

CALIFORNIA COASTAL COMMISSION

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Item W 12

Staff: Aaron McLendon-SF
Staff Report: May 22, 2008
Hearing Date: June 11, 2008

STAFF RECOMMENDATION AND FINDINGS FOR CONSENT CEASE AND DESIST ORDER

CEASE AND DESIST ORDER: CCC-08-CD-03

RELATED VIOLATION FILE: V-4-07-032

PROPERTY LOCATION AND DESCRIPTION: Sandy-beach area along Escondido Beach located seaward of and at 27930 Pacific Coast Highway, Malibu, Los Angeles County, Assessor's Parcel No. 4460-032-019

PROPERTY OWNER: Five S Properties, LTD

VIOLATION DESCRIPTION: Unpermitted beach grading, removal of sand from the intertidal area, and construction of sand berms along Escondido Beach

PERSONS SUBJECT TO THIS CONSENT ORDER: Five S Properties, LTD

SUBSTANTIVE FILE DOCUMENTS:

1. City of Malibu certified Local Coastal Program
2. Exhibits #1 through #9

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

Staff recommends that the Commission issue the Consent Cease and Desist Order attached as Exhibit #9 (hereinafter "Consent Order") to require Five S Properties, LTD (hereinafter referred to as "Respondent") to cease and desist from engaging in any further development at property located seaward of and at 27930 Pacific Coast Highway, Malibu, Los Angeles County, Assessor's Parcel No. 4460-032-019 ("subject property") (Exhibit #1), including, but not limited to: grading, construction of sand berms, and removal and movement of sand from intertidal

areas, unless authorized pursuant to the Coastal Act and, if applicable, the City of Malibu certified Local Coastal Program (“Malibu LCP”). Commission staff has worked closely with Respondent to reach an agreement on the following Consent Order to resolve these issues amicably. Respondent, through the Consent Order, has agreed to resolve all Coastal Act violation matters addressed herein, including resolving Coastal Act claims under Section 30805 and 30822 of the Coastal Act.

Unpermitted Development

The unpermitted development that is the subject of this proceeding includes beach grading and construction of sand berms on Escondido Beach in the City of Malibu, specifically including: grading and removing sand from below and above the ambulatory mean high tide line (“MHTL”), construction of two approximately 6-foot high, 50-foot long sand berms, and grading flat other portions of the beach (See Exhibits #2-#4). The beach grading and berming activities occurred both above and below the ambulatory high water mark, during an active grunion run. Any grunion eggs that were laid and any surface or burrowing intertidal/subtidal species that were present in this area would have been destroyed by the grading and berming activities.

Jurisdiction

The local coastal program (“LCP”) for this area of the City of Malibu was adopted by the Commission on September 13, 2002. The unpermitted development occurred both on land owned by Respondent and on State tidelands that are located seaward of the subject property. The subject property is located within the City of Malibu LCP area; and State tidelands are located within the Commission’s retained jurisdiction. Pursuant to California Public Resources Code (“PRC”) Section 30519(b), the Commission retains permitting jurisdiction over areas that are below MHTL. In addition, Section 13.3.E of the Implementation Plan portion of the Malibu LCP, states:

“Where a proposed project straddles the boundaries of the... City’s Coastal Development Permit jurisdiction area and the Coastal Commission’s retained jurisdiction area, the applicant shall obtain separate Coastal Development Permits from each jurisdiction.”

Given that the development at issue here straddles the boundaries of the City’s and the Commissions permit jurisdiction area, this section required that the party performing the development obtain a coastal development permit (“CDP”) from both the City of Malibu and the Commission. No CDP was issued by either the City of Malibu or the Commission for the development described above, in violation of the Coastal Act and the Malibu LCP.

Commission’s Authority

PRC section 30810 states that the Commission may issue a Cease and Desist Order whenever it determines that someone has undertaken “any activity that (1) requires a permit from the commission without securing the permit.” PRC section 30810 also states that the Commission may issue a Cease and Desist Order “to enforce any requirements of a certified local coastal program., 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 [or] (2) [t]he commission requests and the local government... declines to act, or does not take action in a timely manner, regarding an alleged violation which could cause significant damage to coastal resources.”

In this case, the City of Malibu has requested that the Commission assume primary responsibility for issuing a cease and desist order to resolve the subject violation for the area that lies within the City’s permit jurisdiction area.

As described in more detail below, the unpermitted activity that has occurred on the subject property, including beach grading, removal of sand from the intertidal area of Escondido Beach, and construction of sand berms clearly meets the definition of “development” set forth in Section 30106 of the Coastal Act and Section 2.1 of the Malibu LCP. No CDP was issued by the Commission or the City of Malibu for the development; therefore, the development was undertaken in violation of PRC Section 30600 (generally requiring a CDP for all development in the Coastal Zone) and Section 13.3 of the Malibu LCP, as described more fully on page 7 of this report.

Resources of Sandy Beaches

While it is not an element that is required for issuance of a Cease and Desist Order, the unpermitted development has also adversely impacted resources protected by the Coastal Act, including marine resources, the biological productivity of Escondido Beach and the surrounding habitat, and public access along Escondido Beach. Grading sandy beaches, constructing sand berms along the beach, and removing sand from the intertidal area have a number of unfortunate negative ecological consequences, as discussed below, given the interdependence of the intertidal and shoreline species.

Intertidal sand is habitat to a variety of invertebrates such as amphipods, isopods, and polychaete worms. All these species are very significant food resources for shore birds. Within the swath of the equipment’s grading of the beach, most of these organisms must be presumed to have been killed, and any accumulated habitat that was present on the upper beach was destroyed.

Escondido Beach is also demonstrated grunion habitat. The unpermitted development occurred on July 4, 2007, during a specific period of grunion spawning.¹ Unfortunately most grunion eggs that were laid during this run, which occurred just prior to and at the same time as the unpermitted grading (July 1-4, 2007) were very likely destroyed by the activity as well. Even more significant is the fact that the habitat was altered in a way that would likely have reduced the breeding success of grunion that continued to spawn on this beach during the rest of the 2007 spawning season (the most immediate, subsequent runs as related to the date of the unpermitted development occurred on July 15-18 and July 30 – Aug. 2, 2007). The impacts caused by the unpermitted development are two-fold with respect to grunion spawning. First, the intertidal

¹ Grunion spawning occurs between the spring and summer months, starting as early as March and ending as late as September, with peak spawning periods between the months of April, May, and June. Grunion spawning occurs during full and new moon periods throughout this time when tides are at their most extreme, creating the high tides necessary for successful grunion spawning.

area was effectively lowered and made more uniform. Therefore, waves reached the beach nearest the land more frequently than before, which tends to wash out eggs prematurely. Second, the foot of the steep berm was located within the intertidal zone, so the berm acted as a seawall reflecting wave energy and further increasing the likelihood that grunion eggs were washed out of the sand prematurely.

Finally, public access along Escondido Beach was impacted by both the operation of the equipment and the physical location of the berms. The unpermitted activity lowered the beach profile in the particular area where the grading occurred, thereby allowing wave run-up to move to a much greater distance inland on the beach. During higher tides, wave run-up reached the base of the berm making it nearly impossible to pass without walking in the water or up and over the berm.

