

CALIFORNIA COASTAL COMMISSION

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Item W 9a & 9b

Staff: Aaron McLendon-SF
Staff Report: May 31, 2007
Hearing Date: June 13, 2007

STAFF RECOMMENDATIONS AND FINDINGS FOR CEASE AND DESIST AND RESTORATION ORDERS

CEASE AND DESIST ORDER: CCC-07-CD-01

RESTORATION ORDER: CCC-07-RO-01

RELATED VIOLATION FILE: V-2-06-001

PROPERTY LOCATION: A 52.83 acre property off Frenchman's Creek Road in San Mateo County, APN 048-310-190

PROPERTY OWNER: Schiavon & Associates

VIOLATION DESCRIPTION: Unpermitted development, including 1) grading; 2) placement of fill in wetlands; 3) rocking and asphaltting of the fill for the construction of a road ; 4) removal of major vegetation, including willows; 5) placement of structures and construction materials, including heavy equipment (excavator, bulldozer, cultivators, and compactor), trailers, boats, doors, door jams, windows, window frames, and storage containers.

PERSONS SUBJECT TO THESE ORDERS:

1. Schiavon & Associates
2. Robert Smith

SUBSTANTIVE FILE DOCUMENTS:

1. Notice of Intent to Commence Cease and Desist Order Proceedings, 9/25/06
2. Recorded Notice of Violation 2007-057139, County of San Mateo
3. Cease and Desist Order file No. CCC-07-CD-01
4. Restoration Order file No. CCC-07-RO-01
5. San Mateo County Local Coastal Program

6. Exhibits #1 through #17 of this staff report

CEQA STATUS:

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

I. SUMMARY OF STAFF RECOMMENDATION AND FINDINGS

This case involves the filling of wetlands and grading for the construction of a road up a steeply sloping hillside, and placement of construction material and other structures on an approximately 52.83 acre property located off Frenchman's Creek Road in unincorporated San Mateo County inland of the City of Half Moon Bay (hereinafter, "subject property") (Exhibit #1). Frenchman's creek, a perennial "blue line" stream as designated by the United States Geological Survey ("USGS"), parallels Frenchman's Creek Road on the side opposite to the subject property and is located approximately 400 feet (at its closest point) from the subject property. An approximately 3,875 square foot wetland area is located on the property and is the predominant resource that was affected by the unpermitted development that is the subject of these proceedings. This wetland area has been designated as an "intermittent lake/pond" by the USGS. In addition, Commission staff biologist Dr. John Dixon has visited the site and has verified that this area is a wetland as that term is defined in Section 30121 of the Coastal Act and Section 7.14 of the San Mateo County LCP.

The subject property is zoned for planned agricultural use and has, prior to the unpermitted development, been identified as pasture and dry farm land. The subject property, identified by APN 048-310-190, is owned by Schiavon & Associates. Although not a legal owner, Robert Smith has been involved in undertaking and performing the unpermitted development and is also acting as a representative of Schiavon & Associates. Therefore, under the Coastal Act, Mr. Smith is also subject to these order proceedings.

San Mateo County has a certified Local Coastal Plan ("LCP") for this portion of the County. Once the Commission has certified an LCP, the local government obtains jurisdiction for issuing Coastal Development Permits ("CDPs") under the Coastal Act, and it is able to take actions to obtain compliance with its LCP. However, pursuant to Section 30810(a)(1) of the Coastal Act, the County can request the Commission to assist with, or assume primary responsibility for, enforcing the LCP by means of issuing a cease and desist or restoration order. Pursuant to requests from San Mateo County (as discussed more fully, below), the Commission is assuming primary responsibility to enforce the San Mateo County LCP and the Coastal Act.

Staff recommends that the Commission approve Cease and Desist Order CCC-07-CD-01 and Restoration Order CCC-07-RO-01 (hereinafter "Orders") to require and authorize Schiavon and Associates and Robert Smith (hereinafter collectively referred to as "Respondents") to 1) remove all unpermitted development from the subject

property, 2) restore the subject property using restorative grading and planting of native vegetation endemic to this section of San Mateo County, and 3) cease and desist from conducting any further unpermitted development on the subject property.

The unpermitted activity that has occurred on the subject property, including 1) extensive grading, including grading through wetlands and across steeply sloping terrain; 2) placing fill in wetlands; 3) creation of a road, and rocking and asphaltting of the road on top of the fill; 4) removing major vegetation including willows; 5) placing structures on the property including, but not limited to, storage of heavy equipment (excavator, bulldozer, cultivators, and compactor), trailers, and boats; and 6) stockpiling construction materials such as sinks, doors, door jambs, windows, window frames, and storage containers, clearly meets the definition of “development” set forth in Section 30106 of the Coastal Act and Section 1.2 of the County LCP. All non-exempt development in the Coastal Zone requires a CDP. The development listed above was not exempt, yet it was undertaken without a CDP, in violation of Coastal Act Section 30600 and Section 1.1 of the County LCP.

As discussed in more detail below, not only does the unpermitted activity clearly meet the definition of development as that term is defined in the Coastal Act and in the County’s LCP, and therefore requires but lacks a CDP, but the unpermitted development is also clearly inconsistent with the Chapter 3 policies of the Coastal Act and the Policies of the County’s LCP. The unpermitted development and the ongoing maintenance of the unpermitted development are inconsistent with the policies in Chapter 3 of the Coastal Act, including Section 30231 (protection of biological productivity of coastal waters), Section 30233 (limiting fill of wetlands), and Section 30251 (landform alteration and scenic resources) of the Coastal Act, and numerous policies within the County’s LCP, as fully discussed below.¹

The Commission can issue a Cease and Desist Order under Section 30810 to enforce the requirements of a certified LCP in cases where it finds that the activity that is the subject of the order has occurred either without a required CDP or in violation of a previously granted CDP. The Commission can issue a Restoration Order under section 30811 of the Coastal Act if it finds that development 1) has occurred without a coastal development permit, 2) is inconsistent with the Coastal Act, and 3) is causing continuing resource damage. These criteria are all met in this case, as summarized briefly, below.

The unpermitted development has adversely impacted the resources associated with wetlands habitat and water quality and biological productivity associated with this area. Such impacts meet the definition of damage provided in Section 13190(b) of Title 14 of the California Code of Regulations (hereinafter, “14 CCR”), which defines “damage” as, “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.” If the unpermitted development is allowed to remain, its presence will lead to further impacts (including the temporal

¹ A description of the Chapter 3 policies of the Coastal Act and the County LCP policies that apply to the Subject Property is provided in Section C of this staff report.

continuation of the existing impacts) to wetlands, water quality, and the biological productivity and habitat and scenic values located on the subject property.

The unpermitted development remains at the subject property. The continued presence of the unpermitted development, as described below, will exacerbate and/or prolong the adverse impacts to wetlands habitat, the water quality and biological productivity of this area, and the scenic values of the subject property. Thus, the continued presence of the unpermitted development on the subject property is causing continuing resource damage, as defined in 14 CCR Section 13190. Again, staff recommends approval of the Cease and Desist and Restoration Orders in order to achieve full restoration of the site and removal of unpermitted development.

II. HEARING PROCEDURES

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 RECOMMENDATIONS

Staff recommends that the Commission adopt the following two motions:

1. Motion

I move that the Commission issue Cease and Desist Order No. CCC-07-CD-01 pursuant to the staff recommendation.

Staff Recommendation of Approval

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

Resolution to Issue Cease and Desist Order

The Commission hereby issues Cease and Desist Order No. CCC-07-CD-01, as set forth below, and adopts the findings set forth below on grounds that development, conducted by Schiavon and Associates and Robert Smith, has occurred without a coastal development permit, in violation of the San Mateo County Local Coastal Program.

2. Motion

I move that the Commission issue Restoration Order No. CCC-07-RO-01 pursuant to the staff recommendation.

Staff Recommendation of Approval

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

Resolution to Issue Restoration Order

The Commission hereby issues Restoration Order No. CCC-07-RO-01, as set forth below, and adopts the findings set forth below on the grounds that 1) Schiavon and Associates and Robert Smith have conducted development 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 CEASE AND DESIST ORDER NO. CCC-07-CD-01 AND RESTORATION ORDER CCC-07-RO-01²

A. Description of Unpermitted Development

The unpermitted development, which is the subject matter of these Orders, consists of unpermitted 1) grading, including grading through wetlands and across steeply sloping terrain; 2) placing fill in wetlands; 3) creation of a road, and rocking and asphaltting of the road on top of the fill within the wetland; 4) removing major vegetation, including willows; 5) placing structures on the property including, but not limited to, storage of heavy equipment (excavator, bulldozer, cultivators, and compactor), trailers, and boats; and 6) stockpiling construction materials such as sinks, doors, door jambs, windows, window frames, and storage containers.

B. History of Violations

On December 30, 2005, Commission staff received a report from the San Mateo County Sheriff's Department regarding the unpermitted construction of an access road across the subject property. The Deputy Sheriff additionally notified the San Mateo County Planning and Building Division of the violation. The deputy Sheriff visited the site and observed "a graded road" and a "filled ditch". On the site visit, the Deputy Sheriff met with Mr. Smith. At this time, Mr. Smith presented the Sheriff with a permit to remove poison oak brush, but he had no other development permits from the County or the Commission for the subject activity and had no permits for fill of a wetland area.

On January 3, 2006, San Mateo County Code Enforcement Officer Gary Warren conducted a site visit at which time he posted a Stop Work Order on the property fence. While at the subject property, Mr. Warren observed unpermitted activities including equipment on the property, a fence installed apparently delineating the extent of the property, and a graded farm road that had been "graveled". Later, on this same day, Commission staff visited the site and observed similar unpermitted activities on the subject property, including storage of equipment and construction material, and grading of a road and placement of gravel on top of the graded road. In response to the discovery of unpermitted development, on January 5, 2006, the County issued a Notice of Code Violation addressed to both Mr. Schiavon and Mr. Smith (Exhibit #2). The Notice of Code Violation addressed both a violation of the San Mateo County Stormwater Management and Discharge Program, as well as violations of the San Mateo County LCP. The County Notice of Code Violation also indicated that failure to correct the violations would result in additional citations and fines.

In addition, on several occasions in January 2006, neighbors of the subject property reported to Commission staff additional unpermitted activities, including removal of several willow trees from around a wetland, filling of a portion of the wetland to create a

² These findings also hereby incorporate by reference Section I of the May 31, 2007 staff report ("Staff Recommendations and Findings") in which these findings appear, which section is entitled "Summary of Staff Recommendations and Findings."

road crossing, installation of a culvert for the road crossing the wetland, and removal of other vegetation on the steep hillside above and around the wetland. Additionally, neighbors reported that the hillside was graded and that portions of the unpermitted road had been covered in gravel and a portion covered with asphalt. This additional unpermitted development occurred after and in spite of the fact that the County had issued a Stop Work Order on January 3, 2006.

On January 23, 2006, pursuant to Section 30810(a)(1) of the Coastal Act, the County orally requested that the Commission proceed with enforcement action concerning the subject property. This request was confirmed in writing.³ That same day, Commission staff sent a letter to both Schiavon and Associates, as the property owner, and Robert Smith, as the person who most directly was involved in the physical performance of the unpermitted development, regarding the alleged Coastal Act violations (Exhibit #4). The letter explained that grading, rocking, and asphaltting of a road, and the removal of major vegetation, are activities that constitute development as defined in Section 30106 of the Coastal Act and Section 1.2 of the San Mateo County LCP, that a CDP is required for such development, and that no such permit had been obtained.

The Commission's letter also explained that any development activity conducted in the coastal zone without a valid CDP constitutes a violation of the Coastal Act and the County's certified LCP. The letter further explained the enforcement remedies available to the Commission to address unpermitted development, including issuance of a cease and desist order pursuant to Coastal Act sections 30809 or 30810, issuance of a restoration order pursuant to 30811, filing suit for declaratory and/or equitable relief to restrain any Coastal Act violation pursuant to Coastal Act section 30803, and recording a Notice of Violation against the property pursuant to Coastal Act section 30812. The letter also explained that Section 30820(a)(1) of the Coastal Act provides for civil liability to be imposed on any person who performs or undertakes development without a CDP. In addition, the letter explained that Section 30820(b) of the Coastal Act provides that additional civil liability may be imposed on any person who performs or undertakes development without a CDP when the person intentionally and knowingly performs or undertakes that development. Finally, the letter requested that Respondents cease and desist from conducting any unpermitted development and contact Commission staff to discuss resolution of the Coastal Act Violations.

On February 14, 2006, Mr. Smith sent a letter to the San Mateo County Planning Division inquiring into the County's authority to regulate the subject property and asserting that the subject development is exempt under "AgZoning"⁴ (Exhibit #5). David Holbrook, Senior Planner with the San Mateo County Planning and Building Division, responded to Mr. Smith's letter by explaining that the property is within the Coastal Zone and subject to the County's Coastal Zoning Regulations and the LCP. The letter

³ The County sent a confirming letter to Commission staff reiterating their request that the Commission take the lead in this enforcement action (Exhibit #8).

⁴ "AgZoning" is a term used by Mr. Smith in his letter of February 14, 2006, and is not used by San Mateo County Planning Department. This term has no bearing on whether the unpermitted development is consistent with the LCP nor on the requirement to obtain a CDP for development on this property.

further explained that the work undertaken was not exempt under the County LCP as Agriculturally-Related Development because the work does not fall within the type of work exempted pursuant to the County's Zoning Regulations Chapter 20B Section 6328.5. Mr. Holbrook also explained that the trailer brought onto the property must be removed, since the Coastal Development Exemptions do not allow a temporary trailer for any purposes on the property.

On March 27, 2006, Commission staff, along with Dave Johnson, Department of Fish and Game staff, and Gary Warren, San Mateo County Code Enforcement staff, conducted a site visit of the subject property, with the permission of Mr. Schiavon. The staff documented 1) grading on the subject property; 2) construction of a road up the sloped portion of the property; and 3) removal of vegetation on either side of the newly constructed road, which was evident from the freshly cut roots that were visible on the bank of the graded slope. It appeared that the vegetation removed included common tule (*Scirpus acutus* var. *acutus*), rushes (*Juncus* spp.), and cattails (*Typha* spp.), which are all wetland plant species that typically suggest an area of very long duration, usually perennial, standing water. A portion of the newly constructed road was built through the wetland. This portion of the road was not in existence at the time of a site visit by Commission staff conducted on January 3, 2006.

The road constructed through the wetland also involved filling of the southern portion of the wetland and removing willow trees along the edge of the wetland. Also observed during the March 2006 site visit was a cleared hillside at the end of the road where it appeared that vegetation was removed and burned in place. Additional unpermitted development on the subject property that was observed during this site visit included placement on site of a large amount of debris, material and equipment, including industrial lighting equipment, a bulldozer, excavator, three cultivators, a compactor, two boats, a wooden table, four wooden chairs, rusted metal drums, two camping trailers, building supplies, construction equipment, survey stakes, doors, door jambs, windows, window frames, a ladder, and other material covered by a tarp. In addition, a water well, with a rusty and disconnected power pole, was situated near the top of the property, and a gate had been dismantled and dumped near where the dirt road connected with a neighboring property.⁵

On April 21, 2006, Commission enforcement staff sent another notice of violation letter to Mr. Schiavon (Exhibit #7). The letter summarized the findings from the site visit of March 27, 2006, and again described the Coastal Act violations and explained enforcement remedies available to the Commission to address the unpermitted development, including fines and penalties applicable pursuant to Chapter 9 of the Coastal Act. Again, the notice requested that Mr. Schiavon immediately cease and desist from conducting all unpermitted development on the subject property. The letter

⁵ Section 30106 of the Coastal Act and 1.2 of the San Mateo County LCP specifically define "development" as including "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...and the removal or harvesting of major vegetation other than for agricultural purposes..."

further requested Mr. Schiavon contact the Commission office by May 8, 2006, to set up a meeting to resolve the Coastal Act and LCP violations. Commission staff arranged to meet with Mr. Schiavon on May 19, 2006. Due to illness, the meeting was postponed, and instead a phone meeting occurred on May 22, 2006.

On May 26, 2006, Commission staff sent a third letter to Respondents reiterating the issues discussed during the phone meeting, and attempted to amicably resolve the Coastal Act and LCP violations without having to conduct these order proceedings (Exhibit #9). The letter again explained the violations as listed above, the applicable law from the Coastal Act, and the enforcement remedies available, including fines and penalties pursuant to Chapter 9 of the Coastal Act, all of which had also been previously addressed in both the January 23, 2006 and April 21, 2006 letters. In addition, the letter explained that the best way to resolve the outstanding Coastal Act violations was for Respondents to agree to the issuance of a Consent Cease and Desist Order and/or Consent Restoration Order that would require, among other things, restoration of the site to its pre-violation condition. The letter once again requested that Respondents immediately cease and desist from conducting unpermitted development on the subject property. The letter requested a response from Respondents by June 12, 2006, to indicate whether they would be willing to agree to a Consent Cease and Desist and/or Consent Restoration Order that stipulates to the removal of unpermitted development and the restoration of the site.

