

## CALIFORNIA COASTAL COMMISSION

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SAN FRANCISCO, CA 94105-2219  
VOICE (415) 904-5200  
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# W12.5

## ADDENDUM

November 2, 2009

TO: Coastal Commissioners and Interested Parties

FROM: Enforcement Staff

SUBJECT: ADDENDUM TO **ITEM W12.5** FOR THE COMMISSION MEETING OF **November 4, 2009:**  
COASTAL COMMISSION CONSENT AGREEMENT AND CONSENT AMENDMENTS TO CEASE AND DESIST AND RESTORATION ORDERS **CCC-09-CD-03-A AND CCC-09-RO-02-A (MILLS PCH, LLC)**

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### DOCUMENTS RECEIVED

The following documents are attached:

A. Letter in support of the amendments to the cease and desist and restoration orders:

1. The Cabrillo Wetlands Conservancy

B. Forms For Disclosure Of Ex-Parte Communications

1. From Chair Neely dated October 27, 2009.
2. From Commissioner Stone dated October 28, 2009.
3. From Commissioner Blank dated October 31, 2009.
4. From Chair Neely dated November 2, 2009.

RECEIVED  
South Coast Region

OCT 27 2009

CALIFORNIA  
COASTAL COMMISSION

October 28, 2009

California Coastal Commission  
200 Oceangate, 10th Floor  
Long Beach, CA 90802-4418  
Phone (562) 590-5071  
FAX (562) 590-5084

c/o Coastal Commission staff Teresa Henry, Sherilyn Sarb, Karl Schwing, Meg Vaughn, Andrew Willis

Re: Agenda Items Wednesday November 4, 2009, Items 12 and 12.5

Dear California Coastal Commissioners,

We members of the Cabrillo Wetlands Conservancy are writing in support of the proposed consent amendments to the previously issued Cease and Desist Order and Restoration Orders, which supplement existing Orders to address Commission monetary claims and directed to Mills PCH, LLC; property located at 21722 Pacific Coast Highway, Huntington Beach, Orange County Assessor's Parcel No. 114-150-88. We understand that this monetary claim is in addition to the requirement for Mills to restore the damage to the wetlands by unpermitted wetlands scraping and fill that was done in February of 2008 on two parcels south of the Cabrillo Mobile Home Park in Huntington Beach. We feel the amount should have been more, considering the history of Mills' wetland destruction in the Coastal Zone.

These wetlands are part of the historic Huntington Beach wetlands complex that exists from the Santa Ana River mouth to Beach Blvd in Huntington Beach. It is not acceptable that a landowner should scrape the wetlands vegetation from the Cabrillo Parcel without permits, fill it, and now claim that this is not a wetlands, that the vegetation is not hydrophytic even though it occurs in ponding areas, and that the wetland is not a natural wetland, even though it is part of the Huntington Beach wetlands complex.

We members of the Cabrillo Wetlands Conservancy would like give testimony of our observations. As homeowners of the Cabrillo Wetland Village, aka, Cabrillo Mobile Home Park, we can attest to the types of plants that had previously thrived in, and specific species of birds that have foraged and nested in the area of concern, the Cabrillo central wetland parcel (referred to as the RV parking lot). The majority of our members have lived here between 15 to 35 years. We had previously leased the whole 28.5 acre wetlands and mobile home park from Caltrans from 1966 to 2004. The Mills Land and Water Company purchased it from Caltrans in 2004 and soon after, started their destruction.

We had been the Stewards of the wetlands for all those years, nurturing, cleaning, restoring and preserving the wetlands and protecting the wildlife and plants from destruction. Since Mills took ownership in 2004, we have documented the numerous acts of destruction against the wetland property. Mills has been cited several times regarding their scraping of plants and dumping of asphalt in the adjacent wetlands surrounding Cabrillo.

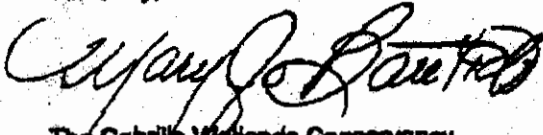
The major plants that were previously present prior to the scraping of the central parcel wetlands (called the RV Parking Lot) on February 23, 2008, were curved sicklegrass, saltgrass, rabbitsfoot grass and pickleweed. The species of birds that continue to be observed in the area are the Western Meadowlark, Belding's Savannah Sparrow, Black Phoebe, Mourning Dove, Killdeer, Red-tailed Hawk, and Cooper's Hawk. Other birds that have been seen and photographed hunting and foraging in the adjacent wetland areas are the Great Blue Heron, Great White Heron, Northern Harrier, Mallard Duck, and White-tailed Kite. We even have pictures of an Osprey eating his fish on a telephone pole above a mobile home.

This property was considered wetlands on March 18, 1996. The City Council accepted and agreed to the Coastal Commission's approval of Local Coastal Program Amendment 2-84, whereby, at the request of the Coastal Commission, the City of Huntington Beach created Ordinance 3325, amended the Huntington Beach Zoning and Subdivision Ordinance and Zoning Map to change the strip of land (with the exception of the 2-acre corner parcel) located along Pacific Coast Highway between Beach Boulevard to Newland Street from Visitor-

Reverting Commercial to Coastal Conservation with Coastal Zone and Floodplain overlays. The current City Zoning Map still depicts this property as Coastal Conservation (CC).

We members of the Cabrillo Wetlands Conservancy thank you for helping us protect our remaining coastal wetlands, and we support your staff in requesting a monetary claim through the proposed consent amendments to the previously issued Cease and Desist Order and Restoration Order of the wetlands that have been damaged adjacent to the Cabrillo Mobile Home Park in Huntington Beach.

Sincerely,



The Cabrillo Wetlands Conservancy  
21752 Pacific Coast Highway  
Space 23A  
Huntington Beach, CA 92648

Mary Jo Baratch, President, mjbaratch@hotmail.com  
Jan D. Vandersloot, MD JonV3@aol.com  
Mark Bbdy mark@bbdy.org  
Joey Racano earthsourcemedia@yahoo.com  
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John McGregor  
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Marinka Horack horackm@hotmail.com  
Suzie Smith suzie@1taftrees.com  
Charles Olsen rthrust@gmail.com

**FORM FOR DISCLOSURE  
OF EX PARTE  
COMMUNICATION**

Date and time of communication:  
(For messages sent to a Commissioner by mail or facsimile or received as a telephone or other message, date time of receipt should be indicated.)

Tuesday, 10/6/09, 7:00 p.m.

Location of communication:  
(For communications sent by mail or facsimile, or received as a telephone or other message, indicate the means of transmission.)

Oceanside, CA

Person(s) initiating communication:

Dave Neish Sr. and Dave Neish Jr.

Person(s) receiving communication:

Commissioner Bonnie Neely

Name or description of project:

Past Agenda Item: Beachfront Village LLC,  
Huntington Beach, Consent Agreement, Amendments,  
and Restoration Orders

Detailed substantive description of content of communication:  
(If communication included written material, attach a copy of the complete text of the written material.)

Mr. Neish represents the applicant, Beachfront Village LLC, who has issues with the amount of the settlement fee proposed by Coastal Commission staff. Mr. Neish discussed his clients concerns and was interested in knowing the procedure to address these concerns with the Coastal Commission staff. I indicated that I would speak with staff and get back to Mr. Neish. Subsequent direct conversations between Mr. Neish and Coastal Commission staff resulted in a settlement figure that was agreed to by the applicant.

Date: October 27, 2009

  
\_\_\_\_\_  
Bonnie Neely, Commissioner

If the communication was provided at the same time to staff as it was provided to a Commissioner, the communication is not ex parte and this form does not need to be filled out.

If communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director within seven days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven days of the hearing, complete this form, provide the information orally on the record of the proceedings and provide the Executive Director with a copy of any written material that was part of the communication.

Coastal Commission Fax: 415 904-5400

**FORM FOR DISCLOSURE  
OF EX PARTE  
COMMUNICATIONS**

Name or description of project, LCP, etc.: Cease and Desist Order Consent  
Amendment No. CCC-09-CD-02-A  
and Restoration Order Consent  
Amendment No. CCC-09-RO-02-A  
(Mills PCH, LLC - Huntington  
Beach, Orange County)

Date and time of receipt of communication: 10/28/09, 11:00 am

Location of communication: Board of Supervisor's Office, Santa  
Cruz, California

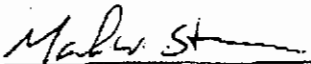
Type of communication: In-person meeting

Person(s) initiating communication: Sarah Corbin  
Grant Weseman

Person(s) receiving communication: Mark Stone

Detailed substantive description of content of communication:  
(Attach a copy of the complete text of any written material received.)

I was briefed on the history of the site. ORCA is in agreement with the staff recommendation and reiterates their support for fines and penalties for intentional destruction of coastal resources such as wetlands.

Date: 10/28/09 Signature of Commissioner: 

If the communication was provided at the same time to staff as it was provided to a Commissioner, the communication is not ex parte and this form does not need to be filled out.

If communication occurred within seven or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director within seven days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used; such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven days of the hearing, complete this form, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication.

-----Original Message-----

**From:** Steve Blank [mailto:sblank@kandsranch.com]  
**Sent:** Saturday, October 31, 2009 10:49 PM  
**To:** Vanessa Miller  
**Subject:** Fwd: Ex parte November CCC meeting

email exparte from ORCA

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Steve Blank  
[www.steveblank.com](http://www.steveblank.com)  
[sblank@kandsranch.com](mailto:sblank@kandsranch.com)  
(415) 999-9924  
twitter: sgblank

Begin forwarded message:

**From:** Lennie Roberts <lennie@darwin.ptvy.ca.us>  
**Date:** October 31, 2009 10:02:32 AM PDT  
**To:** Steve Blank <sblank@kandsranch.com>  
**Subject: Ex parte November CCC meeting**

Hello Steve, Here are three items on the November Commission Agenda that our coastal colleagues would like you to consider. If you have any questions, I would be glad to discuss or put you in touch with the appropriate most knowledgeable person.

Thanks,

Lennie

**W.9.b. Appeal No. A-3-SLO-09-058 (DeCicco, San Luis Obispo Co.)**  
San Luis Obispo colleagues oppose the staff recommendation for finding of No Substantial Issue, and recommend that the Commission find Substantial Issue based on inconsistency with LCP and Coastal Act Visual and Scenic Resources policies. The project, a three story, 220-foot long mass, is considered by them to be inconsistent with the Cayucos Area Plan, which requires new development to be compatible with existing development. Its mass and bulk would appear to be out of scale with the neighborhood which is composed of small one and two story houses . Other issues raised in the appeal include parking, traffic safety, inadequate fire protection, and toxics remaining in the soil from the old gas station. There is substantial community opposition to the project.

**W.12.5 Commission Cease and Desist Order Consent Amendment No. CCC-09-CD-03-A and Restoration Order Consent Amendment No. CCC-09-RO-02-A (Mills PCH, LLC - Huntington Beach, Orange County)**

Orange County colleagues support the staff recommendation, and strongly support the financial penalty. There is a concern that unpermitted fill remains on the property which must be completely removed. The order calls for removal of all unpermitted development, including fill. The staff report finds that the restoration has not yet been completed, or even planned completely.

**W.15.a. Appeal No. A-1-MEN-07-28 (Jackson-Grube Family, Inc., Mendocino Co.)**

While the overall footprint of the project has been reduced through proposed conditions per staff, appellants feel that the project needs to be further scaled down in order to be fully in compliance with the \*1C zoning and that, if approved, the project would still set a troubling precedent for other large coastal properties designated as \*1C.

**FORM FOR DISCLOSURE  
OF EX PARTE  
COMMUNICATION**

**Date and time of communication:** November 2, 2009; 10:00 a.m.  
(For messages sent to a Commissioner by mail or facsimile or received as a telephone or other message, date time of receipt should be indicated.)

**Location of communication:** Commissioner Neely's Eureka Office  
(For communications sent by mail or facsimile, or received as a telephone or other message, indicate the means of transmission.)

**Person(s) initiating communication:** Maggy Herbelin, ORCA Representative

**Person(s) receiving communication:** Commissioner Bonnie Neely

**Name or description of project:** Nov. Agenda Item W12.5 (Addendum Page): Mills PC – Huntington Beach, Orange County – Cease and Desist Order Consent Amendment and Restoration Order Consent Amendment – Public Hearing and Commission action on proposed consent amendments to previously issued Cease and Desist Order.

**Detailed substantive description of content of communication:**  
(If communication included written material, attach a copy of the complete text of the written material.)

ORCA OC supports the staff recommendation and strongly supports the financial penalty. There is some concern that there is still unpermitted fill on the property. ORCA Orange County recommends approval of the staff report with a modification that the remaining rock fill be removed and the site's grade restored to what it was before the violation. Looking through the staff report, it is clear that the restoration has not yet been completed or even completely planned.

**Date:** November 2, 2009

  
Signature of Commissioner

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If communication occurred within seven days of the hearing, complete this form, provide the information orally on the record of the proceedings and provide the Executive Director with a copy of any written material that was part of the communication.

Coastal Commission Fax: 415 904-5400



## CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000  
 SAN FRANCISCO, CA 94105-2219  
 VOICE AND TDD (415) 904-5200  
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# Item W12.5

**Staff:** Andrew Willis-LB  
**Staff Report:** October 19, 2009  
**Hearing Date:** November 4, 2009

## STAFF RECOMMENDATIONS AND FINDINGS FOR CONSENT AGREEMENT AND AMENDMENTS TO CEASE AND DESIST AND RESTORATION ORDERS

**CONSENT AGREEMENT AND AMENDMENT TO CEASE AND DESIST ORDER:**

CCC-09-CD-03-A

**CONSENT AGREEMENT AND AMENDMENT TO RESTORATION ORDER:**

CCC-09-RO-02-A

**RELATED VIOLATION FILE:**

V-5-08-011

**PROPERTY LOCATION:**

21622 Pacific Coast Highway, Huntington Beach, Orange County Assessor's Parcel No. 114-150-86

**PERSONS SUBJECT TO THESE ORDERS:**

Mills PCH, LLC<sup>1</sup>

**PROPERTY OWNER:**

Mills PCH, LLC<sup>2</sup>

**VIOLATION DESCRIPTION:**

Unpermitted development, including 1) removal of major vegetation, including native wetland vegetation; 2) placement of fill in a wetland; 3) grading a wetland; 4) construction of a trench drain in a wetland; and 5) change in the intensity of use of water resulting from altering the hydrology of wetlands through soil compaction, grading, placement of fill and construction of a trench drain.

<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 record owner of the property, whether that be Mills PCH, LLC or some later incarnation thereof, such as Beachfront Village, LLC.

<sup>2</sup> See fn1.

|                                    |  |
|------------------------------------|--|
| <b>SUBSTANTIVE FILE DOCUMENTS:</b> | <ol style="list-style-type: none"> <li>1. Huntington Beach certified Local Coastal Program</li> <li>2. Public documents in Cease and Desist and Restoration Order files No. CCC-09-CD-03 and CCC-09-RO-02</li> <li>3. Exhibits #1 through #6 and Appendix #1 of this staff report</li> </ol> |
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| <b>CEQA STATUS:</b> | Exempt (CEQA Guidelines (CG) §§ 15060(c)(2) and (3)) and Categorically Exempt (CG §§ 15061(b)(2), 15307, 15308 and 15321). |
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## I. SUMMARY OF STAFF RECOMMENDATION

The proposed Consent Agreement and Cease and Desist Order Amendment No. CCC-04-CD-09-A and Restoration Order Amendment No. CCC-04-RO-03-A (“Consent Agreement and Amendments”) will modify the orders previously issued by the California Coastal Commission (“Commission”) by appending new, mutually acceptable language to the orders to 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 (**Exhibit #4**), and occurring prior to the date of the Consent Agreement and Amendments. Through the Consent Agreement and Amendments, Mills PCH, LLC,<sup>3</sup> the entity subject to these orders (“Respondent”), has agreed to pay a monetary settlement of \$125,000, and has agreed not to contest the issuance or enforceability of these amendments or the amended orders. See **Exhibit #5** of this staff report.

