

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
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Center for
Biological Diversity

Coastwalk

Environmental
Protection
Information Center

Friends of Del Norte

Lake Earl Audubon
Branch

Redwood Region
Audubon Society

Northcoast
Environmental
Center

Redwood Chapter,
Sierra Club

California
Sierra Club

Esteemed Commissioners:

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

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.

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.

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

- 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.

Oregon:

Oregon Wild
(formerly Oregon
Natural Resources
Council)

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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Th 12 & 13

Staff: E. Haley-SF
Staff Report: September 21, 2007
Hearing Date: October 11, 2007

STAFF REPORT AND FINDINGS FOR CONSENT CEASE AND DESIST ORDER AND CONSENT RESTORATION ORDER

**CEASE AND DESIST ORDER
AND RESTORATION ORDER:**

CCC-07-CD-07 and CCC-07-RO-05

RELATED VIOLATION FILE:

V-1-06-010

PROPERTY LOCATION:

Block 41, Lot 22, Pacific Shores Subdivision, north of Crescent City, Del Norte County, APN 108-161-22 (**Exhibit 1**).

DESCRIPTION OF PROPERTY:

Coastal property in Pacific Shores, near Lakes Earl and Tolowa in Del Norte County.

PROPERTY OWNERS:

Kenneth Butler and Judith Gipson

VIOLATION DESCRIPTION:

Unpermitted development including (but not limited to): placement of fill (in and/or adjacent to wetlands), change in intensity of use from a vacant lot to residential uses, removal of major vegetation, and placement of a large pre-fabricated structure, at least six mobile homes or trailers, 4-5 vehicles, and several off-road vehicles.

SUBSTANTIVE FILE DOCUMENTS:

1. Public Records contained in Cease and Desist Order File No. CCC-07-CD-07
2. Public Records contained in Restoration Order File No. CCC-07-RO-05
3. Exhibits 1 through 13

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 FINDINGS

The property at issue in this enforcement matter is located in unincorporated Del Norte County, north of Crescent City in the Pacific Shores subdivision, and is designated Block 41, Lot 22, APN 108-161-22 (“subject property”). Pacific Shores is a 1,535-lot subdivision created in 1963. The lots are roughly half-acre in size. The subdivision has no developed community service or public utility infrastructure, minimal road improvements, and is situated tens of miles from police, fire, and ambulance emergency service responders.

Unpermitted development including (but not necessarily limited to): placement of fill (in and/or adjacent to wetlands); change in intensity of use from a vacant lot to residential uses; removal of major vegetation; and placement of a large pre-fabricated structure, at least six mobile homes or trailers, 4-5 vehicles, and several off-road vehicles has occurred on the subject property (**Exhibit 3**). Kenneth Butler and Judith Gipson (“Respondents”) own the subject property.

The subject property includes, and is surrounded by, estuarine areas and seasonal wetlands, which constitute significant environmentally sensitive habitat areas. According to the U.S. Fish and Wildlife Service National Wetlands Inventory¹, the subject property is identified as almost entirely Palustrine emergent persistent seasonally flooded wetland (**Exhibit 12**). According to the Lake Earl Wildlife Area Management Plan, a separate study using a different naming system from the National Wetland Inventory, the subject property is mostly Freshwater emergent wetland mixed with some areas of coastal dunes (**Exhibit 13**).

The subject property and connecting roadways serving the subject property are subject to seasonal inundation by the waters of the nearby coastal lagoon system known as Lakes Earl and Tolowa. This large estuarine lagoon is listed as one of California Department of Fish and Game’s (“DFG’s”) 19 coastal wetland Acquisition Priorities, and as such is specifically called out for heightened protection from fill and other adverse environmental impacts in Section 30233(c) of the Coastal Act. The coastal lagoon complex supports numerous habitat types including emergent wetlands, open water, mudflats, flooded pastures, woodland, sandy beach, and riverine habitat.

Regarding coastal planning and development, the entire subdivision is an Area of Deferred Certification (“ADC”) and was not included in the Commission’s October 1983 certification of the Del Norte County Local Coastal Program. The Commission therefore possesses jurisdiction for issuing Coastal Development Permits, as well as for enforcing the provisions of the Coastal Act, in this area.

¹ U.S. Fish and Wildlife Service. July 2007. National Wetland Inventory website. U.S. Department of the Interior, Fish and Wildlife Service, Washington, D.C. <http://www.fws.gov/nwi/>, accessed on August 23, 2007.

Unpermitted activity that has occurred on the subject property includes the placement of solid materials and structures (such as recreational vehicles, a large pre-fabricated structure, and at least six mobile homes or trailers) on land, placement of fill (in and/or adjacent to wetlands), change in intensity of use from a vacant lot to residential uses, removal of major vegetation, all of which meet the definition of “development” set forth in Section 30106 of the Public Resources Code (Coastal Act). The development was undertaken without a Coastal Development Permit (“CDP”), in violation of Coastal Act section 30600. Therefore, the Commission has the authority to issue a Cease and Desist Order under Section 30810 of the Coastal Act. The unpermitted development is also inconsistent with Sections 30230, 30231, 30233, 30240 and 30250(a) of the Coastal Act, and is causing continuing resource damage. Therefore, the Commission has the authority to issue a Restoration Order under Section 30811 of the Coastal Act.

Staff has worked with the representative for Ms. Gipson to develop a proposed order that is acceptable to both property owners and that will address the unpermitted development and restoration of the site and protect coastal resources. Staff recommends that the Commission approve Consent Cease and Desist Order CCC-07-CD-07 and Consent Restoration Order CCC-07-RO-05 (collectively, “the Orders”) as described below, directing Respondents to: 1) cease and desist from conducting or maintaining unpermitted development on the property; 2) remove all unpermitted development from the property, in accordance with the terms of the Orders; 3) allow natural revegetation of the impacted areas of the property. Staff believes that this is a good resolution of the violations, which addresses the impacts caused by the unpermitted development activities in a comprehensive and efficient manner.

The Motions to issue the proposed Consent Cease and Desist Order and the proposed Consent Restoration Order are found on page 4 of this report.

II. HEARING PROCEDURES

A. Cease and Desist and Restoration Order

The procedures for a hearing on a Cease and Desist Order and Restoration Order are outlined in 14 CCR Section 13185. See also 14 CCR Section 13195.

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

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

III. STAFF RECOMMENDATION

A. Cease and Desist Order

1. Motion

I move that the Commission issue Cease and Desist Order No. CCC-07-CD-07 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-07. 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-07, 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..

B. Restoration Order

1. Motion

I move that the Commission issue Restoration Order No. CCC-07-RO-05, pursuant to the staff recommendation.

2. Recommendation of Approval:

Staff recommends a **YES** vote. Passage of this motion will result in the issuance of Restoration Order CCC-07-RO-05. The motion passes only by an affirmative vote of a majority of Commissioners present.

3. Resolution to Issue Restoration Order:

The Commission hereby issues Restoration Order number CCC-07-RO-05, as set forth below, and adopts the findings set forth below on the grounds that 1) development was conducted on the property without a coastal development permit, 2) the development is inconsistent with the Coastal Act, and 3) the development is causing continuing resource damage.

IV. FINDINGS FOR CONSENT CEASE AND DESIST ORDER CCC-07-CD-07, AND CONSENT RESTORATION ORDER CCC-07-RO-05²

A. History of Violation and Communications Between Respondent and Commission Staff

The subject property is located in the Pacific Shores subdivision in unincorporated Del Norte County, north of Crescent City. Pacific Shores is a 1535-lot subdivision created in 1963. The subdivision has no developed community service or public utility infrastructure, minimal road improvements, and is situated tens of miles from police, fire, and ambulance emergency service responders.

The subject property includes, and is surrounded by, estuarine areas and seasonal wetlands, which constitute significant environmentally sensitive habitat areas. According to the U.S. Fish and Wildlife Service National Wetlands Inventory³, the subject property is made up of Palustrine emergent persistent seasonally flooded wetland (**Exhibit 12**). In its natural state, palustrine emergent wetlands (persistent) are dominated by plant species that normally remain standing at least until the beginning of the next growing season. Common plants found in this habitat include cattails, bulrushes, sawgrass and other sedges, and true grasses, such as reed, manna grasses, sloughgrass, and whitetop. A variety of broad-leafed persistent emergents such as purple loosestrife, dock, waterwillow, and various species of smartweeds are also present.

According to the California Department of Fish and Game (“DFG”) 2003 Lake Earl Wildlife Area Management Plan, a separate study using a different naming system from the National Wetland Inventory, the subject property contains freshwater emergent wetland and some areas of coastal dunes (**Exhibit 13**). The freshwater emergent wetland category includes permanently flooded marshes, wet meadows, isolated ponds, dune hollows, and grazed wet pastures. These wetlands are represented by a high diversity of species and a great deal of intersite variability. Wet meadows are interspersed with wet pasture in low areas that are flooded for short periods, usually in winter. In summer, standing water may not be evident, but soils may be saturated. A mixture of grasses, rushes, and sedges characteristically dominates these meadows. Typical

² These findings also hereby incorporate by reference Section I of the September 21, 2007 staff report (“Staff Report and Findings for Consent Cease and Desist Order and Consent Restoration Order” in which these findings appear, titled “Summary of Staff Recommendation and Findings.”

³ U.S. Fish and Wildlife Service. July 2007. National Wetland Inventory website. U.S. Department of the Interior, Fish and Wildlife Service, Washington, D.C. <http://www.fws.gov/nwi/>.

species include tufted hairgrass, reed canary grass, water foxtail (*Alopecurus geniculatus*), velvet grass (*Holcus lanatus*), sweet vernal grass (*Anthoxanthum odoratum*), spikerush, brown-headed rush (*Juncus phaeocephalus*), and skunk cabbage (*Lysichiton americanum*). Coastal dune habitat commonly includes plants such as sand verbena (*Abronia latifolia*), beach buckwheat (*Eriogonum latifolium*), beach sagewort (*Artemisia pycnocephala*), silver bursage (*Ambrosia chamissonis*), beach evening primrose (*Camissonia cheiranthifolia*), beach blue grass (*Poa douglasii*), and a variety of other grasses and forbs. Silvery phacelia (*Phacelia argentea*), a plant listed by the California Native Plant Society as rare, is found within this community.

The subject property and connecting roadways serving the subject property are subject to seasonal inundation by the waters of the nearby coastal lagoon complex known as Lakes Earl and Tolowa. This large estuarine lagoon is listed as one of DFG's 19 coastal wetland Acquisition Priorities, and as such is specifically called out for heightened protection from fill and other adverse environmental impacts in Section 30233(c) of the Coastal Act. The lagoon complex supports numerous habitat types, including emergent wetlands, open water, mudflats, flooded pastures, woodland, sandy beach, and riverine habitat, and is host to a number of threatened species (see discussion in Section C.2.b.iv of this report for more details). The subject property has essentially flat relief, and is located at an elevation of approximately 10 feet above sea level.

Regarding coastal planning and development, the entire subdivision is an Area of Deferred Certification ("ADC") and was not included in the Commission's October 1983 certification of the Del Norte County Local Coastal Program. The Commission therefore possesses jurisdiction for issuing CDPs, as well as for enforcing the provisions of the Coastal Act, in this area.

Commission staff had received reports of unpermitted development on this property, and had investigated and confirmed the presence of unpermitted development. Commission staff identified the owner of the property from official records maintained by the County Recorder's Office, and had sent two Notices of Violation ("NOV"), dated October 25, 2006 (**Exhibit 4**) and June 28, 2007 (**Exhibit 5**) to Mr. James Emerson, as owner of record of the property.

On July 3, 2007, Respondents recorded a grant deed reflecting that they had taken ownership of the subject property from Mr. Emerson, the prior owner. Commission Staff had been in the process of attempting to resolve existing violations on the property with Mr. Emerson. In fact, on the same day that Respondents recorded their grant deed, the Executive Director of the Commission, unaware of the transfer of the property, sent a Notice of Intent ("NOI") to record a Notice of Violation Action ("NOVA") and to commence Cease and Desist Order and Restoration Order Proceedings to Mr. Emerson (**Exhibit 6**). Mr. Emerson informed staff of the sale of the property to Respondents during a phone call on July 16, 2007. Staff again contacted the Del Norte County Recorder's office on July 17, 2007 and confirmed recordation of the July 3, 2007 grant deed.

In conjunction with the July 3, 2007 NOI sent to Mr. Emerson, on July 5, 2007, Del Norte County code enforcement staff visited the subject property, by then owned by Mr. Butler and Ms. Gibson, and posted two copies of the NOI dated July 3, 2007, on stakes at the edge of the

subject property. County staff reported that during this site visit, persons living on the subject property were observed on site, but declined to come out and speak to staff or accept hand delivery of the NOI.

Respondents saw the posted NOI and called their attorney, Mr. Kelly Smith. They told Mr. Smith that there was a deadline of July 23, 2007. On July 18, 2007, Mr. Smith called Commission staff to declare that he represents Ms. Gipson, Respondent, and enquiring about the July 23, 2007 deadline. Staff informed him that the NOI in question was for Mr. Emerson and referred him to the analyst assigned to the enforcement matter. The analyst assigned to the case attempted to call Mr. Smith back on July 20, 2007 but was unable to reach him.

