

CALIFORNIA COASTAL COMMISSION  
STATEWIDE COASTAL ACCESS PROGRAM  
725 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060  
(831) 427-4875



February 16, 2006

Edwin B. Reeser, III  
Sommenschein, Nath & Rosenthal  
601 South Figueroa Street  
Suite 1500  
Los Angeles, California 90017

Re: Vertical Public Access Easement at 22466 Pacific Coast Highway

Dear Mr. Reeser:

Thank you for your letter dated January 19, 2006. In that letter, you raise a number of questions and request a number of documents. Let me begin by discussing some of the issues you raised and listing the documents that I believe address those issues:

### 1. Liability Insurance

Access for All maintains a Liability Policy for the 23 Public Access Easements they hold, including for the Ackerberg property. The amount of coverage is determined by Access for All and the carrier. A copy of that policy is attached. In addition I have enclosed a copy of "Limitations on Liability for Nonprofit Managers" published jointly by the Coastal Commission and Coastal Conservancy in 1997; this brochure discusses liability issues associated with public access easements.

### 2. Management Plan

For every Offer to Dedicate Public Access Easement accepted by a nonprofit organization, the Coastal Commission requires the submittal of a Management Plan. The Commission and the Coastal Conservancy must approve this plan. Details as to improvements (e.g. gates and signs) as well as monitoring and maintenance responsibilities are required elements of the Plan. Attached is the approved Management Plan, dated July 23, 2003, for the Ackerberg Easement. As you can see, the implementation is phased; Phase 1 required the survey to identify the encroachments and Phase 2 (now) includes encroachment removal and identification of the public access improvements. Once the improvements are identified, then the Management Plan will be amended to reflect those improvements.

### 3. Funding

Access for All has received two grants from the State Coastal Conservancy. The first grant was approved on December 2, 2004 and authorized \$35,000 for a variety of site design tasks to

develop four coastal accessways in Malibu, including the Easement on the Ackerberg property. A second grant was approved on October 27, 2005 for \$70,000 for site design tasks for four coastal accessways in Malibu. Copies of the Staff Recommendations for both grants are attached.

#### **4. Qualifications**

Access for All applied to the Executive Director of the Coastal Commission on July 25, 2000 to be considered as a nonprofit organization acceptable to accept and operate Offers to Dedicate Public Access Easements. After reviewing the submittal from Access for All and reviewing their qualifications, the Executive Director approved them to an acceptable agency on September 15, 2000. The submittal from Access for All and the Executive Director approval letter is attached.

#### **5. Public Access Easements**

Access for All has accepted 23 Offers to Dedicate; 21 are located in Malibu (16 are lateral along the shoreline and 5 are verticals). To date, only one vertical Easement (on David Geffen's parcel) has been opened. They have also accepted one lateral Easement in Santa Monica and one in San Diego. The location of these Public Access Easements are shown in the attached spreadsheet. We expect that Access for All will continue to accept Offers to Dedicate and to manage these easements into the future.

#### **6. Long Term Responsibility for the Easement**

The Certificate of Acceptance includes provisions for future disposition of the Easement should Access for All cease to exist or fail to carry out its responsibilities as Grantee. On page 3 of the Certificate it states that if Access for All does not manage the easement in accordance with July 23, 2003 Management Plan, then all of Access for All's right, title and interest in the Easement shall vest in the State of California, acting by and through the Conservancy. A copy of the Certificate of Acceptance is attached.

I hope this discussion and the documents I have provided give you sufficient information about the steps that the State has taken to allow Access for All to accept the Easement, as well as how Access for All will open and operate the Accessway.

As for the series of questions you raised about the specifics of constructing new public access gates, signs, hours of operation, stairs/ramp, etc, I suggest that we set a meeting to discuss these details. Along with myself, Steve Hoyer of Access for All and Joan Cardellino of the State Coastal Conservancy could attend. At this point, the State and Access for All are ready and prepared to move ahead with opening this Public Access Easement.

#### **Ackerberg Encroachments**

As we have previously discussed, a necessary step in the process is your client's agreement to timely removal of the identified encroachments. At a minimum, it will be necessary to remove 10 ft. of perimeter wall and relocate the generator to a location outside the Easement area. As for the light posts and potential ramp or stairs over the unauthorized rip rap, we can discuss these issues during an on-site visit or at the meeting I suggested above.

In conclusion, we are encouraged by your readiness to move forward and your willingness to continue efforts to resolve this informally, without resorting to a formal enforcement proceeding. We are confident that we can resolve these issues amicably and in a way that is consistent with the permit and Coastal Act. We hope to do so very soon, and of course, prior to any sale of the property. Since we would both like to resolve these issues quickly, we are ready to meet with you in the next 30 days. Please call me to discuss meeting times and location or if you have any questions about this letter.

Sincerely,



Linda Locklin  
Coastal Access Program Manager

Cc: Steve Hoye, Access for All  
Joan Cardellino, State Coastal Conservancy  
Sandy Goldberg, CCC-Staff Attorney  
Lisa Haage, CCC-Enforcement, San Francisco  
Pat Veasart, CCC-Enforcement, Ventura

Exhibit 13  
CCC-09-CD-01 and CCC-09-NOV-01  
(Ackerberg)

**Sonnenschein**  
SONNENSCHN NATH & ROSENTHAL LLP

Edwin B. Reeser, III  
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**RECEIVED**

MAR 27 2006

March 23, 2006

CALIFORNIA  
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VIA FACSIMILE & U.S. MAIL

Linda Locklin  
Coastal Access Program Manager  
California Coastal Commission  
725 Front St., Suite 300  
Santa Cruz, CA 95060

Re: 22466 Pacific Coast Highway, Malibu

Dear Ms. Locklin:

We have reviewed your letter dated February 16, 2006 (received February 22, 2006) and accompanying documents regarding vertical access for the above-referenced property. Your letter and documents raise a number a couple of new questions and issues which, along with those raised in our previous January 19, 2006 letter to you, can serve as a framework for our meeting with you and representatives from Access for All and the California Coastal Conservancy.

I. Insurance and Indemnification

The Chubb liability policy maintained by AFA contains no specific reference as to which easements held by AFA are covered under the policy. Presuming that AFA intends for this liability policy to cover all easements held by AFA, we would request that Chubb be notified upon AFA's opening of the Ackerberg easement for public use. It would also seem appropriate that AFA and the Coastal Commission agree that should the liability policy lapse for any reason, the easement will be immediately closed.

You state that the \$2,000,000 "general aggregate" and \$1,000,000 "each occurrence" limits on the policy were "determined by AFA and the carrier." However, the yearly premium for such liability coverage was not set forth in the policy information you provided. Given that a



Exhibit 14  
CCC-09-CD-01 and CCC-09-NOV-01  
(Ackerberg)



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typical homeowner might have an individual liability policy for these coverage amounts, we would inquire whether these policy limits provide sufficient coverage for the Ackerberg easement given the hazardous conditions inherent to the easement, such as the seawall, the significant (and variance in) drop from the top of the seawall to the sand, and the periodic extreme tidal and shoreline conditions, as well as the fact that the easement begins at the edge of a busy highway and will be for open for public use. In light of these unique conditions, we again raise the question whether a third-party consultant would be in the best position to determine appropriate coverage limits for the Ackerberg easement. In addition to the unique conditions inherent in the Ackerberg easement, we would think such a consultant would want take into consideration the number and nature of claims arising from public use of similar beach accessways.

Your letter also did not address whether AFA would agree to indemnify the property owner as a condition for opening the Ackerberg easement for public use. What is AFA's position on indemnification of the property owner?

2. Encroachments and Improvements

We appreciate AFA's statement in its 2003 Management Plan for the Ackerberg easement that it "will work with the property owner to design" necessary improvements. We look forward to discussing with you and AFA the "encroachments" identified in your December 13, 2005 letter, issues relating to gates, signs, and hours of operation, and whether AFA intends to install and maintain a ramp or stairs from the top of the seawall down to the sand, as would seem necessary for pedestrian traffic, and whether such an improvement must be ADA compliant. The Coastal Conservancy, in its Staff Recommendations recommending grant awards to AFA, has itself recognized the potential need to install stairs at other vertical access easements in Malibu, such as the easement at 19106 Pacific Coast Highway. We also look forward to discussing issues relating to the seawall, rip-rap rocks, and the impact of the unique beach and tidal conditions on the feasibility and safety of opening the easement for public use, all of which you do not address in your letter. On a related subject, AFA's July 2000 application to the Coastal Commission for authorization to accept Offers to Dedicate refers to "site-specific feasibility studies" that were to be undertaken for each easement AFA planned to open and operate. Has AFA prepared such a "feasibility study" for the Ackerberg easement?

3. Operation and Maintenance

Although we understand that AFA is to amend its Management Plan once removal of encroachments and improvements to the easement take place, we do not view the current Plan as sufficiently detailed concerning AFA's intended operation and maintenance of the Ackerberg



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(Ackerberg)



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easement. For instance, the Plan fails to address any issues relating to graffiti removal, parking, sanitation and toilets, security for neighboring homes, lifeguards, and closure of the easement during periods of rough or extreme high tide.

Additionally, the Plan does not indicate whether AFA plans to install gates both at the beach end and the PCH end of the easement, as exist at the Geffen easement. Moreover, although the Plan states that the easement is to be "monitored," AFA does not provide any further details as to its "monitoring" plans. For instance, does AFA plan to station monitors at the easement, as it did during peak season at the Geffen easement?

AFA's Management Plan also states that a "time-lock mechanism" will operate the gate that is to be constructed on the PCH side of the Ackerberg easement. We have observed AFA's representations over the last few years that it plans to install a similar "time-lock mechanism" for the gates at the Geffen easement, but note that no such mechanism has been installed there yet. Given AFA's apparent efforts to develop such a mechanism with a local college professor, since admittedly such a mechanism has never been used in an outdoor, marine environment, what are AFA's current plans for installation of such a mechanism on gates to the Ackerberg easement? Additionally, what provisions will AFA make in the event such an installed mechanism malfunctions or is damaged?

Finally, AFA's Management Plan states that on February 1 of each year, it is to submit an annual report to the Coastal Commission and Coastal Conservancy staff detailing its activities with regards to vertical access easements. Please provide us with copies of all such annual reports AFA has submitted concerning the Ackerberg easement, including its 2006 report.

#### 4. Long-Term Funding

Although it appears from the documents you provided that the Coastal Conservancy awarded two separate grants to AFA in December 2004 and October 2005 in the amounts of \$35,000 and \$70,000, we are concerned by the fact that nothing in the information you provided reflects AFA's sources of long-term funding for operation and maintenance of all the easements it holds or intends to hold, including the Ackerberg easement. As the Conservancy's Staff Recommendations for the 2004 and 2005 grants pointed out, the costs inherent in maintaining and operating beach accessways are so significant that Los Angeles County has refused to accept responsibility for any new easements over the last several years, citing insufficient funding. Indeed, according to the Conservancy's October 2005 Staff Recommendation, "a significant portion" of the December 2004 grant of \$35,000 was used up by AFA over a period of few months just to open the Geffen easement for public use.



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The Conservancy Staff Recommendations demonstrate that AFA is almost entirely dependent on Conservancy grant money at the present time for funding. The Conservancy Staff Recommendations reflect that AFA has raised, or plans to raise, only \$6,000 in in-kind contributions to fund its planned activities, compared to the \$105,000 in total grant money awarded by the Conservancy to AFA. However, in AFA's July 2000 application letter to the Coastal Commission requesting authorization to accept OTDs and operate public accessways, AFA stated that it only planned to apply for grant assistance from the Conservancy through 2005, that it "hop[ed] to eventually become self-sustaining" financially through "personal solicitation fundraising," and that its "fundraising program has already begun with solicitation of private foundations through grant proposals for start-up funding" and it intended to "initiate a personal solicitation fundraising program which will include: Direct Mail; Major Gift Club; Planned Giving/Estate Gift Solicitation; [and] Capital Campaign for Endowment."

As we are now in 2006 — six years after AFA's formation and the Coastal Commission's approval of AFA to accept OTDs and manage public accessways -- it is reasonable to inquire as to the sources of funding for AFA's activities in the long term. How much money has AFA raised from private sources for its past and future activities, and how much does AFA plan to allocate from these privately raised funds to operate and manage the Ackerberg easement? Does AFA intend to continue to seek funding from the Coastal Conservancy to support its activities, even though AFA represented in its application to the Coastal Commission that it would only seek such funding through 2005? Does the Coastal Conservancy plan to continue to fund AFA for the foreseeable future or in perpetuity? Moreover, has AFA prepared itemizations of how it has spent Conservancy grant money thus far? If so, we would like copies of those records as well. We would also renew our request for copies of AFA's recent financial statements and AFA's budget estimating the costs to open the Ackerberg easement and the yearly costs of its maintenance and operation.

#### 5. Staffing/Personnel

In AFA's July 2000 application letter to the Coastal Commission, Mr. Hoye states that AFA intended to "expand its Board." Has AFA expanded its Board from the original three directors in place at the time of its incorporation? We also note from AFA's application letter that its original intent was to "initially contract out the opening, closing and maintenance of access sites" to Los Angeles County, but that "gradually . . . [the] plan is to hand this job over to local volunteers." We would like to know whether the County has agreed to initially perform these duties at the Geffen easement and whether the County has agreed to perform a similar function for the Ackerberg easement. Furthermore, given AFA's stated plan to recruit volunteers "to assist with maintenance and monitoring of its access sites" and our awareness that AFA has



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attempted to solicit volunteers to assist with its accessways, we would also inquire as to how many active volunteers AFA has recruited and how many of these volunteers will assist with the long-term maintenance and monitoring of the Ackerberg accessway.

In light of these funding and staffing issues, and given that (1) AFA has only recently opened the first of five vertical access easements in Malibu where it has accepted Offers to Dedicate, (2) it intends on opening these remaining four accessways, and (3) it intends to accept new Offers to Dedicate and to manage these easements in the future, Mrs. Ackerberg's concern about AFA's ability to adequately finance, maintain, and operate the easement through her property in perpetuity is entirely reasonable. Your February 17, 2006 letter does not adequately address her concerns in this regard.

6. AFA's Forfeiture of Interest in Ackerberg Easement

AFA's Certificate of Acceptance of the Ackerberg OTD provides that "should [AFA] cease to exist or fail to carry out its responsibilities as Grantee to manage the easement . . . , then all of [AFA's] right, title and interest in the easement shall vest in the State of California, acting by and through the Conservancy or its successor, upon acceptance thereof," provided, however that the State can designate another public agency or private association acceptable to the Commission, in which case vesting shall be in that agency or organization rather than the State. The questions that are posed by this provision are twofold. First, how would the funding, operation, and maintenance of the Ackerberg easement be affected if the State accepts AFA's interest in the easement? Second, what happens to the Ackerberg easement if the State does not accept AFA's interest in the easement, and no other public agency or qualified private association steps forward to take over funding, operation, and management of the easement?

Additionally, under the Certificate of Acceptance, AFA's right, title and interest in the Ackerberg easement cannot be taken away except upon (1) a finding by the Conservancy, made at a noticed public hearing, that AFA has ceased to exist or failed to carry out its responsibilities, and (2) recordation by the State or another designated agency or entity of a Certificate of Acceptance. Under this scenario, it appears likely that if AFA were to abandon its obligation to operate and manage the easement (via ceasing to exist or otherwise), there would be a significant period of time before its rights to the easement are actually taken away, leaving the easement without active management and in danger of serious neglect during this intervening period. The Certificate of Acceptance fails to take into account such a situation.

We are ready to meet with you, Mr. Hoye, and Ms. Cardellino to discuss these issues and those we have raised in our previous letter to you. Although we do not feel that Mrs. Ackerberg's presence is necessary at this meeting, it will be difficult for us to communicate with



Exhibit 14  
 CCC-09-CD-01 and CCC-09-NOV-01  
 (Ackerberg)

**Sonnenschein**  
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her during the month of May as she will be out of town for that entire month, so you might want to take that into consideration for the timing of our meeting.

We look forward to meeting with you.

Very truly yours,



Edwin B. Reeser, III

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Exhibit 14  
CCC-09-CD-01 and CCC-09-NOV-01  
(Ackerberg)

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Washington, D.C.  
West Palm Beach

April 3, 2006

VIA FACSIMILE & U.S. MAIL

Linda Locklin  
Coastal Access Program Manager  
California Coastal Commission  
725 Front St., Suite 300  
Santa Cruz, CA 95060

Re: 22466 Pacific Coast Highway, Malibu

Dear Ms. Locklin:

On Friday, March 31, 2006, we received a summons and complaint filed on March 29 by Jack Roth, Lisette Ackerberg's neighbor, naming the Coastal Commission, the Coastal Conservancy and Access for All as defendants (and Mrs. Ackerberg and the Lisette Ackerberg Trust as real parties in interest) in a lawsuit relating to opening of vertical access through Mrs. Ackerberg's property. Given that this lawsuit will certainly complicate our discussions concerning vertical access and that Mr. Roth seeks a preliminary injunction as part of his requested relief, we would inquire whether it would be prudent to meet at this time with you and representatives of the Coastal Conservancy and Access for All as originally planned, or whether such a meeting should be continued to a later date.

Further complicating scheduling such a meeting is that Mrs. Ackerberg has advised that she will be celebrating Passover at her home with family from April 12 through April 20, during which time she will have houseguests, and I will be out of the country from May 8 through May 15. I further understand that you will be on vacation beginning the week of April 24. We can explore with Mrs. Ackerberg whether she is amenable to opening up her property while she is out of town during the month of May so that the parties can jointly discuss issues relating to the physical layout of her property and the proposed accessway. Please advise after consultation with your counsel when would be an appropriate date for such a meeting. Furthermore, now that



Exhibit 15  
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(Ackerberg)

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litigation has commenced, please advise whether we should continue to speak with you directly concerning this matter or solely through your counsel.

Very truly yours,



Edwin B. Reeser, III

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Exhibit 15  
CCC-09-CD-01 and CCC-09-NOV-01  
(Ackerberg)

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## CALIFORNIA COASTAL COMMISSION

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

**NOTICE OF VIOLATION OF THE CALIFORNIA COASTAL ACT  
REGULAR AND CERTIFIED MAIL**

5 March 2007

Lisette Ackerberg  
22466 Pacific Coast Highway  
Malibu, CA 90265

Edwin B. Reeser, III  
Sonnenschein, Nath, and Rosenthal  
601 South Figueroa Street, Suite 1500  
Los Angeles, CA 90017

Violation File Number: V-4-07-006

Property location: 22466 Pacific Coast Highway; City of Malibu; County of Los Angeles; APN 4452-002-013

Unpermitted Development: Rock rip-rap, 9-foot high block wall, concrete slab and generator, fence, railing, planter, and landscaping located within vertical and lateral public access easements.

Dear Ms. Ackerberg and Mr. Reeser:

Our staff has confirmed that there is development that has been undertaken on the above-referenced property without a Coastal Development Permit (CDP), and moreover, which is inconsistent with the terms and conditions of Coastal Development Permit No. 5-84-754 which was approved by the Coastal Commission on January 24, 1985. That permit required you to record a vertical public access Offer to Dedicate in order to mitigate the impacts of construction of your (then) new home located at 22266 Pacific Coast Highway in the City of Malibu. The Irrevocable Offer to Dedicate was recorded by you and your husband in 1985, and was formally accepted by Access for All in 2003. As you know, Access for All is now prepared to develop the public access easement and open it for public use.

As you are aware, there has been a great deal of correspondence regarding this issue between the Commission, Mr. Reeser, and Access for All over the last two years. We believe that there has been a thorough discussion of the issues in that correspondence and that there is no need to revisit those discussions in this letter. The basic issue is that Access for All (the easement holder) is now prepared to open the public access easement for public use, as provided for in the permit, and therefore, you<sup>1</sup> must now remove the unpermitted development located within said easement that would impair public access in order for Access for all to proceed.

<sup>1</sup> The property owner: Mrs. Ackerberg

The unauthorized development on your property includes:

1. The placement of rock rip-rap in both the lateral and vertical access easements. On June 9, 1983, the Commission approved CDP No. 5-83-360 which authorized the construction of a 140-foot long wooden bulkhead. The approved plans allowed rock and gravel wastemix, ¾" to 12" in diameter seaward of the bulkhead, and an overtopping blanket of rocks 1' to 2' in diameter landward of the bulkhead. The rock rip-rap in place today does not conform to the approved plans of CDP No. 5-83-360. Please see our letter to you dated December 13, 2005.
2. The placement of a concrete slab and generator, adjacent to PCH, at the northern end of the easement. The City of Malibu apparently issued an electrical permit for the generator in 1998, however, there is a note attached which indicates that the project is "beyond rec'd setbacks" and the permit is stamped "expired." Regardless, no CDP was issued for the slab and generator, and it is located within the area specifically identified as the location of the vertical accessway.
3. The placement of a 9-foot high block wall across (blocking) the easement at the northern end of the easement along PCH. Neither the City of Malibu nor the Commission issued a CDP for the block wall.
4. The placement of fences, railings, landscaping and planters in the easement. Neither the City of Malibu nor the Commission has issued CDPs for fences, planters, railings, etc. which block the easement or which could potentially impede public pedestrian access to the shoreline.

Standard Condition Three (3) of CDP No. 5-84-754 states:

**All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval** (emphasis added).

The above-mentioned development was not approved in any CDP and moreover, is not consistent with the development approved by the Commission pursuant to CDP Nos. 5-84-754 and 5-83-360. In fact, it is directly inconsistent with Special Condition one (1) of CDP No. 5-84-754 which states:

***Vertical Access Condition. Prior to transmittal of the permit, the Executive Director shall certify in writing that the following conditions have been satisfied. The applicant shall execute and record a document, in a form and content approved by the Executive Director of the Commission, irrevocably offering to dedicate to an agency approved by the Executive Director, an easement for public pedestrian access to the shoreline. Such easement shall be 10 feet wide located along the eastern boundary of the property line and extend from the northerly property line to the mean high tide line. Such easement shall be recorded free of prior liens except for tax liens and free of prior encumbrances which the Executive Director determines may affect the interest being conveyed.***

***The offer shall run with the land in favor of the People of the State of California, binding successors and assigns of the applicant or landowner. The offer of dedication shall be irrevocable for a period of 21 years, such periods running from the date of recording.***

Please be advised that non-compliance with the plans, terms, and conditions of an approved permit constitutes a violation of the Coastal Act.

Additionally, the Irrevocable Offer to Dedicate recorded on April 4, 1985 as Document No. 85-369283 states (in relevant part):

***NOW THEREFORE, in consideration of the granting of permit no. 5-84-754 to the owner(s) by the Commission, the owner(s) hereby offer(s) to dedicate to the People of California an easement in perpetuity for the purpose of public pedestrian access to the shoreline.***

In most cases, a violation involving non-compliance with an approved coastal permit may be resolved administratively by applying for and obtaining an amendment to the previously issued coastal permit to either authorize the unpermitted changes to the approved project and/or to remove the unpermitted development and restore the site. However, the Coastal Act specifically requires the Executive Director to reject amendments which would "lessen or avoid the intended effect of an approved permit" (section 13166 of the Coastal Act implementing regulations). Thus, an application to amend CDP No. 5-84-754 to authorize the subject development is not an option here.

In this case, the unpermitted development is located within vertical and lateral public access easements, blocks or impedes public access, and is directly inconsistent with the intended effect of the original permit condition of providing public pedestrian access to the shoreline. Therefore, in order to resolve this matter in a timely manner and avoid the possibility of a monetary penalty or fine, we are requesting that you submit, by **April 6, 2007**, an as-built site plan and a detailed plan and project description for removal of the unauthorized development. Upon receipt of said plan, staff will review it and make a determination as to whether a CDP or an amendment to CDP No. 5-85-754 will be required to authorize the work. Please contact me by no later than **March 23, 2007** regarding how you intend to resolve this violation.

We hope that you will choose to cooperate in resolving this violation by submitting a detailed plan as requested above. If you do not, we will be forced to consider pursuing additional enforcement actions to resolve the matter. The Coastal Act contains many enforcement remedies for Coastal Act violations. Section 30803 of the Act authorizes the Commission to maintain a legal action for declaratory and equitable relief to restrain any violation of the Act. Coastal Act section 30809 states that if the Executive Director determines that any person has undertaken, or is threatening to undertake, any activity that may require a permit from the Coastal Commission without first securing a permit, the Executive Director may issue an order directing that person to cease and desist. Coastal Act section 30810 states that the Coastal Commission may also issue a cease and desist order. A cease and desist order may be subject to terms and conditions that are necessary to ensure compliance with the Coastal Act. Moreover, section 30811 authorizes the Commission to order restoration of a site where development occurred without a permit from the Commission, is inconsistent with the Coastal Act, and is causing continuing resource damage.

In addition, section 30820(a) provides for civil liability to be imposed on any person who performs or undertakes development without a coastal development permit or in a manner that is inconsistent with any coastal development permit previously issued by the Commission in an amount that shall not exceed \$30,000 and shall not be less than \$500 per violation. Section 30820(b) provides that additional civil liability may be imposed on any person who performs or undertakes development without a coastal development permit or that is inconsistent with any coastal development permit previously issued by the Commission when the person intentionally and knowingly performs or undertakes such development, in an amount not less than \$1,000 and not more than \$15,000 per day for each day in which each violation persists. Section 30821.6 provides that a violation of either type of cease and desist order or of a restoration

order can result in the imposition of civil fines of up to \$6,000 for each day in which each violation persists. Section 30822 allows the Commission to maintain a legal action for exemplary damages, the size of which is left to the discretion of the court. In exercising its discretion, the court shall consider the amount of liability necessary to deter further violations.

Finally, the Executive Director is authorized, after providing notice and the opportunity for a hearing as provided for in Section 30812 of the Coastal Act, to record a Notice of Violation against your property.

We would strongly prefer to resolve this matter amicably and look forward to hearing from you. Thank you for your attention to this matter. If you have any questions regarding this letter or the pending enforcement case, please feel free to contact me.

Sincerely,

N. Patrick Veasart  
Enforcement Supervisor

**cc: Lisa Haage, Chief of Enforcement  
Gary Timm, District Manager  
Linda Locklin, Public Access Manager  
Alex Helperin, Staff Counsel  
Barbara Carey, Supervisor, Planning and Regulation  
Steve Hudson, Supervisor, Planning and Regulation  
Tom Sinclair, District Enforcement Officer**

**Enc: CCC letter to Edwin B Reeser dated December 13, 2005  
Trueblood - Offer to Dedicate pursuant to CDP No. 4-83-360  
Ackerberg - Offer to Dedicate pursuant to CDP No. 4-85 754  
Access For All - Certificate of Acceptance – Ackerberg OTD  
State Lands Commission – Certificate of Acceptance – Trueblood OTD**



Edwin B. Reaser, III  
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CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

601 South Figueroa Street  
Suite 1500  
Los Angeles, CA 90017-5704  
213 623 9300  
213 623 9924 fax  
www.sonnenschein.com

March 22, 2007

VIA FACSIMILE & U.S. MAIL

N. Patrick Veasart  
Enforcement Supervisor  
California Coastal Commission  
South Central Coast Area  
89 South California St., Suite 200  
Ventura, CA 93001

Re: 22466 Pacific Coast Highway, Malibu, California

Dear Mr. Veasart:

We have received your March 5, 2007 "Notice of Violation of the California Coastal Act" addressed to Lisette Ackerberg and me.

As you are no doubt aware, on March 29, 2006, Jack Roth filed a lawsuit against the California Coastal Commission, California Coastal Conservancy, and Access for All (in which he also named Lisette Ackerberg and the Lisette Ackerberg Trust as Real Parties in Interest), seeking to revoke and invalidate the ten-foot-wide vertical access easement that runs along the eastern boundary of Mrs. Ackerberg's property line and to enjoin the defendants from opening the easement for public use. Mr Roth appealed Judge Yaffe's November 2, 2006 dismissal of his lawsuit to the Second District Court of Appeal, Appeal No. B195748, and the parties are currently waiting for the Court of Appeal to set a briefing schedule.

