

**CALIFORNIA COASTAL COMMISSION**

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Staff:	R. Ananda-SF
Staff Report:	8/24/12
Hearing Date:	9/13/12

## **STAFF REPORT: CONSENT CEASE AND DESIST ORDER AND CONSENT RESTORATION ORDER**

**Consent Cease and Desist Order: CCC-12-CD-04**

**Consent Restoration Order: CCC-12-RO-04**

**Related Violation Files: V-4-07-039, V-4-94-040**

**Property Location:** 33440 Pacific Coast Highway, Malibu, CA (County of Los Angeles Assessor's Parcel Numbers (APNs) 4473-020-018 and 4473-020-017) and County-owned APN 4473-020-903

**Property Description:** Coastal bluff (top and face) located seaward of Pacific Coast Highway on the western end of Malibu.

**Property Owners:** Eric and Barbara Linder

**Agent:** Fred Gaines, Gaines and Stacey LLP

**Violation Description:** Violations include, but are not limited to, the following: (1) removal of major vegetation from a coastal bluff; (2) hardscaping and planters; (3) non-native plants on the bluff face; (4) construction of a horse corral and associated development, including: fences, gates, drainage devices, graded pads, and irrigation equipment; (5) construction of retaining/gabion walls; (6) additions to a path, including, but not limited to, construction of retaining walls and concrete stairs on the bluff face, for private

access to the beach<sup>1</sup>; and (7) placement of side-cast material (deposition of graded material over and down the coastal bluff); all without the required coastal development permit (CDP) and within the recorded deed-restricted area required under CDP No. 5-85-057; (8) construction of a swimming pool and associated hardscaping in a configuration and location inconsistent with Coastal Commission-approved plans and the terms of approval of CDP No. 5-85-057; and (9) failure to comply with the conditions of CDP 4-97-077. Specific permit conditions violated or not satisfied include Special Conditions 2(b), 3, and 4 of CDP 4-97-077, which require implementation and completion of the restoration plan, as well as submittal of annual monitoring reports, and submittal of proof of the removal of the water system as part of the final monitoring report required by Special Condition 1, respectively.

**Persons Subject to these Orders:**

Eric and Barbara Linder

**Substantive File Documents:**

Public documents in Cease and Desist and Restoration Order files Nos. CCC-12-CD-04 and CCC-12-RO-04

**California Environmental Quality Act (CEQA)**

**Status:**

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

**Staff Recommendation:**

Approval of these Cease and Desist and Restoration Orders

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## **SUMMARY OF STAFF RECOMMENDATION AND FINDINGS**

### **A. OVERVIEW**

Staff recommends that the Commission approve Consent Cease and Desist and Consent Restoration Orders Nos. CCC-12-CD-04 and CCC-12-RO-04 (hereinafter referred to collectively as the “Orders”) to address development undertaken in violation of the Coastal Act on property located at 33440 Pacific Coast Highway, in the City of Malibu, Los Angeles County<sup>2</sup> (“subject

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<sup>1</sup> The public has access and passive recreational use along this shoreline as required under the terms of CDP 5-85-057.

<sup>2</sup> These parcels are also identified by the Los Angeles County Assessor’s office as Assessor Parcel Numbers (APNs) 4473-020-017 and 4473-020-018.

property”); as well as on an adjacent parcel owned by the County<sup>3</sup>. The subject property and the County-owned parcel are on a coastal bluff, and the general location is depicted in Exhibit No. 1. The proposed Consent Orders are included as Appendix A of this staff report. The persons subject to the proposed Consent Orders are the owners of record for the subject property, Eric Linder and Barbara Linder (hereinafter “Respondents”). The violations at issue in this matter involve development that is both unpermitted and inconsistent with previous Commission-issued CDPs (hereinafter referred to generally as the “subject development”), and which occurred on and adjacent to ESHA. The City of Malibu has a certified Local Coastal Program (LCP); and Policy 3.1 of the Land Use Plan designates Coastal bluffs as Environmentally Sensitive Habitat Areas (ESHA).<sup>4</sup> The policy states as follows:

*The ESHAs in the City of Malibu are riparian areas, streams, native woodlands, native grasslands/savannas, chaparral, coastal sage scrub, dunes, **bluffs**, and wetlands, unless there is site-specific evidence that establishes that a habitat area is not especially valuable because of its special nature or role in the ecosystem [emphasis added]*

The Respondents conducted unpermitted development within ESHA, which was also inconsistent with the approved plan authorized under a CDP issued for the property. Such development specifically violates the conditions of this CDP (CDP No. 5-85-057), including the Deed Restriction required by the CDP. This permit was sought, and obtained and accepted, by Respondents.

These Consent Orders are the culmination of staff’s numerous attempts to work with the Respondents to resolve several sets of violations on the subject property and the County-owned parcel in a manner amenable to both the Commission and Respondents. As will be more fully discussed below, Respondents received a CDP that authorized residential development on APN 4473-020-018 in March 1985. Staff first observed a violation on the subject property in August 1994. The violation involved unpermitted development on the lower bluff and the public beach below the residence, and included an unpermitted horse facility. Staff subsequently opened a violation case and worked with Respondents to address the violation. A CDP for the removal of the unpermitted development and restoration of the site was issued by the Commission in July 1998. That CDP was intended to address these violations on the bluff and beach. However, the Respondents failed to fully comply with the terms and conditions of the CDP, as further discussed, below. Furthermore, a second set of violations including merely moving the unpermitted horse facility from the beach up to the bluff-top was confirmed by staff in May 2001.

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<sup>3</sup> APN 4473-020-903

<sup>4</sup> Staff also notes, importantly, that in addition to this policy, Section 3.11.2.A of the City’s Local Implementation Plan (LIP) requires that confined animal facilities for keeping horses or other ungulates for personal recreational use shall be prohibited in ESHA or ESHA buffers. Policy 3.149 of the LUP also prohibits the disposal of animal wastes and wastewater in ESHA. The violations at issue included the corralling of horses on the bluff-top.

Commission staff communicated with the Respondents regarding the violations on the subject property by way of letters, meetings, and phone calls over the past several years<sup>5</sup>, and in particular, over the last six months, including a *Notice of Intent to Record a Notice of Violation and to Commence Cease and Desist Order and Restoration Order Proceedings* letter to Eric and Barbara Linder, sent on May 7, 2012. The County of Los Angeles, Department of beaches and Harbors also sent the Respondents a letter dated July 9, 2012 informing them of violations on the County Parcel and requested the Respondents remove the unpermitted development (Exhibit 16) Respondents had placed on property owned by the County.

Commission staff has worked closely with the Respondents to reach agreement on the proposed Consent Orders, included in this Staff Report as Appendix A, and appreciates their cooperation in the process. At the very last day before mailing, agreement was reached with Respondents to resolve this matter consensually. Staff feels that this agreement is a good resolution of the situation and will provide for restoration of the affected areas.<sup>6</sup>

## **B. DESCRIPTION OF PROPERTY**

The Respondents' property and the adjacent County-owned Parcel are situated on a coastal bluff at the west end of the City of Malibu. The site includes areas on the bluff-top and face, all on the seaward side of the Pacific Coast Highway. The subject property and the parcel owned by Los Angeles County (the "County") overlook El Sol County Beach in the Encinal Canyon area in the City of Malibu, Los Angeles County. The Respondents' property extends southerly from the Pacific Coast Highway to the Mean High Tide Line and has an extremely steep bluff, approximately 75 feet in height. It comprises 1.14 acres (APN 4473-020-018) to the east, and 0.45 acre (APN 4473-020-017) to the west. Additionally, a portion of the unpermitted development was also placed on a County Parcel (APN 4473-020-903) ("the County Parcel") without the County's permission. The County Parcel lies directly west (up coast) of the Respondents' property. (Exhibit No. 2)

## **C. SUMMARY OF VIOLATION AND PROPOSED RESOLUTION**

This case involves both unpermitted development and the Respondents' failure to comply with the terms and conditions of Coastal Development Permits ("CDP") Nos. 5-85-057 and 4-97-077, as discussed below. Staff has determined that the subject development has occurred on and remains, in part, at the subject property located at 33440 Pacific Coast Highway in Malibu, Los Angeles County, as well as on the County Parcel. The original violations, as described above

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<sup>5</sup> As discussed more fully herein, CCC staff sent letters to the Linders on August 23, 1994, December 5, 1994, May 4, 1995 (re-sent on May 5<sup>th</sup> and June 28<sup>th</sup>), June 28, 1995, August 30, 1995, March 26, 1996, November 27, 1996, March 17, 1997, April 24, 1997, October 10, 1997, April 13, 1998, September 24, 2007, December 11, 2007, February 6, 2009, July 29, 2011, August 31, 2011, February 27, 2012, February 29, 2012, March 29, 2012, April 12, 2012, May 7, 2012 (including Notice of Intent to commence these proceedings), and May 31, 2012 (proposed Consent Orders).

<sup>6</sup> Due to the lateness of the agreement, it was difficult to fully revise the Staff Report and exhibits to reflect this change, but all reasonable efforts were made to do so.



and below, took place between the late 1980s and early 1990s and were intended to be resolved through CDP No. 4-97-077. This CDP was issued by the Commission for the removal of the unpermitted development and restoration of the affected areas on the sandy beach and bluff face. A later set of violations occurred in approximately May 2001, and included both violations of the earlier CDP (including the failure to fully remove the prior violations and restore the site), as well as new unpermitted development placed on the bluff-top (including within the area subject to a Deed Restriction recorded by Respondents).

The violations on the subject property and the County-owned parcel include, but are not limited to, development that is in violation of permits issued for the property, wholly unpermitted development, and failure to take actions required by existing permits. (Exhibits No. 3 and No. 4) More specifically, these violations include the following:

- (1) Development within the deed-restricted area (on APN 4473-020-018) that is unpermitted and / or inconsistent with the CDP No. 5-85-057 including, but not limited to: a) removal of major vegetation; b) retaining/gabion walls located along the bluff face; c) on-site disposal of side-cast material (deposition of graded material over and down the coastal bluff); d) hardscaping and planters, e) non-native plants on the bluff face; f) wooden retaining structures on the east side of the Respondents' property; g) all additions to the unimproved path, including stairs, retaining structures, and other development on, along, and adjacent to the path on the coastal bluff face that provides private access from the top of the bluff to the beach; and h) irrigation equipment;
- (2) Other unpermitted development on both APN 4473-020-017 and the County Parcel (neither of which have any CDPs authorizing development at all), including but not limited to: a) encroachment of the swimming pool and associated hardscaping onto APN 4473-020-017 from the adjacent parcel (APN 4473-020-018, to the east); b) placement of a horse corral and associated development, including fences and drainage devices; c) grading and creation of altered and/or flattened/leveled areas used for the horses on the bluff-top and face, located on the west side of the Respondents' property; d) placement of retaining/gabion walls located along the bluff face; e) disposal of side-cast material (deposition of graded material over and down the coastal bluff); and f) installation of irrigation equipment;
- (3) Construction of the swimming pool and associated hardscaping in a configuration and location inconsistent with Coastal Commission-approved plans and the terms of approval of CDP No. 5-85-057 (including partially on a separate parcel altogether); and
- (4) Failure to comply with Commission-issued CDP No. 4-97-077, Special Conditions 2(b), 3, and 4, which require implementation and completion of the restoration plan, as well as submittal of annual monitoring reports, and submittal of proof of the removal of the water system as part of the final monitoring report required by Special Condition 1, respectively. (Exhibit No. 12)

The Commission approved the issuance of CDP No. 5-85-057 (the original permit) on March 13, 1985. The CDP authorized the construction of a single-family, 6,860-square-foot residence, with an attached three-car garage, swimming pool, and septic system, on a vacant, 1.14-acre bluff-top lot. Special Condition No. 3 of the original CDP required the Respondents to record a Deed Restriction that prohibits “the construction of private stairways, structures or alterations on or down the bluff or within 25 feet of the bluff face”. Respondents recorded the Deed Restriction in October, 1986.

On August 8, 1994, Commission staff observed unpermitted development on the bluff face and at the base of the bluff on the beach, despite the requirements of CDP No. 5-85-057, Special Condition No. 3, which prohibits development within the deed-restricted area (“down the bluff or within 25 feet of the bluff face”). Staff opened Violation Case No. V-94-MAL-94-040 in 1994 and sent the Respondents a violation letter. This first set of violations was to have been resolved through CDP No. 4-97-077, which was approved by Commission on April 13, 1998, and required the removal of a horse corral, fence, gate, wooden retaining structures and water system, and the restoration and revegetation of the coastal bluff. CDP No. 4-97-077 was issued to Respondents on July 23, 1998. (Exhibit 11)

Staff discovered a second set of violations on May 8, 2001. Staff was visiting the site to confirm whether the site had been restored as required under CDP No. 4-97-077. Staff observed from the nearby public area that the restoration required by the CDP had not been completed. The Respondents had failed to restore the subject property under their ownership as required and, moreover, had undertaken new violations that included grading and construction of a new horse corral, which was observed on the bluff-top. Staff opened a second violation case for violations of non-compliance with CDP 4-97-077 (which had required the removal and restoration and revegetation of the site) and the new violations described above, which include a new horse corral and associated facilities on the bluff-top.

The subject development has caused and continues to cause damage to coastal bluff resources. The proposed Consent Cease and Desist Order and Restoration Order would, collectively, address the violations described herein by requiring the Respondents to: 1) cease and desist from maintaining or undertaking any future unpermitted development on the subject property and the County-owned parcel; 2) remove unpermitted development from the subject property and the County-owned parcel; 3) restore the subject property and the County-owned parcel and mitigate for impacts to coastal resources through implementation of a Commission-approved Restoration Plan comprising an Erosion Control Plan, Removal Plan, Restorative Grading Plan, Revegetation Plan, Monitoring Plan, Mitigation Plan, and Drainage Plan; 4) address the issues associated with the incorrect orientation of the pool; and 5) resolve civil liability for violations, by payment of \$138,000 into the Violation Remediation Account.

#### **D. JURISDICTION**

The Commission has enforcement jurisdiction over the violations at issue herein. Many of the violations relate directly to CDP Nos. 5-85-057 and CDP 4-97-077, both of which were issued by the Commission prior to certification of the City of Malibu LCP; the Commission has jurisdiction to enforce its permits. In addition, although the City of Malibu now has a certified LCP, pursuant to Coastal Act Section 30810, the City requested that the Commission take the

lead in this matter, and as such, the Commission also has jurisdiction as related to the unpermitted development located on both the Respondents' parcels, and the adjacent County-owned parcel. The Commission's authority to enforce any requirements of a certified Local Coastal Program is set forth in Section 30810(a) of the Coastal Act, which states, in relevant part, 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. 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.*

#### **E. COMMISSION'S ORDER AUTHORITY**

The Commission can issue a Cease and Desist Order under Section 30810 of the Coastal Act in, among other cases, cases where it finds that the activity that is the subject of the order has occurred either (1) without a CDP that was required under the local government's LCP (and the local government asks the Commission to enforce the LCP) or (2) in violation of a CDP previously issued by the Commission. The Commission can issue a Restoration Order under section 30811 of the Coastal Act if it finds that development: (1) has occurred without a CDP; (2) is inconsistent with the resource protection policies of the Coastal Act; and (3) is causing continuing resource damage. Each of the standards and criteria set forth under Sections 30810 and 30811, for the Commission's issuance of these Consent Cease and Desist and Restoration Orders, has been met in this case, as summarized briefly here and further discussed in Section 3. D.

Commission staff's recommendation, therefore, is that the Commission proceed with issuance of the proposed Consent Orders. The proposed Consent Orders provide a framework for resolving the subject violations, mitigating the impacts associated with those violations, and restoring the bluff habitat in a timely manner, as well as resolving the issue of civil penalties without litigation.

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## APPENDICES

Appendix A – Proposed Consent Orders

## EXHIBITS

EXHIBIT 1 - Location Map

EXHIBIT 2 - Subject Property

EXHIBIT 3 - Unpermitted Development

EXHIBIT 4 - Development within Deed-restricted Setback from Bluff Edge

EXHIBIT 5 - Recorded Deed Restriction

EXHIBIT 6 - Deed Restriction Survey Plan

EXHIBIT 7 - Subject Property Prior to Development

EXHIBIT 8 - History Subject Property Development

EXHIBIT 9 - Notice of Intent Letter

EXHIBIT 10 - County of Los Angeles July 9, 2012 Letter to Respondents

EXHIBIT 11 - CDP 5-85-057

EXHIBIT 12 - CDP 4-97-077

EXHIBIT 13 - SOD Deadline Extensions Letters (5/18/12; 5/31/12; 6/6/12; 6/12/12; 6/15/12; 6/19/12;  
6/21/12; 6/28/12; 7/10/12; and 7/12/12)

EXHIBIT 14 - Notice of Violation Letters – V-4-94-040 (8/23/94; 12/5/94; 5/4/95; 6/28/95;  
8/30/95; 3/26/96 11/27/96; and 3/17/97)

EXHIBIT 15 - Notice of Violation Letters – V4-07-039 (9/24/07; 12/11/07; 2/6/09; 7/29/11;  
8/22/11; and 2/27/12)

## **1. HEARING PROCEDURES**

The procedures for a hearing on a Cease and Desist Order and Restoration Order are outlined in Title 14, Division 5.5, Section 13185 and Section 13195, respectively, of the California Code of Regulations (“CCR”).

The Chair, for a Cease and Desist Order and Restoration Order hearing, shall announce the matter and request that all parties or their representatives present at the hearing identify themselves for the record, indicate what matters are already parts of the record, and announce the rules of the proceeding, including time limits for presentations. The Chair shall also announce the right of any speaker to propose to the Commission, before the close of the hearing, any question(s) for any Commissioner, at his or her discretion, to ask of any other party. Staff then presents the report and recommendation to the Commission, after which the alleged violator(s) or their representative(s) may present their position(s) with particular attention to those areas where an actual controversy exists. The Chair may then recognize other interested persons, after which time staff typically responds to the testimony, to any new evidence introduced, and to any questions posed by Commissioners.

Pursuant to CCR, title 14, section 13195 and 13186, the Commission should receive, consider, and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceedings, as specified in Section 13065. The Chair will close the public hearing after the presentations are completed. The Commissioners may ask questions of any speaker at any time during the hearing or deliberations, including, if any Commissioner chooses, any questions proposed by any speaker in the manner noted above. Finally, the Commission shall determine, by a majority vote of those present and voting, whether to issue the Cease and Desist Order and Restoration Orders, either in the form recommended by the Executive Director, or as amended by the Commission. Passage of the motions below, per staff recommendation or as amended by the Commission, will result in issuance of the Cease and Desist Order and Restoration Order.

## **2. STAFF RECOMMENDATIONS**

Staff recommends that the Commission adopt the following two motions:

### **A. Motion No. 1:**

*I move that the Commission **issue** Consent Cease and Desist Order CCC-12-CD-04 as set forth in the staff recommendation.*

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

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

*The Commission hereby issues Consent Cease and Desist Order No. CCC-12-CD-04, as set forth in the staff report, and adopts the findings set forth in the staff report on grounds that Respondents undertook development at 33440 Pacific Coast Highway and an adjacent parcel owned by the County of Los Angeles, in the City of Malibu, Los Angeles County, without a coastal development permit and in violation of the terms of existing permits 5-85-057 and 4-97-077, in violation of the Coastal Act and the Malibu LCP, and that the requirements of the Cease and Desist Order are necessary to ensure compliance with the Coastal Act.*

#### **B. Motion No. 2:**

*I move that the Commission **issue** Consent Restoration Order CCC-12-RO-04 as set forth in the staff recommendation.*

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in approval of the Consent Restoration Order and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

### **Resolution to Issue Restoration Order**

*The Commission hereby issues Consent Restoration Order No. CCC-12-RO-04, as set forth in the staff report, and adopts the findings set forth in the staff report on grounds that Respondents a) undertook development at 33440 Pacific Coast Highway and an adjacent parcel owned by the County of Los Angeles, in the City of Malibu, Los Angeles County, without a coastal development permit and b) the development is inconsistent with the Coastal Act and is causing continuing damage to coastal resources.*

## **3. FINDINGS AND DECLARATIONS<sup>7</sup>**

### **A. DESCRIPTION OF PROPERTY**

The subject property and the County Parcel (as each term is defined in the Summary of Staff Recommendation and Findings) are situated on a coastal bluff at the west end of the City of Malibu. The site includes areas on the bluff-top and face, all on the seaward side of the Pacific Coast Highway (Exhibit No. 2). These parcels are located in the western area of the City of Malibu, Los Angeles County and are comprised of 1.14 acre APN 4473-020-018 to the east, and

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<sup>7</sup> These findings include those in the Executive Summary (“Summary of Staff Recommendation and Findings”) of this Staff Report.

.45 acre APN 4473-020-017 to the west. The subject property and the County Parcel are situated between the Pacific Ocean and the Pacific Coast Highway (CA 1) on a coastal bluff above Los Angeles County Beach, *El Sol*. Respondents own the subject property, and Los Angeles County Department of Beaches and Harbors (the “County”) owns APN 4473-020-903, which lies directly west (up coast) of the Respondents’ property. The violation spans from APN 4473-020-018 westward on to APN 4473-020-017 and the County Parcel.

## **B. DESCRIPTION OF COASTAL ACT VIOLATIONS**

The violations being addressed in these enforcement proceedings involve development that is unpermitted and / or inconsistent with two previous, Commission-issued permits, CDP Nos. 5-85-057 and 5-97-077 and failure to take actions required those permits. These violations include, but are not limited to:

- (1) Development within the deed-restricted area (on APN 4473-020-018) that is unpermitted and / or inconsistent with the CDP No. 5-85-057 including, but not limited to: a) removal of major vegetation; b) retaining/gabion walls located along the bluff face; c) on site disposal of side-cast material (deposition of graded material over and down the coastal bluff); d) hardscaping and planters: e) non-native plants on the bluff face; f) wooden retaining structures on the east side of the subject property; g) all additions to the unimproved path, including stairs, retaining structures, and other development on, along, and adjacent to the path on the coastal bluff face that provides private access from the top of the bluff to the beach; and h) irrigation equipment;
- (2) Other unpermitted development on both APN 4473-020-017 and the County Parcel (on neither of which do any of the existing permits authorize development), including but not limited to: a) encroachment of the swimming pool and associated hardscaping onto APN 4473-020-017 from the adjacent parcel (APN 4473-020-018, to the east); b) placement of a horse corral and associated development, including fences and drainage devices; c) grading and creation of altered and/or flattened/leveled areas used for the horses on the bluff-top and face, located on the west side of the subject property; d) placement of retaining/gabion walls located along the bluff face; e) disposal of side-cast material (deposition of graded material over and down the coastal bluff); and f) installation of irrigation;
- (3) Construction of the swimming pool and associated hardscaping in a configuration and location inconsistent with Coastal Commission-approved plans and the terms of approval of CDP No. 5-85-057; and
- (4) Failure to comply with Commission-issued CDP No. 4-97-077, Special Conditions 2(b), 3, and 4, which require submittal of annual monitoring reports, implementation and completion of the restoration plan, and submittal of proof of the removal of the water system as part of the final monitoring report required by Special Condition 1, respectively. (Exhibits No. 2 and No. 3)

APN 4473-020-018 contains the residence and has development restrictions recorded on the title for the property, pursuant to the above-referenced Deed Restriction (Exhibit 5) which, in turn, was recorded pursuant to the requirements of CDP No. 5-85-057. The Deed Restriction explicitly states:

*The undersigned Owner, for himself/herself and for his/her heirs, assigns, and successors in interest, covenants and agrees that: the owner understands that the construction of private stairways, structures or alterations on or down the bluff or within 25 feet of the bluff face is prohibited. Said deed restriction shall remain in full force and effect during the period that said permit, or any modification or amendment thereof, remains effective, and during the period that the development authorized by said permit...*

This Deed Restriction, which was recorded by Respondents, clearly prohibits development within a 25-foot setback from the edge of the bluff and on the face of the bluff. The development listed above in item (1), despite the clear prohibitions under the Deed Restriction, has occurred and remains within the deed-restricted area. That development includes placing stairs, retaining structures, and other development on, along, and adjacent to the pre-existing, unimproved path/trail on the bluff face (shown in the exhibit to the Deed Restriction – Exhibit 6), which provides private access from the top of the bluff to the beach, all of which is placed in an area covered by the Deed Restriction and inconsistent with its terms.

APN 4473-020-017 and the County Parcel (APN 4473-020-903) are located directly west of the residential lot. Neither of these parcels has any permits for development. Unpermitted development on these parcels includes, but is not limited to the following: a portion of the swimming pool and hardscaping around it that encroaches onto APN 4473-020-017 from the Respondents' residential lot (APN 4473-020-018); a horse corral that spans both parcels, and associated development, including fences, drainage devices, and graded, altered and/or flattened/leveled areas (graded paths and trails) used for the horses on the bluff-top and face; retaining/gabion wall; and placement of side-cast material (deposition of graded material over and down the coastal bluff). (Exhibits No. 3 and 4)

Development landward of the 25-foot setback from the edge of the bluff required by CDP No. 5-85-057 includes, but is not limited to, hardscaping and other materials inconsistent with the terms of CDP No. 5-85-057. The project plans for a pool, authorized under CDP No. 5-85-057 to be constructed on APN 4473-020-018, depicts the pool in a north-south alignment; however it was constructed in an east-west orientation, which is inconsistent with the CDP.

Respondents have also removed major vegetation on a coastal bluff, including for the purposes of construction and placement of the unpermitted development; the horse corral and associated structures, in particular. The areas that have been developed are now compacted, bare ground devoid of the coastal vegetation that was there prior to the unpermitted removal. Additionally, native vegetation was removed from the bluff face for the construction of the unpermitted additions to the path, including the stairs that lead to the beach located below the subject property. (Exhibits No. 7 and 8)



## **C. HISTORY OF DEVELOPMENT AND COMMISSION ACTION ON THE SUBJECT PROPERTY**

Commission staff has confirmed that unpermitted development has occurred on and remains at the Respondents' property located at 33440 Pacific Coast Highway in Malibu, Los Angeles County, as well as on the County Parcel. The unpermitted development, as described above, took place on various occasions between 1985 and 2001 on the sandy beach, coastal bluff face, and on the bluff-top within the required 25-foot setback area. This case involves both unpermitted development and Respondents' failure to comply with the terms and conditions of CDP Nos. 5-85-057 and 4-97-077.

### **1. Relevant Permit History**

The Commission approved Coastal Development Permit No. 5-85-057 on March 13, 1985, authorizing the construction of a two-story, 6,860-square-foot, single-family residence, with an attached three-car garage, a swimming pool, and septic system, on a vacant, 1.14-acre bluff-top lot. Special Condition No. 3 of the CDP required the Respondents to submit a Deed Restriction (discussed above) for recordation. The Deed Restriction was recorded against APN 4473-020-018 in the Los Angeles County Recorder's Office on October 10, 1986, as Instrument Number 86 1366724.

Despite the requirements of CDP No. 5-85-057 and the Deed Restriction, Commission staff, on August 8, 1994, observed unpermitted development on the bluff face and at the base of the bluff on the beach. The unpermitted development that Commission staff observed at that time included a horse corral, fence, gate, wooden retaining structures and water system. In an effort to have Respondents resolve this first set of violations, the Commission issued CDP No. 4-97-077 on July 23, 1998 for the removal of the unpermitted development and restoration of the site. A more detailed description of the history and context of this original violation case is provided in Section 2, below.

### **2. Discovery and Attempts at Resolution of Violations**

#### **(i) Violation File No. V-4-94-040 – Original Violation**

Staff opened violation case number V-94-MAL-94-040 in August 1994, and required Respondents to resolve the violations at their property, which, it was eventually agreed, would be done via securing and implementation of a CDP. Commission staff communicated with the Respondents regarding the violations on the subject property by way of letters, meetings, and phone calls over several years. Commission enforcement staff sent Respondents letters dated August 23, 1994, December 5, 1994, May 4, 1995 (re-sent on May 5<sup>th</sup> and June 28<sup>th</sup>), June 28, 1995, August 30, 1995, March 26, 1996, November 27, 1996, March 17, 1997, April 24, 1997, and April 13, 1998 regarding resolution of Violation Case No. V-94-MAL-94-040.

On August 8, 1994, staff observed unpermitted development on the sandy beach and an unpermitted path and concrete stairs/additions to the pre-existing path/trail on the bluff face, apparently added to provide for easier use of a path providing access to the beach. On August 23, 1994, Commission staff sent the Respondents a certified letter that informed them that the

unpermitted development on the coastal bluff on their property was a violation of the Coastal Act. Staff requested that the Respondents cease the unpermitted development and submit by September 20, 1994, a CDP application to resolve the unpermitted development on the coastal bluff that had already been undertaken on their property, and to apply in advance for any other development activities contemplated for their property in the future. Staff's August 23<sup>rd</sup> letter included a notification that the Respondents' failure to comply with the request would result in referral of their case to the Commission's Statewide Enforcement Unit ("Headquarters"), and also informed them there was a potential for penalties associated with the Coastal Act violations. Staff reminded Respondents' representative, Mr. Sherman Stacey, that development activity performed without a CDP constitutes a violation of the Coastal Act's permitting requirements and that the Respondents could be subject to penalties as authorized under the Coastal Act.

On December 5, 1994, having not received a response to the CCC August 23<sup>rd</sup> letter from the Respondents, Commission staff sent Respondents another certified letter and again requested that the Respondents submit a completed CDP application, by January 3, 1995, to resolve the unpermitted development undertaken on their property on the coastal bluff. The December 5<sup>th</sup> letter also notified Respondents that staff was in the process of preparing their violation case for referral to Headquarters for further enforcement action if Respondents failed to submit a completed CDP application by January 3<sup>rd</sup>. Additionally, staff again informed the Respondents that there was a potential for imposing penalties.

On May 4, 1995, Commission staff sent Mr. Stacey yet another certified letter, because, as of that date, neither they, nor Mr. Stacey on their behalf, had submitted a CDP application to resolve the violations, as Commission staff had requested in prior letters, dated August 23<sup>rd</sup> and December 5<sup>th</sup>, 1994. Staff also informed Mr. Stacey that Coastal Act sections 30803 and 30805 authorize the Commission to initiate litigation to seek injunctive relief and an award of civil fines for violations, respectively. Furthermore, staff's May 4<sup>th</sup> letter informed the Respondents that Section 30820(b) authorizes additional penalties against an individual who "intentionally and knowingly" performs any development in violation of the Coastal Act. The May 4<sup>th</sup> letter indicated that staff preferred to resolve the matter administratively and informed the Respondents that they could resolve the violation by applying to remove the unpermitted development and restore the property. Staff requested a CDP application be submitted by June 9, 1995 in order to delay a referral of the violation case to Headquarters.

On June 28 and August 30, 1995, Commission staff sent two more certified letters to Mr. Stacey to request that the Respondents resolve the matter of the unpermitted development on the bluff at their property. Staff requested that the Respondents submit a CDP application for the restoration of the site or seeking approval of the retention of the unpermitted development.

On March 26, 1996, Commission staff sent the Respondents a letter informing them that they had still failed to resolve the violation or respond to staff's requests for submittal of a CDP application for the restoration of the bluff. Staff recommended that the Respondents submit an application for the restoration of the bluff face, rather than for retention of the unpermitted development, and clarified that this was preferable because the placement of any structure or the removal of vegetation on a bluff face is inconsistent with the applicable Land Use Plan. Staff reminded the Respondents that their violation was significant as it involved development of a

coastal bluff face, which is designated as an environmentally sensitive habitat area. Staff also reminded Respondents that the Coastal Act allows the Commission to seek injunctive relief through litigation and to impose penalties for violations. Staff informed Respondents that, since the violation was still in place, staff was in the process of preparing their violation case for elevation to Commission Headquarters and would be requesting that a "Notice of Violation" be recorded against the property, in order to put prospective purchasers on notice of the Coastal Act issues. Staff would also request Headquarters to proceed with issuing a Cease and Desist Order for restoration of the bluff.

On April 16, 1996, Commission staff received a Revegetation Plan, prepared by Dennis Turner, Landscape Architect, dated October 1995, for staff review. Respondents through their agent Mr. Stacey indicated a desire to resolve their violations by restoring the subject property. However their submittal did not include a CDP application for restoration of the site, as requested by staff in previous communications with the Respondents and their agent over the previous year and a half. On April 24 1996, Respondents' agent, Mr. Stacey, indicated during a telephone conversation with staff that he would submit a CDP application for restoration of the site, on behalf of Respondents.

By November 27, 1996, no CDP application had been received. Therefore, staff sent Respondents' agent another certified letter attempting to resolve the violation. Staff's letter recapped the April 24, 1996 telephone conversation and confirmed receipt on April 16<sup>th</sup> of Revegetation Plan, but noted that resolution of the violation could not occur until a CDP was obtained to address the unpermitted development and restore the subject property. As a courtesy, staff also provided Respondents with preliminary comments on the Revegetation Plan (prepared by Dennis Turner). In yet another attempt to resolve the situation, staff requested that a CDP application be submitted by January 3, 1997, for removal of the unpermitted development and restoration of the site or to retain the unpermitted development.

On March 17, 1997, Commission staff sent a certified letter to Mr. Stacey, as a follow-up to the staff's telephone call to Mr. Stacey on March 6, 1997, to which Mr. Stacey did not respond. The March 17<sup>th</sup> letter noted that Mr. Stacey had submitted a Revegetation Plan (prepared by Dennis Turner) on April 16, 1996, on behalf of the Linders; however, he had not taken steps to resolve the violation, nor had he submitted the required CDP application, despite staff's multiple requests. In spite of this, staff provided yet another opportunity to defer commencement of formal legal action, if Respondents submitted a completed CDP application by April 11, 1997.

On April 10, 1997, Mr. Stacey submitted an incomplete CDP application, dated April 9, 1997, on behalf of Respondents, seeking authorization for the removal of the unpermitted development (located on the bluff face and sandy beach) and bluff restoration and revegetation of the area from which the unpermitted corrals were removed, i.e., the beach and lower bluff area.

On April 24, 1997, staff sent Mr. Stacey a letter informing him that the Respondents' CDP application was incomplete and requested that they submit the required materials by May 30, 1997. Several communications transpired between staff and Respondents' representative subsequent to April 24, 1997 (including on August 26<sup>th</sup>, September 10<sup>th</sup>, October 10<sup>th</sup>, November

14<sup>th</sup>, December 8<sup>th</sup> and 12<sup>th</sup>) in working with the Respondents to complete their CDP application (No. 4-97-077) for the restoration of their property.

Ultimately, this permit application was heard and approved by the Commission on April 13, 1998. The Commission approved CDP No. 4-97-077 for the removal of the horse corral, fence, gate, wooden retaining structures and water system, and the restoration and revegetation of the coastal bluff on the subject property. As issued, it required removal of the unpermitted development, and restoration of both the beach and lower bluff area. It included Special Conditions that required the Respondents to submit a revised Bluff Restoration Plan (Special Condition No. 1) and a Monitoring Plan (Special Condition No. 2) prior to issuance of the CDP. Special Condition No. 2 included a requirement that they submit written annual reports (which, to this date, Respondents have never provided/submitted). Within 45 days of issuance of the CDP, Respondents were required to implement the approved, revised Bluff Restoration Plan and complete the restoration and revegetation (Special Condition No. 3) and remove all unpermitted structures (Special Condition No. 4). Lastly, they were required to comply with Special Condition Nos. 1 and 2 within 45 days of Commission action. On June 30, 1998 (78 days after the deadline) the Respondents submitted a proposed Bluff Restoration Plan, which they later revised, in response to staff demands, and re-submitted on July 13, 1998. The revised Bluff Restoration plan was approved by the Commission on July 23, 1998. On June 30, 1998 (78 days after the deadline) the Respondents also submitted a revised Monitoring Program prepared by Dennis Turner, dated June 1998.

(ii) Violation File No. V-4-07-039 – New Violation

On May 8, 2001, staff visited the site area to confirm whether or not the site had been restored, as required by CDP 4-97-077. Staff observed from the nearby public area that the restoration had not been completed. In fact not only did Respondents fail to restore the subject property as required by CDP 4-97-077, they had undertaken new unpermitted development, including a new horse corral, which was observed on the bluff-top and for which they had not obtained a CDP. Therefore staff opened a new violation case for non-compliance with CDP 4-97-077 (which had, as noted above, required the removal and restoration and revegetation of the site) and the new unpermitted development which included a new horse corral on the bluff-top.

On September 13, 2007, staff once again observed that there was unpermitted development on the subject property and the County-owned parcel, including a horse corral, shade structure, and horses on the bluff-top.

On September 24, 2007, staff sent the Respondents a new Notice of Violation letter<sup>8</sup> that requested them to bring the subject property into compliance with the Coastal Act by submitting 1) a complete CDP application to the City of Malibu by October 31, 2007, for either the removal of the unpermitted development and restoration of the site or to seek to authorize the as-built development and 2) a restoration monitoring report to the Commission pursuant to Special Condition 2(b) of CDP 4-97-077 by November 31, 2007; 3) and to contact staff by no later than

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<sup>8</sup> For a new violation identified as V-4-07-039.

October 31, 2007, regarding how they intended to resolve the violation. Staff also informed the Respondents that not only was the new development unpermitted, they were not in conformance with Special Condition No. 3 of CDP No. 5-85-057, which prohibited development within the deed-restricted 25-foot setback from the edge of the bluff-top. The September 24<sup>th</sup> Notice additionally informed Respondents that they were in violation of CDP 4-97-077, which was issued to them to resolve their previous violation (V-4-94-040) regarding unpermitted development on the bluff.

In response to this letter, Respondents called on December 4, 2007 to request an extension of the due date for the submittal of a final restoration report. Staff then sent Respondents a letter, dated December 11, 2007, that granted Respondents a time extension to January 17, 2008, intended to afford them the opportunity to address the requirements of Special Condition 2(b), which required Respondents to submit a restoration report that documents and details the relative success of the restoration. Respondents still failed to comply with the Special Condition.

On February 6, 2009, staff sent Respondents a letter that again requested photos and written verification that all horses and structures had been removed and requested that they submit the required restoration report pursuant to CDP 4-97-077. Respondents again did not respond to staff's letter and also failed to confirm that any of the required restorative steps had been taken.

On July 29, 2011, after confirmation that the unpermitted development was still in place, staff again wrote the Respondents reminding them of the unpermitted development and their non-compliance with CDP 5-85-057 Special Condition No. 3 and CDP 4-97-077 Special Conditions No. 2(b), 3, and 4. Staff, again, requested that Respondents stop all maintaining and conducting of unpermitted development activities on the subject property, informed them of the need to contact staff to resolve the violations (i.e., remove the unpermitted development and restore) on the subject property and the County-owned Parcel, and submit the required plans. The July 29, 2011 letter from CCC Staff informed Respondents that not only did the unpermitted development violate the conditions of the two previously-issued CDPs, but it violated the City of Malibu's certified Local Coastal Program, Section 10.4 for development on bluff-tops. Staff also requested that Respondents contact staff by August 17, 2011, regarding how they intended to resolve the violation. Respondents did not respond to staff's July 29, 2011 letter.

On August 22, 2011, staff wrote the Respondents again informing them of the alleged violations and their non-compliance of CDP 5-85-057 Special Condition No. 3 and CDP 4-97-077 Special Condition Nos. 2(b), 3, and 4. Staff requested that the Respondents stop all unpermitted development activity (i.e., maintaining and conducting activities) on the subject property and the County-owned Parcel, informed them of the need to get authorization to remove the unpermitted development, and restore the property, and again provided the Respondents with options to resolve their violation case administratively, such as through a "Consent Order". Staff, again advised Respondents on a number of potential remedies to address the violations under the Coastal Act on the subject property and the County-owned Parcel, and informed them of the potential for the recordation of a Notice of Violation against the property. Staff also requested that Respondents contact staff by September 6, 2011, regarding how they intended to resolve the violation on the subject property.

On December 6, 2011, since staff had not received any responses to the letters, commission staff again visited the site area and, viewing it from nearby/adjacent public areas, confirmed the continued presence of the horse corral, fencing, remnant brick supports/posts from the shade structure, and horses on the subject property.

Staff sent the Respondents letters dated February 27 and 29, 2012, again, outlining staff's efforts to resolve this matter and requested that Respondents inform staff as to how they anticipated resolving the subject violations. Staff's letters informed Respondents that the preference was to resolve the matter in a timely and amicable manner and reiterated the Commission's authority under the Coastal Act with respect to the enforcement of penalties for violations.

Staff also contacted the Respondents by telephone many times over the years to attempt to resolve this matter and to highlight the need for a response to previous letters. During a telephone conversation with staff, on March 12, 2012, Respondents stated a willingness to work to resolve the violations. Staff sent Respondents a letter, dated March 29, 2012 that recapped the March 12<sup>th</sup> conversation and again afforded the Respondents the opportunity to resolve this matter through the Consent Order process.

On April 12, 2012, Mr. Stacey submitted a letter on Respondents' behalf, dated April 10, 2012. Mr. Stacey requested that staff send him a proposed consent order to resolve this matter. On April 16, 2012, staff sent Mr. Stacey a letter that confirmed receipt of his letter, dated April 10<sup>th</sup>, and informed him that the proposed Consent Cease and Desist Order and Restoration Order would be prepared and sent.

In order to initiate the Order process, on May 7, 2012 staff sent via certified and regular U. S. mail a Notice of Intent (NOI) to Commence Cease and Desist and Restoration Order proceedings (Exhibit 9) to the Respondents. The NOI letter to Eric and Barbara Linder also included a notice, in accordance with Section 30812, that the Executive Director intended to record a Notice of Violation on the title to the property (NOVA). A Statement of Defense form ("SOD") was included with the NOI letter, affording the Respondents the opportunity to present defenses to the allegations of Coastal Act violations. The NOI letter provided a twenty-one-day period for submittal of a completed SOD form and written objection to the recordation of a NOVA. The Respondents requested and were granted numerous SOD deadline extensions<sup>9</sup>, (Exhibit 13) as Respondents cooperatively worked with staff and to focus on resolution through proposed Consent Orders. As Respondents did not object to recordation of a NOVA by the May 28, 2012 deadline set forth in the NOI letter, the Executive Director caused to be recorded a NOVA on the title to the two lots under their ownership, APN 4473-020-018 and APN 4473-020-017, on July 30, 2012. The NOI also notified Respondents and their representatives of staff's intent to bring the matter of the subject violations before the Commission at its July 2012 meeting.

Respondents, as indicated above, in 2012, were receptive to staff's efforts to resolve the violation through Consent Orders. Therefore, over the months of May, June, July, and August, 2012, staff worked with their Representatives to fully resolve the violations on the subject property. Staff

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<sup>9</sup> Letters dated May 18 and 31, 2012; June 12, 15, 19, and 28, 2012; and July 10 and 12, 2012.

prepared a proposed Consent Order which was re-drafted several times (July 16, 2012; July 23, 2012; July 24, 2012; July 26, 2012; and August 22, 2012) to respond to proposals from and concerns raised by the Respondents. Through the proposed Consent Orders, the Respondents have agreed to resolve all Coastal Act violation matters addressed herein, including resolving claims for injunctive relief, through the removal of unpermitted development, restoration, mitigation, the payment of penalties, and an enforceable commitment not to undertake unpermitted development in the future and to comply with the terms and conditions of previously-issued permits.

Over the past several years staff has generally monitored the subject property and at the time of each site visit, the horses and the associated unpermitted development were observed on the subject property. (Exhibit No. 3) Although it is impossible to completely verify the status of all unpermitted development from off site, staff has confirmed that, to date or until very recently, some of the subject development at issue remains on the subject property.

The development on the subject property that is inconsistent with the previously-issued CDPs constitutes violations of the Coastal Act. The Respondents remain in non-compliance with CDP No. 5-85-057 Special Condition No. 3 and CDP No. 4-97-077 Special Condition Nos. 2(b), 3, and 4, to date. Moreover, the Respondents conducted development on the bluff-top and bluff face without an approved CDP, which is required by both the Coastal Act and the City of Malibu's certified LCP. This, as Respondents would know both from their prior permits and from the prior enforcement actions at their property regarding unpermitted development, is also a violation of the Coastal Act.

This site has had an extensive history of violations, over a long period of time. This action would resolve these violations and the Consent Orders include a commitment to comply with the Coastal Act in the future. Commission staff has resolved these violations cooperatively with the Respondents through a Consent Order process.

## **D. BASIS FOR ISSUANCE OF ORDERS**

### **1. Cease and Desist Order**

#### **a. Statutory Authority for Issuance of the Proposed Cease and Desist Order**

The statutory authority for issuance of the proposed Cease and Desist Order is provided in Coastal Act section 30810. Section 30810 of the Coastal Act states that the cease and desist order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with the Coastal Act – including the requirement for removal of any unpermitted development or material. Coastal Act Section 30810 states, in relevant part:

*(a) 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. 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.*

...

*(b) The cease and desist order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with this division, including immediate removal of any development or material...*

The development that is the subject of these proceedings includes both unpermitted development and development that is inconsistent with permits previously issued by the Commission. The following paragraphs present the bases for the issuance of this Cease and Desist Order by providing substantial evidence that the development meets the standards set forth in Section 30810 for the Commission's issuance of the proposed Cease and Desist Order.

#### **b. Development without a Coastal Development Permit**

The subject development above-described has occurred on the subject property without a CDP. Section 30600(a) of the Coastal Act states that, in addition to obtaining any other permit required by law, and with limited exceptions not applicable here, any person wishing to perform or undertake any development in the Coastal Zone must obtain a CDP. The term "development" is defined broadly in Section 30106 of the Coastal Act as follows:

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

The activities referenced in Section 3. B of this staff report constitute "development" as defined in Coastal Act Section 30106; they constitute the types of activities noted above and, as such, are subject to the permit requirement of Coastal Act Section 30600(a). No CDP was obtained to authorize the development which is the subject of this proceeding. The instances of development at issue here (1) constitute development that requires authorization pursuant to a CDP from the



Commission<sup>10</sup>; (2) for which Respondents never applied for a permit, and therefore were never permitted; and (3) in fact, could not be permitted due to inconsistency with the Coastal Act and the previous (original) CDP. Therefore, the first of the two independently sufficient bases for issuance of the proposed Cease and Desist Order, as set forth under Coastal Act Section 30810, has been met.

**c. Development Inconsistent with a Previously-issued Coastal Development Permit**

Coastal Act 30810(a) also authorizes the Commission to issue a Cease and Desist Order if development is undertaken that is inconsistent with a previously-issued CDP. Special Condition No. 3 of CDP 5-85-057, which was issued by the Commission March 13, 1985, required that:

*Prior to the transmittal of permit, the applicant shall be required to submit a deed restriction for recording subject to the approval of the Executive Director prohibiting the construction of private stairways, structures or alterations on or down the bluff or within 25 feet of the bluff face. [Sic]*

The required Deed Restriction was properly recorded with Los Angeles County as Instrument Document No. 86 1366723. Despite the specific development prohibitions under Special Condition No. 3 and the Deed Restriction, Respondents undertook development on the bluff-top within the deed-restricted area, i.e., including within the 25-foot setback from the bluff edge and on the bluff face. Such development includes but is not limited to the placement of additions to the pre-existing path/trail such as concrete stairs on the bluff face, the retaining /gabion walls, irrigation equipment, fencing, gates, drainage devices, hardscaping and planters, removal of major vegetation, and placement of non-native plants on the bluff face. Development inconsistent with a previously issued CDP also includes the construction of the swimming pool and associated hardscaping that was authorized under CDP NO. 5-85-057, in a configuration and location that is inconsistent with Coastal Commission-approved plans and the terms of approval of Coastal Development Permit No. 5-85-057. The design illustrated on the approved project plan shows the pool in a north - south alignment; however it was constructed in an east - west direction, inconsistent with the CDP.

CDP No. 4-97-077 was issued by the Commission with the intention to resolve Respondents' prior violation at the base of the bluff and on the sandy beach below Respondents' property, as described above. CDP No. 4-97-077 authorized the removal of unpermitted development, including a horse corral, fence, gate, wooden retaining structures and water system, as well as the restoration and revegetation of the coastal bluff on the subject property. The Special Conditions of the 1997 permit required that the Respondents submit a revised Bluff Restoration Plan (Special Condition No. 1) and a Monitoring Plan (Special Condition No. 2) prior to issuance of

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<sup>10</sup> Although the City of Malibu has a certified LCP, much of the development occurred prior to effective certification of that LCP on September 13, 2002. Moreover, even for the development that came later, as is explained in the next section, much of it was inconsistent with prior Commission CDPs. Consequently, that development would have required a CDP from the Commission as well, in the form of an amendment to the existing Commission-issued CDPs.

the CDP, as discussed earlier in this Staff Report. Special Condition No. 2 included a requirement that the Respondents submit written annual reports which were never submitted. Within 45 days of issuance of the CDP, Respondents were required to implement the approved, revised Bluff Restoration Plan and complete the restoration and revegetation (Special Condition No. 3) and remove all unpermitted structures (Special Condition No. 4). Respondents were required to comply with Special Condition Nos. 1 and 2 within 45 days of Commission action. While Respondents eventually submitted a Restoration Plan and Monitoring Plan, it was after the deadline. Moreover, Respondents have failed to implement the approved Restoration Plan and Monitoring Plan required by CDP No. 4-97-077. The non-native vegetation in the area identified in CDP No. 4-97-077 is not only inconsistent with the approved Restoration Plan; it is inconsistent with the City of Malibu's LIP that requires the use of drought tolerant, native species on bluffs. None of the development at issue has been authorized by the Commission through either of the aforementioned CDPs. For these reasons, although only one basis needs to be met for issuance of the proposed Cease and Desist Order, as set forth under Coastal Act Section 30810, in this case, both have been met.