The violations that are the subject of these proceedings involve the filling, grading and draining of wetlands that support saltmarsh vegetation native to southern California on two portions of an approximately 10.78-acre property located at 21622 Pacific Coast Highway, Huntington Beach (“subject property”) (**Exhibits #1-3**). To address the Coastal Act violations and require restoration of the property, on April 9, 2009, the Commission approved Cease and Desist Order CCC-09-CD-03 and Restoration Order CCC-09-RO-02 (“Orders”) to require and authorize Respondent to 1) remove all unpermitted development from the subject property, 2) restore and undertake mitigation activities on the subject property using restorative grading and planting of vegetation native to southern California saltmarshes, and 3) cease and desist from conducting any further unpermitted development on the subject property. The adopted findings for the April 9, 2009 Staff Report and Orders are attached as **Exhibit #6**, and are hereby incorporated into this staff report.

Over the last several months, Respondent has worked closely with staff to resolve the outstanding issues regarding the violations and has agreed to pay fines and penalties through these amendment proceedings. As of the date of this staff report, Respondent has submitted, and

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<sup>3</sup> See fn1.

staff has approved, a restoration plan that satisfies the provisions of the Orders pertaining to preparation of a restoration plan. The restoration plan includes provisions regarding revegetation of all areas impacted by the unpermitted development that was populated by native saltmarsh plant species and mitigation planting at a 4:1 ratio, including a schedule for such activities and also provides for monitoring over time. Under this agreement Respondent has specifically agreed to not challenge, and to comply with the implementation requirements of the Orders previously issued by the Commission as well as the requirements of this Agreement and Amendments. The payment of a monetary settlement resolves the remaining claims against Respondent for violations of the Coastal Act as alleged in the February 3, 2009 NOI arising prior to the time that NOI was sent and which were specifically referenced in that letter and would avoid the need for litigation of the Commission's remaining claims for these specific violations.

Staff recommends approval of these amendments since they would resolve this case amicably and without the need for litigation.

## **II. MODIFICATION OF CEASE AND DESIST AND RESTORATION ORDERS**

The Commission may, after public hearing, modify a Cease and Desist or Restoration Order that it has issued, under certain enumerated and limited circumstances. The requirements to qualify for and procedures for modifications of Commission Cease and Desist Orders and Restoration Orders are set forth in Title 14, Division 5.5, Section 13188 and Section 13197 of the California Code of Regulations, which provide for public hearings to be held on such modifications.

## **III. HEARING PROCEDURES**

The procedures for a hearing on a Cease and Desist Order and Restoration Order are outlined in Title 14, Division 5.5, Section 13185 and Section 13195 of the California Code of Regulations.

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 the Commission typically gives Staff the opportunity to respond 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, California Code of Regulations (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 a motion, per Staff recommendation or as amended by the Commission, will result in issuance of the Cease and Desist Order and Restoration Order.

#### **IV. STAFF RECOMMENDATIONS**

Staff recommends that the Commission adopt the following motion:

##### **1(a) Motion**

*I move that the Commission issue Consent Cease and Desist Order Amendment No. CCC-09-CD-03-A and Consent Restoration Order Amendment No. CCC-09-RO-02-A pursuant to the staff recommendation.*

##### **1(b) Staff Recommendation of Approval**

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

##### **1(c) Resolution to Issue a Cease and Desist Order Amendment and a Restoration Order Amendment**

The Commission hereby issues Consent Cease and Desist Order Amendment No. CCC-09-CD-03-A, as set forth below, and adopts the findings set forth below on grounds that (1) development conducted by the Respondent and/or its manager or other associated entities has occurred on property owned by Respondent without a coastal development permit, in violation of the City of Huntington Beach Local Coastal Program; and (2) changes to the Orders effected by the Consent Agreement and Amendments are limited to mutually agreeable additions to address Respondent's potential civil liability without litigation and do not alter any of the provisions of the Orders or the legal bases or findings of the Commission, nor does they eliminate any obligations of Respondent under those Orders.

In addition, the Commission hereby issues Restoration Order Amendment No. CCC-09-RO-02-A, as set forth below, and adopts the findings set forth below on the grounds that (1) development has occurred on the subject property without a coastal development permit, the development is inconsistent with the Coastal Act, and the development is causing continuing resource damage; and (2) changes to the Orders effected by the Consent Agreement and Amendments are limited to mutually agreeable additions to address Respondent's potential civil liability without litigation and do not alter any of the provisions of the Orders or the legal bases or findings of the Commission, nor does they eliminate any obligations of Respondent under those Orders.

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

Staff recommends the Commission adopt the following findings of fact in support of its action. As noted above, the findings for the original orders issued in April 2009, Cease and Desist Order No. CCC-09-CD-03 and Restoration Order No. CCC-09-RO-02, are hereby incorporated by reference and included in the Staff Report and Orders which are attached hereto as **Exhibit #6**. In that original action, the Commission found, inter alia, that the development subject to these proceedings 1) occurred without a coastal development permit, 2) was inconsistent with the City of Huntington Beach Local Coastal Program, 3) and was causing continuing resource damage. Therefore, the Commission has found that the criteria for issuance of a cease and desist order and restoration order under Section 30810 and Section 30811 of the Coastal Act have been met and are met for these Amendments as well.

**A. Description of Unpermitted Development**

The unpermitted development that is the subject matter of these Orders includes impacts to a wetland on the subject property, specifically including 1) removal of major vegetation; 2) placement of fill, including but not limited to sediment discharge from an unpermitted trench drain; 3) grading; 4) construction of a trench drain; and 5) change in the intensity of use of water resulting from altering the hydrology of wetlands through soil compaction, grading, placement of fill and construction of a trench drain. The removal of major vegetation, placement of fill, grading and change in the intensity of use of water described above all occurred within or adjacent to wetlands.

**B. Basis For Modification Of Cease And Desist And Restoration Orders**

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, which set forth the specific and limited bases for such amendments, which have been met here, and state, in part:

**Cease and Desist Order (Coastal Act §30810)**

*(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.*

Restoration Order (Coastal Act §30811)

*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.*

Modification of Cease and Desist Orders (California Code of Regulations §13188)

*(b) The commission, after public hearing, may rescind or modify a cease and desist order that it has issued. A proceeding for such a purpose may be commenced by... the executive director...*

Here, the Executive Director, after reaching a settlement with Respondent, has determined that commencing such an Amendment proceeding is appropriate and would save both the State and Respondent time, resources and costs by providing an amicable and efficient resolution of this matter.

Modification of Restoration Orders (California Code of Regulations §13197)

*The commission, after public hearing, may rescind or modify a restoration order that it has issued. A proceeding for such a purpose may be commenced by...the executive director...*

In the present matter, both Respondent (as the entity to which the Cease and Desist and Restoration Orders were directed) and the Executive Director seek Commission approval of the proposed Consent Agreement and Amendments. As described above, the Commission has already found that the criteria for issuance of cease and desist and restoration orders for this matter have been met. The Consent Agreement and Amendments that will modify the previously issued Orders settle the Commission's monetary claims for relief for those violations of the Coastal Act that were set forth in the February 3, 2009 NOI and that occurred prior to the date of the Consent Agreement and Amendments.

Therefore, staff recommends that the Commission issue the Consent Agreement and Cease and Desist Order Amendment No. CCC-09-CD-03-A and Restoration Order Amendment No. CCC-09-RO-02-A attached as **Exhibit #5** of this staff report.

## **Exhibit List**

### **Exhibit**

### **Number      Description**

1. Site Map and Location
2. Photographs of the site prior to the unpermitted development at issue
3. February 23 and 24, 2008 photographs of the site after grading, vegetation removal, and construction of the trench drain
4. Notification of Intent to Commence Cease and Desist Order and Restoration Order Proceedings and to Record a Notice of Violation of the Coastal Act, February 3, 2009
5. Consent Agreement and Cease and Desist Order Amendment No. CCC-09-CD-03-A and Restoration Order Amendment No. CCC-09-RO-02-A
6. Staff Recommendations and Findings for Cease and Desist Order No. CCC-09-CD-03 and Restoration Order No. CCC-09-RO-02, Approved by the Commission on April 9, 2009 and Addendum to Cease and Desist Order No. CCC-09-CD-03 and Restoration Order No. CCC-09-RO-02 (note: a link to full copies of all exhibits to this exhibit and the Addendum is available on the November agenda at [www.coastal.ca.gov](http://www.coastal.ca.gov) at Appendix 1)

Appendix 1. Exhibits to Adopted Findings for Cease and Desist Order No. CCC-09-CD-03 and Restoration Order No. CCC-09-RO-02 for the Commission Meeting of April 9, 2009 and Addendum to Cease and Desist Order No. CCC-09-CD-03 and Restoration Order No. CCC-09-RO-02 (a link to the Appendix is available on the November agenda at [www.coastal.ca.gov](http://www.coastal.ca.gov))

Appendix 1 is arranged in three parts:

1. Exhibits to Staff Recommendations and Findings for Cease and Desist Order No. CCC-09-CD-03 and Restoration Order No. CCC-09-RO-02
2. Appendix to Staff Recommendations and Findings for Cease and Desist Order No. CCC-09-CD-03 and Restoration Order No. CCC-09-RO-02
3. Addendum to Staff Recommendations and Findings for Cease and Desist Order No. CCC-09-CD-03 and Restoration Order No. CCC-09-RO-02

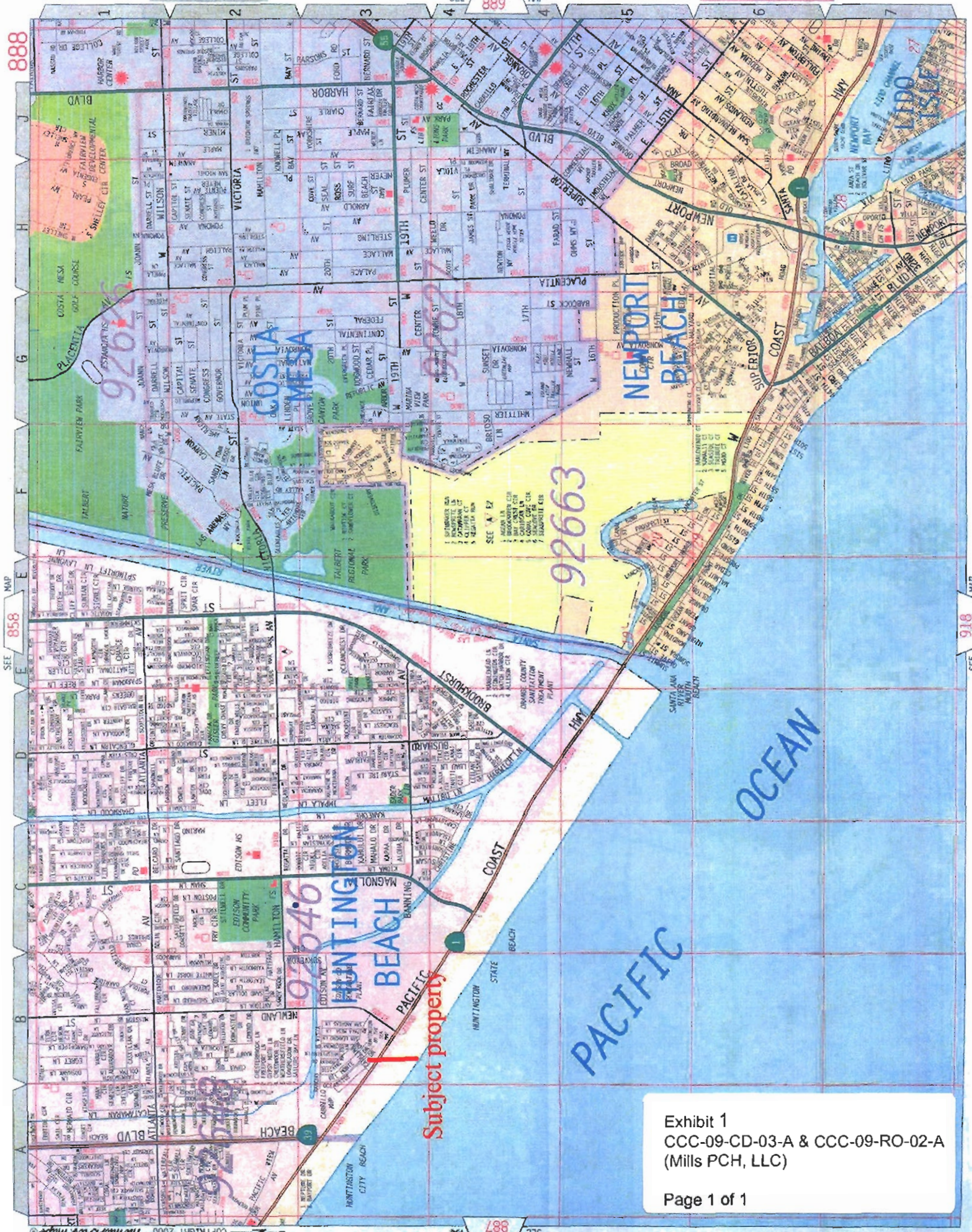
Revised Exhibit 5: Final Consent Agreement and Amendments approved by Commission on November 5, 2009



888

SEE 858 MAP

SEE 918 MAP



Subject property

Exhibit 1  
 CCC-09-CD-03-A & CCC-09-RO-02-A  
 (Mills PCH, LLC)

Page 1 of 1





Exhibit 2  
CCC-09-CD-03-A & CCC-09-RO-02-A  
(Mills PCH, LLC)





Exhibit 2  
CCC-09-CD-03-A & CCC-09-RO-02-A  
(Mills PCH, LLC)

Page 2 of 3 (Fenced portion)





Exhibit 2  
CCC-09-CD-03-A & CCC-09-RO-02-A  
(Mills PCH, LLC)





Exhibit 3  
CCC-09-CD-03-A & CCC-09-RO-02-A  
(Mills PCH, LLC)





## CALIFORNIA COASTAL COMMISSION

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



## VIA CERTIFIED AND REGULAR MAIL

February 3, 2009

Mills PCH, LLC  
Attn: Peter Wynn  
P.O. Box 7108  
Huntington Beach, CA 92615

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

**Property Location:** 21752 Pacific Coast Highway, Huntington Beach, Orange County Assessor's Parcel No. 114-150-86

**Unpermitted Development:** Construction of a fence and berm in a wetland; removal of major vegetation, including native wetland vegetation; placement of fill in a wetland; grading a wetland; construction of a trench drain in a natural wetland; and change in the intensity of use of water resulting from altering the hydrology of wetlands through soil compaction, grading, placement of fill and construction of a trench drain.

Dear Mills PCH, LLC:

The purpose of this letter is to notify you of my intent, as the Executive Director of the California Coastal Commission ("Commission"), to record a Notice of Violation of the Coastal Act against the property where the violations occurred and to commence proceedings for issuance of Cease and Desist and Restoration Orders to address unpermitted development at the site, which includes, but may not be limited to, construction of a fence and berm in a wetland; removal of major vegetation, including native wetland vegetation; placement of fill in a wetland; grading a wetland; construction of a trench drain in a natural wetland; and change in the intensity of use of water resulting from altering the hydrology of wetlands through soil compaction, grading, placement of fill and construction of a trench drain.

The unpermitted development occurred on property owned by Mills PCH, LLC and located at 21752 Pacific Coast Highway, Orange County Assessor's Parcel No. 114-150-86 in Huntington Beach ("Property"). A portion of the Property is developed with a mobilehome park that spans multiple parcels, including the one which is the subject of this letter. The remaining parcels upon which the mobilehome park is located are owned by Mills Land & Water Company. Mills Land & Water Company is the primary manager of Mills PCH, LLC. The unpermitted development impacted a wetland on the Mills PCH property, located approximately 400 feet northwest of the Newland Street and Pacific Coast Highway intersection. The affected wetland supports native wetland vegetation, including salt grass (*Distichlis spicata*) and pickleweed (*Salicornia virginica*).