Until Mr. Roth's lawsuit has reached final judgment (that is, a judgment that is free from direct attack on appeal), it is premature for the Coastal Commission to demand from Mrs. Ackerberg removal of the alleged "unpermitted development" on her property that you identify in your letter. Although you state that Access for All "is now prepared to develop the public access easement and open it for public use" and that the alleged "unpermitted development" on Mrs. Ackerberg's property "would impair public access" to the easement, should Mr. Roth

Exhibit 17  
CCC-09-CD-01 and CCC-09-NOV-01  
(Ackerberg)

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SONNENSCH E I N N A T H & R O S E N T H A L L L P

N. Patrick Veasart  
March 22, 2007  
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prevail in his lawsuit, the Coastal Commission, Coastal Conservancy, and AFA would have no right to open the easement for public use.

Forcing Mrs. Ackerberg to remove all items within the easement (or imposing penalties against Mrs. Ackerberg for her failure to do so) before final resolution of Mr. Roth's lawsuit would cause irreparable harm to Mrs. Ackerberg. Mrs. Ackerberg would lose the benefits of a successful legal challenge by Mr. Roth should she be forced to remove such items as the generator, block wall, fences, and landscaping located within the easement (or forced to incur penalties for her failure to remove such items) before Mr. Roth's lawsuit is adjudicated to a final judgment. On the other hand, the Coastal Commission, Coastal Conservancy, and AFA will not be unduly prejudiced or suffer any irreparable harm by waiting for final resolution of Mr. Roth's lawsuit before taking further action concerning the easement. Indeed, nearly nineteen years elapsed before the Coastal Commission, Coastal Conservancy, and AFA decided to act on the offer to dedicate.

Moreover, should Mr. Roth prevail in his lawsuit, Mrs. Ackerberg would have available to her the option to apply for and obtain an amendment to the previously issued coastal permit to authorize any unpermitted development. Your statement that such an administrative procedure is available "[i]n most cases," but is "not an option here" because such amendment would "lessen or avoid the intended effect of the approved permit," is premature given that Mr. Roth's lawsuit has not been adjudicated to final judgment. Should Mr. Roth prevail in his lawsuit, such an administrative remedy would not "lessen or avoid the intended effect of the approved permit," because the easement would have been declared invalid and its opening for public use would be permanently enjoined.

Finally, it should be noted that the Coastal Commission, in Linda Locklin's March 28, 2005 letter to Mrs. Ackerberg, recognized the Ackerbergs' right to "make full use of [the] entire property, including continued use of the offered strip, until such time as it is developed into an open vertical accessway." Both Coastal Commission commissioners and staff agreed to this use at the January 24, 1985 hearing on the Ackerbergs' coastal permit, which agreement is memorialized in my January 28, 1985 letter to Gary Gleason of the Coastal Commission (a copy of which was attached to Ms. Locklin's March 28, 2005 letter). Both Ms. Locklin's letter and Mr. Reeser's letter are attached for your reference. Moreover, the plans for the Ackerberg development that were submitted to the Coastal Commission in 1984/85 in conjunction with the Ackerbergs' coastal development permit application contemplated the erection of items such as the block wall, fences, railings, and landscaping (copies of relevant segments of those plans are attached). Accordingly, we object to the Coastal Commission's assertion that any and all items on Mrs. Ackerberg's property within the ten-foot-wide easement are *per se* unauthorized and unpermitted.

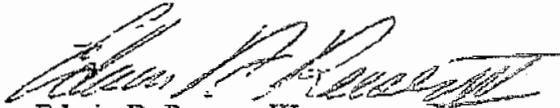
Exhibit 17  
CCC-09-CD-01 and CCC-09-NOV-01  
(Ackerberg)

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N. Patrick Veasart  
March 22, 2007  
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We would welcome further discussion with you concerning the appropriateness of Coastal Commission action on the vertical access easement, including demanding that Mrs. Ackerberg remove all items that lie within the easement, while Mr Roth's appeal is pending.

Very truly yours,



Edwin B. Reeser, III

cc: Lisette Ackerberg  
Peter Sheridan

Enclosures

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STATE OF CALIFORNIA - THE RESOURCES AGENCY

Arnold Schwarzenegger, Governor

CALIFORNIA COASTAL COMMISSION  
STATEWIDE COASTAL ACCESS PROGRAM  
725 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060  
(831) 427-4876



March 28, 2005

Lisette Ackerberg  
22466 Pacific Coast Highway  
Malibu, California 90265

Re: Vertical Public Access Easement at 22466 Pacific Coast Highway, Malibu

Dear Mrs. Ackerberg:

I am following up on the letter sent to you in December 2003 from the nonprofit organization Access for All. In that letter, Access for All (AFA) informed you that they had accepted the vertical Offer to Dedicate Public Access Easement recorded by you and your husband in 1985. (Certificate of Acceptance recorded on December 17, 2003 as Document No. 03-3801416). The easement is a ten foot wide strip of property along the entire eastern border of your property. The Executive Director of AFA, Steve Hoyer, requested a meeting so that AFA could conduct a survey of the easement, in preparation for opening the easement to the general public. Since that time, Mr. Hoyer has been in discussion with your representative, Terry Tamminen, and informed him that AFA requests your permission to enter the property to conduct a survey of the easement. Of course, we know that Mr. Tamminen is extremely busy, and we do not know if he has discussed this with you yet. Nevertheless, AFA has not received your permission for conducting the survey.

I am writing to remind you that the Coastal Commission imposed a permit condition requiring the recording of this public access easement in order to mitigate the impacts of constructing your new home (Coastal Development Permit 5-84-754). Both the Coastal Commission and the Coastal Conservancy have approved AFA to open and operate this accessway; the Conservancy has provided AFA with a grant to perform a survey and install a pedestrian gate and public access signage. Therefore AFA is ready to take on the responsibilities to open and operate this easement. In order for this to occur, you must remove any structures that have been placed or built in the easement. A cursory look at your property shows that both a front yard and a backyard perimeter wall block the easement. These must be removed. The edge of the tennis court, lights and a generator might also be in the easement area. I am attaching a letter from your attorney Edwin Reeser, dated January 28, 1985, in which he acknowledges that you could make full use of your entire property, including continued use of the offered strip, until such time as it is developed into an open vertical accessway.

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(Ackerberg)

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We have reached the time to open this public accessway. I am requesting that you, or your representative, contact us within the next 30 days to inform us when AFA and their surveyor can enter your property and conduct the survey. Once the survey has been completed, if any additional encroachments in the easement are identified (i.e., tennis court, lights and/or generator), they must be removed expeditiously.

Failure to promptly remove the front and backyard wall in the easement and any other encroachments that are identified constitutes a violation of the Coastal Act of 1976. Under Public Resources Code section 30812 (copy enclosed), if efforts to resolve the matter are not successful, the Coastal Commission has the authority to record a notice of violation against the property that has the unpermitted development on it, to ensure that any potential buyer is aware of the situation.

I hope that we resolve this issue in the near term. Please contact me if you want to discuss this matter in more depth.

Sincerely,



Linda Locklin  
Coastal Access Program Manager

Cc: Steve Hoye, Access For All  
Steve Hudson, CCC-Ventura  
Pat Veersart, CCC-Ventura  
Sandy Goldberg, CCC Legal Counsel  
Terry Tamminen

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(Ackerberg)

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DENNIS, JUAREZ, REESER, SHAPER & YOUNG

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

REP1

ATTORNEYS AT LAW

SUITE 1800

2095 CENTURY PARK EAST

LOS ANGELES, CALIFORNIA 90067

TELEPHONE  
(213) 557-1800

TELEX  
606285

TELECOPIER  
(213) 552-9821

LUCINDA DENNIS\*  
L. MORRIS DENNIS\*  
GEORGE A. JUAREZ  
EDWIN G. REESER, III  
ALAN M. SHAPER  
THOMSEN YOUNG  
WILLIAM B. CREIN  
PHYLLIS J. BERSCH  
ELSA R. JONES  
DAVID L. MORGAN  
GENTRY YOUNG

\*A PROFESSIONAL CORPORATION

January 28, 1985

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JAN 30 1985

CALIFORNIA  
COASTAL COMMISSION  
SOUTH COAST DISTRICT

Mr. Gary Gleason  
California Coastal Commission  
South Coast District  
245 West Broadway, Suite 380  
Long Beach, California 90801-1450

Re: Lisette & Norman Ackerberg  
Site: 22466 Pacific Coast Highway  
Application: 5-84-754

Dear Mr. Gleason:

Pursuant to the unanimous decision of the Commission at the January 24, 1985 hearings at the Laguna City Council Chamber, the application for the above project has been approved. However, it is my understanding from the proceedings of that hearing that Staff is instructed to revise its findings in several particulars as requested by Commissioners McLinnis, Nutter and Wright, among others, in consideration of issues addressed in my letter to you dated January 24, 1985.

Specifically, language should be put in the staff report as to the desirability of opening accessways already owned by the public before the opening of private accessways; particularly where the burden on the private property owner is substantial.

Second, there was considerable discussion by Commissioners at the hearing about the extinguishment of offers to dedicate where adequate nearby access is developed; or where after adoption of a Malibu Land Use Plan it may be determined that further access is not required.

Third, both Commissioners and Staff agreed that the Ackerbergs could make full use of the entire width of their property, including the continuation of use of the offered strip, until such time as it is developed into an open vertical accessway.

There is no question in my mind that the issues raised at the hearing are critical not only to the Ackerbergs, but to the Commission and its efforts to adopt a Land Use Plan for Malibu. As the merits of these issues were not decided, but rather

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Mr. Gary Gleason  
Re: Lissette & Norman Ackerberg

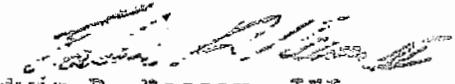
January 28, 1985  
Page Two

deferred for consideration under the process of adoption of a Land Use Plan for Malibu, it is absolutely necessary for the property rights of the Ackerbergs to be protected pending the determination of vertical access policies by the Commission. I believe that the Commissioners so agree, and that is the purpose of the additional findings.

Finally, I would like to obtain a copy of the transcript of that portion of the hearing which concerned the Ackerberg application.

Very truly yours,

DENNIS, JUAREZ, REESER,  
SHAVER & YOUNG

  
Edwin B. Reeser, III

EBR:lg

cc: Norman & Lissette Ackerberg  
Richard Sol

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(Ackerberg)

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**PUBLIC RESOURCES CODE  
DIVISION 20  
CALIFORNIA COASTAL ACT  
(2005)**

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Section 30809 Ex parte cease & desist orders; notice; terms and conditions; time of effectiveness; duration

(a) If the executive director determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity that (1) may require a permit from the commission without securing a permit or (2) may be inconsistent with any permit previously issued by the commission, the executive director may issue an order directing that person or governmental agency to cease and desist. The order may be also issued to enforce any requirements of a certified local coastal program or port master plan, or any requirements of this division which are subject to the jurisdiction of the certified program or plan, under any of the following circumstances:

(1) The local government or port governing body requests the commission to assist with, or assume primary responsibility for, issuing a cease and desist order.

(2) The commissioner requests and the local government or port governing body declines to act, or does not take action in a timely manner, regarding an alleged violation which could cause significant damage to coastal resources.

(3) The local government or port governing body is a party to the violation.

(b) The cease and desist order shall be issued only if the person or agency has failed to respond in a satisfactory manner to an oral notice given in person or by telephone, followed by a written confirmation, or a written notice given by certified mail or hand delivered to the landowner or the person performing the activity. The notice shall include the following:

(1) A description of the activity which meets the criteria of subdivision (a).

(2) A statement that the described activity constitutes development which is in violation of this division because it is not authorized by a valid coastal development permit.

(3) A statement that the described activity be immediately stopped or the alleged violator may receive a cease and desist order, the violation of which may subject the violator to additional fines.

(4) The name, address, and phone number of the commission or local government office which is to be contacted for further information.

(c) The cease and desist order may be subject to such terms and conditions as the executive director may determine are necessary to avoid irreparable injury to any area within the jurisdiction of the commission pending action by the commission under Section 30810.

(d) The cease and desist order shall be effective upon its issuance, and copies shall be served forthwith by certified mail upon the person or governmental agency subject to the order.

(e) A cease and desist order issued pursuant to this section shall become null and void 90 days after issuance.

(Added by Ch. 761, Stats. 1991 )

Section 30810 Cease & desist orders issued after public hearing; terms and conditions; notice of hearing; finality and effectiveness of order

(a) If the commissioner, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the

commission may issue an order directing that person or governmental agency to cease and desist. The order may also be issued to enforce any requirements of a certified local coastal program or port master plan, or any requirements of this division which are subject to the jurisdiction of the certified program or plan, under any of the following circumstances:

(1) The local government or port governing body requests the commission to assist with, or assume primary responsibility for, issuing a cease and desist order.

(2) The commission requests and the local government or port governing body declines to act, or does not take action in a timely manner, regarding an alleged violation which could cause significant damage to coastal resources.

(3) The local government or port governing body is a party to the violation.

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

(c) Notice of the public hearing on a proposed cease and desist order shall be given to all affected persons and agencies and the order shall be final and effective upon the issuance of the order. Copies shall be served immediately by certified mail upon the person or governmental agency subject to the order and upon other affected persons and agencies who appeared at the hearing or requested a copy. The notice shall include a description of the civil remedy to a cease and desist order, authorized by Section 30803.

(Amended by Ch. 1199, Stats. 1993.)

**Section 30811 Restoration order; violations**

In addition to any other authority to order restoration, the commission, a local government that is implementing a certified local coastal program, or a port governing body that is implementing a certified port master plan may, after a public hearing, order restoration of a site if it finds that the development has occurred without a coastal development permit from the commission, local government, or port governing body, the development is inconsistent with this division, and the development is causing continuing resource damage.

(Added by Ch. 955, Stats. 1991.)  
(Section renumbered by Ch. 1199, Stats. 1993.)

**Section 30812. Notice of violation**

(a) Whenever the executive director of the commission has determined, based on substantial evidence, that real property has been developed in violation of this division, the executive director may cause a notification of intention to record a notice of violation to be mailed by regular and certified mail to the owner of the real property at issue, describing the real property, identifying the nature of the violation, naming the owners thereof, and stating that if the owner objects to the filing of a notice of violation, an opportunity will be given to the owner to present evidence on the issue of whether a violation has occurred.

(b) The notification specified in subdivision (a) shall indicate that the owner is required to respond in writing, within 20 days of the postmarked mailing of the notification, to object to recording the notice of violation. The notification shall also state that if, within 20 days of mailing of the notification, the owner of the real property at issue fails to inform the executive director of the owner's objection to recording the notice of violation, the executive director shall record the notice of violation in the office of each county recorder where all or part of the property is located.

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(c) If the owner submits a timely objection to the proposed filing of the notice of violation, a public hearing shall be held at the next regularly scheduled commission meeting for which adequate public notice can be provided, at which the owner may present evidence to the commission why the notice of violation should not be recorded. The hearing may be postponed for cause for not more than 90 days after the date of the receipt of the objection to recordation of the notice of violation.

(d) If, after the commission has completed its hearing and the owner has been given the opportunity to present evidence, the commission finds that, based on substantial evidence, a violation has occurred, the executive director shall record the notice of violation in the office of each county recorder where all or part of the real property is located. If the commission finds that no violation has occurred, the executive director shall mail a clearance letter to the owner of the real property.

(e) (1) The notice of violation shall be contained in a separate document prominently entitled "Notice of Violation of the Coastal Act." The notice of violation shall contain all of the following information:

- (A) The names of the owners of record.
- (B) A legal description of the real property affected by the notice.
- (C) A statement specifically identifying the nature of the alleged violation.
- (D) A commission file number relating to the notice.

(2) The notice of violation, when properly recorded and indexed, shall be considered notice of the violation to all successors in interest in that property. This notice is for informational purposes only and is not a defect, lien, or encumbrance on the property.

(f) Within 30 days after the final resolution of a violation that is the subject of a recorded notice of violation, the executive director shall mail a clearance letter to the owner of the real property and shall record a notice of rescission in the office of each county recorder in which the notice of violation was filed, indicating that the notice of violation is no longer valid. The notice of rescission shall have the same effect of a withdrawal or expungement under Section 405.61 of the Code of Civil Procedure.

(g) The executive director may not invoke the procedures of this section until all existing administrative methods for resolving the violation have been utilized and the property owner has been made aware of the potential for the recordation of a notice of violation. For purposes of this subdivision, existing methods for resolving the violation do not include the commencement of an administrative or judicial proceeding.

(h) This section only applies in circumstances where the commission is the legally responsible coastal development permitting authority or where a local government or port governing body requests the commission to assist in the resolution of an unresolved violation if the local government is the legally responsible coastal development permitting authority.

(i) The commission 24 months from the date of recordation, shall review each notice of violation that has been recorded to determine why the violation has not been resolved and whether the notice of violation should be expunged.

(j) The commission, at any time and for cause, on its own initiative or at the request of the property owner, may cause a notice of rescission to be recorded invalidating the notice of violation recorded pursuant to this section. The notice of rescission shall have the same effect of a withdrawal or expungement under Section 405.61 of the Code of Civil Procedure.

Exhibit 17  
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(Ackerberg)

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FROM  
3/23/07

3/23/07 P.C.M.

4/24/07  
ELECTRIC MECHANICAL  
MECHANICAL MECHANICAL

No. Revisions

Date

By

BLUEPRINTS W/ 3 L.A. COUNTY APPEALS

- D COASTAL COMM (2)
- D NORMAN ACKERBERG
- D RICHARD MEIER
- D EDWIN BESSER
- D RICHARD SOL

ARCHITECTS

Richard Meier & Partners Architects  
130 East 57 Street  
New York, New York 10022  
212 503 1170

CONSULTING ARCHITECT

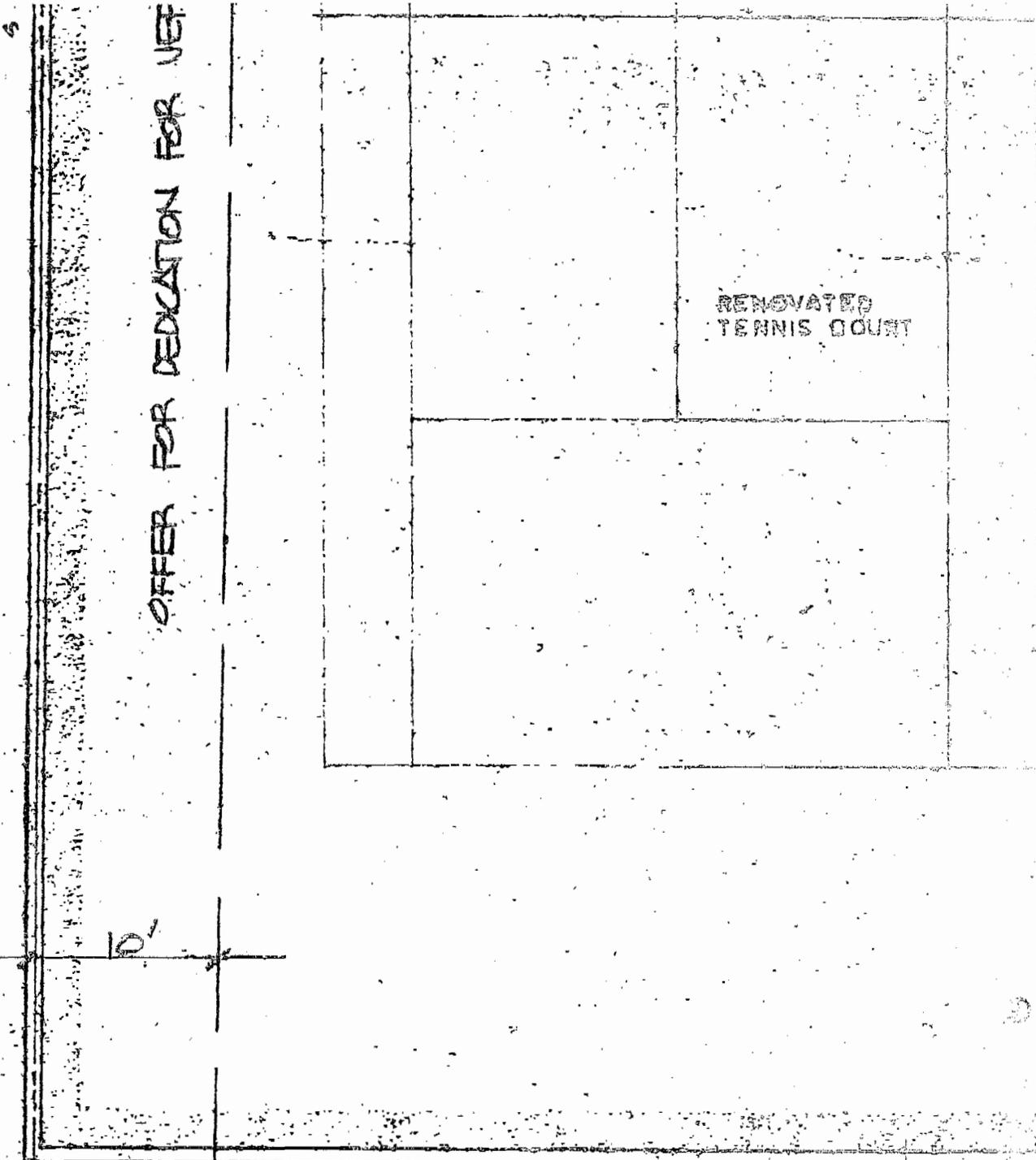
Richard Sol, Architect  
23504 De Villo Way  
Malibu, California 90263  
310 455 8000

STRUCTURAL ENGINEERS

Edward Ferebee, Inc.  
485 Fifth Avenue  
New York, New York 10017  
212 636 3700

POWER POLE

EXISTING  
ZERO SETBACK



OFFER FOR DEDICATION FOR USE

RENOVATED TENNIS COURT

EVIDENCE TO RCH.

10'

11'-0" FRONTED SETBACK  
EXCEEDS AUG BY 11'

FUTURE TRENCH (375' DEPTH)

PL. →

2. Also High  
To 200 200

GREEN HALL LINE

NO. OF OVERLAP

EXISTING TENNIS COURT  
FENCE

200' TO GREEN HALL LINE

FOR VERTICAL ACCESS

## CALIFORNIA COASTAL COMMISSION

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



**VIA CERTIFIED AND REGULAR MAIL**  
(Article No. 7006 0100 0003 4574 1486)

April 27, 2007

Ms. Lisette Ackerberg  
22466 Pacific Coast Highway  
Malibu, CA 90265

**Subject:** Notice of Intent to Record a Notice of Violation of the Coastal Act and to Commence Cease and Desist Order Proceedings

**Violation No.:** V-4-07-006

**Location:** 22500 and 22466 Pacific Coast Highway, Malibu, Los Angeles County (APN 4452-002-013, 4452-002-011)

**Violation Description:** 1) Unpermitted development including, but not limited to, rock rip-rap, 9-ft high wall, concrete slab and generator, fence, railing, planter, and landscaping located within, and restricting access to, vertical and lateral access easements; and 2) development that is inconsistent with the terms and conditions of an existing Coastal Development Permit

Dear Ms. Ackerberg:

The purpose of this letter is to notify you of my intent, as the Executive Director of the California Coastal Commission ("Commission"), to record a Notice of Violation of the Coastal Act against your property at 22500 and 22466 Pacific Coast Highway in Malibu, Los Angeles County Assessor's Parcel No. APN 4452-002-013 and 4452-002-011 ("property"), and to commence proceedings for issuance of a Cease and Desist Order ("Order") to address development on that property that is unpermitted and inconsistent with the terms and conditions of an existing Coastal Development Permit ("CDP"). The development activities at issue include, but are not limited to: the placement of rock rip-rap in lateral and vertical access easements; the placement of a concrete slab and generator at the northern end of the vertical easement; the placement of a 9-foot high concrete wall that completely blocks the northern end of the vertical easement; and the placement of fences, railings, landscaping and planters in the vertical easement. These activities constitute development as defined in the Coastal Act, are not exempt from Coastal Act permitting

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(Ackerberg)

requirements, and therefore required a CDP. No CDP was obtained for this development.<sup>1</sup> In addition to being unpermitted, the development prevents the use of public access easements that were established to satisfy the requirements imposed by the conditions of previously-issued CDPs, and that development is therefore inconsistent with the terms and conditions of those permits.

### **Background**

In June of 1983, the Commission approved CDP No. 5-83-360 with conditions, authorizing the construction of a wooden bulkhead along the southern portion of the property located at 22486 Pacific Coast Highway.<sup>2</sup> The Commission found that the proposed development would impact coastal access and the permit included a provision, as a condition for approval of the permit, for recordation of an offer to dedicate (OTD) a lateral access easement from the toe of the bulkhead to the mean high tide line. The owner recorded the OTD in July of 1983. State Lands Commission accepted the easement in March of 2002. Although you purchased this parcel subsequent to the recordation, the permit and recorded OTD clearly state that the offer runs with the land and were included in the chain of title for this property. Therefore, you are required to comply with the permit and the easement and not impede access to or through the easement.

In November of 1984, you filed a CDP application seeking authorization for the demolition of the existing single-family residence, guest house and pool, the construction of a new residence and pool, and the renovation of an existing tennis court. In January of 1985, the Commission unanimously approved CDP No. 5-84-754 with conditions. The Commission included a vertical public access condition, including recordation of an OTD for a 10-foot wide easement along the eastern property boundary. The Commission stated in its findings for the permit that “[o]nly if so conditioned would the project be consistent with Section 30212 of the Coastal Act.” You did not challenge that permit within the time prescribed in the Coastal Act (Cal. Pub. Res. Code § 30801). In fact, you recorded the OTD as required and you signed and returned the permit (it was issued on April 15, 1985).

Access for All, a non-profit coastal access organization, recorded a Certificate of Acceptance, formally accepting your OTD in December of 2003 and sent you a letter soon thereafter to inform you of the acceptance and to request a meeting to schedule an initial survey of the easement area in order to begin the process of opening the easement. In March of 2005, after Access for All had not yet received permission to conduct the survey, Commission staff sent you a letter requesting that you remove all structures blocking the easement and contact Commission staff within 30

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<sup>1</sup> You contend that the Commission, during the hearing on CDP No. 5-84-754, informally granted you “full use of your entire property... until such time as it is developed into an open vertical accessway.” Even if this were the case, the development blocking the accessway was not actually approved under that permit, but was only allowed to remain until the accessway could be opened. This development must be removed now, as Access for All is ready to open and operate the easement. Moreover, additional development, including the generator, fence, and planter, do not appear to have been present when the permit was heard, so even any potential allowance by the Commission for existing development to remain temporarily would not apply to these items. Thus, all of the development at issue is unpermitted and must be removed.

<sup>2</sup> This property is now identified as 22500 and 22466 Pacific Coast Highway

days to schedule the survey. Access for All did eventually conduct the survey in September of 2005 and found that the vertical easement was blocked by the above-mentioned development, including the slab and generator, 9-ft high wall, planters, fence, landscaping, and rock rip-rap.

Subsequent attempts by Commission staff to resolve the violations in an amicable manner have been unsuccessful. On March 5, 2007, Commission staff sent you a Notice of Violation, alerting you to the possibility of formal enforcement action and monetary penalties if the violations are not resolved. The letter provided you with two options: contact Commission staff to discuss resolution of the violations by March 23, 2007 or submit a plan outlining the removal of the unpermitted development by April 6, 2007. Although on March 22, 2007, you sent Commission staff a letter in response to the Notice of Violation, you did not agree, and to date have not agreed, to resolve the violations on your property. Consequently, you have not submitted removal plans for the unpermitted development.

