program (hereinafter "LCP") or the Chapter 3 Policies of the Coastal Act to issue Cease and Desist Orders under the Coastal Act (Section 30810). However, this section is provided as background information. Commission staff notes that the unpermitted development is, in fact inconsistent with the public access, recreation, and scenic resource policies of the Coastal Act

The protection of coastal access and recreation is one of the major policy goals of the Coastal Act as provided for in Sections 30210, 30211, 30220, 30221, and 30240 of the Coastal Act. In addition, the Coastal Act was designed to protect the scenic and visual qualities of coastal areas as a resource of public importance (Section 30240 and 30251 of the Coastal Act). This development appears to be inconsistent with these Coastal Act policies.

**i. Access and Recreation**

**Section 30210: Access; recreational opportunities; posting**

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

**Section 30211: Development not to interfere with access**

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

**Section 30220: Protection of certain water-oriented activities**

*Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.*

**Section 30221: Oceanfront land; protection for recreational use and development**

*Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.*

**Section 30240: Environmentally sensitive habitat areas; adjacent developments**

*(a) 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.*

*(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which*

*would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

As noted above, this stretch of Broad Beach is located immediately upcoast of Zuma County Beach Park in Malibu and is a popular and heavily used recreational beach area. Two 20-foot wide County-owned, public vertical access ways allow unimpeded access from Broad Beach Road to the beach and ocean. These access ways are operated and maintained by the Los Angeles County Department of Beach and Harbors. As also noted above, the public has the legal right to access all lands below the MHTL, which is an ambulatory line often separating public and private property. In addition, 52 of the approximately 108 properties along Broad Beach have also provided, via easements and deed restrictions, areas at least 25 feet inland of the MHTL for public access and passive recreation (Exhibit #2 and #6). Therefore, there is a large area along Broad Beach for the public to enjoy and use.

The placement of the private property signs and fencing and the use of private security guards patrolling the beach on ATVs discourage and sometimes prevent members of the public from enjoying their right to use this stretch of beach (some of which is held in trust by the State for public use). The Coastal Act was established to protect California's spectacular coastal resources, including the public's ability to access and enjoy California's beaches. The protection of public access to the beach and ocean is one of the fundamental purposes and a principal goal of the Coastal Act.

The private property signs and fencing that were placed on the beach and the use of private security guards on ATVs without a Coastal Development Permit both give the impression that the entire beach is private. The signs state: "Private Property" and "Do Not Trespass." They also state: "Penal Code Section 602(N)." In addition to this, given the placement of the signs and the large number of footage referred to on the signs, these signs give the clear and inaccurate impression that the land seaward of the signs and even the ocean area fronting the subject properties are privately owned and not for the use of the public.<sup>18</sup> They indicate to someone who is on the beach and reads the sign that they are breaking the law and even gives the impression they are committing a crime by being there. Yet, in most cases, this indication is misleading because the visitor is on public tidelands or property where there is a public right to lateral access along the beach. These signs also clearly mislead the public by attempting to delineate the boundary between private and public property. Under well-settled State Law, all lands seaward of the MHTL are owned by the State of California and held in trust for the public. However, the location of the MHTL on the beach is a constantly moving boundary. A fixed location representing the MHTL cannot be determined on a beach in its natural state. Accordingly, the location identified on the signs at most could represent the location of the MHTL at one particular date and time – as hours and days go by, the location indicated on the sign will no longer be accurate.

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<sup>18</sup> This discussion of both the location and text on the sign is, by necessity, generalized since as noted above, the number and location of and text on the signs have changed greatly and frequently over time.

In addition, the state holds numerous easements for public access and recreation along Broad Beach. Commission staff has conducted several site visits and observed that the signs purport to identify private land but include land that appears to lie below the mean high tide line and, in many cases, also land over which there is a public right for lateral access along the beach at least 25 feet inland of the MHTL. The signs declare that the entire area landward of the signs and a certain distance seaward of the signs (in some cases 30 to 70 feet) is private.<sup>19</sup> In some cases, the signs themselves may be on public tidelands. In fact, at some times, the signposts themselves have stood beneath several feet of ocean water. Therefore, many signs not only appear to be placed directly in state tidelands, but also purport to denote as private property the public tidelands a certain distance seaward of the private property sign, which of course would be even more clearly State tidelands.

TPOA has placed "Private Property/Do Not Trespass" signs on property where pursuant to the applicable CDP there is a public right to use the beach inland of the MHTL. At times, TPOA has placed as many as 30 to 40 private "Private Property/Do Not Trespass" signs distributed along approximately one mile of Broad Beach. This continuous row of signs -- even if none of them were to be located on parcels subject to a permit condition for lateral public access -- has and would convey the message that the entire length of Broad Beach is private and no public use of the beach is allowed (see Exhibit #10 for an example of this). The continuous row of signs conveys this message for all properties along Broad Beach, including the properties where there is a right to public lateral access inland of the MHTL. Accordingly, these signs interfere with and prevent public use of the areas adjacent to, and inland of, public tidelands that the CDPs require to be available for public use. Therefore, the signs are inconsistent with the policies of the Coastal Act that protect public access to the sea and opportunities for coastal recreation.

Many of the reports occurring between 2001 and 2003, have indicated that the private security patrol that drives ATVs on the beach has directed the public to leave the beach, claiming that the entire beach is private property. This action changes the intensity of use of the beach and ocean by affecting access to State waters and the public access easements and deed restricted areas. Moreover, the guards appear to instruct people to leave the beach without regard to whether they are on state tidelands, public access easements owned by the State, or land deed restricted for public access. This activity prevents the public from using areas of the beach where there is a right to public beach access provided by CDPs issued by the Commission and state law. This activity constitutes a change in the ability of the public to access public tidelands and to use Broad Beach for recreation. Moreover, the use of the security guards on ATVs adversely impacts the use of the beach by visitors who are on public tidelands or in

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<sup>19</sup> The unpermitted signs state (taken from a photograph taken by Commission staff on 9/10/03 of a sign in front of 30826 Broad Beach Road), PRIVATE PROPERTY – DO NOT TRESPASS – CALIF PENAL CODE SEC. 602(N) – PRIVATE PROPERTY BEGINS 50 FEET TOWARD THE OCEAN FROM THIS SIGN SURVEYED 9/03 (See Exhibit #3 for a close-up photograph of an unpermitted sign on Broad Beach).



areas where there is a right to use the beach inland of the MHTL, even if they are not told to relocate or leave. The use of the security guards on ATVs creates noise that reduces enjoyment of the beach by the public and causes a personal safety concern over being in the pathway of an oncoming ATV that may not be able to see a person lying on the sand. The use of the security guard patrols on ATVs creates an unwelcoming atmosphere for non-resident visitors that will reduce a visitor's enjoyment of the beach and may cause some visitors to decide not to visit Broad Beach in the future and is therefore inconsistent with the policies of the Coastal Act that protect public access to the beach and sea and opportunities for coastal recreation

In conclusion, the "Private Property/Do Not Trespass" signs clearly impede and discourage public access to a stretch of public coastline by giving the public the impression that the land is private property. In addition, the fencing on the sandy beach seaward of and/or adjacent to the two public vertical access ways that run perpendicular to the ocean creates a physical barrier to public access along the shoreline and along public access easements. Furthermore, the private security guard patrols have, through misleading and/or inaccurate statements and their physical appearance (as a private patrol), caused people to either relocate from a public area or leave the beach entirely. Therefore, it is clear that the unpermitted signs and fencing and the use of private security guards on ATVs are inconsistent with the Access and Recreation policies of the Coastal Act by discouraging, interfering, or preventing public access to public tidelands and public access and recreation easements and failing to protect water-oriented activities, inconsistent with Section 30210, 30211, 30220, and 30240 of the Coastal Act.

## ii. Scenic and Visual Qualities

### **Section 30240: Environmentally sensitive habitat areas; adjacent developments**

*(a) 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.*

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

### **Section 30251: Scenic and visual qualities**

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

*scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.*

The Coastal Act and the Malibu LCP also protect the scenic qualities of coastal areas and require that development be sited and designed to protect surrounding coastal resources. In addition, the scenic and visual qualities of coastal areas must be protected as a resource of public importance<sup>20</sup>. The scenic resources that must be protected in this area include the views to and along the beach and ocean and the scenic qualities associated with the natural beach environment. In this case, the unpermitted development, signs labeled "Private Property, Do Not Trespass", fencing, and private security guard patrols riding across the beach on ATVs are all located directly on this heavily visited beach area. Such unpermitted development clearly diminishes the scenic resources of this coastal area. The public is confronted with a beach area that has had, at times up to 30 to 40 intimidating private property signs placed directly on it. During site observations, Commission staff found the signs located at the water line or even in the water, itself (giving the misleading appearance of a private beach area), which would impact the scenic qualities of the public beach area. Clearly, the beach experience one expects does not include seeing a line of "Private Property, Do Not Trespass" signs. In addition, private security guards on ATVs driving up and down the beach detract from the pristine and undisturbed qualities of the beach, and are clearly not consistent with the protection of the adjacent public recreational area (Zuma County Beach Park) and the protection of the coastal resources along Broad Beach, including the scenic and visual qualities of the coastline along Broad beach. This unpermitted development is therefore inconsistent with Sections 30240 and 30251 of the Coastal Act.

**D. California Environmental Quality Act (CEQA)**

The Commission finds that issuance of a cease and desist order to compel the removal of the unpermitted development from the subject properties 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 is exempt from the requirement for the preparation of an Environmental Impact Report, based on Sections 15060(c)(2) and (3), 15061(b)(2), 15307, 15308 and 15321 of CEQA Guidelines.

**E. Summary of Facts**

1. The Trancas Property Owners Association (TPOA) is a voluntary organization that is the homeowners association for the Broad Beach property owners located along Broad Beach, in the City of Malibu.

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<sup>20</sup> §30240 and §30251 of the Coastal Act.

2. There are approximately 52 lateral public access areas (either through recorded easements, deed restrictions, or quit claim deeds) on properties at Broad Beach (identified in Exhibit #2 and #6). These public access areas are included in the conditions of CDPs that the Coastal Commission issued to the property owners to authorize private residential development. The conditions of approval of the CDPs, the easements, deed restrictions and/or quit claim deeds run with the land and bind the current owners of the property. The time period to challenge the Commission's decision has passed, and therefore, the CDPs and the terms and conditions of the CDPs are final.
3. The TPOA has undertaken development, as defined by Coastal Act Section 30106, at the Subject Properties, including the placement of "private property" and "no trespassing" signs, the construction of metal and wood fencing on the sandy beach seaward of and/or adjacent to two County owned, operated, and maintained vertical public access ways, and the use of private security guards on ATVs.
4. The subject unpermitted development is in violation of numerous Coastal Development Permits that included public lateral access easements or deed restrictions. The unpermitted development also violates approximately 15 CDPs that expressly state no "private property" signs are allowed on the beach, or that a CDP or CDP amendment is required for posting *any* signs on the property. The unpermitted development is also in violation of the Coastal Act.
5. The TPOA did not obtain CDPs for any of the unpermitted development it conducted. The TPOA did not obtain a CDP or amendment to any of the CDPs that were issued to individual property owners for the construction of homes on their property to undertake the above-described unpermitted development, which was inconsistent with these CDPs.
6. The TPOA employs a private security patrol that rides All Terrain Vehicles on the beach. This activity involves mechanized equipment on a sandy beach and affects the use of and access to water. The TPOA did not obtain a CDP for this unpermitted development nor did the TPOA obtain an amendment to the CDPs that required public access easements or deed restrictions on approximately 52 properties along Broad Beach.
7. The TPOA places, removes, relocates, and moves "private property" signs across and around Broad Beach, which purports to delineate the Mean high tide Line (MHTL). The signs purport to delineate as private lands a certain distance seaward of the "private property" sign. Only the State Lands Commission has the authority to delineate the MHTL. The TPOA did not receive approval from the State Lands Commission to delineate the MHTL nor has the State Lands Commission authorized the signs themselves. The information on the signs is inaccurate and misleading because (1) at most the signs can only identify the location of the MHTL at a particular date and time, and as hours and days go by, the locations indicated on the signs are no longer accurate (if they were ever accurate to begin with) and (2) the

signs purport to designate as "private property" areas that appear to be public tidelands and/or areas where there is an easement or deed restriction that grants the public the right to use the beach extending at least 25 feet inland of the MHTL or daily high water mark.

8. No permits were issued from the Coastal Commission, the State Lands Commission, the City of Malibu, or any other agency for the unpermitted development listed above.
9. No exemption from the permit requirements of the Coastal Act applies to the unpermitted development on the subject properties.
10. TPOA has submitted evidence which it claims shows a vested right to the signs and guard patrols which are the subject of this action. Based on the relevant facts and evidence, and applying the legal standard for a vested right to development under the Coastal Act, TPOA has failed to establish that they have a vested right to the unpermitted development described in Finding #3.
11. On June 23, 2004, Commission staff sent a letter to representatives of the TPOA notifying them that the signs, fencing, and guards are "development" as defined by the Coastal Act and that such development was placed or operated without a Coastal Development Permit and inconsistent with numerous CDPs, which required lateral public access easements and deed restrictions, and required conditions explicitly prohibiting signs on or seaward of 15 properties at Broad Beach. The letter also requested that the TPOA remove the signs and fencing and cease operation of the private security guards.
12. On August 18, 2004 Commission staff informed the TPOA via a *Notice of Intent to Commence Cease and Desist Order Proceedings* ("NOI") that pursuant to Title 14, California Code of Regulations, Section 13191(a), the Commission intended to initiate cease and desist order proceedings against them, and outlined steps of the cease and desist process. This letter also explained that there is no vested right for any of the unpermitted development described in Finding #3.
13. On March 10, 2005, Commission staff re-sent the August 18, 2004 NOI in an excess of caution and to ensure formally that Commission staff properly notified the TPOA of the possibility of a Cease and Desist Order proceeding since Commission staff discovered that the "Domestic Return Receipt" from the August 18, NOI to the TPOA was not signed and returned to the Commission's San Francisco office.
14. The unpermitted development described in Finding #3 is inconsistent with the policies set forth in Sections 30210, 30211, 30220, 30221, 30240, and 30251 of the Coastal Act.
15. Unless prohibited, the unpermitted development will cause continuing resource damages.

**F. Violators' Defenses and Commission's Response**

Kenneth A. Ehrlich, on behalf of the TPOA, submitted a Statement of Defense ("SOD"), which was received by the Commission staff on June 25, 2005, and is included as Exhibit #4 of this Staff Report. The following paragraphs describe the defenses contained in the SOD and set forth the Commission's response to each defense.

**1. The Respondents' Defense:**

On pages 3 through 6 of TPOA's SOD, TPOA alleges that the public access easements required by CDP conditions are "questionable" and were "held illegal in the U.S. Supreme Court's *Nollan* decision."

**Commission's Response:**

In its Statement of Defense, TPOA asserts that lateral access easements on Broad Beach are "questionable" and were "held illegal in the U.S. Supreme Court's *Nollan* decision." However, TPOA fails to disclose that, along with several individual property owners, it filed a lawsuit against the Commission challenging these easements on this very ground, and in fact, lost their challenge in the trial court. In July 2004, the Superior Court ruled that challenges to the lateral access easements on Broad Beach are barred by the statute of limitations because the property owners accepted the coastal permits and recorded the required offer to dedicate an easement, without filing a timely legal challenge to the easement requirement. (*Trancas Property Owners Assn. et al. v. State of California, et al.* (Los Angeles Superior Court, Case BC 309893). TPOA is appealing this decision. However, the California Court of Appeal has already ruled in the Commission's favor on the same issue in *Serra Canyon Company Ltd. v. California Coastal Commission* (2004) 120 Cal.App.4<sup>th</sup> 663, review denied, October 20, 2004, where the court found that a collateral attack on an offer to dedicate an easement required by a coastal permit condition was barred by the statute of limitations. The Court of Appeal indicated that "controlling authority" for its decision is the opinion in *Ojavan Investors, Inc. v. California Coastal Commission* (1994) 26 Cal.App.4<sup>th</sup> 516 and also relied on the federal court's decision in *Daniel v. County of Santa Barbara* (9<sup>th</sup> Cir. 2002) 288 F.3d 375. Therefore, there is clear authority that the legality of the lateral access easements on Broad Beach is not now subject to challenge. Moreover, TPOA neglects to mention the fact that for most of the parcels on Broad Beach where there is a public right to lateral access inland of the mean high tide line, the access resulted from either a deed restriction or lateral access easement required under a permit that was approved *before* the *Nollan* decision in 1987.

Property owners who received CDPs to construct single-family homes or remodel existing single-family homes along Broad Beach accepted both the benefits and the burdens of the CDPs. They were authorized and able to construct their homes adjacent to Broad Beach, a heavily used and popular public recreational area under the terms and conditions determined to be necessary to make the project approvable under the

Coastal Act, and now cannot obviate the burdens of those CDPs nor can TPOA take actions which are inconsistent with those CDPs.

It is clear that TPOA has installed "private property, no trespassing" signs along Broad Beach, constructed wood and metal fencing on the sandy beach seaward of and/or adjacent to two County-owned and operated vertical public access ways, and operate private security patrols on ATVs without a CDP and in direct conflict with previously issued CDPs. Thus, the requirements to issue a cease and desist order have been met.

## **2. The Respondents' Defense:**

On pages 8 through 10 of TPOA's SOD, TPOA asserts that it has been the object of false information and exploitation by the Commission's Executive Director, Coastal Access Manager and a member of the Commission.

### **Commission's Response:**

The issues that TPOA raises are not relevant to whether the evidence before the Commission shows a violation of the Coastal Act. The only relevant issue to this proceeding is whether there was either unpermitted development or violations of CDP requirements – that is, a violation of the Coastal Act establishing the grounds to issue an Order under Section 30810.

TPOA seems to imply that this administrative proceeding is not fair because of statements by these individuals. There is no evidence that the Executive Director has acted inappropriately by bringing this action against TPOA or seeking the relief that is requested. In fact, the Executive Director's statements that TPOA complains about date from June 2005, more than a year after the Notice of Intent for this administrative enforcement action was sent to TPOA, and do not, in any way relate to the Coastal Act violations that are the subject of this enforcement action. The Executive Director's request for an order in this action is based on facts indicating that placement of private property signs purporting to identify the location of the mean high tide line and patrolling of the beach with security guards on ATVs constitute development that is not authorized in a coastal permit, is inconsistent with previously issued CDPS, and that interferes with public rights to use tidelands, easements and areas deed restricted for public access on Broad Beach.

Furthermore, the Commission as a whole is the decision-maker in this action, not any of the individuals that TPOA complains about. There is no indication that the Commissioners will not provide TPOA a fair hearing and base their decision on the relevant law and the evidence presented.

TPOA also alleges that a Commissioner has a conflict of interest in this case because of personal experiences with issues related to Broad Beach and an organization run by the

Commissioner and spouse. This staff report will not address these issues, which will be addressed internally by legal staff and counsel. However, these assertions by the TPOA do not, in any way provide any evidence that the unpermitted "private property" signs, the unpermitted fencing, and the unpermitted private security patrol on ATVs were constructed or undertaken with the benefit of a CDP or otherwise indicate that there has not been a violation of the Coastal Act, or that Section 30810 does not apply here. In fact, as discussed above, the requirements to issue a cease and desist order have been met since the subject development was undertaken without benefit of a CDP and inconsistent with previously issued CDPs.

### **3. The Respondents' Defense:**

In TPOA's SOD, TPOA raised several allegations that have no relevance to the issue of whether the subject activity was conducted without benefit of a CDP or inconsistent with a previously issued CDP.<sup>21</sup> The TPOA raises the following issues in their SOD:

a) "There are no public facilities, no lifeguards, no restrooms, no changing areas, and no restaurants. Moreover, there is no reliable law enforcement.

### **Commission's Response:**

This argument is continually raised as a defense by property owners adjacent to public areas for unpermitted development adjacent to or on such public area. In fact, in California, most public beaches do not have such amenities as restaurants, lifeguards, and restrooms. The lack of these amenities does not, in any way, revert the land to private ownership or allow adjacent property owners to treat such public land as their own.

In addition, if a property owner on Broad Beach has a legitimate need for assistance from law enforcement, they have the ability to call and request this assistance as every other property owner has. Any shortage of law enforcement personnel does not give a homeowner the right to take the law into their own hands and conduct activities that are against the law, namely the placement of unpermitted "private property/no trespassing" signs, the construction of fencing on the sandy beach seaward of and/or adjacent to the two County-owned, operated, and maintained vertical public access ways, and the operation of private security guard patrols on ATVs, which are driven along the beach.

To issue a cease and desist order under Section 30810 of the Coastal Act, the Commission must find that development was undertaken without a CDP or inconsistent with previously issued CDPs. In this case, it is clear that the development undertaken by TPOA was, in fact conducted both without a CDP and inconsistent with previously issued CDPs.

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<sup>21</sup> Therefore, since this is the standard for a cease and desist order under Section 30810 of the Coastal Act, even if all these assertions were true, they would not provide a defense in a cease and desist order proceeding.

b) Dogs and Horses:

"The physical and health risks to beachgoers, private and public alike, from galloping horses, dog bites and horse and dog feces has reached an intolerable stage."

**Commission's Response:**

While there may be some members of the public who do not abide by local ordinances restricting certain animals on public areas, this is not a defense to the subject proceeding nor is does it give the right to property owners adjacent to a public area to disregard the requirements of the Coastal Act. Since this is a local ordinance that restricts certain animals on this public area, such enforcement is handled at the local level. The fact remains that the unpermitted activity being addressed herein was conducted without benefit of a CDP and inconsistent with previously issued CDPs. In addition, while the Commission does not have to make a finding that the unpermitted development is inconsistent with the resource policies of the Coastal Act, the subject unpermitted development clearly impedes and/or prevents public access along both public areas below the MHTL and public areas included in public access easements and deed restriction. If it is the intent of the TPOA to enforce, on its own, local ordinances restricting certain animals on public areas, they are not only doing so in violation of the Coastal Act but also in a way that comes at the expense of a much larger population of beachgoers who are complying with animal restrictions.<sup>22</sup>

c) Trespassers

"Trespassing on beachfront residential property is a recurrent problem."

**Commission's Response:**

As with any residential property adjacent to a public area, such as a sidewalks, streets, and parks, the public will be in close proximity to the private property. The avenue to address issues of trespassing, if there is a legitimate violation of law, is to contact the local law enforcement. As discussed in numerous correspondences between Commission staff and TPOA, there may be acceptable signs that could be authorized in a CDP, which would be placed on private property, away from the sandy beach area, requesting that the public respect the private property, which could help ameliorate the problem. In addition, if property owners feel the need to protect their homes from trespassers, they have the ability to hire their own security that would not affect public access along Broad Beach or give the appearance that public areas of the beach are private.

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<sup>22</sup> Commission staff notes that on several occasions staff has observed property owners at Broad Beach walking their own dogs across public portions of the beach.



The subject unpermitted development clearly gives the false impression that Broad Beach is entirely private and interferes with the public's ability to access the public portions of the beach.

d) "Storm Damage to Beach and Dunes"

"There are numerous large drain pipes along the entirety of Broad Beach.... During periods of heavy storms, the discharge from these drains is devastating. It blows out the dunes and causes erosion throughout the dune area.... There is little or no regard by government agencies for the consequences of this poor planning and its impacts on the volume of water results.... All repair and restoration is undertaken at the homeowner expense, including that done this year."

**Commission's Response:**

This assertion does not respond in any way to the substance of this proceeding. The "private property" signs, fencing, and private security guard patrols were placed or undertaken without benefit of a CDP and inconsistent with numerous CDPs along Broad Beach properties and such unpermitted development is not related in any way to any alleged drain pipe issues, and certainly do not provide a defense to this proceeding. Commission staff notes that there are several storm drainpipes that exit onto Broad Beach. A majority of these are, in fact, small pipes that Broad Beach property owners have installed (with or without CDPs) to direct water runoff from their homes and landscaped yards to the beach. While there may be a large volume of water that drains from Pacific Coast Highway (above Broad Beach) or from the above hillsides and developments, staff notes that the photographs sited in TPOA's defense and included as Tab 4, 5, and 6 in their SOD appears to show heavy beach erosion from storm waves and tides and not necessarily from storm drain runoff. The beach is eroded in a lateral line well inland of the storm drain outlet typical of high wave run-up and beach scour from winter tides and storm waves. Staff also notes that, while not a part of this proceeding, any "repair" or "restoration" of the dunes or beach is development under the Coastal Act and does require a coastal development permit. The activity that TPOA refers to that was "done this year" is the subject of an ongoing enforcement matter as such development was undertaken without benefit of a CDP.

e) "Ocean Safety"

"In addition to saving lives... lifeguards on publicly maintained beaches protect beach goers and remind them of their responsibilities. Because there are no public facilities or lifeguards on Broad Beach, the presence of our service patrol... provides some measure of protection."

**Commission's Response:**

Again, this assertion does not respond in any way to the substance of this proceeding. The "private property" signs, fencing, and private security guard patrols were placed or undertaken without benefit of a CDP and inconsistent with numerous CDPs along Broad Beach properties. In addition, the private security guard patrols have discouraged and/or prevented public access along Broad Beach. To alleviate the concerns the TPOA raises in this assertion, there are clearly other means to try and address this issue without violating the Coastal Act. For example, Commission staff has been working with TPOA to try and arrange for TPOA to employ or contract with State, County, or City lifeguards.

**4. The Respondents' Defense:**

**"Public Access Through Prescriptive Use"**

"Lateral access is sometimes obtained by the public over private property... by what is referred to as 'adverse' or 'prescriptive use'.... In Gion, the California Supreme Court held that the public had gained prescriptive use over private property because the public had used the land for more than five years with full knowledge of the owner, without asking or receiving permission to do so and without objection being made. In order to register objections, the Supreme Court noted the appropriateness of 'No Trespassing' signs but cautioned that something more is required 'to halt a continuous influx of beach users to an attractive seashore property'.... In order to ensure that lateral access over their home sites is not inadvertently lost through prescriptive use, Broad Beach residents have taken rational protective steps in accordance with the Supreme Court decision of Gion and subsequently enacted legislation by the California State Legislature, Civil Code § 1008."

"There are obviously means by which property owners may make clear their intent to not permit loss of their property through adverse or prescriptive use. The most obvious, and certainly unacceptable means is to station someone at the property and simply prohibit people from crossing over the land. Other less obtrusive and civil means are preferable. Appropriate signage, such as 'No Trespassing' or other language, is commonly employed, and lawful. See Gion and California Civil Code § 1008. Our Association has provided two services which serve this purpose, among others. They are signage and the service patrol. Each has been in existence since prior to the adoption of the Coastal Act."

**Commission's Response:**

During Commission staff's first meeting with TPOA on August 24, 2004 and in a follow-up letter of September 1, 2004, by Commission staff counsel, Sandra Goldberg, we addressed TPOA's claims that Gion justifies the placement of "Private Property/No Trespassing" signs on Broad Beach (see Exhibit #14 for a copy of the September 1

letter). We note that even if true, Gion in no way provides an exemption from complying with the Coastal Act or any other applicable laws. Moreover, far from being the only way to prevent prescriptive rights, Commission staff noted that the Civil Code specifically provides other options to address the concerns about implied dedication that have been raised by the TPOA. On July 11, 2005, in response to TPOA raising the same issues in their SOD, Commission staff sent a second letter responding to TPOA's defenses. This letter was sent to further clarify some of the legal issues apparently giving rise to concerns the TPOA had expressed regarding the need for private property signs to protect against a finding of implied dedication.

Of course, TPOA's concerns about adverse or prescriptive rights are not valid with respect to public tidelands or areas along the beach where there is an easement or deed granting a public right to access. TPOA has no right or legitimate need to place signs designating these areas as private property.

It should be noted the California Legislature responded to the holding of Gion v. City of Santa Cruz (2 Cal. 3d 29, 1970) by enacting California Civil Code section 1009 in 1971. Specifically, in reaction to Gion, Civil Code section 1009 identified three means by which a private landowner may prevent implied dedication of coastal property: posting signs, recording notice, or entering a written government agreement. In fact, California Civil Code Section 813, enacted in 1965, was amended in 1971 specifically in reaction to Gion, and was designed to provide a means of recording notice to prevent implied dedication of coastal property. Particularly, language was changed in the statute's second paragraph to establish that "recorded notice is conclusive evidence" that any use is permissive, subject to revocation, and dispositive in any judicial proceeding on implied dedication or prescriptive right issues. The provisions in Section 1009(f)(2) for the recording of such notices, and the fact that this section was passed as a specific reaction to Gion is further discussed in the more recent California Court of Appeals case of Burch v. Gombos, where the court indicated: "The previously mentioned enactment of Civil Code section 1009 and amendments to Civil Code section 813 were a Legislative reaction to Gion and largely abrogated its holding." (2000) 82 Cal. App. 4th 352, 361 fn.12.

Therefore, under section 1009(f), a private landowner may prevent implied dedication of coastal property through recording a notice as provided under California Civil Code section 813. Given the option of recording notice, placing private property signs on Broad Beach is not legally necessary to prevent implied dedication. Commission staff notes that Section 1009 also provides the option of entering a written agreement with a government agency providing for public use as a means to avoid public prescriptive rights.

Moreover, as was pointed out to TPOA in several correspondences and throughout this Staff Report, the posting of signs is development under the Coastal Act, and posting of signs within the coastal zone requires a Coastal Development Permit (CDP) to be legal

coastal development under Chapter 3 of the Coastal Act (1972) and Gion in no way provides some exception to this.

In fact, placement of any such signs, including those contemplated by the Civil Code, is not exempt from the permit requirements of the Coastal Act. The Civil Code provides no such exemption. Therefore, compliance with both state laws is required and the Association may only place such signs if they have been authorized pursuant to a coastal development permit, which in this case has not occurred. Although the signs are not the only means legally sufficient for a property owner to protect them from implied dedication, as noted above, the TPOA does have the right to apply for approval for signs that do not discourage or prevent public access along the public areas of Broad Beach.

As was previously pointed out to TPOA in our numerous conversations and in our letters of June 23, 2004, March 10, 2005, and July 11, 2005, the text on the signs placed by the TPOA is, at least in many cases, misleading and inaccurate. Clearly, the Civil Code sections do not authorize signs that inaccurately identify private property. The signs purport to delineate a point a fixed number of feet seaward of the sign as the beginning of the mean high tide line. The evidence indicates that the purported border identified on the signs placed by the Association is inaccurate (at many times, the signs have been documented to actually be under water). The location of the MHTL on the beach is a constantly moving boundary. A fixed location representing the MHTL cannot be determined on a beach in its natural state. Accordingly, the location identified on the signs at most could represent the location of the MHTL at one particular date and time – as hours and days go by, the location indicated on the sign will no longer be accurate.

In addition, approximately 15 properties have, via their CDP requirements, conditions that explicitly prohibit the placement of "private property" signs on the beach, or require a CDP or CDP amendment for posting of any signs on the property. The signs that were placed on parcels with such a condition is clearly inconsistent with and in violation of those CDPs.

## **5. The Respondents' Defense:**

### **Signs and Security Guards**

"The Association has placed signage on the beach since prior to the enactment of the Coastal Act. The signage has been maintained throughout all of these years without interruption, except for periods of heavy storms when the signs were removed only to be replaced. They have remained off the sandy beach since early this year at Commission staff request in order to facilitate settlement discussions."

"As true with the signs, there has been a service patrol in place continuously since prior to the enactment of the Coastal Act. It was originally on foot and in later years on both foot and all terrain vehicles ('ATVs')."

The TPOA alleges that a letter from Commission staff in 1995 recognized that "existing signs which have not been replaced or modified in their language, and whose existence either predates the Coastal Act or received a coastal development permit are permitted to remain."

**Commission's Response:**

The assertion raised above relate to the finding of a "vested right" for certain development. As thoroughly discussed in *Section C - Vested Rights Analysis* on pages 15 through 21 of this staff report, incorporated by reference here, it is clear that TPOA does not have vested rights for "private property" signs, fencing seaward of the two County-owned and operated vertical public access ways, and private security guards on ATVs. The unpermitted development did not have all government approvals prior to the enactment of the Coastal Act, TPOA did not incur substantial liabilities prior to the enactment of the Coastal Act, and even if the original unpermitted development had been vested, there was a substantial change in the development (the "private property" signs are removed, replaced, and moved around and across the beach and the language of the signs purporting to denote land as private changes constantly; and the security guard patrols that were allegedly patrolling the beach prior to the Coastal Act were, as stated by TPOA, on foot and sometime after the enactment of the Coastal Act began the security patrols on ATVs or other mechanized equipment).

The TPOA allege that in a letter from Commission staff to TPOA, staff, in some way, recognized the existence of signs prior to the Coastal Act. However, the TPOA fails to cite the conclusion of the letter, which states, "However, we also are aware that many of these signs are removed or destroyed in the winter time and replaced in the spring and summer. Further, the statement on the sign itself has changed, which alters the point of public access to the water. As such, the placement of any sign must receive a coastal development permit." The letter continues by noting the fact that, at the time of the letter, there were no security guard patrols or signs on the beach. The letter concluded by stating, "to place any signs on the beach at any time in the future will require a coastal development permit" and that any signs placed as of receipt of the letter would be a violation of the Coastal Act.

In addition, the TPOA allege that staff, through this letter, informed TPOA that they have the right to patrol private property. The letter does state that they have the right to employ patrols that do not discourage or prevent public access to public areas on Broad Beach. Commission staff's letter does not state that TPOA has a right to use ATVs or other mechanized equipment to conduct the patrols. As addressed above and incorporated here, the private security guard patrols discourage and/or prevent public access across Broad Beach.

**6. The Respondents' Defense:**

**TPOA "Initiated Settlement/Compromise Efforts"**

On pages 10 and 11 of TPOA's defense, TPOA refers to settlement discussions during 2004 and 2005, alleges that the Commission delayed in meeting with TPOA, and claims that there is no need for the Commission to proceed with this action.

**Commission's Response:**

The above assertion does not provide any evidence to support a claim that the findings for a cease and desist order have not been met. The defense alleges that there was a delay in meeting with TPOA to discuss the violations. Commission staff notes that our first violation letter initiating the current Commission effort to resolve the violations was sent to TPOA on June 23, 2004. This letter explained that the placement of signs and operation of the private security guard patrols are development that require a CDP and requested the TPOA remove the signs and cease operation of the security guards. The unpermitted development remained on the beach; and therefore, on August 18, 2004, Commission staff sent a Notice of Intent to Commence Cease and Desist Order Proceedings. After several pieces of correspondence were sent to ascertain the identity of the legal representative for TPOA, Commission staff met with members of TPOA on August 23, 2004. Therefore, there was a relatively short period of time between the initial violation letter and Commission staff's meeting with TPOA.

The remainder of this defense is a generalized history of attempts to resolve the violations without initiating these proceedings. Commission staff had hoped to resolve these issues through a consent cease and desist order. TPOA appears to allege that "positive discussions came to a halt" after Commission staff attempted to resolve a separate violation case involving TPOA's grading of Broad Beach for the creation of a large, linear berm on the upper beach area. TPOA also refers to a Commission offer to settle monetary penalties for the violation involving the berm. The violation case involving the unpermitted construction of a sand berm across the length of Broad Beach is completely separate and distinct from the subject violation case and Commission staff was willing to continue these settlement discussions related to the unpermitted signs, fences, and patrols.

Finally, TPOA states, "there is no need for any Commission action at this time." The SOD alleges that there are, at this time, no signs on Broad Beach that were placed by the TPOA and that the service patrol is currently not using ATVs and the guards have been provided coastal access guides and "have been instructed to do nothing that interferes with the public's right of lateral access below the mean high tide line and above the mean high tide line where such rights have been granted". While this is a very positive step to prevent the continuing impacts to public access along Broad Beach, due to the episodic nature of the violations at Broad Beach and the desire to resolve these with certainty and avoid future complications given our inability to reach a settlement of this matter over the last year, it appears that a Commission cease and desist order to address the subject unpermitted development is necessary and would provide certainty and avoid future problems and violations.

The cease and desist order would require the TPOA to cease and desist from performing or maintaining unpermitted development including placement of "private property" signs along Broad Beach and fencing on the sandy beach located seaward of and/or adjacent to the two County owned and operated vertical public access ways; to cease and desist from operating private security guards on ATVs; and to cease and desist from conducting further unpermitted development along Broad Beach. Commission staff notes that these requirements are apparently consistent with TPOA's current actions as represented in their July 13, 2005 letter and in their SOD, and therefore the issuance of this Order should not be objectionable, and would prevent any future violations and would further strengthen the commitment to desist from placing any unpermitted signs, remove the fencing, and discontinue the use of the private security patrols on ATVs.

**G. Actions in Accordance with Authority Granted to Commission and Staff**

The statutory authority for issuance of this Cease and Desist Order is provided in Section 30810 of the Coastal, 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 first 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...*

The procedures for the issuance of a Cease and Desist Order are described in the Commission's Regulations in Sections 13180 through 13188. Section 13196(e) of the Commission's regulations states the following:

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

Accordingly, the purpose of this Cease and Desist Order is to order removal of unpermitted development from the subject properties and to cease and desist operation of private security guards on ATVs and placement of unpermitted signs and fencing, and from undertaking any other development activities without a CDP, including activities which discourage or prevent public access across Broad Beach.