On June 12, 2006, Commission staff received a letter from Mr. Schiavon, explaining that he was preparing a response to the Commission, but due to extenuating circumstances,⁶ Mr. Schiavon would not be able to meet the deadline indicated by the previous Commission staff letter (Exhibit #10). Commission staff did not receive any additional, written response from Mr. Schiavon or Mr. Smith. Mr. Schiavon also stated in his letter, and in a telephone conversation to Commission staff, that Mr. Smith would be removing all his personal property, which included the construction equipment, boats, rusted metal drums, RVs, building supplies, survey stakes, and other debris from the site. The boats, trailers, and most of the construction equipment have been removed, but other materials remain on the property.

Because of the ongoing resource damage at the subject property and the fact that the subject violations remain in place and unaddressed, Commission staff initiated these proceedings to resolve the unpermitted development and restore the subject property as quickly as possible.

⁶ The letter proceeded to allege that the Commission's "letters and threats" were resulting in the medical problems experienced by Mr. Schiavon's wife, daughter, and partner that ensued after receiving the May 26, 2006 letter from Commission staff. Letters from the Commission seeking compliance with applicable law are certainly not intended to create any personal hardship, and are merely an attempt to resolve outstanding violations in the most efficient way possible.

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

On March 1, 2007, pursuant to 14 CCR Sections 13181 and 13191, the Executive Director of the Commission issued a *Notice of Intent to Commence Cease and Desist Order and Restoration Order Proceedings and to Record a Notice of Violation of the Coastal Act* ("NOI") (Exhibit #11) to commence order proceedings under the Coastal Act. The NOI, which was sent to both Schiavon and Associates and Robert Smith, included a thorough explanation of why the subject activity is development under the Coastal Act and the County LCP and how such activity meets the criteria of Section 30810 and 30811 of the Coastal Act that must be satisfied to commence proceedings for issuance of a cease and desist order and restoration order, as well as the criteria that must be satisfied to Record a Notice of Violation pursuant to Section 30812 of the Coastal Act.

In accordance with Sections 13181(a) and 13191(a) of the Commission's regulations, Respondents were provided the opportunity to respond to the Commission staff's allegations as set forth in the NOI by completing a Statement of Defense form (hereinafter "SOD"). Respondents were required to submit the SOD by no later than March 21, 2007, under the applicable regulations. As of May 31, more than two months after the deadline for submittal of an SOD, Respondents have neither submitted an SOD nor given any indication that they intend to do so.

Notification of Intent to Record a Notice of Violation of the Coastal Act

Also contained in the March 1, 2007 NOI, was a Notification of Intent to Record a Notice of Violation of the Coastal Act (hereinafter, "NOI for NOV").

The Commission's authority to record a Notice of Violation is set forth in Section 30812(a) of the Coastal Act, 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."

The Executive Director issued the NOI for NOV because unpermitted development had occurred at the subject property, in violation of the Coastal Act. The NOI for NOV stated, "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... within twenty days of the postmarked mailing of this notification. If you fail to object within that twenty-day period, we are authorized to record the Notice of Violation in the San Mateo County recorder's office pursuant to Section 30812 of the Coastal

Act.” The deadline for Respondents to object to the recordation of a Notice of Violation was March 21, 2007. Respondents did not object to the recordation and therefore, on March 29, 2007, a Notice of Violation was sent to the San Mateo County Recorder’s office to be recorded on the subject property. On April 13, 2007, the San Mateo County Recorder’s office recorded the Notice on the subject property as Instrument No. 2007-057139 (Exhibit #12).

Site Visit – March 21, 2007

In an effort to work cooperatively with Respondents and to allow Enforcement staff and Commission staff biologist, Dr. John Dixon, an opportunity to inspect the site and to meet with Respondents to discuss the issues related to the case and the various opportunities available to resolve the violation and restore the subject property, Commission staff met with Respondents at the subject property on March 21, 2007. During the site visit, Commission staff confirmed that a road had been graded and graveled on the flat portion of the property closest to Frenchman’s Creek Road, the graded road continued up the slope and asphalt had been placed on top of the graded road for a distance of approximately 30 feet, the wetland area had been filled for the continuance of the road up the slope, vegetation had been removed from the wetlands area, and vegetation had been removed for a distance of approximately ¼ to ½ mile long by approximately 10 to 15 feet wide for the creation of a road up the steeply sloping portion of the property.

During the site visit, Dr. Dixon inspected the filled area (which was apparently partly an abandoned agricultural pond area)⁷ and made the determination that the area is a wetland as that term is defined in Section 30121 of the Coastal Act and Section 7.14 of the County LCP.

While Commission staff and Respondents were not able to agree on a Consent Order at that time, they were able to amicably discuss the issues related to the violation, and Commission staff took the opportunity to discuss with Respondents the importance of wetlands and wetlands habitat and the need for obtaining a CDP to conduct development in the Coastal Zone. It is Commission staff’s assessment, from this site visit, that Respondents understand the necessity of applying for a CDP if they wish to conduct future development on the property, and they realize that restoration of the site will be required by these Orders. These Orders address removal of all remaining unpermitted development, including fill within wetlands, and restoration of the subject property using restorative grading and planting with native plant species.

⁷ Respondents claim that the wetland area was created for and once used for agricultural purposes. No evidence has been provided by Respondents that supports this allegation.

C. Basis for Issuance of Orders

Cease and Desist Order

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

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

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

(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...

Restoration Order

The statutory authority for issuance of this Restoration Order is provided in §30811 of the Coastal Act, 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, local government, or port governing body, [b] the development is inconsistent with this division, and [c] the development is causing continuing resource damage.

The following paragraphs set forth the basis for the issuance of the Cease and Desist and Restoration Orders by providing substantial evidence that the development meets all of the required grounds listed in Sections 30810 and 30811 for the Commission to issue a Cease and Desist Order and Restoration Order.

i. Development has Occurred without a Coastal Development Permit (“CDP”), in violation of the Coastal Act and the County’s LCP

The development at issue here has not been authorized by a CDP. Unpermitted development consisting of 1) extensive grading, including grading through wetlands and across steeply sloping terrain; 2) placing fill in wetlands; 3) creation of a road, and

rocking and asphaltting of the road on top of the fill within the wetland; 4) removing major vegetation, including willows; 5) placing structures on the property including, but not limited to, storage of heavy equipment (excavator, bulldozer, cultivators, and compactor), trailers, and boats; and 6) stockpiling construction materials such as sinks, doors, door jambs, windows, window frames, and storage containers has occurred on the subject property without a CDP.

Section 30600(a) of the Coastal Act and Section 1.1 of the San Mateo County LCP states that, in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the coastal zone must obtain a coastal development permit. "Development" is defined by Section 30106 of the Coastal Act and 1.2 of the San Mateo County LCP 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...change in the intensity of use of water, or of access thereto...and the removal or harvesting of major vegetation other than for agricultural purposes...

Development requires a coastal development permit in accordance with Section 30600 of the Act, and similarly Section 1.1 of the LCP, 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."

The unpermitted development described above clearly constitutes "development" within the meaning of the above-quoted definition. It involves, among other things, grading, placement of fill and other structures, and removal of major vegetation. It is and was therefore subject to the permit requirements of Section 30600(a) of the Coastal Act and Section 1.1 of the County LCP. A CDP was not issued to authorize the subject unpermitted development. The development was undertaken without a CDP, in violation of Public Resources Code 30600, the LCP, and the Coastal Act, and the County requested that the Commission take action and issue a Cease and Desist Order.⁸ Therefore, the Commission may issue a Cease and Desist Order under Section 30810 of the Coastal Act to address the violations associated with the subject property.

⁸ As previously noted, on January 23, 2006, the County of San Mateo requested that the Commission take enforcement action on the County's behalf. Section 30810(a)(1) provides that a local government can request the Commission to assume primary responsibility for issuing a cease and desist order.

ii. The Unpermitted Development at Issue is Inconsistent with the Coastal Act and the County LCP

As described below, the unpermitted development is not consistent with Section 30231 (protection of biological productivity of coastal waters), Section 30233 (limiting fill of wetlands), or Section 30235 of the Coastal Act in addition to numerous policies within the San Mateo County LCP.

a. Wetlands

Section 30233 of the Coastal Act states:

(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.

(b) Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation.

Section 30121 of the Coastal Act defines "Wetland" as:

"Wetland" means lands within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens.

Section 30108.2 of the Coastal Act defines "Fill" as:

"Fill" means earth or any other substance or material, including pilings placed for the purposes of erecting structures thereon, placed in a submerged area.

In addition, the San Mateo County LCP specifically addresses development activity in wetlands and provides for protection policies to ensure that wetlands are not impacted by development. Section 7.16 of the County LCP allows for only certain, specific uses to be undertaken within wetlands, including:

(1) nature education and research, (2) hunting, (3) fishing, (4) fish and wildlife management, (5) mosquito abatement through water management and biological controls; however, when determined to be ineffective, allow chemical controls which will not have a significant impact, (6) diking, dredging, and filling only as it serves to maintain existing dikes and an open channel at Pescadero Marsh, where such activity is necessary for the protection of pre-existing dwellings from flooding, or where such activity will enhance or restore the biological productivity of the marsh, (7) diking, dredging, and filling in any other wetland only if such activity serves to restore or enhance the biological productivity of the wetland, (8) dredging manmade reservoirs for agricultural water supply where wetlands may have formed, providing spoil disposal is planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation, and (9) 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.. None of the unpermitted development that is the subject of these proceedings falls within any of the categories of development that is permitted within wetlands under either Coastal Act section 30233 or the applicable policies of the LCP.

In addition, Section 7.17 of the County LCP states:

Require that development permitted in wetlands minimize adverse impacts during and after construction. Specifically, require that: (1) all paths be elevated (catwalks) so as not to impede movement of water, (2) all construction takes place during daylight hours, (3) all outdoor lighting be kept at a distance away from the wetland sufficient not to affect the wildlife, (4) motorized machinery be kept to less than 45 dBA at the wetland boundary, except for farm machinery, (5) all construction which alters wetland vegetation be required to replace the vegetation to the satisfaction of the Planning Director including "no

action” in order to allow for natural reestablishment, (6) no herbicides be used in wetlands unless specifically approved by the County Agricultural Commissioner and State Department of Fish and Game, and (7) all projects be reviewed by the State Department of Fish and Game and State Water Quality Board to determine appropriate mitigation measures.

Section 7.18 of the County LCP states:

Buffer zones shall extend a minimum of 100 feet landward from the outermost line of wetland vegetation. This setback may be reduced to no less than 50 feet only where (1) no alternative development site or design is possible; and (2) adequacy of the alternative setback to protect wetland resources is conclusively demonstrated by a professional biologist to the satisfaction of the County and the State Department of Fish and Game. A larger setback shall be required as necessary to maintain the functional capacity of the wetland ecosystem.

Section 7.19 of the County LCP states:

Within buffer zones, permit the following uses only: (1) uses allowed within wetlands (Policy 7.16) and (2) public trails, scenic overlooks, and agricultural uses that produce no impact on the adjacent wetlands.

Section 8.6 of the County LCP states, in part:

d. Retain wetlands intact except for public accessways designed to respect the visual and ecological fragility of the area and adjacent land.

Wetlands provide an important ecosystem function and play an essential role in maintaining biodiversity because of its unique habitat. Because of the historical losses and current rarity of these habitats, and because of their extreme sensitivity to disturbance wetlands are provided protection under the Coastal Act and the County LCP.

The Commission’s staff biologist, Dr. John Dixon, evaluated the site and confirmed that the pond area that was impacted by the unpermitted development is a wetland, as that term is defined by Section 30121 of the Coastal Act and Section 7.14 of the County LCP. The wetland is approximately 3,875 square feet in area and is located at the base of a steeply sloping hillside near the northwestern portion of the subject property.

The unpermitted development includes placement of fill within and adjacent to the wetland and removal of wetland vegetation, including the removal of willows, for the construction of a road up the hillside. The unpermitted road constructed through the wetland was graveled in portions, and, in portions, paved with asphalt. Section 30233 of the Coastal Act and 7.16 of the LCP do allow for fill of wetlands under narrow criteria. The unpermitted development that resulted in wetlands fill does not fall under any of the

allowable criteria for wetlands fill. The unpermitted development rendered portions of the wetland incapable of performing its habitat and water quality functions, which is inconsistent with Coastal Act Section 30233(b) and the County LCP.

As stated above, fill, gravel, and asphalt were placed within and adjacent to the wetland and wetland vegetation was removed. Not only does the LCP restrict almost all development within wetlands, but, pursuant to Section 7.18 and 7.19 of the LCP, development is also limited within a 50 to 100-foot buffer zone surrounding wetlands. Clearly, the placement of fill, gravel, and asphalt directly into the wetland, and the removal of wetlands vegetation are not types of development allowed within wetlands or within the 50 to 100-foot buffer surrounding the wetland, in this case the 3,875 square foot wetland on the subject property.

The grading and fill of the wetlands area and the removal of vegetation within and around the wetlands area was conducted without benefit of a CDP in violation of the Coastal Act and the County LCP. As demonstrated in this section and throughout this staff report, the unpermitted development is inconsistent with the resource protection policies of the Coastal Act and the County LCP. Thus, the requirements to issue a Cease and Desist and the first two criteria that must be satisfied for issuance of a Restoration Order have been met.

b. Water Quality and Biological Productivity of Wetlands

Section 30231 of the Coastal Act states:

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

Section 9.18 of the County LCP states:

a. Prohibit development on slopes of 30% or more, unless (1) no alternative exists or (2) the only practicable alternative site is on a skyline or ridgeline. Parcels shall not be created where the only building site, in whole or in part, including roads and driveways, is on a slope of 30% or more. An engineering geologic report shall be required for any development on a slope of 30% or more...

The unpermitted grading significantly impacted the wetland on the subject property; and a large portion of the wetland vegetation, located in the wetland area, was removed. As

stated above, wetlands are extremely rare and important ecosystems. Any alteration of wetland hydrology or removal of wetland vegetation reduces a wetland's ability to function. The unpermitted development has significantly impeded the functioning of this wetland area. Further, the interim loss of ecosystem value and water quality functioning will have a significant impact that will be experienced into the future.

In addition, an approximately $\frac{1}{4}$ to $\frac{1}{2}$ mile long, approximately 10 to 15-foot wide area was cleared of vegetation for the creation of a road up a very steeply sloping hillside adjacent to and above the wetland area. Portions of the road were cleared to mineral earth and, in other sections, only the tops of plants were removed, leaving rootballs intact.

The removal of vegetation on steeply sloping hillsides and in areas adjacent to wetlands causes increased erosion and sedimentation into the remaining portions of the wetland area which is onsite, as well as into areas on and off site that drain into Frenchman's Creek, which eventually drains into the Pacific Ocean at Venice Beach in Half Moon Bay. The discharge of sediment into wetlands and streams can cause cumulative impacts such as: eutrophication and anoxic conditions resulting in fish kills and diseases and the alteration of aquatic habitat, including adverse changes to species composition and size; sedimentation increasing turbidity which both reduce the penetration of sunlight needed by aquatic vegetation which provide food and cover for aquatic species; and disruptions to the reproductive cycle of aquatic species. These impacts reduce the biological productivity and the quality of wetlands and streams, and reduce optimum populations of marine organisms.

The unpermitted development does not maintain, enhance, and restore marine resources in a manner that will sustain the biological productivity of all species of marine organisms in the subject wetland, and it does not maintain and restore biological productivity and water quality of coastal waters (in this case the wetland on the subject property, Frenchman's Creek, and the Pacific Ocean) by controlling runoff, consistent with Section 30231 of the Coastal Act.

As discussed above, the discharge of sediment can cause significant negative impacts to streams. In past Commission actions, the Commission has required development to be located a minimum distance of 100 feet from wetlands, in addition to employing best management practices to minimize runoff of pollutants in order to protect water quality. This setback is necessary to provide sufficient area for infiltration of runoff, minimize erosion and sedimentation, minimize the spread of invasive exotic plant species, and allow an adequate natural vegetation buffer consistent with Section 30231.