Access for All is prepared to open and manage the easement for public access to the beach, so that the area can function as required by the Commission and as set forth in the recorded Certificate of Acceptance. Access for All has been approved by the Commission to hold this easement and has received a grant from the Coastal Conservancy to facilitate access. However, the unpermitted development at issue in this matter is located within the easement and completely obstructs access. As a result, the accessway remains closed and the public access that the Commission found to be necessary for approval of the permit that allowed your new residence and pool to be built has not been provided. The benefits of both existing permits, as well as the burdens that were necessary to impose in order to bring the projects into compliance with the Coastal Act run with the land.

Since the attempts to resolve these violations were unsuccessful, as Executive Director, I have decided that it is necessary to commence Cease and Desist Order proceedings, pursuant to Coastal Act Section 30810, in order to bring your property into compliance with the Coastal Act and with the existing CDP. The purpose of these enforcement proceedings is to issue a Cease and Desist Order, directing you to 1) remove the unpermitted development from the property and 2) comply with the Special Conditions of the existing CDPs. In addition, I intend to record a Notice of Violation to protect potential purchasers of the property from unwittingly assuming responsibility for the existing violations. The Cease and Desist Order and Notice of Violation are discussed in greater detail below.

### **Notice of Violation**

The Commission's authority to record a Notice of Violation is set forth in Section 30812 of the Coastal Act, which states the following:

*(a) Whenever the executive director of the commission has determined, based on substantial evidence, that real property has been developed in violation of this division, the executive director may cause a notification of intention to record a notice of violation to be mailed by regular and certified mail to the owner of the real property at issue, describing the real property, identifying the nature of the violation, naming the owners thereof, and stating that if the owner objects to the filing of a notice of violation, an*

*opportunity will be given to the owner to present evidence on the issue of whether a violation has occurred.*

I am issuing this notice of intent to record a Notice of Violation because the unpermitted development described above has occurred in violation of the Coastal Act at the subject property. This determination is based on an analysis of photographs taken by staff on December 12, 2005, February 5, 2007, and March 8, 2007 and aerial photographs, and a review of the existing permits for the property and relevant recorded documents.

In our letter dated March 5, 2007, in accordance with Coastal Act Section 30812(g), we notified you of the potential for the recordation of a Notice of Violation against your property. If you object to the recordation of a Notice of Violation in this matter and wish to present evidence to the Coastal Commission at a public hearing on the issue of whether a violation has occurred, **you must specifically object, in writing, within 20 days of the postmarked mailing of this notification.** The objection should be sent to Christine Chestnut at the Commission's headquarters office (the address is provided in the letterhead), no later than May 17, 2007. Please include the evidence you wish to present to the Coastal Commission in your written response and identify any issues you would like us to consider.

If, you fail to object within 20 days of mailing of this notification, I shall record the Notice of Violation in the Los Angeles County recorder's office as provided for under Section 30812(b) of the Coastal Act. The Notice of Violation will become part of the chain of title of the subject property, and will be subject to review by potential buyers.

### **Cease and Desist Order**

The Commission's authority to issue Cease and Desist Orders is set forth in Coastal Act Section 30810(a), 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.*

An order is warranted in this case because the development at issue is both unpermitted and inconsistent with a previously-issued permit.

### **Unpermitted Development**

"Development" is defined in Coastal Act Section 30106 as follows:

*"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging,*

*mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreation use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvest of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations... (emphasis added)*

Construction and/or placement of the rip-rap, wall, slab, generator, fence, railing, planter, and landscaping on the property, which is located in the Coastal Zone, constitutes development under Section 30106.

Coastal Act Section 30600(a) states that development activity in the coastal zone requires a coastal development permit (CDP) before that development can occur. As stated above, the activities at issue constitute development, and this development is therefore subject to the permit requirement of Section 30600(a). No CDP permit application was submitted for the cited development and, accordingly, no CDP was issued. Additionally, no exemptions to Coastal Act permitting requirements apply. Therefore, the cited development items are unpermitted and constitute Coastal Act violations.

#### Inconsistent with CDP

In addition to being unpermitted, the cited development is inconsistent with the existing permits. The unpermitted development is located within established public access easements, preventing access to and across the easements in violation of the conditions of the previously-issued CDPs for the property. This non-compliance with the conditions of approved CDPs constitutes a violation of the Coastal Act and such non-compliance is specifically mentioned in the Coastal Act section authorizing cease and desist orders. See Cal. Pub. Res. Code § 30810(a) (“any activity that . . . is inconsistent with any permit previously issued by the commission”).

Special Condition One (1) of CDP No. 5-83-360 required the recordation of an offer to dedicate (OTD) a lateral public access easement extending from the mean high tide line to the toe of the bulkhead, which extends across your property. The OTD, which prohibits any interference with the public’s use of the easement, was recorded, and the easement has been accepted. The unpermitted rip-rap at issue is located seaward of the toe of the bulkhead, within the lateral access easement, and it interferes with the public’s access to and across the easement. The unpermitted rip-rap is inconsistent with the condition of the permit and the recorded OTD.

In addition, Standard Condition Three (3) of CDP No. 5-84-754 states the following:

*All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation*

from the approved plans must be reviewed and approved by the staff and may require Commission approval (emphasis added).

The cited development was not part of the plan approved by the Commission under the permit, nor was it reviewed and approved by the Commission as part of a subsequent permit. Thus, the development is also inconsistent with this condition of CDP No. 5-84-754.

Furthermore, Special Condition one (1) of CDP No. 5-84-754 required that you record an OTD for a vertical accessway along your property's eastern boundary. You recorded the OTD as required. The OTD offers "an easement in perpetuity for the purpose of public pedestrian access to the shoreline," and prohibits interference with public use of the easement. The unpermitted development at issue lies within the vertical access easement, blocking the public's use of it.

The Commission imposed Standard Condition 3 and Special Condition 1, among others, out of a concern for the provision of public access in the area and to mitigate for the impacts from the proposed development and to bring the project into compliance with the Coastal Act. The unpermitted development at issue obstructs the access that the Commission required in violation of the permit, the OTD, and the Coastal Act.

Under Section 30810(b) of the Coastal Act, any Cease and Desist Order issued by the Commission may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with the Coastal Act, including immediate removal of any development or material. Pursuant to Section 30810(a) and 30810(b), I am issuing this notice of intent to commence Cease and Desist Order proceedings to: 1) compel removal of all unpermitted development from the property; 2) order compliance with the requirements of existing permits and; 3) prevent future unpermitted development activities from being undertaken on the property.

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 proceedings by completing the enclosed Statement of Defense form. **The Statement of Defense form must be returned to the Commission's San Francisco office, directed to the attention of Christine Chestnut, no later than May 17, 2007.**

Please be aware that Section 30820(a) provides for civil liability to be imposed on any person who performs or undertakes development without a coastal development permit and/or that is inconsistent with any coastal development permit previously issued by the Commission in an amount that shall not exceed \$30,000 and shall not be less than \$500. Section 30820(b) provides that additional civil liability may be imposed on any person who performs or undertakes development in violation of the Coastal Act or inconsistent with a coastal development permit previously issued by the Commission when the person intentionally and knowingly performs or undertakes such development, in an amount not less than \$1,000 and not more than \$15,000 per day for each day in which the violation persists. Finally, Section 30821.6 provides that any intentional or negligent violation of a cease and desist order can result in civil fines of up to \$6,000 for each day in which the violation persists.

Commission staff has tentatively scheduled the hearing for the proposed Cease and Desist Order (and for the proposed Notice of Violation, should you additionally request, **in writing**, a hearing on this issue) for the June 2007 Commission meeting in Santa Rosa.

As always, we are more than willing to discuss a timely and amicable resolution of this matter. One option that you may consider is agreeing to a "consent order". A consent order is similar to a settlement agreement. A consent order would provide you with an opportunity to work cooperatively with staff to resolve this matter, to have input into the process and timing of removal of the unpermitted development, and to negotiate a penalty amount with Commission staff. If you would like to discuss resolution of this matter via a Consent Order, please contact us immediately. If you have any questions regarding this letter or the enforcement case, please call Christine Chestnut at (415) 904-5200 or send correspondence to her attention at the address provided on the letterhead.

Sincerely,



PETER M. DOUGLAS  
Executive Director

Encl.: Statement of Defense form  
cc (without Encl): Lisa Haage, Chief of Enforcement  
Alex Helperin, Staff Counsel  
Patrick Veasart, Southern California Enforcement Supervisor  
Edwin B. Reeser, III, Attorney for Ms. Ackenberg  
Christine Chestnut, Headquarters Enforcement Analyst

## CALIFORNIA COASTAL COMMISSION

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



## VIA FACSIMILE AND REGULAR MAIL

May 30, 2007

Edwin B. Reeser, III  
Sonnenschein Nath & Rosenthal LLP  
601 South Figueroa Street, suite 1500  
Los Angeles, CA 90017-5704

Re: Coastal Act Violation No. V-4-07-006

Dear Mr. Reeser,

I received your May 17, 2007 letter requesting termination of the above referenced matter or, alternatively, a one-month extension of the deadline for submittal of a statement of defense in the above referenced matter. While we cannot "terminate" the enforcement action in light of the outstanding violation, as a courtesy to your client and in response to your request, we have granted a twenty-five day extension of the deadline for submittal of a statement of defense. The extended and final deadline is **June 11, 2007**. Please submit all materials that you wish the Commission to consider by the deadline.

In your letter, you objected to the enforcement proceedings set forth in the Executive Director's April 27, 2007 Notice of Intent. Therefore, a hearing on the proposed Cease and Desist Order and recordation of a Notice of Violation shall be held during an upcoming Commission meeting. Given that we have extended the statement of defense deadline into June, we have postponed the hearing on this matter and tentatively scheduled it to occur during the Commission's July meeting.

We are pleased to hear your assertion that Mrs. Ackerberg has cooperated with Commission staff in the past and your assurances that she intends to continue working cooperatively with staff. We look forward to discussing this matter with you and your client further and are hopeful we can affect an amicable resolution of the matter. It should be noted that the pending litigation

initiated by Mr. Roth is not an impediment to a collaborative effort between Mrs. Ackerberg and Commission staff to resolve this matter. We would prefer to reach an amicable resolution in this matter and look forward to working with Mrs. Ackerberg to secure her compliance with the conditions of the existing permit and the terms of the accepted offer to dedicate that she recorded in 1985. One option that you may consider is a "consent order", which is similar to a settlement agreement. A consent order would provide you with an opportunity to resolve this matter consensually, and to have more input in the process. If you are interested in negotiating a consent order or in proposing an alternative amicable resolution of this violation, please contact me at (415) 904-5220 or send correspondence to my attention at the address listed on the letterhead. I look forward to hearing from you at your earliest convenience.

Sincerely,



Christine Chestnut  
Headquarters Enforcement Analyst

cc: Lisa Haage, Chief of Enforcement  
Alex Helperin, Staff Counsel  
Linda Locklin, Access Program Manager  
Pat Veasart, Southern California Enforcement Supervisor

**Edwin B. Reeser, III**  
213-892-5072  
ereeser@sonnenschein.com

601 South Figueroa Street  
Suite 1500  
Los Angeles, CA 90017-5704  
213.623.9300  
213.623.9924 fax  
www.sonnenschein.com

May 17, 2007

**VIA FACSIMILE & U.S. MAIL**

Christine Chestnut  
Legal Division  
California Coastal Commission  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105

Exhibit 20  
CCC-09-CD-01 and CCC-09-NOV-01  
(Ackerberg)

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Re: Notice of Intent to Record a Notice of Violation of the Coastal Act and to Commence Cease and Desist Order Proceedings  
Violation No. V-4-07-006  
Location: 22500 and 22466 Pacific Coast Highway, Malibu, California  
APN 4452-002-013, 4452-002-011 (the "Property")

Dear Ms. Chestnut:

We have received the Notice of Intent to Record a Notice of Violation of the Coastal Act and to Commence Cease and Desist Order Proceedings, dated April 27, 2007, from Peter M. Douglas, Executive Director of the California Coastal Commission (the "Douglas Notice Letter"), directed to Lisette Ackerberg concerning the above-referenced Property. Please consider this letter as a response and objection to these proposed proceedings.

Frankly, we are surprised that the Coastal Commission has decided to initiate these proceedings against Mrs. Ackerberg in light of her previous cooperation with the Coastal Commission and Access for All ("AFA") concerning the vertical access easement on the Property (the "Easement"), as well as the pending appeal by Jack Roth of the dismissal of his lawsuit in Los Angeles County Superior Court, Second District Court of Appeal No. B195748 (the "Appeal"), which lawsuit seeks to revoke and invalidate the Easement and to enjoin the Coastal Commission, State Coastal Conservancy, and AFA from opening the Easement for public use (the "Lawsuit"). We further object to any characterization by the Coastal Commission that Mrs. Ackerberg has been less than cooperative in working with the Coastal Commission to resolve any outstanding issues concerning the Easement or that she has refused to comply with any legal obligations concerning the Easement.

As you are no doubt aware, there have been extensive communications between Mrs. Ackerberg and the Coastal Commission/AFA concerning the Easement and issues relating

Christine Chestnut  
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thereto since 2005. At the request of AFA, Mrs. Ackerberg permitted a survey of the Easement to be conducted on her Property. After this survey was conducted in September 2005 and a survey map prepared, I received a letter from Linda Locklin of the Coastal Commission dated December 13, 2005, which stated that the survey identified a number of "encroachments" within the easement and demanded that those "encroachments" be removed, asserting that they "prevent or impede" the opening of the Easement for public use. These identified "encroachments" included a generator, concrete slab, portions of a nine-foot-high block perimeter wall, railings, fencing, landscaping, and rip-rap rocks along the seawall near the southern end of the Easement (collectively, the "Alleged Encroachments").

Thereafter, back-and-forth communications ensued between Mrs. Ackerberg and the Coastal Commission regarding a number of reasonable issues, questions, and concerns raised by Mrs. Ackerberg about removal of the Alleged Encroachments and opening of the Easement for public use, and we suggested a meeting with the Coastal Commission to discuss these subjects. In her February 16, 2006 letter to me, Ms. Locklin agreed to a meeting with me and representatives from AFA and the Coastal Conservancy to discuss open issues concerning the Easement. We agreed to participate in such a meeting and communicated with Ms. Locklin, both verbally and in writing, in February and March 2006 to coordinate a date for this meeting.

It was during this period, on March 29, 2006, that Jack Roth filed his Lawsuit, in which he named Mrs. Ackerberg and the Lisette Ackerberg Trust as Real Parties in Interest. Shortly thereafter, on April 3, 2006, I wrote to Ms. Locklin inquiring whether, in light of the Lawsuit, it would be prudent to go forward with the planned meeting or whether it should be continued to a later date, given that the Lawsuit would complicate any discussions concerning the Easement and Mr. Roth sought injunctive relief in his Lawsuit. Ms. Locklin responded in writing on April 10, 2006, stating that "[a]s for the series of other questions and issues you raise, including whether or not we should set a meeting date, we are preparing a response and will get back to you soon." However, we never heard back from Ms. Locklin or anyone else from the Coastal Commission concerning this meeting and, therefore, reasonably assumed that the Coastal Commission chose to postpone any further direct discussions with us about the Easement pending adjudication of Mr. Roth's Lawsuit. In fact, we did not receive a direct communication from the Coastal Commission again until nearly a year later, when we received a "Notice of Violation of the California Coastal Act," dated March 5, 2007, from N. Patrick Veasart of the Coastal Commission (the "Veasart Notice Letter").

Contrary to the representations in the Douglas Notice Letter, our March 22, 2007 written response to the Veasart Notice Letter did not contain an outright refusal to remove any Alleged Encroachments, and our failure to submit an "as-built site plan" and "detailed plan and project description" for removal of the Alleged Encroachments, as requested in the Veasart Notice

Christine Chestnut  
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Letter, should not be taken as such. Rather, our letter was an attempt to amicably address the Coastal Commission's concern about the need to immediately initiate any enforcement proceedings relating to the Alleged Encroachments or the Easement, and raise the issue of the appropriateness of demanding immediate removal of the Alleged Encroachments while legal action initiated by Mr. Roth relating to the Easement is still pending.

Repeatedly throughout the Veasart Notice Letter and the Douglas Notice Letter, the Coastal Commission attempts to justify the need for immediate removal of the Alleged Encroachments by implying that, but for the Alleged Encroachments, the Easement would promptly be opened by AFA for public use. However, as the Coastal Commission is aware, Mr. Roth's Appeal is pending, and the parties are waiting for the Court of Appeal to set a briefing schedule. We believe that Mr. Roth's Appeal has merit and that the Court of Appeal will reinstate Mr. Roth's Lawsuit. In any event, we reiterate our position that until Mr. Roth's Lawsuit has reached final judgment (that is, a judgment that is free from direct attack on appeal), it is premature for the Coastal Commission to demand from Mrs. Ackerberg removal of the Alleged Encroachments on the Property. Should Mr. Roth prevail in his Appeal and, ultimately, in his Lawsuit, the Coastal Commission, Coastal Conservancy, and Access for All will have no right to open the Easement for public use. By forcing Mrs. Ackerberg to remove the Alleged Encroachments -- under threat of penalties and fines -- before final adjudication of the Appeal and Lawsuit, the Coastal Commission is subjecting her to irreparable harm and loss of the benefits she would receive should Mr. Roth prevail.

If the Coastal Commission proceeds with its Notice of Violation and Cease and Desist Order proceedings against Mrs. Ackerberg during the pendency of the Appeal, she would be required, under threat of encumbrance, penalties, and fines, to demolish and/or remove the following Alleged Encroachments on her Property: (1) a ten-foot-wide portion of a nine-foot-high block perimeter wall facing Pacific Coast Highway; (2) a generator and the concrete slab on which it sits; (3) rip-rap rocks located along the seawall of the Property; and (4) chain link fence, railings, and landscaping located within the Easement.

As we have previously advised, the generator was installed to provide back-up power for the elevator in the two-story residence on the Property. For the last twenty-odd years of his life, Norman Ackerberg was unable to walk due to his multiple sclerosis, so the elevator was his only means of moving upstairs and downstairs. Now, Mrs. Ackerberg depends on the elevator as well due to her Parkinson's disease. The generator is needed to keep the elevator running through the frequent power outages in the area. Mrs. Ackerberg would be faced with losing the generator altogether if it is removed from its present location, as there are very limited options in the way of relocating the generator on the Property. The Property is her primary residence, not a seasonal home. Without the generator, Mrs. Ackerberg fears she will be forced out of her present home.

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Additionally, as we have also previously advised, the rip-rap rocks along the seawall are necessary to protect the Property and adjacent properties from the often severe tidal conditions and wave uprush effects (such as those caused by the El Niño phenomenon) (see attached photograph). Removal of the rip-rap rocks along the entire length of the seawall, or even just the portion within the Easement, would compromise the seawall. Since the Ackerberg seawall is tied together with the seawalls of adjoining properties, removal of rip-rap rocks in front of the Ackerberg seawall could have a detrimental collateral effect on these adjoining properties. Moreover, Mrs. Ackerberg believes that some of these rocks were actually pre-existing underneath the sand, and have only been exposed in recent years due to the lower sand level at the beach. In light of these issues, we believe it would be appropriate for a consultant or engineer to perform an analysis of the rip-rap rocks, including the impact of their removal, and present those findings before any decision is made to remove some or all of the rocks.

If Mrs. Ackerberg is forced to immediately remove/demolish the Alleged Encroachments while this Appeal is pending, and Mr. Roth is ultimately successful in the Appeal and underlying Lawsuit, resulting in revocation of the Easement and enjoinder of its opening for public use, Mrs. Ackerberg will be left with a gaping ten-foot-wide hole in her block perimeter wall facing well-traveled Pacific Coast Highway; an elevator in her residence that is inoperable, affecting her ability to move about her residence; and greater exposure to property damage from the effects of the Pacific Ocean. Restoring the Property to its original condition would require significant expenditure from Mrs. Ackerberg -- a prospect she should not be forced to face in light of the pending Appeal.

The Coastal Commission has asserted that an independent basis exists for the Notice of Violation and Cease and Desist Order proceedings, apart from any issues relating to opening the Easement for public use, because it considers all of the Alleged Encroachments to be "unpermitted development" not approved in any Coastal Development Permit<sup>1</sup> and that,

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<sup>1</sup> The Coastal Commission's assertion in the Veasart Notice Letter and Douglas Notice Letter that all of the Alleged Encroachments were "not approved in any CDP [Coastal Development Permit]," is false. Ms. Locklin, in her March 28, 2005 letter to Mrs. Ackerberg, acknowledged the Ackerbergs' right to "make full use of [the] entire property, including continued use of the offered strip, until such time as it is developed into an open vertical accessway." Both Coastal Commission commissioners and staff agreed to this use at the January 24, 1985 hearing on the Ackerbergs' CDP application, which agreement is memorialized in my January 28, 1985 letter to the Coastal Commission (and a copy of which was attached to Ms. Locklin's March 28, 2005 letter to Mrs. Ackerberg). Moreover, the plans for the Ackerberg development that were submitted to the Coastal Commission in 1984/85 in conjunction with the Ackerbergs' CDP application, which plans were approved by the Coastal Commission (indeed, the submitted plans taken from the Coastal Commission's own files contain an "Approved" stamp signed by Gary Gleason of the Coastal Commission -- see attached), reflected that items such as a perimeter block wall, fences, railings, and landscaping would be erected in the path of the Easement. Accordingly, any assertion by the Coastal

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therefore, these items must be removed regardless of how the Appeal and Lawsuit unfold or whether the Easement is ever allowed to be opened for public use. However, as the Coastal Commission itself acknowledged in the Veasart Notice Letter, administrative procedures exist for Mrs. Ackerberg to apply for and obtain amendments to previously issued coastal development permits to authorize any alleged unpermitted development. See Cal. Code Regs. tit. 14, §§ 13164-13168. The Coastal Commission's statement in the Veasart Notice Letter that such an administrative procedure is available "[i]n most cases," but "is not an option here" because such amendment would "lessen or avoid the intended effect of [the] approved permit" -- that is, conflict with the Easement -- is premature given that the Roth Appeal is pending and his Lawsuit has not been adjudicated to final judgment. Should Mr. Roth prevail in his Appeal and underlying Lawsuit, such an administrative remedy will not "lessen or avoid the intended effect of [the] approved permit," because the Easement will have been declared invalid and its opening for public use will be permanently enjoined. In that case, there is no reason why Mrs. Ackerberg could not attempt to apply for and obtain any necessary amendments to previously issued coastal permits to authorize any alleged unpermitted development. Indeed, Mrs. Ackerberg plans to avail herself of these administrative procedures -- as is her right -- should Mr. Roth succeed in his Appeal and Lawsuit.

On the other hand, the Coastal Commission, Coastal Conservancy, and AFA will not be unduly prejudiced or suffer any irreparable harm by waiting for final adjudication of Roth's Lawsuit before commencing any enforcement proceedings or taking any other action concerning the Alleged Encroachments and the Easement that they deem necessary. Indeed, nearly nineteen years elapsed after recordation of the offer to dedicate vertical access easement on the Property in 1985 before the Coastal Commission/AFA decided to accept the OTD and move forward to open the Easement for public use. Given the significant amount of time that has passed, surely it would not prejudice the Coastal Commission or anyone else to wait the comparatively short time period until the Roth Appeal and Lawsuit have been resolved before taking further action concerning the Easement.

Additionally, as the Coastal Commission is aware, there is an existing vertical access easement open to the public at 22670 Pacific Coast Highway -- commonly referred to as the "Zonker Harris Accessway" -- approximately one-quarter mile to the west of the Ackerberg Property, and another vertical access easement recently opened to the public in 2005 at 22132 Pacific Coast Highway, less than one-half mile to the east of the Ackerberg Property. Both of these vertical access easements provide public access to the same beach in Malibu -- Carbon Beach -- that the Easement would provide if opened for public use. Therefore, immediate

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Commission that all of the Alleged Encroachments on the Property are *per se* unauthorized and unpermitted is unfounded.

Christine Chestnut  
May 17, 2007  
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enforcement actions concerning the Easement and Property are not necessary to provide public access to beaches in Malibu which otherwise lack public access.

Of course, if the dismissal of Mr. Roth's Lawsuit is upheld by the Court of Appeal and final judgment is entered, Mrs. Ackerberg is committed to working with the Coastal Commission -- as she had been before the Coastal Commission unilaterally broke off direct communications upon Mr. Roth's filing of his Lawsuit -- to ensure compliance with any and all legal obligations concerning the Easement. That will also be the appropriate time to resume direct communications with the Coastal Commission/AFA concerning removal of the Alleged Encroachments and the issues, questions, and concerns we had previously raised regarding the Easement.

We therefore respectfully request that the Coastal Commission terminate any action related to its Notice of Intent to Record a Notice of Violation of the Coastal Act and to Commence Cease and Desist Order Proceedings and not reinstitute such proceedings until Roth's Lawsuit has reached final judgment, and only then if such proceedings are still deemed necessary. If the Coastal Commission insists on proceeding with such enforcement actions despite the pending Roth Appeal, we object to such actions and request the opportunity to be heard before the Coastal Commission at a public hearing. In this event, pursuant to Cal. Code Regs. tit. 14, § 13181(b), we would respectfully request that the time for submittal of any Statement of Defense form be extended for a period of thirty (30) days, so that we can gather the required information and analysis concerning removal of the rip-rap rocks and the other Alleged Encroachments.

Very truly yours,



Edwin B. Reeser, III

cc: Lisette Ackerberg

Enclosures

30294380

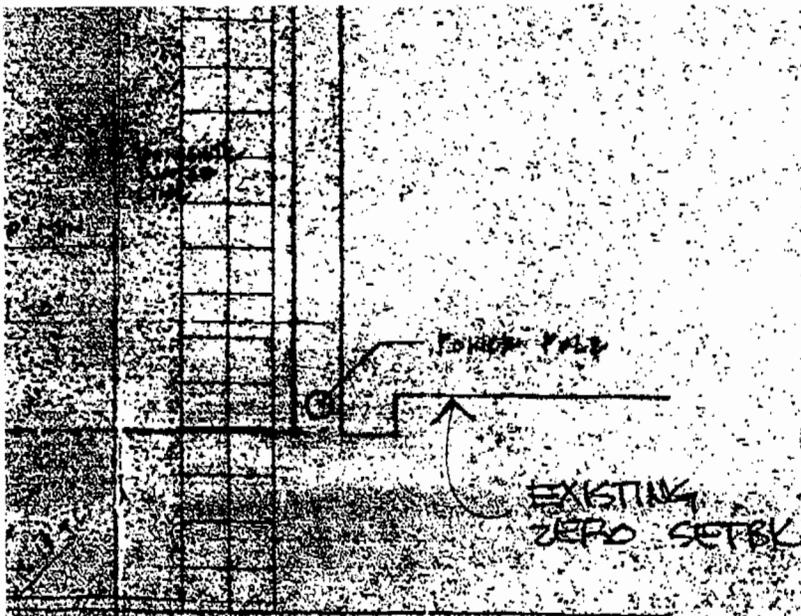
Exhibit 20  
CCC-09-CD-01 and CCC-09-NOV-01  
(Ackerberg)

**ARCHITECTS**  
 Richard Meier & Partners Arch  
 136 East 57 Street  
 New York, New York 10022  
 212 593 1170

**CONSULTING ARCHITECT**  
 Richard Sol, Architect  
 23004 De Ville Way  
 Malibu, California 90265  
 213 458 6908

**STRUCTURAL ENGINEERS**  
 Severud Perrowe Szegedy & St  
 485 Fifth Avenue  
 New York, New York 10017  
 212 986 3700

**MECHANICAL & ELECTRICAL EN**  
 John L. Aimer, P.E.  
 3 Morgan Avenue  
 Norwalk, Connecticut 06851  
 203 866 5538



DEPT. OF REGIONAL PLANNING

APPROVAL IN CONCEPT  
*[Signature]*  
 DATE 2-21-85  
 PLAN SHEET NO.