The impacted wetland is a component of the larger Huntington Beach Wetlands complex, which is a remnant of an extensive historic wetland area that existed at the mouth of the Santa Ana River. Of California's remaining wetlands, southern California wetlands have been the most severely depleted. However, southern California's coastal wetlands still support numerous resident and migrant wildlife species, including birds migrating along the Pacific Flyway. The area's primary resource value is as habitat for marsh dependent bird species. The area presently serves as a waterfowl wintering area, providing resting and foraging areas on the migration routes. The Huntington Beach Wetlands provide a critical food source and breeding habitat for the endangered least tern and the endangered Belding's savannah sparrow.

The purpose of these enforcement proceedings is to address development on the Property that was not authorized with the necessary coastal development permit ("CDP"). The proceedings will propose to address that unpermitted development through the issuance of Cease and Desist and Restoration Orders ("Orders") that will direct you to: 1) cease from performing any additional unpermitted development activity (development not authorized pursuant to, or exempt from, the Coastal Act<sup>1</sup>), 2) remove all unpermitted development according to an approved removal plan, and 3) restore the impacted area pursuant to an approved restoration plan. In addition, the Commission seeks to record a Notice of Violation in this matter to protect prospective purchasers until the Coastal Act violations on the Property have been resolved.

### **1. Violation History**

The unpermitted development activities at issue occurred in February 2008 and include removal of major vegetation, including native wetland vegetation; placement of fill in a wetland; grading a wetland; construction of a trench drain in a natural wetland; and change in the intensity of use of water resulting from altering the hydrology of wetlands through soil compaction, grading, placement of fill and construction of a trench drain. The unpermitted installation of a fence and berm in a wetland on this same property in February 2005 will also be addressed by these Orders.

The wetland impacted by the unpermitted development in February 2008 was also the site of unpermitted development in 2005, 2006 and 2007. In February 2005, a fence and berm were constructed through the wetland. The fence and berm remain on the property. In May 2005, several mounds of asphalt were placed on wetland vegetation. The City of Huntington Beach ("City") ordered the mobilehome park management to remove the asphalt and informed management that a permit must be obtained for any further such work.<sup>2</sup> In August 2006, City staff noticed that wetland vegetation had been removed from the area of the subject unpermitted development. The City informed the mobilehome park management in writing that vegetation could not be removed from the site – also the site of the unpermitted development at issue – without a CDP. In April 2007, several mounds of asphalt were again placed on top of wetland vegetation. The mounds were later removed.

In 1981, a Coastal Act violation (V-5-81-032) involving grading and removal of wetland vegetation from a parcel adjacent to the mobilehome park on the Property was resolved through a settlement

<sup>1</sup> The Coastal Act is codified in sections 30000 to 30900 of the California Public Resources Code ("PRC"). All further section references are to the PRC, and thus, to the Coastal Act, unless otherwise indicated.

<sup>2</sup> As discussed below, the Property is located within the City of Huntington Beach certified Local Coastal Program jurisdiction. The City requested the Commission assume primary enforcement authority with regard to the current violation pursuant to Section 30810.

agreement between the mobilehome park owner, Mills Land & Water Company, and the Office of the Attorney-General, which required Mills Land & Water Company to remove debris and trash from the parcel, notify the Attorney-General of the debris removal, and apply for a coastal development permit for any vegetation removal in the future. As at the time of the 1981 Coastal Act violation, Mills Land & Water Company, which is the primary manager of Mills PCH, presently owns the mobilehome park and would therefore have reason to both know of the protection the Coastal Act provides for wetlands and of the general need for coastal development permits and the role of the Coastal Commission in implementing the Coastal Act and its requirements.

The subject unpermitted development commenced on February 23, 2008 and was reported to staff on February 24. Photographs taken on February 23 and 24 documenting the activity accompanied the report. Staff visited the site on February 26 and confirmed that development, including grading and fill of wetlands, removal of wetland vegetation, and construction of a trench drain in a wetland, had occurred. At the site, staff observed graded wetland areas, placement of a trench drain and pipe, and areas where wetland vegetation had been removed and destroyed. Two pieces of heavy equipment - a mechanized soil compactor and a backhoe - were parked on the site. Commission staff researched the matter and confirmed that no application for a CDP had been submitted, and no CDP had been obtained, for any such activities.

Commission staff consulted with the City, during a telephone conversation on February 26, 2008, regarding what action would be appropriate and the appropriate entity to address the unpermitted development under the policies of the City's certified Local Coastal Program ("LCP"), as is provided for in Sections 30809 and 30810. City staff recommended that the Commission assume primary enforcement authority with regard to this violation.

Commission staff confirmed, in a letter dated March 4, 2008, that City staff had requested the Commission take action to enforce the policies of the City LCP, including but not limited to issuance of an order to enforce the requirements of the LCP pursuant to Section 30810 and/or 30811. As noted above, on February 26, 2008 the City recommended that Commission staff proceed with cease and desist and restoration order proceedings, and therefore, Commission staff is proceeding with this enforcement action.

Commission staff sent a Notice of Violation letter to you on March 21, 2008, that explained the subject unpermitted activity is "development" under the City LCP, development without a CDP is a violation of the LCP, and requested Mills PCH, LLC contact Commission staff to discuss Mills PCH's willingness to resolve the violations.

In your April 14, 2008 response to our March 21 Notice of Violation letter, your representative, Susan Hori, indicated your preference to resolve the matter through a consensual agreement. Subsequently, staff discussed with your representative during a telephone conversation on June 13, 2008, and a visit to the site on July 7, 2008, as well as in a letter dated October 27, 2008, the possibility of addressing this violation through a consent order. Throughout these discussions, both parties were amenable to resolving this matter through a consent order.

Following a January 6, 2009 telephone discussion regarding the matter, on January 13, 2009, City staff also recommended the Commission take action to enforce the policies of the City LCP with regard to an unpermitted fence and berm that were constructed in February 2005. Commission staff



confirmed, in a letter dated January 15, 2009, that City staff had requested the Commission take action to enforce the policies of the City LCP with regard to the fence and berm.

In a January 13, 2009 letter, Commission staff proposed draft consent orders that embody a settlement agreement that Commission staff is willing to recommend to the Commission in order to settle the matter of this violation regarding fill of wetlands on February 23, 2008, and the violation regarding placement of the unpermitted fence and berm, including settlement of penalties for these violations as well, in order to be able to avoid litigation over the subject Coastal Act violations on the Property.

On January 27, 2009, we received your response to the proposed draft Consent Orders, indicating your preference to continue to work towards a consent order. Staff continued discussions of this possibility with your representative on January 29 and remain willing and ready to discuss options that could involve agreeing to consent orders to resolve the violations on the Property.

## **2. Notice of Violation**

By this letter, I am also notifying you of my intent to record a Notice of Violation of the Coastal Act for unpermitted development on the site, including construction of a fence and berm in a wetland; removal of major vegetation, including native wetland vegetation; placement of fill in a wetland; grading a wetland; construction of a trench drain in a natural wetland; and change in the intensity of use of water resulting from altering the hydrology of wetlands through soil compaction, grading, placement of fill and construction of a trench drain. The unpermitted development activities occurred on Mills PCH, LLC property located at 21752 Pacific Coast Highway, Orange County Assessor's Parcel No. 114-150-86 in Huntington Beach, which is located within the Coastal Zone area of the City of Huntington Beach.

Section 245.06 of the City's LCP states that, in addition to obtaining any other permit required by law, and with limited exceptions not applicable here, any person wishing to perform or undertake any development in the Coastal Zone must obtain a CDP. "Development" is defined by Section 245.04 of the LCP as follows:

*The placement or erection of any solid material or structure on land, in or under water; discharge or disposal of any materials; 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...and the removal or harvesting of major vegetation other than for agricultural purposes...*

The subject activities that occurred on the Property constitute "development" within the meaning of the above-quoted definition and therefore are subject to the permit requirement of LCP Section 245.06. A CDP was not issued by the City or the Commission to authorize the subject development. Any non-exempt development performed without a CDP or a waiver constitutes a violation of the City's LCP and the Coastal Act.

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

Exhibit 4  
CCC-09-CD-03-A & CCC-09-RO-02-A  
(Mills PCH, LLC)

*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 Commission's Long Beach office at 200 OceanGate, 10<sup>th</sup> Floor, Long Beach CA, 90802, to the attention of Andrew Willis, within twenty days of the postmarked mailing of this notice.** If you fail to object within that twenty-day period, we shall record the Notice of Violation in the Orange County Recorder's office pursuant to Section 30812(b). It should also be noted that, pursuant to Section 30812, after final resolution of the violation, the Executive Director will record a rescission of this notice, which shall have the legal effect of a withdrawal or expungement of the original notice.

### **3. Cease and Desist Order**

The Commission's authority to issue Cease and Desist Orders is set forth in Section 30810(a), which begins by stating the following:

*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 port master plan, or any requirements of this division which are subject to the jurisdiction of the certified program or plan, under any of the following circumstances:*

- (1) The local government or port governing body requests the commission to assist with, or assume primary responsibility for, issuing a cease and desist order.*
- (2) The commission requests and the local government or port governing body declines to act, or does not take action in a timely manner, regarding an alleged violation which could cause significant damage to coastal resources...*

As noted above, the City requested the Commission to assume primary responsibility for issuing a cease and desist order to address this matter. I am issuing this notice of intent to commence Cease and Desist Order proceedings to compel the removal of the unpermitted development on the Property and to require you to cease and desist from conducting further unpermitted development.

The unpermitted development is located on property that you own in the Huntington Beach Wetlands complex.

Section 245.06 of the City's Zoning Code states that, in addition to obtaining any other permit required by law, and with limited exceptions not applicable here, any person wishing to perform or undertake any development in the Coastal Zone must obtain a CDP. "Development" is defined by broadly by LCP Section 245.04 (see page 4, above).

The subject activities constitute "development" within the meaning of the above-quoted definition and therefore are subject to the permit requirement of LCP Section 245.06. The unpermitted development includes construction of a fence and berm in a wetland; removal of major vegetation, including native wetland vegetation; placement of fill; grading; construction of a trench drain in a natural wetland; and change in the intensity of use of water resulting from altering the hydrology of wetlands through soil compaction, grading, placement of fill and construction of a trench drain. A CDP was not issued by the City or the Commission to authorize the subject unpermitted development.

For this reason, the criteria of Section 30810(a) have been met, and I am sending this letter to initiate proceedings for the Commission to determine whether to issue a Cease and Desist Order.

Based on Section 30810(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 the Coastal Act, including removal of any unpermitted development or material.

#### **4. Restoration Order**

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

*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 the development has occurred without a coastal development permit from the commission, local government..., the development is inconsistent with this division, and the development is causing continuing resource damage.*

Pursuant to Section 13191 of the Commission's regulations, I have determined that the specified activities meet the criteria of Section 30811 of the Coastal Act, based on the following:

- 1) Unpermitted development consisting of construction of a fence and berm in a wetland; removal of major vegetation, including native wetland vegetation such as pickleweed and saltgrass; placement of fill in a wetland; grading a wetland; construction of a trench drain in a natural wetland; and change in the intensity of use of water resulting from altering the hydrology of wetlands through soil compaction, grading, placement of fill and construction of a trench drain has occurred on the Property.
- 2) This development is inconsistent with the resource protection policies of the Coastal Act.
- 3) The unpermitted development remains in place and is thereby causing continuing resource damage, as defined by Section 13190 of the Commission's regulations. The impacts from the unpermitted development remain unmitigated; therefore, the damage to resources protected by the Coastal Act is continuing.

For the reasons stated above, I have decided to commence proceedings for the Commission's issuance of a Restoration Order in order to restore the Property. The procedures for the issuance of Restoration Orders are described in Sections 13190 through 13197 of the Commission's regulations, which are codified in Title 14 of the California Code of Regulations.

### **5. 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 and Restoration Order proceedings by completing the enclosed Statement of Defense (SOD) form. **The SOD form must be returned to the Commission's Long Beach office, directed to the attention of Andrew Willis, no later than February 23, 2009.**

Commission staff intends to schedule the hearings for the Cease and Desist and Restoration Order during the Commission's April 8-10, 2009 meeting in Ventura.

### **6. Civil Liability/Exemplary Damages**

You should be aware that the Coastal Act includes a number of penalty provisions for unpermitted development. Section 30820(a)(1) 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 instance of development that is in violation of the Coastal Act. 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, including an EDCDO, or a restoration order can result in civil fines of up to \$6,000 for each day in which the violation persists. Section 30822 provides for additional exemplary damages.

### **7. Resolution**

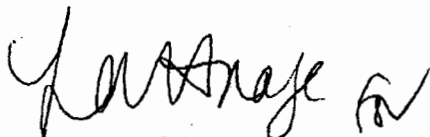
As we have stated in previous correspondence and communications, we would like to work with you to resolve these issues amicably and remain willing and ready to discuss options that could involve agreeing to consent orders. To that end, we sent you proposed draft consent orders on January 13, 2009. A consent cease and desist and restoration order would provide you with an opportunity to have more input into the process and timing of restoration of the Property and mitigation of the damages caused by the unpermitted activity, and could potentially allow you to negotiate a penalty amount with Commission staff in order to resolve the complete violation without any further formal legal action. A Commission cease and desist and restoration order would provide for a permanent resolution and restoration of the Property. We received a response to the proposed draft consent orders on January 27, in which you indicate your preference to resolve this matter through a consent order, and we are still open to negotiating such a consensual resolution to the Coastal Act violations on the Property. If you are interested in discussing the possibility of a consent order, as you have so indicated in your January 27 letter and your representative's conversation with staff on January 29, please contact or send correspondence to the attention of

Mills PCH LLC  
February 3, 2009  
Page 8 of 8

Andrew Willis in the Commission's Long Beach office by no later than February 19, 2009 to discuss options to resolve this case.

Should you have any questions regarding any of the above items, please contact Andrew Willis at (562) 590-5071.

Sincerely,



PETER M. DOUGLAS  
Executive Director  
California Coastal Commission

Enclosure: Statement of Defense form

cc (w/enc.): Susan Hori

cc (w/o enc.): Bill Zylla, City of Huntington Beach  
Lisa Haage, Chief of Enforcement, CCC  
Alex Helperin, Staff Counsel, CCC  
N. Patrick Veasart, Southern California Enforcement Supervisor, CCC  
Andrew Willis, South Coast District Enforcement Analyst, CCC  
Teresa Henry, South Coast District Manager, CCC

**CALIFORNIA COASTAL COMMISSION**

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

**STATEMENT OF DEFENSE FORM**

**DEPENDING ON THE OUTCOME OF FURTHER DISCUSSIONS THAT OCCUR WITH THE COMMISSION ENFORCEMENT STAFF AFTER YOU HAVE COMPLETED AND RETURNED THIS FORM, (FURTHER) ADMINISTRATIVE OR LEGAL ENFORCEMENT PROCEEDINGS MAY NEVERTHELESS BE INITIATED AGAINST YOU. IF THAT OCCURS, ANY STATEMENTS THAT YOU MAKE ON THIS FORM WILL BECOME PART OF THE ENFORCEMENT RECORD AND MAY BE USED AGAINST YOU.**

**YOU MAY WISH TO CONSULT WITH OR RETAIN AN ATTORNEY BEFORE COMPLETING THIS FORM OR OTHERWISE CONTACT THE COMMISSION ENFORCEMENT STAFF.**

This form is accompanied by either a cease and desist order issued by the Executive Director or a notice of intent to initiate cease and desist and restoration order proceedings before the Coastal Commission. This document indicates that you are or may be responsible for, or in some way involved in, either a violation of the Coastal Act or a permit issued by the Commission. This form asks you to provide details about the (possible) violation, the responsible parties, the time and place the violation (may have) occurred, and other pertinent information about the (possible) violation.