Staff recommends that the Commission issue the following Cease and Desist Order to Trancas Property Owners Association:

**CEASE AND DESIST ORDER NO. CCC-05-CD-00**

- 1.0 Pursuant to its authority under Public Resources Code Sections 30810, the California Coastal Commission (hereinafter "Commission") hereby orders and authorizes the Trancas Property Owners Association, all its employees, agents, contractors, and any persons acting in concert with any of the foregoing (hereinafter, "TPOA"), to take all actions required by this Order, including:
- A) Cease and desist from placing, maintaining or conducting any unpermitted development on Broad Beach on either private and/or public property (hereinafter "Subject Properties"), including but not necessarily limited to: "private property" and/or "no trespassing" signs, wood and metal fencing on the sandy beach seaward of and/or adjacent to the two County maintained and operated public vertical access ways at 31344 and 31200 Broad Beach Road, and private security guard patrols on All Terrain Vehicles (hereinafter "ATVs") or other motorized vehicles,
  - B) Refrain from conducting any future development on the Subject Properties not authorized by a CDP or this Cease and Desist Order (hereinafter "Order"),
  - C) Refrain from undertaking any activity that violates the terms or conditions of any Coastal Development Permit issued for development along Broad Beach, including but not limited to any condition that included a public access easement, deed restriction, or Quit Claim deed or that prohibited the placement of "private property" signs on the beach, and
  - D) Refrain from undertaking any activity that discourages or prevents use of public tidelands, public lateral access easements, or areas deed restricted for public access on Broad Beach, including use of private security guards to: 1) question any person who is present on such areas and not violating any applicable state or local law or regulation, or 2) to attempt to cause any person who is present on such areas and not violating any applicable state or local law or regulation to leave or to move.
- 1.1 Accordingly, the TPOA shall, upon issuance of this Order, immediately cease and desist operation of the private security guard patrols on motorized vehicles or which affect public access to public area, and within 7 days of issuance of the Order, commence removal of any and all unpermitted development on the Subject Properties including, but not necessarily limited to, "private property" and/or "no trespassing" signs on the beach and fencing on the sandy beach seaward of and/or adjacent to the two County-owned, operated and maintained public vertical access ways at 31344 and 31200 Broad Beach Road.



- 1.2 Removal of the unpermitted development shall be completed within 10 days of issuance of this Order.
- 1.3 Within 15 days of completion of the removal, TPOA shall submit, for the review and approval of the Executive Director, a report documenting the complete removal of the unpermitted development specified above. The report shall include photographs that clearly show all portions of the Subject Properties to ensure that the removal has occurred.
- 1.4 All plans, reports, photographs and any other materials required by this Order shall be sent to:

California Coastal Commission  
Headquarters Enforcement Program  
Attn: Aaron McLendon  
45 Fremont Street, Suits 2000  
San Francisco, California 94105  
Facsimile (415) 904-5235

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

## 2.0 PERSONS SUBJECT TO THESE ORDERS

- 2.1 The persons subject to this Cease and Desist Order are the Trancas Property Owners Association, its officers, directors, members, employees, agents, contractors, and anyone acting in concert with the foregoing.

## 3.0 IDENTIFICATION OF SUBJECT PROPERTIES

- 3.1 The properties that are the subject of these Orders are located on an approximately 1.1 mile of beach known as Broad Beach in the City of Malibu on both public and private property, Los Angeles County.

## 4.0 DESCRIPTION OF COASTAL ACT VIOLATION

- 4.1 Respondent's Coastal Act violations consist of performing and maintaining development that is not authorized in a coastal development permit, and therefore are violations of the Coastal Act, and performing and maintaining development that also violates the terms and conditions of Coastal Development Permits, and public lateral access easements and deed restrictions recorded on the Subject Properties. The unpermitted development includes: 1) placement of "private property" signs, 2) construction of wood and metal fencing on the sandy beach seaward of and/or adjacent to the two County-owned, operated, and maintained public vertical access ways, and 3) use of private security guards on All-Terrain Vehicles or other mechanized equipment on the beach, all of which discourage or prohibit public access along the beach.

5.0 COMMISSION AUTHORITY TO ACT

5.1 The Commission is issuing this Order pursuant its authority under Section 30810 of the Public Resources Code.

6.0 FINDINGS

6.1 This Order is being issued on the basis of the findings adopted by the Commission on August 12, 2005, as set forth in the foregoing document entitled: STAFF RECOMMENDATIONS AND FINDINGS FOR CEASE AND DESIST ORDER.

7.0 EFFECTIVE DATE

7.1 This Order shall become effective as of the date of issuance by the Commission and shall remain in effect permanently unless and until rescinded by the Commission.

8.0 COMPLIANCE OBLIGATION

8.1 Strict compliance with the terms and conditions of this Order is required. If TPOA fails to comply with the requirements of this Order, including any deadline contained herein, it will constitute a violation of this Order and may result in the imposition of civil penalties of up to six thousand dollars (\$6,000) per day for each day in which compliance failure persists and additional penalties authorized in Chapter 9 of the Coastal Act, including exemplary damages.

9.0 EXTENSIONS OF DEADLINES

9.1 Any extension requests must be made in writing to the Executive Director and received by the Commission staff at least 10 days prior to the expiration of the subject deadline. If the Executive Director determines that TPOA has made a showing of good cause, he/she may at his/her discretion grant extensions of the deadlines contained herein.

10.0 APPEALS AND STAY RESOLUTION

10.1 Pursuant to Public Resources Code Section 30803(b), TPOA, against whom this Order is issued, may file a petition with the Superior Court for a stay of these Orders.

11.0 GOVERNMENT LIABILITY

11.1 The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by TPOA in carrying out activities

authorized under this Order, nor shall the State of California be held as a party to any contract entered into by TPOA or their agents in carrying out activities pursuant to this Order.

12.0 GOVERNING LAW

12.1 This Order shall be interpreted, construed, governed and enforced under and pursuant to the laws of the State of California, which apply in all respects.

13.0 NO LIMITATION OF AUTHORITY

13.1 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 Order.

Issued this 12<sup>th</sup> day of August, 2005 in Costa Mesa, California

\_\_\_\_\_  
Peter M. Douglas, Executive Director  
California Coastal Commission

\_\_\_\_\_  
Date

**CCC-05-CD-09**  
**Exhibit List**

<b>Exhibit Number</b>	<b>Description</b>
1.	Site Map and Location
2.	Coastal Access Guide for Broad Beach prepared by the Commission's Public Access Program, depicting public access easements and deed restrictions.
3.	August 1, 2003 photograph of unpermitted "Private Property" sign on Broad Beach.
4.	Statement of Defense, received on June 25, 2005, by Ken Ehrlich of Jeffer Mangels Butler & Marmaro LLP.
5.	List of Assessor Parcel Numbers and addresses for properties located along Broad Beach.
6.	List of properties and coastal development permits, which included lateral public access via access easements, deed restrictions, or other form of recorded legal document.
7.	June 26, 2003 and July 20, 2004 photographs of unpermitted private security guard patrol.
8.	August 1, 2003, July 20, 2004, and May 14, 2005 photographs of unpermitted fencing on the sandy beach seaward of and/or adjacent to the County-owned and operated vertical public access way.
9.	August 1, 2003 and July 20, 2004 photographs of unpermitted "Private Property" signs on Broad Beach.
10.	Undated photograph showing a line of unpermitted "Private Property" signs along Broad Beach.
11.	Notice of Violation letter, June 23, 2004.
12.	Notice of Intent to Commence Cease and Desist Order Proceedings, August 18, 2004 (as re-sent on March 10, 2004).
13.	Letter of June 28, 2004 from Marshall Grossman to Commissioner Steve Kram.
14.	Letter of September 1, 2004 from Sandra Goldberg, Commission staff counsel to Marshall Grossman regarding prescriptive rights.
15.	Letter of March 25, 2005 from Aaron McLendon, Commission Statewide Enforcement Analyst to Marshall Grossman regarding "No Sign" conditions included in 15 coastal development permits for properties at Broad Beach.
16.	Letter of July 11, 2005 from Sandra Goldberg to Marshall Grossman and Kenneth Ehrlich addressing TPOA's reliance on the <u>Gion</u> case.
17.	Letter of July 1, 2004 from Marshall Grossman to Peter Douglas.
18.	Letter of July 26, 2005 from Aaron McLendon to Marshall Grossman and Kenneth Ehrlich regarding scheduling of cease and desist order proceedings at the Commission's August 2005 hearing.

Pacific Coast Hwy

Luna Rd

Broad Beach Rd

Cuthbert Rd

Trancas

Philip Ave

Caprine Dr

JD Messing Dr

Busch Dr

Merritt Dr

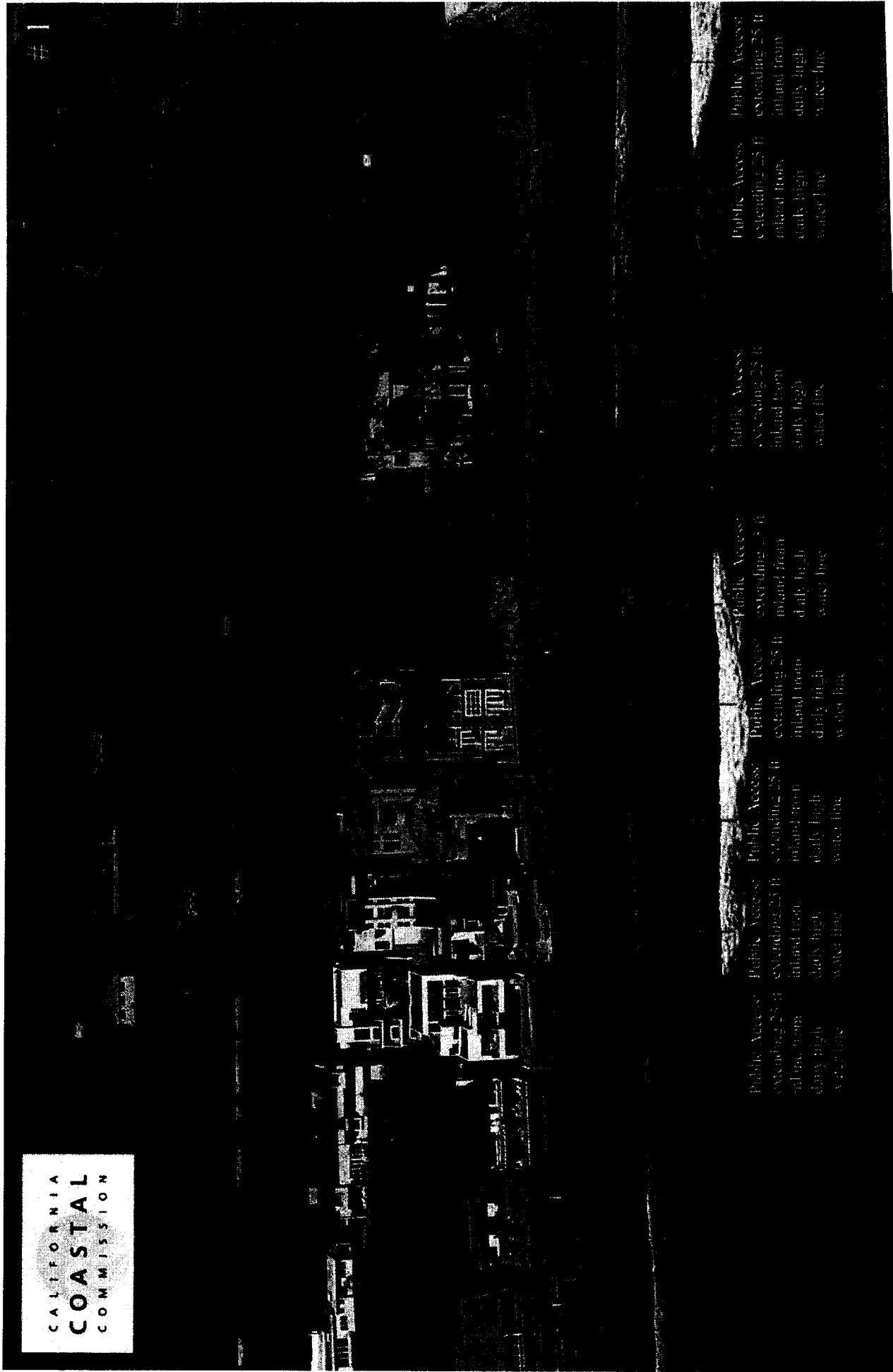
Pacific Coast Hwy

Broad Beach

Zuma County Beach Park

Exhibit #1  
CCC-05-CD-09  
(TPOA - Broad Beach)

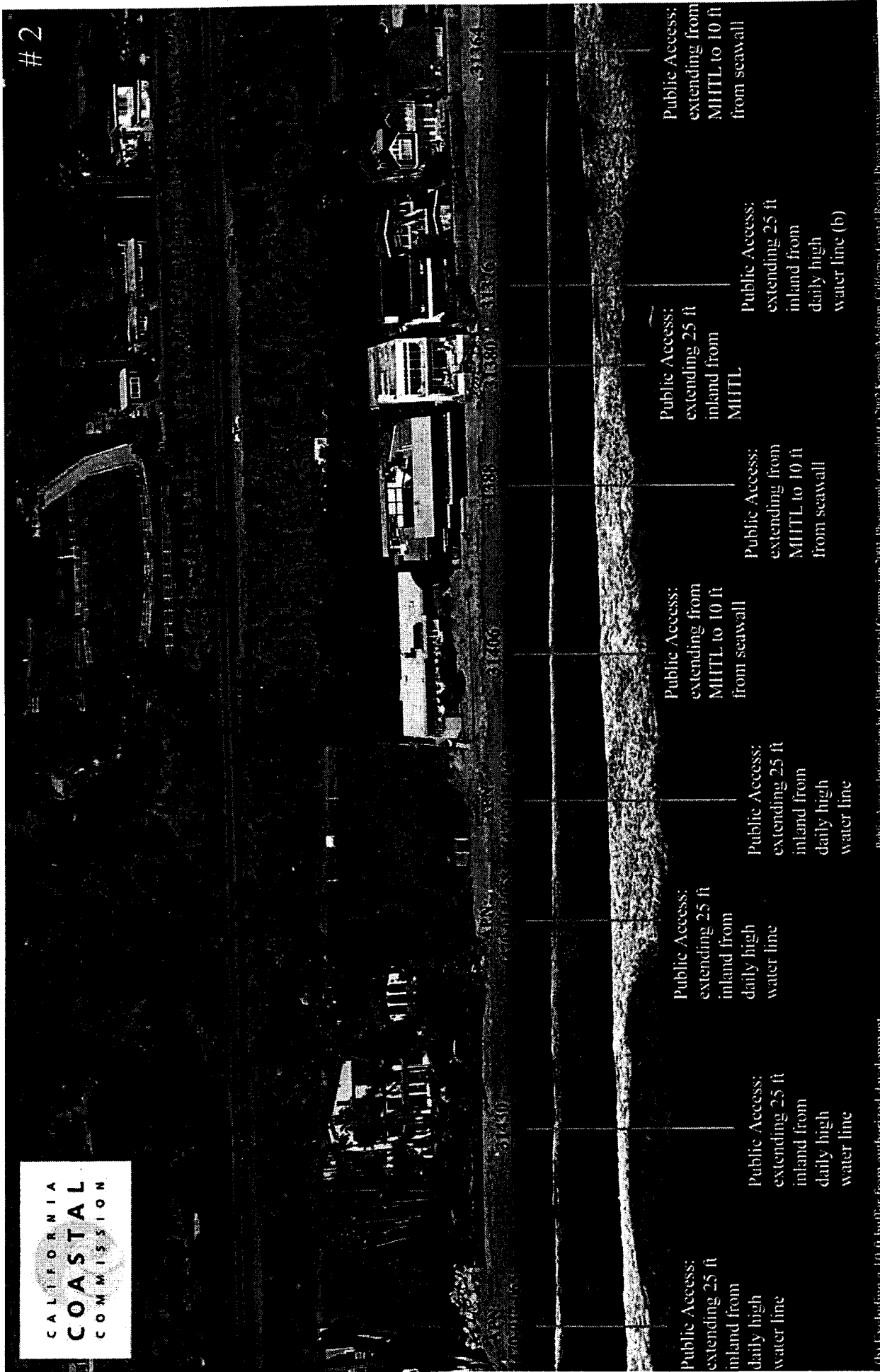
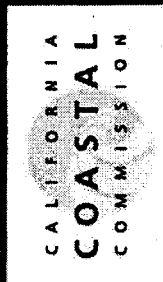
CALIFORNIA  
**COASTAL**  
 COMMISSION



Public Access:	Public Access:	Public Access:	Public Access:	Public Access:	Public Access:
extending 25 ft	extending 25 ft	extending 25 ft	extending 25 ft	extending 25 ft	extending 25 ft
inland from	inland from	inland from	inland from	inland from	inland from
daily high	daily high	daily high	daily high	daily high	daily high
water line	water line	water line	water line	water line	water line

Exhibit #2  
 CCC-05-CD-09  
 (TPOA - Broad Beach)

#2



Public Access:  
extending 25 ft  
inland from  
daily high  
water line

Public Access:  
extending 25 ft  
inland from  
daily high  
water line

Public Access:  
extending 25 ft  
inland from  
daily high  
water line

Public Access:  
extending 25 ft  
inland from  
daily high  
water line

Public Access:  
extending from  
MHTL to 10 ft  
from seawall

Public Access:  
extending from  
MHTL to 10 ft  
from seawall

Public Access:  
extending 25 ft  
inland from  
MHTL

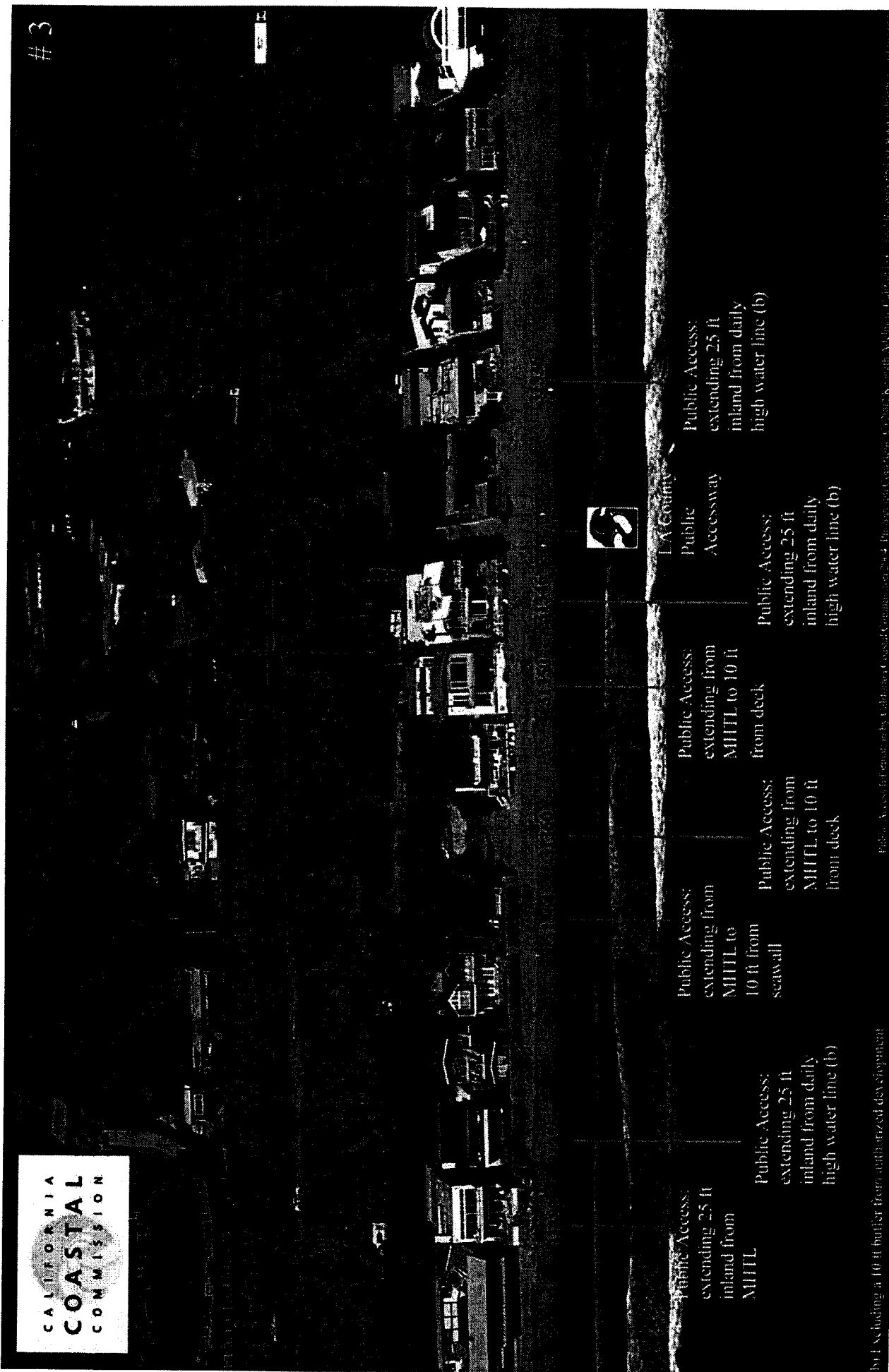
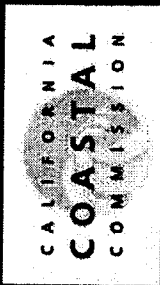
Public Access:  
extending 25 ft  
inland from  
daily high  
water line (b)

Public Access:  
extending from  
MHTL to 10 ft  
from seawall

(b) Excluding a 10 ft buffer from authorized development

Public Access Information by California Coastal Commission 2014. Photographs Copyright (C) 2012 Kenneth Adelman, California Coastal Record, Project 15500

#3



Public Access:  
extending 25 ft  
inland from  
MHFL

Public Access:  
extending 25 ft  
inland from daily  
high water line (b)

Public Access:  
extending from  
MHFL to  
10 ft from  
seawall

Public Access:  
extending from  
MHFL to 10 ft  
from deck

Public Access:  
extending from  
MHFL to 10 ft  
from deck

Public  
Accessway

Public Access:  
extending 25 ft  
inland from daily  
high water line (b)

Public Access:  
extending 25 ft  
inland from daily  
high water line (b)

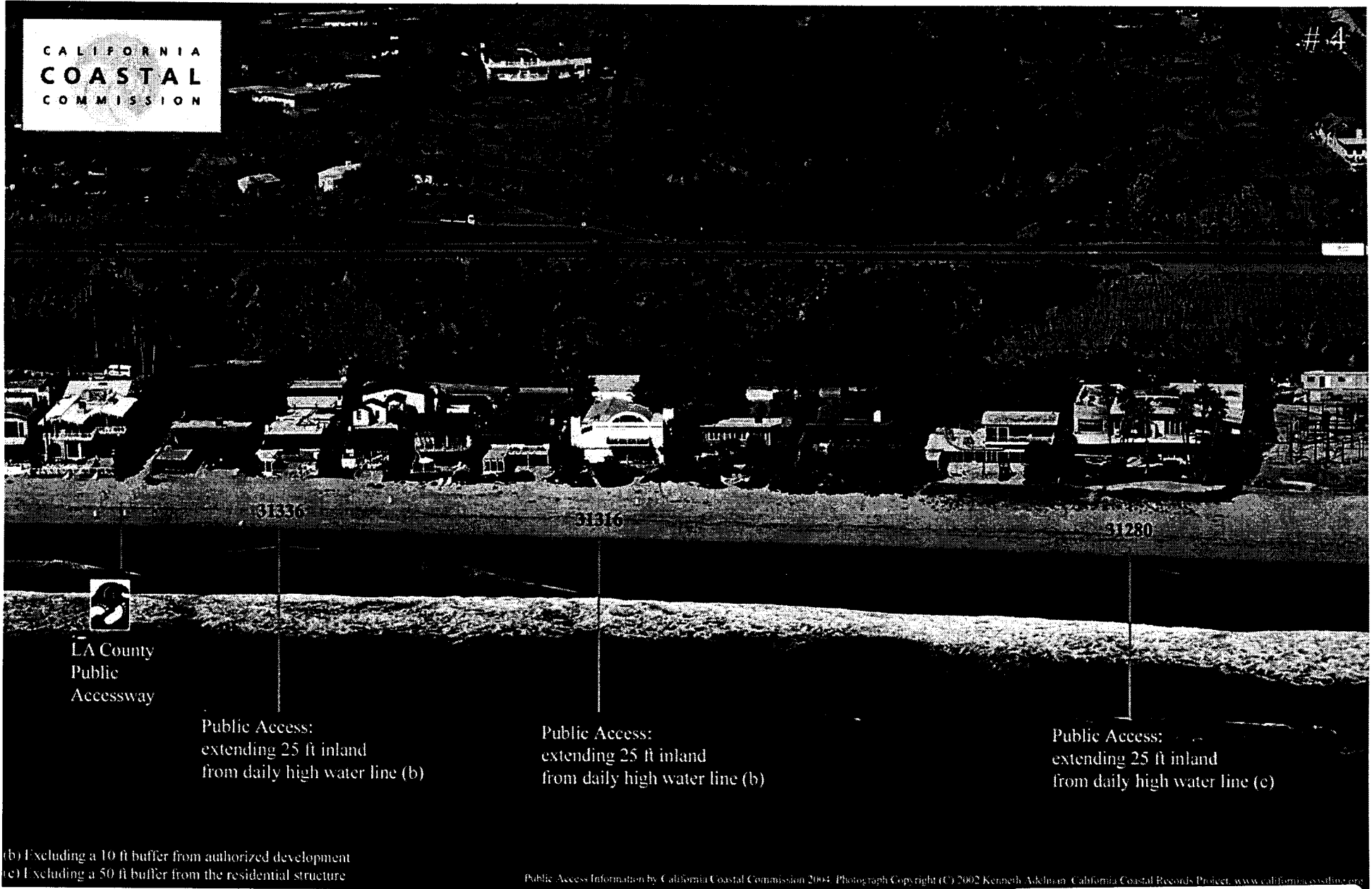
Not including a 10 ft buffer from authorized development

Public Access for map is by California Coastal Commission, 2004. Photo and Aerial Imagery by Google Earth, 2004. Map by California Coastal Commission, 2004.

Exhibit #2  
CCC-05-CD-09  
(TPOA - Broad Beach)

Page 2 of 4





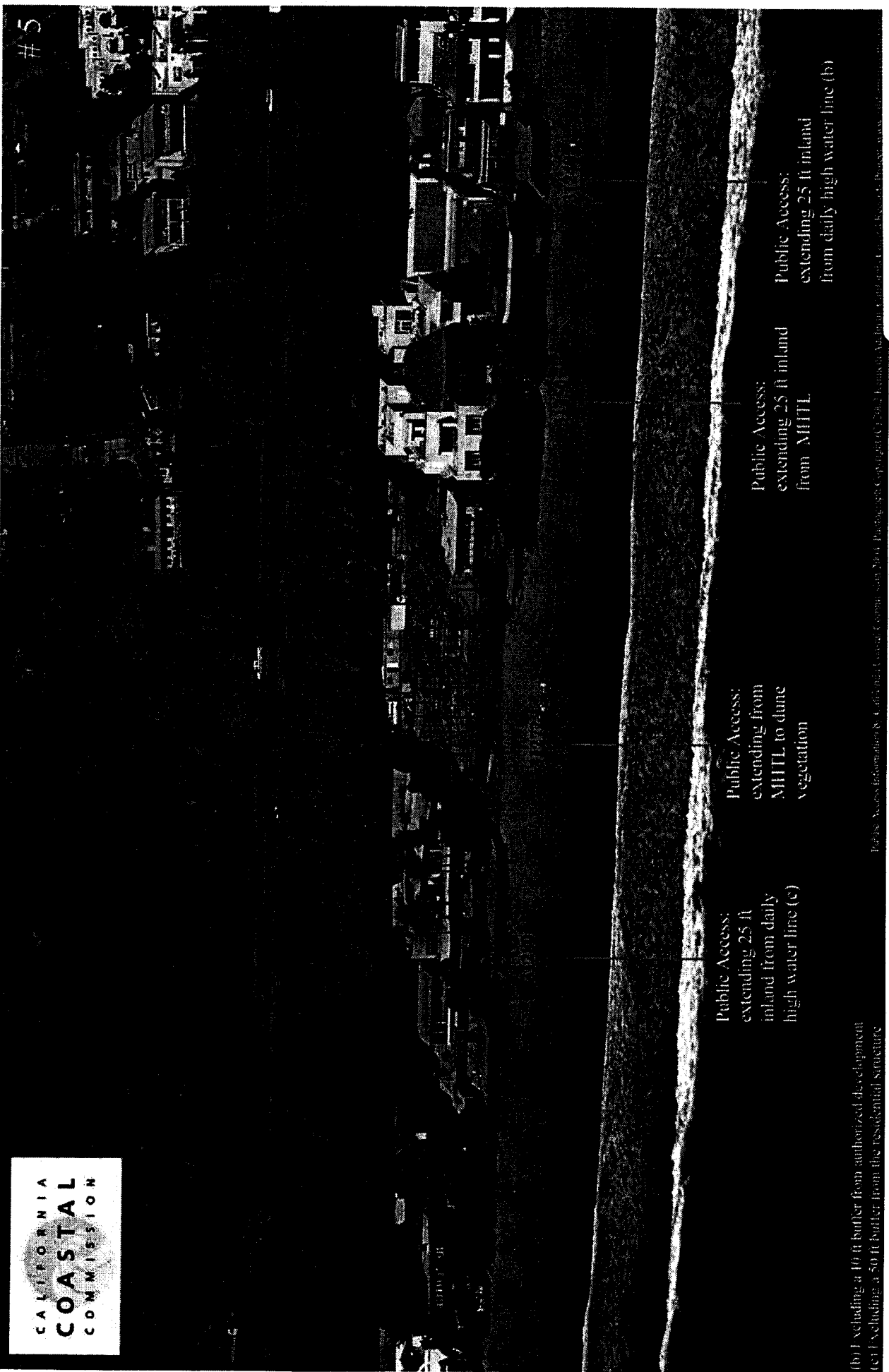
LA County  
Public  
Accessway

Public Access:  
extending 25 ft inland  
from daily high water line (b)

Public Access:  
extending 25 ft inland  
from daily high water line (b)

Public Access:  
extending 25 ft inland  
from daily high water line (c)

(b) Excluding a 10 ft buffer from authorized development  
(c) Excluding a 50 ft buffer from the residential structure



Public Access:  
extending 25 ft  
inland from daily  
high water line (c)

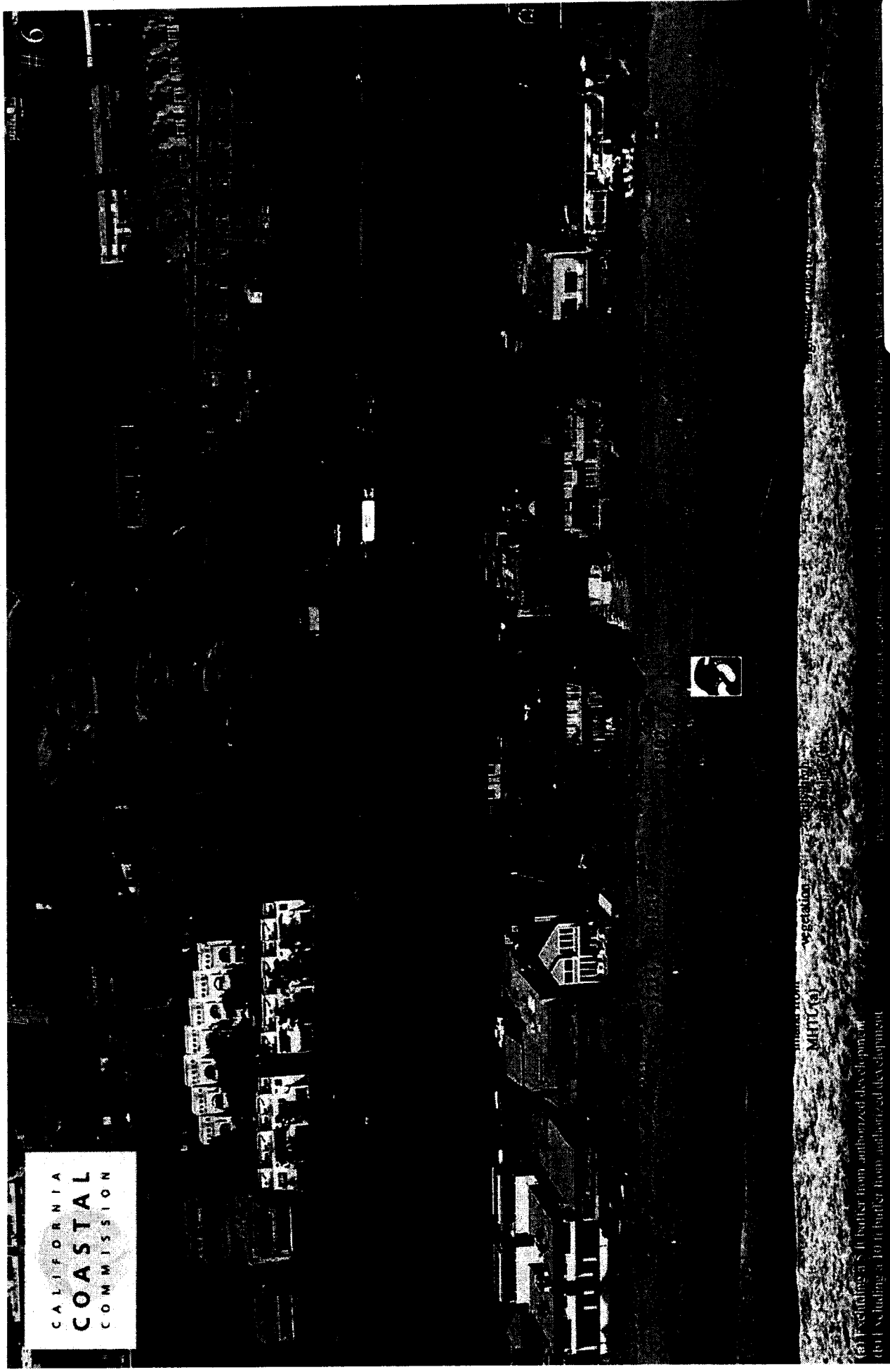
Public Access:  
extending from  
MHLL to dune  
vegetation

Public Access:  
extending 25 ft inland  
from MHLL

Public Access:  
extending 25 ft inland  
from daily high water line (b)

(b)1 including a 10 ft buffer from authorized development  
(c)1 including a 50 ft buffer from the residential structure

#6



CALIFORNIA  
**COASTAL**  
 COMMISSION

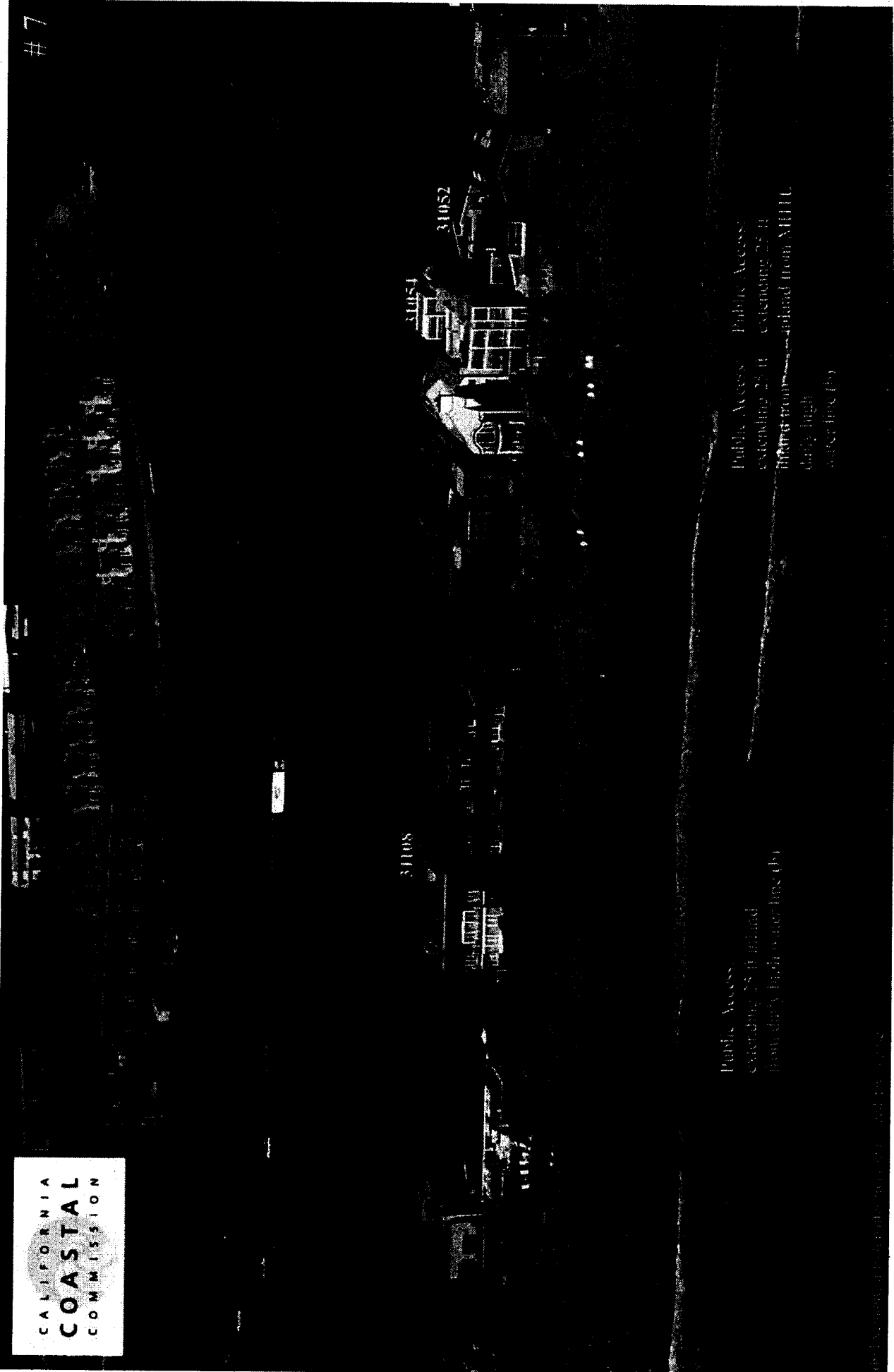
Minimum 100-foot Vegetation Buffer (MVB) (6)

(a) Excluding a 5-foot buffer from authorized development that includes a 10-foot buffer from authorized development

Exhibit #2  
 CCC-05-CD-09  
 (TPOA – Broad Beach)

