

CALIFORNIA COASTAL COMMISSION

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Th 10, 12 & 13

ADDENDUM

October 9, 2007

TO: Coastal Commissioners and Interested Parties

FROM: Lisa Haage, Chief of Enforcement

SUBJECT: ADDENDUM TO **ITEM Th 10**, COASTAL COMMISSION CEASE AND DESIST ORDER CCC-07-CD-08 AND **ITEMS Th 12 & 13**, COASTAL COMMISSION CONSENT CEASE AND DESIST ORDER CCC-07-CD-07 AND CONSENT RESTORATION ORDER CCC-07-RO-05 FOR THE COMMISSION MEETING OF **October 11, 2007**

Item Th 10

Commission staff recommends revisions to the Cease and Desist Order and staff report. Language to be added appears in bold font and is underlined. Language to be deleted appears in bold font and is struck through.

- Page 17 of the staff report for Cease and Desist Order No. CCC-07-CD-08 (Section 1.0 of the Order), should read as follows:

1.0 GENERAL STATEMENT

Pursuant to its authority under California Public Resources Code (“PRC”) § 30810, the California Coastal Commission (“Commission”) hereby authorizes and orders **Robert Figas (as owner of the property at issue, as trustee of the Robert Leslie and Kathryn Joanne Figas Trust, and as the person who performed or arranged for the performance of the unpermitted development on the property)** and Kathryn Figas (as owners of the property at issue and as trustees of the Robert Leslie and Kathryn Joanne Figas Trust) all their successors, assigns, employees, agents, and contractors, and any persons acting in concert with any of the foregoing (hereinafter, “Respondents”) to take all actions required by Cease and Desist Order No. CCC-07-CD-08 (“the Order”) by complying with the following conditions:

- Page 20 of the staff report for Cease and Desist Order No. CCC-07-CD-08 (Section 7.0 of the Order), should read as follows:

7.0 DESCRIPTION OF ALLEGED COASTAL ACT VIOLATION

Unpermitted development near or adjacent to wetlands and ESHA, including but not limited to, site clearance, grading, and placement of materials including a concrete structure, debris, and gravel and/or fill material. As used in this Order, the phrase "unpermitted development" refers to development, as that term is defined in PRC section 30106, that is not exempt from the permitting requirement of the Coastal Act and has not been authorized pursuant to the Coastal Act, as well as to any materials and structures existing on the subject property that are the product of such development.

Items Th 12 and 13

The Commission has received one letter which is included with this addendum.

1. October 5, 2007 letter from the Lake Earl Coastal Lagoon Alliance to the California Coastal Commission expressing support for the issuance of the proposed Consent Cease and Desist Order and Restoration Order.



Lake Earl Coastal Lagoon Alliance

Committed to Restoring the Wild Lagoon

"If there is magic on this planet, it is contained in water."

Loren Eiseky

(707) 951-3020
PO Box 229
Gasquet, CA 95543

October 5, 2007

— FAXED, Attn. Nancy Cave @ 415 904-5235 —

California:

California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Center for
Biological Diversity

Esteemed Commissioners:

Coastwalk

RE: **Support for Consent Cease and Desist Order CCC-07-CD-07
and Consent Restoration Order No. CCC-07-RO-05 (Butler-Gipson),
Commission meeting October 11, 2007, Items 12 & 13
re the Pacific Shores subdivision in Del Norte County**

Environmental
Protection
Information Center

Friends of Del Norte

The Lake Earl coastal lagoon is a gem of biodiversity with statewide and national importance. The Lake Earl Coastal Lagoon Alliance (LECLA) advocates for protection and restoration of this unique wetlands complex, and is on record supporting your enforcement actions taken against illegal development in the Pacific Shores subdivision.

Lake Earl Audubon
Branch

Redwood Region
Audubon Society

Without the Coastal Commission, the Pacific Shores subdivision would be truly a lawless 1500 acre pocket within Del Norte County. We stand and applaud your enforcement staff for continuing to pursue these actions. With the October items, in a little over a year the Commission will have taken action on eight lots which have been illegally developed within this ill-fated subdivision. The enforcement staff has continued to move forward in the face of numerous obstacles, and in spite of threats against their persons during a visit to the subdivision.

Northcoast
Environmental
Center

Redwood Chapter,
Sierra Club

California
Sierra Club

We also want you to know that illegal development at Pacific Shores has escalated in the last few months. For example:

Oregon:

Oregon Wild
(formerly Oregon
Natural Resources
Council)

- It appears that the Bicknell lot, subject of your Cease & Desist Order in June 2006, is continually occupied, with even more accumulation on site. Marking the first time that sanitation has been observed on this site, in the last few days of August, 2007, a porta-potty was added.

Siskiyou Project

- Wilson lot, the subject of your Cease & Desist Order in December 2006.
- RVs have parked on lots, coming and going all summer long, perhaps half a dozen RV encampments total.
- Vehicles and trailers are routinely dumped, and then set on fire.

We urge you to begin discussions with the California Attorney General's Office and the County of Del Norte to move toward a more effective and lasting solution, and to abate immediately the health hazards and pollution threats to the lagoon.

We also wish to note how sad and unfair it seems that Mr. Emerson, owner of several lots at Pacific Shores, apparently sold this lot to Butler-Gipson without informing them fully about the situation. They deserve appreciation for agreeing to restore the property.

Thanking you for your vital work,



Joe Gillespie

on behalf of all LECLA member organizations
as listed on our letterhead

Reference: Block 41, Lot 22 (APN 108-161-22)

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Item TH 10

Staff: Christine Chestnut-SF
Staff Report: September 21, 2007
Hearing Date: October 11, 2007

STAFF REPORT AND FINDINGS FOR ISSUANCE OF CEASE AND DESIST ORDER

CEASE AND DESIST ORDER: CCC-07-CD-08

RELATED VIOLATION FILE: V-1-06-004

PROPERTY LOCATION: The property is located at 4900 Broadway Avenue, Eureka, Humboldt County (**Exhibit 1**).

DESCRIPTION OF PROPERTY: .62-acre parcel identified by Humboldt County Assessor as APN 302-171-024.

PROPERTY OWNERS: Robert and Kathryn Figas, Trustees of the Robert Leslie and Kathryn Joanne Figas Trust

VIOLATION DESCRIPTION: Unpermitted development near and adjacent to wetlands and environmentally sensitive habitat area, including site clearance, grading, and placement of 180 linear feet of concrete block walls, debris, motorcycle and truck parts, refrigerators, twenty truckloads of rock, and gravel and/or fill material.

SUBSTANTIVE FILE DOCUMENTS:

1. Cease and Desist Order File No. CCC-07-CD-08
2. Exhibits 1 through 14.

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

I. SUMMARY OF STAFF RECOMMENDATION AND PROPOSED FINDINGS

The proposed enforcement action addresses unpermitted development adjacent to an environmentally sensitive habitat area (ESHA) and will ensure that the unpermitted development currently on the property is removed and that the property owners obtain a coastal development permit (CDP) prior to the undertaking of any future development activity on the property. Although the property lies within the City of Eureka's permit jurisdiction, the City has asked the California Coastal Commission (Commission) to assume primary enforcement authority under Coastal Act Section 30810(a)(1) and, specifically, to take action to remedy the violations at issue in this matter.¹ Thus, the Commission has the authority to issue the proposed Cease and Desist Order in this matter.

The Respondents have been involved in multiple Coastal Act violation matters and, with respect to this property, have continued unpermitted development activities after City and Commission staff notified them that they needed to obtain a CDP for development on the property. Therefore, the proposed enforcement actions will serve an important dual function: 1) facilitating the removal of the unpermitted development currently on the property; and 2) requiring that the Respondents do not conduct additional unpermitted development activities on the property in the future.

The property at issue in this enforcement matter is the northernmost of two parcels located at 4900 Broadway Street in the City of Eureka in Humboldt County (hereinafter, "the property"). The property once contained a county animal shelter facility and is still referred to by locals as "the old dog pound site". It is owned by the Robert Leslie and Kathryn Joanne Figas Trust, of which Robert and Kathryn Figas are trustees (hereinafter collectively referred to as "Respondents"). The property and all of the unpermitted development located on the property is immediately adjacent to the Elk River Wildlife Area, consisting of 104 acres of coastal marsh

¹ All references to "the City" in this report will pertain to the City of Eureka Community Development Department, unless otherwise specified. The Commission certified the City of Eureka's Local Coastal Program (LCP) on July 26, 1984. The City assumed permit issuing authority on January 14, 1985. Coastal Act Section 30810(a) states, in relevant part, the following:

The [cease and desist] order may . . . be issued to enforce any requirements of a certified local coastal program . . . 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.*

and riparian wetlands, which is managed by the City of Eureka and the California Department of Fish and Game and is home to waterfowl; coho and chinook salmon; cutthroat, steelhead, and rainbow trout; river otters; and gray fox. A public trail within the Wildlife Area is located a few hundred feet west of the property and a proposed expansion of the trail would lead through the public land immediately south of the property. The Elk River runs through the Wildlife Area and is approximately 630 feet west, across City-owned open space lands, from the property. The entire property lies within the Elk River watershed.

Respondents demolished and removed a structure from the property and constructed three concrete block walls, totaling approximately 180 linear feet in length, in the general location of the removed structure.² Respondents also placed approximately twenty dump truck loads of rocks (in large piles), motorcycle and truck parts, refrigerators, and debris piles containing wood and other construction materials onto the property. The walls extend beyond the footprint of the demolished structure into wetland buffer areas. Some of the rocks and debris are also within wetland buffer areas. In addition, it appears that rocks and dirt were poured onto the ground and smoothed out for an undetermined use.³ In addition to being unpermitted, the proximity of the development (in fact, the entire property) to the Elk River Wildlife Area raises serious concerns regarding impacts of the development on the biological productivity of nearby waters (the Elk River) and on adjacent environmentally sensitive habitat area (Elk River Wildlife Area) and appears likely to be therefore inconsistent with Coastal Act Sections 30231 and 30240(b). Furthermore, environmentally sensitive wetlands habitat may exist on the property, in which case, the unpermitted development would be inconsistent with Sections 30233 and 30240(a), pertaining to fill of wetlands and impacts to on-site environmentally sensitive habitat areas (ESHA).⁴

On February 14, 2006, City officials found a debris pile surrounded on three sides by concrete block walls that appeared to have been newly constructed. No CDP or other permits were obtained for this development.⁵ The City Building Department then issued a stop work order. The City sent a Notice of Violation to the Respondents on March 9, 2006. An additional violation letter was sent on April 7, 2006. On April 13, 2006, the City confirmed that additional unpermitted development including grading and site clearance had occurred on the property and sent another Violation Notice. The City issued an Administrative Citation to the Respondents on May 4, 2006 for the unpermitted development on the property, but rescinded it upon assurances from the Respondents that they would complete a CDP application for the unpermitted

² The length of the concrete walls was provided by the Respondents' representative in a letter to Commission staff on April 5, 2006.

³ It is unclear whether this unpermitted activity was undertaken to create roads or pads on the property or simply to dispose of materials. As will be discussed more fully herein, either constitutes development under the Coastal Act and would require a permit.

⁴ A detailed explanation of the basis for these additional concerns is on page 11 of this report.

⁵ Respondents had obtained a re-roofing permit from the City Building Department. In the City's July 11, 2007 letter to the Respondents, the City explains that the permit does not include removal of the entire roof structure, that the permit does not constitute a CDP, and that a CDP is required for development on the site.

development. The Respondents submitted a CDP application to the City on May 12, 2006. The application was incomplete and remained incomplete for fifteen months. The City returned the application to the Respondents on August 13, 2007.

On June 22, 2007, the City confirmed that the unpermitted development described above remained on the property and observed additional unpermitted development on the property consisting of the placement of a large amount of rock (approximately twenty dump truck loads). The City Building Department issued a second stop work order on June 26, 2007, and the City issued another Administrative Citation, notifying Respondents with a final Violation Notice on July 11, 2007. On July 13, 2007, the City formally requested that the Commission assume primary jurisdiction over this matter and take appropriate enforcement action to resolve the violations. The City then rescinded the second Administrative Citation for the sole purpose of allowing the Commission to assume this authority.⁶

The cited activities undertaken on the property constitute development, as defined in Coastal Act Section 30106 and LCP Policy 1.3 and were undertaken without a CDP, in violation of Coastal Act Section 30600.⁷ Thus, the Commission has the authority, under Coastal Act Section 30810, to issue a cease and desist order in this matter. Furthermore, the unpermitted development is inconsistent with the policies of Chapter 3 of the Coastal Act, including Sections 30231 and 30240. Staff recommends that the Commission issue the proposed cease and desist order to address the Coastal Act violations that currently exist on the property and to prevent additional unpermitted development activities from occurring on the property.

II. CEASE AND DESIST ORDER HEARING PROCEDURES

The procedures for a hearing on a proposed Cease and Desist Order are set forth in Section 13185 of the California Code of Regulations (CCR), Title 14, Division 5.5, Chapter 5, Subchapter 8. The Chair shall announce the matter and request that all alleged violators or their representatives present at the hearing identify themselves for the record, indicate what matters are already part of the record, and announce the rules of the proceeding including time limits for presentations. The Chair shall also announce the right of any speaker to propose to the Commission, before the close of the hearing, any question(s) for any Commissioner, in his or her discretion, to ask of any person, other than the violator or its representative. Commission staff shall then present the report and recommendation to the Commission, after which the alleged violator or his representative may present their position(s) with particular attention to those areas where an actual controversy exists. The Chair may then recognize other interested persons, after which staff typically responds to the testimony and to any new evidence introduced.

The Commission will receive, consider, and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceedings, as specified in CCR Section 13185, and

⁶ The City rescinded the Citation after Commission staff agreed to assume enforcement authority. Had the City chosen to retain jurisdiction in this matter, the City would not have rescinded the Administrative Citation. The rescission was not based on any action by the Respondents.

⁷ The CDP requirement is also codified in Section 156.096 of the City's Municipal Code.

13186, incorporating by reference Sections 13185, 13186 and 13065. The Chair will close the public hearing after the presentations are completed. The Commissioners may ask questions to any speaker at any time during the hearing or deliberations, including, if any Commissioner chooses, any questions proposed by any speaker in the manner noted above. Finally, the Commission shall determine, by a majority vote of those present and voting, whether to issue the Cease and Desist Order, either in the form recommended by the Executive Director, or as amended by the Commission. Passage of the motion, corresponding to the Cease and Desist Order per staff recommendation or as amended by the Commission, will result in issuance of the Order.

III. STAFF RECOMMENDATION

1. Motion

I move that the Commission issue Cease and Desist Order No. CCC-07-CD-08 pursuant to the staff recommendation.

2. Recommendation of Approval

Staff recommends a **YES** vote. Passage of this motion will result in the issuance of Cease and Desist Order CCC-07-CD-08. The motion passes only by an affirmative vote of the majority of Commissioners present.

3. Resolution to Issue Cease and Desist Order

The Commission hereby issues Cease and Desist Order No. CCC-07-CD-08, as set forth below, and adopts the findings set forth below on the grounds that development has occurred without a coastal development permit, in violation of the Coastal Act.