This form also provides you the opportunity to respond to the (alleged) facts contained in the document, to raise any affirmative defenses that you believe apply, and to inform the staff of all facts that you believe may exonerate you of any legal responsibility for the (possible) violation or may mitigate your responsibility. You must also enclose with the completed statement of defense form copies of all written documents, such as letters, photographs, maps, drawings, etc. and written declarations under penalty of perjury that you want the commission to consider as part of this enforcement hearing.

You must complete the form (please use additional pages if necessary) and return it no later than February 23, 2009 to the Commission's enforcement staff at the following address:

Andrew Willis  
 California Coastal Commission  
 200 Oceangate, 10<sup>th</sup> Floor  
 Long Beach, CA 90802

If you have any questions, please contact Andrew Willis at (562) 590-5071.

- Facts or allegations contained in the cease and desist order or the notice of intent that you admit (with specific reference to the paragraph number in the order):**

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4. **Other facts which may exonerate or mitigate your possible responsibility or otherwise explain your relationship to the possible violation (be as specific as you can; if you have or know of any document(s), photograph(s), map(s), letter(s), or other evidence that you believe is/are relevant, please identify it/them by name, date, type, and any other identifying information and provide the original(s) or (a) copy(ies) if you can:**

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5. **Any other information, statement, etc. that you want to offer or make:**

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6. **Documents, exhibits, declarations under penalty of perjury or other materials that you have attached to this form to support your answers or that you want to be made part of the administrative record for this enforcement proceeding (Please list in chronological order by date, author, and title, and enclose a copy with this completed form):**

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**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 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 amended herein, 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.

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

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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.

<sup>2</sup> See fn1.

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

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 \$125,000. Respondent agrees to make an initial payment of \$62,500 within 30 days of issuance these Consent Agreement and Amendments. Respondent agrees to make a second payment of \$62,500 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

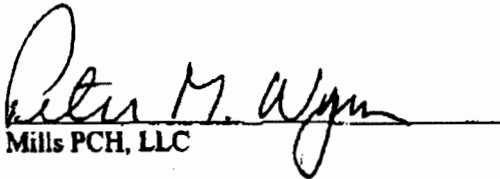
Respondent attests that it has reviewed the terms of the Consent Agreement and Amendments and understands that its consent is final and stipulate to its issuance by the Commission.

CCC-09-CD-03-A & CCC-09-RO-02-A

Page 5 of 5

**IT IS SO STIPULATED AND AGREED:**

On behalf of Respondent:

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

10/20/2009  
 \_\_\_\_\_  
 Date:

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

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

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

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

**CEASE AND DESIST ORDER NO. CCC-09-CD-03 AND  
RESTORATION ORDER NO. CCC-09-RO-02**

**1.0 CEASE AND DESIST ORDER CCC-09-CD-03**

Pursuant to its authority under Public Resources Code § 30810, the California Coastal Commission (“Commission”) hereby authorizes and orders Mills PCH, LLC<sup>1</sup>; all its successors, assigns, employees, agents, and contractors; and any persons acting in concert with any of the foregoing (hereinafter, “Respondents”) to: 1) cease and desist from engaging in any further development on the property identified in Section 5.0, below (“subject property”), unless authorized pursuant to the Coastal Act, including through the terms and conditions of these Orders, 2) to remove the unpermitted development including all fill (whether resulting from direct deposition, side-casting, indirectly from earth movement on-site or sediment discharge from the trench drain, or otherwise); including wetland fill resulting from earth movement on the site, sediment discharge from a trench drain and from construction of the trench drain; and a trench drain, consistent with the requirements of Section 2 as set forth below, 3) take all steps necessary to ensure compliance with the Coastal Act and to return the impacted area of the property its pre-violation condition, including by complying with the requirements of these Orders as described herein.

**2.0 RESTORATION ORDER CCC-09-RO-02**

Pursuant to its authority under PRC Section 30811, the Commission hereby orders and authorizes the Respondents to restore and undertake mitigation efforts on the subject property as described below. The restoration and mitigation required under this order is necessary to resolve a Coastal Act violation.

**2.1. TERMS AND CONDITIONS**

Within 30 days of issuance of these Orders, Respondents shall submit for the review and approval of the Executive Director of the Commission a Restoration Plan, including sections covering Restorative Grading, Revegetation, and On-site Mitigation (“Restoration Plan”). The Restoration Plan will outline the restoration of the pre-violation topography of the site and revegetation, with appropriate species native to southern California saltmarshes, of the areas of the subject property where the unpermitted development occurred that were vegetated with plant species that are native to southern California saltmarshes, as those areas are generally identified in the March 26, 2009 memorandum from Jonna D. Engel, PH.D, Commission staff ecologist. The Restoration Plan shall include the following components and satisfy the following criteria:

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<sup>1</sup> Mills PCH, LLC has informed staff that Mills PCH, LLC is now known as Beachfront Village, LLC. All references to Mills PCH, LLC or Respondents are to Beachfront Village, LLC (formerly known as Mills PCH, LLC).

A. General Terms and Conditions

1. The Restoration Plan shall outline the steps and schedule to be taken, in accordance with sections 2.1.B and C, below, to achieve restoration of the pre-violation topography of the site and revegetation, with appropriate species native to southern California saltmarshes, of the areas of the subject property where the unpermitted development occurred that were vegetated with plant species that are native to southern California saltmarshes, as those areas are generally identified in the March 26, 2009 memorandum from Jonna D. Engel, Ph.D, Commission staff ecologist..
2. The Restoration Plan shall be prepared by a qualified restoration ecologist(s) or resource specialist(s) ("Specialist"), and shall include a description of the education, training, and experience of said Specialist. A qualified Specialist for this project shall have experience successfully completing restoration or revegetation (using California native plant species) of habitat native to this area, including wetland habitats. The Restoration Plan shall include a schedule/timeline of restoration activities and identification of the parties who will be conducting the activities. If these procedures require planting to occur at a certain time of year beyond the deadlines set forth herein, the Executive Director may, at the written request of Respondents, extend the deadlines as set forth in Section 11.0 of the Orders in order to achieve optimal growth of the vegetation.
3. The Restoration Plan shall include a detailed description of all equipment to be used. It shall indicate that only hand tools shall be utilized, unless the information contained in the Restoration Plan demonstrates to the satisfaction of the Executive Director that mechanized equipment is needed and will not have a significant adverse impact on resources protected under the Coastal Act. The Restoration Plan shall designate areas for staging of any construction equipment and materials, including receptacles and temporary stockpiles of graded materials, all of which shall be covered on a daily basis. The Restoration Plan shall include identification of the maximum hours of operation for all equipment and a contingency plan that addresses and provides responses to: 1) impacts from equipment use, including disruption of areas where revegetation and/or restorative grading occurs; 2) potential spills of fuel or other hazardous releases that may result from the use of mechanized equipment; and 3) any water quality concerns.
4. The Restoration Plan shall identify the location of the disposal site(s) for the disposal of all materials removed from the site and all waste generated during restoration activities pursuant to the Orders. If a disposal site is located in the Coastal Zone and is not an existing sanitary landfill, a Coastal Development Permit is required. All hazardous waste must be disposed of at a suitable licensed disposal facility.



**B. Restorative Grading Portion of the Restoration Plan**

1. Respondents shall submit a plan to: (a) remove all unpermitted materials placed at the site, including fill, which, in turn, includes sediment discharge from the trench drain and construction of the trench drain; and (b) fill the trench drain ("Restorative Grading Plan"). The Restorative Grading Plan shall demonstrate that the topography of the subject property will be restored to the condition that existed prior to the unpermitted development. The Restorative Grading Plan shall include sections, drawn to scale with contours that clearly illustrate original (pre-violation), current, and proposed grades, and quantitative breakdown of grading amounts (cut/fill).
2. If the restoration specialist determines that alterations to the original topography, or to any other aspect of the property from its pre-violation state, are necessary to ensure successful revegetation of the site, as described in Section 2.1.C below, then notwithstanding any other provision of these Orders, the Restorative Grading Plan shall include this proposed topography or a description of the aspects that are proposed to be changed and the methods that shall be used to attain the modified outcome. The Restorative Grading Plan shall include a narrative report of the proposed alterations to the original topography, citing any reference sites, case studies, or other data that was used in the analysis and provides reasons for altering the topography from the original contours or changing any other aspect of the pre-violation condition of the property.
3. The Restorative Grading Plan shall provide for any relief of soil compaction in the restoration area necessary to achieve the goals of the Restoration Plan.
4. Other than those areas subject to revegetation activities, the areas of the site and surrounding areas currently undisturbed shall not be disturbed by activities related to this restoration project, unless such activities include removal of non-native, invasive plant species, as defined in Section 2.1.C.4 below, and/or the planting of native plant species within the subject property, or for any mitigation work to be done on the subject property. Prior to initiation of any activities resulting in physical alteration of the subject property, the disturbance boundary shall be physically delineated in the field using temporary measures such as stakes or colored tape.
5. Respondents shall complete implementation of the Restorative Grading Plan within 30 days of approval of the Restoration Plan and implement the work in compliance with the schedule and terms set forth therein.

C. Revegetation Portion of the Restoration Plan

1. Respondents shall submit a Revegetation Plan. The Revegetation Plan shall be prepared by a qualified Specialist, like all other parts of the Restoration Plan, and it shall include detailed descriptions, including graphic representations, narrative reports, and photographic evidence as necessary, of the vegetation on the subject property prior to any unpermitted activities undertaken on the subject property, and the current state of the subject property, as well as a description of the location, type, and implementation steps for the proposed revegetation as forth in these Orders.
2. The Revegetation Plan shall address all areas impacted by the unpermitted development, including all native vegetation characteristic of southern California saltmarshes impacted by the unpermitted development listed in Section 6.0 on the subject property, including the area impacted by the unpermitted trench drain (hereinafter collectively referred to as the "Planting Area").
3. The Revegetation Plan shall identify and describe the physical and biological parameters of the natural habitat type that is the model and that establishes the goals for the restoration including the particular characteristic species. This section shall explicitly lay out the restoration goals and objectives. It shall also include a detailed description of reference site(s) including rationale for selection, location, and species composition. The reference sites shall be located as close as possible to the restoration area, shall be similar in all relevant respects to the habitat model, and shall provide the standard for measuring success of the restoration under the Orders.
4. Based on the natural habitat model and reference site(s), 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 shall come from local native stock (the plan shall not employ any non-native or invasive plant species: no plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council or as may be identified from time to time by the State of California shall be utilized). If plants, cuttings, or seeds 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, mycorrhizal inoculation, etc.) shall also be included. The Revegetation Plan shall include procedures for any plant salvage and methods of

installing salvaged plants. It shall also include a map 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.

5. The Revegetation Plan shall include a plan for weed eradication, which shall include the following: 1) 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.
6. All plantings 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. The plants shall be planted using accepted planting procedures required by the 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 11.0, herein.
7. The Revegetation Plan shall describe the proposed use of artificial inputs, such as watering or fertilization, including the full range of amounts of the inputs that may be utilized. The minimum amount necessary to support the establishment of the plantings for successful restoration shall be utilized. No permanent irrigation system is allowed 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 restored native vegetation has become established, whichever occurs first. If, after the three-year time limit, the restored native vegetation has not established itself, the Executive Director may allow for the continued use of the temporary irrigation system until such time as the restored native vegetation is established.
8. The Specialist shall specify the methods to be used after restoration 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. The Revegetation Plan shall specify the type and location of erosion control measures that shall be installed on

the subject property prior to or concurrent with the initial grading operations and maintained until the impacted areas have been revegetated to minimize erosion and transport of sediment. Such measures shall be provided at all times of the year for at least three years from the effective date of these orders or until the plantings have been established, whichever occurs first, and then shall be removed or eliminated by Respondents.

9. The Revegetation Plan shall include performance standards to determine the success of the native vegetation restoration. The performance standards shall be based on the restoration objectives and goals and the reference site(s) characteristics, in order to determine the success of the native vegetation restoration. The Performance Standards shall identify that "x" native species appropriate to the habitat should be present, each with at least "y" percent cover or with a density of at least "y" / square meter. The Restoration Plan shall include a monitoring program (detailed below) designed to assess whether the restoration results in wetland vegetation on the subject property with a similar plant density, total cover and species composition as that typical of an undisturbed wetland area in the surrounding area within five years from the initiation of revegetation activities.
10. The Revegetation Plan shall describe the monitoring and maintenance methodology and shall include the following provisions:
  - a. The Revegetation Plan shall include maintenance and monitoring methodology, including sampling procedures, sampling frequency, and contingency plans to address potential problems with restoration activities or unsuccessful restoration of the area. Monitoring and maintenance activities shall be conducted in a way that does not impact the sensitive resources on the subject property or on adjacent properties. Any impacts shall be remedied by the Respondents to ensure successful restoration.
  - b. Respondents shall submit, on an annual basis for a period of five years from the date of issuance of these orders (no later than December 31<sup>st</sup> of each year) a written report, for the review and approval of the Executive Director, prepared by a qualified Specialist, evaluating compliance with the approved Revegetation Plan. The annual reports shall include further recommendations and requirements for additional restoration activities, as necessary, 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.
  - c. At the end of the five-year period, Respondents shall submit a final detailed report prepared by a qualified 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 Restoration Plan, Respondents shall submit a revised or supplemental plan to compensate for those portions of the original program that were not successful. The Executive Director shall determine if the revised or supplemental restoration plan must be processed as a CDP, a new Restoration Order, or a modification of these Orders. Respondents shall implement the approved plan.

D. Onsite Mitigation Portion of the Restoration Plan

1. Respondents shall submit, for the review and approval of the Executive Director, an Onsite Mitigation Plan for offsetting the continuing temporal loss and loss of fitness that has resulted from the Coastal Act violations that are the subject of these Orders.

2. The plan shall identify a mitigation site on the subject property, separate from and in addition to the areas being revegetated pursuant to the Revegetation Plan required by Section 2.1.C. In the mitigation area, a native wetland plant community will be restored and permanently protected at a ratio of 4:1 to the Planting Area. The Onsite Mitigation Plan shall include an analysis by a qualified Specialist that considers the specific condition of the site including soil, exposure, temperature, moisture, and wind, as well as restoration goals, methods, and monitoring schedule, including the requirements contained in Section 2.1.A – 3.1.C, above.

3. The Onsite Mitigation Plan shall include maintenance and monitoring methodology, including sampling procedures, sampling frequency, and contingency plans to address potential problems with mitigation activities or unsuccessful restoration of the area. Monitoring and maintenance activities shall be conducted in a way that does not impact the sensitive resources on the subject property or on adjacent properties. Any impacts shall be remedied by the Respondents to ensure successful restoration. At a minimum, long-term maintenance requirements shall include periodic site inspections (at an interval designated in the plan) by a qualified Specialist to assess the success of the restoration efforts, identify maintenance concerns, and recommend solutions to those concerns.

4. Annually, for five years from the date of issuance of these orders (no later than December 31<sup>st</sup> of each year), Respondents shall submit, for the review and approval of the Executive Director, a monitoring report, prepared by a qualified Specialist, that certifies whether the mitigation is in conformance with the approved Onsite Mitigation Plan. The reports shall contain photographic documentation, taken from fixed locations specified in the Onsite Mitigation Plan, of the success of the project. Respondents may incorporate the Onsite Mitigation monitoring report into the monitoring report required in Section 2.1.C.9, above.

