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6 Attorneys for Respondents
7 California Coastal Commission, et al.

8
9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF LOS ANGELES

11
12 **DAVID A. HARNER,**
13 Petitioner and Plaintiff,
14 v.
15 **CALIFORNIA COASTAL COMMISSION,**
16 **et al.,**
17 Respondents and Defendants,
18 **ACCESS FOR ALL, et al.,**
19 Defendants and Indispensable Parties.
20 **CALIFORNIA COASTAL COMMISSION,**
21 Cross-Complainant,
22 v.
23 **DAVID HARNER, and ROES 1 through**
24 **100, inclusive,**
25 Cross-Defendants,
26 **ACCESS FOR ALL,**
27 Real Party in Interest.

CASE NO. SS013093

STIPULATION FOR ENTRY OF JUDGMENT

Dept: 40
Judge: Honorable Ann I. Jones

Trial Date:
Action Filed: December 13, 2004
Cross-Complaint Filed: Feb. 10, 2005

1 IT IS HEREBY STIPULATED AND AGREED by and among the parties as follows:

2 1. This stipulation of the parties for entry of judgment ("stipulation") is a settlement of
3 the above-captioned petition for writ of mandate ("petition") and related cross-complaint. David
4 A. Harner ("Harner") filed the petition against the California Coastal Commission ("Coastal
5 Commission") to challenge an enforcement decision of the Coastal Commission. The Coastal
6 Commission filed a cross-complaint against Harner alleging various violations of the California
7 Coastal Act of 1976, Public Resources Code, section 30000 et seq. ("Coastal Act"). The petition
8 and related cross-complaint shall be referred to collectively as "the litigation."

9 2. Harner is the owner in fee simple of the following parcel of beachfront real property in
10 Malibu: APN No. 4449-003-027 (19016 Pacific Coast Highway, Malibu, California) ("subject
11 property").

12 3. The parties agree that judgment shall be entered as described in this stipulation. The
13 proposed stipulated judgment is attached as Exhibit A. A separate copy of the proposed
14 stipulated judgment is being lodged concurrently with this stipulation.

15 **PETITION**

16 4. Harner's petition is hereby dismissed in its entirety and with prejudice.

17 **CROSS-COMPLAINT**

18 5. The Coastal Commission's cross-complaint is hereby dismissed in its entirety and with
19 prejudice.

20 **PERMANENT INJUNCTION**

21 6. On October 23, 2006, the Honorable Dzintra Janavs heard the petition and on
22 November 15, 2006, the Court entered its order denying the petition in its entirety with respect to
23 Harner's challenge to the Coastal Commission's Cease and Desist Order No. CCC-04-CD-10
24 ("Cease and Desist Order"). The Cease and Desist Order shall be incorporated into the stipulated
25 judgment and have the full force and effect of a permanent injunction issued by a Court of
26 competent jurisdiction. (A true and correct copy of the Cease and Desist Order is attached to the
27 stipulated judgment.)
28

- 1 a. Within ninety (90) days of the date on which the Coastal Commission serves notice of
2 entry of judgment, Harner shall submit to the Coastal Commission's Executive
3 Director (Executive Director) for his approval a plan for removal of the unpermitted
4 development in the vertical access easement (removal plan). The removal plan shall
5 contain a timetable for completion of the removal of the unpermitted development.
6 Harner shall modify the removal plan as necessary to receive the Executive Director's
7 approval. Harner shall make such modifications to the removal plan within 60 days of
8 Executive Director notice that such modifications are necessary to receive Executive
9 Director approval. The Executive Director shall extend the time periods provided in
10 this paragraph by an additional 60 days if Harner or his agent demonstrates to the
11 Executive Director's satisfaction that conditions beyond Harner's control, for example,
12 tidal conditions or storms, prevented the timely submission of the removal plan or the
13 modification of the removal plan.
- 14 b. Upon the Coastal Commission's written notification to Harner that Real Party in
15 Interest Access for All is prepared to commence construction of improvements in the
16 access easement, Harner shall within 30 days commence removal of the unpermitted
17 development in the vertical access easement on the subject property in accordance with
18 the Executive Director-approved removal plan.
- 19 c. Within 3 days of completing the removal of the unpermitted development in the
20 vertical access easement on the subject property, Harner shall provide Access for All
21 with written notice that the removal is complete. Harner shall provide a copy of this
22 written notice to Aaron McLendon, Statewide Enforcement Analyst, California Coastal
23 Commission, 45 Fremont Street, Suite 2000, San Francisco, CA 94105-2219.
- 24 d. Within seven (7) days of receipt of Harner's notice of completion of removal of the
25 unpermitted development in the vertical access easement on the subject property,
26 Access for All shall secure the vertical access easement and prevent public entry
27 thereon until such time that Access for All opens the vertical access easement for
28 public use.