As noted above, a tentative settlement of this matter (Consent Order) has been reached, as more fully described herein and as reflected in Exhibit #9. Staff recommends that the Commission approve this Consent Order.

II. HEARING PROCEDURES

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

For a Cease and Desist 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 Title 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, either in the form recommended by the Executive Director, or as amended by the Commission. Passage of a motion, per Staff recommendation or as amended by the Commission, will result in issuance of the Cease and Desist Order.

III. STAFF RECOMMENDATIONS

Staff recommends that the Commission adopt the following motion:

Motion:

I move that the Commission issue Consent Cease and Desist Order No. CCC-08-CD-03 pursuant to the staff recommendation.

Staff Recommendation of Approval

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

Resolution to Issue Consent Cease and Desist Order:

The Commission hereby issues Consent Cease and Desist Order No. CCC-08-CD-03, as set forth below, and adopts the findings set forth below on grounds that development requiring a coastal development permit from the Commission has occurred without such a permit having been issued, and development requiring a coastal development permit from the City of Malibu has also occurred without such a permit having been issued, in violation of the requirements of the City of Malibu's certified local coastal program.

IV. FINDINGS FOR CONSENT CEASE AND DESIST ORDER NO. CCC-08-CD-03²

A. Description of Unpermitted Development

The unpermitted development that is the subject matter of this Consent Order, consists of beach grading and construction of sand berms on Escondido Beach in the City of Malibu, specifically including: grading and removing sand from below and above the MHTL, construction of two approximately 4 to 6-foot high, 50-foot long sand berms, and grading flat other portions of the beach (See). Commission staff witnessed the unpermitted development occurring at the subject property, and a selection of photographs taken by staff can be found at Exhibits #2-#4.

B. Background: Commission's Actions and History of Violation on the Subject Property

On July 4, 2007, Commission staff witnessed (and photographed) heavy equipment (a loader) entering coastal waters, scooping sand from the intertidal area, and then placing the sand on the upper beach area creating sand berms on the beach on and seaward of the subject property.

² These findings also hereby incorporate by reference Section I of the May 22, 2008 staff report ("Staff Recommendation and Findings for Consent Cease and Desist Order") in which these findings appear, which section is entitled "Summary of Staff Recommendation."

Commission staff spoke with the equipment operator, informed the operator that the activity was “development” under the Coastal Act, and requested the operator to stop the activity. The equipment operator agreed to stop work, however, the construction of the berms was nearly completed by the time Commission staff was able to stop the unpermitted development.

A Notice of Violation (“NOV”) letter was sent to Respondent on August 21, 2007 (Exhibit #5). The letter explained that the grading and berming activities were development under the Coastal Act and that such unpermitted activity had adverse impacts to numerous coastal resources. The NOV set a timeframe for Respondent to respond and requested technical evaluations that fully document the impacts of the grading and berming activities upon the coastal resources of Escondido Beach.

On November 16, 2007, Commission staff received a letter from Respondent’s representative that included a report by structural engineer, David C. Weiss (Exhibit #7). Mr. Weiss stated that, based on the assumption that no grading took place in the intertidal area and based on one observation approximately 3 months after the unpermitted activity occurred, “no damage was done to the beach environment.”

In a January 10, 2008 letter, Commission staff responded to the November 16, 2007 letter and Mr. Weiss’ report (Exhibit #8). In summary, the letter from Commission staff noted that, “the factual evidence does not support the findings made in Mr. Weiss’ Report.” In addition to discussing the coastal resources that were damaged or destroyed by the unpermitted activity, the letter informed Respondent, even assuming that no resource damage had occurred from the unpermitted development, which did not appear to be the case, “the grading of the beach, construction of a berm, and removal of beach wrack is development under the Coastal Act and was undertaken without benefit of a coastal development permit. Therefore a violation of the Coastal Act has occurred and fines and penalties lie under the terms of the Coastal Act.”

Following the January 10, 2008 letter, Commission staff and Respondent began ongoing negotiations to resolve the subject Coastal Act violations. Because Commission staff and Respondent were able to amicably resolve the violations through this Consent Order (attached as Exhibit #9), and because the Commission staff and Respondent wish to resolve this violation without requiring further resources by either party, and wish to work cooperatively in the future, Respondent has not submitted a “Statement of Defense” form as provided for in Section 13181 of Title 14 of the California Code of Regulations and has agreed not to contest the legal and factual bases and the terms and issuance of this Consent Order. Respondent agrees that all of the necessary elements for issuance of an order under Coastal Act Section 30810 have been met.

C. Basis for Issuance of Cease and Desist Orders

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

- a) *If the Commission, after public hearing, determines that any person...has undertaken, or is threatening to undertake, any activity that... requires a permit from the commission without first securing the permit... the Commission may*

issue an order directing that person...to cease and desist....The order may also be issued to enforce any requirements of a certified local coastal program..., or any requirements of this division which are subject to the jurisdiction of the certified program... 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.

(2) The commission requests and the local government... declines to act, or does not take action in a timely manner, regarding an alleged violation which could cause significant damage to coastal resources.

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

Development has Occurred without a Coastal Development Permit

Unpermitted development consisting of beach grading, construction of berms, and removal of sand from the intertidal area, has occurred on and seaward of the subject property without a CDP. The unpermitted development that is the subject of this Consent Order meets the definition of “development” contained in PRC Section 30106, as explained below.

PRC Section 30600(a) and Section 13.3 of the Malibu 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 PRC Section 30106 and Section 2.1 of the Malibu 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; 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...”

In this case, the grading of the beach, construction of sand berms, and the removal of sand from the intertidal area clearly constitute “development” within the meaning of the above-quoted definition and therefore are subject to the permit requirement of section 30600(a) and Section 13.3 of the Malibu LCP. The unpermitted activity included grading and removing materials, and the placement of solid materials.

A coastal development permit was not issued to authorize the subject unpermitted development, the unpermitted development is not exempt from the permit requirements, and therefore, the

requirements for issuance of a Cease and Desist Order under Section 30810 of the Coastal Act have been met.

Inconsistent with Resource Protection Policies of the Coastal Act

It should be noted that this is not an element which is required for issuance of a Cease and Desist Order. That is, the Commission does not have to find that the nature of the unpermitted development is inconsistent with the Chapter 3 policies of the Coastal Act or the resource protection policies of the Malibu LCP in order to issue Cease and Desist Orders under the Coastal Act (Section 30810). However, this section is provided as background information. The Commission finds that the unpermitted development is inconsistent with Chapter 3 policies of the Coastal Act regarding the protection of marine resources (including the loss of grunion and grunion eggs), the biological productivity of coastal waters, and public access along this coastal area.

