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# TH 11&12

## ADDENDUM

April 8, 2009

TO: Coastal Commissioners and Interested Parties

FROM: Enforcement Staff

SUBJECT: ADDENDUM TO **ITEM TH11&12** FOR THE COMMISSION MEETING OF **APRIL 9, 2009:**
COASTAL COMMISSION CEASE AND DESIST AND RESTORATION ORDER **CCC-09-CD-03 AND CCC-09-RO-02** (MILLS PCH, LLC)

**Changes to staff report for CCC-09-CD-03 and CCC-09-RO-02:**

Respondent asserts that the 1.12-acre portion of the site is not a wetland under the Coastal Act because wetland hydrology is lacking and saltgrass and pickleweed present on the site are not acting as wetland indicators. These assertions are addressed in Dr. Engel's memorandum which was already attached as Exhibit #10 to the Staff Report and thus incorporated by reference into the staff report's proposed Commission findings. In an attempt to respond again to the requests by Respondent for clarification, Commission staff recommends additions to page 15 of the staff report, Section IV (Findings and Declarations). Language to be added is shown in *italic and underlined*, as shown below:

Page 15, the first paragraph, continued from the previous page should read:

> 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 having wetland conditions. *See, also, Kirkorowicz v. California Coastal Comm'n* (2000) 83 Cal.App.4th 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 Commission concurs in Dr. Engel's analysis and conclusions, and Dr. Engel's memorandum is incorporated herein.*

In addition, on page 15, new paragraphs are inserted before the first full paragraph to read:

*Respondent asserts that the 1.12 acre portion of the site is not a wetland under the Coastal Act because wetland hydrology and hydric soils are lacking and saltgrass and pickleweed present on the site are not acting as hydrophytes. Based on review of photographs of the site taken from 2004 to the present, Dr. Engel found that portions of the fenced portion of the property are periodically under standing water for long periods; demonstrably in excess of 14 days in several instances. This is unequivocal evidence of wetland hydrology.*

*In addition, based on her review of photographs of the fenced area in 2004, 2005, and 2007, as well as her site visit notes and plant surveys submitted by Respondent, Dr. Engel determined that areas of the site subject to inundation and saturation supported a preponderance of wetland indicator plants, including pickleweed (an obligate wetland species, i.e. one that is associated with wetlands 99 percent of the time) intermixed with saltgrass (a facultative wetland species, i.e. one that occurs in wetlands between 67 and 99 percent of the time) prior to the unpermitted development at issue in this action. These species have been observed in these same areas of ponding following the unpermitted development, such that portions of the area continue to be wetlands.*

*Respondent also asserts that Dr. Engel's approach of looking at historical data is inappropriate. Dr. Engel did so because she concluded that the unpermitted development at issue in this action disrupted the normal indicators used to identify wetlands to such a degree that an "atypical situation," as defined by the Army Corps of Engineers existed at the site. In such situations, it is recommended that one look at other evidence (such as historic conditions) rather than at current conditions. Although Respondent asserts it is not necessary to use an atypical approach to a wetland, the Commission concurs with Dr. Engel's conclusion, for the reasons stated in her memorandum, that, as a result of the subject unpermitted development, the property constitutes an atypical situation. The recent unpermitted development activities on the site resulted in such significant site alterations that all indicators of wetland hydrology, vegetation, and soil parameters were severely compromised. The trench drains water from the site, clearly altering the hydrology; the grading and soil compaction also impacted site hydrology; and vegetation was extirpated. Therefore current conditions are not indicative of the condition of the site prior to disturbance.*

*The Army Corps of Engineers provides guidance for analyzing atypical situations. This entails comparison to nearby similar sites, use of historical evidence (e.g., photographs), and consideration of topography and landscape position. In the present instance, the size and character of the wetland that was disturbed is best estimated from photographs taken prior to the development. As noted in the previous paragraphs, these photographs, as well as recent site surveys and photographs, show that two parameters of the Commission and City wetland definition, wetland hydrology and a preponderance of wetland vegetation, are present on the site.*