1 e. Upon receipt of Harner's notice of completion of removal of the unpermitted
2 development in the vertical access easement on the subject property, Access for All
3 shall commence construction of the access improvements within 15 days. Harner shall
4 allow Access for All to access the vertical access easement for purposes of constructing
5 and maintaining the access improvements.

6 f. Harner shall not interfere with Access for All's planning, construction or maintenance
7 of its access improvements, including access to the vertical easement for such
8 purposes.

9 **OTHER CONDITIONS RELATING TO IMPROVEMENTS**

10 7. Within ninety (90) days of the date on which the Coastal Commission serves
11 notice of entry of judgment, Harner shall file a complete coastal development permit amendment
12 application with the Coastal Commission addressing any new development that may be necessary
13 regarding his septic system, return wall or bulkhead. The Executive Director shall extend the
14 time period provided in this paragraph by an additional 60 days if Harner or his agent
15 demonstrates to the Executive Director's satisfaction that conditions beyond Harner's control, for
16 example, tidal conditions or storms, prevented the timely submission of the complete permit
17 application. The processing of this application shall not relieve Harner of his obligation to
18 comply with Paragraph 6 herein.

19 8. The parties do not anticipate that the amendment application referenced in
20 Paragraph 7 will require the oversight or approval of the City of Malibu. If, however, the City of
21 Malibu asserts jurisdictional authority over any aspect of the amendment application, any
22 resulting delay in Harner's compliance with Paragraph 7 will not subject Harner to the fines set
23 forth in Paragraph 11, provided Harner responds in good faith and within a reasonable time to the
24 requests of the City of Malibu.

25 9. Prior to the Coastal Commission providing written notification to Harner as
26 specified in Paragraph 6.b, AFA shall establish to the satisfaction of the Executive Director that
27 it is prepared to commence construction of improvements in the vertical access easement
28 including that it has necessary permits, financing and construction contracts, and that its

1 contractors are licensed and insured.

2 10. The Commission shall use its best efforts to inform Harner or his agent of any
3 information the Commission may need in order to approve the removal plan or for a complete
4 coastal development permit amendment application.

5 **PAYMENT OF ATTORNEYS' FEES**

6 11. Petitioner shall pay the California Department of Justice twenty thousand dollars
7 (\$20,000.00) in attorneys' fees. Such payment shall be made within ten (10) days of the date on
8 which the Coastal Commission serves notice of entry of judgment. Harner shall deliver to
9 Supervising Deputy Attorney General John A. Saurenman, California Department of Justice, 300
10 South Spring St., Los Angeles, CA 90013, a certified or cashier's check in the amount of twenty
11 thousand dollars (\$20,000.00) payable to the "CALIFORNIA DEPARTMENT OF JUSTICE."
12 Harner shall provide a copy of the check to Aaron McLendon, Statewide Enforcement Analyst,
13 California Coastal Commission, 45 Fremont Street, Suite 2000, San Francisco, CA 94105-2219.

14 **ENFORCEMENT OF STIPULATED JUDGMENT**

15 12. Should Harner violate any term set by the stipulated judgment, including the
16 permanent injunction, Harner shall be liable for a penalty in the amount of seven hundred and
17 fifty dollars (\$750.00) for each day Harner is in violation. Before any such penalty is imposed,
18 the Coastal Commission shall give Harner no less than ten (10) days written notice of the Coastal
19 Commission's intent to enforce this penalty provision. If at the end of such ten (10) days Harner
20 is still in violation of the stipulated judgment, the Coastal Commission may enforce this penalty
21 provision for the entire period of noncompliance regardless of whether Harner has subsequently
22 complied. Harner shall pay the Coastal Commission such penalty within ten (10) days of receipt
23 of the Coastal Commission's second written notice to enforce this penalty provision. Payment of
24 the penalty shall be delivered to Aaron McLendon, Statewide Enforcement Analyst, California
25 Coastal Commission, 45 Fremont Street, Suite 2000, San Francisco, CA 94105-2219, in the form
26 of a certified or cashier's check made out to: "CALIFORNIA COASTAL COMMISSION,
27 VIOLATION REMEDIATION ACCOUNT." Such penalty shall be computed from the first day
28 Harner stood in violation of the stipulated judgment as noted in the notice sent by the Coastal