Beach grading, removing sand from the intertidal area, and construction of sand berms impacts marine resources, biological productivity of coastal waters, and public access. The beaches of Malibu, including Escondido Beach, are known to be frequented by California grunion (*Leuresthes tenuis*), and the grunion spawning season typically runs between the months of March and September, with peak spawning periods occurring during April, May, and June.³ During the grunion spawning season, eggs and developing embryos are buried in the sand to incubate between the highest tides of each month, at the full and new moon. The eggs have no defense against any kind of interference. Thus the California Department of Fish and Game has designated the sandy beaches as critical habitat for grunion management. Unfortunately, the unpermitted development occurred during the July 1-4, 2007 grunion run. In addition, the construction of the berms, themselves, likely affected subsequent grunion runs (at a minimum the July 15-18 and July 30 – Aug. 2, 2007). Grunion spawn at the most landward point of the highest tides and the berm was placed in the exact location of the grunion spawning areas. Even if grunion were able to spawn in front of the berm, which would have been unlikely, any eggs laid would have been washed out due to the refraction of wave run-up against the berm.⁴

In addition, any intertidal/subtidal species that were in this area would also have been destroyed when they were removed from their habitat (when the loader scooped sand from the intertidal area) and placed in the dry environment on the upper beach area (when the sand was placed on the upper beach area for the construction of sand berms). These intertidal/subtidal species,

³ In a conversation between Commission staff and Dr. Karen Martin, expert in the study of California grunion and professor of biology at Pepperdine University, Dr. Martin confirmed that during the time of the unpermitted activity California grunion were likely spawning on and in the vicinity of Escondido Beach.

⁴ There have been numerous studies and published literature on the significance and unique characteristics of the California grunion, and associated impacts to grunion by human interference. See, for example: (1) Martin, K. L. M., C. R. Van Winkle, J. E. Drais, and H. Lakisic. 2004. "Beach spawning fishes, terrestrial eggs, and air breathing." *Physiological and Biochemical Zoology* 77: 750-759.; and Carpenter, K.A., J.R. Pommerening, T. Speer, J. Flannery, and K. Martin. 2003. "Does Beach Grooming Harm Grunion Eggs?" *Bulletin of the Southern California Academy of Sciences* 102(2):S29.

which are dependent on submerged habitat, play a key role in the food chain for other invertebrates, shorebirds, fish, and marine mammals.

Commission staff was on the beach at the time of the unpermitted activity and witnessed (and photographed), on one of the busiest beach days of the year, impacts to public access along Escondido Beach from both the berms and the operation of equipment on the beach. These photographs were taken upon arrival to the subject property, just prior to halting the activities. The loader was seen driving from the intertidal area across the wet sand and up to the upper beach area for the construction of sand berms, criss-crossing the exact location where the public would have walked along the beach. The construction activity, alone, limited and deterred public access along the beach area. In addition, the physical location of the sand berms, within the wave run-up area and encroaching on lands subject to the public trust, prevented the public from walking along the beach during certain times of the day, when tides were at an average or above average elevation.

Therefore, while not a necessary element for the issuance of a Cease and Desist Order, the Commission finds that the unpermitted development is not consistent with the resource protection policies of the Coastal Act and the Malibu LCP.

D. Consent Order is Consistent with Chapter 3 of the Coastal Act

The Consent Order, attached to this staff report (see Exhibit #9) and signed by Respondent, and the activities required therein, are consistent with the resource protection policies found in Chapter 3 of the Coastal Act, as also incorporated in the Malibu LCP. The Consent Order requires Respondent to cease and desist from maintaining unpermitted development and from conducting further unpermitted development on the subject property. In addition, the Consent Order specifically requires that Respondent cease and desist from beach grading, constructing sand berms, and removing or moving sand from the intertidal area, unless authorized pursuant to the Coastal Act and, as applicable, the Malibu LCP. Therefore, the Consent Order is consistent with the Chapter 3 policies of the Coastal Act and the Malibu LCP.

E. California Environmental Quality Act (CEQA)

The Commission finds that the issuance of Consent Cease and Desist Order CCC-08-CD-03 is exempt from the California Environmental Quality Act (CEQA), Cal. Pub. Res. Code §§ 21000 *et seq.*, for multiple reasons, including that it will not have any significant adverse effects on the environment, within the meaning of CEQA. The Consent Order is exempt from CEQA based on Sections 15061(b)(3) and is categorically exempt based on sections 15061(b)(2), 15307, 15308 and 15321 of the CEQA Guidelines (Title 14 of the California Code of Regulations).

F. Consent Agreement: Settlement

Chapter 9, Article 2 of the Coastal Act provides that violators may be civilly liable for a variety of penalties for violations of the Coastal Act, including daily penalties for knowingly and intentionally undertaking development in violation of the Coastal Act. Respondent has clearly stated their willingness to completely resolve the violation, including any penalties,

administratively and amicably, through a settlement process. To that end, Respondent has committed to comply with all terms and conditions of the Consent Order, and not to contest the issuance or implementation of this Consent Order. Additionally, in light of the intent of the parties to resolve these matters in a timely fashion and through settlement, Respondent has also agreed to pay a monetary penalty (see Section 10.0 of the attached Consent Order – Exhibit #9) to resolve the violations fully without litigation.

G. Findings of Fact

1. Respondent is the owner of property located at 27930 Pacific Coast Highway, Malibu, Los Angeles County, Assessor's Parcel No. 4460-032-019.
2. Respondent has undertaken development, as defined by Coastal Act Section 30106, at the subject property, including unpermitted beach grading, construction of sand berms, and removal of sand from the intertidal area without a CDP, in violation of the Coastal Act.
3. Respondent did not obtain a coastal development permit to undertake any of the above-described unpermitted development.
4. The unpermitted development has impacts that are not consistent with the policies in Chapter 3 of the Coastal Act.
5. Respondent has not submitted a "Statement of Defense" from as provided for in Section 13181 of Title 14 of the California Code of Regulations and has agreed not to contest the legal and factual bases and the terms and issuance of this Consent Order. Respondent also agrees that all of the necessary elements for issuance of a cease and desist order under Coastal Act Section 30810 have been met.

Exhibit List

Exhibit

Number Description

1. Site Map and Location
2. July 4, 2008 photograph of equipment scooping sand from the intertidal area
3. July 4, 2008 photograph of equipment taking intertidal sand to the upper beach area
4. July 4, 2008 photograph of unpermitted sand berm
5. August 21, 2007 Notice of Violation letter
6. September 7, 2007 letter from Alan Block to Commission staff
7. November 5, 2007 letter from Alan Block to Commission staff; and Site Observation Report by David C. Weiss
8. January 10, 2008 letter from Commission staff to Alan Block
9. Signed Consent Cease and Desist Order No. CCC-08-CD-03



Subject Property

Exhibit #1
CCC-08-CD-03
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Exhibit #2
CCC-08-CD-03