Since staff had discovered that Respondents now owned the property, a new NOI letter was prepared and signed by the Executive Director of the Commission, to commence Cease and Desist Order and Restoration Order Proceedings against Respondents (**Exhibit 7**). The new NOI letter was sent on July 20, 2007 to Respondents via both regular and certified mail. In addition, a copy was faxed to Mr. Smith along with a cover letter asking for written confirmation that he now represented Ms. Gipson, and a copy of this new NOI directed to Respondents was also posted at the subject property by Del Norte County Code Enforcement staff on July 25, 2007. The NOI also stated the basis for issuance of the proposed Orders, stated that the matter was tentatively being placed on the Commission's September 2007 hearing agenda, and, in accordance with Sections 13181(a) and 13191(a) of the Commission's regulations, provided Respondents with the opportunity to respond to allegations in the NOI with a Statement of Defense ("SOD") form, informed Respondents of the various enforcement tools provided for in the Coastal Act, including recordation of a Notice of Violation pursuant to section 30812 and invited them to contact staff to discuss an amicable solution. The NOI requested that Respondents submit their response or objection to Commission staff in writing by August 10, 2007, pursuant to the deadlines set forth in the Commission's regulations. On July 21st, Mr. Smith wrote a response letter to the faxed NOI confirming his representation of Ms. Gipson, stating that he may be asking for a deadline extension to submit a SOD on behalf of his client, and requesting that further communication on the matter be directed to him (**Exhibit 9**).

On July 23, 2007, staff again attempted to reach Mr. Smith. Contact was finally made, and Mr. Smith informed staff that he would in fact be able to meet the August 10, 2007 deadline. During the phone call, Mr. Smith stated some concerns about the validity of the enforcement matter and assured staff that he would list all such arguments in the SOD. Staff agreed that he would receive copies of all communication involving the Butler-Gipson enforcement matter.

On July 26, 2007, the Executive Director of the Commission issued a NOI to Record a NOVA (**Exhibit 8**). The letter was sent to Respondents via both regular and certified mail, and additionally a copy was posted at the subject property. A copy was also mailed to Mr. Smith. The letter gave Respondents 20 days (until August 15, 2007) to provide a written objection to recordation of the NOVA. No written objection was received and a NOVA was recorded on the subject property with the Del Norte County Recorder's Office on August 27, 2007.

As a courtesy, on August 6, 2007, a copy of the hearing notice for the Commission hearing regarding Mr. Emerson, held in San Francisco on August 8, 2007, was faxed to Mr. Smith. On August 7, 2007, Mr. Smith called staff to express his concerns that neither he nor his client had received proper notice of the impending hearing. Staff clarified that the hearing was for Mr. Emerson regarding Mr. Emerson's responsibility for Coastal Act violations on the subject property, not Respondents'. Smith also relayed his client's position that a Commission action against Mr. Emerson for unpermitted development done by Mr. Emerson on the Respondents' property would affect Respondents' interests. Mr. Smith wrote a letter expanding on these matters and faxed it to staff on August 7, 2007 (**Exhibit 10**). Commission Staff Counsel responded to Mr. Smith's letter with a letter that was also faxed on August 7, 2007, reminding Mr. Smith that his client had received notice of the hearing originally when the July 3, 2007 NOI was posted at the subject property and also memorialized the contents of several phone calls between staff and Smith that had been held throughout the day (**Exhibit 11**). Moreover, a provision was added to Mr. Emerson's Cease and Desist and Restoration Orders, at Mr. Smith's request, to acknowledge that personal property placed on the subject property might belong to Respondents' and if that were demonstrated to the Executive Director's satisfaction, that Mr. Emerson must coordinate removal of the property with Respondents. Mr. Smith acknowledged that this new provision in the Orders assuaged the concerns he had with the Commission proceeding against Mr. Emerson at the August Commission hearing.

According to Mr. Smith, Respondents claim that they purchased all the trailers and the pre-fabricated structure at the same time as they purchased the subject property and therefore Respondents have been maintaining the development on the subject property ever since. However, written evidence of this ownership has not yet been provided. Mr. Smith also stated that Respondents were willing to negotiate a Consent Order to address resolutions to the violations of the Coastal Act.

On August 8, 2007, the Commission issued Cease and Desist Order CCC-07-CD-03 and Restoration Order CCC-07-RO-02 to Mr. Emerson to address the unpermitted development placed on the property by Emerson.

Due to the on-going negotiations for Consent Orders, and at Mr. Smith's request on behalf of his clients, the Commission hearing date was postponed from September 2007, to October 2007. Negotiations for the Consent Orders continued until the parties all agreed upon the Orders included in this proceeding.

The unpermitted development placed on the subject property by the Respondents was still in place as of September 11, 2007.

B. Description of Unpermitted Development

The unpermitted development consists of placement of fill (in wetlands), change in intensity of use from a vacant lot to residential uses, removal of major vegetation, and placement of a large pre-fabricated structure, at least six mobile homes or trailers, storage of 4-5 vehicles, and storage of several off-road vehicles.

The unpermitted activities at issue in this matter include the placement of solid materials and structures (such as recreational vehicles, mobile homes or trailers, and a large pre-fabricated structure) on land, change in intensity of use, and removal of major vegetation. They therefore clearly meet the definition of “development” set forth in Section 30106 of the Coastal Act (Public Resources Code). The development was undertaken without a Coastal Development Permit (“CDP”), in violation of Coastal Act Section 30600.

C. Basis for Issuance of Cease and Desist and Restoration Orders

1. Basis for Issuance of Cease and Desist Order

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...

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

The activities listed in the prior section clearly constitute “development.” “Development” is defined by Section 30106 of the Coastal Act as follows:

*"Development" means, on land, in or under water, **the placement or erection of any solid material** or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; **change in the density or intensity of use of land...**; construction, reconstruction, demolition, or alteration of the size of any structure...; and the **removal or harvesting of major vegetation...** (emphasis added)*

Development requires a coastal development permit in accordance with Section 30600 of the Act which provides in pertinent part:

“... in 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.”

No CDP was obtained from the Commission for the development on the property, as required under Coastal Act Section 30600(a) and (c). Consequently, the Commission is authorized to issue a cease and desist order pursuant to Section 30810(a)(1). The proposed Consent Cease and Desist Order will direct the Respondents to ensure compliance with the Coastal Act by removing the unpermitted development, allowing vegetation to grow back and returning impacted areas of the property to their pre-violation condition. Respondents do not contest the issuance of Consent Cease and Desist Order No. CCC-07-CD-07.

2. Basis for Issuance of Restoration Order

The statutory authority for issuance of this Restoration Order is provided in Coastal Act Section 30811, which states, in relevant part:

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

a. Development Has Occurred Without a Coastal Development Permit

As previously explained in Section C.1. of this report, Commission staff has verified that the cited development on the property was conducted without a CDP from the Commission (or from any other entity). The following paragraphs provide evidence that the unpermitted development is inconsistent with the Coastal Act and is causing continuing resource damage.

b. Unpermitted Development is Inconsistent with Chapter 3 of the Coastal Act

The unpermitted development is inconsistent with Sections 30230, 30231, 30233, 30240 and 30250(a) of the Coastal Act. The discussion regarding the inconsistency of the unpermitted development with Sections 30230, 30231, 30233, and 30240 of the Coastal Act is grouped together after the text excerpts of these four sections because the impact discussion for all four sections is related. The inconsistency of the unpermitted development with Section 30250(a) is discussed separately at the end of this section of the report.

i. Section 30230 – Marine resources; maintenance

Coastal Act **Section 30230** states as follows:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

ii. Section 30231 – Biological productivity; water quality

Coastal Act **Section 30231** states as follows:

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.

iii. Section 30233 – Diking, filling or dredging; continued movement of sediment and nutrients

Coastal Act **Section 30233(a)** states as follows:

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

(1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.

(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.

(3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

(4) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

(5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

(6) Restoration purposes.

(7) Nature study, aquaculture, or similar resource dependent activities.

Coastal Act **Section 30233(c)** states as follows:

In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary. Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its report entitled “Acquisition Priorities for the Coastal Wetlands of California”, shall be limited to very minor incidental public facilities, restorative measures, nature study, commercial fishing facilities in Bodega Bay, and development in already developed parts of south San Diego Bay, if otherwise in accordance with this division.

iv. Section 30240 – Environmentally sensitive habitat areas; adjacent development

Coastal Act **Section 30240** states as follows:

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

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

Analysis of Chapter 3 Impacts

Lakes Earl and Tolowa form an estuarine lagoon complex that comprises the core of the approximately 5,624-acre Lake Earl Wildlife Area, which is managed by the DFG. This large estuarine lagoon is listed as one of DFG’s 19 coastal wetland Acquisition Priorities, and as such is specifically called out for heightened protection from fill and other adverse environmental impacts in **Section 30233(c)** of the Coastal Act.. The lagoon system supports numerous habitat types including emergent wetlands, open water, mudflats, flooded pastures, woodland, sandy beach, and riverine habitat. The subject property has essentially flat relief and is located at an elevation of approximately 10 feet above sea level. The subject property and its connecting roadways are subject to seasonal inundation by the waters of Lakes Earl and Tolowa.

The subject property includes, and is surrounded by, estuarine areas and seasonal wetlands, which constitute significant environmentally sensitive habitat areas. According to the U.S. Fish and Wildlife Service National Wetlands Inventory⁴, the subject property is identified as almost

⁴ U.S. Fish and Wildlife Service. July 2007. National Wetland Inventory website. U.S. Department of the Interior, Fish and Wildlife Service, Washington, D.C. <http://www.fws.gov/nwi/>, accessed on August 23, 2007.

entirely Palustrine emergent persistent seasonally flooded wetland (**Exhibit 12**). According to the Lake Earl Wildlife Area Management Plan, a separate study using a different naming system from the National Wetland Inventory, the subject property is mostly Freshwater emergent wetland mixed with some areas of coastal dunes (**Exhibit 13**).

The unpermitted development on the subject property constitutes a significant alteration, disruption, and negative impact to marine resources and environmentally sensitive coastal wetland habitat (**Sections 30230, 30231, 30233 and 30240** of the Coastal Act), because of adverse effects of the unpermitted fill and major vegetation removal. Any fill or alteration of wetland hydrology (including diversion or draining of water from or into wetland areas) reduces its ability to function. Water is a major requirement for a functional wetland. If water is removed, or isn't present in the wetland for as long (for example, because of adjacent filled areas that prevent water from infiltrating into the ground), then wetland function will be degraded. Therefore, wetland function would be degraded by actions that 1) disrupt water supply through direct fill of a wetland, other sorts of covering of a wetland, diversion of water, or draining, 2) degrade water quality through chemical contamination or temperature modification, or 3) result in removal of wetland vegetation through grading, grazing, mowing, or placement of fill that covers and then eliminates the underlying vegetation. Degradation of function means that the same plants will not grow, the wetland will not provide the same water filtration, percolation, and stormwater runoff storage function, and habitat value and wildlife use of that feature could be reduced.

The unpermitted development is likely also affecting the biological productivity and water quality of the surrounding area (which is to be protected under **Section 30231** of the Coastal Act). The unpermitted fill is interfering with surface water flow, and potentially causing depletion of natural vegetation buffers. The subject property has no septic system and no municipal water supply. Commission staff has no information regarding how Respondents are disposing of sewage, or if any existing system is being adequately maintained. The potential for wastewater and septic waste streams percolating into the surrounding area and contaminating the groundwater is high, given the absence of waste disposal infrastructure. The subject property has a low elevation relative to the lagoon's surface level, presenting the risk that untreated sewage from Respondents' property could contaminate the public waters. Furthermore, the Pacific Shores subdivision is characterized by shallow or perched groundwater conditions and underlying sandy soils that are highly permeable. The subject property's natural characteristics and geography, combined with Respondent's unpermitted development, present a high risk of release of untreated sewage into adjoining areas that would pose human health risks to persons who might come in contact with the waste. This unpermitted development also threatens to adversely affect the water quality and nearby environmentally sensitive habitat area. The unpermitted development at issue here is currently located within and adjacent to the wetlands, inconsistent with the setback necessary to protect water quality and biological diversity pursuant to Section 30231 of the Coastal Act, and it does not maintain a natural vegetation buffer area to protect the wetland habitat, as required by Section 30231.

Therefore, the unpermitted development is inconsistent with **Sections 30230, 30231, 30233 and 30240** of the Coastal Act.

v. Section 30250(a) – Location; existing developed area

Coastal Act **Section 30250(a)** states the following:

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

Analysis of Chapter 3 Consistency

No municipal water supply or wastewater treatment facilities are available to serve the subject property. Although the subject property is located within a community services district, the Pacific Shores Subdivision California Water District has not developed water infrastructure or sewage disposal infrastructure to serve the subdivision. As noted above, the Pacific Shores Subdivision also lacks any other public services such as road maintenance, electricity service, mail delivery, fire and police services and access to other emergency service providers.