## **2. Restoration Order**

### **a. Statutory Authority for the Issuance of Restoration Order**

The statutory authority for issuance of the proposed Restoration Order is provided in Coastal Act Section 30811.<sup>11</sup> Section 30811 of the Coastal Act, states, in relevant part:

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

As discussed below, all three of these elements have been met in this case.

### **b. Development without a Coastal Development Permit**

Section 30600(a) of the Coastal Act states that, in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the Coastal Zone must obtain a CDP. Section D.1.b above, provides the Coastal Act definition for "development" and staff has established that the activities at issue in these Orders constitute "development" as defined in Coastal Act Section 30600. The subject instances of development, therefore, are subject to the permit requirements of the Coastal Act, unless exempted under the Coastal Act, and individuals undertaking or intending to undertake such activities in the Coastal Zone must

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<sup>11</sup> The area in which the development occurred is coastal bluff which is designated ESHA under the City of Malibu's certified LCP. Any proposed resolution of these violations described above will include restoration of the areas that have been affected by the unpermitted development.

first obtain a CDP. Staff has confirmed that the subject development on the subject property was conducted without authorization through a CDP, in violation of Section 30600(a) and that no exemption applies here; therefore the first criterion necessary to support the Commission's issuance of the proposed Restoration Order has been met.

**c. Development is Inconsistent with the Coastal Act**

The subject development is inconsistent with the specific provisions and conditions of two CDPs<sup>12</sup> that were previously approved by the Commission, and therefore the development is in violation of the Coastal Act.

The subject development is also inconsistent with the following Chapter 3 policies of the Coastal Act, which are more fully described/discussed below: Section 30240 (protection of environmentally sensitive habitat); Section 30253 (minimization of adverse impacts/geologic hazards); Section 30251 (protection of scenic and visual qualities); Section 30231 (protection of biological productivity and water quality); and 30230 (protection of marine resources). The subject development, additionally, is inconsistent with the requirements of the City of Malibu's certified Local Coastal Program, and Local Implementation Plan (LIP). It is specifically inconsistent with the LIP provisions that include: Sections 6.5.D.1, 6.5.D.2, 6.5.D.3, and 6.5.H, all of which ensure the protection of scenic and visual resources; Policies 3.1, 3.8, 3.77, 3.78, 3.11.2.A, and 3.149 for the protection of environmentally sensitive habitat areas; and Sections 10.4.D and 10.4.F which have development standards that address geologic stability on coastal bluffs. These are further addressed in the discussion below.

**(i) Environmentally Sensitive Habitat Areas**

Coastal Act Section 30240 provides that:

- a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed in those areas.*
- b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

Policy 3.1 of the City of Malibu Land Use Plan (LUP) provides that:

*The ESHAs in the City of Malibu are riparian areas, streams, native woodlands, native grasslands/savannas, chaparral, coastal sage scrub, dunes, **bluffs**, and wetlands, unless there is site-specific evidence that establishes that a habitat area is not especially valuable because of its special nature or role in the ecosystem. [Emphasis added]*

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<sup>12</sup> CDPs Nos. 5-85-057 and 4-97-077.

City of Malibu LUP Policy 3.8 states:

*Environmentally Sensitive Habitat Areas (ESHAs) shall be protected against significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.*

ESHA buffers are detailed in City of Malibu LUP Policy 3.23:

*Development adjacent to ESHAs shall minimize impacts to habitat values or sensitive species to the maximum extent feasible. Native vegetation buffer areas shall be provided around ESHAs to serve as transitional habitat and provide distance and physical barriers to human intrusion. Buffers shall be of a sufficient size to ensure the biological integrity and preservation of the ESHA they are designed to protect. All buffers shall be a minimum of 100 feet in width, except for the case addressed in Policy 3.27. [Policy 3.27 states that the buffer area shall extend from the top of the bluff for coastal bluff ESHA.]*

The City of Malibu LUP Policy 3.77 protects beach and near shore habitat:

*Development on beach or ocean bluff areas adjacent to marine and beach habitats shall be sited and designed to prevent impacts that could significantly degrade the Environmentally Sensitive Habitat Areas. All uses shall be compatible with the maintenance of the biological productivity of such areas.*

The City of Malibu LIP provides similar protections for coastal bluffs/ESHA as does Chapter 3 of the Coastal Act. Section 4.6.1.D of the Malibu LIP provides that new development shall provide a buffer of no less than 100 feet from the edge of a coastal bluff. The City of Malibu LIP and LUP contain policies that limit the presence of confined animal facilities; such facilities are generally prohibited in ESHA. In the case of the subject property, the horse corral located on the ESHA bluff face does not have an adequate buffer zone to ensure that resulting contaminants from the horse facilities would not adversely impact either the bluff ESHA or the sensitive offshore kelp beds. The untreated animal waste from the unpermitted horse facilities contributes to the cumulative degradation of water quality in the area. This can adversely affect the kelp beds, which are a marine resource, identified in the LCP and found in the near-shore below the subject property. The placement of horse facilities on the coastal bluff, the planting of non-native vegetation on the subject property, including on the face of the bluff, displaces (and therefore is damaging to) the native species, thus creating an imbalance of the bluff ecosystem. Coastal bluff habitats are considered ESHA and are afforded substantial protections under the Coastal Act and the City of Malibu LCP. In addition, kelp beds, a marine resource identified in the LCP, are located just off the coast below the subject property in the near-shore and clearly are affected by such facilities immediately adjacent to the coast. Therefore, the subject development is inconsistent with the Coastal Act policies for the protection of ESHA.

(ii) Minimization of Adverse Impacts / Geologic Hazards

Section 30253 of the Coastal Act states in part that new development shall:

- 1) *Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- 2) *Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

Section 10.4.D of the City of Malibu's certified Local LIP provides in relevant part:

*All new development located on a bluff-top shall be setback from the bluff edge a sufficient distance to ensure that it will not be endangered by erosion or threatened by slope instability for a projected 100 year economic life of the structure. In no case shall development be set back less than 100 feet. This distance may be reduced to 50 feet if the City geotechnical staff determines that either of the conditions below can be met with a lesser setback. This requirement shall apply to the principal structure, and accessory or ancillary structures such as guesthouses, pools, tennis courts, cabanas, and septic systems etc. Ancillary structures such as decks, patios and walkways that do not require structural foundations may extend into the setback area but in no case shall be sited closer than 15 feet from the bluff edge....*

Further, the LIP Section 10.4.F states:

*No permanent structures shall be permitted on a bluff face, except for engineered stairways or accessways to provide **public** beach access where no feasible alternative means of public access exists....Such structures shall be constructed and designed to not contribute to further erosion of the bluff face and to be visually compatible with the surrounding area to the maximum extent feasible [emphasis added].*

The Coastal Act requires that new development minimize risk to life and property in areas of high geologic, flood and fire hazard, and assure stability and structural integrity. Coastal bluffs, such as the one located on the subject site and impacted by the unpermitted development, are unique geomorphic features that are characteristically unstable. By nature, coastal bluffs are subject to erosion from sheet flow across the top of the bluff and from wave action at the base of the bluff. As bluffs are highly erodible and geologically unstable, the Commission, in past permit actions, has consistently required a 25-foot setback or compliance with a string line, whichever is greater, for development located at the top of the bluff. In conformance with this practice, here, Special Condition 1 of CDP No. 5-85-057 required submittal of revised plans indicating no development within 25-feet of the bluff edge.

*"The Commission finds that if the project were conditioned to provide a 25 ft setback for all development from the bluff edge and to conform with the recommendations of the project soils engineering report, the proposed project would be consistent with Section 30253 of the Coastal Act." [Findings and Declarations (B), 5-85-057].*

Chapter 3 of the Coastal Act is the standard of review and basis for decisions in this matter, as stated above, the inconsistency with the LCP is discussed herein as a point of reference in understanding that these violations are noteworthy from a local government perspective.

Additionally, Section 10.4.D of Malibu's LIP specifically enumerates requisite setbacks for principal and ancillary structures. As the corral and associated development appear to be situated on the edge of the coastal bluff and possibly extend onto the upper portion of the face of the bluff, it is evident that no setbacks were complied with, despite the minimum 15 foot requisite setback as provided by the LIP. The presence of the horse corral and associated development near the top of the bluff is particularly troubling, as photographs of the site demonstrate that water pools in the corral area, and remains standing on the bluff. The standing water causes soil saturation which can lead to bluff sloughing and failure.

The City of Malibu LIP additionally proscribes the construction of permanent structures on the face of bluffs, with the exception of public access ways / stairways. As the unpermitted stairway in question is private, it could not be found consistent with the City of Malibu LIP.

Moreover, both the Coastal Act and the LIP require that development shall be designed and sited so as not contribute to erosion and/or geologic instability of an area. As the unpermitted work in question was undertaken without the benefit of a permit, the Commission and the City of Malibu have not been afforded the opportunity to analyze the development and ensure that it was constructed in a manner consistent with the geologic stability protections enumerated by the Coastal Act and City of Malibu. This analysis would be particularly apropos for the unpermitted development on the subject property given that the development is situated 75 feet high atop the coastal bluff and traversing the face of the bluff above the beach and directly adjacent to Los Angeles County park property. Any instability caused by the unpermitted development could undermine the adjacent County property and endanger visitors to the public beach below.

### (iii)Scenic and Visual Qualities

Both the Coastal Act and the City of Malibu LCP provide for the protection of coastal visual resources. The policies are applicable to public views of the ocean, the scenic qualities of designated scenic highways, and views from the ocean and public lands. The unpermitted development in question deleteriously impacts all three aspects of protected visual resources and is therefore inconsistent with the Coastal Act and the City of Malibu LCP.

Section 30251 of the Coastal Act states that:

*The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation by local government shall be subordinate to the character of its setting.*

City of Malibu LIP Section 6.5.D.1 states:

*In addition to the blufftop development setback requirements necessary to ensure geologic stability contained in Chapter 10 of the certified Malibu LCP, new development proposed on blufftops shall incorporate a setback from the edge of the bluff that avoids and minimizes visual impacts from the beach and ocean below. The blufftop setback necessary to protect visual resources may be in excess of, but no less than, the setback necessary to ensure that risk from geologic hazards are minimized from the life of the structure.*

Respondents never submitted a CDP application to obtain authorization for the horse facility, hardscaping, staircase, and placement of vegetation on the subject property. Therefore, the Commission was deprived of the opportunity to evaluate consistency with the Coastal Act, or ensure that the new development is consistent with Section 30251 of the Coastal Act and that the valuable coastal view-sheds are protected, accordingly.

Significantly, CDP No. 5-85-057 was explicitly conditioned to require all development reflect the finding that a 25-foot setback from the coastal bluff edge was necessary to minimize visual impacts of the project as viewed from the sandy beach areas. The Findings and Declarations in relevant part, from the staff report, is cited below:

*The Commission is concerned with the impact the proposed project may have on views across the site from Pacific Coast Highway. However, the Commission is also concerned with visual impacts which the project may have on the adjacent 2.54-acre county park (El Sol). The Commission's adopted Interpretive Guidelines for Malibu specify that "all development located within 1,000 feet of publicly owned park lands should be sited and designed with great sensitivity so as not to create adverse visual impacts affecting park areas."*

*Additionally, the Commission is concerned with the visual impact of the project from the sandy beach areas below the coastal bluff. The Commission finds that a requirement for a 25-ft. coastal blufftop setback will help to minimize visual impacts of the project as viewed from the sandy beach areas. In order to ensure that the project does not result in alterations of the bluff face which may result in adverse visual impacts, the Commission finds it necessary to condition the project to preclude the construction of private stairways, structures or alterations on or down the bluff or beach or within 25 ft. of the bluff face. This will ensure that the bluff face remains in as natural condition as possible and will minimize view impacts from the beach and adjacent park. [Sic]*

Special Condition No. 3 required recordation of a Deed Restriction prohibiting the construction of private stairways, structures or alterations on or down the bluff or within 25 feet of the bluff face.

*"In order to ensure that the project does not result in alterations of the bluff face which may result in adverse visual impacts, the Commission finds it necessary to condition the project to preclude the construction of private stairways, structures or alterations on or down the bluff or beach or within 25ft of the bluff face. This will ensure that the bluff face*

*remains in as natural a condition as possible and will minimize view impacts from the beach and adjacent park.”*

The Commission therefore found it necessary to require a 25-foot setback for development on the subject property to ensure consistency with Section 30251 of the Coastal Act. The visual qualities of development on the subject property are particularly important given that the development on the site can be seen from both a Los Angeles County beach and from Los Angeles County park property. The 2.54-acre El Sol County Park is approximately 330 feet from the permitted residence on the subject property, and since a portion of the unpermitted development is in fact located on Los Angeles County property (APN 4473-020-903); its as-built location has unmistakably resulted in adverse effects on the views from that Los Angeles County park property.

The unpermitted development is inconsistent with and a violation of the provisions of Section 30251 of the Coastal Act. The unpermitted development undertaken by the Respondents is a clear violation of the Deed Restriction; and as such, it is inconsistent with Section 30251, which is the basis for the establishment of the Deed Restriction. The horse corral and its associated facilities, located on the bluff, are not natural features of the coastal bluffs in Malibu. Coastal bluffs are designated as Environmentally Sensitive Habitat Areas, under the City of Malibu’s certified LCP. The unpermitted development is an introduced element to the appearance of the bluff and is not a part of the natural landscape or the original visual character. Section 30251 requires that development be designed to protect views along scenic coastal areas and to minimize the alteration of natural landforms. The Respondents’ construction and placement of unpermitted development on the bluff face has degraded the natural character through the removal of the natural bluff vegetation and the creation of bare areas that appear as a scar on the face of the natural bluff/landform. The visual appearance created by the Respondents is by no means consistent with the provisions of the Coastal Act that protect scenic resources and the visual qualities of the coast.

Chapter 3 is the standard of review and basis for decisions in this matter, as stated above. The inconsistency with the LCP is discussed herein as a point of reference to show that the violations are noteworthy from the perspective of the local government. Further, the City of Malibu LIP Section 6.5.D.2 provides that:

*No permanent structures shall be permitted on a bluff face, except for engineered stairways to accessways to provide **public** beach access. Such structures shall be designed and constructed to not contribute to further erosion of the bluff face and to be visually compatible with the surrounding area to the maximum extent feasible [emphasis added].*

The staircase at issue here is a concrete structure that could not be considered temporary, and moreover, only provides private beach access, therefore, the construction of the stairway is clearly inconsistent with the requirements of the City of Malibu LIP. Additionally, as the staircase is concrete and was not colorized and / or treated to be visually compatible with the surrounding area, it is inconsistent with the LIP, even if it were a public staircase.



Moreover, Section 6.5.D.3 requires that:

*Landscaping permitted on a bluff face or hillside for restoration, revegetation, or erosion control purposes shall consist of native, drought-tolerant plant species endemic to the area.*

Section 6.5.H additionally states:

1. *The Pacific Coast Highway corridor shall be protected as a scenic highway and significant viewshed by requiring that development conform to the following standards.*
  - a. *Landscape improvements, including median plantings, may be permitted along Pacific Coast Highway. Any proposed landscaping shall be comprised primarily of native and drought tolerant plant species. Landscaping shall be designed and maintained subordinate to the character of the area, and not block ocean or mountain views at maturity....*

The vegetation planted on the bluff face appears to be non-native, non-drought tolerant *Myoporum*, and is damaging to both the natural scenic character of the area, and the geologic stability of the bluff face, which is inconsistent with Section 6.5.D of the LIP. In addition, the vegetation planted along the landward edge of the subject properties also appears to be non-native and completely blocks ocean views from the Pacific Coast Highway across the subject property, in violation of Section 6.5.H of the LIP.

As the Subject Development is constructed on the top and face of a coastal bluff, and degrades the visual resources of the area from a scenic highway and public land, it is inconsistent with the visual resource protection policies provided in the City of Malibu LCP and the Coastal Act.

#### (iv) Biological Productivity and Water Quality

Section 30231 of the Coastal Act requires:

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

Policy 3.78 of the Malibu LUP requires that:

*New development shall prevent or reduce non-point source pollution in the near shore environment through implementation of the non-point source pollution and private sewage disposal systems.*

With respect to animal facilities Section 3.11.2.A of the City of Malibu LIP provides:

*New confined animal facilities for the keeping of horses or other ungulates for personal recreational use shall be prohibited in ESHA, or ESHA buffer except as otherwise provided in Section 4.7 of the Malibu LIP.*

Policy 3.149 of the City of Malibu LUP states:

*Animal waste, wastewater, and any other byproducts of agricultural activities shall be properly disposed of on land or through suitable sewage disposal systems, if available. This disposal of such wastes in or near streams or ESHA is prohibited.*

Coastal bluffs provide nesting, feeding, and shelter sites for shore birds and remain a part of the shoreline ecosystem. Section 30231 (and 30230 as discussed above) of the Coastal Act require that the biological productivity and the quality of coastal waters (and marine resources, also discussed above) be maintained and, where feasible, restored through among other means, preventing depletion of ground water supplies and substantial interference with surface water flows, maintaining natural buffer areas.

The Commission has found in past permit actions that the minimization of non-point source pollutants from new development will help to maintain and enhance the quality of coastal waters, streams, wetlands, estuaries and lakes. Non-point source pollution includes suspended solids, coliform bacteria and nutrients. Horse facilities are one of the most recognized sources of non-point source pollutants since these types of developments entail large areas which are cleared of vegetation and have concentrated sources of animal wastes. Horse wastes contain nutrients such as phosphorous and nitrogen, as well as microorganisms such as coliform bacteria. Excessive levels of nutrients can cause eutrophication and a decrease of oxygen levels in water ultimately resulting in clouding, algae blooms, fish-kills/diseases, alteration of aquatic species composition and size, and destruction of benthic habitats. In the case of the subject site, the horse corral located on the ESHA bluff face does not have an adequate buffer zone to ensure that resulting contaminants would not adversely impact either the bluff ESHA or the sensitive offshore kelp beds. The untreated animal waste from the unpermitted horse facilities contributes to the cumulative degradation of water quality in the area. This can adversely affect the kelp beds, which are a marine resource, identified in the LCP and found in the near-shore below the subject property.

The City of Malibu LIP accords similar protections for coastal bluffs/ESHA as does Chapter 3 of the Coastal Act. Section 4.6.1.D of the Malibu LIP provides that new development shall provide a buffer of no less than 100 feet from the edge of a coastal bluff. The City of Malibu LIP and LUP contain policies that limit the presence of confined animal facilities; such facilities are generally prohibited in ESHA. Furthermore, even if, despite these applicable policies, it were somehow possible for such a facility to be found consistent with the City of Malibu LCP, Policies 3.78 and 3.149 of the City of Malibu LUP further require that animal waste and byproducts be properly disposed of, and that such development prevent or reduce non-point source pollution in the near-shore environment through implementation of an appropriate

disposal system. Since Respondents never submitted an application or obtained a permit for the above-mentioned work on the subject property, neither the Commission nor the City of Malibu were given the opportunity to review proposed storm water pollution protection practices to ensure that Respondents adequately safe-guard coastal water quality or comply with these sections of the LIP and LUP.

In addition to biological productivity and near-shore water quality issues associated with the placement of horse facilities on the coastal bluff, the planting of non-native vegetation on the subject property, including on the face of the bluff, displaces (and therefore obviously is damaging to) the native species, thus creating an imbalance of the bluff ecosystem. Coastal bluff habitats are considered ESHA and are afforded substantial protections under the Coastal Act and the City of Malibu LCP. In addition, kelp beds, a marine resource identified in the LCP, are located just off the coast below the subject property in the near-shore and clearly are affected by such facilities immediately adjacent to the coast. Therefore, the subject development is inconsistent with the Coastal Act policies for the protection of water quality and biological productivity.

#### **d. Unpermitted Development is Causing Continuing Resource Damage**

The unpermitted development is causing ‘continuing resource damage’, as those terms are defined by Section 13190 of the Commission’s regulations.

##### **(i) Definition of Continuing Resource Damage**

Section 13190(a) of the Commission’s regulations defines the term ‘resource’ as it is used in Section 30811 of the Coastal Act as follows:

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

The term ‘damage’ in the context of Restoration Order proceedings is defined in Section 13190(b) as follows:

*‘Damage’ means any degradation or other reduction in quality, abundance, or other quantitative or qualitative characteristic of the resource as compared to the condition the resource was in before it was disturbed by unpermitted development.*

In this case, the resources affected include the habitat, and ecosystem functions provided by the coastal bluff habitat. As long as the unpermitted development remains on the bluff the visual quality of the bluff is adversely affected, rendering it inconsistent with a more natural landform characteristic of a coastal setting. The damage caused by the subject development on the subject property includes the degradation and removal of the native coastal bluff vegetation, alteration of the natural landform, compromised bluff stability due to increased erosion of the bluff face, and

cumulative impacts on water quality and the near shore kelp beds, which are designated ESHA in the Malibu LCP.

The term ‘continuing’ is defined by Section 13190(c) of the Commission’s regulations as follows:

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

As of this time, the unpermitted development that is the subject of these proceedings and the results thereof remain at the subject property. As described above, the unpermitted development results in impacts to coastal resources, including the habitat provided by native bluff vegetation, the biological productivity and quality of coastal waters, and the physical integrity of the bluff-top and face. The grading and removal of native vegetation and placement of structures on the bluff face continue to have an impact the coastal resources, by preventing the ecosystem from existing or functioning and thereby disrupting the biological productivity of these areas, and by continuing discharges of untreated wastes from the areas where animals have been stored into the near-shore where kelps beds occur, as mentioned above.

The unpermitted development is causing “continuing resource damage,” as defined by Section 13190 of the Commission’s regulations. The unpermitted development has at a minimum: (1) caused substantial interference of surface water flow; (2) failed to maintain natural buffer to protect coastal scrub habitats and near shore coastal waters; (3) failed to maintain the biological productivity of coastal waters; (4) destroyed native vegetation communities in an environmentally sensitive habitat area; and (5) contributed to the destruction of the coastal scrub habitat on the site. Such impacts meet the definition of damage provided in Section 13190(b), which includes, “any degradation or other reduction in quality, abundance, or other quantitative or qualitative characteristic of the resource as compared to the condition the resource was in before it was disturbed by unpermitted development.” In addition, the resource damage from the development is continuing, in that the impacts from the unpermitted development continue to occur at the property, unmitigated.

As described above, the subject development is causing adverse impacts to resources that protected by the Coastal Act that continue to occur as of the date of this proceeding, and therefore damage to resources is “continuing” for purposes of Section 30811 of the Coastal Act. The damage caused by the unpermitted development, which is described in the above paragraphs, satisfies the regulatory definition of “continuing resource damage.” The third and final criterion for issuance of a Restoration Order is therefore satisfied.

#### **E. PROVISIONS OF RECOMMENDED ACTIONS**

As described in Section 3. C. of these findings, Commission staff has made numerous attempts to work with Respondents towards an amicable resolution to the violations described herein. Historically, Respondents continued to maintain and undertake additional development that is inconsistent with provisions of two previously-issued CDP, and the Coastal Act, but is also causing continuing resource damage. As a result, staff determined that the only remaining

administrative option for resolving this matter is through formal enforcement proceedings. The Respondents have cooperatively agreed with staff to discontinue these ongoing set of violations and to bring the subject properties into compliance with the Coastal Act – both by completing the removal and restoration work that was required by CDP No. 4-97-077 in 1997/98 and never completed, and by requiring additional habitat restoration to mitigate for the temporal losses that occurred over that period and by removing and restoring the other unpermitted development on the site. Staff recommends the Commission approve the proposed Consent Cease and Desist and Restoration Orders and believes that they provide a good resolution of this matter.

The proposed Consent Cease and Desist Order and Consent Restoration Order (included as Appendix A to this Staff Report) are consistent with the resource protection policies found in Chapter 3 of the Coastal Act. The proposed Consent Orders would require Respondents to: (1) cease and desist from maintaining or undertaking any future unpermitted development on the subject property and the County Parcel; (2) remove, from the subject property and the County Parcel, the unpermitted development and development inconsistent with prior permits<sup>13</sup>; (3) restore and mitigate for impacts to the subject property and the County Parcel pursuant to the requirements of the Restoration Plan that includes provisions for a Removal Plan, Erosion Control Plan, Restorative Grading Plan, Revegetation Plan, Monitoring Plan, Mitigation Plan, and Drainage Plan.

#### **F. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

The Commission finds that issuance of these Orders to compel the removal of unpermitted development and restoration of the subject property is exempt from any applicable requirements of the California Environmental Quality Act of 1970 (CEQA), Cal. Pub. Res. Code §§ 21000 *et seq.*, and will not have significant adverse effects on the environment, within the meaning of CEQA. The Orders are exempt from the requirement for the preparation of an Environmental Impact Report, based on Sections 15060(c)(2) and (3), 15061(b)(2), 15307, 15308 and 15321 of CEQA Guidelines, also in 14 CCR.

#### **G. SUMMARY OF FINDINGS OF FACT**

1. Eric and Barbara Linder are and have been the sole owners of real property located at 33440 Pacific Coast Highway, in Malibu, Los Angeles County (APN: 4473-020-017 and APN 4473-020-018) since at least 1985, when they obtained, from the Commission on March 13, 1985, Coastal Development Permit No. 5-85-057 with special conditions which authorized

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<sup>13</sup> The pool shall be removed or within 45 days of the effective date of the Consent Orders, Respondents shall execute and record a Deed Restriction on the subject property to 1) preserve open space and habitat values on the undeveloped portion of APN 4473-020-017, 2) prohibit development as long as the pool remains in place, 3) requires that neither parcel can be sold as long as pool remains. The Deed Restriction can only be extinguished if pool is removed and/or if the two parcels are legally combined.

the construction of a two-story, 6,860-square-foot, single-family residence, with an attached three-car garage, a swimming pool, and septic system, on a vacant, 1.14-acre bluff-top lot.

2. Los Angeles County Department of Beaches and Harbors (“County”) owns APN 4473-020-903, which is located directly up coast (westerly) of the subject Linder property.
3. The subject property is located within the Coastal Zone, in an area that is covered by the City of Malibu’s certified Local Coastal Program.
4. Eric and Barbara Linder undertook and maintained development, as defined in Coastal Act Section 30106, on the subject property without obtaining a coastal development permit; which is in violation of the Coastal Act.
5. The development at issue in this matter is also inconsistent with the special conditions of previous Commission-issued Coastal Development Permit No. 5-85-057; which is in violation of the Coastal Act.
6. Eric and Barbara Linder failed to comply with the conditions of Coastal Development Permit No. 4-97-077; which is in violation of the Coastal Act.
7. The violations of the Coastal Act are found on both the two parcels owned by Respondents, and on the County-owned parcel.

- 8.** On March 13, 1985, the Commission approved, with special conditions, issuance of Coastal Development Permit No. 5-85-057 authorizing the construction of a two-story, 6,860-square-foot, single-family residence, with an attached three-car garage, a swimming pool, and septic system, on a vacant, 1.14-acre bluff-top lot.
- 9.** On August 8, 1994, staff observed unpermitted development, comprising a horse corral, fence, gate, wooden retaining structures and water system on the bluff face and at the base of the bluff on the beach. Staff opened violation case number V-94-MAL-94-040 in August 1994.
- 10.** On August 23, 1994 staff sent Eric Linder a Notice of Violation letter and required Respondents to resolve the violation at their property through a coastal development permit.
- 11.** Staff communicated with Respondents regarding the 1994 violations on the subject property by way of letters, meetings, and phone calls over several years. Staff sent Respondents letters dated August 23, 1994, December 5, 1994, May 4, 1995 (re-sent on May 5<sup>th</sup> and June 28<sup>th</sup>), June 28, 1995, August 30, 1995, March 26, 1996, November 27, 1996, March 17, 1997, April 24, 1997, and April 13, 1998 regarding resolution of violation case No. V-94-MAL-94-040.
- 12.** In 1998, the Commission approved CDP No. 4-97-077 for the removal of the horse corral, fence, gate, wooden retaining structures and water system, and the restoration and revegetation of the coastal bluff on the subject property.
- 13.** On July 23, 1998 CDP No. 4-97-077 was issued to Respondents.
- 14.** CDP No. 4-97-077 Special Conditions required Respondents to submit a revised Bluff Restoration Plan (Special Condition No. 1) and a Monitoring Plan (Special Condition No. 2) prior to issuance of the CDP. Special Condition No. 2 included a requirement that respondent submit written annual reports.
- 15.** The Respondents have never submitted any documentation to staff that indicates their compliance with Special Condition Nos. 2(b), 3, and 4.
- 16.** Respondents failed to comply with Special Conditions to CDP No. 4-97-077, including No. 2 that required written annual reports, Special Condition No. 3 that required Respondents to implement the approved, revised Bluff Restoration Plan, complete the restoration and revegetation of the subject property within 45 days of issuance of the CDP, Special Condition No. 4 that required Respondents to remove all unpermitted structures.
- 17.** Respondents failed to restore the subject property as required by CDP No. 4-97-077 and have undertaken new, alleged violations, including a new horse corral, which was observed on the bluff-top.
- 18.** On September 24, 2007, staff sent Respondents a new Notice of Violation letter for V-4-07-039 that requested the Respondents to bring their property into compliance with the Coastal

Act and informed Respondents that they were not in conformance with Special Condition No. 3 of CDP No. 5-85-057, which prohibited development within the deed-restricted 25-ft setback from the edge of the bluff-top, and that they were in violation of CDP No. 4-97-077, which was issued to Respondents to resolve their previous violations (V-4-94-040) regarding unpermitted development on the bluff.

19. On May 7, 2012, staff sent Respondents, via certified mail, a Notice of Intent to Record a Notice of Violation and to Commence Cease and Desist Order and Restoration Order Proceedings.
20. The subject development has had negative impacts on coastal resources protected under Coastal Act Sections 30240, 30253, 30251, 30230, and 30231, and is inconsistent with those sections of the Coastal Act.
21. The subject development is causing “continuing resource damage” as defined under Coastal Act Section 30811 and Title 14, California Code of Regulations, Section 13190.
22. The impacts to the Malibu coastal bluff, caused by the development at issue, including, but not limited to: the temporal loss of the habitat provided by the coastal bluff plant community; the degradation of its scenic and visual qualities; the potential hazards associated with the bluff alteration, and cumulative effects on water quality, are inconsistent with the Coastal Act. In addition, these impacts will continue until restoration and revegetation activities are implemented and completed.
23. The requirements of Coastal Act Section 30810 and 30811 have been met here, and therefore, the Commission is authorized by the Coastal Act to issue a Cease and Desist Order and Restoration Order, for this matter.
24. The work to be performed under the proposed Orders, if completed in compliance with the Orders and plans required, therein, will be consistent with Chapter 3 of the Coastal Act.

#### **H. STATEMENT OF DEFENSE**

The Respondents submitted a Statement of Defense on August 8, 2012 in objection to the May 7, 2012 NOI letter. However in a good faith effort to resolve the violations Respondents continued to cooperatively work with staff and they have agreed to resolve this violation matter through a Consent Order process.



CCC-12-CD-04 and CCC 12-RO-04 (Linder)

## **ATTACHMENT A**

**CONSENT CEASE AND DESIST ORDER CCC-12-CD-04 AND**  
**CONSENT RESTORATION ORDER CCC-12-RO-04**

1.0 **CONSENT CEASE AND DESIST ORDER CCC-12-CD-04**

Pursuant to its authority under California Public Resources Code (“PRC”) Section 30810, the California Coastal Commission (“Commission”) hereby authorizes and orders Eric and Barbara Linder and all their successors, assigns, employees, agents, and anyone acting in concert with any of the foregoing (hereinafter collectively referred to as “Respondents”) to:

- 1.1 Cease and desist from engaging in any further development, as that term is defined in PRC Section 30106, that would normally require a coastal development permit (“CDP”) on any of the property identified in Section 4.2 below (“Subject Property”), unless authorized pursuant to the Coastal Act (PRC Sections 30000-30900), which includes through these Consent Orders.
- 1.2 Cease and desist from maintaining on the Subject Property any Unpermitted Development (defined in Section 4.6 below), including, but not limited to, any of the unpermitted physical structures and materials on the Subject Property, or other unpermitted changes in the intensity of use to the Subject Property, resulting therefrom.
- 1.3 Take all steps necessary to comply with the Coastal Act, including obtaining all obligatory approvals or other necessary permits, such as a Right of Entry permit from Los Angeles County for the removal of the unpermitted development from the County-owned parcel and restoration of the areas affected by the work undertaken pursuant to these Consent Orders.
- 1.4 Remove, pursuant to an approved removal plan, and pursuant to the terms and conditions set forth herein, all physical items placed or allowed to come to rest on the Subject Property as a result of Unpermitted Development, including, but not necessarily limited to:
  - (1) Development within the deed-restricted area that is unpermitted and / or inconsistent with CDP No. 5-85-057 or CDP No. 4-97-077, including, but not limited to: a) retaining/gabion walls located along the bluff face; b) side-cast material; c) hardscaping and planters; d) non-native plants on the bluff face; e) wooden retaining structures on the east side of the Subject Property; f) all improvements to the unimproved path in the exhibit to the Deed Restriction, including stairs, retaining structures, and other development on, along, and adjacent to the path on the coastal bluff face that provides access from the top of the bluff to the beach; and g) irrigation equipment; and

- (2) Other Unpermitted Development on both APN 4473-020-017 and county-owned APN 4473-020-903, including but not limited to: a) a horse corral and associated development, including fences and drainage devices; b) altered and/or flattened/leveled areas used for the horses on the bluff-top and face, located on the west side of the Subject Property; c) retaining/gabion wall located along the bluff face; d) side-cast material; and e) irrigation equipment.

- 1.5 Remove, pursuant to an approved removal plan, and pursuant to the terms and conditions set forth in Section 5.3, the existing swimming pool and associated hardscaping or alternatively take all actions required pursuant to Section 7.0, below.

- 1.6 Fully and completely comply with the terms and conditions of the Consent Restoration Order CCC-12-RO-04 as provided in Section 2.0, below.

## 2.0 CONSENT RESTORATION ORDER CCC-12-RO-04

Pursuant to its authority under PRC Section 30811, the Commission hereby orders and authorizes Respondents to take the actions set forth below, including the measures necessary to restore and revegetate the areas that were damaged as a result of the Unpermitted Development, including on-site mitigation to compensate for the temporal impacts to coastal bluff habitat.

## 3.0 NATURE OF ORDERS AND OF CONSENT

Through the execution of Consent Restoration Order CCC-12-RO-04 and Consent Cease and Desist Order CCC-12-CD-04 (hereinafter collectively referred to as “these Consent Orders”), Respondents agree to comply with the terms and conditions of these Consent Orders. These Consent Orders authorize and require the removal and restoration activities, among other things, outlined in these Consent Orders. Any development subject to Coastal Act permitting requirements that is not specifically authorized under these Consent Orders requires a Coastal Development Permit. Nothing in these Consent Orders guarantees or conveys any right to development on the Subject Property other than the work expressly authorized by these Consent Orders. Through the execution of these Consent Orders, Respondents agree to comply with these Consent Orders including the following terms and conditions.

Respondents further agree to condition any contracts for work related to these Consent Orders upon an agreement that any and all employees, agents, and contractors; and any persons acting in concert with any of the foregoing, adhere to and comply with the terms and conditions set forth herein.

## **PROVISIONS COMMON TO BOTH ORDERS**

### **4.0 DEFINITIONS**

4.1 **“Consent Orders.”** CCC-12-CD-04 and CCC-12-RO-04 are hereinafter collectively referred to as the(se) Consent Orders.

4.2 **“Subject Property.”** The properties that are the subject of these Consent Orders are described as follows: 33440 Pacific Coast Highway, Malibu, Los Angeles County (APNs 4473-020-018 and 4473-020-017) and County-owned APN 4473-020-903.

4.3 **“Deed-restricted Area.”** The area from the toe of the coastal bluff to a point 25 feet landward of the edge of the coastal bluff where development is prohibited. This prohibition was established pursuant to the irrevocable covenant between the Coastal Commission and Eric and Barbara Linder and officially recorded in the Los Angeles County Recorder’s Office on October 10, 1986, whereby the use and enjoyment of said property is attached to and is a part of the deed to the property. The recorded Deed Restriction (Instrument No. 86 1366724) prohibits the construction of private stairways, structures, or alterations on or down the bluff or within in area 25 feet inland of the bluff face.

4.4 **“25-foot Deed-restricted Setback Area.”** The area within the Deed-restricted Area 25 feet landward from the edge of the bluff where development is prohibited. This prohibition was established pursuant to the Deed Restriction (No. 86 1366724) that prohibits the construction of private stairs, structures, or alterations within 25 feet inland of the bluff face.

4.5 **“Restoration Area”.** Areas on the Subject Property where Unpermitted Development has occurred or materials or structures have been placed or allowed to come to rest as a result of Unpermitted Development, including areas on the bluff face and within the 25-foot Deed-restricted Setback Area, and including all areas that were required to be restored under CDP No. 4-97-077..

4.6 **“Unpermitted Development.”** All “development”, as that term is defined in the Coastal Act (PRC section 30106), that has occurred on the Subject Property and required a coastal development permit pursuant to the Coastal Act, but for which no such permit was obtained, including, but not necessarily limited to: (1) Removal of major vegetation; (2) installation of hardscaping, planters, and non-native plants; (3) construction of a swimming pool and associated pool equipment and hardscaping in a configuration and location inconsistent with Coastal Commission-approved plans and the terms of approval of Coastal Development Permit (CDP) No. 5-85-057; (4) construction of a horse corral and associated development, including: fences, gates, drainage devices, graded pads, and irrigation equipment; (5) construction of retaining/gabion walls; (6) construction of a path, retaining walls, and concrete stairs

on and landward of the bluff face for private access to the beach; (7) deposition of graded material over and down the coastal bluff; and (8) failure to comply with conditions of CDP No. 5-85-057 and CDP No. 4-97-077. Specific permit conditions whose requirements were not satisfied include (a) Special Condition No. 3 of CDP No. 5-85-057, which prohibits development on or down the bluff face or within 25 feet of the edge of the bluff, and which was violated by the alleged violations listed in points 2, 4, 5, and 7, above; and (b) Special Conditions 2(b), 3, and 4 of CDP No. 4-97-077, which require submittal of annual monitoring reports, implementation and completion of the restoration plan, and submittal of proof of the removal of the water system as part of the final monitoring report required by Special Condition 1, respectively.

4.7 **“Open Space Area”**. The portion of APN 4473-020-017 not occupied by the swimming pool, which is to remain undeveloped while the Deed Restriction described in Section 7.0 is in place.

## 5.0 RESTORATION PLAN

Within sixty (60) days of issuance of these Consent Orders, Respondents shall submit, for the review and approval of the Commission’s Executive Director (“Executive Director”), a Restoration Plan that includes a Removal Plan, Erosion Control Plan, Restorative Grading Plan, Revegetation Plan, Monitoring Plan, and Mitigation Plan (“Restoration Plan”) consistent with the provisions set forth below, and shall implement the Restoration Plan consistent with the provisions set forth below and the schedules set forth in the approved plans.

## 5.1 GENERAL PROVISIONS

A. The Restoration Plan shall be prepared by a qualified restoration ecologist(s), resource specialist(s), and/or engineer (“Specialist”). Prior to the preparation of the Restoration Plan, Respondents shall submit for the Executive Director’s review and approval, a description of the qualifications of the proposed Specialist, including a description of the proposed Specialist’s educational background, training, and experience related to the preparation and implementation of the Restoration Plan described herein. If the Executive Director determines that the qualifications of Respondents’ resource specialists are not adequate to conduct such restoration work, he/she shall notify Respondents and, within 10 days of such notification, Respondents shall submit for the Executive Director’s review and approval a different Specialist.

B. The Restoration Plan shall include the following provisions and elements:

- (1) A schedule / timeline for the activities covered in the Restoration Plan, the procedures to be used, and specification of the parties who will be conducting the restoration activities. The schedule / timeline of activities covered by the Restoration Plan shall be in accordance with the deadlines included in

Sections 5.2, 5.3, 5.4, 5.5, 5.7 and 5.8, for the erosion control, removal, restorative grading, revegetation, monitoring, and mitigation for the site.

- (2) A Site Plan identifying all areas on which the Restoration Plan is to be implemented, which shall be coextensive with the Restoration Area as defined in Section 4.4. The Site Plan shall designate areas for staging of any construction equipment and materials, including receptacles and temporary stockpiles of graded materials, which all shall be covered on a daily basis. The Restoration Area shall include all areas of the Subject Property adversely affected by the Unpermitted Development as defined in Section 4.6 and all areas, including the lower bluff, that were required to be restored under CDP No. 4-97-077.
- (3) Identification of the location of the disposal site(s) for the disposal of unused, excess materials and or waste generated during restoration activities pursuant to these Consent Orders. If a disposal site is located in the Coastal Zone and is not an existing sanitary landfill or construction waste reclamation facility, a Coastal Development Permit is required for such disposal.
- (4) A detailed description of all equipment to be used. All tools utilized shall be hand tools unless the Restoration Specialist demonstrates to the satisfaction of the Executive Director that mechanized equipment is needed and will not result in significant impacts on resources protected under the Coastal Act, including, but not limited to: geological stability, integrity of landforms, freedom from erosion, and the existing native vegetation. If the use of mechanized equipment is proposed, the Restoration Plan shall specify limitations on the hours of operation for all equipment and a contingency plan that addresses the following: (a) impacts from equipment use, including disruption of areas outside of those designated on the site plan for restoration (Section 5.1.B), and responses thereto; (b) potential spills of fuel or other hazardous releases that may result from the use of mechanized equipment and responses thereto; and (c) impacts to water quality due to the Unpermitted Development's close proximity to El Sol County Beach and the Pacific Ocean.

## 5.2 EROSION CONTROL PLAN

- A. Respondents shall submit and implement an Erosion Control Plan, prepared by a qualified Specialist (approved pursuant to Section 5.1.A) as part of the Restoration Plan, to address ground disturbance during any construction or restoration activities, and during the establishment of the vegetation planted pursuant to Section 5.5, below.
- B. The Erosion Control Plan shall specify the type and location of erosion control measures that will be installed on the Subject Property and maintained until

the affected / damaged areas have been revegetated to minimize erosion and transport of sediment to the beach and adjacent ocean below the property.

C. The Erosion Control Plan shall include provisions as follows:

- (1) Specify that the removal and restoration work shall take place only during the dry season (April 1 – September 30). This period may be extended for a limited period of time if the situation warrants such a limited extension, upon approval by the Executive Director.
- (2) Specify measures if the project work is required to be conducted outside of the dry season.
- (3) Include temporary erosion control measures that will be employed should construction or site preparation cease for a period of more than 30 days, including but not limited to: stabilization of all stockpiled fill, access roads, disturbed soils and cut and fill slopes with geotextile material and/or mats, sand bag barriers, silt fencing; temporary drains and swales and sediment basins. The plans shall also specify that all disturbed areas shall be seeded with native grass species and include the technical specifications for seeding the disturbed areas. These temporary erosion control measures shall be monitored and maintained until grading or construction operations, i.e., removal activities resume.
- (4) All temporary, construction-related erosion control materials shall be comprised of bio-degradable materials and removed from the construction site once the permanent erosion control features are established.
- (5) Include a narrative report describing all temporary run-off and erosion control measures and Best Management Practices (BMPs) to be used during removal of the Unpermitted Development and restoration of the site.
- (6) Identify and delineate on the site plan (Section 5.1) or a grading plan the locations of all temporary erosion control measures.
- (7) Identify the Best Management Practices which may include provisions as follows:
  - a) No debris or waste from the removed Unpermitted Development shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion.
  - b) Any and all debris resulting from removal activities shall be transported from the project site within 24 hours of completion of the project and shall be disposed in the proper trash and recycling

receptacles at the end of each day that removal activities take place. Debris and sediment from the removal of the Unpermitted Development shall be removed from work areas each day that removal activities occur, so as to prevent the accumulation of sediment and other debris that may be discharged to the beach and into coastal waters.

- c) Debris shall be disposed of at a permitted disposal site or recycled at a certified recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required.
  - d) All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil.
  - e) Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems.
  - f) The discharge of any hazardous materials into any receiving waters shall be prohibited.
  - g) All BMPs shall be maintained in a functional condition throughout the duration of removal of Unpermitted Development.
- (8) Erosion Control Plan shall specify the methods to be used during and after restoration to stabilize the soil on the site and make it capable of supporting native, drought resistant, vegetation endemic to coastal bluffs. Any soil stabilizers identified for erosion control shall be compatible with native plant recruitment and establishment. Methods shall not include the placement of retaining walls or other permanent structures, grout, geogrid, or similar materials.
- (9) Erosion control measures shall remain in place and be maintained at all times of the year for at least three (3) years or until the revegetation/mitigation plantings have become established, whichever occurs first, and then shall be removed or eliminated by Respondents.
- (10) Include verification of the removal of temporary erosion control measures shall be provided in the annual monitoring report identified in Section 5.7 of these Consent Orders.

### 5.3 REMOVAL PLAN



A. The Restoration Plan shall include a plan for the removal of the Unpermitted Development ("Removal Plan") prepared by a qualified Specialist approved pursuant to Section 5.1.A. The Removal Plan shall address removal of all structures, materials, or other physical items placed or allowed to come to rest on the Subject Property as a result of Unpermitted Development, as defined in Section 4.6. The Removal Plan shall also address the removal of non-native vegetation on the coastal bluff face portion of the Subject Property. Respondents shall implement the Removal Plan consistent with the schedule set forth in the Plan.

B. The Removal Plan shall include:

- (1) A detailed description of proposed removal activities.
- (2) A site plan showing all development on the Subject Property, with labels identifying all Unpermitted Development to be removed from the Subject Property.
- (3) A timetable / schedule for the removal.
- (4) A provision that removal activities shall not disturb areas outside the Restoration Area as identified on the Site Plan (Section 5.3, B.). Contingency measures for the restoration of areas incidentally disturbed by the removal activities shall be included in the Restoration Plan.
- (5) Limitations on the hours of operations for all equipment, if mechanized equipment is proposed to be used, and a contingency plan that addresses, at a minimum: 1) impacts from equipment use; 2) potential spills of fuel or other hazardous releases that may result from the use of mechanized equipment and responses thereto; and 3) any water quality concerns.
- (6) A geotechnical report for Executive Director review and approval that makes recommendations for complete removal of the swimming pool if the removal option is chosen pursuant to Section 1.5 above.

C. Removal shall commence no later than ten (10) days after the approval of the Restoration Plan by the Executive Director and shall proceed in accordance with the terms of the approved plan.

D. Within thirty (30) days from commencing implementation of the Removal Plan, the removal shall be completed.

E. Within fifteen (15) days of the completion of the removal of all unpermitted development from the property, submit evidence for Executive Director approval, in the form of a narrative report and photos, showing that the removal has been completed pursuant to the approved plans.

#### 5.4 RESTORATIVE GRADING PLAN

A. The Restoration Plan shall include a plan for restorative grading of the site and contain a remedial grading plan and cross sections depicting pre- and post violation grades, drawn to scale with contours that clearly illustrate, as accurately as possible, the topography of the Subject Property before and after the unpermitted grading.

B. The Restorative Grading plan shall include:

(1) Identification of the source and date of any data used in creating the representations of pre- and post-disturbance topography. The Restorative Grading Plan shall also demonstrate how the proposed remedial grading will restore the Subject Property to its original, pre-violation topography to the greatest extent possible consistent with restoration of the habitat on the site. If the Specialist determines that alterations to the original topography are necessary to ensure a successful restoration of the Subject Property's habitats, the Restorative Grading Plan shall also include this proposed topography and a narrative description that explains the justification for needing to alter the topography from the original, pre-violation grade.

(2) Restoration of the original topography of the Subject Property as the primary goal of the Restoration Plan, while minimizing the size of the area to be graded and the intensity of the impacts to coastal resources associated with any proposed grading.

C. Within ten (10) days of Executive Director approval of the submittal of evidence of removal and report of the completion of implementation of the Removal Plan (Section 5.3), implement the Restorative Grading Plan.

D. Within thirty (30) days of commencing remedial grading, Respondents shall complete topographic restoration of the property.

E. Within five (5) days of the completion of the remedial grading and topographic restoration Respondents shall submit evidence for Executive Director approval, in the form of a narrative report and photos, showing that the grading has been completed pursuant to the approved plans.

#### 5.5 REVEGETATION PLAN

A. The Restoration Plan shall include a Revegetation component that outlines the measures necessary to revegetate all areas of the Subject Property from which native vegetation was removed (or disturbed) as a result of the Unpermitted

Development activities; and the measures necessary to revegetate the areas from which non-native plant species will be removed pursuant to Section 5.4. Respondents shall implement the approved Revegetation Plan consistent with its terms, including the schedule for activities.