1 Commission or in other subsequent correspondence. Payment of such penalty shall not relieve
2 Harner of his duties under the stipulated judgment.

3 **OTHER TERMS**

4 13. This Court has jurisdiction over the subject matter of and the parties to this
5 litigation.

6 14. The Coastal Commission waives all Coastal Act fines and penalties, if any, for the
7 unpermitted development in the vertical access easement for the time period prior to entry of the
8 stipulated judgment.

9 15. This stipulation represents the complete and final agreement of the parties and
10 fully settles and resolves all issues presented in the litigation.

11 16. None of the provisions herein shall constitute evidence or an admission of liability
12 on the part of any of the parties.

13 17. The parties waive any statement of decision and all rights of appeal from the
14 stipulated judgment.

15 18. The Executive Director may grant extensions of all time periods specified herein
16 if he or she determines there is good cause for an extension, and he or she shall not unreasonably
17 deny extension requests.

18 19. Other than Harner's payment of attorneys' fees as set forth in Paragraph 11 above,
19 the parties shall bear their own attorneys' fees and costs.

20 20. The Court shall retain jurisdiction for the purpose of enabling any party to the
21 litigation to apply to the Court for any further orders, directions or relief as may be necessary and
22 appropriate for the stipulated judgment's construction, execution, modification, and enforcement
23 of compliance. Such application shall be made in the first instance to the Honorable Ann I.
24 Jones, Judge of the Superior Court. If Judge Jones is not available, pursuant to all applicable
25 rules, the Superior Court may assign the stipulated judgment to a judge, commissioner or judge
26 pro tem of the Superior Court for the County of Los Angeles as required to fulfill its terms.

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1 DATED: January 10, 2008

EDMUND G. BROWN JR.
Attorney General
JOHN A. SAURENMAN
Supervising Deputy Attorney General

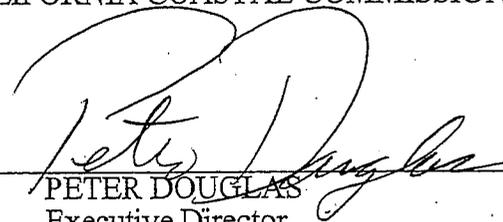
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By 
JOHN A. SAURENMAN

Attorneys for California Coastal Commission

DATED: January 10, 2008

CALIFORNIA COASTAL COMMISSION

By 
PETER DOUGLAS
Executive Director

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DATED: 1/29/08

RONALD ZUMBRUN
ANGELA THOMPSON
THE ZUMBRUN LAW FIRM

By Angela C. Thompson
ANGELA THOMPSON

Attorneys for David A. Harner

DATED: 1/28/08

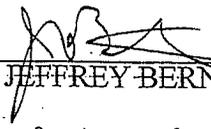
DAVID A. HARNER

By [Signature]
DAVID A. HARNER

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DATED: 4/08

JEFFREY BERNSTEIN, Esq.

By 
JEFFREY BERNSTEIN
Attorney for Access for All

DATED: 1/8/08

ACCESS FOR ALL

By 
STEVE HOYE
Executive Director

60263561.wpd

EXHIBIT TO STIPULATION FOR ENTRY OF JUDGMENT

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

DAVID A. HARNER,
Petitioner and Plaintiff,
v.
CALIFORNIA COASTAL COMMISSION,
et al.,
Respondents and Defendants,
ACCESS FOR ALL, et al.,
Defendants and Indispensable Parties.

CALIFORNIA COASTAL COMMISSION,
Cross-Complainant,
v.
DAVID HARNER, and ROES 1 through
100, inclusive,
Cross-Defendants,
ACCESS FOR ALL,
Real Party in Interest.