The unpermitted development on the subject property has not been placed within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In fact, no such services are available and the unpermitted development is having significant adverse effects on coastal resources as described above. Therefore, the unpermitted development is inconsistent with **Section 30250(a)** of the Coastal Act.

c. Unpermitted Development is Causing Continuing Resource Damage

The unpermitted development is causing continuing resource damage, as defined in Section 13190 of the Commission's regulations (14 CCR), which states:

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

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

'Damage' means any degradation or other reduction in quality, abundance, or other quantitative or qualitative characteristic of the resource as compared to the condition the resource was in before it was disturbed by unpermitted development. (emphasis added)

Because the unpermitted development remains on the property, and the effects it is having on coastal resources as noted above continue to occur, the resource damage is "continuing" as that term is defined above, and as is required by Coastal Act Section 30811 for issuance of a Restoration Order. As of this time, all of the unpermitted development that is the subject of these proceedings remains at the Subject Property. As described above, the remaining unpermitted development results in impacts to wetlands, wetlands habitat, the water quality, and biological productivity of the wetland. The unpermitted fill and the removal of vegetation continue to impact the wetland and the protected resources within and adjacent to the wetland area by continuing to cause increased erosion, and continuing to prevent the wetland from existing or functioning.

The damage is the degradation of a wetland, and the aquatic resources and water quality, which are caused by the unpermitted development on the subject property, as described in the prior section.

D. Inconsistency with Del Norte County Code: Title 7 Health and Welfare and Title 14 Buildings and Construction

Relevant sections of the Del Norte County Codes are provided to underscore the inconsistencies of this development with local regulations and policies as well as with the Coastal Act.

The unpermitted development on the subject property is inconsistent with the following Del Norte County Health and Building Codes regulating recreational vehicles and on-site sewage disposal:

1. County Health and Welfare Code; Recreational Vehicles and Tents

Section 7.09.110 – Purpose

Del Norte Health and Welfare Code Section 7.09.110 states the following:

The purpose of this chapter is to enhance the appearance of the county by limiting the proliferation of recreational vehicles and tents being used for temporary lodging on a protracted basis which constitute a visual blight and reduces the quality of life within the county to the extent that the overall public health is detrimentally affected. (Ord. 97-12 § 2 (part), 1997.)

Section 7.09.120 – Definitions

Del Norte Health and Welfare Code Section 7.09.120 states the following:

As used in this chapter

...

"Development permit" means and includes, but shall not be limited to, a valid building permit or other valid permit acquired for the development of property for residential purposes, and any other valid permit obtained for the development of property as defined in Section 21.04.195, both within and outside of the coastal zone.

...

"Recreational vehicle" means and includes, but shall not be limited to, a motor home, travel trailer, truck camper, or camping trailer, with or without motive power, designed for human habitation for recreational, emergency, or other occupancy, and which is either self-propelled, truck-mounted, or designed to be towable on the highways. For purposes of this chapter, "recreational vehicle" shall also include tents which may or may not be designed to be towable on the highways. (Ord. 97-12 § 2 (part), 1997.)

Section 7.09.210 – Prohibited Activity

Del Norte Health and Welfare Code Section 7.09.210(a) states the following:

It is unlawful for any person to occupy or use any recreational vehicle, or attempt to occupy or use any recreational vehicle for purposes of sleeping or lodging on private or public property, unless otherwise excepted in this chapter, in the unincorporated area of Del Norte County for any period of time in excess of fourteen consecutive days during any thirty day period without first obtaining a permit for such use from the community development department.

Section 7.09.240(a) – Permits

Del Norte Health and Welfare Code Section 7.09.240(a) states the following:

The community development department is authorized to issue permits for the use of recreational vehicles for a period of longer than fourteen days under the following circumstances:

1. *The registered owner or other person in legal possession of the recreational vehicle has a development permit relating to the property upon which the recreational vehicle is parked; and*
2. *Adequate and safe provisions have been made for water and sewage; and*

3. *If electricity is supplied to the recreational vehicle, the connections have been approved for purposes of safety by the county's building inspector. (Ord. 97-12 § 2 (part), 1997.)*

Analysis of applicable County Code provisions:

There are at least six recreational vehicles, as defined by Del Norte County Health and Welfare Code Section 7.09.120 (noted above), located on the subject property. Recreational vehicles and other development were first observed on the subject property on October 12, 2006, by Commission staff during a site inspection. The County community development department has issued no permit for this use. Furthermore, none of the circumstances listed in section 7.09.240 of the County Health and Welfare Code that authorize the County community development department to issue recreational use permits apply to the subject property. Photographs of the subject property taken in October 2006, July 2007, and September 2007 by Commission staff and County Code Enforcement staff indicate that the recreational vehicles have remained on the property for at least 11 months and are evidently being used for permanent lodging purposes in violation of sections 7.09.110 and 7.09.210 of the Del Norte County Health and Welfare Code policies and ordinances.

2. County Buildings and Construction Code; On-Site Sewage Disposal Systems

Section 14.12.050 – Permit or approval required

Del Norte Buildings and Construction Code Section 14.12.050 states the following:

- A. *No alternative on-site sewage disposal system shall be constructed, enlarged, altered, repaired, relocated, removed, or demolished unless a permit has first been obtained from the health officer.*
- B. *No standard on-site sewage disposal system shall be constructed, enlarged, altered, repaired, relocated, removed, or demolished unless a permit has first been obtained from the building department. Ord. 2005-25B § 4, 2005; Ord. 88-34 § 2 (part), 1988.).*

Section 14.12.060 – General standards, prohibitions, requirements

Del Norte Buildings and Construction Code Section 14.12.060(a-b) states the following:

- A. *Approved Disposal Required. All sewage shall be treated and disposed of in an approved manner.*
- B. *Discharge of Sewage Prohibited. Discharge of untreated or partially treated sewage or septic tank effluent directly or*

indirectly onto the ground surface or into public waters constitutes a public health hazard and is prohibited.

Analysis of applicable County Code provisions:

As discussed above, the Pacific Shores Subdivision California Water District has not developed a sewage disposal infrastructure. Additionally, Respondents have not obtained or applied for any of the above-mentioned permits or approvals required by Del Norte County for treatment and disposal of sewage generated on the subject property. Commission staff has no information about whether or how Respondents are disposing of sewage. The potential for wastewater and septic waste streams percolating into the surrounding area and contaminating the groundwater is high given the absence of waste disposal infrastructure.

E. California Environmental Quality Act (CEQA)

The Commission finds that the issuance of Consent Cease and Desist Order CCC-07-CD-07 and Consent Restoration Order CCC-07-RO-05, to compel removal of the unpermitted development and restoration of the subject property back to pre-development conditions, is exempt from any applicable requirements of the California Environmental Quality Act of 1970 (CEQA) and will not have significant adverse effects on the environment, within the meaning of CEQA. The Orders are exempt from the requirement to prepare an Environmental Impact Report, based on Sections 15061(b)(3) and Section 15061(b)(2), 15307, 15308 and 15321 of the CEQA Guidelines, which are in Title 14 of the California Code of Regulations.

F. Findings of Fact

1. Kenneth Butler and Judith Gipson are owners of the subject property, identified as Block 41, Lot 22, APN 108-161-22, in the Pacific Shores Subdivision, north of Crescent City, Del Norte County.
2. Kenneth Butler and Judith Gipson are maintaining unpermitted development on the subject property.
2. Development subject to these Orders includes placement of fill (in and/or adjacent to wetlands), change in intensity of use from a vacant lot to residential uses, removal of major vegetation, and placement of a large pre-fabricated structure, at least six mobile homes or trailers, 4-5 vehicles, and several off-road vehicles, has occurred on the subject property.
3. No coastal development permit was applied for or obtained for this development.
4. No exemption from the permit requirements of the Coastal Act applies to the unpermitted development on the subject property.

5. The unpermitted development is inconsistent with the Chapter 3 resource protection policies of the Coastal Act, including Sections 30230, 30231, 30233, 30240, and 30250(a).
6. The unpermitted development is causing continuing resource damages.
7. The unpermitted development is inconsistent with the Del Norte County Health and Welfare and Buildings and Construction Codes, including Sections 7.09.210, 7.09.240, 14.12.050, and 14.12.060.
8. The unpermitted development on the site constitutes a violation of the Coastal Act.
9. On July 5, 2007, County Code Enforcement staff posted a Notice of Intent to Record a Notice of Violation and Commence Cease and Desist and Restoration Order proceedings on the subject property addressed to the former owner of the property, James Emerson.
10. On July 20, 2007, the Executive Director informed Respondents that, pursuant to Title 14, California Code of Regulations, Sections 13181(a) and 13191(a), the Commission intended to initiate cease and desist and restoration order proceedings against them, outlined steps in the cease and desist and restoration order process, and provided a Statement of Defense form to Respondents, pursuant to the regulations and also informed them of remedies available under the Coastal Act, including the recordation of a Notice of Violation.
11. On July 26, 2007, the Executive Director sent a "Notice of Intent to Record a Notice of Violation" letter to Respondents, and County Code Enforcement posted a copy at the subject property. Respondents had until August 15, 2007, to object in writing to such a recordation.
12. On August 7, 2007, the attorney representing Respondents contacted staff to discuss the August 2007 Emerson proceeding and the relationship between that hearing and the upcoming hearing involving his clients. In this conversation, he stated that his clients not only owned the property, but that they owned the unpermitted structures thereon and were retaining them there for use and possible resale. During this phone call, the attorney representing Respondents agreed to pursue resolution of the violations through consent cease and desist and restoration orders.
13. On September 18, 2007, Respondents signed the Consent Cease and Desist and Restoration Orders.

G. Waiver of Defenses

Section 13181(a) of the Commissions Regulations states, in part:

"The notice of intent shall be accompanied by a 'statement of defense form' that conforms to the format attached to these regulations as Appendix A. The person(s) to whom such notice

is given shall complete and return the statement of defense form to the Commission by the date specified therein, which date shall be no earlier than 20 days from transmittal of the notice of intent.”

In recognition of the value of resolving this matter in a timely manner and for the purposes of agreeing to the issuance and enforcement of the Consent Orders, the Respondents have agreed not to raise contested allegations, defenses, mitigating factors, rebuttal evidence and other unresolved issues pursuant to California Code of Regulations Section 13183 or otherwise to contest the legal and factual bases and the terms and issuance of these Consent Orders.

Staff recommends that the Commission issue the following Consent Cease and Desist Order and Consent Restoration Order:

COMBINED CONSENT CEASE AND DESIST ORDER CCC-07-CD-07 AND CONSENT RESTORATION ORDER CCC-07-RO-05, BUTLER-GIPSON

1.0 CEASE AND DESIST ORDER CCC-07-CD-07

Pursuant to its authority under California Public Resource Code (hereinafter, “PRC”) section 30810, the California Coastal Commission (hereinafter, “Commission”) hereby authorizes and orders Kenneth Butler, Judith Gipson, all their employees, agents, and contractors, and any persons acting in concert with any of the foregoing (hereinafter, “Respondents”) to: 1) cease and desist from engaging in any further development, as that term is defined in PRC section 30106, on the property located at Block 41, Lot 22, Pacific Shores Subdivision, north of Crescent City, Del Norte County (APN 108-161-22) (hereinafter, “subject property”), unless authorized pursuant to the Coastal Act (PRC §§ 30000-30900) or pursuant to the terms and conditions of any permit or order issued by the Commission in administering the Coastal Act, including these Consent Orders, and 2) comply with the requirements of Section 3.0, as set forth below, including any requirement therein to comply with other sections of these Consent Orders, and with all other terms of these Consent Orders. Through the execution of these Consent Orders, the Respondents agree to comply with the terms of this paragraph and with the following terms and conditions.

2.0 RESTORATION ORDER CCC-07-RO-05

Pursuant to its authority under PRC section 30811, the Commission hereby authorizes and orders Kenneth Butler, Judith Gipson, all of their employees, agents, and contractors, and any persons acting in concert with any of the foregoing (hereinafter collectively referred to as “Respondents”) to restore the property as described below. The restoration and mitigation required under this Consent Restoration Order is necessary to resolve Coastal Act violations, consisting of the unpermitted fill of, and change in intensity of use of, land, and removal of major vegetation, including wetlands vegetation on property owned by Respondents, located at Block 41, Lot 22, Pacific Shores Subdivision, north of Crescent City, Del Norte County (APN 108-161-22), (hereinafter referred to as “subject property”) The only activities authorized by this Consent Restoration Order are those outlined herein. Any development subject to Coastal Act permitting requirements that is not specifically authorized under these Consent Cease and Desist and Restoration Orders (hereinafter, “Orders”) requires a Coastal Development Permit (hereinafter, “CDP”). Through the execution of these Consent Orders, the Respondents agree to comply with the following requirements:

3.0 TERMS AND CONDITIONS

1. Cease and desist from engaging in any further unpermitted “development,” as that term is defined in PRC section 30106, on the property identified by Del Norte County as

Pacific Shores Subdivision Block 41, Lot 22, Assessor's Parcel Number 108-161-22 (the "subject property").

2. Cease and desist from maintaining unpermitted "development," as that term is defined in PRC section 30106, on the subject property.