B. The Revegetation Plan shall include:

- (1) Documentation of the condition of the site prior to placement of all Unpermitted Development. Respondents shall provide a detailed description including drawings, mapping, narrative report, and photographic evidence of the habitat originally on the site prior to the unpermitted activities, to the extent possible.
- (2) A planting plan and species palette for the Restoration Area demonstrating that the site will be revegetated using coastal bluff species that are endemic to and appropriate for the Subject Property. The planting plan / map shall depict the type, size, and location of all plant materials that will be planted in the Restoration Area; the location of all non-native plants to be removed from the Subject Property; the location of reference sites; and the locations from which annual photographs of the restoration will be taken to document the success of the plantings, and for inclusion in the annual monitoring reports, required pursuant to Section 5.7.
- (3) A rationale for the inclusion of each species to be used and describe the size and number of container plants and the rate and method of seed application.
- (4) A coastal bluff location / site with undisturbed, natural habitat as a reference site for the revegetation efforts. The Revegetation component shall include a detailed description of the reference site(s) including the rationale for selection, the location, and species compositions, distributions, and densities. The reference sites shall be located as close as possible to the Subject Property, be similar in all relevant respects, and shall serve as the standard for measuring success of the restoration activities under these Consent Orders.
- (5) A detailed description of the methods to be utilized for restoring the coastal bluff habitat on the Subject Property to the condition in which they existed prior to the Unpermitted Development. The Revegetation component shall explain how the proposed approach will result in the successful reestablishment of coastal bluff habitat on the Subject Property with similar plant densities, total coverage and species compositions to those of the identified undisturbed reference site(s) in the surrounding area. Revegetation of the site shall be fully established within five (5) years from the initiation of revegetation efforts.

- (6) Include a detailed explanation of the performance standards that will be utilized to determine the success of the restoration. The performance standards shall be quantitative, where feasible, and specify the native species appropriate to the habitat to be present, each with a specified percent cover or with a specified density of individuals per square meter. The methodology to be used to evaluate and determine the success of the restoration shall be in a form such that an independent professional / specialist can replicate it, if necessary.
- (7) Include a schedule for the installation of plants and removal of non-native plants, including the non-native species along the unpermitted path / stairs on the bluff which shall be removed pursuant to Section 5.3. Respondents shall not plant non-native species, which could out-compete native plant species in the Restoration Areas. If the planting schedule requires planting to occur at a certain time of year beyond the deadlines set forth herein, the Executive Director may, at the written request of Respondents, extend the deadlines as set forth in section 18.0 of these Consent Orders in order to achieve optimal growth of the vegetation. The Revegetation component shall demonstrate that all non-native vegetation within the Restoration Area, in addition to non-native vegetation in those areas that are identified as being subject to disturbance as a result of the Unpermitted Development removal, remedial grading and revegetation activities, will be eradicated prior to any restorative grading and revegetation activities on the Subject Property. In addition, the Revegetation component shall specify that continuing non-native species removal shall occur on a monthly basis during the rainy season (i.e., January through April) for the duration of the restoration monitoring period, pursuant to Section 5.
- (8) Describe any proposed use of artificial measures, such as irrigation, fertilizer or herbicides, including the full range of amounts of the inputs that may be utilized. The Revegetation Plan shall indicate that the minimum amount necessary to support the establishment of the plantings for successful restoration will be utilized. No permanent irrigation system is allowed in the Restoration Areas. Temporary above-ground irrigation to provide for the establishment of the plantings is allowed for a maximum of three (3) years or until the plantings have become established, whichever occurs first. If, after the establishment period, the vegetation planted pursuant to the Revegetation component has not become established, the Executive Director may, upon receipt of a written request from Respondents, allow for the continued use of the temporary irrigation system. The written request shall outline the need for and the duration of the proposed extension.

C. Within ten (10) days of Executive Director approval of the submittal of evidence of the completion and report of the Restorative Grading Plan, Respondents shall commence implementation of the Revegetation Plan and proceed in accordance with the terms of the approved plan. Respondents shall complete the removal of non-native species and revegetation of the Subject Property within ten (10) days of starting the implementation of the Revegetation component.

#### 5.6 COMPLETION OF RESTORATION

Within fifteen (15) days of the completion the erosion control (Section 5.2), removal (Section 5.3), restorative grading (Section 5.4), revegetation (Section 5.5), and mitigation (Section 5.8) work, Respondents shall submit, according to the procedure set forth under Section 9.0 a written report, prepared by a qualified Restoration Specialist, for the review and approval of the Executive Director, that includes documentation of all restoration work performed on the Subject Property. This report shall include a summary of dates when work was performed and photographs taken from the pre-designated locations (as identified on the site plan map submitted pursuant to Section 5.7) documenting implementation of the respective components of the Restoration Plan, as well as photographs of the Subject Property before the work commenced and after it was completed.

#### 5.7 MONITORING PLAN

The Restoration Plan shall include a five-year Monitoring Plan, prepared by a qualified Specialist. The Monitoring Plan shall include the following:

- (1) Performance criteria and standards upon which to evaluate the success of the Revegetation / restoration efforts on the site.
- (2) Success Criteria specifying that successful restoration of the site shall be attained when it is determined that the site is revegetated with self-sustaining native, drought-resistant, endemic species that can survive without additional measures such as supplemental irrigation.
- (3) A requirement for written annual monitoring reports to be submitted for review and approval by the Executive Director. The first report shall be due six months after implementation of the restoration planting on the site; then subsequently on an annual basis no later than December 31<sup>st</sup> each year, for a period of five (5) years.
- (4) A requirement that written monitoring reports shall include further recommendations and requirements for additional restoration actions necessary to ensure that the goals and performance standards, specified in the Monitoring Plan, for the site restoration are met.

- (a) Monitoring reports shall include a site plan annotated with the designated photo points / locations.
- (b) Written monitoring reports shall include photographs of the site from approved designated photo points / locations.
- (5) Specification of the timeframe for the plant establishment period on the site and identify any artificial measures, such as temporary irrigation, required during the plant establishment period.
- (6) Provision that all artificial inputs, such as temporary irrigation, shall be removed except for the purposes of providing mid-course corrections or maintenance to ensure the long-term survival of the restoration of the project site, during the monitoring period. If any such inputs are required beyond the establishment period, as specified in Section 5.5, then monitoring of the restoration site shall be extended by an amount of time equal to that time during which inputs were required after the establishment period, so that the success and sustainability of the restoration of the project site are ensured.
- (7) Requirement for submission of a final detailed report at the end of the five-year period (or other duration, if the monitoring period is extended pursuant to Section 18.0) for the review and approval of the Executive Director. If this report indicates that the restoration project has in part, or in whole, been unsuccessful, based on the approved performance standards, Respondents shall be required to submit and implement a revised or supplemental Restoration Plan to compensate for those portions of the original restoration project that were not successful. The revised Restoration Plan shall be prepared by a qualified Restoration Specialist and shall specify measures to correct those portions of the remediation that have failed or are not in conformance with the original approved Restoration Plan. The Executive Director will determine if the revised or supplemental Restoration Plan must be processed as a CDP, a new Restoration Order, or modification of Consent Restoration Order (CCC-12-RO-04), as an amendment.
- (8) Requirement that after the revised or supplemental Restoration Plan has been approved, the new actions listed in the revised plan, and any subsequent measures necessary to carry out the original approved Restoration Plan and still applicable, shall be undertaken by Respondents in coordination with the Executive Director until the goals of the Restoration Plan and these Restoration Plan provisions have been met.
- (9) Requirement that following completion of the revised Restoration Plan's implementation, the duration of the five-year (5-year) monitoring period, as set forth in this section, shall be extended for at least a period of time equal to that during which the project remained out of compliance, but in no case less than two reporting periods.

- (10) Specification that the Specialist shall conduct at least two site visits annually for the duration of the five-year (5-year) monitoring period, at intervals specified in the Monitoring Plan, for the purposes of inspecting and maintaining, at a minimum, the following: all erosion control measures; non-native species eradication; trash and debris removal; and original and/or replacement plantings.
- (11) Requirement that the Monitoring and Maintenance activities shall be conducted in a way that does not result in impacts to sensitive resources on the Subject Property or on the adjacent properties. Any and all incidental impacts to sensitive species resulting from monitoring activities shall be addressed in the appropriate annual report required pursuant to Section 5.7 and shall be remedied by the Respondents to ensure successful restoration.

#### 5.8 MITIGATION PLAN

- A. The Restoration Plan shall include a Mitigation Plan, prepared by a qualified Specialist, for approval by the Executive Director pursuant to the requirements of Section 5.1.A. The Mitigation Plan shall include the following:
  - (1) An outline of the proposed mitigation to be undertaken on-site at a ratio of 4:1 (mitigation: damaged resources).
  - (2) A map, to scale, overlain with the physical dimensions of each element of Unpermitted Development, and the dimensions of each proposed area of mitigation. Respondents shall additionally provide the aerial extent of each element calculated in square feet.
- B. Respondents shall begin implementation of the Mitigation Plan within ten (10) days of Executive Director approval of the submittal of evidence of the completion and report of the Restorative Grading Plan, Respondents shall commence implementation of the Mitigation Plan, concurrent with implementation of the Revegetation Plan (Section 5.5).

#### 5.9 DRAINAGE PLAN

- A. The Restoration Plan shall include a Drainage Plan, prepared by a qualified Specialist, pursuant to the requirements of Section 5.1.A. The Drainage Plan shall show that all drainage from within the 25-ft deed-restricted setback from the bluff edge is directed into an appropriate collection system to control surface runoff and drainage flows with a dissipater and / or swale located at the terminus of the drainage system to minimize erosion of the bluff. The Drainage Plan shall include, at a minimum, the following:

- (1) A site plan, drawn to scale of the existing and proposed drainage for the Deed-restricted Area, including structures and other development that affect drainage.
- (2) The Drainage Plan shall demonstrate that drainage from within the Deed-restricted Area is limited to the minimum needed so that runoff does not erode the bluff.

#### 6.0 PRE-EXISTING FOOT PATH / TRAIL

The pre-existing, unimproved, unpaved foot path/trail shown on the survey plan as “Exhibit C” to the Deed Restriction shall, by virtue of the requirements above, be returned to an unimproved, unpaved condition, and it shall remain in that state.

#### 7.0 DEED RESTRICTION

If Respondents choose not to address the issue with the orientation of the pool at this time by including a plan for its removal in the removal plan, within forty-five (45) days of the effective date of these Consent Orders, Respondents shall execute and record a deed restriction according to the specifications and including the elements listed below, and in a form and content acceptable to the Executive Director (the “Deed Restriction”) over the property currently designated by the Los Angeles County Assessor’s office as APN 4473-020-017 and APN 4473-020-018 to preserve the open space and habitat values of the portion of APN 4473-020-017 not occupied by the swimming pool and to effectively combine the two APNs while the Deed Restriction is in place. The recorded Deed Restriction shall include a formal legal description of the subject properties and a metes and bounds legal description and graphic depiction, prepared by a licensed surveyor, of the area subject to the development prohibition. The recorded document shall reflect that no development, as defined in PRC Section 30106, shall occur within the Deed Restriction Area, as defined in Section 4.7, except as otherwise set forth in the Deed Restriction, as described below. The Deed Restriction shall be recorded free of prior liens and encumbrances, except for existing, as of this date (August 24, 2012), equity lenders identified to the Commission staff by September 1, 2012, that the Executive Director determines may affect the enforceability of the restrictions and shall run with the land, binding all successors and assigns. The recordation process shall be completed, and its completion shall be demonstrated, to the Executive Director’s satisfaction.

- (i) All documents to be recorded to effectuate the Deed Restriction shall be submitted to the Executive Director for review and approval prior to recordation.
- (ii) Certified copies of all documents recorded by the County Recorder’s Office shall be submitted to Commission staff, according to Section 9.0 of these Consent Orders, within thirty (30) days of recordation.



- (iii) The Deed Restriction shall provide that as long as the pool remains in place no other development, as defined in PRC Section 30106 shall take place on any portion of APN 4473-020-017.
- (iv) The Deed Restriction shall also provide that as long as the pool remains in place and the Deed Restriction is in effect, no portion of APN 4473-020-017 or APN 4473-020-018 shall be sold, leased, or otherwise conveyed or transferred except as part of a single unit consisting of all of the land designated by those two APNs.
- (v) If and when the pool is fully removed to the satisfaction of the Executive Director and in full compliance with a Removal Plan prepared by Respondents, consistent with the requirements of Section 5.0 of these Consent Orders, and approved by the Executive Director, or if and when APN 4473-020-017 and APN 4473-020-018 are legally combined for purposes of all state and municipal law, including the Subdivision Map Act into one distinct individual lot in perpetuity, to the satisfaction of the Executive Director, the Executive Director will, upon written request by Respondents, cooperate with Respondents' efforts to extinguish the Deed Restriction, pursuant to the process set forth herein.
- (vi) If Respondents remove the pool, Respondents, within 15 days of completion of the removal of the pool, shall submit evidence to the Executive Director for his review and approval, in the form of a narrative report and photographs, demonstrating that the removal has been completed pursuant to the approved plans.
- (vii) The Executive Director, upon review and approval of documents demonstrating completion of the pool removal, shall provide Respondents written confirmation that the requirements for removal of the pool have been satisfied and identify the form of the document to effectuate extinguishment of the Deed Restriction (the "Extinguishment Document") for Respondents to complete and submit to the Executive Director for review and approval and execution.
- (viii) Respondents, upon receipt of the executed Extinguishment Document, shall submit it to the Los Angeles County Recorder's office to be recorded, in order to effectuate extinguishment of the Deed Restriction.

- (ix) The Respondents agree, for themselves and any successors and assigns, that no future shoreline protective device(s) shall ever be constructed to protect the pool in the event that it is threatened with damage or destruction from waves, erosion, storm conditions, flooding, or any other natural hazards in the future. Respondents hereby waive, on behalf of themselves and all successors and assigns, any rights to construct such devices to protect the pool that may exist under PRC Section 30235 or any comparable provisions of the City of Malibu certified LCP.
- (x) The Respondents, and all successors and assigns, shall remove any portions of the pool that becomes damaged or undermined due to wave action, erosion, storm conditions, liquefaction, or earth movement. In the event that portions of the pool fall down the bluff or to the beach before they are removed, the Respondents shall remove all recoverable debris associated with the pool from the bluff, beach, or ocean and lawfully dispose of the material in an approved disposal site.
- (xi) The Respondents shall immediately notify the Executive Director, in writing, whether any portion of the pool becomes damaged or undermined as a result of wave action, erosion, storm conditions, etc. In addition, within 30 days after such damage occurs, Respondents shall remove the pool debris.
- (xii) The Respondents agree that any repair and maintenance exemptions, pursuant to Section 30610(d) of the Coastal Act and the implementing regulations, and any exemptions for improvements, pursuant to Section 30610(a) of the Coastal Act and the implementing regulations, shall not apply to the existing pool, and any repair, maintenance, replacement, or redevelopment of said pool shall require a CDP, and failure to obtain a CDP for such activities will constitute a violation of these Consent Orders.

8.0 If Respondents propose to construct a new pool or alter in any way the existing pool, Respondents must submit a complete CDP application to the City of Malibu, pursuant to its certified Local Coastal Program ("City LCP"). Any proposal for a new pool shall meet the development standards and requirements of the City LCP.

9.0 SUBMITTAL OF PLANS, REPORTS, AND OTHER MATERIALS

All plans, reports, photographs and any other materials required by these Consent Orders shall be sent to:

California Coastal Commission  
Attn: Ms. Renée T. Ananda  
45 Fremont Street, Suite 2  
San Francisco, CA 94105

With a copy sent to:  
California Coastal Commission  
Attn: Mr. Pat Veasart  
89 South California Street, Suite 200  
Ventura, CA 93001

## **GENERAL PROVISIONS**

### **10.0 LOCAL REQUIREMENTS**

All work to be performed under these Consent Orders shall be done in compliance with all applicable laws. Nothing in these Consent Orders shall be interpreted as requiring Respondents to take any action in violation of any local requirements.

### **11.0 REVISIONS OF DELIVERABLES**

The Executive Director may require revisions to deliverables required under these Consent Orders, and the Respondents shall revise any such deliverables consistent with the Executive Director's specifications, and resubmit them for further review and approval by the Executive Director, by the deadline established by the modification request from the Executive Director. The Executive Director may extend the deadline for submittals upon a written request and a showing of good cause, pursuant to Section 18.0 of these Consent Orders.

### **12.0 PERSONS SUBJECT TO THESE ORDERS**

Eric and Barbara Linder and all their successors, assigns, employees, agents, and anyone acting in concert with any of the foregoing, are jointly and severally subject to all the requirements of these Consent Orders. Respondents agree to undertake the work required herein, and agree to cause their current and future employees and agents, and any contractors performing any of the work contemplated or required herein and any persons acting in concert with any of these entities to comply with the terms and conditions of these Consent Orders. By executing these Consent Orders, Respondents attest that they have the authority to conduct the work on the Subject Property required by these Consent Orders and agree to obtain all necessary permissions (access, etc.) to conduct and complete the work required to resolve the violations addressed herein.

### **13.0 COMMISSION JURISDICTION**

The Commission has jurisdiction over resolution of the alleged Coastal Act violations described in Section 4.6 pursuant to PRC Section 30810 and Section 30811. In light of the desire to settle these matters, Respondents agree to not contest the Commission's jurisdiction to issue or enforce these Consent Orders.

#### 14.0 RESOLUTION OF MATTER VIA SETTLEMENT

In light of the intent of the parties to resolve these matters in settlement, Respondents have submitted a “Statement of Defense” form as provided for in Section 13181 and 13191 of Title 14 of the California Code of Regulations, but in light of the proposed settlement have agreed not to assert these defenses and have agreed not to contest the legal and factual bases, the terms, or the issuance of these Consent Orders, including the allegations of Coastal Act violations contained in the Notice of Intent to Commence Cease and Desist and Restoration Order Proceedings and to Record a Notice of Violation, dated May 7, 2012. Specifically, Respondents have agreed not to contest the issuance or enforcement of these Consent Orders at a public hearing or any other proceeding.

#### 15.0 EFFECTIVE DATE AND TERMS OF THESE CONSENT ORDERS

The effective date of these Consent Orders is the date these Consent Orders are issued by the Commission. These Consent Orders shall remain in effect permanently unless and until rescinded by the Commission.

#### 16.0 FINDINGS

These Consent Orders are issued on the basis of the findings adopted by the Commission at its August 10, 2012 meeting, as set forth in the document entitled “Staff Report and Findings for Consent Cease and Desist Order No. CCC-12-CD-04 and Restoration Order No. CCC-12-RO-04.” The activities authorized and required in these Consent Orders are consistent with the resource protection policies set forth in Chapter 3 of the Coastal Act. The Commission has authorized the activities required in these Consent Orders as being consistent with the resource protection policies set forth in Chapter 3 of the Coastal Act.

#### 17.0 SETTLEMENT/COMPLIANCE OBLIGATION

- 17.1 In light of the intent of the parties to resolve these matters in settlement, Respondents have agreed to pay a monetary settlement in the amount of \$138,000. Respondents agree to make an initial payment of \$20,000 within 90 days of the issuance of these Consent Orders. Thereafter, Respondents agree to make 6 additional \$ payments: \$19,666 on June 15, 2013; \$19,666 on December 15, 2013; \$19, 666 on June 15, 2014; 19, 666 on December 15, 2014; \$19, 666 on June 15, 2015, and a final payment of \$19, 670 on December 15, 2015. The settlement monies shall be deposited in the Violation Remediation Account of the California Coastal Conservancy Fund (see Public Resources Code Section 30823), or into such other public account as authorized by applicable California law at the time of the payment, and as designated by the Executive Director. The settlement payments shall be submitted to the Commission’s San Francisco Office, at the address provided in Section 9.0 to the attention of Renee Ananda of the Commission, payable to the account designated under the Coastal Act, and include a reference to the numbers of these Consent Orders.

17.2 Strict compliance with these Consent Orders by all parties subject thereto is required. Failure to comply with any term or condition of these Consent Orders, including any deadline contained in these Consent Orders, unless the Executive Director grants an extension under Section 18.0, will constitute a violation of these Consent Orders and shall result in Respondents being liable for stipulated penalties in the amount of \$1,000 per day per violation. Respondents shall pay stipulated penalties regardless of whether Respondents have subsequently complied. If Respondents violate these Consent Orders, 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 imposition of civil penalties and other remedies pursuant to Public Resources Code Sections 30820, 30821.6, and 30822 as a result of the lack of compliance with the Consent Orders and for the underlying Coastal Act violations described herein.

#### 18.0 DEADLINES

Prior to the expiration of any given deadline established by these Consent Orders, Respondents may request from the Executive Director an extension of the unexpired deadline. Such a request shall be made in writing ten (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 any deadline upon a showing of good cause, if the Executive Director determines that Respondents have diligently worked to comply with their obligations under these Consent Orders but cannot meet deadlines due to unforeseen circumstances beyond their control. A violation of deadlines established pursuant to these Consent Orders will result in stipulated penalties, as provided for in Section 17.2, above.

#### 19.0 SEVERABILITY

Should any provision of these Consent Orders be found invalid, void or unenforceable, such illegality or unenforceability shall not invalidate the whole, but the Consent Orders shall be construed as if the provision(s) containing the illegal or unenforceable part were not a part hereof.

#### 20.0 SITE ACCESS

Respondents shall provide access to the subject properties at all reasonable times to Commission staff and any agency having jurisdiction over the work being performed under these Consent Orders. Nothing in these Consent Orders is intended to limit in any way the right of entry or inspection that any entity may otherwise have by operation of any law. The Commission staff may enter and move freely about the subject properties for purposes including, but not limited to: viewing the areas where development is being performed pursuant to the requirements of these Consent Orders; 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 these Consent Orders.

## 21.0 GOVERNMENT LIABILITY

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

## 22.0 SETTLEMENT VIA CONSENT ORDERS

In light of the desire to settle this matter via these Consent Orders and avoid litigation, pursuant to the agreement of the parties as set forth in these Consent Orders, Respondents hereby agree not to seek a stay pursuant to PRC Section 30803(b) or to challenge the issuance and enforceability of these Consent Orders in a court of law or equity.

## 23.0 SETTLEMENT OF CLAIMS

The Commission and Respondents agree that these Consent Orders settle the Commission's monetary claims for relief from Respondents for the violations of the Coastal Act alleged in the Notice of Intent dated May 7, 2012 ("NOI"), occurring prior to the date of these Consent Orders, (specifically including claims for civil penalties, fines, or damages under the Coastal Act, including under Public Resources Code Sections 30805, 30820, and 30822), with the exception that, if Respondents fail to comply with any term or condition of these Consent Orders, the Commission may seek monetary or other claims for both the underlying violations of the Coastal Act and for the violation of these Consent Orders. In addition, these Consent Orders do not limit the Commission from taking enforcement action due to Coastal Act violations on the Subject Property beyond those that are the subject of the NOI.

## 24.0 SUCCESSORS AND ASSIGNS

These Consent Orders shall run with the land binding Respondents and all successors in interest, future owners of the Subject Property, heirs, and assigns. Respondents shall provide notice to all successors in interest, heirs, assigns, and future owners of the Subject Property, of any remaining obligations under these Consent Orders.

## 25.0 MODIFICATIONS AND AMENDMENTS

Except as provided for in Section 18.0, and for minor, immaterial matters upon mutual written agreement of the Executive Director and Respondents, these Consent Orders may be modified or amended only in accordance with the standards and procedures set forth in Section 13188(b) of the Commission's Administrative Regulations.

26.0 GOVERNING JURISDICTION

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

27.0 LIMITATION OF AUTHORITY

Except as expressly provided herein, nothing in these Consent Orders 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 these Consent Orders. Failure to enforce any provision of these Consent Orders shall not serve as a waiver of the ability to enforce those provisions or any others at a later time.

Correspondingly, Respondents have entered into these Consent Orders and waived their right to contest the factual and legal basis for issuance of these Consent Orders, and the enforcement thereof according to their terms. Respondents have agreed not to contest the Commission's jurisdiction to issue and enforce these Consent Orders.

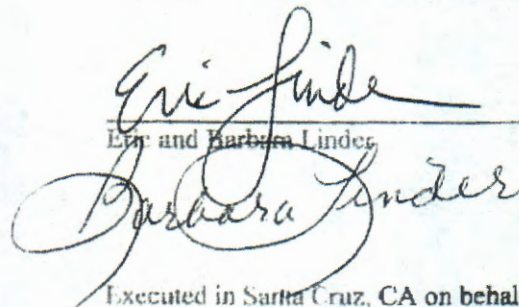
28.0 INTEGRATION

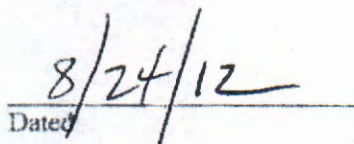
These Consent Orders constitute the entire agreement between the parties and may not be amended, supplemented, or modified except as provided in these Consent Orders.

29.0 STIPULATION

Respondents attest that they have reviewed the terms of these Consent Orders and understand that its consent is final, and stipulate to its issuance by the Commission.

IT IS SO STIPULATED AND AGREED:

  
Eric and Barbara Linder  
Executed in Santa Cruz, CA on behalf of the California Coastal Commission:

  
Dated

Charles Lester, Executive Director

Dated





**Subject Property**

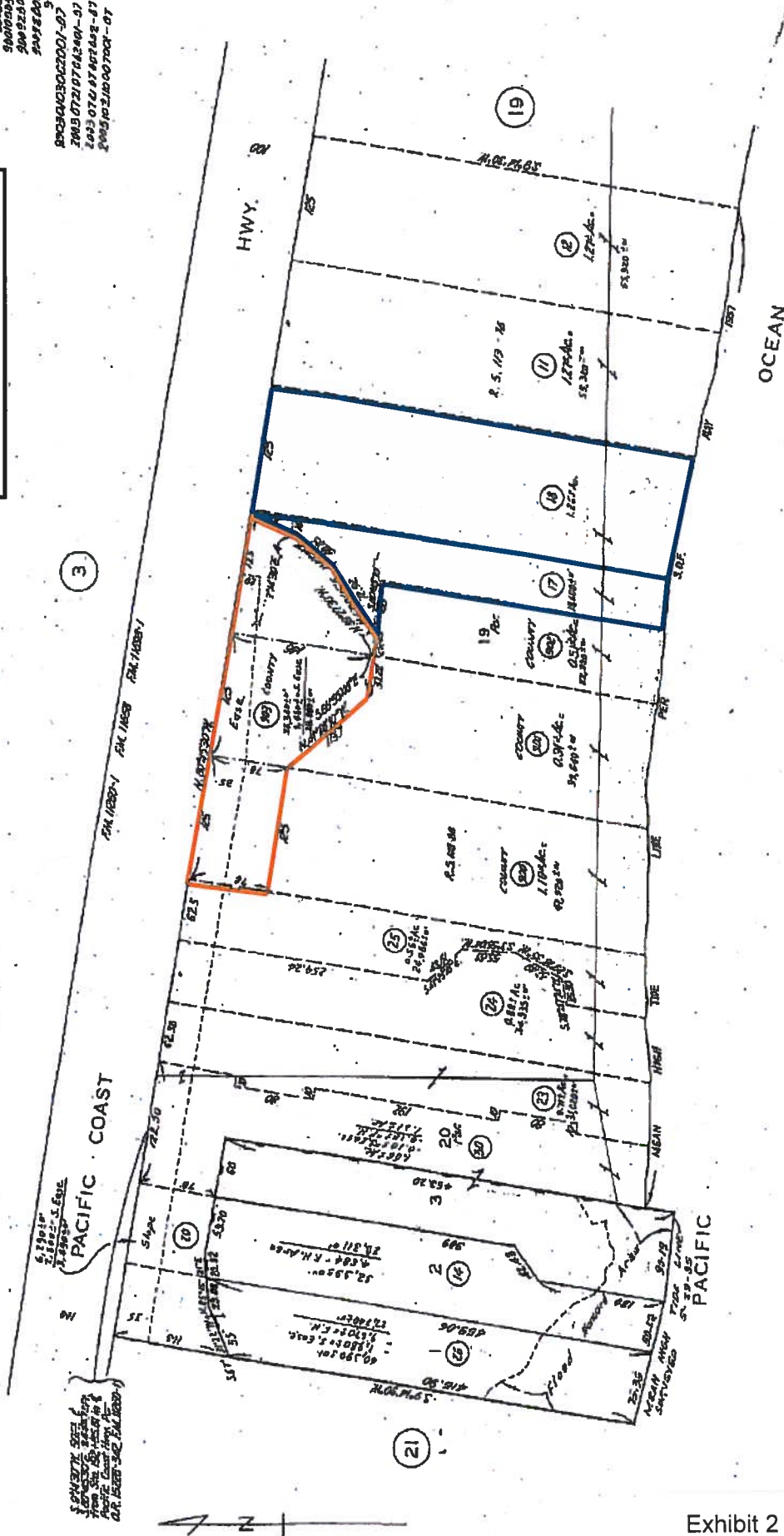


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②

# LA County Property

[illegible]

CODE  
10853

Exhibit 2  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)

Page 1 of 2

TRACT NO. 43599 - - M. B. 1060 -87-90  
LAND OF MATTHEW KELLER IN THE RANCHO  
TOPANGA MALIBU SEQUIT R.F. 534

0CT 2 1 2005

FOR PREV. ASSMT SEE:  
4470-35 & 36

ASSESSOR'S MAP  
COUNTY OF LOS ANGELES, CALIF.



SUBJECT PROPERTY  
33440 PACIFIC COAST HIGHWAY, MALIBU







**UNPERMITTED DEVELOPMENT  
SUBJECT PROPERTY 2006**

Exhibit 3  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)



**UNPERMITTED DEVELOPMENT—HORSES (“PONIES”) ON BLUFF  
SITE VISIT JANUARY 7, 2011**

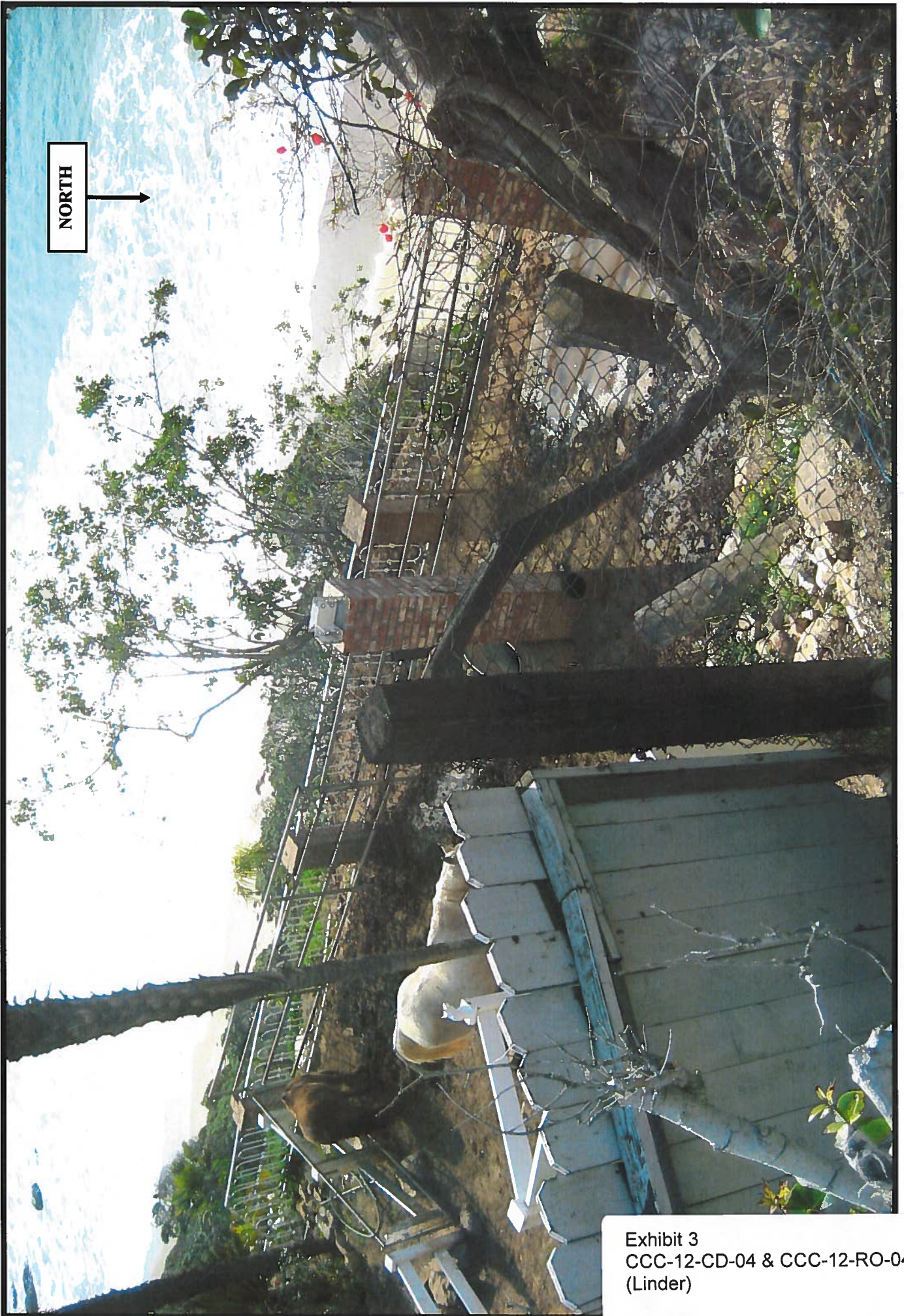


Exhibit 3  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)



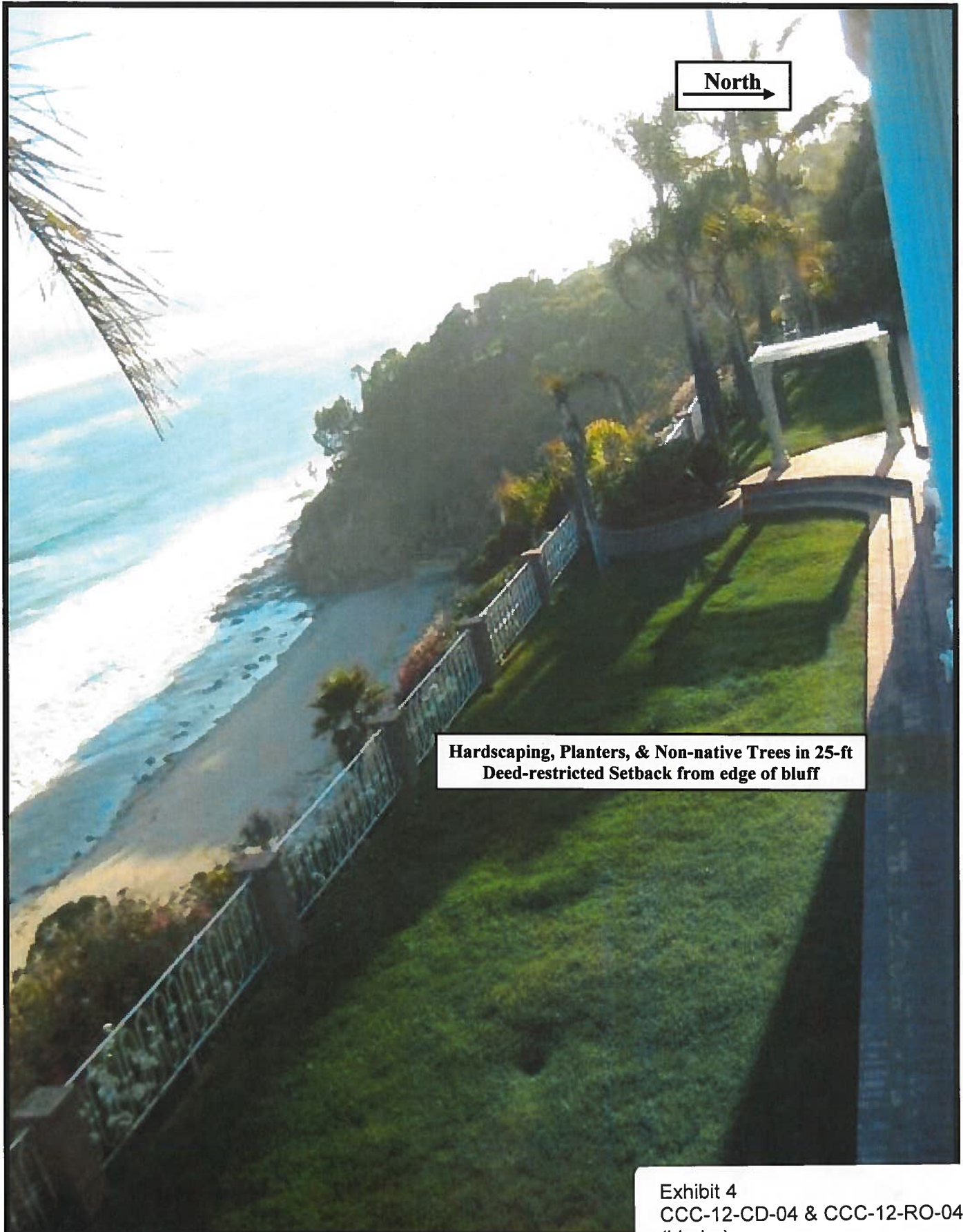
**UNPERMITTED DEVELOPMENT HORSES ("PONIES") ON BLUFF  
SITE VISIT APRIL 15, 2009**



Exhibit 3  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)



**DEVELOPMENT INCONSISTENT WITH CDP 5-85-057  
SUBJECT PROPERTY 2012**



**Hardscaping, Planters, & Non-native Trees in 25-ft  
Deed-restricted Setback from edge of bluff**

Exhibit 4  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)



**DEVELOPMENT INCONSISTENT WITH CDP 5-85-057  
SUBJECT PROPERTY 2012**

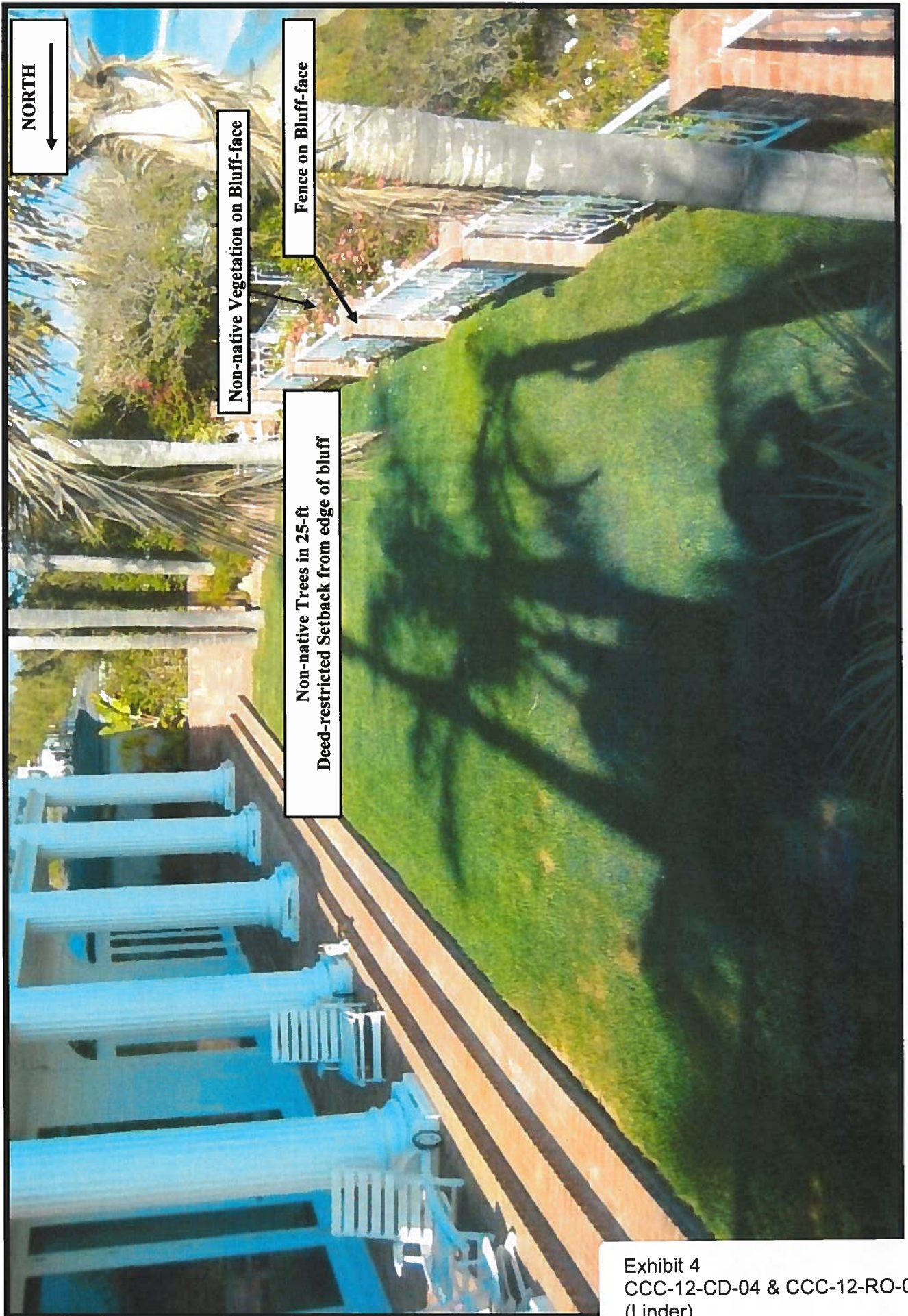


Exhibit 4  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)

AMERICAN TITLE CO.

Recording Requested by and Return to  
State of California  
California Coastal Commission  
631 Howard Street, Fourth Floor  
San Francisco, California 94105

86 1366724

6 37108-66

DEED RESTRICTION

FREE G

I. WHEREAS, Eric and Barbara Linder  
Linder

, hereinafter referred to as  
Owner(s), is the record owner(s) of the real property located in the County  
of Los Angeles, described in attached Exhibit A, hereby  
incorporated by reference, and hereinafter referred to as the subject  
property; and

II. WHEREAS, the California Coastal Commission is acting on behalf  
of the people of the State of California; and

III. WHEREAS, the subject property is located within the coastal  
zone as defined in Section 30103 of the California Public Resources Code  
(hereinafter referred to as the California Coastal Act); and

IV. WHEREAS, pursuant to the California Coastal Act of 1976, the  
Owner applied to the California Coastal Commission for a coastal development  
permit for the development on the subject property; and

V. WHEREAS, a coastal development permit No. 5-85-57 was  
granted on March 13, 1985 by the California Coastal  
Commission based on the findings adopted by the California Coastal Commission  
attached in Exhibit B and hereby incorporated by reference; and

VI. WHEREAS, coastal development permit No. 5-85-57 was subject  
to terms and conditions including but not limited to the following condition:

//

// GO TO NEXT PAGE

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RECORDED IN OFFICIAL RECORDS  
OF LOS ANGELES COUNTY, CA

OCT 10 1986 AT 8 A.M.

Recorder's Office

COURT PAPER  
STATE OF CALIFORNIA  
STD 113 (REV. 8-71)

Exhibit 5  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)



1 Scenic Resources. Prior to transmittal of permit, the applicant  
2 shall be required to submit a deed restriction for recording subject  
3 to the approval of the Executive Director prohibiting the construction  
4 of private stairways, structures or alterations on or down the bluff  
5 or within 25 feet of the bluff face. This deed restriction does not  
6 prohibit the repair or maintenance of the existing trail down the bluff  
7 face as shown on the survey submitted to the California Coastal Commission  
8 and incorporated into this document by reference.  
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17

18 VII. WHEREAS, the Commission found that but for the imposition of  
19 the above condition the proposed development could not be found consistent  
20 with the provisions of the California Coastal Act of 1976 and that a permit  
21 could therefore not have been granted; and

22 VIII. WHEREAS, it is intended that this Deed Restriction is irrevocable  
23 and shall constitute enforceable restrictions; and

24 IX. WHEREAS, Owner has elected to comply with the condition  
25 imposed by Permit No. 5-85-57 so as to enable Owner to undertake the  
26 development authorized by the permit;  
27 //

COURT PAPER  
STATE OF CALIFORNIA  
STD. 113 (REV. 6-78)

86 1366724

1 NOW, THEREFORE, in consideration of the granting of Permit No.  
2 5-85-57 to the Owner by the California Coastal Commission, the Owner  
3 hereby irrevocably covenants with the California Coastal Commission that  
4 there be and hereby is created the following restrictions on the use and  
5 enjoyment of said property, to be attached to and become a part of the deed  
6 to the property. The undersigned Owner, for himself/herself and for his/her  
7 heirs, assigns, and successors in interest, covenants and agrees that:  
8 the owner understands that the construction of private stairways, structures  
9 or alterations on or down the bluff or within 25 feet of the bluff face  
10 is prohibited.

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Said deed restriction shall remain in full force and effect during the  
period that said permit, or any modification or amendment thereof, remains  
effective, and during the period that the development authorized by said  
permit or any modification of said development, remains in existence in or  
upon any part of, and thereby confers benefit upon, the subject property  
described herein, and to that extent, said deed restriction is hereby deemed  
and agreed by Owner to be a covenant running with the land, and shall bind  
Owner and all his/her assigns or successors in interest.

COURT PAPER  
STATE OF CALIFORNIA  
STD. 113 (REV. 6-78)

86 1366724

Exhibit 5  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)

Owner agrees to record this Deed Restriction in the Recorder's office  
for the County of Los Angeles as soon as possible after the  
date of execution.

DATED: 9/12, 1986

SIGNED: 

Eric Linder

PRINT OR TYPE NAME OF ABOVE

SIGNED: 

Barbara Linder

PRINT OR TYPE NAME OF ABOVE

(NOTARY ACKNOWLEDGMENT ON NEXT PAGE)

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86 1366724

NOTE TO NOTARY PUBLIC:

If you are notarizing the signatures of anyone signing on behalf of a trust, corporation, partnership, etc., please use the correct notary jurat (acknowledgment) as explained in your Notary Law Book.

State of California

County of Los Angeles

On this 12th day of September, in the year 1986,  
before me Marcus M. Knotts, a Notary Public, personally  
appeared Eric Linder + Barbara Linder

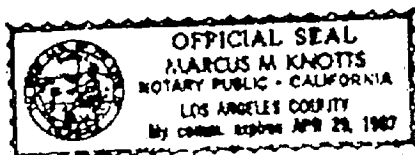
/ / personally known to me

/X proved to me on the basis of satisfactory evidence

to be the person(s) whose name is subscribed to this instrument, and  
acknowledged that he/she/they executed it.

MARCUS M. KNOTTS  
ATTORNEY AT LAW  
100 PIER AVENUE  
SANTA MONICA, CA 90405  
TELEPHONE 302-8286

Marcus M. Knotts  
NOTARY PUBLIC IN AND FOR SAID COUNTY AND  
STATE



86 1366724

1 This is to certify that the deed restriction set forth above  
2 is hereby acknowledged by the undersigned officer on behalf of the  
3 California Coastal Commission pursuant to authority conferred by  
4 the California Coastal Commission when it granted Coastal  
5 Development Permit No. 5-85-57 on March 13, 1985  
6 and the California Coastal Commission consents to recordation  
7 thereof by its duly authorized officer.

8 Dated: October 7, 1986

9 John Bowers  
10 John Bowers  
Staff Counsel  
11 California Coastal Commission

12 STATE OF California )  
13 ) ss  
14 COUNTY OF San Francisco )

15 On 7 October 1986 before me the undersigned

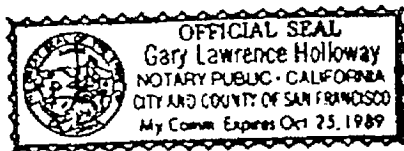
16 Notary Public, personally appeared John Bowers

17 personally known to me to be (or proved to me on the basis of  
18 satisfactory evidence) to be the person who executed this

19 instrument as the Staff Counsel and authorized

20 representative of the California Coastal Commission and

21 acknowledged to me that the California Coastal Commission executed  
22 it.



Gary Lawrence Holloway  
NOTARY PUBLIC IN AND FOR  
SAID STATE AND COUNTY

86 1366724

A parcel of land, being a portion of Rancho Topanga Malibu Sequit, as confirmed to Matthew Keller by Patent, recorded in Book 1 Page 407, et seq., of Patents, in the office of the County Recorder of said County, particularly described as follows:

Beginning at a point in the Southerly line of the 80 foot strip of land described in the deed from T. R. Cadwalader, et al., to the State of California, recorded in Book 15228 Page 342, Official Records of said County, said point of beginning being South 9° 14' 30" West 40 feet and South 80° 45' 30" East 3274.72 feet from Engineer's center line station 192 plus 85.81 at the Westerly extremity of that certain center line course described in said deed as South 80° 45' 30" East 7702.63 feet, said point of beginning being also in the Northerly prolongation of the Easterly line of the parcel of land described in a deed from Marblehead Land Company, to Marion Stoker and wife, recorded in Book 21333 Page 385, Official Records of said County; thence South 80° 45' 30" East 125 feet along the Southerly line of said 80 foot strip; thence South 9° 14' 30" West to a point in the ordinary high tide line of the Pacific Ocean; thence Westerly along said tide line to the intersection of said tide line and that line which bears South 9° 14' 30" West from the point of beginning; thence North 9° 14' 30" East to the point of beginning; said last mentioned course being also the Easterly line of said Stoker parcel heretofore mentioned.