In addition, Section 9.18 of the LCP prohibits development on slopes of 30% or more, unless no alternative exists or the only practicable alternative site is on a skyline or ridgeline. The unpermitted development included vegetation clearance and grading up a steeply sloping hillside of greater than 30%. There are alternative locations to construct a road to the upper portion of the property in areas of the subject property with slopes less than 30% (using the existing private road north of the subject property) and

therefore, the unpermitted graded road on the subject property is not consistent with the County's LCP.⁹

The unpermitted development at issue here is currently located within and adjacent to the wetland, 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.

In summary, the unpermitted development does not maintain, much less restore, water quality and biological productivity in wetlands by controlling runoff or maintaining natural vegetation buffer areas, and the grading and vegetation removal has occurred on slopes greater than 30%. Therefore, the unpermitted development is inconsistent with Sections 30231 of the Coastal Act and Section 9.18 of the LCP, again satisfying the second criterion for issuance of a Restoration Order.

c. Scenic Coastal Areas/Landform Alteration.

Section 30251 of the Coastal Act states, in part:

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

Section 8.5 of the County LCP states:

a. Require that new development be located on a portion of a parcel where the development ... (3) is consistent with all other LCP requirements, best preserves the visual and open space qualities of the parcel overall. Where conflicts in complying with this requirement occur, resolve them in a manner which on balance most protects significant coastal resources on the parcel, consistent with Coastal Act Section 30007.5.

⁹ Mr. Schiavon has stated that he has attempted to negotiate with the neighboring property owner to use their private road to access the upper portion of the subject property. If an easement is obtained by the neighboring property owner, there would be no need for any grading or additional roads on the subject property. Even without the easement, there are still alternative areas on the subject property that are less than 30% grade where it appears that Respondents could build a road (if authorized by a CDP). Any new proposed roads on the subject property that are consistent with the LCP and the Coastal Act would, regardless, require a CDP from San Mateo County.

Section 8.17 of the County LCP states:

a. Require that development be located and designed to conform with, rather than change landforms. Minimize the alteration of landforms as a consequence of grading, cutting, excavating, filling or other development.

b. To the degree possible, ensure restoration of pre-existing topographic contours after any alteration by development, except to the extent necessary to comply with the requirements of Policy 8.18.

c. Control development to avoid the need to construct access roads visible from State and County Scenic Roads. Existing private roads shall be shared wherever possible. New access roads may be permitted only where it is demonstrated that use of existing roads is physically or legally impossible or unsafe. New roads shall be (1) located and designed to minimize visibility from State and County Scenic Roads and (2) built to fit the natural topography and to minimize alteration of existing landforms and natural characteristics.

This provision does not apply to agricultural development to the extent that application of the provision would impair any agricultural use or operation, or convert agricultural soils. In such cases, build new access roads to minimize alteration of existing landforms and natural characteristics.

Section 8.18 of the County LCP states:

a. Require that development (1) blend with and be subordinate to the environment and the character of the area where located, and (2) be as unobtrusive as possible and not detract from the natural, open space or visual qualities of the area, including but not limited to siting, design, layout, size, height, shape, materials, colors, access and landscaping...

The property contains wetlands, wetland vegetation, as well as a mix of native scrub vegetation, including coyote brush, and pines, eucalyptus, and other large, mature trees. The 52.83 acre property was completely undeveloped prior to this unpermitted development, highly visible from Frenchman's Creek Road, and appeared (prior to the unpermitted development) consistent with the natural setting found in the coastal mountains of San Mateo County. The unpermitted development at issue includes grading of a road, rocking the road with gravel and paving with asphalt, grading up a hillside and filling a wetland for the continuance of the road, and removing wetlands vegetation and vegetation located on the hillside for a distance of approximately ¼ to ½ mile. Respondents also placed structures and construction material and equipment throughout the property.¹⁰ The bare, graded ground, a "graveled" and asphalted road up a steep hillside, and the placement and storage of construction material and

¹⁰ While Respondents have removed some of the unpermitted construction equipment and materials, some equipment and stored materials still exist on the subject property, inconsistent with the resource protection policies of the Coastal Act and LCP.

equipment are visually incompatible with the natural landscape of the surrounding areas, and diminish the scenic values of the community. The unpermitted development is, therefore, inconsistent with Coastal Act Section 30251.

The Coastal Act and the County LCP also require that development minimize landform alteration, that new roads be built to fit the natural topography and to minimize alteration of existing landforms and natural characteristics, and that development blend with and be subordinate to the environment and the character of the area where located, and be as unobtrusive as possible and not detract from the natural, open space or visual qualities of the area. The natural landscape of the Corral de Tierra coastal mountain range, which the subject property is a part of, consists of a variety of vegetative communities from coyote brush to mature pines. The landscape ranges from steeply sloping canyons, to higher mountain peaks, to relatively flat alluvial flood plains.

The unpermitted development includes grading and fill of wetlands and “rocking” and paving of a road up a steep hillside that clearly altered the natural slope of the hillside, did not blend in with the surrounding environment, and detracted from the natural open space and scenic qualities of the area. In addition, the unpermitted development consisted of a new, unpermitted road that was not built to fit the natural topography and did not minimize the alteration of existing landforms and natural characteristics of the subject property. The construction of the road also failed to restore pre-existing contours and, it appears, that there are alternative site designs, including the use of existing roads that could fit the natural topography and minimize alteration of existing landforms and natural characteristics.

Therefore, the Commission finds that the unpermitted development is not consistent with Section 30251 of the Coastal Act or the policies of the County LCP again satisfying the second criterion for issuance of a Restoration Order.

iii. Unpermitted Development is Causing Continuing Resource Damage

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

a. Definition of Continuing Resource Damage

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

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

The term “damage” in the context of Cease and Desist and Restoration Order proceedings is provided in Section 13190(b) as follows:

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

In this case, the damage is the degradation of a wetland, aquatic resources and water quality, and the scenic qualities of this area, which are caused by the unpermitted development across the subject property, as described in the prior section.

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

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

As of this time, all of the unpermitted development that is the subject of these proceedings remains at the Subject Property, with the exception of the stored material (trailers, boats, doors, door jambs, windows, window frames, and storage containers) which, at the time of the March 21, 2007 site visit by CCC staff, were not on site. As described above, the remaining unpermitted development results in impacts to wetlands and wetlands habitat, the water quality and biological productivity of the wetland and adjacent streams, natural landforms, and the scenic qualities of this area. The graded road, fill of wetlands, and the removal of vegetation continues to impact the wetland and the protected resources within and adjacent to the wetland area by continuing to affect views, continuing to cause increased erosion, and continuing to prevent the wetland from existing or functioning.

In addition, unpermitted structures and equipment remain on the subject property and continue to detract from the natural, open space and visual qualities of this area. As described above, the unpermitted development is causing adverse impacts to resources protected by the Coastal Act and the County LCP that continue to occur as of the date of this proceeding and damage to resources is “continuing” for purposes of Section 30811 of the Coastal Act. The damage caused by the unpermitted development, which is described in the above paragraphs, satisfies the regulatory definition of “continuing resource damage.” The third and final criterion for issuance of a Restoration Order is therefore satisfied.

D. Orders are Consistent with Chapter 3 of the Coastal Act

The Cease and Desist Order and Restoration Order attached to this staff report are consistent with the resource protection policies found in Chapter 3 of the Coastal Act. The Orders require Respondents to remove all unpermitted development from the subject property, restore the subject property using restorative grading and planting of native vegetation endemic to this section of San Mateo County, and cease and desist from conducting any further unpermitted development on the subject property. The Orders require Respondents to plant native plant species to lessen the potential for

erosion across the site, to be compatible with the surrounding wetlands habitat, and to ensure that non-native, invasive plant species do not colonize the newly restored site and spread from there to supplant the surrounding native habitat. The Commission finds that allowing the planting of non-native plant species (which is not authorized or required by these Orders) would lead to the further degradation of the wetlands and cause continued erosion throughout the site. Similarly, failure to revegetate the site would lead to increased erosion across the subject property, which would lead to sedimentation of the wetland and adjacent streams, decreasing water quality and decreasing the biological productivity in this aquatic habitat, inconsistent with the resource protection policies of the Coastal Act and the County LCP.

Therefore, the Cease and Desist Order and Restoration Order are consistent with the Chapter 3 policies of the Coastal Act and the County LCP.

E. California Environmental Quality Act (CEQA)

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

F. Statement of Defense

Respondents were provided the opportunity to identify their defenses to the issuance of the Orders in a written Statement of Defense, as provided in the Commission's Regulations, but have failed to do so.

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."

As of the date of this report, 91 days from when the NOI was sent, Respondents have not presented any defenses, or any other response, to staff's allegations as set forth in the March 1, 2007 NOI. The final date for submittal of the statement of defense form ("SOD") was March 21, 2007. Respondents did not submit the SOD by the March 21, 2007 deadline, and did not request additional time to do so. Since the completion of Section 13181's statement of defense form is mandatory, Respondents have failed to raise and preserve any defenses that they may have. The SOD is necessary to enable the Executive Director to prepare a recommendation to the Commission as required by

Section 13183 of the Commission's Regulations that includes rebuttal evidence to matters raised in the SOD and summarizes any unresolved issues as is provided for in the regulations for these proceedings. Since Respondents did not submit an SOD, they have waived their right to present defenses for the Commission's consideration in this matter.

G. Summary of Findings

1. Schiavon and Associates is the owner of property located at APN 048-310-190, a 52.83 acre property off Frenchman's Creek Road in San Mateo County, ("subject property").
2. Robert Smith, an agent of Schiavon and Associates, was the person most directly involved in the physical performance of the unpermitted development described in point 3.
3. Respondents collectively undertook development, as defined by Coastal Act Section 30106 and Section 1.2 of the County LCP, at the subject property, consisting of 1) extensive grading, including grading through wetlands and across steeply sloping terrain; 2) placing fill in wetlands; 3) creation of a road, and rocking, and asphaltting of the road on the subject property and on top of the fill; 4) removing major vegetation including willows; 5) placing structures on the property including, but not limited to, storage of heavy equipment (excavator, bulldozer, cultivators, and compactor), trailers, and boats; and 6) stockpiling construction materials such as sinks, doors, door jambs, windows, window frames, and storage containers in violation of the Coastal Act and the LCP.
4. Respondents conducted the above-described development without a Coastal Development Permit or any other Coastal Act authorization, which is a violation of the Coastal Act and the County LCP.
5. No exemption from the permit requirements of the Coastal Act or the County LCP applies to the unpermitted development on the subject property.
6. On March 1, 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, and outlined steps in the cease and desist and restoration order process.
7. On March 1, 2007, the Executive Director sent Respondents a Notification of Intent to Record a Notice of Violation of the Coastal Act pursuant to Section 30812 of the Coastal Act.
8. Respondents did not object to the recordation of a Notification of Intent to Record a Notice of Violation of the Coastal Act and therefore, the Executive Director recorded the Notice on the subject property as Instrument No. 2007-057139.

9. The “agricultural” pond on the subject property is a wetland as that term is defined by Section 30121 of the Coastal Act and Section 7.14 of the County’s LCP.
10. The unpermitted development described in item No. 3 is inconsistent with the policies set forth in Sections 30231, 30233, and 30251 of the Coastal Act and numerous policies of the San Mateo County Local Coastal Program.
11. The unpermitted development described in item No. 3 is causing “continuing resource damage” within the meaning of Section 30811 of the Coastal Act and Section 13190, Title 14, California Code of Regulations.

Exhibit List

Exhibit Number

Description

1. Site Map and Location
2. Notice of Code Violation from San Mateo Co. to Respondents, 1/5/06
3. Letter from CCC staff to Lisa Grote, San Mateo Co, 1/23/06
4. Notice of Violation letter from CCC staff to Respondents, 1/23/06
5. Letter from Robert Smith to David Holbrook, San Mateo Co., 2/14/06
6. Violation status letter from CCC staff to Lisa Grote, San Mateo Co., 4/14/06
7. 2nd Violation letter from CCC staff to Mr. Schiavon, 4/21/06
8. Letter from San Mateo Co. to CCC staff requesting enforcement action by the Commission, 5/17/06
9. 3rd Violation letter from CCC staff to Respondents, 5/26/07
10. Letter from Mr. Schiavon to CCC staff, 6/11/06
11. Notification of Intent to Commence Cease and Desist Order and Restoration Order Proceedings and to Record a Notice of Violation of the Coastal Act, 3/1/07
12. Recorded Notice of Violation of the Coastal Act, Instrument No. 2007-057139, San Mateo County Records Office, 4/13/07
13. Site photograph showing unpermitted grading, 1/3/06
14. Site photograph showing unpermitted paved road and grading, 3/27/06
15. Site photograph showing unpermitted grading, 3/27/06
16. Site photograph showing unpermitted graveled road and storage of materials, 3/27/06
17. Site photograph showing removal of wetlands vegetation and fill in wetlands, 3/27/06

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

**CEASE AND DESIST ORDER NO. CCC-07-CD-01 AND
RESTORATION ORDER NO. CCC-07-RO-01**

1.0 PERSONS SUBJECT TO THESE ORDERS

The persons subject to Cease and Desist Order No. CCC-07-CD-01 and Restoration Order No. CCC-07-RO-01 (hereinafter, "Orders") are Schiavon and Associates and Robert Smith, their employees, agents, contractors, and anyone acting in concert with the foregoing, and successors in interest and future owners of the subject property (hereinafter, "Respondents").

2.0 IDENTIFICATION OF SUBJECT PROPERTIES

The property that is the subject of these Orders is a 52.83 acre property off Frenchman's Creek Road in San Mateo County, APN 048-310-190 (hereinafter, "subject property").

3.0 DESCRIPTION OF COASTAL ACT VIOLATION

The unpermitted development consists of: 1) extensive grading, including grading through wetlands and across steeply sloping terrain; 2) placing fill in wetlands; 3) creation of a road, and rocking, and asphaltting of the road on the subject property and on top of the unpermitted fill; 4) removing major vegetation, including willows; 5) placing structures on the property including, but not limited to, storage of heavy equipment (excavator, bulldozer, cultivators, and compactor), trailers, and boats; and 6) stockpiling construction materials such as sinks, doors, door jambs, windows, window frames, and storage containers.

4.0 COMMISSION AUTHORITY TO ACT

The Commission is issuing these Orders pursuant its authority under Sections 30810 and 30811 of the Public Resources Code.

5.0 FINDINGS

These Orders are being issued on the basis of the findings adopted by the Commission on June 13, 2007, as set forth in the foregoing document entitled: STAFF RECOMMENDATIONS AND FINDINGS FOR CEASE AND DESIST AND RESTORATION ORDERS, and Exhibits thereto.

6.0 EFFECTIVE DATE

These Orders shall become effective as of the date of issuance by the Commission and shall remain in effect permanently unless and until rescinded by the Commission.

7.0 COMPLIANCE OBLIGATION

Strict compliance with the terms and conditions of these Orders is required. If the Respondents fails to comply with the requirements of these Orders, including any deadline contained herein, it will constitute a violation of these Orders and may result in the imposition of civil penalties of up to six thousand dollars (\$6,000) per day for each day in which compliance failure persists, in addition to any other penalties authorized under Chapter 9 of the Coastal Act, including exemplary damages under Section 30822.

8.0 EXTENSIONS OF DEADLINES

If the Executive Director determines that the Respondents have made a showing of good cause, he/she shall grant extensions of the deadlines contained herein. Any extension requests must be made in writing to the Executive Director and received by the Commission staff at least 10 days prior to the expiration of the subject deadline.

9.0 SITE ACCESS

Respondents shall provide Commission staff and staff of any agency having jurisdiction over the work being performed under these Orders with access to the subject property at all reasonable times. Nothing in these Orders are 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 and other relevant agency 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 Orders or pursuant to any plans adopted pursuant to these 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 Orders or evidence of such work is held, for purposes including but not limited to inspecting records, operating logs, and contracts relating to the subject property and overseeing, inspecting, documenting, and reviewing the progress of Respondents in carrying out the terms of these Orders.

10.0 APPEALS AND STAY RESOLUTION

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

11.0 GOVERNMENT LIABILITY

The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by the Respondents in carrying out

activities authorized under these Orders, nor shall the State of California be held as a party to any contract entered into by the Respondents or their agents in carrying out activities pursuant to these Orders.

12.0 GOVERNING LAW

These Orders shall be interpreted, construed, governed and enforced under and pursuant to the laws of the State of California, which apply in all respects.

13.0 NO LIMITATION OF AUTHORITY

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

14.0 CEASE AND DESIST ORDER

Pursuant to its authority under Public Resources Code (hereinafter, "PRC") Section 30810, the California Coastal Commission (hereinafter, "Commission") hereby authorizes and orders Respondents to:

- A. Cease and desist from maintaining unpermitted development (as described in Section 5.0, below) on the subject property,
- B. Cease and desist from conducting any further unpermitted development on the subject property,
- C. Remove all unpermitted development, including but not limited to gravel and asphalt on the unpermitted road, construction equipment and materials, fill within the wetland and on the unpermitted road, and the culvert below the unpermitted road, from the subject property, and
- D. Restore the subject property by complying with the requirements of these Orders as described herein.