IV. FINDINGS FOR CEASE AND DESIST ORDER CCC-07-CD-08⁸

A. Violation History

1. Description of Property

The property is a .62-acre parcel, which is the northernmost of two parcels comprising the 4900 Broadway Street site in the City of Eureka, in Humboldt County (See Exhibit 1). The property previously contained an animal shelter facility and is still referred to by locals as the “old dog pound site”. The property is bordered on all sides by the Elk River Wildlife Area, which is operated by the City and the California Department of Fish and Game for habitat and species

⁸ These findings also hereby incorporate by reference Section I of the September 21, 2007 staff report in which these findings appear, which section is entitled “Summary of Staff Recommendation and Proposed Findings.”

protection as well as public use (**Exhibit 2**). The Elk River Wildlife Trail runs west of the property between the property and the Elk River and a proposed expansion of the trail will run immediately adjacent to the property's southern boundary (See Exhibit 2).

The property currently contains three masonry walls that were erected on top of the footings of a structure that was demolished and cleared from the site without a permit. The walls extend beyond the footprint of the demolished building and into wetland buffer areas. The concrete walls surround a large pile of debris including wood and other construction materials. Other piles of debris, including rock, dirt, motorcycle parts, refrigerators, construction materials, and approximately twenty large piles of rock, have been placed on the property. All of this development was undertaken without a CDP, and some of the unpermitted development activities occurred after the Respondents were notified by the City that any development on the property requires a CDP. Furthermore, Respondents have been aware of Coastal Act permitting requirements at least as early as October 2000, when Commission staff contacted them regarding a Coastal Act violation on a separate property in Arcata. The Respondents have been involved in other matters involving unpermitted development in the Coastal Zone. Thus, the Respondents are well aware of the requirement for a CDP for development and familiar with the Coastal Commission and the City's Community Development Department, which enforces the City's Local Coastal Program. However, establishing knowledge of relevant laws and regulations is not a prerequisite to the Commission's action here, and the Commission does not hold Respondents to a higher or different standard based on their knowledge.

2. Initial Violation Report and Administrative Attempts to Resolve Violations

On February 14, 2006, City officials conducted an inspection of the property and noticed a debris pile surrounded on three sides by concrete block walls, which appeared to have been recently constructed. The City Building Department then issued a Stop Work Order, to prevent additional unpermitted development activities on the property. On March 9, 2006 the City determined that the Respondents owned the property and sent a first Notice of Violation to the Respondents (**Exhibit 3**). The Commission also sent a letter on March 24, 2006, citing the unpermitted demolition of a structure and the construction of a portion of a new structure as unpermitted development in violation of the Coastal Act (**Exhibit 4**). At that time, Commission staff believed that the property was located within the Commission's retained permit jurisdiction. On April 5, 2006, the Respondents' representative responded to Commission staff's letter and stated therein that he would continue to work with the City on permit issues regarding the development (**Exhibit 5**). Commission staff then determined that the property does in fact lie within the City's permit jurisdictional boundaries, so the City resumed enforcement authority in this matter. Ultimately, however, the Respondents did not complete a CDP application for the unpermitted development and no permit was issued.

The City sent the Respondents another notice on April 7, 2006, stating that the plans that Respondents had submitted (in an effort to obtain a building permit for construction of a structure incorporating the concrete block walls) were incomplete and were not accompanied by a CDP application and, therefore, could not be approved. The letter directed the Respondents to

submit a complete CDP application by April 21, 2006 and included a list of items necessary to complete the CDP application.

On April 13, 2006, a City inspection determined that additional unpermitted development, including grading and site clearance, had occurred on the subject property. The City sent another Notice of Violation to the Respondents on May 1, 2006, indicating that a CDP from the City was still required and that an extension of the April 21, 2006 CDP application submittal deadline would not be granted. On May 4, 2006, the City issued an Administrative Citation to the Respondents, but later rescinded it after receiving assurances from the Respondents that they would continue to work diligently toward obtaining a CDP.

The Respondents finally submitted a CDP application and fees to the City on May 12, 2006, and the City sent a letter on May 30, 2006, enumerating the 24 items which were missing and necessary to complete the application (**Exhibit 6**). During a January 25, 2007 meeting on the property with City officials and the Respondents' agent and project biologist, the City strongly advised the Respondents to consider hiring a consultant to complete the necessary CEQA review and documentation.

On June 22, 2007, the City confirmed another new and additional violation on the subject property: a large amount of rocks (totaling at least twenty dump truck loads) had been placed on the subject property. The City Building Department issued a stop work order and the City issued a second Administrative Citation to the Respondents. In a letter dated June 26, 2007, the City informed the Respondents of this second stop work order (**Exhibit 7**). The Respondents sent a letter to the City on July 9, 2007 stating that they would remove the cited development from the property (**Exhibit 8**). To date, that unpermitted development remains on the property. On July 11, 2007, the City sent a final Notice of Violation regarding unpermitted development on the subject property (**Exhibit 9**).

The Respondents failed to submit a complete CDP application and, after attempting to resolve the violation through the permitting process for fifteen months, the City returned the permit application to the Respondents on August 13, 2007.⁹ Consequently, no CDP for the cited development activity has been issued. Thus, the cited unpermitted development remains on the property in violation of the Coastal Act and the City's LCP.

3. Notice of Intent to Record a Notice of Violation and to Commence Cease and Desist Order Proceedings

In a July 13, 2007 letter to the Commission's Northern California Enforcement Supervisor, the City formally requested that the Commission assume primary enforcement jurisdiction with respect to the property, under Coastal Act Section 30810(a)(1), and take any enforcement action

⁹ The City states in its July 13, 2007 letter to the Respondents that the City had not heard from the Respondents regarding the unpermitted development at issue in 195 days.

necessary to resolve the violations on the property (**Exhibit 9A**).¹⁰ The City notified the Respondents of the request on July 24, 2007. Subsequently, also on July 24, 2007, the Executive Director issued to the Respondents a Notice of Intent (“NOI”) to Record a Notice of Violation against the property and to Commence Cease and Desist Order Proceedings against them (**Exhibit 10**). A Statement of Defense (“SOD”) form was sent along with the NOI, affording the Respondents the opportunity to present defenses to the issuance of the orders. The NOI also provided the Respondents with the opportunity to specifically object, in writing, to the recordation of a Notice of Violation in this matter, as provided for in Coastal Act Section 30812. The NOI and the SOD form specified a twenty-day time period for submittal of an SOD and any objection to the recordation of a Notice of Violation, as required under Section 13181(a) of the Commissions Regulations and Coastal Act Section 30812(b), respectively. The final date for submittal of the SOD and objection was August 13, 2007.

The Respondents did not contact staff or submit a Statement or Defense by the prescribed deadline. When staff contacted Mr. Figas on August 14, 2007, he claimed that he had not received the NOI, which had been sent by regular and certified mail. Staff then faxed Respondents a copy of the NOI on August 14, 2007 (**Exhibit 11**). Respondents did not acknowledge receipt of the faxed NOI.¹¹ Their attorney, however, referenced the NOI, which was only sent to the Respondents, in an August 15, 2007 letter to staff, thereby confirming that Respondents had in fact received the NOI at some point, either through the mail or by facsimile (**Exhibit 12**). Staff asked Respondents to agree to hold the hearing on this matter at the Commissions’ September meeting in Eureka, which would have been more convenient for all parties, including the Respondents, local Commission staff, City officials, and concerned members of the public to attend. Respondents did not agree to staff’s suggestion, and, therefore, based on Respondents’ claims that they did not receive the NOI, staff postponed the matter.

On August 28, 2007, staff sent an updated NOI (hereinafter, “August NOI”), with a new deadline of September 17, 2007 for submittal of an SOD and objection to the recordation of a Notice of Violation, by regular and certified mail to Respondents and also to their attorney, in order to provide them with formal notice that this matter is now scheduled for the October 2007 Commission meeting and to provide an opportunity to respond (**Exhibit 13**). Both Respondents and their attorney have orally confirmed receipt of the August NOI, which staff has verified through U.S. Postal Service records. Therefore, it is clear that the Respondents have received proper notice in this matter. The Respondents have not submitted an SOD or Notice of Violation objection. Accordingly, the Executive Director recorded a Notice of Violation against the property at the Humboldt County Recorder’s Office. The Notice of Violation will be rescinded

¹⁰ Prior to requesting that the Commission assume jurisdiction in this matter, the City had issued a second Administrative Citation and Fine to the Respondents with respect to the unpermitted development at issue. The City rescinded the Citation after Commission staff agreed to assume enforcement authority over this matter.

¹¹ Staff notes that the faxed NOI does not constitute proper notice under the Commission’s regulations. However, staff faxed the NOI to Respondents in order to discuss resolution of the violations with Respondents and because Respondents claimed that they did not receive the NOI by regular or certified mail.

upon complete resolution of the violations at issue in this matter. The notice of rescission shall have the same effect of a withdrawal or expungement under Section 405.61 of the Code of Civil Procedure.

Staff has made numerous attempts to resolve this matter amicably, through a consent cease and desist order. These efforts have been unsuccessful. Although the Respondents have asserted that they are willing to enter into a consent agreement in this matter, staff has been unable to reach a written, signed resolution.

B. Description of Unpermitted Development

The unpermitted development activities at issue were undertaken by the Respondents on property that is nearby and adjacent to wetlands and other ESHAs. The unpermitted development includes, but may not be limited to, site clearance, grading, and placement of 180 linear feet of concrete block walls, debris, motorcycle and truck parts, refrigerators, twenty truckloads of rock, and gravel and/or fill material (**Exhibit 14**).

C. Basis For Issuance of a Cease and Desist Order

The following sections set forth the basis for the proposed enforcement action. The findings listed above are hereby incorporated by reference into this section. Although a showing that unpermitted development is inconsistent with the policies of Chapter 3 of the Coastal Act is not required for the issuance a Cease and Desist Order, information regarding the inconsistency of the cited development with those policies is provided below as additional information regarding the importance of the proposed actions.

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

(a) If the commission, after public hearing, determines that any person...has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person ... to cease and desist. 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 or the setting of a schedule within which steps shall be taken to obtain a permit pursuant to this division.

1. Development Occurred on the Property Without a Coastal Development Permit in Violation of the Coastal Act and Local Coastal Program

The unpermitted development at issue in this matter includes site clearance, grading, and placement of 180 linear feet of concrete block walls, debris, motorcycle and truck parts, refrigerators, rock, and gravel and/or fill material on the property. The cited activities meet the definition of “development” set forth in Section 30106 of the Coastal Act:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511).

As used in this section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line. (emphasis added)

Section 30600(a) of the Coastal Act provides:

Except as provided in subdivision (e), and in addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency, any person, as defined in Section 21066, wishing to perform or undertake any development in the coastal zone, other than a facility subject to Section 25500, shall obtain a coastal development permit.

The cited activities undertaken on the property clearly constitute development under the Coastal Act and require a CDP. No exemptions from Coastal Act permitting requirements apply here. Clearly, the vast majority of the unpermitted development was placed on the property by the Respondents. However, even if some of the materials on the property may have been left there by people other than the Respondents, as the property owners, the Respondents are responsible for preventing illegal dumping on their property. See, e.g., Leslie Salt Co. v. San Francisco Bay Conservation & Development Commission (1984) 153 Cal.App.3d 605, 617-622. The City erected a locked gate at the entrance to the property. Respondents should make sure that the gate remains locked and that they report any illegal dumping activities to the City.

The Respondents submitted a CDP application to the City on May 12, 2006 and, although the application was grossly inadequate, the City delayed undertaking enforcement action based upon assurances from the Respondents that they would complete the application in a timely fashion. The application remained incomplete for approximately fifteen months, and the City finally returned it to the Respondents on August 13, 2007. To this date, the Respondents have not obtained a CDP for the development. Therefore, unpermitted development, as defined by Sections 30106 and 30600 of the Coastal Act, has occurred.

2. Unpermitted Development is Inconsistent with the Goals of the Coastal Act and the LCP

Although a showing that unpermitted development is inconsistent with the policies of Chapter 3 of the Coastal Act and the analogous policies of the LCP is not required for the issuance of a cease and desist order, information regarding the inconsistency of the cited development with those policies is provided below as additional information regarding the importance of the proposed actions. The proposed enforcement action will result in the removal of the unpermitted development currently on the property and will also ensure that no additional unpermitted development activities will be undertaken on the property. Any new development proposal will go through the permitting process so that the City, and if necessary, the Commission on appeal, can evaluate the impacts of the proposed development and impose conditions on any approved development to prevent or reduce the impacts.

a. Environmentally Sensitive Habitat Area

Section 30240 of the Coastal Act states:

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

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

The property is located immediately adjacent to the Elk River Wildlife Area, a 104-acre area of coastal salt marsh and riparian wetlands that is home to waterfowl, gray fox, river otters and salmonids. The area is managed to protect the sensitive and valuable resources located therein. The unpermitted placement of the materials in this matter was conducted in close proximity to this adjacent ESHA and was not sited or designed to protect the ESHA. Polluted runoff from the development can impact the sensitive riparian and wetland areas and impact the larger watershed. Thus, the development is inconsistent with Coastal Act Section 30240(b) and LCP Policies 5.5 and 5.6.

b. Water Quality

Section 30231 of the Coastal Act states:

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

The unpermitted development on the property is located approximately .2 miles from the Elk River, a fifth order (medium size) stream that drains directly into Humboldt Bay and is specifically identified as an environmentally sensitive habitat area (ESHA) in LCP Policy 5.5.

The entire property is located within the Elk River Watershed, which spans 33,840 acres and drains directly into Humboldt Bay. Salmonids present in the watershed include coho salmon, chinook salmon, steelhead trout, anadromous (sea-run) cutthroat trout, and resident rainbow trout. All of these species migrate through, and rear and spawn in, the Elk River and its tributaries.¹²

Polluted runoff that has run through piles of debris, rock, gravel, and fill materials placed on the property, can impact the water quality of the Elk River as well as other tributaries within the watershed.¹³ Materials placed on the property such as refrigerators and motorcycle parts can contain freon, gasoline, motor oil, and other hazardous chemicals that can leach into the groundwater or runoff into streams or the Elk River. In addition, polluted runoff from the property can also impact the functioning of adjacent wetland areas and the sensitive ecosystems that the areas support. Therefore, the unpermitted development can impact the biological productivity of nearby coastal waters and is inconsistent with Coastal Act Section 30231 and LCP Policy 5.2.

c. Sections 30240(a) and 30233

In its July 13, 2007 letter to Commission staff, the City states that some of the unpermitted development on the property may be located in close proximity onsite wetland areas, but that the City can not be sure of the exact location of the wetlands because the Respondents failed to

¹² The Elk River Watershed contains approximately 1,444 streams. *Humboldt Bay Watershed Salmon and Steelhead Conservation Plan*, Section V.C., The Humboldt Bay Watershed Advisory Committee and the Natural Resources Services Division of the Redwood Community Action Agency, March 2005.

¹³ *Id.*

submit a wetland delineation and biological inventory for the property, which were required as part of the Respondents' CDP application. Therefore, any proposed development would require additional investigations to formally determine whether ESHA, including wetland ESHA, exist on the property, so that development, if approvable, can be properly sited to minimize or eliminate impacts to the wetland areas.