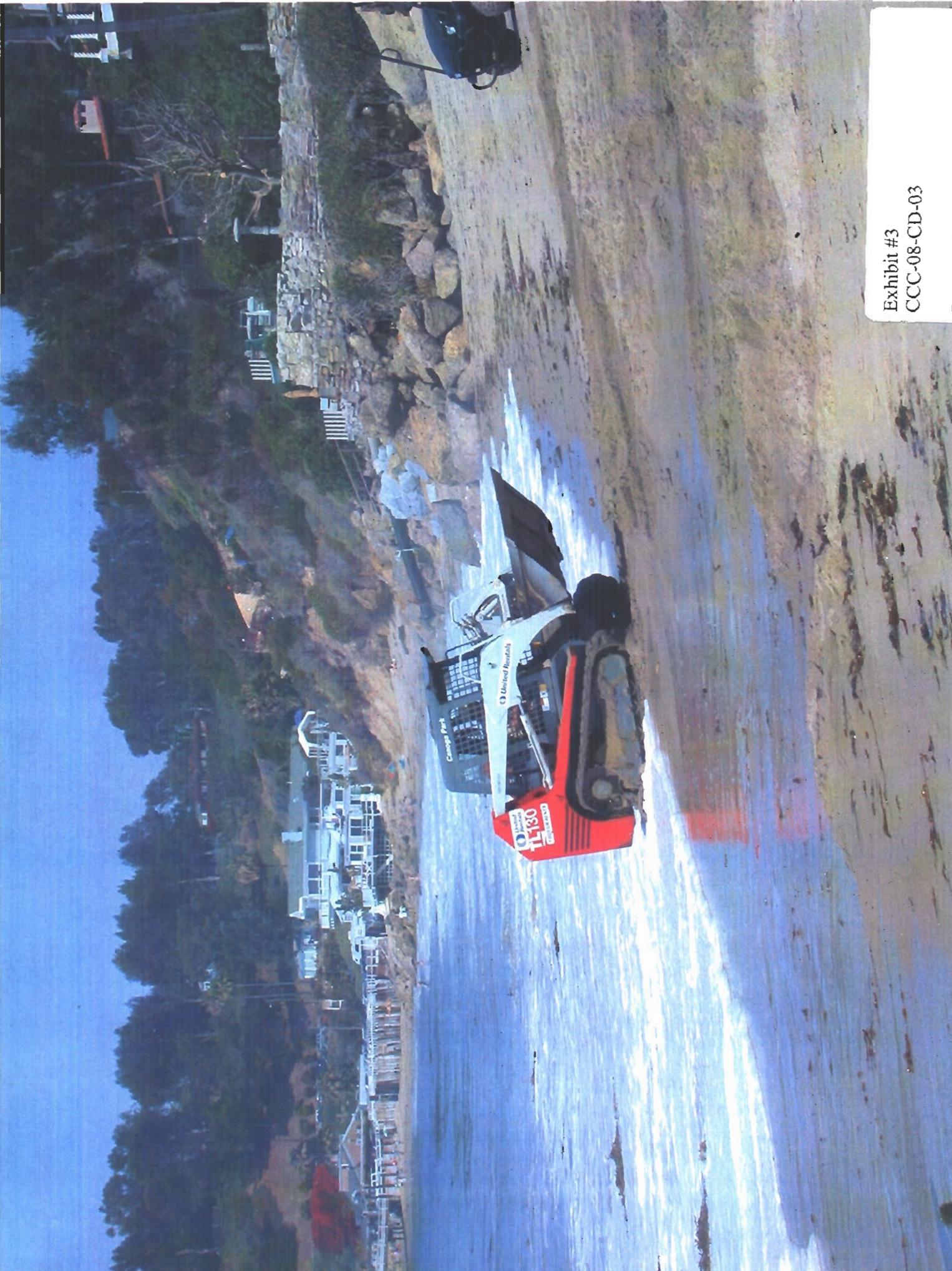


Exhibit #3
CCC-08-CD-03



Exhibit #4
CCC-08-CD-03

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 585-1800

**NOTICE OF VIOLATION OF THE CALIFORNIA COASTAL ACT
REGULAR AND CERTIFIED MAIL**

August 21, 2007

David Saperstein
27930 Pacific Coast Highway
Malibu, CA 90265

Five S Properties, LTD
c/o Yuliya Chekhter
9171 Wilshire Blvd, Ste. 600 E7
Beverly Hills, CA 90210

Five S Properties, LTD
c/o Richard A. Behlmann
5100 San Felipe 393 E
Houston, TX 77056

Violation File Number: V-4-07-032

Property location: Escondido Beach, 27930 Pacific Coast Highway,
Malibu, Los Angeles County, Assessor's Parcel No.
4460-032-019.

Unpermitted Development: Beach grading and sand berm construction with
mechanized equipment.

Dear Mr. Saperstein:

The California Coastal Act¹ was enacted by the State Legislature in 1976 to provide long-term protection of California's 1,100-mile coastline through implementation of a comprehensive planning and regulatory program designed to manage conservation and development of coastal resources. The California Coastal Commission ("Commission") is the state agency created by, and charged with administering, the Coastal Act of 1976. In making its permit and land use planning decisions, the Commission carries out Coastal Act policies, which, amongst other goals, seek to protect and restore sensitive habitats (such as the intertidal areas of sandy beaches); protect natural landforms; protect scenic landscapes and views of the sea; protect against loss of life and property from coastal hazards; and provide maximum public access to the sea.

¹ The Coastal Act is codified in sections 30,000 to 30,900 of the California Public Resources Code. All further section references are to that code, and thus, to the Coastal Act, unless otherwise indicated.

Our staff has confirmed that grading was undertaken on the beach, above and below the Mean High Tide Line ("MHTL") on Escondido Beach, Los Angeles County, Assessor's Parcel No. 4460-032-019, on July 4, 2007.

The subject property is located within the Coastal Zone, and grading has occurred in the intertidal area (on State tidelands), which is within the California Coastal Commission's (CCC) retained jurisdiction. In addition, grading has occurred above the MHTL (on your property), which is located in the City of Malibu's jurisdiction pursuant to Malibu's certified local coastal program ("LCP"). Commission staff has researched our permit files and concluded that no coastal development permits have been issued for any of the development described above by either the Coastal Commission or the City of Malibu.

Pursuant to Section 30600 (a) of the Coastal Act, in addition to obtaining any other permit required by law, any person wishing to undertake development in the coastal zone must obtain a coastal development permit. "Development" is defined by Section 30106 of the Coastal Act as follows:

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

Any development activity conducted in the coastal zone without a valid coastal development permit constitutes a violation of the Coastal Act.

Exposed sandy beaches comprise three-quarters of the world's shorelines and are a dominant open coast habitat in southern California. Beaches are valuable as primary coastal areas for human recreation and as resources for wildlife. Sandy beaches in southern California support diverse macroinvertebrate communities with values of species richness, biomass and abundance that generally exceed those reported for beaches worldwide.

The operation of heavy equipment on the beach, grading, and movement of sand from intertidal areas on the subject site threatens biological resources, aesthetic values, and public access. The beaches of Malibu, including Escondido Beach, are known to be frequented by California grunion (*Leuresthes tenuis*), and the grunion spawning season typically runs between the months of March and August, with peak spawning periods occurring during April, May, and June. During the grunion spawning season, eggs and developing embryos are buried in the sand to incubate between the highest tides of

each month, at the full and new moon. The eggs have no defense against any kind of interference. Thus the California Department of Fish and Game has designated the sandy beaches as critical habitat for grunion management. Additionally, the grading of the beach creates a physical obstruction that may prevent or inhibit public access and give the appearance that the beach is private property.