5. If the periodic inspections or the monitoring report indicate that the project or a portion thereof is not in conformance with the plan or has failed to meet the goals and/or performance standards specified in the Onsite Mitigation Plan, Respondents shall submit a revised or supplemental Onsite Mitigation Plan for review and approval by the Executive Director. The revised Onsite Mitigation Plan shall be prepared by a qualified Specialist and shall specify measures to remediate those portions of the original Onsite Mitigation Plan that have failed or are not in conformance with the original approved Onsite Mitigation Plan. These measures, and any subsequent measures necessary to carry out the original approved plan, shall be carried out by Respondents in coordination with the Executive Director until the goals of the original approved Onsite Mitigation Plan have been met.

- 2.2 Upon approval of the Restoration Plan (including the Restorative Grading, Revegetation, and On-site Mitigation Portions) by the Executive Director, Respondents shall fully implement the entire plan pursuant to its terms, including the approved schedule, with all restoration and mitigation work to be completed as early as possible consistent with recommendations by the consulting Specialist. Unless the Restoration Plan provides otherwise, the restoration and mitigation work shall be completed no later than 45 days after the approval of the Restoration Plan. The Executive Director may extend this deadline or modify the approved schedule for good cause pursuant to Section 11.0 of the Orders.
- 2.3 Within 30 days of the completion of the work described in the Restoration Plan (Section 2.1), Respondents shall submit to the Executive Director of the Commission a report documenting the restoration and mitigation work on the subject property. This report shall include a summary of dates when work was performed and photographs that show implementation of the Restoration Plan (both restoration and mitigation work), as well as photographs of the subject property before and after the grading and plantings required by the Restoration Plan have been completed.
- 2.4 All plans, reports, photographs and any other materials required by these Orders shall be sent to:

California Coastal Commission

Attn: Andrew Willis  
200 OceanGate, 10<sup>th</sup> Floor  
Long Beach, CA 90802  
(562) 590-5071  
Facsimile (562) 590-5084

California Coastal  
Commission

Attn: Pat Veasart  
89 S. California St., Ste 200  
Ventura, CA 93001  
(805) 585-1800  
Facsimile (805) 641-1732

- 2.5 All work to be performed under the Orders shall be done in compliance with all applicable laws.

3.0 REVISIONS OF DELIVERABLES

The Executive Director may require revisions to deliverables required under these Orders, and the Respondents shall revise any such deliverables consistent with the Executive Director's specifications, and resubmit them for further review and approval by the Executive Director, within ten days of receipt of a modification request from the Executive Director. The Executive Director may extend the time for submittals upon a written request and a showing of good cause, pursuant to Section 11.0 of the Orders

4.0 PERSONS SUBJECT TO THESE ORDERS

Mills PCH, LLC, all their successors, assigns, employees, agents, and contractors, and any persons acting in concert with any of the foregoing are jointly and severally subject to all the requirements of these Orders, and shall undertake the work required herein.

5.0 IDENTIFICATION OF THE SUBJECT PROPERTY

The property that is the subject of these Orders is described as follows:

1.12 acre fenced portion of Mills PCH, LLC property located at 21622 Pacific Coast Highway, Assessor's Parcel Number 114-150-86 in Huntington Beach, Orange County and 0.92 acre unfenced portion of the same property at the Northeast corner of the Newland Street and Pacific Coast Highway intersection.

6.0 DESCRIPTION OF COASTAL ACT VIOLATION

The Coastal Act violations addressed by these Orders include removal of major vegetation; placement of fill in a wetland; grading a wetland; construction of a trench drain in a wetland; and change in the intensity of use of water resulting from altering the wetland hydrology of the site through soil compaction, grading, *placement of fill and construction of a trench drain.*

7.0 COMMISSION AUTHORITY TO ACT

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

8.0 FINDINGS

These Orders are issued on the basis of the findings adopted by the Commission, as set forth in the document entitled "Findings for Cease and Desist Order No. CCC-09-CD-03 and Restoration Order No. CCC-09-RO-02." The activities authorized and required in these Orders are consistent with the resource protection



policies set forth in Chapter 3 of the Coastal Act. The Commission has authorized the activities required in these Orders as being consistent with the resource protection policies set forth in Chapter 3 of the Coastal Act.

9.0 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.

10.0 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. Whether or not such violations of these Orders occur, and if they do, whether or not liability is imposed for such violations, the Commission also retains its right to seek penalties under Chapter 9 for the original underlying violation.

11.0 EXTENSIONS OF DEADLINES

If the Executive Director determines that the Respondents have made a showing of good cause, he/she may 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.

12.0 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.

13.0 APPEAL

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 this Cease and Desist Order. Under 30803(b), a court may only impose or continue such a stay if it is not against the public interest.

14.0 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.

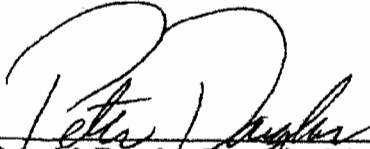
15.0 GOVERNING LAW

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.

16.0 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.

Issued this 9th day of April, 2009 in Oxnard, California

  
Peter M. Douglas, Executive Director  
California Coastal Commission

4/9/09  
Date

Exhibit 5  
CCC-09-CD-03-A & CCC-09-RO-02-A  
(Mills PCH, LLC)

## CALIFORNIA COASTAL COMMISSION

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



# Items TH11 &12

**Staff:** Andrew Willis-LB  
**Staff Report:** March 26, 2009  
**Hearing Date:** April 9, 2009

## STAFF RECOMMENDATIONS AND FINDINGS FOR CEASE AND DESIST AND RESTORATION ORDERS

**CEASE AND DESIST ORDER:** CCC-09-CD-03

**RESTORATION ORDER:** CCC-09-RO-02

**RELATED VIOLATION FILE:** V-5-08-011

**PROPERTY LOCATION:** 21622 Pacific Coast Highway, Huntington Beach,  
 Orange County Assessor's Parcel No. 114-150-86

**PROPERTY OWNER:** Mills PCH, LLC<sup>1</sup>

**VIOLATION DESCRIPTION:** Unpermitted development, including 1) removal of major vegetation, including native wetland vegetation; 2) placement of fill in a wetland; 3) grading a wetland; 4) construction of a trench drain in a wetland; and 5) change in the intensity of use of water resulting from altering the hydrology of wetlands through soil compaction, grading, placement of fill and construction of a trench drain.

**PERSONS SUBJECT TO THESE ORDERS:** 1. Mills PCH, LLC<sup>2</sup>

**SUBSTANTIVE FILE DOCUMENTS:**

1. Huntington Beach certified Local Coastal Program
2. Public documents in Cease and Desist and Restoration Order files No. CCC-09-CD-03 and CCC-09-RO-02

<sup>1</sup> Mills PCH, LLC has informed staff that Mills PCH, LLC is now known as Beachfront Village, LLC. All references to Mills PCH, LLC or Respondent are to Beachfront Village, LLC (formerly known as Mills PCH, LLC).

<sup>2</sup> See fn1.

3. Exhibits #1 through #12 and Appendix 1 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).

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**I. SUMMARY OF STAFF RECOMMENDATION AND FINDINGS**

This case involves the filling, grading and draining of wetlands that support saltmarsh vegetation native to southern California on two portions of an approximately 10.78 acre property located at 21622 Pacific Coast Highway, Huntington Beach (hereinafter, "subject property") (Exhibit #1), as well as other unpermitted development, including removal of major vegetation, such as native saltmarsh vegetation; construction of a trench drain; and change in the intensity of use of water resulting from altering the hydrology of wetlands through soil compaction, grading, placement of fill, and the construction of the trench drain. The unpermitted development at issue affected a 1.12 acre fenced portion of the subject property and a 0.92 acre unfenced portion of the subject property (Exhibit #2). The latter portion of the subject property is located at the Northeast corner of the Newland Street and Pacific Coast Highway intersection. Areas of wetlands and the habitat provided by native saltmarsh vegetation located on the subject property constitute the predominant resources that were affected by the unpermitted development that is the subject of these proceedings. In addition, the state endangered Belding's Savannah Sparrow has been documented within the unfenced and fenced portions of the subject property.

Wetland and Habitat Resources

Wetlands are extremely rare and important ecosystems. Of California's remaining wetlands, southern California wetlands have been the most severely depleted. Despite their rarity, they remain extremely important from an ecological standpoint and southern California's coastal wetlands still support numerous plant species found only in wetlands and resident and migrant wildlife species, including birds migrating along the Pacific Flyway. Wetlands often provide critical habitat, nesting sites, and foraging areas for threatened or endangered wildlife and bird species.

The affected wetland areas pond frequently during winter and support vegetation native to southern California saltmarshes, including saltgrass (*Distichlis spicata*) and pickleweed (*Salicornia virginica*). Commission staff ecologist Dr. Jonna Engel has visited the site and has verified that this site contains wetland as that term is defined in Section 30121 of the Coastal Act and Section 2.16.04 of the City of Huntington Beach certified Local Coastal Program ("LCP") (see March 26, 2009 memorandum from Jonna D. Engel, PH.D, Commission staff ecologist (Exhibit #12).

The impacted wetland is a component of the larger Huntington Beach wetlands complex, which is a rare remnant of an extensive and disappearing historic wetland area that existed at the mouth of the Santa Ana River (Exhibit #3) and is designated an environmentally sensitive habitat area

("ESHA") in the City LCP. The Huntington Beach wetlands support a diversity of native plants characteristic of saltmarshes, which in turn provide habitat for animal species. Numerous wetland dependent and wetland associated bird species, such as Marsh Wren, Song Sparrow, Killdeer, and Western Meadowlark nest within the complex. The Huntington Beach Wetlands provide a critical food source and breeding habitat for the endangered Belding's Savannah Sparrow. The area also presently serves as a waterfowl wintering area, providing resting and foraging areas during migration.

The impacted wetlands are ecologically connected to the Huntington Beach wetlands complex through shared saltmarsh plant species and wildlife usage and contiguous ponding. The native saltmarsh vegetation in the impacted wetlands, in and of itself, provides habitat for wildlife, including wetland dependent species. In addition, the saltmarsh vegetation on the impacted site expands the propagule and seed sources for vegetation in adjacent wetlands, thus helping to preserve genetic diversity and the flora of the wetland complex. Bird species that nest or forage within the Huntington Beach wetlands, including Killdeer, Western Meadowlark, and the endangered Belding's Savannah Sparrow utilize the habitat, primarily composed of the saltmarsh vegetation and ponded areas, of the impacted wetlands.

The subject property is a portion of a larger parcel identified by Orange County Assessor's Parcel No.114-150-86, which is owned by Mills PCH, LLC ("Respondent"). The subject property is zoned for coastal conservation and its designated land use is commercial visitor. A portion of the property is developed with a mobilehome park. Mills Land & Water Company owns the mobilehome park and is the primary manager of Respondent. In communications with staff, the Respondent has asserted that the unpermitted development at issue was undertaken to reduce ponding within the fenced portion of the subject property.

#### Unpermitted Development

The unpermitted activity that is the subject of these proceedings includes impacts to a wetland on the subject property, specifically including 1) removal of major vegetation; 2) placement of fill, including but not limited to sediment discharge from an unpermitted trench drain; 3) grading; 4) construction of a trench drain; and 5) change in the intensity of use of water resulting from altering the hydrology of wetlands through soil compaction, grading, placement of fill and construction of a trench drain (Exhibit #4). The removal of major vegetation, placement of fill, grading and change in the intensity of use of water described above all occurred within or adjacent to wetlands. Respondent acknowledges that a trench drain was excavated on the subject property; grading occurred to construct the trench; soil excavated from the trench was dispersed on the property, including into a wetland in the unfenced portion of the property; grading on the property resulted in the removal of saltgrass and pickleweed; and stormwater was discharged into a wetland from the trench drain.

#### Jurisdiction

Huntington Beach has a certified LCP. Once the Commission has certified an LCP, the local government obtains jurisdiction for issuing Coastal Development Permits ("CDPs") under the Coastal Act, and it has inherent (police power) authority to take enforcement actions for

violations of its LCP. Pursuant to Section 30810 of the Coastal Act, Commission staff coordinated with the City of Huntington Beach, and requested that Huntington Beach take action to enforce the policies of the LCP, or to indicate their preference that the Coastal Commission take action to address the Coastal Act violation. City staff recommended that the Coastal Commission take action to address the Coastal Act violations at issue.

### Commission's Authority

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 CDP, 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.

As described in more detail in Section IV of this staff report, the unpermitted activity that has occurred on the subject property clearly meets the definition of "development" set forth in Coastal Act Section 30106 and LCP Section 245.04. Coastal Act Section 30600 and LCP Section 245.06 state 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 CDP. Since the City has a certified LCP, the performance of this development requires a CDP from the City. No such permit was issued by the City nor has a permit application been submitted.<sup>3</sup> No permit was issued for the activity at issue, either by the Commission or by the City pursuant to its authority under the LCP, implementing the Coastal Act.

As discussed 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 City 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 City LCP. The unpermitted development and the ongoing maintenance of the unpermitted development are inconsistent with policies in Chapter 3 of the Coastal Act, including Section 30231 (biological productivity of coastal waters), Section 30233 (limiting fill of wetlands), and Section 30240 (environmentally sensitive habitat areas or ESHA), and numerous policies within the City's LCP, as fully discussed below.<sup>4</sup>

The unpermitted development has adversely impacted the resources associated with wetland habitat. Such impacts meet the definition of damage provided in Section 13190(b) of Title 14 of

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<sup>3</sup> The location of the unpermitted development and the property on which the activity occurred is located within the Commission's "Appeals Area," as that term is defined by LCP Section 245.04(B), since the subject property and the location of the unpermitted development are located within 100 feet of a wetland. This area is also within the Commission's appeals jurisdiction as defined in the Coastal Act, for the same reason. See Coastal Act Section 30603(a)(2). Therefore, if the Respondents had applied for and obtained any permit for this activity, which it did not, any action taken by the City, under its LCP, approving proposed development at this location, including the subject unpermitted development, would be appealable to the Commission.

<sup>4</sup> A description of the Chapter 3 policies of the Coastal Act and the City LCP policies that apply to the Subject Property is provided in Section IV of this staff report.

the California Code of Regulations (“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, including, but not limited to, wetland fill, a trench drain, and altered wetland hydrology, is allowed to remain unmitigated, its effects will lead to further adverse impacts (including the temporal continuation of the existing impacts) to water quality and biological productivity of wetlands and adjacent sensitive habitat.

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 wetland habitat, the water quality and biological productivity of this area, and the adjacent sensitive habitat. Thus, the continued presence of the unpermitted development on the subject property is causing continuing resource damage, as defined in 14 CCR Section 13190.

Staff recommends that the Commission approve Cease and Desist Order CCC-09-CD-03 and Restoration Order CCC-09-RO-02 (“Orders”) to require and authorize Respondent to 1) remove all unpermitted development from the subject property, 2) restore and undertake mitigation activities on the subject property using restorative grading and planting of vegetation native to southern California saltmarshes, and 3) cease and desist from conducting any further unpermitted development on the subject property.

## **II. HEARING PROCEDURES**

The procedures for a hearing on a Cease and Desist Order and Restoration Order are outlined in 14 CCR Section 13185 and 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-09-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 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-09-CD-03, as set forth below, and adopts the findings set forth below on grounds that development, conducted by the Respondent and/or its manager or other associated entities has occurred on property owned by Respondent without a coastal development permit, in violation of the City of Huntington Beach Local Coastal Program.

#### **2. Motion**

*I move that the Commission issue Restoration Order No. CCC-09-RO-02 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-09-RO-02, as set forth below, and adopts the findings set forth below on the grounds that 1) development has occurred on the subject property without a coastal development permit, 2) the development is inconsistent with the Coastal Act, and 3) the development is causing continuing resource damage.