CASE NO. SS013093

**[PROPOSED] JUDGMENT
PURSUANT TO STIPULATION OF
THE PARTIES**

Dept: 40
Judge: Honorable Ann I. Jones

Trial Date:
Action Filed: December 13, 2004
Cross-Complaint Filed: Feb. 10, 2005

1 Upon written stipulation of the parties, by and through their counsel, and upon this Court's
2 finding of good cause, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that
3 judgment is entered as follows:

4 1. This judgment ("stipulated judgment") is entered pursuant to stipulation of the parties
5 for entry of judgment and is a settlement of the above-captioned petition for writ of mandate
6 ("petition") and related cross-complaint. David A. Harner ("Harner") filed the petition against
7 the California Coastal Commission ("Coastal Commission") to challenge an enforcement
8 decision of the Coastal Commission. The Coastal Commission filed a cross-complaint against
9 Harner alleging various violations of the California Coastal Act of 1976, Public Resources Code,
10 section 30000 et seq. ("Coastal Act"). The petition and related cross-complaint shall be referred
11 to collectively as "the litigation."

12 2. Harner is the owner in fee simple of the following parcel of beachfront real property in
13 Malibu: APN No. 4449-003-027 (19016 Pacific Coast Highway, Malibu, California) ("subject
14 property").

15 3. The parties agree that judgment shall be entered with the following terms and
16 conditions:

17 **PETITION**

18 4. Harner's petition is hereby dismissed in its entirety and with prejudice.

19 **CROSS-COMPLAINT**

20 5. The Coastal Commission's cross-complaint is hereby dismissed in its entirety and with
21 prejudice.

22 **PERMANENT INJUNCTION**

23 6. On October 23, 2006, the Honorable Dzintra Janavs heard the petition and on
24 November 15, 2006, the Court entered its order denying the petition in its entirety with respect to
25 Harner's challenge to the Coastal Commission's Cease and Desist Order No. CCC-04-CD-10
26 ("Cease and Desist Order"). The Cease and Desist Order is incorporated into this stipulated
27 judgment and has the full force and effect of a permanent injunction issued by a Court of
28 competent jurisdiction. (A true and correct copy of the Cease and Desist Order is attached.

1 hereto.)

- 2 a. Within ninety (90) days of the date on which the Coastal Commission serves notice of
3 entry of judgment, Harner shall submit to the Coastal Commission's Executive
4 Director (Executive Director) for his approval a plan for removal of the unpermitted
5 development in the vertical access easement (removal plan). The removal plan shall
6 contain a timetable for completion of the removal of the unpermitted development.
7 Harner shall modify the removal plan as necessary to receive the Executive Director's
8 approval. Harner shall make such modifications to the removal plan within 60 days of
9 Executive Director notice that such modifications are necessary to receive Executive
10 Director approval. The Executive Director shall extend the time periods provided in
11 this paragraph by an additional 60 days if Harner or his agent demonstrates to the
12 Executive Director's satisfaction that conditions beyond Harner's control, for example,
13 tidal conditions or storms, prevented the timely submission of the removal plan or the
14 modification of the removal plan.
- 15 b. Upon the Coastal Commission's written notification to Harner that Real Party in
16 Interest Access for All is prepared to commence construction of improvements in the
17 access easement, Harner shall within 30 days commence removal of the unpermitted
18 development in the vertical access easement on the subject property in accordance with
19 the Executive Director-approved removal plan.
- 20 c. Within 3 days of completing the removal of the unpermitted development in the
21 vertical access easement on the subject property, Harner shall provide Access for All
22 with written notice that the removal is complete. Harner shall provide a copy of this
23 written notice to Aaron McLendon, Statewide Enforcement Analyst, California Coastal
24 Commission, 45 Fremont Street, Suite 2000, San Francisco, CA 94105-2219.
- 25 d. Within seven (7) days of receipt of Harner's notice of completion of removal of the
26 unpermitted development in the vertical access easement on the subject property,
27 Access for All shall secure the vertical access easement and prevent public entry
28 thereon until such time that Access for All opens the vertical access easement for

1 public use.