EXCEPT therefrom that portion of the 100 foot strip of land described in a deed from Marblehead Land Company to the State of California, recorded in Book 20716 Page 385, Official Records, Los Angeles County, that lies within the parcel herein described.

ALSO EXCEPT therefrom all minerals, oil, petroleum, asphaltum, gas coal, and other hydrocarbon substances in, or within, and under said lands and every part thereof, but without right of entry, as reserved by Marblehead Land Company, in deed recorded August 2, 1945, in Book 22185 Page 248, Official Records.

EXHIBIT "A"

86 1366724

Exhibit 5  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)

State of California, George Deukmejian, Governor

California Coastal Commission  
SOUTH COAST DISTRICT  
245 West Broadway, Suite 380  
P.O. Box 1450  
Long Beach, California 90801-1450  
(213) 590-5071

FILED: 2/8/85  
49th DAY: 3/29/85  
180th DAY: 8/7/85  
STAFF: DeV. Reason  
STAFF REPORT: 3/1/85 sws  
HEARING DATE: 3/12-15/85

REGULAR CALENDAR  
STAFF REPORT AND RECOMMENDATION

Application: 5-85-57

Applicant: Eric Linder  
1950 Jamestown Way  
Oxnard, CA 93030

Agent: Lynn Heacox

Description: Construction of a two-story single-family dwelling with attached 3-car garage, swimming pool and septic system on a 1.14 acre blufftop lot.

Site: 33440 Pacific Coast Highway  
Malibu, CA Los Angeles County

SUMMARY

The staff is recommending approval with conditions to bring the project into conformance with the policy provisions of the Coastal Act which address public access and scenic and visual resources and geologic stability.

Substantive File Documents:

1. Statewide Interpretive Guidelines.
2. Malibu/Santa Monica Mountains Interpretive Guidelines.
3. Coastal Permit Applications, 5-84-394 (Kimzey);  
77-1478 (Rezai); 5-84-616 (1758 Properties Ltd.);  
5-83-255 (Malibu Riviera Properties); P-79-6238 (Heckler);  
5-83-131E2 (Stuppy)



EXHIBIT "B"

86 1366724

Exhibit 5  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)

STAFF RECOMMENDATION

The staff recommends the Commission adopt the following resolution:

I. Approval with Conditions

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

II. STANDARD CONDITIONS

See Attachment X.

III. SPECIAL CONDITIONS

This permit is subject to the following special conditions:

1. Geologic Stability. Prior to transmittal of permit, the applicant shall be required to submit revised plans which indicate no development within the 25-foot setback area from the top of the bluff edge. This setback does not apply to the bluff top security fence proposed in the project. Such plans shall be subject to review and approval of the Executive Director.
2. Lateral Access. Prior to transmittal of permit, the Executive Director shall certify in writing that the following condition has 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 a public agency or private association approved by the Executive Director, an easement for public access and passive recreational use along the shoreline. The documents shall also restrict the applicants from interfering with present use by public of the area subject to the offer and shall include legal descriptions of both the applicant's parcel or parcels and the easement area.

Such easement shall include all lands seaward of the toe of the bluff (as determined by the Executive Director) to the mean high tide line. The form and content of the approved document shall include a topographical map prepared by a licensed civil engineer

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Exhibit 5  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)



showing the location and elevation contours of the bluff with respect to the landward property line. The map shall be suitable for recording with the other necessary documents.

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 period running from the date of recording.

3. Scenic Resources. Prior to transmittal of permit, the applicant shall be required to submit a deed restriction for recording subject to the approval of the Executive Director prohibiting the construction of private stairways, structures or alterations on or down the bluff or within 25 feet of the bluff face.
4. Prior to transmittal of permit, the applicant shall be required to submit revised plans which indicate that the proposed 6 foot in height wall on the property line adjacent to Pacific Coast Highway has been reduced in height to 3 feet or that the fence has been relocated nearer the structure at the 118 ft. contour line.

#### IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares as follows:

- A. Project Description. The project consists of the construction of a two story, 6860 sq.ft., single-family dwelling with attached three-car garage, spa, pool and septic system on a coastal blufftop lot in the Encinal Beach area of Malibu.
- B. Geologic Stability. The Coastal Act in Section 30253(2) requires that new development "assure stability and structural integrity and neither create nor contribute significantly to erosion or geologic instability."

The project is proposed to be constructed on a 50,000 sq.ft. lot in the Encinal Canyon of Malibu. The lot extends southerly from Pacific Coast Highway to the mean high tide line. The site includes an extremely steep coastal bluff approximately 75 ft. in height with a sandy beach area located between the base of the bluff and the mean high tide line. The proposed project will be constructed on a pad to be located on top of the bluff.

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In acting to approve similarly designed coastal bluff-top projects in the past, the Commission has required that such projects incorporate a minimum 25 ft. setback from the bluff face. This criteria is specifically set forth in the Malibu/Santa Monica Mountains Guidelines. The Statewide Guidelines adopted by the Commission, state that a "bluff edge" or cliff edge is the upper termination of a bluff, cliff or seacliff. The Commission Guidelines specify further that in order to meet the requirements of the Act, bluff and cliff development must be sited and designed to assure stability and structural integrity for their economic lifespans while minimizing alteration of natural landforms. The Commission has in other coastal blufftop projects, ensured geologic stability in part through the use of the 25 ft. structural setback from the edge of bluff. The currently proposed project includes a residence which will comply with the Commission setback criteria. However, the project includes other development such as a swimming pool which would encroach within 25 ft. of the bluff. In order to ensure geologic stability on the site, the Commission finds it necessary to condition the project to require all onsite development be set back a minimum of 25 ft. from the bluff edge.

The applicant has furnished a soils engineering report in support of the project which states that the project is free of major geologic hazard such as landslide, settlement or seepage. The soils engineering report for the site does however, contain several recommendations regarding site development, grading, drainage and structure design. The Commission finds that if the project were conditioned to provide a 25 ft. setback for all development from the bluff edge and to conform with the recommendations of the project soils engineering report, the proposed project would be consistent with Section 30253 of the Coastal Act.

- C. Public Access. The Coastal Act contains strong policy provisions in Sections 30210 and 30212, requiring public access to and along the shore. However, the requirements for the provision of access for the public to California's shoreline is not limited to the Coastal Act. The California Constitution in Article X, Section 4 provides:

No individual, partnership, or corporation claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this state shall be permitted to exclude the right of way to such water whenever it is required for any public purposes . . . and the Legislature shall enact such law as will give the most liberal construction to this provision so that access to the navigable waters of this state shall always be attainable for the people thereof. (Emphasis added).

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The Coastal Act contains more specific policies regarding the provision of public access to the State's shoreline. Coastal Act Section 30210 as set forth below, stipulates that in meeting the requirements of Section 4, Article X of the Constitution maximum public access, conspicuously posted shall be provided subject to certain conditions.

Section 30210.

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

Section 30212 of the Coastal Act contains several very explicit policy provisions regarding the location and type of public access to be provided.

Section 30212.

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

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

In addition to the above provisions of the Coastal Act, Section 30214(a) addresses with a greater degree of specificity the time, place and manner of public access. Section 30214(a) states:

Section 30214.

(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

- (1) Topographic and geologic site characteristics.
- (2) The capacity of the site to sustain use and at what level of intensity.
- (3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.
- (4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.

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Additionally, the legislature has expressed its intent that the Commission balance the rights of the individual property owner with the public's constitutional right of access to the coast. Section 30214(b) states:

(b) It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article I of the California Constitution. Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article I of the California Constitution.

In 1979, the Commission began work on the Interpretive Guidelines for public access in order to provide a comprehensive review of the policies developed in permits in the previous 24 years. These guidelines were and are intended to provide the public, including permit applicants, with a general description of how the Coastal Act has been applied in previous cases and indicate the general approach the Commission would use in future actions. They are not regulations, do not supersede the statute and need not be followed in any particular case. In May, 1981, the Commission also adopted a set of Interpretive Guidelines for the Malibu area.

One of the major issues presented by the proposed project is the determination of the appropriate extent of access, given the circumstances. The question of the appropriate width and description of lateral accessways was one of the more important issues addressed in the Guidelines. Permit decisions by the State Commission and the six Regional Commission decisions had been somewhat inconsistent prior to 1981 when the Guidelines were adopted.

The Coastal Act's basic policy is that maximum access must be provided in new development projects, in a time, place and manner responsive to the facts and circumstances outlined in Section 30214. The Commission, through a long history of permit decisions and in the Guidelines, has developed a policy approach which implements these requirements. Although each permit is reviewed on its own merits, many cases contain similar factual circumstances. The Commission has attempted to provide a uniform and consistent policy approach which protects both private and public interests by ensuring that landowners in similar factual circumstances are treated similarly and ensuring that dedicated accessways can be properly and efficiently managed for the enjoyment of the public and the protection of neighboring private uses.

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The Guidelines make clear that a lateral access requirement should be meaningful in light of all the circumstances of the site. Most important are the physical characteristics of the beach. Certainty in locating the inland extent of the accessway is important in reducing potential for conflict between beach users and property owners. Because the width of a beach may change depending upon time of year, the guidelines establish the inland extent of a beach by means of a fixed inland point, "... the most efficient way to describe an accessway is as a distance from a fixed line landward of and parallel to the mean high tide line ..."

In prior Commission actions, the Commission has used the fixed inland point to describe accessways. In the instance of the current project, the fixed inland point is easily defined as the toe of the bluff.

The Commission concludes that with respect to the currently proposed project, the requirement of an offer of dedication of an easement for public use of the sandy shoreline seaward of the toe of the bluff is not only consistent with the policies of the Coastal Act but is, in fact, mandated by the access provisions of the Coastal Act.

Vertical access to the shore is adequately provided for at the present time via the adjacent El Sol County Park a 2.54 acre county park with 330 ft. of shoreline frontage. El Sol Park is currently unimproved but when fully improved will provide public access to approximately 1/4 acre of sandy beach area. Therefore, the Commission finds it is not necessary to condition the project to provide vertical access from Pacific Coast Highway across the site to the shore. However, the Commission further determines that a requirement for lateral access is both appropriate and needed on the project site. Based upon the foregoing, the Commission concludes that if the project were conditioned to provide a lateral access easement for the public from the mean high tide line to the toe of the bluff, the project would be consistent with the access provisions of the Coastal Act.

- D. Scenic and Visual Resources. Section 30251 of the Coastal Act states in part:

Section 30251.

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character surrounding areas.

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Exhibit 5  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)

The proposed project, consisting of a two-story single-family residence with spa and pool, will be located in the Encinal Beach area of Malibu. The proposed project is, as previously mentioned, a blufftop lot. The location where the proposed structure will be built is situated approximately 75 feet above sea level and at the present time, excellent views of the ocean are available across the project site to the ocean. The Commission is concerned with the impact the proposed project may have on views across the site from Pacific Coast Highway. However, the Commission is also concerned with visual impacts which the project may have on the adjacent 2.54-acre county park (El Sol). The Commission's adopted Interpretive Guidelines for Malibu specify that "all development located within 1,000 feet of publicly owned park lands should be sited and designed with great sensitivity so as not to create adverse visual impacts affecting park areas."

Additionally, the Commission is concerned with the visual impact of the project from the sandy beach areas below the coastal bluff. The Commission finds that a requirement for a 25 ft. coastal blufftop setback will help to minimize visual impacts of the project as viewed from the sandy beach areas. In order to ensure that the project does not result in alterations of the bluff face which may result in adverse visual impacts, the Commission finds it necessary to condition the project to preclude the construction of private stairways, structures or alterations on or down the bluff or beach or within 25 ft. of the bluff face. This will ensure that the bluff face remains in as natural a condition as possible and will minimize view impacts from the beach and adjacent park.

With respect to the visual impact of the project from Pacific Coast Highway, the Commission finds that the project will adversely impact public views of the ocean from Pacific Coast Highway. Therefore, the Commission finds it necessary to mitigate to the maximum extent feasible, any visual impact which the project may have as viewed from Pacific Coast Highway. In recent prior permit actions involving similar coastal projects in other areas of Malibu, the Commission has required residential structures to be no higher than 5 ft. above centerline of frontage road (5-84-616, 1758 Properties, and 5-83-255 Malibu Riviera Properties). The currently proposed project is designed to be 5 ft. in height as measured from the centerline of frontage road. The Commission has occasionally in the past required new residential developments in this area of Malibu to provide view corridors across the site. In approving P-77-1478 in the Encinal Beach area of Malibu, The Regional Commission approved a residential project with a view corridor. That project included a frontage of 433 ft. The current project has a frontage of 125 ft.

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In its action to approve other similarly designed bluff-top lots in Malibu, the Commission has also carefully reviewed ancillary structures such as fences which might impact views. The currently proposed project includes a proposed 6 ft. in height, solid fence or wall on the property line adjacent to Pacific Coast Highway. The Commission finds it necessary to condition the project to reduce the height of the project fence located adjacent to Pacific Coast Highway to a height of not greater than 3 ft. above grade or relocate the proposed 6 ft. in height fence closer to the proposed structure at a location which is approximately at the 118 ft. contour line as indicated on the project site plan. If so conditioned, the visual impact of the project as viewed from Pacific Coast Highway will be minimized.

Therefore, the Commission concludes that if the project were conditioned to minimize visual impacts by limiting development on the bluff and bluff face and by reducing the height of the proposed fence or relocating the proposed fence adjacent to Pacific Coast Highway to a location nearer the residence (the 118 ft. contour line) that impacts on scenic and visual resources would be reduced. The Commission further finds that the height of proposed structure above centerline of frontage road (5 ft.) is consistent with recent Commission actions on permits on other blufftop lots. Therefore, the Commission finds that as conditioned above, the project is consistent with Section 30251 of the Coastal Act.

- E. Local Coastal Program. Section 30604(a) of the Coastal Act states in part:

Section 30604.

(a) Prior to certification of the local coastal program, a coastal development permit shall be issued if the issuing agency, or the commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a local coastal program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200).

The County of Los Angeles adopted the Land Use Plan portion of the Malibu/Santa Monica Mountains area Local Coastal Program on December 28, 1982, for submittal to the Commission for certification. On March 24, 1983 the Commission voted to find that the Land Use Plan raised a "Substantial Issue" in terms of conformity with the Coastal Act and voted to deny the Land Use Plan as submitted.

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In January of 1985, the Commission held a public hearing to consider suggested modifications to the county's Land Use Plan. No action was taken by the Commission at that hearing. At the present time it is anticipated that the Commission will conduct a second hearing on the suggested modifications to the county LUP in May, 1985.

Since the proposed project as conditioned is in conformity with the policies of Chapter 3 of the Coastal Act as mentioned earlier, the Commission finds that approval of the project will not prejudice the ability of the County of Los Angeles to prepare a Local Coastal Program that is consistent with the policies of Chapter 3 of the Coastal Act.

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16

Attachment X

To: Permit Applicants

From: California Coastal Commission, South Coast District

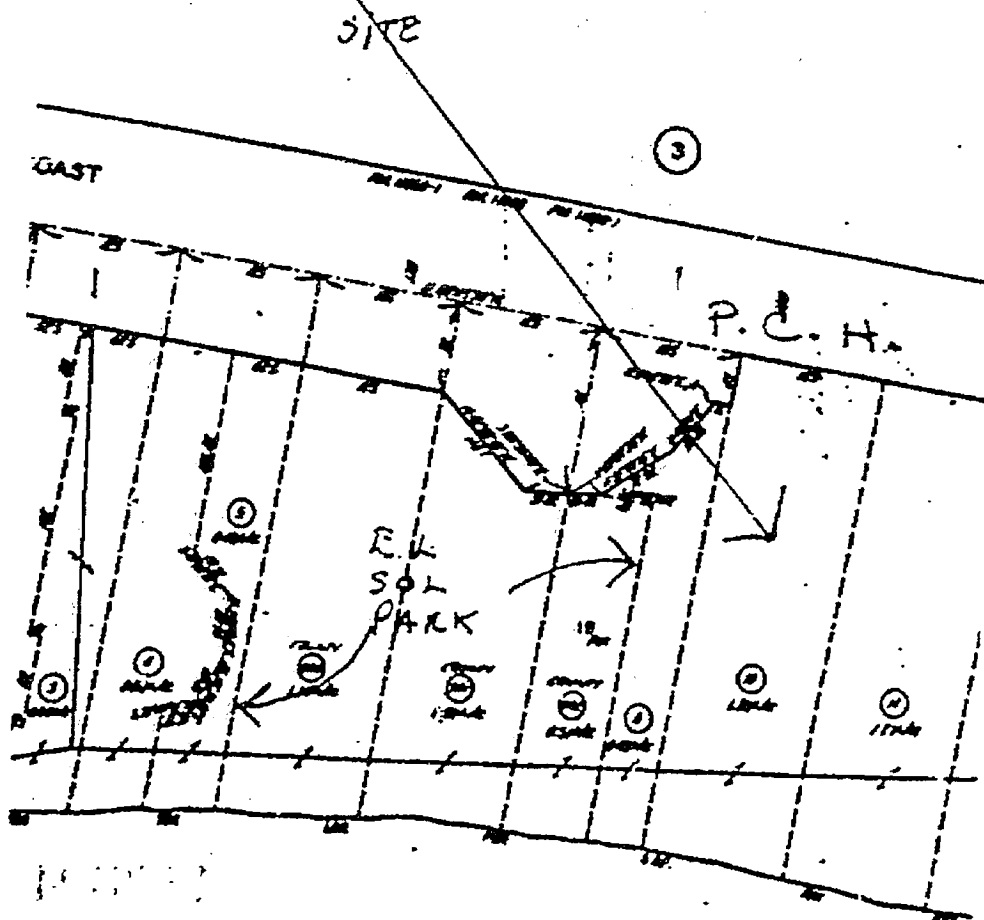
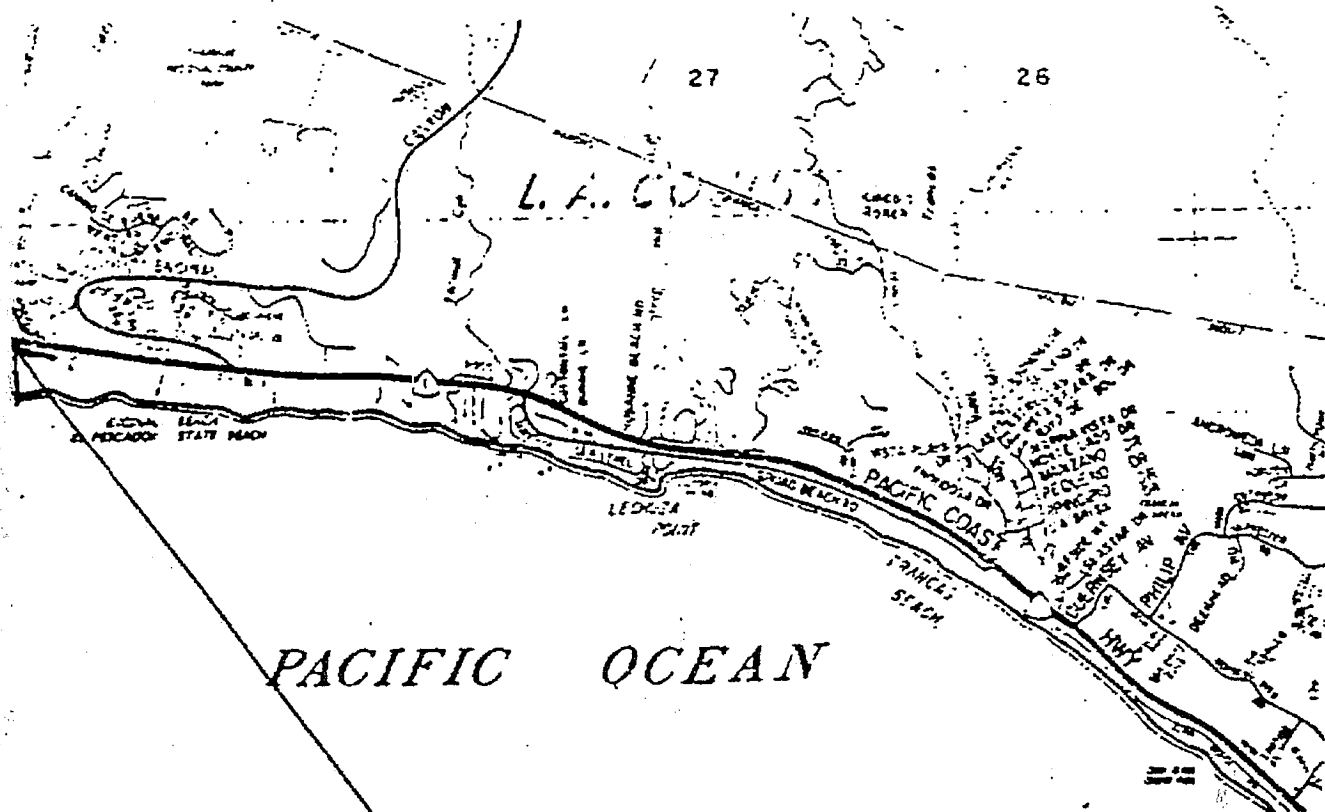
Subject: Standard Conditions

The following standard conditions are imposed on all permits issued by the California Coastal Commission.

I. STANDARD CONDITIONS

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

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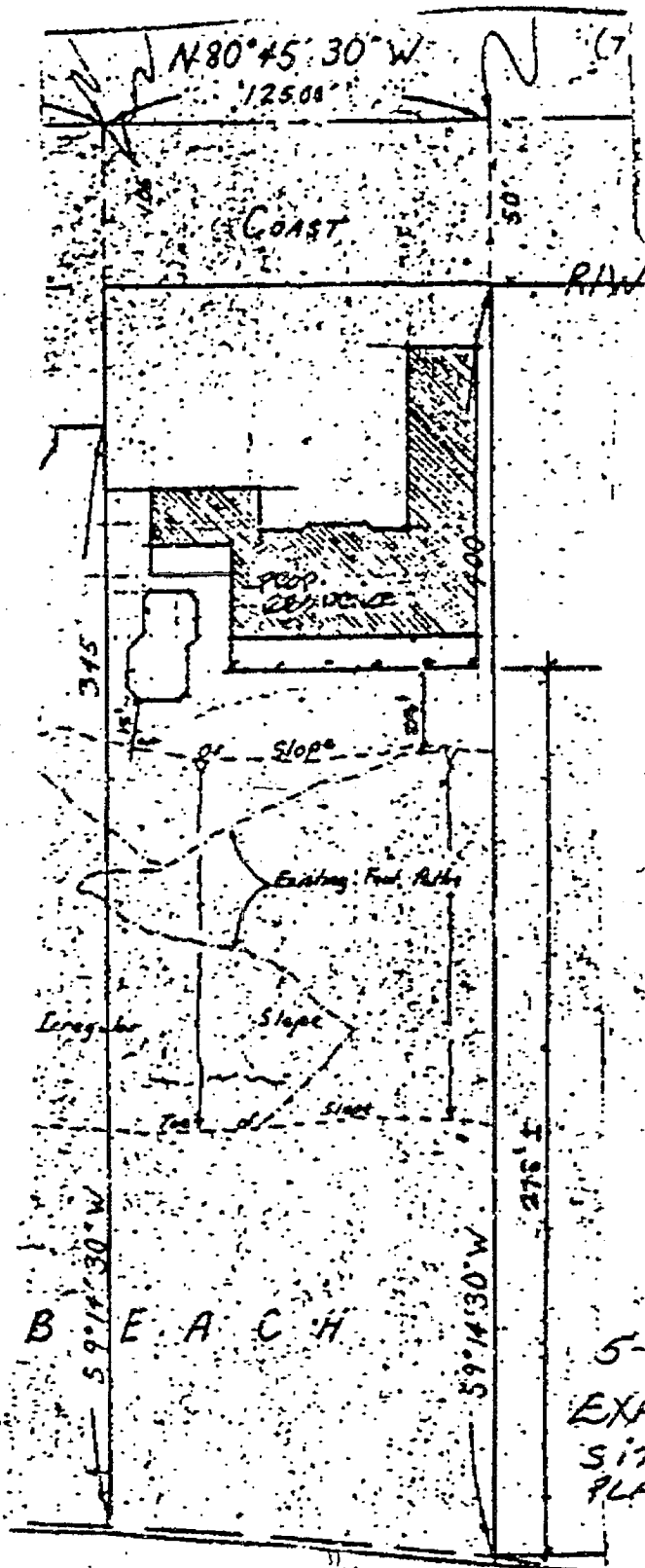


RECORDER'S MEMO:  
POOR RECORD IS DUE TO  
QUALITY OF ORIGINAL DOCUMENT

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5-25-57  
EXHIBIT 1  
LOCATION MAP

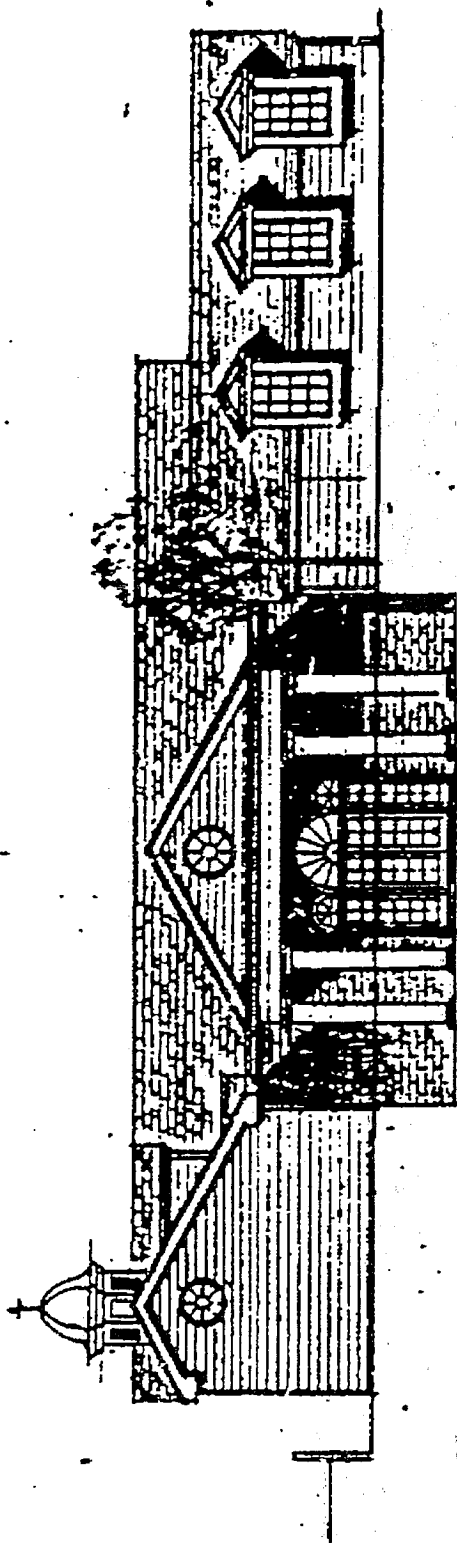
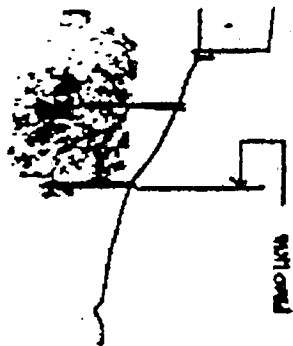
Exhibit 5  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)



5-85-57

5-85-57  
EXHIBIT 2  
SITE  
PLAN

86 1366724



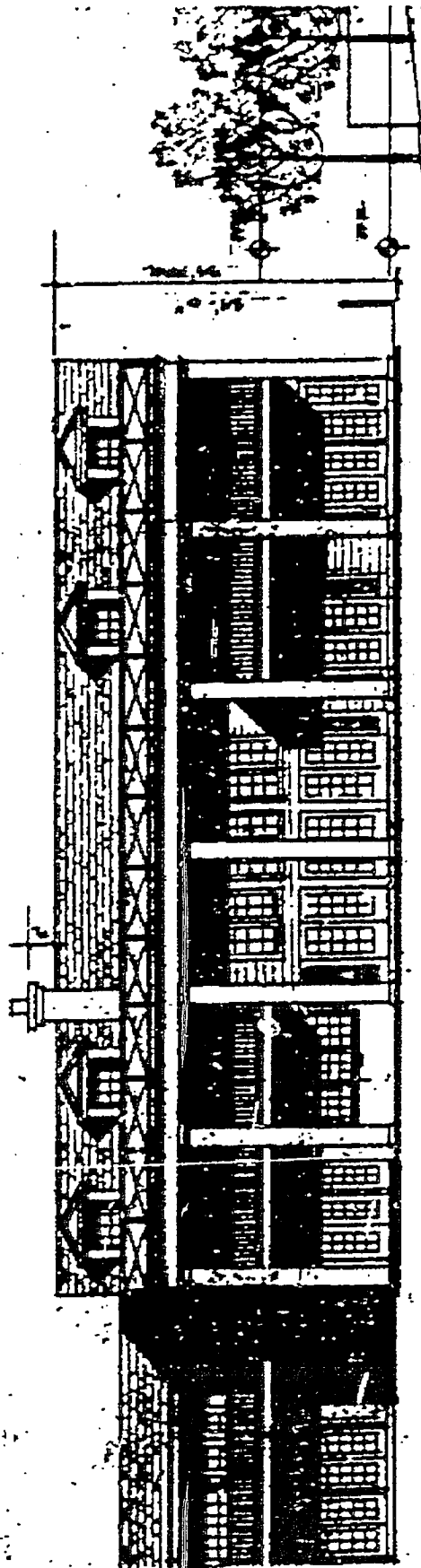
NORTH ELEVATION  
1/20/05

86-1366724

5-85-57  
EXHIBIT 3.

NORTH ELEVATION

Exhibit 5  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)



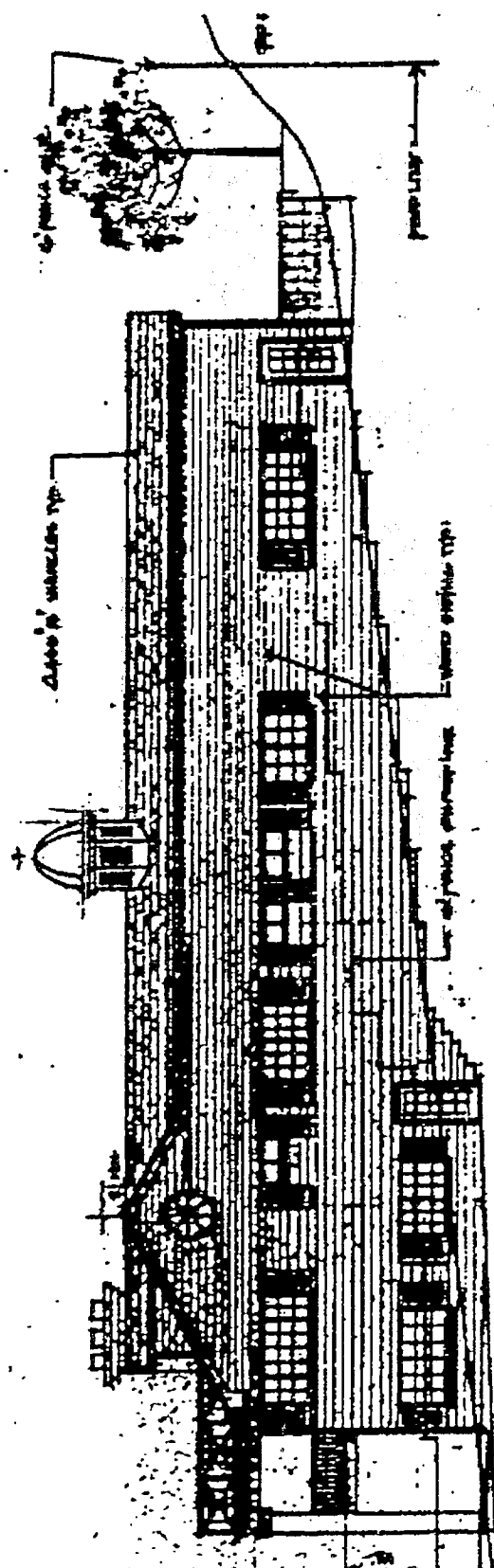
SOUTH ELEVATION

86 1366724

5-85-57

SOUTH ELEVATION

EXHIBIT 6



ALL DIMENSIONS ARE IN FEET AND INCHES  
UNLESS OTHERWISE SPECIFIED  
1/4" = 1'-0"

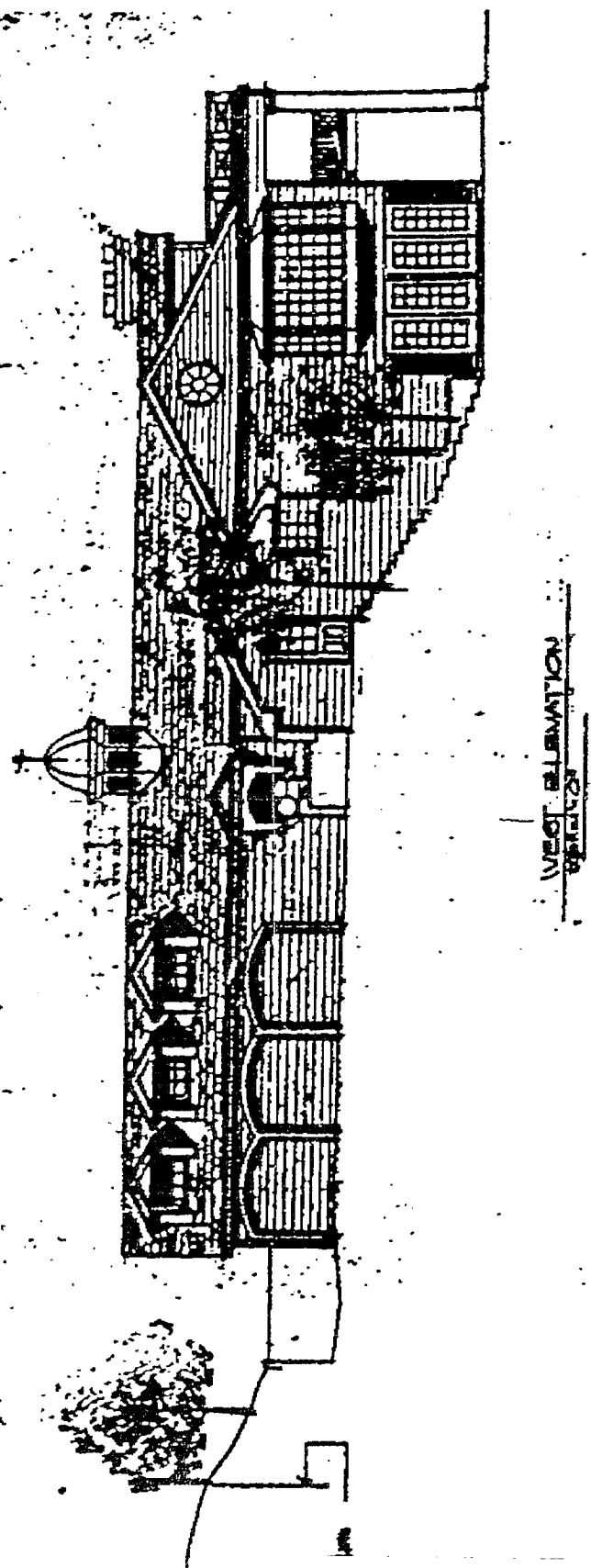
EAST ELEVATION

1/4" = 1'-0"

86 1366724

5-85-57  
EXHIBIT 5  
EAST ELEVATION

Exhibit 5  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)



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5-15-57  
WEST ELEVATION  
EXHIBIT 4

Exhibit 5  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)

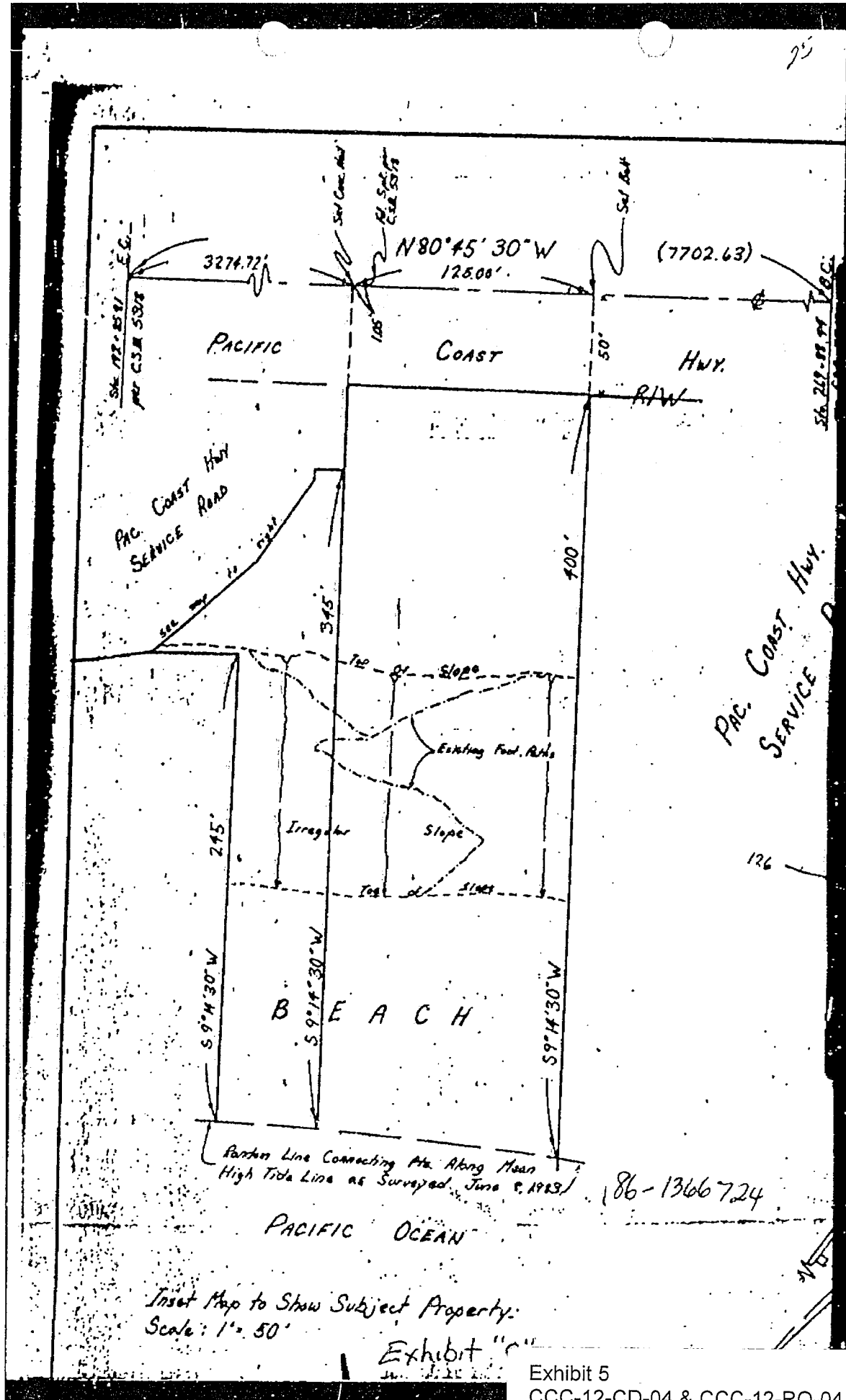


Exhibit 5  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)



STATE OF CALIFORNIA  
DIVISION OF HIGHWAYS  
AERIAL SURVEY CONTRACT  
NUMBER 685  
07-LA-1  
SCALE 1" = 100' CONTOUR INTERVAL 5'  
Photography dated 2-8-63  
Compiled by  
SMOLTZ & ASSOCIATES, INC.  
300 E. Beverly Boulevard  
Los Angeles 22, California  
Date sheet completed 7-8-63 Sheet #2 of 14

EXHIBIT "C"

86 1366724

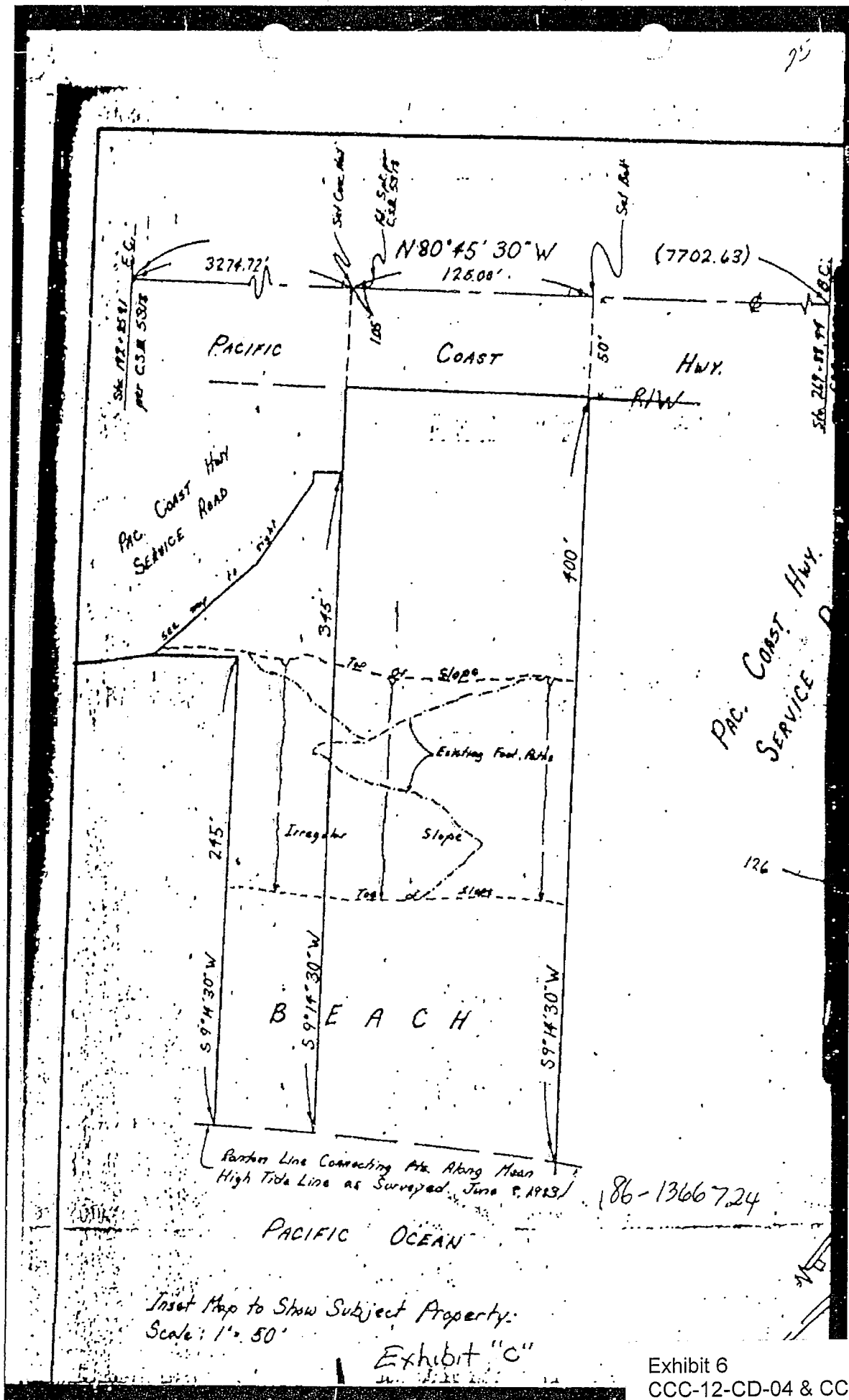


Exhibit 6  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)





APN 4473-020-017

APN 4473-020-017

APN 4473-020-018

**SUBJECT PROPERTY**  
**1972**

Exhibit 7  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)





APN 4473-020-903

APN 4473-020-017

APN 4473-020-018

**SUBJECT PROPERTY**  
**1979**





APN 4473-020-903

APN 4473-020-017

APN 4473-020-018

**SUBJECT PROPERTY**  
**1987**

Exhibit 8  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)



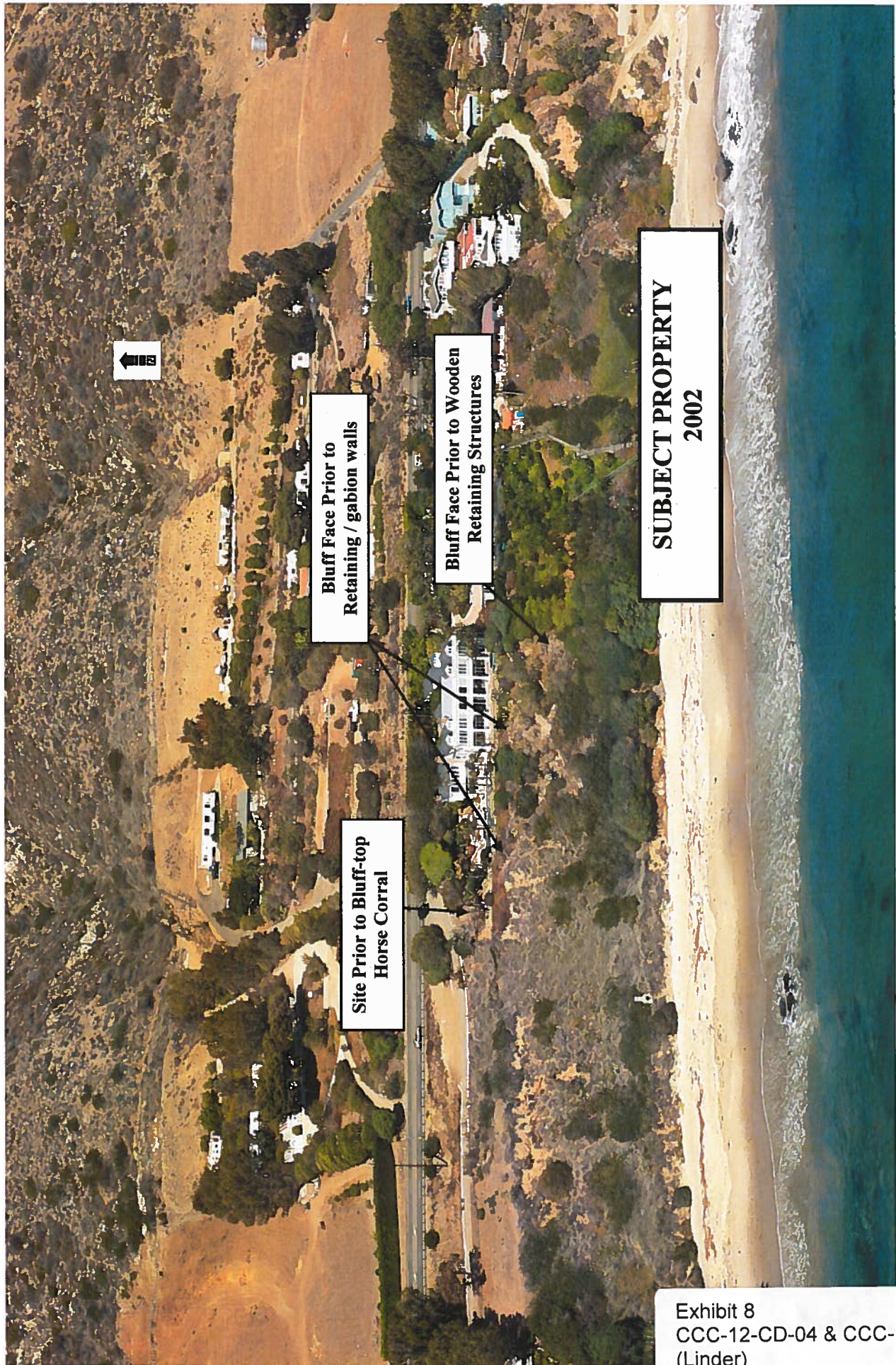
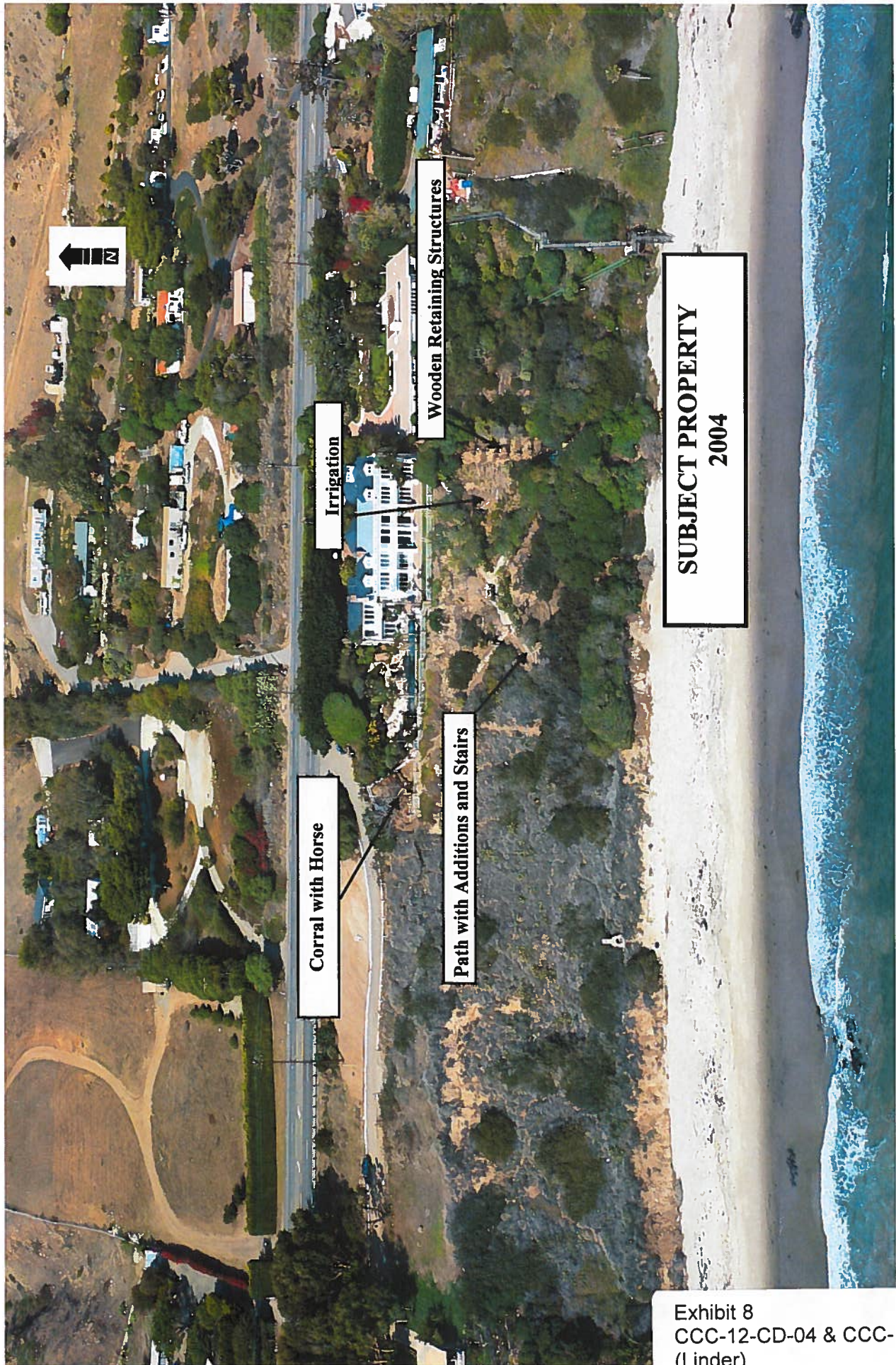


Exhibit 8  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)





**SUBJECT PROPERTY  
2004**

Exhibit 8  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)

## CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE (415) 904-5200  
FAX (415) 904-5400  
TDD (415) 587-5885



Via Regular and Certified Mail

May 7, 2012

Eric and Barbara Linder  
33440 Pacific Coast Highway  
Malibu, CA 90265  
(Certified Mail No. 7006 2760 0005 5883 4609)

Eric and Barbara Linder  
101 Rogers Road  
Irving, Texas 75061  
(Certified Mail No. 7006 2760 0005 5883 4623)

Subject: Notice of Intent to Record a Notice of Violation and to Commence  
Cease and Desist Order and Restoration Order Proceedings

Violation File Numbers: V-4-07-039 and V-4-94-040 (Linder)

Property Location: 33440 Pacific Coast Highway, Malibu, Los Angeles County, APNs 4473-  
020-017 and 4473-020-018

Alleged Violations: Include: (1) unpermitted grading and removal of major vegetation on a coastal bluff; (2) unpermitted installation of concrete/rock pool area patio within an area deed-restricted to provide for a 25-ft setback from the edge of the coastal bluff; (3) construction of a swimming pool in a configuration and location inconsistent with Coastal Commission-approved plans and the terms of approval of Coastal Development Permit No. 5-85-057; (4) unpermitted construction of a horse corral and associated horse facilities, including fencing, gates, and watering infrastructure, within an area deed-restricted to provide for a 25-ft setback from the edge a coastal bluff; (5) unpermitted construction of a path and concrete stairs on the bluff face for private beach access to a public beach; and (6) failure to comply with conditions of Coastal Development Permit (CDP) No. 5-85-057 and CDP 4-97-077. Specific permit conditions whose requirements were not satisfied include (a) Special Condition No. 3 of CDP 5-85-057, which prohibits construction within 25 feet of the bluff face, and which was violated by the alleged violations listed in points 2, 4, and 5, above; and (b) Special Conditions 2(b), 3, and 4 of CDP 4-97-077, which require submittal of annual monitoring reports, implementation and completion of the restoration plan, and submittal of proof of the removal of the water system as part of the final monitoring report required by Special Condition 1, respectively.