15.0 RESTORATION ORDER

Pursuant to its authority under PRC Section 30811, the Commission hereby orders and authorizes the following:

15.1 REMOVAL PLAN

- A. Within 45 days of the issuance of these Orders, Respondents shall submit a Removal Plan, for the review and approval of the Executive Director, for removal of all unpermitted development on the property, including but not limited to: gravel, asphalt, and fill used for the construction of the unpermitted road, fill

within the wetland, and all structures, construction material, and stored heavy equipment. The removal of the fill within the wetland area must be addressed in the Restoration Plan, as described below.

B. The Removal Plan must contain the following provisions:

- a. A detailed description of proposed removal activities.
- b. A timetable for removal.
- c. The location of a disposal site for removed material. The site must be a licensed disposal facility authorized to accept such material. If the disposal site is located in the Coastal Zone and is not an existing sanitary landfill, a Coastal Development Permit shall be required. Any hazardous materials must be transported to a licensed hazardous waste disposal facility in compliance with all applicable laws.

C. If mechanized equipment is used, the Removal Plan must contain the following provisions:

- a. Type of mechanized equipment required for removal activities;
- b. Length of time equipment will be used;
- c. Routes utilized to bring equipment to and from the property;
- d. Storage location for equipment when not in use during removal process;
- e. Hours of operation of mechanized equipment;
- f. Contingency plan in case of a spill of fuel or other hazardous release from use of mechanized equipment that addresses clean-up and disposal of the hazardous materials and water quality concerns;

D. The Removal Plan shall indicate that removal shall commence no later than 10 days after the approval of the Removal Plan by the Executive Director. The Removal Plan shall be fully implemented and all work shall be consistent with the terms of the final approved plan, including that removal shall be completed according to the time schedule provided in the approved plan. Thereafter, Respondents shall restore the subject property in accordance with Sections 15.2 and 15.4, below

E. Within 10 days of completion of the removal (such date being established by the time schedule provided in the approved Removal Plan), submit, for the review and approval of the Executive Director, a report documenting the complete removal of the unpermitted development specified in Section 3.0. The

report shall include plans showing the location of all removed development from the subject property and photographs that clearly show all portions of the subject property, the locations of which are annotated to a copy of the plans required by Section 15.4.

15.2 RESTORATIVE GRADING PLAN

A. Within 45 days of the issuance of these Orders, Respondents shall submit a Restorative Grading Plan, for the review and approval of the Executive Director. The Restorative Grading Plan shall demonstrate that the topography of the subject property in the location of the wetlands area will be restored to the condition that existed prior to the unpermitted development. The Restorative Grading Plan shall indicate that fill material shall be removed from the wetland and the banks restored consistent with the adjacent hillside. The Restorative Grading Plan shall include sections showing existing, unpermitted grades and finished grades, and quantitative breakdown of grading amounts (cut/fill), drawn to scale with contours that clearly illustrate 1) the existing topography of the subject property caused by the grading disturbance and fill in the location of the wetland and 2) the restored contours. The Restorative Grading Plan shall also demonstrate that restoration of the subject property restores the original topography of the subject property to the condition that existed prior to the unpermitted activity.

B. The Restorative Grading Plan shall indicate that measures shall be taken to ensure that erosion from the area subject to re-grading activities does not enter into the wetland or surrounding area, consistent with Section 15.3.

C. The Restorative Grading Plan shall indicate that the location for any excavated material to be removed from the site as a result of the restorative grading of the impacted areas shall be identified. If the disposal site is located in the Coastal Zone and is not an existing sanitary landfill, a Coastal Development Permit shall be required.

D. The Restorative Grading Plan shall indicate that restorative grading shall commence no later than 10 days after the approval of the Removal Plan by the Executive Director. Restorative grading shall be completed according to the time schedule and fully implemented in accordance with the terms of final, approved Restorative Grading Plan. Thereafter, Respondents shall restore the subject property in accordance with Sections 15.4, below.

E. Within 10 days of completion of the restorative grading (such date being established by the time schedule provided in the approved Restorative Grading Plan), submit, for the review and approval of the Executive Director, a report documenting the completion of the Restorative Grading. The report shall include plans showing the location of all graded areas on the subject property and photographs that clearly show all portions of the subject property included in the

Restorative Grading, the locations of which are annotated to a copy of the plans required by Section 15.4.

15.3 EROSION CONTROL PLAN

A. Within 45 days of the issuance of these Orders, Respondents shall submit, for the review and approval of the Executive Director, an Erosion Control Plan. The Erosion Control Plan shall be prepared by a qualified restoration ecologist or resource specialist and shall demonstrate that no erosion and dispersion of sediments across the subject property via rain, nuisance flow runoff, or wind will occur during the removal of unpermitted development, during restorative grading, or during implementation of the revegetation plans.

B. The Erosion Control Plan shall specify the erosion control measures that shall be installed on the subject property prior to or concurrent with the removal and grading actions required by Sections 15.1 and 15.2 and maintained until the impacted areas have been revegetated, consistent with Section 15.4, to minimize erosion and transport of sediment outside of the disturbed areas.

C. The Erosion Control Plan shall indicate that any necessary temporary erosion control measures, including but not limited to the following, shall be used: temporary hay bales, silt fences, swales, sand bag barriers, wind barriers, and biodegradable erosion control material. In addition, all stockpiled material shall be covered with geofabric covers or other appropriate cover and all graded areas shall be covered with geotextiles or mats.

D. The Erosion Control Plan shall include, at a minimum, 1) a narrative describing and identifying all erosion control measures to be used, 2) detailed site plan showing the location of all temporary erosion control measures, and 3) a schedule for installation and removal of temporary erosion control measures, in coordination with the long-term restoration of the subject property.

E. The Restorative Grading Plan shall indicate that erosion control measures shall be provided at all times of the year for at least three years or until the revegetation described in Section 15.4 has been established, whichever occurs first, and then shall be removed or eliminated by Respondents.

F. Upon approval of the Erosion Control Plan, Respondents shall implement the Erosion Control Plan subsequent to or concurrent with undertaking the Removal and Restorative Grading Plans.

G. Within 10 days of implementation of the Erosion Control Plan (such date being established by the time schedule provided in the approved Erosion Control Plan), Respondents shall submit, for the review and approval of the Executive Director, a report documenting the completion of the measures required in the Erosion Control Plan. The report shall include plans showing the location of all

erosion control measures on the subject property and photographs that clearly show all portions of the subject property included in the restoration, the locations of which are annotated to a copy of the plans required by Section 15.4.

15.4 REVEGETATION PLAN

A. Within 45 days of the issuance of these Orders, Respondents shall submit, for the review and approval of the Executive Director, a Revegetation Plan that demonstrates that the areas impacted by the construction, placement, or removal of unpermitted development on the subject property will be restored using planting of species endemic to and appropriate for this portion of San Mateo County, including wetland and transitional upland plant species. The Revegetation Plan shall include all graded areas and areas impacted by the unpermitted development (hereinafter "Planting Area") and demonstrate that the disturbed areas will have a similar plant density, total cover and species composition to that typical of an undisturbed wetland area in this portion of San Mateo County within 5 years from the initiation of revegetation activities.

B. The Revegetation Plan shall identify the natural habitat type that is the model for the restoration and describe the desired relative abundance of particular species in each vegetation layer. Based on these goals, the plan shall identify the species that are to be planted (plant "palette"), and provide a rationale for and describe the size and number of container plants and the rate and method of seed application. The Revegetation Plan shall indicate that plant propagules should come from local native stock. If plants, cuttings, or seed are obtained from a nursery, the nursery must certify that they are of local origin and are not cultivars and the Revegetation Plan shall provide specifications for preparation of nursery stock (e.g., container size & shape to develop proper root form, hardening techniques, watering regime, etc.). Technical details of planting methods (e.g., spacing, micorrhyzal inoculation, etc.) shall also be included.

C. The Revegetation Plan shall be prepared by a qualified restoration ecologist or resource specialist and include a plan showing the type, size, and location of all plant materials that will be planted in the Planting Area, all invasive and non-native plants to be removed from the Planting Area, the topography of the site, all other landscape features, and a schedule for installation of plants and removal of invasive and/or non-native plants.

D. The Revegetation Plan shall include a plan for weed eradication, which shall include the following: 1) after restoration takes place, weeding should be monthly and shall impose a zero tolerance on non-native, invasive species; 2) weeding shall occur at this frequency and care until the native vegetation is sufficiently well-established to resist continued colonization by exotics; and 3) weeding shall be done by hand and must be supervised by a restoration biologist to ensure that the native plants are not disturbed.

E. The Revegetation Plan shall demonstrate that the vegetation planted on the subject property consists only of native, non-invasive plants endemic to this portion of San Mateo County vegetative communities. The Revegetation Plan shall demonstrate that all non-native vegetation within the areas subject to revegetation and those areas that are identified as being subject to disturbance as a result of the unpermitted development and restoration and revegetation activities, are eradicated. The Revegetation Plan shall identify that all non-native plant species are removed from the Planting Area prior to any restorative grading or revegetation activities on the subject property.

F. The Revegetation Plan shall describe the use of artificial inputs, such as watering or fertilization that may be used to support the establishment of the plantings and specify that only the minimal necessary amount of such inputs are used. The Revegetation Plan shall not include permanent irrigation system on the subject property. Temporary above ground irrigation to provide for the establishment of the plantings is allowed for a maximum of three years or until the Revegetation has become established, whichever occurs first. If, after the three-year time limit, the revegetation has not established itself, the Executive Director may allow for the continued use of the temporary irrigation system until such time as the revegetation is established. All irrigation infrastructures must be removed by the end of the monitoring period described in Section 15.4.I.

G. All planting in the approved Revegetation Plan shall be installed in accordance with the schedule and requirements of the approved Revegetation Plan and no later than 15 days after the completion of the components of the Restorative Grading Plan or Removal Plan. The Revegetation shall be planted using accepted planting procedures required by the restoration ecologist or resource specialist. Such planting procedures may suggest that planting would best occur during a certain time of the year. If so, and if this necessitates a change in the planting schedule, the 15 day deadline to implement the Revegetation Plan may be extended as provided for under the provisions of Section 8.0, herein.

H. Consistent with Section 15.3, the Revegetation Plan shall specify the methods to be used after planting has occurred to stabilize the soil and make it capable of supporting native vegetation. Such methods shall not include the placement of retaining walls or other permanent structures, grout, geogrid or similar materials. Any soil stabilizers identified for erosion control shall be compatible with native plant recruitment and establishment.

I. The Revegetation Plan shall describe the monitoring and maintenance methodology and shall include the following provisions:

- a. Respondents shall submit, on an annual basis for a period of five years from the date of implementation of the Revegetation Plan (no later than December 31st of each year) a written report, for the review and approval of

- the Executive Director, prepared by a qualified resource specialist, evaluating compliance with the approved Revegetation Plan. The annual reports shall include further recommendations and requirements for additional restoration activities in order for the project to meet the objectives of the Revegetation Plan. These reports shall also include photographs taken annually from the same pre-designated locations (annotated to a copy of the site plans) indicating the progress of recovery in the Planting Area.
- b. At the end of the five-year period, Respondents shall submit a final detailed report prepared by a qualified resource specialist for the review and approval of the Executive Director. If this report indicates that the restoration project has in part, or in whole, been unsuccessful, based on the approved Revegetation Plan, Respondents shall submit a revised or supplemental plan to compensate for those portions of the original program that were not successful within 30 days of the Executive Director's determination that the restoration was unsuccessful. The Executive Director will determine if the revised or supplemental revegetation plan must be processed as a CDP, a new Restoration Order, or a modification of these Orders.
- J. Immediately following the complete removal of all unpermitted development and recontouring of the wetland area to its pre-violation condition and no later than 10 days after implementation of the Restorative Grading Plans, Respondents shall implement the Revegetation Plan.
- K. Within 15 days of the implementation of the Revegetation Plan, Respondents shall submit to the Executive Director a report documenting the project's completion. The report shall include photographs that clearly show the entire revegetated area on the Subject Property. The report shall also include a statement by the professionally licensed restoration ecologist or resource specialist indicating that the Revegetation Plan has been implemented and describing the success of the plantings.

15.5 GOALS AND PERFORMANCE STANDARDS

- A. Restoration of the subject property shall consist of removal of all unpermitted development, re-contouring of the wetland that was damaged by the placement of fill, and revegetation of all areas on the subject property impacted by the unpermitted development. Revegetation shall consist of native plant species endemic to this portion of San Mateo County, and shall include wetland and transitional upland vegetative plant communities. The restoration shall also include eradication of non-native vegetation in areas impacted by the unpermitted development.
- B. The goal of the restoration shall include revegetation of all graded areas and areas impacted by the unpermitted development so that disturbed areas have a similar plant density, total cover and species composition as that typical of

undisturbed chaparral vegetation in the surrounding area within 5 years from the initiation of revegetation activities.

15.6 Appendix A of the Plans required in Section 15.0 shall include a description of the education, training and experience of the qualified restoration ecologist and/or resource specialist who shall prepare the Plans required in 15.0. A qualified restoration ecologist for this project shall be an ecologist, biologist, or botanist who has experience successfully completing restoration or revegetation of riparian habitats and wetlands.

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

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

With a copy sent to:
California Coastal Commission
North Central Coast District Office
Attn: Ruby Pap
45 Fremont Street, Suite 2000
San Francisco, CA 94105
Facsimile (415) 904-5400

15.8 If the Executive Director determines that any modifications or additions to the submitted Plans under 15.0 are necessary, he shall notify Respondents. Respondents shall complete the requested modifications and resubmit the Removal Plan for approval within 10 days of the notification.

Issued this 13th day of June, 2007 in Santa Rosa, California

Peter M. Douglas, Executive Director
California Coastal Commission

Date

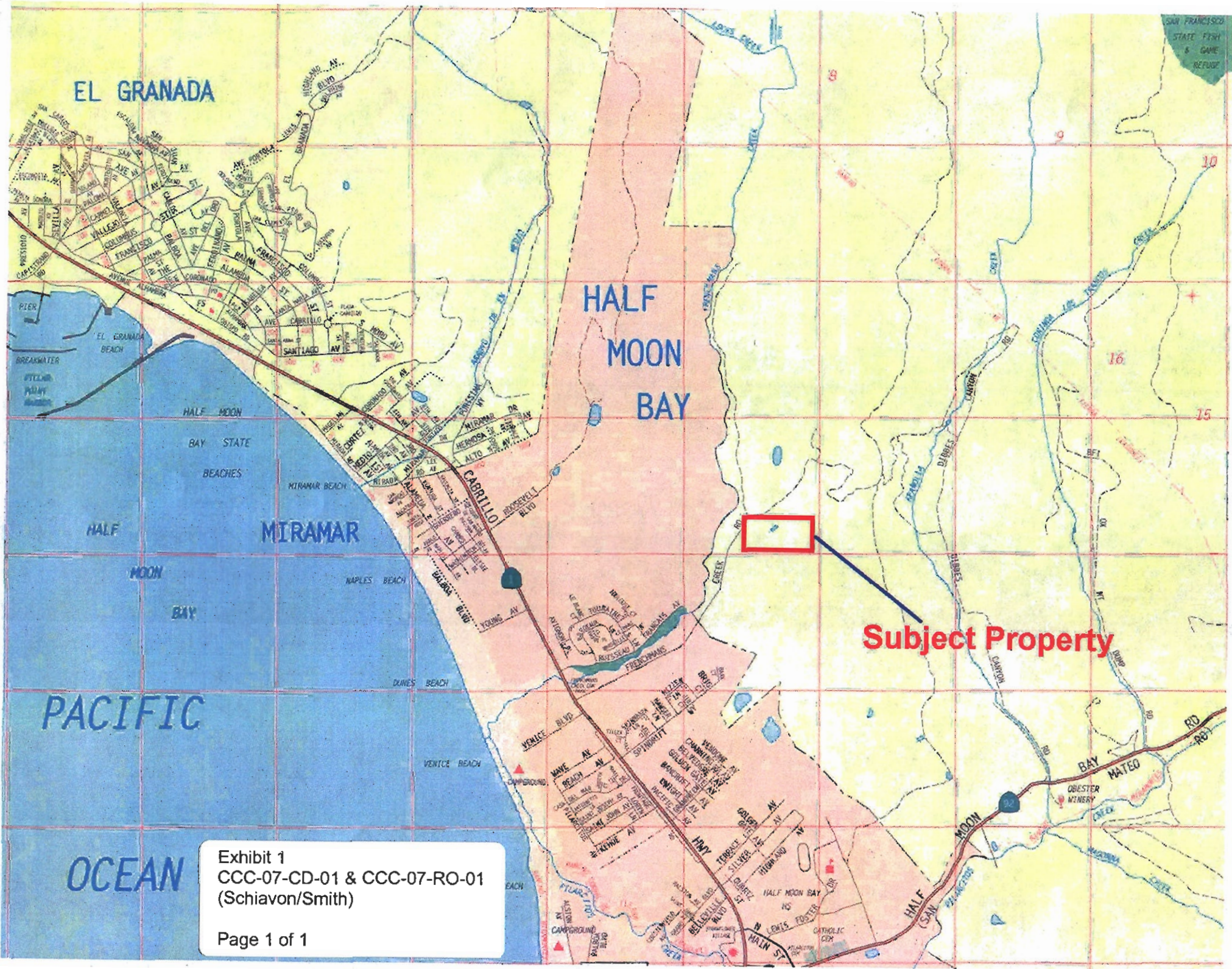


Exhibit 1
CCC-07-CD-01 & CCC-07-RO-01
(Schiavon/Smith)



January 5, 2006

CERTIFIED MAIL

Schiavon and Associates
114 Vista Grande
Aptos, CA 95003

Robert Smith
10241 Redwood Drive
Felton, CA 95018

Dear Sirs:

SUBJECT: NOTICE OF CODE VIOLATION
File No. VIO 2005-00299; APN 048-310-190

As the record owner of the property located at 29 Frenchman's Creek, I am requesting your immediate attention to a violation of the San Mateo County Ordinance Code, Zoning Annex. This Department inspected your property and has determined that you are in violation of Section 6328.4. Specifically, development has taken place without the required Coastal Development Permit. The above property is zoned PAD/CD (Planned Agricultural District within the Coastal Development District). Within this zone, any structure, including fences, roads, pipe, conduit, telephone lines and electrical lines, and grading are all development.