2 e. Upon receipt of Harner's notice of completion of removal of the unpermitted
3 development in the vertical access easement on the subject property, Access for All
4 shall commence construction of the access improvements within 15 days. Harner shall
5 allow Access for All to access the vertical access easement for purposes of constructing
6 and maintaining the access improvements.

7 f. Harner shall not interfere with Access for All's planning, construction or maintenance
8 of its access improvements, including access to the vertical easement for such
9 purposes.

10 **OTHER CONDITIONS RELATING TO IMPROVEMENTS**

11 7. Within ninety (90) days of the date on which the Coastal Commission serves
12 notice of entry of judgment, Harner shall file a complete coastal development permit amendment
13 application with the Coastal Commission addressing any new development that may be necessary
14 regarding his septic system, return wall or bulkhead. The Executive Director shall extend the
15 time period provided in this paragraph by an additional 60 days if Harner or his agent
16 demonstrates to the Executive Director's satisfaction that conditions beyond Harner's control, for
17 example, tidal conditions or storms, prevented the timely submission of the complete permit
18 application. The processing of this application shall not relieve Harner of his obligation to
19 comply with Paragraph 6 herein.

20 8. The parties do not anticipate that the amendment application referenced in
21 Paragraph 7 will require the oversight or approval of the City of Malibu. If, however, the City of
22 Malibu asserts jurisdictional authority over any aspect of the amendment application, any
23 resulting delay in Harner's compliance with Paragraph 7 will not subject Harner to the fines set
24 forth in Paragraph 11, provided Harner responds in good faith and within a reasonable time to the
25 requests of the City of Malibu.

26 9. Prior to the Coastal Commission providing written notification to Harner as
27 specified in Paragraph 6.b, AFA shall establish to the satisfaction of the Executive Director that
28 it is prepared to commence construction of improvements in the vertical access easement

1 including that it has necessary permits, financing and construction contracts, and that its
2 contractors are licensed and insured.

3 10. The Commission shall use its best efforts to inform Harner or his agent of any
4 information the Commission may need in order to approve the removal plan or for a complete
5 coastal development permit amendment application.

6 **PAYMENT OF ATTORNEYS' FEES**

7 11. Petitioner shall pay the California Department of Justice twenty thousand dollars
8 (\$20,000.00) in attorneys' fees. Such payment shall be made within ten (10) days of the date on
9 which the Coastal Commission serves notice of entry of judgment. Harner shall deliver to
10 Supervising Deputy Attorney General John A. Saurenman, California Department of Justice, 300
11 South Spring St., Los Angeles, CA 90013, a certified or cashier's check in the amount of twenty
12 thousand dollars (\$20,000.00) payable to the "CALIFORNIA DEPARTMENT OF JUSTICE."
13 Harner shall provide a copy of the check to Aaron McLendon, Statewide Enforcement Analyst,
14 California Coastal Commission, 45 Fremont Street, Suite 2000, San Francisco, CA 94105-2219.

15 **ENFORCEMENT OF STIPULATED JUDGMENT**

16 12. Should Harner violate any term set by this stipulated judgment, including the
17 permanent injunction, Harner shall be liable for a penalty in the amount of seven hundred and
18 fifty dollars (\$750.00) for each day Harner is in violation. Before any such penalty is imposed,
19 the Coastal Commission shall give Harner no less than ten (10) days written notice of the Coastal
20 Commission's intent to enforce this penalty provision. If at the end of such ten (10) days Harner
21 is still in violation of this stipulated judgment, the Coastal Commission may enforce this penalty
22 provision for the entire period of noncompliance regardless of whether Harner has subsequently
23 complied. Harner shall pay the Coastal Commission such penalty within ten (10) days of receipt
24 of the Coastal Commission's second written notice to enforce this penalty provision. Payment of
25 the penalty shall be delivered to Aaron McLendon, Statewide Enforcement Analyst, California
26 Coastal Commission, 45 Fremont Street, Suite 2000, San Francisco, CA 94105-2219, in the form
27 of a certified or cashier's check made out to: "CALIFORNIA COASTAL COMMISSION,
28 VIOLATION REMEDIATION ACCOUNT." Such penalty shall be computed from the first day

1 Harner stood in violation of this stipulated judgment as noted in the notice sent by the Coastal
2 Commission or in other subsequent correspondence. Payment of such penalty shall not relieve
3 Harner of his duties under the stipulated judgment.

