

**CONSENT AGREEMENT AND CEASE AND DESIST ORDER AMENDMENT NO.  
CCC-09-CD-03-A AND RESTORATION ORDER AMENDMENT NO. CCC-09-RO-02-A**

1.0 Consent Agreement and Amendments to Cease and Desist Order No. CCC-09-CD-03 and Restoration Order No. CCC-09-RO-02 (“Consent Agreement and Amendments”) modify the orders previously issued by the California Coastal Commission (hereinafter, “Commission”) by appending new, mutually acceptable language to the orders to (1) require the removal of unpermitted gravel from the site, along with the other unpermitted development, and (2) settle the Commission's monetary claims for relief for those violations of the Coastal Act alleged in the Notice of Intent to issue a Cease and Desist Order and Restoration Order (“NOI”) dated February 3, 2009 occurring prior to the date of the Consent Agreement and Amendments. Cease and Desist Order No. CCC-09-CD-03 and Restoration Order No. CCC-09-RO-02 (“the Orders”), as amended herein, remain fully in effect and legally binding. The Orders, as originally adopted, are hereby incorporated by reference and attached hereto as Exhibit A to the Consent Agreement and Amendments. The text of the Consent Agreement and Amendments is presented in Section 2.0 through Section 16.0, below. Nothing in this agreement otherwise affects the Orders issued by the Commission; all aspects of the Orders referenced above remain in place and fully enforceable.

2.0 AMENDMENTS TO CEASE AND DESIST AND RESTORATION ORDERS

Pursuant to its authority under Public Resources Code Section 30810 and Section 30811 and California Code of Regulations Title 14, Section 13188 and Section 13197, the Commission, with the consent and agreement of Mills PCH, LLC<sup>1</sup> (hereinafter, “Respondent”), hereby amends Cease and Desist Order No. CCC-09-CD-03 and Restoration Order No. CCC-09-RO-02, which were previously approved by the Commission on April 9, 2009. Accordingly, through the execution of the Consent Agreement and Amendments, Respondent agrees to comply with the terms of the above referenced orders and these amendments thereto, and agrees to accept and comply with the following terms and conditions.

2.1 Unpermitted Gravel

The original Cease and Desist Order (CCC-09-CD-03) and Restoration Order (CCC-09-RO-02) are amended to add the following language:

A. to Section 1.0 of CCC-09-CD-03, line 12 immediately following the semicolon:  
...“gravel placed on the site without a coastal development permit;”...

B. to Section 2.1 TERMS AND CONDITIONS of CCC-09-RO-02, line 10 immediately following the period:

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<sup>1</sup> Mills PCH, LLC has informed staff that Mills PCH, LLC is now known as Beachfront Village, LLC. However, publicly available records continue to list the property owner as Mills PCH, LLC. Accordingly, all references to Mills PCH, LLC or Respondent are to the current recorder owner of the property, whether that be Mills PCH, LLC or some later incarnation thereof, such as Beachfront Village, LLC.

“The Restoration Plan approved, pursuant to this section, on August 24, 2009, prior to the amendment of this section to add this and the following sentence, shall be amended to address the areas impacted by the placement of gravel, and shall contain necessary steps and elements to return these areas to their pre-violation condition. This revised Restoration Plan will be submitted by December 15, 2009.”

### 3.0 PERSONS SUBJECT TO THE CONSENT AGREEMENT AND AMENDMENTS

Mills PCH, LLC (now known as Beachfront Village, LLC<sup>2</sup>) 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 the Consent Agreement and Amendments.

### 4.0 COMMISSION JURISDICTION

The statutory authority for issuance of Orders under the Coastal Act, including the proposed Consent Agreement and Cease and Desist and Restoration Order Amendments is provided in Section 30810 and Section 30811 of the Coastal Act and amendments to such orders are specifically provided for in California Code of Regulations, Title 14, Section 13188 and Section 13197. Respondent agrees not to contest the Commission’s jurisdiction to issue or enforce the Consent Agreement and Amendments.

### 5.0 SETTLEMENT OF MATTER WITHOUT LITIGATION

In light of the intent of the parties to resolve these matters in settlement, Respondent has agreed not to contest the legal and factual bases and the terms and issuance of the Consent Agreement and Amendments, including the allegations of Coastal Act violations contained in the Notice of Intent to issue a Cease and Desist and Restoration Order (“NOI”) dated February 3, 2009 and agrees that all legal prerequisites for issuance of the Orders and the Consent Agreement and Amendments have been met. Accordingly, Respondent has agreed not to contest the issuance or enforcement of the Consent Agreement and Amendments at a public hearing or any other proceeding and to comply with the terms of the Consent Agreement and Amendments.

### 6.0 EFFECTIVE DATE AND TERMS OF THE CONSENT AGREEMENT AND AMENDMENTS

The Consent Agreement and Amendments shall become effective as of the date of approval by the Commission and shall remain in effect permanently unless and until rescinded by the Commission.

### 7.0 FINDINGS

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<sup>2</sup> See fn1.