3. Take all steps necessary to ensure compliance with the Coastal Act, including removal of all unpermitted "development," as that term is defined in PRC section 30106, from the subject property, allowing native vegetation to grow back, and returning impacted areas of the property to their pre-violation condition according to the following terms and conditions:

- A. **Within 120 days after issuance of these Consent Orders, consistent with the provisions of these Orders**, all unpermitted development on the property including but not limited to that identified in Section II of this Order shall have been addressed, by, at a minimum: (i) providing for the removal of any fill placed on the property, the existing large pre-fabricated structure, the mobile homes or trailers placed on the property without a CDP (of which there were at least six as of July 25, 2007), 4-5 vehicles, and several off-road vehicles, (ii) revegetating the site consistent with section 4.B of these Orders; and (iii) reversing the unpermitted conversion of the site to residential use by ceasing to use the site for residential purposes. All solid materials that have been placed on the subject property without a CDP constitute unpermitted development and must be completely removed.
- B. Any unpermitted fill materials consisting of soil, sand, or other similar materials that have been placed on the subject property shall be removed with hand labor utilizing hand tools such as rakes and shovels to avoid impacts to the underlying vegetation. All fill removal shall be conducted with great care for the adjacent and underlying vegetation and shall not result in the creation/excavation of pits or holes on the subject property. The fill shall be removed only as far as the level that reinstates the original site grade that existed prior to the placement of the fill on the subject property.
- C. The removal of all unpermitted development on the subject property shall be completed no later than **120 days after issuance of these Consent Orders, consistent with the provisions of these Orders**. Respondents shall submit photographs of the property, as provided in Section V of these Orders, or allow Commission staff or staff from other agencies acting in cooperation with the Commission or with jurisdiction over the work to be performed access to the subject property per Section XIV below to document progress of removal and compliance with photographs and written reports no later than **thirty (30) days after completion of removal**, clearly documenting the completion of all removal activities.

- D. Other than those areas subject to removal and restoration activities, the property and surrounding areas shall not be disturbed by activities required by this Order.
- E. Any waste materials removed from the site must be disposed of at a licensed facility, preferably outside of the Coastal Zone, appropriate for the type of waste being disposed of and with any required permits or approvals. If the disposal site is to be located within the Coastal Zone, a CDP for such disposal is required and must be obtained prior to such disposal.

4. REQUIREMENTS GOVERNING REMOVAL AND COMPLIANCE⁵

- A. Within 90 days of issuance of these Orders, Respondents or their Representative will supply the Executive Director with a letter inventorying all of the development currently on the subject property.
 - a. Development required to be removed includes all development detailed in the letter, all fill materials, all mobile homes and trailers, the large pre-fabricated structure, and all vehicles. The site must no longer be used for residential purposes absent a valid Coastal Development Permit authorizing such development at the site.
- B. Revegetate the site by allowing all native vegetation to grow back until site resembles pre-development condition.
- C. Allow access to the site per Section XIV below for the purpose of monitoring compliance with these Consent Orders.
- D. In all removal activities, the following guidelines must be followed:
 - a. Remove development using tow trucks or other mechanical means that provides the least impact possible on the subject property.
 - b. Remove the fill materials consisting of soil, sand, or other similar materials using hand tools or other means that provide the least impact possible on the subject property.
 - c. Disposal of removed materials and structures which are to be disposed of must occur at a licensed disposal facility located outside of the Coastal Zone. Any hazardous materials must be transported to a licensed hazardous waste disposal facility.
 - d. Minimize the number of trips to and from the site.

⁵ Alternatively, if Respondents instead wish to submit plans for the work to be performed under these Orders, including via submittals by their counsel, they can do so. In that event, they should so inform Commission staff within 30 days of issuance of these Orders, and submit plans within 60 days of issuance of these Orders which contain the elements addressed in sections 3-6 of these Orders.

- e. Traverse only the already well-traveled areas of the site so as to minimize effects on wetlands areas and vegetation.
 - f. Complete all removal as soon as is feasible and no later than 120 days from the issuance of the Orders.
 - g. Operation of all mechanized removal equipment will be conducted only during daylight hours.
 - h. Wait a minimum of one week after any rain event for the ground and any ponding areas to dry out before conducting or resuming removal activities.
- E. If the Executive Director determines that any modifications or additions to any submittals required by these Orders, he shall notify Respondents and their representative. Respondents or their representative shall complete requested modifications and resubmit the submittals for approval within 10 days of the postmarked date of the notification.

5. REMOVAL AND COMPLIANCE IMPLEMENTATION

- A. Within 90 days after issuance of the Orders, and in compliance with their terms, Respondents shall commence removal in compliance with the terms of the Consent Cease and Desist and Restoration Orders. Respondents shall:
- a. Remove all development subject to these Orders, including the placement of fill (in and/or adjacent to wetlands), and all unpermitted development at the site, including a large pre-fabricated structure, at least six mobile homes or trailers, 4-5 vehicles, and several off-road vehicles.
 - b. Cease maintaining or conducting new unpermitted development, including the change in intensity of use from a vacant lot to residential uses, removal of major vegetation,
 - c. Allow native vegetation at the site to reestablish.
- B. Within 120 days, after issuance of the Orders, Commission staff or some other agency personnel acting in coordination with the Commission will conduct a site inspection to confirm compliance with the terms and conditions of the order.
- C. Other than those areas subject to removal and restoration activities, the areas of the property and surrounding areas currently undisturbed shall not be disturbed by activities required by this Order.
- D. Site Progress Documentation

- a. Allow Commission staff or staff from other agencies working in coordination with the Commission or with jurisdiction over the work to be performed access to the subject property per Section XIV below to document progress of removal and compliance with photographs and any written reports.

6. MONITORING

Respondents or their representative will monitor restoration of the property and submit a site progress report and photographs documenting progress of their Order compliance, or allow Commission staff on site per Section XIV of this Order to perform the necessary monitoring. All monitoring documents submitted by Respondents shall be submitted according to Section V. of this Order.

7. PERSONAL PROPERTY

Insofar as Respondents or others are able to demonstrate, to the satisfaction of the Commission's Executive Director, that any personal property located on the property is not owned by Respondents, Respondents must coordinate with the owner of any such property in order to make arrangements to comply with the terms of this order.

I. Persons Subject to the Consent Order

Persons subject to this Consent Cease and Desist Order and Consent Restoration Order are Respondents, as defined above to include Kenneth Butler, Judith Gipson, their agents, contractors and employees, and any persons acting in concert with any of the foregoing.

II. Identification of the Property

The property that is subject to these Consent Orders and the Notice of Violation is identified by Del Norte County as Pacific Shores Subdivision Block 41, Lot 22, Assessor's Parcel Number 108-161-22.

III. Description of Development Subject to these Orders

The development that is the subject of these Orders includes (but may not be limited to) placement of fill (in and/or adjacent to wetlands), change in intensity of use from a vacant lot to residential uses, removal of major vegetation, and placement of a large pre-fabricated structure, at least six mobile homes or trailers, 4-5 vehicles, and several off-road vehicles.

IV. Commission Jurisdiction and Authority to Act

The Commission has jurisdiction over this matter, as the property at issue is located within the Coastal Zone and in an area not covered by a certified Local Coastal Program. The Commission is issuing these Orders pursuant to its authority under the Coastal Act in Public Resources Code Sections 30810 and 30811.

V. Submittal of Documents

All documents submitted pursuant to this Consent Order must be sent to:

California Coastal Commission
Attn: Erin M. Haley
45 Fremont St., Suite 2000
San Francisco, CA 94105-2219

With a copy sent to:

California Coastal Commission
North Coast District
710 "E" Street, Suite 200
Eureka, CA 95501-6813

VI. Settlement of Matter Prior to Hearing

In light of the intent and preference of the parties to resolve these matters in settlement, Respondents have waived their right to contest the legal and factual bases and the terms and issuance of these Consent Orders, including the allegations of Coastal Act violations contained in the Notice of Intent to Commence Cease and Desist Order and Restoration Order Proceedings (NOI) dated July 20, 2007, and the Notice of Intent to Record a Notice of Violation of the Coastal Act dated July 26, 2007. Specifically, Respondents waive their rights to present defenses or evidence in advance of or at a public hearing on these Orders in order to contest the issuance of the Consent Orders or to object to the recordation of a Notice of Violation pursuant to PRC Section 30812.

VII. Effective Date and Terms of the Consent Order

The effective date of the Consent Order is the date of approval by the Commission. The Consent Order shall remain in effect permanently unless and until modified or rescinded by the Commission.

VIII. Findings

The Consent Order is issued on the basis of the findings adopted by the Commission at its September 2007 hearing, as set forth in the attached document entitled “Staff Report and Findings for Consent Cease and Desist Order and Consent Restoration Order”.

IX. Settlement/Compliance Obligation

Strict compliance with these Consent Orders by all parties subject thereto is required. Failure to comply with any term or condition of these Consent Orders, including any deadline contained in these Consent Orders, unless the Executive Director grants an extension under Section X, shall constitute a violation of these Consent Orders and shall result in Respondents being liable for stipulated penalties in the amount of \$50 per day per section of the Order violated. Respondents shall pay stipulated penalties within 15 days of receipt of written demand by the Commission for such penalties regardless of whether Respondents have subsequently complied. If Respondents violate these Consent Orders, nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of the Commission to seek any other remedies available, in addition to these stipulated penalties, including the imposition of civil penalties and other remedies pursuant to Public Resources Code Sections 30821.6, 30822 and 30820 as a result of the lack of compliance with the Consent Orders and for the underlying Coastal Act violations as described herein.

X. Extension of Deadlines

The Executive Director may extend the deadlines set forth in these Orders for good cause. Any extension request must be made in writing to the Executive Director and received by Commission staff at least ten days prior to expiration of the subject deadline.

XI. Appeal

Pursuant to Public Resources Code Section 30803(b), any person or entity against whom these Orders are issued may file a petition with the Superior Court for a stay of either or both of these Orders.

XII. Modifications and Amendments to this Consent Order

This Order may be amended or modified only in accordance with the standards and procedures set forth in Section 13188(b) or 13197 of Title 14 of the California Code of Regulations.

XIII. Government Liability

The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent in carrying out activities required and authorized under these Orders, nor shall the State of California be held as a party to any contract entered into by Respondent or Respondent's agents in carrying out activities pursuant to these Orders.

XIV. Site Access

Respondents shall provide access to the property at all reasonable times to Commission staff and any agency working in cooperation with the Commission or having jurisdiction over the work being performed under these Consent Orders. Nothing in these Consent Orders is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Commission staff may enter and move freely about the following areas: (1) the portions of the Subject Property on which the violations are located, (2) any areas where work is to be performed pursuant to these Consent Orders or pursuant to any plans adopted pursuant to these Consent Orders, (3) adjacent areas of the property, and (4) any other area where evidence of compliance with these Orders may lie, as necessary or convenient to view the areas where work is being performed pursuant to the requirements of these Consent Orders, for purposes including but not limited to overseeing, inspecting, documenting, and reviewing the progress of Respondent in carrying out the terms of these Consent Orders.

XV. Settlement of Claims

The Commission and Respondents agree that these Consent Orders settle their monetary claims for relief for those violations of the Coastal Act alleged in the NOI occurring prior to the date of these Consent Orders, (specifically including claims for civil penalties, fines, or damages under the Coastal Act, including Sections 30805, 30820, and 30822), with the exception that, if Respondents fail to comply with any term or condition of these Consent Orders, the Commission may seek monetary or other claims for both the underlying violations of the Coastal Act and for the violation of these Consent Orders. In addition, these Consent Orders do not limit the Commission from taking enforcement action due to Coastal Act violations at the property other than those that are the subject of these Consent Orders.

XV. Successors and Assigns

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

XVI. No Limitation on Authority

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

XVII Integration

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

XVIII Severability

If a court finds any provision of this Agreement invalid or unenforceable under any applicable law, such provision shall, to that extent, be deemed omitted, and the balance of this Agreement will be enforceable in accordance with its own terms.

XIX Non-Waiver

The failure of either party to exercise any of its rights under this Agreement for a breach thereof shall not be deemed a waiver of such rights or waiver of any subsequent breach.

XX Persons Performing Removal and Compliance

Notwithstanding the references to Respondents (in the plural) and the fact that these Orders apply equally to Kenneth Butler and Judith Gipson, co-owners of the property, the parties understand that Ms. Gipson has indicated she will be performing all the removal and compliance activities. Mr. Butler does not object to any portion of these Orders and consents to the actions set forth in these Orders

XXI Purpose of These Consent Orders

The purpose of entering into these Consent Orders is for the Respondents to avoid further controversy and liability. Entering into the Consent Orders does not constitute an admission of liability on the part of either of the Respondents.

XXII Stipulation

Respondents and their representatives attest that they have reviewed the terms of these Consent Cease and Desist and Restoration Orders and understand that their consent is final and stipulate to their issuance by the Commission.

IT IS SO STIPULATED AND AGREED:

On behalf of Respondent:

Kenneth Butler

Date

Judith Gipson

Date

Executed in Eureka on behalf of the California Coastal Commission:

PETER DOUGLAS, Executive Director

Date

Exhibits

1. Site map.
2. Aerial photograph.
3. Site photographs.
4. Notice of Violation letter dated October 25, 2006 from Commission staff to former owner of the subject property, James Emerson, regarding the unpermitted development on the subject property.
5. Notice of Violation letter dated June 28, 2007 from Commission staff to Mr. Emerson regarding the unpermitted development on the subject property.
6. Notice of Intent (NOI) dated July 3, 2007 to record a Notice of Violation Action (“NOVA”) and to commence Cease and Desist Order and Restoration Order Proceedings, addressed to Mr. Emerson, and posted on the subject property.
7. NOI dated July 20, 2007 to commence Cease and Desist Order and Restoration Order Proceedings, addressed to Respondents, and posted on the subject property.
8. NOI dated July 26, 2007 to record a NOVA, addressed to Respondents, and posted at the subject property.
9. July 21, 2007 letter from Kelly Smith, representing Respondents
10. August 7, 2007 letter from Kelly Smith, stating objections to the August 8, 2007 Commission hearing regarding enforcement actions against the former owner of the property, Mr. Emerson.
11. August 7, 2007 Commission Staff Counsel response letter to the August 7, 2007 letter from Kelly Smith.
12. Wetlands overlay map of Lake Earl Wildlife Area.
13. Map titled “Major Vegetation Types in and Adjacent to the Lake Earl Wildlife Area”, from the Lake Earl Management Plan, adopted January 2003.