Exhibit 9  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)



Mr. and Ms. Linder  
May 7, 2012  
Page 2 of 12

Page 2 of 12

Dear Mr. and Ms. Linder,

This letter follows up the March 12, 2012 telephone conversation you had with Renée Ananda of the Coastal Commission ("Commission") staff, regarding alleged violations on property you own at 33440 Pacific Coast Highway, in Malibu, Los Angeles County ("subject property"). The alleged violations include, but are not limited to: (1) unpermitted grading and removal of major vegetation on a coastal bluff; (2) unpermitted installation of concrete/rock pool area patio within an area deed-restricted to provide for a 25-ft setback from the edge of the coastal bluff; (3) construction of a swimming pool in a configuration and location inconsistent with Commission-approved plans and the terms of approval of Coastal Development Permit No. 5-85-057; (4) unpermitted construction of a horse corral and associated horse facilities, including fencing, gates, and watering infrastructure within an area deed restricted to provide for a 25-foot setback from the edge of a coastal bluff; (5) unpermitted construction of a path and concrete stairs on the bluff face for private beach access to a public beach; and (6) failure to comply with conditions of Coastal Development Permit (CDP) No. 5-85-057 (prohibiting development on or within 25 feet of the bluff face) and CDP No. 4-97-077 (requiring restoration, the submittal of monitoring reports, and the submittal of proof of the removal of the water system as part of the final monitoring report).

We are very encouraged by your stated willingness to take the steps necessary to bring the subject property into compliance with the Coastal Act and are happy to continue working with you to achieve that end. As staff mentioned in our discussions, this letter is intended to provide you notice, as required by Commission regulations, of my intent, as the Executive Director of the Commission, to commence proceedings for issuance of Cease and Desist and Restoration Orders and a Notice of Violation of the Coastal Act (NOVA) to address violations of the Coastal Act on the subject property. In addition, this letter provides notice of my intent, as the Executive Director of the Commission, to record a NOVA. This does not preclude in any way our ability to resolve these matters through a Consent Order, of course, and we still hope to do so.

As you are aware through numerous communications over the past eighteen years (1994 - 2012), the Commission has been attempting to resolve the outstanding violations on your property, for a very long time. The alleged violations are located on and at the edge of a coastal bluff, and in an area on the property where development has been specifically prohibited (see Special Condition No. 2 of CDP No. 5-85-057, as discussed more fully below). In addition, the City of Malibu's LCP provides that bluffs are Environmentally Sensitive Habitat Areas (ESHA) and requires that all ESHA shall be protected. The LCP, additionally, specifically prohibits confined animal/horse facilities and the disposal of animal waste in ESHA. ESHA including certain plant and animal life and their habitats, are afforded special protection pursuant to the Coastal Act and the certified LCP, "because of their special nature or role in an ecosystem and [ability to] ...be easily disturbed or degraded by human activities and developments" (see Coastal Act Section 30107.5). Only certain types of development are permissible in ESHAs. For example, under Section 30240 of the Coastal Act, only resource-dependent uses are permitted within ESHAs. Similarly, City of Malibu Land Use Plan Policy 3.8 of the certified LCP specifies that "Environmentally Sensitive Habitat Areas (ESHAs) shall be protected against significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas". The alleged violations at issue appear to have occurred within and adjacent to ESHA, not only causing impacts to those areas, but also preventing their recovery. For these reasons, the development at issue is not only unpermitted, it is also inconsistent with the resource protection policies of the Coastal Act and Malibu's certified LCP.

Mr. and Ms. Linder  
May 7, 2012  
Page 3 of 12

Page 3 of 12

### History of Alleged Violations

Commission staff has determined that alleged violations have occurred on and remain at your property located at 33440 Pacific Coast Highway in Malibu, Los Angeles County. The alleged violations, as described above, took place between 1985 and 2001 on the sandy beach, coastal bluff face, and on the bluff top within the required 25-foot setback area.

Pursuant to Section 30600(a) of the Coastal Act, any person wishing to perform or undertake development in the Coastal Zone must obtain a CDP, in addition to any other permit(s) required by law. "Development" is defined by section 30106 of the Coastal Act as:

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

The alleged violations listed above include unpermitted development. The unpermitted development constitutes "development", as defined under the Coastal Act, therefore it requires a CDP. Any non-exempt development activity conducted in the Coastal Zone without a valid CDP, or that is not in substantial conformity with a previously issued permit, constitutes a violation of the Coastal Act. As noted above, the development addressed herein lacked permits. Moreover, some of the development is also directly inconsistent with conditions contained in previously-issued permits for your property.

Commission staff communications with you regarding the violations on the subject property include letters, meetings, and phone calls over a period of eighteen years, including letters from Commission enforcement staff sent August 23, 1994, December 5, 1994, May 4, 1995 (re-sent on May 5<sup>th</sup> and June 28<sup>th</sup>), June 28, 1995, August 30, 1995, March 26, 1996, November 27, 1996, March 17, 1997, April 24, 1997, October 10, 1997, April 13, 1998, September 24, 2007, December 11, 2007, February 6, 2009, July 29, 2011, August 31, 2011, February 27, 2012, February 29, 2012, and March 12, 2012. The following is a chronology of the activity to date regarding the alleged violations on the subject property.

In light of the fact that there has been so many communications and events, including several sets of violations, regarding the subject property; we thought that a summary of the site history would put the current situation into context.

#### 1. Coastal Development Permit No. 5-85-057 – Construction of Single Family Residence

The Commission approved CDP No. 5-85-057 on March 13, 1985 for the construction of a two-story, single-family dwelling with an attached three-car garage, swimming pool, and septic system on a 1.14-acre bluff top lot. CDP No. 5-85-057 also specifically prohibits the construction of private stairways, structures, or alterations on or down the bluff or within 25 feet of the bluff face; among other conditions. Thus the path and concrete stairs on the bluff face for private beach access to a public beach, the horse

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facilities, and the patio around the pool are all not only unpermitted, but also violate this specific prohibition in CDP 5-085-057. As provided in plans approved pursuant to CDP 5-87-057, the swimming pool was to be a rectangle constructed in a North-South direction, extending seaward from the home. The as-built swimming pool is configured in an East-West orientation, paralleling the edge of the bluff.

## 2. Violation File No. V-4-94-040 – Original Violation

Special Condition No. 3 of CDP 5-85-057 required that:

*Prior to the transmittal of permit, the applicant shall be required to submit a deed restriction for recording subject to the approval of the Executive Director prohibiting the construction of private stairways, structures or alterations on or down the bluff or within 25 feet of the bluff face. [Sic]*

This required deed restriction was properly recorded with Los Angeles County as Document No. 86 1366723. Despite this, unpermitted development occurred on the bluff top within the deed-restricted 25-ft. setback. Unpermitted development also includes the placement of the path and concrete stairs on the bluff face that are still in existence, extending down the bluff face. However, Special Condition No. 3 of CDP 5-85-057 explicitly prohibits the construction of private stairways, structures or alterations on or down the bluff or within 25 feet of the bluff face, yet multiple forms of development persist in that location today. Therefore, to date, you are in violation of CDP 5-85-057.

On August 8, 1994, staff observed unpermitted development on the sandy beach and a path and concrete stairs on the bluff face to provide for private beach access to a public beach. On August 23, 1994, Commission staff sent you a certified letter which informed you that the unpermitted development on the coastal bluff on your property was a violation of the Coastal Act. Staff requested that you stop the unpermitted work and submit by September 20, 1994, a CDP application to resolve the unpermitted development on the coastal bluff that was undertaken on your property, and any other development activities contemplated on your property for the near future. Staff's August 23<sup>rd</sup> letter also notified you that your failure to comply with the request would result in referral of your case to the Commission's Statewide Enforcement Unit and informed you that there was a potential for penalties associated with Coastal Act violations.

On December 5, 1994, having not received a response to our August 23<sup>rd</sup> letter or any other form of communications from you, Commission staff sent you another certified letter. Staff again requested that you submit a completed CDP application to resolve the unpermitted development on the coastal bluff undertaken on your property, by January 3, 1995. The December 5<sup>th</sup> letter also notified you that staff was in the process of preparing your violation case for referral to the Commission's Statewide Enforcement unit for further enforcement action if you failed to submit a completed CDP application by January 3<sup>rd</sup>. Additionally, staff informed you that there was a potential for imposing penalties.

On May 4, 1995, Commission staff sent Mr. Sherman Stacey (an attorney then acting as your agent) another certified letter, because, as of that date, neither you nor Mr. Stacey on your behalf had submitted a CDP as we requested in our prior letters, dated August 23<sup>rd</sup> and December 5<sup>th</sup>, 1994. Staff indicated a preference to resolve the matter of unpermitted development on the bluff administratively through the issuance of either an after-the-fact (A-T-F) permit to retain the unpermitted development or a permit for removal and restoration of the site. Staff met with Mr. Stacey (after the August 23<sup>rd</sup> letter was sent) and discussed the matter of your alleged violations; the existence of a path [and concrete stairs] on the bluff face, and the Commission's past permit that prohibited such development. Staff reminded Mr.

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Stacey that development activity performed without a CDP constitutes a violation of the Coastal Act's permitting requirements and that you could be subject to penalties as authorized under the Coastal Act. Staff also informed Mr. Stacey that Coastal Act sections 30803 and 30805 authorize the Commission to initiate litigation to seek injunctive relief and an award of civil fines for violations, respectively. Furthermore you were informed that Section 30820(b) authorizes additional penalties against an individual who "intentionally and knowingly" performs any development in violation of the Coastal Act. The May 4<sup>th</sup> letter stated that you were entitled to apply to retain the unpermitted development. Staff requested a CDP application be submitted by June 9, 1995 in order to delay a referral of this matter to our Statewide Enforcement Unit in San Francisco.

On June 28 and August 30, 1995, Commission staff sent two more certified letters to Mr. Sherman Stacey to again request that you resolve the matter of the unpermitted development on the bluff at your property. Staff re-iterated in each letter the several points that were raised in the May 4, 1995 letter to Mr. Stacey, and again requested that you, as his client, submit a CDP application for the restoration of the site or the retention of the unpermitted development. The June 28<sup>th</sup> letter set a deadline of July 21<sup>st</sup>; and the August 30<sup>th</sup> letter deadline for submitting a CDP application was October 6<sup>th</sup>.

On March 26, 1996, Commission staff sent you a letter which noted that as of that date, you and Mr. Stacey had still failed to resolve the violation or to respond to staff's requests that you submit a CDP application for the restoration of the bluff. Staff also informed you that we recommended that you submit an application for the restoration of the bluff face, rather than for retention of the unpermitted development; since that would be more productive for all, in light of the fact that the placement of any structure or the removal of vegetation on a bluff face is not consistent with the applicable Land Use Plan. Staff reminded you that this violation was significant as it involved development of a coastal bluff face, which is designated as an environmentally sensitive habitat area. Staff also reminded you that the Coastal Act allows the Commission to seek injunctive relief through litigation and to impose penalties for violations and, as stated in previous letters. Staff's March 26<sup>th</sup> letter also informed you, that since the violation was still in place, staff was in the process of preparing your violation case for referral to the Commission's Statewide Enforcement Unit and would be requesting that a "Notice of Violation" be recorded against your property. Staff's referral also would include a request to proceed with issuing a cease and desist order for restoration of the bluff.

On April 16, 1996, Commission staff received a letter, dated April 12, 1996, from Mr. Sherman Stacey. The letter was accompanied by a Revegetation Plan, prepared by Dennis Turner, Landscape Architect, dated October 1995, submitted on your behalf for staff review. Mr. Stacey's letter also indicated you desired to resolve this matter by restoring the subject property. On April 24, 1996, Mr. Sherman Stacey, in a telephone conversation with staff, indicated that he would, on your behalf, submit a CDP application for restoration of the site.

By November 27, 1996, no such CDP application had been received. Therefore, staff sent a certified letter to Mr. Sherman Stacey. Staff's letter re-capped the April 24, 1996 telephone conversation and confirmed receipt of your April 12<sup>th</sup> submittal. Staff provided you with preliminary comments on the landscape plan (prepared by Dennis Turner). In yet another attempt to resolve the situation, staff requested that a CDP application be submitted by January 3, 1997, for removal of the unpermitted development and restoration of the site or to retain the unpermitted development.

On March 17, 1997, Commission staff sent a certified letter to Mr. Sherman Stacey, as a follow-up to the staff's phone call made to Mr. Stacey on March 6, 1997, which was not responded to. The March

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17<sup>th</sup> letter noted that Mr. Stacey had submitted a plan (prepared by Dennis Turner) on April 12, 1996, on your behalf; however, he had not taken steps to resolve the violation, nor had he submitted the required CDP application. Despite this, staff provided yet another opportunity to defer commencement of formal legal action, if you submitted a completed CDP application by April 11, 1997.

On April 10, 1997, Mr. Stacey submitted a CDP application, dated April 9, 1997, on your behalf, seeking authorization for the removal of the unpermitted development (located on the bluff face and sandy beach) and bluff restoration and revegetation. The CDP application was for the revegetation of the area from which the unpermitted corrals were removed, i.e., the beach and lower bluff area. Permit staff reviewed your CDP application and determined that it was incomplete. On April 24, 1997, staff sent Mr. Stacey a letter informing him that your CDP application was incomplete and requested that you submit the required materials by May 30, 1997. Several communications transpired between staff and your representative subsequent to April 24, 1997 (including on August 26<sup>th</sup>, September 10<sup>th</sup>, October 10<sup>th</sup>, November 14<sup>th</sup>, December 8<sup>th</sup> and 12<sup>th</sup>) in working with you to complete your CDP application (No. 4-97-077) for the restoration of the subject property, which was eventually completed.

### 3. Coastal Development Permit No. 4-97-077- Removal of Alleged Violations and Revegetation and Restoration of the Site.

On April 13, 1998, the Commission approved CDP 4-97-077 for the removal of the horse corral, fence, gate, wooden retaining structures and water system, and the restoration and revegetation of the coastal bluff on the subject property. Staff issued a Notice of Intent to Issue a Permit (dated April 13, 1998), upon your compliance with Special Condition Nos. 1 - 5. CDP 4-97-077 was issued on July 23, 1998.

The Special Conditions required that you submit a revised Bluff Restoration Plan (Special Condition No. 1) and a Monitoring Plan (Special Condition No. 2) prior to issuance of the CDP. Special Condition No. 2 included a requirement that you submit written annual reports (which, to this date, you have never provided/submitted). Within 45 days of issuance of the CDP you were required to implement the approved, revised Bluff Restoration Plan and complete the restoration and revegetation (Special Condition No. 3) and remove all unpermitted structures (Special Condition No. 4). Lastly, you were required to comply with Special Condition Nos. 1 and 2 within 45 days of Commission action. On June 30, 1998 (78 days after the deadline) you submitted the Bluff Restoration Plan, which was revised and subsequently re-submitted on July 13, 1998. The revised Bluff Restoration plan was approved by the Commission on July 23, 1998. On June 30, 1998 (78 days after the deadline) you also submitted the Monitoring Program prepared by Dennis Turner, dated June 1998. Up to that date no documentation had been submitted to staff that indicated you had complied with Special Condition Nos. 2(b), 3, and 4. Furthermore, as noted below violations remained on the subject property.

### 4. Violation File No. V-4-07-039 - New Alleged Violations

On May 8, 2001, staff visited the site area to confirm whether or not the site had been restored. Staff observed from the nearby public area that the restoration, pursuant to CDP 4-97-077, had not been completed. In fact not only did you fail to restore the subject property as required by CDP 4-97-077, but you had undertaken new, alleged violations, including a new horse corral, which was observed on the bluff top. Therefore staff opened a violation case for non-compliance with CDP 4-97-077 (for the removal and restoration and revegetation of the site) and the new alleged violations which included a new horse corral on the bluff top.

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On September 13, 2007, staff once again observed that there was unpermitted development on the site, including a horse corral, shade structure and horses on the bluff top. On September 24, 2007, staff sent you a new Notice of Violation for V-4-07-039 that asked you to bring your property into compliance with the Coastal Act by submitting 1) a complete CDP application to the City of Malibu by October 31, 2007, for either the removal of the unpermitted development and restoration of the site or to seek to authorize the as-built development; 2) a restoration monitoring report to the Commission pursuant to Special Condition 2(b) of CDP 4-97-077 by November 31, 2007; 3) and to contact staff by no later than October 31, 2007, regarding how you intended to resolve the violation. Staff also informed you that you were not in conformance with Special Condition No. 3 of CDP No. 5-85-057, which prohibited development within the deed-restricted 25-ft setback from the edge of the bluff top. The September 24<sup>th</sup> Notice additionally informed you that you were in violation of CDP 4-97-077, which was issued to you to resolve your previous violation (V-4-94-040) regarding unpermitted development on the bluff.

In response to your December 4, 2007 telephone request for an extension on the due date for the submittal of a final restoration report, staff sent you a letter, dated December 11, 2007, which granted you a time extension to January 17, 2008 to address the requirements of Special Condition 2(b), which required you to submit a restoration report that documents and details the relative success of the restoration.

On February 6, 2009, staff sent you a letter that again requested photos and written verification that all horses and structures had been removed and requested you submit the required restoration report pursuant to CDP 4-97-077. Staff received no response to this letter or any confirmation that any of the steps had been taken.

On July 29, 2011, after confirmation that the unpermitted development was still in place, staff again wrote you and reminded you of the unpermitted development and non-compliance with CDP 5-85-057 Special Condition No. 3 and CDP 4-97-077 Special Conditions No. 2(b), 3, and 4. Staff, again, requested that you stop unpermitted development activity, remove the unpermitted development, and restore the site. The July 29, 2011 letter also requested that you contact staff by August 17, 2011, regarding how you intended to resolve the violation. Staff received no response to this letter, either.

On August 22, 2011, staff wrote you and again informed you of the alleged violations and your non-compliance of CDP 5-85-057 Special Condition No. 3 and CDP 4-97-077 Special Condition Nos. 2(b), 3, and 4. Staff requested that you stop all alleged violations, and again provided you with options to resolve your violation case administratively, such as through a "consent order". Staff, again advised you on a number of potential remedies to address the violations under the Coastal Act, and reiterated the potential for recordation of a Notice of Violation against your property, after providing notice and the opportunity for a hearing.

On December 6, 2011, again, since we had not received any responses to our letters, commission staff visited the site area and, viewing it from nearby/adjacent public areas, confirmed the continued presence of the horse corral, fencing, remnant brick supports/posts from the shade structure, and horses on the Subject Property.

Staff sent you letters dated February 27 and 29, 2012, again, outlining staff's efforts to resolve this matter and requested that you inform staff as to how you anticipated resolving the subject violations. Staff letters informed you of our preference to resolve your case in a timely and amicable manner and reiterated

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the Commission's authority under the Coastal Act with respect to the enforcement of penalties for violations.

Staff also contacted you by telephone many times over the years to attempt to resolve this matter and to highlight the need for a response to our previous letters. In your most recent conversation with staff, on March 12, 2012, you stated a willingness to work to resolve the violation. Staff sent you a letter, dated March 29, 2012 that recapped the March 12 conversation and informed you about the opportunity to resolve this matter through the Consent Order process.

On April 12, 2012, Mr. Stacey submitted a letter on your behalf, dated April 10, 2012. Mr. Stacey requested that we send him a proposed consent order to resolve this matter. On April 16, 2012, staff sent Mr. Stacey a letter that confirmed receipt of his letter, dated April 10<sup>th</sup>, and informed him that the proposed Consent Cease and Desist Order and Restoration Order would be sent to you and him, once it was prepared.

As you know, you have been provided with options to resolve your violation case administratively, such as through a "consent order". Staff, while hopeful that your violation case could be resolved amicably, further advised you in the April 16, 2012 letter regarding a number of potential remedies to address the Coastal Act violations pursuant to Coastal Act Sections 30809, 30810, 30811, 30803, 30805, 30820 (a) (1), and 30820 (b). Staff also informed you that the Executive Director is authorized by 30812 to record a Notice of Violation against your property, after providing notice and the opportunity for a hearing.

In summary, the development on the subject property that is inconsistent with the previously-issued CDPs constitutes violations of the Coastal Act. You remain in non-compliance with CDP 5-85-057 Special Condition No. 3 and CDP 4-97-077 Special Condition Nos. 2(b), 3, and 4, to date. Moreover, you conducted development on the bluff top and bluff face without an approved CDP, which is required by both the Coastal Act and the City of Malibu's certified LCP. This, as you know, is also a violation of the Coastal Act. The subject unpermitted development raises considerable concerns regarding impacts to coastal resources, which, as you know, are protected by the LCP. The unpermitted development is also a concern as it is inconsistent with the provisions and provisions of the LCP, Local Implementation Plan (LIP) and policies of the Land Use Plan (LUP) which are more fully listed in the "Restoration Order" section below.

## 5. Notice of Intent

### Cease and Desist Order

Staff has proposed that the violations at issue would be amicably resolved through Consent Cease and Desist and Restoration Orders, which would outline the terms for removal of the alleged violations and restoration of the site, and also allow for the resolution of penalties. The standards for the Commission's issuance of a Cease and Desist Order are discussed in this section. The standards for the Commission's issuance of a Restoration Order are presented in the section that follows.

The Commission has enforcement jurisdiction over the subject property and over the subject property as it pertains to CDP Nos. 5-85-057 and CDP 4-97-077 that were issued by the Commission. The Commission's authority to issue Cease and Desist Orders is set forth in Section 30810(a) of the Coastal Act, which states, in part, 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. 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.*

The City of Malibu requested that we take the lead in this matter, and we have confirmed our intention to do so.

Section 30810(b) of the Coastal Act states that the Cease and Desist Order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with the Coastal Act – including the requirement for removal of any unpermitted development or material.

Section 30600(a) of the Coastal Act states that, in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the coastal zone must obtain a CDP. As noted previously, “development” is defined by Section 30106 of the Coastal Act. The activities at issue in this Cease and Desist Order constitute “development” within the meaning of the above-quoted definition, and therefore anyone performing or undertaking those activities was required to first obtain a CDP.

You, as the property owners, did not obtain a CDP for the subject alleged violations; therefore, the subject alleged violations is not authorized. In addition, certain items of the alleged violations listed above are also inconsistent with a previously issued CDP. For these reasons, the criteria of Section 30810(a) of the Coastal Act have been met. Therefore, I am issuing this Notice of Intent to commence Cease and Desist Order proceedings. The procedures for the issuance of Cease and Desist Orders are described in Sections 13180 through 13188 of the Commission’s regulations, which are codified in Title 14 of the California Code of Regulations.

The above-described alleged violations at issue in this matter are located immediately adjacent to the edge of a coastal bluff approximately 75 feet above El Sol County Beach, and partially occupy APN 4473-020-903 (which is owned by Los Angeles County). The proposed Cease and Desist Order will direct you to (1) cease and desist from maintaining any development on the subject property not authorized pursuant to the Coastal Act; (2) cease and desist from engaging in any further development on the subject properties unless authorized pursuant to the Coastal Act; remove all alleged violations from the property at issue; and (3) take all steps necessary to comply with the Coastal Act, including obtaining all obligatory approvals or other necessary permits, such as a Right of Entry permit from the County for the removal of the unpermitted development from the County-owned parcel.<sup>1</sup>

#### Restoration Order

Restoration of the affected areas will be part of any proposed resolution due to the sensitive nature of the ecosystem in which the development occurred, and the impacts to resources as a result of the

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<sup>1</sup> Stephen Nguyen, Los Angeles County Beaches and Harbors, Pers. Comm., April 30, 2012.



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alleged violations. Section 30811 of the Coastal Act authorizes the Commission to order restoration of a site as follows:

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

The specified unpermitted activities meet the criteria of Section 30811 of the Coastal Act. As noted above, development has occurred on the property without a coastal development permit from the Commission in violation of Section 30600(a) of the Coastal Act, which is inconsistent with the provisions and conditions of two approved Coastal Development Permits; the development is in violation of CDPs Nos. 5-85-057 and 4-97-077. These violations are also violations of and inconsistent with the requirements of the certified LCP and are inconsistent with numerous provisions of the Coastal Act, including Section 30251 (protection of scenic and visual qualities); Section 30230 (protection of marine resources); Section 30231 (protection of biological productivity and water quality); Section 30240 (protection of environmentally sensitive habitat); Section 30253 (minimization of adverse impacts); and Section 30236 (water supply and flood control), as well as parallel and related provisions of the LCP.<sup>2</sup>

Lastly, the alleged violations are causing "continuing resource damage," as defined by Section 13190 of the Commission's regulations.

For the reasons stated above, I have decided it is necessary to commence a Restoration Order proceeding before the Commission. The procedures for the issuance of Restoration Orders are described in Sections 13190 through 13197 of the Commission's regulations, which are codified in Title 14 of the California Code of Regulations. The proposed Restoration Orders would provide for removal of the alleged violations and to return the site to its pre-violation condition.

#### Notice of Violation against the Coastal Act

As you have been informed in prior letters, the Coastal Act contains a provision for notifying potential, future purchasers of real property of the existence of a Coastal Act violation on the property. The Executive Director of the Commission may record a Notice of Violation against the title to the property pursuant to Coastal Act Section 30812, after providing notice and the opportunity for a hearing.

Should you choose to object to the recording of a Notice of Violation 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 calendar days of the postmarked mailing of this notification. The objection should be sent to Renée Ananda, Statewide Enforcement Analyst at the Commission's headquarters office (the address is provided above in the letterhead), no later than May 28, 2012. 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 decide not to object within 20 days of my mailing of this notification, I shall record the Notice of Violation in the Los Angeles County recorder's

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<sup>2</sup> The subject development is inconsistent with numerous provisions of Malibu's certified LUP and Land Use Implementation Plan (LIP). The development is inconsistent with LIP Sections 6.5.D.1, 6.5.D.2, 6.5.D.3, and 6.5.H all of which ensure the protection of scenic and visual resources; LUP Policies 3.1, 3.8, 3.77, 3.78, 3.11.2.A, and 3.149 for the protection of environmentally sensitive habitat areas; and LIP Sections 10.4.D and 10.4.F which address geologic stability on coastal bluffs.

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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. This notice is intended to put other parties on notice of the status of the property and to avoid unnecessary confusion. The Notice of Violation will be rescinded once the violations are resolved.

### Civil Liability

Coastal Act Section 30820(a) provides that any person who violates any provision of the Coastal Act may be subject to a penalty not to exceed \$30,000 per violation. Further, Section 30820(b) states that, in addition to any other penalties, any person who "knowingly and intentionally" performs any development in violation of the Coastal Act can be subject to a civil penalty of up to \$15,000 per violation for each day in which each violation persists. Section 30821.6 provides that a violation of a cease and desist order, including an Executive Director Cease and Desist Order, or a restoration order can result in civil fines of up to \$6,000 for each day in which the violation persists. Section 30805 provides that any person may maintain an action for the recovery of civil penalties provided for in Section 30820 or 30821.6. Section 30822 further provides that exemplary damages may also be imposed for knowing and intentional violations of the Coastal Act or of any orders issued pursuant to the Coastal Act.

### 6. Next Steps

My staff has explained through correspondence with you and your agent that the most expeditious way of resolving this matter would likely be through a Consent Cease and Desist Order and a Consent Restoration Order ("Consent Orders"). Consent Orders are similar to a settlement agreement and would outline the terms and conditions of removal of the alleged violations and restoration of the property. Such an approach would help to resolve the violations at issue without the need for contested enforcement order proceedings before the Commission or litigation, and would also allow you to resolve your civil liability outside of litigation. We are happy to do what we can to help make this happen. Please contact my staff by May 14, 2012 to indicate that you are interested in pursuing a Consent Order.

Please note, as we advised you in our March 29, 2012 and April 16, 2012 letters, and during your telephone conversation with staff on March 12, 2012, that due to the sensitive nature of the area, it is critical that any removal and restoration work be done under an approved restoration plan, which includes provisions to avoid any additional harm to coastal resources.

In accordance with Sections 13181(a) and 13191(a) of the Commission's regulations, you have the opportunity to respond to the Commission staff's allegations as set forth in this Notice of Intent to commence Cease and Desist Order and Restoration Order proceedings by completing the enclosed Statement of Defense form. The Commission's regulations provide 20 days for you to complete and submit the enclosed Statement of Defense form, or until May 28, 2012. However, should this matter be resolved via a settlement agreement, a statement of defense form would not be necessary. In any case, and in the interim, staff would be happy to accept any information you wish to share regarding this matter.

Commission staff has tentatively scheduled the hearing for the proposed Cease and Desist and Restoration Orders (and for the proposed Notice of Violation of the Coastal Act, should you additionally request, in writing, a hearing on this issue) for the upcoming Commission meeting in July 2012. We prefer to work cooperatively with you to resolve the above-mentioned Coastal Act violations amicably and administratively, to avoid any unnecessary legal steps, and are more than willing to do so in the immediate future. Any such resolution, however, will require your immediate attention and proactive efforts to take

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all the steps necessary to comply with the Coastal Act. If you have questions regarding this letter or the pending enforcement case, please feel free to contact my staff. In any event, please contact my staff, Renée Ananda, Statewide Enforcement Analyst at (415) 904-5220 by May 14, 2012 regarding the possible Consent Order.

Sincerely,

  
CHARLES LESTER  
Executive Director

Enclosure: Statement of Defense Form

cc without encl.: Lisa Haage, Chief of Enforcement  
Alex Helperin, Enforcement Staff Counsel  
Aaron McLendon, Statewide Enforcement Supervisor  
Pat Veesart, Southern California Enforcement Supervisor  
Steve Hudson, South Central Coast District Manager  
Renée Ananda, Statewide Enforcement Analyst  
Stephen K. Nguyen, Los Angeles County - Beaches and Harbors

Exhibit 9  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)



*To enrich lives through effective and caring service*



July 9, 2012

Eric and Barbara Linder  
33440 Pacific Coast Highway  
Malibu, CA 90265

Eric and Barbara Linder  
101 Rogers Road  
Irvine, TX 75061

**Santos H. Kreimann**  
Director

**Kerry Silverstrom**  
Chief Deputy

**Gary Jones**  
Deputy Director

Certified Mail, Return Receipt Requested  
and Regular Mail

Dear Mr. & Mrs. Linder:

**ENCROACHMENT WITHIN COUNTY PROPERTY APN 4473-020-903  
ADJACENT 33440 PACIFIC COAST HIGHWAY, MALIBU**

We were notified by the California Coastal Commission that certain improvements were installed illegally on County property adjacent to your property at 33440 Pacific Coast Highway in Malibu (see enclosed photo). Our staff confirmed the encroachment by field inspection. The property wherein the encroachments lie is the sole property of the County. Moreover, the County has not granted you any right to use said public property for your personal use.

Accordingly, we ask that you remove the encroaching improvements no later than August 31<sup>st</sup>, 2012. Should you fail to remove the improvements, we will confer with County Counsel in order to seek all available legal remedies.

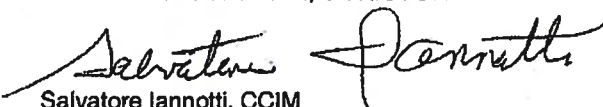
To remove this encroachment you first must apply for and obtain a Right of Entry Permit. The Right of Entry Permit will authorize you to enter County property to remove the improvements and restore the property to its original condition. It may be obtained from:

The Department of Beaches and Harbors  
13837 Fiji Way  
Marina del Rey, CA 90292  
Contact: Stephen Nguyen,  
Senior Real Property Agent  
310-577-7960

Thank you for your cooperation in this matter. If you have any question, please call me at (310) 305-9573. Our office hours are Monday through Thursday from 7 a.m. to 6 p.m.

Very truly yours,

**SANTOS H. KIREIMANN, DIRECTOR**

  
Salvatore Iannotti, CCIM  
Senior Real Property Agent  
Asset Management Division

SK:SP:si  
c: DBH Planning Division  
Stephen Nguyen  
County Counsel  
Renee Ananda, California Coastal Commission  
Richard Mollica, City of Malibu

Exhibit 10  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)

Page 1 of 2





Yellow = County Property  
Red = Private Property

Imagery date: Winter 2011

## CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA  
245 WEST BROADWAY, SUITE 380  
LONG BEACH, CA 90802  
(213) 590-5071



October 14, 1986/do

COASTAL DEVELOPMENT PERMIT NO. 5-85-057

Page 1 of 3

On March 13, 1985, the California Coastal Commission granted to Eric Linder this permit for the development described below, subject to the attached Standard and Special Conditions.

**DESCRIPTION AND SITE:**

Construction of a two-story, single family dwelling with attached three-car garage, swimming pool and septic system on a 1.14-acre blufftop lot.

Site: 33440 Pacific Coast Highway, Malibu, Los Angeles County.

Issued on behalf of the California Coastal Commission by

PETER DOUGLAS

Executive Director

By:

Gary Gleason  
Coastal Program Analyst

**IMPORTANT:** THIS PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT WITH THE SIGNED ACKNOWLEDGEMENT HAS BEEN RETURNED TO THE COMMISSION OFFICE.

**ACKNOWLEDGEMENT**

The undersigned permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions thereof.

Date

Signature of Permittee

Exhibit 11  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)

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

#### SPECIAL CONDITIONS:

This permit is subject to the following Special Conditions:

1. Geologic Stability.

Prior to transmittal of permit, the applicant shall be required to submit revised plans which indicate no development within the 25-foot setback area from the top of the bluff edge. This setback does not apply to the blufftop security fence proposed in the project. Such plans shall be subject to review and approval of the Executive Director.

2. Lateral Access.

Prior to transmittal of permit, the Executive Director shall certify in writing that the following condition has been satisfied. The

Exhibit 11  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)

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 a public agency or private association approved by the Executive Director, an easement for public access and passive recreational use along the shoreline. The documents shall also restrict the applicants from interfering with present use by public of the area subject to the offer and shall include legal descriptions of both the applicant's parcel or parcels and the easement area.

Such easement shall include all lands seaward of the toe of the bluff (as determined by the Executive Director) to the mean high tide line. The form and content of the approved document shall include a topographical map prepared by a licensed civil engineer showing the location and elevation contours of the bluff with respect to the landward property line. The map shall be suitable for recording with the other necessary documents.

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 period running from the date of recording.

3. Scenic Resources.

Prior to transmittal of permit, the applicant shall be required to submit a deed restriction for recording subject to the approval of the Executive Director prohibiting the construction of private stairways, structures or alterations on or down the bluff or within 25 feet of the bluff face.

4. Prior to transmittal of permit, the applicant shall be required to submit revised plans which indicate that the proposed six-foot in height wall on the property line adjacent to Pacific Coast Highway has been reduced in height to three feet or that the fence has been relocated nearer the structure at the 118-foot contour line.



## CALIFORNIA COASTAL COMMISSION

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



RECEIVED

SEP 10 1998

Page 1 of 3

Date: July 23, 1998

Permit Application No. 4-97-077

CALIFORNIA  
COASTAL COMMISSION **COASTAL DEVELOPMENT PERMIT**  
SOUTH CENTRAL COAST DISTRICT

On April 13, 1998, the California Coastal Commission granted to Eric & Barbara Linder, permit 4-97-077, this permit subject to the attached Standard and Special Conditions, for development consisting of: Removal of a horse corral, fence, gate, wooden retaining structures and water system, and the restoration and revegetation of a coastal bluff and is more specifically described in the application on file in the Commission offices and is more specifically described in the application on file in the Commission offices.

The development is within the coastal zone in Los Angeles County at 33440 Pacific Coast Highway, Malibu.

Issued on behalf of the California Coastal Commission by,

PETER DOUGLAS  
Executive Director

By: Steve Hudson  
Coastal Program Analyst

ACKNOWLEDGMENT:

The undersigned permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions thereof.

The undersigned permittee acknowledges that Government Code Section 818.4 which states in pertinent part, that: "A public entity is not liable for injury caused by the issuance. . . of any permit. . ." applies to the issuance of this permit.

IMPORTANT: THIS PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT WITH THE SIGNED ACKNOWLEDGEMENT HAS BEEN RETURNED TO THE COMMISSION OFFICE. 14 Cal. Admin. Code Section 13158(a).

8/10/98

Date

  
Permittee

A5: 8/95

Exhibit 12  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)

Page 1 of 3

## COASTAL DEVELOPMENT PERMIT

Page 2 of 3  
Permit Application No. 4-97-077

### STANDARD CONDITIONS:

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

### SPECIAL CONDITIONS:

#### 1. Revised Bluff Restoration Plan

Prior to the issuance of a coastal development permit, the applicant shall submit for the review and approval of the Executive Director, a revised bluff restoration plan which utilizes only native drought resistant plants, endemic to coastal bluffs. The revegetation program shall use a mixture of seeds and container plants to increase the potential for successful revegetation.

#### 2. Monitoring Program

(a) Prior to the issuance of a coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, a three (3) year Monitoring Program, prepared by a landscaping architect or resource specialist, which outlines revegetation performance standards to ensure that revegetation efforts at the project site are successful. Successful site restoration shall be determined if the revegetation of

Exhibit 12  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)

## NOTICE OF INTENT TO ISSUE PERMIT

Page 3 of 3  
Permit Application No. 4-97-077

native plant species on site is adequate to provide 90% coverage by the end of the three (3) year monitoring period and is able to survive without additional outside inputs, such as supplemental irrigation.

(b) The applicant shall submit, for the review and approval of the Executive Director, written annual reports, beginning after the first year following implementation of the restoration program and include recommendations for mid-program corrections, if necessary. At the end of a three (3) year period, a final detailed report shall be submitted for review and approval of the Executive Director. If this report indicates that the restoration project has in part, or in whole, been unsuccessful, based on the performance standards outlined in the monitoring program, the applicant shall be required to submit a revised or supplemental program to compensate for those portions of the original program which were not successful. The revised, or supplemental restoration program shall be processed as an amendment to this coastal development permit.

### **3. Implementation and Completion of the Restoration Plan**

The applicant shall implement and complete the restoration and revegetation plans for bluff restoration and revegetation within 45 days of the issuance of this permit. The Executive Director may grant additional time for good cause.

### **4. Removal of All Unpermitted Structures**

The applicant agrees shall remove the corral, fence, gate, and any other development, including the wooden board retaining structures, with the exception of the water system, located on the bluff within 45 days of the issuance of this permit. All restorative grading shall be conducted with the use of hand tools only. The water system, including all pipes and faucets, shall be removed and/or capped below grade upon completion of the three year revegetation monitoring period. The applicant shall submit proof of the removal of the water system as part of the final monitoring report required by special condition one (1).

### **5. Condition Compliance**

The requirements specified in the foregoing special conditions that the applicant is required to satisfy as a prerequisite to the issuance of this permit must be fulfilled within 45 days of Commission action. Failure to comply with such additional time as may be granted by the Executive Director for good cause, will result in the nullification of this permit approval.

jr

Exhibit 12  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)

## 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

May 18, 2012

Mr. Sherman L. Stacey  
Gaines and Stacey LLP  
1111 Bayside Drive, Suite 280  
Corona Del Mar, California 92625

FAX (949) 640-8330

Subject: Violation Case Nos. V-4-07-039 and 4-97-077 - 33440 Pacific Coast Highway,  
Malibu - (Linder)

Dear Mr. Stacey:

Attached for your records is a copy of the May 7, 2012 Notice of Intent (NOI) letter that was issued to Eric and Barbara Linder (your clients) for the subject violation cases. I note that your April 10, 2012 letter asked for copies of the proposed consent orders, and we will provide those to you at the same time we send them to your clients. As clarification, we send formal notices to the property owners, and generally only send copies to counsel when we have a request to do so from the client. I interpret your email as an indication of this consent from your clients, but would appreciate written confirmation of this. We will make every effort to coordinate with you in the future.

Thank you for your e-mail message on May 15, 2012 in which you request an extension of 18 days in order to respond to the NOI and, again, express the Linder's desire to resolve this matter through a Consent Cease and Desist Order and Consent Restoration Order (Consent Orders). Your request for an extension would result in extending the deadline for the submission of a Statement of Defense (SOD) form from May 28, 2012 to June 8, 2012. We are obviously anxious to resolve this matter and avoid any future impacts to coastal resources and appreciate your cooperation towards this end. I appreciate the Linder's expressed continued willingness to work with staff to resolve the pending enforcement case through a Consent Order, and should we do so, the SOD deadlines will be largely mooted. As mentioned in the NOI the SOD form is not necessary should this matter be resolved via a settlement agreement. Typically, to spare time, effort, and attorney's fees, and to focus on settlement discussions, parties resolving Coastal Act violations with the Commission through Consent Orders elect not to submit the SOD form. However, staff feels it is not unreasonable to provide you with a brief extension of the deadline to submit the SOD form, should you still feel the need to submit the form. If this is the case, please complete and tender the document to Commission staff by **June 1, 2012**.

Exhibit 13  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)

Eric and Barbara Linder  
Violation Nos. V-4-07-039 and V-4-94-040  
5/18/2012  
Page 2 of 2

If we are making significant progress towards settling this matter, we will be glad to provide additional extensions as long as we can still meet the necessary deadlines to get this matter before the Commission at the July hearing.

In the meantime, we would be happy to discuss the terms of resolution, and will make ourselves available so that this matter may be resolved expeditiously. Staff will forward you proposed Consent Orders for your and your clients' review and would like to schedule a time to discuss a potential resolution as soon as possible thereafter. Should you have any questions regarding this letter or the pending enforcement case, please feel free to contact me. I can be reached in writing at the address listed above in the letter head if you have questions. I can also be reached by telephone at (415) 904-5220. Thank you for your anticipated cooperation.

Sincerely,



Renée T. Ananda  
Statewide Enforcement Analyst

Attachment

cc: Lisa Haage, Chief of Enforcement (w/o attachment)  
Alex Helperin, Staff Counsel (w/o attachment)  
Aaron McLendon, Statewide Enforcement Supervisor (w/o attachment)  
N. Patrick Veasart, Southern California Enforcement Supervisor (w/o attachment)  
Eric and Barbara Linder (w/o attachment)

Exhibit 13  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)

## CALIFORNIA COASTAL COMMISSION

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



Via Regular and Certified Mail

May 7, 2012

Eric and Barbara Linder  
33440 Pacific Coast Highway  
Malibu, CA 90265  
(Certified Mail No. 7006 2760 0005 5883 4609)

Eric and Barbara Linder  
101 Rogers Road  
Irving, Texas 75061  
(Certified Mail No. 7006 2760 0005 5883 4623)

Subject: Notice of Intent to Record a Notice of Violation and to Commence  
Cease and Desist Order and Restoration Order Proceedings

Violation File Numbers: V-4-07-039 and V-4-94-040 (Linder)

Property Location: 33440 Pacific Coast Highway, Malibu, Los Angeles County, APNs 4473-  
020-017 and 4473-020-018

Alleged Violations: Include: (1) unpermitted grading and removal of major vegetation on a coastal bluff; (2) unpermitted installation of concrete/rock pool area patio within an area deed-restricted to provide for a 25-ft setback from the edge of the coastal bluff; (3) construction of a swimming pool in a configuration and location inconsistent with Coastal Commission-approved plans and the terms of approval of Coastal Development Permit No. 5-85-057; (4) unpermitted construction of a horse corral and associated horse facilities, including fencing, gates, and watering infrastructure, within an area deed-restricted to provide for a 25-ft setback from the edge a coastal bluff; (5) unpermitted construction of a path and concrete stairs on the bluff face for private beach access to a public beach; and (6) failure to comply with conditions of Coastal Development Permit (CDP) No. 5-85-057 and CDP 4-97-077. Specific permit conditions whose requirements were not satisfied include (a) Special Condition No. 3 of CDP 5-85-057, which prohibits construction within 25 feet of the bluff face, and which was violated by the alleged violations listed in points 2, 4, and 5, above; and (b) Special Conditions 2(b), 3, and 4 of CDP 4-97-077, which require submittal of annual monitoring reports, implementation and completion of the restoration plan, and submittal of proof of the removal of the water system as part of the final monitoring report required by Special Condition 1, respectively.