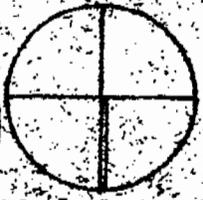
Per sec. 21400 et seq. of the  
 Public Resources Code and  
 Sec. 13215(a), Title 14 of the  
 Administrative Code, State  
 of California

THIS IS NOT A PERMIT  
 and  
 is subject to any conditions  
 listed below

DEPARTMENT OF REGIONAL PLANNING  
 Its proposed development. Except as noted herein  
 is approved as shown on the attached drawings and  
 also with sections **SHOWING COMPLIANCE**  
 of County Code, Title 22.

This approval is conditional upon the conditions  
 listed and the requirements of County Code, Title  
 No. 22 in effect at this time. It is applicable  
 only as specifically indicated herein and does not  
 extend prior to any change in pertinent ordinance  
 requirements. Such approval shall not be construed  
 to permit the violation of any provision of any  
 county ordinance of any law.

*[Signature]*  
 2-21-85



# ACKERBERG RESIDENTIAL

MALIBU CALIFORNIA

SITE PLAN SOUTH PUEBLO			
Job No. 84020	Date	Scale 1/8" = 1'-0"	Dr.
Drawn	Checked	Approved	

APPROVAL  
 Permit No.

*[Handwritten]* PP 33668

OFFER FOR DEDICATION FOR VERTICAL

10'

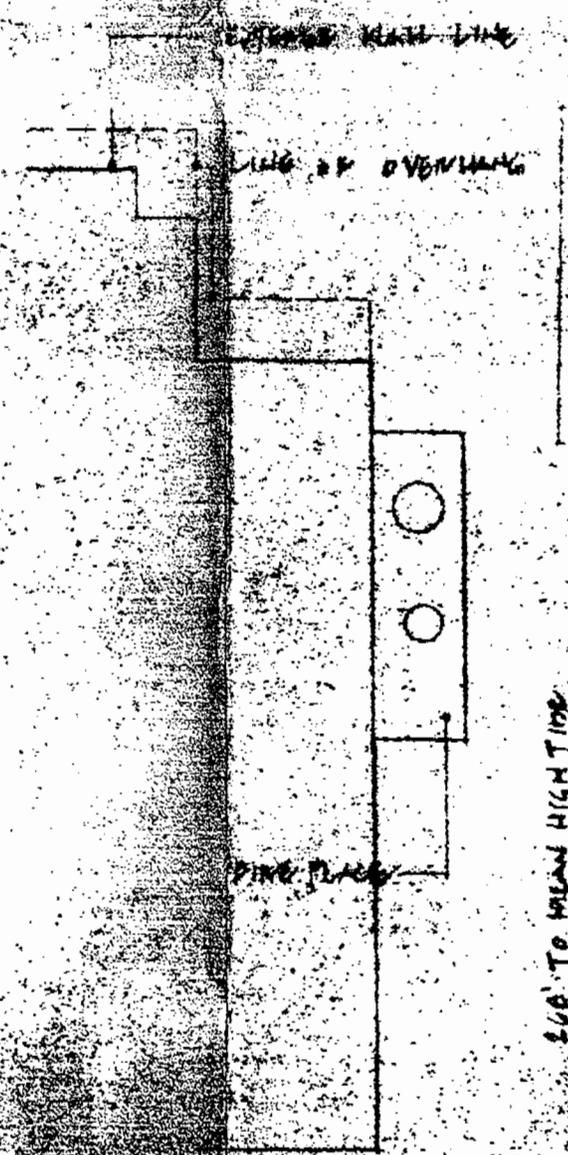
11' 0" FLOOD SETBACK  
EXCEEDS ASH BY

5' 0"

FUTURE TRAILHEAD

PL →

Exhibit 20  
CCC-09-CD-01 and CCC-09-NOV-01  
(Ackerberg)



200' TO MEAN HIGH TIDE

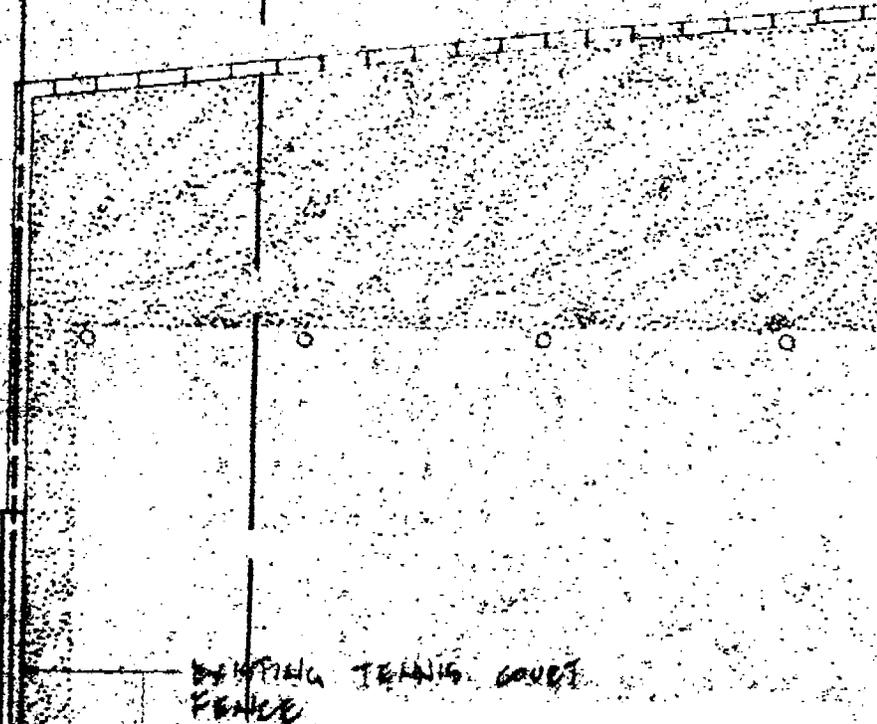
BRITISH TENNIS COURT  
FENCE

ON FOR VERTICAL ACCESS

2x4 6'-0" HIGH  
UNDESIGNED

EXISTING KRAV LINE

LINE OF OVERLAP



TENNIS COURT  
FENCE

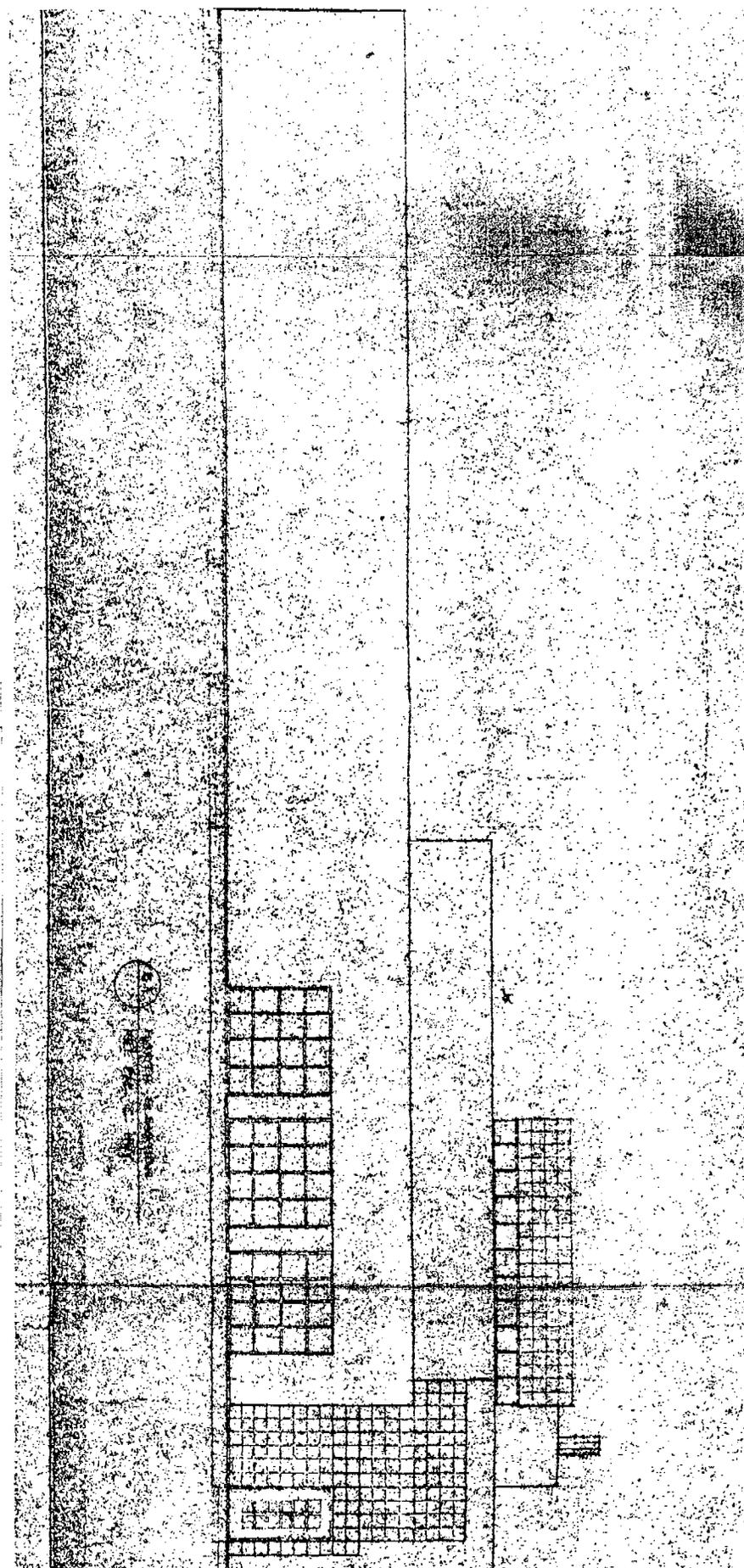


Exhibit 20  
CCC-09-CD-01 and CCC-09-NOV-01  
(Ackerberg)



Exhibit 20  
CCC-09-CD-01 and CCC-09-NOV-01  
(Ackerberg)

David S. Alverson  
213-892-2916  
dalverson@sonnenschein.com

601 South Figueroa Street  
Suite 1500  
Los Angeles, CA 90017-5704  
213.623.9300  
213.623.9924 fax  
www.sonnenschein.com

June 11, 2007

**VIA FACSIMILE & U.S. MAIL**

Christine Chestnut  
Legal Division  
California Coastal Commission  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105

Exhibit 21  
CCC-09-CD-01 and CCC-09-NOV-01  
(Ackerberg)

Page 1 of 3

Re: Notice of Intent to Record a Notice of Violation of the Coastal Act and to Commence Cease and Desist Order Proceedings dated April 27, 2007  
(the "Enforcement Proceedings")  
Violation No. V-4-07-006  
Location: 22500 and 22466 Pacific Coast Highway, Malibu, California  
APN 4452-002-013, 4452-002-011 (the "Property")

Dear Ms. Chestnut:

We have received your letter to Edwin B. Reeser, III, of our firm dated May 30, 2007, in which you advised that, despite Jack Roth's pending appeal of the dismissal of his lawsuit in Los Angeles County Superior Court, Second District Court of Appeal No. B195748 (the "Appeal"), the Coastal Commission is moving forward with the Enforcement Proceedings against Lisette Ackerberg and her Property, which Property is immediately adjacent to Mr. Roth's property, and that a Coastal Commission hearing on the Enforcement Proceedings has been tentatively scheduled for July 2007. Please consider this letter, the previous letters sent by Mr. Reeser to the Coastal Commission dated March 22, 2007 and May 17, 2007, and any further response that may be submitted, as Mrs. Ackerberg's response to the Enforcement Proceedings.

We note that in your brief letter, other than to indicate that the Coastal Commission intends to proceed with the Enforcement Proceedings, you fail to address any of the issues raised in Mr. Reeser's detailed May 17, 2007 letter. Most importantly, you fail to address our contention that the Enforcement Proceedings are improper in light of Mr. Roth's pending Appeal. As you know, Mr. Roth's lawsuit seeks to revoke and invalidate the Easement and to

Christine Chestnut  
June 11, 2007  
Page 2

Exhibit 21  
CCC-09-CD-01 and CCC-09-NOV-01  
(Ackerberg)

Page 2 of 3

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enjoin the Coastal Commission, State Coastal Conservancy and Access For All ("AFA") from acting to implement, enforce and open the Easement. Your statement that "the pending litigation initiated by Mr. Roth is not an impediment to a collaborative effort between Mrs. Ackerberg and Commission staff to resolve this matter," wholly ignores the fact that, should Mr. Roth prevail in his Appeal and, ultimately, in his lawsuit, the Coastal Commission, Coastal Conservancy and AFA will have no right to open the Easement on her Property for public use.

The Coastal Commission has not provided a single reason why immediate removal of the alleged encroachments from the Ackerberg Property -- which would require Mrs. Ackerberg to substantially alter the physical appearance of her Property and to remove/demolish a number of items and structures within the Easement, including a ten-foot-wide portion of a nine-foot high perimeter block wall facing Pacific Coast Highway -- is necessary or required while Mr. Roth's Appeal is pending and before his lawsuit has been fully adjudicated. Because the legality of opening the Easement for public use has yet to be fully adjudicated in Mr. Roth's lawsuit, the Easement cannot open for public use at this time. Nevertheless, the Coastal Commission apparently expects Mrs. Ackerberg to immediately remove a significant portion of her perimeter block wall facing Pacific Coast Highway, which wall was reflected in the plans approved by the Coastal Commission in 1985. This would leave the interior of the Property exposed and unprotected from trespassers for the entirety of the time Mr. Roth's Appeal and lawsuit are pending (which, as you know, will be several months at the very least). The Coastal Commission's failure to consider the effects of such circumstance is unfair and unfortunate.

Most significantly, the Enforcement Proceedings constitute an impermissible effort by the Coastal Commission to make an "end run" around the pending Appeal and to divest the Second District Court of Appeal of its constitutionally derived appellate jurisdiction. See People ex rel. San Francisco Bay Conservation and Dev. Comm'n v. Town of Emeryville, 69 Cal.2d 533, 536-39 (1968) (hereinafter, "Emeryville"). Emeryville is instructive and highlights the Coastal Commission's improper efforts to ignore the pending Appeal and to divest the Second District Court of Appeal of its appellate jurisdiction to determine the viability of Mr. Roth's lawsuit and the issues and claims raised therein.

In Emeryville, California's Attorney General brought an action on behalf of the San Francisco Bay Conservation and Development Commission ("BCDC") against the Town of Emeryville to enjoin it from conducting fill operations for failure to obtain a necessary permit from the BCDC. Emeryville, 69 Cal.2d at 536. The trial court first granted the injunction, then dissolved it on the ground that the Town was exempt from securing such a permit. Id. In upholding its order enjoining all fill operations by the Town pending final determination of BCDC's appeal, the California Supreme Court found that resumption of fill activities would have imperiled the value of BCDC's right of appeal and threatened maintenance of the Court's

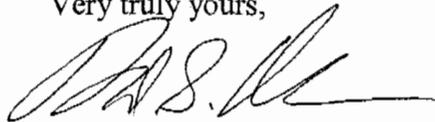
Christine Chestnut  
June 11, 2007  
Page 3

appellate jurisdiction. Id. The Supreme Court held that “had Emeryville been permitted to resume its fill activities, it would have been able, as a practical matter, to render this appeal moot.” Id. at 537

What the Coastal Commission seeks to do here via its Enforcement Proceedings is exactly what the California Supreme Court held in Emeryville to be an impermissible interference with appellate jurisdiction. Here, as in Emeryville, the trial court has rejected Mr. Roth’s claims for injunctive relief and Mr. Roth has appealed that trial court ruling -- which ruling is subject to *de novo* review by the Court of Appeal. See Honig v. San Francisco Planning Dep’t, 127 Cal.App.4th 520, 524 (2005) (*de novo* review standard for dismissal from sustained demurrer without leave to amend). Moreover, as in Emeryville, while Mr. Roth’s Appeal is pending, the Coastal Commission seeks to engage in the very acts sought to be enjoined by his lawsuit -- namely, the implementation, enforcement and opening of the Easement through its use of the Enforcement Proceedings to force Mrs. Ackerberg to immediately remove the alleged encroachments from the Easement. Indeed, the Coastal Commission admits in its April 27, 2007 Notice letter to Mrs. Ackerberg that the Enforcement Proceedings against her are designed to ensure that AFA can “open and manage the easement for public access to the beach” and “the area can function as required by the Commission and as set forth in the recorded Certificate of Acceptance.” Thus, as in Emeryville, the Coastal Commission’s Enforcement Proceedings impermissibly interfere with maintenance of the Second District Court of Appeal’s appellate jurisdiction and imperil the value of Mr. Roth’s and Mrs. Ackerberg’s rights on appeal.

Your consideration of this letter is greatly appreciated.

Very truly yours,



David S. Alverson

cc: Lisette Ackerberg  
Martin J. Foley, Esq.

30295942

Exhibit 21  
CCC-09-CD-01 and CCC-09-NOV-01  
(Ackerberg)

Page 3 of 3

## CALIFORNIA COASTAL COMMISSION

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



Via Certified (# 7006 2760 005 5883 3961)  
and Regular Mail

October 2, 2008

Ms. Diane Abbitt  
511 5<sup>th</sup> Street, Suite G  
San Fernando, CA 91340

Subject: Public Access Easement at 22466 and 22500 Pacific Coast Highway, Malibu. Property Owner Lisette Ackerberg/Lisette Ackerberg Trust.

Violation No.: V-4-07-006

Location: 22500 and 22466 Pacific Coast Highway, Malibu, Los Angeles County (APN 4452-002-013, 4452-002-011)

Violation Description: 1) Unpermitted development including, but not limited to, rock rip-rap, 9-ft high wall, concrete slab and generator, fence, railing, planter, and landscaping located within, and restricting access to, vertical and lateral access easements; and 2) development that is inconsistent with the terms and conditions of existing Coastal Development Permits No. 5-83-360 and 5-84-754, requiring vertical and lateral public access easements.

Dear Ms. Abbitt:

This letter is in regards to your client's, Mrs. Lisette Ackerberg, property and the above referenced Coastal Act violation.<sup>1</sup> The purpose of this letter is to notify you of the California Coastal Commission ("Commission") staff's intention to move forward with the proceedings that were stalled in June of last year due to a now-dissolved judicial stay: (1) for issuance of a Cease and Desist Order and (2) to determine whether a Notice of Violation ("NOVA") will be recorded against your client's property. The nature of and reasons for these proposed proceedings were addressed in previous correspondence from the Commission staff. The original Notice of Intent ("NOI") was sent to Mrs. Ackerberg on April 27, 2007,<sup>2</sup> after more than two years of prior correspondence failed to resolve this matter informally. These proceedings did not occur in 2007 because of litigation filed by your client's neighbor, Jack Roth, seeking to resolve and invalidate

<sup>1</sup> The Coastal Act is codified in Cal. Pub. Res. Code sections 30000-30900.

<sup>2</sup> For your convenience, a copy of the April 27, 2007 NOI is attached to this letter.

Exhibit 22  
CCC-09-CD-01 and CCC-09-NOV-01  
(Ackerberg)

the subject easement ("Public Access Easement") and to enjoin the Commission, the State Coastal Conservancy, and Access for All ("AFA") from opening the easement for public use. Mrs. Ackerberg's previous lawyer, Mr. Edwin Reeser, requested that the Commission postpone the proceedings until the issuance of a final judgment for Jack Roth's lawsuit against the Commission, filed in Los Angeles County Superior Court, Case No. BS102404, which was then pending on appeal to the Second District Court of Appeal (No. B195748), and the Court of Appeals granted a stay of Commission proceedings until it ruled on the appeal.

As you know, the Court of Appeals ultimately ruled in favor of the Coastal Commission and against Mr. Roth, and the California Supreme Court denied Mr. Roth's petition for review and application for stay on July 9, 2008. Therefore, the dismissal of Mr. Roth's lawsuit has been upheld by the courts, and the stay has been dissolved. Thus, we intend to re-commence the proceedings which were postponed in June of 2007. We understand that AFA also intends to proceed with opening the Public Access Easement which it accepted in 2003, and is therefore now held by that organization. Since Mr. Roth did not prevail in his lawsuit, the Coastal Commission, Coastal Conservancy, and AFA have the right to proceed with opening the Public Access Easement for public use. The work that was conditionally permitted by the Commission under Coastal Development Permit ("CDP") Nos. 5-83-360 and 5-84-754 was completed long ago, and since that time, the benefits of the permits have accrued to the property. However, the public access, which the Commission found in the original permit hearing to be required in order to approve the CDPs in a manner that was consistent with the Coastal Act and authorize the development that Mrs. Ackerberg now enjoys and which was a specific condition of the CDPs referenced above, has not been provided.

The April 27, 2007 NOI presented the opportunity to raise defenses in a Statement of Defense form ("SOD"). The NOI and the SOD form specified a twenty-day period for submittal of an SOD, consistent with Section 13181 (a) of the Commissions regulations. The final date for submittal of the SOD was May 17, 2007; however, Commission staff granted Mrs. Ackerberg a 25-day extension of the deadline to submit the SOD extending the final SOD submittal deadline to June 11, 2007, and simultaneously moving the tentative hearing to July. Mrs. Ackerberg sent letters to Commission staff on May 17, 2007 and June 11, 2007, both containing objections to the recordation of a NOVA and the issuance of a Cease and Desist Order.<sup>3</sup> NOVA proceedings were stalled due to the court issued stay. The stay has been resolved with the California Supreme Court's denial of Mr. Roth's petition for review and application for stay on July 9, 2008. Therefore, the proceedings regarding the recordation of a NOVA and the issuance of a Cease and Desist Order are ripe for action. At the time of the prior exchanges, Mrs. Ackerberg was represented by Mr. Reeser. The twenty-day time for identifying issues and raising objections relevant to the Commission proceedings provided for in the Coastal Act regulations has long run, but in light of the change in Mrs. Ackerberg's representation, Commission staff is offering, as a courtesy, an additional ten-day period to raise any issues that were not raised by Mr. Reeser on behalf of Mrs. Ackerberg in the previous objection letters. This is a courtesy offer

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<sup>3</sup> Mrs. Ackerberg's June 11, 2007, May 17, 2007 and March 22, 2007 letters incorporating objections are attached. Staff construes that the letters form her statement of defense, even though the statement of defense form that was sent with the NOI was not completed and submitted. An additional statement of defense form is attached.

and the Commission is under no obligation to provide an additional opportunity to raise additional defenses to the original NOI.

### **Unpermitted Development/Obstruction of Public Access**

The unpermitted development here at issue includes, but is not necessarily limited to, the placement of rock rip-rap, a 9-ft high concrete wall, large generator and associated concrete slab, fence, railing, planter, and landscaping, all of which continues to exist on the property. The unpermitted items lie directly within the vertical easement area and/or the lateral easement area AFA has been attempting to open since 2005. Offers to Dedicate (“OTD”) both easements were found by the Commission to be necessary to find the project consistent with the Coastal Act, and were required by specific permit conditions adopted by the Commission when it issued the two CDPs in the early 1980’s for construction of a wooden bulk head, a new residence and pool, the renovation of an existing tennis court, and the demolition of an existing single-family residence. The unpermitted items completely obstruct public access within the vertical easement and partially obstruct access along the lateral easement. Therefore, the items are both inconsistent with the public access policies of Chapter 3 of the Coastal Act and with the existing permits and the easements established as conditions of the existing permits. Staff has attempted to obtain a voluntary resolution of the violations, but to date, Mrs. Ackerberg has not agreed to resolve the violations on the property and has not submitted removal plans for the unpermitted development.

The Coastal Act violations at issue have resulted in a loss of public access to the coast. The proposed cease and desist order proceeding would direct Mrs. Ackerberg to comply with the permit conditions and easement by removing the unpermitted items located within the easement area, and to cease from placing any development in the easement area in the future or otherwise interfering with public access in the area covered by the legal easement. Removal of the unpermitted development and prohibiting the placement of development within the area in the future allows AFA to open the easement to provide the valuable public access that the Commission required when it authorized the construction of the current Ackerberg residence.

Removal of unpermitted development includes removal of the rip rap at issue, which lies within the lateral access easement area. As we have pointed out in earlier correspondence, the unpermitted rip rap is inconsistent with the applicable permits for the property as it exceeds that which was approved under the 1983 CDP or any other CDP, exceeds the approved specifications in the 1983 permit, and in addition, it lies within the lateral access easement that the Commission required to bring the bulkhead into compliance with the Coastal Act. In addition removal of unpermitted development requires the removal of the rock rip rap, 9-ft high wall, concrete slab and generator, fence, railing, planter, and landscaping located within the vertical easement which completely restricts access to the vertical access easement. The unpermitted development within both the vertical access easement and the lateral access easement constitute development that is inconsistent with an existing CDP and is unpermitted development within the meaning of the Coastal Act and allows the Commission to issue a Cease and Desist Order.<sup>4</sup> The unpermitted development within the vertical easement area has been in violation of an existing CDP since March of 2005, when AFA accepted the easement and indicated it was ready to open it, and

<sup>4</sup> See attached April 27, 2007 NOI letter p. 4-5 defining “unpermitted development” and “inconsistent with CDP” under Section 30106 of the Coastal Act and Cal. Pub. Res. Code § 30810 (a).

since that time, Mrs. Ackerberg has not agreed to comply with removal of the unpermitted development within the vertical easement area.

### **Additional Statements of Defense**

Please submit any additional defenses you wish to assert, in addition to the previous defenses asserted by Mrs. Ackerberg's former counsel, to the Commission's San Francisco office by **October 12, 2008**. A Statement of Defense form is attached to this letter. Comments may be directed to Erin Murphy of the Enforcement Unit, at the address listed on the letter head above. Despite the previously unsuccessful attempts to resolve the violations amicably, Commission staff remains willing to work with Mrs. Ackerberg to resolve the violations in a cooperative manner. Please feel free to contact Commission staff with any questions or concerns you may have regarding the resolution of this violation matter by calling (415) 904-5220. We look forward to working with you to resolve these enforcement actions.

Sincerely,



Aaron McLendon  
Statewide Enforcement Analysts

Encl: April 27, 2007 NOI to Mrs. Ackerberg from Peter M. Douglas  
Mrs. Ackerberg's June 11, 2007 letter to the Commission  
Mrs. Ackerberg's May 17, 2007 letter to the Commission  
Mrs. Ackerberg's March 22, 2007 letter to the Commission  
Statement of Defense form

Cc (with Encl): Mrs. Lisette Ackerberg

Cc (without Encl): Lisa Haage, Chief of Enforcement  
Alex Helperin, Staff Counsel

LAW OFFICES OF DIANE ABBITT

511 5<sup>th</sup> Street  
Suite G  
San Fernando, California 91340

TELEPHONE (818) 837-2117  
FAX (818) 256-2379

October 16, 2006

VIA FACSIMILE & US MAIL

Erin Murphy  
Enforcement Unit  
CALIFORNIA COASTAL COMMISSION  
45 Fremont, Suite 2000  
San Francisco, California 94105-2219

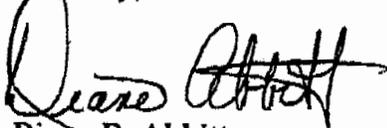
Re: Second Statement of Defense Submittal Extension  
Lisette Ackerberg/Lisette Ackerberg Trust Public Access Easement

Dear Ms. Murphy,

Thank you for your correspondence received by our offices at 5:40 PM yesterday afternoon. Ms. Ackerberg asked me to express her appreciation of the courtesy you are extending to our offices by giving us till October 22, 2008, to respond to the October 2, 2008, correspondence sent to our offices by Aaron McLendon.