If unpermitted development was or is placed directly on top of ESHA, or vegetation was cleared and/or wetland areas filled to provide graded areas for the placement of the unpermitted development, the violations are also inconsistent with Coastal Act Sections 30240(a) (protection of ESHA) and 30233 (restrictions on fill of wetlands) and the analogous LCP Policies 5.6 and 5.8.

D. Provisions of CCC-07-CD-08

The development was undertaken on the property without a CDP and, given the property's location adjacent to the Elk River Wildlife Area and the Elk River Watershed, the development has the potential to cause serious impacts to the biological productivity of coastal waters and sensitive habitat. Therefore, the development is inconsistent with the resource protection policies of Chapter 3 of the Coastal Act. Issuance of the Order is essential to resolve the violations because the Respondents have not been willing to voluntarily resolve the violations, have caused undue delays in both the City and Commission enforcement processes, and have in fact undertaken additional unpermitted development after receiving notice that development on the property required a CDP.

E. California Environmental Quality Act (CEQA)

The Commission finds that the issuance of Commission Cease and Desist Order CCC-07-CD-08, to compel removal of the unpermitted development on the property, is exempt from the California Environmental Quality Act of 1970 (CEQA), Cal. Pub. Res. Code §§ 21000 *et seq.*, for multiple reasons, including that it will not have any significant adverse effects on the environment, within the meaning of CEQA. The Cease and Desist Order is exempt from CEQA based on Sections 15061(b)(3) and is categorically exempt based on sections 15061(b)(2), 15307, 15308 and 15321 of the CEQA Guidelines (Title 14 of the California Code of Regulations).

F. Findings of Fact

1. Robert and Kathryn Figas, as trustees of the Robert Leslie and Kathryn Joanne Figas Trust ("Respondents") are the owners of the property located at 4900 Broadway Street in Eureka, Humboldt County. The property is identified by the Humboldt County Assessor's Office as APN 302-171-024. The property is located within the Coastal Zone, in an area that is covered by the City of Eureka's certified Local Coastal Program. On July 13, 2007, the City of Eureka formally requested that the Commission assume primary jurisdiction in this matter in order to undertake enforcement action pursuant to Coastal Act Section 30810(a)(1).

2. Respondents conducted unpermitted development activities on the property, which is near and adjacent to wetlands and other ESHAs. This unpermitted development includes site clearance, grading, and placement of a concrete structure, debris, motorcycle and truck parts, refrigerators, rock, and gravel and/or fill material. These items of unpermitted development constitute Coastal Act violations.
3. No CDP was applied for or obtained prior to the undertaking of this development, in violation of Coastal Act Section 30600(a) and Section 156.096 of the City's Municipal Code. No exemption from the permit requirements of the Coastal Act and LCP applies to the unpermitted development.
4. The unpermitted development is inconsistent with the resource protection policies of the Coastal Act, including Sections 30240 and 30231 and LCP Policies 5.2, 5.5, and 5.6.
5. On February 14, 2006, City officials found a debris pile surrounded on three sides by concrete block walls which appeared to have been newly constructed. The City Building Department then issued a stop work order.
6. The City sent a Notice of Violation to the Respondents on March 9, 2006. An additional violation letter was sent on April 7, 2006.
7. On April 13, 2006, the City confirmed that grading and site clearance had occurred on the property and sent another Notice of Violation.
8. The City issued an Administrative Citation to the Respondents on May 4, 2006 for the unpermitted development on the property, but rescinded the notice upon assurances from the Respondents that they would complete a CDP application for the unpermitted development.
9. The Respondents submitted a CDP application to the City on May 12, 2006. The application was incomplete and remained incomplete for fifteen months. The City returned the application to the Respondents on August 13, 2007.
10. On June 22, 2007, the City confirmed that a large amount of rock (approximately twenty dump truck loads) had been placed on the property without a permit. The City Building Department issued a second stop work order on June 26, 2007, and the City issued another Administrative Citation July 10, 2007 as well as a final Notice of Violation on July 11, 2007. On July 13, 2007, the City rescinded the second Administrative Citation in light of the fact that they were formally requesting that the Commission assume primary jurisdiction over this matter and take appropriate enforcement action to resolve the violations.
11. On July 24, 2007, the Executive Director issued a Notice of Intent to Commence Cease and Desist Order and Restoration Order Proceedings and to Record a Notice of Violation (July NOI), addressing the unpermitted development on the property. A response to the July NOI, using the

Statement of Defense (SOD) form sent to the Respondents with the NOI, was due on or before August 13, 2007. The Respondents did not submit an SOD.

12. Respondents did not acknowledge receiving the July NOI. On August 14, 2007, staff faxed a copy of the July NOI to Respondents. Respondents did not acknowledge receipt of the faxed copy.

13. To ensure proper notice, staff sent a second NOI (August NOI) on August 28, 2007. The Respondents and their attorney confirmed receipt of the August NOI on September 14, 2007 and August 31, 2007 respectively. In addition, staff received certified mail delivery receipts for the August NOI, which were signed by Mr. Figas and the Respondents' attorney.

14. The deadline for submittal of an SOD and an objection to the recordation of a Notice of Violation was September 17, 2007. The Respondents did not submit an SOD or Notice of Violation objection. Accordingly, the Executive Director recorded a Notice of Violation against the property at the Humboldt County Recorder's Office. The Notice of Violation will be rescinded upon complete resolution of the violations at issue in this matter. The notice of rescission shall have the same effect of a withdrawal or expungement under Section 405.61 of the Code of Civil Procedure.

15. The unpermitted development listed above in finding no. 2 persists on the property.

G. RESPONDENTS HAVE FAILED TO RAISE DEFENSES TO THE ISSUANCE OF THE ORDER

An SOD form was provided to the Respondents with the August NOI, in accordance with Section 13181(a) of the Commission's regulations. The Respondents were provided the opportunity to respond to the allegations made in the August NOI and to raise defenses to the issuance of the Cease and Desist Order in this matter. The Respondents have not submitted an SOD. Since the completion of an SOD form is mandatory, the Respondents have failed to raise and preserve any defenses that they may have, and have waived their right to present defenses for consideration by the Commission.

The SOD requirement serves an important function. (See, e.g., *Horack v. Franchise Tax Board* (1971) 18 Cal.App.3d 363, 368) ("Where administrative machinery exists for resolution of differences, such procedures must be "fully utilized and exhausted"). The Coastal Commission's cease and desist hearings are "quasi-judicial." Thus, if the Coastal Commission is to make findings of fact and conclusions at law in the form of an adopted Staff Report, Respondents must inform the Commission, precisely and in writing, which defenses they wish the Commission to consider. The SOD form has six categories of information that the Respondents should have provided to the Coastal Commission: (1) facts or allegations contained in the cease and desist order or the notice of intent that are admitted by respondent; (2) facts or allegations contained in the cease and desist order or the notice of intent that are denied by respondent; (3) facts or allegations contained in the cease and desist order or the notice of intent of which the respondent

has no personal knowledge; (4) facts and/or a description of any documents, photographs or other physical evidence that may exonerate the respondent; (5) any other information, statement, etc. that respondent desires to make; and (6) a listing of any documents, exhibits, declarations or other materials that are being attached by respondent to the statement of defense form.

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

Staff recommends that the Commission issue the following Cease and Desist Order to the Respondents:

CEASE AND DESIST ORDER CCC-07-CD-08: FIGAS (V-1-06-004)

1.0 GENERAL STATEMENT

Pursuant to its authority under PRC § 30810, the California Coastal Commission (“Commission”) hereby authorizes and orders Robert and Kathryn Figas (as owners of the property at issue and as trustees of the Robert Leslie and Kathryn Joanne Figas Trust) all their successors, assigns, employees, agents, and contractors, and any persons acting in concert with any of the foregoing (hereinafter, “Respondents”) to take all actions required by Cease and Desist Order No. CCC-07-CD-08 (“the Order”) by complying with the following conditions:

- 1.1. Cease and desist from engaging in any further development on the property identified in Section 6.0 of this Order, which is not authorized by a coastal development permit.
- 1.2. Cease and desist from maintaining any development on the property that is not authorized by a coastal development permit.
- 1.3. Take all steps necessary to ensure compliance with the Coastal Act including: removal of all unpermitted development from the property according to the following terms and conditions:

2.0 REMOVAL OF UNPERMITTED DEVELOPMENT

2.1 Removal Plan

Within twenty (20) days of issuance of this Order, Respondents shall submit a Removal Plan (“Plan”) for the review and approval of the Executive Director of the Commission. The Executive Director may require revisions to this and any other deliverables required under this Order and the Respondents shall revise and resubmit any such deliverables in compliance with the schedule set forth in this Order and Plan. The Plan shall outline the removal of all unpermitted development on the subject property. The Plan shall include and discuss the following elements:

- a. A current, scaled site plan depicting all existing development on the subject property, clearly distinguishing between permitted and unpermitted development.
- b. Photographs of the site and of all development contained thereon, annotated to include the information in Provision 2.1(a).

- c. A detailed and comprehensive description of the removal activities.
- d. If mechanized equipment is to be used, the following information shall be provided:
 - i. Type(s) of mechanized equipment required for removal activities;
 - ii. Length of time equipment is to be used;
 - iii. Hours of operation of mechanized equipment;
 - iv. Storage location for equipment when not in use during removal process;
 - v. Routes utilized to bring equipment to and from the property;
 - vi. Contingency plan addressing potential spills of fuel or other hazardous releases from use of mechanized equipment, including protocols for clean-up and disposal, and methods for addressing water quality concerns;
 - vii. Any necessary proactive measures to be taken to protect water quality.
- e. An assessment of the possible impacts to sensitive resources onsite and in adjacent areas (including but not limited to any wetlands and wetlands buffers) from the removal activities, including procedures for both proactively and retroactively addressing these impacts. Removal activities shall be conducted in a way that minimizes impacts to onsite resources and prevents any impacts to adjacent wetlands and parklands. The property and surrounding areas, other than those areas subject to removal activities, shall not be disturbed by activities related to this Order, and the work shall be conducted in accordance with the approved Plan.
- f. The name and location of an appropriate, licensed disposal site (or, if materials are being reused or stored for future use, the location of reuse or an appropriate storage facility) located outside of the Coastal Zone where the unpermitted development will be taken. Should the disposal or storage site be located in the Coastal Zone, a coastal development permit shall be required.
- g. A proposed series of dates and times for performing the removal work. Respondents shall finalize the work schedule after contacting Christine

Chestnut using the information listed in Section 3.0. of this Order, to determine dates when staff/monitors can be present at the subject property to observe the removal work.

- h. A provision that all work to be performed under this Order shall be done in compliance with all applicable laws.

2.2 Execution of Removal Plan

Within ten (10) days of the approval by the Executive Director of the documents submitted under paragraph 2.1, Respondents shall remove all unpermitted development to an appropriate, licensed disposal site (or other designated areas approved by the Executive Director) located outside of the Coastal Zone, in a manner complying with the requirements of this Order and the plans approved thereunder. Should the disposal or storage site be located in the Coastal Zone, a coastal development permit shall be obtained.

2.3 Evidence of Compliance

Within ten (10) days of the completion of the removal activities described in paragraph 2.2, Respondents shall submit to the Executive Director a report verifying compliance with this Order. This report shall include a summary of the dates on which work was performed and photographs taken from the same locations and angles as those required under Provision 2.1(b), which confirm the removal of the unpermitted development from the property and show the property after removal of all unpermitted development. Include, if applicable, a narrative of any significant occurrences during the removal process.

3.0 SUBMITTAL OF DELIVERABLES

All plans, reports, photographs and any other materials required by this Order shall be sent to:

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

With a copy to:
California Coastal Commission
North Coast District Office
710 J Street, Suite 503
Eureka, CA 95814
(707) 445-7833
Facsimile (707) 445-7877

4.0 REVISIONS OF DELIVERABLES

If determined necessary, the Executive Director may require revisions to deliverables required under this Order, 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, within ten (10) days of receipt of a modification request from the Executive Director. The Executive Director may extend time for submittals upon a written request and a showing of good cause, pursuant to Section 12.0 of this Order.

5.0 PERSONS SUBJECT TO THE ORDER

Bob and Kathryn Figas (as owners of the property at issue and as trustees of the Robert Leslie and Kathryn Joanne Figas Trust), all of their successors, assigns, employees, agents, and contractors, and any persons acting in concert with any of the foregoing are jointly and severally subject to all the requirements of this Order.

6.0 IDENTIFICATION OF THE PROPERTY

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

Address: 4900 Broadway Street, Eureka, Humboldt County (APN 302-171-024)
Legal Description: Lot No. 24, Tract No. 6006.

7.0 DESCRIPTION OF ALLEGED COASTAL ACT VIOLATION

Unpermitted development near or adjacent to wetlands and ESHA, including but not limited to, site clearance, grading, and placement of materials including a concrete structure, debris, and gravel and/or fill material.

8.0 COMMISSION JURISDICTION

The Commission has jurisdiction over resolution of this alleged Coastal Act violation pursuant to Public Resources Code Section 30810(a)(1).

9.0 EFFECTIVE DATE AND TERMS OF THE ORDER

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

10.0 FINDINGS

This Order is issued on the basis of the findings adopted by the Commission at its October, 2007 hearing, as set forth in the attached document entitled: Staff Report and Findings for Issuance of a Cease and Desist Order, as well as the testimony and any additional evidence presented at the hearing. The activities authorized and required in

this Order are consistent with the resource protection policies set forth in Chapter 3 of the Coastal Act and the resource protection policies of the City of Eureka Local Coastal Program. The Commission has authorized the activities required in this Order as being consistent with the resource protection policies set forth in Chapter 3 of the Coastal Act.

11.0 COMPLIANCE OBLIGATION

Strict compliance with this Order by all parties subject hereto is required. Public Resources Code Sections 30803 and 30805 authorize the Commission to initiate litigation to seek injunctive relief and an award of civil penalties, respectively, in response to any violation of the Coastal Act. Section 30820(a) provides for civil liability of \$500 to \$30,000 to be imposed on anyone who undertakes development that is inconsistent with a previously issued CDP or is performed without a CDP. Section 30820(b) provides that additional civil liability may be imposed on any person who knowingly and intentionally undertakes development that is inconsistent with a previously issued CDP or is performed without a CDP. Penalties under Section 30820(b) range from \$1,000 to \$15,000 per day for each day in which the violation persists. Pursuant to Section 30821.6, if it is determined that an order issued by the Commission has been violated, the violator may be liable for penalties of up to \$6,000 per day for every day the violation of the order continues. Section 30822 allows a court to award exemplary penalties when it is determined that additional deterrence is necessary to ensure compliance with the Coastal Act.

12.0 DEADLINES

Prior to the expiration of the deadlines established by this Order, Respondents may request from the Executive Director an extension of the deadlines. Such a request shall be made in writing ten (10) days in advance of the deadline and directed to the Executive Director in the Commission's San Francisco office. The Executive Director shall grant an extension of deadlines upon a showing of good cause, if the Executive Director determines that Respondents have diligently worked to comply with their obligations under this Order, but cannot meet deadlines due to unforeseen circumstances beyond their control.