Exhibit 13  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)

Dear Mr. and Ms. Linder,

This letter follows up the March 12, 2012 telephone conversation you had with Renée Ananda of the Coastal Commission ("Commission") staff, regarding alleged violations on property you own at 33440 Pacific Coast Highway, in Malibu, Los Angeles County ("subject property"). The alleged violations include, but are not limited to: (1) unpermitted grading and removal of major vegetation on a coastal bluff; (2) unpermitted installation of concrete/rock pool area patio within an area deed-restricted to provide for a 25-ft setback from the edge of the coastal bluff; (3) construction of a swimming pool in a configuration and location inconsistent with Commission-approved plans and the terms of approval of Coastal Development Permit No. 5-85-057; (4) unpermitted construction of a horse corral and associated horse facilities, including fencing, gates, and watering infrastructure within an area deed restricted to provide for a 25-foot setback from the edge of a coastal bluff; (5) unpermitted construction of a path and concrete stairs on the bluff face for private beach access to a public beach; and (6) failure to comply with conditions of Coastal Development Permit (CDP) No. 5-85-057 (prohibiting development on or within 25 feet of the bluff face) and CDP No. 4-97-077 (requiring restoration, the submittal of monitoring reports, and the submittal of proof of the removal of the water system as part of the final monitoring report).

We are very encouraged by your stated willingness to take the steps necessary to bring the subject property into compliance with the Coastal Act and are happy to continue working with you to achieve that end. As staff mentioned in our discussions, this letter is intended to provide you notice, as required by Commission regulations, of my intent, as the Executive Director of the Commission, to commence proceedings for issuance of Cease and Desist and Restoration Orders and a Notice of Violation of the Coastal Act (NOVA) to address violations of the Coastal Act on the subject property. In addition, this letter provides notice of my intent, as the Executive Director of the Commission, to record a NOVA. This does not preclude in any way our ability to resolve these matters through a Consent Order, of course, and we still hope to do so.

As you are aware through numerous communications over the past eighteen years (1994 - 2012), the Commission has been attempting to resolve the outstanding violations on your property, for a very long time. The alleged violations are located on and at the edge of a coastal bluff, and in an area on the property where development has been specifically prohibited (see Special Condition No. 2 of CDP No. 5-85-057, as discussed more fully below). In addition, the City of Malibu's LCP provides that bluffs are Environmentally Sensitive Habitat Areas (ESHA) and requires that all ESHA shall be protected. The LCP, additionally, specifically prohibits confined animal/horse facilities and the disposal of animal waste in ESHA. ESHA including certain plant and animal life and their habitats, are afforded special protection pursuant to the Coastal Act and the certified LCP, "because of their special nature or role in an ecosystem and [ability to] ...be easily disturbed or degraded by human activities and developments" (see Coastal Act Section 30107.5). Only certain types of development are permissible in ESHAs. For example, under Section 30240 of the Coastal Act, only resource-dependent uses are permitted within ESHAs. Similarly, City of Malibu Land Use Plan Policy 3.8 of the certified LCP specifies that "Environmentally Sensitive Habitat Areas (ESHAs) shall be protected against significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas". The alleged violations at issue appear to have occurred within and adjacent to ESHA, not only causing impacts to those areas, but also preventing their recovery. For these reasons, the development at issue is not only unpermitted, it is also inconsistent with the resource protection policies of the Coastal Act and Malibu's certified LCP.



### History of Alleged Violations

Page 5 of 43

Commission staff has determined that alleged violations have occurred on and remain at your property located at 33440 Pacific Coast Highway in Malibu, Los Angeles County. The alleged violations, as described above, took place between 1985 and 2001 on the sandy beach, coastal bluff face, and on the bluff top within the required 25-foot setback area.

Pursuant to Section 30600(a) of the Coastal Act, any person wishing to perform or undertake development in the Coastal Zone must obtain a CDP, in addition to any other permit(s) required by law. "Development" is defined by section 30106 of the Coastal Act as:

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

The alleged violations listed above include unpermitted development. The unpermitted development constitutes "development", as defined under the Coastal Act, therefore it requires a CDP. Any non-exempt development activity conducted in the Coastal Zone without a valid CDP, or that is not in substantial conformity with a previously issued permit, constitutes a violation of the Coastal Act. As noted above, the development addressed herein lacked permits. Moreover, some of the development is also directly inconsistent with conditions contained in previously-issued permits for your property.

Commission staff communications with you regarding the violations on the subject property include letters, meetings, and phone calls over a period of eighteen years, including letters from Commission enforcement staff sent August 23, 1994, December 5, 1994, May 4, 1995 (re-sent on May 5<sup>th</sup> and June 28<sup>th</sup>), June 28, 1995, August 30, 1995, March 26, 1996, November 27, 1996, March 17, 1997, April 24, 1997, October 10, 1997, April 13, 1998, September 24, 2007, December 11, 2007, February 6, 2009, July 29, 2011, August 31, 2011, February 27, 2012, February 29, 2012, and March 12, 2012. The following is a chronology of the activity to date regarding the alleged violations on the subject property.

In light of the fact that there has been so many communications and events, including several sets of violations, regarding the subject property; we thought that a summary of the site history would put the current situation into context.

#### 1. Coastal Development Permit No. 5-85-057 – Construction of Single Family Residence

The Commission approved CDP No. 5-85-057 on March 13, 1985 for the construction of a two-story, single-family dwelling with an attached three-car garage, swimming pool, and septic system on a 1.14-acre bluff top lot. CDP No. 5-85-057 also specifically prohibits the construction of private stairways, structures, or alterations on or down the bluff or within 25 feet of the bluff face; among other conditions. Thus the path and concrete stairs on the bluff face for private beach access to a public beach, the horse

facilities, and the patio around the pool are all not only unpermitted, but also violate this specific prohibition in CDP 5-085-057. As provided in plans approved pursuant to CDP 5-87-057, the swimming pool was to be a rectangle constructed in a North-South direction, extending seaward from the home. The as-built swimming pool is configured in an East-West orientation, paralleling the edge of the bluff.

## 2. Violation File No. V-4-94-040 – Original Violation

Special Condition No. 3 of CDP 5-85-057 required that:

*Prior to the transmittal of permit, the applicant shall be required to submit a deed restriction for recording subject to the approval of the Executive Director prohibiting the construction of private stairways, structures or alterations on or down the bluff or within 25 feet of the bluff face. [Sic]*

This required deed restriction was properly recorded with Los Angeles County as Document No. 86 1366723. Despite this, unpermitted development occurred on the bluff top within the deed-restricted 25-ft. setback. Unpermitted development also includes the placement of the path and concrete stairs on the bluff face that are still in existence, extending down the bluff face. However, Special Condition No. 3 of CDP 5-85-057 explicitly prohibits the construction of private stairways, structures or alterations on or down the bluff or within 25 feet of the bluff face, yet multiple forms of development persist in that location today. Therefore, to date, you are in violation of CDP 5-85-057.

On August 8, 1994, staff observed unpermitted development on the sandy beach and a path and concrete stairs on the bluff face to provide for private beach access to a public beach. On August 23, 1994, Commission staff sent you a certified letter which informed you that the unpermitted development on the coastal bluff on your property was a violation of the Coastal Act. Staff requested that you stop the unpermitted work and submit by September 20, 1994, a CDP application to resolve the unpermitted development on the coastal bluff that was undertaken on your property, and any other development activities contemplated on your property for the near future. Staff's August 23<sup>rd</sup> letter also notified you that your failure to comply with the request would result in referral of your case to the Commission's Statewide Enforcement Unit and informed you that there was a potential for penalties associated with Coastal Act violations.

On December 5, 1994, having not received a response to our August 23<sup>rd</sup> letter or any other form of communications from you, Commission staff sent you another certified letter. Staff again requested that you submit a completed CDP application to resolve the unpermitted development on the coastal bluff undertaken on your property, by January 3, 1995. The December 5<sup>th</sup> letter also notified you that staff was in the process of preparing your violation case for referral to the Commission's Statewide Enforcement unit for further enforcement action if you failed to submit a completed CDP application by January 3<sup>rd</sup>. Additionally, staff informed you that there was a potential for imposing penalties.

On May 4, 1995, Commission staff sent Mr. Sherman Stacey (an attorney then acting as your agent) another certified letter, because, as of that date, neither you nor Mr. Stacey on your behalf had submitted a CDP as we requested in our prior letters, dated August 23<sup>rd</sup> and December 5<sup>th</sup>, 1994. Staff indicated a preference to resolve the matter of unpermitted development on the bluff administratively through the issuance of either an after-the-fact (A-T-F) permit to retain the unpermitted development or a permit for removal and restoration of the site. Staff met with Mr. Stacey (after the August 23<sup>rd</sup> letter was sent) and discussed the matter of your alleged violations, the existence of a path [and concrete stairs] on the bluff face, and the Commission's past permit that prohibited such development. Staff reminded Mr.

Stacey that development activity performed without a CDP constitutes a violation of the Coastal Act's permitting requirements and that you could be subject to penalties as authorized under the Coastal Act. Staff also informed Mr. Stacey that Coastal Act sections 30803 and 30805 authorize the Commission to initiate litigation to seek injunctive relief and an award of civil fines for violations, respectively. Furthermore you were informed that Section 30820(b) authorizes additional penalties against an individual who "intentionally and knowingly" performs any development in violation of the Coastal Act. The May 4<sup>th</sup> letter stated that you were entitled to apply to retain the unpermitted development. Staff requested a CDP application be submitted by June 9, 1995 in order to delay a referral of this matter to our Statewide Enforcement Unit in San Francisco.

On June 28 and August 30, 1995, Commission staff sent two more certified letters to Mr. Sherman Stacey to again request that you resolve the matter of the unpermitted development on the bluff at your property. Staff re-iterated in each letter the several points that were raised in the May 4, 1995 letter to Mr. Stacey, and again requested that you, as his client, submit a CDP application for the restoration of the site or the retention of the unpermitted development. The June 28<sup>th</sup> letter set a deadline of July 21<sup>st</sup>; and the August 30<sup>th</sup> letter deadline for submitting a CDP application was October 6<sup>th</sup>.

On March 26, 1996, Commission staff sent you a letter which noted that as of that date, you and Mr. Stacey had still failed to resolve the violation or to respond to staff's requests that you submit a CDP application for the restoration of the bluff. Staff also informed you that we recommended that you submit an application for the restoration of the bluff face, rather than for retention of the unpermitted development; since that would be more productive for all, in light of the fact that the placement of any structure or the removal of vegetation on a bluff face is not consistent with the applicable Land Use Plan. Staff reminded you that this violation was significant as it involved development of a coastal bluff face, which is designated as an environmentally sensitive habitat area. Staff also reminded you that the Coastal Act allows the Commission to seek injunctive relief through litigation and to impose penalties for violations and, as stated in previous letters. Staff's March 26<sup>th</sup> letter also informed you, that since the violation was still in place, staff was in the process of preparing your violation case for referral to the Commission's Statewide Enforcement Unit and would be requesting that a "Notice of Violation" be recorded against your property. Staff's referral also would include a request to proceed with issuing a cease and desist order for restoration of the bluff.

On April 16, 1996, Commission staff received a letter, dated April 12, 1996, from Mr. Sherman Stacey. The letter was accompanied by a Revegetation Plan, prepared by Dennis Turner, Landscape Architect, dated October 1995, submitted on your behalf for staff review. Mr. Stacey's letter also indicated you desired to resolve this matter by restoring the subject property. On April 24, 1996, Mr. Sherman Stacey, in a telephone conversation with staff, indicated that he would, on your behalf, submit a CDP application for restoration of the site.

By November 27, 1996, no such CDP application had been received. Therefore, staff sent a certified letter to Mr. Sherman Stacey. Staff's letter re-capped the April 24, 1996 telephone conversation and confirmed receipt of your April 12<sup>th</sup> submittal. Staff provided you with preliminary comments on the landscape plan (prepared by Dennis Turner). In yet another attempt to resolve the situation, staff requested that a CDP application be submitted by January 3, 1997, for removal of the unpermitted development and restoration of the site or to retain the unpermitted development.

On March 17, 1997, Commission staff sent a certified letter to Mr. Sherman Stacey, as a follow-up to the staff's phone call made to Mr. Stacey on March 6, 1997, which was not responded to. The March

17<sup>th</sup> letter noted that Mr. Stacey had submitted a plan (prepared by Dennis Turner) on April 12, 1996, on your behalf; however, he had not taken steps to resolve the violation, nor had he submitted the required CDP application. Despite this, staff provided yet another opportunity to defer commencement of formal legal action, if you submitted a completed CDP application by April 11, 1997.

On April 10, 1997, Mr. Stacey submitted a CDP application, dated April 9, 1997, on your behalf, seeking authorization for the removal of the unpermitted development (located on the bluff face and sandy beach) and bluff restoration and revegetation. The CDP application was for the revegetation of the area from which the unpermitted corrals were removed, i.e., the beach and lower bluff area. Permit staff reviewed your CDP application and determined that it was incomplete. On April 24, 1997, staff sent Mr. Stacey a letter informing him that your CDP application was incomplete and requested that you submit the required materials by May 30, 1997. Several communications transpired between staff and your representative subsequent to April 24, 1997 (including on August 26<sup>th</sup>, September 10<sup>th</sup>, October 10<sup>th</sup>, November 14<sup>th</sup>, December 8<sup>th</sup> and 12<sup>th</sup>) in working with you to complete your CDP application (No. 4-97-077) for the restoration of the subject property, which was eventually completed.

### 3. Coastal Development Permit No. 4-97-077– Removal of Alleged Violations and Revegetation and Restoration of the Site.

On April 13, 1998, the Commission approved CDP 4-97-077 for the removal of the horse corral, fence, gate, wooden retaining structures and water system, and the restoration and revegetation of the coastal bluff on the subject property. Staff issued a Notice of Intent to Issue a Permit (dated April 13, 1998), upon your compliance with Special Condition Nos. 1 – 5. CDP 4-97-077 was issued on July 23, 1998.

The Special Conditions required that you submit a revised Bluff Restoration Plan (Special Condition No. 1) and a Monitoring Plan (Special Condition No. 2) prior to issuance of the CDP. Special Condition No. 2 included a requirement that you submit written annual reports (which, to this date, you have never provided/submitted). Within 45 days of issuance of the CDP you were required to implement the approved, revised Bluff Restoration Plan and complete the restoration and revegetation (Special Condition No. 3) and remove all unpermitted structures (Special Condition No. 4). Lastly, you were required to comply with Special Condition Nos. 1 and 2 within 45 days of Commission action. On June 30, 1998 (78 days after the deadline) you submitted the Bluff Restoration Plan, which was revised and subsequently re-submitted on July 13, 1998. The revised Bluff Restoration plan was approved by the Commission on July 23, 1998. On June 30, 1998 (78 days after the deadline) you also submitted the Monitoring Program prepared by Dennis Turner, dated June 1998. Up to that date no documentation had been submitted to staff that indicated you had complied with Special Condition Nos. 2(b), 3, and 4. Furthermore, as noted below violations remained on the subject property.

### 4. Violation File No. V-4-07-039 – New Alleged Violations

On May 8, 2001, staff visited the site area to confirm whether or not the site had been restored. Staff observed from the nearby public area that the restoration, pursuant to CDP 4-97-077, had not been completed. In fact not only did you fail to restore the subject property as required by CDP 4-97-077, but you had undertaken new, alleged violations, including a new horse corral, which was observed on the bluff top. Therefore staff opened a violation case for non-compliance with CDP 4-97-077 (for the removal and restoration and revegetation of the site) and the new alleged violations which included a new horse corral on the bluff top.

On September 13, 2007, staff once again observed that there was unpermitted development on the site, including a horse corral, shade structure and horses on the bluff top. On September 24, 2007, staff sent you a new Notice of Violation for V-4-07-039 that asked you to bring your property into compliance with the Coastal Act by submitting 1) a complete CDP application to the City of Malibu by October 31, 2007, for either the removal of the unpermitted development and restoration of the site or to seek to authorize the as-built development; 2) a restoration monitoring report to the Commission pursuant to Special Condition 2(b) of CDP 4-97-077 by November 31, 2007; 3) and to contact staff by no later than October 31, 2007, regarding how you intended to resolve the violation. Staff also informed you that you were not in conformance with Special Condition No. 3 of CDP No. 5-85-057, which prohibited development within the deed-restricted 25-ft setback from the edge of the bluff top. The September 24<sup>th</sup> Notice additionally informed you that you were in violation of CDP 4-97-077, which was issued to you to resolve your previous violation (V-4-94-040) regarding unpermitted development on the bluff.

In response to your December 4, 2007 telephone request for an extension on the due date for the submittal of a final restoration report, staff sent you a letter, dated December 11, 2007, which granted you a time extension to January 17, 2008 to address the requirements of Special Condition 2(b), which required you to submit a restoration report that documents and details the relative success of the restoration.

On February 6, 2009, staff sent you a letter that again requested photos and written verification that all horses and structures had been removed and requested you submit the required restoration report pursuant to CDP 4-97-077. Staff received no response to this letter or any confirmation that any of the steps had been taken.

On July 29, 2011, after confirmation that the unpermitted development was still in place, staff again wrote you and reminded you of the unpermitted development and non-compliance with CDP 5-85-057 Special Condition No. 3 and CDP 4-97-077 Special Conditions No. 2(b), 3, and 4. Staff, again, requested that you stop unpermitted development activity, remove the unpermitted development, and restore the site. The July 29, 2011 letter also requested that you contact staff by August 17, 2011, regarding how you intended to resolve the violation. Staff received no response to this letter, either.

On August 22, 2011, staff wrote you and again informed you of the alleged violations and your non-compliance of CDP 5-85-057 Special Condition No. 3 and CDP 4-97-077 Special Condition Nos. 2(b), 3, and 4. Staff requested that you stop all alleged violations, and again provided you with options to resolve your violation case administratively, such as through a "consent order". Staff, again advised you on a number of potential remedies to address the violations under the Coastal Act, and reiterated the potential for recordation of a Notice of Violation against your property, after providing notice and the opportunity for a hearing.

On December 6, 2011, again, since we had not received any responses to our letters, commission staff visited the site area and, viewing it from nearby/adjacent public areas, confirmed the continued presence of the horse corral, fencing, remnant brick supports/posts from the shade structure, and horses on the Subject Property.

Staff sent you letters dated February 27 and 29, 2012, again, outlining staff's efforts to resolve this matter and requested that you inform staff as to how you anticipated resolving the subject violations. Staff letters informed you of our preference to resolve your case in a timely and amicable manner and reiterated

the Commission's authority under the Coastal Act with respect to the enforcement of penalties for violations.

Staff also contacted you by telephone many times over the years to attempt to resolve this matter and to highlight the need for a response to our previous letters. In your most recent conversation with staff, on March 12, 2012, you stated a willingness to work to resolve the violation. Staff sent you a letter, dated March 29, 2012 that recapped the March 12 conversation and informed you about the opportunity to resolve this matter through the Consent Order process.

On April 12, 2012, Mr. Stacey submitted a letter on your behalf, dated April 10, 2012. Mr. Stacey requested that we send him a proposed consent order to resolve this matter. On April 16, 2012, staff sent Mr. Stacey a letter that confirmed receipt of his letter, dated April 10<sup>th</sup>, and informed him that the proposed Consent Cease and Desist Order and Restoration Order would be sent to you and him, once it was prepared.

As you know, you have been provided with options to resolve your violation case administratively, such as through a "consent order". Staff, while hopeful that your violation case could be resolved amicably, further advised you in the April 16, 2012 letter regarding a number of potential remedies to address the Coastal Act violations pursuant to Coastal Act Sections 30809, 30810, 30811, 30803, 30805, 30820 (a) (1), and 30820 (b). Staff also informed you that the Executive Director is authorized by 30812 to record a Notice of Violation against your property, after providing notice and the opportunity for a hearing.

In summary, the development on the subject property that is inconsistent with the previously-issued CDPs constitutes violations of the Coastal Act. You remain in non-compliance with CDP 5-85-057 Special Condition No. 3 and CDP 4-97-077 Special Condition Nos. 2(b), 3, and 4, to date. Moreover, you conducted development on the bluff top and bluff face without an approved CDP, which is required by both the Coastal Act and the City of Malibu's certified LCP. This, as you know, is also a violation of the Coastal Act. The subject unpermitted development raises considerable concerns regarding impacts to coastal resources, which, as you know, are protected by the LCP. The unpermitted development is also a concern as it is inconsistent with the provisions and provisions of the LCP, Local Implementation Plan (LIP) and policies of the Land Use Plan (LUP) which are more fully listed in the "Restoration Order" section below.

## 5. Notice of Intent

### Cease and Desist Order

Staff has proposed that the violations at issue would be amicably resolved through Consent Cease and Desist and Restoration Orders, which would outline the terms for removal of the alleged violations and restoration of the site, and also allow for the resolution of penalties. The standards for the Commission's issuance of a Cease and Desist Order are discussed in this section. The standards for the Commission's issuance of a Restoration Order are presented in the section that follows.

The Commission has enforcement jurisdiction over the subject property and over the subject property as it pertains to CDP Nos. 5-85-057 and CDP 4-97-077 that were issued by the Commission. The Commission's authority to issue Cease and Desist Orders is set forth in Section 30810(a) of the Coastal Act, which states, in part, 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. 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.*

The City of Malibu requested that we take the lead in this matter, and we have confirmed our intention to do so.

Section 30810(b) of the Coastal Act states that the Cease and Desist Order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with the Coastal Act – including the requirement for removal of any unpermitted development or material.

Section 30600(a) of the Coastal Act states that, in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the coastal zone must obtain a CDP. As noted previously, “development” is defined by Section 30106 of the Coastal Act. The activities at issue in this Cease and Desist Order constitute “development” within the meaning of the above-quoted definition, and therefore anyone performing or undertaking those activities was required to first obtain a CDP.

You, as the property owners, did not obtain a CDP for the subject alleged violations; therefore, the subject alleged violations is not authorized. In addition, certain items of the alleged violations listed above are also inconsistent with a previously issued CDP. For these reasons, the criteria of Section 30810(a) of the Coastal Act have been met. Therefore, I am issuing this Notice of Intent to commence Cease and Desist Order proceedings. The procedures for the issuance of Cease and Desist Orders are described in Sections 13180 through 13188 of the Commission’s regulations, which are codified in Title 14 of the California Code of Regulations.

The above-described alleged violations at issue in this matter are located immediately adjacent to the edge of a coastal bluff approximately 75 feet above El Sol County Beach, and partially occupy APN 4473-020-903 (which is owned by Los Angeles County). The proposed Cease and Desist Order will direct you to (1) cease and desist from maintaining any development on the subject property not authorized pursuant to the Coastal Act; (2) cease and desist from engaging in any further development on the subject properties unless authorized pursuant to the Coastal Act; remove all alleged violations from the property at issue; and (3) take all steps necessary to comply with the Coastal Act, including obtaining all obligatory approvals or other necessary permits, such as a Right of Entry permit from the County for the removal of the unpermitted development from the County-owned parcel.<sup>1</sup>

#### Restoration Order

Restoration of the affected areas will be part of any proposed resolution due to the sensitive nature of the ecosystem in which the development occurred, and the impacts to resources as a result of the

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<sup>1</sup> Stephen Nguyen, Los Angeles County Beaches and Harbors, Pers. Comm., April 30, 2012.



alleged violations. Section 30811 of the Coastal Act authorizes the Commission to order restoration of a site as follows:

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

The specified unpermitted activities meet the criteria of Section 30811 of the Coastal Act. As noted above, development has occurred on the property without a coastal development permit from the Commission in violation of Section 30600(a) of the Coastal Act, which is inconsistent with the provisions and conditions of two approved Coastal Development Permits; the development is in violation of CDPs Nos. 5-85-057 and 4-97-077. These violations are also violations of and inconsistent with the requirements of the certified LCP and are inconsistent with numerous provisions of the Coastal Act, including Section 30251 (protection of scenic and visual qualities); Section 30230 (protection of marine resources); Section 30231 (protection of biological productivity and water quality); Section 30240 (protection of environmentally sensitive habitat); Section 30253 (minimization of adverse impacts); and Section 30236 (water supply and flood control), as well as parallel and related provisions of the LCP.<sup>2</sup>

Lastly, the alleged violations are causing "continuing resource damage," as defined by Section 13190 of the Commission's regulations.

For the reasons stated above, I have decided it is necessary to commence a Restoration Order proceeding before the Commission. The procedures for the issuance of Restoration Orders are described in Sections 13190 through 13197 of the Commission's regulations, which are codified in Title 14 of the California Code of Regulations. The proposed Restoration Orders would provide for removal of the alleged violations and to return the site to its pre-violation condition.

#### Notice of Violation against the Coastal Act

As you have been informed in prior letters, the Coastal Act contains a provision for notifying potential, future purchasers of real property of the existence of a Coastal Act violation on the property. The Executive Director of the Commission may record a Notice of Violation against the title to the property pursuant to Coastal Act Section 30812, after providing notice and the opportunity for a hearing.

Should you choose to object to the recording of a Notice of Violation 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 calendar days of the postmarked mailing of this notification. The objection should be sent to Renée Ananda, Statewide Enforcement Analyst at the Commission's headquarters office (the address is provided above in the letterhead), no later than May 28, 2012. 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 decide not to object within 20 days of my mailing of this notification, I shall record the Notice of Violation in the Los Angeles County recorder's

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<sup>2</sup> The subject development is inconsistent with numerous provisions of Malibu's certified LUP and Land Use Implementation Plan (LIP). The development is inconsistent with LIP Sections 6.5.D.1, 6.5.D.2, 6.5.D.3, and 6.5.H all of which ensure the protection of scenic and visual resources; LUP Policies 3.1, 3.8, 3.77, 3.78, 3.11.2.A, and 3.149 for the protection of environmentally sensitive habitat areas; and LIP Sections 10.4.D and 10.4.F which address geologic stability on coastal bluffs.

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. This notice is intended to put other parties on notice of the status of the property and to avoid unnecessary confusion. The Notice of Violation will be rescinded once the violations are resolved.

### Civil Liability

Coastal Act Section 30820(a) provides that any person who violates any provision of the Coastal Act may be subject to a penalty not to exceed \$30,000 per violation. Further, Section 30820(b) states that, in addition to any other penalties, any person who "knowingly and intentionally" performs any development in violation of the Coastal Act can be subject to a civil penalty of up to \$15,000 per violation for each day in which each violation persists. Section 30821.6 provides that a violation of a cease and desist order, including an Executive Director Cease and Desist Order, or a restoration order can result in civil fines of up to \$6,000 for each day in which the violation persists. Section 30805 provides that any person may maintain an action for the recovery of civil penalties provided for in Section 30820 or 30821.6. Section 30822 further provides that exemplary damages may also be imposed for knowing and intentional violations of the Coastal Act or of any orders issued pursuant to the Coastal Act.

### 6. Next Steps

My staff has explained through correspondence with you and your agent that the most expeditious way of resolving this matter would likely be through a Consent Cease and Desist Order and a Consent Restoration Order ("Consent Orders"). Consent Orders are similar to a settlement agreement and would outline the terms and conditions of removal of the alleged violations and restoration of the property. Such an approach would help to resolve the violations at issue without the need for contested enforcement order proceedings before the Commission or litigation, and would also allow you to resolve your civil liability outside of litigation. We are happy to do what we can to help make this happen. Please contact my staff by May 14, 2012 to indicate that you are interested in pursuing a Consent Order.

Please note, as we advised you in our March 29, 2012 and April 16, 2012 letters, and during your telephone conversation with staff on March 12, 2012, that due to the sensitive nature of the area, it is critical that any removal and restoration work be done under an approved restoration plan, which includes provisions to avoid any additional harm to coastal resources.

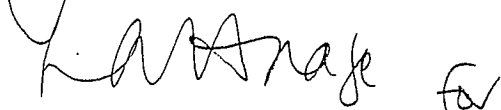
In accordance with Sections 13181(a) and 13191(a) of the Commission's regulations, you have the opportunity to respond to the Commission staff's allegations as set forth in this Notice of Intent to commence Cease and Desist Order and Restoration Order proceedings by completing the enclosed Statement of Defense form. The Commission's regulations provide 20 days for you to complete and submit the enclosed Statement of Defense form, or until May 28, 2012. However, should this matter be resolved via a settlement agreement, a statement of defense form would not be necessary. In any case, and in the interim, staff would be happy to accept any information you wish to share regarding this matter.

Commission staff has tentatively scheduled the hearing for the proposed Cease and Desist and Restoration Orders (and for the proposed Notice of Violation of the Coastal Act, should you additionally request, in writing, a hearing on this issue) for the upcoming Commission meeting in July 2012. We prefer to work cooperatively with you to resolve the above-mentioned Coastal Act violations amicably and administratively, to avoid any unnecessary legal steps, and are more than willing to do so in the immediate future. Any such resolution, however, will require your immediate attention and proactive efforts to take

Mr. and Ms. Linder  
May 7, 2012  
Page 12 of 12

all the steps necessary to comply with the Coastal Act. If you have questions regarding this letter or the pending enforcement case, please feel free to contact my staff. In any event, please contact my staff, Renée Ananda, Statewide Enforcement Analyst at (415) 904-5220 by May 14, 2012 regarding the possible Consent Order.

Sincerely,

A handwritten signature in dark ink, appearing to read "Charles Lester", followed by a small "for" in cursive.

CHARLES LESTER  
Executive Director

Enclosure:                      Statement of Defense Form

cc without encl.:              Lisa Haage, Chief of Enforcement  
                                        Alex Helperin, Enforcement Staff Counsel  
                                        Aaron McLendon, Statewide Enforcement Supervisor  
                                        Pat Veesart, Southern California Enforcement Supervisor  
                                        Steve Hudson, South Central Coast District Manager  
                                        Renée Ananda, Statewide Enforcement Analyst  
                                        Stephen K. Nguyen, Los Angeles County - Beaches and Harbors

Exhibit 13  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)

## 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 U. S. MAIL AND FACSIMILE

May 31, 2012

Mr. Sherman L. Stacey  
Gaines and Stacey LLP  
1111 Bayside Drive, Suite 280  
Corona Del Mar, California 92625  
FAX (949) 640-8330

Subject: Violation Case Nos. V-4-07-039 and 4-97-077 (Linder) – 33440 Pacific Coast Highway, Malibu, Proposed Consent Orders and 2<sup>nd</sup> Time Extension

Dear Mr. Stacey:

Thank you for your May 23, 2012 letter that we received in our office on May 29, 2012. This letter serves to respond to your request for another extension of time to file a statement of defense form (SOD) and transmits the enclosed copy of the proposed consent orders for your clients' consideration. The SOD was originally due May 28, 2012. Staff provided you with a brief extension of the deadline to June 1, 2012, as a courtesy, in response to your May 15, 2012 email request for additional time. In the interest of resolving this matter through a consent order, as we understand your client desires, we are willing to extend the deadline (for a second time) until June 8, 2012, per your request.

While we are providing you with this additional extension of time to submit an SOD, we urge you to focus on reviewing these proposed orders as soon as possible so that we can quickly achieve resolution of the violations at your clients' property, thereby rendering the SOD unnecessary.

I look forward to hearing from you regarding this matter and can be reached by telephone at (415) 904-5220 or in writing at the address listed above in the letter head. Thank you, again, for your anticipated cooperation.

Sincerely,

A handwritten signature in cursive script that reads "Renée T. Ananda".

Renée T. Ananda  
Statewide Enforcement Officer

Enclosure

cc: Eric and Barbara Linder (Enclosure Sent under Separate Cover)  
Lisa Haage, Chief of Enforcement (w/o enclosure)  
Alex Helperin, Senior Staff Counsel (w/o enclosure)  
Aaron McLendon, Statewide Enforcement Supervisor (w/o enclosure)

Exhibit 13  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)

## PROPOSED

### CONSENT CEASE AND DESIST ORDER CCC-12-CD-04 AND CONSENT RESTORATION ORDER CCC-12-RO-04

#### 1.0 CONSENT CEASE AND DESIST ORDER CCC-12-CD-04

Pursuant to its authority under California Public Resources Code ("PRC") Section 30810, the California Coastal Commission ("Commission") hereby authorizes and orders Eric and Barbara Linder and all their successors, assigns, employees, agents, and anyone acting in concert with any of the foregoing (hereinafter collectively referred to as "Respondents") to:

- 1.1 Cease and desist from engaging in any further development, as that term is defined in PRC Section 30106, that would normally require a coastal development permit ("CDP") on any of the property identified in Section 4.2 below ("Subject Property"), unless authorized pursuant to the Coastal Act (PRC Sections 30000-30900), which includes through these Consent Orders.
- 1.2 Cease and desist from maintaining on the Subject Property any Unpermitted Development (defined in Section 4.5 below), including, but not limited to, any of the unpermitted physical structures and materials on the Subject Property, or other unpermitted changes in the intensity of use to the Subject Property, resulting therefrom.
- 1.3 Take all steps necessary to comply with the Coastal Act, including obtaining all obligatory approvals or other necessary permits, such as a Right of Entry permit from the County for the removal of the unpermitted development from the County-owned parcel and restoration of the affected areas under this Order.
- 1.4 Remove, pursuant to an approved removal plan, and pursuant to the terms and conditions set forth herein, all physical items placed or allowed to come to rest on the Subject Property as a result of Unpermitted Development, including, but not necessarily limited to: (1) graded pads and trails; (2) concrete/rock patio area; (3) a horse corral and associated horse-related development, including fences, gates, and watering infrastructure; and (4) the path and stairs on the coastal bluff face that provides private access from the top of the bluff to a public beach.
- 1.5 Fully and completely comply with the terms and conditions of Coastal Development Permit (CDP) No. 5-85-057 and CDP 4-97-077, including, but not limited to the permit conditions whose requirements were not satisfied including: (a) Special Condition No. 3 of CDP 5-85-057, which prohibits development within 25 feet of the bluff edge; and (b) Special Conditions 2(b), 3, and 4 of CDP 4-97-077, which require submittal of annual monitoring reports, implementation and completion of the restoration plan pursuant to the approved proposal, and

Exhibit 13  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)

submittal of proof of the removal of the water system as part of the final monitoring report required by Special Condition 1, respectively.

- 1.6 Fully and completely comply with the terms and conditions of the Consent Restoration Order CCC-12-RO-04 as provided in Section 2.0, below.

## 2.0 CONSENT RESTORATION ORDER CCC-12-RO-04

Pursuant to its authority under PRC Section 30811, the Commission hereby orders and authorizes Respondents to take the actions set forth below, including the measures necessary to restore and revegetate the areas that were damaged as a result of the Unpermitted Development, including on-site mitigation to compensate for the temporal impacts to coastal bluff habitat.

## 3.0 NATURE OF ORDERS AND OF CONSENT

Through the execution of Consent Restoration Order CCC-12-RO-04 and Consent Cease and Desist Order CCC-12-CD-04 (hereinafter collectively referred to as “these Consent Orders”), Respondents agree to comply with the terms and conditions of these Consent Orders. These Consent Orders authorize and require the removal and restoration activities, among other things, outlined in these Consent Orders. Any development subject to Coastal Act permitting requirements that is not specifically authorized under these Consent Orders requires a Coastal Development Permit. Nothing in these Consent Orders guarantees or conveys any right to development on the Subject Property other than the work expressly authorized by these Consent Orders. Through the execution of these Consent Orders, Respondents agree to comply with these Consent Orders including the following terms and conditions.

Respondents further agree to condition any contracts for work related to these Consent Orders upon an agreement that any and all employees, agents, and contractors; and any persons acting in concert with any of the foregoing, adhere to and comply with the terms and conditions set forth herein.

## PROVISIONS COMMON TO BOTH ORDERS

### 4.0 DEFINITIONS

- 4.1 **“Consent Orders.”** CCC-12-CD-04 and CCC-12-RO-04 are hereinafter collectively referred to as the(se) Consent Orders.

- 4.2 **“Subject Property.”** The properties that are the subject of these Consent Orders are described as follows: 33440 Pacific Coast Highway, Malibu, Los Angeles County (APNs 4473-020-018 and 4473-020-017) and County-owned APN 4473-020-903.



4.3 **"25-foot deed-restricted Area."** The 25-foot designated restricted area, established pursuant the irrevocable covenant between the Coastal Commission and Eric and Barbara Linder and officially recorded in the Los Angeles County Recorder's Office on October 10, 1986, whereby the use and enjoyment of said property is attached to and is a part of the deed to the property. The recorded deed restriction (No. 86 1366724) prohibits the construction of private stairways, structures, or alterations on or down the bluff or within 25 feet of the bluff face.

4.4 **"Restoration Area".** Area on the Subject Property where Unpermitted Development has occurred or materials or structures have been placed pursuant thereto, including, but not limited to the bluff face and the area of land protected by a deed restriction that prohibits development 25-ft inland of the bluff edge.

4.5 **"Unpermitted Development."** All "development", as that term is defined in the Coastal Act (PRC section 30106), that has occurred on the Subject Property and required a coastal development permit pursuant to the Coastal Act, but for which no such permit was obtained, including, but not necessarily limited to: (1) grading and removal of major vegetation on the coastal bluff since 1985; (2) installation of concrete/rock pool area patio on the bluff top; (3) construction of a horse corral and associated horse facilities, including fencing, gates, and watering infrastructure, on a coastal bluff face; and (4) construction of a path and stairs on the bluff face for private beach access to a public beach.

## 5.0 RESTORATION PLAN

Within 30 days of issuance of these Consent Orders, Respondents shall submit, for the review and approval of the Commission's Executive Director ("Executive Director"), a Restoration Plan that includes a Removal Plan, Erosion Control Plan, Restorative Grading Plan, Revegetation Plan, Monitoring Plan, and Mitigation Plan ("Restoration Plan") consistent with the provisions set forth below, and shall implement the Restoration Plan consistent with the provisions set forth below and the schedules set forth in the approved plans.

### 5.1 GENERAL PROVISIONS

A. The Restoration Plan shall be prepared by a qualified restoration ecologist(s), resource specialist(s), and/or engineer ("Specialist"). Prior to the preparation of the Restoration Plan, Respondents shall submit for the Executive Director's review and approval, a description of the qualifications of the proposed Specialist, including a description of the proposed Specialist's educational background, training, and experience related to the preparation and implementation of the Restoration Plan described herein. If the Executive Director determines that the qualifications of Respondents' resource specialist is not adequate to conduct such restoration work, he/she shall notify Respondents and, within 10 days of such notification, Respondents shall submit for the Executive Director's review and approval a different Specialist.

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(Linder)

B. The Restoration Plan shall include the following provisions:

- (1) A schedule / timeline of activities covered in the Restoration Plan, the procedures to be used, and specification of the parties who will be conducting the restoration activities. The schedule / timeline of activities covered by the Restoration Plan shall be in accordance with the deadlines included in Sections 5.2, 5.3, 5.4, 5.5, 5.7 and 5.8, for the erosion control, removal, restorative grading, revegetation, monitoring, and mitigation for the site.
- (2) A Site Plan identifying all areas on which the Restoration Plan is to be implemented, which shall be coextensive with the Restoration Area as defined in Section 4.4. The Site Plan shall designate areas for staging of any construction equipment and materials, including receptacles and temporary stockpiles of graded materials, which all shall be covered on a daily basis. The Restoration Area shall include all areas of the Subject Property adversely affected by the Unpermitted Development, which includes areas where the following has occurred: (1) grading and removal of native vegetation on the coastal bluff face; (2) development within in the 25-ft deed-restricted setback area; (3) a horse corral and associated horse facilities, including fences, gates, and watering infrastructure on the coastal bluff; and (4) an unpermitted path and stairs on the bluff face.
- (3) Identification of the location of the disposal site(s) for the disposal of unused, excess materials and or waste generated during restoration activities pursuant to these Consent Orders. If a disposal site is located in the Coastal Zone and is not an existing sanitary landfill or construction waste reclamation facility, a Coastal Development Permit is required for such disposal.
- (4) A detailed description of all equipment to be used. All tools utilized shall be hand tools unless the Restoration Specialist demonstrates to the satisfaction of the Executive Director that mechanized equipment is needed and will not result in significant impacts on resources protected under the Coastal Act, including, but not limited to: geological stability, integrity of landforms, freedom from erosion, and the existing native vegetation. If the use of mechanized equipment is proposed, the Restoration Plan shall specify limitations on the hours of operation for all equipment and a contingency plan that addresses the following: (a) impacts from equipment use, including disruption of areas outside of those designated on the site plan for restoration (Section 5.1.B), and responses thereto; (b) potential spills of fuel or other hazardous releases that may result from the use of mechanized equipment and responses thereto; and (c) impacts to water quality due to the Unpermitted Development's close proximity to El Sol County Beach and the Pacific Ocean.

- A. Respondents shall submit and implement an Erosion Control Plan, prepared by a qualified Specialist (approved pursuant to Section 5.1.A) as part of the Restoration Plan, to address ground disturbance during any construction or restoration activities, and during the establishment of the vegetation planted pursuant to Section 5.5, below.
- B. The Erosion Control Plan shall specify the type and location of erosion control measures that will be installed on the Subject Property and maintained until the affected / damaged areas have been revegetated to minimize erosion and transport of sediment to the beach and adjacent ocean below the property.
- C. The Erosion Control Plan shall include provisions as follows:
  - (1) Specify that the removal and restoration work shall take place only during the dry season (April 1 – September 30). This period may be extended for a limited period of time if the situation warrants such a limited extension, upon approval by the Executive Director.
  - (2) Specify measures if the project work is required to be conducted outside of the dry season.
  - (3) Include temporary erosion control measures should construction or site preparation cease for a period of more than 30 days, including but not limited to: stabilization of all stockpiled fill, access roads, disturbed soils and cut and fill slopes with geotextile material and/or mats, sand bag barriers, silt fencing; temporary drains and swales and sediment basins. The plans shall also specify that all disturbed areas shall be seeded with native grass species and include the technical specifications for seeding the disturbed areas. These temporary erosion control measures shall be monitored and maintained until grading or construction operations, i.e., removal activities resume.
  - (4) All temporary, construction-related erosion control materials shall be comprised of bio-degradable materials and removed from the construction site once the permanent erosion control features are established.
  - (5) Include a narrative report describing all temporary run-off and erosion control measures and Best Management Practices (BMPs) to be used during removal of the Unpermitted Development and restoration of the site.
  - (6) Identify and delineate on the site plan (Section 5.1) or a grading plan the locations of all temporary erosion control measures.

- (7) Identify the Best Management Practices that may include provisions as follows:
- a) No debris or waste from the removed Unpermitted Development shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion.
  - b) Any and all debris resulting from removal activities shall be transported from the project site within 24 hours of completion of the project and shall be disposed in the proper trash and recycling receptacles at the end of each day that removal activities take place. Debris and sediment from the removal of the Unpermitted Development shall be removed from work areas each day that removal activities occur, so as to prevent the accumulation of sediment and other debris that may be discharged to the beach and into coastal waters.
  - c) Debris shall be disposed of at a permitted disposal site or recycled at a certified recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required.
  - d) All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil.
  - e) Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems.
  - f) The discharge of any hazardous materials into any receiving waters shall be prohibited.
  - g) All BMPs shall be maintained in a functional condition throughout the duration of removal of Unpermitted Development.
- (8) Erosion Control Plan shall specify the methods to be used during and after restoration to stabilize the soil on the site and make it capable of supporting native, drought resistant, vegetation endemic to coastal bluffs. Any soil stabilizers identified for erosion control shall be compatible with native plant recruitment and establishment. Methods shall not include the placement of retaining walls or other permanent structures, grout, geogrid, or similar materials.
- (9) Erosion control measures shall remain in place and be maintained at all times of the year for at least three (3) years or until the revegetation/mitigation

plantings have become established, whichever occurs first, and then shall be removed or eliminated by Respondents.

- (10) Include verification of the removal of temporary erosion control measures shall be provided in the annual monitoring report identified in Section 5.7 of these Consent Orders.

### 5.3 REMOVAL PLAN

A. The Restoration Plan shall include a plan for the removal of the Unpermitted Development ("Removal Plan") prepared by a qualified Specialist approved pursuant to Section 5.1.A. The Removal Plan shall address removal of all structures, materials, or other physical items placed or allowed to come to rest on the Subject Property as a result of Unpermitted Development, including, but not limited to: concrete/rock pool area patio within the bluff top 25-ft deed-restricted setback area; horse corral and associated horse facilities, including fencing, gates, and watering infrastructure; and the path and stairs on the bluff face for private beach access to a public beach. The Removal Plan shall also address the removal of non-native vegetation on the coastal bluff face portion of the Subject Property. Respondents shall implement the Removal Plan consistent with the schedule set forth in the Plan.

B. The Removal Plan shall include:

- (1) A detailed description of proposed removal activities.
- (2) A site plan showing all development on the Subject Property, with labels identifying all Unpermitted Development to be removed from the Subject Property.
- (3) A timetable / schedule for the removal.
- (4) A provision that removal activities shall not disturb areas outside the Restoration Area as identified on the Site Plan (Section 5.3, B.). Contingency measures for the restoration of areas incidentally disturbed by the removal activities shall be included in the Restoration Plan.
- (5) Limitations on the hours of operations for all equipment, if mechanized equipment is proposed to be used, and a contingency plan that addresses, at a minimum: 1) impacts from equipment use; 2) potential spills of fuel or other hazardous releases that may result from the use of mechanized equipment and responses thereto; and 3) any water quality concerns.

C. Removal shall commence no later than five (5) days after the approval of the Restoration Plan by the Executive Director.

- D. Within thirty (30) days from commencing implementation of the Removal Plan, the removal shall be completed.
- E. Within five (5) days of the completion of the removal of all unpermitted development from the property, submit evidence for Executive Director approval, in the form of a narrative report and photos, showing that the removal has been completed pursuant to the approved plans.

#### 5.4 RESTORATIVE GRADING PLAN

A. The Restoration Plan shall include a plan for restorative grading of the site and contain a remedial grading plan and cross sections depicting pre- and post violation grades, drawn to scale with contours that clearly illustrate, as accurately as possible, the topography of the Subject Property before and after the unpermitted grading.

B. The Restorative Grading plan shall include:

- (1) Identification of the source and date of any data used in creating the representations of pre- and post-disturbance topography. The Restorative Grading Plan shall also demonstrate how the proposed remedial grading will restore the Subject Property to its original, pre-violation topography to the greatest extent possible consistent with restoration of the habitat on the site. If the Specialist determines that alterations to the original topography are necessary to ensure a successful restoration of the Subject Property's habitats, the Restorative Grading Plan shall also include this proposed topography and a narrative description that explains the justification for needing to alter the topography from the original, pre-violation grade.
- (2) Restoration of the original topography of the Subject Property as the primary goal of the Restoration Plan, while minimizing the size of the area to be graded and the intensity of the impacts to coastal resources associated with any proposed grading.

- C. Within ten (10) days of Executive Director approval of the submittal of evidence of removal and report of the completion of implementation of the Removal Plan (Section 5.3), implement the Restorative Grading Plan.
- D. Within thirty (30) days of commencing remedial grading, Respondents shall complete topographic restoration of the property.
- E. Within five (5) days of the completion of the remedial grading and topographic restoration Respondents shall submit evidence for Executive



Director approval, in the form of a narrative report and photos, showing that the grading has been completed pursuant to the approved plans.

## 5.5 REVEGETATION PLAN

A. The Restoration Plan shall include a Revegetation component that outlines the measures necessary to revegetate all areas of the Subject Property from which native vegetation was removed (or disturbed) as a result of the Unpermitted Development activities; and the measures necessary to revegetate the areas from which non-native plant species will be removed pursuant to Section 5.4. Respondents shall implement the approved Revegetation Plan consistent with its terms, including the schedule for activities.

B. The Revegetation Plan shall include:

- (1) Documentation of the condition of the site prior to placement of all Unpermitted Development. Respondents shall provide a detailed description including drawings, mapping, narrative report, and photographic evidence of the habitat originally on the site prior to the unpermitted activities, to the extent possible.
- (2) A planting plan and species palette for the Restoration Area demonstrating that the site will be revegetated using coastal bluff species that are endemic to and appropriate for the Subject Property. The planting plan / map shall depict the type, size, and location of all plant materials that will be planted in the Restoration Area; the location of all non-native plants to be removed from the Subject Property; the location of reference sites; and the locations from which annual photographs of the restoration will be taken to document the success of the plantings, and for inclusion in the annual monitoring reports, required pursuant to Section 5.7.
- (3) A rationale for the inclusion of each species to be used and describe the size and number of container plants and the rate and method of seed application.
- (4) A coastal bluff location / site with undisturbed, natural habitat as a reference site for the revegetation efforts. The Revegetation component shall include a detailed description of the reference site(s) including the rationale for selection, the location, and species compositions, distributions, and densities. The reference sites shall be located as close as possible to the Subject Property, be similar in all relevant respects, and shall serve as the standard for measuring success of the restoration activities under these Consent Orders.