Beach grading and construction of sand berms may result in potential individual and cumulative adverse effects to coastal processes, shoreline sand supply, and public access including encroachment on lands subject to the public trust (thus physically excluding the public), interference with the natural shoreline processes necessary to maintain publicly-owned tidelands and other public beach areas, overcrowding or congestion of such tideland or beach areas, and visual or psychological interference with the public's access to and the ability to use public tideland areas. Additionally, sand berms could alter wave patterns, and increase the reflection of water, thereby disrupting grunion spawning activities and other intertidal natural resources.

Impacts to marine resources (including California grunion), public access, and scenic resources are regulated by several resource protection policies of the Coastal Act:

Section 30230 of the Coastal Act states:

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

Section 30235 of the Coastal Act states:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.

Section 30251 of the Coastal Act states:

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

Section 30211 of the Coastal Act states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

In most cases, violations involving unpermitted development may be resolved administratively by removal of the unpermitted development and restoration of any damaged resources or by obtaining a coastal development permit authorizing the development after-the-fact, potentially with conditions to ensure conformance with the resource protection policies of Chapter 3 of the Coastal Act. Removal of the development and restoration of the site also requires a coastal development permit. The permitting process is the way that we, as an agency, review potential impacts to coastal resource before any activities proceed. However, Commission staff will not recommend approval of this unpermitted development through an 'after-the-fact' authorization due to the potential significant adverse impacts to coastal resources. Alternatively, Commission approval of some type of restoration to address the unpermitted development may be possible. Thus, we request that your response to this letter include technical evaluations that fully document the impacts of the grading and berming activities upon the coastal resources of Escondido Beach, and identify potential remedies. Please respond to this letter by **September 21, 2007**.

Although we would prefer to resolve this matter administratively, please be aware that if such resolution is not reached in a timely manner, Coastal Act Section 30809 states that if the Executive Director of the Commission determines that any person has undertaken, or is threatening to undertake, any activity that requires 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. A cease and desist order may be subject to any terms and conditions that are necessary to ensure compliance with the Coastal Act. Coastal Act Section 30810 also authorizes the Coastal Commission to issue a cease and desist order and/or order restoration of a site if unpermitted development is inconsistent with the policies of the Coastal Act and is causing continuing resource damage. A violation of a cease and desist or restoration order can result in civil fines of up to \$6,000 for each day in which the violation persists.

Coastal Act Sections 30803 and 30805 authorize the Coastal Commission to initiate litigation to seek injunctive relief and an award of civil penalties in response to any violation of the Coastal Act, regardless of the extent of the resource damage and whether the damage can be remediated. Coastal Act Section 30820(a) provides that any person who violates any provision of the Coastal Act may be subject to a penalty not to exceed \$30,000 for each violation. Further, Section 30820(b) states that, in addition to any other penalties, any person who "knowingly and intentionally" performs any development in violation of the Coastal Act can be subject to a civil penalty of up to \$15,000 for each day in which each violation persists. Additional penalties of up to \$6,000 per day can be imposed if a cease and desist or restoration order is violated. Section 30822 further provides that exemplary damages may also be imposed for knowing and intentional violations of the Coastal Act or of any orders issued pursuant to

the Coastal Act. The Commission is prepared, if necessary, to seek imposition of all appropriate monetary penalty amounts pursuant to Chapter 9 of the Coastal Act.

We are willing to resolve these issues through settlement and we would like to discuss a mutually agreeable settlement amount for the above-listed violations. We request that you contact us to negotiate a monetary penalty as part of the resolution of this matter, no later than **September 21, 2007**. Please submit any technical evaluations that document the impacts of the grading and berming activities upon the coastal resources of Escondido Beach and identify potential remedies so that we can include them in our settlement discussions.

Finally, the Executive Director is authorized, after providing notice and the opportunity for a hearing before the Commission as provided for in Section 30812 of the Coastal Act, to record a Notice of Violation against your property.

Thank you for your attention to this matter. Should you have questions regarding this letter or the pending enforcement case, please contact me or Mr. Patrick Veasart at 805-585-1800.

Sincerely,



Jesse Patterson
District Enforcement Officer

cc: Lisa Haage, Chief of Enforcement, California Coastal Commission
Aaron McLendon, Statewide Enforcement Analyst, California Coastal Commission
Barbara Carey, Supervisor, Planning and Regulation, California Coastal Commission
N. Patrick Veasart, Enforcement Supervisor, California Coastal Commission
Tom Sinclair, District Enforcement Officer, California Coastal Commission
Gary Timm, District Manager, California Coastal Commission
Lisa Tent, Code Enforcement Officer, City of Malibu

LAW OFFICES

ALAN ROBERT BLOCK

A PROFESSIONAL CORPORATION

1901 AVENUE OF THE STARS, SUITE 470
LOS ANGELES, CALIFORNIA 90067-6006
TELEPHONE (310) 552-3336
TELEFAX (310) 552-1850

ALAN ROBERT BLOCK
JUSTIN MICHAEL BLOCK

OF COUNSEL
MICHAEL N. FRIEDMAN

SENDER'S E-MAIL
alan@blocklaw.net

September 7, 2007

RECEIVED
SEP 10 2007

COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Mr. Pat Veersart
California Coastal Commission
89 South California Street, Suite 200
Ventura, CA 93001

Re: Violation No. V-5-07-032

Property Address: 27930 Escondido Beach Road, Malibu
Property Owners: David Saperstein

Dear Pat:

Please letter will confirm our telephone conversation earlier this week with regard to the above captioned pending violation. Pursuant to our conversation the property owner has retained David Weiss and Associates to perform a site visit to determine the present status of the beach profile in order to determine whether it has returned to it's natural condition. At present because of his present work schedule, and the up-coming Jewish holidays, Mr. Weiss will not be able to perform his site inspection until September 25th.

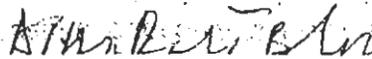
I will be in contact with your office after Mr. Weiss performs the site visit and the applicant is able to determine the status of the beach profile.

Naturally, should your office have any questions please contact me at your earliest convenience.

Thank you in advance for your anticipated courtesy, cooperation, and support.

Very truly yours,

LAW OFFICES
ALAN ROBERT BLOCK
A Professional Corporation



ALAN ROBERT BLOCK

ARB:ah

cc: Simon T
David Weiss

Exhibit #6
CCC-08-CD-03

LAW OFFICES

ALAN ROBERT BLOCK

A PROFESSIONAL CORPORATION

1901 AVENUE OF THE STARS, SUITE 470
LOS ANGELES, CALIFORNIA 90067-6006

TELEPHONE (310) 552-3336
TELEFAX (310) 552-1850

ALAN ROBERT BLOCK
JUSTIN MICHAEL BLOCK

OF COUNSEL
MICHAEL N. FRIEDMAN

SENDER'S E-MAIL
justin@blocklaw.net

November 5, 2007

Mr. Pat Veearat
California Coastal Commission
89 South California Street, Suite 200
Ventura, CA 93001

RECEIVED
NOV 18 2007

Re: Violation: No. V-5-07-032

Property Address: 27930 Escondido Beach Road
Property Owners: David Saperstein

COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Dear Pat:

Enclosed please find a report from David C. Weiss Structural Engineer & Associates, dated October 25, 2007, regarding the above captioned matter.