13.0 SITE ACCESS

Respondents shall provide access to the property, at all reasonable times, including when work is being conducted pursuant to this Order, for Commission staff and any agency that is working in coordination with the Commission regarding this Order or has jurisdiction over the work being performed under this Order. Nothing in this Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Commission staff, and any other agency working in coordination with the Commission with regards to this matter, may enter and move freely about the portions of the subject property on which the violations are

located, and on adjacent areas of the property to view the areas where work is being performed pursuant to the requirements of this Order, for purposes including but not limited to inspecting records, operating logs, and contracts relating to the site and overseeing, inspecting and reviewing the progress of Respondents in carrying out the terms of this Order.

14.0 GOVERNMENT LIABILITIES

The State of California, the Commission and its employees shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondents in carrying out activities pursuant to this Order, nor shall the State of California, 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 this Order.

15.0 APPEAL AND ORDER ENFORCEMENT

Pursuant to Public Resources Code Section 30803(b), any person or entity against whom this Order is issued may file a petition with the Superior Court for a stay of this Order. Pursuant to Public Resources Code Section 30803(a), any person may maintain an action for declaratory and equitable relief to restrain any violation of the Coastal Act or of a cease and desist order issued thereunder.

16.0 SUCCESSORS AND ASSIGNS

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

17.0 MODIFICATIONS AND AMENDMENTS

Except as provided in Section 12.0, this Order may be amended or modified only in accordance with the standards and procedures set forth in Section 13188(b) of the Commission's administrative regulations.

18.0 GOVERNMENTAL JURISDICTION

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

19.0 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 (Public

Resources Code Sections 30800-30824), including the authority to require and enforce compliance with this Order.

IT IS SO ORDERED:

Executed in San Pedro, California on behalf of the California Coastal Commission:

Peter Douglas, Executive Director

Date

CCC-07-CD-08 Exhibit List

Exhibit Number	Description
1.	Site Map and Location.
2.	<i>Final Draft, Eureka Trails Committee Waterfront and Promenade Recommendations, Attachment B, Figure 3a, Natural Resources Services Division of RCAA for the City of Eureka Trails Committee, April 2005.</i>
3.	Letter from the City of Eureka to Bob Figas, dated March 9, 2006.
4.	Letter from Commission staff to Bob Figas, dated March 24, 2006.
5.	Letter from Rod Hartman, representative for the Respondents, to Commission staff, dated April 5, 2007.
6.	Letter from the City of Eureka to Rod Hartman, dated May 30, 2006.
7.	Letter from the City of Eureka to Bob Figas, dated June 26, 2007.
8.	Letter from the Bob Figas to the City of Eureka, dated July 9, 2007.
9.	Letter from the City of Eureka to Bob Figas, dated July 11, 2007.
9A.	Letter from the City of Eureka to Nancy Cave, dated July 13, 2007.
10.	Notice of Intent to Commence Cease and Desist Order and Restoration Order Proceedings and to Record a Notice of Violation, from the Executive Director of the Commission to the Respondents, dated July 24, 2007.
11.	Fax sheets verifying that a faxed copy of the July NOI was successfully sent to Bob Figas on August 14, 2007.
12.	Letter from Kenneth Bareilles to Commission staff, dated August 15, 2007.
13.	Notice of Intent to Record Notice of Violation of the Coastal Act and to Commence Cease and Desist Order Proceedings, from the Executive Director of the Commission to the Respondents, dated August 28, 2007.
14 a-d.	Photographs of the unpermitted development on the property.



Exhibit 1: Map showing the location of the Figas property at issue in this matter.

Figure 1.



Elk River Access Project Recommendations

Natural Resources Services, RCAA, August 2002 - Photo date: March, 2000

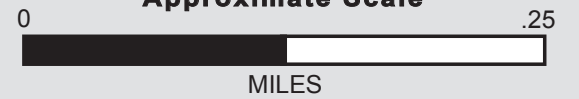
Existing Conditions

- Public Multi-Use Trail
- Footpath
- Approximate Elk River Wildlife Area Boundary
- Approximate City Ownership
- Approximate Harbor District Ownership
- Approximate Private Ownership
- NWP Railroad
- Parking Area

Proposed Improvements

- Public Multiple-Use Trail (approximate location)
- Fencing/Access Control
- Parking Area
- Paddle Boat Access
- Day-Use Facilities
- Restroom
- Interpretive Sign and/or Wayside Exhibit
- Observation Platform (includes interpretive signing)
- Landscaping & Beach/Trail Access Control

Approximate Scale



Site Summaries

Approximate Areas

- 1 Truesdale Vista Point**
 - Scenic visitor area with day use facilities
 - Upgraded parking area to accommodate 23 vehicles
 - Refer to Figure 3 for further detail
- 2 Truesdale Beach & Park**
 - Former City storage yard
 - Open space
- 3 'Crowley' Natural Area**
 - Potential observation platform
 - Interpretive signage
- 4 Elk River Paddling Access**
 - Small parking area and simple accommodations for primitive beach launch site
- 5 Hilfiker Lane Trail Segment**
 - Multi-use trail adjacent to Hilfiker Lane
 - Aquisition of private parcel necessary
 - Potential observation platform
- 6 Elk River Wildlife Area Trailhead**
 - Existing parking for 21 vehicles
 - Interpretive signage
 - Day-use facilities and park/open space north of parking area
- 7 Existing Elk River Wildlife Area Trail**
 - Re-surfacing of existing trail
 - Potential interpretive signage
- 8 Riverside Footpath**
 - Hardened surface to reduce habitat impacts
 - Potential interpretive signage
- 9 Pound Road Access**
 - Several options for public access improvements
 - Interim ERWA trail 'loop' end until RR access approved
 - See Figure 6 for more details

Exhibit 2
CCC-07-CD-08
(Figs)



CITY OF EUREKA
COMMUNITY DEVELOPMENT DEPARTMENT
Kevin R. Hamblin, AICP, Director

Kristen M. Goetz, Planner
531 K Street • Eureka, California 95501-1146
Ph (707) 441-4166 • Fx (707) 441-4202 • kgoetz@ci.eureka.ca.gov

March 9, 2006

Robert and Kathryn Figas
115 Redmond Road
Eureka, CA 95503

Re: **FIRST NOTICE**
4900 Broadway, Eureka, CA; APN 302-171-023

Dear Mr. and Mrs. Figas:

The purpose of this **FIRST NOTICE** is to notify you that the Community Development Department has received a complaint regarding the property at 4900 Broadway in Eureka. The complaint alleges construction is being undertaken on the property without benefit of permits. Our records show you are the owner of this property and are, therefore, responsible for the uses and activities occurring on the property. If you no longer own this property, or if an error has been made in determining ownership, please notify us so that we may correct our records.

A recent city inspection of the property found concrete block walls have been constructed on the site.

The property at 4900 Broadway is zoned General Industrial (MG) and is in the Coastal Zone. Title 15 of the Eureka Municipal Code requires any applicant wishing to undertake a development in the coastal zone to obtain a Coastal Development Permit, in addition to any other permit required by law. A review of City records does not reveal any Coastal Development or other permits have been applied for or issued for new construction on this property.

In response to an inquiry from you, a letter was sent on January 13, 2006, (copy attached) directing you to submit an application for demolition of a structure on the property and to then demolish the structure which was deemed to be an imminent threat to the public health, safety and welfare. The letter also informed you the City could not waive the requirement to obtain a Coastal Development Permit for the re-construction of a similar building.

Please consider this a warning notice; it is our hope that by sending you this warning notice that you will voluntarily resolve the violation of the property at 4900 Broadway by obtaining all required permits. An application for a Coastal Development Permit is

Robert and Kathryn Figas

Re: **FIRST NOTICE** - 4900 Broadway, Eureka, CA; APN 302-171-023

March 9, 2006

Page Two

enclosed for your use. Please contact our office, or provide a written timeline, for resolution of this violation within 15 days from the date of your receipt of this notice.

Your cooperation is appreciated. If you have any questions regarding this notice, please call the Community Development Department at (707) 441-4160.

Respectfully,



Kristen M. Goetz
Planner

/kg

cc: Jim Baskin, Coastal Planner
David Tranberg, Eureka City Attorney
Captain Murl Harpham, Community Response Team, Eureka Police Department
Rick Bennett, Fire Marshal, Eureka Fire Department
Mike Knight, Public Works Director/Building Official

Certified Return Receipt No. 7003 3110 0002 7732 6608

CALIFORNIA COASTAL COMMISSION

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



Via Regular and Certified Mail

March 24, 2006

Robert Figas
115 Redmond Road
Eureka, CA 95503
(705 0390 0001 2128 0422)

Re: Violation File V-1-06-004; Alleged violation of the Coastal Act consisting of demolition of a structure and construction of a new structure without a Coastal Development Permit

Property Location: 4900 Broadway Street, Eureka, Humboldt County

Dear Mr. Figas,

You are listed as the owner of record for property located at 4900 Broadway Street in Eureka, Humboldt County. California Coastal Commission ("Commission") staff received a report that a structure had been demolished on the property and that construction had begun on the building of a new structure. The property is located within the coastal zone and within the Commission's retained coastal development permit jurisdiction, and as such is subject to the California Coastal Act ("Coastal Act"). Section 30106 of the Coastal Act defines development, and states:

*"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials' change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; **construction, reconstruction, demolition or alteration of any structure**, including any facility of any private, public or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511) (emphasis added).*

As you can see, the activities undertaken on your property constitute development as defined under the Coastal Act. Section 30600 of the Coastal Act states:

March 24, 2006

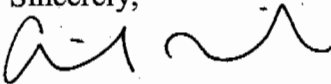
Page 2 of 2

“...[I]n addition to obtaining any other permit required by law from any local government or from any state, regional or local agency, any person... wishing to perform or undertake any development in the coastal zone shall obtain a coastal development permit.”

It is our understanding that you do not have a Coastal Commission, or even local permit approvals for the demolition of existing structures and the construction of the new structure, and therefore you must cease all construction activities immediately. It is also our understanding that the City of Eureka has asked you to submit plans of the development. Please submit a copy of these plans to us no later than **April 7, 2006** so that we can begin to take the next step towards resolving this violation.

We will be in further contact with respect to what will be required in order to fully resolve the violation. Should you have any questions regarding this matter, please do not hesitate to contact me at the address on the above letterhead or at the Commission's San Francisco Office at (415) 904-5220.

Sincerely,



Amrita Narasimhan
Enforcement Staff

cc: Nancy Cave, Northern California Supervisor, Enforcement Program
Bob Merrill, North Coast District Manager
Sidnie Olson, Senior Planner, City of Eureka Community Development Department

RECEIVED

APR 05 2006

CALIFORNIA
COASTAL COMMISSION

r.b hartman **1979 ernest way** **arcata, ca. 95521**
phone (707) 826-0404 **e-mail: rshartman1@netzero.com**

FAX/MEMO

TO: Amrita Narasimhan
COMPANY: CALIFORNIA COASTAL COMMISSION
FAX #: 415-904-5400
DATE: 4-5-2006

#pg's including this 2

SUBJECT: FILE #V-1-06-004

Dear Ms. Narasimhan:

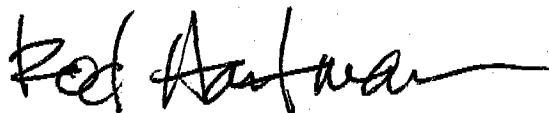
In regard to your letter of 3-24-2006 to Mr. Robert Figas, please note that I am working with Mr. Figas to resolve all issues on the repair and restoration of his building at 4900 Broadway, in Eureka, Ca.

The City of Eureka issued a building permit #B05-1200 for this project, covering re-roofing and a new electrical service. In the course of working on the building it became evident that both the roof framing and a large portion of the wall framing were collapsed and/or inadequate. Mr. Figas proceeded to remove the collapsed roof framing, and replaced approximately 180 linear feet of deteriorated wood frame walls with new reinforced masonry walls. The overall building footprint and square footage of floor area are unchanged. Just to clarify 2 items in your letter, the building has not been demolished, and we are not constructing a "new" structure – just restoring the building that existed.

The City of Eureka issued a stop work order, pending submission of structural design for the new masonry walls, and a site plan. The structural design was submitted last week, and the site plan yesterday. I am attaching the site plan for your information. To date, the structural design and the site plan are the only supplemental documents requested by Eureka, and we have complied.

Please note that I will be working with the Planning Department and the Building Department of the City of Eureka this week to identify and resolve the remaining issues on this parcel.

Cordially



Rod Hartman
cell 707-616-9096

Exhibit 5
CCC-07-CD-08
(Figas)
Page 1 of 2

PROJECT DESCRIPTION:

RECONSTRUCT COLLAPSED WALLS & ROOF STRUCTURE
OF EXISTING, STORM-DAMAGED MASONRY BUILDING

ADDRESS:

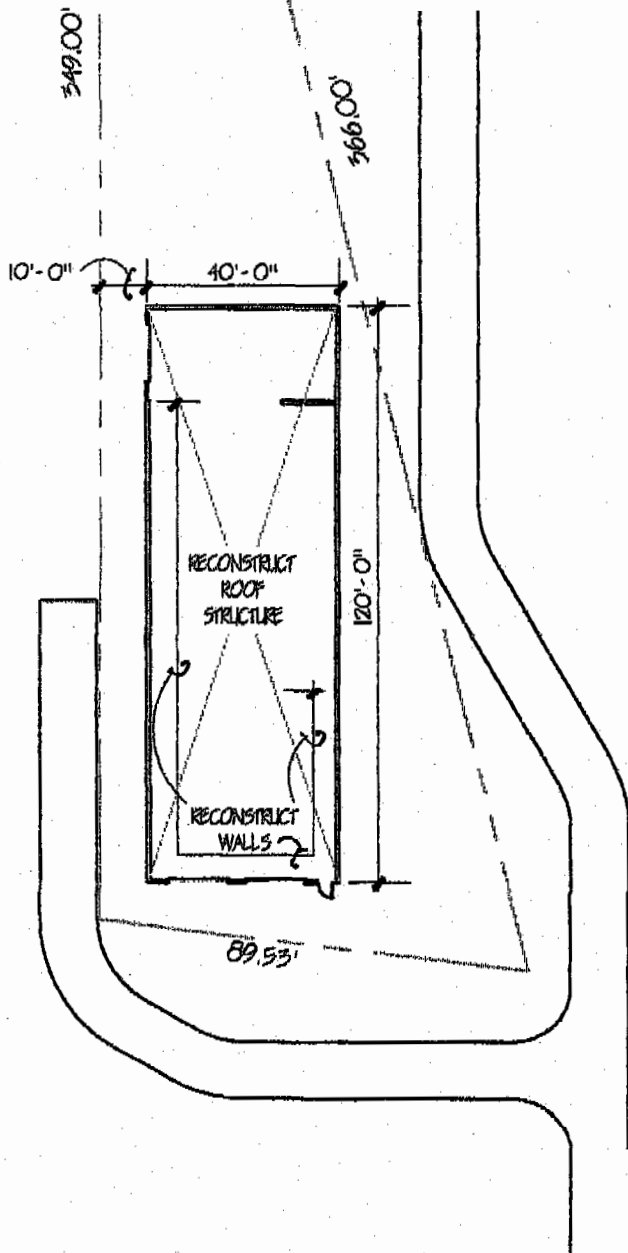
4900 BROADWAY
EUREKA, CA.