4 OTHER TERMS

5 13. This Court has jurisdiction over the subject matter of and the parties to this
6 litigation.

7 14. The Coastal Commission waives all Coastal Act fines and penalties, if any, for the
8 unpermitted development in the vertical access easement for the time period prior to entry of this
9 stipulated judgment.

10 15. This stipulated judgment represents the complete and final agreement of the
11 parties and fully settles and resolves all issues presented in the litigation.

12 16. None of the provisions herein shall constitute evidence or an admission of liability
13 on the part of any of the parties.

14 17. The parties waive any statement of decision and all rights of appeal from this
15 stipulated judgment.

16 18. The Executive Director may grant extensions of all time periods specified herein
17 if he or she determines there is good cause for an extension and shall not unreasonably deny
18 extension requests.

19 19. Other than Harner's payment of attorneys' fees as set forth in Paragraph 11 above,
20 the parties shall bear their own attorneys' fees and costs.

21 20. The Court shall retain jurisdiction for the purpose of enabling any party to the
22 litigation to apply to the Court for any further orders, directions or relief as may be necessary and
23 appropriate for this stipulated judgment's construction, execution, modification, and enforcement
24 of compliance. Such application shall be made in the first instance to the Honorable Ann I.
25 Jones, Judge of the Superior Court. If Judge Jones is not available, pursuant to all applicable
26 rules, the Superior Court may assign the stipulated judgment to a judge, commissioner or judge
27 pro tem of the Superior Court for the County of Los Angeles as required to fulfill its terms.

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THE CLERK IS TO ENTER THIS JUDGMENT

DATED: _____

HONORABLE ANN I. JONES
JUDGE OF THE SUPERIOR COURT

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EXHIBIT TO JUDGMENT

CALIFORNIA COASTAL COMMISSION

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

COMMISSION CEASE AND DESIST ORDER NO. CCC-04-CD-10

Pursuant to authority in Section 30810 Title 14 California Code of Regulations, the Commission hereby orders and authorizes David Harner (hereinafter "Harner"), owner of the property described in Section 3.0 of this Cease and Desist Order (hereinafter "Subject Property"), to cease and desist from maintaining development without a coastal development permit (hereinafter "CDP") in violation of the Coastal Act and in violation of the terms of a previously approved CDP, which is also a violation of the Coastal Act. Harner is also ordered and authorized to remove the unpermitted development from the easement with the exception of any portion of the development identified in a plan approved by the Executive Director as development that may remain. Lastly, Harner is ordered allow Access for All, a California non-profit corporation and employees to make certain improvements to the public access easement on the Subject Property necessary to facilitate use of the public accessway.

1.0 PUBLIC ACCESS EASEMENT

Special Condition 2 of CDP No. 5-83-456¹ required the applicant (Dorothy Friedman) to record an irrevocable offer-to-dedicate a 3 foot wide vertical public access easement extending from Pacific Coast Highway to the mean high tide line along the western boundary of the Subject Property. On February 16, 1984, the applicant Dorothy Friedman (hereinafter "Friedman") recorded the irrevocable offer-to-dedicate in the Los Angeles Recorder's Office as Document No. 84-199298. On June 10, 2004, Access for All, a California non-profit corporation, recorded a Certificate of Acceptance of the Irrevocable Offer to Dedicate as Document No. 04 1490729.

2.0 UNPERMITTED DEVELOPMENT

The unpermitted development on the Subject Property consists of a locked gate, a wooden stairway, part of a timber bulkhead, and concrete caissons forming a return wall. In 1984, Friedman recorded an irrevocable offer-to-dedicate a public access easement across the Subject Property. In 2004 Access for All recorded a Certificate of Acceptance of the offer and wants to open the easement for public use but the unpermitted development is blocking the easement and thus is preventing Access for All from opening the easement.

¹ On August 25, 1983, the Commission issued CDP No. 5-83-456 to Dorothy Friedman to authorize construction of a 3 story, 2,602 square foot, single-family residence on a vacant oceanfront lot in Malibu, Los Angeles County.