**DOCUMENTS RECEIVED**

In addition to receiving the attached letters of support, Commission staff also received literally dozens of additional pages of materials from Respondent, in four separate submittals, on Tuesday, April 7, two days before the scheduled hearing on this matter. Because these submittals function as additional statements of defense, and given that: (1) Respondent was already allowed to submit two such statements and (2) Respondent did not receive the necessary authorization to be allowed to submit additional statements of defense at this late date, pursuant to Sections 13181(b) and 13191(b) of the Commission's regulation, these additional statements are not timely filed, and are therefore not properly before the Commission. Nevertheless, as a courtesy, and to the extent that the limited remaining available time permits, Commission staff provides the following additional responses, which are necessarily cursory. These responses are set forth below, along with a summary of the comments received by Respondent in its various late-submitted documents.

Commission staff suggests that these additional responses be added into the Commission's findings.

The following documents are attached:

A. Letters in support of the cease and desist and restoration orders:

1. The Cabrillo Wetlands Conservancy
2. Orange County Coastkeeper
3. Julie Fontaine, Wetland Ecologist, Trestles Environmental Corp.
4. Sea & Sage Audubon
5. Penny Elia
6. Tom and Betty Kuhn
7. Monica Ruzich
8. Marinka Horack
9. Mary Parsell, Conservation Chair, El Dorado Audubon
10. Nancy Donaven
11. Catherine Caufield
12. Bob Smith, Ph.D.
13. Adele and Greg Jewell
14. Flossie Horgan
15. John F. Scott
16. Jan D. Vandersloot, MD
17. James T. Mansfield
18. Iryne Black & Family
19. Irwin Haydock, Ph.D
20. Cynthia Breatore
21. Jeanne Whiteshell
22. Elmer F. Smith
23. Debby Koken

24. Terry Welsh
25. Carolyn Longstreth
26. Mark D. Bixby
27. Don Harvey, JD, PhD
28. John Kaiser
29. Charles Olsen
30. Cathleen Brannon
31. Charlotte Masarik
32. Eileen Murphy
33. Dennis Baker, Board President, Newport Bay Naturalists and Friends
34. Sharon L. Dana
35. Phil Drachman
36. Laura Pickett
37. Laurel Telfer
38. Marc Stirdivant
39. John Strada
40. Lorraine B. Levitan
41. Mr. and Mrs. Julian Vochelli
42. Barbara L. McCoy
43. Elaine Linhoff
44. Catherine Parker
45. Alan Beek
46. Juliann Blake
47. Joe & Linda Kimes
48. Fred Galluccio, MD, FAAFP
49. Julie Bixby
50. Don Schulz
51. Judy Todd
52. Robert & Gracie Winchell
53. Michael McMahan
54. Madeline Seymour

B. Forms For Disclosure Of Ex-Parte Communications from Commissioner Kruer dated March 27. 2009 and Chair Neely dated April 7, 2009.

C. April 7, 2009 Letter from Respondent to Commission staff, received by Commission staff on April 7, 2009.

Commission staff have reviewed the letter submitted by Respondent, In its letter, Respondent does not raise any new defenses to the Coastal Act violations alleged in this matter.

With respect to the request listed in the first "Clarification," as indicated in the staff report on pages 24-25, Commission staff disagrees with the premise that no soil compaction occurred as a result of the subject violation, and Commission staff therefore does not recommend making the requested change.

Regarding the third "Clarification" Commission staff discussed the definition of "loss of fitness" with Respondent since receipt of this letter and Respondent was satisfied with staff's definition.

With respect to the details of the restoration plan, staff will work with Respondent on restoration plan implementation issues via the plan submittal and approval process.

D. April 7, 2009 Letter to Chair Neely and Commissioners from Respondent, received by Commission staff on April 7, 2009.

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

**1) Respondent:**

Respondent requests the Commission direct staff to re-examine data and again visit the site to work towards revised findings. Page 1-2 (of Respondent's April 7, 2009 letter to Chair Neely)

**CCC:**

Commission staff has already conducted a site visit, reviewed the existing documentation including that submitted by Respondent, discussed the available information and staff's analysis several times with Respondent's counsel and Respondent's consultant and the existing information is adequate to analyze and evaluate the site's wetland characteristics.