LEGAL DESCRIPTION:

APN 302 171 024

PERMIT #:

B05-1200



SITE PLAN

1" = 40'





CITY OF EUREKA

COMMUNITY DEVELOPMENT DEPARTMENT

Kevin R. Hamblin, AICP, Director

Sidnie L. Olson, AICP, Senior Planner

531 K Street • Eureka, California 95501-1146

Phone (707) 441-4265 • Fax (707) 441-4202

solson@ci.eureka.ca.gov • www.ci.eureka.ca.gov

May 30, 2006

Rod Hartman
1979 Ernest Way
Arcata, CA 95521

Subject: Figas property, 4900 Broadway, APN 302-171-023 & -024, Coastal Development Permit (Case No. CDP-06-010)

Dear Rod,

We are in receipt of the coastal development permit application you submitted on behalf of Robert & Kathy Figas which is described on the application as re-building existing 4800 s.f. building which collapsed after 12/31/05 storm; demolition and removal of 17,710 s.f. building made irreparable by 12/31/05 storm; and building new 20,000 s.f. pre-engineered metal building on approximately same footprint as demolished building.

The purpose of this letter is to advise you that the application is incomplete, and therefore, the processing of the application is suspended until all the required information listed below has been submitted. In order to complete the coastal development permit application you must submit the following information and documentation:

1. The intended use of the property, all buildings and open spaces.
2. Not all setbacks from buildings and parking areas to property lines are shown; show all setbacks.
3. The dimension and location of all parking and loading areas must be shown. The amount of required parking and loading cannot be determined until the use of the buildings/property has been identified.
4. Proof of rights to use the road & utility easement (document #1989-6039).
5. Wetland/Biological investigation. The conclusions and recommendations of the investigation may require additional mitigation or project modification.
6. A traffic study that identifies the number and type of vehicular traffic that will be generated by the project and describes the capability of existing road network to support such traffic.
7. Location of any landscaping, and accompanying landscaping plan.
8. Existing and proposed utilities must be shown.
9. Additional application fees for CEQA review are required. The application fee for a Mitigated Negative Declaration is \$540.00. At a minimum, a Mitigated Negative Declaration will be required; however, we cannot determine whether an EIR is required until the project application is complete and the initial study has been completed. If an EIR is required, we will use the \$540.00 as a deposit towards preparation of the EIR.

Exhibit 6
CCC-07-CD-08
(Figas)



CITY OF EUREKA Building Department
531 K Street Eureka, California 95501-1165 (707) 441-4155 FAX (707) 441-4202

June 26, 2007

Case #CE07-0098

Robert & Kathryn Figas
115 Redmond Road
Eureka, CA 95503

Subject: Request to abate Code Violations and Public Nuisance at 4900 Broadway
APN 302-171-023

Dear Mr. & Mrs. Figas:

Our office has been advised of and confirmed the existence of code violations(s) at the above referenced property. Pursuant to Eureka Municipal Code (EMC) Sections 10.39 and 10.45 you are hereby requested to abate the following nuisance conditions within the time specified in this notice:

1. UBC 106.1 & EMC Section 150.015 – Work without benefit of permits. **** STOP WORK ISSUED 6/22/07 FOR FILL OR STOCK PILING WITHOUT PERMITS.**

The above conditions are considered to be a public nuisance as defined in EMC Section 150.163 and a violation of EMC Section 10.99. We are requesting your cooperation and community spirit in correcting the violation(s) by contacting this office within (5) working days of receipt of this letter to obtain permits for the above-mentioned address.

The City's goal is to keep neighborhoods clean and safe for everyone. If you have any questions, please contact me at 441-4155.

Sincerely,

Brian Gerving
Plans Examiner

Cc: City Attorney
Community Development

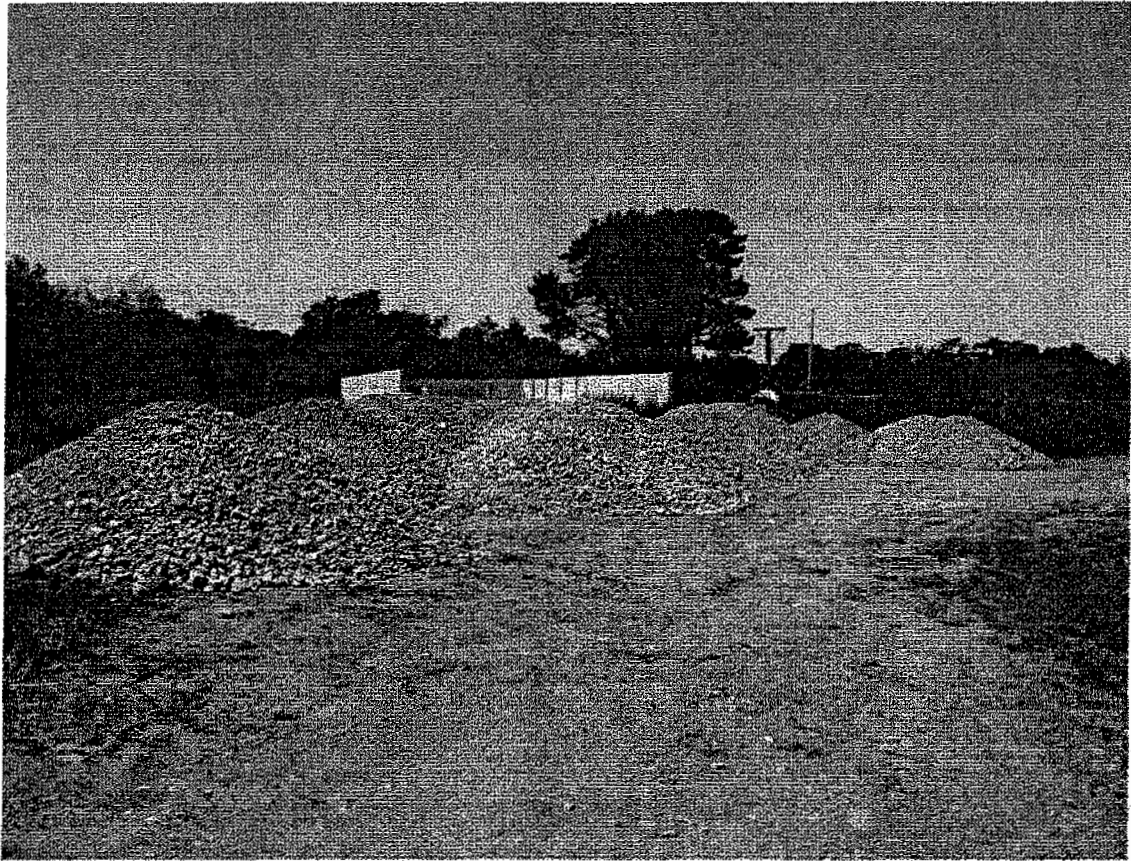
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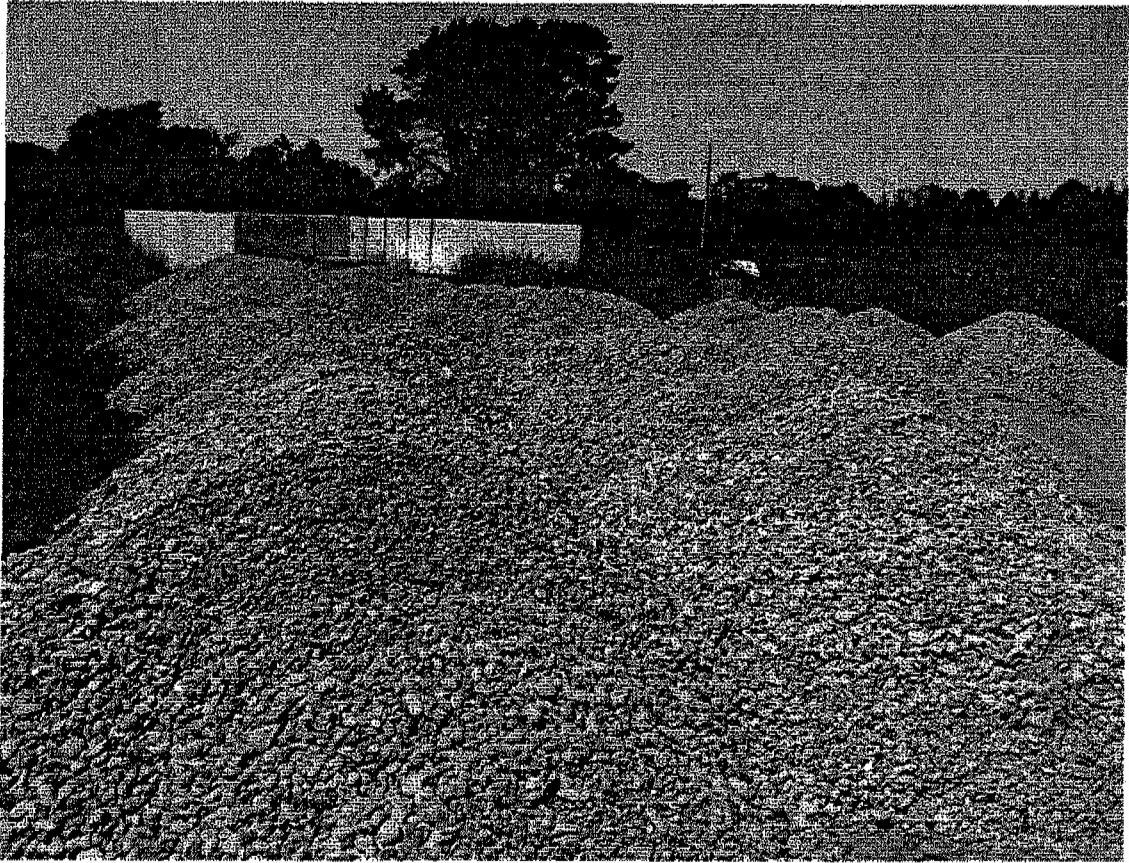
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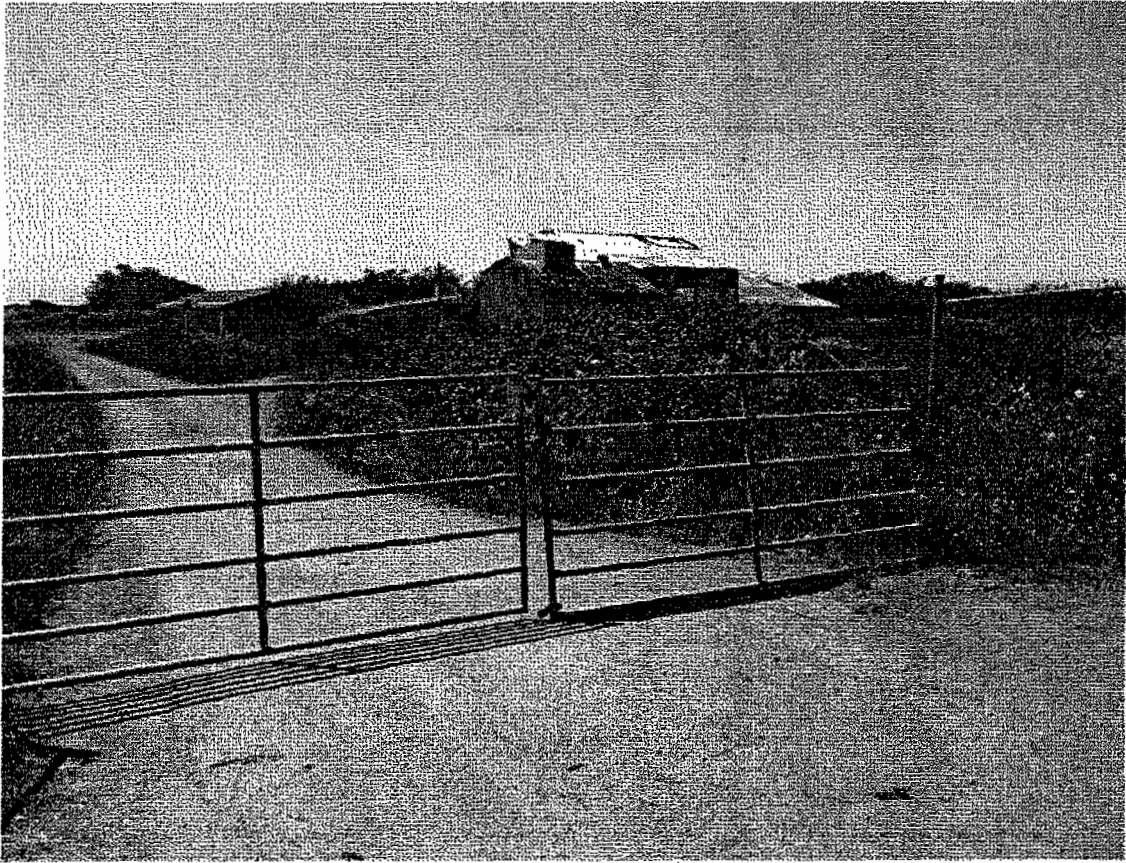
COMM.

Exhibit 7
CCC-07-CD-08
(Figas)
Page 1 of 6











FIGAS CONSTRUCTION

Robert L. Figas

General Engineering Contractor

116 Redmond Rd. Eureka, Ca. 95503 * Phone (707) 442-2620 * Fax (707) 442-9455
License No. 332773 - Class A

July 9, 2007

PLANNING DEPT FYI.

Mr. John Fitzhugh, Deputy Building Official
CITY OF EUREKA
531 K Street
Eureka, Ca. 95501

RE: MATERIAL STOCKPILE - 4900 BRAODWAY

Dear Mr. Fitzhugh:

This is to confirm our conversation regarding the drain rock material that I have temporarily stockpiled at the reference address.

I was unaware that a permit is required to stockpile material that will be exported to another job, until I was notified by the City of Eureka. This material will be used on the new Alzheimer Center on California Street, and I expect to start moving the material this week. All of the stockpiled rock will be moved off the Tallow site, and it will be restored to its prior condition.

I apologize for any confusion or inconvenience.

Very truly yours,

Robert Figas

Robert Figas

RECEIVED

JUL 10 2007

DEPARTMENT OF
COMMUNITY DEVELOPMENT

RECEIVED

JUL 10 2007

Eureka Building Dept.

Exhibit 8
CCC-07-CD-08
(Figas)



CITY OF EUREKA
COMMUNITY DEVELOPMENT DEPARTMENT
Kevin R. Hamblin, AICP, Director

Kristen M. Goetz, Planner
531 K Street • Eureka, California 95501-1146
Ph (707) 441-4166 • Fx (707) 441-4202 • kgoetz@ci.eureka.ca.gov

July 11, 2007

Robert and Kathryn Figas
115 Redmond Road
Eureka, CA 95503

Re: **FINAL NOTICE – Former Dog Pound Building**
4900 Broadway, Eureka, CA; APN 302-171-023 and -024
Case No. VIO-06-0006

Dear Bob and Kathy:

On several occasions prior to your purchase of the above noted property, Senior Planner Sidnie Olson discussed the property with you. Ms. Olson verbally indicated to you that any work on the property would require a Coastal Development Permit.