#7

CALIFORNIA  
COASTAL  
COMMISSION

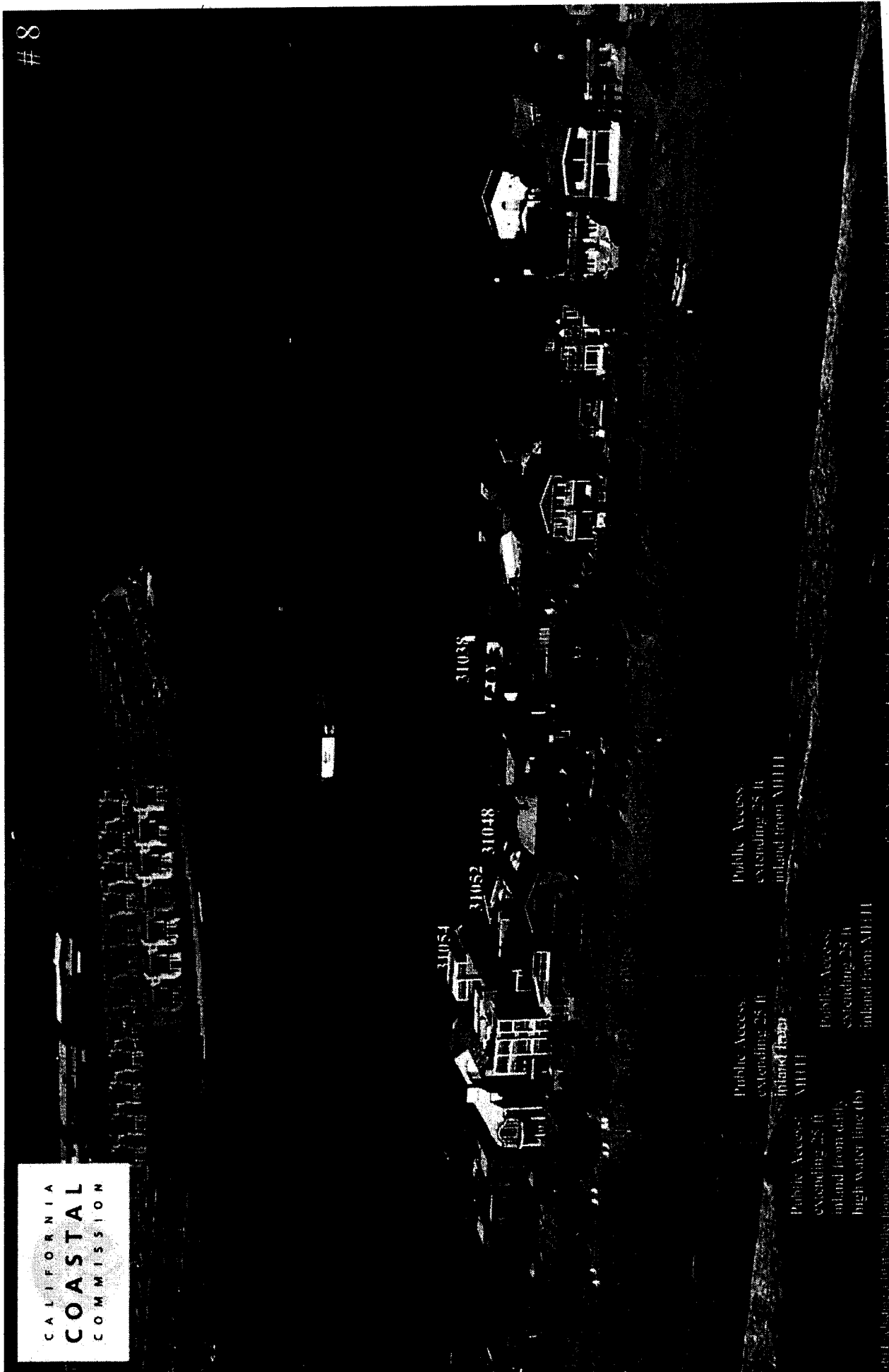


Public Access  
extending 25 ft inland  
from daily high water line (b)

Public Access  
extending 25 ft inland from MHH  
daily high  
water line (b)

Exhibit #2  
CCC-05-CD-09  
(TPOA - Broad Beach)

CALIFORNIA  
COASTAL  
COMMISSION

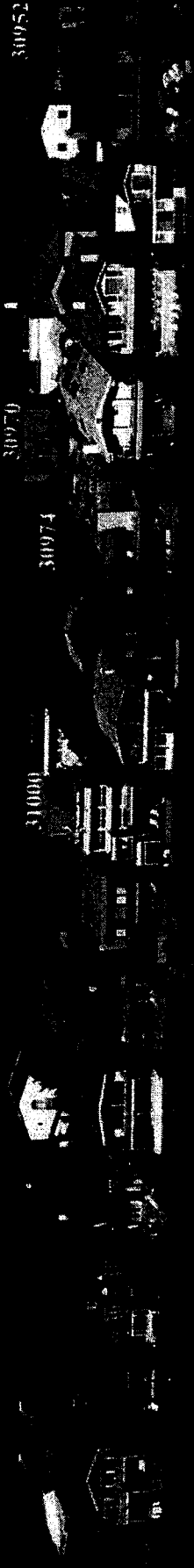


Public Access  
extending 25 ft  
inland from MHHI

Public Access  
extending 25 ft  
inland from MHHI

Public Access  
extending 25 ft  
inland from daily  
high water line (b)

CALIFORNIA  
COASTAL  
COMMISSION



30952

30970

30974

31000

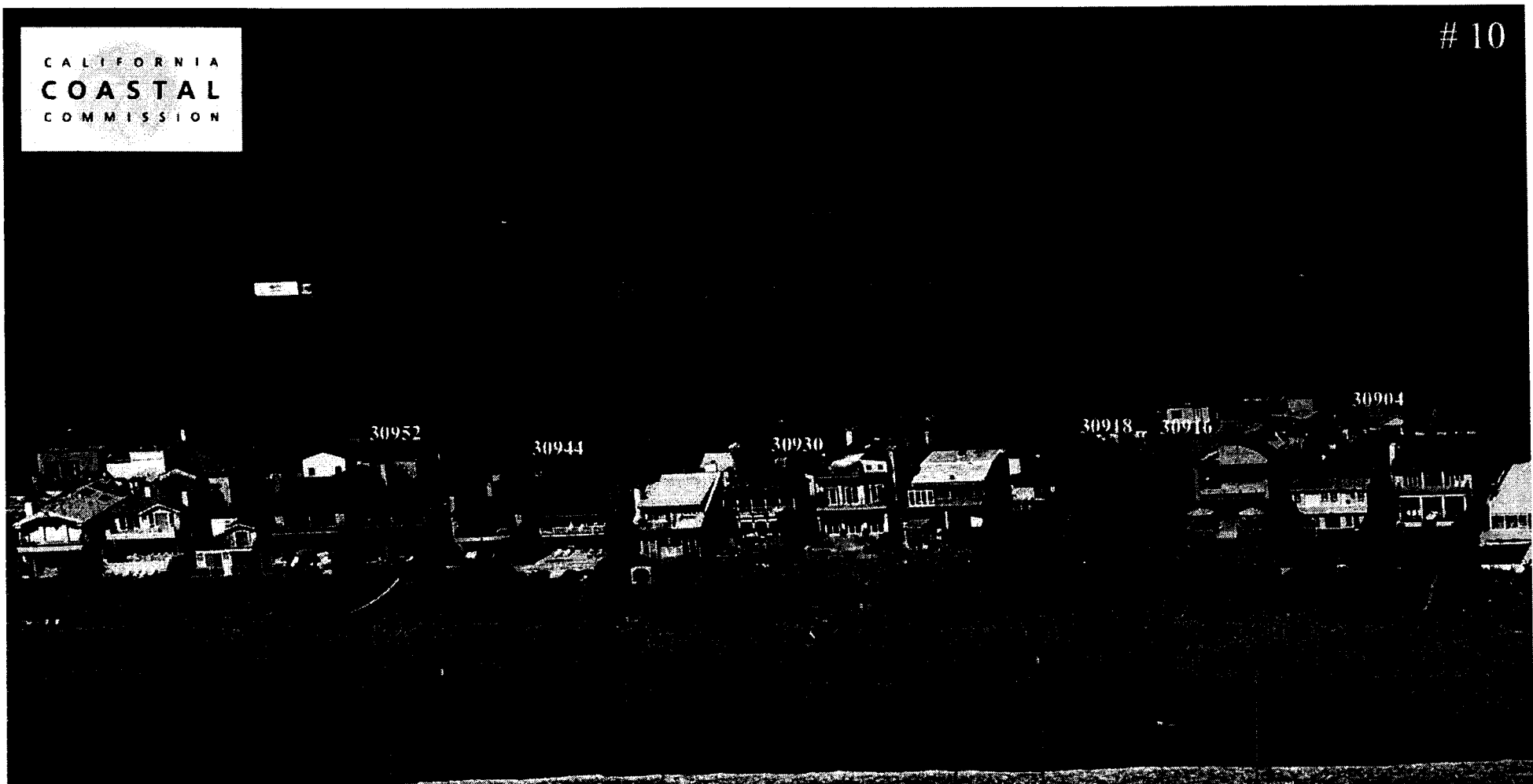
Public Access  
extending 25 ft  
inland from  
MHLL (a)

Public Access  
extending 25 ft  
inland from  
MHLL (a)

Public Access  
extending 25 ft inland  
from water table (a)

Public Access  
extending 25 ft  
inland from daily  
high water line (a)

Exhibit #2  
CCC-05-CD-09  
(TPOA - Broad Beach)



Public Access:  
 extending 25 ft  
 inland from daily  
 high water line (c)

Public Access:  
 extending 25 ft  
 inland from  
 MHTL

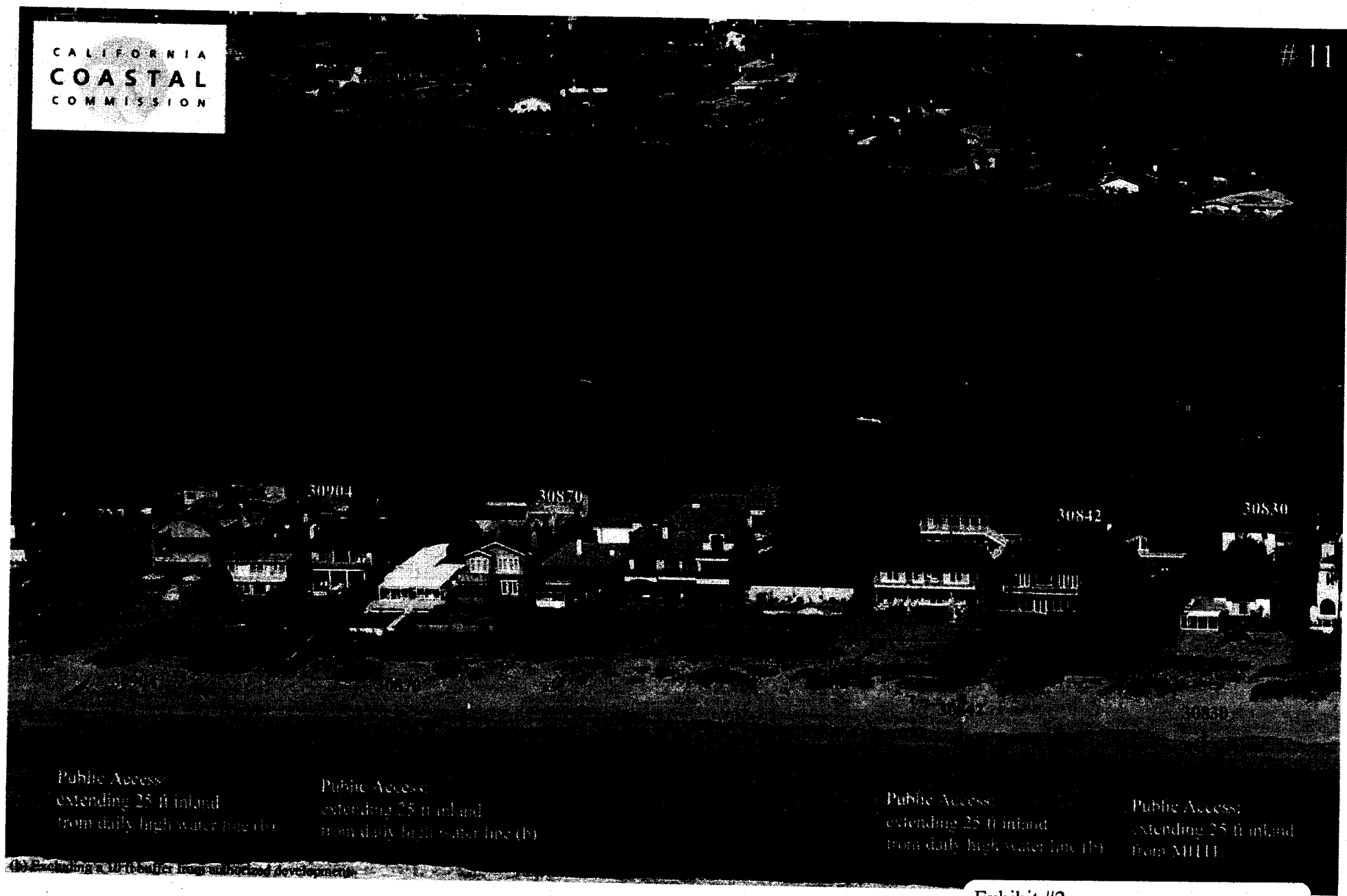
Public Access:  
 extending 25 ft  
 inland from daily  
 high water line (b)

Public Access:  
 extending 25 ft  
 inland from  
 MHTL

Public Access:  
 extending from  
 MHTL to dune  
 vegetation

Public Access:  
 extending 25 ft  
 inland from daily  
 high water line (b)

(b) Excluding a 10 ft buffer from authorized development  
 (c) Excluding a 50 ft buffer from the residential structure



Public Access:  
extending 25 ft inland  
from daily high water line (b)

Public Access:  
extending 25 ft inland  
from daily high water line (b)

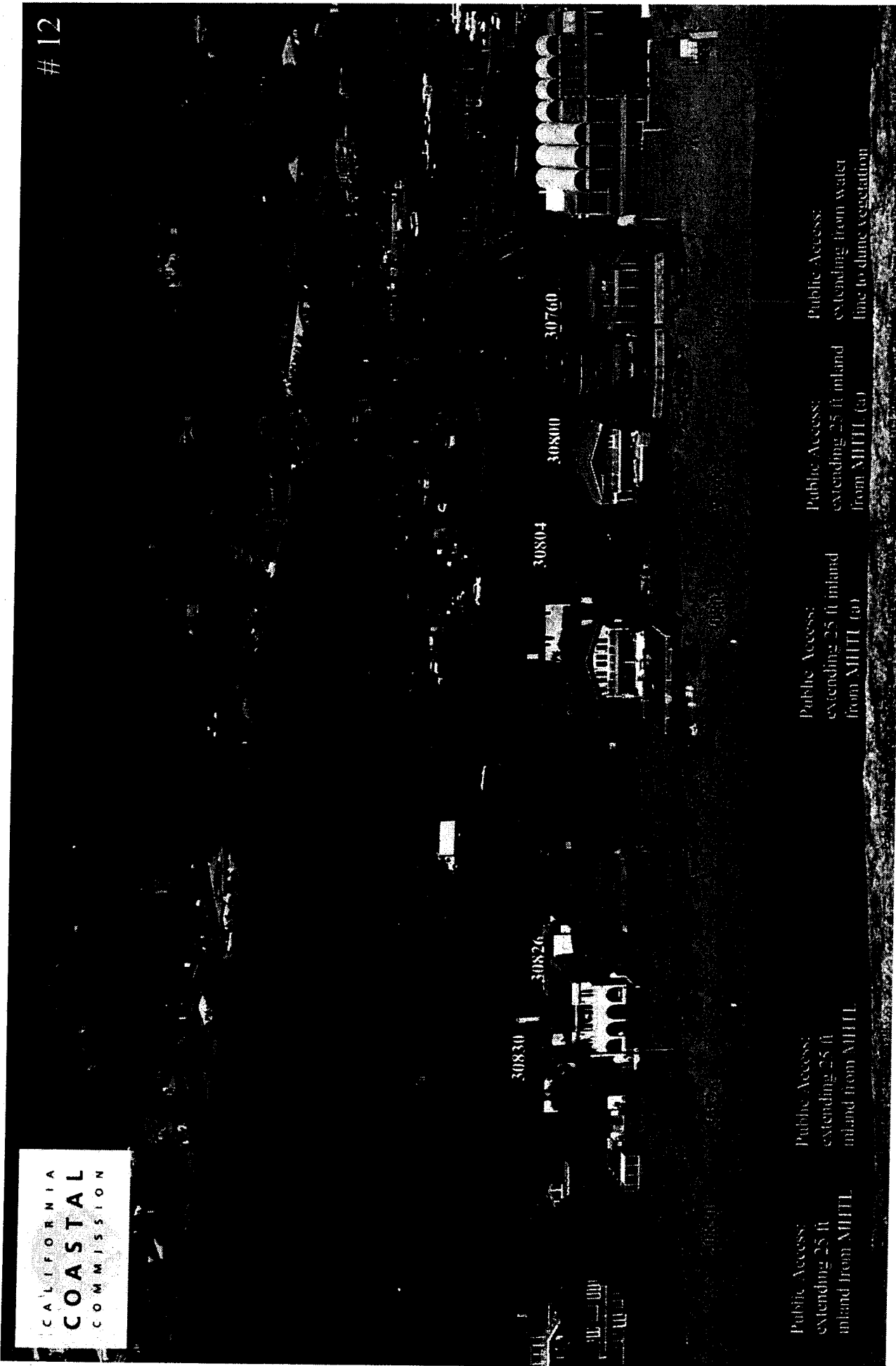
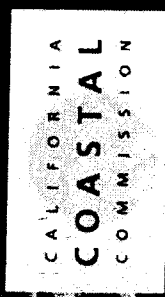
Public Access:  
extending 25 ft inland  
from daily high water line (b)

Public Access:  
extending 25 ft inland  
from MHH

© 2009 California Coastal Commission

Exhibit #2  
CCC-05-CD-09  
(TPOA – Broad Beach)





30830

30826

30804

30800

30760

Public Access:  
extending 25 ft  
inland from MHFL

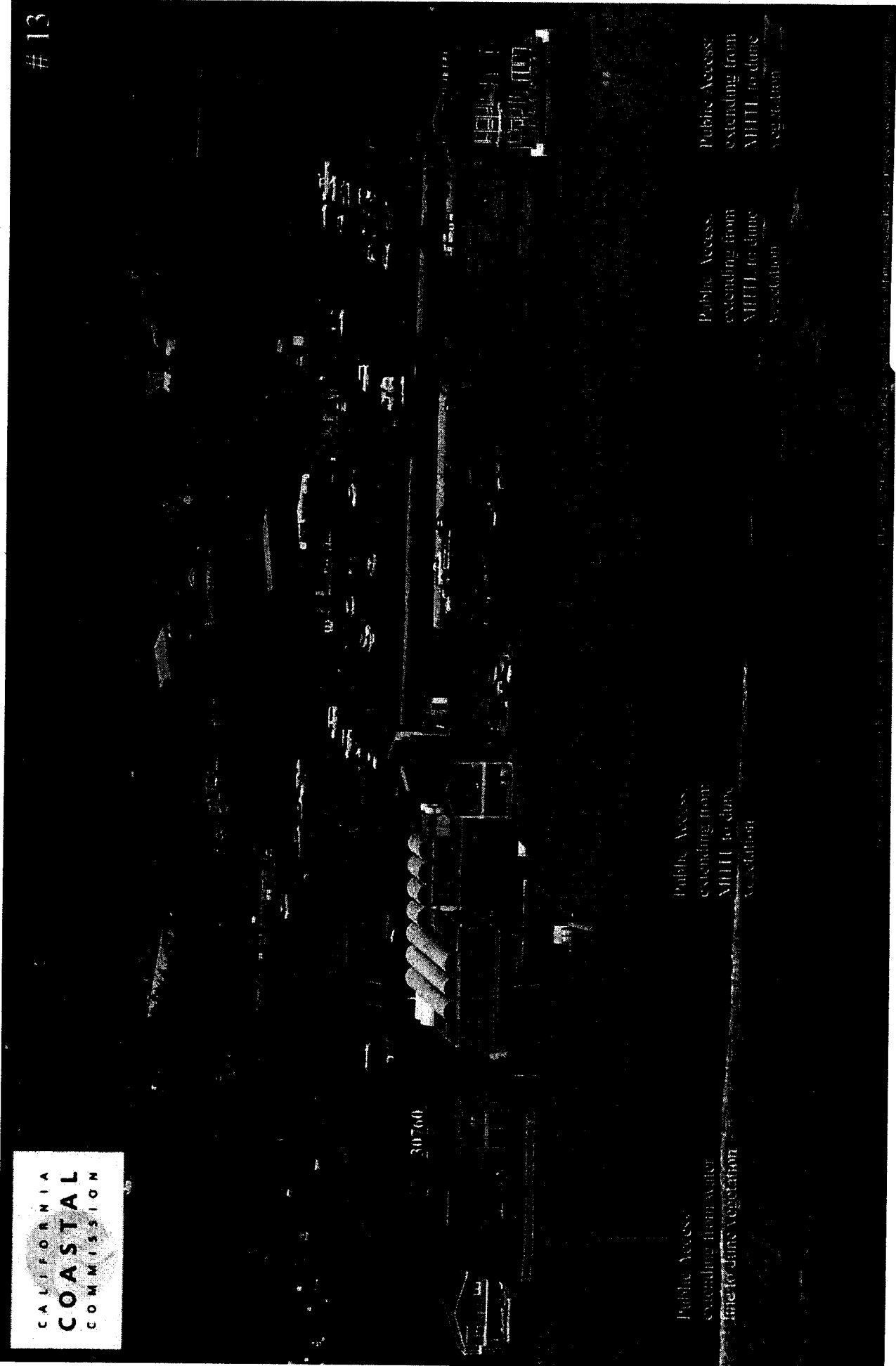
Public Access:  
extending 25 ft  
inland from MHFL

Public Access:  
extending 25 ft inland  
from MHFL (a)

Public Access:  
extending 25 ft inland  
from MHFL (a)

Public Access:  
extending from water  
line to dune vegetation

Exhibit #2  
CCC-05-CD-09  
(TPOA - Broad Beach)



Public Access  
extending from water  
line to dune vegetation

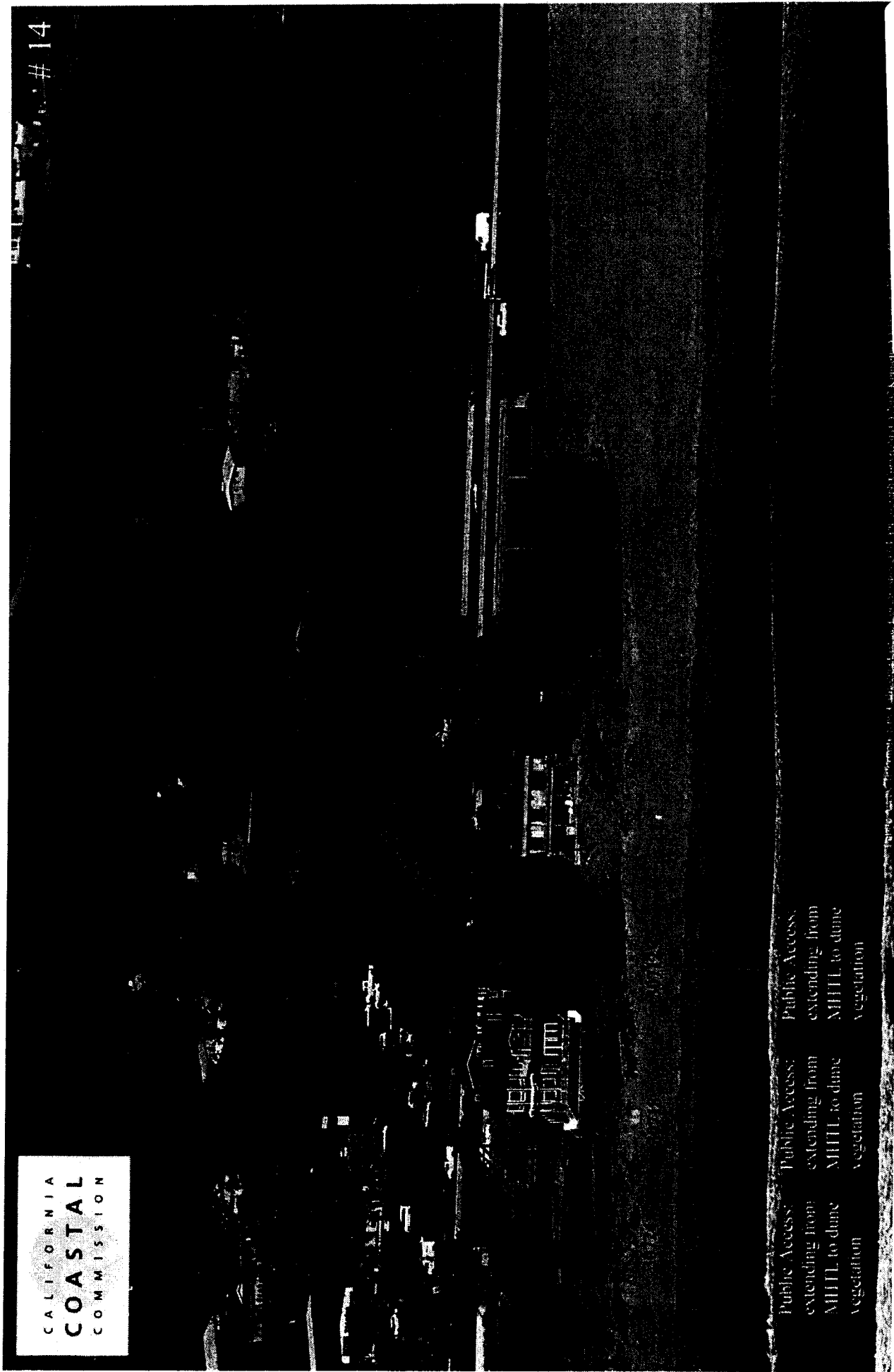
Public Access  
extending from  
MHTH to dune  
vegetation

Public Access  
extending from  
MHTH to dune  
vegetation

Public Access  
extending from  
MHTH to dune  
vegetation

CALIFORNIA  
**COASTAL**  
COMMISSION

# 14



Public Access: extending from MHTL to dune vegetation

Public Access: extending from MHTL to dune vegetation

Public Access: extending from MHTL to dune vegetation

Exhibit #2  
CCC-05-CD-09  
(TPOA - Broad Beach)

PRIVATE  
PROPERTY

DO NOT  
TRESPASS  
CALIF. PENAL  
CODE SEC. 602(N)  
PRIVATE PROPERTY  
LINE BEGINS (50)  
FEET TOWARD THE  
OCEAN FROM THIS  
SIGN SURVEYED 8/03

Exhibit #3  
CCC-05-CD-09  
(TPOA – Broad Beach)

Kenneth A. Ehrlich  
Direct: (310) 785-5395  
Fax: (310) 712-3395  
KEhrlich@jmbm.com

1900 Avenue of the Stars, 7th Floor  
Los Angeles, California 90067-4308  
(310) 203-8080 (310) 203-0567 Fax  
www.jmbm.com

Ref: 62287-0004

June 24, 2005

**VIA OVERNIGHT MAIL**

Lisa Haage  
Aaron N. McLendon  
California Coastal Commission  
45 Fremont Street, Suite 200  
San Francisco, CA 94105-2219

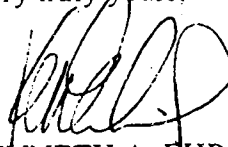
Re: Our Client: Trancas Property Owners Association;  
Coastal Commission's Notice of Intent to Commence Cease and Desist  
Order Proceedings ("NOI") No. V-4-02-097 (Signs and Security)

Dear Ms. Haage and Mr. McLendon :

Please find enclosed the Statement of Defenses ("SOD") of the Trancas Property Owners Association ("TPOA") in connection with the NOI referenced above. The TPOA has not used the usual SOD form because it seeks to provide a historical perspective and analysis on the issue, and address issues beyond that covered by the form. As discussed in the enclosed materials, the TPOA does not believe further CCC action is needed on this NOI.

Please contact our office with questions or comments. We appreciate your attention to this matter.

Very truly yours,



KENNETH A. EHRLICH,  
a Professional Corporation of  
Jeffer, Mangels, Butler & Marmaro LLP

KAE:pf  
Enclosures

Exhibit #4  
CCC-05-CD-09  
(TPOA – Broad Beach)

Page 1 of 97

Kenneth A. Ehrlich  
Direct: (310) 785-5395  
Fax: (310) 712-3395  
KEhrlich@jmbm.com

1900 Avenue of the Stars, 7th Floor  
Los Angeles, California 90067-4308  
(310) 203-8080 (310) 203-0567 Fax  
www.jmbm.com

Ref: 62287-0004

June 24, 2005

**VIA OVERNIGHT MAIL**

Members of the California Coastal Commission  
(see attached list) and  
Peter Douglas, Executive Director

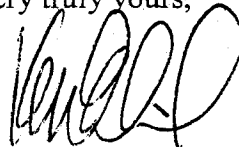
Re: Our Client: Trancas Property Owners Association;  
Coastal Commission's Notice of Intent to Commence Cease and Desist  
Order Proceedings ("NOI") No. V-4-02-097 (Signs and Security)

Dear Coastal Commissioners and Mr. Douglas:

Please find enclosed the Trancas Property Owners Association's ("TPOA") Statement of Defenses ("SOD") in connection with the NOI referenced above. Many have commented in recent days about beach access issues in Malibu and other areas of California. The TPOA thought it appropriate to use its SOD to provide the Commission with a historical perspective and analysis of the issue as it relates to Broad Beach. For this reason, the TPOA has not used the typical SOD form, but instead provides the enclosed, bound response. As discussed in the enclosed materials, the TPOA does not believe further CCC action is needed on this NOI.

Please contact our office with questions or comments. We appreciate your attention to this matter.

Very truly yours,



KENNETH A. EHRLICH,  
a Professional Corporation of  
Jeffer, Mangels, Butler & Marmaro LLP

KAE:pf

Enclosures

cc: Lisa Haage  
Aaron McLendon

Exhibit #4  
CCC-05-CD-09  
(TPOA - Broad Beach)

Page 2 of 97

MAILING LIST

Members of the California Coastal Commission

Jim Aldinger  
Dr. William A. Burke  
Meg Caldwell  
Toni Iseman  
Steven Kram  
Patrick Kruer  
Bonnie Neely  
Scott Peters  
Dave Potter  
Mike Reilly  
Dan Secord, M.D.  
Mary Shallenberger  
Sara Wan

Executive Director

Peter M. Douglas

Exhibit #4  
CCC-05-CD-09  
(TPOA – Broad Beach)

Statement of Defense: August 18, 2004 Notice of Intent: Signs and ATVs on the Beach

1. Introduction

This Statement of Defense is in response to the Executive Director's Notice of Intent dated August 18, 2004. It pertains to the existence of Private Property signs on the sandy beach and the use of ATVs by a service patrol contracted with by the Trancas Property Owners Association (the "Association"). The signs and the security patrol predate the enactment of the Coastal Act. In 1995, Commission staff recognized the propriety of each such activity. However, with respect to the signs it questioned whether their nature had changed over the years and with respect to the service patrol it questioned whether it had acted in such a way as to discourage the public's right to use appropriate public access. The issue was then closed and did not resurface again until 2004. At that time, the Association initiated a dialogue with the Commission intended to remove the signs from the sandy beach and replace them at more appropriate locations. In addition, the Association voluntarily initiated discussions designed to ameliorate the confusion resulting from inconsistent and non-existent lateral access above the mean high tide line. Discussions between Association representatives and Coastal Commission staff continued intermittently throughout most of 2004 and, on the eve of resolution, were interrupted as a result of the unintended and unauthorized construction of a sand berm on the beach. The issue of the sand berm is addressed in a separate submission to the Coastal Commission. It should be clear from any objective reading of this Statement of Defense that both the Association and Commission staff members, Lisa Haage and Aaron McLendon, have worked diligently and in good faith in a candid and constructive manner to resolve these issues amicably and, but for recent events, would have resolved the signage and ATV issues by this date.

The Association respectfully requests that the members of the Commission consider the information which we are now providing and work with us constructively for the benefit of the public and the residents alike.

2. The Broad Beach Community

Ours is a community of approximately one hundred single-family residences. Some residents have resided here over fifty years. This beach is an area of unusual natural beauty. It is one of the few, if not the last, sand duned beaches in Southern California. The beach is generously deep (with property depth extending up to 350 or 400 feet); thus the name, Broad Beach. The homes are set back up to 200 feet above the mean high tide line.

The public enjoys open access to Broad Beach, both vertical and lateral. We are adjacent to Zuma Beach, one of the most heavily utilized public beaches in Southern California. In addition to public lateral access from Zuma, there are two public vertical access ways from Broad Beach Road to the beach itself. They have existed for several decades.

Unlike adjacent Zuma and other nearby public beaches on Broad Beach, there are no public facilities, no lifeguards, no restrooms, no changing areas, and no restaurants.

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Moreover, there is no reliable law enforcement. The Sheriff's department is simply not sufficiently staffed to respond to other than significant criminal activity, and animal control officers, if available, take about two to four hours to respond to calls.

As is true with all private beachfront property in California, the seaward property line extends to the mean high tide line, a point difficult to precisely locate or even understand.

As a community, we face certain challenges.

### 3. Dogs and Horses

Because of its open access to the public, the presence of dogs and horses on the beach is one that we live with daily. Even though the prohibition of animals on the beach is clearly posted at the vertical access ways, the law is not respected. Members of the public with dogs, including commercial "dog walkers," are an ongoing problem. See the photograph attached at Tab 1. Horses on the beach present greater safety risks. As shown in the attached photograph at Tab 2, perhaps a bit too graphically, horses leave their mark on this beach in a rather distinguishable way. The physical and health risks to beach goers, private and public alike, from galloping horses, dog bites and horse and dog feces has reached an intolerable stage.

### 4. Trespassers

Trespassing on beachfront residential property is a recurrent problem. There is heightened risk of criminal activity because of the prohibition against boundary fences on the beach. Some trespassing is wholly innocent because of the lack of clarity between public and private property. Some is not innocent. There are also those who seek to push the limits by approaching the homes of celebrities or taunting homeowners. The privacy concerns are exacerbated because various publications print names and addresses as a virtual "star map" to our residents. And then there are the paparazzi who pass themselves off as beach goers and show no respect for privacy. One celebrity resident was stalked and physically threatened; the stalker is now in prison. Within the last two months a "demonstration" by public access advocates took place, ironically on private property. Not content to place their chairs and protest signs on private property, the co-leader of the group (and his dog) trampled the newly planted dunes and approached the home itself in order to accommodate his dog who was answering the call of nature. Please see the three photographs at Tab 3.

### 5. Storm Damage to Beach and Dunes

There are numerous large storm drain pipes along the entirety of Broad Beach. They cross State and County land, run through the sandy dunes and empty onto Broad Beach.

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During periods of heavy storms, the discharge from these drains is devastating. It blows out the dunes and causes erosion throughout the dune area. For years now we have pleaded with City and Coastal Commission staff and commissioners to address this issue, but to no avail. Instead, significant development has been permitted on the adjacent hillside (Lunita Pacific) and even more is proposed (Trancas PCH). The resultant increase in water runoff and damage has been staggering. There is little or no regard by governmental agencies for the consequences of this poor planning and its impact on the volume of water that results. Examples of how these storm drains are exposed and the devastation they bring are shown in the photographs at Tabs 4, 5 and 6. These photographs were taken in January of this year. No public services are provided to remedy the damage caused. All repair and restoration is undertaken at homeowner expense, including that done this year.

#### 6. Ocean Safety

The same ocean safety considerations which prompt lifeguards on public beaches are obviously present in any beach front community. In addition to saving lives (drowning is a leading cause of accidental death in the United States), lifeguards on publicly maintained beaches protect beach goers and remind them of their responsibilities. Because there are no public facilities or lifeguards on Broad Beach, the presence of our service patrol (see paragraph 7H below) provides some measure of protection. The ATVs they utilize have facilitated the rescue of several members of the public from the ocean. Just last year they were instrumental in saving the life of a highly allergic public visitor who was stung by a bee.

#### 7. Public Access

There is State guaranteed public access below the mean high tide line throughout the entirety of Broad Beach and it is accessible both laterally from the adjacent public Zuma beach and vertically from Broad Beach Road. In addition, there are public access grants above the mean high tide line which have been provided by approximately one-half of Broad Beach homeowners. The manner in which the Coastal Commission has obtained these additional lateral access grants over private property is questionable and is discussed in the balance of this paragraph 7.

##### A. 1970s – Mid 1980s: Lateral Access Grants.

Property owners requesting a coastal development permit for construction of single family residences were required to grant lateral public easements above the mean high tide line as a condition to receiving a permit. These ambulatory easements are typically 25 feet in depth above the mean high tide line. They were obtained without any monetary compensation to the homeowners and without showing any legal necessity for the easements.

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B. 1987 Supreme Court Decision of Nollan v. California Coastal Commission, 483 U.S. 825 (1987)

Property owners in Ventura, California sued the Coastal Commission claiming it violated the Takings clause of the Fifth Amendment of the United States Constitution when it conditioned the issuance of a coastal permit for beach front development on the granting of a lateral access easement over private property. The Supreme Court held that "unless the permit condition serves the same governmental purpose as the development ban, the building restriction is not a valid regulation of land use but 'an out and out plan of extortion.'" at Nollan, 483, U.S. at 837. (Emphasis added). The Supreme Court held that the Coastal Commission failed to establish any nexus between requiring a lateral public easement and any burdens on access posed by the demolition and reconstruction of an existing resident. The Court held that it was "quite impossible to understand how a requirement that people already on the public beaches be able to walk across the Nollan's property reduces any obstacles to viewing the beach created by the new house... or how it lowers any 'psychological barrier' to using the public beaches, or how it helps remedy any additional congestion on them caused by the construction of the Nollan's new house." In short, the Supreme Court held that if the Coastal Commission wanted an easement across the beach front owner's property, it must condemn the easement and compensate the property owner; it could not simply demand a lateral easement unless the easement shares a nexus with the effects of the development.