Mr. Weiss did a site inspection on September 25th to observe the condition of the beach in order to render an opinion as to whether or not permanent damages had been sustained as a result of the alleged grading that occurred on the beach on July 4, 2007. Mr. Weiss concludes as follows in his report:

"It is my opinion that no damage was done to the beach environment. Because all of the smoothing was performed well out of the surf zone, no biological damage was done. No protective or other structure was constructed and nothing was done to alter or in any way effect the normal movement of sand along the beach or the sands supply. No land form was altered. The contours of the beach are constant between the two existing rock revetments on neighboring properties well to the east and west of the subject site."

In light of the fact that no damage has occurred to the beach it is respectfully requested that the above captioned violation filed be closed.

Naturally, should you have any questions, please don't hesitate to call the undersigned at your earliest convenience.

Exhibit #7
CCC-08-CD-03

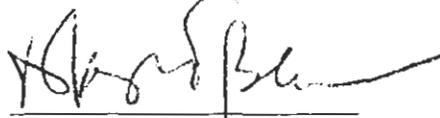
Mr. Pat Veearst
Re: Violation: No. V-5-07-032
November 5, 2007

Page 2

Thank you for your anticipated courtesy and cooperation.

Very truly yours,

LAW OFFICES OF
ALAN ROBERT BLOCK

A handwritten signature in black ink, appearing to read 'Alan Robert Block', written over a horizontal line.

ALAN ROBERT BLOCK

ARB.ah
enclosure

cc: Simon T

Exhibit #7
CCC-08-CD-03

Page 2 of 5



October 25, 2007

Mr. David Saperstein
C/o Alan Block, Esq.
1901 Avenue of the Stars, Suite 1610
Los Angeles, California 90067

RECEIVED
NOV 16 2007

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Subject: Report on Observations of Beach Area at
27930 Pacific Coast Highway
Malibu, California

Reference: Notice of Violation of the California Coastal Act
Violation File Number V-4-07-032

Our Job Number: SAP2.107

Dear Mr. Saperstein,

At the request of your attorney, Mr. Alan Block, I visited the subject site on September 25, 2007. The purpose of the visit was observe the condition of the beach in order to render an opinion as to whether or not permanent damage had been sustained as a result of alleged grading that occurred on July 4, 2007; and, if so, what measures could be taken to repair or mitigate that damage.

At the time of my visit, there were approximately eighty feet between the end of the wave uprush and the base of the scarp between the foreshore slope and the first level backshore berm above the foreshore area of the beach. The lower berm extends landward (length unmeasured at the time of the visit) to a second scarp above which there is a higher level berm.

Conversations with the maintenance staff on site revealed that the "grading" that occurred on July 4, 2007 consisted of nothing more than dragging, smoothing and cleaning the surface of the intermediate berm in preparation for a Fourth of July celebration to be held that day. As explained to me, no work was performed on the foreshore area of the beach between the scarp of the lower berm and the waterline. All of the smoothing was performed on the lower of the two berms, well above the above the Mean High Tide Line.

Based upon my observations during this one site visit, it is my opinion that no damage was done to the beach environment. Because all of the smoothing was performed well out of the surf zone, no biological damage was done. No protective or other structure was constructed and nothing was done to alter or in any way effect the normal movement of sand along the beach or the sand supply. No land form was altered. The contours of the beach are constant between the two existing rock revetments on neighboring properties well to the east and west of the subject site. The attached Photographs 1 and 2 show the consistency of the beach between the two revetments. The scenic and visual

Exhibit #7
CCC-08-CD-03

Mr. David Saperstein
Re.: 27930 Pacific Coast Highway
Malibu, CA
October 25, 2007
Page 2 of 3

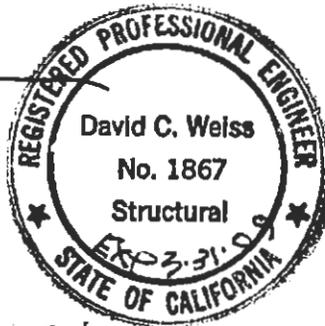
qualities of the coastal area were not changed. The smoothing and cleaning of the berm has had absolutely no impact upon the public access to or along the beach. Therefore, it is my opinion that no repair or mitigating measures are required as a result of the alleged "grading".

Thank you for your consideration of this matter and thank you for allowing **David C. Weiss, Structural Engineer & Associates, Inc.** to be of service to you in this matter. If you have any questions, please contact me.

Very truly yours,



David C. Weiss
President
S.E. 1867



Encl: Photographs (2)

10/25/07



Photograph 1: Beach looking west from 27930 Pacific Coast Highway



Photograph 2: Beach looking east from 27930 Pacific Coast Highway

CALIFORNIA COASTAL COMMISSION

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



Via Regular Mail

January 10, 2008

Alan Robert Block
Law Offices of Alan Robert Block
1901 Avenue Of The Stars, Suite 470
Los Angeles, CA 90067

Subject: Violation No. V-4-07-032 (Saperstein)

Dear Mr. Block:

Thank you for your letter of November 5, 2007, to Patrick Veasart, Southern California Enforcement Supervisor, regarding the violation on property owned by your client, Mr. David Saperstein (Violation No. V-4-07-032). This letter is in response to your November 2007 letter and the October 25, 2007 report by Mr. David C. Weiss, structural engineer ("Report"), which was submitted with your letter.

While we appreciate the work that went into Mr. Weiss' Report and the efforts made by your client to resolve the violation, factual evidence does not support the findings made in Mr. Weiss' Report. For example, on July 4, 2007, during the unpermitted activity Commission staff witnessed (and photographed) heavy equipment (a bobcat) entering coastal waters, scooping sand from the intertidal area, and then placing the sand on the upper beach area creating a berm on the beach seaward of your client's property. The Report states, based on conversations with maintenance staff, "the 'grading' that occurred on July 4, 2007 consisted of nothing more than dragging, smoothing and cleaning the surface of the intermediate berm... [and] no work was performed on the foreshore area of the beach." The Report continues by stating, "All of the smoothing was performed on the lower of the two berms, well above the Mean High Tide Line."

As indicated above, this is not an accurate depiction of the events that occurred on July 4, 2007. Heavy equipment was seen in the surf zone, removing sand from the intertidal area to create a berm on the upper beach area. Even assuming that the activities described in the Report were accurate, which appears to be factually inaccurate, the use of heavy equipment on the beach, grading the beach, removing organic material cast up onto the beach by tide, waves, and wind ("beach wrack"), and "smoothing" the beach is development as that term is defined in the Coastal Act, and moreover, has the potential to adversely affect a number of coastal resources.