#### IV. FINDINGS FOR CEASE AND DESIST ORDER NO. CCC-09-CD-03 AND RESTORATION ORDER CCC-09-RO-02<sup>5</sup>

##### A. Description of Unpermitted Development

The unpermitted development that is the subject matter of these Orders, consists of 1) removal of major vegetation; 2) placement of fill, including but not limited to sediment discharge from an unpermitted trench drain; 3) grading; 4) construction of a trench drain; and 5) change in the intensity of use of water resulting from altering the hydrology of wetlands through soil compaction, grading, placement of fill and construction of a trench drain. The removal of major vegetation, placement of fill, grading and change in the intensity of use of water described above all occurred within or adjacent to wetlands.

##### B. History of Violations

###### Site History

The unpermitted development activities at issue occurred in February 2008. The wetlands impacted by the unpermitted development in February 2008 have been disturbed in the past. In May 2005, several mounds of asphalt were placed on wetland vegetation. In response, the City of Huntington Beach ordered the mobilehome park management to remove the asphalt and informed management that a permit must be obtained for any further such activities.<sup>6</sup> In August 2006, City staff noticed that wetland vegetation had been removed from the same area of the subject unpermitted development. The City informed the mobilehome park management in writing that vegetation could not be removed from the site – also the site of the unpermitted development at issue – without a CDP. In April 2007, several mounds of asphalt were again placed on top of wetland vegetation. The mounds were later removed.

In addition, in 1981, a Coastal Act violation (V-5-81-032) involving grading and removal of wetland vegetation from a parcel adjacent to the mobilehome park was resolved through a settlement agreement between the mobilehome park owner, Mills Land & Water Company, and the Office of the Attorney-General, which required Mills Land & Water Company to remove debris and trash from the parcel, notify the Attorney-General of the debris removal, and apply for a coastal development permit for any vegetation removal in the future. The parcel subject to the 1981 enforcement action is on the opposite side of the mobilehome park from the subject property. Mills Land & Water Company, which is the primary manager of Respondent, presently owns the mobilehome park, as they did at the time of the 1981 Coastal Act violation. Mills Land & Water Company would therefore have reason to both know of the protection the Coastal Act provides for wetlands and of the general need for coastal development permits and the role of the Coastal Commission in implementing the Coastal Act and its requirements. Mills Land & Water Company, as primary manager of the Respondent, would presumably have informed Respondent of these facts. In communications with staff Respondent has asserted that the unpermitted

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<sup>5</sup> These findings also hereby incorporate by reference Section I of the March 26, 2009 staff report (“Staff Recommendations and Findings”) in which these findings appear, which section is entitled “Summary of Staff Recommendations and Findings.”

<sup>6</sup> As discussed above in Section I of the March 26, 2009 staff report, the Property is located within the City of Huntington Beach certified Local Coastal Program jurisdiction. The City recommended the Commission assume primary enforcement authority with regard to the current violation pursuant to Section 30810.

development at issue was undertaken to reduce ponding within the fenced portion of the subject property

### Unpermitted Development at Issue

The current incident of unpermitted development commenced on February 23, 2008 and was reported to Commission staff by a member of the public on February 24. Photographs taken on February 23 and 24 documenting the activity accompanied the report. Staff visited the site on February 26 and confirmed that development, including grading and fill of wetlands, removal of wetland vegetation, and construction of a trench drain in a wetland, had occurred. At the site, staff observed graded wetland areas, ponding water in several locations, placement of a trench drain and pipe, and areas where wetland vegetation, including pickleweed had been removed and destroyed. Two pieces of heavy equipment - a mechanized soil compactor and a backhoe - were parked on the site. Commission staff researched City and Commission CDP history and confirmed that no application for a CDP had been submitted, and no CDP had been obtained from the City or the Commission, for any such activities.

Commission staff consulted with the City, during a telephone conversation on February 26, 2008, regarding what action would be appropriate and the appropriate entity to address the unpermitted development under the policies of the City's certified Local Coastal Program ("LCP"), as is provided for in Sections 30809 and 30810. City staff recommended that the Commission assume primary enforcement authority with regard to this violation.

Commission staff confirmed, in a letter dated March 4, 2008 (Exhibit #5), that City staff had requested the Commission take action to enforce the policies of the City LCP, including but not limited to issuance of an order to enforce the requirements of the LCP pursuant to Section 30810 and/or 30811. As noted above, on February 26, 2008, the City recommended that Commission staff proceed with cease and desist and restoration order proceedings, and therefore, Commission staff initiated these proceedings to resolve the unpermitted development and obtain restoration of the subject property.

### Attempts at Resolution

The Commission staff has made extensive attempts to resolve this matter amicably, and to work with Respondent to achieve restoration of this area. Commission staff sent a Notice of Violation letter to Respondent on March 21, 2008 (Exhibit #6), that explained the subject unpermitted activity is "development" under the City LCP, that development without a CDP is a violation of the LCP, and requested that the Respondent contact Commission staff to discuss Respondent's willingness to resolve the violations.

In an April 14, 2008 response to Commission staff's March 21 Notice of Violation letter (Exhibit #7), Respondent indicated its preference to resolve the matter through a consensual agreement. Subsequently, staff discussed with Respondent during a telephone conversation on June 13, 2008, the possibility of addressing these violations through a consent order.

Commission staff ecologist Dr. Jonna Engel and Commission enforcement staff met with a representative of Respondent and its biological consultant on the site on July 7, 2008. During

that site visit, wetland indicator plant species, including saltgrass and pickleweed, were documented by Commission staff in the area disturbed by unpermitted development. Dr. Engel's site visit notes are summarized on page 1 of her March 25, 2009 memorandum. (Exhibit #12)

Respondent submitted a letter including a wetland delineation memo to staff on September 16, 2008 that stated that they had found no wetlands in the disturbed area and requested the enforcement action be delayed to study the site throughout winter. Commission staff responded by letter dated October 27, 2008 that existing photographic documentation adequately addressed the site hydrologic characteristics and the information Mills PCH proposed to gather wasn't necessary to staff's ability to make a wetland determination, and moreover, in order to address the impacts to coastal resources resulting from the subject unpermitted development in a timely manner, it was necessary to move forward expeditiously. Staff reiterated its preference to work cooperatively with Mills PCH to reach a consensual resolution of the violations.

In an effort to assist the discussions and to share the grounds for the CCC staff analysis of the character of the site, on November 25, 2008, Commission staff shared photographic documentation of the site's hydrologic characteristics with Respondent.

In a January 13, 2009 letter, Commission staff proposed draft consent orders to Respondent in order to settle the matter of this violation regarding fill of wetlands in February 2008, including settlement of penalties for these violations as well, in order to be able to avoid litigation over the subject Coastal Act violations on the Property and to most quickly move to site restoration.

On January 27, 2009, staff received Mills PCH, LLC's response to the proposed draft consent orders, indicating its preference to continue to work towards a consent order. Staff continued discussions of this possibility during a telephone conversation with Mills PCH, LLC on January 29.

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

Because of the ongoing resource damage at the subject property and the fact that the subject violations remain in place and unaddressed despite the discussions noted above, Commission staff initiated these proceedings to resolve the unpermitted development and to provide a framework to restore the subject property as quickly as possible. To that end, on February 3, 2009, the Executive Director issued a Notice of Intent to Record a Notice of Violation of the Coastal Act and to Commence Cease and Desist and Restoration Order Proceedings (Exhibit #8), to resolve the violations, through formal enforcement actions either as a consent or standard order proceeding.

In accordance with Sections 13181(a) and 13191(a) of the Commission's regulations, Respondent was 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"). Respondent was required to submit the SOD by no later than February 23, 2009, under the applicable regulations. At the request of Respondent, staff extended the deadline twice, to February 27 and March 2. Although not characterized as an SOD by Respondent, on March 2, Respondent

submitted a letter containing their responses to issues raised in the NOI (Attached with Exhibit #10). (This letter is summarized and responded to in Section IV.F herein). Respondent also indicated their preference to continue discussions with CCC staff and so requested additional extensions of time to submit a more formal SOD. Late on the evening of March 19, Respondent informed CCC staff that they would not be settling this matter. Therefore, CCC staff gave them until Monday, March 23 to submit a supplemental SOD if they chose to do so. Respondent's supplemental SOD, received on March 23, is attached as Exhibit #10.

Also contained in the February 3, 2009 NOI, was a Notification of Intent to Record a Notice of Violation of the Coastal Act (hereinafter, "NOI for NOVA").

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."*

NOVAs are merely intended to provide notice to avoid inadvertent creation of innocent purchasers, and do not constitute a lien or other encumbrance of the property. The Executive Director issued the NOI for NOVA because unpermitted development had occurred at the subject property, in violation of the Coastal Act. The NOI for NOVA 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 Orange County recorder's office pursuant to Section 30812 of the Coastal Act." The deadline for Respondent to object to the recordation of a Notice of Violation was February 23, 2009. Respondent did not object to the recordation, and moreover, agreed to its recordation, and therefore, on February 24, 2009, a Notice of Violation was sent to the Orange County Recorder's office to be recorded on the subject property. On February 27, 2009, the Orange County Recorder's office recorded the Notice on the subject property as Instrument No. 2009-000092466 (Exhibit #9).

The NOI did not signal the end of negotiations to resolve the matter consensually. In an effort to continue to work cooperatively with Respondent, Commission staff discussed the terms of potential consent orders with Respondent on January 29 and sent Respondent updated proposed language on February 6, 2009. By letter dated February 17, 2009, Respondent objected to the updated proposed language in the draft consent orders. Staff revised the proposed language again and sent the revised draft consent orders on March 5, 2009. On March 10, staff and the Respondent discussed the proposed language of the orders.



On March 13, 2009, Respondent informed staff that it objected to some of the provisions in the proposed order. CCC staff tried several times to propose compromise language and spoke numerous times with Respondent in an attempt to resolve this matter, but was ultimately unsuccessful in doing so. Therefore, in order to obtain restoration of the site, the Commission staff was required to continue with these Cease and Desist and Restoration Order proceedings.

**C. Basis for Issuance of Orders**

**Cease and Desist Order**

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

*(a) If the commission, after public hearing, determines that any person 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...*

The unpermitted development detailed above in Section IV.A has occurred on the subject property without a CDP. The unpermitted development that is the subject of these Orders meets the definition of “development” contained in Section 245.04 of the Huntington Beach LCP, as explained below.

Section 245.06 of the City’s LCP states that, in addition to obtaining any other permit required by law, and with limited exceptions not applicable here, any person wishing to perform or undertake any development in the Coastal Zone must obtain a CDP. “Development” is defined by Section 245.04 of the LCP as follows:

*The placement or erection of any solid material or structure on land, in or under water; discharge or disposal of any materials; 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...and the removal or harvesting of major vegetation other than for agricultural purposes...*

In this case, the activities described in Section IV.A constitute “development” within the meaning of the above-quoted definition and therefore are subject to the permit requirement of LCP Section 245.06. Respondent acknowledges that a trench drain was excavated on the subject property; grading occurred to construct the trench; soil excavated from the trench was dispersed on the property, including into a wetland in the unfenced portion of the property; grading on the property resulted in the removal of saltgrass and pickleweed; and stormwater was discharged into a wetland from the trench drain. A CDP was not issued by the City or the Commission to authorize the subject development, the unpermitted development is not exempt under the permit requirements, and the City requested that the Commission take action and issue a Cease and Desist Order.<sup>7</sup> Therefore, the requirements for issuance of a Cease and Desist Order under Coastal Act Section 30810 have been met.

### **Restoration Order**

The statutory authority for issuance of this Restoration Order is provided in Section 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 Restoration Order by providing substantial evidence that the development meets all of the required grounds listed in Section 30811 for the Commission to issue a Restoration Order.

#### **a. Development has occurred with a Coastal Development Permit**

As previously presented in Section IV.C of this report, the activities at issue in this matter constitute “development” as defined in the City LCP and Coastal Act and are therefore subject to LCP permitting requirements. Staff has verified that the cited development on the subject property was conducted without a CDP.

#### **b. The Unpermitted Development at Issue is Inconsistent with the Coastal Act and the City LCP**

As described below, the unpermitted development is not consistent with Section 30231 (protection of biological productivity of coastal waters and quality of coastal waters), Section 30233 (limiting fill of wetlands) and Section 30240 (ESHA protection) of the Coastal Act, in addition to policies within the Huntington Beach LCP.

##### **i. Wetlands**

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<sup>7</sup> As previously noted, on February 26, 2008, the City of Huntington Beach requested that the Commission take enforcement action on the City’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.

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 City LCP.

Section 30121 of the Coastal Act states:

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

The Commission has further specified how wetlands are to be identified through regulations and guidance documents. Section 13577(b)(1) of the Commission’s regulations states, in pertinent part:

*Wetlands shall be defined as land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes . . . . For purposes of this section, the upland limit of a wetland shall be defined as:*

- (A) the boundary between land with predominantly hydrophytic cover and land with predominantly mesophytic or xerophytic cover;*
- (B) the boundary between soil that is predominantly hydric and soil that is predominantly nonhydric; or*
- (C) in the case of wetlands without vegetation or soils, . . .*

The City LCP defines a wetland in similar terms, essentially combining the above statutory and regulatory definitions, resulting in a definition of wetlands as:

*Land which may be covered periodically or permanently with shallow water and includes saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens. Wetlands are lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For purposes of this classification<sup>2</sup>, wetlands must have one or more of the following attributes:*

- 1. At least periodically, the land supports predominantly hydrophytes; or*
- 2. The substrate is predominantly undrained hydric soil; or*
- 3. The substrate is non-soil and is saturated with water or covered by shallow water at some point during the growing season of each year.*

<sup>2</sup> *“ Classification of Wetlands and Deep-Water habitats of the United States” by Lewis M. Cowardin, et al, United States Department of Interior, Fish and Wildlife Service, December 1979*

Section 30233(a) of the Coastal Act states:

*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.*

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 City LCP specifically addresses development activity in wetlands and provides for protection policies to ensure that wetlands are not impacted by development. Policy C 6.1.20 of the City LCP limits filling of wetlands to the specific activities outlined in Section 30233 of the Coastal Act.

Policy 7.1.4 states:

*Require that new development contiguous to wetland or environmentally sensitive habitat areas include buffer zones. Buffer zones shall be a minimum of one hundred feet setback from the landward edge of the wetland...*

The Commission's staff ecologist, Dr. Jonna Engel, evaluated the subject property and confirmed that the area impacted by the unpermitted development contained wetlands, as that term is defined by Section 30121 of the Coastal Act and the City LCP.<sup>8</sup> The Coastal

<sup>8</sup> The LCP clearly provides for identification of wetlands in this manner, regardless of the fact that the area being assessed was not specifically and independently called out as a wetland in the LCP. This approach is undisputed, as evidenced not only by Respondent's participation in this evaluation process, but also by the fact that Respondent

Commission's regulations regarding wetlands and the LCP definition of wetlands, both quoted above, establish a "one parameter definition," meaning that they only require evidence of a single parameter to designate an area as a wetland conditions. *See, also, Kirkorowicz v. California Coastal Comm'n* (2000) 83 Cal.App.4<sup>th</sup> 980, 990. Dr. Engel found that not just one parameter, but two parameters, wetland hydrology and a preponderance of wetland vegetation, are present on the site. (see March 26, 2009 memorandum from Jonna D. Engel, PH.D, Commission staff ecologist (Exhibit #12)).

The unpermitted development includes placement of fill within and adjacent to wetlands and removal of wetland vegetation, including saltgrass and pickleweed. Section 30233 of the Coastal Act and Policy 6.1.20 of the LCP do allow for fill of wetlands under narrow criteria, and when properly authorized in a CDP. Notably, there was no CDP applied for or obtained for the development activities at issue in this enforcement action. Moreover, even if they had applied for a CDP from the County or CCC, the unpermitted development that resulted in wetland fill does not fall under any of the allowable criteria for wetlands fill under the Coastal Act and LCP.

As stated above, fill was placed within and adjacent to wetlands on the subject property, and wetland vegetation was removed. Not only does the City LCP restrict almost all development within wetlands, but, pursuant to Section 7.1.4 of the City LCP, development is also limited within a 100-foot buffer zone surrounding wetlands. Clearly, the placement of fill directly into the wetland, and the removal of wetlands vegetation are not types of development allowed within wetlands or within the 100-foot buffer surrounding wetlands.