After Nollan, in order for the Commission to legitimately require the dedication of a lateral public easement as a condition of obtaining a coastal development permit without providing compensation, the Commission had the burden of establishing specific negative adverse impacts on access to the publicly owned portions of the beach (the area seaward of the mean high tide line) from the new proposed development. However, such a showing was difficult if not impossible to make in cases where a person was proposing to rebuild an existing residence without any seaward expansion from the existing structure. With respect to Broad Beach, such a showing would be difficult because of the unusual depth of the beach and the set back of most residences of approximately up to 200 feet landward from the mean high tide line.

C. Coastal Commission Temporary Compliance With Nollan

In the years immediately after Nollan, the Coastal Commission complied with the Supreme Court decision. It did not require grants of lateral access by property owners along Broad Beach as a condition to granting coastal development permits. For example, in 1989, the Coastal Commission granted a coastal development permit to demolish a 2,000 square feet residence and build a 5,000 square feet residence in its place without any lateral access condition. The Coastal Commission found no adverse impact on public access and no lateral access was required. Tab 7 is a copy of the Coastal Commission staff analysis; see pages 8 and 9 at Tab 7.

The Executive Director of the Commission has been openly critical of the Supreme Court decision in Nollan. For example, in a speech given on October 13, 1997 to the California Chapter of the American Planning Association. He stated:

“The recent rulings on “takings” issues have, directly and indirectly, stripped the public sector of important tools needed to effectively manage development of private land.”

.....

“The Nollan decision for the first time, established a bright line and direct nexus test between project impacts and permit conditions that cannot feasibly be met in most real-world situations (i.e., a permit condition that involves a possessory interest in land must now be clearly, directly and demonstrably connected to the specific kind of impact the new development will have).”

.....

“The cumulative effect of these new judicial statements of law has been disabling, to say the least.”

D. Early '90s: Coastal Commission Strategy Shifts

In the early 1990s, Commission staff developed a strategy to obtain the public access over private property that had been held illegal in the Nollan decision. After Broad Beach property owners applied for a coastal development permit for construction or remodeling of a residence indistinguishable from the contemplated project in Nollan or the project described in the prior paragraph 7C, Commission staff informed owners that in order for the Commission to conclude with “absolute certainty” that no adverse effects will result from the proposed project, a “historical shoreline access analysis” based on site specific studies would be required. The staff did not reveal the scope of the study, examples of precedent studies, persons qualified to make the study or the legal basis for requiring it. The only requirement specified was that the applicant must provide a study that proves no impact with “absolute certainty,” a literal impossibility! As an alternative, the staff encouraged property owners to “voluntarily” furnish a lateral easement across the property owner's land. Unlike the 25 foot lateral access easements found unconstitutional and to be extortion in Nollan, these so-called “voluntary” lateral access requirements extended from the mean high tide line all the way to the area of dune vegetation. Given the depth of the lots on Broad Beach, this resulted in public access grants of some 200 feet on some parcels, or almost 50% of the entire parcel. In one instance, for example, the property is 428 feet deep. The initial “voluntary” ambulatory easement required was 97.5 feet. The permit conditions are written in such a way that the lateral access could ultimately extend to a total of 272.5 feet in depth, or over half of the property. The staff reports during this recent period of time are factually inaccurate and sugarcoat a rationale for the public access condition, as follows:

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"In past permit actions, the Commission has required that all new development on the beach, including new single family residences, provide for lateral public access along the beach in order to minimize any adverse effects to public access. In order to conclude with absolute certainty what adverse effects would result from the proposed project in relation to shoreline processes, a historical shoreline analysis based on site-specific studies would be necessary. Although this level of analysis has not been submitted by the applicant, the Commission notes that because the applicant has proposed, as part of the project, an offer to dedicate a lateral public access easement along the southern portion of the lot, as measured from the mean high tide line landward to the ambulatory seawardmost limited dune vegetation, it has not been necessary for Commission staff to engage in an extensive analysis as to whether imposition of an offer to dedicate would be required here absent the applicant's proposal." (Emphasis added)

E. The State of Public Access Today

The present situation is a confused checkerboard or patchwork of inconsistency along the entire stretch of Broad Beach. There is no public access over private property on about half of the residences. The remaining half are subject to lateral access grants of various widths, most often 25 feet. One literally needs a "sand map" to navigate. Where relative certainty once prevailed (the mean high tide line), today both homeowner and public beach goer are frequently left with nothing more than speculation and guess work. We are constrained to state that the cause of this confusion is not that of the homeowner; it rests squarely on the shoulders of the Commission.

F. Public Access Through Prescriptive Use

Lateral access is sometimes obtained by the public over private property, wherever located, by what is referred to as "adverse" or "prescriptive use." Simply stated, such access may be obtained over private property when the public has used the land for a period of more than five years with full knowledge of the owner, without asking or receiving permission to do so and without objection being made by anyone. Gion vs. City of Santa Cruz, 2 Cal. 3d 29, 40 (1970). In Gion, the California Supreme Court held that the public had gained prescriptive use over private beach front property because the public had used the land for more than five years with full knowledge of the owner, without asking or receiving permission to do so and without any objection having been made. In order to register objections, the Supreme Court noted the appropriateness of "No Trespassing" signs but cautioned that something more is required "to halt a continuous influx of beach users to an attractive seashore property." Gion, 2 Cal.3d at 58.

In order to ensure that lateral access over their home sites is not inadvertently lost through prescriptive use, Broad Beach residents have taken rational protective steps in

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accordance with the Supreme Court decision of Gion and subsequently enacted legislation by the California State Legislature, Civil Code § 1008.

There are obviously means by which property owners may make clear their intent to not permit loss of their property through adverse or prescriptive use. The most obvious, and certainly unacceptable means, is to station someone at the property and simply prohibit people from crossing over the land. Other less obtrusive and civil means are preferable. Appropriate signage, such as "No Trespassing" or other language, is commonly employed, and lawful. See Gion and California Civil Code § 1008. Our Association has provided two services which serve this purpose, among others. They are signage and the service patrol. Each has been in existence since prior to the adoption of the Coastal Act.

#### G. Signs on the Beach

The Association has placed signage on the beach since prior to the enactment of the Coastal Act. The signs were first described in a news letter to the residents dated November 1, 1966. See Tab 8. They are again described in a letter to the residents dated January 23, 1969. See Tab 9. Following the 1970 decision in Gion, a surveyor was employed and the language on the signage was made more specific. Please see the minutes of the board of directors meeting of the Association of November 20, 1971 and April 15, 1972, at Tabs 10 and 11. The signage has been maintained throughout all of these years without interruption, except for periods of heavy storms when the signs were removed only to be replaced. They have remained off the sandy beach since early this year at Commission staff request in order to facilitate settlement discussions. See paragraph 8, below.

The first time there was any objection by Coastal Commission staff to the signs was by letter dated May 18, 1995. Even in that letter, the staff recognized that "existing signs which have not been replaced or modified in their language, and whose existence either predates the Coastal Act or received a coastal development permit are permitted to remain." See Tab 12. The Association's June 2, 1995 response to this letter is found at Tab 13.

#### H. The Service Patrol

As is true with the signs, there has been a service patrol in place continuously since prior to the enactment of the Coastal Act. It was originally on foot and in later years on both foot and all terrain vehicles ("ATVs"). The first objection from Coastal Commission staff was in the same above-referenced May 18, 1995 letter, Tab 12. Most critically, there was recognition of the Association's right to provide these services. Indeed, the letter states "...you have the right to patrol private property..." (Tab 12). The objection raised was to any effort to "prevent beach goers from using the public tide lands." The critical point made was the staff "suggestion" "that the beach patrol not deter any public use on any wet area of the sand." The staff letter expressed its concern that the purpose of the service patrol was to "prevent the public from using the public portions of the beach seaward of the mean high tide line." No specific incidents of such conduct were identified. We responded that if the staff provides us with any reports of such conduct "we will investigate and, if the reports are true, such activity will be stopped immediately." (See Tab 13). Since that date and through and including the present time,

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no such reports have ever been provided to the Association. That is true even though we again asked for such information as recently as July 1, 2004. (See Tab 14).

1. False Information and Exploitation Concerning Signage and Service Patrol Issues

The residents of Broad Beach have been the target of gratuitous and unnecessary attacks by certain Commission staff. These include comments to the media which are false, and defamatory. Mr. Douglas has been publicly quoted as referring to the service patrol as "goons." Linda Locklin, the Commission Coastal Access Manager, in a Los Angeles Times interview publicly accused the Association of "hiring guards to kick out the public."

On June 9 and again on June 22, 2005, Mr. Douglas provided live interviews to the highly acclaimed public radio program "Which Way L.A." hosted by Warren Olney. In his interviews, he discussed the recent sand berm issue and accused Broad Beach residents of the "blatant theft of public land" and "theft of public sand." Theft is, of course, a crime and his comments were so interpreted. In a June 10, 2005, Internet posting, a listener wrote:

"Here's my thought. I suspect, if looked at correctly, what Coastal Commission Executive Director Peter Douglas said on Warren Olney's show is right. This is theft of public property. Let's see...in the State of California, theft of that magnitude amounts to Felony Grand Theft. And what'dya know...?! According to the California penal code, since the amount of real property stolen can arguably valued in excess of \$150,000, that's a mandatory four years state prison time. (We are, after all, living in a determinate sentencing era.) Also, given the way this "theft" occurred, I think an energetic prosecutor might very easily be able to throw a Conspiracy to Commit Grand Theft charge in there too---which could mandate a bit more prison time."

Moreover, he stated that the "Commission authorized maximum penalties." (This apparent pre-judgment came as quite a surprise given the Commission had yet to receive or consider the Association's position).

Broad Beach residents have become a highly public target of Commissioner Sara Wan. She has made herself the issue regarding Broad Beach access. In 2003 she brought a Los Angeles Times reporter and photographer and sat on private property thus staging a confrontation. When Sheriff's deputies arrived, she scurried down from the private property and onto an area of public access. She then revisited Broad Beach and gave a televised interview to NBC National News. And on August 5, 2004, she provided a taped television interview to the BBC on Broad Beach.

Sara Wan and her husband are the founders of an organization called the WAN Conservancy. Until late 2004, its Web page was generous with biographical information and photographs of the Wans. The public was asked to contribute money and real estate to Sara Wan's efforts. The public was directed to her home address in Malibu as the

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place to send contributions and get information. A principal focus of the Web page was Broad Beach. It included a photograph of Ms. Wan with photo credits to her husband; the photo was taken when she was waging her self promotional "sit-in" on Broad Beach. The Web page stated that Broad Beach homeowners employ "fences and armed security guards," neither of which is true. These falsehoods were surrounded by self-aggrandizing headlines "Show Down at Broad Beach!" and "How Sara Wan Took on the Barons of Broad Beach!"

In 2004, a fundraising solicitation was mailed to the public by the WAN Conservancy. The solicitation promoted Commissioner Wan's photo-op at Broad Beach to raise money for the WAN Conservancy. The address on the return envelope for contributions is Ms. Wan's private residence in Malibu. The solicitation letter reads in material part as follows:

"The work of Sara Wan and the Western Alliance for Nature has shown that educating beachgoers and deputies on the specifics of where one may legally access the beach is powerfully effective. The Western Alliance for Nature has more activities of this nature planned, activities that will make it unnecessary in the future for the knowledgeable beachgoer to ever have to endure harassment! We are acting on your behalf to protect your right to enjoy the beach in Malibu.

But we need your help to continue! The homeowners at Broad Beach use money to secure their privacy. We need money to secure the public's rights.

Please help us with your donation." (Emphasis added).

The color brochure which accompanies the solicitation letter reveals her own financial interest in attacking Broad Beach residents. It states in pertinent part:

"With the major initial donation of funds from its founders [Mr. and Mrs. Wan], and a commitment to match even more, the Western Alliance for Nature will move quickly to fulfill its three-part mission..." (Emphasis added.)

Not surprisingly, in the wake of these personal attacks, the media joined the band wagon. In its editorial of August 26, 2003, following Sara Wan's sit in, the Los Angeles Times editorialized, falsely, that there are "chained gates" on Broad Beach to keep the public out. This is false.

Commissioner Wan's conflict of interest was brought to her attention by letter dated August 26, 2004. See Tab 15. Following no response, a follow-up letter was sent on September 8, 2004. See Tab 16.

She belatedly responded on September 24, 2004. See Tab 17. In our response of September 29, 2004, we provided the promotional materials utilized by Ms. Wan's non-profit soliciting money at the expense of the Homeowners Association and the resident.

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See Tab 18. The WAN Web site has since removed Ms. Wan's name and no longer requests that donations be sent to her personal home address.

8. Homeowner Association Initiated Settlement/Compromise Efforts

Beginning early 2004, the Association sought to initiate discussions with the Commission to resolve all access related issues on Broad Beach. This was some eight months before the August, 2004 Notice of Intent was sent by Commission staff. These issues included the staff concerns about the signage and the use of ATVs by the service patrol. We also sought to bring some order out of the chaos created by the lack of in most areas and otherwise inconsistent public lateral access over private property. We voluntarily requested a dialogue to accomplish the removal of the signs from the sandy beach with their replacement in the dune areas and agreed upon circumscribed use of the ATVs. In addition, we offered to discuss the idea of a truly voluntary and uniform agreed upon lateral access across private property along the entirety of Broad Beach. Such an agreement would provide that all homeowners who have never granted lateral access over their property would do so and those who have done so in the past would have the size of their lateral access grants reduced to the new agreed upon uniform level. It took months for any discussions to occur. We wrote to Commissioner Kram on June 28, 2004, in our efforts to get talks going with commissioners and staff alike. See Tab 19. This letter was in response to a letter from Mr. Douglas dated June 23, 2004. See Tab 20. We responded to Mr. Douglas on July 1, 2004. See Tab 21. A meeting was finally held on August 23, 2004 when three representatives of the Association traveled to San Francisco and met with Commission staff. It had taken that long to arrange the meeting because of various objections raised by Commission staff to Commissioners participating in a meeting with us and questioning the authority of Association board member Grossman to represent the Association in any such discussions.

At this meeting, we made our suggestions for the removal of the signs from the sandy beach, for clearly defined use of the ATVs, and for uniform lateral access across private property for the entirety of Broad Beach. We committed to provide a settlement proposal within thirty days. On September 22, 2004, as promised, we submitted our proposal to the Commission, See Tab 22. On September 28, 2004, Commission staff replied by phone and stated that they were "definitely very encouraged with the offer" and planned to get a response by the end of the week. The Commission staff response finally came on December 30, 2004. See Tab 23. This was almost a year after we requested a dialogue and three months after our proposal.

The Association had significant concerns with the December 30, 2004 response. Specifically, the staff suggestion for the language on new signage ("Remain on Sandy Beach") created the obvious risk of and legitimized the loss of the entire sandy beach through adverse or prescriptive use. In addition, the staff proposed a 25 foot uniform grant of lateral access across private property; the exact amount of lateral access found to be "extortion" and inappropriate under the Nollan decision.

Accordingly, the Association decided to proceed through permitting procedures to permanently remove all signage on the sandy beach and replace it with small signs in the

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dune areas, to continue with and enforce steps in place to ensure that the service patrol continues to conduct itself in strict accordance with the Coastal Act. We "gave up" on our initiative to create lateral access over private property across the entirety of Broad Beach. Our position was set forth in our letter of February 4, 2005. See Tab 24. In reply, Commission staff asked us to continue the dialogue and make a further proposal. We did so by letter date February 28, 2005. See Tab 25. Prior to receiving a response to that proposal, we received a letter from Commission staff dated March 10, 2005, setting forth their legal position with respect to the signs and the service patrol. See Tab 26. We finally received a reply to the February 28, 2005, counter proposal three months later during a telephone conversation on June 2, 2005.

During this conversation, the Association agreed to defer replacing the signs on the sandy beach because we were close to final agreement for replacement signage within the sand dunes. With respect to the ATVs we agreed to jointly explore the Association contracting directly with the Sheriff Department. With respect to the voluntary uniform lateral access, we continued our discussion with respect to the appropriate width. In short, we had reached virtual agreement with respect to the signage issue, had agreed on a joint approach to resolving the ATV issue, and recognized that further negotiation remained concerning our voluntary proposal to achieve uniform lateral access over private property. The counter proposal and discussion is memorialized in a memorandum dated June 3, 2005, at Tab 27. Regrettably, when the sand berm was placed on the beach, Commission staff demanded \$300,000 in penalties and exemplary damages and the positive discussions came to a halt.

#### 9. The Current Status

An agreement in principle has been reached on the resolution of the signage issue. Agreement has also been reached on how to pursue Commission staff's concern with the use of ATVs by the service patrol. In the meantime, and for at least a year, the service patrol has been provided with Coastal Commission maps of all deeded lateral access and have been instructed to do nothing that interferes with the public's right of lateral access below the mean high tide line and above the mean high tide line where such rights have been granted. Discussions concerning a voluntary uniform grant of lateral access across private property are of greater complexity and require more time and effort. Obviously, resolution of the signage and ATV issues are not dependent upon grants of uniform lateral access across private property.

In short, there is no need for any Commission action at this time.

Dated: June 24, 2005

Respectfully Submitted,

TRANCAS PROPERTY OWNERS' ASSOCIATION

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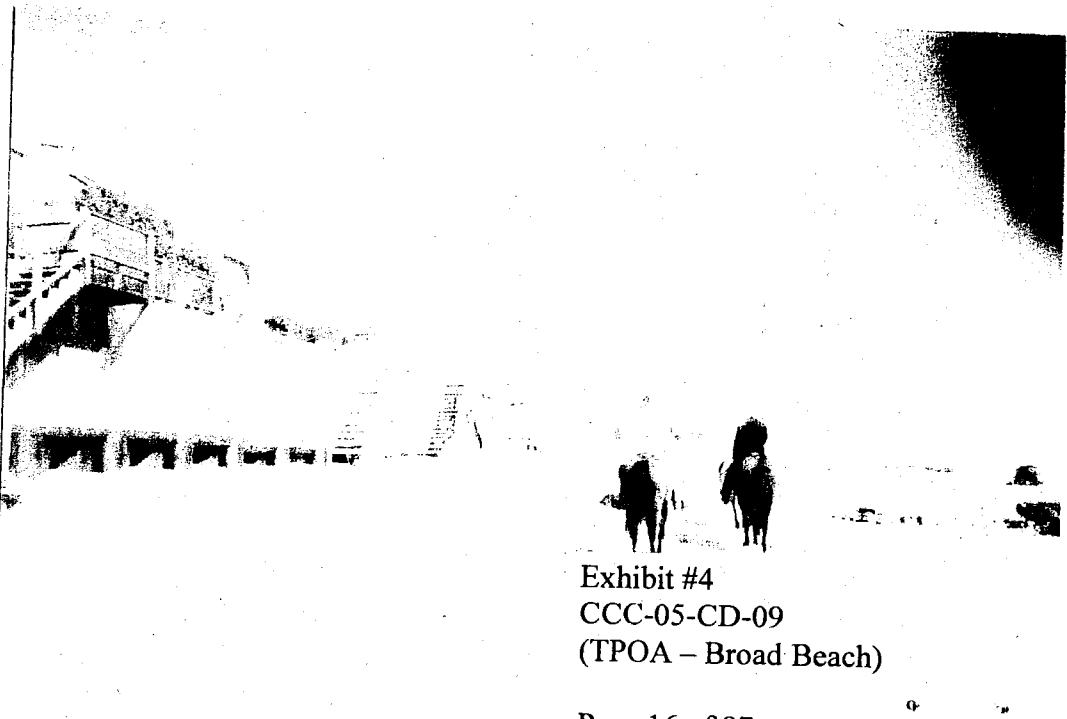


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## CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA  
 3 WEST BROADWAY, SUITE 380  
 MALIBU BEACH, CA 90802  
 31) 590-5071

Filed: 8/31/89  
 49th Day: 10/19/89  
 180th Day: 2/27/89  
 Staff: JLA  
 Staff Report: 9/25/89  
 Hearing Date:  
 Commission Action:

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 5-89-756

APPLICANT: Marshall and Marlene Grossman AGENT: Ellis Reveness

PROJECT LOCATION: 310 Broad Beach Road, Malibu, Los Angeles County

PROJECT DESCRIPTION: Demolish an existing single family residence and construct a 5,670 square foot, 32 foot high, single family residence with two car garage, 650 sq. ft. guest unit and septic system with rock blanket.

Lot area:	14800 sq. ft.
Building coverage:	33151 sq. ft.
Pavement coverage:	1654 sq. ft.
Landscape coverage:	1475 sq. ft.
Parking spaces:	5
Ht abv fin grade:	32 feet

LOCAL APPROVALS RECEIVED: Los Angeles County, "Approval in Concept", Los Angeles County Department of Health Services Approval

SUBSTANTIVE FILE DOCUMENTS: Certified Malibu/Santa Monica Mountain Land Use Plan, County of Los Angeles, 12/11/86; coastal development permits 5-87-916 (Brillstein).

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends approval of the proposed development with special conditions regarding dune protection, assumption of risk, future improvements, and revised plans to comply with stringline.

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STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions.

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

II. 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 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.

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III. Special Conditions:

1. Dune Protection

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Prior to issuance of the coastal development permit, the applicant shall

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submit, for review and approval by the Executive Director, evidence from a biologist or landscape architect with expertise in sand dune vegetation, that no portion of the development (including leachfields and the rock blanket) will require or cause the removal of any rare or endangered plant species. Additionally, the applicant shall submit, for review and approval by the Executive Director, a Dune Restoration Program which shall require restoration of any portion of the dunes disturbed by construction activity, including revegetation with plant species suitable for dunes pursuant to the recommendations of the biologist or landscape architect.

2. Applicant's Assumption of Risk.

Prior to the issuance of the coastal development permit, the applicant as landowner shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide: (a) that the applicant understands that the site may be subject to extraordinary hazard from waves during storms and from erosion or flooding and the applicant assumes the liability from such hazards; and (b) that the applicant unconditionally waives any claim of liability on the part of the Commission and agrees to indemnify and hold harmless the Commission and its advisors relative to the Commission's approval of the project for any damage due to natural hazards. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens which the Executive Director determines may affect the interest being conveyed, and free of any other encumbrances which may affect said interest.

3. Future Improvements.

Prior to issuance of the permit, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide that coastal development permit 5-89-756 is only for the proposed development and that any future additions or improvements to the ~~property, including clearing of vegetation, grading, and structural additions,~~ will require a permit from the Commission or its successor agency. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens and any other encumbrances which the Executive Director determines may affect the interest being conveyed.

4. Revised Plans

No portion of the proposed development shall extend further seaward onto the beach than a line drawn between the nearest adjacent corners of the decks of the adjacent structures. Prior to the issuance of the permit the applicant shall submit revised plans, for the review and approval of the Executive Director, which comply with the stringline as stated above.

IV. FINDINGS AND DECLARATIONS:

The Commission finds and declares as follows:

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(TPOA - Broad Beach)

A. Project Description

The applicant proposes to demolish an existing single family residence and construct a 5,670 square foot, 32 foot high, single family residence with two car garage, 650 sq. ft. guest unit and septic system with rock blanket on a 14,800 square foot lot on Trancas Beach (Broad Beach), Malibu (Exhibits 1-3). The subject property is located in an existing developed area consisting of single family residences.

The proposed residence and teahouse conforms to a building stringline drawn between the adjacent residences, however, the proposed deck/terrace exceeds the stringline. (Exhibit 3). The proposed septic system and rock blanket will replace an existing system with no rock blanket located seaward of the existing residence in the dune area of Trancas Beach. A determination has been made by the State Lands Commission that the most seaward extent of the proposed structure will be landward of the surveyed mean high tide line and that no lease or permit will be required.

B. Shoreline Protective Device/Environmentally Sensitive Habitat Areas and Marine Resources

The proposed project raises issues with respect to the hazard, beach erosion, and environmentally sensitive habitat and marine resource protection policies of the Coastal Act and the certified Land Use Plan. These issues are closely interrelated in the subject application, as the request involves construction of a shoreline protective device partially within a designated environmentally sensitive marine habitat area.

The applicants propose to demolish and reconstruct a single family residence on Trancas Beach (also known as Broad Beach). The proposed development includes the installation of a new septic system and leachfield in the sand area in front of the residence, and a "rock blanket" and rock revetment in front of, and over, the septic system to protect it from storm wave damage (see attached exhibits). Both the septic system and rock protective device will encroach into the sand dunes which run the length of Broad Beach, and will necessitate excavation of the dunes during the construction phase, and rebuilding and revegetation of the dunes once construction has been completed.

The Trancas Beach coastal dunes are a unique feature in the Malibu coastal zone. As described in the County's original LUP submittal, "The small system of vegetated dunes at Trancas Beach supports a flora and fauna restricted to sand dunes. These are the only extensive dunes in the Malibu Coastal Zone. Furthermore, vegetated coastal dunes are restricted in distribution throughout the State. Although many of the dunes at Trancas are dominated by introduced ice plant, the outer dunes support a typical native dune flora." The certified LUP designates this dune system as "Environmentally Sensitive Marine Habitat" and affords the dunes special protection in policies P98, P99, P101, P102, P103, P104, and P109, as follows:

P98 Permitted land uses or developments shall have no significant adverse impacts on sensitive marine and beach habitat areas.

P99 Development in areas adjacent to sensitive marine and beach habitats shall be sited and designed to prevent impacts that could significantly

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degrade the environmentally sensitive habitats. All uses shall be compatible with the maintenance of biological productivity of such areas.

P101 Only resource dependent uses shall be permitted in sensitive marine and beach habitats.

P102 In all sensitive marine and beach habitats, require that all permitted uses shall comply with the U.S. Fish and Wildlife and the State Department of Fish and Game regulations.

P103 For proposed development adjacent to or near sensitive marine or beach habitats, the applicant shall evaluate the potential for significant impacts on sensitive marine or beach habitats. When it is determined that significant impacts may occur, the applicant shall be required to provide a report prepared by a qualified professional with expertise in marine or beach biology which provides: (a) mitigation measures which protect resources and comply with the policies of the environmentally sensitive habitats components, and (b) a program for monitoring and evaluating the effectiveness of mitigation measures. An appropriate program shall be adopted to inspect the adequacy of the applicant's mitigation measures.

P104 When feasible, the restoration of damage to habitat(s) shall be required as a condition of permit approval.

P109 (Area-specific to Trancas Beach Coastal Dunes) For all new development, vegetation disturbance including recreation or foot traffic on vegetated dunes, should be minimized. Where access through dunes is necessary, well-defined foot paths shall be developed and used.

These LUP policies implement sections 30240 and 30230 of the Coastal Act, which state, respectively, that environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and that ~~marine resources shall be maintained, enhanced, and where feasible, restored.~~

With respect to construction of a shoreline protective device, Section 30235 of the Coastal Act states, in part that "Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal dependent uses or to protect existing structures or public beaches in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. . .

Further, section 30253 states that "New development shall:

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

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

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These sections are implemented in the certified Malibu LUP in policies P166 and P167, which state:

P166: Seawalls shall not be permitted unless the County Engineer has determined that there are no other less environmentally damaging alternatives for protection on onshore development. Revetments, seawalls, cliff retaining walls and other such construction shall be permitted only when required to serve coastal-dependent uses or to protect existing structures or new structures which constitute infill development.

P167: Revetments, groins, cliff retaining walls, seawalls, pipelines, and outfalls, and other such construction that may alter natural shoreline processes shall be permitted when designed and engineered to eliminate or mitigate adverse impacts on shoreline and sand supply.

The Los Angeles County Department of Health Services requires a shoreline protective device to protect septic systems in the wave uprush zone. According to the applicants' coastal engineer, a shoreline protective device will be required to protect the septic system from storm wave hazard, if it is located as proposed, seaward of the residence. However, the particular protective device proposed, a "rock blanket," is not likely to have any significant adverse impact on shoreline processes, both because of the nature of the structure itself, and the fact that it will be located behind an extensive natural dune system which dissipates most of the wave energy before it would reach the protective device. Under policy P166 of the certified LUP, such protective devices may be permitted when required to protect existing structures or new structures which constitute infill development, as is the case here. The Commission finds that construction of the rock blanket would minimize risks to the septic system, and would assure its stability and structural integrity without creating nor contributing significantly to erosion of the site, and that installation of the septic system and rock blanket in the proposed location is therefore consistent with sections 30253 and 30235 of the Coastal Act.

The Commission notes that installation of the septic system and rock blanket in this location will require significant disruption of the dunes, a designated environmentally sensitive habitat area under the certified LUP. The LUP contains several policies, outlined above, to ensure full mitigation of significant impacts on sensitive marine habitat in general, and on the Trancas Beach dunes in particular; these policies include requirements for evaluation of the potential for significant impacts, development of an adequate mitigation program, and restoration of habitat damage as a condition of permit approval.

Therefore, the Commission finds that as a special condition of approval the applicants are required to have a botanist or landscape architect with expertise in dune ecology do a survey of the dunes prior to construction, and certify to the Executive Director prior to issuance of the permit that no portion of the development will result in removal or destruction of any rare or endangered plant species inhabiting the dunes. In addition, the Commission finds that the applicants must have a botanist or landscape architect prepare and implement a Dune Restoration Program to fully restore any portion of the dunes disturbed during construction of the septic system and rock blanket, including revegetation with native plant species. The Commission finds that

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such a survey and restoration program will fully mitigate any adverse impacts on the dune ecosystem that may arise as a result of construction activity, and in fact, may result in a more natural dune environment than currently exists. The Commission finds that as conditioned, the development is consistent with sections 30240 and 30230 of the Coastal Act and with the above delineated policies of the certified LUP.

The Commission has previously approved a single family residence under coastal development permit 5-87-916 (Brillstein) five lots to the west of the subject property which is exactly the same type of development with the same special conditions that have been applied to this permit.

In addition, section 30231 of the Coastal Act requires that the biological productivity and quality of coastal waters be maintained and where feasible restored. Further, policies P217, P218, P225 and P226 require that septic systems be installed and maintained only in strict accordance with all applicable County health and safety codes, in order to ensure that the beach and ocean are not polluted by failed septic systems on beachfront lots. The applicant has submitted approval of the proposed septic system from the Los Angeles County Department of Health Services which indicates that it complies with all minimum requirements of the health and plumbing codes. Therefore, the Commission finds that the proposed septic system is consistent with Section 30231 of the Coastal Act and all applicable LUP policies.

Although Trancas Beach is wider and more stable than most other beaches in the Malibu area, storm waves do overtop the natural sand dune barrier and can reach the proposed structure. The Commission cannot absolutely acknowledge that the proposed development and existing residence will be safe during all future storms or be constructed in a structurally sound manner and be properly maintained to eliminate any potential risk to the beach going public. The Commission acknowledges that many of the oceanfront parcels in Malibu such as the subject property are susceptible to flooding and wave damage from waves and storm conditions. Past occurrences have resulted in public costs (through low interested loans) in the millions of dollars in the Malibu area alone. Storms during the winter of 1982-83 caused over six million dollars in damage to private property in Los Angeles County and severely damaged existing bulkheads, patios, decks, and windows along the Malibu coastline.

The applicant may decide that the economic benefits of development outweigh the risk of harm which may occur from the identified hazards. Neither the Commission nor any other public agency that permits development should be held liable for the applicants decision to develop. Therefore, as conditioned to assume risk of failure, the applicants are required to expressly waive any potential claim of liability against the Commission for any damage or economic harm suffered as a result of the decision to develop. Only as conditioned is the proposed development consistent with the relevant geologic and natural hazard polices of the LUP, and section 30253 of the Coastal Act.

### C. Public Access

Coastal Act Section 30210 provides as follows:

In carrying out the requirement of Section 4 Article X of the California Constitution, maximum access, which shall be conspicuously posted, and

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recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resources areas from overuse..

Coastal Act Section 30121(a) provides that in new shoreline development projects, access to the shoreline and along the coast shall be provided, except in specified circumstances, where:

- (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources.
- (2) adequate access exists nearby, or,
- (3) agricultural would be adversely affected. Dedicated access shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

Section 30212 provides for certain additional exceptions from access requirements where a proposed project does not constitute "new development" as defined therein.

The proposed development is "new development" under Section 30212 because the project includes a total demolition of an existing single family residence and reconstruction of a new single family residence. Therefore, the Commission must examine whether the exceptions provided by Section 30212(a) are applicable, and, if not, whether the project as proposed by the applicant or as conditioned by the Commission would provide public access to the shoreline and along the coast, consistent with requirements of the Coastal Act.

With regard to lateral access along the coast, the Commission has prfeviously found in certifying the Malibu/Santa Monica Mountains Land Use Plan that none of the exceptions specified by Section 30212(a) apply to Broad (Trancas) Beach. Thus, policy 52 of the LUP states:

For all new development as defined in Public Resources Code Section 30106 and 30212(b) between the first public road and the sea, an irrevocable offer of dedication of an easement to allow public lateral access along the shoreline shall be required...

A conclusion that access may be mandated by Section 30212 does not end the Commission's inquiry. As noted, Section 30210 imposes a duty on the Commission to administer the public access policies of the Coastal Act in a manner that is "consistent with...the need to protect...rights of private property owners..." The need to carefully review the potential impacts of a project when considering imposition of public access conditions was emphasized by the Supreme Court's decision in the Court case of Nollan vs California Coastal Commission. In that case, the Court ruled that the Commission may legitimately require a public access easement where the proposed development has impacts (either individually or cumulative) which substantially impede the achievement of the state's legitimate interest in protecting access and where there is a connection, or nexus, between the impacts on access caused by the development and the easement the Commission is required to mitigate those impacts.

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The Commission's experience in reviewing shoreline residential projects in Malibu indicates that individual or cumulative adverse impacts on access of such projects can include, among others: encroachment on lands subject to the public trust, thus physically excluding the public; interference with natural shoreline processes which are necessary to maintain publically owned tidelands and other public beach areas; overcrowding or congestion of such tidelands and other public beach areas; and visual or psychological interference with the public's access to and ability to use and enjoy these areas. In this case, the Commission finds that this project will not cause adverse impacts on public access such as those above. For instance, the proposed development does not encroach onto or over tidelands of public trust lands, will not interfere with rights of access to sandy beach or other areas acquired through historic public use, and will not alter any shoreline process which would affect the availability of sand or of the sandy beach. Since no significant intensification of use will result from the proposed development, the project will not have any physical or psychological adverse impacts on recreational use of public lands in Malibu. Thus, in this instance, the Commission finds that a condition to require lateral access is not appropriate because the project would not result in impacts sufficient to justify such a condition.

With respect to provision of vertical access, the Commission has similarly found in certifying the Malibu LUP that none of the exceptions specified by Section 30212(a) apply to Broad Beach. The certified LUP requires that new development provide vertical access on lots with widths greater than 75 feet, in order to achieve a standard of one vertical accessway per 1,000 feet on Broad Beach. However, The Commission finds determines that no vertical access is required in this case because the 40' width of the property is less than the LUP standard, and because there will be no direct impact on beach access as a result of this project. The Commission finds that the project as proposed is consistent with the public access policies of the Coastal Act and the certified LUP.

#### D. Seaward Encroachment

As a means of controlling seaward encroachment of residential structures on a beach in order to insure maximum access, protect public views and minimize wave hazards as required by Sections 30210, 30211, 30251 and 30253 of the Coastal Act, the Commission has developed the "stringline" policy to control the seaward extent of buildout in past permit actions. As Applied to beachfront development, the stringline limits extension of a structure to a line drawn between the nearest corners of adjacent structures and limits decks to a similar line drawn between the nearest corners of the adjacent decks. In addition the Commission has approved the "stringline" policy in the certified Malibu Land Use Plan:

P153 On sites exposed to potentially heavy tidal action or wave action, new development and redevelopment shall be sited a minimum of 10 feet landward of the mean high tide line. In a developed area area where new construction is generally infilling and is otherwise consistent with LCP policies the proposed new structure may extent to the stringline of existing structures on each side.

The Commission has applied this policy to numerous past permits involving infill on sandy beaches, and has found it to be an effective policy tool in

preventing further encroachments onto sandy beach. Even on Broad Beach, where development is less subject to wave attack due to the width of the beach, the Commission has found application of a stringline policy to be necessary in order to establish and maintain a reasonable limit on new development onto sandy beach, to protect the dune system and ensure preservation of views along the shoreline. In this case, the development (the deck/terrace) extends approximately 5 feet onto the beach and clearly violates a stringline between adjacent decks. The permit has therefore been conditioned to require the applicant to submit revised plans which illustrate the development complies with the stringline. The Commission finds that as conditioned, the proposed development will be consistent with the relevant stringline policies of the LUP and Coastal Act.

#### E. Guest Unit

Sections 30250, 30251 and 30252 of the Coastal Act address the cumulative impacts of new developments. Based on these policies the Commission has limited the development of second dwelling units on residential lots in Malibu. The Commission has found that guest houses or second units can intensify the use of a site and impact public services, such as water, sewage, electricity, and roads.

Policy 271 of the certified Malibu/Santa Monica Mountains Land Use Plan states:

"In any single family residential category, the maximum additional residential development above and beyond the principal unit shall be one guest house or other second unit with an interior floor space not to exceed 750 gross square feet, not counting garage space."

As proposed, the guest unit over the garage conforms to LUP criteria. This permit has been conditioned to require the recordation of a future improvements deed restriction, which will require the applicant to obtain a new permit if additions or changes to the development are proposed in the future that might result in the guest unit exceeding LUP criteria. The Commission finds that as conditioned, the proposed development is consistent with Section 30250 of the Coastal Act and policy 271 of the LUP.

#### E. Local Coastal Program

The Commission certified the Land Use Plan for Malibu and the Santa Monica Mountains on December 11, 1986. The Executive Director determines that the proposed development, as conditioned will not prejudice the ability of the County of Los Angeles to prepare a certifiable Local Coastal Program that is consistent with the policies of Chapter 3 of the Coastal Act.

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TRANCAS PROPERTY OWNERS ASSOCIATION

A NON-PROFIT CALIFORNIA CORPORATION  
BOX 327, MALIBU, CALIFORNIA

November 1, 1966

NEWS LETTER FOR TRANCAS BEACH PROPERTY OWNERS

The annual meeting of the Trancas Property Owners Association was held September 11, 1966.

The Association Treasurer reports a cash balance of \$2,976.64. During the year, there was income from dues of \$1,005.00. There were expenditures of \$787.10.