In addition to the above, I am requesting your immediate attention to a violation of the San Mateo County **STORMWATER MANAGEMENT AND DISCHARGE PROGRAM**. No sediment of any kind, soil or chemicals can be discharged into any waterway. You must install and maintain sediment and erosion control measures during the course of your project. Only clean clear rainwater can be discharged from your property into the storm drain system or waterway.

The required corrective action is to immediately provide sediment and erosion control. A stormwater management plan must be submitted to the Development Review Center for review.

Pursuant to Sections 6594 and 1.12.010 of the County of San Mateo Zoning Regulations, these violations are unlawful and a public nuisance. The required corrective action is to stop all work, and apply for and obtain all required permits for the development on the property. Please take the necessary corrective action within ten (10) calendar days of receipt of this notice.

Exhibit 2
CCC-07-CD-01 & CCC-07-RO-01
(Schiavon/Smith)

Page 1 of 2

PLANNING AND BUILDING

455 County Center, 2nd Floor • Redwood City, CA 94063 • Phone (650) 363-4161 • FAX (650) 363-4849

**ENVIRONMENTAL
SERVICES
AGENCY**

Agricultural
Commissioner/ Sealer of
Weights & Measures

Animal Control

Cooperative Extension

Fire Protection

LAFCo

Library

Parks & Recreation

Planning & Building

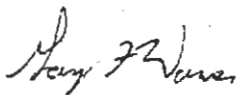
Your failure to correct the violations will result in a citation being issued to you for using and maintaining your property contrary to the provisions of the County's Zoning Regulations. The amount of bail for the first citation is \$136.00 and unless the nuisance is abated and all code violations corrected: (1) additional citations **will be issued**, requiring mandatory court appearances, (2) a Notice of Continuing Nuisance will be recorded against the property on which the nuisance is found, and (3) summary abatement of the nuisance may be undertaken by the County, at your expense.

Please be advised that violations of the County Ordinances may also be prosecuted through civil and/or criminal procedures; however, we would prefer to work cooperatively with you on this matter and avoid any legal involvement.

Notice is hereby given that your failure to correct this violation within the allowed time will result in you being assessed administrative costs associated with the processing of this violation at an hourly rate as established and adjusted from time to time by the Board of Supervisors. The hourly rate presently in effect is \$50.00 per hour of staff time. At the conclusion of this case, you will receive a summary of administrative costs charged to you. You will have the right to object to these charges by filing a Request for Hearing with the Environmental Services Agency within ten (10) calendar days of service of the summary of charges. However, if legal action is implemented against you to obtain compliance, no appeal of the enforcement processing fees will be available.

You may contact me at 650/363-4825 if you have any questions or concerns about this matter. All appointments must be scheduled in advance, as we are frequently out of the office. Your cooperation in correcting this violation is appreciated.

Sincerely,



GARY F. WARREN
Code Compliance Officer II

GFW:fc - GFWQ0013_WFE.DOC

cc: Jim Eggemeyer, Development Review Services Manager
Nancy Cave, CA Coastal Commission

CALIFORNIA COASTAL COMMISSION

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



January 23, 2006

Lisa Grote
Community Development Director
San Mateo County Environmental Services Agency
455 County Center
Redwood County Center, CA 94063

RE: **Alleged Coastal Act Violation No. V-2-06-001** (Schiavon & Associates), including but not limited to the unpermitted grading, rocking, and/or blacktopping of a road on the subject property, and the removal of major vegetation from the vicinity of the pond/reservoir on the subject property, which is located near Frenchman's Creek Road in San Mateo County, APN 048-310-190

Dear Ms. Grote:

Pursuant to the telephone conversation we had on January 20, 2006, Coastal Commission staff is proceeding with taking enforcement action concerning the above-referenced Coastal Act violation. We understand that the County has sent to the property owners a Notice of Code Violation, and has also posted the site with a Stop Work Order, to no avail. We have been informed by neighbors that the unpermitted development is continuing unabated. We therefore wish to join the County in its effort to halt the unpermitted development, and to seek resolution of the ongoing violations of the Coastal Act and the County's LCP.

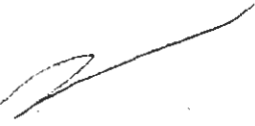
We are sending the property owners a Notice of Violation, and intend to follow up with a Notice of Intent to issue a Cease and Desist and/or Restoration Order. We will keep you apprised of our actions.

We appreciate the opportunity to work with the County to seek resolution of the violations. If you or your staff have any questions or concerns, please contact Jo Ginsberg at (415) 904-5269 or Nancy Cave at (415) 904-5290.

Exhibit 3
CCC-07-CD-01 & CCC-07-RO-01
(Schiavon/Smith)

LISA GROTE
Page No. 2

Sincerely,



JO GINSBERG
Enforcement Analyst

cc: Chris Kern, CCC, North Central Coast District Manager
Nancy Cave, CCC, Enforcement, Northern California Supervisor
Gary Warren, San Mateo County Code Compliance Officer
Dave Holbrook, San Mateo County Senior Planner

Exhibit 3
CCC-07-CD-01 & CCC-07-RO-01
(Schiavon/Smith)

Page 2 of 2

CALIFORNIA COASTAL COMMISSION

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

**SENT BY CERTIFIED AND REGULAR MAIL**

January 23, 2006

Schiavon & Associates
114 Vista Grande Drive
Aptos, CA 95003-5526
Certification No. 7002 3150 0004 3501 9570

Robert Smith
10241 Redwood Drive
Felton, CA 95018
Certification No. 7003 1680 0004 0129 6005

RE: **Alleged Coastal Act Violation No. V-2-06-001** (Schiavon & Associates), including but not limited to the unpermitted grading, rocking, and/or blacktopping of a road on the subject property, and the removal of major vegetation from the vicinity of the pond/reservoir on the subject property, which is located near Frenchman's Creek Road in San Mateo County, APN 048-310-190

Dear Sirs:

It has come to our attention that various development activities have been taking place recently on the above-referenced property without benefit of a coastal development permit, including but not limited to the grading, rocking, and/or blacktopping of a road on the subject property, and the removal of major vegetation (numerous willow trees) from the vicinity of the pond/reservoir on the property, which is located near Frenchman's Creek Road in San Mateo County. We have been in contact with San Mateo County, within whose coastal permit jurisdiction the subject property lies, and County staff has indicated that the County has no record of any permits issued for these activities. Further, the County has informed us that a Notice of Code Violation has been sent to you, and a Stop Work Order has been issued for the subject property. Despite these measures by the County, unpermitted development continues to take place at the site. We are working with the County to try to achieve satisfactory resolution to the outstanding Coastal Act violations.

1. **Unpermitted Development.** The grading, rocking, and/or blacktopping of a road, and the removal of major vegetation, are activities that constitute development, as defined in Section 30106 of the Coastal Act, which states:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any

Exhibit 4
CCC-07-CD-01 & CCC-07-RO-01
(Schiavon/Smith)

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...change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973... (Emphasis added)

Thus, the grading, rocking, and/or blacktopping of a road ("placement of any solid material," and "grading") and the removal of willow trees ("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") constitutes development.

Section 30600(a) of the Act requires that any person wishing to perform or undertake development in the coastal zone must first obtain a coastal development permit, in addition to any other permit required by law. Any development activity conducted in the coastal zone without a valid coastal development permit constitutes a violation of the Coastal Act and the County's certified Local Coastal Program ("LCP"). Thus, the unpermitted development described above constitutes a Coastal Act and County LCP violation.

2. Enforcement Remedies. The Coastal Act contains many enforcement remedies for Coastal Act violations. Coastal Act section 30809 states that if the Executive Director determines that any person has undertaken, or is threatening to undertake, any activity that may require a permit from the Coastal Commission without first securing a permit, the Executive Director may issue an order directing that person to cease and desist. Coastal Act section 30810 states that the Coastal Commission may also issue a cease and desist order for such violations. A cease and desist order may be subject to terms and conditions that are necessary to avoid irreparable injury to the area or to ensure compliance with the Coastal Act. A violation of a cease and desist order can result in civil fines of up to \$6,000 for each day in which the violation persists. Moreover, Section 30811 authorizes the Commission to order restoration of a site where development occurred without a coastal development permit from the commission, is inconsistent with the Coastal Act, and is causing continuing resource damage. Further, Section 30803 of the Coastal Act gives the Commission the ability to maintain an action for declaratory and equitable relief to restrain any Coastal Act violation. Finally, the Executive Director is authorized, after providing notice and the opportunity for a hearing as provided for in Section 30812 of the Coastal Act, to record a Notice of Violation (NOVA) against your property.

In addition, Section 30820(a) provides for civil liability to be imposed on any person who performs or undertakes development without a coastal development permit and/or that is inconsistent with any coastal development permit previously issued by the Commission in an amount that shall not exceed \$30,000 and shall not be less than \$500. Section 30820(b) provides

that additional civil liability may be imposed on any person who performs or undertakes development without a coastal development permit and/or that is inconsistent with any coastal development permit previously issued by the Commission when the person intentionally and knowingly performs or undertakes such development, in an amount not less than \$1,000 and not more than \$15,000 per day for each day in which the violation persists. Section 30822 states that where a person has intentionally and knowingly violated any provision of this division, a court may also award exemplary damages.

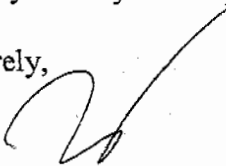
3. Resolution of Alleged Coastal Act Violation. To begin the resolution process regarding the alleged Coastal Act violation on your property, you should first **CEASE AT ONCE** all unpermitted development on the subject property, including but not limited to development of a road and removal of major vegetation. Please contact the Coastal Commission office by Friday, January 27, 2006 to acknowledge receipt of this letter, and to discuss resolution of the Coastal Act violations. You may call Jo Ginsberg at (415) 904-5269, or Nancy Cave at (415) 904-5290.

Please also submit by February 2, 2006 an application to San Mateo County seeking after-the-fact authorization for the existing, unpermitted development on the subject property. I understand that you have already spoken to Dave Holbrook, San Mateo County Senior Planner, concerning submittal of a coastal permit application, and that he has given you an application form to fill out and return. Mr. Holbrook can be reached at (650) 363-1837.

Failure to meet these deadlines may result in more formal action by the Commission to resolve the Coastal Act violation. The formal action could include a civil lawsuit, filing of a Notice of Violation, the issuance of an Executive Director cease and desist order or Commission cease and desist order, and/or imposition of monetary penalties, pursuant to Coastal Act sections 30809, 30810, 30811, 30812, 30820, 30821.6, and 30822, as noted above.

Thank you for your cooperation.

Sincerely,



JO GINSBERG
Enforcement Analyst

cc: Chris Kern, CCC, North Central Coast District Manager
Nancy Cave, CCC, Enforcement, Northern California Supervisor
Gary Warren, San Mateo County Code Compliance Officer
Dave Holbrook, San Mateo County Senior Planner
Lisa Grote, San Mateo County, Community Development Director

Robert A. Smith
10241 Redwood Drive
Felton, CA 95018

February 14, 2006

Mr. David Holbrook, ACP
Senior Planner
455 County Center, 2F
Redwood City, CA 94063

Dear Sir:

Re: 29 Frenchman's Creek Road: APN 048-310-190

Can you show me the Statute of Law you feel I am in violation of, and also are you sure you have the authority to personally rezone my property at 29 Frenchman's Creek Road, Half Moon Bay?

I also met with Michael G. Kirchner #585, State of California Department of Fish and Game. He has no problem with what's going on.

If you are sure you have this authority, show it to me now in writing, otherwise we will continue with our work, or you and or the County of San Mateo can pay us \$6,000 a day for delaying us and refusing us our Constitutional right to pursue happiness.

As you know, I have gone to the San Mateo County and acquired permits from your office, and was also shown in writing where we are exempt from everything we are doing under AgZoning.

Sincerely,

Robert A. Smith

Robert A. Smith

CALL 831-247-1166

LOU SCHIAVON 831-688-5061

RECEIVED

FEB 14 2006

San Mateo County
Planning Division

Exhibit 5
CCC-07-CD-01 & CCC-07-RO-01
(Schiavon/Smith)

CALIFORNIA COASTAL COMMISSION

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



April 14, 2006

Lisa Grote
Community Development Director
San Mateo County Environmental Services Agency
455 County Center
Redwood City, CA 94063

RE: **Coastal Act Violation No. V-2-06-001** (Schiavon & Associates), including but not limited to the unpermitted grading, rocking, and/or blacktopping of a road on the subject property; unpermitted placement on site of an RV/mobile home serving as a temporary residence; unpermitted placement of equipment, building supplies, and debris; and the removal of major vegetation from the vicinity of the pond/reservoir on the subject property, which is located at near Frenchman's Creek Road in San Mateo County, APN 048-310-190

Dear Ms. Grote:

As you know, pursuant to the telephone conversation we had on January 20, 2006, Coastal Commission staff began taking enforcement action concerning Coastal Act violations on the above-referenced property. We sent the property owner a Notice of Violation letter dated January 23, 2006, spoke to Mr. Schiavon several times by telephone, and, most recently, conducted a site visit, after getting permission from Mr. Schiavon.

On March 27, 2006, several Commission staff persons met on site with Gary Warren of your staff, and Dave Johnston, a field biologist with the Department of Fish and Game. During our site visit, we noted that a large amount of grading had taken place, major vegetation had been removed, and a large amount of equipment, supplies, and debris had been deposited on the site. In addition, a number of survey stakes and story poles had been erected. Furthermore, there were two RVs/mobile homes, one of which is apparently being inhabited by Mr. Robert Smith, who is acting as an agent for Mr. Schiavon, and who apparently is the party performing the unpermitted development. We also noted that significant additional unpermitted development has taken place on the site since the County posted its initial Stop Work Order and sent its Notice of Violation, which was followed up by the Commission's Notice of Violation letter advising

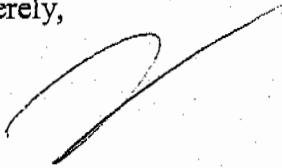
Exhibit 6
CCC-07-CD-01 & CCC-07-RO-01
(Schiavon/Smith)

Mr. Schiavon to cease at once all unpermitted development. It appears that the Coastal Act violations are continuing unabated.

Gary Warren indicated to us verbally that at a County Task Force meeting it was conveyed to him that County staff believes the fastest way to achieve resolution of the continuing Coastal Act violations is for the Coastal Commission to move forward with a cease and desist and/or restoration order. Please send us a letter reiterating the County's desire to have the Commission proceed with a cease and desist and/or restoration order, pursuant to Coastal Act Section 30810(1), which states that the Commission may assist with, or assume primary responsibility for, issuing a cease and desist order, should the local government so request.