- (5) A detailed description of the methods to be utilized for restoring the coastal bluff habitat on the Subject Property to the condition in which they existed prior to the Unpermitted Development. The Revegetation component shall explain how the proposed approach will result in the successful reestablishment of coastal bluff habitat on the Subject Property with similar plant densities, total coverage and species compositions to those of the identified undisturbed reference site(s) in the surrounding area. Revegetation of the site shall be fully established within five (5) years from the initiation of revegetation efforts.
- (6) Include a detailed explanation of the performance standards that will be utilized to determine the success of the restoration. The performance standards shall be quantitative, where feasible, and specify the native species appropriate to the habitat to be present, each with a specified percent cover or with a specified density of individuals per square meter. The methodology to be used to evaluate and determine the success of the restoration shall be in a form such that an independent professional / specialist can replicate it, if necessary.
- (7) Include a schedule for the installation of plants and removal of non-native plants, including the non-native species along the unpermitted path / stairs on the bluff which shall be removed pursuant to Section 5.3. Respondents shall not plant non-native species, which could out-compete native plant species in the Restoration Areas. If the planting schedule requires planting to occur at a certain time of year beyond the deadlines set forth herein, the Executive Director may, at the written request of Respondents, extend the deadlines as set forth in section 15.0 of these Consent Orders in order to achieve optimal growth of the vegetation. The Revegetation component shall demonstrate that all non-native vegetation within the Restoration Area, in addition to non-native vegetation in those areas that are identified as being subject to disturbance as a result of the Unpermitted Development removal, remedial grading and revegetation activities, will be eradicated prior to any restorative grading and revegetation activities on the Subject Property. In addition, the Revegetation component shall specify that continuing non-native species removal shall occur on a monthly basis during the rainy season (i.e., January through April) for the duration of the restoration monitoring period, pursuant to Section 5.
- (8) Describe any proposed use of artificial measures, such as irrigation, fertilizer or herbicides, including the full range of amounts of the inputs that may be utilized. The Revegetation Plan shall indicate that the minimum amount necessary to support the establishment of the plantings for successful restoration will be utilized. No permanent irrigation system is allowed in the Restoration Areas. Temporary above-ground irrigation to provide for the establishment of the plantings is allowed for a maximum of

three (3) years or until the plantings have become established, whichever occurs first. If, after the establishment period, the vegetation planted pursuant to the Revegetation component has not become established, the Executive Director may, upon receipt of a written request from Respondents, allow for the continued use of the temporary irrigation system. The written request shall outline the need for and the duration of the proposed extension.

C. Within ten (10) days of Executive Director approval of the submittal of evidence of the completion and report of the Restorative Grading Plan, Respondents shall commence implementation of the Revegetation Plan. Respondents shall complete the removal of non-native species and revegetation of the Subject Property within ten (10) days of starting the implementation of the Revegetation component.

#### 5.6 COMPLETION OF RESTORATION

Within fifteen (15) days of the completion the erosion control (Section 5.2), removal (Section 5.3), restorative grading (Section 5.4), revegetation (Section 5.5), and mitigation (Section 5.8) work, Respondents shall submit, according to the procedure set forth under Section 5.9 a written report, prepared by a qualified Restoration Specialist, for the review and approval of the Executive Director, that includes documentation of all restoration work performed on the Subject Property. This report shall include a summary of dates when work was performed and photographs taken from the pre-designated locations (as identified on the site plan map submitted pursuant to Section 5.9) documenting implementation of the respective components of the Restoration Plan, as well as photographs of the Subject Property before the work commenced and after it was completed.

#### 5.7 MONITORING PLAN

The Restoration Plan shall include a five-year Monitoring Plan, prepared by a qualified Specialist. The Monitoring Plan shall include the following:

- (1) Performance criteria and standards upon which to evaluate the success of the Revegetation / restoration efforts on the site.
- (2) Success Criteria specifying that successful restoration of the site shall be attained when it is determined that the site is revegetated with self-sustaining native, drought-resistant, endemic species that can survive without additional measures such as supplemental irrigation.
- (3) A requirement for written annual monitoring reports to be submitted for review and approval by the Executive Director. The first report shall be due six months after implementation of the restoration planting on the site; then subsequently on

an annual basis no later than December 31<sup>st</sup> each year, for a period of five (5) years.

- (4) A requirement that written monitoring reports shall include further recommendations and requirements for additional restoration actions necessary to ensure that the goals and performance standards, specified in the Monitoring Plan, for the site restoration are met.
  - (a) Monitoring reports shall include a site plan annotated with the designated photo points / locations.
  - (b) Written monitoring reports shall include photographs of the site from approved designated photo points / locations.
- (5) Specification of the timeframe for the plant establishment period on the site and identify any artificial measures, such as temporary irrigation, required during the plant establishment period.
- (6) Provision that all artificial inputs, such as temporary irrigation, shall be removed except for the purposes of providing mid-course corrections or maintenance to ensure the long-term survival of the restoration of the project site, during the monitoring period. If any such inputs are required beyond the establishment period, as specified in Section 5.5, then monitoring of the restoration site shall be extended by an amount of time equal to that time during which inputs were required after the establishment period, so that the success and sustainability of the restoration of the project site are ensured.
- (7) Requirement for submission of a final detailed report at the end of the five-year period (or other duration, if the monitoring period is extended pursuant to Section 15.0) for the review and approval of the Executive Director. If this report indicates that the restoration project has in part, or in whole, been unsuccessful, based on the approved performance standards, Respondents shall be required to submit and implement a revised or supplemental Restoration Plan to compensate for those portions of the original restoration project that were not successful. The revised Restoration Plan shall be prepared by a qualified Restoration Specialist and shall specify measures to correct those portions of the remediation that have failed or are not in conformance with the original approved Restoration Plan. The Executive Director will determine if the revised or supplemental Restoration Plan must be processed as a CDP, a new Restoration Order, or modification of Consent Restoration Order (CCC-12-RO-04), as an amendment.
- (8) Requirement that after the revised or supplemental Restoration Plan has been approved, the new actions listed in the revised plan, and any subsequent measures necessary to carry out the original approved Restoration Plan and still applicable, shall be undertaken by Respondents in coordination with the Executive Director

until the goals of the Restoration Plan and these Restoration Plan provisions have been met.

- (9) Requirement that following completion of the revised Restoration Plan's implementation, the duration of the five-year (5-year) monitoring period, as set forth in this section, shall be extended for at least a period of time equal to that during which the project remained out of compliance, but in no case less than two reporting periods.
- (10) Specification that the Specialist shall conduct at least two site visits annually for the duration of the five-year (5-year) monitoring period, at intervals specified in the Monitoring Plan, for the purposes of inspecting and maintaining, at a minimum, the following: all erosion control measures; non-native species eradication; trash and debris removal; and original and/or replacement plantings.
- (11) Requirement that the Monitoring and Maintenance activities shall be conducted in a way that does not result in impacts to sensitive resources on the Subject Property or on the adjacent properties. Any and all incidental impacts to sensitive species resulting from monitoring activities shall be addressed in the appropriate annual report required pursuant to Section 5.7 and shall be remedied by the Respondents to ensure successful restoration.

#### 5.8 MITIGATION PLAN

A. The Restoration Plan shall include a Mitigation Plan, prepared by a qualified Specialist, for approval by the Executive Director pursuant to the requirements of Section 5.1.A. The Mitigation Plan shall include the following:

- (1) An outline of the proposed mitigation to be undertaken on-site at a ratio of 7:1 (mitigation: damaged resources).
- (2) A scaled map, to scale, overlain with the physical dimensions of each element of Unpermitted Development, and the dimensions of each proposed area of mitigation. Respondents shall additionally provide the aerial extent of each element calculated in square feet.

B. Respondents shall begin implementation of the Mitigation Plan within ten (10) days of Executive Director approval of the submittal of evidence of the completion and report of the Restorative Grading Plan, Respondents shall commence implementation of the Mitigation Plan, concurrent with implementation of the Revegetation Plan (Section 5.5).

#### 6.0 Submittal of Plans, Reports, and Other Materials

All plans, reports, photographs and any other materials required by these Consent Orders shall be sent to:

California Coastal Commission  
Attn: Ms. Renée T. Ananda  
45 Fremont Street, Suite 2  
San Francisco, CA 94105

With a copy sent to:  
California Coastal Commission  
Attn: Mr. Pat Veasart  
89 South California Street, Suite 200  
Ventura, CA 93001

## GENERAL PROVISIONS

### 7.0 LOCAL REQUIREMENTS

All work to be performed under these Consent Orders shall be done in compliance with all applicable laws. Nothing in these Consent Orders shall be interpreted as requiring Respondents to take any action in violation of any local requirements.

### 8.0 REVISIONS OF DELIVERABLES

The Executive Director may require revisions to deliverables required under these Consent Orders, and the Respondents shall revise any such deliverables consistent with the Executive Director's specifications, and resubmit them for further review and approval by the Executive Director, by the deadline established by the modification request from the Executive Director. The Executive Director may extend the deadline for submittals upon a written request and a showing of good cause, pursuant to Section 15.0 of these Consent Orders.

### 9.0 PERSONS SUBJECT TO THESE ORDERS

Eric and Barbara Linder and all their successors, assigns, employees, agents, and anyone acting in concert with any of the foregoing, are jointly and severally subject to all the requirements of these Consent Orders. Respondents agree to undertake the work required herein, and agree to cause their current and future employees and agents, and any contractors performing any of the work contemplated or required herein and any persons acting in concert with any of these entities to comply with the terms and conditions of these Consent Orders. By executing these Consent Orders, Respondents attest that they have the authority to conduct the work on the Subject Property required by these Consent Orders and agree to obtain all necessary permissions (access, etc.) to conduct and complete the work required to resolve the violations addressed herein.

### 10.0 COMMISSION JURISDICTION

The Commission has jurisdiction over resolution of the alleged Coastal Act violations described in Section 4.3 pursuant to PRC Section 30810 and Section 30811. In light of

Exhibit 13  
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(Linder)



the desire to settle these matters, Respondents agree to not contest the Commission's jurisdiction to issue or enforce these Consent Orders.

#### 11.0 RESOLUTION OF MATTER VIA SETTLEMENT

In light of the intent of the parties to resolve these matters in settlement, Respondents have not submitted a "Statement of Defense" form as provided for in Section 13181 and 13191 of Title 14 of the California Code of Regulations and have agreed not to contest the legal and factual bases, the terms, or the issuance of these Consent Orders, including the allegations of Coastal Act violations contained in the Notice of Intent to Commence Cease and Desist and Restoration Order Proceedings and to Record a Notice of Violation, dated May 7, 2012. Specifically, Respondents have agreed not to contest the issuance or enforcement of these Consent Orders at a public hearing or any other proceeding.

#### 12.0 EFFECTIVE DATE AND TERMS OF THESE CONSENT ORDERS

The effective date of these Consent Orders is the date these Consent Orders are issued by the Commission. These Consent Orders shall remain in effect permanently unless and until rescinded by the Commission.

#### 13.0 FINDINGS

These Consent Orders are issued on the basis of the findings adopted by the Commission at its July XX, 2012 meeting, as set forth in the document entitled "Staff Report and Findings for Consent Cease and Desist Order No. CCC-12-CD-04 and Restoration Order No. CCC-12-RO-04." The activities authorized and required in these Consent Orders are consistent with the resource protection policies set forth in Chapter 3 of the Coastal Act. The Commission has authorized the activities required in these Consent Orders as being consistent with the resource protection policies set forth in Chapter 3 of the Coastal Act.

#### 14.0 SETTLEMENT/COMPLIANCE OBLIGATION

14.1 In light of the intent of the parties to resolve these matters in settlement, Respondents have agreed to pay a monetary settlement in the amount of [[\$X]]. The settlement monies shall be deposited in the Violation Remediation Account of the California Coastal Conservancy Fund (see Public Resources Code Section 30823), or into such other public account as authorized by applicable California law at the time of the payment, and as designated by the Executive Director. The settlement payments shall be submitted to the Commission's San Francisco Office, at the address provided in Section 5.10 to the attention of Renee Ananda of the Commission, payable to the account designated under the Coastal Act, and include a reference to the numbers of these Consent Orders.

14.2 Strict compliance with these Consent Orders by all parties subject thereto is required. Failure to comply with any term or condition of these Consent Orders, including any deadline contained in these Consent Orders, unless the Executive Director grants an

extension under Section 15.0, will constitute a violation of these Consent Orders and shall result in Respondents being liable for stipulated penalties in the amount of \$1,000 per day per violation. Respondents shall pay stipulated penalties regardless of whether Respondents have subsequently complied. If Respondents violate these Consent Orders, 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 imposition of civil penalties and other remedies pursuant to Public Resources Code Sections 30820, 30821.6, and 30822 as a result of the lack of compliance with the Consent Orders and for the underlying Coastal Act violations described herein.

#### 15.0 DEADLINES

Prior to the expiration of any given deadline established by these Consent Orders, Respondents may request from the Executive Director an extension of the unexpired deadline. Such a request shall be made in writing ten (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 any deadline upon a showing of good cause, if the Executive Director determines that Respondents have diligently worked to comply with their obligations under these Consent Orders but cannot meet deadlines due to unforeseen circumstances beyond their control. A violation of deadlines established pursuant to these Consent Orders will result in stipulated penalties, as provided for in Section 13.2, above.

#### 16.0 SEVERABILITY

Should any provision of these Consent Orders be found invalid, void or unenforceable, such illegality or unenforceability shall not invalidate the whole, but the Consent Orders shall be construed as if the provision(s) containing the illegal or unenforceable part were not a part hereof.

#### 17.0 SITE ACCESS

Respondents shall provide access to the subject properties at all reasonable times to Commission staff and any agency having jurisdiction over the work being performed under these Consent Orders. Nothing in these Consent Orders is intended to limit in any way the right of entry or inspection that any entity may otherwise have by operation of any law. The Commission staff may enter and move freely about the subject properties for purposes including, but not limited to: viewing the areas where development is being performed pursuant to the requirements of these Consent Orders; 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 these Consent Orders.

18.0 GOVERNMENT LIABILITY

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

19.0 SETTLEMENT VIA CONSENT ORDERS

In light of the desire to settle this matter via these Consent Orders and avoid litigation, pursuant to the agreement of the parties as set forth in these Consent Orders, Respondents hereby agree not to seek a stay pursuant to PRC Section 30803(b) or to challenge the issuance and enforceability of these Consent Orders in a court of law or equity.

20.0 SETTLEMENT OF CLAIMS

The Commission and Respondents agree that these Consent Orders settle the Commission's monetary claims for relief from Respondents for the violations of the Coastal Act alleged in the Notice of Intent dated May 7, 2012 ("NOI"), occurring prior to the date of these Consent Orders, (specifically including claims for civil penalties, fines, or damages under the Coastal Act, including under Public Resources Code Sections 30805, 30820, and 30822), with the exception that, if Respondents fail to comply with any term or condition of these Consent Orders, the Commission may seek monetary or other claims for both the underlying violations of the Coastal Act and for the violation of these Consent Orders. In addition, these Consent Orders do not limit the Commission from taking enforcement action due to Coastal Act violations on the Subject Properties beyond those that are the subject of the NOI.

21.0 SUCCESSORS AND ASSIGNS

These Consent Orders shall run with the land binding Respondents and all successors in interest, future owners of the Subject Property, heirs, and assigns. Respondents shall provide notice to all successors in interest, heirs, assigns, and future owners of the Subject Property, of any remaining obligations under these Consent Orders.

22.0 MODIFICATIONS AND AMENDMENTS

Except as provided for in Section 15.0, and for minor, immaterial matters upon mutual written agreement of the Executive Director and Respondents, these Consent Orders may be modified or amended only in accordance with the standards and procedures set forth in Section 13188(b) of the Commission's Administrative Regulations.

23.0 GOVERNING JURISDICTION

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

25.0 LIMITATION OF AUTHORITY

Except as expressly provided herein, nothing in these Consent Orders 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 these Consent Orders. Failure to enforce any provision of these Consent Orders shall not serve as a waiver of the ability to enforce those provisions or any others at a later time.

Correspondingly, Respondents have entered into these Consent Orders and waived their right to contest the factual and legal basis for issuance of these Consent Orders, and the enforcement thereof according to their terms. Respondents have agreed not to contest the Commission's jurisdiction to issue and enforce these Consent Orders.

26.0 INTEGRATION

These Consent Orders constitute the entire agreement between the parties and may not be amended, supplemented, or modified except as provided in these Consent Orders.

27.0 STIPULATION

Respondents attest that they have reviewed the terms of these Consent Orders and understand that its consent is final, and stipulate to its issuance by the Commission.

IT IS SO STIPULATED AND AGREED:

\_\_\_\_\_  
Eric and Barbara Linder

\_\_\_\_\_  
Dated

Executed in

, CA on behalf of the California Coastal Commission:

\_\_\_\_\_  
Charles Lester, Executive Director

\_\_\_\_\_  
Dated

Exhibit 13  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)

**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**

June 6, 2012

Ms. Kimberly A. Rible, Esq.  
Gaines & Stacey LLP  
16633 Ventura Boulevard, Suite 1220  
Encino, California 91436-1872  
Fax: (818) 933-0222

Subject: Conference Call Regarding Proposed Consent Orders - Linder Violation Case  
Nos. V-4-07-039 and 4-97-077

Dear Ms. Rible:

I thank you for taking the time to return my telephone call and talking with me regarding your client's, Eric and Barbara Linder's, enforcement case. This brief letter serves to confirm our conference call at 11:00 AM on Friday, June 8, 2012, for the purpose of discussing our proposed Consent Cease and Desist and Restoration Order ("Consent Orders") that were sent to you on May 31, 2012, and working toward a mutually agreeable settlement and resolution of the alleged violations on the Linder property located at 33440 Pacific Coast Highway in Malibu.

As we agreed, you will review the proposed Consent Orders and provide me with preliminary comments/feedback by close of business on Thursday, June 7, 2012, for our June 8, 2012 meeting. Please let me know, if Mr. Gaines is unable to participate in the call, what number you can be reached at, at that time, and I will call you.

Based on our scheduled conference call and representations that your client wishes to settle this matter, the Executive Director has agreed to extend the deadline for submittal of the Statement of Defense (SOD) to June 13, 2012 (from the previously extended deadline of June 8<sup>th</sup>). We agreed that this new deadline could be further extended assuming our June 8 meeting is productive and to provide additional time to work through the proposed Consent Orders.

Mr. Stacey, in his May 23, 2012 letter, stated that your client desires to resolve this matter through a consent order. We look forward to working with you and your client to resolve these issues, and note that if we do so, an SOD is not necessary. I can be contacted in writing at the address listed above in the letter head if you have questions. I can also be reached by telephone

Exhibit 13  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)

Eric and Barbara Linder  
Violation Nos. V-4-07-039 and V-4-94-040  
6/6/2012  
Page 2 of 2

at (415) 904-5220. Thank you for your cooperation and we look forward to working with you and your client to resolve this matter amicably and in a mutually acceptable manner.

Sincerely,

A handwritten signature in cursive script, reading "Renée T. Ananda". The signature is written in dark ink and is positioned above the printed name and title.

Renée T. Ananda  
Statewide Enforcement Officer

cc: Lisa Haage, Chief of Enforcement  
Alex Helperin, Senior Staff Counsel  
Aaron McLendon, Statewide Enforcement Supervisor



**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**

June 12, 2012

Ms. Kimberly A. Rible, Esq.  
Gaines & Stacey LLP  
16633 Ventura Boulevard, Suite 1220  
Encino, California 91436-1872  
Fax: (818) 933-0222

Subject: Proposed Consent Orders and 4th Time Extension - Linder Violation Case Nos.  
V-4-07-039 and 4-97-077

Dear Ms. Rible:

This letter is a response to the June 11, 2012 electronic-mail message ("June 11 e-mail") you sent to me and is also a follow-up to my June 12, 2012 voice mail message to you. Your June 11 e-mail states that your office is in the process of reviewing the proposed Consent Orders and intends to provide comments by 5:00 PM Wednesday, June 13, 2012. It also requests that we grant an extension of the June 13, 2012 deadline to submit a Statement of Defense to provide time to focus on the Consent Order negotiations.

Staff is pleased that Mr. Linder is willing to continue to cooperate with us toward resolution of the alleged violations and enter into a Consent Order (as you reiterate in your June 11<sup>th</sup> e-mail). In light of this, the Executive Director has agreed to further extend the Statement of Defense deadline for a short period of time until June 15. If, after reviewing your comments to the proposed Consent Orders, it appears that settlement through Consent Orders is likely, the Executive Director can extend the deadlines once again to provide time to finalize the settlement.

Thank you, again, for your time and cooperation during our June 8, 2012 conference call. While we hoped to discuss the content of the proposed Consent Orders in greater detail and to address any concerns you may have with its content, we were happy to provide the facts that you requested so you could provide Mr. Linder and Mr. Gaines the information they need to move toward settlement of the matter.

We would like to reiterate an issue that did come up during our June 8 meeting regarding Mr. Linder's potential desire to retain items of unpermitted development. As we explained, staff cannot recommend approval of any development, including, but not limited to, the horse corral and associated structures, hardscaping around the pool, the circular brick planter, the lawn/landscaping and drainage/irrigation devices, and stairs located on the bluff face or in the deed-restricted, 25-ft setback area. As we discussed, staff is more than happy to discuss other options to address unpermitted development located in areas landward of the 25-ft setback.

Exhibit 13  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)

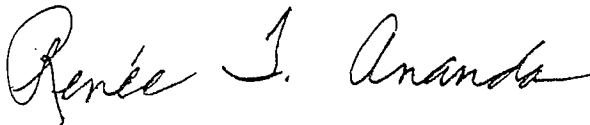
Page 36 of 43

Kimberly Rible  
Violation Nos. V-4-07-039 and V-4-94-040  
6/12/2012  
Page 2 of 2

Finally, staff received an e-mail copy of a letter from Mr. Linder, dated June 11, 2012, that authorizes the firm of Gaines and Stacey LLP to represent the Linders in the subject violation cases. Please have Mr. Linder provide me with the original signed hard copy.

We look forward to working with you to resolve this matter amicably and expeditiously through a consent order. Please call me if you have any additional questions or concerns. I can be reached by telephone at (415) 904-5220 or in writing at the address listed above in the letter head regarding this matter.

Sincerely,



Renée T. Ananda  
Statewide Enforcement Officer

cc: Eric and Barbara Linder  
Lisa Haage, Chief of Enforcement  
Alex Helperin, Staff Counsel  
Aaron McLendon, Statewide Enforcement Supervisor

Exhibit 13  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)

Page 37 of 43

## 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

June 15, 2012

Ms. Kimberly A. Rible, Esq.  
Gaines & Stacey LLP  
16633 Ventura Boulevard, Suite 1220  
Encino, California 91436-1872  
Fax: (818) 933-0222

Subject: Proposed Consent Orders and 5th Time Extension - Linder Violation Case Nos.  
V-4-07-039 and 4-97-077

Dear Ms. Rible:

This is a follow-up to the voice mail message I left you this morning and serves to confirm that the Executive Director has agreed to further extend the deadline for submittal of a Statement of Defense until June 19, 2012. This short period of time is being provided in order to continue with the discussions for settlement of this matter through the proposed Consent Orders, in which case the SOD would not be needed.

I received your e-mail message on June 13, 2012 that transmitted your letter, dated June 13, 2012 that provides comments on the proposed Consent Orders. In follow-up to our telephone call on June 14, 2012 (and my June 15, 2012 telephone message), staff hopes to discuss your comments in detail with you some time Monday June 18, 2012. We look forward to receiving the original comment letter via U. S. mail.

Please call me if you have any additional questions or concerns. I can be reached by telephone at (415) 904-5220 or in writing at the address listed above in the letter head regarding this matter.

Sincerely,

A handwritten signature in cursive script that reads "Renée T. Ananda".

Renée T. Ananda  
Statewide Enforcement Officer

cc: Eric and Barbara Linder  
Lisa Haage, Chief of Enforcement  
Alex Helperin, Staff Counsel  
Aaron McLendon, Statewide Enforcement Supervisor

Exhibit 13  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)

## 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

June 19, 2012

Ms. Kimberly A. Ribble, Esq.  
Gaines & Stacey LLP  
16633 Ventura Boulevard, Suite 1220  
Encino, California 91436-1872  
Fax: (818) 933-0222

Subject: Proposed Consent Orders and 6th Time Extension - Linder Violation Case Nos.  
V-4-07-039 and 4-97-077

Dear Ms. Ribble:

Thank you for your continued cooperation in our efforts to resolve the alleged violations at your clients', Eric and Barbara Linder's, property at 33440 Pacific Coast Highway in Malibu, through Consent Cease and Desist and Restoration Orders ("Consent Orders"). As we conveyed in our June 18, 2012 meeting, Commission staff will re-draft the proposed Consent Orders in order to address your comments and the issues you raised in your June 13, 2012 letter and during our June 18 conversation, and we will send these revised Consent Orders to you as soon as possible. As we indicated in the June 18 meeting, the Executive Director has agreed to once again extend the deadline for submittal of the Statement of Defense form ("SOD"). This letter serves to confirm that the deadline for submittal of a SOD has been extended to June 22, 2012. Staff is optimistic that this matter will be resolved amicably through the Consent Orders. Please call me if you have any additional questions or concerns. I can be reached by telephone at (415) 904-5220 or in writing at the address listed above in the letter head regarding this matter.

Sincerely,

A handwritten signature in cursive script that reads "Renée T. Ananda".

Renée T. Ananda  
Statewide Enforcement Officer

cc: Eric and Barbara Linder  
Lisa Haage, Chief of Enforcement  
Alex Helperin, Staff Counsel  
Aaron McLendon, Statewide Enforcement Supervisor

Exhibit 13  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)

## 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

June 21, 2012

Ms. Kimberly A. Rible, Esq.  
Gaines & Stacey LLP  
16633 Ventura Boulevard, Suite 1220  
Encino, California 91436-1872  
Fax: (818) 933-0222

Subject: Deadline Extension for Submittal of Statement of Defense - Linder Violation  
Case Nos. V-4-07-039 and 4-97-077

Dear Ms. Rible:

This letter follows my voice mail message I left for you earlier today, June 21, 2012, which was in response to your e-mail message, of the same day, which included the résumé for Mr. Daryl Koutnik, Biology Group and the Curriculum Vitae (CV) for Mr. Robert Sousa, GeoConcepts. Thank you for sending these documents for our review. As you requested during our June 18, 2012 conference call, these documents have been forwarded to Commission staff specialists to review Mr. Sousa and Mr. Koutnik's qualifications and experience in conducted restoration work on coastal bluffs in the Malibu area.

Again, we thank you for your continued cooperation in our efforts to resolve the alleged violations at your clients', Eric and Barbara Linder's, property at 33440 Pacific Coast Highway in Malibu, through Consent Cease and Desist and Restoration Orders ("Consent Orders"). In order to allow time to continue our productive settlement discussions, the Executive Director has agreed to extend the June 22, 2012 deadline for submittal of a Statement of Defense form to June 28, 2012. Please call me if you have any additional questions or concerns. I can be reached by telephone at (415) 904-5220 or in writing at the address listed above in the letter head regarding this matter.

Sincerely,

A handwritten signature in cursive script that reads "Renée T. Ananda".

Renée T. Ananda  
Statewide Enforcement Officer

cc: Eric and Barbara Linder  
Lisa Haage, Chief of Enforcement  
Alex Helperin, Staff Counsel  
Aaron McLendon, Statewide Enforcement Supervisor

Exhibit 13  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)

**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**

June 28, 2012

Ms. Kimberly A. Rible, Esq.  
Gaines & Stacey LLP  
16633 Ventura Boulevard, Suite 1220  
Encino, California 91436-1872  
Fax: (818) 933-0222

Subject: Time Extension for Proposed Consent Orders - Linder Violation Case Nos. V-4-07-039 and 4-97-077

Dear Ms. Rible:

We appreciate your continued cooperation in our efforts to resolve the subject violation cases through Consent Cease and Desist and Restoration Orders ("Consent Orders"). Staff, as both parties agreed, is working on a re-draft of the proposed Consent Orders in order to best address your comments and the concerns you raised in your June 13, 2012 letter and during our June 18 conversation. We ascertain from your comments that you want a more detailed listing of the unpermitted development items and information about what would be required should your clients want to retain the pool. The question of what to do about the pool raises substantive issues that staff must thoroughly evaluate before completing the re-draft. Staff would like to further discuss how your client wants to proceed with the pool. Staff looks forward to a telephone discussion, tomorrow (Friday June 29, 2012) as you and I discussed earlier today.

The Executive Director has agreed to once again extend the deadline for submittal of the Statement of Defense form ("SOD"). This confirms that the deadline for submittal of a SOD is extended to July 9, 2012. I can be contacted by telephone at (415) 904-5220 or in writing at the address listed above in the letter head if you have questions or additional concerns regarding this matter.

Sincerely,

A handwritten signature in cursive script that reads "Renée T. Ananda".

Renée T. Ananda  
Statewide Enforcement Officer

cc: Eric and Barbara Linder  
Lisa Haage, Chief of Enforcement  
Alex Helperin, Staff Counsel  
Aaron McLendon, Statewide Enforcement Supervisor

Exhibit 13  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)



## 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

July 10, 2012

Ms. Kimberly A. Rible, Esq.  
Gaines & Stacey LLP  
16633 Ventura Boulevard, Suite 1220  
Encino, California 91436-1872  
Fax: (818) 933-0222

Subject: Time Extension for Proposed Consent Orders - Linder Violation Case Nos. V-4-07-039 and 4-97-077

Dear Ms. Rible:

Thank you for your continued cooperation in our efforts to resolve the subject violation cases through Consent Cease and Desist and Restoration Orders ("Consent Orders"). Staff, as both parties agreed, is working on another re-draft of the proposed Consent Orders in an attempt to address your comments and the requests you raised in your June 13, 2012 letter and during our June 18 conversation. As you know from our telephone discussion on June 29, 2012, your question of what to do about the pool raised serious substantive issues and has required consultation with our permit and technical. Our evaluation also includes your recent proposal, e-mailed to Alex Helperin, Senior Staff Counsel, on July 5, 2012. In the interest of making progress with our negotiation of the proposed Consent Orders, please provide me with your clients' counter-offer to the penalty fee amount we discussed.

This confirms that the Executive Director has agreed to once again extend the deadline for submittal of the Statement of Defense form ("SOD"). The deadline for submittal of a SOD form is extended to July 12, 2012. I can be contacted by telephone at (415) 904-5220 or in writing at the address listed above in the letter head if you have questions or additional concerns regarding this matter.

Sincerely,

A handwritten signature in cursive script that reads "Renée T. Ananda".

Renée T. Ananda  
Statewide Enforcement Officer

cc: Eric and Barbara Linder  
Lisa Haage, Chief of Enforcement  
Alex Helperin, Senior Staff Counsel  
Aaron McLendon, Statewide Enforcement Supervisor

Exhibit 13  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)

## 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

July 12, 2012

Ms. Kimberly A. Ribble, Esq.  
Gaines & Stacey LLP  
16633 Ventura Boulevard, Suite 1220  
Encino, California 91436-1872  
Fax: (818) 933-0222

Subject: Time Extension for Proposed Consent Orders - Linder Violation Case Nos. V-4-07-039 and 4-97-077

Dear Ms. Ribble:

This is a follow-up to the telephone message I left you earlier today, July 12, 2012, in response to your July 12, 2012 e-mail request. This confirms that the Executive Director has agreed to once again extend the deadline for submittal of the Statement of Defense form ("SOD"). The deadline for submittal of a SOD form is extended to July 17, 2012. I can be contacted by telephone at (415) 904-5220 or in writing at the address listed above in the letter head if you have questions or additional concerns regarding this matter.

Sincerely,

A handwritten signature in cursive script that reads "Renée T. Ananda".

Renée T. Ananda  
Statewide Enforcement Officer

cc: Eric and Barbara Linder  
Lisa Haage, Chief of Enforcement  
Alex Helperin, Senior Staff Counsel  
Aaron McLendon, Statewide Enforcement Supervisor

Exhibit 13  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)

Page 43 of 43

## CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA  
89 SOUTH CALIFORNIA ST., 2ND FLOOR  
VENTURA, CA 93001  
(805) 641-0142

CERTIFIED MAIL

August 23, 1994

Eric Linder  
33440 Pacific Coast Highway  
Malibu, CA 90265

File Number: V-4-MAL-94-040

Property Address: 33440 Pacific Coast Highway, City of Malibu, Los Angeles County

Re: Development on coastal bluff

Dear Mr. Linder:

Our office has confirmed reports that the above-referenced activity on your property, which is located in the coastal zone, was undertaken without first obtaining a coastal development permit. Section 30600(a) of the Coastal Act states that in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the coastal zone must obtain a coastal development permit. "Development" is broadly defined by section 30106 of the Coastal Act to include:

"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 the use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of 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....

The development on the coastal bluff undertaken on your property constitutes "development" and therefore requires a coastal development permit.

Any development activity performed without a coastal development permit constitutes a violation of the California Coastal Act's permitting

Exhibit 14  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)

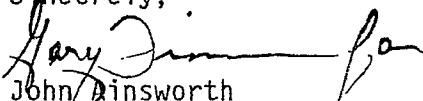
requirements. Coastal Act sections 30803 and 30805 authorize the Coastal Commission to initiate litigation to seek injunctive relief and an award of civil fines in response to any violation of the Coastal Act. Coastal Act section 30820(a) provides that any person who violates any provision of the Coastal Act may be subject to a penalty not to exceed \$30,000. Further, section 30820(b) states that, in addition to any other penalties, any person who "intentionally and knowingly" performs any development in violation of the Coastal Act can be subject to a civil penalty of not less than \$1000 nor more than \$15,000 for each day in which the violation persists.

As one step toward resolving the violation, please stop all unpermitted work on the property. Any additional work could be considered a knowing and intentional violation of the Coastal Act. Please submit a completed coastal development permit application for this activity, and any other development activities contemplated on this property in the near future, to this office by September 20, 1994. If we do not receive a coastal development permit application by this date, we will refer this case to our Statewide Enforcement Unit in San Francisco for further legal action.

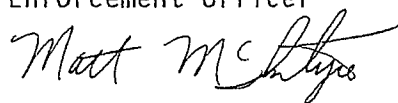
Please contact Matt McIntyre at our office if you have any questions regarding this matter. Please refer to your file number when communicating with this office.

Thank you for your anticipated cooperation.

Sincerely,

  
John Ainsworth  
Enforcement Supervisor

Matt McIntyre  
Enforcement Officer



encl: CDP Application, Waiver of Legal Argument

JLA:MM  
0594V

Exhibit 14  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)

## CALIFORNIA COASTAL COMMISSION

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



CERTIFIED MAIL  
SECOND NOTICE

December 5, 1994

Eric Linder  
33440 Pacific Coast Highway  
Malibu, CA 90265

File Number: V-4-MAL-94-040

Property Address: 33440 Pacific Coast Highway, City of Malibu, Los Angeles County.

Re: Development on coastal bluff

Dear Mr. Linder:

On August 30, 1994 our office received verification that you received our letter, dated August 23, 1994, requesting that you stop work immediately, and submit by September 20, 1994, a Coastal Development Permit Application to resolve the above unpermitted development at the above address. As of this date, our office has not received an application for this activity. Please note, as stated in our first letter, that the above activity on your property, which is located in the coastal zone, requires a Coastal Development Permit. Section 30600(a) of the Coastal Act states that in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the coastal zone must obtain a coastal development permit. Stop all unpermitted work on the property. Any additional work will be considered a knowing and intentional violation of the Coastal Act.

Any development activity performed without a coastal development permit constitutes a violation of the California Coastal Act's permitting requirements. Coastal Act sections 30803 and 30805 authorize the Coastal Commission to initiate litigation to seek injunctive relief and an award of civil fines in response to any violation of the Coastal Act. Coastal Act section 30820(a) provides that any person who violates any provision of the Coastal Act may be subject to a penalty not to exceed \$30,000. Further, section 30820(b) states that, in addition to any other penalties, any person who "intentionally and knowingly" performs any development in violation of the Coastal Act can be subject to a civil penalty of not less than \$1000 nor more


Exhibit 14  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)

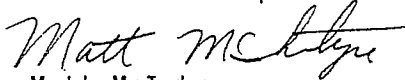
than \$15,000 for each day in which the violation persists.

Please submit a completed Coastal Permit Application as requested in our first letter by January 3, 1995. We are in the process of preparing this case for referral to our Statewide Enforcement Unit in San Francisco for further enforcement action. If we do not receive a completed Coastal Development Permit Application by this date, this case will be referred to our Statewide Enforcement Unit in San Francisco.

Please contact Matt McIntyre at our office if you have any questions regarding this matter. Please refer to your file number when communicating with this office.

Sincerely,

  
John Ainsworth  
Enforcement Supervisor

  
Matt McIntyre  
Enforcement Officer

encl: CDP Application, Waiver of Legal Argument

MWM:JLA  
0659V

Exhibit 14  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)



CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA  
89 SOUTH CALIFORNIA ST., 2ND FLOOR  
VENTURA, CA 93001  
(805) 641-0142



CERTIFIED MAIL

May 4, 1995

Sherman Stacey  
233 Wilshire Blvd., Ste 510  
Santa Monica, CA. 90401

File Number: V-4-MAL-94-040 (Linder)

Property Address: 33440 Pacific Coast Highway, City of Malibu, L.A. County.

Re: Development on coastal bluff

Dear Mr. Stacey:

On August 30, 1994 our office received verification that your client, Mr. Linder, received our letter, dated August 23, 1994, requesting that he submit, by September 20, 1994, a Coastal Development Permit Application to resolve the above unpermitted development at the above address. Subsequent to that letter, Susan Friend of our enforcement department met with you to discuss this matter. At that time, you and Ms. Friend discussed the existence of a path and the Commission's past actions in not approving new development on bluff faces. You stated that you were representing the Linders and that you would be submitting an application for the unpermitted development, on their behalf. As of this date, our office has not received an application for this activity.

Please note that the above activity on your client's property, which is located in the coastal zone, requires a Coastal Development Permit. Section 30600(a) of the Coastal Act states that in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the coastal zone must obtain a coastal development permit.

We must remind you that any development activity performed without a coastal development permit constitutes a violation of the California Coastal Act's permitting requirements. Coastal Act sections 30803 and 30805 authorize the Coastal Commission to initiate litigation to seek injunctive relief and an award of civil fines in response to any violation of the Coastal Act. Coastal Act section 30820(a) provides that any person who violates any provision of the Coastal Act may be subject to a penalty not to exceed \$30,000. Further, section 30820(b) states that, in addition to any other penalties, any person who "intentionally and knowingly" performs any development in violation of the Coastal Act can be subject to a civil penalty of not less than \$1000 nor more

Exhibit 14


CCC-12-CD-04 & CCC-12-RO-04  
(Linder)

than \$15,000 for each day in which the violation persists.

We would prefer to resolve this matter administratively through the issuance of either an after-the-fact permit or a permit for restoration of the site. As noted before, the placement of any structures or development on a bluff face is not consistent with the Chapter Three policies of the Coastal Act. Therefore, our staff is likely to recommend denial of this project. If the Commission denies the project our enforcement staff would work to resolve this violation through the restoration of the site and possible monetary payments. In order to avoid a delay in resolution of this violation we are requesting that you please submit a completed Coastal Permit Application for the restoration of the site of the unpermitted development. You are entitled, however, to apply to retain the developments. In either event, we are requesting that you please submit a completed Coastal Permit Application no later than June 9, 1995 so we may delay a referral of this matter to our Statewide Enforcement Unit in San Francisco for further enforcement action. If we do not receive a completed Coastal Development Permit Application by this date, this case will be referred to our Statewide Enforcement Unit in San Francisco.

Please contact Susan Friend at our office if you have any questions regarding this matter.

Sincerely,

  
John Ainsworth  
Enforcement Supervisor

  
Susan Friend  
Enforcement Officer

encl: CDP Application, Waiver of Legal Argument

SPF:JLA  
0659V

Exhibit 14  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)

## CALIFORNIA COASTAL COMMISSION

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



CERTIFIED MAIL  
Second Attempt to Notify

June 28, 1995

Sherman Stacey  
233 Wilshire Blvd., Ste 510  
Santa Monica, CA. 90401

File Number: V-4-MAL-94-040 (Linder)

Property Address: 33440 Pacific Coast Highway, City of Malibu, L.A. County.

Re: Development on coastal bluff

Dear Mr. Stacey:

On August 30, 1994 our office received verification that your client, Mr. Linder, received our letter, dated August 23, 1994, requesting that he submit, by September 20, 1994, a Coastal Development Permit Application to resolve the above unpermitted development at the above address. Subsequent to that letter, Susan Friend of our enforcement department met with you to discuss this matter. At that time, you and Ms. Friend discussed the existence of a path and the Commission's past actions in not approving new development on bluff faces. You stated that you were representing the Linders and that you would be submitting an application for the unpermitted development, on their behalf. \*As of this date, our office has not received an application for this activity.

Please note that the above activity on your client's property, which is located in the coastal zone, requires a Coastal Development Permit. Section 30600(a) of the Coastal Act states that in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the coastal zone must obtain a coastal development permit.

We must remind you that any development activity performed without a coastal development permit constitutes a violation of the California Coastal Act's permitting requirements. Coastal Act sections 30803 and 30805 authorize the Coastal Commission to initiate litigation to seek injunctive relief and an award of civil fines in response to any violation of the Coastal Act. Coastal Act section 30820(a) provides that any person who violates any provision of the Coastal Act may be subject to a penalty not to exceed \$30,000. Further, section 30820(b) states that, in addition to any other penalties, any person who "intentionally and knowingly" performs any development in violation of the Coastal Act can be subject to a civil penalty of not less than \$1000 nor more

Exhibit 14  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)

than \$15,000 for each day in which the violation persists.

We would prefer to resolve this matter administratively through the issuance of either an after-the-fact permit or a permit for restoration of the site. As noted before, the placement of any structures or development on a bluff face is not consistent with the Chapter Three policies of the Coastal Act. Therefore, our staff is likely to recommend denial of this project. If the Commission denies the project our enforcement staff would work to resolve this violation through the restoration of the site and possible monetary payments. In order to avoid a delay in resolution of this violation we are requesting that you please submit a completed Coastal Permit Application for the restoration of the site of the unpermitted development. You are entitled, however, to apply to retain the developments. In either event, we are requesting that you please submit a completed Coastal Permit Application no later than July 21, 1995 so we may delay a referral of this matter to our Statewide Enforcement Unit in San Francisco for further enforcement action. If we do not receive a completed Coastal Development Permit Application by this date, this case will be referred to our Statewide Enforcement Unit in San Francisco.

Please contact Susan Friend at our office if you have any questions regarding this matter.

Sincerely,



John Ainsworth  
Enforcement Supervisor



Susan Friend  
Enforcement Officer

encl: CDP Application, Waiver of Legal Argument

SPF:JLA  
0659V

Exhibit 14  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)

## CALIFORNIA COASTAL COMMISSION

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



CERTIFIED MAIL  
Third Attempt to Notify

August 30 1995

Eric Linder  
33440 P.C.H  
Malibu, CA. 90265

File Number: V-4-MAL-94-040

Property Address: 33440 Pacific Coast Highway, City of Malibu, L.A. County.

Re: Development on coastal bluff

Dear Mr. Linder:

On August 30, 1994 our office received verification that you, received our letter, dated August 23, 1994, requesting that you submit, by September 20, 1994, a Coastal Development Permit Application to resolve the above unpermitted development at the above address. Subsequent to that letter, Susan Friend of our enforcement department met with your agent, Mr Stacey, to discuss this matter. At that time, Mr Stacey and Ms. Friend discussed the existence of a path and the Commission's past actions in not approving new development on bluff faces. Mr Stacey stated that he was representing you and that he would be submitting an application for the unpermitted development, on your behalf. However, no application was submitted. Our records show that on July 21, 1995 our office received verification that Mr Stacey, received our second letter, requesting a coastal development permit application. As of this date, our office has not received an application for this activity.

Please note that the above activity on your property, which is located in the coastal zone, requires a Coastal Development Permit. Section 30600(a) of the Coastal Act states that in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the coastal zone must obtain a coastal development permit.

We must remind you that any development activity performed without a coastal development permit constitutes a violation of the California Coastal Act's permitting requirements. Coastal Act sections 30803 and 30805 authorize the Coastal Commission to initiate litigation to seek injunctive relief and an award of civil fines in response to any violation of the Coastal Act. Coastal Act section 30820(a) provides that any person who violates any provision of the Coastal Act may be subject to a penalty not to exceed \$30,000. Further, section 30820(b) states that, in addition to any other penalties, any person who "intentionally and knowingly" performs any development in violation of the Coastal Act can be subject to a civil penalty of not less than \$1000 nor more


Exhibit 14  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)


than \$15,000 for each day in which the violation persists.

We would prefer to resolve this matter administratively through the issuance of either an after-the-fact permit or a permit for restoration of the site. As noted before, the placement of any structures or development on a bluff face is not consistent with the Chapter Three policies of the Coastal Act. Therefore, our staff is likely to recommend denial of this project. If the Commission denies the project our enforcement staff would work to resolve this violation through the restoration of the site and possible monetary payments. In order to avoid a delay in resolution of this violation we are requesting that you please submit a completed Coastal Permit Application for the restoration of the site of the unpermitted development. You are entitled, however, to apply to retain the developments. In either event, we are requesting that you please submit a completed Coastal Permit Application no later than October 6, 1995 so we may delay a referral of this matter to our Statewide Enforcement Unit in San Francisco for further enforcement action. If we do not receive a completed Coastal Development Permit Application by this date, this case will be referred to our Statewide Enforcement Unit in San Francisco.

Please contact Susan Friend at our office if you have any questions regarding this matter.

Sincerely,

  
John Ainsworth  
Enforcement Supervisor

  
Susan Friend  
Enforcement Officer

encl: CDP Application, Waiver of Legal Argument

SPF:JLA  
0659V

Exhibit 14  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)

## CALIFORNIA COASTAL COMMISSION

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

CERTIFIED MAIL

March 26, 1996

Eric Linder  
33440 Pacific Coast Highway  
Malibu, CA. 90265

Violation File Number: V-4-MAL-94-040

Property Address: 33440 Pacific Coast Highway, City of Malibu, L.A. County.

Re: Unpermitted development on a coastal bluff

Dear Mr. Linder:

As you know we have contacted you and your attorney, Sherman Stacey, several times with regards to the above noted violation case. Unfortunately, you have not responded to any of our requests to submit a coastal development permit application for the restoration of the bluff face. Nor, have we received an application to retain said developments. Our last correspondence with regards to this case was with Sherman Stacey. On November 16, 1995, in a telephone conversation with Susan Friend of our enforcement staff, he stated that you were preparing an application for the landscaping (restoration) of the bluff face which would be submitted to our office shortly.

We must remind you that we consider this violation to be significant as it involves development of a coastal bluff, designated as an environmentally sensitive habitat area. We must also remind you that Coastal Act sections 30803 and 30805 authorize the Coastal Commission to initiate litigation to seek injunctive relief and an award of civil fines in response to any violation of the Coastal Act. Coastal Act section 30820(a) provides that any person who violates any provision of the Coastal Act may be subject to a penalty not to exceed \$30,000. Further, section 30820(b) states that, in addition to any other penalties, any person who "intentionally and knowingly" performs any development in violation of the Coastal Act can be subject to a civil penalty of not less than \$1000 nor more than \$15,000 for each day in which the violation persists.

As we have stated to you in previous letters, we would prefer that you submit an application for the restoration of the bluff face as the placement of any structure or the removal of vegetation on a bluff face is not consistent with the Coastal Act. As such, our staff is likely to recommend denial of a proposal to retain developments on the bluff face or remove vegetation. If denied, our enforcement staff would work to resolve this violation through the restoration of the site and possible monetary payments.


Exhibit 14  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)

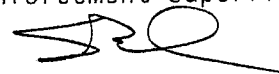


At this time, we are preparing this file for a referral to our Statewide Enforcement Unit in San Francisco with a request that record a "Notice of Violation Action" against your property and proceed with a cease and desist order for restoration of the bluff. This file will be referred if we do not receive a completed application no later than April 19, 1996.

Please contact Susan Friend if you have any questions regarding this matter.

Sincerely,

  
John Ainsworth  
Enforcement Supervisor

  
Susan Friend  
Enforcement Officer

cc: Sherman Stacey  
Nancy Cave: California Coastal Commission-Statewide Enforcement Supervisor

SPF:JLA/0659V

## CALIFORNIA COASTAL COMMISSION

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

CERTIFIED MAIL

November 27, 1996

Sherman Stacey  
233 Wilshire Blvd., Ste 510  
Santa Monica, CA. 90401

Violation File Number: V-4-MAL-94-040 (Linder)

Property Location: 33440 Pacific Coast Highway, City of Malibu; L.A. County

Dear Mr. Stacey:

It has now been over two years since we first notified your client, Eric Linder, of the unpermitted development on his property noted above. In our previous letters we requested that Mr. Linder submit an application to restore the bluff on his site to its pre-violation condition. In a telephone conversation on April 24, 1996, you informed Susan Friend of our enforcement staff that you would submit an application for bluff restoration. However, as of this date, no application has been received in our office.

Resolution of this outstanding violation cannot occur until either a permit is obtained for the retention of the developments on the bluff, or the site is restored through a restoration permit. We would prefer to resolve this matter administratively through the permit process; however, unless a complete application is submitted to our office, we cannot take any action towards resolution.