The Architectural Committee reported that during the year it had approved remodelling plans for Mrs. Hoffman, Mr. Silverman, Mrs. Candy, Mr. Ballard, Mr. Edwards and Mr. Ohrbach. It also approved plans for a new home for Mr. and Mrs. Robert Wise. Anyone planning to build or remodel should submit plans to the Association for approval prior to starting construction.

According to the Membership Committee, there are 67 dues-paying members of the Association.

The life-saving floats and stands were all repainted and stenciled during the year. Ten additional "No Trespassing" signs were put up during the year.

Several lots in La Chusa Point subdivision at the west end of Trancas Beach were sold. Jerry Pritchett reports some of the new owners are planning to build in 1967.

Deed restrictions on property along Trancas Beach expire in 1970. The Association is studying the effects this will have and whether further zoning will be required.

The members elected the following persons to be Directors for the year:

Mr. Gene Hurtz  
31388 Broad Beach Road

Mr. Jess Johns  
31350 Broad Beach Road

Mr. Bill Lawry  
31280 Broad Beach Road

Mr. George Seaton  
30924 Broad Beach Road

Mrs. Peggy Trumbull  
31330 Broad Beach Road

Mr. Jerry Pritchett  
30926 Broad Beach Road

Mr. Bob Wilson  
30940 Broad Beach Road

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TRANCAS PROPERTY OWNERS ASSOCIATION

A NON-PROFIT CALIFORNIA CORPORATION  
BOX 222, MALIBU, CALIFORNIA

SECURITY COMMITTEE

RESPONSIBILITIES:

To assist the property owners of Trancas beach protect their property.

ORGANIZATION:

The committee shall consist of three members appointed by the President. One member shall be the Chairman who shall conduct meetings and assign work of the committee.

DUTIES:

1. Erect and maintain no-trespassing signs.
2. Erect and maintain "SLOW CHILDREN" signs.
3. Erect and maintain life preservers and stands.
4. Arrange special summer beach patrol with Sentinel Patrol.
5. Inform property owners, by letter, of trespassing laws and owners rights and duties.

TRANCAS PROPERTY OWNERS ASSOCIATION

A Non-Profit California Corporation

Box 322, Malibu, California 90296

DIRECTORS FOR 1968-1969

LEONARD EUGENE HURTE  
President

JOHN T. REYNOLDS  
Vice President

STEWART TRUMBULL  
Treasurer

FRANCES DONAVAN  
Secretary

WILLIAM D. LAWRY

JERRY E. PRITCHETT

FRANK G. WELLS

January 23, 1969

Dear Trancas Property Owner:

It is that time of year again to advise you that your 1969 Association dues are due and payable.

We are confident that those of you who have been past members of the Association will continue to participate and we hope that those of you who have not joined our organization will plan to do so this year.

Annual dues are \$25.00 and your statement is enclosed.

Your annual contribution to the Trancas Property Owners Association, we feel, is one of the Best investments you can make for your participation and contribution permit the Association to involve itself in such matters as zoning, architectural supervision, legal matters and beach front protection and cleanup. Without this constant and close surveillance by the Association, it would be impossible to protect and improve the beautiful and natural environment which is Trancas Beach's unique charm. This short mile strip of beach in which you own property has become internationally famous as one of the finest residential beach areas in the world and it is the goal of your Association to do everything within its power to perpetuate and enhance this private retreat.

For example, this past year, your Association has been actively involved in plans for extending the deed restrictions and exploring the possibility of establishing a zoning ordinance to protect the building line on the beach side of Trancas. Your dues have helped underwrite the cost of beach cleanup to remove the trash, bottles and plastic cups that wash ashore. It pays for the maintenance and replacement of the "No Trespassing" signs and the life-saving apparatus. The Association works closely with the Sentinel Patrol to help minimize the number of trespassers. The Architectural Committee continues to review both new and remodeling plans in an effort to insure architectural compatibility in keeping with the best interests of all concerned. The Association continues to work closely with the Sheriff and Highway Patrol in an effort to control and minimize speeding along Broadbeach Road.

A number of your neighbors serve voluntarily on committees which are necessary to improve our community. These members give a good deal of

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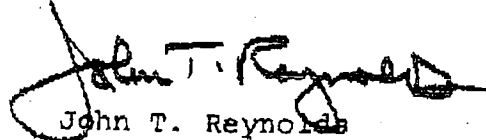
Trancas Property Owner  
January 23, 1969  
Page two

their time to protect and improve Trancas Beach and thus to protect and enhance the value of your property. To do this; however, we need operating capital for legal fees, beach cleanup, postage, maintenance, etc.

We welcome your active participation and ask that you please return your check for \$25.00 in the enclosed stamped and addressed envelope.

Thank you.

Sincerely yours,



John T. Reynolds  
Chairman - Membership Committee

JTR:mjr  
enclosure

P. S. We would appreciate your advising us of any change of address or telephone number in order that we may keep our records up-to-date.

JTR

Exhibit #4  
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MINUTES OF SPECIAL MEETING OF BOARD OF DIRECTORS OF  
TRANCAS PROPERTY OWNERS' ASSOCIATION  
A CALIFORNIA CORPORATION

A special meeting of the Board of Directors of the Trancas Property Owners' Association was held at the home of Director John Reynolds, 31322 Broad Beach Road, Malibu, California, on Saturday, November 20, 1971, at the hour of 2:00 p.m.

Present at said meeting were:

Arthur Froehlich  
Jerry E. Pritchett  
John Reynolds  
Virginia Van Vorst  
I. A. Meeker, M.D.

Absent were Directors Peter Forrest and Sally Moore.

Also present at said meeting was Property Owner Bill Lawry.

I. A. Meeker, president, acted as chairman of the meeting, and Virginia Van Vorst, Secretary, acted as secretary of the meeting.

The Chairman announced that the meeting was being held pursuant to written Waiver of Notice thereof and Consent thereto signed by all the directors of the Association present; said Waiver and Consent was presented to the meeting, and upon motion made and unanimously carried, was made a part of the records of the meeting, and now precedes the minutes of this meeting in the Book of minutes of the Corporation.

The reading of the minutes of the previous meeting was waived.

Jerry Pritchett reported that he had contacted Mario Quiros, a Malibu surveyor and engineer, about determining the mean high tide line from the Malibu West Swim Club to LaChusa Point; that Mr. Quiros suggested the job could be done for \$400 to \$500 for the original survey and a fee of \$100 each time he has to come back to remark the line. Bill Lawry would drive posts as per the markers left by Mr. Quiros at approximately every 300 feet.

After a lengthy discussion, Jerry Pritchett presented the following resolution and moved its adoption:

RESOLVED: That this Board of Directors elect to proceed with the establishment of the mean high tide

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(TPOA - Broad Beach)



line from the Malibu West Swim Club westerly to LaChusa Point; and that the survey will include the placing of markers every three-hundred feet; that the final bid will be subject to the approval of the Board, and that further, the engineer will provide the Board with a bid for subsequent surveys for marking the mean high tide line.

John Reynolds seconded the motion which was unanimously carried by vote of all the directors present.

Jerry Pritchett was instructed to follow up on securing the bid.

John Reynolds reported that as of November 20, 1971, we owed Joe Ross's office \$2,750.00 for legal fees. Mr. Reynolds was asked if this sum included the preparation of the "White Paper" or the paper outlining the property owners' new situation in dealing with the public. Director Reynolds said he did not know, but would find out and report back to the Board.

John Gonden, of the Sentinel Patrol, then spoke on his work in the Trancas Beach area. Mr. Gonden reported that the Association pays him \$240.00 a year to do patrol work and that approximately 60 per cent of the Trancas Beach residents employ him. Mr. Gonden reported that he needed a line of demarcation between the public property and the private property on the beach in order to properly do his work.

Mr. Gonden was asked to attempt to set up a meeting of the deputy sheriffs in the Malibu station and the Board of Directors at an early date so that we might resolve some of our mutual problems.

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Director Van Vorst read a newsletter put out by the Malibu Township Council in which the Council urged its members to write to the State Lands Commission and request that that agency determine the line between public and private property along the Malibu Coast.

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There being no other business to be brought before the Board, upon motion duly made, seconded and unanimously carried, the meeting adjourned.

  
\_\_\_\_\_  
Virginia Van Vorst, Secretary

MINUTES OF SPECIAL MEETING OF BOARD OF DIRECTORS OF  
TRANCAS PROPERTY OWNERS' ASSOCIATION  
A CALIFORNIA CORPORATION

A special meeting of the Board of Directors of the Trancas Property Owners' Association was held at the home of Arthur Froehlich, 31042 Broad Beach Road, Malibu, California, on the fifteenth day of April, 1972, at the hour of 2:00 p.m.

Present at the meeting were:

Jerry Pritchett  
Arthur Froehlich  
John Reynolds  
I. A. Meeker, Jr.  
Virginia Van Vorst

Absent were Directors Moore and Forrest.

I. A. Meeker, president, acted as chairman of the meeting, and Virginia Van Vorst acted as secretary of the meeting.

The Chairman announced that the meeting was being held pursuant to written Waiver of Notice thereof and Consent thereto signed by all the directors of the Association present; said Waiver and Consent was presented to the meeting and upon motion made and unanimously carried, was made a part of the records of the meeting, and now precedes the minutes of this meeting in the book of minutes of the Corporation.

The reading of the minutes of the previous meeting was waived.

Arthur Froehlich announced that the purpose of the meeting was to settle on the wording for the signs to be placed on the ocean side of our property and for the signs to be placed on the chain fencing on either side of the Moore-Bauer accessway.

Director Froehlich presented the following wording which had the verbal approval of Joe Ross, one of the Association's attorneys:

PRIVATE PROPERTY

Trespassing

Landward

of

mean high tide line

violation

Calif. Penal

Code Sec. 602-N

This state is \_\_\_ Ft.

landward mean high tide

Surveyed \_\_\_\_\_

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Private Property both sides this  
walkway

Trespass violates Calif.

Penal Code 602-N

John Reynolds moved the adoption of the above wording subject to the written approval of Alan Levine of Joe Ross ' office. John Reynolds seconded the motion which was unanimously carried by vote of all the directors present.

Jerry Pritchett then reported on the various candidates running for the job of supervisor for the 4th district of L.A. County.

There being no further business to be brought before the directors, upon motion duly made, seconded and unanimously carried, the meeting adjourned.

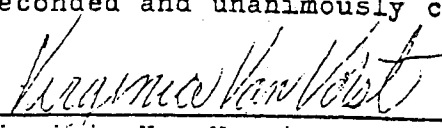
  
Virginia Van Vorst

Exhibit #4  
CCC-05-CD-09  
(TPOA - Broad Beach)

## CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA  
89 SOUTH CALIFORNIA ST., SUITE 200  
VENTURA, CA 93001  
(805) 441-0142

CERTIFIED MAIL

May 18, 1995

Warner Koenig, M.D.  
President: Broadbeach Homeowners Association  
11835 Olympic Blvd.  
West Los Angeles, CA. 90064

Subject: Patrol of the beach and the placement of signs on the beach

Dear Mr. Koenig:

As the president of the homeowners association of Broadbeach homeowners we are contacting you regarding the signs on the beach which read:

Private Property / Do not trespass Calif. Penal Code Sec.602(N). Private  
Property line begins 85 feet toward the ocean from this sign surveyed 6/94

We also have received reports that during the summer months the homeowners association employs a beach patrol to ride motorized vehicles on the beach and deter and prevent the public from using the public portions of the beach seaward of the mean high tide line. Although you have the right to patrol private property, you may not prevent beachgoers from using the public tidelands. We must remind you that all portions of the beach from the ocean landward to the mean high tide line are public beaches. As such, ~~the public has the right to use these portions of the beach for access to the water, for walking, or, if permissible by the tides, sunbathing. The public is not trespassing on~~ private property seaward of the mean high tide line. As you may also be aware, the mean high tide line changes, and as such, it is next to impossible to determine the actual location of this ambulatory line on a day to day basis on beaches which are constantly changing. Therefore, we suggest that the beach patrol not deter any public use on any wet area of the sand.

With regards to the signs, Coastal Act Section 30106 states in part that development is defined as, "...on land or in the water, the placement or erection of any solid material or structure;... change in the intensity of use of water, or of access thereto..." We consider the placement of signs on the beach to constitute development under Section 30106 of the Coastal Act. Moreover, we consider the language on these signs to constitute a change in the intensity of use of water and, a change in access to the water and therefore constitutes development.

Exhibit #4  
CCC-05-CD-09  
(TPOA - Broad Beach)

Page 2

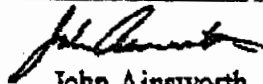
Broadbeach Homeowners Assoc.

We understand that some of these signs are existing. Existing signs which have not been replaced or modified in their language, and whose existence either predates the Coastal Act or received a coastal development permit are permitted to remain. However, we also are aware that many of these signs are removed or destroyed in the winter time and replaced in the spring and summer. Further, the statement on the sign itself has changed, which alters the point of public access to the water. As such, the placement of any sign must receive a coastal development permit.

Section 30600(a) of the Coastal Act requires that all development in the coastal zone receive a coastal development permit. Development without a coastal development permit constitutes a violation of the Coastal Act. We consider the placement of new signs and the changes in the language to the signs development without a coastal development permit, and thus a violation. We are not however, at this time, opening any violation files against any homeowner or the association since no patrols are currently on the beach and the signs have been removed for the winter season. However, to place any signs on the beach at any time in the future will require a coastal development permit. We suggest that prior to submitting an application for these developments, that you contact the State Lands Commission for a more accurate location of the mean high tide line and the delineation between public and private land. If any signs are placed on the beach as of the date of the receipt of this letter, we will pursue this matter as a violation of the Coastal Act of 1976. We would like to inform you that a violation of the Coastal Act of 1976 carries with it the potential for monetary fines and penalties, all of which may be avoided if no unpermitted development, as described above, occurs.

Please contact Susan Friend with any questions regarding this matter.

Sincerely,



John Ainsworth  
Enforcement Officer



Susan Friend  
Enforcement Officer

cc: Sarah Maurice: City of Malibu  
Jane Smith: State Lands Commission

violet2.spf

Exhibit #4  
CCC-05-CD-09  
(TPOA - Broad Beach)

A L S C H U L E R , G R O S S M A N & P I N E S  
A L A W P A R T N E R S H I P I N C L U D I N G P R O F E S S I O N A L C O R P O R A T I O N S

MARSHALL B. GROSSMAN  
A PROFESSIONAL CORPORATION  
310-551-9118

OUR FILE NUMBER

June 2, 1995

Mr. John Ainsworth  
Ms. Susan Friend  
California Coastal Commission  
South Central Coast Area  
89 South California Street  
Suite 200  
Ventura, CA 93001

Dear Susan and Jack:

I am pleased to write to you in response to your letter of May 18, 1995 to the president of the Broadbeach Homeowners Association.

We thank you very much for writing so that the Association may address those concerns and correct whatever misunderstandings may exist.

Your letter addresses two issues, the issue of signs and the issue of what you describe as a "beach patrol."

---

At the outset, I wish to emphasize that the Association and its members are respectful of both the letter and spirit of the Coastal Act and would never wilfully do anything to interfere with legitimate public access. As you know, members of the general public enjoy both lateral and vertical access on Broadbeach. Vertical access is provided at various locations right off of Broadbeach Road. Because of the breadth of the beach itself, lateral access is provided along the entire beach front.

With respect to the beach patrol, contrary to what you have been informed, it is a year round service. The service is provided by local college students and involves both maintenance and privacy services. The privacy services are designed to make sure that members of the public do not disturb the extensive and protected dune vegetation or enter upon the property of the homeowners. Under no circumstances is any action designed to prevent the public from using the public portions of the beach seaward of the mean high tide line. Your letter states that you have received reports that such conduct has been engaged in. We are not aware of any such reports or conduct. If you provide your information to us, we will investigate and, if the reports are true, such activity will be stopped immediately.

Exhibit #4  
CCC-05-CD-09  
(TPOA - Broad Beach)

June 2, 1995  
Page 2

With regard to the signs, there have been such signs posted on the beach dating back to many years prior to the Coastal Act itself. Although I have not had the opportunity of going through all of the Association's records, I am enclosing for your review Association board minutes dated November 20, 1971 and April 15, 1972. These documents should establish to your satisfaction the historical nature of the signage. These signs are placed on the private property of members of the Association. They have been and are interspersed along the entirety of the beach. They serve the purpose of protecting the legitimate privacy and property rights of the homeowners and, at the same time, informing the public where access is legally permissible. The Association is mindful of the California Supreme Court decision in Gion vs. City of Santa Cruz, 2 Cal.3d 29 (1970) and this signage is essential to the protection of the type of rights which were lost through inaction in the Gion decision.

We understand your apparent position that the modest change in language which is made periodically on the signs requires a Coastal Development permit. We respectfully disagree. The language change is necessitated because of the change in the location of the mean high tide line and the Association's determination to keep it current through periodic surveys conducted by Mr. Quiros, a licensed and respected local surveyor with whom we believe you are well familiar. It seems clear that Coastal Act Sections 30610, (d) and (g) exempt from permit requirement the maintenance of these signs (by updating the location of the mean high tide line) as well as the replacement of any sign which is uprooted by wave action.

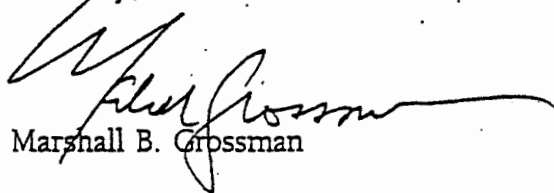
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In closing, we genuinely believe that the Association has acted in a responsible manner with due regard for the interests of its members and total respect for the Coastal Act and its salutary objectives which your office is entrusted to enforce.

I trust that this response will permit you to close your file on this matter.

Kindest regards.

Sincerely,



Marshall B. Grossman

MBG/sb  
Enclosures

cc: Sarah Maurice, City of Malibu  
Jane Smith, State Lands Commission, Sacramento, CA  
Werner Koenig, M.D. - via telecopy

Exhibit #4  
CCC-05-CD-09  
(TPOA - Broad Beach)



MINUTES OF SPECIAL MEETING OF BOARD OF DIRECTORS OF  
TRANCAS PROPERTY OWNERS' ASSOCIATION  
A CALIFORNIA CORPORATION

A special meeting of the Board of Directors of the Trancas Property Owners' Association was held at the home of Director John Reynolds, 31322 Broad Beach Road, Malibu, California, on Saturday, November 20, 1971, at the hour of 2:00 p.m.

Present at said meeting were:

Arthur Froehlich  
Jerry E. Pritchett  
John Reynolds  
Virginia Van Vorst  
I. A. Meeker, M.D.

Absent were Directors Peter Forrest and Sally Moore.

Also present at said meeting was Property Owner Bill Lawry.

I. A. Meeker, president, acted as chairman of the meeting, and Virginia Van Vorst, Secretary, acted as secretary of the meeting.

The Chairman announced that the meeting was being held pursuant to written Waiver of Notice thereof and Consent thereto signed by all the directors of the Association present; said Waiver and Consent was presented to the meeting, and upon motion made and unanimously carried,

was made a part of the records of the meeting, and now precedes the minutes of this meeting in the Book of minutes of the Corporation.

The reading of the minutes of the previous meeting was waived.

Jerry Pritchett reported that he had contacted Mario Quiros, a Malibu surveyor and engineer, about determining the mean high tide line from the Malibu West Swim Club to LaChusa Point; that Mr. Quiros suggested the job could be done for \$400 to \$500 for the original survey and a fee of \$100 each time he has to come back to remark the line. Bill Lawry would drive posts as per the markers left by Mr. Quiros at approximately every 300 feet.

After a lengthy discussion, Jerry Pritchett presented the following resolution and moved its adoption:

RESOLVED: That this Board of Directors elect to proceed with the establishment of the mean high tide

Exhibit #4  
CCC-05-CD-09  
(TPOA - Broad Beach)

line from the Malibu West Swim Club westerly to LaChusa Point; and that the survey will include the placing of markers every three-hundred feet; that the final bid will be subject to the approval of the Board, and that further, the engineer will provide the Board with a bid for subsequent surveys for marking the mean high tide line.

John Reynolds seconded the motion which was unanimously carried by vote of all the directors present.

Jerry Pritchett was instructed to follow up on securing the bid.

John Reynolds reported that as of November 20, 1971, we owed Joe Ross's office \$2,750.00 for legal fees. Mr. Reynolds was asked if this sum included the preparation of the "White Paper" or the paper outlining the property owners' new situation in dealing with the public. Director Reynolds said he did not know, but would find out and report back to the Board.

John Gonden, of the Sentinel Patrol, then spoke on his work in the Trancas Beach area. Mr. Gonden reported that the Association pays him \$240.00 a year to do patrol work and that approximately 60 per cent of the Trancas Beach residents employ him. Mr. Gonden reported that he needed a line of demarcation between the public ~~property and the private property on the beach in order to properly~~ do his work.

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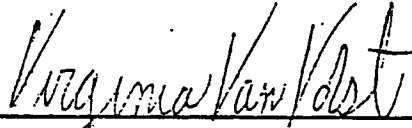
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Director Van Vorst read a newsletter put out by the Malibu Township Council in which the Council urged its members to write to the State Lands Commission and request that that agency determine the line between public and private property along the Malibu Coast. Jerry Pritchett said that he would try to ascertain what the

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Director Van Vorst stated that Chairman Meeker was concerned that the title of the Access Way & Security Committee might have a negative connotation to many people. Whereupon Director Pritchett moved that the name of the Access Way & Security Committee be changed to the Community Development Committee. Director Van Vorst seconded the motion which was unanimously carried by vote of all the directors present.

There being no other business to be brought before the Board, upon motion duly made, seconded and unanimously carried, the meeting adjourned.



---

Virginia Van Vorst, Secretary

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- John Reynolds
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- Virginia Van Vorst

Absent were Directors Moore and Forrest.

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---

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The reading of the minutes of the previous meeting was waived.

Arthur Froehlich announced that the purpose of the meeting was to settle on the wording for the signs to be placed on the ocean side of our property and for the signs to be placed on the chain fencing on either side of the Moore-Bauer accessway.

Director Froehlich presented the following wording which had the verbal approval of Joe Ross, one of the Association's attorneys:

Exhibit #4  
CCC-05-CD-09  
(TPOA - Broad Beach)

PRIVATE PROPERTY

Trespassing

Landward

of

mean high tide line

violation

Calif. Penal

Code Sec. 602-N

This state is \_\_\_ Ft.

landward mean high tide

Surveyed \_\_\_\_\_

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\_\_\_\_\_  
Virginia Van Vorst

Exhibit #4  
CCC-05-CD-09  
(TPOA - Broad Beach)

ALSCHULER GROSSMAN STEIN & KAHAN LLP  
ATTORNEYS AT LAW

MARSHALL B. GROSSMAN  
A PROFESSIONAL CORPORATION  
mgrossman@agsk.com  
Direct Dial: 310-255-9118  
Direct Fax: 310-907-2118

OUR FILE NUMBER  
5001-0105  
Direct Fax: 310-907-2118

July 1, 2004

BY FACSIMILE AND U.S. MAIL

Peter M. Douglas  
Executive Director  
California Coastal Commission  
45 Fremont Street  
San Francisco, CA 94105

Re: Trancas Property Owners Association

Dear Peter:

As a member of the board of directors of the Trancas Property Owners Association, I am replying to your letter dated June 23, 2004 directed to the Association.

Your letter addresses two issues: signs placed on the private property of beach front property owners and the patrol service use of all terrain vehicles (the "ATVs"). Even if considered to be "development," these activities predate the Coastal Act and no permit is required.

~~With respect to the signs, I trust you will recall correspondence of some ten years ago in response to the Coastal Commission position that a coastal development permit is obtained for the signs. Copies of that correspondence are enclosed. At that time we demonstrated to the Commission that the signs predate the Coastal Act and no permit was required. Both prior to and during the existence of the Coastal Act these signs have been placed and maintained in a consistent manner.~~

If, in fact, any of the signs purport to identify as private "land that clearly lies below the mean high tide line" or are otherwise inappropriate, then we are certainly prepared to remedy same. Your letter is not specific with respect to such signage and we invite you to provide such specifics so that we may deal reasonably with those issues while, at the same time, preserving those signage rights which attached prior to the enactment of the Coastal Act. Please understand that in the absence of such signage, private property owners run the risk of losing rights to their own property through prescriptive use and without compensation. Gion vs. City of Santa Cruz, 2 Cal.3<sup>rd</sup> 29 (1970). Rights to appropriate signage must be respected as well as the rights accorded to the general public under the Coastal Act.

With respect to the ATVs, that these services provided to the homeowners also predate the Coastal Act is clear from the minutes of the Association Board dated November 20, 1971, which were enclosed with my letter to the Commission dated June 2, 1995.

THE WATER GARDEN  
1620 26<sup>TH</sup> STREET · FOURTH FLOOR · NORTH TOWER · SANTA MONICA, CA 90404-4060  
TELEPHONE: 310-907-1000 · www.agsk.com · FACSIMILE: 310-907-2000

Exhibit #4  
CCC-05-CD-09  
(TPOA - Broad Beach)

Peter M. Douglas  
July 1, 2004  
Page 2

As you know there is both lateral and vertical access to Broad Beach. There are no public facilities. As a result, trash and worse is left on the beach, public and private, by those who utilize the lateral and vertical access to the beach. Moreover, visitors take it upon themselves to go on what is clearly private property. Part of the confusion over boundaries results from the patchwork of lateral access that the Coastal Commission has obtained over the years, some prior to the Nollan decision but much of it after the Coastal Commission was found to have acted illegally in requiring lateral access. The confusion of which you write in your letter is, in my opinion, a direct result of Coastal Commission action over the years; not the result of conduct on the part of the homeowners or the Association.

If you are aware of specific instances in which the service personnel on the ATVs have acted contrary to the Coastal Act, then please let us know and we will remedy those issues. I made the same request of you in my June 2, 1995 letter and have never received a specific complaint.

The Association categorically denies that there is any ongoing practice of directing the public not to enjoy or to leave public areas. If such an occasion occurred, then it was certainly inadvertent and not intentional.

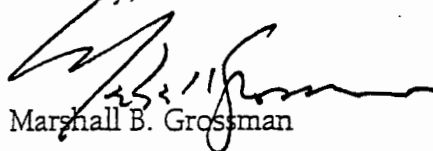
I invite you or members of your staff to visit the beach on any one of the crowded summer weekends and you will see public beach goers and private homeowners co-existing peacefully and without incident. Please come by this holiday weekend and see for yourself. The only "incident" of which I am aware is one that was intentionally provoked by a Commission member who was accompanied by a press photographer/reporter.

---

~~In closing, I repeat what I have stated to you both in writing and personally over~~  
many years now: these are complex issues which should be resolved amicably. Our Association is ready, willing and able to do so. In that spirit I sent a letter to Commissioner Steve Kram on June 28 (with a copy to you), a copy of which is here enclosed. We remain ready and open for such dialogue.

Kindest regards.

Sincerely,



Marshall B. Grossman

MBG/sb  
Enclosures

cc: Commissioners, California Coastal Commission – via mail  
(with enclosures)

Exhibit #4  
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(TPOA – Broad Beach)

Page 51 of 97

August 26, 2004

Ralph Faust, Esq.  
California Coastal Commission  
45 Fremont Street  
San Francisco, CA 94105

Ms. Sara Wan  
California Coastal Commissioner  
California Coastal Commission  
22350 Carbon Mesa Road  
Malibu, CA 90265

Dear Ms. Wan and Mr. Faust:

This letter is written on behalf of the Trancas Property Owners Association. The purpose of this letter is to formally object to Sara Wan taking any role on any matters where there is an access related issue applicable to any property on Broad Beach, whether it be a permit application, an enforcement matter, one involving a local coastal plan or amendments to same, or otherwise.

The basis of this request is that she is biased, and gives the appearance of bias, when it comes to Malibu and, in particular, to Broad Beach. Her hostility to the City and to specific areas of the City are well known and demonstrated. She has specifically interjected herself and made herself part of the issues impacting Broad Beach. For example, on at least three occasions in the recent past, Ms. Wan has made herself the issue regarding Broad Beach access. On one occasion, she brought a Los Angeles Times reporter and photographer and sat on private property thus staging a confrontation. On another occasion, she gave a televised interview to NBC News at the site. And on August 5 she provided a taped television interview to the BBC on Broad Beach. Her actions and comments demonstrate a bias inconsistent with her role as a neutral decision maker. She is disabled from serving in a judicial capacity because she has assumed the role of witness and prosecutor and with such demonstrated bias and animus.

Ms. Wan, please confirm your recusal going forward.

Thank you.

Sincerely,



Marshall B. Grossman

MBG/sb  
cc: Peter Douglas  
Coastal California Commissioners

Exhibit #4  
CCC-05-CD-09  
(TPOA - Broad Beach)

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THE WATER GARDEN

1620 26<sup>TH</sup> STREET · FOURTH FLOOR · NORTH TOWER · SANTA MONICA, CA 90404-4060  
TELEPHONE: 310-907-1000 · www.agsk.com · FACSIMILE: 310-907-2000



September 8, 2004

BY FACSIMILE AND U.S. MAIL

Ms. Sara Wan  
 California Coastal Commissioner  
 22350 Carbon Mesa Road  
 Malibu, CA 90265

Ralph Faust, Esq.  
 California Coastal Commission  
 45 Fremont Street  
 San Francisco, CA 94105

Re: TPOA/Broad Beach

Dear Mr. Faust:

On August 26, 2004, the Trancas Property Owners Association wrote and requested that Ms. Wan recuse herself and not take any role on any matters where there is an access related issue applicable to any property on Broad Beach. That letter provided examples of bias which serve to disqualify Ms. Wan from any such participation.

~~No response to this request has been received or even acknowledged.~~

The purpose of this letter is to provide further information which mandates recusal. We have now learned that Ms. Wan is soliciting money for her non-profit corporation, and is doing so by promoting the action she has taken and directed against homeowners on Broad Beach.

Sara Wan and her husband are the founders of an organization called WAN Conservancy. Its Web page is generous with biographical information and photographs of the Wans. The public is asked to contribute money and real estate to Sara Wan's efforts. The public is directed to her home address in Malibu as the place to send contributions and get information. The principal focus of the Web page is Broad Beach. It includes a photograph of Ms. Wan with photo credit to her husband; it was taken when she was waging a self-promotional "sit in" on Broad Beach. The Web page states that Broad Beach homeowners employ "fences and armed security guards," neither of which is true. These falsehoods are surrounded by self-aggrandizing headlines "Showdown at Broad Beach!" and "How Sara Wan Took on the Barons of Broad Beach!"

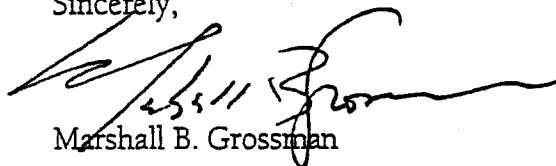
Please recuse yourself

Exhibit #4  
 CCC-05-CD-09  
 (TPOA - Broad Beach)

Ms. Sara Wan  
Ralph Faust, Esq.  
September 8, 2004  
Page 2

Enough is enough.

Sincerely,



Handwritten signature of Marshall B. Grossman in black ink, appearing as a stylized cursive script.

Marshall B. Grossman

MBG/sb

cc: Peter Douglas  
California Coastal Commissioners

Exhibit #4  
CCC-05-CD-09  
(TPOA – Broad Beach)

Page 54 of 97

SEP 28 2004

ALSCHULER GROSSMAN  
STEIN & KAHAN LLP

Sept. 24<sup>th</sup>, 2004

Mr. Marshall B. Grossman  
1620 26<sup>th</sup> St  
Fourth Floor, North Tower  
Santa Monica, CA 90404-4060

Dear Mr. Grossman:

I take great offense at the tone and substance of your letters of August 26 and September 8, 2004. Your request that I recuse myself, on the basis of assertions that are untrue, is truly insulting. As a Coastal Commissioner, my only bias is my belief that I have a duty to respect the requirements of the California Coastal Act.

Contrary to your assertions, I feel no hostility towards the City of Malibu or the residents of Broad Beach, nor have I made statements that would support such a conclusion. It is true that, as a public official, I am motivated to act in the public interest. In that connection, during the course of Malibu LCP hearings I have had to make judgments concerning the consistency of proposed LCP policies with Coastal Act requirements. I do not see disagreements with others over policy issues as evidence of "hostility". In fact, after the Coastal Act was amended to assign the task of preparing a Malibu LCP to the Coastal Commission, I expended a great deal of effort attempting to get the City to participate actively in the LCP process. Unfortunately, they chose not to.

Concerning last summer's L.A. Times article, my visit to Broad Beach was prompted by a column in the Times earlier in the year that echoed many other complaints I had received about beach access there. I simply wanted to see the situation for myself. I did not invite the L.A. Times reporter that accompanied me. Rather, he invited himself after learning of my intended visit. During my visit, I was careful to stay on property owned by or dedicated to public use. Any confrontation that may have occurred during my visit, if "staged", was staged by the Broad Beach security guards, supported by deputy sheriffs and by you.

I did not instigate the interviews with NBC and the BBC, of which you complain. In those interviews, I did not attack the Broad Beach homeowners, nor anyone else.

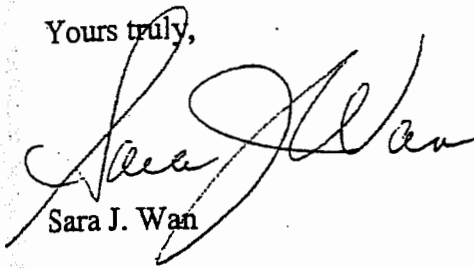
Your attack on my husband's Land Conservancy is the most troubling and unfair of all. It is a small non-profit that has been working hard for the preservation of land and public access. While I helped my husband found the Conservancy by donating a large sum of money to it, I take no active part in running that organization. I am not on the Board, I am not an Officer and I do not work for the Conservancy. Neither my husband nor I receive any form of compensation from the Alliance. He does not have any employees and runs it with outside contractors, including a Press/PR person who lives in Arizona and a web master who does the web site. He has checked with that web master who is prepared to provide proof that the "principal focus of

Exhibit #4  
CCC-05-CD-09  
(TPOA - Broad Beach)

the Web page" is not Broad Beach. In fact, the page you refer to amounted to less than 1% of the site and was included without review by my husband. The statements you make reference to were taken from a recent Sierra Club Coastwatchers Newsletter and were not written by the Alliance's Press person. The issue of public access on Broad Beach is included on numerous other web sites and is a matter of much public concern and interest.

In summary, I see no justification for your demand that I recuse myself from actions regarding public access in relationship to Broad Beach or anywhere else. Acting in the public interest and upholding the law does not constitute bias. I will not be intimidated from performing my duties as a Commissioner.

Yours truly,



Sara J. Wan

Cc: Ralph Faust  
Peter Douglas  
California Coastal Commissioners

Exhibit #4  
CCC-05-CD-09  
(TPOA - Broad Beach)

September 29, 2004

Ms. Sara Wan  
22350 Carbon Mesa Road  
Malibu, CA 90265

Dear Ms. Wan:

Thank you for your letter of September 24 in belated response to my letters of August 26 and September 8, 2004. We refrain from responding to the "great offense" you have taken or to the other hyperbole in your letter. Let's deal with the facts.

In your letter you attempt to distance yourself from the personal attacks you have made directly on Broad Beach residents and the use of those attacks to solicit money for the Wan Conservancy. You state that you have no involvement in what you refer to as "my husband's Land Conservancy." Ms. Wan, it was only after you received my letter of September 8 that the references to Broad Beach were removed from the offending Wan Conservancy Web site and that your home address was replaced with a post office box as the location to which funds solicited from the public should be sent. You cannot so easily distance yourself from the organization that you and your husband founded, fund and continue to use as a means of promoting your own personal vendetta against people who are subject to your vote on permit applications and enforcement proceedings before the Commission.

Since writing to you on the two prior occasions, we have received a troublesome fundraising solicitation mailed to the public this year by your "husband's Land Conservancy." It underscores your conflict of interest. The solicitation promotes your photo-op at Broad Beach to raise money for your organization<sup>1</sup>. The address on the return envelope for contributions is your residence in Malibu. I trust you are aware of the contents of the solicitation letter which reads in material part as follows:

"The work of Sara Wan and the Western Alliance for Nature has shown that educating beachgoers and deputies on the specifics of where one may legally access the beach is powerfully effective. The Western Alliance for Nature has more activities of this nature planned, activities that will make it unnecessary in the future for the knowledgeable beachgoer to ever have to endure harassment! We are acting on your behalf to protect your right to enjoy the beach in Malibu.

<sup>1</sup> Your letter fails to explain how the L.A. Times reporter knew to "invite himself after learning of [your] intended visit," or indeed how your "husband's Land Conservancy" used your photo at Broad Beach taken by your husband to raise money.

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Ms. Sara Wan  
September 29, 2004  
Page 2

But we need your help to continue! The homeowners at Broad Beach use money to secure their privacy. We need money to secure the public's rights.

Please help us with your donation." (Emphasis added).

The color brochure which accompanies the solicitation letter reveals your own financial gain in attacking Broad Beach residents. It states in pertinent part:

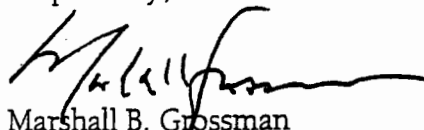
"With the major initial donation of funds from its founders [Mr. and Mrs. Wan], and a commitment to match even more, the Western Alliance for Nature will move quickly to fulfill its three-part mission..." (Emphasis added.)

Quite obviously, you have a financial stake in soliciting money to lessen your own ongoing commitment of continued financial support to the organization you sponsor.

Your promotional activities and media interviews on the property of people who must appear before you in quasi-judicial proceedings, the Web site promoting you, and the divisive fundraising rhetoric in your name and with your home address so prominently featured clearly show your role as other than benign. Any objective observer would come to the conclusion that your participation in any matters impacting access issues on Broad Beach, past or future, is a stain on the reputation of the Coastal Commission and a violation of the most basic principles of fair dealing expected of public officials with the power you have.

Once again, we urge you to do the right thing and step aside.