Exhibit 1
 CCC-07-CD-07
 CCC-07-RO-05
 CCC-NOV-07-09
 (Butler-Gipson)



(Copyright© 2002 Kenneth & Gabrielle Adelman. www.californiacoastline.org)

Exhibit 2. 2002 Aerial photograph of Pacific Shores subdivision.

Exhibit 2
CCC-07-CD-07
CCC-07-RO-05
CCC-07-NOV-09
(Butler-Gipson)



Exhibit 3a. October 11, 2006 photo of unpermitted trailers, structures, and vehicles.



Exhibit 3b. July 5, 2007 photo of unpermitted trailers and multiple vehicles on subject property.

Exhibit 3 a-b
CCC-07-CD-07
CCC-07-RO-05
CCC-NOV-07-09
(Butler-Gipson)



Exhibit 3c. July 5, 2007 photo of unpermitted trailers, vehicles, and debris on subject property. Also a view of the Notice of Intent letter posted at subject property.



Exhibit 3d. July 5, 2007 close up view of unpermitted trailers, vehicles and structure on subject property.

Exhibit 3 c-d
CCC-07-CD-07
CCC-07-RO-05
CCC-NOV-07-09
(Butler-Gipson)



Exhibit 3e. July 5, 2007 photo of unpermitted development and debris at subject property.



Exhibit 3f. July 5, 2007 photo of unpermitted trailers and debris at subject property.

Exhibit 3 e-f
CCC-07-CD-07
CCC-07-RO-05
CCC-07-NOV-09
(Butler-Gipson)



Exhibit 3g. July 25, 2007 photo of unpermitted structures, trailers, and vehicles on subject property.



Exhibit 3h. July 25, 2007 photo of unpermitted trailers and fill at subject property.

Exhibit 3 g-h
CCC-07-CD-07
CCC-07-RO-05
CCC-NOV-07-09
(Butler-Gipson)



Exhibit 3i. July 3, 2007 Notice of Intent posted at subject property, and unpermitted fill at subject property.



Exhibit 3j. July 20, 2007 Notice of Intent posted at subject property with unpermitted trailer able to be viewed in background.

Exhibit 3 i-j
CCC-07-CD-07
CCC-07-RO-05
CCC-NOV-07-09
(Butler-Gipson)

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
7005 1820 0007 4658 5264

October 25, 2006

James R. Emerson
18927 Ridge Road
Redding, CA 96002

Subject: Coastal Act Violation File No. V-1-06-010: Unpermitted placement of fill (in or adjacent to wetlands), change in intensity of-use from vacant lot to residential uses, vegetation removal, placement of mobilehomes or recreational vehicles and placement of additional structures

Location: Block 41, Lot 22, Pacific Shores, Del Norte County; APN 108-161-22

Dear Mr. Emerson:

You are listed as the owner of record for property located in the Pacific Shores Subdivision Block 41, Lot 22, APN 108-161-22 in Del Norte County ("the property"). On October 11, 2006, Coastal Commission staff confirmed the existence of unpermitted development at the property, consisting of a large pre-fabricated structure, at least four mobilehomes or trailers, 4-5 vehicles and several off-road vehicles as well as fill and vegetation removal. These cited items constitute development as defined 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

Exhibit 4
CCC-07-CD-07, CCC-07-RO-05,
CCC-07-NOV-09
Butler-Gipson)
Page 1 of 3

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... (emphasis added)

The placement of fill (in this case, in or adjacent to wetlands), change in intensity of use from a vacant lot to residential uses, vegetation removal, placement of recreational vehicles, and construction of additional structures on the subject property constitute development under the Coastal Act, and as such are subject to Coastal Act coastal development permit requirements. Primarily, they are subject to the requirement in Section 30600(a), which requires that anyone performing such development within the Coastal Zone obtain a Coastal Development Permit ("CDP"). We have reviewed our records and have determined that no CDP exists authorizing the cited development on your property. The cited development all occurred without the benefits of a CDP, making them violations of the Coastal Act.

It is critical that you stop immediately all unpermitted development activities and contact us within two weeks of the date of this letter no later than November 8, 2006 with a plan for removal of all unpermitted development and restoration of the site to its pre-violation condition. Commission enforcement staff prefers to work cooperatively with alleged violators to resolve Coastal Act violations administratively without resorting to formal enforcement proceedings. However, if you fail to meet our requested deadlines for administrative resolution, Commission staff will be forced to conclude that you do not wish to resolve this violation administratively and we will be obligated to seek formal action by the Executive Director and the Commission to resolve this matter. For that reason, I provide the following citations of the Coastal Act so that you fully understand the consequence of violation cases subject to formal action

Coastal Act sections 30803 and 30805 authorize the Coastal Commission to initiate litigation to seek injunctive relief and an award of civil penalties, respectively, in response to any violation of the Coastal Act. Coastal Act section 30809 states that if the Executive Director of the Commission determines that any person had undertaken or is threatening to undertake any activity that requires a permit from the Commission without first securing a CDP, the Executive Director may issue an order directing that person to cease and desist. Coastal Act section 30810 states that the Commission may also issue a permanent cease and desist order after conducting a public hearing. A cease and desist order may be subject to terms and conditions that are necessary to avoid irreparable injury to the area or to ensure compliance with the Coastal Act. Section 30811 of the Act authorizes the Commission to order restoration of a site where development has occurred without a CDP, is inconsistent with the Coastal Act, and is causing continuing resource damage. Section 30812 of the Act authorizes the Executive Director to record a Notice of Violation on your property. Pursuant to section 30812, you have the ability to object to such a recordation and request a public hearing on whether or not a violation has occurred on your property within 20 days of receiving notice of the Executive Director's intent to record a Notice of Violation. If, after a public hearing the Commission finds based on substantial evidence that a violation has occurred, the Executive Director can record the Notice. Coastal Act Section 30820(a) provides that any person who violates any provision of the Coastal Act may be subject to a penalty not to exceed \$30,000. Further, Section 30820(b) states that, in addition to any other penalties, any person who "knowingly and intentionally" performs any

V-1-06-10

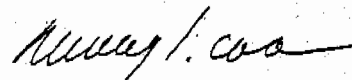
Emerson

Page 3

development in violation of the Coastal Act can be subject to a civil penalty of up to \$15,000 for each day in which the violation persists. Additional penalties of up to \$6,000 per day can be imposed if a cease and desist or restoration order is violated. Section 30822 further provides that exemplary damages may also be imposed for knowing and intentional violations of the Coastal Act or of any orders issued pursuant to the Coastal Act.

Please submit your plan for removal and restoration to me no later than November 8, 2006 to avoid further Commission enforcement proceedings. If you have any questions concerning this letter or this enforcement action, please do not hesitate to contact me at the letterhead above, or at 415-904-5290.

Sincerely,



Nancy L. Cave
Enforcement Supervisor
Northern California

cc

Robert Merrill, North Coast District Manager
Manjula Martin, Enforcement Staff

CALIFORNIA COASTAL COMMISSION

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FAX (415) 904-5400
TDD (415) 597-5885



VIA CERTIFIED AND REGULAR MAIL
7005 3110 0002 6240 1073

June 28, 2007

Mr. James R. Emerson
18925 Ridge Road
Red Bluff, CA 96080-9260

RE: Coastal Act Violation File No. V-1-06-010: Unpermitted placement of fill (in or adjacent to wetlands), change in intensity of use of land from vacant lot to residential uses, vegetation removal, placement of mobile homes, recreational vehicles, and additional structures at Block 41, Lot 22, Pacific Shores, Del Norte County; APN 108-161-22

Dear Mr. Emerson:

You are listed as the owner of record for property located in the Pacific Shores Subdivision Block 41, Lot 22, APN 108-161-22 in Del Norte County (subject property). On October 11, 2006, Coastal Commission staff confirmed the existence of unpermitted development at the subject property, including but not limited to, a large pre-fabricated structure, at least four mobile homes or trailers, four to five vehicles, and several off-road vehicles, as well as evidence of vegetation removal and earthen fill activities in or adjacent to wetlands. These activities constitute development as defined by Section 30106 of the California 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 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...

Exhibit 5
CCC-07-CD-07, CCC-07-RO-05,
CCC-07-NOV-09
(Butler-Gipson)

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.

The placement of fill (in this case, in or adjacent to wetlands), change in intensity of use from a vacant lot to residential uses, vegetation removal, placement of solid material (recreational vehicles), and construction of additional structures on the property constitute development under the Coastal Act. Pursuant to Section 30600(a) of the Coastal Act, these activities require a Coastal Development Permit (CDP). Commission staff has reviewed our permit records and has determined that no CDP has been applied for nor exists for the aforementioned development activities on the subject property in Pacific Shores. Therefore, the cited activities have been undertaken in violation with the Coastal Act's permit requirements.

You must immediately cease and remove all unpermitted development on the subject property and contact Commission staff with evidence of removal of the unpermitted development on the subject property and restoration of the subject property to its pre-violation condition.

Although we would like to resolve this informally and would like to work with you to do so, we also note that the Executive Director of the Coastal Commission is authorized, after providing notice and the opportunity for a hearing as provided in section 30812 of the Coastal Act, to record a Notice of Violation against the subject property, under Section 30812 of the Coastal Act, as well as to seek other administrative and judicial remedies to resolve the cited violation activity. The purpose of such notice is to avoid any potential parties from unwittingly purchasing a property with an unresolved Coastal Act violation on the property.

Commission Enforcement staff prefers to work administratively and without resorting to formal enforcement proceedings. Commission staff is prepared to execute formal action by the Executive Director and the Commission to resolve this violation matter.

First the Executive Director will notify you of his intent to record a Notice of Violation Action as required in Section 30812 of the Act. In addition, a more formal enforcement action likely would consist of the Commission issuing a Cease and Desist Order and Restoration Order. Section 30810 allows for a Cease and Desist Order to be issued by the Commission, after a public hearing, if a person has undertaken an activity that is inconsistent with a permit previously issued by the Commission or if development has occurred without a permit. These Cease and Desist Orders may be subject to terms and conditions necessary to ensure compliance with the Coastal Act, including removal of the development or setting of a schedule. Section 30811 of the Coastal Act gives the Commission the authority to issue a Restoration Order to require restoration of the site, after a public hearing, if the Commission finds that development has occurred without a CDP, is inconsistent with the Coastal Act and is causing continuing resource damage. If it is determined that an Order issued by the Commission has been violated, the Commission can seek daily penalties not to exceed \$6,000 per day for every day the violation of the order continues.

Section 30820(a) of the Coastal Act provides for civil liabilities in an amount not to exceed \$30,000 and not less than \$500 to be imposed on anyone who undertakes development in a

Exhibit 5

CCC-07-CD-07, CCC-07-RO-05,

CCC-07-NOV-09

(Butler-Gipson)

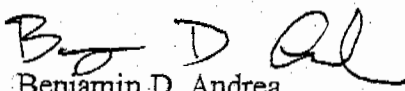
manner inconsistent with a previously issued CDP or if development has occurred without a permit. Section 30820(b) provides that additional civil liability may be imposed on any person who performs or undertakes development that is inconsistent with any CDP previously issued by the Commission or if development has occurred without a permit, when the person knowingly and intentionally performs or undertakes such development, in an amount not less than \$1,000 and not more than \$15,000 per day for each day in which the violation persists. Section 30822 of the Act allows a court to award exemplary penalties in situations where it is determined that additional deterrence is necessary to ensure compliance with the Coastal Act.

This is the second attempt to contact you regarding the Coastal Act Violations on the subject property. Real Quest property records indicate that your mailing address is 18927 Ridge Road, Redding CA 96002, however no such address exists. A letter similar to this one dated October 25, 2006 was sent to that address via Certified (7005 1820 0007 4658 5264) and Regular mail, however both letters were returned due to no such address at 18927 Ridge Road. In your response to this letter, please submit to the Commission your current mailing address.

Commission records indicate that you are also the owner or co-owner of five other lots in the Pacific Shores subdivision: APNs 108-151-19, 107-182-10, 107-182-11, 108-051-17, and 108-051-18. As mentioned, Commission staff has confirmed unpermitted development on APN 108-161-22, the subject property; however, in light of the fact that you own additional lots within Pacific Shores we take this opportunity to remind you that any activities that may be defined as "development" pursuant to Section 30106 of the California Coastal Act (as quoted above) require a Coastal Development Permit. While unpermitted development has not been confirmed by Commission staff at this time on other parcels owned by you, if such development exists it is mandatory that such development cease and the property be restored to its pre-violation condition. If Commission staff verifies that unpermitted development persists on other property that you own in Pacific Shores, further action will be taken.

Again, please contact Commission staff by July 3, 2007 with evidence of removal of the unpermitted development on the subject property and restoration of the subject property to its pre-violation condition. If you have any questions concerning this letter, please contact me at 415-904-5220, or at the address on the letterhead. Thank you for your attention and cooperation.