Once again, we appreciate the opportunity to work with the County to seek speedy resolution of the Coastal Act violations. If you or your staff have any additional questions or concerns, please contact Jo Ginsberg at (415) 904-5269 or Nancy Cave at (415) 904-5290. Thank you.

Sincerely,



JO GINSBERG
Enforcement Analyst

cc: Chris Kern, CCC, North Central Coast District Manager
Nancy Cave, CCC, Enforcement, Northern California Supervisor
Gary Warren, San Mateo County Code Compliance Officer
Dave Holbrook, San Mateo County Senior Planner

CALIFORNIA COASTAL COMMISSION

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

**SENT BY REGULAR AND CERTIFIED MAIL****No. 7003 1680 0004 0129 6012**

April 21, 2006

Louis Schiavon
Schiavon & Associates
114 Vista Grande Drive
Aptos, CA 95003-5526

RE: **Coastal Act Violation No. V-2-06-001** (Schiavon & Associates), including but not limited to the unpermitted grading, rocking, and/or blacktopping of a road on the subject property; unpermitted placement of an RV/mobile home serving as a residence; unpermitted placement of equipment, building supplies, and debris; and the removal of major vegetation from the vicinity of the pond/reservoir on the subject property, which is located near Frenchman's Creek Road in San Mateo County, APN 048-310-190

Dear Mr. Schiavon:

As you know, Coastal Commission staff is investigating the above-referenced alleged Coastal Act and LCP violations on property you own. Commission staff visited the subject property on March 27, 2006, along with Gary Warren of San Mateo County Code Enforcement, and Dave Johnston, a field biologist from the California Department of Fish and Game. It is our conclusion that there is unpermitted development on the property, constituting Coastal Act and Local Coastal Program ("LCP") violations. In addition, we have confirmed that additional unpermitted development has taken place since the County issued a Stop Work Order and sent you a Notice of Code Violation on January 5, 2006.

1. **Unpermitted Development.** To reiterate what we discussed in our previous letter dated January 23, 2006, the grading, rocking, and/or blacktopping of a road, and the removal of major vegetation, are activities that constitute development, as defined in Section 30106 of the Coastal Act, which states:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act...change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or

Exhibit 7
CCC-07-CD-01 & CCC-07-RO-01
(Schiavon/Smith)

alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973... (Emphasis added)

Thus, the grading, rocking, and/or blacktopping of a road ("placement of any solid material," and "grading") and the removal of willow trees and other vegetation ("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") constitutes development. In addition, since we sent our last letter, we have confirmed that two RVs/mobile homes have been placed on the subject property, and that at least one of them is serving as a residence, without a coastal permit. Furthermore, there is a great deal of equipment, supplies, building materials, and debris that has been placed in various locations on the property. The placement of RVs/mobile homes, equipment, and debris also constitutes development ("placement of any solid material or structures") and, as it is unpermitted, constitutes a Coastal Act and LCP violation.

Section 30600(a) of the Act requires that any person wishing to perform or undertake development in the coastal zone must first obtain a coastal development permit, in addition to any other permit required by law. Any development activity conducted in the coastal zone without a valid coastal development permit constitutes a violation of the Coastal Act. Thus, the unpermitted development described above constitutes a Coastal Act and County LCP violation.

During our site visit, we noted the following: There was grading and removal of vegetation on either side of the newly constructed road up the hillside; there is a cleared hillside at the end of the road where it appears that vegetation was removed and burned in place; there is a large amount of debris and equipment on site, including industrial lighting equipment, a bulldozer or front-loader, two boats, a wooden table, four wooden chairs, rusted metal drums, at least two RVs, building supplies, construction equipment, survey stakes, etc. A water well, with a rusty and disconnected power pole, was situated near the top of the property. A gate had been dumped near where the dirt road connected with a neighboring property. A portion of the graded and graveled road crosses a pond/reservoir, constituting non-allowable fill in a wetland. Chris Kern of our staff, who had visited the site once before, confirmed that during his first site visit, he was unable to cross the pond and continue up the hill, but this time, since the road had been constructed through the pond, we were able to cross the pond and continue up the hill.

In conclusion, there appears to be an extensive amount of road grading, including grading on a very steep slope; removal of major vegetation; placement of two RVs/mobile homes and various equipment and debris; and fill in a wetland, all of which constitute unpermitted development, and, thus, are Coastal Act and LCP violations subject to penalties. It appears that despite repeated letters and phone calls by County and Coastal Commission staff, additional unpermitted development is continuing to take place, constituting a knowing and intentional violation, which is subject to additional penalties, as described further below.

2. Enforcement Remedies. As we discussed in our previous letter dated January 23, 2006, the Coastal Act contains many enforcement remedies for Coastal Act violations. Coastal Act section 30809 states that if the Executive Director determines that any person has undertaken, or is threatening to undertake, any activity that may require a permit from the Coastal Commission without first securing a permit, the Executive Director may issue an order directing that person to cease and desist. Coastal Act section 30810 states that the Coastal Commission may also issue a cease and desist order for such violations. A cease and desist order may be subject to terms and conditions that are necessary to avoid irreparable injury to the area or to ensure compliance with the Coastal Act. A violation of a cease and desist order can result in civil fines of up to \$6,000 for each day in which the violation persists. Moreover, Section 30811 authorizes the Commission to order restoration of a site where development occurred without a coastal development permit from the commission, is inconsistent with the Coastal Act, and is causing continuing resource damage. Further, Section 30803 of the Coastal Act gives the Commission the ability to maintain an action for declaratory and equitable relief to restrain any Coastal Act violation. Finally, the Executive Director is authorized, after providing notice and the opportunity for a hearing as provided for in Section 30812 of the Coastal Act, to record a Notice of Violation (NOVA) against your property.

In addition, Section 30820(a) provides for civil liability to be imposed on any person who performs or undertakes development without a coastal development permit and/or that is inconsistent with any coastal development permit previously issued by the Commission in an amount that shall not exceed \$30,000 and shall not be less than \$500 for each violation. Section 30820(b) provides that additional civil liability may be imposed on any person who performs or undertakes development without a coastal development permit and/or that is inconsistent with any coastal development permit previously issued by the Commission when the person intentionally and knowingly performs or undertakes such development, in an amount not less than \$1,000 and not more than \$15,000 per day for each day in which the violation persists. Section 30822 states that where a person has intentionally and knowingly violated any provision of this division, a court may also award exemplary damages.

3. Resolution of Coastal Act and LCP Violations. You have informed us that the person responsible for the unpermitted development is Robert Smith, who is not an owner of the property. You have also informed us that Mr. Smith has told you on more than one occasion that he has ceased all unpermitted development, although this does not appear to be true. Both Chris Kern of our staff and Gary Warren of County Code Enforcement staff have visited the site previously, and can attest to the fact that additional development has continued to take place. You also informed me that Mr. Holbrook of San Mateo County told either you or Mr. Smith that it was necessary to conduct a "survey" of the road and/or property, and to proceed with such a survey. Mr. Holbrook has informed me that at no time did he advise either you or Mr. Smith to proceed with a "survey" of the road or property before obtaining a coastal development permit. Mr. Holbrook has also informed me that no application for a coastal development permit has been submitted to the County. It appears that you have not attempted to begin resolution of the Coastal Act and LCP violations on your property, which have continued unabated. Further, it

appears that some if not all of the unpermitted development that has taken place is inconsistent with the County's LCP and will need to be removed and the site restored.

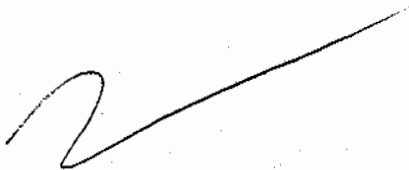
You have questioned the Coastal Commission's authority to enforce the requirements of the County's LCP and the Coastal Act on your property, since you are in the coastal permit jurisdiction of San Mateo County. Pursuant to Coastal Act Section 30810(1), the Commission may assist with, or assume primary responsibility for, issuing a cease and desist order to enforce compliance with a certified LCP and with the Coastal Act, should the local government so request. In this case, San Mateo County has requested that the Commission issue a cease and desist order to ensure compliance with the Coastal Act and the County's certified LCP.

We suggest that it would be helpful to meet in person to discuss resolution of the alleged LCP and Coastal Act violations. We invite you to come to our office in San Francisco to meet with Commission enforcement staff. Should this be inconvenient for you, we are willing to meet with you at our Santa Cruz office, which is located at 725 Front Street, Suite 300. Please contact me by May 8, 2006 to set up a meeting. I can be reached at (415) 904-5269. To effectuate speedy resolution of the Coastal Act and LCP violations, you should first **CEASE AT ONCE** all unpermitted development on the subject property, including but not limited to development of a road and removal of vegetation. Also, the RVs/mobile homes located on the property may not be inhabited, pursuant to the San Mateo County LCP.

Failure to meet these deadlines may result in more formal action by the Commission to resolve the Coastal Act and LCP violations. The formal action could include a civil lawsuit, filing of a Notice of Violation, the issuance of an Executive Director cease and desist order or Commission cease and desist order, and/or imposition of monetary penalties, pursuant to Coastal Act sections 30809, 30810, 30811, 30812, 30820, 30821.6, and 30822, as noted above.

Thank you for your cooperation.

Sincerely,



JO GINSBERG
Enforcement Analyst

cc: Chris Kern, CCC, North Central Coast District Manager
Nancy Cave, CCC, Enforcement, Northern California Supervisor
Gary Warren, San Mateo County Code Compliance Officer
Dave Holbrook, San Mateo County Senior Planner
Lisa Grote, San Mateo County, Community Development Director
Robert Smith

Exhibit 7
CCC-07-CD-01 & CCC-07-RO-01
(Schiavon/Smith)



May 17, 2006

Jo Ginsberg
Enforcement Analyst
California Coastal Commission
45 Fremont, Suite 2000
San Francisco, CA 94105-2219

**ENVIRONMENTAL
SERVICES
AGENCY**

Dear Ms. Ginsberg:

SUBJECT: Coastal Act Violation No. V-2-06-001 (Schiavon and Associates)
San Mateo County Violation VIO 2005-00229
APN 048-310-190; Site Address 29 Frenchman's Creek Road

On behalf of Lisa Grote, Community Development Director, I am requesting that the California Coastal Commission proceed with enforcement action to resolve the violations of the Coastal Act on the above property.

We appreciate the effort that the Commission will undertake in resolving the violations. I look forward to working with your staff to aid in correcting the violations created by Mr. Robert Smith and Mr. Schiavon.

Sincerely,

Gary F. Warren
Code Compliance Officer II

GFW:fc - GFWQ0524_WFE.DOC

cc: Lisa Grote, Community Development Director
Chris Kern, CCC, North Central Coast District Manager
Nancy Cave, CCC, Enforcement, Northern California Supervisor

Exhibit 8
CCC-07-CD-01 & CCC-07-RO-01
(Schiavon/Smith)

Page 1 of 1

PLANNING AND BUILDING

455 County Center, 2nd Floor • Redwood City, CA 94063 • Phone (650) 363-4161 • FAX (650) 363-4849

Agricultural
Commissioner/ Sealer of
Weights & Measures

Animal Control

Cooperative Extension

Fire Protection

LAFCo

Library

Parks & Recreation

Planning & Building

CALIFORNIA COASTAL COMMISSION

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

**SENT BY CERTIFIED AND REGULAR MAIL**

May 26, 2006

Schiavon & Associates
114 Vista Grande Drive
Aptos, CA 95003-5526
Certification No. 7003 1680 0004 0129 6029

Robert Smith
10241 Redwood Drive
Felton, CA 95018
Certification No. 7004 1160 0003 4567 7540

RE: **Alleged Coastal Act Violation No. V-2-06-001** (Schiavon & Associates), including but not limited to the unpermitted grading, rocking, and/or blacktopping of a road on the subject property; stockpiling of equipment and materials; and the removal of major vegetation from the vicinity of the pond/reservoir on the subject property, which is located near Frenchman's Creek Road in San Mateo County, APN 048-310-190

Dear Sirs:

As you know, Coastal Commission staff is investigating the above-referenced alleged Coastal Act and Local Coastal Program ("LCP") violations on property owned by Schiavon and Associates. Commission staff visited the subject property on March 27, 2006, along with Gary Warren of San Mateo County Code Enforcement, and Dave Johnston, a field biologist from the California Department of Fish and Game. As we noted in our last letter dated April 21, 2006, it is our conclusion that there is unpermitted development on the property, constituting Coastal Act and Local Coastal Program ("LCP") violations. After visiting the site, we confirmed that additional unpermitted development has taken place since the County issued a Stop Work Order and sent you a Notice of Code Violation on January 5, 2006. Furthermore, we have had more recent reports of additional unpermitted activities, including the addition of an RV or mobile home, in which someone is allegedly living, and the additional stockpiling of equipment and other material on the site. To resolve these violations, the site must be restored to its pre-violation condition.

Exhibit 9
CCC-07-CD-01 & CCC-07-RO-01
(Schiavon/Smith)

On May 22, 2006, Nancy Cave and I had a phone conversation with Mr. Schiavon, in which we discussed the need to resolve the outstanding Coastal Act and LCP violations and to cease additional unpermitted development. Recently, Mr. Smith left a voicemail message for me, and I tried several times to return his call. I was unable to leave a message, as his voicemail box was full.

1. **Unpermitted Development.** To reiterate what we discussed in our previous letters dated January 23, 2006 and April 21, 2006, as well as in our phone conversation on May 22, 2006, the grading, rocking, and/or blacktopping of a road, stockpiling of equipment and debris, and the removal of major vegetation, are activities that constitute development, as defined in Section 30106 of the Coastal Act, which states:

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

Thus, the grading, rocking, and/or blacktopping of a road ("placement of any solid material," and the removal of willow trees and other vegetation ("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") constitutes development. In addition, it has been reported to us that an RV or mobile home has again been placed on the subject property and is serving as a residence. Furthermore, there is a great deal of equipment, supplies, building materials, and other material that has been placed in various locations on the property. The placement of RVs/mobile homes, equipment, and stockpiling of material also constitutes development ("placement of any solid material or structures") and, as it is unpermitted, constitutes a Coastal Act and LCP violation. County Planning staff has also indicated that residential use of an RV or mobile home is not an allowable use on the subject property, constituting an LCP violation.

Section 30600(a) of the Act requires that any person wishing to perform or undertake development in the coastal zone must first obtain a coastal development permit, in addition to any other permit required by law. Any development activity conducted in the coastal zone without a valid coastal development permit constitutes a violation of the Coastal Act. Thus, the unpermitted development described above constitutes a Coastal Act and County LCP violation.

As we stated in our letter of April 21, 2006, during our site visit we noted the following: There was grading and removal of vegetation on either side of the newly constructed road up the hillside; there is a cleared hillside at the end of the road where it appears that vegetation was removed and burned in place; there is a large amount of material and equipment on site, including industrial lighting equipment, a bulldozer or front-loader, two boats, a wooden table, four wooden chairs, rusted metal drums, at least two RVs, building supplies, construction equipment, survey stakes, etc. A water well, with a rusty and disconnected power pole, was situated near the top of the property. A gate had been dumped near where the dirt road connected with a neighboring property. A portion of the graded and graveled road crosses a pond/reservoir, constituting non-allowable fill in a wetland. Chris Kern of our staff, who had visited the site once before, confirmed that during his first site visit, he was unable to cross the pond and continue up the hill, but this time, since the road had been constructed through the pond, we were able to cross the pond and continue up the hill.

In conclusion, there appears to be an extensive amount of road grading, including grading on a very steep slope; removal of major vegetation; placement of various equipment and material; and fill in a wetland, all of which constitute unpermitted development, and, thus, are Coastal Act and LCP violations subject to penalties. In addition, we have received several reports that an RV or mobile home had been moved onto the property, and was being used as a residence. Subsequent to our visit to the property on March 27, it was reported to us that at least one of the RVs/mobile homes was removed from the site. However, it was recently reported to us that another RV/mobile home/trailer was brought back on the site, and is being occupied for residential use. It appears that despite repeated letters and phone calls by County and Coastal Commission staff, additional unpermitted development continues to take place, constituting a knowing and intentional violation, which is subject to additional penalties, as described further below.