The Consent Agreement and Amendments are issued on the basis of the findings adopted by the Commission on November 5, 2009, as set forth in the attached document entitled “Staff Recommendations and Findings for Consent Agreement and Amendments to Cease and Desist and Restoration Orders.” The activities authorized and required in the Consent Agreement and Amendments are consistent with the resource protection policies set forth in Chapter 3 of the Coastal Act.

## 8.0 SETTLEMENT/COMPLIANCE OBLIGATION

8.1 In light of the intent of the parties to resolve these matters in settlement, Respondent has agreed to pay a monetary settlement in the amount of \$250,000. Respondent agrees to make an initial payment of \$125,000 within 30 days of issuance these Consent Agreement and Amendments. Respondent agrees to make a second payment of \$125,000 by no later than 180 days from issuance of these Consent Agreement and Amendments. The settlement monies shall be deposited in the Violation Remediation Account of the California Coastal Conservancy Fund (see Public Resources Code Section 30823) or into such other public account as authorized by applicable California law at the time of the payment and as designated by the Executive Director. Respondent shall submit the settlement payments to the attention of Andrew Willis of the Commission, payable to the California Coastal Commission/Coastal Conservancy Violation Remediation Account or other account designated as pursuant to this paragraph.

8.2 Strict compliance with the Consent Agreement and Amendments by all parties subject thereto is required. Failure to comply with any term or condition of the Consent Agreement and Amendments, including any deadline contained in the Consent Agreement and Amendments, unless the Executive Director grants an extension under Section 9.0, below, will constitute a violation of the Consent Agreement and Amendments 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. If Respondent violates the Consent Agreement and Amendments, 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 Agreement and Amendments and for the underlying Coastal Act violations as described herein.

## 9.0 DEADLINES

Prior to the expiration of the deadlines established by the Consent Agreement and Amendments, Respondent may request from the Executive Director an extension of the deadlines. Such a request shall be made in writing 10 days in advance of the deadline and directed to Andrew Willis in the Long Beach 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 the

obligations under the Consent Agreement and Amendments, but cannot meet deadlines due to unforeseen circumstances beyond Respondent's control.

#### 10.0 SETTLEMENT OF CLAIMS

A. Pursuant to the agreement of the parties as set forth in the Consent Agreement and Amendments, Respondent agrees to waive any rights to seek a stay or to challenge the issuance and enforceability of the Consent Agreement and Amendments in a court of law.

B. The Commission and Respondent agree that the Consent Agreement and Amendments settle the Commission's monetary claims for relief for those violations of the Coastal Act alleged in the NOI occurring prior to the date of the Consent Agreement and Amendments (specifically including claims for civil penalties, fines, or damages under the Coastal Act), with the exception that, if Respondent fails to comply with any term or condition of the Consent Agreement and Amendments, the Commission may seek monetary or other claims for both the underlying violations of the Coastal Act and for the violation of the Consent Agreement and Amendments. In addition, the Consent Agreement and Amendments do not limit the Commission from taking enforcement action due to Coastal Act violations other than those that are the subject of the NOI.

#### 11.0 MODIFICATIONS AND AMENDMENTS

Except as provided in Section 9.0, and for minor, immaterial matters upon mutual written agreement of the Executive Director and Respondent, the Consent Agreement and Amendments may be amended or modified only in accordance with the standards and procedures set forth in Section 13188 or Section 13197 of Title 14 of the California Code of Regulations.

#### 12.0 SUCCESSORS AND ASSIGNS

The Consent Agreement and Amendments shall run with the land binding Respondent and all successors in interest, heirs, assigns, and future owners of the property. Respondent shall provide notice to all successors, assigns, and potential purchasers of the property of any remaining obligations under the Orders and Consent Agreement and Amendments.

#### 13.0 GOVERNMENTAL JURISDICTION

The Consent Agreement and Amendments shall be interpreted, construed, governed and enforced under and pursuant to the laws of the State of California.

#### 14.0 LIMITATION OF AUTHORITY

- 14.1 Except as expressly provided herein, nothing in the Consent Agreement and Amendments 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 the Consent Agreement and Amendments.

- 14.2 Correspondingly, Respondent has entered into the Consent Agreement and Amendments and waived its right to contest the factual and legal basis for issuance of the Consent Agreement and Amendments, and the enforcement thereof according to its terms. Respondent has agreed not to contest the Commission's jurisdiction to issue and enforce the Consent Agreement and Amendments.

15.0 INTEGRATION

The Consent Agreement and Amendments constitutes the entire agreement between the parties and may not be amended, supplemented, or modified except as provided in the Consent Agreement and Amendments.

16.0 STIPULATION

Respondent attests that it has reviewed the terms of the Consent Agreement and Amendments and understands that its consent is final and stipulate to its issuance by the Commission.

IT IS SO STIPULATED AND AGREED:

On behalf of Respondent:

SIGNATURES ON FILE

\_\_\_\_\_  
Mills PCH, LLC

\_\_\_\_\_  
Date:

Executed in Long Beach on behalf of the California Coastal Commission:

\_\_\_\_\_  
Peter Douglas, Executive Director

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Date:

Exhibit A: Cease and Desist Order No. CCC-09-CD-03 and Restoration Order No. CCC-09-RO-02