Respectfully,



Marshall B. Grossman

MBG/sb

cc: Matthew Rodriquez, Esq.  
Ralph Faust, Esq.  
Peter Douglas, Esq.  
California Coastal Commissioners  
Senator Don Perata

Enclosures: Letters to Ms. Sara Wan dated August 26 and September 8, 2004  
Letter to Marshall Grossman from Ms. Sara Wan dated September 24, 2004  
Western Alliance for Nature, fundraising materials, 2004



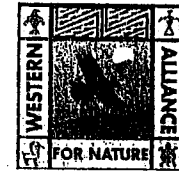
Place  
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## Western Alliance for Nature

22350 Carbon Mesa Road  
Malibu, CA 90265

Exhibit #4  
CCC-05-CD-09  
(TPOA – Broad Beach)

# WESTERN ALLIANCE FOR NATURE



- I would like to join Western Alliance for Nature** to help rescue and protect vanishing lands, threatened habitats and sacred sites. Annual membership is \$35.00.
- I would like to make a donation** to help the ongoing campaign to save threatened habitats.
- I would like to volunteer to help.** Please contact me.

**Please visit: [www.wanconservancy](http://www.wanconservancy) or call (310) 456-0611**

## Please fill out and return

Please find enclosed my check **made payable to Western Alliance for Nature. (Tax deductible see note below)**

\$35    \$50    \$100    \$200    \$500    \$1000    Other \$ \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

City State \_\_\_\_\_ Zip \_\_\_\_\_

Phone \_\_\_\_\_

Email \_\_\_\_\_

**Please Note:** Western Alliance is 501c(3) charitable corporation. All contributions to the Western Alliance for Nature are tax deductible.

Exhibit #4  
CCC-05-CD-09  
(TPOA – Broad Beach)





*Preserving Everyone's Natural Heritage For All Generations*

Dear Friend,

Does the idea of illegally being prevented from enjoying the beaches in Malibu grate on your sense of fairness? If so, I think you would like to know what one person did about it.

### ***Not an Ordinary Beachgoer***

In August, a Malibu resident went to Broad Beach after hearing how beachgoers were harassed and intimidated by private security guards. She expected the guards would also try to intimidate her.

She sat down with her beach blanket and cooler on a strip of land in Broad Beach. The guard, hired by the homeowners' association, told her she'd have to leave. She refused. He disrespectfully told her "you'd better look to the law, girl," before tearing down the beach to summons reinforcements.

The security guard had no idea that he was dealing with Sara Wan, a California Coastal Commissioner, founder of Vote the Coast, co-founder of the Western Alliance for Nature and a fearless coastal activist. Nor could he have guessed that the man with her was Ken Weiss, a *Los Angeles Times* reporter. Sara had come "armed" with a document stating that the public has access to that particular 25-foot strip of beach, granted by the homeowner 22 years previously as a condition to obtain a permit from the California Coastal Commission to remodel the house.

### ***Sheriffs' Excessive Response***

When the guard returned, he had five deputy sheriffs with him. Given the magnitude of the response, you'd think she was threatening somebody with bodily harm.

When the deputies arrived, Sara simply took out the document she carried and proceeded to educate them that she did, in fact, have the right to sit on that spot. In response, one of the deputies is quoted to have replied, "what do I know—I'm just a dumb deputy." This is hard to accept since this deputy is also a part-time code enforcement officer for the City of Malibu!

### ***Access to the Beach is Guaranteed by the Coastal Act***

Public access to the beaches in Malibu is a thorny issue. The Coastal Act grants the public access to sand below the mean high tide line. Since this line cannot be easily determined on any given day, the wet sand is always considered public. But in Malibu,

## **Western Alliance for Nature**

22350 Carbon Mesa Rd., Malibu, CA 90265 • (310) 456-0611 • Fax (310) 456-3380

director@wanconservancy.org • www.wanconservancy.org

Exhibit #4

CCC-05-CD-09

(TPOA - Broad Beach)

many homes have been built right out over the surf. And in several places, rocks jut out into the surf, making it very dangerous to try to stay legal and walk the length of the beach without reverting to Pacific Coast Highway. At Broad Beach, according to the "no trespassing" signs and aggressive guards, the public has no right to occupy dry sand, other than that within the two narrow easement corridors that allow the public to walk down to the beach. Even the narrow strip of wet sand, which is always public, is made unpleasant for beachgoers by the guards who ride up and down on it using all-terrain vehicles.

### **Public Access Versus Privacy in Malibu**

On 20 miles of beach in Malibu, **fully one quarter** of the beachfront in L.A. County, homeowners post "private beach" signs. The point that Sara Wan made clear was that the public has rights to the beach, but the public does not always know exactly where those rights begin and end. Bad publicity may be an embarrassment to those who illegally try to prevent the public from accessing the beach, but it's not likely to change anything. For that, one must hope that the results of three lawsuits currently underway over public access issues will have a positive effect.

### **Working on Your Behalf**

The work of Sara Wan and the Western Alliance for Nature has shown that educating beachgoers and deputies on the specifics of where one may legally access the beach is powerfully effective. The Western Alliance for Nature has more activities of this nature planned, activities that will make it **unnecessary** in the future for the **knowledgeable** beachgoer to ever have to endure harassment! We are acting on your behalf to protect your right to enjoy the beach in Malibu.

But we need your help to continue! The homeowners at Broad Beach use money to secure their privacy. We need money to secure the public's rights.

Please help us with your donation. By becoming a member of the Western Alliance for Nature, you will help us to protect your right to enjoy the beaches. Unlike many donations you may make that you never get to personally enjoy, **this will be a tangible benefit you can use whenever you please!** And you will also be creating a legacy for future generations while there is still time to secure it.

Thank you,



Janet Bridgers  
Communications Director  
Western Alliance for Nature  
janet@wanconservancy.org

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CCC-05-CD-09  
(TPOA - Broad Beach)

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ALSCHULER GROSSMAN STEIN & KAHAN LLP  
ATTORNEYS AT LAW

MARSHALL B. GROSSMAN  
A PROFESSIONAL CORPORATION  
mgrossman@agsk.com  
Direct Dial: 310-255-9118  
Direct Fax: 310-907-2118

OUR FILE NUMBER

Direct Fax: 310-907-2118

June 28, 2004

Via Facsimile and Mail

Mr. Steve H. Kram  
Executive Vice President/Chief Operating Officer  
William Morris Agency, Inc.  
One William Morris Place  
151 El Camino Drive  
Beverly Hills, CA 90212

Re: Trancas Property Owners Association

Dear Steve:

As you know there are a myriad number of "access related issues" which have impacted relations between the residents on Broad Beach Road and Coastal Commission staff over a period of several years. The purpose of this letter is to suggest that a small working group of Southern California Coastal Commissioners and members of our board meet with a view to achieving, once and for all, a resolution of these issues.

As I see it, the primary issues include the following:

1. Lateral Access. Litigation is now pending concerning access conditions imposed which are claimed to be unconstitutional. There is now which can only be described as a crazy patchwork in existence on Broad Beach. Many properties, including my own, have no access conditions. Where access conditions exist, there is a high degree of inconsistency among them. And, of course, the constitutionality of requiring any access is now before the Court.

2. Vertical Access and View Corridors. The Coastal Commission staff has expressed a desire in the past to attempt to obtain "peak a boo views" or vertical access between houses in addition to the vertical access ways which already exist.

3. Signs on the Beach. Private property signs were placed on the beach prior to the enactment of the Coastal Act. As such, no coastal development permit was required. Nonetheless, Coastal Commission staff has engaged and is now engaged in various attempts to require the removal of some of these signs.

4. Private Beach Patrol. The homeowners engage a private patrol for safety, clean up, and private property protection. Coastal Commission staff has expressed concern about the patrol in general and specifically that the patrol may be requiring people to leave areas that have been dedicated for public access.

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(TPOA - Broad Beach)

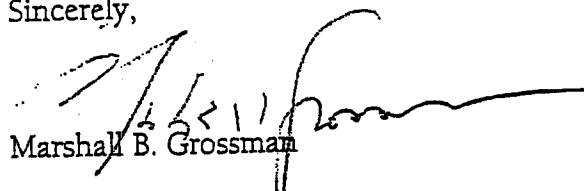
Mr. Steve H. Kram  
June 28, 2004

Via Facsimile and Mail  
Page 2

I realize that these issues are not easily resolved. However, our board is convinced that an overall resolution of these issues is preferable to the patchwork which now exists and to ongoing litigation at great public and private expense.

This letter and all future communications are written in the spirit of settlement and compromise and we invite your positive response.

Sincerely,

  
Marshall B. Grossman

MBG/sb

cc: Peter Douglas – via facsimile and mail  
TPOA Board of Directors

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(TPOA – Broad Beach)

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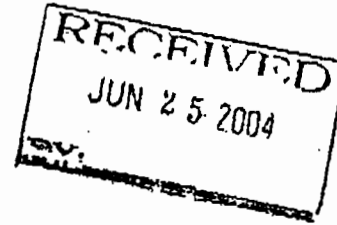
## CALIFORNIA COASTAL COMMISSION

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



## Certified and Regular Mail

June 23, 2004



Trancas Property Owners' Association  
Attn: Arnold Palmer, President  
Attn: Helmut Martinek, Agent  
28990 Pacific Coast Highway, #107  
Malibu, CA 90265  
Certified Mail No. 7002 3150 0004 3512 2188

Dear Mr. Palmer and Mr. Martinek,

It has come to our attention, through numerous reports from the public, recent newspaper articles, and Commission staff research, that private property signs and security guards on all-terrain vehicles ("ATVs") have been used at Broad Beach, which discourage or prohibit the public's right to use Broad Beach. This letter is to provide you with some background information and to request the removal of such signs and that the Trancas Property Owners' Association discontinue the practice of employing ATVs to discourage public use at Broad Beach.

We are concerned that the placement of these private property signs and the use of private security guards patrolling the beach on ATVs discourage and sometimes prohibit the public's right to enjoy this stretch of beach (some or all of which is held in trust by the State for public use). ~~As you may know, the Coastal Act was established to protect~~ California's spectacular coastal resources, including the public's ability to access and enjoy California's beaches. The protection of public access to the beach and ocean is one of the fundamental purposes and a principal goal of the Coastal Act.

Commission staff notes that the placement of private property signs and ATV use require a Coastal Development Permit since they are both "development" as that term is defined in the Coastal Act, and no Coastal Development Permit was issued to allow the sign and ATV use. After conducting research, we found that the signs have been replaced over the years by new signs, moved vertically and laterally along the beach, and in some instances removed from the beach entirely and replaced at a subsequent time. In addition to a Coastal Development Permit for placement of a sign on the beach, the substantial change of a pre-existing sign also requires a Coastal Development Permit. In addition, many of the signs were placed within easements that are held by the State of California for public access and passive recreation. Other signs were placed within areas where, through either recorded deed restrictions or other Coastal Development Permit conditions for development on property adjacent to the

Exhibit #4  
CCC-05-CD-09  
(TPOA - Broad Beach)

beach, the placement of signs and/or the denial of public lateral access across the beach were specifically prohibited.

Furthermore, the private property signs that were placed on the beach without a Coastal Development Permit also give the impression that the entire beach is private. Under well-settled State Law, all lands seaward of the mean high tide line are owned by the State of California and held in trust for the public. In addition, the state holds numerous easements for public access and recreation along Broad Beach. Commission staff has conducted several site visits and observed that the signs purport to identify private land but include land that clearly lies below the mean high tide line and, in most cases, also land over which the state holds a public access easement. The signs declare that the entire area landward of the signs and a certain distance seaward of the signs (in some cases 30 or 40 feet) is private. However, in many cases, the signs themselves are on public tidelands. In fact, at some times, the signposts themselves stand beneath several feet of ocean water, which lands are clearly owned by the State for public use. Therefore, the signs not only appear to be placed directly in state tidelands, but also purport to denote as private property a certain distance (in many case 30 to 40 feet) seaward of the private property sign. Even if the signs were not placed below the mean high tide line, the area denoted by the signs clearly is within state tidelands.

Any activity on the beach that changes public access to the ocean is development as defined by Section 30106 of the Coastal Act. Recent reports have indicated that the private security company that drives ATVs on the beach is directing the public to leave the beach, claiming that the beach is private property. This action changes the intensity of use of the beach and ocean by affecting access to State waters, thereby triggering the requirement to obtain a Coastal Development Permit for such activity. Moreover, the guards appear to instruct people to leave the beach without regard to whether they are on state tidelands, public access easements owned by the State, or land deed restricted for public access. This activity prevents the public from enjoying a public beach area provided to them by the State and state law.


For these reasons, we respectfully request that you immediately remove the private property signs from the beach and discontinue the use of ATV patrols along the beach. We would like to work with you to resolve these issues as amicably as possible. If we are not able to resolve this amicably, the Coastal Act provides for the use of a variety of enforcement tools, including the imposition of Cease and Desist Orders, seeking fines and penalties, and injunctive relief. We would obviously rather avoid having to undertake any of these enforcement measures and would prefer to work cooperatively with you and the homeowners to resolve this matter.

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Trancas Property Owners' Association  
Page 3 of 3

Please contact Aaron McLendon of the Commission staff at (415) 904-5220 or send correspondence to his attention to the address on this letterhead no later than July 9, 2004 confirming what measures will be taken to resolve these issues. Thank you in advance for your cooperation in resolving this matter.

Sincerely,



Peter Douglas  
Executive Director

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(TPOA – Broad Beach)

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ALSCHULER GROSSMAN STEIN & KAHAN LLP  
ATTORNEYS AT LAW

MARSHALL B. GROSSMAN  
A PROFESSIONAL CORPORATION  
mgrossman@agsk.com  
Direct Dial: 310-255-9118  
Direct Fax: 310-907-2118

OUR FILE NUMBER  
5001-0105  
Direct Fax: 310-907-2118

July 1, 2004

BY FACSIMILE AND U.S. MAIL

Peter M. Douglas  
Executive Director  
California Coastal Commission  
45 Fremont Street  
San Francisco, CA 94105

Re: Trancas Property Owners Association

Dear Peter:

As a member of the board of directors of the Trancas Property Owners Association, I am replying to your letter dated June 23, 2004 directed to the Association.

Your letter addresses two issues: signs placed on the private property of beach front property owners and the patrol service use of all terrain vehicles (the "ATVs"). Even if considered to be "development," these activities predate the Coastal Act and no permit is required.

~~With respect to the signs, I trust you will recall correspondence of some ten years ago in response to the Coastal Commission position that a coastal development permit is obtained for the signs. Copies of that correspondence are enclosed. At that time we demonstrated to the Commission that the signs predate the Coastal Act and no permit was required. Both prior to and during the existence of the Coastal Act these signs have been placed and maintained in a consistent manner.~~

If, in fact, any of the signs purport to identify as private "land that clearly lies below the mean high tide line" or are otherwise inappropriate, then we are certainly prepared to remedy same. Your letter is not specific with respect to such signage and we invite you to provide such specifics so that we may deal reasonably with those issues while, at the same time, preserving those signage rights which attached prior to the enactment of the Coastal Act. Please understand that in the absence of such signage, private property owners run the risk of losing rights to their own property through prescriptive use and without compensation. Gion vs. City of Santa Cruz, 2 Cal.3<sup>rd</sup> 29 (1970). Rights to appropriate signage must be respected as well as the rights accorded to the general public under the Coastal Act.

With respect to the ATVs, that these services provided to the homeowners also predate the Coastal Act is clear from the minutes of the Association Board dated November 20, 1971, which were enclosed with my letter to the Commission dated June 2, 1995

Exhibit #4  
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(TPOA - Broad Beach)

THE WATER GARDEN  
1620 26<sup>TH</sup> STREET · FOURTH FLOOR · NORTH TOWER · SANTA MONICA, CA  
TELEPHONE: 310-907-1000 · www.agsk.com · FACSIMILE

Page 68 of 07



Peter M. Douglas  
July 1, 2004  
Page 2

As you know there is both lateral and vertical access to Broad Beach. There are no public facilities. As a result, trash and worse is left on the beach, public and private, by those who utilize the lateral and vertical access to the beach. Moreover, visitors take it upon themselves to go on what is clearly private property. Part of the confusion over boundaries results from the patchwork of lateral access that the Coastal Commission has obtained over the years, some prior to the Nollan decision but much of it after the Coastal Commission was found to have acted illegally in requiring lateral access. The confusion of which you write in your letter is, in my opinion, a direct result of Coastal Commission action over the years; not the result of conduct on the part of the homeowners or the Association.

If you are aware of specific instances in which the service personnel on the ATVs have acted contrary to the Coastal Act, then please let us know and we will remedy those issues. I made the same request of you in my June 2, 1995 letter and have never received a specific complaint.

The Association categorically denies that there is any ongoing practice of directing the public not to enjoy or to leave public areas. If such an occasion occurred, then it was certainly inadvertent and not intentional.

I invite you or members of your staff to visit the beach on any one of the crowded summer weekends and you will see public beach goers and private homeowners co-existing peacefully and without incident. Please come by this holiday weekend and see for yourself. The only "incident" of which I am aware is one that was intentionally provoked by a Commission member who was accompanied by a press photographer/reporter.

~~In closing, I repeat what I have stated to you both in writing and personally over~~  
many years now: these are complex issues which should be resolved amicably. Our Association is ready, willing and able to do so. In that spirit I sent a letter to Commissioner Steve Kram on June 28 (with a copy to you), a copy of which is here enclosed. We remain ready and open for such dialogue.

Kindest regards.

Sincerely,



Marshall B. Grossman

MBG/sb  
Enclosures

cc: Commissioners, California Coastal Commission – via mail  
(with enclosures)

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(TPOA – Broad Beach)

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September 22, 2004

VIA FACSIMILE AND U.S. MAIL  
CONFIDENTIAL

Ms. Lisa Haage  
Chief of Enforcement  
California Coastal Commission  
45 Fremont Street  
San Francisco, CA 94105

Re: Broad Beach

Dear Ms. Haage:

This letter and proposed offer of compromise is provided to you in furtherance of our meeting in San Francisco on August 23, 2004. It is sent with the approval of the Board of Directors of the Trancas Property Owners Association. No other homeowners have yet approved it. This letter is a good faith effort to achieve an overall settlement of the access issues affecting Broad Beach. Because it is a compromise proposal, neither it nor any subsequent communications shall be admissible in any court of law. It is subject to final review of our Board, legal counsel and homeowners. Please treat our discussions as confidential.

The items at issue and our proposed resolution are as follows:

1. Existing Private Property Signs

A. Current Situation

There are two types of signs common to Broad Beach. The first are signs spaced along the entirety of the beach on large poles which read "Private Property" and purport to demarcate the boundary between private property and public tidelands. The second are random "Private Property" signs. The Association contends that the former predate the Coastal Act and are thus exempt from any required permit. The Commission contends that the signs require a permit and that those signs which are on property where lateral access has been granted are confusing and discourage use of the lateral access.

The Association is concerned that the absence of signage would result in no guidance at all, could result in confusion and in the loss of property through prescriptive use. The courts recognize that signage is an accepted means of protecting against such loss. The Association believes that the provisions of the LCP prohibiting such signage are an unconstitutional abridgment of free speech.

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(TPOA – Broad Beach)

B. Proposed Solution

All existing signs on the beach denoting "Private Property" or denoting a demarcation between private and public property will be removed. Individual homeowners will be permitted to place signs on their property (but not on the sandy beach) stating "Please Respect Private Property. Remain on Public Easement" or other language agreeable to the Commission. All signs will be modest and of uniform size and composition. In addition, there will be signage at each of the two vertical access ways and where Zuma joins Broad Beach. Those signs will inform the public of the lateral access, the need to respect private property, that no dogs, horses, or alcohol are permitted on the beach and that there are no public facilities on the beach.

2. Lateral Access

A. Current Situation

There is unrestricted lateral access along the length of Broad Beach seaward of the mean high tide line. That access is easily available directly from the adjacent public Zuma Beach. The Commission claims to have obtained some 50 dedications of lateral access both before and after the Nollan decision. Access obtained pre-Nollan was obtained under circumstances held unconstitutional in Nollan. Access obtained post-Nollan was obtained under circumstances which our Association claims to have been in direct violation of Nollan. Some 50% of the properties have no lateral access over private property. The result is a patchwork of inconsistent or non-existent lateral access above the main high tide line resulting in confusion among the public and homeowners alike. Absent settlement, there is little doubt that homeowners will successfully challenge any further attempts to obtain lateral access and the current state of confusion and inconsistency will be perpetuated.

B. Proposed Solution

We propose a uniform agreed upon lateral access of five feet for all property on Broad Beach to allow the public to "pass and repass" above the wet sand, a more clearly identifiable location than the elusive "mean high tide line." The wet sand is higher than the mean high tide line so the lateral access would be more than five feet above the mean high tide line. Those properties with no existing lateral access would grant the access. Those properties which have lateral access greater than the five feet would have that lateral access rolled back to the five-foot line. This uniform grant of additional lateral access would be subject to a 20-foot privacy buffer from the deck or toe of dune vegetation, or seawall, whichever is most seaward. No additional lateral access greater than the agreed upon compromise will be required.

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3. Vertical Access

A. Current Situation

There is currently vertical access to Broad Beach. There are two vertical access passageways. The current LCP provides for the potential of additional vertical access every 500 or 1,000 feet. No homeowner will ever agree to vertical access between houses because of the obvious intrusion upon his or her privacy. Certainly no Commissioner would agree to it as a short cut to his or her street. The requirement of vertical access is illegal under Nollan.

B. Proposed Solution

No further vertical access will be required from Broad Beach Road to the beach.

4. The Patrol Service

A. Current Situation

There are no public services on Broad Beach and no regular dependable law enforcement. Unlike other neighborhoods, there is no fencing for the yards of homeowners and all too often people walk up to the homes from the beach in search of restroom facilities and food. Because of the inconsistent pattern of lateral access where it has been granted and the absence of lateral access on so many of the properties, it is difficult for the public and homeowners alike to understand where the appropriate line is drawn. In the past it has also ~~been difficult for the patrol to understand this. This has resulted in confusion and~~ misunderstanding. On weekends and holidays and occasionally at other times during the course of the year, the Association engages the services of off duty officers on ATVs to provide multiple services for the homeowners. They remind beach goers of the laws prohibiting dogs and horses on the beach and the use of alcohol. They assist in maintenance as required. They also remind beach goers of the divisions between private and public property. The staff believes the patrol requires a permit and that the current patrol discourages the public use of lateral access. The Association disagrees, the patrol having pre dated the Coastal Act.

B. Proposed Solution

Staff has requested that the Association consider contracting with the Sheriff's Department to provide the services currently provided by the patrol. The Association is willing to consider this. If that is not feasible, then the current patrol's activities will be (and have been) modified. The ATVs will traverse the beach area less frequently and will do so high up on the sand so as to ensure minimal contact with beach goers. In addition, they are provided with Commission maps to guide them. Finally, a single consistent demarcation line will reduce the risk of confusion and conflict going forward.

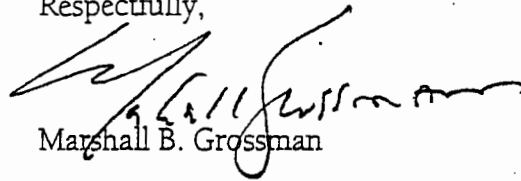
Exhibit #4  
CCC-05-CD-09  
(TPOA - Broad Beach)

Lisa Haage  
September 22, 2004  
Page 4

With respect to maintenance, the agency or agencies which accept lateral access shall provide trash pick-up with the same frequency provided at Zuma Beach

These proposals represent significant compromises. We trust they will be favorably viewed. We are open to your suggestions. Once compromise is reached, we will need to determine how to render it legally binding. In the meantime, we request that all pending proceedings be further extended in order for us to complete our discussions.

Respectfully,



Marshall B. Grossman

MBG/sb

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## CALIFORNIA COASTAL COMMISSION

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

RECEIVED

JAN 3 2005



ALSCHULER GROSSMAN  
STEIN & KAHAN LLP

Via Facsimile and Regular Mail  
Confidential

December 30, 2004

Marshall Grossman  
Alschuler Grossman Stein and Kahan LLP  
1620 26<sup>th</sup> Street, 4<sup>th</sup> Floor, North Tower  
Santa Monica, CA 90404

Dear Mr. Grossman,

Thank you for taking the time to meet with Commission staff to discuss the recent notices of intent to commence Commission cease and desist order proceedings and how best to resolve the issues related to the private property signs and private security guards on Broad Beach. We also appreciate your efforts in putting together a proposed "offer of compromise" with the approval of the Directors of the Trancas Property Owners Association ("Association"). This letter is in response to your proposed offer of resolution. We are encouraged by your having made a proposal and hope that we can reach a mutually acceptable agreement. While we are not responding to the legal arguments made in your letter at this time, we would like to respond to each of the five issues you raised in your proposal and, where we are not in complete agreement with your proposal, to offer a counter proposal for your review.

1. Private Property Signs

Association Proposal

"All existing signs on the beach denoting 'Private Property' or denoting a demarcation between private and public property will be removed. Individual homeowners will be permitted to place signs on their property (but not on the sandy beach) stating 'Please Respect Private Property. Remain on Public Easement' or other language agreeable to the Commission. All signs will be modest and of uniform size and composition. In addition, there will be signage at each of the two vertical access ways and where Zuma joins Broad Beach. Those signs will inform the public of the lateral access, the need to respect private property, that no dogs, horses, or alcohol are permitted on the beach and that there are no public facilities on the beach."

Response

We are happy to see that your proposal includes the removal of the "private property" signs from the sandy beach. We agree with your proposal to remove these signs. We

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also agree that property owners along Broad Beach can place signs (not exceeding an agreed on maximum size) on existing legal structures on their property or within the dune vegetation (if there is any vegetation present on their property - typically along the downcoast end of Broad Beach). While we can agree with most of your wording, we would like to propose the following changes to the language: "Please Respect Private Property and Privacy. Remain on Sandy Beach". This wording can be used for signs that are attached to existing structures, such as legal seawalls, decks, patios, walls, etc.... Signs installed within dune vegetation may be freestanding and can include language such as, "Sensitive Dune Habitat, Please Remain on Sandy Beach". However, as you proposed, no signs shall be placed on the sandy beach, itself.

The Los Angeles County Department of Beaches and Harbors informational signs that are currently located at the entrance to each of the two vertical accessways may remain. We agree with and encourage the implementation of your proposal to include language describing the public lateral access easements and to inform the public of the location of public areas. We remain willing and ready to coordinate with the Department of Beaches and Harbors to discuss including such language on their beach access signs. If there is additional language that you would like on these signs, please let us know and we can discuss this further. We agree that a similar sign with identical informational language may also be placed on the beach where Zuma Beach joins Broad Beach, as you recommended.

## 2. Lateral Access

### Association Proposal

"We propose a uniform agreed upon lateral access of five feet for all property on Broad Beach to allow the public to 'pass and repass' above the wet sand, a more clearly identifiable location than the elusive 'mean high tide line'... This uniform grant of ~~additional lateral access would be subject to a 20-foot privacy buffer from the deck or~~ toe of dune vegetation, or seawall, which ever is most seaward. No additional lateral access greater than the agreed upon compromise will be required."

### Response

We are encouraged by this proposal and agree that a uniform lateral access area would benefit both the public and property owners at Broad Beach. However, we cannot accept a 5-foot lateral access easement across the beach with use restricted to "pass and repass". Five feet is not broad enough to be useful. For example, five feet would not allow two people carrying things in their arms to walk down the beach next to each other and it would not allow a family to put down a blanket and picnic basket and sit on the beach. In addition, we note that the total area provided for in your proposed 5-foot lateral easement across the entire beach would equal far less than the area that the public already has the right to use through the recorded access easements that the State holds. Therefore, we cannot accept an offer that reduces the amount of sandy

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beach area already legally subject to public access, and we would like to ensure that any agreement we reach provides a useful width for public access.

Therefore, we propose a uniform lateral public access easement for both passive recreation and public access that extends 25 feet inland of the wet sand. We note that this is similar to your concept of having greater access than now provided at some properties and far less access area on others, compared to the current easement configuration. As you know, many of the properties currently have lateral access easements covering the entire beach in front of their residences; ranging at times up to 40 to 80 feet. Under staff's proposal, no property would have more than 25 feet subject to a lateral access easement.

In addition, your proposal referred to lateral access easements that would allow the public to only "pass and repass" along a certain portion of the beach. Currently, all public access easements on Broad Beach are for public access and passive recreation. Therefore, any proposed lateral easement would need to include the right of passive recreational use over the easement.

To protect homeowner privacy and in response to your request for a buffer between the easement area and the private residences, we propose that the inland reach of the easement would, in no case, extend landward of the first line of terrestrial vegetation or, if there is no such vegetation, 10 feet from the seaward edge of legal development. We would propose that if the only beach area available is the 10-foot buffer from legal development, then this buffer area may be used to "pass and repass" only. We cannot accept the 20-foot privacy buffer because on many days there is not 20 feet of beach area between the dune vegetation, seawall, deck, etc and the high water line, making any lateral access easement unusable. In fact, along the upper one-third of Broad Beach, there seems to never be 20 feet of dry sand between the high water mark and legal development. Accordingly, your offer would, absent this clarification, provide no public access whatsoever in areas where the public currently has access across almost all the properties. In addition, having an area where there is no access at all, or a different amount of access at different locations along the beach would undercut our mutual goal of a uniform access area across Broad Beach.

### 3. Vertical Access

#### Association Proposal

"No further vertical access will be required from Broad Beach Road to the beach."

#### Response

As you may know, the City of Malibu's Local Coastal Program contains goals for vertical public access. For this area, the "goal" is to have public access every 1000 feet (Malibu Land Use Plan, Policy 2.86). However, specific findings, consistent with the implementing measures that carry out the goals of the LCP (see Malibu Implementation

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Plan, Sections 12.8.1 and 12.8.2), must be made demonstrating that there is a nexus between requiring new vertical access and the impacts caused by any proposed new development. It is not possible to anticipate all potential new development scenarios in the future that may include or warrant vertical public access provisions, but we certainly would not require or include any new vertical access provisions in this agreement. While we understand the Association's desire to limit vertical access easements, the Commission cannot enter into an agreement that purports to bind the City of Malibu's or the Commission's decision on future permit matters and/or LCP amendments. We hope this will address any concerns you may have and we are more than willing to discuss this further with you.

#### 4. Patrol Service

##### Association Proposal

"The Association is willing to consider [contracting with the Sheriff's Department to provide the services currently provided by the patrol]. If that is not feasible, then the current patrol's activities will be (and have been) modified. The ATVs will traverse the beach area less frequently and will do so high up on the sand so as to ensure minimal contact with beach goers. In addition, they are provided with Commission maps to guide them. Finally, a single consistent demarcation line will reduce the risk of confusion and conflict going forward."

##### Response

We continue to hold to the position that no ATV's are permitted on the beach except for emergency reasons. Additionally, the way to avoid the appearance of a completely private beach is to use a patrol service typical of what is found on most other beaches used by the public, such as local law enforcement or County Lifeguards. Of course, ~~property owners may continue to use or hire their own private security firms so long as~~ the guards do not adversely affect the use of lateral public access easement areas on the sandy beach. We have contacted both the City of Malibu and the L.A. County Sheriffs Department to discuss this possibility and have received initially favorable responses. We are very hopeful that the Association can work with the City of Malibu and the Sheriffs Department to give adequate patrol service for your neighborhood and we remain willing and ready to coordinate these discussions.

#### 5. Maintenance

##### Association Proposal

"With respect to maintenance, the agency or agencies which accept lateral access shall provide trash pick-up with the same frequency provided at Zuma."

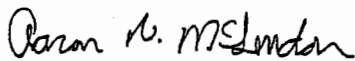
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Response

It is our understanding that the County of Los Angeles currently maintains the two vertical accessways and collects garbage from the existing trashcans. The Commission will work with the accepting agency to ensure that trash collection at the beach is properly maintained. We are willing and ready to work with the accepting agency to ensure that there is adequate trash pick-up and, where necessary, to provide for more trashcans and increased frequency of trash collection.

Please call me at your convenience so we can discuss these responses further. We look forward to continuing to work with you to resolve these issues amicably and we appreciate your continued cooperation and efforts.

Sincerely,



Aaron N. McLendon  
Statewide Enforcement Analyst

cc: Peter Douglas, Executive Director  
Lisa Haage, Chief of Enforcement  
Sandy Goldberg, Staff Counsel  
Gary Timm, District Manager, South Central Coast  
John Ainsworth, Supervisor, South Central Coast  
Linda Locklin, Manager, Coastal Access Program

February 4, 2005

BY FACSIMILE AND U.S. MAIL

Lisa Haage  
Chief of Enforcement  
California Coastal Commission  
45 Fremont Street  
San Francisco, CA 94105

Aaron N. McLendon  
Statewide Enforcement Analyst  
California Coastal Commission  
45 Fremont Street  
San Francisco, CA 94105

Re: Broad Beach/Trancas

Dear Ms. Haage and Mr. McLendon:

On September 22, 2004, I provided you with a written proposal to achieve "an overall settlement of the access issues affecting Broad Beach." After your complimenting the proposal and expressing the view that it was reasonable and a good faith basis for further discussions, we finally received your "counter proposal" dated December 30, 2004.

Unfortunately, the counter proposal was disappointing to the members of our board and to other members of our Association with whom it was shared.

Accordingly, we have determined that efforts to achieve "an overall settlement" are not likely to be productive at this time. However, we have determined to pursue a course of action with which we trust you will be pleased.

Let me first take a moment to review how we got to the current situation.

Prior to the enactment of the Coastal Act, there was no public lateral access above the mean high tide line on Broad Beach. After the Coastal Act was enacted and prior to the Nollan decision in 1987, the Commission obtained a number of lateral access grants of 25 feet. After Nollan, the Commission's analysis of permit applications rightly concluded that there was an insufficient nexus between the development of residences on Broad Beach and the public's right of access below the mean high tide to require any additional lateral access above the mean high tide line. And none was required. This is understandable given that most of the lots are greater than 350 feet in depth and the sandy beach is quite wide. At some point in time in the early 1990's, Commission staff began engaging in highly questionable conduct to exact lateral

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access where none was constitutionally required. Using the threat of delay and expense of a coastal wave study to confirm that no greater access was required, Commission staff offered the alternative of a "voluntary" grant of lateral access with the result that some homeowners "voluntarily" gave up lateral access as the price for development. Your counter proposal notes the existence of these various "40 to 80" feet access grants without recognizing the extraordinarily dubious way they were obtained in the first place. In any event, the result is a patchwork of inconsistent and non-existent lateral access above the mean high tide line throughout the length of Broad Beach. Some one-half of the properties have no lateral access condition at all.

Even in its present condition, Broad Beach remains one of the most open and accessible beaches in the area. The beach is open from the adjacent public Zuma beach and there are two vertical access ways from Broad Beach Road that cut between homes and lead directly to the sandy beach.

It was out of recognition of the reality of today's conditions and the advisability of certainty for homeowners and the public alike that we made our proposal. Unfortunately, the counter proposal is a "non starter." Let me explain why by focusing on two services we provide to the residents, each of which predates the Coastal Act.

1. Boundary Signs.

You agreed to our proposal to permanently remove the existing signage on the sandy beach. You also agreed that signs may be put on the home sites (off the sandy beach) to protect the property rights of residents. However, you now suggest signage language which ~~appears calculated to obtain prescriptive rights for the public to use the entirety of the sandy beach.~~ The language which you propose, "Remain on Sandy Beach," turns the purpose of signage on its head. Proper signage is designed to demarcate private and public property and protect the private property owner from the loss of its property. Your proposal could ultimately lead to an unlimited access grant of the entire sandy beach.

2. Privacy Buffer.

We proposed a uniform 5-foot lateral access easement across the entirety of the beach, including those parcels with no grant of lateral access. Your counter proposal of 25 feet is simply unacceptable. This is the amount of lateral access obtained pre-Nollan.

With respect to a privacy buffer, your suggestion "that the inland reach of the easement would, in no case, extend landward of the first line of terrestrial vegetation...." could convert private property purchased at high market prices into a public beach.

3. Patrol Service.

For many years now (even prior to the Coastal Act) our Association has engaged the services of personnel on the sandy beach. They perform invaluable services for our members. Unlike the adjacent public Zuma beach, there are no lifeguards, restrooms, trash pick-up or law enforcement on Broad Beach. They help the public understand the demarcation between public and private property and explain where the lateral access easements exist and do not exist. They ensure that the laws against dogs, horses and alcohol on the beach are enforced; they help clean the beach of trash and feces left by the public. And they are available to call law enforcement in case of life threatening emergencies. They provide a critical service to our residents and to the public alike in an area where it is difficult to obtain help from law enforcement which is already stretched thin. The services provided are no different than those provided in communities throughout the state. You apparently would like us to discontinue our patrol service. We cannot and will not do so. We have every right to ensure the security of our residences which are not fenced and which are open to anybody who wishes to approach them and our homeowners and to provide for neighborhood services which any other neighborhood is permitted to enjoy.

With this background in mind, I am pleased to inform you how we intend to proceed:

1. Boundary Signs.

Because of seasonal storms, the signs on the beach are generally removed at this time of the year and replaced in the Spring. To my knowledge, there are but one or two signs currently on the beach. ~~The Association will be applying to the City of Malibu for a Coastal Development permit to remove (and not reinstate) the signs on the sandy beach and replace them with individual signs for each residence as suggested by you in your counter proposal.~~ Thus, in your words, the "property owners along Broad Beach can place signs (not exceeding an agreed on maximum size) on existing legal structures on their property or within the dune vegetation." However, the language that we will propose will be designed to protect the loss of property through prescriptive use. You may be assured that they will not be misleading in any way and will not discourage members of the public from previously granted access rights (assuming, of course, that those grants of access are not declared invalid for any reason).

This resolution of the "signage issue" meets every stated objective of the Commission staff. The signs will be removed and not replaced on the sandy beach. And the public will not be discouraged from utilizing lateral access that is rightfully the public's.

2. Service Patrol.

We have taken steps to ensure that the Service Patrol conducts itself in strict accordance with the Coastal Act. For example, they have been furnished with the official Coastal Commission maps off of the Commission Web site so that they know with precision where

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Lisa Haage  
Aaron N. McLendon  
February 4, 2005  
Page 4

public access exists and where it does not exist. They will not approach anyone who is rightfully below the mean high tide line or on deeded lateral access (unless, of course, that individual is engaged in unlawful conduct).