Following the New Year's windstorm in January, you approached the Community Development Department requesting that you be allowed to demolish the tallow works building, which you indicated had been damaged in the windstorm. On January 13, 2006, Staff sent you a letter directing you to obtain a demolition permit and demolish the tallow works building within 10 working days of receipt of the letter. Staff also responded to your request that the City waive the Coastal Development Permit for reconstruction of a similar building of the same size and in the same location by indicating the City could not authorize a waiver.

On February 14, 2006 a City inspection found a debris pile surrounded on three sides by concrete block walls, portions of which appeared to be recently constructed, and a Stop Work Order was issued by the Building Department. On February 15, 2006 the Community Development Department sent a First Notice of violation to Eureka Tallow Company and Frank Bisio, who were, according to the Assessor's office, the property owners. The First Notice asked that they obtain all required permits for work on the property, and a Coastal Development Permit application was included for their use.

On March 9, 2006, Staff learned property ownership had changed, and the First Notice and Coastal Development Permit application were re-sent to you (copy attached)

On March 27, 2006 you dropped by the Community Development department with a photograph of the dog pound building before removal of the roof and the wooden structure (unknown date when photograph was taken). You indicated you had a re-roof permit (B05-1200 issued 12/13/05) for the dog pound building. However, I indicated, in my opinion, a re-roof permit does not include removal of the entire roof structure, and you would need to

Robert and Kathryn Figas

Re: **FINAL NOTICE – Former Dog Pound Building** - 4900 Broadway, Eureka, CA;

APN 302-171-023 and -024; Case No. VIO-06-0006

July 11, 2007

Page Two

obtain a Coastal Development Permit for the work that had been and is proposed to be performed.

On April 7, 2006, your agent, Rod Hartman faxed a memo to Community Development indicating you believed you could replace an existing damaged structure without having to obtain a Coastal Development Permit pursuant to Section 30610 of the Coastal Act. Mr. Hartman indicated he planned to be in with a proposed site plan for the property by the end of the next week.

On this same date, I sent you a letter in response to plans submitted for review under Building Permit B06-0322 indicating the plans could not be approved as submitted since the plans were incomplete, and they were not accompanied by a Coastal Development Permit Application. The letter went on to direct you to submit a Coastal Development Permit application to the Community Development department. The letter contained a list of items that had to be included with the application, and directed you to submit the required materials and fees to the department no later than April 21, 2006. Staff also allowed you until April 14, 2006 to contact our department to discuss a timeline, if you believed you would not be able to submit the required application and materials by April 21, 2006.

On April 13, 2006, following a complaint alleging work being done on the property, a City inspection showed that grading and site clearing had continued to occur on the property.

On April 17, 2006, Ms. Olson and I met with Mr. Hartman, who believed the project was exempt from Coastal Permit requirements. Ms. Olson explained to Mr. Hartman she had had discussions with you prior to your purchase of the property, and she had indicated the property was NOT exempt, and Coastal Development permits were required for any work you would be doing down there (excepting the demolition of the tallow works building). Ms. Olson reiterated that in spite of that day's conversation, nothing was changing on abatements, including deadlines. Mr. Hartman indicated he was going to meet with the Coastal Commission and Ms. Olson suggested Bob Merrill might be a good contact if he had questions and provided the Coastal Commission's address and telephone number.

On April 21, 2006, Mr. Hartman sent a letter to the City indicating you had asked for clarification from the Coastal Commission on the application of Section 30610 of the Coastal Act and requested an extension for submission of your Coastal Development Application.

Robert and Kathryn Figas

Re: **FINAL NOTICE – Former Dog Pound Building** - 4900 Broadway, Eureka, CA;

APN 302-171-023 and -024; Case No. VIO-06-0006

July 11, 2007

Page Three

On May 1, 2006, Kevin Hamblin, Director of Community Development, sent a Third Notice to you indicating since the property is within the primary jurisdiction of the City of Eureka for determination of Coastal Development Permit requirements, and a clarification of Section 30610 would not change that, the City would not grant an extension to the April 21, 2006, Coastal Development Permit application submission deadline. Additionally effective May 1, and continuing until such time as the Coastal Development Permit was approved and effective, Community Development Department requested the Building Department issue an Administrative Citation for each and every day that you did not have a Coastal Development Permit.

An Administrative Citation was issued to you on May 4, 2006 following a meeting with City Staff during which Staff again indicated to you, amongst other things that the City had primary jurisdiction and NO WORK could be done while the Coastal Development Permit process was in progress. The Administrative Citation was later rescinded by Building with the understanding that you would continue to work diligently toward obtaining a Coastal Development Permit.

On May 12, 2006, following submission of a site plan acceptable to Community Development Department Staff, a demolition permit for the tallow works building was issued. Additionally, an application and fees were submitted to the Community Development Department for a Coastal Development Permit.

On May 30, 2006, Staff completed their initial review of the Coastal Development Permit application submittal and sent a letter to Mr. Hartman enumerating the twenty-four items of information and documentation needed for Staff to be able to continue their review of the application for completeness (copy attached).

On December 28, 2006 Mr. Hartman provided a response to the comments from the May 30, 2006 letter and on January 25, 2007, City Staff met with Mr. Hartman and Shannon Zimmerman from SCS Engineers. During that meeting Staff strongly advised that you consider hiring a consultant to complete the necessary CEQA review and documentation.

Since that date, Staff has not had any contact with either you or Mr. Hartman, nor has any additional information or documentation been submitted, regarding the Coastal Development Permit for the former dog pound building.

Bob, you have continued to perform work on the property without benefit of permits, failed to obtain permits in a timely manner when directed to do so, failed to meet deadlines set by

Robert and Kathryn Figas

Re: **FINAL NOTICE – Former Dog Pound Building** - 4900 Broadway, Eureka, CA;
APN 302-171-023 and -024; Case No. VIO-06-0006

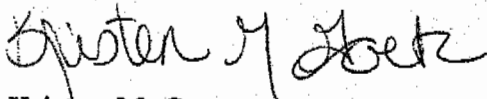
July 11, 2007

Page Four

City Staff, and to date have failed to provide complete information as directed in order to obtain the required permits for work that has already begun.

Therefore, by way of this **FINAL NOTICE**, you are directed to submit all information and documentation enumerated in the May 30, 2006 letter no later than 5:00 p.m., July 18, 2007. If you fail to submit the requested information and documentation by July 18, 2007, an Administrative Citation and fine will be issued effective July 19, 2007 for each and every day until a Coastal Development Permit is issued for the former dog pound site, and any and all conditions of approval are met.

Respectfully,



Kristen M. Goetz
Planner

cc: Sheryl Schaffner, City Attorney
Murl Harpham, Captain, Eureka Police Department
Bill Gillespie, Acting Fire Marshal, Eureka Fire Department
Mike Knight, Assistant City Manager
John Fitzhugh, Deputy Building Official
Jim Baskin, Coastal Planner
Nancy Cave, Coastal Commission
David Tyson, City Manager
City Council Reads

Certified Return Receipt 7006 3450 0003 7685 2444



CITY OF EUREKA
COMMUNITY DEVELOPMENT DEPARTMENT
Kevin R. Hamblin, AICP, Director

531 K Street • Eureka, California 95501-1146
Ph (707) 441-4160 • Fx (707) 441-4202 • khamblin@ci.eureka.ca.gov

July 13, 2007

Nancy Cave
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Re: **Figas, Robert and Kathryn**
4900 Broadway, Eureka, CA; APNs 302-171-023 and -024
Case No. VIO-06-0006

Dear Nancy:

For several years, the City of Eureka has been attempting to gain compliance regarding numerous violations occurring at 4900 Broadway located northwest of the Elk River interchange on State Highway 101 just south of Eureka, California. The site consists of two parcels. The northerly parcel is the site of the former dog pound building, and the southerly parcel is the site of the former tallow works. The site is often referred to as the tallow works property.

Community Development Staff has ongoing enforcement actions on the property, including the former tallow works building as a substandard building and a public nuisance, work being done on the former dog pound building without benefit of permits and the placement of fill materials on the property without benefit of permits.

For the following reasons, pursuant to Section 30809, 30810 and 30811 of Chapter 9 of the Coastal Act, the City of Eureka is formally requesting the State Coastal Commission take primary jurisdiction for enforcement of violations of the Coastal Act:

The following is a synopsis of events to date:

- On February 14, 2006 a City inspection found a debris pile surrounded on three sides by concrete block walls, portions of which appeared to be recently constructed, and a Stop Work Order was issued by the Building Department.
- On February 15, 2006 a First Notice of violation was sent certified return receipt requested to Eureka Tallow Company and Frank Bisio, who were, according to the Assessor's office, the property owners.
- On March 9, 2006, Staff learned property ownership had changed, and the First Notice and Coastal Development Permit application were re-sent to new owners Robert and Kathryn Figas.

Nancy Cave

Re: **Figas, Robert and Kathryn**; 4900 Broadway, Eureka, CA; APNs 302-171-023 and -024;
City of Eureka Case No. VIO-06-0006

July 13, 2007

Page Two

- On April 5, 2006 the owner submitted plans to the Eureka Building Department for the reconstruction of walls and the roof structure of the existing building.
- On April 7, 2006, the owner's agent faxed a memo to the Community Development Department indicating they believed they could replace an existing damaged structure without having to obtain a Coastal Development Permit pursuant to Section 30610 of the Coastal Act.
- On April 7, 2006, Community Development sent a letter in response to plans submitted for review under the Building Permit application (B06-0322) indicating the plans could not be approved as submitted since the plans were incomplete, and they were not accompanied by a Coastal Development Permit Application. The letter directed the owner to submit a Coastal Development Permit application, included a list of items that had to be included with the application, and provided a deadline of April 21, 2006 for the submission of a complete application.
- On April 13, 2006, following a complaint alleging work being done on the property, a City inspection showed that grading and site clearing had occurred on the property.
- On May 1, 2006, Community Development sent a Third Notice indicating the property was within the primary jurisdiction of the City of Eureka for determination of Coastal Development Permit requirements, and a clarification of Section 30610 would not change that determination. Therefore, the City would not grant an extension to the April 21, 2006, Coastal Development Permit application submission deadline.
- An Administrative Citation was issued by the City of Eureka to the property owner on May 4, 2006 following a meeting with City Staff and the property owner, during which Staff again indicated that the City had primary jurisdiction and NO WORK could be done while the Coastal Development Permit process was in progress. The Administrative Citation was later rescinded by Building with the understanding that the property owner would continue to work diligently toward obtaining a Coastal Development Permit.
- On May 12, 2006, an application and fees were submitted to the Community Development Department for a Coastal Development Permit.
- On May 30, 2006, Community Development completed their initial review of the Coastal Development Permit application submittal and sent a letter to the property owner's agent enumerating the twenty-four items of information and documentation needed for Staff to be able to continue their review of the application for completeness.
- On December 28, 2006 the property owner's agent provided a written response to the comments from the May 30, 2006 letter and on January 25, 2007, Community Development met with the property owner's agent and their project biologist.

Nancy Cave

Re: **Figas, Robert and Kathryn**; 4900 Broadway, Eureka, CA; APNs 302-171-023 and -024;
City of Eureka Case No. VIO-06-0006

July 13, 2007

Page Three

During that meeting Community Development strongly advised that the property owner consider hiring a consultant to complete the necessary CEQA review and documentation.

- Since that date, Community Development has not had any contact with either the property owner or his agent, nor has any additional information or documentation been submitted for the Coastal Development Permit.
- On June 22, 2007, a City inspection found that a large amount (20 or more dump truck loads) of gravel has been piled on the property. A Stop Work Notice was issued by the Building Department and an Administrative Citation was issued by Community Development. The property owner provided a letter to the Building Department indicating the fill materials were only being temporarily stored on the property, prior to their use on another project (not located in the Coastal Zone).

The property owner has continued to perform work on the property without benefit of permits, failed to obtain permits in a timely manner when directed to do so, failed to meet deadlines set by City Staff, and to date has failed to provide complete information as directed in order to obtain the required permits for work that has already begun.

Since the Coastal Development Permit application submitted by the property owner is not complete, the wetland and ESHA areas have not been delineated on the property. However, it certainly appears that the fill material is located within 250' of wetlands the City suspects exist on the property. Further, consistent with Section 6 of the LUP the materials also appear to be within 250' of an ESHA on adjacent property (i.e., the Elk River Wildlife Area). Additionally, the City has no record whether the fill material placed on the property is engineered material and therefore does not know the composition of the material.

Given the location of the fill material and the work that has already been undertaken on the former dog pound structure, and the proximity of the materials and the structure to known and suspected ESHA's, the City asks that the State Coastal Commission take primary enforcement responsibility for the violations occurring on the property.

Community Development looks forward to supplying Coastal Commission Staff with any information that may be required. If you have any questions regarding this situation, please contact Kristen M. Goetz, Planner, at our office.

Nancy Cave

Re: **Figas, Robert and Kathryn**; 4900 Broadway, Eureka, CA; APNs 302-171-023 and -024;
City of Eureka Case No. VIO-06-0006

July 13, 2007

Page Four

Sincerely,



Kevin R. Hamblin, AICP
Director of Community Development

cc: Sheryl Schaffner, City Attorney
David Tyson, City Manager
City Council Reads
Murl Harpham, Captain, Eureka Police Department
Bill Gillespie, Acting Fire Marshal, Eureka Fire Department
Mike Knight, Assistant City Manager
John Fitzhugh, Deputy Building Official
Jim Baskin, Coastal Planner
Sidnie L. Olson, Principal Planner
Kristen Goetz, Planner

CALIFORNIA COASTAL COMMISSION

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

**VIA CERTIFIED AND REGULAR MAIL**

July 24, 2007

Robert and Kathryn Figas
115 Redmond Road
Eureka, CA 95503

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

Violation No.: V-1-06-004

Violation Description: Unpermitted development including, but not limited to, site clearance, grading, and placement of a concrete structure, debris, and gravel and/or fill material near or adjacent to wetlands and ESHA

Violation Location: 4900 Broadway Avenue, Eureka, Humboldt County; APN 302-171-023

Dear Robert and Kathryn Figas:

The purpose of this letter is to notify you of my intent, as Executive Director of the California Coastal Commission ("Commission"), to record a Notice of Violation of the Coastal Act¹ against your property located at 4900 Broadway Avenue in Eureka in Humboldt County, Assessor's Parcel No. 302-171-023 ("subject property"), and to commence proceedings for issuance of Cease and Desist and Restoration Orders to address the unpermitted development that has occurred thereon. The Cease and Desist and Restoration Orders will direct you to: 1) cease and desist from maintaining or conducting additional unpermitted development on the subject property, 2) remove all unpermitted development, and 3) restore the impacted areas of the property to the condition that the areas were in prior to the unpermitted activities. In addition,

¹ The Coastal Act is codified in sections 30,000 to 30,900 of the California Public Resources Code ("PRC"). All further section references, including references to sections of the Coastal Act, are actually to sections of the PRC, and thus, to provisions of the Coastal Act, unless otherwise indicated.

the Notice of Violation will notify any potential purchasers that Coastal Act violations exist on the subject property.²

The subject property is within the City of Eureka's jurisdiction for purposes of Coastal Act permitting pursuant to the City's certified Local Coastal Program ("LCP"). On July 13, 2007, the City formally requested that the Commission assume primary jurisdiction for enforcement of violations of the Coastal Act. Therefore, the Commission has the authority to issue the proposed Cease and Desist Order under Coastal Act Section 30810(a)(1), as well as having authority for the other aspects of this proposed enforcement action under Sections 30811 and 30812.