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2.0 REMOVAL OF DEVELOPMENT

Upon notification by the Commission staff, Harner shall remove the unpermitted development from the easement with the exception of any portion of the development identified in a plan approved by the Executive Director as development that may remain. If Harner removes the development before being directed to do so by Commission staff and before improvements to the public access way are complete, he could create a hazardous situation. To eliminate any hazard which may be caused by a delay between removal of the illegal development and construction of the public access improvements, the removal shall take place concurrently with construction of the improvements to the public access way. If he so chooses, Harner may hire the same contractor employed to make the improvements to the public access way to remove the illegal development.

3.0 PROPERTY DESCRIPTION

The Subject Property is identified as 19016 Pacific Coast Highway, Malibu, Los Angeles County (APN 4449-003-027). The Subject Property is a beachfront lot and is between the first public road and the sea. The lot contains a single-family residence. There is a 3 foot wide deed restricted vertical public access way on the lot adjoining the western boundary of the Subject Property that runs parallel and adjacent to the easement on the Subject Property.²

4.0 PERSONS SUBJECT TO THIS CEASE AND DESIST ORDER

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

5.0 COMMISSION AUTHORITY TO ACT

The Commission is issuing this Cease and Desist Order pursuant to its authority under Section 30810 of the Public Resources Code.

6.0 FINDINGS

This Cease and Desist Order is being issued on the basis of the Findings adopted by the Commission on October 8, 2004, as set forth in the attached document entitled Staff Report for Cease and Desist Order No. CCC-04-CD-10.

² 19020 Pacific Coast Highway, Malibu, Los Angeles County. The owner of the property is Mark B. Gilmartin. The deed restriction was recorded on April 28, 1977 as Document No. 77-435422 by the previous property owner in compliance with a condition attached to the original coastal permit that approved construction of Gilmartin's house.

7.0 EFFECTIVE DATE

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

8.0 COMPLIANCE OBLIGATION

Strict compliance with the terms and conditions of this Cease and Desist Order is required. If Harner fails to comply with the requirements of Section 1.0 of this Order, it will constitute a violation of the Order and may result in the imposition of civil penalties of up to six thousand dollars (\$6,000) per day for each day in which compliance failure persists pursuant to Section 30821.6(a) of the Coastal Act.

9.0 SITE ACCESS

Harner shall provide Access for All and its employees access to the Subject Property at all reasonable times for the purpose of constructing the public access improvements to the easement. Harner shall also provide Commission staff access to the Subject Property at all reasonable times to verify compliance with the requirements of this Cease and Desist Order and inspect the progress of the improvements.

10.0 APPEALS AND STAY RESOLUTION

Pursuant to Title 14 Public Resources Code Section 30803(b), Harner against whom this Cease and Desist Order is issued may file a petition with the Superior Court for a stay of the Order.

11.0 GOVERNMENT LIABILITY

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

12.0 SUCCESSORS AND ASSIGNS

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

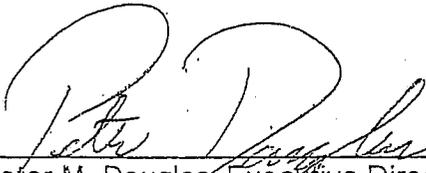
13.0 GOVERNING LAW

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

14.0 NO LIMITATION OF AUTHORITY

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

Issued this 13th day of October 2004.



Peter M. Douglas, Executive Director
California Coastal Commission

Oct. 13, '04
Date

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: Harner v. California Coastal Commission

No.: SS013093

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 300 South Spring Street, Suite 1702, Los Angeles, CA 90013.

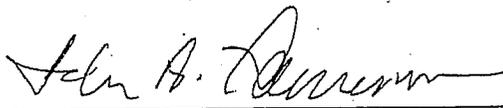
On January 31, 2008 I served the attached **STIPULATION FOR ENTRY OF JUDGMENT** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Los Angeles, California, addressed as follows:

Ronald A. Zumbrun
Mark Teh
The Zumbrun Law Firm
3800 Watt Avenue, Suite 101
Sacramento, CA 95821

Jeffrey Bernstein
505 West Mercer Place, # 300
Seattle, WA 98119

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on January 31, 2008, at Los Angeles, California.

John A. Saurenman
Declarant


Signature

60274891.wpd

RECEIVED

REGISTRATION DIVISION
CALIFORNIA COASTAL COMMISSION