3. Conclusion.

Although we have been unable to come to an overall resolution on each issue, I trust that the information provided in this letter is more than sufficient for you to withdraw all pending Notices of Intent to Commence Cease and Desist Order Proceedings. The staff has achieved what it desires with respect to signage. The staff has also received appropriate and responsible assurances with respect to the service patrol and is free to revisit the issue without prejudice at a later date.

We look forward to confirmation of the withdrawal of the now pending enforcement proceedings, and to a renewal effort of cooperation.

Sincerely,

Marshall B. Grossman

MBG/sb

cc: Members of the Coastal Commission  
(with enclosures: Marshall Grossman's letter of September 22, 2004;  
~~Coastal Commission response to Marshall Grossman dated December 30, 2004~~)

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For the record, we continue to object to any participation by Commissioner Sara Wan in these matters. Her open public campaigning against Broad Beach residents and fundraising for her private non-profit organization at our expense have been amply documented in prior correspondence.

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(TPOA – Broad Beach)

ALSCHULER GROSSMAN STEIN & KAHAN LLP  
ATTORNEYS AT LAW

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February 28, 2005

BY FACSIMILE AND U.S. MAIL

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Chief of Enforcement  
California Coastal Commission  
Suite 1970  
45 Fremont Street  
San Francisco, CA 94105-2254

Aaron N. McLendon  
Statewide Enforcement Analyst  
California Coastal Commission  
Suite 1970  
45 Fremont Street  
San Francisco, CA 94105-2254

Re: Trancas/Broad Beach

Dear Ms. Haage and Mr. McLendon:

In response to your request that we do so and the clarification of your views, we have given further consideration to the resolution of the outstanding matters. Please consider the following as a basis for settlement:

1. Private Property Signs

- (a) The random signs will be removed and not replaced.
- (b) The large pole signs will be removed and not replaced

(c) Each individual homeowner may place signage on their property or within any dune area (but not the sandy beach) stating "Please Respect Private Property. Remain on Public Easement." All signs will be of modest and uniform size and composition. In addition, there will be signage at each of the two vertical access ways and where Zuma joins Broad Beach. Those signs will inform the public of the lateral access, the need to respect private property, that no dogs, horses or alcohol are permitted on the beach and that there are no public facilities on the beach.

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2. Lateral Access

(a) With respect to those properties with deeded and accepted lateral access, lateral access of ten feet will be provided for passive recreational use. And it will be ambulatory landward from the then wave run up (as distinguished from the mean high tide line or merely wet sand).

(b) With respect to those properties with no deeded and accepted lateral access, lateral access of five feet will be provided for 'pass and repass' purposes. And it too will be ambulatory landward from the then wave run up.

(c) Those properties with no existing lateral access would grant the access referred to in item 2b and those properties with existing or offered access greater than 10 feet would have that lateral access rolled back to the 10 foot line.

(d) These grants of access would be subject to a privacy buffer of 20 feet from the deck or toe of the dune area for those properties with no seawalls or rock revetments and 10 feet as to those properties with a seawall or rock revetment; provided that as to those properties with a seawall or rock revetment, any easement within the privacy buffer will be for 'pass and repass' only.

3. Vertical Access

(a) No further vertical access or any view corridors will be required.

(b) We recognize that this will require an amendment to the LCP.

---

4. Service Patrol

(a) It is essential to provide the services to our members which the service patrol provides and it will continue with stipulated modifications.

(b) As previously noted, they have been and will be provided with specific directions to assist in the implementation of our agreement.

We are prepared to proceed to determine if an agreement can be reached along the lines here described, or alternatively we can proceed as set forth in our letter of February 4. In any event, we believe it would be appropriate for you to withdraw all pending Notices of Intent to Commence Cease and Desist Proceedings.

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Lisa Haage  
Aaron N. McLendon  
February 28, 2005  
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Please get back to me at your first convenience.

Sincerely,



Marshall B. Grossman

MBG/sb

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## CALIFORNIA COASTAL COMMISSION

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



VIA CERTIFIED AND REGULAR MAIL

March 10, 2005

Alschuler Grossman Stein & Kahan LLP  
Attn: Marshall Grossman  
1620 26<sup>th</sup> Street, 4<sup>th</sup> Floor  
Santa Monica, CA 90404

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

Violation No.: V-4-02-097

Location: Broad Beach, Malibu, Los Angeles County

Violation Description: Unpermitted placement of private property signs, fencing seaward of the two County vertical access easements, and use of private security guards on All-Terrain-Vehicles, which discourage or prohibit public access along Broad Beach

Dear Mr. Grossman:

This letter sets forth our response to your letters dated June 28 and July 1, 2004, on behalf of the Trancas Property Owners' Association, and also constitutes a Notice of Intent to Commence Cease and Desist Order Proceedings.

Thank you for your responses to our June 23, 2004 letter. In your letters, you made several statements regarding the private property sign and security guards on Broad Beach and cited and attached previous correspondence from yourself to Commission staff, which I will address later in this letter. As you indicated, most of the signs have been removed from the beach. However, we continue to request that you remove all the signs from Broad Beach, remove the fencing seaward of the two County vertical public access easements, and discontinue the practice of employing private security guards on ATVs, at this time. As noted in my first letter to you, the signs and use of private security guards on ATVs are unpermitted under the Coastal Act and are inconsistent with the policies of the Coastal Act. We thought that a response to some of the issues you raised, including the allegations raised in your correspondence claiming that the signs were placed and ATVs were used prior to the Coastal Act, that they are consistent with the public access easements across certain properties, and that they do not require a coastal development permit, might be helpful.

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Section 30600(a) of the Coastal Act states that, in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the coastal zone must obtain a coastal development permit ("CDP"). "Development" is defined by Section 30106 of the Coastal Act as follows:

*"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land...change in the intensity of use of water, or of access thereto...and the removal or harvesting of major vegetation other than for agricultural purposes...*

The placement of private property signs that purport to denote private property and fencing seaward of the two County vertical access easements on Broad Beach and the use of private security guards on ATVs constitutes "development" under the Coastal Act and therefore may not be installed, maintained, or used unless such development is authorized in a CDP.

Your letters, with references to a letter from you to Commission staff, John Ainsworth and Susan Friend, dated June 2, 1995, allegedly explains that the signs were installed prior to the Coastal Act and do not require a CDP. These are issues we have considered and researched, and we do not agree with your assertions. A brief explanation of the legal issues regarding such an assertion that this development predates the Coastal Act might be helpful. Initially, to make the determination that development was conducted prior to the Coastal Act, the person making such an assertion must submit a Claim of Vested Rights to the Commission. In such a proceeding, the claimant has the burden of proving the facts that are necessary to establish a vested right. (See Title 14, California Code of Regulations, sections 13200 and 13201). Neither Mr. Grossman nor any other party has submitted such a claim.

More importantly, when the Commission considers a claim of vested rights, it must apply certain legal criteria to determine whether a property owner has a vested right for a specific development. Applying those criteria here, the facts would not support a claim of a vested right for several reasons. For example, to qualify as vested, the development must have received all necessary governmental approvals to complete the development prior to February 1, 1973 (the effective date of the Coastal Zone Conservation Act of 1972). The sign at issue purports to delineate the line between State property and private property (the Mean High Tide Line). This boundary between public tidelands and private property is moving constantly and a survey can only identify the boundary for any one particular time at any one particular day; and the difference in this boundary from one day to the next could be considerable. It is not possible for the private property signs to accurately depict the mean high tide line at all times, since this boundary is ambulatory from day to day. As you know, in California, lands located seaward of the Mean High Tide Line constitute public tidelands that are owned by the State and held in trust for the public. (California Civil Code section 670.). The public has the legal right to use these public tidelands. The State Lands Commission has the

regulatory authority over public tidelands and making determinations regarding the location of public tidelands. The signs along Broad Beach were not authorized by the State Lands Commission prior to February 1, 1973, or at any time thereafter. Accordingly, the signs did not receive all required governmental approvals prior to the effective date of the Coastal Act. Therefore, even if the signs existed prior to February 1, 1973, they are not exempt from the permit requirements of the Coastal Act.

Second, another criteria for establishing a vested right is that it must be shown that there has not been any "substantial change" in the development (Title 14, California Code of Regulations section 13207). From our observations and historic aerial photographs, it is clear that the number and location of the signs along Broad Beach have changed often over time. There is no evidence that the specific signs currently located on Broad Beach were in existence prior to February 1, 1973. The minutes of the homeowners association meeting in 1971 that you referred to in your June 2, 1995 and July 1, 2004 letter allude to hiring a "surveyor" and the placement of some signs on the beach but does not indicate the exact location of the signs, the number of signs, or the date of their installation. We note that there are approximately 108 separate parcels on Broad Beach Road, but private property signs have never been present on the vast majority of these parcels at any one time. There is no evidence that such signs were present on any one particular parcel prior to February 1, 1973.

Furthermore, the signs on Broad Beach have been moved vertically and laterally across the beach, at times have been completely removed from the beach, and have also been replaced by new signs at various times since February 1, 1973. For example, during a survey of the signs by Commission staff on April 5, 2004, staff discovered that there were 15 signs present on various locations of Broad Beach. Approximately 3½ months later, on July 20, 2004, Commission staff counted 38 signs located on various locations of Broad Beach. In addition, Commission staff has confirmed that the fencing seaward of the County vertical public access easements that impede lateral public access along Broad Beach have been removed, added to, and extended over the years. Even in cases where there is vested development, which appears not to be the case here, the replacement of vested development, or any substantial change in such development, is not exempt from the permit requirements of the Coastal Act (Public Resources Code section 30608; and Title 14, California Code of Regulations section 13207). Furthermore, removal of any vested development for a substantial period of time results in abandonment of any vested right that may have existed. For these reasons, the facts do not support a vested right for the private property sign on or seaward of your parcel.

As discussed, the language on the sign purports to denote the location of the boundary between public tidelands and private property. As previously mentioned, under California law the State owns all public tidelands. The State Lands Commission has not determined the boundary between public tidelands and private property at this location and has not authorized the assertions on the signs that purport to denote private property. Commission staff has conducted several site visits and observed that the signs purport to identify private land but include land that clearly lies below the mean high tide line and, in most cases, also land over which the state holds a public access

easement. The signs declare that the entire area landward of the signs and a certain distance seaward of the signs (in some cases 30 or 40 feet) is private. However, in many cases, the signs themselves are on public tidelands. In fact, at some times, the signposts themselves stand beneath several feet of ocean water, which lands are clearly owned by the State for public use. Therefore, the signs not only appear to be placed directly in state tidelands, but also purport to denote as private property a certain distance (in many case 30 to 40 feet) seaward of the private property sign. Even if the signs were not placed below the mean high tide line, the area denoted by the signs clearly is within state tidelands.

For the reasons explained above, we again request that you remove the private property signs from Broad Beach and discontinue the use of private security guards on ATVs. Commission staff would be happy to discuss this further and discuss the possibility of authorization for signs on individual properties and beach security that does not adversely affect the use of public tidelands or the Public Access Easements across Broad Beach. If you choose not to remove the unpermitted development and discontinue use of private security guards on ATVs, Commission staff will begin proceedings for issuance of a Cease and Desist Order to compel the removal of the unpermitted development as described below.

### Cease and Desist Order

While we hope to resolve this violation without initiating these proceedings, this letter is to also notify you of my intent, as the Executive Director of the California Coastal Commission ("Commission"), to commence proceedings for issuance of a Cease and Desist Order for unpermitted development, should this not be resolved in a timely fashion. As noted above, the unpermitted development consists of private property signs, fencing seaward of the two County vertical access easements, and use of private security guards on All-Terrain-Vehicles on and along Broad Beach.

The purpose of this enforcement proceeding is to resolve outstanding issues associated with the unpermitted development activities that have occurred on and along Broad Beach. The Cease and Desist Order will direct you to cease and desist from performing or maintaining any development that is inconsistent with a previously issued CDP and/or subject to the permit requirements of the Coastal Act without a CDP and to compel the removal of the private property signs and fencing from the beach and to discontinue the use of private security guards on ATVs.

The Commission's authority to issue Cease and Desist Orders is set forth in Section 30810(a) of the Coastal Act, which states the following:

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

Exhibit #4  
CCC-05-CD-09  
(TPOA – Broad Beach)

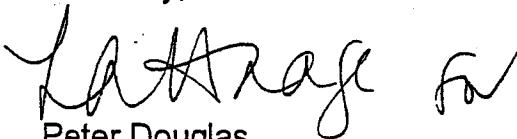
In addition, based on Section 30810(b) of the Coastal Act, the Cease and Desist Order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with the Coastal Act, including removal of any development or material.

For the reasons stated above, the criteria of Section 30810(a) of the Coastal Act have been met and I am sending this letter to initiate proceedings to request that the Commission issue a Cease and Desist Order. Commission staff is willing to work with you to reach an amicable resolution of this matter. If the Property Owners Association chooses to remove the unpermitted development that is located on Broad Beach, provide Commission staff with photographic evidence by that such development was removed, and ensure that use of private security guards on ATVs has been discontinued, Commission staff will withdraw any enforcement action against the Property Owners Association.

In accordance with Sections 13181(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 proceedings by completing the enclosed Statement of Defense (SOD) form. **The SOD form must be returned to the Commission's San Francisco office, directed to the attention of Aaron McLendon, no later than May 9, 2005.**

The Commission staff intends to schedule the hearings for the Cease and Desist Order during the June 8-10, 2005 Commission meeting in Long Beach. If you have any questions regarding this letter or the enforcement case, please call Aaron McLendon at (415) 904-5220 or send correspondence to his attention at the address listed on the letterhead.

Sincerely,



Peter Douglas  
Executive Director

Enc. Statement of Defense Form for Cease and Desist Order

cc: Lisa Haage, Chief of Enforcement  
Sandy Goldberg, Staff Counsel  
Aaron McLendon, Statewide Enforcement Analyst  
Steve Hudson, Southern California Enforcement Supervisor  
Arnold Palmer  
Helmut Martinek

Exhibit #4  
CCC-05-CD-09  
(TPOA - Broad Beach)

## CALIFORNIA COASTAL COMMISSION

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

STATEMENT OF DEFENSE FORM

DEPENDING ON THE OUTCOME OF FURTHER DISCUSSIONS THAT OCCUR WITH THE COMMISSION ENFORCEMENT STAFF AFTER YOU HAVE COMPLETED AND RETURNED THIS FORM, (FURTHER) ADMINISTRATIVE OR LEGAL ENFORCEMENT PROCEEDINGS MAY NEVERTHELESS BE INITIATED AGAINST YOU. IF THAT OCCURS, ANY STATEMENTS THAT YOU MAKE ON THIS FORM WILL BECOME PART OF THE ENFORCEMENT RECORD AND MAY BE USED AGAINST YOU.

YOU MAY WISH TO CONSULT WITH OR RETAIN AN ATTORNEY BEFORE YOU COMPLETE THIS FORM OR OTHERWISE CONTACT THE COMMISSION ENFORCEMENT STAFF.

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

This form requires you to respond to the (alleged) facts contained in the document, to raise any affirmative defenses that you believe apply, and to inform the staff of all facts that you believe may exonerate you of any legal responsibility for the (possible) violation or may mitigate your responsibility. This form also requires you to enclose with the completed statement of defense form copies of all written documents, such as letters, photographs, maps, drawings, etc. and written declarations under penalty of perjury that you want the commission to consider as part of this enforcement hearing.

You should complete the form (please use additional pages if necessary) and return it **no later than May 9, 2005** to the Commission's enforcement staff at the following address:

**Aaron McLendon, Legal Division,  
California Coastal Commission  
45 Fremont Street, Suite 2000  
San Francisco, California 94105**

If you have any questions, please contact Aaron McLendon at (415) 904-5220.

Exhibit #4  
CCC-05-CD-09  
(TPOA - Broad Beach)











# MEMORANDUM

## CONFIDENTIAL – NOT FOR DISTRIBUTION

To: File  
From: Marshall B. Grossman  
Date: June 3, 2005  
In Re: Coastal Commission Negotiations  
File No.: 0S996-0000

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On June 2<sup>nd</sup>, I had a lengthy telephone conversation with Lisa Haage and Aaron McLendon, the chief enforcement officer and her chief assistant. The tenor was cordial and constructive.

We discussed the following issues:

1. Signs on the Beach.

They expressed concern that if the signs went back up they would serve as a provocation and stimulate rumored litigation against the Association and the Coastal Commission for failing to comply with the Coastal Act. They requested some delay in replacing the signs in order to give us an opportunity to work out an agreement for their permanent removal and replacement with signage located on each property (on the dunes if dunes, and on seawalls if seawalls). I told them that we would defer reinstalling the signs and I would move aggressively with them to arrive at agreed upon language for the signs.

2. The Patrol.

They have been in ongoing discussions with the Malibu City Manager and the Sheriff's Department about the possibility of the Association contracting directly with the Sheriff's Department to provide sheriff deputies to perform the patrol function. They implied that if sheriff deputies did so it would be acceptable for the deputies to patrol on the three-wheel quads owned by the Association. I told them that our preference would be to have the sheriff deputies perform this function rather than the private service. The sheriff deputies would be in full uniform and armed. I said my only concern is the matter of cost and the assurance of availability on an ongoing basis. They will step up their discussions with the authorities and I told them that we would be pleased to participate in such discussions.

3. Width of Public Access Easement.

They said that they were having great difficulty in our proposal for a five or ten foot access easement above the mean high tide line. They explained that the State has already acquired public access greater than that in the form of many 24-foot lateral access easements and some 50 and 100 lateral access easements. They said that they were trying to work out a formula

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which would take into consideration the total amount of square footage already obtained and ensure that at least that amount was retained in the form of a uniform access easement. I told them that this approach was a non-starter and there was no way that we would ever get homeowners to agree to voluntarily give more than 10 feet. I said that they had to balance between maintaining the status quo (under which no further access would likely be granted) and an historic opportunity to create truly voluntary additional lateral access. I explained that the current situation was a crazy patchwork which was confusing to homeowners and the public alike and if it was their preference that it continue then so be it. They said they would give that issue reconsideration.

## Properties Along Broad Beach

APN	BROAD BEACH ADDRESS
4470-017-061	31460 Broad Beach Road
4470-017-062	31454 Broad Beach Road
4470-017-063	31450 Broad Beach Road
4470-017-064	31444 Broad Beach Road
4470-017-065	Vacant Lot
4470-017-066	Vacant Lot
4470-017-067	31430 Broad Beach Road
4470-017-068, 69	Vacant Lot
4470-016-026	31406 Broad Beach Road
4470-016-025	31388 Broad Beach Road
4470-016-020	31380 Broad Beach Road
4470-016-019	31376 Broad Beach Road
4470-016-018	31372 Broad Beach Road
4470-016-017	31368 Broad Beach Road
4470-016-016	31364 Broad Beach Road
4470-016-015	31360 Broad Beach Road
4470-016-014	31356 Broad Beach Road
4470-016-013	31350 Broad Beach Road
4470-016-012	31346 Broad Beach Road
4470-016-011	31340 Broad Beach Road
4470-016-010	31336 Broad Beach Road
4470-016-008	31330 Broad Beach Road
4470-016-027	31324 Broad Beach Road
4470-016-028	31322 Broad Beach Road
4470-016-031	31316 Broad Beach Road
4470-016-006	31310 Broad Beach Road
4470-016-005	31302 Broad Beach Road
4470-016-004	31284 Broad Beach Road
4470-016-003	31280 Broad Beach Road
4470-016-002	31272 Broad Beach Road
4470-016-001	31268 Broad Beach Road
4470-015-025	31260 Broad Beach Road
4470-015-032	31250 Broad Beach Road
4470-015-021	31240 Broad Beach Road
4470-015-020	31236 Broad Beach Road
4470-015-019	31232 Broad Beach Road
4470-015-018	31228 Broad Beach Road
4470-015-017	31224 Broad Beach Road
4470-015-016	31220 Broad Beach Road
4470-015-015	31214 Broad Beach Road
4470-015-014	31212 Broad Beach Road
4470-015-013	31206 Broad Beach Road
4470-015-012	31202 Broad Beach Road

Exhibit #5  
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 (TPOA – Broad Beach)

## Properties Along Broad Beach

APN	BROAD BEACH ADDRESS
4470-015-011	31138 Broad Beach Road
4470-015-009	31134 Broad Beach Road
4470-015-008	31130 Broad Beach Road
4470-015-007	31122 Broad Beach Road
4470-015-006, -027	31118 Broad Beach Road
4470-015-029	31108 Broad Beach Road
4470-015-004	31100 Broad Beach Road
4470-015-031	31070 Broad Beach Road
4470-015-030	31064 Broad Beach Road
4470-014-022	31058 Broad Beach Road
4470-014-021	31054 Broad Beach Road
4470-014-020	31052 Broad Beach Road
4470-014-019	31048 Broad Beach Road
4470-014-018	31042 Broad Beach Road
4470-014-017	31038 Broad Beach Road
4470-014-016	31034 Broad Beach Road
4470-014-015	31030 Broad Beach Road
4470-014-014	31026 Broad Beach Road
4470-014-013	31022 Broad Beach Road
4470-014-012	31020 Broad Beach Road
4470-014-011	31016 Broad Beach Road
4470-014-010	31012 Broad Beach Road
4470-014-009	31008 Broad Beach Road
4470-014-008	31000 Broad Beach Road
4470-014-007	30980 Broad Beach Road
4470-014-006	30978 Broad Beach Road
4470-014-005	30974 Broad Beach Road
4470-014-004	30970 Broad Beach Road
4470-014-003	30966 Broad Beach Road
4470-014-002	30962 Broad Beach Road
4470-014-001	30956 Broad Beach Road
4470-013-027	30952 Broad Beach Road
4470-013-026	30948 Broad Beach Road
4470-013-025	30944 Broad Beach Road
4470-013-024	30940 Broad Beach Road
4470-013-023	30936 Broad Beach Road
4470-013-022	30930 Broad Beach Road
4470-013-021	30928 Broad Beach Road
4470-013-020	30924 Broad Beach Road
4470-013-019	30918 Broad Beach Road
4470-013-018	30916 Broad Beach Road
4470-013-017	30908 Broad Beach Road
4470-013-016	30904 Broad Beach Road

Exhibit #5  
 CCC-05-CD-09  
 (TPOA – Broad Beach)

## Properties Along Broad Beach

APN	BROAD BEACH ADDRESS
4470-013-015	30900 Broad Beach Road
4470-013-014	30874 Broad Beach Road
4470-013-013	30870 Broad Beach Road
4470-013-012	30866 Broad Beach Road
4470-013-011, 010, 009	30860 Broad Beach Road
4470-013-008	30846 Broad Beach Road
4470-013-007	30842 Broad Beach Road
4470-013-006	30838 Broad Beach Road
4470-013-005	30830 Broad Beach Road
4470-013-004	30826 Broad Beach Road
4470-013-003	30822 Broad Beach Road
4470-013-002	30810 Broad Beach Road
4470-013-028	30804 Broad Beach Road
4469-026-012	30800 Broad Beach Road
4469-026-002	30760 Broad Beach Road
4469-026-003, 015	30756 Pacific Coast Highway
4469-026-011	30750 Pacific Coast Highway
4469-026-005	30732 Pacific Coast Highway
4469-026-006	30724 Pacific Coast Highway
4469-026-007	30718 Pacific Coast Highway
4469-026-008	30712 Pacific Coast Highway
4469-026-009	30708 Pacific Coast Highway

Exhibit #5  
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(TPOA – Broad Beach)



# Broad Beach Properties Providing Public Access

Street Number	Street Name	APNs Combined	Permit Number	Accessway Type
30712	Pacific Coast Highway	4469-0026-0008	4-99-153	Lateral Easement
30718	Pacific Coast Highway	4469-0026-0007	4-99-154	Lateral Easement
30724	Pacific Coast Highway	4469-0026-0006	4-99-155	Lateral Easement
30750	Pacific Coast Highway	4469-0026-0011	4-99-129	Lateral Easement
30760	Broad Beach Road	4469-0026-0002	P-78-3511	Lateral Deed Restriction
30800	Broad Beach Road	4469-0026-0012	P-77-2527	Lateral Deed Restriction
30804	Broad Beach Road	4470-0013-0028	P-76-9478	Lateral Deed Restriction
30826	Broad Beach Road	4470-0013-0004	P-73-1446	Legal Document for Public Access
30830	Broad Beach Road	4470-0013-0005	5-83-796	Lateral Easement
30842	Broad Beach Road	4470-0013-0007	5-83-210	Lateral Easement
30870	Broad Beach Road	4470-0013-0013	5-85-516	Lateral Easement
30904	Broad Beach Road	4470-0013-0016	5-84-849	Lateral Easement
30916	Broad Beach Road	4470-0013-0018	P-74-2834	Lateral Easement
30916	Broad Beach Road	4470-0013-0018	4-01-148	Lateral Easement
30918	Broad Beach Road	4470-0013-0019	5-83-816	Lateral Easement
30930	Broad Beach Road	4470-0013-0022	SF-80-7373	Lateral Easement
30944	Broad Beach Road	4470-0013-0025	P-75-4957	Lateral Deed Restriction
30952	Broad Beach Road	4470-0013-0027	5-85-044	Lateral Easement
30970	Broad Beach Road	4470-0014-0004	A-79-5085	Lateral Deed Restriction
30974	Broad Beach Road	4470-0014-0005	A-77-1760	Lateral Deed Restriction
31000	Broad Beach Road	4470-0014-0008	A-77-226	Lateral Deed Restriction
31038	Broad Beach Road	4470-0014-0017	P-75-4712	Lateral Deed Restriction
31048	Broad Beach Road	4470-0014-0019	75-4653	Lateral Deed Restriction
31052	Broad Beach Road	4470-0014-0020	P-75-4573	Lateral Deed Restriction
31054	Broad Beach Road	4470-0014-0021	5-83-372	Lateral Easement
31108	Broad Beach Road	4470-0015-0029	5-87-093	Lateral Easement
31122	Broad Beach Road	4470-0015-0007	5-83-899	Lateral Easement
31202	Broad Beach Road	4470-0015-0012	5-81-431	Lateral Easement
31212	Broad Beach Road	4470-0015-0014	4-02-027	Lateral Easement
31214	Broad Beach Road	4470-0015-0015	P-77-9738	Lateral Deed Restriction
31240	Broad Beach Road	4470-0015-0021	5-85-272	Lateral Easement
31250	Broad Beach Road	4470-0015-0032	5-83-783	Lateral Easement
31250	Broad Beach Road	4470-0015-0032	P-76-7021	Lateral Deed Restriction
31268 & 31272	Broad Beach Road	4470-0016-0002	4-00-275	Lateral Easement

Exhibit #6  
 CCC-05-CD-09  
 (TPOA – Broad Beach)

## Broad Beach Properties Providing Public Access

Street Number	Street Name	APNs Combined	Permit Number	Accessway Type
31280	Broad Beach Road	4470-0016-0003	5-87-593	Legal Document for Public Access
31316	Broad Beach Road	4470-0016-0031	A-80-7553	Lateral Easement
31336	Broad Beach Road	4470-0016-0010	5-90-487	Lateral Easement
31346	Broad Beach Road	4470-0016-0012	5-86-273	Lateral Easement
31350	Broad Beach Road	4470-0016-0013	4-99-216	Lateral Easement
31360	Broad Beach Road	4470-0016-0015	4-99-086	Lateral Easement
31364	Broad Beach Road	4470-0016-0016	4-98-302	Lateral Easement
31376	Broad Beach Road	4470-0016-0019	5-85-015	Lateral Easement
31380	Broad Beach Road	4470-0016-0020	P-74-2534	Legal Document for Public Access
31388	Broad Beach Road	4470-0016-0025	4-98-298	Lateral Easement
31406	Broad Beach Road	4470-0016-0026	4-98-028	Lateral Easement
31430	Broad Beach Road	4470-0017-0067	4-93-086	Lateral Easement
31430 - 31460	Broad Beach Road	4470-0017-0062,	5-85-635	Lateral Easement

Exhibit #6  
 CCC-05-CD-09  
 (TPOA – Broad Beach)

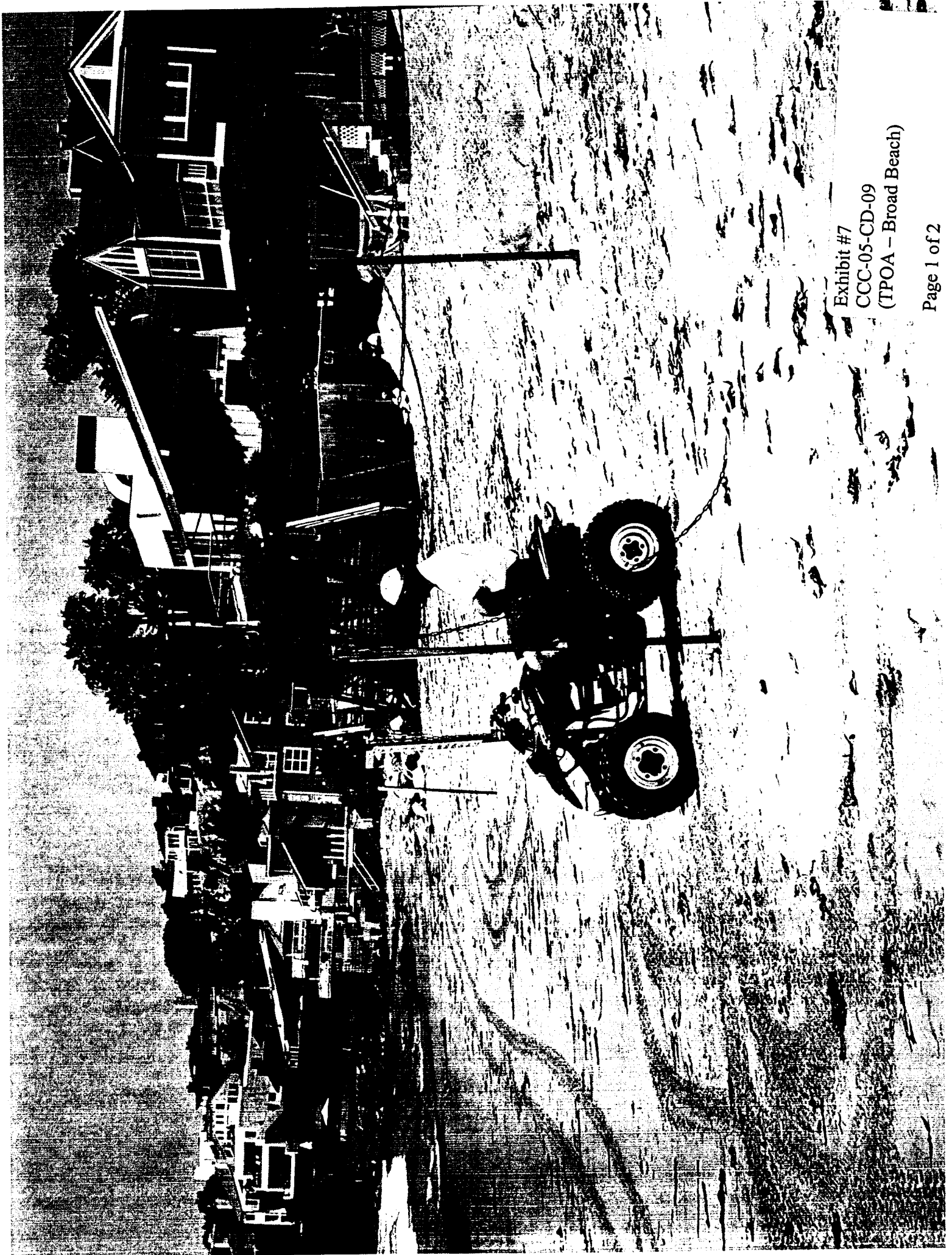


Exhibit #7  
CCC-05-CD-09  
(TPOA - Broad Beach)

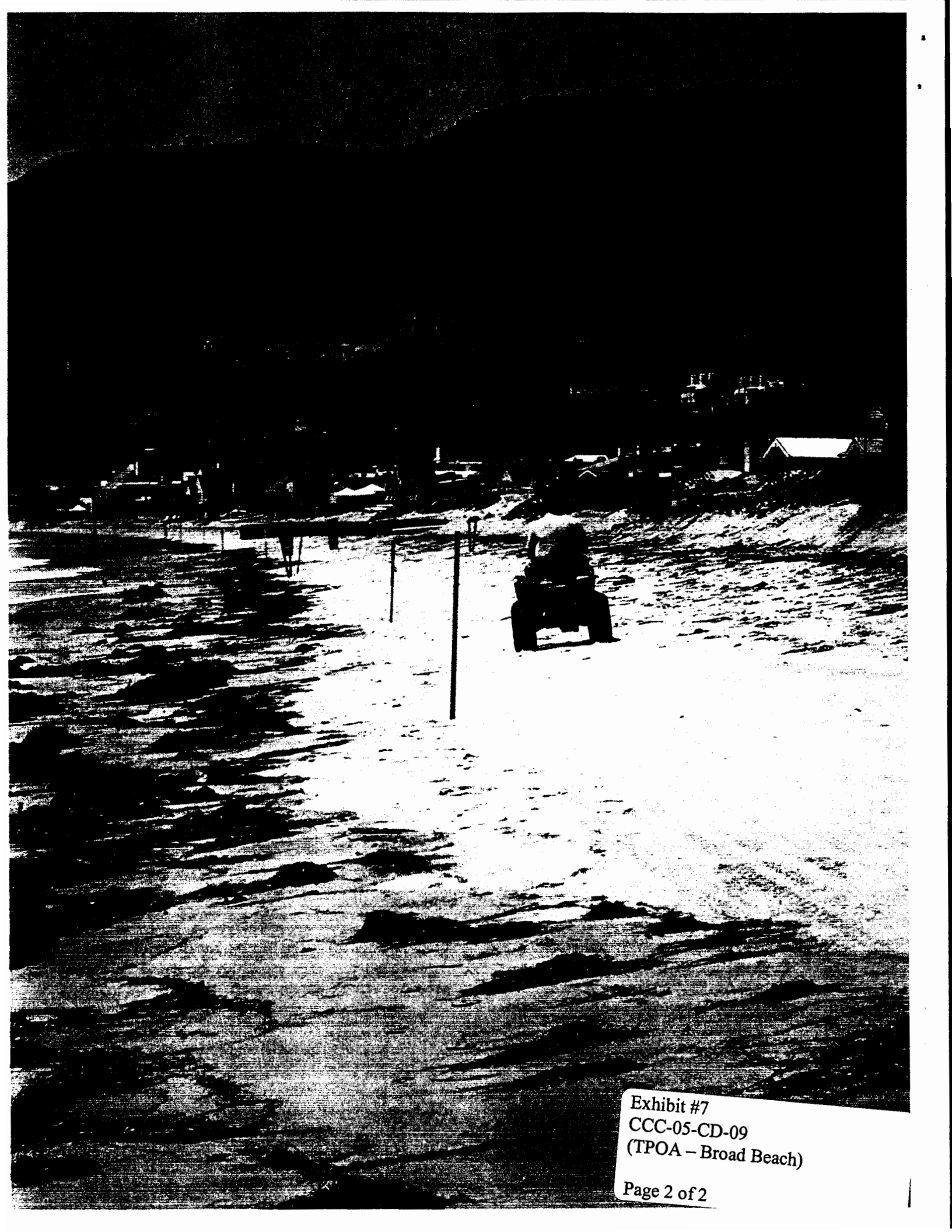


Exhibit #7  
CCC-05-CD-09  
(TPOA - Broad Beach)



Exhibit #8  
CCC-05-CD-09  
(TPOA - Broad Beach)

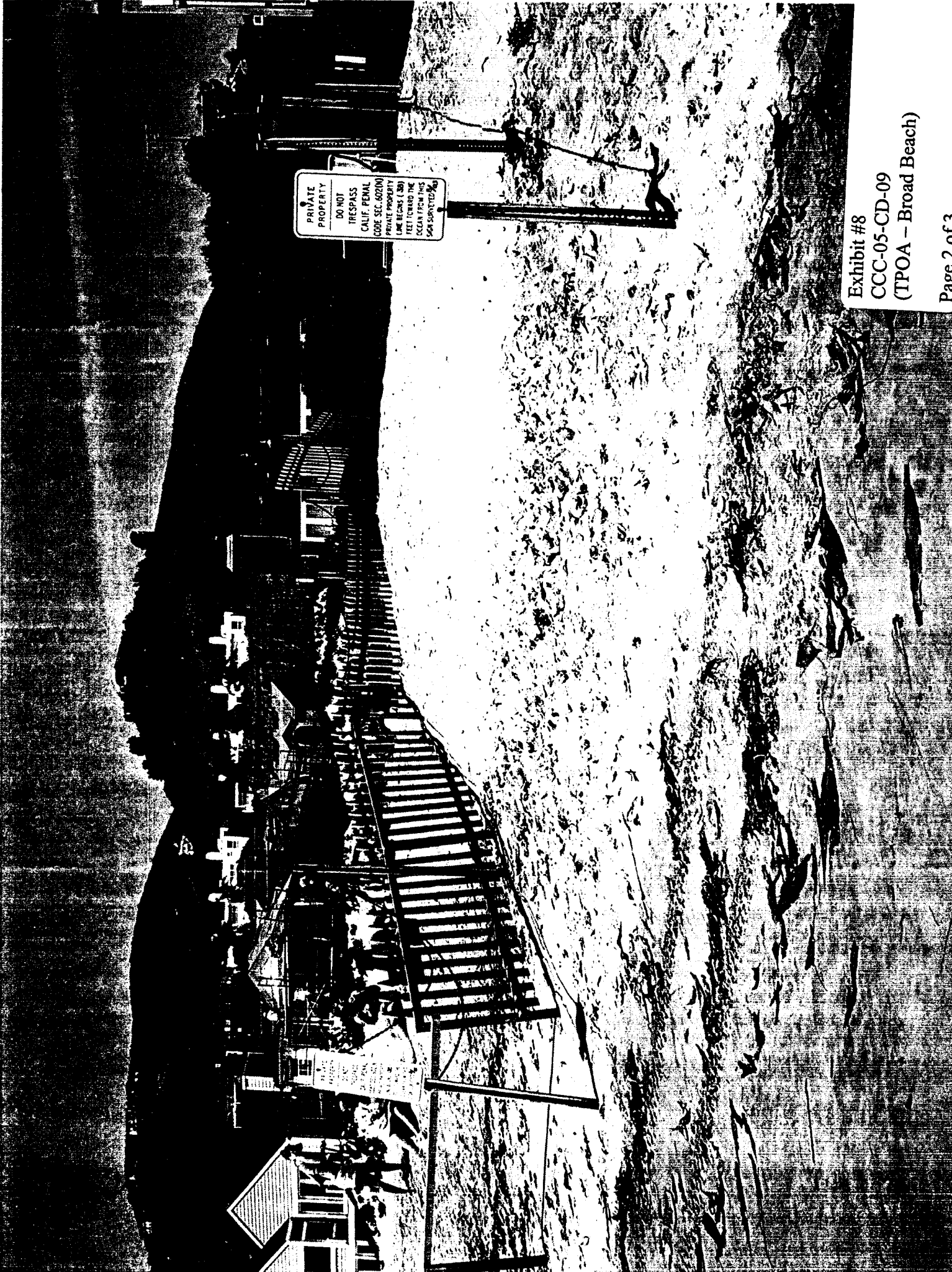


Exhibit #8  
CCC-05-CD-09  
(TPOA - Broad Beach)



Exhibit #8  
CCC-05-CD-09  
(TPOA - Broad Beach)

PRIVATE  
PROPERTY

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DO NOT  
TRESPASS  
CALIF. PENAL  
CODE SEC. 602(N)  
PRIVATE PROPERTY  
LINE BEGINS (20)  
FEET TOWARD THE  
OCEAN FROM THIS  
SIGN SURVEYED 7/03

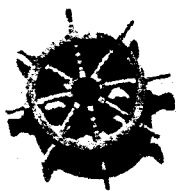


Exhibit #9  
CCC-05-CD-09  
(TPOA – Broad Beach)



PRIVATE  
PROPERTY

---

DO NOT  
TRESPASS

CALIF. PENAL  
CODE SEC. 602 IN  
PRIVATE PROPERTY  
LINE BEGINS 25  
FEET TOWARD THE  
OCEAN FROM THIS  
SIGN SURVEYED 9/64

Exhibit #9  
CCC-05-CD-09  
(TPOA - Broad Beach)



Exhibit #10  
CCC-05-CD-09  
(TPOA - Broad Beach)

## CALIFORNIA COASTAL COMMISSION

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

**Certified and Regular Mail**

June 23, 2004

Trancas Property Owners' Association  
Attn: Arnold Palmer, President  
Attn: Helmut Martinek, Agent  
28990 Pacific Coast Highway, #107  
Malibu, CA 90265  
Certified Mail No. 7002 3150 0004 3512 2188

Dear Mr. Palmer and Mr. Martinek,

It has come to our attention, through numerous reports from the public, recent newspaper articles, and Commission staff research, that private property signs and security guards on all-terrain vehicles ("ATVs") have been used at Broad Beach, which discourage or prohibit the public's right to use Broad Beach. This letter is to provide you with some background information and to request the removal of such signs and that the Trancas Property Owners' Association discontinue the practice of employing ATVs to discourage public use at Broad Beach.