Development is defined in Coastal Act Section 30106 and LCP Policy 1.3, as follows:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973...(Emphasis Added)

Coastal Act Section 30600(a) states the following:³

(a) Except as provided in subdivision (e), and in addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency, any person, as defined in Section 21066, wishing to perform or undertake any development in the coastal zone, other than a facility subject to Section 25500, shall obtain a coastal development permit.

The site clearance, grading, and placement of a concrete structure, debris, and gravel and/or fill material clearly constitute development under the Coastal Act and the LCP, and therefore require a CDP. No CDP was obtained for the unpermitted development and, therefore, it has been undertaken in violation of Coastal Act permit requirements. Despite previous notification from the City Community Development Department ("City") and the Commission of these violations, the unpermitted development remains on the property.

History of Violation

² Pursuant to Coastal Act Section 30812(f), after the violations have been fully resolved, the Executive Director shall record a Notice of Rescission of the Notice of Violation.

³ The permit requirement is also codified in Section 156.096 of the City's Municipal Code.

On February 14, 2006, a City inspection found a debris pile surrounded on three sides by concrete block walls, portions of which appeared to be recently constructed, and a Stop Work Order was issued by the City Building Department. On March 9, 2006, the City determined that you owned the property and sent you a First Notice of Violation. The Commission sent you a letter on March 24, 2006, citing the construction of a new structure without a CDP, and asked you to submit to the Coastal Commission a copy of plans submitted to the City so that the Commission could determine whether or not you needed to obtain a CDP from the Commission. The City sent you another notice on April 7, 2006, stating that the plans you submitted were incomplete and were not accompanied by a CDP application and, therefore, could not be approved. The letter directed you to submit a complete CDP application by April 21, 2006 and included a list of items necessary to complete the application. On April 13, 2006, a City inspection determined that grading and site clearance had occurred on the subject property. The City sent a Third Notice to you on May 1, 2006, indicating that a CDP from the City was still required and that an extension of the April 21, 2006 CDP application submittal deadline would not be granted. On May 4, 2006, the City issued an Administrative Citation to you, but later rescinded it after receiving assurances from you that you would continue to work diligently toward obtaining a CDP.

You finally submitted a CDP application and fees to the City on May 12, 2006, but the City sent you a letter on May 30, 2006, enumerating the 24 items which were missing, and which were necessary to complete your application. During a January 25, 2007 meeting on the subject property with City officials, your agent and your project biologist, the City informs me that it strongly advised you to consider hiring a consultant to complete the necessary CEQA review and documentation. Since that date, the City reports that it has had no further contact from you or your agents and you have not submitted a complete CDP application.

On June 22, 2007, the City found that a large amount of gravel (totaling at least 20 dump truck loads) had been placed on the subject property. The City Building Department issued a stop work order and City issued a second Administrative Citation. In a letter dated June 26, 2007, the City informed you of this second stop work order. On July 11, 2007, the City gave you Final Notice regarding unpermitted development on the subject property.

As of today's date, the City informs me that you still have failed to submit a complete CDP application and, consequently, no CDP for the cited development activity has been issued. Thus, the cited unpermitted development remains on the subject property in violation of the Coastal Act and the City's LCP.

Notice of Violation

The Commission's authority to record a Notice of Violation against your property is set forth in Section 30812 of the Coastal Act, subdivision (a) of which states as follows:

Whenever the Executive Director of the Commission has determined, based on substantial evidence, that real property has been developed in violation of this division, the Executive Director may cause a notification of intention to record a

Notice of Violation to be mailed by regular and certified mail to the owner of the real property at issue, describing the real property, identifying the nature of the violation, naming the owners thereof, and stating that if the owner objects to the filing of a notice of violation, an opportunity will be given to the owner to present evidence on the issue of whether a violation has occurred.

I am issuing this notice of intent to record a Notice of Violation because the unpermitted development described above has occurred on the subject property in violation of the Coastal Act and the LCP. In a July 10, 2007 letter from Commission staff, you were made aware of the potential remedies available in the Coastal Act to address Coastal Act violations, including the recordation of a Notice of Violation. If you object to the recordation of a Notice of Violation against the subject property and wish to present evidence to the Commission at a public hearing on the issue of whether a violation has occurred, you must respond, in writing, within 20 days (by August 13, 2007) of the postmarked date of mailing of this notification. You must send your written objection to the attention of Christine Chestnut in the Commission's San Francisco office using the address on the letterhead, no later than August 13, 2007. Please include any evidence you wish to present to the Commission in your written response and identify any issues you would like us to consider.

If, within 20 days of mailing of this notification, you fail to inform Commission staff in writing of an objection to the recording of a Notice of Violation, I shall record the Notice of Violation in the Humboldt County Recorder's Office as provided for under Section 30812(b) of the Coastal Act.

Cease and Desist Order

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

(a) If the commission, after public hearing, determines that any person...has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person...to cease and desist. The order may also be issued to enforce any requirements of a certified local coastal program...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...requests the commission to assist with, or assume primary responsibility for, issuing a cease and desist order.

As the Executive Director of the Commission, I am issuing this Notice of Intent to commence Cease and Desist Order proceedings because unpermitted development has occurred at the subject property. The unpermitted development at issue in this matter includes, but is not limited to, site clearance, grading, and placement of a concrete structure, debris, and gravel and/or fill material. The proposed Cease and Desist Order will direct you to desist from maintaining

existing unpermitted development or performing further unpermitted development on the subject property.

Based on Section 30810(b) of the Coastal Act, the Cease and Desist Order may also be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with the Coastal Act, including a requirement for immediate removal of any development or material. Thus, the proposed Cease and Desist Order will require removal of the unpermitted development. The proposed Order will require removal to occur according to a plan and schedule that will have to be submitted and approved by the Executive Director. Site investigations to ensure and document removal of all unpermitted materials and structures on the subject property will also be required.

Restoration Order

Section 30811 of the Coastal Act authorizes the Commission to order restoration of a site in the following terms:

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

Commission staff has determined that the specified activities meet the criteria of Section 30811 of the Coastal Act, based on the following:

- 1) Development including, but not limited to site clearance, grading, and placement of a concrete structure, debris, and gravel and/or fill material has occurred and remains on the subject property. No CDP authorizing this development was obtained from the Commission or the City. This development is inconsistent with the resource protection policies of the Coastal Act and the City's LCP. The subject property is surrounded by open space and the Elk River Wildlife Area. The Elk River is specifically identified as an environmentally sensitive habitat area (ESHA) in the LCP.⁴ The Coastal Act and LCP require that development on properties adjacent to

⁴ Furthermore, the City also believes that there are wetlands on the property and that unpermitted development was placed on or near wetlands. The City requested that you submit a formal wetland delineation and biological inventory of the property as part of your CDP application. You did not submit this information. Therefore, additional investigations will be required to determine whether ESHA, including wetland ESHA, exist on the property. If the unpermitted development was placed directly on top of ESHA, or vegetation was cleared and/or wetland areas filled to provide graded areas for the placement of the unpermitted development, the violations are also inconsistent with Coastal Act Sections 30240(a) (protection of ESHA) and 30233 (restrictions on fill of wetlands) and the analogous LCP Policies 5.6 and 5.8.

ESHA be sited and designed to prevent impacts to the ESHA. There is not enough of a buffer between the unpermitted development at issue and adjacent ESHA. In addition, runoff from increased development (impervious surfaces, etc.) can impact the water quality of the Elk River. Therefore, the unpermitted development is inconsistent with Coastal Act Sections 30231 (biological productivity and water quality) and 30240(b) (protection of adjacent ESHA) and the analogous LCP Policies 5.2 and 5.6.

- 2) The unpermitted development is causing continuing resource damage, as defined by Section 13190 of the Commission's regulations. Cal. Code Regs., Title 14 § 13190. The unpermitted development has impacted ESHA, which is a resource protected by the Coastal Act and listed in the definition of the term "resource" in Section 13190(a) of the Commission's regulations. Such impacts meet the definition of damage provided in Section 13190(b) of those regulations: "*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.*" The unpermitted development includes placement of fill (in and/or adjacent to wetlands and ESHA), site clearance and grading. The unpermitted development and the effects caused by the unpermitted development continue to occur and persist on the subject property. Therefore, the damage to resources protected by the Coastal Act is "continuing," as that term is defined in Section 13190(c) of the Commission's regulations.

For the reasons stated above, I have decided to commence a Restoration Order proceeding in order to restore the subject property to the condition it was in before the unpermitted development occurred. Section 13196(e) of the Commission's regulations states, in part, the following:

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

Accordingly, the purpose of any removal requirement that the Commission may impose as part of any Restoration Order it issues will be the restoration of the subject property to the conditions that existed prior to the occurrence of the unpermitted development described above.

Additional Procedures

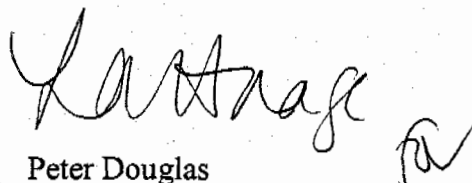
Please be advised that Coastal Act Sections 30803 and 30805 authorize the Commission to initiate litigation to seek injunctive relief and an award of civil penalties, respectively, in response to any violation of the Coastal Act. Section 30820(a) of the Coastal Act provides for civil liability of \$500 to \$30,000 to be imposed on anyone who undertakes development that is inconsistent with a previously issued CDP or is performed without a CDP. Section 30820(b) of the Coastal Act provides that additional civil liability may be imposed on any person who knowingly and intentionally undertakes development that is inconsistent with a previously issued

CDP or is performed without a CDP. Penalties under Section 30820(b) range from \$1,000 to \$15,000 per day for each day in which the violation persists. Pursuant to Section 30821.6 of the Coastal Act, if it is determined that an order issued by the Commission has been violated, the violator may be liable for penalties of up to \$6,000 per day for every day the violation of the order continues. Section 30822 of the Coastal Act allows a court to award exemplary penalties when it is determined that additional deterrence is necessary to ensure compliance with the Coastal Act.

In accordance with Sections 13181(a) and 13191(a) of the Commission's regulations, you have the opportunity to respond to the Commission staff's allegations as set forth in this Notice of Intent to commence Cease and Desist Order and Restoration Order proceedings by completing the enclosed Statement of Defense form. The Statement of Defense form must be returned to the Commission's San Francisco office, directed to the attention of Christine Chestnut, no later than August 13, 2007.

The Commission staff is tentatively scheduling the hearing for the Cease and Desist Order and Restoration Order (and for the proposed recordation of the Notice of Violation, should you additionally request, in writing, a hearing on this issue) during the Commission meeting that is scheduled for the week of September 5-7, 2007 in Eureka, California. We prefer to resolve violations amicably when possible. One option that you may consider is agreeing to a "consent order". A consent order is similar to a settlement agreement. A consent order would provide you with an opportunity to resolve this matter consensually, to have greater input into the process and timing of removal of the unpermitted development and restoration of the subject property, and to negotiate an appropriate penalty amount with Commission staff. If you are interested in discussing the possibility of resolving the violation through a consent order, please contact Christine Chestnut at 415-904-5220 or send correspondence to her attention at the address listed on the letterhead. Again, we hope we can resolve this matter amicably and look forward to hearing from you.

Sincerely,




Peter Douglas
Executive Director

Encl.: Statement of Defense Form

cc w/o Encl.: Lisa Haage, Chief of Enforcement
Nancy Cave, Northern California Enforcement Program Supervisor
Christine Chestnut, Headquarters Enforcement Analyst
Bob Merrill, North Coast District Manager
Kevin Hamblin, Director of Community Development, City of Eureka
Sheryl Schaffner, City Attorney for City of Eureka
Kristen Goetz, Planner, City of Eureka

JOB	START TIME	USAGE	PHONE NUMBER/ADDRESS	TYPE	PAGES	MODE	STATUS
430	8/14 3:22PM	3'44"	707 442 9455	SEND.....	8/ 8	EC144	COMPLETED.....

TOTAL 3'44" PAGES SENT: 8 PAGES PRINTED: 0

California Coastal Commission <small>45 Fremont, Suite 2000 San Francisco, CA 94105-2219 Voice and TDD (415) 904-5200 • CALNET 539-5200</small>		FAX COVER SHEET	
Date: 8/14/2007	Time: 3:03 PM	Number of Pages including this cover sheet:	
To: ROBERT FIGAS	From: CHRISTINE CHESTNUT		
Company: FIGAS CONSTRUCTION	Unit:		
Address: 115 REDMOND RD. EUREKA, CA 95503	Telephone Number: (415) 904-5220		
FAX Number: 707-442-9455	Direct FAX = (415) 904-5400	CALNET = 539-5400	
Remarks: <input type="checkbox"/> Urgent <input type="checkbox"/> For your review <input type="checkbox"/> Reply ASAP <input type="checkbox"/> Please comment <input type="checkbox"/> Other			
<p>Mr. Figas -</p> <p>Here is the notice that I sent to you via certified and regular mail on July 24, 2007. If you have questions or concerns about this letter, please feel free to contact me at my direct line at 415-904-5294. I look forward to working with you to resolve this issue. Thank you for your time.</p> <p>Sincerely,</p> <p><i>Christine Chestnut</i> Christine Chestnut Headquarters Enforcement Analyst California Coastal Commission</p>			
 CCC World Wide Web Location http://ceres.ca.gov/coastalcomm/index.html			

cc: Bob
Nancy
Lisa
Ann

KENNETH M. BAREILLES

ATTORNEY AT LAW
533 E. STREET
EUREKA, CA 95501
(707) 443-9338
FAX (707) 444-9742

RECEIVED

AUG 17 2007

CALIFORNIA
COASTAL COMMISSION

August 15, 2007

California Coastal Commission
45 Fremont, Suite 2000
San Francisco, CA. 94105-2219

Attn: Peter Douglas

Re: Violation Location: 4900 Broadway Avenue, Eureka
Humboldt County, APN 302-171-023

Dear Mr. Douglas:

In response to your letter dated July 24, 2007, this letter is to request the opportunity to meet with your office and attempt to consolidate the governing authority for coastal act purposes for the above parcel and the adjacent parcel of property.

As you may be aware, the City of Eureka has asserted primary jurisdiction for coastal act purposes over that parcel. Both of the parcels have the common address of 4900 Broadway, Eureka, CA.