Please know that we take this matter very seriously, and are reviewing the history of this matter very carefully so that we can appropriately advise our client of her options.

Sincerely,

  
Diane R. Abbitt

DRA/dir

cc: Lisette Ackerberg  
Lisa Haage, Chief of Enforcement  
Aaron McLendon, CCC Headquarters Enforcement Analyst

Exhibit 23  
CCC-09-CD-01 and CCC-09-NOV-01  
(Ackerberg)

## CALIFORNIA COASTAL COMMISSION

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



Via Fax and Regular Mail

October 15, 2008

Ms. Diane Abbitt  
511 5<sup>th</sup> Street, Suite G  
San Fernando, CA 91340

Subject: Second Statement of Defense Submittal Extension, Lisette  
Ackerberg/Lisette Ackerberg Trust Public Access Easement.

Violation No.: V-4-07-006

Location: 22500 and 22466 Pacific Coast Highway, Malibu, Los Angeles County  
(APN 4452-002-013, 4452-002-011)

Dear Ms. Abbitt:

This letter is in response to your request to extend the deadline for submittal of an additional Statement of Defense in regards to the above referenced Coastal Act violation for your client, Mrs. Ackerberg, and to express our continuing interest in resolving this violation. Commission staff member Aaron McLendon received your request to extend the original deadline via email on Tuesday, October 14, 2008. The original deadline for submitting defenses in addition to those submitted by Mrs. Ackerberg's former counsel was October 12, 2008. You requested a 30 day extension period from the date of your request, October 14, 2008, (not from the date of the original letter). We attempted to reach you to discuss this issue further on the afternoon of October 14, 2008, but were unable to reach you and as of this date, have not received a return call from you. We therefore are writing this letter to avoid more time passing before we had the opportunity to communicate with you.

Unfortunately, Commission staff cannot grant such a lengthy extension period at this time. We point out that the application regulations provide for "20 days from transmittal" of the notice of intent for a response to be submitted. (CCR, Title 14, Division 5.5 Section 13181 (a)). Moreover, as we previously discussed, the Commission already provided your client such a period of response to the notice of intent at the time the original letter was sent. The actual time limit period she had to respond to the notice of intent letter has long since passed and the regulations do not provide for a new opportunity to respond. However, as a courtesy, in light of the fact that we became aware that she had retained new counsel, we voluntarily offered you and your client a new opportunity to respond to the issues raised in the notice of intent. However, given the long passage of time since this case began, and the need to move toward resolution and to address this matter in an upcoming hearing, we need to move forward.

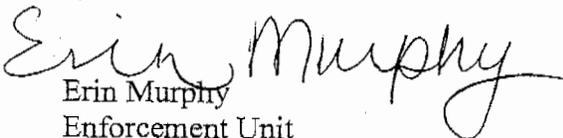
Exhibit 23  
CCC-09-CD-01 and CCC-09-NOV-01  
(Ackerberg)

Despite the foregoing, as an additional accommodation to your request, the Commission staff is willing to grant a 20 day period of time for the new response (from the date on which Commission staff mailed a letter to your office extending the courtesy opportunity to assert additional defenses on behalf of your client, Mrs. Ackerberg, which would mean that she now has the full amount of time provided to your office as if she had not had an opportunity to respond previously). That letter was mailed to your office on October 2, 2008. Please submit any defenses you wish to assert to the Commission's San Francisco office by **October 22, 2008**. Comments may be directed to Erin Murphy of the Enforcement Unit, at the address listed on the letter head above.

This letter is sent in addition to the voice mail you received from Commission staff Lisa Haage and Erin Murphy at your office on Tuesday, October 14, 2008. As stated in that voice mail, Commission staff remains willing to work with Mrs. Ackerberg to resolve the violations in a cooperative manner. Moreover, as we mentioned in our voicemail of yesterday, if it appears that it is likely we were going to be able to reach an expeditious settlement of this matter, it may be that you do not need to respond with a Statement of Defense at all. In many cases, parties prefer to work towards a consensual resolution of the violation which obviates the need for a contested hearing altogether. If you and your client would like to discuss the option of reaching an agreement which would comply with the permit conditions and would resolve the violation and open the accessway Commission staff is available to discuss those options with both of you. As we noted, such an agreement would allow you and your client increased input in the manner and timing of the resolution of the violation, and we would strive to make the process as collaborative as possible. We would, however, have to work very quickly to address this issue, given the upcoming hearing schedule. **If you would like to discuss this option, please contact our office no later than October 21, 2008.** For your information, Commission staff is tentatively looking at bringing this matter before the Commission at the November 12-14 hearing which will be held in Long Beach, California.

You also indicated that you are working with counsel for Access for All, who hold the easement established by the Commission permit conditions. We are pleased to hear that, and encourage this as a constructive step in resolving the situation and opening the accessway. We look forward to working with you to resolve the violation and in moving forward with this matter. Please feel free to contact Erin Murphy of the Commission Enforcement Unit with any questions or concerns you may have regarding the resolution of this violation matter by calling (415) 904-5220. We look forward to working with you to resolve these enforcement actions.

Sincerely,

  
Erin Murphy  
Enforcement Unit

cc. Lisa Haage, Chief of Enforcement  
Aaron McLendon, CCC Headquarters Enforcement Analyst

Exhibit 23  
CCC-09-CD-01 and CCC-09-NOV-01  
(Ackerberg)

# LAW OFFICES OF DIANE ABBITT

511 Fifth Street, Suite G  
San Fernando, California 91340

# COPY

TELEPHONE (818) 637-2117  
FAX (818) 256-2379

October 21, 2008

**Via Fax and UPS OVERNIGHT**

Ms. Lisa Haage  
Chief of Enforcement  
California Coastal Commission  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105

Re: Notice of Intent to Record a Notice of Violation of the Coastal Act and to  
Commence Cease and Desist Order Proceedings  
V-4-07-006  
Location: 22500 and 22466 Pacific Coast Highway, Malibu, California  
APN 4452-002-013, 4452-002-011

Dear Ms. Haage:

This letter is written on behalf of our client, Lisette Ackerberg, in response to Staff's recent October 2, 2008, and October 15, 2008, letters regarding the above-referenced Coastal Act violation and the short extension that we were provided to submit an additional Statement of Defense. We appreciate Staff's courtesies and offer to work with Mrs. Ackerberg; we believe that our objective is the same as the Commission's, to end up with a meaningful vertical accessway to this area of Carbon Beach and, toward that end, we are taking aggressive, pro-active action. We now find that to accomplish this mutual objective, we need more time, as well as your assistance.<sup>1</sup>

To date, the letters exchanged have addressed the fact that Access for All (AFA) has accepted the vertical access easement located on the downcoast side of Mrs. Ackerberg's property, that AFA indicates that it is ready to open and operate the easement, and that Staff has requested that certain improvements located within easement strip be removed. Yet, a fundamental problem remains – namely, this particular vertical

<sup>1</sup> For the sake of simplicity, we would ask Staff to construe Mrs. Ackerberg's prior objection letters, as well as this letter, as her statement of defense, to the extent you believe that is required at this point.

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accessway simply may not be viable. Recognizing that this is the case, we have recently been pursuing what we ( and we believe the Commission in 1984) believed to be a better solution for the public – opening and funding a dedicated vertical accessway close by that is currently owned by the County of Los Angeles at 22600 Pacific Coast Highway.

We all agree that in approving the Ackerberg residence in 1984, the Commission imposed a vertical access requirement. But, the Commission's decision also anticipated the current situation and included revised findings to address it. In a letter to Staff dated January 28, 1985, the Ackerberg's then attorney, Edwin Reeser, recounted his understanding of the Commission's instructions regarding the revised findings:

- “[L]anguage should be put in the staff report as to the desirability of opening accessways already owned by the public before the opening of private accessways; particularly where the burden on the private property owner is substantial.”
- “[T]here was considerable discussion by Commissioners at the hearing about the extinguishment of offers to dedicate where adequate nearby access is developed; or where after adoption of a Malibu Land Use Plan it may be determined that further access is not required.”
- “[B]oth Commissioners and Staff agreed that the Ackerbergs could make full use of the entire width of their property, including the continuation of use of the offered strip, until such time as it is developed into an open vertical accessway.” (See the accompanying letter, dated January 28, 1985, from Edwin B. Reeser, III, to Gary Gleason attached to this letter as Exhibit A and made a part of it.)

With this in mind, the Commission then added a finding to its decision to provide the Ackerbergs with the future opportunity for extinguishing the condition. After discussing the reason for imposing the vertical accessway, the Commission stated:

“The Commission further finds that notwithstanding the fact the County of Los Angeles owns a vertical accessway within 500 feet of the project, that accessway has not been opened to the public and therefore the Commission cannot make a finding that ‘adequate access exists nearby.’ In addition, although the Commission has, in some cases, found that vertical access dedication will not be required, such an approach is not appropriate here. The appropriate vehicle for establishing the policy relative to the precise spacing of vertical accessways and whether previously secured offers to dedicate vertical accessways can be extinguished if another vertical accessway is improved and opened within 500 feet of the subject property in [sic] the LUP. The Malibu LUP recommendation suggests a policy on this point. *The Commission believes that as a matter of policy, public owned vertical accessways should be improved and opened to*

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*public use before additional offers to dedicate vertical access easements are opened* (Emphasis Added). This position assumes that publicly owned accessway is within 500 feet of the subject property, that it is equally suitable for public use based on management and safety concerns, and that improvements to accomplishment public use are feasible. Once a public accessway has been improved and opened for public use, and a suitable policy and mechanism has been developed and adopted to ensure that such a vertical accessway remains open and available and assuming the Commission has approved a policy that outstanding offers to dedicate additional vertical access easements within 500 feet of an opened vertical accessway can then be extinguished, staff will initiate actions to notify affected property owners that they can take steps to extinguish such offers to dedicate. As part of the Commission's public access program, procedures will be developed to implement this directive."<sup>2</sup> (Commission Decision, Application No. 5-84-754, pp. 7-8 attached to this letter as Exhibit B and made a part of it.)

With this very specific language, the Commission explained to the Ackerbergs its policy that "publicly owned vertical accessways should be improved and opened to public use before additional offers to dedicate vertical access easements are opened," and that "[o]nce a public accessway has been improved and opened for public use," a suitable policy and mechanism would be developed and adopted that would enable the OTD to be extinguished. This makes sense because, as a practical matter, not every accessway mechanically spaced at 500 feet results in meaningful or viable public access, something ordinarily that would be provided by a publicly owned accessway.

The vertical access easement here has inherent limitations that seriously affect its utility to provide meaningful or viable public access to the beach. There is insufficient parking in this area and no crosswalk or stop light near the Ackerberg property. There are no visitor-supporting facilities, *i.e.*, trash cans, lifeguards, or bathrooms, on or near the beach. As you undoubtedly know, the easement area is cramped, sandwiched between two homes, and is not visible from Pacific Coast Highway.

In addition and equally important, there are problems that exist at both ends of the easement area. Erin Murphy was kind enough to forward me the July 28, 2003, "Public Vertical Access Easement Management Plan" for the easement. On page 2, the Management Plan states that two eucalyptus trees are located within the easement. That, however, is not accurate. There are two substantial eucalyptus trees on the land side of the easement but they are located in the City right-of-way, not the easement area. (Please see the accompanying survey of the Ackerberg property attached to this letter as Exhibit C and made a part of it.) Mrs. Ackerberg has no control over the location of the trees. They are owned by the City and are not encroachments in the easement. The trees are

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<sup>2</sup> The accompanying copy of the revised Staff Report includes a margin note by Mr. Reeser, "added change in findings," reflecting the addition of this paragraph to the findings.

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significant, however, because they are mature and fully obscure the easement area.  
(Please see photo on Exhibit C which clearly reflect the height and location of the trees.)

A problem also exists at the seaward end of the easement. Staff's letters assert that "the placement of rock rip-rap" constitutes unpermitted development. However, this is inaccurate as well. On June 9, 1983, the Commission approved the construction of an approximately 140-foot long wood pile supported, wood sheeted bulkhead. Importantly, the approved seawall, which spanned the length of the property, included rock rip-rap. (Please see the accompanying correspondence and seawall engineering report attached to this letter as Exhibit D and made a part of it.) The seawall/rip-rap has been on the property for over 20 years, but sand covered the rip-rap. By our observation, the west end of Carbon Beach where the Ackerberg property is located has been eroding. The beach is significantly shallower today than it was when the Commission imposed the vertical access easement requirement. Thus, the rip-rap that Staff notes is, of course, visible, but it was lawfully installed under the 1983 permit approved by the Commission. The significance of this is two-fold: First, there is no violation with respect to the existing seawall. Second, the exposed rock where the easement adjoins the beach makes use of the easement, again, problematic.

Based upon the foregoing, it is clear that there are some fundamental problems associated with opening this particular vertical accessway, problems which the Commission itself appears to have been aware of as reflected in the above quoted language of the revised findings.

As originally stated, we recognize the Commission's and Staff's desire to provide a meaningful vertical accessway in the Carbon Beach area. To that end, we have been diligently pursuing a related course of action, consistent with the findings and guidance that the Commission provided in granting the permit for the Ackerberg residence. As noted in the revised findings, "[O]ne County accessway (at 22550 P. C. H.) is located within 500 feet of the project site." This vertical accessway was created in or about 1973, when the County of Los Angeles approved Tract Map No. 29628 ("Tract Map"), which authorized the conversion of an existing apartment building at 22600 Pacific Coast Highway to condominiums. The Tract Map reflects a surveyed 10-foot wide vertical access easement on the upcoast side of the condominium building that extends to the mean high tide line, identified as "[a]n easement to the County of Los Angeles for pedestrian ingress and egress purposes." The then property owner, Malibu Terrace, Ltd., provided the following dedication on the approved map: "We also dedicate to the County of Los Angeles the easement for ingress and egress purposes so designated on said map and all uses incident thereto, including the right to make connections therewith from any adjoining properties." And, on October 23, 1973, the County of Los Angeles accepted the easement on behalf of the public: "That all easements shown on said map and offered

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for dedication be and the same are hereby accepted on behalf of the public.”<sup>3</sup> (Please see the accompanying Tract Map attached to this letter as Exhibit E and made a part of it.)

Thus, there still exists a dedicated public vertical accessway only five properties to the west (upcoast) of the Ackerberg residence. (See Commission’s Website, “Carbon Beach – Parcels with Public Access Easements – Malibu, Los Angeles County” – #s2 and 3 of 6.) This public accessway is located immediately upcoast of the condominium building in the existing parking lot that serves the building. In contrast to the easement adjacent to the Ackerberg residence, the County accessway is visible and far closer to public parking, a signal, and a crosswalk, and it is already paved. The accessway is 420 feet from the nearest pedestrian crosswalk downcoast and 850 feet from the nearest pedestrian crosswalk upcoast. There are, however, modest encroachments currently within the easement area: a stucco retaining wall, a planter, a wood gate, a pool equipment area, and portion of a wood deck that need to be removed. We have prepared a “Topography Survey” which more graphically shows both the west end of the condominium property and the unimproved property immediately upcoast. The survey identifies the location of the dedicated public accessway, and it also notes another possible location for it outside of condominium parking lot. (Please see Exhibit F attached to this letter and made a part of it.)

Further to our efforts, we met recently with Supervisor Zev Yaroslavsky’s office to discuss the opening of this public accessway and the funding of its long-term maintenance. That dialogue is continuing.

We understand that this matter has been pending since 2003, and that everyone is impatient to be done with it and to move forward and open the accessway, but I ask you the same questions we have been asking ourselves – Is this the right accessway? Is it truly viable? For the money to be spent, will we get the desired return on our dollars? I’m new to this matter and, in reviewing all of the materials generated by previous counsel and Staff to date, the materials enclosed with this correspondence, my visits to the Ackerberg property and the County accessway, and the guidance offered in the revised findings as set forth in Exhibit B, I would have to answer, NO, not if the County accessway can be opened.

We are committed to proceeding expeditiously, but we need more time and we need to work together. We are aware that the upcoming November Commission meeting is in Long Beach, and we think that would be a great time to meet with you and, if your time permits, to visit both sites.

<sup>3</sup> The property immediately upcoast of the condominium building and parking lot is undeveloped. The Tract Map approval required a sizable area for a temporary private easement for a leachfield to serve the condominium which is to be maintained until such time as a sewer is installed in this area of Malibu. (See the accompanying “Covenant and Agreement.”) Since it is not likely that there will ever be a sewer system approved and constructed in Malibu, the leachfield is likely to remain for the life of the building, and the leachfield easement greatly limits the developable area available on this unimproved parcel.

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I look forward to discussing this further with you at your earliest convenience.

Sincerely,



Diane R. Abbitt

Cc: Mr. Aaron McLendon, CCC Headquarters Enforcement Analyst  
Ms. Erin Murphy, CCC Enforcement Unit (w/o enclosures)  
Mrs. Lisette Ackerberg (w/o enclosures)  
Mr. Terry Taminen (w/o enclosures)

Enclosures

## CALIFORNIA COASTAL COMMISSION

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



Via Regular Mail  
and Fax

November 14, 2008

Law Offices of Diane Abbitt  
511 Fifth Street, Suite G  
San Fernando, CA 91340

Subject: **Draft Consent Cease and Desist Order No. CCC-08-CD-10**

Violation No.: V-4-07-006

Location: 22500 and 22466 Pacific Coast Highway, Malibu, Los Angeles  
County (APNs 4452-002-013, 4452-002-011)

Violation Description: 1) Unpermitted development including, but not limited to, rock rip-rap, 9-ft high wall, concrete slab and generator, fence, railing, planter, light posts, staircase, and landscaping, all of which is located within, and restricting access to, vertical and lateral access easements; and 2) development that is inconsistent with the terms and conditions of existing Coastal Development Permits Nos. 5-83-360 and 5-84-754, requiring vertical and lateral public access easements.

Dear Ms. Abbitt:

This letter is in regards to Mrs. Lisette Ackerberg's (your client) property and the above referenced Coastal Act violation case.<sup>1</sup> In light of California Coastal Commission ("Commission") staff's desire to resolve the above-cited violations that exist on your client's property, along with your October 21, 2008 letter sent to Commission staff expressing the desire to resolve this matter amicably, I am attaching a draft of a proposed Consent Cease and Desist Order for your review. As you are aware from the Notice of Intent to Record a Notice of Violation of the Coastal Act and to Commence Cease and Desist Order Proceedings, sent by Commission staff to Ms. Lisette Ackerberg, and dated April 27, 2007, as well as the letter I sent to you dated October 2, 2008, Commission staff has been making preparations to bring to the Commission at its December meeting, (1) a proposed Cease and Desist Order and (2) findings in support of a recordation of a Notice of Violation ("NOVA") against your client's property. As

<sup>1</sup> The Coastal Act is codified in Cal. Pub. Res. Code sections 30000-30900.

Exhibit 25  
CCC-09-CD-01 and CCC-09-NOV-01  
(Ackerberg)

noted in the Notice of Intent ("NOI") letters sent to your client, we always prefer to resolve matters consensually if possible. As a reflection of our desire to resolve this matter amicably, we are providing you with the opportunity to reach an agreement with the Commission via a Consent Cease and Desist Order, to settle the violations that exist at the subject property. The situation is similar to executing a settlement and you will note the similarity of the proposed Consent Order to a settlement agreement.

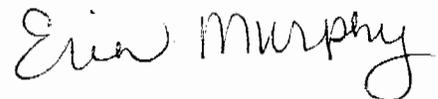
A Consent Order would provide your client with an opportunity to resolve this matter consensually, to have greater input into the process and timing of removal of the unpermitted development, and to resolve the issue of penalties under the Coastal Act. The Consent Order process will provide your client with the necessary framework to proceed with the removal of unpermitted development at the subject property as well as comply with the terms and conditions of Coastal Development Permit Nos. 5-83-360 and 5-84-754, requiring vertical and lateral public access easements. The proposed order includes a provision that you agree not to contest to the issuance or enforceability of the order.

Provided that you, on behalf of your client, reach agreement with Commission staff on the proposed Consent Order, we will ask Mrs. Ackerberg to sign the Consent Order prior to the December 11-12, 2008 Commission hearing since the terms of the Order relate to the conduct of the Commission hearing. In order to avoid a unilateral hearing, we ask that Mrs. Ackerberg sign the Consent Order **by Tuesday, December 2, 2008**. In the event that we are unable to reach an agreement regarding the proposed Order, Commission staff will proceed with the Cease and Desist Order proceedings already scheduled, as well as determining whether a NOVA will be recorded against your client's property at the December 11-12, 2008 Commission hearing.

Please review the proposed Consent Order and provide me with comments by **Wednesday, November 19, 2008**. If we fail to reach agreement by that date, the Commission staff will proceed as scheduled with a unilateral Cease and Desist Order proceeding as well as a hearing on recordation of a NOVA.

If you have any questions regarding this letter, the proposed Consent Order, or any other issues relating to this violation matter, please contact me at 415-597-5886 or send correspondence addressed to my attention at the address listed on the letterhead above. Again, we hope we can resolve this matter amicably and look forward to hearing from you.

Sincerely,



Erin Murphy  
Enforcement Program

cc: Lisa Haage, Chief of Enforcement  
Alex Helperin, Staff Counsel

Exhibit 25  
CCC-09-CD-01 and CCC-09-NOV-01  
(Ackerberg)

Violation No. V-4-07-006

Ackerberg

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Aaron McLendon, Statewide Enforcement Analyst  
Pat Veasat, Southern California Enforcement Program Supervisor  
Lisette Ackerberg

Exhibit 25  
CCC-09-CD-01 and CCC-09-NOV-01  
(Ackerberg)

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November 14, 2008

DRAFT CONSENT CEASE AND DESIST ORDER CCC-08-CD-10

1.0 CONSENT CEASE AND DESIST ORDER CCC-08-CD-10

Pursuant to its authority under California Public Resources Code ("PRC") § 30810, the California Coastal Commission ("Commission") hereby authorizes and orders Mrs. Lisette Ackerberg, both in her individual capacity and in her capacity as trustee for the Lisette Ackerberg Trust, all her successors, assigns, employees, agents, and contractors, and any persons acting in concert with any of the foregoing (hereinafter, "Respondent") to take all actions required by Consent Cease and Desist Order No. CCC-08-CD-10 ("Consent Order"). Through the execution of this Consent Order, the Respondent agrees to comply with the terms of this paragraph and with following terms and conditions embodied in this Consent Cease and Desist Order:

- 1.1 Cease and desist from engaging in any further development on the subject property, as defined in Section 5.1 of this Consent Order, unless authorized pursuant to the Coastal Act (Cal. Pub. Res. Code §§ 30000 *et. seq.*).
- 1.2 Cease and desist from maintaining any unpermitted development on the property, as that phrase is defined in Section 6 of this Consent Order.
- 1.3 Take all steps necessary to ensure compliance with the Coastal Act by removing (consistent with the requirements in Section 2.0 of this order) all unpermitted development, as defined in Section 6 of this order, consisting of, but not limited to, rock rip-rap, a 9-ft. high wall, a concrete slab and generator, a fence, a railing, a planter, light posts, a stairwell, and landscaping, all of which is located within, and restricting access to, vertical and lateral access easements, by complying with the requirements of Section 2 as set forth below.
- 1.4 Respondent shall allow Access for All, and all their employees, agents and contractors, access to the vertical easement area for purposes of surveying the area as well as designing, constructing, opening, and maintaining the vertical easement area dedicated for public use once the unpermitted development is removed.

2.0 ADDITIONAL TERMS AND CONDITIONS

2.1 Removal Plan

Exhibit 25  
CCC-09-CD-01 and CCC-09-NOV-01  
(Ackerberg)

Within 60 days of issuance of this Consent Order, Respondent shall submit for the review and approval of the Executive Director of the Commission ("Executive Director") a Removal Plan ("Plan"). The Plan shall outline the removal of all unpermitted development on the subject property along with any restoration work that may be required as a result of removal activities. The Executive Director's approval of the plan will not constitute concurrence that no unpermitted development exists on the property other than that which is listed in the Plan. Unpermitted development to be removed includes, but is not necessarily limited to, all unpermitted development within the vertical and lateral easement areas including rock rip-rap, a 9-ft. high wall, a concrete slab and generator, a fence, a railing, a planter, light posts, a stairwell, and landscaping, all of which is located within, and restricting access to, vertical and lateral access easements. If the Respondent proposes to relocate the concrete slab and generator to another area on the property, the property owner shall apply for applicable coastal development permits. The plan shall include and discuss the following elements:

- a. A current, scaled site plan prepared by a qualified surveyor depicting all existing development on the subject property.
- b. Photographs of the site and of all unpermitted and approved development contained thereon.
- c. A description of all equipment that will be used for removal of the unpermitted development. If the Plan calls for heavy equipment on the sandy beach, the Plan shall also include appropriate operation of mechanized equipment necessary to complete removal work, including, but not limited to the following:
  - i. Hours of operation of mechanized equipment shall be limited to weekdays between sunrise and sunset, excluding the holidays;
  - ii. Equipment shall be stored in an appropriate location inland from the beach when not in use;
  - iii. A contingency plan shall be established addressing: 1) potential spills of fuel or other hazardous releases that may result from the use of mechanized equipment; 2) clean-up and disposal of the hazardous materials; and 3) water quality concerns;
  - iv. Measures to protect impacts to water quality from removal activities shall be provided.
  - v. At no time shall any equipment or other construction activities occur within the intertidal (wet sand) areas of the sandy beach. If tides and surf are such that any equipment or construction material make contact with coastal waters, all such activities shall stop and any equipment or construction material shall be immediately removed from the sandy beach area.

- d. A detailed and comprehensive description of the removal activities.
- e. Identification of any restoration work that will be needed as a result of removal activities, to ensure public access consistent with the permit condition and protection of coastal resources consistent with Chapter 3 of the Coastal Act.
- f. A description including name and location of an appropriate, licensed disposal site (or, if usable materials are being reused or stored for future use, the location of reuse or an appropriate storage facility) where the unpermitted development will be taken. Should the disposal or storage site be located in the Coastal Zone, a coastal development permit shall be required for such disposal.
- g. A proposed series of dates and times for performing the removal work.
- h. A provision that all work to be performed under this Consent Order shall be done in compliance with all applicable laws.
- i. All plans, reports, photographs and any other materials required by this Consent Order shall be sent to:

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

With a copy sent to:

California Coastal Commission  
South Central Coast District  
Attn: Tom Sinclair  
89 S. California Street, Suite 200  
Ventura, CA 93001  
Facsimile (805) 641-1732

California Coastal Commission  
Central Coast District  
Attn: Linda Locklin  
725 Front Street, Suite 300  
Santa Cruz, CA 95060  
Facsimile (831) 427-4877

## 2.2 Execution of Removal Plan

Respondent shall implement all the terms and requirements of the Removal Plan in accordance with the approved deadlines of the Plan.

## 2.3 Evidence of Compliance

Within 30 days of the completion of the removal activities described in paragraph 2.1, Respondent shall submit to the Executive Director a report documenting the removal of

unpermitted development from the subject property. This report shall include a summary of dates when work was performed and photographs that show the removal of the unpermitted development from the subject property, as well as photographs of the subject property after removal of all unpermitted development.

### 3.0 REVISIONS OF DELIVERABLES

If the Executive Director determines that any modifications or additions to a proposed Removal Plan are necessary, he shall notify Respondent. Respondent shall complete requested modifications and resubmit the Removal Plan for approval within 10 days of the postmarked date of the notification. The Executive Director may extend time for submittals upon a written request and a showing of good cause, pursuant to Section 12.0 of this Consent Order.