Sincerely,



Benjamin D. Andrea

Statewide Enforcement Program Staff

CC: Nancy Cave, Northern California Enforcement Program Supervisor
Bob Merrill, North Coast District Manager
Erin Haley, Statewide Enforcement Analyst

CALIFORNIA COASTAL COMMISSION

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FAX (415) 904-5400
TDD (415) 597-5885



Via Certified Mail (#7005 3110 0002 6246 4054),
Regular Mail, and Hand Delivery

July 3, 2007

Mailing Address

James R. Emerson
18925 Ridge Road
Red Bluff, CA 96080-9260

Hand Delivery (Subject Property) Address

James R. Emerson
295 Ocean Drive
Crescent City, CA 95531-7922

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

Violation No.: V-1-06-010

Location: Block 41, Lot 22, Pacific Shores, Del Norte County; APN 108-
161-22

Violation Description: Unpermitted placement of fill (in and/or adjacent to wetlands),
change in intensity of use of land from vacant lot to residential
uses, removal of major vegetation, and placement of mobile
homes, recreational vehicles, and additional structures.

Dear Mr. Emerson:

As you might be aware, your property at 295 Ocean Drive, in the Crescent City subdivision of Pacific Shores, is located in an area with pervasive environmentally sensitive habitat areas (ESHA). The ESHA includes wetlands and habitat for the Oregon Silverspot butterfly, a species listed as threatened by the federal government. Due to the fragile natural resources in the area, and the fact that water and sewer services have yet to be established for Pacific Shores, no residential development has been approved by the California Coastal Commission ("Commission") for the subdivision. The Commission staff looks forward to working with you to protect the sensitive resources in and around your property.

The purpose of this letter is to notify you of my intent, as Executive Director of the Commission, to record a Notice of Violation ("NOVA") against your property to reflect the fact that development has occurred thereon in violation of the Coastal Act¹ (for failure to secure a permit), and to commence proceedings for issuance of a Cease and Desist Order and Restoration Order to address the unpermitted development. The unpermitted development includes placement of fill (in and/or adjacent to wetlands), change in intensity of use from a vacant lot to residential uses, removal of major vegetation, and placement of a large pre-fabricated structure, at least four mobile homes or trailers, 4-5 vehicles, and several off-road vehicles. This unpermitted development is located on property you own at Block 41, Lot 22, Pacific Shores, Del Norte County, APN 108-161-22 (the "subject property"). The subject property contains and is adjacent to environmentally sensitive habitat.

Development is defined, for purposes of the Coastal Act, in Section 30106, as follows:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public 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... (emphasis added)

The placement of fill (in and/or adjacent to wetlands), change in intensity of use from a vacant lot to residential uses, major vegetation removal, and placement of vehicles, off-road vehicles, 4-5 trailers or mobile homes, and a pre-fabricated structure that has occurred on the subject property each constitutes development under the Coastal Act. Moreover, none of it qualifies for any of the exemptions in the Coastal Act. As such, each of these activities is subject to the

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 and thus, to the Coastal Act, unless otherwise indicated.

requirement in Section 30600(a) that anyone performing such non-exempt development within the Coastal Zone obtain a Coastal Development Permit ("CDP"). These activities all occurred without the benefit of CDPs, which means they are violations of the Coastal Act.

The purpose of these enforcement proceedings is to resolve outstanding issues associated with the unpermitted development activities that have occurred at the subject property. The purpose of the NOVA is to provide notice to any prospective buyers about the Coastal Act violations on the subject property. Collectively, the Cease and Desist Order and Restoration Order will direct you to cease and desist from performing or maintaining any unpermitted development, will require the removal of unpermitted development, and will order any necessary restoration of the areas impacted by the unpermitted development to return it to its pre-violation condition. The NOVA, Cease and Desist Order, and Restoration Order are discussed in more detail in the following sections of this letter.

Commission staff sent you a letter dated October 25, 2006, via certified mail (#7005 1820 0007 4658 5264) and regular mail to inform you of the violations occurring on the subject property. Both of these letters were returned to Commission staff because they were undeliverable because they were sent to the address that is listed in the public records as your mailing address, but that address does not appear to exist. Staff then researched more extensively into the ownership records and discovered that you own five other parcels in Pacific Shores. The records for these properties listed another contact address for you and a new notice of violation letter and this notice of intent letter were sent to that mailing address. The new notice of violation letter, dated June 28, 2007, was sent via regular mail and certified mail (#7005 3110 0002 6240 1073). We gave you until July 3, 2007 to respond with proof that all unpermitted development had been removed. As of the date of this letter, no response has been received. If you do have additional information regarding the site conditions, and in particular, if some of the unpermitted development has been removed, please do provide it to us.

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, which states, in part, the following:

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 development has occurred in violation of the Coastal Act on the subject property. If you object to the recordation of a Notice of Violation against your property in this matter 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 July 23, 2007) of the date of hand delivery or postmarked date of mailing of this notification. If, within 20 days of mailing of the notification, you fail to inform Commission staff in writing of an objection to recording a Notice of Violation, I shall record the Notice of Violation in the Del Norte County Recorder's Office as provided for under Section 30812 of the Coastal Act.

If you object to the recordation of a Notice of Violation in this matter and wish to present evidence on the issue of whether a violation has occurred, **you must do so in writing, to the attention of Erin Haley in the Coastal Commission's San Francisco office, no later than July 23, 2007.** Please include the evidence you wish to present to the Coastal Commission in your written response and identify any issues you would like us to consider.

Cease and Desist Order

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

(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.

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. This unpermitted development includes placement of fill (in and/or adjacent to wetlands), change in intensity of use from a vacant lot to residential uses, removal of major vegetation, and placement of a large pre-fabricated structure, at least four mobile homes or trailers, 4-5 vehicles, and several off-road vehicles. The Cease and Desist Order would order you to desist from maintaining unpermitted materials and structures and from performing any further unpermitted development on your 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. Staff will recommend that the Cease and Desist Order include terms requiring such removal and requiring additional site investigations to ensure removal of all unpermitted materials and structures on the subject property, with a schedule for removing the unpermitted items.

Restoration Order

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

Exhibit 6
CCC-07-CD-07, CCC-07-RO-05,
CCC-07-NOV-09
(Butler-Gipson)

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) Unpermitted development consisting of placement of fill (in and/or adjacent to wetlands), change in intensity of use from a vacant lot to residential uses, major vegetation removal, and placement of mobile homes, recreational vehicles, and additional structures .
- 2) This development is inconsistent with the resource protection policies of the Coastal Act. The subject property is adjacent to (and may contain some) biologically significant wetlands. The project may involve fill of wetlands (see Section 30233), but even if it does not, the unpermitted development constitutes a significant disruption and negative impact to the quality of environmentally sensitive wetland habitat (see Section 30240), as well as to the quality of coastal waters contained in nearby Lakes Earl and Tolowa (see Sections 30230 and 30231). The unpermitted placement of vehicles and structures has resulted in major vegetation removal and disturbance to the natural habitat (see Sections 30240(a) and (b)). The unpermitted development has also not been placed "within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or...in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources," as is required by Section 30250(a) of the Coastal Act.
- 3) 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 environmentally sensitive habitat, which is a resource protected by the Coastal Act and listed in the definition of resource in Section 13190(a). 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), change in intensity of use from a vacant lot to residential uses, removal of major vegetation, and placement of a large pre-fabricated structure, at least four mobile homes or trailers, 4-5 vehicles, and several off-road vehicles. Finally, the unpermitted development and the effects thereof continue to be present and persists at the subject property; therefore, the damage to resources protected by the Coastal Act is continuing.

For the reasons stated above, I have decided to commence a Cease and Desist and Restoration Order proceeding before the Commission in order to restore the subject property to the condition it was in before the unpermitted development occurred. Restoration will require removal of all unpermitted development on the subject property and may include other actions required to restore the subject property to its prior condition.

The procedures for the issuance of Cease and Desist and Restoration Orders are described in Sections 13190 through 13197 of the Commission's regulations. See Title 14 of the California Code of Regulations. Section 13196(e) of the Commission's regulations states the following:

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

Accordingly, any removal requirement that the Commission may impose as part of any Restoration Order it issues will have as its purpose 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 Coastal Commission to initiate litigation to seek injunctive relief and an award of civil penalties, respectively, in response to any violation of the Coastal Act. Coastal Act Section 30820(a) provides that any person who violates any provision of the Coastal Act may be subject to a penalty not to exceed \$30,000 per violation. Further, Section 30820(b) states that, in addition to any other penalties, any person who "knowingly and intentionally" performs any development in violation of the Coastal Act can be subject to a civil penalty of up to \$15,000 per violation for each day in which each violation persists. Additional penalties of up to \$6,000 per day can be imposed if a cease and desist or restoration order is violated. Section 30822 further provides that exemplary damages may also be imposed for knowing and intentional violations of the Coastal Act or of any orders issued pursuant to the Coastal Act.

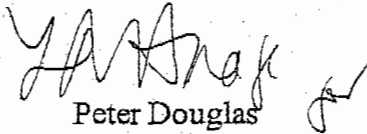
In accordance with Sections 13181(a) and 13191(a) of the Commission's regulations, you have the opportunity to respond to the Commission staff's allegations as set forth in this Notice of Intent to commence Cease and Desist Order and Restoration Order proceedings by completing the enclosed Statement of Defense form. **The Statement of Defense form must be returned to the Commission's San Francisco office, directed to the attention of Erin Haley, no later than July 23, 2007.**

The Commission staff is tentatively scheduling the hearing for the NOVA, Cease and Desist Order, and Restoration Order during the Commission meeting that is scheduled for the week of August 8-10, 2007 in San Francisco, CA. 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, and to have greater input into the process and timing of removal of the unpermitted development and restoration of the subject property, and would allow you to

V-1-06-010
Emerson NOI
Page 7 of 7

negotiate a penalty amount with Commission staff. If you are interested in negotiating a consent order, please contact Erin Haley at (415) 904-5220 or send correspondence to her attention at the address listed on the letterhead when you receive this letter to discuss options to resolve this case. Again, we hope we can resolve this matter amicably and look forward to hearing from you.

Sincerely,



Peter Douglas
Executive Director

cc without encl: Lisa Haage, Chief of Enforcement
Alex Helperin, Staff Counsel
Nancy Cave, Northern California Enforcement Supervisor

Encl: Statement of Defense form for Cease and Desist Order and Restoration Order

BRN

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 Mail (#7006 2150 0003 4324 7507 & # 7006 3450 0001 1752 5699),
Regular Mail, and Hand Delivery

July 20, 2007

Mailing Addresses

Kenneth Butler
17301 Pittim Drive
Redding, CA 96003

Judith Gipson
21614 Kathy Lane
Redding, CA 96003

Hand Delivery (Subject Property) Address

Kenneth Butler, Judith Gipson
295 Ocean Drive
Crescent City, CA 95531-7922

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

Violation No.: Y-1-06-010

Location: Block 41, Lot 22, Pacific Shores, Del Norte County; APN 108-161-22

Violation Description: Unpermitted placement of fill (in and/or adjacent to wetlands), change in intensity of use from a vacant lot to residential uses, major vegetation removal, and placement of at least 6 trailers or mobile homes, several vehicles, and a pre-fabricated structure.

Dear Mr. Butler and Ms. Gipson:

As you might be aware, your property at 295 Ocean Drive, in the Crescent City subdivision of Pacific Shores, is located in an area with pervasive environmentally sensitive habitat areas (ESHAs), which are accorded protection under the Coastal Act. The ESHAs include wetlands and habitat for the Oregon Silverspot butterfly, a species listed as threatened by the federal government. Due in large part to the fragile natural resources in the area, and the fact that water and sewer services have yet to be established for Pacific Shores, no residential development has been approved by the California Coastal Commission ("Commission") for the subdivision. Yet, there has been development on the property, which as discussed below, requires a permit under the Coastal Act, and none has been obtained. Unfortunately, such unpermitted development constitutes a violation of the Coastal Act¹. The Commission staff looks forward to working with you to protect the sensitive resources in and around your property, and would like to work with you to resolve this. Information regarding how to contact us is provided at the end of this letter.

The purpose of this letter is to notify you of my intent, as Executive Director of the Commission, to commence proceedings for issuance of a Cease and Desist Order and Restoration Order to address the unpermitted development on your property. According to the Del Norte County Recorder's office, as well as representations made by the prior owner, Mr. James Emerson, you are listed as the owners of Block 41, Lot 22 APN 108-161-22 in the Pacific Shores subdivision, Del Norte County (the "subject property"). The unpermitted development includes, but is not limited to, placement of fill (in and/or adjacent to wetlands), change in intensity of use from a vacant lot to residential uses, removal of major vegetation, and placement of at least 6 trailers or mobile homes, several vehicles, and a pre-fabricated structure. As noted above, the subject property contains and is adjacent to environmentally sensitive habitat.

Development is defined, for purposes of the Coastal Act, in Section 30106, as follows:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public 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... (emphasis added)

The placement of fill (in and/or adjacent to wetlands), change in intensity of use from a vacant lot to residential uses, major vegetation removal, and placement of at least 6 trailers or mobile

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 the Coastal Act, unless otherwise indicated.

homes, several vehicles, and a pre-fabricated structure that has occurred on the subject property each constitutes development under the Coastal Act. Moreover, none of it qualifies for any of the exemptions in the Coastal Act. As such, each of these activities is subject to the requirement in Section 30600(a) that anyone performing such non-exempt development within the Coastal Zone obtain a Coastal Development Permit ("CDP"). These activities all occurred without the benefit of CDPs, which means they are violations of the Coastal Act.