2. Enforcement Remedies. As we discussed in our previous letters dated January 23, 2006 and April 21, 2006, the Coastal Act contains many enforcement remedies for Coastal Act violations. Coastal Act section 30809 states that if the Executive Director determines that any person has undertaken, or is threatening to undertake, any activity that may require a permit from the Coastal Commission without first securing a permit, the Executive Director may issue an order directing that person to cease and desist. Coastal Act section 30810 states that the Coastal Commission may also issue a cease and desist order for such violations. A cease and desist order may be subject to terms and conditions that are necessary to avoid irreparable injury to the area or to ensure compliance with the Coastal Act. A violation of a cease and desist order can result in civil fines of up to \$6,000 for each day in which the violation persists. Moreover, Section 30811 authorizes the Commission to order restoration of a site where development occurred without a coastal development permit from the commission, is inconsistent with the Coastal Act, and is causing continuing resource damage. Further, Section 30803 of the Coastal Act gives the Commission the ability to maintain an action for declaratory and equitable relief to restrain any Coastal Act violation. Finally, the Executive Director is authorized, after providing notice and the opportunity for a hearing as provided for in Section 30812 of the Coastal Act, to record a Notice of Violation (NOVA) against your property.

In addition, Section 30820(a) provides for civil liability to be imposed on any person who performs or undertakes development without a coastal development permit and/or that is inconsistent with any coastal development permit previously issued by the Commission in an amount that shall not exceed \$30,000 and shall not be less than \$500 for each violation. Section 30820(b) provides that additional civil liability may be imposed on any person who performs or undertakes development without a coastal development permit and/or that is inconsistent with any coastal development permit previously issued by the Commission when the person intentionally and knowingly performs or undertakes such development, in an amount not less than \$1,000 and not more than \$15,000 per day for each day in which the violation persists. Section 30822 states that where a person has intentionally and knowingly violated any provision of this division, a court may also award exemplary damages.

3. Resolution of Coastal Act and LCP Violations. As we discussed during our telephone conversation of May 22, 2006, the best way to resolve the outstanding Coastal Act violations is for the property owners (Schiavon and Associates) to agree to the issuance of a Consent Agreement and Cease and Desist Order and/or Restoration Order, which would contain provisions directing the restoration of the site to its pre-violation condition. As part of the Agreement, we would need to negotiate a penalty amount for the Coastal Act violations. Should you decline to agree to the issuance of a Consent Agreement and Cease and Desist and/or Restoration Order, staff will recommend that the Coastal Commission issue a contested Cease and Desist and/or Restoration Order, ordering the property owner to effectuate restoration of the site and restore it to its pre-violation condition. "Pre-violation condition" would require removal of all stockpiled materials and debris; removal of all unpermitted fill; revegetation of the pond and hillside areas where major vegetation was removed without a coastal permit; and removal of the existing unpermitted road up the hillside, with restoration and revegetation of the area, including implementation of erosion control measures.

Mr. Schiavon has informed us that the person responsible for the unpermitted development is Robert Smith, who is not an owner of the property. Mr. Schiavon has also informed us that Mr. Smith has stated on more than one occasion that he has ceased all unpermitted development, although this does not appear to be true. Both Chris Kern of our staff and Gary Warren of County Code Enforcement staff have visited the site previously, and can attest to the fact that additional development has continued to take place. Mr. Schiavon has also informed me that Mr. Holbrook of San Mateo County told either Mr. Schiavon or Mr. Smith that it was necessary to conduct a "survey" of the road and/or property, and to proceed with such a survey. Mr. Holbrook has informed me that at no time did he advise either Mr. Schiavon or Mr. Smith to proceed with a "survey" of the road or property before obtaining a coastal development permit. Mr. Holbrook has also informed me that no application for a coastal development permit has been submitted to the County.

Should you wish to apply to the County for a Coastal Development Permit ("CDP") for new development on the property, after you have restored the property to pre-violation condition, you

Exhibit 9
CCC-07-CD-01 & CCC-07-RO-01
(Schiavon/Smith)

should discuss with County Planning staff what types of development are allowable under the current zoning. Certain types of development that you have mentioned to me that you have considered, such as a bed and breakfast establishment, a hotel, or multiple residences, are not allowable under the current zoning for the site. Should you wish to propose development that is not allowable under the current zoning, you should discuss with County Planning staff how to begin the process of applying for an LCP Amendment, which would need to be approved first by the County of San Mateo, and then by the Coastal Commission. County staff can advise you whether the County would support such an LCP amendment request.

We do *not* recommend that you submit a CDP application to the County to request after-the-fact permit authorization for the existing unpermitted development, which constitutes a violation of the Coastal Act and the LCP. Much of the existing unpermitted development on the site, such as the construction of a road on a steep slope, the placement of fill in a wetland, and the removal of major vegetation on a slope and in the area of the pond, is development that is not consistent with the County's certified LCP, is unlikely to be approved by the County, and will therefore need to be removed and the site restored. In the unlikely event that the County approved a coastal permit for this development, such a permit would be appealable to the Coastal Commission, and is extremely unlikely to be approved by the Coastal Commission. Thus, we recommend that you agree to a Consent Agreement and Cease and Desist and/or Restoration Order by the Coastal Commission to resolve the outstanding violations. After you have done so, you are free to seek permit approval for allowable development on your land.

You have questioned the Coastal Commission's authority to enforce the requirements of the County's LCP and the Coastal Act on your property, since you are in the coastal permit jurisdiction of San Mateo County. Pursuant to Coastal Act Section 30810(1), the Commission may assist with, or assume primary responsibility for, issuing a cease and desist order to enforce compliance with a certified LCP and with the Coastal Act, should the local government so request. In this case, San Mateo County has requested by phone call and letter that the Commission issue a cease and desist order to ensure compliance with the Coastal Act and the County's certified LCP.

To effectuate speedy resolution of the Coastal Act and LCP violations, we once again request that you **CEASE AT ONCE** all unpermitted development on the subject property, including but not limited to development of a road and removal of vegetation, as well as placement of additional materials.

Please contact us by June 12, 2006, to indicate whether you are willing to agree to a Consent Agreement and Cease and Desist and/or Restoration Order that stipulates to the removal of unpermitted development and the restoration of the site. As noted above, we would need to negotiate a monetary penalty amount in settlement of non-compliance with the Coastal Act, pursuant to Coastal Act Sections 30820, 30821.6, and 30922.

SCHIAVON & ASSOCIATES
ROBERT SMITH
Page No. 6

If you have any questions, please feel free to contact me at (415) 904-5269. Thank you for your cooperation.

Sincerely,



JO GINSBERG
Enforcement Analyst

cc: Chris Kern, CCC, North Central Coast District Manager
Nancy Cave, CCC, Enforcement, Northern California Supervisor
Ruby Pap, CCC, Coastal Planner
Gary Warren, San Mateo County Code Compliance Officer
Dave Holbrook, San Mateo County Senior Planner
Lisa Grote, San Mateo County, Community Development Director

Jo Ginsberg

6/11/2006

California Coastal Commission

RECEIVED

JUN 12 2006

CALIFORNIA
COASTAL COMMISSION

Dear Ms. Ginsberg:

I know that I had to get a letter to you by tomorrow, and I had been working on that as I promised; At my age and typing ability, it is a laborious task to sort out my thoughts and put them on paper. However, I did do 5 pages but they require reffwriting because of typos and spelling errors, and is not completed.

The reason that I am sending this note to you in lieu of the letter is because it isn't finished, but I wanted you to know that your letter^s and pressures weren't lightly regarded by us.

As much as possible, I have tried to shield my wife and daughter and my long time friend Gerry Harrah from the pressures which I've suffered from your letter^s and threats. However, Two or three days after I received your letter^s I felt that I had to let Gerry know, so I sent him one. Also, since we live in the same home, My wife and daughter couldn't help but notice the stress I was under in trying to get a letter out to you.

So, it's no mere coincidence I'm sure, that 3 days after your letter (June 1st) my wife came down with shoulder and throat pains, to the point that we went to ^uor doctor (Dr. Engleman). He gave her some medication to determine what it was. The next day he sent us to a cardiologist (Dr. Sing^h) who performed an echoc~~ard~~ogram (sp). and said that she should be hospitalized. We went home and the next morning our neighbor Cheryl Ravago and Her husband Dr. Frank Ravago called an ambulance when my wifes pains persisted. She's still in the hospital now, recovering ^{from} ~~for~~ the surgical procedure

Exhibit 10
CCC-07-CD-01 & CCC-07-RO-01
(Schiavon/Smith)

and stent which they placed in her artery.

IN the meantime my daughter Renee came down with chest pains, and had to go to Dr. Potkin in Watsonville for an echocardiogram, and may need a pacemaker (We'll know thursday) because her pulse rate is fluctuating.

Also, while she was at Dr. Potkin waiting for her Echocardiogram, Gerry Harrah's daughter brought Gerry in to Dr. Potkin for an "X", because he was having chest pains. We don't know the results of his tests yet.

Anyway, as important as it is for me to get a letter out to you A.S.A.P. my priorities are the health and safety of my family and partner. I can only do the best that I can to satisfy your concerns.

It is now 6:35; p.m., and I'm long overdue for returning to the Dominican hospital and my wife.

I'm truly sorry that this situation keeps escalating, and We do want to continue to work with any reasonable demands and concerns that you and the Coastal commission have, even though we'll never understand why you're so adamantly trying to deny us the use and access to our own property. Gerry & I spent the better part of WW11 on an ammunition ship astride of 5000 tons of bombs risking our lives for what we thought was to protect a country which cared deeply about individual Freedom, Liberty & justice for all. The heavy handed powers of the Coastal commission against it's citizens isn't exactly what we had in mind.

sincerely,

Louis Schiavon
Louis Schiavon

Exhibit 10
CCC-07-CD-01 & CCC-07-RO-01
(Schiavon/Smith)

Page 2 of 2

P.S. I've not been able to contact Bob Smith since I gave him \$500 (6/2)

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

March 1, 2007

Schiavon & Associates
Louis Schiavon
114 Vista Grande Drive
Aptos, CA 95003-5526
(7005 0390 0002 6832 0470)

Robert Smith
10241 Redwood Drive
Felton, CA 95018
(7005 0390 0002 6832 0487)

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

Violation No.: V-2-06-001

Subject Property: A 52.83 acre property off Frenchman's Creek Road in San Mateo County, APN 048-310-190

Violation Description: Unpermitted development, including 1) grading; 2) rocking, and/or asphaltting of a road; 3) placement of fill in a pond/reservoir; 3) removal of major vegetation including willows; 4) placement of structures and construction materials, including fencing, storage of heavy equipment (excavator, bulldozer, cultivators, and compactor), trailers, boats, doors, door jambs, windows, window frames, and storage containers.

Dear Mr. Schiavon and Mr. Smith:

The purpose of this letter is to notify you of my intent, as the Executive Director of the California Coastal Commission ("Commission"), to commence proceedings for issuance of a Cease and Desist Order and Restoration Order to require you to remove unpermitted development from property located on a 52.83 acre parcel off Frenchman's Creek Road in San Mateo County, identified as APN 048-310-190 (hereinafter, "subject property"), restore the subject property to its pre-violation condition using restorative grading and planting of native vegetation, and to cease and desist from conducting any further unpermitted development and/or maintaining existing unpermitted development on the subject property. In addition, this letter is to notify you of my intent to record a Notice of Violation of the California Coastal Act against the subject property.

The unpermitted development consists of: 1) extensive grading, including grading through potential wetlands and through steeply sloping terrain; 2) creation of a road, and rocking, and/or

Exhibit 11
CCC-07-CD-01 & CCC-07-RO-01
(Schiavon/Smith)

asphalting of the road on the subject property; 3) placing fill in a pond/reservoir; 3) removing major vegetation including willows; 4) placing structures on the property including, but not limited to, fencing, storage of heavy equipment (excavator, bulldozer, cultivators, and compactor), trailers, and boats; and 5) stockpiling construction materials such as sinks, doors, door jambs, windows, window frames, and storage containers.

The unpermitted development is occurring on property located off Frenchman's Creek Road in unincorporated San Mateo County north of the City of Half Moon Bay. San Mateo County has a certified Local Coastal Plan ("LCP") for this portion of the county. Once the Commission has certified a LCP, the County obtains jurisdiction for issuing Coastal Development Permits ("CDP") under the Coastal Act, and is able to take actions to obtain compliance with the LCP. However, pursuant to Section 30810(a)(1) of the Coastal Act, the County can request the Commission to assist with, or assume primary responsibility for, enforcing the LCP by means of issuing a cease and desist order. Pursuant to requests from San Mateo County, I intend to commence proceedings intended to result in the Commission issuing orders to enforce the San Mateo County LCP and the California Coastal Act.

The subject property is a 52.83-acre lot off of Frenchman's Creek Road that is zoned for planned agricultural use and has, prior to the unpermitted development, been identified as pasture and dry farm land. Frenchman's creek parallels the road on the side opposite to the subject property. The subject property, identified by APN 048-310-190, is owned by Schiavon & Associates. Although not a legal owner, Robert Smith has been involved in undertaking and performing the unpermitted development and is also acting as a representative of Schiavon & Associates. Therefore, under the Coastal Act, Mr. Smith is also subject to these order proceedings.

History of Violation

On December 30, 2005, Commission staff received a report from the San Mateo County Sheriff's Department regarding the construction of an access road across the subject property. The deputy Sheriff additionally notified the San Mateo County Planning and Building Division of the violation. The deputy Sheriff visited the site and observed "a graded road" and a "filled ditch". On the site visit the Deputy Sheriff met with Mr. Smith. At this time, Mr. Smith presented the Sheriff with a permit to remove poison oak brush, but had no other development permits from the County or the Commission for the subject activity.

On January 3, 2006, San Mateo County Code Enforcement Officer Gary Warren conducted a site visit at which time he posted a Stop Work Order on the property fence. While at the subject property, Mr. Warren observed unpermitted activities including equipment on the property, a fence installed apparently delineating the extent of the property, and a farm road that had been rocked. In response to the discovery of unpermitted development, on January 5, 2006, the County issued a Notice of Code Violation addressed to both Mr. Schiavon and Mr. Smith. The Notice of Code Violation addressed both a violation of the San Mateo County Stormwater Management and Discharge Program, as well as violations of the San Mateo County LCP. The County Notice of Code Violation also indicated that failure to correct the violations would result in additional citations and fines.

In addition, on several occasions in January, 2006, neighbors of the subject property reported to Commission staff additional unpermitted activities, including removal of several willow trees from around a pond/reservoir that appears to be a wetland, filling of a portion of the wetland to create a road crossing, installation of a culvert for the road crossing the wetland, and removal of brush. Additionally, neighbors reported that the hillside was graded and the road at issue had a portion covered in gravel, and a portion covered with asphalt. This additional unpermitted development occurred despite the fact that the County had issued a Stop Work Order.

On January 23, 2006, the County requested that the Commission proceed with enforcement action concerning the subject property. That same day, Commission staff sent a letter to both of you regarding the alleged Coastal Act violations (V-2-06-001). The letter explained that grading, rocking, and/or blacktopping of a road, and the removal of vegetation, are activities that constitute development as defined in Section 30106 of the Coastal Act and Section 1.2 of the San Mateo County LCP, that a Coastal Development Permit must therefore be secured prior to conducting such development, and that no such permit had been obtained.

The Commission's letter also explained that any development activity conducted in the coastal zone without a valid CDP constitutes a violation of the Coastal Act and County's certified LCP. The cited unpermitted development therefore constitutes an ongoing violation of both the Coastal Act and the County LCP. The letter further explained the enforcement remedies available to the Commission to address unpermitted development, including issuing a cease and desist order pursuant to Coastal Act sections 30809 or 30810, issuing of a restoration order pursuant to 30811, filing suit for declaratory and/or equitable relief to restrain any Coastal Act violation pursuant to Coastal Act section 30803, and recording a Notice of Violation against the property pursuant to Coastal Act section 30812. The letter also advised you that Public Resources Code Section 30820(a)(1) provides for civil liability to be imposed on any person who performs or undertakes development without a CDP in an amount that shall not exceed \$30,000 and shall not be less than \$500 for each violation. In addition the letter notified you that Public Resources Code Section 30820(b) provides that additional civil liability may be imposed on any person who performs or undertakes development without a CDP when the person intentionally and knowingly performs or undertakes that development, in an amount not less than \$1,000 and not more than \$15,000 per day for each day in which each violation persists. The letter requested that you cease and desist from conducting all unpermitted development, and contact the Coastal Commission office to discuss resolution of the Coastal Act Violations.

On February 14, 2006, Mr. Smith sent a letter to the San Mateo County Planning Division inquiring into the County's authority to regulate the subject property and stated that the subject development is exempt under "AgZoning"¹. David Holbrook, Senior Planner with the San Mateo County Planning and Building Division, responded to Mr. Smith's letter by explaining that the property is within the Coastal Zone and subject to the County's Coastal Zoning Regulations. The letter further explained that the work undertaken was not exempt under the County LCP as Agriculturally-Related Development because the work does not fall within the type of work exempted pursuant to the County's Zoning Regulations Chapter 20B Section

¹ AgZoning is a term used by Mr. Smith in his letter of February 14, 2006. This term has no bearing on whether the unpermitted development is consistent with the LCP.