### 4.0 PERSONS SUBJECT TO THE ORDER

Mrs. Lisette Ackerberg, both in her individual capacity and in her capacity as trustee for the Lisette Ackerberg Trust, all her successors, assigns, employees, agents, and contractors and any persons acting in concert with any of the foregoing are jointly and severally subject to all the requirements of this Consent Order.

### 5.0 IDENTIFICATION OF THE PROPERTY

The property that is the subject of this Consent Order is described as follows:

22466 and 22500 Pacific Coast Highway, Malibu, Los Angeles County, APNs 4452-002-013 and 4452-002-011.

### 6.0 DESCRIPTION OF ALLEGED COASTAL ACT VIOLATION

6.1 Unpermitted development and development that is inconsistent with the terms and conditions of existing CDP Nos. 5-83-360 and 5-84-754, including, but not limited to, rock rip-rap exceeding that which was approved by the Commission under Coastal Development Permit No. 5-83-360, a 9-ft. high wall, a concrete slab and generator, a fence, a railing, a planter, light posts, a stairwell, and landscaping, all of which is located within, and restricting access to, vertical and lateral access easements.

6.2 As used in this Consent Order, the phrase 'unpermitted development' refers to any development, as that term is defined in PRC Section 30106, that lacks a necessary Coastal Development Permit including any materials and structures existing on the subject property as a result of such development.

### 7.0 COMMISSION JURISDICTION

The Commission has jurisdiction over resolution of this alleged Coastal Act violation pursuant to PRC Section 30810. Respondent agree not to contest the Commission's jurisdiction to issue or enforce this Consent Order.

#### 8.0 SETTLEMENT OF MATTER PRIOR TO HEARING

In light of the intent of the parties to resolve these matters in settlement, Respondent agreed not to contest the legal and factual bases for, and the terms and issuance of, this Consent Order, including the allegations of Coastal Act violations contained in the Notice of Intent to Record a Notice of Violation of the Coastal Act and to Commence Cease and Desist Order Proceedings ("NOI") dated April 27, 2007. Specifically, Respondent has agreed not to contest the issuance or enforcement of the Consent Order at a public hearing or any other proceeding.

#### 9.0 EFFECTIVE DATE AND TERMS OF THE ORDER

The effective date of this Consent Order is the effective date the Consent Order is issued by the Commission. This order shall remain in effect permanently unless and until rescinded by the Commission.

#### 10.0 FINDINGS

This Consent Order is issued on the basis of the findings adopted by the Commission, as set forth in the document entitled "Staff Report and Findings for Consent Cease and Desist Order No. CCC-08-CD-10." The activities authorized and required in this Consent Order are consistent with the resource protection policies set forth in Chapter 3 of the Coastal Act. The Commission has authorized the activities required in this Consent Order as being consistent with the resource protection policies set forth in Chapter 3 of the Coastal Act.

#### 11.0 SETTLEMENT/COMPLIANCE OBLIGATION

11.1 In light of the intent of the parties to resolve these matters in settlement, Respondent shall pay a monetary settlement in the amount of \$ \_\_\_\_\_. The settlement monies shall be deposited in the Violation Remediation Account of the California Coastal Conservancy Fund (see PRC Section 30823). Respondent shall submit the settlement payment amount by \_\_\_\_\_ to the attention of Aaron McLendon of the Commission, payable to the California Coastal Commission/Coastal Conservancy Violation Remediation Account.

11.2 Respondent agrees to not engage in any further development, as that term is defined in PRC section 30106, located on or seaward of the subject property unless authorized pursuant to the Coastal Act, PRC §§ 30000-30900, and/or the City of Malibu certified Local Coastal Program or recognized, in writing, by the Commission to be exempt.

11.03 Strict compliance with this Consent Order by all parties subject thereto is required. Failure to comply with any term or condition of this Consent Order, including any deadline contained in this Consent Order, unless the Executive Director of the Commission ("Executive Director") grants an extension under Section 12, will constitute a violation of this Consent Order and shall result in Respondent being liable for stipulated penalties in the amount of \$1,000 per day per violation. Respondent shall pay stipulated penalties within 15 days of receipt of written demand by the Commission for such penalties regardless of whether Respondent has subsequently complied. In addition, if Respondent violates this Consent Order, nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of the Commission to seek any other remedies available, including the imposition of civil penalties and other remedies pursuant to Public Resources Code Sections 30821.6, 30822 and 30820 as a result of the lack of compliance with the Consent Orders and for the underlying Coastal Act violations as described herein.

11.4 Settlement monies and any other materials required by this Consent Order shall be sent to:

California Coastal Commission  
Headquarters Enforcement Program  
Attn: Aaron McLendon  
45 Fremont Street, Suite 2000  
San Francisco, California 94105  
(415) 904-5220  
Facsimile (415) 904-5235

## 12.0 DEADLINES

Prior to the expiration of any given deadlines established by this Consent Order, Respondent may request from the Executive Director an extension of the unexpired deadline. Such a request shall be made in writing 10 days in advance of the deadline and directed to the Executive Director in the San Francisco office of the Commission. The Executive Director may grant an extension of deadlines upon a showing of good cause.

## 13.0 SITE ACCESS

Respondent shall provide access to the subject property at all reasonable times to Commission staff and any entity having jurisdiction over the work being performed under this Consent Order. Nothing in this Consent Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Commission staff may enter and move freely about the portions of the subject property on which the violations are located, and on adjacent areas of the property to view the areas where removal of development is being performed pursuant to the requirements of the Consent Order for purposes including but not limited to inspecting

records, operating logs, and contracts relating to the site and overseeing, inspecting and reviewing the progress of respondents in carrying out the terms of this Consent Order.

#### 14.0 GOVERNMENT LIABILITIES

Neither the State of California, the Commission, nor its employees shall be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent in carrying out activities pursuant to this Consent Order, nor shall the State of California, the Commission or its employees be held as a party to any contract entered into by Respondent or their agents in carrying out activities pursuant to this Consent Order.

#### 15.0 SETTLEMENT OF CLAIMS

15.1 Persons against whom the Commission issues a Cease and Desist and/or Restoration Order have the right pursuant to PRC Section 30803(b) to seek a stay of the order. However, in light of the desire to settle this matter and avoid litigation, pursuant to the agreement of the parties as set forth in this Consent Order, Respondent hereby waives whatever right they may have to seek a stay or to challenge the issuance and enforceability of this Consent Order in a court of law or equity.

15.2 The Commission and Respondent agree that this Consent Order settles the Commission's monetary claims for relief for those violations of the Coastal Act alleged in the NOI dated April 27, 2007 occurring prior to the date of this Consent Order (specifically including claims for civil penalties, fines, or damages under the Coastal Act, including under PRC Sections 30805, 30820, and 30822), with the exception that, if Respondent fails to comply with any term or condition of this Consent Order, the Commission may seek monetary or other claims for both the underlying violations of the Coastal Act and for the violation of this Consent Order. In addition, this Consent Order does not prevent the Commission from taking enforcement action due to Coastal Act violations at the subject property other than those that are the subject of the NOI.

#### 16.0 SUCCESSORS AND ASSIGNS

This Consent Order shall run with the land binding Respondent and all successors in interest, heirs, assigns, and future owners of the property. Respondent shall provide notice to all successors, assigns, and potential purchasers of the property of any remaining obligations under this Consent Order.

#### 17.0 MODIFICATIONS AND AMENDMENTS

Except as provided in Section 12.0, and for minor, immaterial matters upon mutual written agreement of the Executive Director and Respondent, this Consent Order may be

amended or modified only in accordance with the standards and procedures set forth in Section 13188(b) of the Commission's administrative regulations.

#### 18.0 GOVERNMENTAL JURISDICTION

This Consent Order shall be interpreted, construed, governed and enforced under and pursuant to the laws of the State of California.

#### 19.0 LIMITATION OF AUTHORITY

19.1 Except as expressly provided herein, nothing in this Consent Order 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 Consent Order.

19.2 Correspondingly, Respondent has entered into this Consent Order and waived their right to contest the factual and legal bases for issuance of this Consent Order, and the enforcement thereof according to its terms. Respondent has agreed not to contest the Commission's jurisdiction to issue and enforce this Consent Order.

#### 20.0 INTEGRATION

This Consent Order constitutes the entire agreement between the parties and may not be amended, supplemented, or modified except as provided in this Consent Order.

#### 21.0 STIPULATION

Respondent and their representatives attest that they have reviewed the terms of this Consent Order and understand that their consent is final and stipulate to its issuance by the Commission.

#### 22.0 RECORDATION OF A NOTICE OF VIOLATION

Respondent does not object to recordation by the Executive Director of a notice of violation, pursuant to PRC Section 30812(b). Accordingly, a notice of violation will be recorded after issuance of this Consent Order. No later than thirty (30) days after the Commission determines that Respondent has fully complied with this Consent Order, the Executive Director shall record a notice of rescission of the notice of violation, pursuant to Section 30812(f). The notice of rescission shall have the same effect of a withdrawal or expungement under Section 405.1 of the Code of Civil Procedure.

IT IS SO STIPULATED AND AGREED:  
On behalf of Respondent:

\_\_\_\_\_  
Lisette Ackerberg

\_\_\_\_\_  
Date

Executed in San Francisco on behalf of the California Coastal Commission:

\_\_\_\_\_  
Peter Douglas, Executive Director

\_\_\_\_\_  
Date

# LAW OFFICES OF DIANE ABBITT

511 Fifth Street, Suite G  
San Fernando, California 91340

TELEPHONE (818) 637-2117  
FAX (818) 256-2379

November 19, 2008

## Via Fax and US MAIL

Ms. Erin Murphy  
Enforcement Program  
California Coastal Commission  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105

Re: Draft Consent Cease and Desist Order No. CCC-08-CD-10  
Violation No.: V-4-07-006  
Location: 22500 and 22466 Pacific Coast Highway, Malibu, California  
APN 4452-002-013, 4452-002-011

Dear Ms. Murphy:

This letter is written on behalf of our client, Lisette Ackerberg, in response to Staff's recent correspondence, faxed over to our offices at 4:57 p.m. on Friday, November 14, 2008, regarding the above-referenced Coastal Act violation, and requesting a response by Wednesday, November 19, 2008.

In conversations with, and as expressed in my correspondence to Staff of October 21, 2008 (a copy of which is enclosed with this letter), there has never been any question that our approach has been to co-operate with Staff and Access for All to end up with the most meaningful vertical accessway to this area of Carbon Beach. Toward this end we have thoroughly investigated the facts leading up to the dedication of the Ackerberg accessway and, to the best of our ability, the reasons for the language in the 1984 Ackerberg staff report referring to the County accessway, as well as the "whys" of why that County accessway has not yet been opened. We have had a licensed surveyor survey both the Ackerberg and the County accessway properties and have objectively examined which property provides the best visitor serving opportunity and, as the Commission did in the adopted Ackerberg staff report, have concluded that the County accessway is by far the superior location.

Exhibit 26  
CCC-09-CD-01 and CCC-09-NOV-01  
(Ackerberg)

Ms. Erin Murphy  
Enforcement Program  
California Coastal Commission  
November 18, 2008  
Page 2

We shared the findings of our investigation and the surveys we had commissioned in our October 21, 2008, correspondence to your offices and invited Staff to meet with us, if time permitted, during its November Commission meeting and to view both the Ackerberg property and the County vertical accessway. We were surprised by the lack of a response to both our correspondence and our invitation, but believed that the issues we raised were of sufficient relevance that Staff was taking the time to carefully examine the points raised and to conduct its own investigation after which we could expect a thoughtful, meaningful response as versus the correspondence I received late last Friday.

While waiting for your response, we have continued to take steps in pursuit of a solution to this issue. (Please see the attached e mail of this same date from Steve Afriat of the Afriat Consulting Group Inc., who has been retained to assist in discussions with the County regarding the opening of the County accessway.) These efforts are continuing.

Your correspondence makes clear your intent to take this matter to the Commission during the December 11-12 Commission hearing. I am scheduled for surgery the morning of December 10, 2008, and will be out on disability until mid January, 2009. I would ask that you postpone taking this matter to the Commission until such time as I can attend the hearing. The postponement would also provide the additional time need by the Afriat Consulting Group to determine the viability of opening the County accessway.

Thank you in advance for your courtesy.

Sincerely,



Diane R. Abbitt

Cc: Mr. Peter Douglas, Executive Director, California Coastal Commission  
Mr. Aaron McLendon, CCC Headquarters Enforcement Analyst  
Ms. Lisa Haage, Chief of Enforcement, California Coastal Commission  
Mrs. Lisette Ackerberg (w/o enclosures)  
Mr. Terry Taminien (w/o enclosures)

Enclosures

## CALIFORNIA COASTAL COMMISSION

PREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
PHONE (415) 904-5200  
FAX (415) 904-5400  
TELETYPE (415) 597-5885



Via Fax  
and Regular Mail

November 24, 2008

Law Offices of Diane Abbitt  
511 Fifth Street, Suite G  
San Fernando, CA, 91340

Subject: **Response to our November 19, 2008 telephone  
conversation and your November 19, 2008 letter**

Dear Ms. Abbitt:

This letter is written in response to your letter sent to Commission staff, dated November 19, 2008 on behalf of your client, Mrs. Ackerberg. Commission staff thanks you for your response to our letter dated November 14, 2008, which enclosed a Draft Consent Order for your consideration. Although your letter did not respond to this settlement proposal, we are still interested in reaching a Consent Order agreement to remove the unpermitted development from the vertical and lateral easement areas recorded on Mrs. Ackerberg's property, in an effort to avoid formal Commission proceedings at an upcoming Commission hearing. In light of some of the comments made in our conversation on November 19, 2008, and your subsequent letter of the same date, I believe an overview of Commission staff's attempts to resolve this matter, as well as some of the history regarding this violation will help us in furtherance of our desire to resolve this violation amicably.

In summary, Access for All ("AFA") recorded a Certificate of Acceptance, formally accepting the Offer to Dedicate ("OTD") for the vertical access easement in December of 2003 and sent a letter soon thereafter to inform Mr. and Mrs. Ackerberg of the acceptance and to request a meeting to schedule an initial survey of the easement area in order to begin the process of opening the easement. In March of 2005, AFA had not yet received permission to conduct the survey, and Commission staff sent a letter requesting that Mrs. Ackerberg remove all structures blocking the easement and contact Commission staff within 30 days to schedule the survey. When Mrs. Ackerberg informed Commission staff she was dealing with important personal matters, as a courtesy, Commission staff decided to delay enforcement action to remove the unpermitted development, and AFA delayed their efforts to open the accessway. AFA did eventually conduct a survey in September of 2005 and found that the vertical easement was blocked by unpermitted development. Linda Locklin, the Commission's Coastal Access Program Manager, sent Mrs. Ackerberg's previous attorney, Mr. Reeser, a letter on December 13, 2005, listing the encroachments found by the surveyor, and requested submittal of a removal plan.

Exhibit 27  
CCC-09-CD-01 and CCC-09-NOV-01  
(Ackerberg)

In response, Mr. Reeser, on behalf of Mrs. Ackerberg, sent a letter to staff outlining her concerns regarding removal of the development, and "defenses" to staff's request for removal of the unpermitted development. Additional correspondence between Ms. Locklin and Mr. Reeser pertaining to Mrs. Ackerberg's concerns and defenses occurred, including letters dated January 19, 2006, February 16, 2006, March 23, 2006, and April 3, 2006. On March 5, 2007, Enforcement Supervisor Pat Veasart sent Mrs. Ackerberg a Notice of Violation ("NOV"), explaining that the presence of the items in the easement areas constituted violations of the Coastal Act and, seeking informal resolution of the matter, requested a removal plan, and alerted her to the possibility of formal enforcement action and monetary penalties if the permit conditions were not complied with and the items were not removed. Although Mr. Reeser sent a response to the NOV on March 22, 2007, the letter simply repeated arguments for why Mrs. Ackerberg believed she should not have to remove the items. It did not state that Mrs. Ackerberg was ready to discuss resolution, nor did the requested removal plan accompany the letter. Therefore, on April 27, 2007, the Executive Director issued a Notice of Intent to Record a Notice of Violation of the Coastal Act and to Commence Cease and Desist Order Proceedings ("NOI"). Mrs. Ackerberg has been aware of Commission staff's desire to resolve the matter, and, if necessary, the need to move forward with formal hearing procedures for more than a year and a half now. Additionally, Mrs. Ackerberg has been aware of AFA's and the Commission staff's efforts to obtain compliance with the permit since 2005.

As you know, the NOI procedures were postponed until the resolution of the then pending appeal regarding the litigation brought by Mr. Roth. In the Spring of this year, the Court of Appeals upheld the trial court's decision in favor of the Commission, and the stay placed upon the Commission's enforcement proceedings was dissolved. In August of 2008, Lisa Haage, the Commission's Chief of Enforcement, discussed the possibilities of settling this violation matter with you during a long conversation on August 11<sup>th</sup>. During the August 11, 2008 conversation, you raised the suggestion that Mrs. Ackerberg's easement not be opened and some other accessway should be pursued instead. Ms. Haage indicated a preliminary reaction that this would not be acceptable to the Commission for a number of reasons, nor would it constitute compliance with the permit condition. Upon your request, Ms. Haage did agree that she would discuss this issue internally after you mailed additional information regarding the 22458 PCH vertical accessway as well as information regarding your then proposal to assist with opening the 22548 PCH accessway instead of agreeing to open the accessway at your client's property. Ms. Haage did not receive such a proposal from you regarding opening the 22548 PCH vertical accessway. To date, the only information provided by you or your client regarding the 22548 PCH was a survey of the easement area and a Tract Map recording the offer and acceptance of the vertical accessway, which was attached to the letter you mailed in response to the opportunity to submit additional SODs, dated October 21, 2008.

After discussing this matter internally, Ms. Haage and other Commission staff called you to make it clear that we were very willing to work with you and your client, but that we needed to have a settlement that included compliance with the permit conditions and could not agree to exchanging one existing public access easement for extinguishing the existing easement on Mrs. Ackerberg's property. Doing so would not constitute compliance with the permit, nor provide a similar public access benefit. Since we were unable to reach you, we left a voicemail message

on September 10, 2008 to this effect. Unfortunately, we did not hear back from you regarding this message and for some reason, these communications are not referenced or reflected in your letters.

Less than one month later, in an October 2, 2008 letter, Commission staff again notified you and your client of our desire to resolve this matter, to obtain compliance with the permits, and our intentions to move forward once again with the enforcement proceedings. In that letter, Commission staff agreed to allow your client to submit supplemental information in a new Statement of Defense ("SOD"), in addition to the defenses previously asserted by Mrs. Ackerberg's former counsel, even though there is no legal provision for such an additional opportunity, and even though the deadlines provided for by the applicable regulations and given to you in the notice had long since passed. We again urged you and your client to consider resolution of the violation and a settlement of this matter. On October 14, 2008, you requested an extension of the deadline for submitting an additional SOD, and although staff told you we were not able to grant the full additional 30-day extension you requested given the fact the violation issue was tentatively scheduled for the November hearing and staff would have to meet the mailing deadline for the hearing, Commission staff did grant a partial extension as a courtesy. Your October 21, 2008 letter included a new summary of defenses and objections to removing the unpermitted development located in the vertical and lateral easements dedicated on your client's property.

On October 21, 2008, prior to receiving your letter dated that same day, I called your office as well as your cell phone in an attempt to discuss settlement possibilities. I was unable to reach you, and so I left a message on your voice mail reiterating Commission staff's desire to reach an agreement to resolve the violations and open the recorded accessway on your client's property. I requested that you call me back if you wanted to discuss reaching settlement options. Unfortunately, I did not receive a return phone call, nor have you indicated since this time that you would like to discuss reaching a settlement regarding a consent order. Instead, in your October 21, 2008 letter, you continued to indicate you were not interested in reaching a settlement regarding the removal of unpermitted development in Mrs. Ackerberg's easement and only interested in discussing the option of assisting with opening a County owned accessway nearby. We have provided Mrs. Ackerberg with our responses to your allegations and defenses in previous letters and telephone conversations; however, we are briefly responding again to these claims below to make our position clear and in the hope that this will lead to a more productive discussion as we continue our efforts to resolve the violations on your client's property. In order to review the legal matters regarding the defenses you asserted, Commission staff scheduled the hearing for the December Commission meeting, and we placed the matter on the agenda on November 19, 2008.

Subsequently, in our continued efforts to resolve this matter amicably through a settlement agreement, Commission staff faxed and mailed you a Draft Consent Order in which we proposed negotiating an agreement to remove the unpermitted development from the easement areas on Mrs. Ackerberg's property, and proposed settlement language for your consideration. On November 19, 2008, during a conversation that took place between you and Commission staff members Counsel Alex Helperin and myself, we discussed the Draft Consent

Order. During that conversation, we were disappointed that you indicated that you were not interested in discussing the possibility of removing the unpermitted development from the easement areas, which is necessary for opening the easement area, or in complying with the terms of the permit conditions. Therefore, in order to resolve this matter, the Commission is still moving forward with enforcement proceedings and addressing this issue at a Commission hearing.

In addition, it should be noted that the statements made in your November 19, 2008 letter do not accurately or fully portray our efforts to resolve these violations. In your November 19, 2008 letter you allege that staff had not responded to "findings of [Ackerberg's] investigation and the surveys we had commissioned", and that you were "surprised by the lack of any response at all to both our correspondence and our invitation..." As you are aware, Commission staff made it clear to you in voicemail messages on September 10, 2008 and October 21, 2008, that we cannot agree to exchanging one existing public access easement for extinguishing the existing public access easement on Mrs. Ackerberg's property. These communications were not referenced in your letter, nor did we receive a return call in which we could more fully communicate the situation. The information you submitted in your October 21, 2008 letter was a repeat of previous statements you have made involving opening an existing public access easement held by the County in exchange for not removing unpermitted development on Mrs. Ackerberg's property and did not respond to our offer to resolve the on-site violations.

During our November 19, 2008 conversation, for the first time you mentioned that you are scheduled to have surgery on December 10, 2008 (the first day of the December hearing and the day the cease and desist order was scheduled for this matter) and are unable to attend the hearing and will be out on disability until January 12, 2009. We are disappointed that at no time over the last 3 months, during our various phone and written communications, and during which time we had made it clear the hearing would be in either November or one of the upcoming Commission meetings, you did not inform us of your scheduled surgery. Despite this, in another attempt to resolve this matter, Commission staff is willing, once again, to postpone the cease and desist order hearing so long as you can assure us that you and Mrs. Ackerberg agree to continue, in good faith, to try to resolve this matter through the consent order process, with the goal of reaching agreement on an approach that would include the removal of unpermitted development on Mrs. Ackerberg's property and the opening of the recorded access easement on the property that is held by AFA. We would again note that this violation has been pending for years now, and the immediate pendency of a hearing has been clear since the time we sent the formal Notice of Intent, on March 5, 2007. Your client has been on notice for over a year and a half, and you have been aware of the pending enforcement hearing for some months, and yet we were never informed of any potential scheduling issues you might have.

In your letter responding to our recently proposed Draft Consent Order, you continue to object to your client complying with the requirements of the Coastal Development Permits ("CDPs") referenced above, which required dedication of both a vertical and lateral public access easement on the subject property. Instead, you discuss opening an existing vertical access easement held by Los Angeles County and located on private property at 22548 Pacific Coast Highway ("PCH"), Malibu, California. While the discussion of the 22548 PCH vertical

accessway was raised in previous communication between Commission staff, Mrs. Ackerberg's former counsel, Mr. Reeser, and yourself, it might be helpful to address some of the issues you raise in your letters dated October 21 and November 19, 2008. Some of the issues associated with the 22548 PCH vertical accessway were also discussed in our November 19, 2008 conversation as well as in the previous conversation between you and Ms. Haage on August 11, 2008. We would like to briefly address some of these issues below in yet another attempt to resolve this violation matter amicably.

As you know, the Commission does not own or otherwise control the dedicated vertical accessway at 22548 PCH, and does not have authority to open the accessway. The public access easement at 22548 PCH has been held by Los Angeles County for 34 years now, and the County has never opened the accessway nor has the county presented any plans for opening the accessway. In fact, County planning staff has informed Commission staff several times in the past that it has no plans for opening any more public accessways, including the accessway located at 22548 PCH. More importantly, even assuming the County were to agree to open the public access easement at 22548, this matter is irrelevant to the matter at hand, which is the placement of unpermitted development and development inconsistent with a previously issued CDP on an accepted vertical and lateral public access easement on your client's property. Even if the County, at some time in the future, proposes to open the vertical accessway at 22548 PCH, and commits to keeping it open, there is nothing in the applicable permits or in the 2002 Malibu Local Coastal Program ("LCP") prohibiting AFA from opening and operating the vertical accessway that exists on your client's property while the County operates the 22548 vertical accessway.

In fact, Policy No. 2.85 in Section 4 of the LCP, states:

*Improvements and/or opening of public easements already in public ownership or accepted pursuant to a Coastal Permit shall be permitted regardless of the distance of the nearest available vertical accessway.*

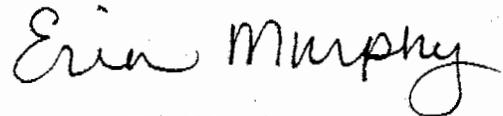
The vertical accessway dedicated by Mr. and Mrs. Ackerberg was accepted by AFA, a private nonprofit corporation, and is held on behalf of the public. Under the legally applicable 2002 Malibu LCP, the distance between the Ackerberg's vertical accessway and the nearest vertical accessway does not prohibit, but rather encourages, opening or improving both the Ackerberg easement area and the easement area located at 22548 PCH. In addition, the 2002 Malibu LCP includes a specific plan for opening and operating vertical accessways along Carbon Beach, in Policy No. 2.86 of Section 5. That policy requires "improving and opening 2 existing vertical access Offers to Dedicate ("OTDs") and 4 existing vertical access deed restrictions" in addition to maintaining and operating the existing vertical accessway known as "Zonker Harris." In the Access Maps within the 2002 Malibu LCP, there are only two OTDs shown to exist on Carbon Beach in addition to the Zonker Harris accessway: one is located at your client, Mrs. Ackerberg's, property and the other is located down coast at David Geffen's property. Since the 2002 Malibu LCP, the Geffen easement has been opened and is operating, and the publicly owned vertical accessway that exists at your client's property remains closed and blocked by the unpermitted development referenced above. Therefore, not only does the Malibu LCP require the opening of all public easements regardless of distance to the nearest available vertical

accessway, but the LCP, the land use document for the entire City of Malibu, explicitly calls for the opening of the vertical access easement on your client's property.

In your letters dated October 21, 2008 and November 19, 2008, you refer to the revised findings that were added to the January 14, 1985 Ackerberg staff report approving CDP No. 5-84-754 with conditions requiring the dedication of a vertical easement for the public's use. It should be noted that the revised findings added to the 1985 staff report were founded on the satisfaction of three criteria, none of which have been met. Moreover, the 1985 revised findings were premised on an OTD which was not accepted. In any event, the conditions which were part of the permit issued by the Commission to your client are legally applicable.

Commission staff is open to continuing working on reaching a Consent Order agreement *to open the accessway that exists at your client's property*. Please notify me in writing regarding whether or not you are interested in reaching a Consent Order agreement for opening the easement area on behalf of your client by **Wednesday, November 26th**. In fact, if we can resolve these issues amicably through a Consent Order between now and December 10, 2008, the date of the Commission hearing, you will not necessarily have to attend the hearing since we would have worked through all of our issues prior to the Order going to the Commission. Again, we are eager to work with you and your client to resolve this issue and look forward to hearing from you. Please call me at (415) 597-5886 with any issues you would like to discuss regarding resolving this violation matter, or send a letter to my attention at the address listed on the letter head above.