The purpose of these enforcement proceedings is to resolve outstanding issues associated with the unpermitted development activities that have occurred at the subject property. Collectively, the Cease and Desist Order and Restoration Order will direct you to cease and desist from performing or maintaining any unpermitted development on the subject property, will require the removal of unpermitted development, and will order any necessary restoration of the areas impacted by the unpermitted development to return it to its pre-violation condition. The Cease and Desist Order and Restoration Order are discussed in more detail in the following sections of this letter.

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. . . .

As the Executive Director of the Commission, I am issuing this Notice of Intent to commence Cease and Desist Order proceedings because unpermitted development that requires a permit from the Commission has occurred at the subject property. As noted above, this unpermitted development includes, but is not limited to, the placement of fill (in and/or adjacent to wetlands), change in intensity of use from a vacant lot to residential uses, major vegetation removal, and the placement of at least 6 trailers or mobile homes, several vehicles, and a pre-fabricated structure. The Cease and Desist Order would order you to desist from maintaining unpermitted materials and structures and from performing any further unpermitted development on your property without any required Coastal Act permits.

Based on Section 30810(b) of the Coastal Act, the Cease and Desist Order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with the Coastal Act, including a requirement for immediate removal of any development or material. Staff will recommend that the Cease and Desist Order include terms requiring such removal and requiring additional site investigations to ensure removal of all unpermitted materials and structures on the subject property, with a schedule for removing the unpermitted items.

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) Unpermitted development (development not authorized by a coastal development permit from the appropriate entity) consisting of but not limited to the placement of fill (in and/or adjacent to wetlands), change in intensity of use from a vacant lot to residential uses, major vegetation removal, and the placement of at least 6 trailers or mobile homes, several vehicles, and a pre-fabricated structure has occurred on the subject property.
- 2) This development is inconsistent with the resource protection policies of the Coastal Act. The subject property is adjacent to (and may contain some) biologically significant wetlands. The project may involve fill of wetlands (see Section 30233), but even if it does not, the unpermitted development constitutes a significant disruption and negative impact to the quality of environmentally sensitive wetland habitat (see Section 30240), as well as to the quality of coastal waters contained in nearby Lakes Earl and Tolowa (see Sections 30230 and 30231). The unpermitted placement of vehicles and structures has resulted in major vegetation removal and disturbance to other environmentally sensitive habitat areas (see Sections 30240(a) and (b)). The unpermitted development has also not been placed "within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or...in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources," as is required by Section 30250(a) of the Coastal Act.
- 3) 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 environmentally sensitive habitat and marine and other aquatic resources, which are resources protected by the Coastal Act and listed in the definition of 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 but is not limited to the placement of fill (in and/or adjacent to wetlands), change in intensity

of use from a vacant lot to residential uses, major vegetation removal, and the placement of at least 6 trailers or mobile homes, several vehicles, and a pre-fabricated structure. Finally, the unpermitted development remains, and the effects thereof continue to be occur and persist at 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 it is necessary to commence a Cease and Desist and Restoration Order proceeding before the Commission in order to restore the subject property to the condition it was in before the unpermitted development occurred. Restoration will require removal of all unpermitted development on the subject property and may include other actions required to restore the subject property to its prior condition.

The procedures for the issuance of Cease and Desist and Restoration Orders are described in Sections 13190 through 13197 of the Commission's regulations. See Title 14 of the California Code of Regulations. 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, any removal requirement that the Commission may impose as part of any Restoration Order it issues will have as its purpose 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 Coastal Commission to initiate litigation to seek injunctive relief and an award of civil penalties, respectively, in response to any violation of the Coastal Act. Coastal Act Section 30820(a) provides that any person who violates any provision of the Coastal Act may be subject to a penalty not to exceed \$30,000 per violation. Further, Section 30820(b) states that, in addition to any other penalties, any person who "knowingly and intentionally" performs any development in violation of the Coastal Act can be subject to a civil penalty of up to \$15,000 per violation for each day in which each violation persists. Additional penalties of up to \$6,000 per day can be imposed if a cease and desist or restoration order is violated. Section 30822 further provides that exemplary damages may also be imposed for knowing and intentional violations of the Coastal Act or of any orders issued pursuant to the Coastal Act.

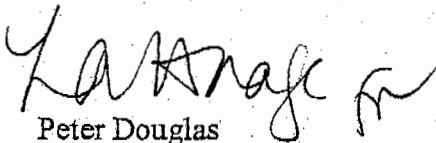
Although we would like to resolve this informally and would like to work with you to do so, we also note that the Executive Director of the Coastal Commission is authorized, after providing notice and the opportunity for a hearing as provided in section 30812 of the Coastal Act, to record a Notice of Violation against the subject property, under Section 30812 of the Coastal Act, as well as to seek other administrative and judicial remedies. The purpose of such notices is to avoid any potential parties from unwittingly purchasing a property with a Coastal Act

violation on the property. **If you are willing to resolve the violation and hereby avoid the potential for such a recordation, please contact Erin Haley at the Commission's San Francisco office by Wednesday, July 25, 2007.**

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 Erin Haley, no later than August 10, 2007.**

The Commission staff is tentatively scheduling the hearing for the Cease and Desist Order, and Restoration Order during the Commission meeting that is scheduled for the week of September 5-7 in Eureka, CA. 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, and to have greater input into the process and timing of removal of the unpermitted development and restoration of the subject property, and would allow you to negotiate a penalty amount with Commission staff. If you are interested in negotiating a consent order, please contact Erin Haley at (415) 904-5220 or send correspondence to her attention at the address listed on the letterhead when you receive this letter to discuss options to resolve this case. Again, we hope we can resolve this matter amicably and look forward to hearing from you.

Sincerely,



Peter Douglas
Executive Director

cc without encl: Lisa Haage, Chief of Enforcement
Alex Helperin, Staff Counsel
Nancy Cave, Northern California Enforcement Supervisor
Erin Haley, Statewide Enforcement Staff
Bob Merrill, North Coast District Manager

Encl: Statement of Defense form for Cease and Desist Order and Restoration Order

CALIFORNIA COASTAL COMMISSION

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



Via Certified Mail (#7006 2150 0003 4324 7491 & # 7006 3450 0001 1752 5729),
 Regular Mail, and Hand Delivery

July 26, 2007

Mailing Addresses

Kenneth Butler
 17301 Pittim Drive
 Redding, CA 96003

Judith Gipson
 21614 Kathy Lane
 Redding, CA 96003

Hand Delivery (Subject Property) Address

Kenneth Butler, Judith Gipson
 295 Ocean Drive
 Crescent City, CA 95531-7922

Subject:	Notice of Intent to Record Notice of Violation
Violation No.:	V-1-06-010
Location:	Block 41, Lot 22, Pacific Shores, Del Norte County; APN 108-161-22
Violation Description:	Unpermitted placement of fill (in and/or adjacent to wetlands), change in intensity of use from a vacant lot to residential uses, major vegetation removal, and placement of at least 6 trailers or mobile homes, several vehicles, and a pre-fabricated structure.

Dear Mr. Butler and Ms. Gipson:

The purpose of this letter is to notify you of my intent, as the Executive Director of the California Coastal Commission ("Commission"), to record a Notice of Violation for unpermitted development located on your property. Our previous Notice of Intent letter (dated July 20, 2007) was to notify you of my intention to commence proceedings for a Cease and Desist order and a Restoration

Exhibit 8
 CCC-07-CD-07, CCC-07-RO-05,
 CCC-07-NOV-09
 (Butler-Gipson)
 Page 1 of 3

Order for the unpermitted development. The letter also mentioned that Section 30812 of the Coastal Act states that, after providing notice and the opportunity to make written request for a hearing, as the Executive Director of the Commission I have the authority to record a Notice of Violation against the subject property. Also mentioned in the previous letter, Section 30812 further authorizes other administrative and judicial remedies. In that letter, we invited you to respond by July 25, 2007 in an effort to resolve the violation and avoid recordation of Notice of Violation. As of today, July, 26, 2007, we have received no response from you.

The purpose of recording a Notice of Violation on the subject property is to give notice to any potential purchasers and to avoid such purchasers from unknowingly purchasing a property with a Coastal Act violation on the property.

As you know from the previous Notice of Intent letter, the unpermitted development in question includes, but is not limited to, placement of fill (in and/or adjacent to wetlands), change in intensity of use from a vacant lot to residential uses, removal of major vegetation, and placement of at least 4¹ trailers or mobile homes, several vehicles, and a pre-fabricated structure. This unpermitted development is located on property you own at Block 41, Lot 22 APN 108-161-22 in the Pacific Shores subdivision, Del Norte County (the "subject property"). The subject property's legal description is as follows: A PARCEL OF LAND LOCATED IN THE STATE OF CALIFORNIA, COUNTY OF DEL NORTE, WITH A SITUS ADDRESS OF 295 OCEAN DR, CRESCENT CITY CA 95531-7922 CURRENTLY OWNED BY BUTLER KENNETH N/GIPSIN JUDITH E HAVING A TAX ASSESSOR NUMBER OF 108-161-22 AND DESCRIBED IN DOCUMENT NUMBER 3821 DATED 07/03/2007 AND RECORDED 07/03/2007. This letter is being sent to you as the owners of record of the subject property.

Notice of Violation

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

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, as discussed above, unpermitted development has occurred on your property, in violation of the Coastal Act. If you object to the recordation of a Notice of Violation in this matter and wish to present evidence on the issue of whether a violation has occurred, you must respond in writing, to the attention of Erin Haley, using the address provided on the letterhead, within twenty days of the postmarked mailing of this notice (i.e., by August 15, 2007). If you fail to object within that twenty-day period, we are authorized to record the Notice of Violation against your property in the Del Norte County Recorder's office pursuant to Section 30812 of the Coastal Act. If you object

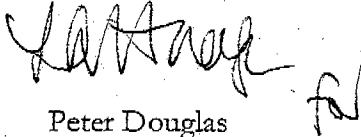
¹ Subsequent site visits have confirmed 6 trailers on the subject property.

to this recordation and believe that there has not been unpermitted development on your property, please provide us with any information that you believe supports your contention with your objection. For your information, under additional provisions of Section 30812, any such recordation of a Notice of Violation will be removed after the final resolution of the violations, and you will be provided with a "clearance letter" confirming such action at that time.

If you object to this recordation, and desire a hearing, such a hearing would focus on whether a violation exists on the subject property and would tentatively be heard during the Commission meeting, which is scheduled for September 5-7, 2007 in Eureka, CA. This will be the same meeting and the same hearing item as the scheduled hearing for the proposed Cease and Desist Order and Restoration Order.

As noted in our previous communication, we prefer to resolve violations amicably when possible. If you are interested in speaking about anything regarding the on-going enforcement actions for your property, please contact Erin Haley at (415) 904-5220 or send correspondence to her attention at the address listed on the letterhead. We look forward to working with you to resolve these enforcement actions.

Sincerely,



Peter Douglas
Executive Director

cc: Lisa Haage, Chief of Enforcement
Alex Helperin, Staff Counsel
Nancy Cave, Northern California Enforcement Supervisor
Erin Haley, Statewide Enforcement Staff
Bob Merrill, North Coast District Manager
Kelly Smith, The Smith Firm, 1541 Corporate Way, Suite 100, Sacramento, CA 95831

THE SMITH FIRM

ATTORNEYS

1541 CORPORATE WAY, SUITE 100

SACRAMENTO, CA 95831

(916) 442-2019

WWW.THESMITHFIRM.COM

July 21, 2007

Ms. Erin M. Haley
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

RE: Judy Gibson; Violation no. V-1-06-010

Dear Ms. Haley:

Thank you very much for providing a copy of the Notice of Intent in the above matter, mailed to my client on July 20, 2007.

As I stated to Nancy Cave, I represent Ms. Gipson in this matter. Please copy with any further written notice or communication and direct all other communication regarding this matter to me.

Because of my trial calendar, I may need to seek an extension to the August 10, 2007 date requested for the Statement of Defense. Also, if the hearing on the violation will take place at the September meeting of the Commission in Eureka, please provide me with the time during the meeting when you expect the matter to be heard.

Thank you for your assistance and courtesy.

Sincerely,


KELLY T. SMITH

cc: Client

Exhibit 9
CCC-07-CD-07, CCC-07-RO-05,
CCC-07-NOV-09
(Butler-Gipson)

Page 1 of 1

THE SMITH FIRM

ATTORNEYS

1541 CORPORATE WAY, SUITE 100

SACRAMENTO, CA 95831

(916) 442-2019

WWW.THESMITHFIRM.COM

August 7, 2007

Ms. Erin M. Haley
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

RE: Judy Gibson; Violation no. V-1-06-010; notice of August 8, 2007 hearing

Dear Ms. Haley:

I write regarding the notice received today by fax relating to property owned by my client Judith Gipson. The public notice is of a cease and desist order (CCC-07-CD-03) and restoration order (CCC-07-RO-02) directed to James Emerson, "as owner of property" identified as that property owned now by my client.

Your fax purports to notify me and my client of a hearing of the orders before the Commission on August 8, which as I write this is tomorrow. The fax identifies the item as pertaining to "Violation No. V-1-06-010."