Furthermore, as explained in Dr. Engel's memorandum on pages 3-5, the disturbance which is the very subject matter of these proceedings has so altered the site that current conditions cannot reasonably be considered to mirror the conditions that existed prior to the illegal disturbance, thus an "atypical" situation exists. An atypical situation is defined by the Army Corp of Engineers as one "where vegetation, soil, or hydrology indicators are absent due to recent human activities or natural events." The Army Corps of Engineers provides guidance for analyzing "atypical" situations, which is a term of art and is specifically provided for in wetland identification and analysis and addresses situations precisely such as this one where wetland characteristics of the site are altered or absent due to recent human activities. This analysis entails comparisons to nearby similar sites, use of historical evidence (e.g., photographs), and consideration of topography and landscape position. In the present instance, the size and character of the wetland that was disturbed is best estimated from photographs taken prior to the unpermitted development. These show portions of the property support wetland hydrology and wetland vegetation.

Thus, based on the analysis and information presented in and referred to in Dr. Engel's memorandum and elsewhere in the Staff Report, in order to address the impacts to coastal resources resulting from the subject unpermitted development in a timely manner, there is sufficient information to act. In addition, as discussed more fully in the Staff Report and Dr. Engel's memorandum, more information regarding the current site conditions would not be

probative as to the characterization of the area as a wetland in its pre-violation condition, and moreover, it is necessary to move forward expeditiously to resolve the outstanding violations and restore the site to its pre-violation condition.

**2) Respondent:**

Vegetation on site is growing under upland soil conditions. Page 2 (of Respondent's April 7, 2009 letter to Chair Neely)

**CCC:**

Respondent's argument that wetland plants on the site are growing as phreatophytes, is already addressed and rebutted on page 6 of Dr. Engel's memorandum, which is incorporated into the staff report.

**3) Respondent:**

No hydric soils are present. Page 2 (of Respondent's April 7, 2009 letter to Chair Neely)

**CCC:**

As explained in Dr. Engel's memorandum on page 5, the unpermitted development severely compromised the wetland indicators on site. However, Dr. Engel analyzed the available information, including historic information, and found that the site supported hydrophytes and wetland hydrology, thus meeting, in fact exceeding the "one parameter" definition of wetlands in the Commissions' regulations and City LCP, and making an independent analysis of the status of the soils unnecessary and irrelevant.

**4) Respondent:**

No wetland hydrology is present. Page 2 (of Respondent's April 7, 2009 letter to Chair Neely)

**CCC:**

Inundation and wet soil for a sufficient duration and of a sufficient frequency to establish wetland hydrology on the site is demonstrated and discussed on pages 4-5 of Dr. Engel's memorandum.

**5) Respondent:**

The characterization of the entire site as a wetland is not supported by scientific evidence. Page 2 (of Respondent's April 7, 2009 letter to Chair Neely)

**CCC:**

Dr. Engel's memorandum identifies several areas of the site that delineate as wetlands. Dr. Engel's conclusions are incorporated by reference into the staff report's proposed Commission findings.

**6) Respondent:**

Respondent disputes the characterization of the vegetation as "native wetland vegetation," and states that the work did not grade or fill wetlands, and the work did not alter site hydrology by soil compaction. Page 2 (of Respondent's April 7, 2009 letter to Chair Neely)

**CCC:**

Staff has determined and Respondent acknowledges that two species native to southern California, saltgrass, a facultative wetland species (i.e. occurs in wetlands 66 to 99 percent of the time) and pickleweed, an obligate wetland species (i.e. occurs in wetlands 99 percent of the time) were removed by the unpermitted development. These plants are wetland indicators and were growing in areas of inundation and wet soil that were identified by Dr. Engel as wetlands. Thus, "native wetland vegetation" is an appropriate and scientifically accurate description of some of the vegetation removed by the unpermitted development. Since there was a preponderance of these species in areas that were graded and filled, and because the hydrologic data also supports characterizing these areas as wetlands, it is accurate to state that the work graded and filled wetlands.