Sincerely,



Erin Murphy  
Enforcement Program

cc: Lisa Haage, Chief of Enforcement  
Alex Helperin, Staff Counsel  
Aaron McLendon, Statewide Enforcement Analyst  
Pat Veesat, Southern California Enforcement Supervisor  
Lisette Ackerberg  
Terry Tamminen

Exhibit 27  
CCC-09-CD-01 and CCC-09-NOV-01  
(Ackerberg)

## CALIFORNIA COASTAL COMMISSION

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



Via Regular Mail  
and Fax

November 25, 2008

Law Offices of Diane Abbitt  
Attn: Diane Abbitt  
511 Fifth Street, Suite G  
San Fernando, CA 91340

Subject: **Commission hearing postponement**

Dear Ms. Abbitt:

This letter is written in regards to the recent request you made to postpone the Commission hearing to resolve your client, Mrs. Ackerberg's, violation matter (violation no. V-4-07-006), which is tentatively scheduled for the Wednesday, December 10, 2008 Commission meeting in San Francisco. In your letter to Commission staff dated November 19, 2008, you requested Commission staff postpone the hearing date for this violation matter due to your surgery scheduled for December 10, 2008. In addition, you informed Commission staff that you will be in recovery from surgery and unable to represent your client until mid January, 2009. If necessary, Commission staff is willing to postpone the hearing to resolve your client's violation matter until the January or February Commission meeting. However, as is explained below, we continue to hope that is not necessary.

As indicated in the letter I sent to you, dated November 24, 2008, and received by you via fax yesterday, Commission staff requests a written statement by **Wednesday, November 26, 2008**, regarding whether you wish to continue working amicably with Commission staff to reach an agreement for a Consent Order to open the accessway that exists on your client's property. In the event that we do reach a Consent Order agreement prior to the December 10, 2008 Commission meeting, Commission staff can keep this on the calendar and present the terms of the agreement at the meeting, and it would not be necessary for your or your client to attend the hearing since we will have worked through all of our issues prior to the Order going to the Commission. In the event that we are unable to reach a Consent Order agreement prior to the December 10, 2008 hearing, or between then and the scheduled hearing, Commission staff will plan on scheduling the hearing on staff's proposed order to resolve this violation matter no later than the February, 2009 Commission meeting. Please call me at (415) 597-5886 with any issues you would like to discuss regarding resolving this violation matter, or send a letter to my attention at the address listed on the letter head above.

Sincerely,

A handwritten signature in black ink that reads "Erin Murphy".

Erin Murphy  
Enforcement Program

Exhibit 28  
CCC-09-CD-01 and CCC-09-NOV-01  
(Ackerberg)

Violation No. V-4-07-006

11/25/2008

Page 2 of 2

cc: Lisette Ackerberg  
Terry Tamminen  
Lisa Haage, Chief of Enforcement  
Alex Helperin, Staff Counsel  
Aaron McLendon, Statewide Enforcement Analyst  
Pat Veosat, Southern California Enforcement Supervisor

Exhibit 28  
CCC-09-CD-01 and CCC-09-NOV-01  
(Ackerberg)

Page 2 of 2

# LAW OFFICES OF DIANE ABBITT

511 Fifth Street, Suite G  
San Fernando, California 91340

TELEPHONE (818) 637-2117  
FAX (818) 256-2379

November 26, 2008

**RECEIVED**

DEC 01 2008

CALIFORNIA  
COASTAL COMMISSION

Via Fax and US MAIL

Ms. Erin Murphy  
Enforcement Program  
California Coastal Commission  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105

Re: Draft Consent Cease and Desist Order No. CCC-08-CD-10  
Violation No.: V-4-07-006  
Location: 22500 and 22466 Pacific Coast Highway, Malibu, California  
APN 4452-002-013, 4452-002-011

Dear Ms. Murphy:

As you have requested, I write in brief response to your correspondence sent to our offices on November 24, 2008, and to your further letter to me of November 25, 2008.

At the outset, I want to again express my appreciation for Staff's courtesy in agreeing to postpone this matter to the February, 2009, Commission meeting to accommodate my surgery and initial rehabilitation. You indicate that Staff nonetheless may make a "report" on the item at the December 10, 2009, Commission meeting. Inasmuch as I will be unable to attend the hearing, and in that due process obviously attaches to the type of proceeding agendized, it is my hope, and request, that Staff not make any report to the Commission that is substantive in nature or that addresses any material aspect of the violation matter. Certainly, if this matter is not resolved and we need to go to hearing in February, there will be ample time for Staff to make its case to the Commission and for us to respond in a way that fairly presents this matter for the Commission's consideration.

Regarding your November 24, 2008 letter, I have read it carefully and believe it to clearly set forth Staff's position. In this regard, we do appreciate Staff's patience and

Ms. Erin Murphy  
Enforcement Program  
California Coastal Commission  
November 26, 2008  
Page 2

willingness to try and amicably resolve the matter, and as my October 21, 2008, letter explains, we are proactively working toward that end. We have not reached the point, however, where we can agree to the Consent Order agreement you have previously provided.

Your discussion has raised issues I will be discussing with my client and to which we will respond as we continue to work with Staff in good faith to resolve this matter.

In the interim, I would offer a response to three points made in your November 24, 2008, letter. First, the letter refers to the Los Angeles County easement at 22548 Pacific Coast Highway, and correctly states that the County has never opened the accessway. As your letter indicates, on several occasions Staff has discussed the opening of that accessway with County planning staff, but to date has not been successful making it clear that the County easement has obviously and rightfully been of importance to the Commission. As discussed in my October 21, 2008, letter, we have and continue to have meaningful discussions with the Supervisor's office towards opening this existing public accessway and funding its long-term maintenance. It is truly in everyone's best interest to permit these discussions to continue and to, hopefully, succeed.

Second, your letter again notes Staff's view that exchanging the County accessway for the existing easement on Ms. Ackerberg's property would not constitute compliance with the CDP issued by the Commission, nor provide a similar public access benefit. We hope staff will give this additional thought. The substitution of the County accessway for the easement on Ms. Ackerberg's property was specifically addressed in the 1985 revised findings, and, with the co-operation and consent of Access for All, could be achieved by an amendment to that permit. Further, the County accessway is superior to the easement on Ms. Ackerberg's property. In contrast to the easement on Ms. Ackerberg's property, the County easement is paved, visible, and proximate and accessible to public parking on both sides of Pacific Coast Highway. Further, as my October 21, 2008, letter explained, there are fundamental problems at both ends of the Ackerberg easement that raise serious questions about whether this vertical accessway, even if opened, could provide meaningful public access to Carbon Beach.

Finally, our initial review of the Malibu LCP does not disclose anything that would foreclose the resolution we are pursuing or that would permit the Commission to simply dismiss the revised findings it added to the 1985 permit approval which specifically stated that "as a matter of policy, publicly owned vertical accessways should be improved and opened to public use before additional offers to dedicate vertical access easements are opened." The Ackerbergs accepted the permit on the basis of the commitment in those revised findings to provide a mechanism to allow for the extinguishing of the imposed vertical access easement once the existing County accessway had been improved and opened for public use.

Ms. Erin Murphy  
Enforcement Program  
California Coastal Commission  
November 26, 2008  
Page 3

We will continue to work with Staff and provide you with a timely update on the status of our efforts in dealing with the County. Again, thank you for postponing the December 10, 2008, hearing to the February 2009, Commission meeting.

Sincerely,



Diane R. Abbitt

Cc: Mr. Peter Douglas, Executive Director, California Coastal Commission  
Mr. Aaron McLendon, CCC Headquarters Enforcement Analyst  
Ms. Lisa Haage, Chief of Enforcement, California Coastal Commission  
Mrs. Lisette Ackenberg  
Mr. Terry Taminen

## CALIFORNIA COASTAL COMMISSION

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



Via Regular Mail  
and Fax

December 2, 2008

Diane Abbitt  
Law Offices of Diane Abbitt  
511 Fifth Street, Suite G  
San Fernando, California, 91340

Subject: **Response to your letter dated November 26, 2006**

Violation No.: V-4-07-006

Dear Ms. Abbitt

This letter is written in response to your letter to Commission staff dated November 26, 2006. Commission staff is happy to hear that you are willing to continue working amicably to resolve this violation prior to the January 2009 and February 2009 Commission meetings. In order to further discuss resolution of this violation and reaching a Consent Order agreement, Commission staff would like to arrange a call to discuss some of the issues you have raised in your November 26, 2008 letter as well as those raised in your previous communications with Commission staff. While this letter did not raise any new issues, Commission staff has thought long and hard about the arguments you have raised during our communications regarding the resolution of this violation matter, and we would like to schedule a time when we can discuss in detail our response to your arguments and the possibility of settling this matter. We realize the need to move as quickly as possible before the commencement of your medical leave on December 10, 2008; therefore we would like to schedule a meeting with you for some time this week to discuss the legal issues involved in this matter as well as settlement options. Please call our office to discuss the possibility of arranging a meeting by calling me directly at (415) 597-5886.

While Commission staff has addressed the issues raised in your November 26, 2006 letter in previous conversations that took place between you and Commission staff on August 11<sup>th</sup> and November 19, 2008, as well as in our letter dated November 24, 2008, we will briefly respond to those arguments again in this letter. To begin, Commission staff would like to reiterate some of the similarities between the vertical easement area located at 22548 Pacific Coast Highway (PCH) and the vertical easement area located on your client, Mrs. Ackerberg's, property. Both easements exist on privately owned property and are held for the benefit of the public; in that sense the two easement areas are indistinguishable. As for the distinction you attempt to draw in your communications with Commission staff that the 22548 PCH easement is publicly owned and the vertical easement located at Mrs. Ackerberg's property is not, it is, at best, a distinction

Exhibit 30  
CCC-09-CD-01 and CCC-09-NOV-01  
(Ackerberg)

without a difference, as both easements are for general public access and are held by entities on behalf of the public, and are both easements located on private property. Additionally, we would like to point that contrary to your statements in your letter dated November 26, 2008, the easement area located on Mrs. Ackerberg's property is paved, and proximate and accessible to public parking on both sides of PCH, as the easement location complements the public parking pattern along PCH.

In addition, as indicated in the letter I sent to you dated November 24, 2008, the Commission does not own or otherwise control the vertical easement located at 22458 PCH, and, moreover, does not have the authority to open the easement area, or, if it is opened, to ensure that it remains so. As indicated in the conversation that took place between you and Ms. Haage, the Commission's Chief of Enforcement, on August 11, 2008, as well as in a voicemail left for you by Ms. Haage on September 10, 2008, and in the November 24, 2008 letter, even if we did receive a guarantee that the County easement would be opened, Commission staff can not agree to forever relinquish the possibility of opening a public accessway that was secured as a condition of a permit in exchange for the opening of another accessway more than 600 feet away. We can not agree on policy grounds, because there is no basis, even in the revised findings<sup>1</sup>, for doing so under the present conditions. Nor can we do so legally, as the easement on your client's property is owned by a third party. Furthermore, staff's review of the 2002 Malibu Local Coastal Program ("LCP") does reveal that the LCP forecloses the resolution you are pursuing to trade opening and improving one vertical accessway for the extinguishment of another. As quoted in our letter dated November 24, 2008, Policy No. 2.85 in Section 4 of the Malibu LCP requires opening public access easements such as both the vertical easement located at 22548 PCH and the vertical easement located at Mrs. Ackerberg's property, regardless of the distance of the nearest open and available vertical accessway. A policy allowing for the extinguishment of one vertical accessway if another nearby vertical accessway opens up nearby does not exist in the Malibu LCP.

Furthermore, Policy No. 2.86 of Section 5 of the 2002 Malibu LCP specifically requires improving and opening the vertical accessway located at Mrs. Ackerberg's property in addition to the four existing vertical access deed restrictions along Carbon Beach, one of which is the vertical easement area located at 22548 PCH. The 2002 Malibu LCP calls for and encourages opening the vertical accessway located at 22548 PCH and the vertical accessway located at Mrs. Ackerberg's property; it does not require opening one or the other. The 2002 Malibu LCP favors opening as many dedicated and accepted accessways as possible, a policy that is in line with the Commission's belief that the more accessways that are opened and operating, the better, since such a policy complements Sections 30210, 30211 and 30212 of the Coastal Act, and Section 4

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<sup>1</sup> Your statement, at the bottom of page 2 of your letter, that the Ackerberg's accepted their permit "on the basis of the commitment in those revised findings to provide a mechanism to allow for the extinguishment of the imposed vertical accessway easement once the existing county accessway had been improved and opened" is also untrue. The findings you reference contained no commitment by the Commission to provide such a mechanism. They contained only conditional statements about what would happen if certain criteria were satisfied - which they have not been. Nor did the discussion in those findings apply to where an offer to dedicate had been accepted, so that a third party had a defensible property interest.

of Article X of the California Constitution, which require the provision of maximum access for all of the public. To state that Commission staff "to date has not been successful making it clear [to County staff] that the County easement [located at 22548 PCH] has obviously and rightfully been of importance to the Commission" is misleading, irrelevant, and does not accurately reflect the Commission staff's commitment to open as many dedicated and accepted accessway as possible. As indicated in our November 24, 2008 letter, even if the County were to agree to open the public accessway located at 22548 PCH, the opening of the accessway is irrelevant to the matter at hand, which is the placement of unpermitted development and development inconsistent with a previously issued Coastal Development Permit ("CDP") on an accepted vertical and lateral public access easement on your client's property and failure to allow opening this easement.

Lastly, Commission staff would like to again note that the opening of the easement located 22548 is irrelevant to the resolution of this violation matter. The issue of concern in this matter is the removal of unpermitted development located within the vertical easement area at Mrs. Ackerberg's property as well as the removal of rip-rap exceeding that which was permitted in CDP No. 5-83-360 which the Commission approved in 1983 and which authorized the construction of the bulkhead located in front of Mrs. Ackerberg's property, and the access itself. The Commission also approved CDP No. 5-84-754, however, that permit did not approve the development that exists within the vertical accessway and therefore the development within both the vertical and lateral easement areas is inconsistent with CDP Nos. 5-84-754 and 5-83-360. The "fundamental problems [that exist] at both ends of the Ackerberg easement" which you discuss in your letter dated November 26, 2008, as well as in previous communications with Commission staff, is unpermitted development that was not approved by the Commission in any of the CDPs for the property and in fact are part of the violation at the site. Therefore, Commission staff is, in resolving this matter, seeking to reach a resolution regarding the removal of the unpermitted development.

Commission staff is willing to work amicably with you on behalf of Mrs. Ackerberg to try and resolve this violation and open this easement with as little disruption to her as is possible. We would be glad to discuss the issues with you and it is possible that a settlement could include negotiating the retention of some of the unpermitted development, so long as it does not restrict the available access within the vertical and lateral easement areas located at Mrs. Ackerberg's property. Commission staff would like to discuss with you the retention of some of the unpermitted development along with other issues relevant to the resolution of this violation matter. Please call me at the number listed above to schedule a convenient time for you to further discuss with Commission staff the legal issues involved in this matter as well as the resolution of this violation.

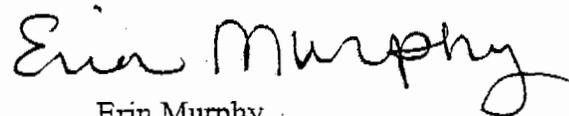
As previously indicated, Commission staff would like to have such a discussion with you some time this week, prior to your leave of absence beginning December 10, 2008. Additionally, to address your concern regarding the December 2008 Commission meeting, any comments and updates regarding this matter that may be raised at the upcoming Commission meeting will not include a substantive discussion of this violation matter. As always,

Exhibit 30  
CCC-09-CD-01 and CCC-09-NOV-01  
(Ackerberg)

December 2, 2008  
Violation No. V-4-07-006  
Page 4 of 4

Commission staff is eager to work with you and your client to resolve this issue and we look forward to hearing from you.

Sincerely,



Erin Murphy  
Enforcement Program

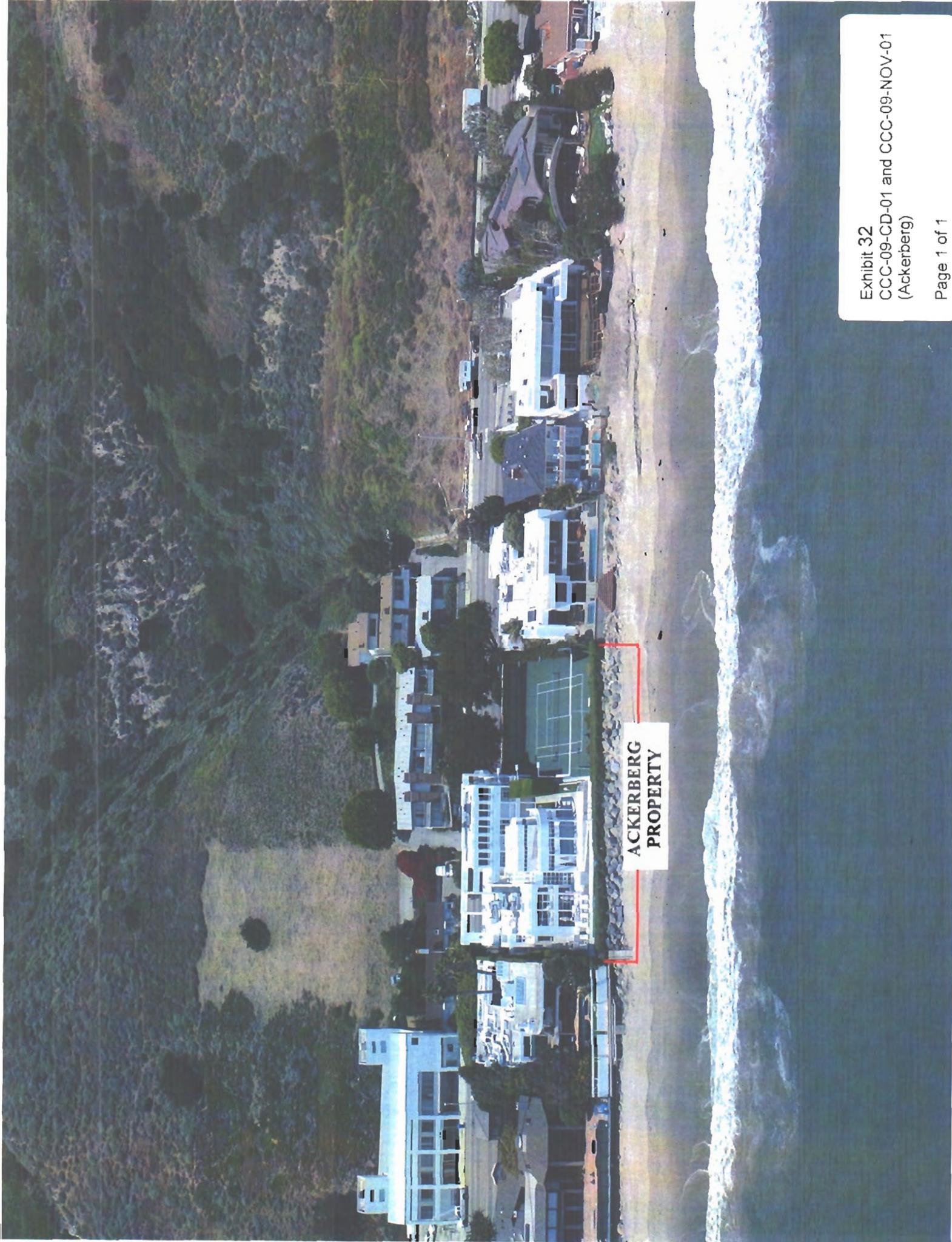
cc: Lisette Ackerberg  
Terry Tamminen  
Lisa Haage, Chief of Enforcement  
Alex Helperin, Staff Counsel  
Aaron McLendon, Statewide Enforcement Analyst  
Pat Veosat, Southern California Enforcement Supervisor



Norman J. & Lisette Ackerberg  
22466 Pacific Coast Highway  
(Formerly 22486 PCH)  
Malibu, CA 90265

Exhibit 31  
CCC-09-CD-01 and CCC-09-NOV-01  
(Ackerberg)

5-84-754  
EXHIBIT 4  
AERIAL PHOTO



**ACKERBERG  
PROPERTY**

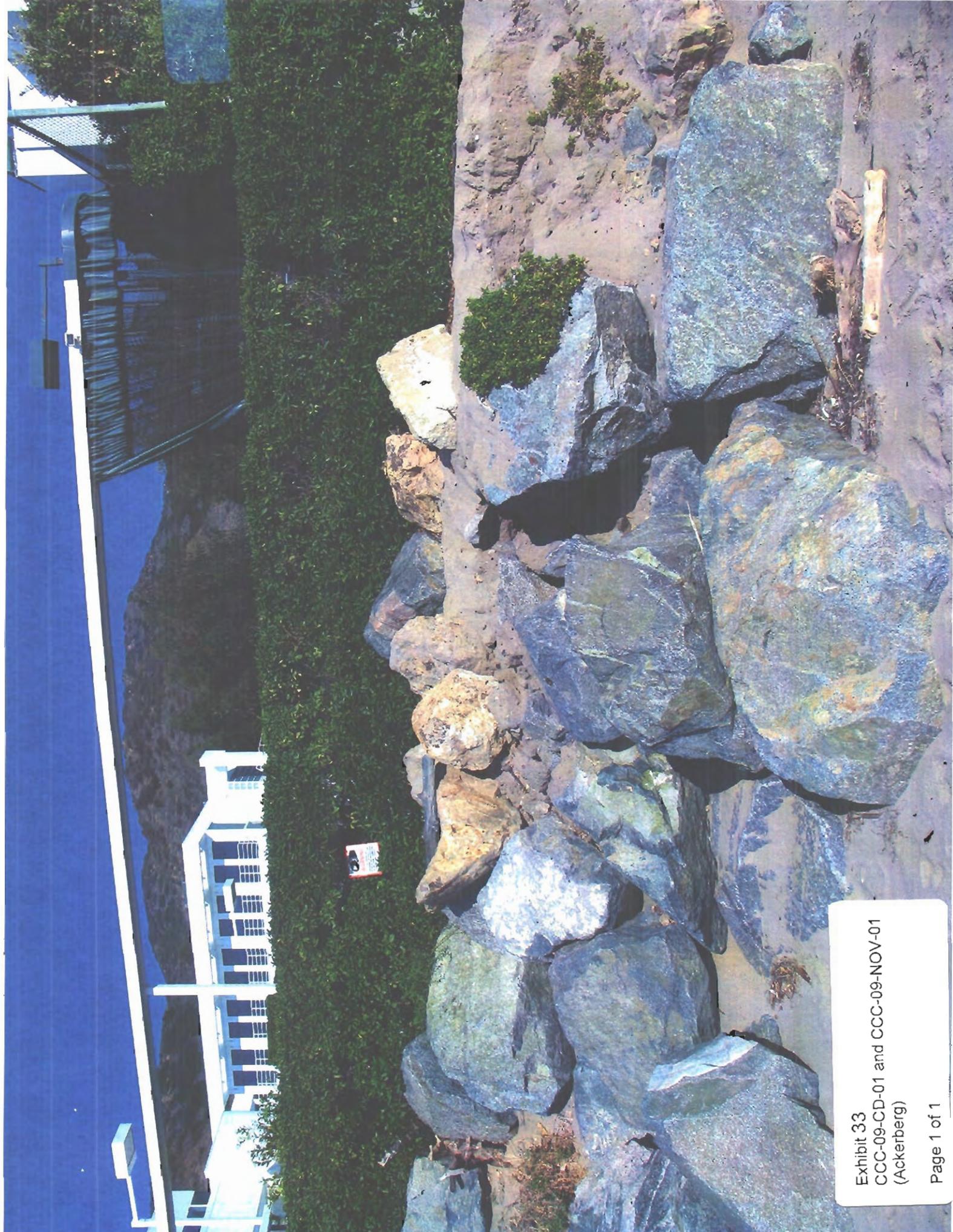


Exhibit 33  
CCC-09-CD-01 and CCC-09-NOV-01  
(Ackerberg)

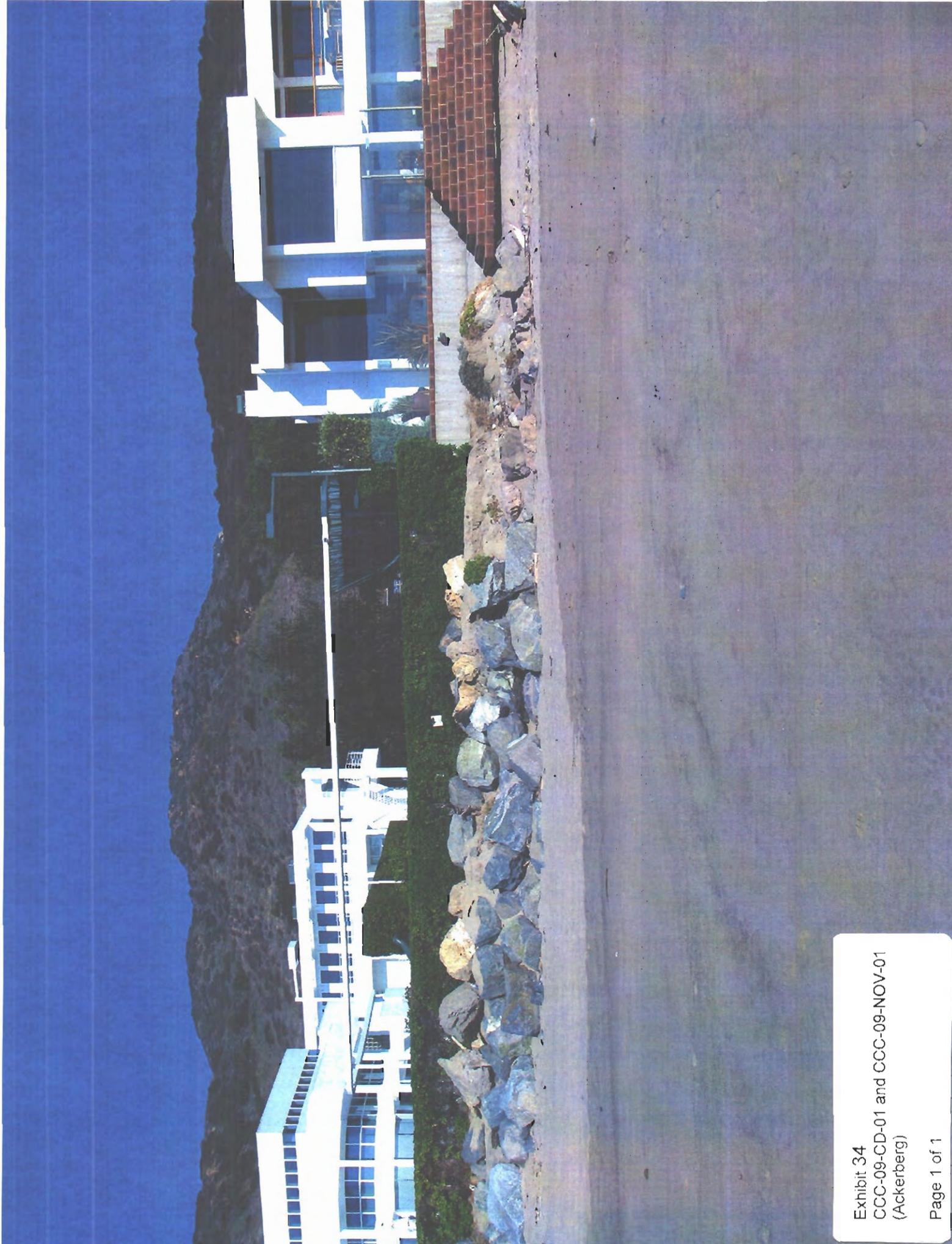


Exhibit 34  
CCC-09-CD-01 and CCC-09-NOV-01  
(Ackerberg)