In addition, the grading and fill of the wetlands and the removal of vegetation within and around the wetlands was conducted without benefit of a CDP, in violation of the Coastal Act and the City 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 City 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.

ii. Biological Productivity of Wetlands and Development Adjacent to Environmentally Sensitive Habitat Areas

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,*

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recognizes the wetlands within the unfenced portion of the subject property (an area not specifically called out as containing wetlands in the LCP) as wetlands.



*encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

Policy 6.1.4 of the City LCP states:

*The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain organisms and for the protection of human health shall be maintained and, where feasible, restored.*

Coastal Act Section 30240(b) states:

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

Policy 7.1.3 of the City LCP duplicates the language of Coastal Act Section 30240(b).

#### Biological Productivity of Wetlands and ESHA

Any fill or alteration of wetland hydrology reduces a wetland's ability to function, and consequently, its biological productivity. Water is the main requirement for a functional wetland. If water is drained or removed, or isn't present in the wetland for as long, then wetland function will be degraded. Therefore, wetland function would be degraded by actions that disrupt water supply through direct fill of a wetland or draining. Degradation of function means that the same plants will not grow and the wetland will not provide the same water filtration, percolation, and stormwater runoff storage function. The unpermitted development at issue disrupted water supply through direct fill, both from grading and placement of soil excavated to construct the trench drain on the site, as well from sediment-laden discharge from the trench drain, and draining of a wetland. Respondent acknowledges that the biological productivity of the wetlands on the unfenced portion of the subject property was affected by stormwater discharge from the trench drain. Consequently, the unpermitted development degraded the function of wetlands on the subject property.

In addition, as noted above, the habitat that a functioning wetland provides is a significant coastal resource due in part to the high biological productivity of wetland habitat and the rarity of this habitat and the sensitive species it supports. One of the chief components of wetland habitat is wetland vegetation. Thus, removal of wetland plant species reduces the habitat value of a wetland. Wetland vegetation native to southern California saltmarshes, such as pickleweed and saltgrass, were among the vegetation removed here, without a permit and subsequently in violation of the Coastal Act. Also, as noted in the paragraph above, degradation of function through alteration of wetland hydrology means that the same plants may not grow and habitat value and wildlife use of the wetland could be reduced.

Also, bird species that are a component of the Huntington Beach wetland ecosystem, such as Killdeer, and bird species that nest in the adjacent Huntington Beach wetlands, including the

state endangered Belding's Savannah Sparrow<sup>9</sup> and the Western Meadowlark, have been documented in the impacted wetlands. The use of the impacted wetlands by these species underscores the fact that wetlands on the subject property are part of the larger Huntington Beach wetlands complex, which is a designated ESHA in the City LCP. The wetlands and habitat on the subject property are also ecologically connected to the wetland complex through shared saltmarsh plant species and contiguous ponding.

The wetlands on the property and the wetland complex have been historically degraded and fragmented as a result of development in the area. Impacts to the wetlands and native saltmarsh vegetation on the subject property can fragment the wetland complex, causing more extensive damage to the whole complex and the flora and fauna it supports. For instance, as noted above, bird species that nest in the Huntington Beach wetlands have been documented utilizing the area disturbed by the unpermitted development. In disturbing the site, foraging areas for birds nesting in the adjacent wetlands, a designated ESHA, have been eliminated, thus impacting adjacent ESHA and the biological productivity of adjacent wetlands, which is inconsistent with Coastal Act Sections 30240(b) and 30231.

#### Quality of Coastal Waters

Sediment discharged into the wetlands on the unfenced portion of the property from the trench drain and fill placed in the wetlands, both on the unfenced and fenced portions of the property, inevitably diminished the water quality of the wetlands by increasing turbidity. Respondent acknowledges that stormwater was discharged from the trench drain into the wetlands on the unfenced portion of the property. Increased sedimentation and turbidity diminish the water quality of wetlands, and as noted above, the function and biological productivity of the wetland, by reducing water clarity, increasing water temperature, and smothering wetland vegetation.

No measures were taken to control runoff in order prevent these water quality impacts. On the contrary, the unpermitted development facilitated runoff into the wetland on the unfenced portion of the property and directly introduced sediment into wetlands on the unfenced and fenced portions of the property.

In summary, the unpermitted development has significantly impeded the functioning and biological productivity of wetlands on and off the subject property, in part due to removal of native vegetation that provides habitat to wildlife, which in turn will affect adjacent wetlands and ESHA. Further, the interim loss of habitat value and wetland hydrology will have a significant impact that will continue to be experienced until the impacts of the unpermitted development are remedied. Due to its deleterious effect on wetland habitat and function on and off the subject property, the unpermitted development does not maintain, much less restore, the biological productivity and water quality of wetlands necessary to maintain the optimum populations of marine organisms and is not compatible with the continuance of the Huntington Beach wetlands ESHA. Therefore, the unpermitted development is inconsistent with Sections 30231 and

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<sup>9</sup> The Belding's Savannah Sparrow was observed on March 10, 2009 and March 17, 2009 within the unfenced portion of the impacted area and on March 17, 2009 within the fenced portion of the impacted area. Personal communication from Robb Hamilton of Hamilton Biological, Inc., and co-author of *The Birds of Orange County, California: Status and Distribution*. Sea & Sage Press, Sea & Sage Audubon Society, Irvine.

302340(b) of the Coastal Act and Policies 6.1.4 and 7.1.3 of the City LCP, again satisfying the second criterion for issuance of a Restoration Order. As noted above, Respondent acknowledges that the biological productivity of the wetlands on the unfenced portion of the subject property was affected by sediment discharge from the trench drain. Thus, Respondent is in agreement that the second criterion for issuance of Restoration Order has been met. Mitigation is necessary in this case, due to the fact even with proper restoration of the wetlands and habitat on site, the interim loss of ecosystem value and water quality functioning will have a significant impact that will be experienced into the future.

**c. 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.

**i. 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 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 resources are the habitat provided by the impacted native saltmarsh vegetation, and the water quality functions and environmentally sensitive wildlife and plant habitat provided by the wetlands, and the damage is the degradation of that wetland habitat, including ESHA, which is caused by the unpermitted development on 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 and the results thereof remain at the subject property. As described above, the unpermitted development results in impacts to coastal resources, including habitat provided by native

saltmarsh vegetation, wetlands and wetlands habitat, biological productivity of the wetlands, and ESHA. The fill of wetlands and removal of wetland vegetation continues to impact the coastal resources, including wetland and protected resources within and adjacent to the wetland area by continuing to prevent the wetland from existing or functioning and disrupting the biological productivity of these areas.

As described above, the unpermitted development is causing adverse impacts to resources protected by the Coastal Act and the City 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 Orders attached to this staff report are consistent with the resource protection policies found in Chapter 3 of the Coastal Act. The Orders require Respondent to remove all unpermitted development from the subject property, restore the subject property using restorative grading and planting of vegetation native to southern California saltmarshes, mitigate for temporal losses, and cease and desist from conducting any further unpermitted development on the subject property. The Orders require Respondent to plant native plant species 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. Failure to revegetate the site would lead to potential invasion of non-native plant species, thus decreasing the biological productivity of this wetland habitat, inconsistent with the resource protection policies of the Coastal Act and the City LCP.

Therefore, the Cease and Desist Order and Restoration Order are consistent with the Chapter 3 policies of the Coastal Act and the City 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**

In accordance with Sections 13181(a) and 13191(a) of the Commission’s regulations, Respondent was provided the opportunity to respond to the Commission staff’s allegations as set forth in the NOI dated February 3, 2009, by completing a Statement of Defense form (hereinafter “SOD”). Respondent was required to submit the SOD by no later than February 23, 2009, under

the applicable regulations. At the request of Respondent, in conjunction with settlement negotiations, staff extended the deadline twice, to February 27 and March 2. Although not initially characterized as an SOD by Respondent, on March 2, Respondent submitted a letter that included, by reference, issues raised in prior letters (dated November 12, 2008, January 27, 2009, and February 17, 2009) and memoranda from Respondent's biological consultant (dated September 11, 2008, November 12, 2008, and February 28, 2009) and contained their responses to issues raised in the NOI. Respondent subsequently indicated that its March 2 letter constituted part of its SOD.

Respondent also indicated its preference to continue discussions with CCC staff and so requested additional extensions of time in the hopes of avoiding having to submit a more formal SOD. Late on the evening of March 19, Respondent informed CCC staff that they would not be settling this matter. As a courtesy, CCC staff gave Respondent an opportunity to submit a supplemental SOD by March 23 if it chose to do so. Respondent supplemented its March 2 letter on March 23, and the Commission is responding herein.

The following paragraphs present statements made by Respondent and the Commission's responses to those statements.

**1. Respondent Defense:**

**"We disagree with the characterization of the Cabrillo Site as a wetland. Photos from that time show that the majority of the site consisted of bare, compacted soil to support its use as a parking lot and vehicle storage facility with patches of vegetation, consisting of both sensitive plants such as saltgrass (*Distichlis spicata*), small patches of pickleweed (*Salicornia virginica*), and non-native ruderal species, such as five-hook bassia (*Bassia hyssopifolia*) small-flowered ice plant (*Mesembryanthemum nodiflorum*), and Italian ryegrass.**

**As we discussed during your site visit, although sensitive vegetation, specifically saltgrass and pickleweed, are present on site, these plants on this site are not hydrophytes growing in hydric soils." March 2, 2009 letter, p.3.**

**CCC Response:**

Commission staff ecologist Jonna D. Engel's March 26, 2009 memorandum (Exhibit #12) delineates wetlands on the site that were impacted by the unpermitted development. Dr. Engel was able to observe the site, review all available information including that submitted by Respondent, apply the applicable standards for evaluating wetlands under the Coastal Act and the City LCP, and concluded that one large area and a few smaller areas on the fenced portion of the subject property do exhibit wetland hydrology and support wetland vegetation therefore meeting the definition of California Coastal Commission and LCP wetlands.

In addition, although Respondent disputes the delineation of wetlands within the fenced portion of the subject property, representatives of Respondent have admitted to staff that there are wetlands on the unfenced portion of the property and these were impacted by stormwater from

the trench drain and sidecast from excavation of the trench drain. Thus, Respondent acknowledges that the unpermitted development resulted in fill of an area which has been determined to be wetland and consequently, that one of the necessary findings for issuance of a restoration order – that the development is inconsistent with the Coastal Act – has been satisfied.

Moreover, wetland fill for a purpose that is not one of the enumerated allowable purposes is just one basis for issuance of a restoration order. As described in the Section IV of this staff report, the unpermitted development was inconsistent with several Chapter 3 policies of the Coastal Act and resource protection policies in the City LCP.

In addition, it should be noted that wetland fill for a purpose not listed as allowable, or any finding of an inconsistency with a Chapter 3 policy, is not a necessary element for the issuance of a cease and desist order. The only elements necessary for issuance of a CDO are that development was undertaken without a CDP or which is inconsistent with a CDP. As discussed above, these elements have been met here.

As noted in Respondent's statement above, the site contained sensitive plants such as saltgrass and pickleweed. Respondent admits that the unpermitted activity resulted in the removal of these plants, which constitute major vegetation as that term is used in the definition of development in the Section 30106 in the Coastal Act. Respondent also admits that a trench was excavated on site, grading occurred to construct the trench, soil excavated from the site was dispersed on the site, and grading occurred in the area of saltgrass and pickleweed, resulting in their removal. All of these are development activities, as defined in Section 30106 of the Coastal Act, and all would therefore require a CDP unless otherwise exempt. However, no City or Commission-issued CDP authorized any of this development, and no exemption is applicable, and, thus the prerequisites for issuance of a cease and desist order have been met.

## **2. Respondent Defense:**

**“The 1.1.2 acre area is referred to in this Statement of Defense as the “Cabrillo RV Storage Lot” and has been used to park and store recreational vehicles since the 1960’s pursuant to a permit issued by the City of Huntington Beach. A copy of the City permit...is attached as Exhibit 1A. The Cabrillo RV Storage Lot was filled in the 1950’s-1960’s and has been used and regularly maintained (as required by the terms of the permit) as a parking lot since 1966.” March 23, 2009 Statement of Defense of Beachfront Village, LLC, p.1.**

## **CCC Response:**

Respondent's defense appears to rest on the implicit claims that Respondent has a vested right to use of the subject property as a vehicle storage lot and that the subject unpermitted development was exempt maintenance of the lot. As explained below, this defense fails in that there is no established vested right to the use of the subject property for vehicle storage, or even an application before the Commission to consider the issue, the unpermitted development at issue does not constitute maintenance, and even if all of Respondent's assertions were correct, the



activity would not qualify as the sort of maintenance that would be exempt from the permitting requirements of the City's LCP.

There is a specific and formal process for establishing a vested right to an activity under the Coastal Act, as set forth in Section 30608 and its implementing regulations. No such application has been filed, and no such vested right has been established, nor does Respondent assert that it has done such. "A developer who claims exemption from the permit requirement of the [Coastal] act on grounds that he has a vested right to continue his development is required to seek confirmation of his vested right claim ... and may not first assert the claim in defense." Halaco Engineering Co. v. South Central Coast Regional Commission (1986) 42 Cal.3d 52, 63; see also LT-WR (2007) 152 Cal.App.4th 770, 785; Davis v. CCZCC (1976) 57 Cal.App.3d 700.

However, even if the Commission were to apply the standards for reviewing claims of vested rights, Respondent does not appear to have satisfied those standards. If this were a proceeding for the Commission to determine if Respondent has a "vested right" for the alleged parking and storage of recreational vehicles on the fenced portion of the subject property, the Commission would evaluate the evidence provided by Respondent and apply the established legal criteria for evaluating such claims based on the terms of the Coastal Act, its implementing regulations, as well as case law interpreting the Coastal Act's vested right provision and common law vested rights claims. The applicable criteria include the following:

1. The claimed development must have received all applicable governmental approvals needed to complete the development prior to the effective date of the Coastal Act. Typically this would be a building permit, grading permit, Final Map, Health Department approval for a well or septic system, etc. or evidence that no permit was required for the claimed development. (*Billings v. California Coastal Commission* (1988) 103 Cal.App.3d 729, 735).
2. If work was not completed prior to the Coastal Act, the claimant must have performed substantial work and/or incurred substantial liabilities in good faith reliance on the governmental authorization received prior to that date. (*Tosh v. California Coastal Commission* (1979) 99 Cal.App. 3d 388, 393; *Avco Community Developers, Inc. v. South Coast Regional Commission* (1976) 17 Cal.3d 785).
3. The burden of proof is on the claimant to substantiate the claim of vested right. (Title 14, California Code of Regulation, Section 13200). If there are any doubts regarding the meaning or extent of the vested rights exemption, they should be resolved against the person seeking the exemption. (*Urban Renewal Agency v. California Coastal Zone Conservation Commission* (1975) 15 Cal.3d 577, 588).
4. A narrow, as opposed to expansive, view of vested rights should be adopted to avoid seriously impairing the government's right to control land use policy. (*Charles A. Pratt Construction Co. v. California Coastal Commission* (1982) 128 Cal.App.3d 830, 844). In evaluating a claimed vested right to maintain a nonconforming use (i.e., a use that fails to conform to current zoning), courts "follow a strict policy against extension or expansion of those uses." (*Hansen Bros. Enterprises v. Board of Supervisors* (1996) 12 Cal.4<sup>th</sup> 533, 568). "It is the general purpose to eventually end all nonconforming uses and to permit no improvements or rebuilding which

would *extend the normal life* of nonconforming structures.” (*Sabek, Inc. v. County of Sonoma*, (1987) 190 Cal.App.3d 163, 168).