**7) Respondent:**

Reliance on a "one parameter" to support a wetland finding is a *"rebuttable presumption" which can be "rebutted by strong, independent evidence of upland condition."* Page 2 (of Respondent's April 7, 2009 letter to Chair Neely)

**CCC:**

As explained on pages 5-7 of Dr. Engel's memo, strong evidence of upland conditions has not been provided in this case. Moreover, based on the available information, site visits and photographs, Dr. Engel found that areas of the site met two parameters, wetland hydrology and predominated by hydrophytes, of the Commission and City wetland definition. Therefore, not only is the assertion that this is upland not supported, it does not support Respondent's claim regarding a rebuttable presumption. In fact, it is irrelevant here given that two parameters have been met at this site.

**8) Respondent:**

A finding of upland conditions on the site is supported because:

a) the site was filled 40 years ago and isolated the site hydrologically;
b) use of the site for RV storage since 1966 resulted in compaction of the site and alteration of soils;
c) the vegetation growing on site is growing as upland vegetation;
d) photos depicting ponding were taken with 24 hours of major rain events, but none resulted in the creation of hydric soils. Pages 2-3 (of Respondent's April 7, 2009 letter to Chair Neely)

**CCC:**

Regarding a), events that occurred prior to 1973 are irrelevant if the site continued to exhibit wetland characteristics, and, as demonstrated in Dr. Engel's memorandum on pages 4-5, areas of the site have exhibited wetland hydrology over the past several years. Regarding b), again, even if it is true that the pre-1973 use of the site resulted in compaction and alteration of the soils, that would be irrelevant. The relevant question is how the site has functioned since then. Thus, regardless of whether wetland areas on the site have been consistently used for RV storage, and the bulk of the evidence suggests otherwise, portions of the site exhibit wetland hydrology and support a preponderance of hydrophytes. Regarding c), whether the wetland vegetation on the site is growing as upland vegetation, this issue is discussed and rebutted on page 6 of Dr. Engel's memorandum. Nor does it make any sense to say that a finding of upland conditions is supported by the fact that the vegetation on site is growing as upland vegetation, since a determination that vegetation such as this (i.e., vegetation that is presumptively wetland vegetation) is growing as upland vegetation is made based on the presence of upland conditions, so the analysis is backwards or circular.

Regarding d), as explained on pages 4-5 of Dr. Engel's memorandum, wetland hydrology satisfying the hydrology parameter of the City' LCP and Commission's definition of wetlands is documented during typical and wet rainfall years. Moreover, many photos depicting ponding on the site were taken weeks after rainfall events. As noted above regarding hydric soils and as explained in Dr. Engel's memo on page 5, the unpermitted development severely compromised the wetland indicators on site. However, Dr.Engel found that the site supported hydrophytes and wetland hydrology, thus meeting, in fact exceeding the "one parameter" definition of wetlands in the Commissions' regulations and City LCP as discussed above and in the Staff Report and Dr. Engel's memorandum.

**9) Respondent:**

Staff report should be revised to eliminate characterization of the entire 1.12 portion of the property as a wetland. Page 3 (of Respondent's April 7, 2009 letter to Chair Neely)

**CCC:**

See No.5 above.