We are in receipt of a plan prepared by Dennis Turner, dated October 1995, which was submitted by you on April 12, 1996. As Ms. Friend, pointed out to you on the telephone on April 24, 1996, no recommendation can be made on this plan until an application is submitted with all the relevant information. The native plant list proposed on this restoration plan is sufficient, however no recommendation can be made as to the retention of the invasive plant species until evidence is given as to when they were planted. Unless it can be shown that these invasive plant species existed in 1972, staff is unlikely to recommend approval of these plants. As we have explained previously, restoration of the site includes the removal of all non-native plants and structures, returning the topography to its original condition, and replanting the area with plants endemic to Southern California coastal bluffs.

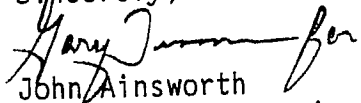
Exhibit 14  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)


At this time, we are preparing this file for referral to our Statewide Enforcement Unit in San Francisco with a recommendation that they seek a cease and desist order for restoration. In order to defer this referral we must receive a complete coastal development permit application for the restoration of the site no later than January 3, 1997. If we do not receive an application by this date we will refer this file to our San Francisco office.

Please contact Susan Friend with any questions regarding this matter.

We look forward to your cooperation in this matter.

Sincerely, .

  
John Ainsworth  
Enforcement Supervisor

  
Susan Friend  
Enforcement Officer

cc: Eric Linder

1134V/SPF:JLA

Exhibit 14  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)

## CALIFORNIA COASTAL COMMISSION

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

CERTIFIED MAIL

March 17, 1997

Sherman Stacey  
233 Wilshire Blvd., Ste 510  
Santa Monica, CA. 90401

Violation File Number: V-4-MAL-94-040 (Linder)  
Property Location: 33400 Pacific Coast Highway, City of Malibu, Los Angeles County

Dear Mr. Stacey:

As you are aware from previous correspondence, the above noted violation remains unresolved. We have contacted both you and your client several times requesting an application for the restoration of the bluff face or retention of the developments. We have informed you that we can not resolve this matter until either a permit is obtained to retain the developments or the site is restored through a permit for restoration.

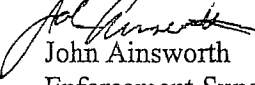
As we noted in our last letter of November 26, 1996, we are in receipt of a plan prepared by Dennis Turner, dated October 1995. However, as this plan was not submitted in conjunction with an application, no action can be taken on this plan.

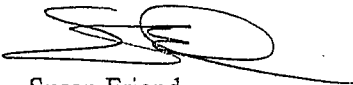
Please be advised that Coastal Act Sections 30803 and 30805 authorize the Coastal Commission to initiate litigation to seek injunctive relief and an award of civil fines in response to any violation of the Coastal Act. Section 30820(a) of the Coastal Act provides that any person who violates any provision of the Coastal Act may be subject to a penalty not to exceed \$30,000. Further, Coastal Act section 30820(b) states that, in addition to any other penalties, any person who "knowingly and intentionally" performs any development in violation of the Coastal Act can be subject to a civil penalty of not less than \$1,000 nor more than \$15,000 for each day the violation persists.

This violation file is currently being prepared for referral to our Statewide Enforcement Unit in San Francisco. We can defer this action if we receive an application in our office by April 11, 1997. Should we receive an application by this date, and we are able to resolve this matter administratively through the permit process, we will, most likely, not proceed with any enforcement action, including assessing fines.

Please contact Susan Friend with any questions. We look forward to your cooperation in this matter.

Sincerely,

  
John Ainsworth  
Enforcement Supervisor

  
Susan Friend  
Enforcement Officer

cc: Eric Linder

Exhibit 14  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)

## 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**

September 24, 2007

33440 Pacific Coast Highway,  
Malibu, California 90265

Violation File Number: V-4-07-039

Property location: 33440 Pacific Coast Highway,  
Malibu, California 90265

Violation: Placement of a horse corral and stable on a coastal bluff and within the required setback; Failure to comply with the special conditions of CDP Nos. 5-85-57 and 4-97-077.

Dear Mr. and Mrs. Linder:

The California Coastal Act<sup>1</sup> was enacted by the State Legislature in 1976 to provide long-term protection of California's 1,100-mile coastline through implementation of a comprehensive planning and regulatory program designed to manage conservation and development of coastal resources. The California Coastal Commission ("Commission") is the state agency created by, and charged with administering, the Coastal Act of 1976. In making its permit and land use planning decisions, the Commission carries out Coastal Act policies, which, amongst other goals, seek to protect and restore sensitive habitats (such as coastal bluffs); protect natural landforms; protect scenic landscapes and views of the sea; protect against loss of life and property from coastal hazards; and provide maximum public access to the sea.

On September 13, 2007 our staff confirmed that coastal development including, but not limited to, the placement of a horse corral and stable on a coastal bluff within the required setback has occurred at your property located at 33440 Pacific Coast Highway, Malibu, which is located within the Coastal Zone.

Pursuant to Section 30600 (a) of the Coastal Act and Section 13.3 of the City of Malibu Local Coastal Program (LCP) Local Implementation Plan, any person wishing to perform or undertake development in the Coastal Zone must obtain a coastal

<sup>1</sup> The Coastal Act is codified in sections 30,000 to 30,900 of the California Public Resources Code. All further section references are to that code, and thus, to the Coastal Act, unless otherwise indicated.

development permit, in addition to any other permit required by law. "Development" is defined by Section 30106 of the Coastal Act and Section 2.1 of the City of Malibu LCP Local Implementation Plan as:

*"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 any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of the use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of 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....*

The above-mentioned placement of a horse corral and stable on a coastal bluff constitutes development under the Coastal Act and the City of Malibu's LCP and, therefore, requires a Coastal Development Permit (CDP). Any development activity conducted in the Coastal Zone without a valid CDP, or which does not substantially conform to a previously issued permit, constitutes a violation of the Coastal Act.

On March 13, 1985 the California Coastal Commission granted, to Mr. Linder, Coastal Development Permit No. 5-85-57, subject to special conditions, authorizing the construction of a two-story single-family dwelling with attached 3-car garage, swimming pool and septic system for house, to be located at 33440 Pacific Coast Highway. Specifically, Special Condition Three (3) of that permit, under heading "scenic resources", states that:

*Prior to transmittal of permit, the applicant shall be required to submit a deed restriction for recording subject to the approval of the Executive Director prohibiting the construction of private stairways, structures or alterations on or down the bluff or within 25 feet of the bluff face.*

Placement of a horse corral and stable within 25 feet of the bluff face is not in conformance with Special Condition Three of CDP No. 5-85-57 and is, therefore, also a violation of the Coastal Act.

#### **Violation File No. V-4-95-040**

In addition to the aforementioned unpermitted development and development not in conformance with a previously issued CDP, it is pertinent to remind you of your previous violation, Violation File No. V-4-94-040, regarding the placement of a horse corral, fence, gate, wooden retaining structures and water system at the base of the coastal bluff below the property. The Commission officially notified you of this violation by letter on August 23, 1994. This violation was partially remedied through an after-the-fact coastal development permit; CDP No. 4-97-077, granted to you on April 13, 1998 by the

Exhibit 15  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)

Commission. The permit allowed for the removal of the unpermitted development subject to special conditions, specifically, the removal of a horse corral, fence, gate, wooden retaining structures and water system, and the restoration and revegetation of the coastal bluff.

You were required by Special Condition (2)(b) of CDP No. 4-97-077 to submit, for review and approval of the Executive Director, written and annual reports, beginning after the first year following implementation of the restoration program and include recommendations for mid-program corrections, if necessary. At the end of a three year period, a final detailed report was to be submitted for review and approval of the Executive Director. To this date no annual reports or conclusive final report, indicating the relative success of the revegetation project over the first three years, have been received by the Commission. Therefore, you are in non-compliance with CDP NO 4-97-077, which is also a violation of the Coastal Act. A copy of CDP NO. 4-97-077 has been enclosed for your convenience.

In order to resolve Violation File No. V-4-94-040, we request that you fulfill the terms of CDP NO. 4-97-077 relating to the completion of the prescribed revegetation monitoring requirements set forth in Special Condition 2 of the permit. Specifically, the Commission requires that you submit a final detailed report determining the relative success of the site restoration. Successful site restoration shall be determined, pursuant to Special Condition (2) (a), if the revegetation of native plant species on site is adequate to provide 90% coverage and is able to survive without additional outside inputs, such as supplemental irrigation. If the final report indicates that the restoration project has in part, or in whole, been unsuccessful, based on the performance standards outlined in the monitoring program<sup>2</sup>, you will be required to submit a revised or supplemental program to compensate for those portions of the original program which were not successful. The revised or supplemental restoration program shall be processed as an amendment to this coastal development permit.

In order to resolve Violation File No. V-4-94-040 in a timely manner the Commission requests that the final restoration report be submitted to us by **November 31, 2007**.

#### **Violation File No. V-4-07-039**

This notice of violation letter is primarily intended to address the coastal development violation observed on your property on September 13, 2007. The recent unpermitted development including, but not limited to, placement of a horse corral, and stable on the bluff top and within 25 feet of the bluff face, does not conform to Special Condition Three (3) of CDP No. 5-85-57, and constitutes a violation of the Coastal Act.

In addition, your coastal property is located in the City of Malibu's coastal planning and development jurisdiction, and thus, in addition to having violated a term of the

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<sup>2</sup> The revegetation monitoring program for 33440 Pacific Coast Highway, Malibu, CA 90265 was submitted to the Commission on June 30, 1998, by your landscape architect, Dennis Turner.



Commission's CDP, the unpermitted development is in violation of Malibu's LCP, Specifically, Section 10.4 (D) of the City of Malibu LCP Local Implementation Plan states (in relevant part):

*All new development located on a bluff top shall be setback from the bluff edge a sufficient distance to ensure that it will not be endangered by erosion or threatened by slope instability for a projected 100 year economic life of the structure. In no case shall development be set back less than 100 feet. This distance may be reduced to 50 feet...This requirement shall apply to the principle structure and accessory or ancillary structures such as guesthouses, pools, tennis courts, cabanas, and septic systems etc. Ancillary structures such as decks, patios and walkways that do not require structural foundations may extend into the setback area but in no case shall be sited closer than 15 feet from the bluff edge.*

The above mentioned unpermitted development requires a CDP from the City of Malibu. However, since the development is located within the setback specified in the City's LCP, it is not likely the City would approve said development unless it was relocated outside the required setback. In any event, we require that you cease with any current development activities and expediently apply to the City of Malibu for a coastal development permit to either authorize or remove all current development on the subject site. In addition, any future development will require a CDP from the City.

In most cases, violations involving unpermitted development may be resolved administratively by removal of the unpermitted development and restoration of any damaged resources or by obtaining a coastal development permit authorizing the development after-the-fact. Removal of the development and restoration of the site also requires a coastal development permit. Therefore, in order to resolve this matter administratively, you must submit a complete coastal development permit application to the City of Malibu, to either retain the development, or to remove the unpermitted development and restore the site to its previous condition.

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 do all of the following: 1) Submit a complete coastal development permit application to the City of Malibu by **October 31, 2007** for either removal of the unpermitted development and restoration of the site or to authorize the as-built development; 2) Submit a final restoration report to the Coastal Commission pursuant to Special Condition 2 (b) of CDP NO. 4-97-077 by **November 31, 2007** and: 3) please contact me by no later than **October 31, 2007** regarding how you intend to resolve this violation.

While we are hopeful that we can resolve this matter amicably, we are required to remind you that Coastal Act Section 30809 states that if the Executive Director of the Commission 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 avoid irreparable injury to the area or to ensure

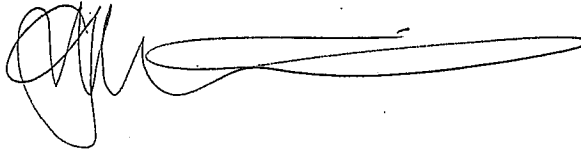
compliance with the Coastal Act. A violation of a cease and desist order can result in civil fines of up to \$6,000 for each day in which the violation persists.

In addition, we remind you that Sections 30803 and 30805 of the Coastal Act authorize the Commission to initiate litigation to seek injunctive relief and an award of civil fines in response to any violation of the Coastal Act. Section 30820(a)(1) of the Coastal Act provides that any person who violates any provision of the Coastal Act may be subject to a penalty amount that shall not exceed \$30,000 and shall not be less than \$500. Coastal Act section 30820(b) states that, in addition to any other penalties, any person who "knowingly and intentionally" performs or undertakes any development in violation of the Coastal Act can be subject to a civil penalty of not less than \$1,000 nor more than \$15,000 for each day in which the violation persists.

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.

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,



Celia Williams  
Enforcement Officer

**cc:** Gail Sumpter, Permit Services Manager/Code Enforcement, City of Malibu  
Gary Timm, South Central District Manager, CCC  
Barbara Carey, Supervisor, Planning and Regulation, CCC  
Patrick Veesart, Enforcement Supervisor, CCC  
Tom Sinclair, District Enforcement Officer, CCC

**Enclosures:** CDP NO. 4-97-077

## CALIFORNIA COASTAL COMMISSION

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



December 11, 2007

33440 Pacific Coast Highway,  
Malibu, California 90265

Violation File Number: V-4-07-039

Property location: 33440 Pacific Coast Highway,  
Malibu, California 90265

Violation: Placement of a horse corral and stable on a coastal bluff and within the required setback; Failure to comply with the special conditions of CDP Nos. 5-85-57 and 4-97-077

Dear Mr. and Mrs. Linder,

This letter concerns your phone call made to me on December 4, 2007, requesting an extension on the due date for the submittal of a final restoration report to the Coastal Commission pursuant to Special Condition 2 (b) of CDP NO. 4-97-077 by **November 31, 2007**.

Firstly, I want to apologize for not returning your call. It appears that your phone does not accept anonymous numbers such as the Commission's outgoing number. Therefore, I am writing to grant your request for an extension on the due date for the submittal of your final restoration report to the Coastal Commission. The Coastal Commission is willing to give you until **January 17, 2007** to fulfill the requirements of Special Condition 2 (b) of CDP NO. 4-97-077.

The original request for a final restoration report related to your earliest Violation File NO. V-4-94-040, which you were notified of on August 23, 1994. As part of the after-the-fact remedial Coastal Development Permit NO. 4-97-077 granted to you on April 13, 1998, Special Condition 2 (b) required that you submit a final detailed report determining the relative success of the site restoration. Successful site restoration shall be determined, pursuant to Special Condition (2) (a). Please refer to the Notice of Violation letter sent to you on September 24, 2007 for a detailed prescription of what we would like you to submit in terms of restoration reports.

I hope that this extension will enable you to successfully complete you requirements pursuant to CDP NO.4-97-077 and that this matter may be resolved without resort to further enforcement action.

Exhibit 15  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)

Yours Sincerely,

Celia Williams.

Cc: Patrick Veesart, Enforcement Supervisor, CCC

## 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

February 6, 2009

Eric & Barbara Linder  
33440 Pacific Coast Highway,  
Malibu, CA 90265

Violation File Number: V-4-07-039

Property location: 33440 Pacific Coast Highway, Malibu: Los Angeles  
County, APN 4473-020-018

Violation: Placement of a horse corral within a coastal bluff  
setback area and non-compliance with Special  
Condition 2(b) of CDP No. 4-97-077.

Dear Mr. and Mrs. Linder:

We are in receipt of your letters dated January 17 and February 18, 2008. Thank you. These letters indicate that you are in the process of complying with the Special Conditions of Coastal Development Permit (CDP) No. 4-97-077. However, as of the date of this letter, we still have not received any annual reports or a conclusive final report, indicating the relative success of the revegetation project, as required by your CDP. As you have been previously informed, failure to comply with the terms and conditions of an approved CDP is a violation of the Coastal Act.

We are sending this letter as a reminder that you are required by Special Condition (2)(b) of CDP No. 4-97-077 to submit, for review and approval of the Executive Director, written and annual reports, beginning after the first year following implementation of the restoration program and include recommendations for mid-program corrections, if necessary. At the end of a three year period, a final detailed report is to be submitted for review and approval of the Executive Director.

Special Condition (2)(b) of CDP No. 4-97-077 states:

(b) The applicant shall submit, for the review and approval of the Executive Director, written annual reports, beginning after the first year following implementation of the restoration program and include recommendations for mid-program corrections, if necessary. At the end of a three (3) year period, a final detailed report shall be submitted for review and approval of the Executive Director. If this report indicates that the restoration project has in part, or in whole, been unsuccessful, based on the performance standards outlined in the

Exhibit 15  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)

monitoring program, the applicant shall be required to submit a revised or supplemental program to compensate for those portions of the original program which were not successful. The revised, or supplemental restoration program shall be processed as an amendment to this coastal development permit.

Therefore, in order to comply with Special Condition (2)(b), you must submit to the Commission a final report which indicates successful site restoration; i.e., if the revegetation of native plant species on site is adequate to provide 90% coverage and is able to survive without additional outside inputs, such as supplemental irrigation. In our letter dated December 11, 2007, the Commission gave you until January 17, 2008 to fulfill the requirements of Special Condition (2)(b). As of this date, you have not done so and, therefore, you are still in non-compliance with the requirements of CDP No. 4-97-077.

Additionally, we notified you that unpermitted development including, but not limited to, the placement of a horse corral and stable on a coastal bluff and within the required setback must be removed. In your letter dated, January 17, 2008, you indicated you had successfully removed the structure and "made arrangements to move the horses to an off site location within the next 90 days." Please verify, in writing and with pictures, that all horses and structures have been removed.

Although we would still prefer to resolve this matter administratively, we are obligated to inform you that if such resolution is not reached in a timely manner, Coastal Act Section 30809 states that if the Executive Director of the Commission 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 avoid irreparable injury to the area or to ensure compliance with the Coastal Act. A 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.

In addition, Coastal Act Section 30820 (a) provides that any person who violates any provision of the Coastal Act may be subject to a penalty of up to \$30,000, and Section 30820 (b) states that a person who intentionally and knowingly undertakes development that is in violation of the Coastal Act may be civilly liable in an amount which shall not be less than \$1,000 and not more than \$15,000 per day for each day in which the violation persists.

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.

In order to resolve the violation on your property and reduce the possibility of any court-imposed monetary penalty or fine, please submit the required final report which indicates successful site restoration pursuant to the requirements of CDP NO. 4-97-077;

and documentation that the unpermitted horse facility has been removed by **COB March 13, 2009**. Please contact me by no later than **February 20, 2009**, regarding how you intend to resolve this violation. If you do not, we will consider pursuing additional enforcement action against 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,

A handwritten signature in black ink, appearing to read 'Andrew D. Berner', written in a cursive style.

Andrew D. Berner, Enforcement Analyst

cc: Lisa Haage, Chief of Enforcment  
N. Patrick Veesart, Enforcement Supervisor  
Steve Hudson, District Manager  
Barbara Carey, Supervisor, Planning and Regulation  
Alex Helperin, Staff Counsel  
Tom Sinclair, District Enforcement Officer



## 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  
(by regular and certified mail)

July 29, 2011

Eric Linder  
33440 Pacific Coast Highway  
Malibu, CA 90265

Eric Linder  
12700 Preston Road #145  
Dallas, TX 75230

Violation File Number: V-4-07-039; V-4-94-040

Property location: 33440 Pacific Coast Highway, Malibu CA, Los Angeles  
County Assessor's Parcel Number 4473-020-018

Unpermitted Development<sup>1</sup>: Placement of a horse corral within a coastal bluff setback area  
and non-compliance with CDP No. 6-85-057 and CDP No.  
4-97-077.

Dear Mr. Linder:

The California Coastal Act<sup>2</sup> was enacted by the State Legislature in 1976 to provide long-term protection of California's 1,100-mile coastline through implementation of a comprehensive planning and regulatory program designed to manage conservation and development of coastal resources. The California Coastal Commission ("Commission") is the state agency created by, and charged with administering, the Coastal Act of 1976. In making its permit and land use planning decisions, the

<sup>1</sup> Please note that the description herein of the violation at issue is not necessarily a complete list of all development on the subject property that is in violation of the Coastal Act and/or that may be of concern to the Commission. Accordingly, you should not treat the Commission's silence regarding (or failure to address) other development on the subject property as indicative of Commission acceptance of, or acquiescence in, any such development.

<sup>2</sup> The Coastal Act is codified in sections 30,000 to 30,900 of the California Public Resources Code. All further section references are to that code, and thus, to the Coastal Act, unless otherwise indicated.

Exhibit 15  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)

Commission carries out Coastal Act policies, which, amongst other goals, seek to protect and restore sensitive habitats such as oak woodlands and riparian corridors; protect natural landforms; protect against loss of life and property from coastal hazards.

Staff has confirmed that as of January 7, 2011, unpermitted development remains on your property located at 33440 Pacific Coast Highway; Los Angeles County Assessor's Parcel No. 4473-020-018. This development includes but is not limited to the placement of a horse corral, fence, and horses on a coastal bluff. As you have been previously informed, this development is both unpermitted and non-compliant with the conditions of Coastal Development Permits Nos. 5-85-057 and 4-97-077 (issued to you in 1985 and 1998 respectively).

### CDP 5-85-057

As you are aware, the Commission granted you CDP No. 5-87-057 in 1985 for the construction of a single family residence with a two car garage and swimming pool on the subject 1.14 acre lot. To protect the scenic and geologic integrity of the affected coastal bluff, Special Condition 3 of this permit required that:

*Prior to the transmittal of permit, the applicant shall be required to submit a deed restriction for recording subject to the approval of the Executive Director prohibiting the construction of private stairways, structures or alterations on or down the bluff or within 25 feet of the bluff face.*

The unpermitted development in question is situated directly on the edge of the coastal bluff, and is therefore violative of Special Condition 3 of this permit.

### CDP 4-97-077

Additionally, on April 13, 1998, you were granted CDP No. 4-97-077 for the removal of unpermitted development from, and restoration of, the bluff<sup>3</sup>.

Special Condition 2(b) provides:

*b) The applicant shall submit, for the review and approval of the Executive Director, written annual reports, beginning after the first years following the implementation of the restoration program and include recommendations for mid-program corrections, if necessary. At the end of a three (3) year period, a final detailed report shall be submitted for review and approval of the Executive Director. If this report indicates that the restoration project abs in part, or in whole, been unsuccessful, based on the performance standards outlined in the monitoring program, the applicant shall be required to submit a revised or supplemental program to compensate for those portions of the original program which were not successful. The revised, or supplemental restoration program shall be processed as an amendment to this coastal development permit.*

<sup>3</sup> As you know, the portion of the bluff slated for restoration bluff in CDP 4-97-077 is distinct from the portion of the bluff now impacted by the unpermitted horses and related structures.

Commission Staff has received no documentation evidencing compliance with the three-year restoration monitoring required pursuant to Special Condition 2(b).

### Malibu LCP

Not only does the unpermitted development violate the conditions of two previously issued coastal development permits, but it also exists in violation of the City of Malibu's certified Local Coastal Program, Section 10.4, which provides in relevant part:

*All new development located on a bluff top shall be setback from the bluff edge a sufficient distance to ensure that it will not be endangered by erosion or threatened by slope instability for a projected 100 year economic life of the structure. In no case shall development be set back less than 100 feet. This distance may be reduced to 50 feet...This requirement shall apply to the principal structure and accessory or ancillary structures such as guesthouses, pools, tennis courts, cabanas, and septic systems etc. Ancillary structures such as decks, patios and walkways that do not require structural foundations may extend into the setback area but in no case shall be sited closer than 15 feet from the bluff edge.*

Pursuant to Section 30600 (a) of the Coastal Act and Section 13.3 of the City of Malibu Local Coastal Program Local Implementation Plan, any person wishing to perform or undertake development in the Coastal Zone must obtain a coastal development permit, in addition to any other permit required by law. "Development" is defined by Section 30106 of the Coastal Act and Section 2.1 of the City of Malibu Local Coastal Program Local Implementation Plan as:

*"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 any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of the use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of 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....*

The above-mentioned construction of a horse corral and fence constitutes development under the Coastal Act and, therefore, requires a coastal development permit (CDP). Any development activity conducted in the Coastal Zone without a valid coastal development permit, or which does not substantially conform to a previously issued permit, constitutes a violation of the Coastal Act.

## History

The history of this violation dates back over seventeen years; Notice of Violation for file V-4-94-040 was issued to you on August 23, 1994 for development on a coastal bluff (albeit, in a different location). This letter informed you that the construction of a horse corral, fence, gate, and water system was both unpermitted and development in violation of Special Condition 3 of CDP No. 5-85-057. As described above, this 1985 CDP for the construction of your home and swimming pool specified that no development is allowable within 25 feet of the top of the coastal bluff.

This letter was followed by two and a half years of correspondence between yourself and staff, culminating finally in the April 9, 1997 submission of a CDP application for the removal the unpermitted development and restoration of the impacted bluff.

On April 13, 1998, you were sent a Notice of Intent to Issue Permit, which indicated that CDP No. 4-97-077 would issue to you once Special Conditions 1-5 were complied with. As detailed above, to date, no documentation has been submitted to staff evidencing compliance with Special Conditions 2(b) and 3.

On September 4, 2007, after observing a horse corral, shade structure and horses on top of the bluff, staff sent you an new Notice of Violation asking you to bring your property into compliance with the Coastal Act by 1) submitting a complete CDP application to the City of Malibu for the removal or retention of the unpermitted development by October 31, 2007 and 2) submitting a final restoration report to the Coastal Commission to fulfill your obligations under Special Condition 2(b) of CDP 4-97-077 by November 31, 2007.

On December 11, 2007, you were granted a time extension for the submittal of the restoration report until January 17, 2007. Subsequently, in a letter to Commission staff dated January 17, 2008, you represented that the horse corral and shade structure had been removed and that arrangements had been made to remove the horses from the site within 90 days.

As staff determined that the horses and at least a portion of the original unpermitted development remained in place, a year after this communication, an additional letter was sent to you on February 6, 2009, asking for documentation that the violation had been remedied. Staff received no response to this letter.

On January 7, 2011, staff confirmed the continued presence of the horse corral, structure and horses on your property.

## Resolution

In some cases, violations involving unpermitted development may be resolved administratively by removal of the unpermitted development and restoration of any damaged resources. Removal of the development and restoration of the site generally will require formal approval under the Coastal Act. In this case, we would like to work with you to resolve these issues amicably and would like to discuss with you options to do so. These options may include agreeing to a "consent order". A consent order is similar to a settlement agreement. A consent order would provide you with an opportunity to have input into the process and timing of restoration of the subject property and mitigation of the damages caused by the unpermitted activity and could potentially allow you to negotiate a penalty amount with Commission staff in order to resolve the complete violation without any further formal legal action. If you are amenable to this approach, please contact me by **August 17, 2011** to discuss further. Please be advised that if we cannot come to an agreement in a timely manner, we will be forced to consider other options for resolution including processing administrative orders pursuant to Sections 30809, 30810, and/or 30811.

In any event, please stop all unpermitted development activity on the subject property and contact me by **August 17, 2011** regarding how you intend to resolve this violation.

While we are hopeful that we can resolve this matter amicably, please be advised that the Coastal Act has a number of potential remedies to address such violations of the Coastal Act including the following:

Section 30809 states that if the Executive Director of the Commission 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. 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 avoid irreparable injury to the area or to ensure compliance with the Coastal Act. A violation of a cease and desist order can result in civil fines of up to \$6,000 for each day in which each violation persists. Pursuant to Section 30811, the Commission may also order restoration of the property.

Additionally, Sections 30803 and 30805 authorize the Commission to initiate litigation to seek injunctive relief and an award of civil fines in response to any violation of the Coastal Act. Section 30820(a)(1) provides that any person who violates any provision of the Coastal Act may be subject to a penalty amount that shall not exceed \$30,000 and shall not be less than \$500 per violation. Section 30820(b) states that, in addition to any other penalties, any person who "knowingly and intentionally" performs or undertakes any development in violation of the Coastal Act can be subject to a civil penalty of not less than \$1,000 nor more than \$15,000 for each day in which each violation persists. Because you have been previously apprised of the fact that the grading and removal of major vegetation require a permit under the Coastal Act, this additional unpermitted development could be construed as a 'knowing and intentional' violation of the Coastal Act.

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

Thank you, in advance, for your prompt attention to this matter. We look forward to hearing from you soon. If you have any questions regarding this letter or the pending enforcement case, please feel free to contact me at (805) 585-1800.

Sincerely,



Heather Johnston  
South Central Coast District Enforcement Officer

cc: Lisa Haage, Chief of Enforcement, CCC  
N. Patrick Veesart, Enforcement Supervisor, CCC  
Steve Hudson, District Manager, CCC  
Barbara Carey, Supervisor, Planning and Regulation, CCC  
Alex Helperin, Staff Counsel, CCC  
Lisa Tent, Senior Code Enforcement Officer, City of Malibu

## 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  
(by regular and certified mail)

August 22, 2011

Eric Linder  
33440 Pacific Coast Highway  
Malibu, CA 90265

Eric Linder  
12700 Preston Road # 145  
Dallas, TX 75230

Violation File Number: V-4-07-039; V-4-94-040

Property location: 33440 Pacific Coast Highway, Malibu CA, Los Angeles  
County Assessor's Parcel Number 4473-020-018

Unpermitted Development<sup>1</sup>: Placement of a horse corral within a coastal bluff setback area  
and non-compliance with CDP No. 6-85-057 and CDP No.  
4-97-077.

Dear Mr. Linder:

The California Coastal Act<sup>2</sup> was enacted by the State Legislature in 1976 to provide long-term protection of California's 1,100-mile coastline through implementation of a comprehensive planning and regulatory program designed to manage conservation and development of coastal resources. The California Coastal Commission ("Commission") is the state agency created by, and charged with administering, the Coastal Act of 1976. In making its permit and land use planning decisions, the

<sup>1</sup> Please note that the description herein of the violation at issue is not necessarily a complete list of all development on the subject property that is in violation of the Coastal Act and/or that may be of concern to the Commission. Accordingly, you should not treat the Commission's silence regarding (or failure to address) other development on the subject property as indicative of Commission acceptance of, or acquiescence in, any such development.

<sup>2</sup> The Coastal Act is codified in sections 30,000 to 30,900 of the California Public Resources Code. All further section references are to that code, and thus, to the Coastal Act, unless otherwise indicated.

Exhibit 15  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)



Commission carries out Coastal Act policies, which, amongst other goals, seek to protect and restore sensitive habitats such as oak woodlands and riparian corridors; protect natural landforms; protect against loss of life and property from coastal hazards.

Staff has confirmed that as of January 7, 2011, unpermitted development remains on your property located at 33440 Pacific Coast Highway; Los Angeles County Assessor's Parcel No. 4473-020-018. This development includes but is not limited to the placement of a horse corral, fence, and horses on a coastal bluff. As you have been previously informed, this development is both unpermitted and non-compliant with the conditions of Coastal Development Permits Nos. 5-85-057 and 4-97-077 (issued to you in 1985 and 1998 respectively).

#### CDP 5-85-057

As you are aware, the Commission granted you CDP No. 5-87-057 in 1985 for the construction of a single family residence with a two car garage and swimming pool on the subject 1.14 acre lot. To protect the scenic and geologic integrity of the affected coastal bluff, Special Condition 3 of this permit required that:

*Prior to the transmittal of permit, the applicant shall be required to submit a deed restriction for recording subject to the approval of the Executive Director prohibiting the construction of private stairways, structures or alterations on or down the bluff or within 25 feet of the bluff face.*

The unpermitted development in question is situated directly on the edge of the coastal bluff, and is therefore violative of Special Condition 3 of this permit.

#### CDP 4-97-077

Additionally, on April 13, 1998, you were granted CDP No. 4-97-077 for the removal of unpermitted development from, and restoration of, the bluff<sup>3</sup>.

Special Condition 2(b) provides:

*b) The applicant shall submit, for the review and approval of the Executive Director, written annual reports, beginning after the first years following the implementation of the restoration program and include recommendations for mid-program corrections, if necessary. At the end of a three (3) year period, a final detailed report shall be submitted for review and approval of the Executive Director. If this report indicates that the restoration project has in part, or in whole, been unsuccessful, based on the performance standards outlined in the monitoring program, the applicant shall be required to submit a revised or supplemental program to compensate for those portions of the original program which were not successful. The revised, or supplemental restoration program shall be processed as an amendment to this coastal development permit.*

<sup>3</sup> As you know, the portion of the bluff slated for restoration bluff in CDP 4-97-077 is distinct from the portion of the bluff now impacted by the unpermitted horses and related structures.

Commission Staff has received no documentation evidencing compliance with the three-year restoration monitoring required pursuant to Special Condition 2(b).

Exhibit 15  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)

Malibu LCP

Page 19 of 28

Not only does the unpermitted development violate the conditions of two previously issued coastal development permits, but it also exists in violation of the City of Malibu's certified Local Coastal Program, Section 10.4, which provides in relevant part:

*All new development located on a bluff top shall be setback from the bluff edge a sufficient distance to ensure that it will not be endangered by erosion or threatened by slope instability for a projected 100 year economic life of the structure. In no case shall development be set back less than 100 feet. This distance may be reduced to 50 feet. . . This requirement shall apply to the principal structure and accessory or ancillary structures such as guesthouses, pools, tennis courts, cabanas, and septic systems etc. Ancillary structures such as decks, patios and walkways that do not require structural foundations may extend into the setback area but in no case shall be sited closer than 15 feet from the bluff edge.*

Pursuant to Section 30600 (a) of the Coastal Act and Section 13.3 of the City of Malibu Local Coastal Program Local Implementation Plan, any person wishing to perform or undertake development in the Coastal Zone must obtain a coastal development permit, in addition to any other permit required by law. "Development" is defined by Section 30106 of the Coastal Act and Section 2.1 of the City of Malibu Local Coastal Program Local Implementation Plan as:

*"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 any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of the use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of 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....*

The above-mentioned construction of a horse corral and fence constitutes development under the Coastal Act and, therefore, requires a coastal development permit (CDP). Any development activity conducted in the Coastal Zone without a valid coastal development permit, or which does not substantially conform to a previously issued permit, constitutes a violation of the Coastal Act.

## History

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This letter was followed by two and a half years of correspondence between yourself and staff, culminating finally in the April 9, 1997 submission of a CDP application for the removal the unpermitted development and restoration of the impacted bluff.

On April 13, 1998, you were sent a Notice of Intent to Issue Permit, which indicated that CDP No. 4-97-077 would issue to you once Special Conditions 1-5 were complied with. As detailed above, to date, no documentation has been submitted to staff evidencing compliance with Special Conditions 2(b) and 3.

On September 4, 2007, after observing a horse corral, shade structure and horses on top of the bluff, staff sent you an new Notice of Violation asking you to bring your property into compliance with the Coastal Act by 1) submitting a complete CDP application to the City of Malibu for the removal or retention of the unpermitted development by October 31, 2007 and 2) submitting a final restoration report to the Coastal Commission to fulfill your obligations under Special Condition 2(b) of CDP 4-97-077 by November 31, 2007.

On December 11, 2007, you were granted a time extension for the submittal of the restoration report until January 17, 2008. Subsequently, in a letter to Commission staff dated January 17, 2008, you represented that the horse corral and shade structure had been removed and that arrangements had been made to remove the horses from the site within 90 days.

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On January 7, 2011, staff confirmed the continued presence of the horse corral, structure and horses on your property.

Resolution

Page 21 of 28

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While we are hopeful that we can resolve this matter amicably, please be advised that the Coastal Act has a number of potential remedies to address such violations of the Coastal Act including the following:

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Additionally, Sections 30803 and 30805 authorize the Commission to initiate litigation to seek injunctive relief and an award of civil fines in response to any violation of the Coastal Act. Section 30820(a)(1) provides that any person who violates any provision of the Coastal Act may be subject to a penalty amount that shall not exceed \$30,000 and shall not be less than \$500 per violation. Section 30820(b) states that, in addition to any other penalties, any person who "knowingly and intentionally" performs or undertakes any development in violation of the Coastal Act can be subject to a civil penalty of not less than \$1,000 nor more than \$15,000 for each day in which each violation persists. Because you have been previously apprised of the fact that the grading and removal of major vegetation require a permit under the Coastal Act, this additional unpermitted development could be construed as a 'knowing and intentional' violation of the Coastal Act.

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

Thank you, in advance, for your prompt attention to this matter. We look forward to hearing from you soon. If you have any questions regarding this letter or the pending enforcement case, please feel free to contact me at (805) 585-1800.

Sincerely,



Heather Johnston  
South Central Coast District Enforcement Officer

cc: Lisa Haage, Chief of Enforcement, CCC  
N. Patrick Veesart, Enforcement Supervisor, CCC  
Steve Hudson, District Manager, CCC  
Barbara Carey, Supervisor, Planning and Regulation, CCC  
Alex Helperin, Staff Counsel, CCC  
Lisa Tent, Senior Code Enforcement Officer, City of Malibu

## CALIFORNIA COASTAL COMMISSION

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

VIA REGULAR MAIL

February 27, 2012

Eric and Barbara Linder  
33440 Pacific Coast Highway  
Malibu, CA 90265

Eric and Barbara Linder  
12700 Preston Road #145  
Dallas, TX 75230

Subject: Violation Case Nos. V-4-07-039 and V-4-94-040 on Property Located at 33440 Pacific Coast Highway, Malibu (APNs 4473-020-018; 4473-020-017; and 4473-020-903)

Dear Mr. and Mrs. Linder,

Coastal Commission staff ("staff") has confirmed that as of January 7, 2011, unpermitted development remains on your property located at 33440 Pacific Coast Highway; Los Angeles County Assessor's Parcel No. 4473-020-018. The unpermitted development includes but is not limited to the placement of a horse corral, fence, and horses on a coastal bluff top, the concrete staircase constructed to provide private beach access and the non-native vegetation planted on the bluff face along the stairway. This development, as you have been previously informed, is both unpermitted and non-compliant with the conditions of Coastal Development Permits Nos. 5-85-057 and 4-97-077 (issued to you in 1985 and 1998 respectively).

Pursuant to Section 30600 (a) of the Coastal Act and Section 13.3 of the City of Malibu Local Coastal Program Local Implementation Plan, any person wishing to perform or undertake development in the Coastal Zone must obtain a coastal development permit, in addition to any other permit required by law. "Development" is defined by Section 30106 of the Coastal Act and Section 2.1 of the City of Malibu Local Coastal Program Local Implementation Plan as:

*"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 any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of the use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change*

*in the intensity of 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....*

The above-mentioned construction of a horse corral and fence constitutes development under the Coastal Act and, therefore, requires a coastal development permit (CDP). Any development activity conducted in the Coastal Zone without a valid CDP, or which does not substantially conform to a previously issued CDP, constitutes a violation of the Coastal Act.

The California Coastal Commission's (Commission) South Central Coast District Enforcement staff (in Ventura) has referred the subject violation cases to the Commission Statewide Enforcement Office (Headquarters) for further action. I reviewed your violation files and found that your violation history dates back over seventeen years. The Commission, as you are aware, has contacted you on numerous occasions in the past in an attempt to informally resolve this matter. These attempts included, but are not limited to, letters to you and or your representative/agent Mr. Sherman Stacey, dated August 23, 1994, December 5, 1994, May 4, 1995, June 28, 1995, August 30, 1995, March 26, 1996, November 27, 1996, March 17, 1997, May 8, 2001, September 24, 2007, December 11, 2007, February 6, 2009, July 29, 2011, and August 22, 2011. The letters, in brief, requested that you stop unpermitted development and that you submit a Coastal Development Permit (CDP) application to seek authorization to conduct work necessary for restoration of the site or retain the unpermitted development. You were also provided with the option to resolve this matter administratively.

The Commission issued CDP No. 5-85-057 to you in 1985 for the construction of a two-story, single-family dwelling with an attached three-car garage, a swimming pool, and septic system on a 1.4-acre bluff top lot. CDP No. 5-85-057 specifically prohibits the construction of private stairways, structures, or alterations on or down the bluff or within 25 feet of the bluff face; among other conditions.

On August 8, 1994, staff observed unpermitted development located on the bluff face and the sandy beach at the base of the bluff below your property. A Notice of Violation (Notice) for file V-4-94-040 was issued to you on August 23, 1994 for the aforementioned unpermitted development. The Notice informed you that the construction of a horse corral, fence, gate, and water system (then located on the sandy beach at the bottom of the bluff) was both unpermitted and development undertaken in violation of Special Condition No. 3 of CDP No. 5-85-057, and requested that you provide any information regarding compliance with your permit, or to indicate our Notice was incorrect. Commission staff, to date, has not received the requested documentation providing evidence of your compliance with Special Condition No. 3 of CDP No. 5-85-057. The current unpermitted development at issue here, which includes a corral and fence on the bluff top, in fact appears to be not only unpermitted development under the Coastal Act but also located at the very edge of the coastal bluff, inconsistent with Special Condition No. 3 of CDP No. 5-85-057.



Staff further notes that, unpermitted development in the form of hardscaping and landscaping in the area directly east of the unpermitted corral and contiguous with the swimming pool does not comply with the project approved under CDP 5-85-057. While development such as the hardscaping and some landscaping may be approvable, such development requires review under the coastal development permitting process for either a separate CDP or an amendment to CDP 5-85-057.

The issuance of the August 23, 1994 Notice was followed by two and a half years of correspondence between you and Commission staff. You ultimately submitted a CDP application on April 9, 1997 seeking authorization for the removal of the unpermitted development (located on the bluff face and sandy beach) and bluff restoration and revegetation. The Commission granted you CDP 4-97-077 on April 13, 1998 for the removal of the horse corral, fence, gate, wooden retaining structures and water system, and the restoration and revegetation of a coastal bluff. Staff issued a Notice of Intent to Issue a Permit (dated April 13, 1998), upon your compliance with Special Condition Nos. 1 – 5. CDP 4-97-077 was issued on July 23, 1998. However, to date, you remain in non-compliance with CDP 4-97-077 Special Condition Nos. 2(b) and 3, to date.

On May 8, 2001 staff visited the site area and observed from the nearby public area that the restoration had not been completed, pursuant to CDP 9-97-077. Additionally, new, unpermitted development, including a new horse corral, was observed on the top of the bluff. Staff informed you in this letter of May 8, 2001 that these were violations of the Coastal Act.

On September 13, 2007, staff observed that there was still an unpermitted horse corral, shade structure and horses on the bluff top. On September 24, 2007 staff sent you a new Notice of Violation for V-4-07-039 that asked you to bring your property into compliance with the Coastal Act by 1) submitting a complete CDP application to the City of Malibu by October 31, 2007 for either the removal of the unpermitted development and restoration of the site or to seek to authorize the as-built development; 2) submitting a restoration report to the Coastal Commission to fulfill your obligations under Special Condition 2(b) of CDP 4-97-077 by November 31, 2007; and to 3) contact staff by no later than October 31, 2007 regarding how you intended to resolve the violation.

On December 11, 2007, staff granted you a time extension to January 17, 2008 to fulfill the requirements of Special Condition 2(b), which required you to submit a restoration report that details the relative success of the restoration. Staff received your letter, dated January 17, 2008, which stated that all fences, barn structures, water system, and a shade structure you had erected within the 25-foot bluff setback had been removed. Your letter also stated that you had made arrangements to remove the horses from the site within 90 days and were trying to get confirmation of the status of the restoration from the original landscape architect. Staff received another letter from you, dated February 18, 2008, which stated that you were unable to contact the original landscaper and that you were looking for another. Your letter also stated that you would notify staff of the timing of your submittal of the restoration report. As of February 18, 2008 you still had failed to comply with the Special Conditions of CDP Nos. 5-85-57 and 4-97-077.

On February 6, 2009, staff sent you a letter again that requested photos and written verification that all horses and structures have been removed and requested you submit the required restoration report pursuant to CDP 4-97-077. Staff received no response to this letter.

On January 7, 2011, since we had not received any responses to our letters, staff visited the site area and viewing it from nearby/adjacent public areas, again confirmed the continued presence of the horse corral, structure and horses on your property.

On July 29, 2011, staff again wrote you and reminded you of the unpermitted development and non-compliance of CDP 5-85-057 Special Condition No. 3 and CDP 4-97-077 Special Conditions No. 2(b). Staff, again, requested that you stop unpermitted development activity, remove the unpermitted development, and restore the site. You have also been provided with options to resolve your violation case administratively, such as through a "consent order". Staff, while hopeful that your violation case could be resolved amicably, further advised you on a number of potential remedies to address the Coastal Act violations pursuant to Coastal Act Sections 30809, 30810, 30811, 30803, 30805, 30820 (a) (1), and 30820 (b). Staff also informed you that the Executive Director is authorized by 30812 to record a Notice of Violation against your property, after providing notice and the opportunity for a hearing. The July 29, 2011 letter also requested that you contact staff by August 17, 2011 regarding how you intended to resolve the violation. Staff has received no response to this letter.

On August 22, 2011, staff wrote you and again informed you of the unpermitted development and your non-compliance of CDP 5-85-057 Special Condition No. 3 and CDP 4-97-077 Special Condition No. 2(b). Staff requested that you stop unpermitted development activity, remove the unpermitted development, and restore the site. You were also again provided with options to resolve your violation case administratively, such as through a "consent order". Staff, while still hopeful that your violation case could be resolved amicably, again advised you on a number of potential remedies to address the violations pursuant to Coastal Act Sections 30809, 30810, 30811, 30803, 30805, 30820 (a) (1), and 30820 (b). Staff also informed you that the Executive Director is authorized by 30812 to record a Notice of Violation against your property, after providing notice and the opportunity for a hearing. The July 29, 2011 letter also requested that you contact staff by September 6, 2011 regarding how you intend to resolve this violation. Unfortunately, staff has received no response to this letter, either.

District Enforcement staff, as evident from the long record of violations at this site, has provided you with many opportunities over the past several years (from 1994 to date) to informally resolve the violation on your property at 33440 Pacific Coast Highway in Malibu. Unfortunately, we have not received responses from you or your representative/agent since January 17, 2008. Your violations, therefore are now being handled by Headquarters in order to resolve the violations at the site, including grading; removal of vegetation; and the placement of a horse corral within a coastal bluff setback area, all of which is unpermitted development. Additionally, you are in non-compliance of Coastal Development Permit Nos. 5-85-057 and 4-97-077.

We advise you, again, that the Coastal Act provides the Commission with a number of potential legal remedies to address violations of the Coastal Act including the following:

Section 30809 states that if the Executive Director of the Commission 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. 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 avoid irreparable injury to the area or to ensure compliance with the Coastal Act. A violation of a cease and desist order can result in civil fines of up to \$6,000 for each day in which each violation persists. Pursuant to Section 30811, the Commission may also order restoration of the property.

Additionally, Sections 30803 and 30805 authorize the Commission to initiate litigation to seek injunctive relief and an award of civil fines in response to any violation of the Coastal Act. Section 30820(a)(1) provides that any person who violates any provision of the Coastal Act may be subject to a penalty amount that shall not exceed \$30,000 and shall not be less than \$500 per violation. Section 30820(b) states that, in addition to any other penalties, any person who "knowingly and intentionally" performs or undertakes any development in violation of the Coastal Act can be subject to a civil penalty of not less than \$1,000 nor more than \$15,000 for each day in which each violation persists. Because of the history of the set of violations, it appears that they constitute 'knowing and intentional' violations of the Coastal Act.

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

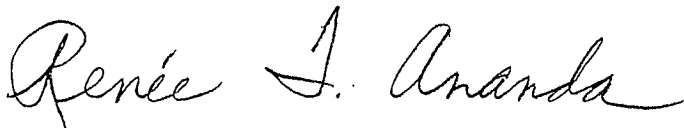
The Commission's preferred option, still, is to resolve your violation cases through a negotiation process that results in a Consent Cease and Desist and Restoration Orders (Consent Orders), which is further-described below. It is our primary goal to resolve your case in a timely and amicable manner.

Consent Orders are similar to settlement agreements in that you would have the opportunity to participate in the crafting of the terms and conditions of such an agreement. Consent Orders would avoid litigation, thereby requiring less time and incurred costs to you for resolving the subject violations. Please let me know by Friday, February 20, 2012, if you are interested in pursuing this option to resolve this matter through a Consent Order.

I hope that you can resolve the issue of the unpermitted development timely and agreeably with Headquarters Enforcement staff. I look forward to hearing from you by February 20, 2012 regarding how you anticipate resolving your violation cases. Thank you for your time and attention to this matter. I can be contacted in writing at the address listed above in the letter head if you have questions regarding your case. Feel free, also, to reach me by telephone at (415) 904-5220.

Eric and Barbara Linder  
Violation Nos. V-4-07-039 and V-4-94-040  
2/27/2012  
Page 6 of 6

Sincerely,

A handwritten signature in cursive script that reads "Renée T. Ananda". The signature is written in dark ink and is positioned above the printed name and title.

Renée T. Ananda  
Statewide Enforcement Officer

cc: Lisa Haage, Chief of Enforcement  
Alex Helperin, Staff Counsel  
Aaron McLendon, Statewide Enforcement Supervisor  
Pat Veesart, Southern California Enforcement Supervisor  
Heather Johnston, Statewide Enforcement Officer

Exhibit 15  
CCC-12-CD-04 & CCC-12-RO-04  
(Linder)