6328.5. Mr. Holbrook also explained that the trailer brought onto the property must be removed, since the Coastal Development Exemptions do not allow a temporary trailer for any purposes on the property.

On March 27, 2006, Commission staff, Dave Johnson, Department of Fish and Game staff, and Gary Warren, San Mateo County Code Enforcement staff, conducted a site visit of the subject property with the permission of Mr. Schiavon. The staff documented 1) grading on the subject property; 2) construction of a road up the sloped portion of the property; and 3) removal of vegetation on either side of the newly constructed road, which was evident by the freshly cut roots that were visible on the bank of the graded slope. It appears that the vegetation removed included common tule (*Scirpus acutus* var. *acutus*), rushes (*Juncus* spp.), and cattails (*Typha* spp.), which are all wetland plant species that typically suggest an area of very long duration, usually perennial, standing water. A portion of the newly constructed road was built through the wetland. This portion of the road was not in existence at the time of a site visit by Commission staff conducted on January 3, 2006. The road constructed through the wetland also involved filling of the southern portion of the wetland, and removing willow trees along the edge of the wetland. Also observed during the March 2006 site visit was a cleared hillside at the end of the road where it appears that vegetation was removed and burned in place. Additional unpermitted development on the subject property that was observed during this site visit included a large amount of debris, material and equipment on site, including industrial lighting equipment, a bulldozer, excavator, three cultivators, a compactor, two boats, a wooden table, four wooden chairs, rusted metal drums, at least two camping trailers, building supplies, construction equipment, survey stakes, doors, door jambs, windows, window frames, a ladder, and other material covered by a tarp. In addition, a water well, with a rusty and disconnected power pole, was situated near the top of the property, and a gate had been dismantled and dumped near where the dirt road connected with a neighboring property.

On April 21, 2006, Commission enforcement staff sent another notice of violation letter to Mr. Schiavon. The letter summarized the findings from the site visit of March 27, 2006, and again described the Coastal Act violations and explained enforcement remedies available to the Commission to address the unpermitted development, including fines and penalties applicable pursuant to Chapter 9 of the Coastal Act. Again, the notice requested that Mr. Schiavon immediately cease and desist from conducting all unpermitted development on the subject property. The letter requested Mr. Schiavon contact the Commission office by May 8, 2006, to set up a meeting to resolve the Coastal Act and LCP violations. Commission staff arranged to meet with Mr. Schiavon on May 19, 2006. Due to illness, the meeting was postponed, and instead a phone meeting occurred on May 22, 2006.

On May 26, 2006, Commission staff sent a third letter to both of you reiterating the issues discussed during the phone meeting, and attempted to amicably resolve the Coastal Act and LCP violations without having to conduct these order proceedings. The letter again explained the violations as listed above, the applicable law from the Coastal Act, and the enforcement remedies available, including fines and penalties applicable pursuant to Chapter 9 of the Coastal Act, all of which were explained in both the January 23, 2006 and April 21, 2006 letters. In addition, the letter explained the best way to resolve the outstanding Coastal Act violation was for the property owner to agree to the issuance of a Consent Cease and Desist Order and/or Consent

Restoration Order that would require, amongst other things, restoration of the site to its pre-violation condition. The letter also included the Commission staff's recommendation that you not submit a CDP application to request after-the-fact permit authorization for the existing unpermitted development, since most of the development appears to be inconsistent with the County's certified LCP and the Coastal Act. The letter once again requested that you immediately cease and desist from conducting all unpermitted development on the subject property. The letter requested a response from you by June 12, 2006, to indicate whether you would be willing to agree to a Consent Cease and Desist and/or Consent Restoration Order that stipulates to the removal of unpermitted development and the restoration of the site.

On June 12, 2006, Commission staff received a letter from Mr. Schiavon, which explained that he was preparing a response to the Commission, but due to extenuating circumstances,² Mr. Schiavon would not be able to meet the deadline indicated by the previous Commission staff letter. As of today's date (over six months later) Commission staff has not received any additional response from Mr. Schiavon. Mr. Schiavon also stated in his letter, and in a telephone conversation to Commission staff, that Mr. Smith would be removing all his personal property, which included the construction equipment, boats, rusted metal drums, RVs, building supplies, survey stakes, and other debris from the site. As of this date, it has been reported by members of the public that the camping trailers and boats have been removed, but the other materials remain on the property.

As discussed in all of our three previous letters to both of you, and as briefly discussed below, the unpermitted development is inconsistent with the Chapter 3 policies of the Coastal Act and the County's certified LCP. Even if the unpermitted development were consistent with the Chapter 3 policies of the Coastal Act, which it is not, such activities are clearly included in the definition of "development" (Section 30106 of the Coastal Act and Section 1.2 of the County LCP), and therefore require a coastal development permit. No such permits were obtained from either the County or the Commission. Because you have failed to remove the cited unpermitted development and restore the property to its pre-violation condition, and the unpermitted development remains on site and also has the potential to cause ongoing resource damages, I am commencing proceedings for issuance of a Cease and Desist Order and Restoration Order, as described below.

Cease and Desist Order

Neither the Coastal Commission nor San Mateo County has issued a coastal development permit to authorize any of the cited unpermitted development.

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

² The letter proceeded to allege that the Commission's "letters and threats" were resulting in the medical problems experienced by Mr. Schiavon's wife, daughter, and partner that ensued after receiving the letter from Commission staff on May 26, 2006. Letters from the Commission seeking compliance with applicable law are certainly not intended to create any personal hardship, and are merely an attempt to resolve outstanding violations in the most efficient way possible.

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

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

I am issuing this notice of intent to commence Cease and Desist Order proceedings 1) to require you to cease and desist from maintaining unpermitted development on the subject property or conducting any further unpermitted development including but not limited to grading, filling, removal of vegetation, or placement of any development on the subject property unless authorized through a Coastal Development Permit; and 2) to compel the removal of unpermitted development, which the Commission is specifically authorized to require, pursuant to Public Resources Code Section 30810(b).

Section 30600(a) of the Coastal Act, and LCP Section 1.1, require that, in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the coastal zone must obtain a coastal development permit. "Development" is defined by Section 30106 of the Coastal Act and 1.2 of the County LCP, both of which state:

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

Development requires a coastal development permit in accordance with Section 30600 of the Act, and similarly Section 1.1 of the LCP, 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."

The unpermitted activity clearly constitutes "development" within the meaning of the definition and therefore is subject to the permit requirement of section 30600(a). A coastal development permit was not issued to authorize the subject unpermitted development.

As previously noted, on January 23, 2006, the County of San Mateo requested that the Commission take enforcement action on the County's behalf. Section 30810(a)(1) provides that a local government can request the Commission to assume primary responsibility for issuing a cease and desist order.

For these reasons, the criteria of Section 30810(a) of the Coastal Act have been met, and I am sending this letter to notify you that I will be initiating proceedings for the Commission to determine whether to issue a Cease and Desist Order.

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 removal of any unpermitted development or material or mitigating for the loss of resources caused by the unpermitted activity.

Restoration Order

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

"In addition to any other authority to order restoration, the commission [or] a local government that is implementing a certified local coastal program...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 [or] local government...the development is inconsistent with this division, and the development is causing continuing resource damage."

I have determined that the specified activities meet the criteria of Section 30811 of the Coastal Act, based on the following:

- 1) Development consisting of the grading, rocking, and asphaltting of a roadway, placement of fill in a pond/reservoir, removal of major vegetation including willows, and placement of structures including a bulldozer, excavator, three cultivators, a compactor, two boats, a wooden table, four wooden chairs, rusted metal drums, at least two camping trailers, building supplies, construction equipment, survey stakes, doors, door jambs, windows, window frames, a ladder, and other material covered by a tarp, has occurred without a CDP.
- 2) This development is inconsistent with the procedural requirements and resource protection policies of the Coastal Act (as well as those of the LCP), including, but not limited to:
 - a. The following resource protection policies of the Coastal Act:

Exhibit 11
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(Schiavon/Smith)

- i. Section 30230 (requiring maintenance of Marine Resources)
 - ii. Section 30231 (requiring protection of water quality and biological productivity of coastal waters)
 - iii. Section 30233 (limiting fill of wetlands- see also Section 30108.2 defining "fill" and 30121 defining "wetland")
 - iv. Section 30240 (protecting environmentally sensitive habitat areas)
 - v. Section 30253 (requiring protections against development causing erosion)
- b. The resource protection policies of the County LCP including, but not limited to, the following:
- i. Section 5.5 (limiting uses on Prime Agricultural Lands designated as agriculture)
 - ii. Section 5.6 (limiting uses on lands suitable for agriculture designated as agriculture)
 - iii. Section 7.3 (protecting sensitive habitat)
 - iv. Section 8.5 (protecting visual resources)
 - v. Section 9.18 (requiring protection against development on steep slopes)
- 3) The unpermitted development is causing continuing resource damage, as defined by Section 13190 of the Commission's regulations. The unpermitted development has impacted the resources listed in the previous paragraph (item number two). Such impacts meet the definition of damage provided in Section 13190(b): "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 impacts from the unpermitted development continue to exist at the subject property; therefore, the damage to resources protected by the Coastal Act and the LCP is continuing.

For the reasons stated above, I have decided to commence proceedings for a Restoration Order before the Commission in order to compel the restoration of the subject property through removal of unpermitted development, restorative grading, and the planting of native vegetation to assist in achieving successful restoration of the subject property.

The procedures for the issuance of Restoration Orders are described in Sections 13190 through 13197 of the Commission's 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 Restoration Order that the Commission may issue 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.

Response Procedure

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 (SOD) form. **The SOD form, including identification of issues and materials for Commission consideration, and documents and issues that you would like the Commission to consider, must be returned to the Commission's San Francisco office, directed to the attention of Aaron McLendon, using the address provided on the letterhead, no later than March 21, 2007.**

Civil Fines

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

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.

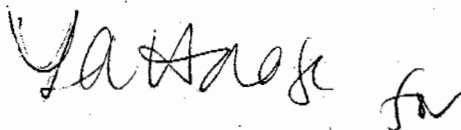
I am issuing this Notice of Intent to record a Notice of Violation because, as discussed above, unpermitted development has occurred at the property, in violation of the Coastal Act. **If you object to the recordation of a Notice of Violation in this matter and wish to present evidence on the issue of whether a violation has occurred, you must respond in writing, to the attention of Aaron McLendon, using the address provided on the letterhead, within twenty days of the postmarked mailing of this notice.** If you fail to object within that twenty-day period, we are authorized to record the Notice of Violation in the San Mateo County recorders' office pursuant to Section 30812 of the Coastal Act. If you object to this recordation

Exhibit 11
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(Schiavon/Smith)

and believe that there has not been unpermitted development at the property, please provide us with any information you believe supports your contention along with your objection. For your information, under the provision of the Coastal Act, any such recordation is to be removed after the final resolution of the violations, and you will be provided with a "clearance letter" confirming such action.

The Commission staff intends to schedule the hearings for the Cease and Desist Order and Restoration Order (and for the proposed recordation of a Notice of Violation, should you additionally request in writing a hearing on this issue) during the Commission meeting that is scheduled for April 10-13, 2007, in Santa Barbara. However, we would like to work with you to resolve these issues amicably. 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 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 Aaron McLendon at (415) 904-5220 or send correspondence to his attention at the address listed on the letterhead when you receive this letter to discuss options to resolve this case.

Sincerely,



Peter Douglas
Executive Director

cc: Lisa Haage, Chief of Enforcement
Charles Lester, Senior Deputy Director
Rebecca Roth, North Central Coast District Manager
Nancy Cave, Northern California Enforcement Supervisor
Alex Helperin, Staff Counsel
Aaron McLendon, Statewide Enforcement Analyst
Jo Ginsberg, North Central Coast District Enforcement Officer
Lisa Grote, County Community Development Director
Gary Warren, County Enforcement Officer

Encl. Statement of Defense Form for Cease and Desist Order and Restoration Order

Exhibit 11
CCC-07-CD-01 & CCC-07-RO-01
(Schiavon/Smith)

RECORDING REQUESTED BY:
California Coastal Commission

WHEN RECORDED MAIL TO:

California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105
Attention: Aaron McLendon

ORIGINAL

2007-057139

11:18am 04/13/07 VN Fee: NO FEE

Count of pages 3

Recorded in Official Records

County of San Mateo

Warren Slocum

Assessor-County Clerk-Recorder



* 2 0 0 7 0 0 5 7 1 3 9 A R *

[Exempt from recording fee pursuant to Gov. Code § 27383]

3P

DOCUMENT TITLE:

NOTICE OF VIOLATION OF THE COASTAL ACT

Re: Assessor's Parcel No. 048-310-190

Property Owner: Schiavon & Associates

Exhibit 12
CCC-07-CD-01 & CCC-07-RO-01
(Schiavon/Smith)

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

CALIFORNIA COASTAL COMMISSION
Attention: Aaron McLendon
45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219

STATE OF CALIFORNIA OFFICIAL BUSINESS
Document entitled to free recordation
Pursuant to Government Code §27383

NOTICE OF VIOLATION OF THE COASTAL ACT
(Public Resources Code Section §30812)

On behalf of Peter Douglas, I, Lisa Haage declare:

1. Peter Douglas is the Executive Director of the California Coastal Commission. Section 30812 of the Coastal Act provides for the Executive Director to record Notices of Violation of the Coastal Act. Peter Douglas, Executive Director, has specifically delegated this authority to me to act on his behalf.
2. A violation of the California Coastal Act of 1976 (Public Resources Code §30000, et seq.) has occurred on a certain parcel situated in San Mateo County, California, more particularly described as follows:

A 52.83-acre undeveloped parcel located off of Frenchman's Creek Road in San Mateo County (Assessor's Parcel Number 048-310-190).

Owner of Record: Schiavon & Associates.

The violation consists of the undertaking of development activity without the authorization required by the California Coastal Act of 1976.

3. This property is located within the Coastal Zone as that term is defined in Coastal Act Section 30103.
4. The record owner of said real property is: Schiavon & Associates.
5. The violation of the Coastal Act (Violation File No. V-2-06-001) consists of the following unpermitted development: 1) grading, 2) rocking and/or asphaltting of a road, 3) placement of fill in a wetland, 4) removal of major vegetation, 5) placement of structures and construction equipment including fencing, heavy equipment (excavator, bulldozer, cultivators, and compactor), trailers, boats, doors, door jambs, windows, window frames, and storage containers. The requirements set forth in Section 30812 for notice and recordation of this

Exhibit 12
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(Schiavon/Smith)

Notice of Violation have been complied with. Recording this notice is authorized under Section 30812 of the California Public Resources Code.

7. The California Coastal Commission notified the record owner, Schiavon & Associates, of its intent to record a Notice of Violation in this matter in a letter dated March 1, 2007.
8. As of this date, the Commission has not received a written objection to the recordation of the Notice of Violation. Therefore the Executive Director of the Commission is recording the Notice of Violation as provided for under Section 30812 of the California Coastal Act.

Executed in San Francisco California, on 29 March 2007.

I declare under penalty of perjury that the foregoing is true and correct.

Lisa Haage

LISA HAAGE, Chief of Enforcement,
California Coastal Commission

STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

On 03/29/07 before me, Jeff G. Staben, Notary Public, personally appeared Lisa Haage, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

Jeff G. Staben

Notary Public in and for Said State and County

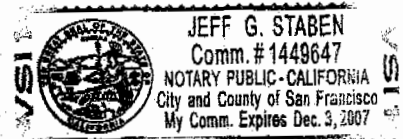



Exhibit 12
CCC-07-CD-01 & CCC-07-RO-01
(Schiavon/Smith)

A photograph showing a graded road on a hillside. The road is a light brown color, contrasting with the darker, more vegetated areas. Several orange survey stakes are driven into the ground along the right side of the road. A red text overlay in the upper right corner reads "Graded road up hillside, below wetlands area 1/3/06".

Graded road up
hillside, below
wetlands area 1/3/06

Exhibit 13
CCC-07-CD-01 & CCC-07-RO-01
(Schiavon/Smith)



Exhibit 14
CCC-07-CD-01 & CCC-07-RO-01
(Schiavon/Smith)



Exhibit 15
CCC-07-CD-01 & CCC-07-RO-01
(Schiavon/Smith)



Exhibit 16
CCC-07-CD-01 & CCC-07-RO-01
(Schiavon/Smith)

Wetlands Vegetation Removed

**Wetlands
Fill**

3 27 08