**10) Respondent:**

Commission staff asked Beachfront to waive its right to submit a Statement of Defense. Page 3 (of Respondent's April 7, 2009 letter to Chair Neely)

**CCC:**

The Commission staff made extensive attempts, involving many discussions, letters and proposals sent to Respondent, to resolve this matter amicably and in the course of these discussions, noted to Respondent that SOD's are typically not submitted in consent order proceedings, in order to save the Respondent party time and resources in drafting such a document. Respondent sought to work with Commission staff on a negotiated settlement and to avail itself of the opportunity not to file an SOD. During settlement negotiations, at the request of Respondent, staff extended the deadline to submit an SOD twice, to February 27 and March 2, in order to allow Respondent to forestall, and possibly avoid, having to submit an SOD. Accordingly, in those settlement negotiations, Commission staff proposed that any Consent Order include language reflecting Respondent's decision not to submit an SOD. Late on the evening of March 19, Respondent informed CCC staff that they would not be settling this matter. Therefore, as a courtesy and to ensure that Respondent had every opportunity to avail themselves of the SOD procedures set forth in the applicable regulations for these proceedings, CCC staff gave them until Monday, March 23 to submit supplemental defenses if they chose to do so. Not only did Respondent have the usual opportunity to respond to the Commission, Respondent has had additional opportunities to respond. In the Staff Report, Staff has responded to defenses raised in the SOD and other submissions from Respondent and in an excess of caution even those not characterized as SODs, so as to fully respond to issues raised by Respondent.

Moreover, even though it is not provided for in the regulations, as discussed elsewhere in this addendum, Respondent submitted even later information to the Commission, such as the letter being responded to herein. As a courtesy, staff has made these late-submittals part of the record and is responding to the substance contained therein.

**11) Respondent:**

The complete Statement of Defense was not included as Exhibit 10 to the staff report. Page 3 (of Respondent's April 7, 2009 letter to Chair Neely)

**CCC:**

The complete SOD was included as Exhibit 10 to the staff report. Due to the great length of some of the attachments to the exhibits, those attachments were made available electronically, and that availability was clearly indicated on the hard copies provided to the Commissioners and the public. The complete SOD exhibits and attachments were also linked to the staff report on-line as Appendix 1 and was thus made part of the record available to Commissioners and the public in that manner as well. Staff has thoroughly considered and addressed the issues raised in the SOD, including in Appendix 1, in the staff report. There is no dispute that the complete Statement of Defense is part of the administrative record for any action taken by the

Commission. Again, as a courtesy, we are attaching again these documents to this addendum and reiterating the fact that they are part of the record for this matter.

E. Response of Beachfront Village, LLC To The Staff Recommendations And Findings For Cease And Desist And Restoration Orders, Dated March 26, 2009, received by Commission staff on April 7, 2009

Staff notes that most of the issues raised in this document were also raised in the April 7, 2009 letter from Respondent to Chair Neely, and therefore the staff response to that document largely responds to the issues raised by this document as well.

**1) Respondent:**

Description of the Subject Property should be corrected to reflect the proper site address.

**CCC:**

Property is described in the staff report as it appears on property records, which is one 10.78-acre parcel.

**2) Respondent:**

Description of Unpermitted Development is inaccurate in its reference to wetland impacts(page 1)…this area [of the trench drain] would not constitute a "wetland" and while the work may not have been permitted, it was also not conducted in wetlands(page 2)…the work did not result in soil compaction(page 2)…[t]he trench drain extended a short distance (approximately 4-6 feet) onto the Newland Parcel which Beachfront acknowledges does include areas determined to be wetlands. As a result of that extension, an area of approximately 2 feet by 15 feet received runoff from the trench drain. The majority of the Newland Parcel was unaffected by the excavation of the trench drain on the adjacent Cabrillo Lot and did not receive runoff from the trench drain.

**CCC:**

As described on page 7 of the staff report, all unpermitted development occurred in or adjacent to the undisputed portion of the wetlands on the south side of the fence or the portion of the wetlands on the north side of the fence identified by Dr. Engel in her memorandum.
As Respondent acknowledges, the excavation of the trench drain was unpermitted. Thus, as described on pages 11-12 of the staff report, the criteria for issuance of a cease and desist order have been met.

The Respondent also acknowledges that the drain discharged stormwater into the undisputed wetlands on the south side of the fence. Thus, as explained on pages 12-19 of the staff report, the criteria for issuance of a restoration have been met. In addition, the trench drain, as is its function, changed the hydrology of the portion of wetlands on the north side of the fence.