Exhibit 35  
CCC-09-CD-01 and CCC-09-NOV-01  
(Ackerberg)

Page 1 of 1

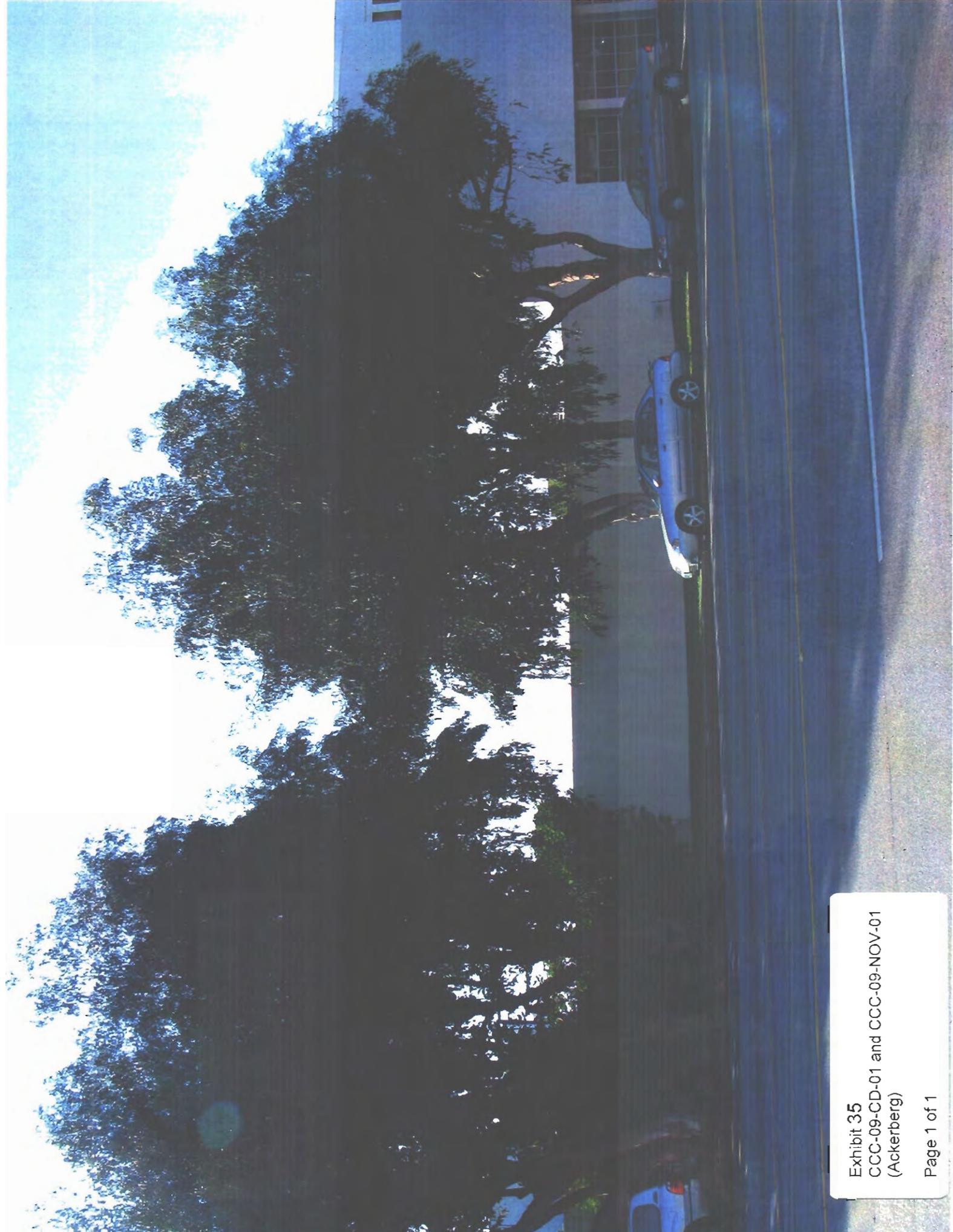




Exhibit 36  
CCC-09-CD-01 and CCC-09-NOV-01  
(Ackerberg)  
Page 1 of 1



Exhibit 37  
CCC-09-CD-01 and CCC-09-NOV-01  
(Ackerberg)

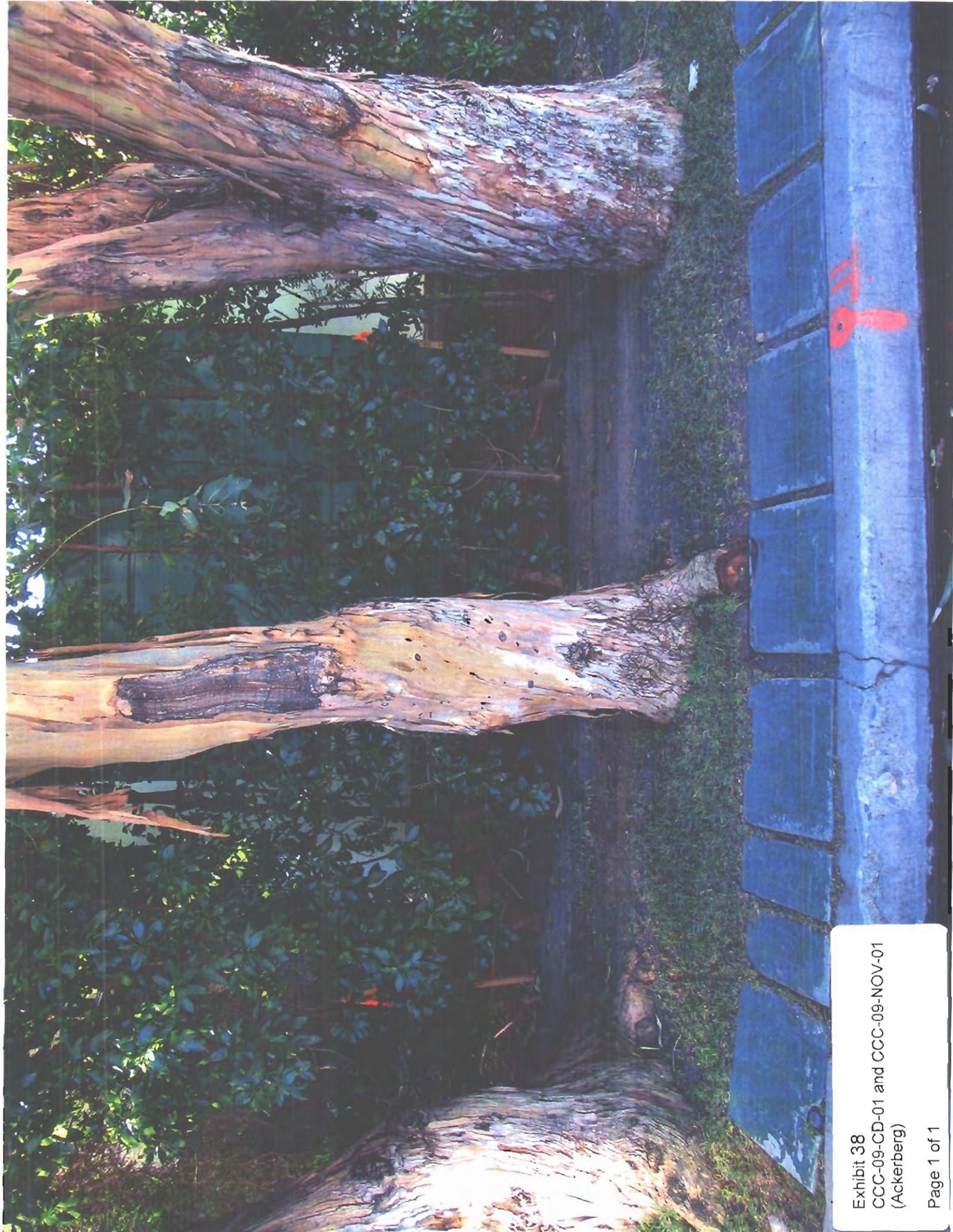


Exhibit 38  
CCC-09-CD-01 and CCC-09-NOV-01  
(Ackerberg)  
Page 1 of 1

22548 PCA

P-732-105-7

Mich Texera

BOOK 235 PAGE 49

SHEET 1 OF 2 SHEETS

# TRACT NO. 29628

IN THE UNINCORPORATED TERRITORY OF THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

FOR CONDOMINIUM PURPOSES

BEING A PORTION OF THE RANCHO TOPANGA MALIBU SEQUIT, AS CONFIRMED TO MATTHEW KELLER BY PATENT RECORDED IN BOOK I, PAGE 407 ET. SEQ., OF PATENTS EXCEPT ANY PORTION OF SAID LAND WHICH IS TIDE OR SUBMERGED LAND OR HAS BEEN CREATED BY ARTIFICIAL MEANS OR HAS ACCRETTED TO SUCH PORTION, SO CREATED.

FILED  
AT REQUEST OF OWNER  
OCT 29, 1973  
2:37 PM  
IN BOOK 235  
AT PAGE 49  
LOS ANGELES COUNTY, CALIF.

ROBERT T. MORRIS  
DONALD F. WICKHAM  
SPINDLER ENGINEERING CORPORATION

### OWNER'S CERTIFICATE:

WE HEREBY CERTIFY THAT WE ARE THE OWNERS OF OR ARE INTERESTED IN THE LANDS INCLUDED WITHIN THE SUBDIVISION SHOWN ON THIS MAP WITHIN THE COLORED BORDER LINES AND WE CONSENT TO THE PREPARATION AND FILING OF SAID MAP AND SUBDIVISION.  
WE HEREBY DEDICATE FOR PUBLIC USE FOR STREET PURPOSES THE CERTAIN STRIP OF LAND DESIGNATED AS FUTURE STREET ON THIS MAP RESERVING TO OURSELVES ALL ORDINARY USES OF SAID LAND EXCEPT THE ERECTION OR CONSTRUCTION OF ANY STRUCTURE NOT ORDINARILY PLACED IN PUBLIC STREETS UNTIL SUCH TIME AS SAID STREET IS OPENED FOR PUBLIC USE.  
WE ALSO DEDICATE TO THE COUNTY OF LOS ANGELES THE EASEMENT FOR HEREDITARY AND EGRESS PURPOSES SO DESIGNATED ON SAID MAP AND ALL DUES INCIDENT THEREON, INCLUDING THE RIGHT TO MAKE CONNECTIONS THEREWITH FROM ANY ADJACENT PROPERTIES.

PALIBU TERRACE, LTD.,  
A LIMITED PARTNERSHIP

ROBERT T. MORRIS  
DONALD F. WICKHAM  
GENERAL PARTNER  
GENERAL PARTNER

TITLE INSURANCE AND TRUST COMPANY,  
A CORPORATION  
(TRUSTEE)

UNDER DEED OF TRUST RECORDED IN BOOK T-5478  
PAGE 408 OFFICIAL RECORDS

WE FURTHER CERTIFY THAT, EXCEPT AS SHOWN ON A COPY OF THIS MAP ON FILE IN THE OFFICE OF THE COUNTY ROAD COMMISSIONERS, WE KNOW OF NO AGREEMENT OR STRUCTURE existing within the easements herein offered for dedication to the public other than public, owned water lines. Owners of structures that will front on or abut on the easements hereinafter described, except where such front or abut on streets, are hereby notified that they are to be removed or altered at their own expense.

### ENGINEER'S CERTIFICATE:

I HEREBY CERTIFY THAT I AM A REGISTERED CIVIL ENGINEER OF THE STATE OF CALIFORNIA; THAT THIS MAP, CONSISTING OF 2 SHEETS, CORRECTLY REPRESENTS A TRUE AND COMPLETE SURVEY MADE UNDER MY SUPERVISION NOVEMBER 6, 1972; THAT THE INSTRUMENTS OF THE CHARACTER AND LOCATIONS SHOWN HEREON WILL BE IN PLACE WITHIN TWENTY (20) MONTHS FROM THE FILING DATE OF THIS MAP; THAT THE MONUMENTS ARE SUFFICIENT TO ENABLE THE SURVEY TO BE READILY RETRACED AND THAT THE NOTES TO ALL CENTERLINE MONUMENTS SHOWN AS TO BE SET WILL BE ON FILE IN THE OFFICE OF THE COUNTY ENGINEER TWENTY-FOUR MONTHS FROM THE FILING DATE SHOWN HEREON.



RONALD H. SPINDLER  
SPINDLER ENGINEERING CORPORATION

NOTE: ALL 1" IRON PIPES WILL BE SET FLUSH.

### BASIS OF BEARINGS:

THE BEARING SOUTH 86°25'16" WEST ON THE CENTERLINE OF PACIFIC COAST HIGHWAY SHOWN ON C.S.B. 2808, SHEET 3 AND SHOWN ON THIS MAP AS NORTH 86°01'00" EAST WAS USED AS THE BASIS OF BEARINGS OF THIS MAP.

STATE OF CALIFORNIA )  
COUNTY OF LOS ANGELES ) SS

ON THIS 16 DAY OF August, 1973 BEFORE ME

Sharon Pattison, A NOTARY PUBLIC IN AND FOR THE STATE OF CALIFORNIA, PERSONALLY APPEARED ROBERT T. MORRIS AND DONALD F. WICKHAM, KNOWN TO ME TO BE THE PARTNERS OF THE PARTNERSHIP THAT EXECUTED THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT SUCH PARTNERSHIP EXECUTED THE SAME.

Sharon Pattison  
Notary Public

NOTARY PUBLIC CALIFORNIA  
LOS ANGELES COUNTY  
My Commission Expires Nov 23, 1954

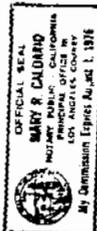
STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

ON THIS 10 DAY OF BEFORE ME  
~~BEFORE ME~~  
A NOTARY PUBLIC IN AND FOR  
SAID STATE, PERSONALLY APPEARED  
KNOWN TO ME TO BE THE  
PRESIDENT AND  
SECRETARY OF TITLE INSURANCE AND TRUST COMPANY, THE CORPORATION  
PERSONS WHO RECEIVED THE INSTRUMENT KNOWN TO ME TO BE THE  
CORPORATION HERIN NAMED AND ACKNOWLEDGED TO ME THAT SUCH  
CORPORATION EXECUTED THE SAME AS TRUSTEE.

STATE OF CALIFORNIA ) SS  
COUNTY OF LOS ANGELES )

ON THIS 17th DAY OF August 1973 BEFORE ME  
MARY S. CALDWELL A NOTARY PUBLIC IN AND FOR  
SAID STATE, PERSONALLY APPEARED Edward D. Frazee  
KNOWN TO ME TO BE THE VICA PRESIDENT AND  
Edward D. Frazee KNOWN TO ME TO BE THE PERSONS WHO EXECUTED THE  
WITH THIS INSTRUMENT AND KNOWN TO ME TO BE THE PERSONS WHO EXECUTED  
AND ACKNOWLEDGED TO ME THAT SUCH CORPORATION EXECUTED THE SAME  
AS TRUSTEE.

Mary S. Caldwell  
Notary Public



IN RE TRACT NO. 29628 IT IS ORDERED THAT THE MAP T HEREBY CERTIFY THAT I HAVE EXAMINED THIS MAP  
OF TRACT NO. 29628 IS HEREBY APPROVED AND THAT IT CONFORMS SUBSTANTIALLY TO THE TENTATIVE  
WITH THE BOND IN THE AMOUNT OF \$ 25,000.00 FILED MAP AND ALL APPROVED ALTERATIONS THEREON THAT ALL  
SPECIAL ASSESSMENT COLLECTED AS TAXES BE APPROVED THAT I AM SATISFIED THAT THIS MAP IS TECHNICALLY  
AND EASEMENTS SHOWN ON SAID MAP AND OFFERED FOR  
DEDICATION BE AND THE SAME ARE HEREBY ACCEPTED ON  
BEHALF OF THE PUBLIC.

Harvey T. Bruidt  
COUNTY ENGINEER  
DEPUTY



THAT THE Edwards Street SHOWN  
ON SAID MAP AND HERIN OFFERED FOR DEDICATION IN  
AND THE SAME IS HEREBY REJECTED,  
I HEREBY CERTIFY THAT THE FOREGOING ORDER WAS ADOPTED  
BY THE BOARD OF SUPERVISORS AT A MEETING HELD  
JAMES S. AMZE, EXECUTIVE OFFICER - CLERK  
OF THE BOARD OF SUPERVISORS OF THE COUNTY  
OF LOS ANGELES, STATE OF CALIFORNIA  
BY \_\_\_\_\_ DEPUTY

UNION BANK,  
A CALIFORNIA CORPORATION  
(TRUSTEE)

UNDER DEED OF TRUST RECORDED IN BOOK T-8316  
PAGE 478 OFFICIAL RECORDS

Edward D. Frazee

E.A. Harris

Edward D. Frazee  
VICE PRESIDENT

Edward D. Frazee  
ASSISTANT VICE PRESIDENT

THE SIGNATURE OF THE ADAMSON COMPANIES, A PARTNERSHIP, OWNER OF  
AN EASEMENT AS DISCLOSED BY DEEDS RECORDED IN BOOK 19316, PAGE 11 AND RECORDED  
IN BOOK 19047, PAGE 111 OFFICIAL RECORDS, LOS ANGELES COUNTY, HAS BEEN OMITTED UNDER  
THE PROVISIONS OF SECTION 11587, SUBSECTION (A) OF THE SUBDIVISION  
MAP ACT, THEIR INTEREST IS SUCH THAT IT CANNOT RIPEN INTO A FEE  
TITLE AND SAID SIGNATURE IS NOT REQUIRED BY THE GOVERNING BODY.

THE SIGNATURE OF SOUTHERN CALIFORNIA EDISON COMPANY, OWNER OF AN  
EASEMENT, AS DISCLOSED BY DEED RECORDED IN BOOK D 17977, PAGE 317  
AND IN BOOK D 1776, PAGE 45, ALL OF OFFICIAL RECORDS, LOS ANGELES  
COUNTY, HAS BEEN OMITTED UNDER THE PROVISIONS OF SECTION 11587, SUBSECTION  
SUBSECTION (A) OF THE SUBDIVISION MAP ACT, THEIR INTEREST IS SUCH  
THAT IT CANNOT RIPEN INTO A FEE TITLE AND SAID SIGNATURE IS NOT RE-  
QUIRED BY THE GOVERNING BODY.

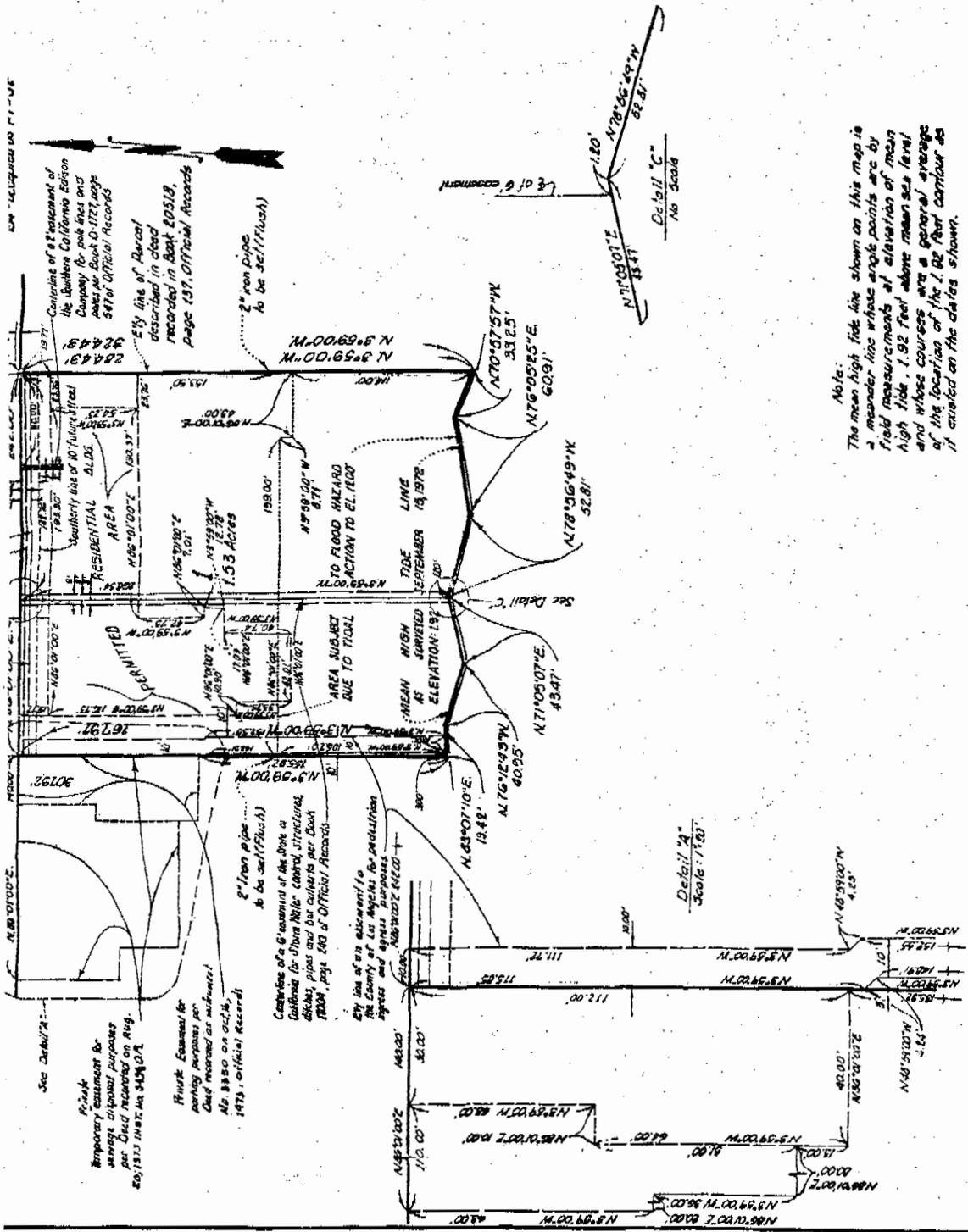
THE SIGNATURE OF STATE OF CALIFORNIA, OWNER OF AN EASEMENT, AS DIS-  
CLOSED BY DEED RECORDED IN BOOK 17004, PAGE 240 AND RECORDED IN BOOK 19116 PAGE  
142 OF OFFICIAL RECORDS, LOS ANGELES COUNTY, HAS BEEN OMITTED UNDER THE PROVISIONS OF SEC-  
TION 11587, SUBSECTION (A) OF THE SUBDIVISION MAP ACT, THEIR INTEREST IS  
SUCH THAT IT CANNOT RIPEN INTO A FEE TITLE AND SAID SIGNATURE IS NOT  
REQUIRED BY THE GOVERNING BODY.

THE SIGNATURE OF GENERAL TELEPHONE COMPANY OF CALIFORNIA, A CORPOR-  
ATION, SUCCESSOR TO ASSOCIATED TELEPHONE COMPANY, LTD., CORPORATION  
OWNER OF AN EASEMENT, AS DISCLOSED BY DEED RECORDED IN BOOK 19047, PAGE 111  
PAGE 186 OF OFFICIAL RECORDS OF LOS ANGELES COUNTY, HAS BEEN OMITTED  
UNDER THE PROVISIONS OF SECTION 11587, SUBSECTION (A) OF THE SUBDIVI-  
SION MAP ACT, THEIR INTEREST IS SUCH THAT IT CANNOT RIPEN INTO A FEE  
TITLE AND SAID SIGNATURE IS NOT REQUIRED BY THE GOVERNING BODY.

THE PRESENT OWNERS OF THE MINERALS, OIL, PETROLEUM,  
GAS AND OTHER HYDROCARBON SUBSTANCES RESERVED IN THE DEED RECORDED  
DECEMBER 14, 1943 IN BOOK 20518, PAGE 137 OF OFFICIAL RECORDS, HAVE  
BEEN OMITTED AS NECESSARY PART/MENT SIGN THE MAP UNDER THE PROVI-  
SIONS OF SECTION 11587 C (1) OF THE SUBDIVISION MAP ACT, INASMUCH AS  
SUCH OWNERSHIP DOES NOT INCLUDE A RIGHT OF ENTRY ON THE SURFACE OF  
THE LAND.

THIS TRACT IS A CONDOMINIUM PROJECT WHEREBY THE OWNERS OF THE UNITS  
OF AIR SPACE WILL HOLD AN UNDIVIDED INTEREST IN THE COMMON AREAS  
WHICH WILL IN TURN PROVIDE THE NECESSARY ACCESS AND UTILITY EASE-  
MENTS FOR THE UNITS.





*Note:*  
 The mean high tide line shown on this map is a meander line whose exact points are by field measurements of elevation of mean high tide, 1.92 feet above mean sea level and whose courses are a general average of the location of the 1.92 foot contour as it existed on the dates shown.

Vincent  
Kevin  
Kelly  
and  
Associates  
Inc.

civil  
and  
structural  
engineering

2216 wilshire boulevard  
santa monica, ca 90403  
213 / 828-3431

Vincent Kevin Ke  
presic  
Michael A. Gardner, E  
assoc  
Stephen F. Taylor, C. E.  
Edward D. Keller  
John Lamb  
Doree Thomps  
Betty Jo Spr

February 15, 1984

Mr. Ralph W. Trueblood  
#14 Oakmont Drive  
Los Angeles, Calif. 90049

Re: Bulkhead Inspection  
22470 Pacific Coast Hwy.  
Malibu, Calif. 90265

Dear Mr. Trueblood:

Per our contract of December 1, 1983 this office conducted periodic surveys of the construction of your bulkhead at the above referenced address. The following is a summary of those inspections:

12/5/83 The 14 inch diameter piles were driven at an average of 4 feet on center.

12/21/83 The 14 foot, 2 inch long, 3 X 12 sheathing to be driven on your property was just commencing. Jim Coulson, the Contractor, had completed driving the sheathing on the Sherman property, which is an extension of your bulkhead. It should be noted that, in our opinion, the job was done exceptionally well.

1/4/84 The filter cloth was placed correctly to the underside of the top whaler. The filter rock was, at that point, just arriving. It was clean and of good quality. However placement of said material had not yet commenced. The bulkhead return ended at the existing tennis court, which was short of the length stated in the wave action report dated April 9, 1983. However, John Hale, the Coastal Engineer of record, will personally direct boulder placement as an alternative to the shortened return.

Exhibit 40  
CCC-09-CD-01 and CCC-09-NOV-01  
(Ackerberg)

Page 1 of 2

1/22/84. The bulkhead has been completed. A general final inspection of all bolts, washers, walers, sheathing and dimensional aspects were made. It was noticed that by sighting along the top edge of the sheathing that the wall bowed in and out horizontally. The slight variation noticed has no structural affect, and is acceptable to this office.

1/26/84 At the request of the Contractor, the man sized boulders were inspected extending a minimum of 10 feet 0 inches back from the wall. These rested on 1 foot 0 inch minimum filter material and all were as per plans. Excellent workmanship was observed.

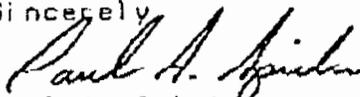
Also noted was the completed return wall which extends only to the tennis court (approximately 19 feet 0 inches). It is our understanding that the corner boulder protection has been installed under the supervision of John Hale's office.

Elevations were established at the property by Mario C. Quiros, Land Surveyor, 22249 Pacific Coast Hwy, P. O. Box 186, Malibu, Ca.

Piling was observed by Kovac-Byer-Robertson and their findings are contained in their report no. M742-F, dated January 11, 1984.

It is our opinion, from the above inspections, that your bulkhead seawall was satisfactorily constructed in accordance with our plans and specifications.

Sincerely,



Paul A. Spieler  
Project Engineer

PAS/dmt