We are concerned that the placement of these private property signs and the use of private security guards patrolling the beach on ATVs discourage and sometimes prohibit the public's right to enjoy this stretch of beach (some or all of which is held in trust by the State for public use). As you may know, the Coastal Act was established to protect California's spectacular coastal resources, including the public's ability to access and enjoy California's beaches. The protection of public access to the beach and ocean is one of the fundamental purposes and a principal goal of the Coastal Act.

Commission staff notes that the placement of private property signs and ATV use require a Coastal Development Permit since they are both "development" as that term is defined in the Coastal Act, and no Coastal Development Permit was issued to allow the sign and ATV use. After conducting research, we found that the signs have been replaced over the years by new signs, moved vertically and laterally along the beach, and in some instances removed from the beach entirely and replaced at a subsequent time. In addition to a Coastal Development Permit for placement of a sign on the beach, the substantial change of a pre-existing sign also requires a Coastal Development Permit. In addition, many of the signs were placed within easements that are held by the State of California for public access and passive recreation. Other signs were placed within areas where, through either recorded deed restrictions or other Coastal Development Permit conditions for development on property adjacent to the

Exhibit #11  
CCC-05-CD-09  
(TPOA – Broad Beach)

beach, the placement of signs and/or the denial of public lateral access across the beach were specifically prohibited.

Furthermore, the private property signs that were placed on the beach without a Coastal Development Permit also give the impression that the entire beach is private. Under well-settled State Law, all lands seaward of the mean high tide line are owned by the State of California and held in trust for the public. In addition, the state holds numerous easements for public access and recreation along Broad Beach. Commission staff has conducted several site visits and observed that the signs purport to identify private land but include land that clearly lies below the mean high tide line and, in most cases, also land over which the state holds a public access easement. The signs declare that the entire area landward of the signs and a certain distance seaward of the signs (in some cases 30 or 40 feet) is private. However, in many cases, the signs themselves are on public tidelands. In fact, at some times, the signposts themselves stand beneath several feet of ocean water, which lands are clearly owned by the State for public use. Therefore, the signs not only appear to be placed directly in state tidelands, but also purport to denote as private property a certain distance (in many case 30 to 40 feet) seaward of the private property sign. Even if the signs were not placed below the mean high tide line, the area denoted by the signs clearly is within state tidelands.

Any activity on the beach that changes public access to the ocean is development as defined by Section 30106 of the Coastal Act. Recent reports have indicated that the private security company that drives ATVs on the beach is directing the public to leave the beach, claiming that the beach is private property. This action changes the intensity of use of the beach and ocean by affecting access to State waters, thereby triggering the requirement to obtain a Coastal Development Permit for such activity. Moreover, the guards appear to instruct people to leave the beach without regard to whether they are on state tidelands, public access easements owned by the State, or land deed restricted for public access. This activity prevents the public from enjoying a public beach area provided to them by the State and state law.


For these reasons, we respectfully request that you immediately remove the private property signs from the beach and discontinue the use of ATV patrols along the beach. We would like to work with you to resolve these issues as amicably as possible. If we are not able to resolve this amicably, the Coastal Act provides for the use of a variety of enforcement tools, including the imposition of Cease and Desist Orders, seeking fines and penalties, and injunctive relief. We would obviously rather avoid having to undertake any of these enforcement measures and would prefer to work cooperatively with you and the homeowners to resolve this matter.

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(TPOA – Broad Beach)

Trancas Property Owners' Association  
Page 3 of 3

Please contact Aaron McLendon of the Commission staff at (415) 904-5220 or send correspondence to his attention to the address on this letterhead no later than July 9, 2004 confirming what measures will be taken to resolve these issues. Thank you in advance for your cooperation in resolving this matter.

Sincerely,



Peter Douglas  
Executive Director

Exhibit #11  
CCC-05-CD-09  
(TPOA – Broad Beach)

## CALIFORNIA COASTAL COMMISSION

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



VIA CERTIFIED AND REGULAR MAIL

March 10, 2005

Alschuler Grossman Stein & Kahan LLP  
Attn: Marshall Grossman  
1620 26<sup>th</sup> Street, 4<sup>th</sup> Floor  
Santa Monica, CA 90404

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

Violation No.: V-4-02-097

Location: Broad Beach, Malibu, Los Angeles County

Violation Description: Unpermitted placement of private property signs, fencing seaward of the two County vertical access easements, and use of private security guards on All-Terrain-Vehicles, which discourage or prohibit public access along Broad Beach

Dear Mr. Grossman:

This letter sets forth our response to your letters dated June 28 and July 1, 2004, on behalf of the Trancas Property Owners' Association, and also constitutes a Notice of Intent to Commence Cease and Desist Order Proceedings.

Thank you for your responses to our June 23, 2004 letter. In your letters, you made several statements regarding the private property sign and security guards on Broad Beach and cited and attached previous correspondence from yourself to Commission staff, which I will address later in this letter. As you indicated, most of the signs have been removed from the beach. However, we continue to request that you remove all the signs from Broad Beach, remove the fencing seaward of the two County vertical public access easements, and discontinue the practice of employing private security guards on ATVs, at this time. As noted in my first letter to you, the signs and use of private security guards on ATVs are unpermitted under the Coastal Act and are inconsistent with the policies of the Coastal Act. We thought that a response to some of the issues you raised, including the allegations raised in your correspondence claiming that the signs were placed and ATVs were used prior to the Coastal Act, that they are consistent with the public access easements across certain properties, and that they do not require a coastal development permit, might be helpful.

Exhibit #12  
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(TPOA – Broad Beach)

Section 30600(a) of the Coastal Act states that, in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the coastal zone must obtain a coastal development permit ("CDP"). "Development" is defined by Section 30106 of the Coastal Act as follows:

*"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land...change in the intensity of use of water, or of access thereto...and the removal or harvesting of major vegetation other than for agricultural purposes...*

The placement of private property signs that purport to denote private property and fencing seaward of the two County vertical access easements on Broad Beach and the use of private security guards on ATVs constitutes "development" under the Coastal Act and therefore may not be installed, maintained, or used unless such development is authorized in a CDP.

Your letters, with references to a letter from you to Commission staff, John Ainsworth and Susan Friend, dated June 2, 1995, allegedly explains that the signs were installed prior to the Coastal Act and do not require a CDP. These are issues we have considered and researched, and we do not agree with your assertions. A brief explanation of the legal issues regarding such an assertion that this development predates the Coastal Act might be helpful. Initially, to make the determination that development was conducted prior to the Coastal Act, the person making such an assertion must submit a Claim of Vested Rights to the Commission. In such a proceeding, the claimant has the burden of proving the facts that are necessary to establish a vested right. (See Title 14, California Code of Regulations, sections 13200 and 13201). Neither Mr. Grossman nor any other party has submitted such a claim.

More importantly, when the Commission considers a claim of vested rights, it must apply certain legal criteria to determine whether a property owner has a vested right for a specific development. Applying those criteria here, the facts would not support a claim of a vested right for several reasons. For example, to qualify as vested, the development must have received all necessary governmental approvals to complete the development prior to February 1, 1973 (the effective date of the Coastal Zone Conservation Act of 1972). The sign at issue purports to delineate the line between State property and private property (the Mean High Tide Line). This boundary between public tidelands and private property is moving constantly and a survey can only identify the boundary for any one particular time at any one particular day; and the difference in this boundary from one day to the next could be considerable. It is not possible for the private property signs to accurately depict the mean high tide line at all times, since this boundary is ambulatory from day to day. As you know, in California, lands located seaward of the Mean High Tide Line constitute public tidelands that are owned by the State and held in trust for the public. (California Civil Code section 670.). The public has the legal right to use these public tidelands. The State Lands Commission has the

Exhibit #12  
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(TPOA – Broad Beach)

regulatory authority over public tidelands and making determinations regarding the location of public tidelands. The signs along Broad Beach were not authorized by the State Lands Commission prior to February 1, 1973, or at any time thereafter. Accordingly, the signs did not receive all required governmental approvals prior to the effective date of the Coastal Act. Therefore, even if the signs existed prior to February 1, 1973, they are not exempt from the permit requirements of the Coastal Act.

Second, another criteria for establishing a vested right is that it must be shown that there has not been any "substantial change" in the development (Title 14, California Code of Regulations section 13207). From our observations and historic aerial photographs, it is clear that the number and location of the signs along Broad Beach have changed often over time. There is no evidence that the specific signs currently located on Broad Beach were in existence prior to February 1, 1973. The minutes of the homeowners association meeting in 1971 that you referred to in your June 2, 1995 and July 1, 2004 letter allude to hiring a "surveyor" and the placement of some signs on the beach but does not indicate the exact location of the signs, the number of signs, or the date of their installation. We note that there are approximately 108 separate parcels on Broad Beach Road, but private property signs have never been present on the vast majority of these parcels at any one time. There is no evidence that such signs were present on any one particular parcel prior to February 1, 1973.

Furthermore, the signs on Broad Beach have been moved vertically and laterally across the beach, at times have been completely removed from the beach, and have also been replaced by new signs at various times since February 1, 1973. For example, during a survey of the signs by Commission staff on April 5, 2004, staff discovered that there were 15 signs present on various locations of Broad Beach. Approximately 3½ months later, on July 20, 2004, Commission staff counted 38 signs located on various locations of Broad Beach. In addition, Commission staff has confirmed that the fencing seaward of the County vertical public access easements that impede lateral public access along Broad Beach have been removed, added to, and extended over the years. Even in cases where there is vested development, which appears not to be the case here, the replacement of vested development, or any substantial change in such development, is not exempt from the permit requirements of the Coastal Act (Public Resources Code section 30608; and Title 14, California Code of Regulations section 13207). Furthermore, removal of any vested development for a substantial period of time results in abandonment of any vested right that may have existed. For these reasons, the facts do not support a vested right for the private property sign on or seaward of your parcel.

As discussed, the language on the sign purports to denote the location of the boundary between public tidelands and private property. As previously mentioned, under California law the State owns all public tidelands. The State Lands Commission has not determined the boundary between public tidelands and private property at this location and has not authorized the assertions on the signs that purport to denote private property. Commission staff has conducted several site visits and observed that the signs purport to identify private land but include land that clearly lies below the mean high tide line and, in most cases, also land over which the state holds a public access



easement. The signs declare that the entire area landward of the signs and a certain distance seaward of the signs (in some cases 30 or 40 feet) is private. However, in many cases, the signs themselves are on public tidelands. In fact, at some times, the signposts themselves stand beneath several feet of ocean water, which lands are clearly owned by the State for public use. Therefore, the signs not only appear to be placed directly in state tidelands, but also purport to denote as private property a certain distance (in many case 30 to 40 feet) seaward of the private property sign. Even if the signs were not placed below the mean high tide line, the area denoted by the signs clearly is within state tidelands.

For the reasons explained above, we again request that you remove the private property signs from Broad Beach and discontinue the use of private security guards on ATVs. Commission staff would be happy to discuss this further and discuss the possibility of authorization for signs on individual properties and beach security that does not adversely affect the use of public tidelands or the Public Access Easements across Broad Beach. If you choose not to remove the unpermitted development and discontinue use of private security guards on ATVs, Commission staff will begin proceedings for issuance of a Cease and Desist Order to compel the removal of the unpermitted development as described below.

### **Cease and Desist Order**

While we hope to resolve this violation without initiating these proceedings, this letter is to also notify you of my intent, as the Executive Director of the California Coastal Commission ("Commission"), to commence proceedings for issuance of a Cease and Desist Order for unpermitted development, should this not be resolved in a timely fashion. As noted above, the unpermitted development consists of private property signs, fencing seaward of the two County vertical access easements, and use of private security guards on All-Terrain-Vehicles on and along Broad Beach.

The purpose of this enforcement proceeding is to resolve outstanding issues associated with the unpermitted development activities that have occurred on and along Broad Beach. The Cease and Desist Order will direct you to cease and desist from performing or maintaining any development that is inconsistent with a previously issued CDP and/or subject to the permit requirements of the Coastal Act without a CDP and to compel the removal of the private property signs and fencing from the beach and to discontinue the use of private security guards on ATVs.

The Commission's authority to issue Cease and Desist Orders is set forth in Section 30810(a) of the Coastal Act, which states the following:

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

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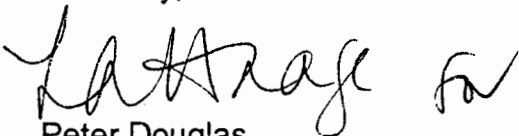
In addition, based on Section 30810(b) of the Coastal Act, the Cease and Desist Order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with the Coastal Act, including removal of any development or material.

For the reasons stated above, the criteria of Section 30810(a) of the Coastal Act have been met and I am sending this letter to initiate proceedings to request that the Commission issue a Cease and Desist Order. Commission staff is willing to work with you to reach an amicable resolution of this matter. If the Property Owners Association chooses to remove the unpermitted development that is located on Broad Beach, provide Commission staff with photographic evidence by that such development was removed, and ensure that use of private security guards on ATVs has been discontinued, Commission staff will withdraw any enforcement action against the Property Owners Association.

In accordance with Sections 13181(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 proceedings by completing the enclosed Statement of Defense (SOD) form. **The SOD form must be returned to the Commission's San Francisco office, directed to the attention of Aaron McLendon, no later than May 9, 2005.**

The Commission staff intends to schedule the hearings for the Cease and Desist Order during the June 8-10, 2005 Commission meeting in Long Beach. If you have any questions regarding this letter or the enforcement case, please call Aaron McLendon at (415) 904-5220 or send correspondence to his attention at the address listed on the letterhead.

Sincerely,



Peter Douglas  
Executive Director

Enc. Statement of Defense Form for Cease and Desist Order

cc: Lisa Haage, Chief of Enforcement  
Sandy Goldberg, Staff Counsel  
Aaron McLendon, Statewide Enforcement Analyst  
Steve Hudson, Southern California Enforcement Supervisor  
Arnold Palmer  
Helmut Martinek

Exhibit #12  
CCC-05-CD-09  
(TPOA - Broad Beach)

ALSCHULER GROSSMAN STEIN & KAHAN LLP  
ATTORNEYS AT LAW

MARSHALL B. GROSSMAN  
A PROFESSIONAL CORPORATION  
mgrossman@agsk.com  
Direct Dial: 310-255-9118  
Direct Fax: 310-907-2118

Exhibit #13  
CCC-05-CD-09  
(TPOA - Broad Beach)

Page 1 of 2

June 28, 2004

Via Facsimile and Mail

Mr. Steve H. Kram  
Executive Vice President/Chief Operating Officer  
William Morris Agency, Inc.  
One William Morris Place  
151 El Camino Drive  
Beverly Hills, CA 90212

Re: Trancas Property Owners Association

Dear Steve:

As you know there are a myriad number of "access related issues" which have impacted relations between the residents on Broad Beach Road and Coastal Commission staff over a period of several years. The purpose of this letter is to suggest that a small working group of Southern California Coastal Commissioners and members of our board meet with a view to achieving, once and for all, a resolution of these issues.

As I see it, the primary issues include the following:

1. Lateral Access. Litigation is now pending concerning access conditions imposed which are claimed to be unconstitutional. There is now which can only be described as a crazy patchwork in existence on Broad Beach. Many properties, including my own, have no access conditions. Where access conditions exist, there is a high degree of inconsistency among them. And, of course, the constitutionality of requiring any access is now before the Court.
2. Vertical Access and View Corridors. The Coastal Commission staff has expressed a desire in the past to attempt to obtain "peak a boo views" or vertical access between houses in addition to the vertical access ways which already exist.
3. Signs on the Beach. Private property signs were placed on the beach prior to the enactment of the Coastal Act. As such, no coastal development permit was required. Nonetheless, Coastal Commission staff has engaged and is now engaged in various attempts to require the removal of some of these signs.
4. Private Beach Patrol. The homeowners engage a private patrol for safety, clean up, and private property protection. Coastal Commission staff has expressed concern about the patrol in general and specifically that the patrol may be requiring people to leave areas that have been dedicated for public access.

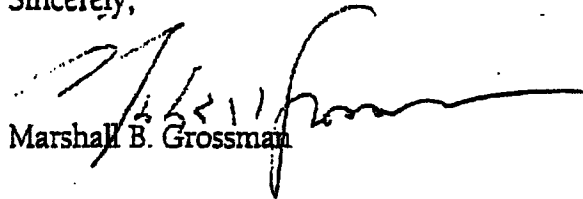
Mr. Steve H. Kram  
June 28, 2004

Via Facsimile and Mail  
Page 2

I realize that these issues are not easily resolved. However, our board is convinced that an overall resolution of these issues is preferable to the patchwork which now exists and to ongoing litigation at great public and private expense.

This letter and all future communications are written in the spirit of settlement and compromise and we invite your positive response.

Sincerely,



Marshall B. Grossman

MBG/sb

cc: Peter Douglas – via facsimile and mail  
TPOA Board of Directors

Exhibit #13  
CCC-05-CD-09  
(TPOA – Broad Beach)

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## CALIFORNIA COASTAL COMMISSION

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



September 1, 2004

Marshall B. Grossman  
1620 26<sup>th</sup> Street  
4<sup>th</sup> Floor, North Tower  
Santa Monica, CA 90404-4060

Re: Broad Beach

Dear Mr. Grossman:

I am writing to follow-up the discussion we had during our meeting on August 24 about recording a notice that will prevent future accrual of prescriptive rights. This procedure is set forth at California Civil Code sections 1009(f)(2) and 813 (copies enclosed). Although the area of permissive public use would need to be described, I think this could be worked out. In addition, the document would have no impact on public tidelands or areas that may become public tidelands in the future as a result of potential sea level rise and/or narrowing of the beach. It appears that these statutes provide a way to address the concerns about accrual of prescriptive rights that has been expressed by owners of parcels on Broad Beach where there is no easement for lateral public access across the beach.

Please call me at 415-904-5220, if you have any questions about this.

Sincerely,

A handwritten signature in cursive script that reads "Sandra Goldberg".

SANDRA GOLDBERG  
Staff Counsel

Enclosures

cc: Lisa Haage  
Aaron McLendon  
Steve Hudson  
Trancas Property Owners' Association  
Attn: Arnold Palmer, President  
Attn: Helmut Martinek, Agent  
28990 Pacific Coast Highway, #107  
Malibu, CA 90265

Exhibit #14  
CCC-05-CD-09  
(TPOA - Broad Beach)

## CALIFORNIA COASTAL COMMISSION

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



Via Regular Mail and Facsimile

March 25, 2005

Marshall Grossman  
Alschuler Grossman Stein & Kahan LLP  
1620 26<sup>th</sup> Street, 4<sup>th</sup> Floor, North Tower  
Santa Monica, CA 90404

Dear Mr. Grossman:

As you requested in our last meeting, the following is a list of property owners (with property addresses and Coastal Development Permit (CDP) numbers), whose CDP imposed a "No Sign" condition. Over the years, the language of the condition has changed slightly, which has resulted in three somewhat different conditions. The three categories of "No Sign" conditions state, in part:

- 1) "The Placement of any sign on the subject property without the required review by, and written approval of, the Executive Director, shall constitute a violation of Coastal Development Permit 'X'."
- 2) "No signs shall be posted on the property subject to this permit unless authorized by a Coastal Development Permit or an amendment to this Coastal Development Permit."
- 3) "No signs shall be installed or placed on the beach unless a Coastal Development Permit is approved allowing for the sign or signs."

After review of our records, we found that 15 properties along Broad Beach were issued CDPs with one of the three "No Sign" conditions listed above. Nine CDPs required category #1 "No Sign" condition, five CDPs required category #2 "No Sign" condition, and one CDP required category #3 "No Sign" condition.

Category #1

31406 Broad Beach Road (Jacobs), CDP No. 4-98-028  
31388 Broad Beach Road (Kenterra VI), CDP No. 4-98-298  
31364 Broad Beach Road (Powell/Moorman), CDP No. 4-98-302  
31360 Broad Beach Road (Kevin Bright Trust), CDP No. 4-99-086  
31350 Broad Beach Road (Fenton Family Trust), CDP No. 4-99-216  
30750 Broad Beach Road (Schwab), CDP No. 4-99-129

Exhibit #15  
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30724 Broad Beach Road (Montanaro), CDP No. 4-99-155  
30718 Broad Beach Road (Fossil II), CDP No. 4-99-154  
30712 Broad Beach Road (Montanaro), CDP No. 4-99-153

Category #2

31272 Broad Beach Road (Spears), CDP No. 4-00-275  
31268 Broad Beach Road (Spears), CDP No. 4-00-275  
31212 Broad Beach Road (Frank), CDP No. 4-02-027  
30916 Broad Beach Road (Nathanson), CDP No. 4-01-148  
30846 Broad Beach Road (Ressler), CDP No. 4-00-189

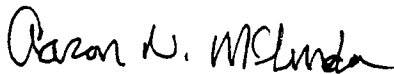
Category #3

30962 Broad Beach Road (Sitrick), CDP No. 4-00-016

For those properties that fall in the Category #1 "No Sign" condition, if the property owner wishes to place a sign on his/her property then they must submit a sign plan to the Executive Director for his/her review and approval. No new CDP or amendment to their CDP is required so long as they submit a sign plan to the Executive Director and that plan is approved. For all other properties, including the properties that are listed in the Category #2 and #3 "No Sign" condition, above, the property owner must submit a CDP application to the City of Malibu for the placement of signs on the property, consistent with Policy 3.13 of the City of Malibu LCP Local Implementation Plan, since the City of Malibu has jurisdiction over Coastal Development Permits in this area (Section 13.10.2 of the City of Malibu's LCP Local Implementation Plan). The City of Malibu's LCP also specifically requires that a CDP is required for signs on beachfront property. The CDP would be appealable to the Commission.

We appreciate your continued cooperation and efforts and we look forward to continuing to work with you to resolve these issues amicably. If you have any questions, please call Lisa Haage or me at (415) 904-5220.

Sincerely,



Aaron N. McLendon  
Statewide Enforcement Analyst

Exhibit #15  
CCC-05-CD-09  
(TPOA – Broad Beach)

## CALIFORNIA COASTAL COMMISSION

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

Exhibit #16  
CCC-05-CD-09  
(TPOA - Broad Beach)



Page 1 of 3

Sent Via Regular Mail and Facsimile

July 11, 2005

Marshall Grossman  
Alschuler Grossman Stein & Kahan LLP  
1620 26<sup>th</sup> Street  
4<sup>th</sup> Floor, North Tower  
Santa Monica, CA 90404-4060

Kenneth A. Ehrlich  
Jeffer Mangels Butler & Marmaro LLP  
1900 Avenue of the Stars, 7<sup>th</sup> Floor  
Los Angeles, CA 90067-4308

Re: Trancas Property Owners Association - Broad Beach

Dear Messrs Grossman and Ehrlich:

The California Coastal Commission received and reviewed the Trancas Property Owner Association's ("TPOA") letter dated June 24, 2005 outlining their Statement of Defense regarding the August 18, 2004 Notice of Intent. Without addressing all of the issues raised in your statement herein, we thought it might be helpful to respond to one issue in the hopes of quickly resolving at least one issue - your reliance on Gion v. City of Santa Cruz, regarding the issue of public access and implied dedication (2 Cal. 3d 29 (1970)). As we pointed out during our first meeting on August 24, 2004 and in my follow-up letter of September 1, 2004, the California Code of Regulations provides other options to address the concerns about implied dedication that have been raised by the TPOA. This letter is to further clarify some of the legal issues apparently giving rise to concerns the TPOA has expressed regarding the need for private property signs to protect against a finding of implied dedication. Enclosed in this letter are a copy of the September 1, 2004 letter, and a copy of California Civil Code section 1009(f) and section 813 for your convenience.

It should be noted the California Legislature responded to the holding of Gion v. City of Santa Cruz (2 Cal. 3d 29, 1970) by enacting California Civil Code section 1009 in 1971. In Gion, the court held that an affirmative grant of a license to the public or evidence that the owner made a bona fide attempt to prevent public recreational use of the private property is necessary to avoid a finding of implied dedication based on public use for more than five years. The court further indicated that in some cases "no trespassing" signs may be adequate to preclude a finding of implied dedication, but in some cases simply posting "no trespassing" signs would



not be considered a reasonable or adequate attempt to prevent public use (i.e., where there is "a continuous influx of beach users to an attractive seashore property"). In reaction to Gion, section 1009 created three means by which a private landowner may prevent implied dedication of coastal property: posting signs, recording notice, or entering a written government agreement. In fact, California Civil Code Section 813, enacted in 1965, was amended in 1971 specifically in reaction to Gion, and was designed to provide a means of preventing implied dedication of coastal property. Particularly, language was changed in the statute's second paragraph to establish that "recorded notice is conclusive evidence" that any use is permissive, subject to revocation, and dispositive in any judicial proceeding on implied dedication or prescriptive right issues. The provisions in Section 1009(f)(2) for the recording of such notices, and the fact that this section was passed as a specific reaction to Gion is further discussed in the more recent California Court of Appeals case of Burch v. Gombos, where the court indicated: "The previously mentioned enactment of Civil Code section 1009 and amendments to Civil Code section 813 were a Legislative reaction to Gion and largely abrogated its holding." (2000) 82 Cal. App. 4th 352, 361 fn.12. Similarly, in Friends of the Trails v. Blasius, the court explained the Legislative reaction to the Gion holding:

"Senate Bill No. 504 (1971 Reg. Sess.) was initially introduced as urgency legislation in response to the controversy [Gion]. The bill was the vehicle for the enactment of Civil Code section 1009 and the amendment of Civil Code section 813." (2000) 78 Cal. App. 4th 810, 822.

Therefore, under section 1009(f), a private landowner may prevent implied dedication of coastal property through recording a notice as provided under California Civil Code section 813. Given the option of recording notice, placing private property signs on Broad Beach is not legally necessary to prevent implied dedication. We note that Section 1009 also provides the option of entering a written agreement with a government agency providing for public use. While TPOA is not proposing this, we are willing to discuss such an agreement.

Moreover, as we have pointed out in our prior correspondence, the posting of signs is development under the Coastal Act, and posting of signs within the coastal zone requires a Coastal Development Permit (CDP) to be legal coastal development under Chapter 3 of the Coastal Act (1972).<sup>1</sup>

In addition, placement of any such signs, including those contemplated by the Civil Code, is not exempt from the permit requirements of the Coastal Act. The Civil Code provides no such exemption. Therefore, compliance with both state laws is required and the Association may only place such signs if they have been authorized pursuant to a coastal development permit, which in this case has not occurred. Although we do not believe that the signs are legally required to protect yourselves from implied dedication, as noted above, we have acknowledged your rights to apply for approval for signs, and even have been willing to work with you to

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<sup>1</sup> We are aware that TPOA has asserted that it has a "vested right" for the placement of private property signs on Broad Beach and therefore no coastal permit is required. The Commission staff does not agree with this assertion for numerous reasons as discussed in the Notice of Intent to TPOA dated August 18, 2004 and resent March 10, 2005. This letter will not further address the vested rights issue but we refer you to our earlier letter on this point.

July 11, 2005

Page 3 of 3

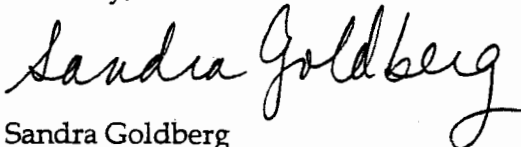
design text and location of signs which staff believed could be consistent with the Coastal Act and therefore would be able to recommend approval of at a Commission hearing.

Finally, we note that as we have previously pointed out to you in our conversations and in our letters of June 23, 2004 and March 10, 2005, the text on the signs placed by the TPOA is, at least in many cases, misleading and inaccurate. Clearly, the Civil Code sections do not authorize signs that inaccurately identify private property. As you know, the signs purport to delineate a point a fixed number of feet seaward of the sign as the beginning of the mean high tide line. The evidence indicates that the purported border identified on the signs placed by the Association is inaccurate (at many times, the signs have been documented to actually be under water). At the very least, this is a case where the actual border between the public and private property is not known, whereas the signs purport to positively identify it. The purported border determinations in the signs that the Association has placed on Broad Beach were not made in compliance with the applicable laws, nor has the State Lands Commission reviewed or concurred with the border determinations.

Moreover, many of the signs were placed on property where there is a lateral public access easement across the property extending inland from the public tidelands (or in some cases, possibly a deed restriction granting public access). There is a legal right for public recreational use in these easements, and it is misleading and inaccurate to have a sign on these parcels stating only that areas, including where the easement is located, are private property. The signs that were placed on parcels with easements or deed restrictions granting public recreational access discourage or interfere with such access and therefore violate the terms and conditions of the coastal development permits that apply to those parcels.

I hope that this letter addresses some of your concerns. If you would like to have us consider any responses to this letter in the upcoming Commission hearing, please provide your response by July 18, 2005. If you have any further questions regarding the enforcement case or the upcoming Commission hearing please contact Lisa Haage, Aaron McLendon, or me at (415) 904-5220.

Sincerely,



Sandra Goldberg  
Staff Counsel

Enclosures

cc: Lisa Haage, Chief of Enforcement  
Aaron McLendon, Statewide Enforcement Analyst

Exhibit #16  
CCC-05-CD-09  
(TPOA - Broad Beach)

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ALSCHULER GROSSMAN STEIN &  
ATTORNEYS AT LAW

Exhibit #17  
CCC-05-CD-09  
(TPOA - Broad Beach)

Page 1 of 2

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OUR FILE NUMBER

S001-0105

Direct Fax: 310-907-2118

July 1, 2004

BY FACSIMILE AND U.S. MAIL

RECEIVED  
JUL 06 2004

CALIFORNIA  
COASTAL COMMISSION

Peter M. Douglas  
Executive Director  
California Coastal Commission  
45 Fremont Street  
San Francisco, CA 94105

Re: Trancas Property Owners Association

Dear Peter:

As a member of the board of directors of the Trancas Property Owners Association, I am replying to your letter dated June 23, 2004 directed to the Association.

Your letter addresses two issues: signs placed on the private property of beach front property owners and the patrol service use of all terrain vehicles (the "ATVs"). Even if considered to be "development," these activities predate the Coastal Act and no permit is required.

With respect to the signs, I trust you will recall correspondence of some ten years ago in response to the Coastal Commission position that a coastal development permit is obtained for the signs. Copies of that correspondence are enclosed. At that time we demonstrated to the Commission that the signs predate the Coastal Act and no permit was required. Both prior to and during the existence of the Coastal Act these signs have been placed and maintained in a consistent manner.

If, in fact, any of the signs purport to identify as private "land that clearly lies below the mean high tide line" or are otherwise inappropriate, then we are certainly prepared to remedy same. Your letter is not specific with respect to such signage and we invite you to provide such specifics so that we may deal reasonably with those issues while, at the same time, preserving those signage rights which attached prior to the enactment of the Coastal Act. Please understand that in the absence of such signage, private property owners run the risk of losing rights to their own property through prescriptive use and without compensation. Gion vs. City of Santa Cruz, 2 Cal.3<sup>rd</sup> 29 (1970). Rights to appropriate signage must be respected as well as the rights accorded to the general public under the Coastal Act.

With respect to the ATVs, that these services provided to the homeowners also predate the Coastal Act is clear from the minutes of the Association Board dated November 20, 1971, which were enclosed with my letter to the Commission dated June 2, 1995.

Peter M. Douglas  
July 1, 2004  
Page 2

Page 2 of 2

As you know there is both lateral and vertical access to Broad Beach. There are no public facilities. As a result, trash and worse is left on the beach, public and private, by those who utilize the lateral and vertical access to the beach. Moreover, visitors take it upon themselves to go on what is clearly private property. Part of the confusion over boundaries results from the patchwork of lateral access that the Coastal Commission has obtained over the years, some prior to the Nollan decision but much of it after the Coastal Commission was found to have acted illegally in requiring lateral access. The confusion of which you write in your letter is, in my opinion, a direct result of Coastal Commission action over the years; not the result of conduct on the part of the homeowners or the Association.

If you are aware of specific instances in which the service personnel on the ATVs have acted contrary to the Coastal Act, then please let us know and we will remedy those issues. I made the same request of you in my June 2, 1995 letter and have never received a specific complaint.

The Association categorically denies that there is any ongoing practice of directing the public not to enjoy or to leave public areas. If such an occasion occurred, then it was certainly inadvertent and not intentional.

I invite you or members of your staff to visit the beach on any one of the crowded summer weekends and you will see public beach goers and private homeowners co-existing peacefully and without incident. Please come by this holiday weekend and see for yourself. The only "incident" of which I am aware is one that was intentionally provoked by a Commission member who was accompanied by a press photographer/reporter.

In closing, I repeat what I have stated to you both in writing and personally over many years now: these are complex issues which should be resolved amicably. Our Association is ready, willing and able to do so. In that spirit I sent a letter to Commissioner Steve Kram on June 28 (with a copy to you), a copy of which is here enclosed. We remain ready and open for such dialogue.

Kindest regards.

Sincerely,



Marshall B. Grossman

MBG/sb  
Enclosures

cc: Commissioners, California Coastal Commission - via mail  
(with enclosures)

## CALIFORNIA COASTAL COMMISSION

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



Via Regular Mail and Facsimile

July 26, 2005

Kenneth A. Ehrlich  
Jeffer Mangels Butler & Marmaro LLP  
1900 Avenue Of The Stars, 7<sup>th</sup> Floor  
Los Angeles, CA 90067-4308

Marshall Grossman  
Alschuler Grossman Stein & Kahan LLP  
1620 26<sup>th</sup> Street, 4<sup>th</sup> Floor, North Tower  
Santa Monica, CA 90404

Dear Mr. Ehrlich and Mr. Grossman:

Thank you for your letter of July 13, 2005, in response to Sandra Goldberg's July 11, 2005 letter concerning the issue of "implied dedication". In your letter you stated, among other things, that there are, at this time, no signs on Broad Beach that were placed by the TPOA and you informed us that the service patrol is currently not using ATVs. While this is a very positive step to prevent the continuing impacts to public access along Broad Beach, due to the episodic nature of the violations at Broad Beach and our desire to resolve these with certainty and avoid future complication for either of us we are, nevertheless, proceeding with recommending that the Commission approve a cease and desist order at its August hearing. The cease and desist order would require the TPOA to cease and desist from performing or maintaining unpermitted development including "private property" signs along Broad Beach and fencing located seaward of the two County owned and operated vertical public access ways; to cease and desist from operating private security guards on ATVs; and to cease and desist from conducting further unpermitted development along Broad Beach. We note that these requirements are apparently consistent with your current actions as represented in your July 13 letter, but would further strengthen the commitment to remove the unpermitted signs and fencing and to discontinue the use of the private security patrols on ATVs. The hearing is scheduled for August 12, 2005, in Costa Mesa. We hope that the outcome of this hearing will solidify our mutual goal of resolving these outstanding issues and ensure that there are no further violations of the Coastal Act along Broad Beach.

Exhibit #18  
CCC-05-CD-09  
(TPOA – Broad Beach)

If you have any further questions regarding the August hearing or the cease and desist order please do not hesitate to call me at (415) 904-5220.

Sincerely,



Aaron McLendon  
Statewide Enforcement Analyst

cc: Lisa Haage, Chief of Enforcement  
Sandra Goldberg, Staff Counsel

Exhibit #18  
CCC-05-CD-09  
(TPOA – Broad Beach)