I have also received a July 20, 2007 letter and notice of a hearing regarding the same violation, V-1-06-010, set for the Commission's September hearing.

As I informed you, I am not sure whether my client has taken title to personal properties on the real property owned by my client and addressed by the two hearing notices. Nor have I been able to reach my client to find out.

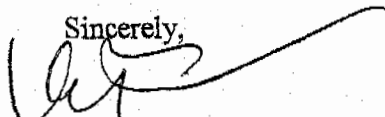
However, if it turns out that my client took title with any personal property on the real property, the hearing tomorrow would deprive her of due process rights to be heard. I have been relying upon the September commission date to exercise those rights, and will definitely not have sufficient time to prepare to be heard tomorrow. I am concerned, and to the extent it occurs I would object to any cloud on the title of my client to either real or personal property which might result from action taken without due process.

The obvious best decision would be to continue tomorrow's matter until the date set for my client's hearing.

Exhibit 10
CCC-07-CD-07, CCC-07-RO-05,
CCC-07-NOV-09
(Butler-Gipson)
Page 1 of 2

Thank you for your courtesy and attention to this mater.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Smith', with a long, sweeping horizontal line extending to the right.

KELLY T. SMITH

cc: Client

CALIFORNIA COASTAL COMMISSION

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

VIA FACSIMILE AND REGULAR MAIL

August 7, 2007

Kelly T. Smith
The Smith Firm
1541 Corporate Way, Suite 100
Sacramento, CA 95831.

Re: CCC-07-CD-03 and CCC-07-RO-02 (Emerson)
Block 41, Lot 22, Pacific Shores Subdivision, Del Norte County, APN 108-161-22

Dear Mr. Smith,

We are in receipt of your letter of August 7 regarding the proposed cease and desist and restoration orders listed above, which relate to property we understand your client, Judith Gipson, now owns. As you note, the Coastal Commission is scheduled to review these proposed orders tomorrow, August 8. We understand that you raised some concerns regarding this hearing on the basis that you did not receive notice of the hearing until receipt of the fax we sent to your office yesterday. However, we note that the orders are not directed to your client and would not impose any legal obligations on her. Accordingly, and because you have not asked to receive notice of all such hearings, the regulations pertaining to the noticing of such hearings did not require that we provide notice to you in this case. See, e.g., Cal. Code Regs., tit. 14, §§ 13182 and 13192. Nevertheless, we did so as a courtesy.

Moreover, your client had actual notice of this hearing over a month ago, and in fact, your client called you to discuss the fact that she had observed the notice posted on what is now her property. This is because, in an effort to ensure proper notice, we also had written notice physically posted on your client's property over a month ago. On July 5, a representative of the County posted notice of the Executive Director's intent to hold this hearing during the Commission's August meeting. Moreover, your client obviously received that notice and the content thereof, as she relayed the information to you, and you contacted Nancy Cave about it almost three weeks ago, well in advance of tomorrow's hearing. Consequently, we cannot agree that proceeding with tomorrow's scheduled hearing would deprive your client of due process.

All of this may be of no consequence, however, as we have been in contact with you several times today by telephone, and we have agreed to modify the proposed orders to: (1) recognize your client's apparent claim to ownership of the personal property on the above-referenced site and (2) require that Mr. Emerson coordinate with your client on the removal of any property that she owns. We read proposed draft language to you for this modification, and you indicated that you did not have any problem with it. We also pointed out that the matters scheduled for the Commission's

Exhibit 11
CCC-07-CD-07, CCC-07-RO-05,
CCC-07-NOV-09
Butler-Gipson)
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hearing tomorrow do not include a proposal to record a Notice of Violation against your client's property. That item (which was agenda item number 10) has been withdrawn. As you agreed this afternoon, this should address your client's due process concern, though we understand that you maintain your claim that the notice we provided was inadequate.

We also understand that your client is interested in working with us on a Consent Order to address the outstanding issues regarding unpermitted development on the property, and we are looking forward to doing this as soon as possible. We have, as reflected in our conversation today, made tentative arrangements for our enforcement staffer, Erin Haley, to talk to you about this as soon as possible and appreciate your anticipated cooperation. As you may know, she can be reached at (415) 904-5220.

If this letter does not reflect your understanding in any way, please contact me as soon as possible. You can leave a message on my direct line (415/904-5228) if you do not reach me.

Sincerely,



ALEX HELPERIN
Staff Counsel
California Coastal Commission

cc: Lisa Haage
Erin Haley

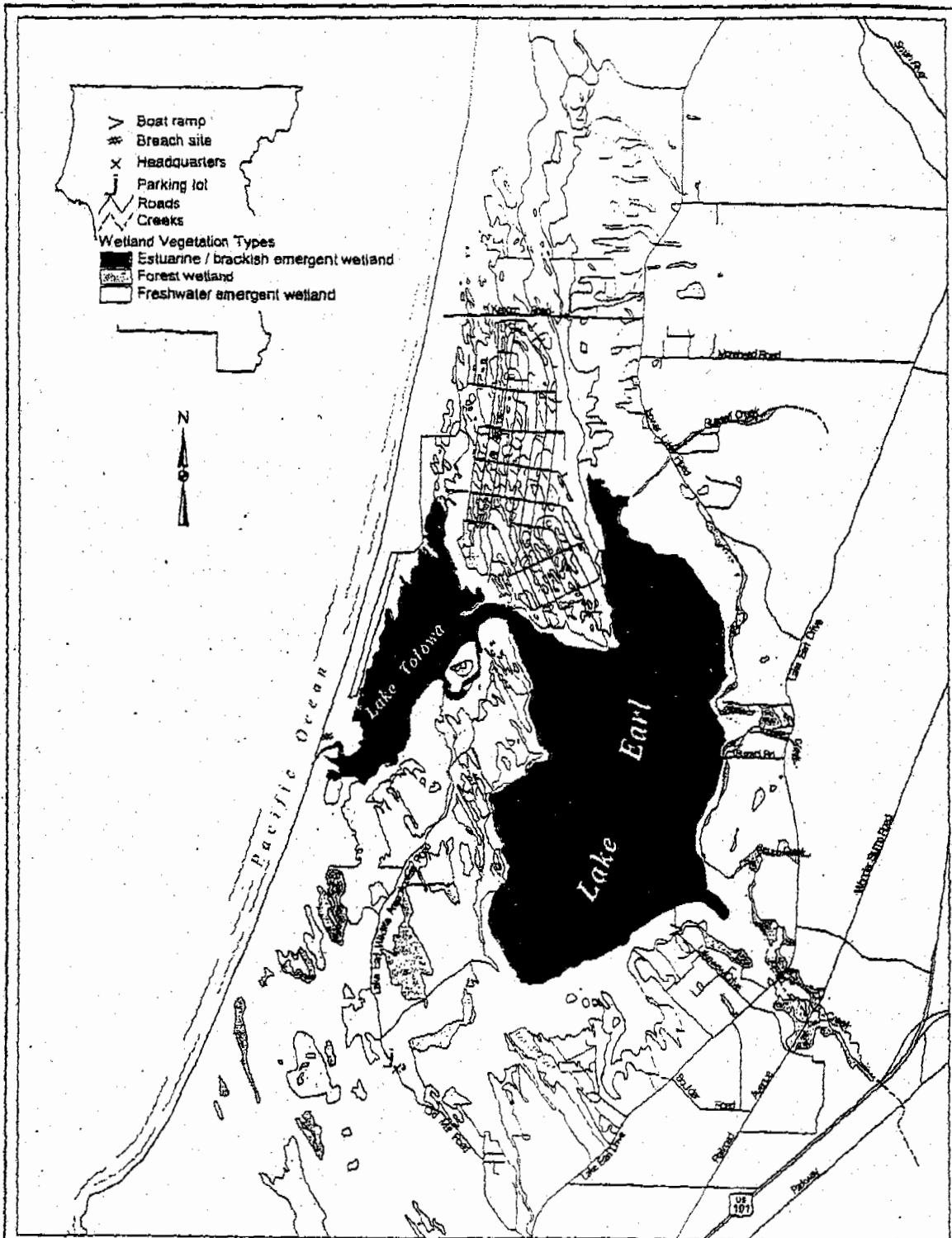


Figure 4-2. Major Wetland Types Present at Current Managed Water Surface Elevation (8'-10')

Area shown wetlands present for the preferred alternative (8-10'). Wetland maps of other alternatives would be significantly similar to this map; however, note do not exist to show wetland types at the other alternatives.

This map is for planning purposes only.

LiDAR points are shown at 4 foot resolution. (California Department of Water Resources, 1988)

Topographic contours from Terra Tech, Inc. (2005). Elevation (MAD), and National Wetlands Inventory (1987), with aerial photography verification.

Waterway Elevation Classification of Frequency and Time Parameters (2005).

Point data and Wetland Classification Department of Fish and Game.

Map by California Department of Fish and Game, Eastern District (2007)

Scale 1:39320

0 2500 5000 7500 Feet

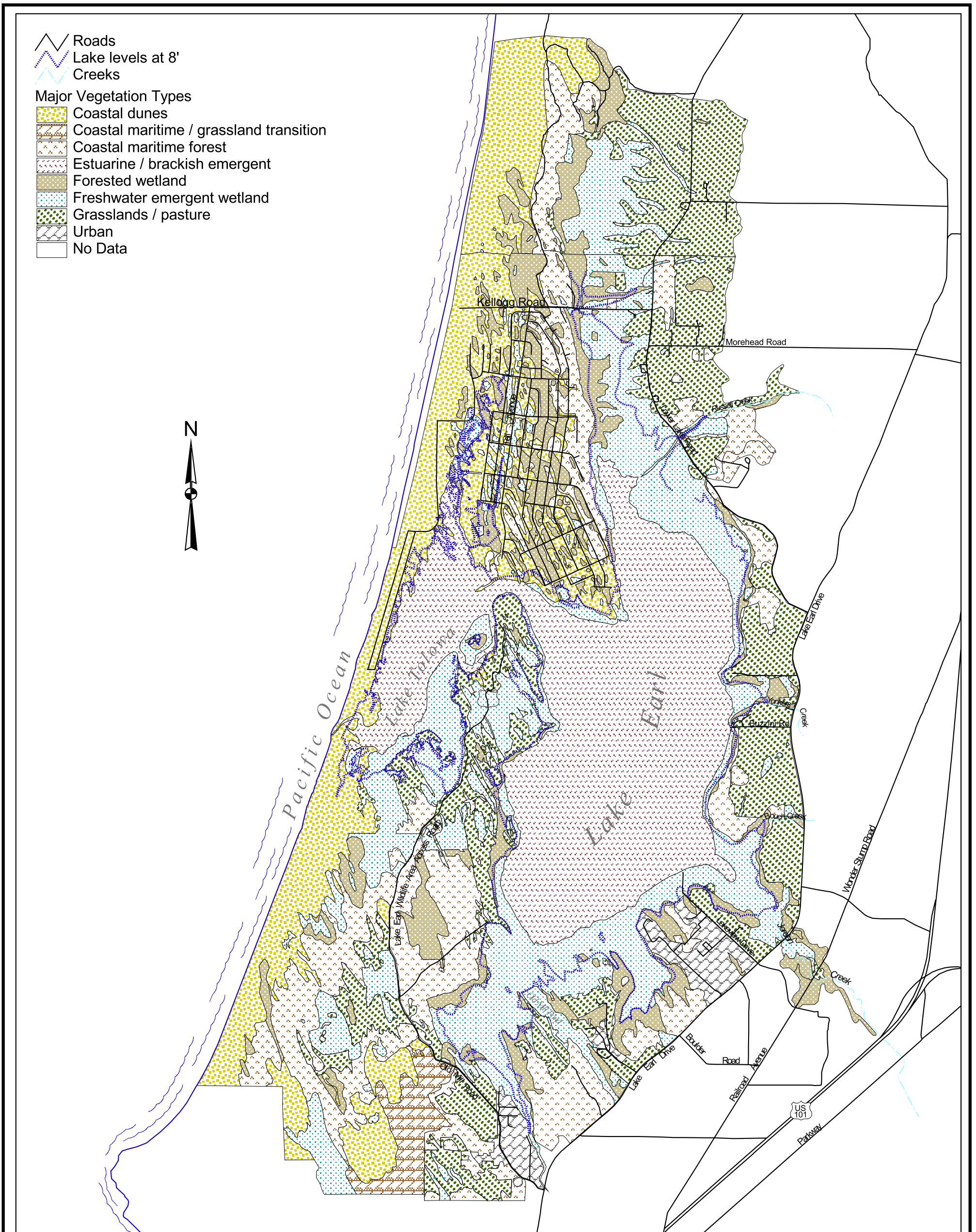


Figure 14. Major Vegetation Types in and Adjacent to the Lake Earl Wildlife Area

This map is for planning purposes only.
 Lake levels are shown at 8 feet MSL (Department of Water Resources, 2001).
 Data sources: Vegetation (modified), Tetra Tech, Inc. (1999), Eicher (1988), and NWI (1987).
 Vegetation verified by aerial photos, Richard B. Davis (1996). Roads (2000)(modified) and
 Facilities (2002), California Department of Fish and Game. Streams (2001), California Department of Forestry.
 Map: California Department of Fish and Game, Eureka (July 2002).

Scale 1:50,000

0 2500 5000 Feet