5. Section 30608 of the Coastal Act does not allow a substantial change to a vested development without obtaining prior approval pursuant to the requirements of the Coastal Act.

These detailed standards and criteria demonstrate that numerous issues are involved in a vested rights determination. The Commission rejects the Respondent’s attempt to raise a claim of vested rights as a defense in this enforcement action, when Respondent has failed to follow the procedures for seeking such a determination by the Commission. As indicated above, several California courts have found that it is not appropriate to raise a claim of vested rights in a different proceeding, without following the Commission regulations for such claims.

However, as indicated above, although no vested rights claim has been filed, Respondent has provided evidence that the claimed development did not receive all necessary local approvals. Respondent provided staff with a Use Variance from the City allowing a motor vehicle storage yard on the subject property from July 19, 1966, to July 19, 1967. The variance expired and Respondent has provided no evidence that another variance was obtained. Thus, far from establishing that the claimed development received all necessary local approvals, the variance proves that local approval was required for the claimed development and none was obtained past July 19, 1967.

In addition, it appears that the use of the site for this purpose has been episodic and would likely fail to qualify for a vested right for that reason as well. Of the hundreds of historic photos taken over dozens of dates and taken with more frequency in the past several years, only one of which, taken in 1976, shows possible vehicle storage in the area of the impacted wetlands. In the remaining hundreds of photos, there is no vehicle storage in the impacted wetlands.

Therefore, in addition to not being legally established as a vested right which might otherwise have been relevant as a possible defense, the activity also appears to not qualify on the facts as a vested right.

Even if a vested right for ongoing use of the site as a parking lot were found to exist, which Respondent has not applied for and the facts do not support, then the question arises whether the subject unpermitted development is a maintenance activity and whether it would qualify for the Coastal Act exemption for repair and maintenance to existing development in Section 30610(d) and the LCP exemption for maintenance to existing development in Section 245.08. Since, the unpermitted development was undertaken in an area of the property that has not been used for vehicle storage – as described above, only one photo of the hundreds of historical photos taken of the site show possible vehicle storage in the area of the impacted wetlands – the unpermitted development would not maintain any areas used for vehicle storage. Moreover, even if, for argument’s sake, we were to assume the activity was considered maintenance, it would still not be exempt from the permit requirements. That is because, under the Commission’s and City’s regulations, exempt repair and maintenance is distinguished from activities that require a coastal development permit because they involve a risk of substantial adverse environmental impact. 14 CCR Section 13252(a)(3) states:

“Any repair or maintenance to facilities or structures or work located in an environmentally sensitive habitat area, any sand area, within 50 feet of the edge of a coastal bluff or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams that include:

- (A) The placement or removal, whether temporary or permanent, of rip-rap, rocks, sand or other beach materials or any other forms of solid materials;
- (B) The presence, whether temporary or permanent, of mechanized equipment or construction materials.

Likewise, pursuant to LCP Section 245.08, maintenance activities involving placement of solid material or the presence of mechanized equipment or construction materials within 20 feet of a wetland requires a CDP.

Wetland areas on the subject property are clearly within 20 feet of the unpermitted development at issue. In fact, wetland areas within the fenced portion of the property were graded and filled. Sediment was discharged, resulting in wetland fill, into a wetland on the unfenced portion of the property. Respondent agrees that there is a wetland on the unfenced portion of the property and the unpermitted trench drain discharged sediment into this wetland. Therefore these activities, even if all of Respondent’s assertions were correct and the activities were considered maintenance, could not be exempt and would require a CDP. No such CDP was applied for nor obtained here.

### 3. Respondent Defense:

**“The Extension Letter also described the unpermitted development as including “soil compaction” that changed the intensity of use of water, i.e. altered the site’s wetland hydrology. As a result of the use of the Cabrillo Site for vehicle storage for over 40 years, the soils on the site are highly compacted. The compaction was not a result of the work that occurred in February, 2008, nor did that work result in the alteration of wetland hydrology.” March 2, 2009 letter, p.4.**

### CCC Response:

As is explained above in No. 2, there is no established vested right or coastal development permit authorizing use of this site as vehicle storage area. More relevant to the compaction of soil in the area of the impacted wetlands, and thus the alteration of wetland hydrology, are the hundreds of historic photos taken over dozens of dates and taken with more frequency in the past several years, only one of which, taken in 1976, shows possible vehicle storage in the area of the impacted wetlands. In the remaining hundreds of photos, there is no vehicle storage in the impacted wetlands. In contrast, photos documenting the unpermitted development in February 2008 show the use and storage of heavy machinery on the site and within the impacted wetlands, including a mechanized soil compactor, two backhoes, a flatbed truck and a dumptruck, a storage container loaded with debris and soil, equipment trailers, and a bobcat. Relative to the soil compaction resulting from operation and storage of this heavy machinery, vehicle storage within

the impacted wetlands, which is documented solely by one photograph taken 33 years ago, would result in little soil compaction in the impacted wetland areas.

Regardless of the relative effect of the activities, the use of a mechanized soil compactor on the site, as documented during the February 2008 unpermitted development, would necessarily result in soil compaction.

**4. Respondent Defense:**

**“The removal of small areas of pickleweed and saltgrass would not have resulted in the measurable loss of ecological functions.” November 12, 2008 memorandum, p.8.**

**CCC Response:**

The analysis of the unpermitted development’s inconsistency with the Coastal Act is discussed in Section IV of this report. Even if degraded, all coastal wetlands are valuable because of the dramatic loss of wetlands and the unique habitats wetland provide. Clearly then, in degrading the function of the wetlands on the subject property and removing of native saltmarsh vegetation, the unpermitted development resulted in habitat loss. Moreover, even if this statement were true, which it is not, this defense creates and relies on a term (“measurable loss of ecological functions”) which is not the legally applicable standard for issuance of orders under Sections 30810 and 30811 of the Coastal Act. The correct standard and elements to be proven are discussed above in Section C, and are demonstrated to have been met as discussed herein.

**5. Respondent Defense:**

**“It is also important to note that the pickleweed that was present on the site exhibited no potential for either breeding or foraging habitat for the state-listed Belding’s savannah sparrow. Any suggestion that the site exhibited potential to support this species is unfounded and not supported by the literature that addresses the ecological requirements of this species.” November 12, 2008 memorandum, p.8.**

**CCC Response:**

Belding’s Savannah Sparrow was observed on March 10, 2009, and March 17, 2009, within the unfenced portion of the impacted area and on March 17, 2009, within the fenced portion of the impacted area. Personal communication from Robb Hamilton of Hamilton Biological, Inc., and co-author of *The Birds of Orange County, California: Status and Distribution*. Sea & Sage Press, Sea & Sage Audubon Society, Irvine. Although its presence is not necessary to establish the value of the wetlands impacted by the unpermitted development, the presence of this species on the subject property is evidence that the wetlands on the subject property are habitat for a rare and endangered species. The Belding’s Savannah Sparrow has lost much of its habitat due to the loss and degradation of saltmarshes in southern California. The saltmarshes that remain, including those on the subject property are critical, and increasingly so due to further loss, to the survival of this species.

The removal of the saltmarsh vegetation and wetland fill that resulted from the unpermitted development at issue degraded the sparrow's habitat on the property, thus lowering the biological productivity of the wetlands on the property. Furthermore, the loss of wetlands and habitat on this site affects the biological productivity of the ecologically connected Huntington Beach wetland complex.

Therefore, as explained in Section IV of this staff report, the unpermitted development is inconsistent with Section 30231 of Coastal Act, which protects the biological productivity of wetlands, and the second criterion for issuance of a Restoration Order is satisfied.

#### 6. Respondent Defense:

**“As a mobilehome park facility, the Cabrillo Mobilehome Park and its associated Cabrillo Storage Lot fall under the jurisdiction of the Department of Housing and Community Development (“HCD”) acting as lead agency. Proper maintenance of the facility is required by HCD regulations including surfacing the site to mitigate against “excessive dust.”” March 23, 2009 Statement of Defense of Beachfront Village, LLC, p.5.**

#### CCC Response:

HCD has adopted regulations establishing a permit system and development standards for mobilehome parks. (Cal. Code Regs., Title 25 Section 1000 et seq.) These regulations contemplate that other permit requirements may also apply to mobilehome parks and refer to the necessity for park operators to obtain approvals from other state agencies with regulatory jurisdiction. (See, *id.*, Sections 1020.6, 1032 and 1044). As explained extensively in this staff report, the subject development, as well as any similar project in the coastal zone, requires a coastal development permit from the City or Commission. After certification of its LCP, the City assumed responsibility for issuing CDPs, thus implementing state law, although the Commission retains appellate authority in specified areas of the coastal zone, including the subject property. Neither the Coastal Act nor the Coastal Commission's regulations contain an exclusion or an exemption from the permit requirements of the Act for development in a wetland on the basis that it occurs within an existing mobile home park.

Although HCD's regulations may govern some aspects of the facility's operations, they do not preempt applicable Coastal Act provisions. There is nothing in the Special Occupancy Parks Act (SOPA), Cal. Health and Safety Code (“H&SC”) §§ 18860-74; the Mobilehome Parks Act, *id.* at §§ 18200-700; the Mobilehome-Manufactured Housing Act, *id.* at §§ 18000-135; or HCD's regulations to suggest that Coastal Act review and protection of wetlands would be wholly abandoned in this context. In fact, SOPA itself recognizes the applicability of LCPs within regulated facilities. *Cf. id.* at § 18865.2.

Thus, even if one were to accept that HCD has general jurisdiction over dust mitigation, for example, it is also unquestionably true that the Coastal Commission (or in this case, the City, as the entity with delegated authority to issue Coastal Act permits) has general jurisdiction over “development,” as defined in the Coastal Act and LCP, and an obligation to protect wetlands, an issue not within HCD's jurisdiction. In this context, general rules of statutory construction

would require that HCD's jurisdiction and the City's or Commission's be harmonized such that both given effect whenever possible. One way to do that would be to have HCD specify its objective for dust mitigation, and have the City review various proposed alternatives to find one that is, at a minimum, as consistent as possible with the Coastal Act and the applicable LCP, and arguably only approve ones that are found to be fully consistent.

In any event, matters which may involve impacts to wetlands, including actions to mitigate against "excessive dust" are properly subject to review through the coastal permit process, which could allow for such dust mitigation if consistent with the resource protection policies of the Coastal Act. Thus, the failure to obtain a permit remains a violation of the Coastal Act and the LCP.

Furthermore, it is clear from the HCD letter to Respondent dated February 18, 2008, attached with Exhibit #10, that Respondent was under no actual obligation to undertake the subject unpermitted development to mitigate for excessive dust. HCD had not ordered Respondent to undertake the unpermitted development to mitigate for excessive dust and had received no complaints to require Respondent to take such action.

**7. Respondent Defense:**

**"As we have previously discussed, because APN 114-150-86 encompasses a much larger property, a portion of which also includes land developed and used as a mobile home park, those areas should be excluded from the NOV and only the two parcels described above on which activity occurred constitute the "Subject Property" covered by the NOV." March 23, 2009 letter, p2.**

**CCC Response:**

In response to this issue raised by Respondent, the property subject to these Orders is described as the 0.92 unfenced portion of the subject property and the 1.12 fenced portion of the subject property.

**8. Respondent Defense:**

**"Beachfront would accept the proposed consent order but for the finding that the excavation of the trench occurred in a "natural wetland",.." March 23, 2009 Statement of Defense of Beachfront Village, LLC, p.5. "The 1.12 acre area is not a "natural wetland." March 23, 2009 Statement of Defense of Beachfront Village, LLC, p.1.**

**CCC Response:**

The wetland protection policies of the Coastal Act and City LCP apply to wetlands of natural or anthropogenic origin. The Commission's findings supporting a determination that the unpermitted development resulted in fill of a wetland that is inconsistent with the wetland protection policies of the Coastal Act are contained in Section IV.C of this staff report.



**9. Respondent Defense:**

**“The placement of fill was limited to the removal of soil from the trench and deposition of that material immediately adjacent to the trench.” March 23, 2009 Statement of Defense of Beachfront Village, LLC, p.1.**

**CCC Response:**

Placement of fill anywhere on the site, regardless of its origin, constitutes development under the definition of development in Coastal Act Section 30106. The placement of fill was not authorized by a CDP from the City or Commission. Unpermitted development that is not otherwise exempt constitutes a violation of the City LCP and Coastal Act. In addition, Respondent acknowledges that grading was undertaken in more locations on the site than just immediately adjacent to the trench. This grading resulted in earth movement and placement of fill in wetlands. Furthermore, Respondent acknowledges that soil excavated from the trench on the unfenced portion of the property was placed in wetlands.

**G. Summary of Findings**

1. Mills PCH, LLC<sup>10</sup> is the owner of property located at 21622 Pacific Coast Highway, Huntington Beach. The property is identified by the Orange County Assessor’s Office as APN 114-150-86 (“subject property”). The property is located within the Coastal Zone.
2. Respondent undertook unpermitted development, as defined by Coastal Act Section 30106 and Huntington Beach LCP Section 245.04, at the subject property, consisting of 1) unpermitted removal of major vegetation; 2) unpermitted placement of fill; 3) unpermitted grading; 4) unpermitted construction of a trench drain; and 5) unpermitted change in the intensity of use of water resulting from altering the hydrology of wetlands through soil compaction, grading, placement of fill and construction of a trench drain.
3. Respondent conducted the above-described development without a Coastal Development Permit or any other Coastal Act authorization, in violation of Coastal Act Section 30600(a) and LCP Section 245.06.
4. No exemption from the permit requirements of the Coastal Act or the City LCP applies to the unpermitted development on the subject property.
5. On February 3, 2009, the Executive Director informed Respondent 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.

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<sup>10</sup> Mills PCH, LLC has informed staff that Mills PCH, LLC is now known as Beachfront Village, LLC. All references to Mills PCH, LLC or Respondent are to Beachfront Village, LLC (formerly known as Mills PCH, LLC).

6. On February 3, 2009, the Executive Director sent Respondent a Notification of Intent to Record a Notice of Violation of the Coastal Act pursuant to Section 30812 of the Coastal Act.
7. Respondent did not object to the recordation of a Notice of Violation of the Coastal Act and therefore, the Executive Director recorded the Notice on the subject property as Instrument No. 2009-000092466 in the Orange County Recorder's Office.
8. The unpermitted development filled and graded wetlands, as that term is defined by Section 30121 of the Coastal Act and the City LCP.
9. The unpermitted development described in item No. 2 is inconsistent with the policies set forth in Sections 30231, 30233, and 30240(b) of the Coastal Act and City LCP Policies 6.1.4, 6.1.20, 7.1.3, and 7.1.4.
10. The unpermitted development described in item No. 2 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. Photographs of the site prior to the unpermitted development at issue
3. 1940 Aerial photograph of subject property
4. February 23 and 24, 2008 photographs of the site after grading and construction of the trench drain
5. Letter from CCC staff to the City of Huntington Beach staff, March 4, 2008
6. Notice of Violation letter to Respondent, March 21, 2008
7. Letter from Respondent to CCC staff, April 14, 2008
8. Notification of Intent to Commence Cease and Desist Order and Restoration Order Proceedings and to Record a Notice of Violation of the Coastal Act, February 3, 2009
9. Recorded Notice of Violation of the Coastal Act, Instrument No. 2009-000092466, Orange County Recorder's Office, February 27, 2009
10. Letter from Respondent to CCC staff, March 23, 2009 including attachments (note: a link to full copies of all exhibits to the attachments and appendices to this exhibit is available on the April agenda at [www.coastal.ca.gov](http://www.coastal.ca.gov)).
11. Cease and Desist and Restoration Orders No. CCC-09-CD-03 and No. CCC-09-RO-02
12. March 26, 2009 memorandum from Jonna D. Engel, Ph.D, Commission staff ecologist and exhibits thereto

Appendix 1. Exhibits and appendices to February 28 memorandum attached with Exhibit #10