The Report also states, "Based on my observations during this one site visit it is my opinion that no damage was done to the beach environment. Because all of the smoothing was performed well

Exhibit #8
CCC-08-CD-03

out of the surf zone, no biological damage was done. No protective or other structure was constructed and nothing was done to alter or in any way effect the normal movement of sand along the beach or the sand supply. No land form was altered.” While we are not questioning Mr. Weiss’ expertise in structural engineering or diminishing his efforts in creating the Report, an accurate biological assessment is likely difficult, if not impossible, to make during observations of the beach on one day, 2 ½ months after the unpermitted activity occurred. It appears from the Report that Mr. Weiss based his biological assessment on the belief that “smoothing was performed well out of the surf zone.” The beach grading, in fact, did occur within the surf zone and, unfortunately during peak grunion spawning season. Any grunion eggs that were laid during the June 17-20 grunion “run” would have been destroyed by the grading activity and the construction of the berm, as discussed further below. In addition, any intertidal/subtidal species that were in this area would also have been destroyed when they were removed from their habitat (when the bobcat scooped sand from the intertidal area) and placed in the dry environment on the upper beach area (when the sand was placed on the upper beach area for the construction of a berm). These intertidal/subtidal species, which are dependent on submerged habitat, play a key role in the food chain for other invertebrates, shorebirds, fish, and marine mammals:

In addition, the construction of the berm, itself, likely affected subsequent grunion runs (at a minimum the July 16-19 and August 14-17 runs). Grunion spawn at the most landward point of the highest tides during spring and summer months. The berm was placed in the exact location of the grunion spawning areas. Even if grunion were able to spawn in front of the berm, which appears unlikely, any eggs laid would have been washed out due to the refraction of wave run-up against the berm.

Furthermore, as the Report acknowledges, “dragging, smoothing and cleaning the surface [of the beach]” was performed. This grooming activity would have removed critical habitat for several species of invertebrates, such as worms and insects. This habitat, the organic material cast up onto beaches by tides, waves, and wind, is known as beach wrack. Shorebirds, like the threatened western snowy plover, depend on invertebrate in wrack as a food source. Beach wrack was both removed from the beach and buried by the construction of the berm, and the berm wall reflected wave run-up that prevented additional wrack from accumulating on the beach.

Finally, the Report states, “The smoothing and cleaning of the berm has had absolutely no impact upon the public access to or along the beach.” Again, Commission staff was on the beach at the time of the unpermitted activity and witnessed (and photographed), on one of the busiest beach days of the year, impacts to public access along Escondido Beach from both the berm and the operation of equipment on the beach. Even if at the time of Mr. Weiss’ observation (2 ½ months after the unpermitted development occurred) the beach profile had naturally restored itself, which we have not concluded for ourselves, there was nevertheless a temporal loss of public access, which is a significant loss to the public’s enjoyment of this coastal area.

I hope this brief summary of the resource damages caused by the unpermitted development on, and seaward of, your client’s property is helpful in understanding our concerns and the vital role that these coastal resources have in our environment. While the resource damage component of a

violation is critical in evaluating whether or not a Restoration Order is needed it is not a necessary element in a finding of a violation or in determining liability for fines and penalties under Chapter 9 of the Coastal Act. The Coastal Act seeks, as you may be aware, to ensure that all development in the Coastal Zone is done under Coastal Act authorization, precisely to ensure that situations such as this one can be avoided. For activities undertaken on sandy beaches, for example, coastal development permits seek to prevent harm to coastal resources, and even if approvable under the Coastal Act, these permits include provisions and conditions to avoid such adverse impacts to resources, such as to grunion and other intertidal species.

Section 30820(a) of the Coastal Act states, in part:

“Any person who violates any provision of this division may be civilly liable in accordance with this subdivision...”

Section 30820(b) of the Coastal Act states, in part:

“Any person who performs or undertakes development that is in violation of this division... when the person intentionally and knowingly performs or undertakes the development in violation of this division... may, in addition to any other penalties, be civilly liable in accordance with this subdivision.”

Even assuming that no resource damage occurred from the unpermitted development, the grading of the beach, construction of a berm, and removal of beach wrack is development under the Coastal Act and was undertaken without benefit of a coastal development permit. Therefore a violation of the Coastal Act has occurred and fines and penalties lie under the terms of the Coastal Act.

Again, we appreciate all the efforts that Mr. Saperstein has made in addressing the Coastal Act violation and we hope that this letter better summarizes the facts related to this case. We continue to be hopeful that an amicable resolution can be found and look forward to working with both you and Mr. Saperstein to find such a solution.

Thank you in advance for your cooperation. Since this case has been elevated to the Commission's Statewide Enforcement unit, please call me at your earliest convenience to discuss the possibility of entering into a Consent Cease and Desist Order (similar to a settlement agreement) where we can resolve both the injunctive component of the violation and the fines and penalties under the Coastal Act (either through the direct payment of a negotiated fine or possibly by funding a project that mitigates the impacts that were caused by the unpermitted development).

Alan Robert Block
January 10, 2008
Page 4 of 4

If you have any questions please feel free to call me at (415) 904-5220.

Sincerely,



Aaron N. McLendon
Headquarters Enforcement Analyst

cc: Lisa Haage, Chief of Enforcement
N. Patrick Veasart, Southern CA Enforcement Supervisor
Alex Helperin, Staff Counsel

Exhibit #8
CCC-08-CD-03

Page 4 of 4

CONSENT CEASE AND DESIST ORDER CCC-08-CD-03

1.0 CONSENT CEASE AND DESIST ORDER CCC-08-CD-03

Pursuant to its authority under California Public Resources Code ("PRC") section 30810, the California Coastal Commission ("Commission") hereby authorizes and orders Five S Properties, LTD; all its successors, assigns, employees, agents, and contractors, and any persons acting in concert with any of the foregoing (hereinafter, "Respondent") to: cease and desist from engaging in any further development, as that term is defined in PRC section 30106, located at or seaward of 27930 Pacific Coast Highway, City of Malibu, Los Angeles County, APN 4460-032-019 ("subject property"), including, but not limited to, beach grading, construction of sand berms, or removal or movement of sand from the intertidal area; unless authorized pursuant to the Coastal Act, PRC §§ 30000-30900, and/or the City of Malibu certified Local Coastal Program or recognized, in writing, by the Commission to be exempt.

2.0 PERSONS SUBJECT TO THE CONSENT ORDER

Five S Properties, LTD; all its successors, assigns, employees, agents, and contractors; and any persons acting in concert with any of the foregoing are jointly and severally subject to all the requirements of Cease and Desist Order No. CCC-08-CD-03 ("Consent Order"), and agree to the terms and conditions required herein.

3.0 RESOLUTION AND COOPERATION

It is the expressed desire of Respondent and the Commission to resolve the Coastal Act violations described in Section 5.0 of this Consent Order through the signing of this Consent Order, to avoid litigation, and to cooperate amicably in carrying out the provisions of the Consent Order.

4.0 IDENTIFICATION OF THE PROPERTY

The property that is the subject of this Consent Order is described as follows:
27930 Pacific Coast Highway, City of Malibu, Los Angeles County, APN 4460-032-019.

5.0 DESCRIPTION OF ALLEGED COASTAL ACT VIOLATION

Beach grading, removal of sand from within the intertidal area, and construction of sand berms, undertaken both on and seaward of the subject property, without a coastal development permit.