This parcel contained two different unconnected structures:

1. The dog pound and office, and
2. The Tallow Works Warehouse

We are presently dealing with the City of Eureka on this very same parcel. We met with Robert Merrill at the Eureka Coastal Commission Office last year, and Mr. Merrill informed us that this parcel was governed by the Local Coastal Act which was under the jurisdiction of the City of Eureka.

Since that time, we have been dealing with the City of Eureka regarding that parcel.

Our request is to consolidate the governing jurisdiction for both parcels to one agency; either the State or the City of Eureka.

We plan to continue pursuing the completion of the permit process for both structures as listed above.

Please contact my office to arrange a meeting at your earliest convenience.

Very truly:


KEN BAREILLES

Exhibit 12
CCC-07-CD-08
(Figas)

CC: City of Eureka

CALIFORNIA COASTAL COMMISSION

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

**VIA CERTIFIED AND REGULAR MAIL**

August 28, 2007

Robert and Kathryn Figas
115 Redmond Road
Eureka, CA 95503
(Article No. 7006 2150 0003 4793 1730)

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

Violation No.: V-1-06-004

Violation Description: Unpermitted development including, but not limited to, site clearance, grading, and placement of a concrete structure, debris, and gravel and/or fill material near or adjacent to wetlands and ESHA

Violation Location: 4900 Broadway Avenue, Eureka, Humboldt County; APN 302-171-024

Dear Mr. and Mrs. Figas:

The purpose of this letter is to notify you of my intent, as Executive Director of the California Coastal Commission ("Commission"), to record a Notice of Violation of the Coastal Act¹ against your property located at 4900 Broadway Avenue in Eureka in Humboldt County, Assessor's Parcel No. 302-171-024 ("subject property"), and to commence proceedings for issuance of a Cease and Desist Order to address the unpermitted development that has occurred thereon. The Order will include provisions directing you to: 1) cease and desist from maintaining current unpermitted development or undertaking additional unpermitted development on the subject property, and 2) remove all unpermitted development. In addition, the Notice of Violation will notify any potential purchasers that Coastal Act violations exist on the subject property.²

¹ The Coastal Act is codified in sections 30,000 to 30,900 of the California Public Resources Code ("PRC"). All further section references, including references to sections of the Coastal Act, are actually to sections of the PRC, and thus, to provisions of the Coastal Act, unless otherwise indicated.

² Pursuant to Coastal Act Section 30812(f), after the violations have been fully resolved, the Executive Director shall record a Notice of Rescission of the Notice of Violation.

The subject property is within the City of Eureka's jurisdiction for purposes of Coastal Act permitting pursuant to the City's certified Local Coastal Program ("LCP"). On July 13, 2007, the City formally requested that the Commission assume primary jurisdiction for enforcement of violations of the Coastal Act. Therefore, the Commission has the authority to issue the proposed Cease and Desist Order under Coastal Act Section 30810(a)(1), as well as having authority for the other aspects of this proposed enforcement action under Section 30812.

Development is defined in Coastal Act Section 30106 and LCP Policy 1.3, as follows:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973... (Emphasis Added)

Coastal Act Section 30600(a) states the following:³

(a) Except as provided in subdivision (e), and in addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency, any person, as defined in Section 21066, wishing to perform or undertake any development in the coastal zone, other than a facility subject to Section 25500, shall obtain a coastal development permit.

The site clearance, grading, and placement of a concrete structure, debris, and gravel and/or fill material clearly constitute development under the Coastal Act and the LCP, and therefore require a CDP. No CDP was obtained for the unpermitted development and, therefore, it has been undertaken in violation of Coastal Act permit requirements. Despite previous notification from the City Community Development Department ("City") and the Commission of these violations, the unpermitted development remains on the property.

History of Violation

On February 14, 2006, a City inspection found a debris pile surrounded on three sides by concrete block walls, portions of which appeared to be recently constructed, and a Stop Work Order was issued by the City Building Department. On March 9, 2006, the City determined that

³ The permit requirement is also codified in Section 156.096 of the City's Municipal Code.

you owned the property and sent you a first Notice of Violation. The Commission sent you a letter on March 24, 2006, citing the construction of a new structure without a CDP, and asked you to submit to the Coastal Commission a copy of plans submitted to the City so that the Commission could determine whether or not you needed to obtain a CDP from the Commission. The City sent you another notice on April 7, 2006, stating that the plans you submitted were incomplete and were not accompanied by a CDP application and, therefore, could not be approved. The letter directed you to submit a complete CDP application by April 21, 2006 and included a list of items necessary to complete the application. On April 13, 2006, a City inspection determined that grading and site clearance had occurred on the subject property. The City sent a third Notice of Violation to you on May 1, 2006, indicating that a CDP from the City was still required and that an extension of the April 21, 2006 CDP application submittal deadline would not be granted. On May 4, 2006, the City issued an Administrative Citation to you, but later rescinded it after receiving assurances from you that you would continue to work diligently toward obtaining a CDP.

You finally submitted a CDP application and fees to the City on May 12, 2006, but the City sent you a letter on May 30, 2006, enumerating the 24 items which were missing, and which were necessary to complete your application. During a January 25, 2007 meeting on the subject property with City officials, your agent and your project biologist, the City informs me that it strongly advised you to consider hiring a consultant to complete the necessary CEQA review and documentation. Since that date, the City reports that it had no further contact from you or your agents regarding this project and you did not complete the CDP application.

On June 22, 2007, the City confirmed a new and additional violation on the subject property: a large amount of rocks (totaling at least 20 dump truck loads) had been placed on the subject property. The City Building Department issued a stop work order and the City issued a second Administrative Citation. In a letter dated June 26, 2007, the City informed you of this second stop work order. On July 11, 2007, the City gave you final Notice of Violation regarding unpermitted development on the subject property.

You failed to submit a complete CDP application and, after attempting to resolve the violation through the permitting process for 15 months, the City returned the permit application to you on August 13, 2007.⁴ Consequently, no CDP for the cited development activity has been issued. Thus, the cited unpermitted development remains on the subject property in violation of the Coastal Act and the City's LCP.

In a July 13, 2007 letter to the Commission's Northern California Enforcement Supervisor, the City formally requested that the Commission assume primary enforcement jurisdiction at the property, under Coastal Act Section 30810(a)(1), and take any enforcement action necessary to resolve the violations on the property.⁵ The City notified you of the request on July 24, 2007. Subsequently, on July 24, 2007, the Executive Director issued a Notice of Intent ("NOI") to

⁴ The City states in its July 13, 2007 letter to you that the City had not heard from you regarding the unpermitted development at issue in 195 days.

⁵ Prior to requesting that the Commission assume jurisdiction in this matter, the City had issued a second Administrative Citation and Fine to you with respect to the unpermitted development at issue. The City rescinded the Citation after Commission staff agreed to assume enforcement authority over this matter.

Record a Notice of Violation and to Commence Cease and Desist Order Proceedings to you. A Statement of Defense (SOD) form as required under Section 13181(a) of the Commission's regulations (California Code of Regulations (CCR), Title 14, Division 5.5, Chapter 5, Subchapter 8). The NOI provided the required 20-day time period for submittal of an SOD and, accordingly, set forth a deadline of August 13, 2007. You did not submit an SOD by the prescribed deadline and refused to acknowledge service of the NOI when contacted by Commission staff. The regular mail copy of the NOI that was mailed to you has not been returned, so under the standard practices of the local post office, which have been confirmed by staff, you presumably received this copy of the NOI at your mailing address.

You stated that you were unsure whether you had received the July 24, 2007 NOI. Thus, in the interest of resolving the violations in a timely manner so as to prevent additional environmental impacts from occurring, on August 13, 2007, staff faxed another copy of the July 24, 2007 to you and to your representative, Rod Hartman.⁶ You have not acknowledged receipt of the faxed copy of the NOI, which staff confirmed was successfully sent to your fax number. However, your attorney, Kenneth Bareilles, who was not sent the July 24, 2007 NOI, specifically responded to the notice in his letter to staff dated August 15, 2007. Regardless of whether you received the initial NOI, in an effort to protect your rights to due process and a fair hearing, I am sending this second NOI to you to notify you of these enforcement matters, which are now tentatively scheduled to be considered by the Commission at the 10-12 hearing in San Pedro in Los Angeles County.

Notice of Violation

The Commission's authority to record a Notice of Violation against your property is set forth in Section 30812 of the Coastal Act, subdivision (a) of which states as follows:

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

I am issuing this notice of intent to record a Notice of Violation because the unpermitted development described above has occurred on the subject property in violation of the Coastal Act and the LCP. In a July 10, 2007 letter from Commission staff, you were made aware of the potential remedies available in the Coastal Act to address Coastal Act violations, including the recordation of a Notice of Violation. If you object to the recordation of a Notice of Violation against the subject property and wish to present evidence to the Commission at a public hearing on the issue of whether a violation has occurred, you must respond, in writing, within 20 days (by September 18, 2007) of the postmarked date of mailing of this notification. You must send

⁶ You informed staff August 15, 2007 that Mr. Hartman was in the process of moving and that he may not receive the facsimile. Mr. Hartman did not confirm receipt of the faxed notice.

your written objection to the attention of Christine Chestnut in the Commission's San Francisco office using the address on the letterhead, no later than September 18, 2007. Please include any evidence you wish to present to the Commission in your written response and identify any issues you would like us to consider.

If, within 20 days of mailing of this notification, you fail to inform Commission staff in writing of an objection to the recording of a Notice of Violation, I shall record the Notice of Violation in the Humboldt County Recorder's Office as provided for under Section 30812(b) of the Coastal Act.

Cease and Desist Order

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

(a) If the commission, after public hearing, determines that any person...has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person...to cease and desist. The order may also be issued to enforce any requirements of a certified local coastal program...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...requests the commission to assist with, or assume primary responsibility for, issuing a cease and desist order.

As the Executive Director of the Commission, I am issuing this Notice of Intent to commence Cease and Desist Order proceedings because unpermitted development has occurred at the subject property. The unpermitted development at issue in this matter includes, but is not limited to, site clearance, grading, and placement of a concrete structure, debris, and gravel and/or fill material. The proposed Cease and Desist Order will direct you to desist from maintaining existing unpermitted development or performing further unpermitted development on the subject property.

Although a showing that unpermitted development is inconsistent with the policies of Chapter 3 of the Coastal Act is not required for either the issuance a Cease and Desist Order or to record a Notice of Violation, information regarding the inconsistency of the cited development with those policies provides background and additional information regarding the proposed actions. This development is inconsistent with the resource protection policies of the Coastal Act and the City's LCP. The property is surrounded by open space and the Elk River Wildlife Area. The Elk River is specifically identified as an environmentally sensitive habitat area (ESHA) in the LCP.⁷ The Coastal Act and LCP require that development on properties adjacent to ESHA be

⁷ Furthermore, the City also believes that there are wetlands on the property and that unpermitted development was placed on or near wetlands. If the unpermitted development was placed directly on top of ESHA, or vegetation was cleared and/or wetland areas filled to provide graded areas for the

sited and designed to prevent impacts to the ESHA. There is not enough of a buffer between the unpermitted development at issue and adjacent ESHA. In addition, runoff from increased development (impervious surfaces, etc.) can impact the water quality of the Elk River. Therefore, the unpermitted development is inconsistent with Coastal Act Sections 30231 (biological productivity and water quality) and 30240(b) (protection of adjacent ESHA) and the analogous LCP Policies 5.2 and 5.6.

Based on Section 30810(b) of the Coastal Act, the Cease and Desist Order may also be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with the Coastal Act, including a requirement for immediate removal of any development or material. Thus, the proposed Cease and Desist Order will require removal of the unpermitted development. The proposed Order will require removal to occur according to a plan and schedule that will have to be submitted and approved by the Executive Director. Site investigations to ensure and document removal of all unpermitted materials and structures on the subject property will also be required.

Additional Procedures

Please be advised that Coastal Act Sections 30803 and 30805 authorize the Commission to initiate litigation to seek injunctive relief and an award of civil penalties, respectively, in response to any violation of the Coastal Act. Section 30820(a) of the Coastal Act provides for civil liability of \$500 to \$30,000 to be imposed on anyone who undertakes development that is inconsistent with a previously issued CDP or is performed without a CDP. Section 30820(b) of the Coastal Act provides that additional civil liability may be imposed on any person who knowingly and intentionally undertakes development that is inconsistent with a previously issued CDP or is performed without a CDP. Penalties under Section 30820(b) range from \$1,000 to \$15,000 per day for each day in which the violation persists. Pursuant to Section 30821.6 of the Coastal Act, if it is determined that an order issued by the Commission has been violated, the violator may be liable for penalties of up to \$6,000 per day for every day the violation of the order continues. Section 30822 of the Coastal Act allows a court to award exemplary penalties when it is determined that additional deterrence is necessary to ensure compliance with the Coastal Act.

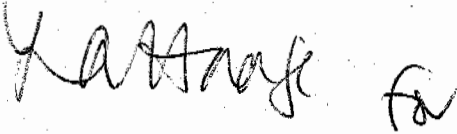
In accordance with Sections 13181(a) and 13191(a) of the Commission's regulations, you have the opportunity to respond to the Commission staff's allegations as set forth in this Notice of Intent to commence Cease and Desist Order proceedings by completing the enclosed SOD form. **The SOD form must be returned to the Commission's San Francisco office, directed to the attention of Christine Chestnut, no later than, September 18, 2007.**

The Commission staff is tentatively scheduling the hearing for the Cease and Desist Order (and for the proposed recordation of the Notice of Violation, should you additionally request, in writing, a hearing on this issue) during the Commission meeting that is scheduled for the week of October 10-12, 2007 in San Pedro, California. We prefer to resolve violations amicably when

placement of the unpermitted development, the violations are also inconsistent with Coastal Act Sections 30240(a) (protection of ESHA) and 30233 (restrictions on fill of wetlands) and the analogous LCP Policies 5.6 and 5.8.

possible. One option that you may consider is agreeing to a "consent order". A consent order is similar to a settlement agreement. A consent order would provide you with an opportunity to resolve this matter consensually, to have greater input into the process and timing of removal of the unpermitted development and restoration of the subject property, and to negotiate an appropriate penalty amount with Commission staff. If you are interested in discussing the possibility of resolving the violation through a consent order, please contact Christine Chestnut at 415-904-5220 or send correspondence to her attention at the address listed on the letterhead. Again, we hope we can resolve this matter amicably and look forward to hearing from you.

Sincerely,



Peter Douglas
Executive Director

Encl.: Statement of Defense Form

cc w/o Encl.: Lisa Haage, Chief of Enforcement
Nancy Cave, Northern California Enforcement Program Supervisor
Christine Chestnut, Headquarters Enforcement Analyst
Bob Merrill, North Coast District Manager
Kevin Hamblin, Director of Community Development, City of Eureka
Sheryl Schaffner, City Attorney for City of Eureka
Kristen Goetz, Planner, City of Eureka
Kenneth M. Bareilles, Attorney for Mr. and Mrs. Figas
(Article No. 7006 2150 0003 4793 1747)



Exhibit 14 a-b: Photographs taken by Commission staff on a September 7, 2007 showing the unpermitted development on the property.



Exhibit 14 c-d: Photographs taken by Commission staff on a September 7, 2007 showing the unpermitted development on the property.