6.0 COMMISSION JURISDICTION

The Commission has jurisdiction over resolution of this alleged Coastal Act violation pursuant to PRC Section 30810. Respondent agrees to not contest the Commission's

jurisdiction to issue or enforce this Consent Order. In light of the history of communications between Respondent and Commission Enforcement staff on this matter, and the intent of the parties to resolve these matters amicably through this Consent Order, Respondent agrees that a Notice of Intent to Commence Cease and Desist Order Proceedings, pursuant to section 13181 of the Commission's regulations (codified in California Code of Regulations Title 15, Division 5.5), is not necessary.

7.0 NONSUBMISSION OF STATEMENT OF DEFENSE

In light of the intent of the parties to resolve these matters in settlement, and the fact that the Commission and Respondent wish to work cooperatively in the future, without an admission of wrongdoing, Respondent has not submitted a "Statement of Defense" form as provided for in Section 13181 of Title 14 of the California Code of Regulations and has agreed not to contest the legal and factual bases for, or the terms and issuance of, this Consent Order. Accordingly, Respondent has agreed not to contest the issuance or enforcement of this Consent Order at a public hearing or any other proceeding.

8.0 EFFECTIVE DATE AND TERMS OF THE ORDER

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

9.0 FINDINGS

This Consent Order is issued on the basis of the findings adopted by the Commission as set forth in the document entitled "Findings for Consent Cease and Desist Order No. CCC-08-CD-03." The activities authorized and required in this Consent Order are consistent with the resource protection policies set forth in Chapter 3 of the Coastal Act. The Commission has authorized the activities required in this Consent Order as being consistent with the resource protection policies set forth in Chapter 3 of the Coastal Act.

10.0 SETTLEMENT/COMPLIANCE OBLIGATION

- 10.1 In light of the intent of the parties to resolve these matters in settlement, Respondent shall pay a monetary settlement in the amount of \$15,000. The settlement monies shall be deposited in the Violation Remediation Account of the California Coastal Conservancy Fund (see PRC Section 30823). Respondent shall submit the settlement payment amount by July 11, 2008 to the attention of Aaron McLendon of the Commission, payable to the California Coastal Commission/Coastal Conservancy Violation Remediation Account.
- 10.2 Respondent agrees to not engage in any further development, as that term is defined in PRC section 30106, located on or seaward of the subject property, including, but not limited to, beach grading, construction of sand berms, or removal or movement of sand from the intertidal area; unless authorized pursuant to the Coastal Act, PRC §§ 30000-

30900, and/or the City of Malibu certified Local Coastal Program or recognized, in writing, by the Commission to be exempt.

- 10.3 Strict compliance with this Consent Order by all parties subject thereto is required. Failure to comply with any term or condition of this Consent Order, including any deadline contained in this Consent Order, unless the Executive Director of the Commission ("Executive Director") grants an extension under Section 11.0, will constitute a violation of this Consent Order and shall result in Respondent being liable for stipulated penalties in the amount of \$500 per day per violation. Respondent shall pay stipulated penalties within 15 days of receipt of written demand by the Commission for such penalties regardless of whether Respondent has subsequently complied. In addition, if Respondent violates this Consent Order, nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of the Commission to seek any other remedies available, including the imposition of civil penalties and other remedies pursuant to Public Resources Code Sections 30821.6, 30822 and 30820 as a result of the lack of compliance with the Consent Orders and for the underlying Coastal Act violations as described herein.
- 10.4 Settlement monies and any other materials required by this Consent Order shall be sent to:

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

11.0 DEADLINES

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

- 12.0 Respondent shall provide access to the subject property at all reasonable times to Commission staff and any agency having jurisdiction over the subject property. Nothing in this Consent Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Commission staff may enter and move freely about the portions of the subject property on which the violations are located, and on adjacent areas of the subject property to view the areas where the

unpermitted development occurred for purposes including, but not limited to, ensuring compliance with the terms of this Consent Order.

13.0 GOVERNMENT LIABILITIES

Neither the State of California, the Commission, nor its employees shall be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent in carrying out activities pursuant to this Consent Order, nor shall the State of California, the Commission or its employees be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Consent Order.

14.0 NON APPEAL

Persons against whom the Commission issues a Cease and Desist Order have the right, pursuant to PRC Section 30803(b), to seek a stay of the order. However, pursuant to the agreement of the parties as set forth in this Consent Order, and in light of the settlement contained herein, Respondent hereby waives whatever right it may have to seek a stay or to challenge the issuance and enforceability of this Consent Order in a court of law.

15.0 SETTLEMENT OF CLAIMS

The Commission and Respondent agree that this Consent Order settles the Commission's monetary claims for relief for those violations of the Coastal Act alleged in Section 5.0, above, (specifically including claims for civil penalties, fines, or damages under the Coastal Act, including under PRC Sections 30805, 30820, and 30822), with the exception that, if Respondent fails to comply with any term or condition of this Consent Order, the Commission may seek monetary or other claims for both the underlying violations of the Coastal Act and for the violation of this Consent Order. In addition, this Consent Order does not limit the Commission from taking enforcement action due to Coastal Act violations at the subject property other than those that are the subject of this Consent Order.

16.0 SUCCESSORS AND ASSIGNS

This Consent Order shall be binding upon Respondent and its successors and assigns.

17.0 MODIFICATIONS AND AMENDMENTS

Except as provided in Section 11.0, this Consent Order may be amended or modified only in accordance with the standards and procedures set forth in Section 13188(b) of Title 14 of the California Code of Regulations.

18.0 GOVERNMENTAL JURISDICTION

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

19.0 LIMITATION OF AUTHORITY

Except as expressly provided herein, nothing in this Consent Order 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 Consent Order.

20.0 INTEGRATION

This Consent Order constitutes the entire agreement between the parties and may not be amended, supplemented, or modified except as provided in this Consent Order.

21.0 REPRESENTATIVE AUTHORITY

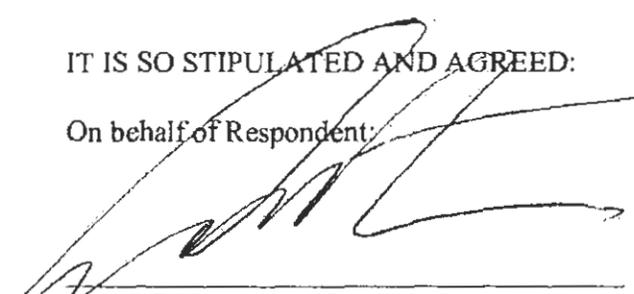
The signatory below attest that he/she has the authority to represent and bind in this agreement the Respondent.

22.0 STIPULATION

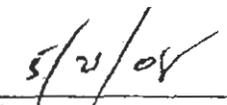
Respondent and its representatives attest that they have reviewed the terms of this Consent Order and understand that their consent is final and stipulate to its issuance by the Commission.

IT IS SO STIPULATED AND AGREED:

On behalf of Respondent:



Five S Properties, LTD



Date

Executed in Santa Rosa, CA on behalf of the California Coastal Commission:

Peter Douglas, Executive Director

Date

Exhibit #9
CCC-08-CD-03