The use of a soil compactor, as well as other heavy machinery, would necessarily result in soil compaction. The hydrology of the site, and thus the intensity of use of water, was also impacted by grading and placement of fill in wetlands and draining wetlands via a trench drain. As noted above, Respondent again acknowledges that the drain impacted wetlands on the property.

The evaluation of the parcel as to its wetlands characteristics has been fully addressed in Dr. Engel's memorandum, the staff report and the addendum.

**3.) Respondent:**

The Respondent restates various issues regarding their Statement of Defense.

**CCC**:

See CCC response No. 10 to April 7, 2009 letter from Respondent to Chair Neely, contained in this addendum.

4**.) Respondent:** The 1.12-acre Cabrillo Lot continues to be validly permitted use as a parking lot…

Fill of the site in the 1950's converted the site to uplands

**CCC:**

As explained on pages 21-24 of the staff report, 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. Moreover, as the Respondent points out, it does not assert that the subject unpermitted development was in some way exempt maintenance of vested development. Thus, the issue of whether the Respondent has a vested right to use of the subject property as a vehicle storage lot is irrelevant to issuance of a cease and desist order. And as explained extensively in the staff report, the unpermitted development at issue is not consistent with the resource protection polices of the Coastal Act and the criteria for issuance of a restoration order are met. Based on review of recent documentation of the site's characteristics, Dr. Engel concluded that portions of the site are wetlands.

**5. Respondent:** The Cabrillo Lot is Not a Wetlands

a. The one parameter definition is a rebuttable presumption that has been rebutted.

**CCC:**

See CCC response No. 7 to April 7, 2009 letter from Respondent to Chair Neely, contained in this addendum.

b. This paragraph seems to be a sort of summary of issues regarding whether portions of the site is properly characterized as a wetland.

**CCC:** None of these issues are new, and they have been addressed already in the staff report, Dr. Engel's memorandum and in this addendum.

6. **Respondent:** The Findings should be revised to accurately describe the existing conditions. There is no evidence of continuing resource damage.

**CCC:**

The findings are well supported by the Dr. Engel's memorandum. This section raises no issues that have not been addressed in the staff report, and this addendum. The issue of continuing resource damage is directly addressed in the Staff Report and Respondent's statements are completely unsupported by the facts and applicable Coastal Act policies. The violations at issue here were the result of actions undertaken without Coastal Act authorization, were inconsistent with numerous Coastal Act policies, remain unaddressed and unrestored and clearly constitute ongoing resource damages under the Coastal Act.

F. Memorandum dated April 6, 2009 from Tony Bomkamp, received by Commission staff on April 7, 2009

Staff, including Dr Engel, has reviewed the memo from Respondent's consultant, submitted April 7, 2009[1] and concluded it doesn't raise new issues or affect the conclusion that the site contains wetlands. The general issues Mr. Bomkamp raises were summarized in the April 7, 2009 letter from Respondent to Chair Neely and Commissioners and responded to in our summary and response to that letter in this addendum, as well as the staff report for these orders.

[1] As noted in detail above on page 3 of this addendum, these additional statements are not timely filed, and are therefore not properly before the Commission. Nevertheless, as a courtesy, and to the extent that the limited remaining available time permits, Commission staff provides the following additional responses, which are necessarily cursory.

RECEIVED
South Coast Region
MAR 30 2009
CALIFORNIA
COASTAL COMMISSION

March 29, 2009

California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416
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 Thursday April 9, Items 11 and 12, support staff recommendation

Dear California Coastal Commissioners,

We members of the Cabrillo Wetlands Conservancy are writing to ask that you support the Coastal Commission staff recommendation to issue a Cease and Desist Order and to restore the damage to the wetlands by unpermitted wetlands scraping and fill that was done in February of 2008 on a parcel south of the Cabrillo Mobile Home Park in Huntington Beach.

This wetlands is 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.. Some of the Huntington Beach wetlands is currrently undergoing restoration, so it is not appropriate for a part of it to be destroyed without permits.

It is estimated that we have lost close to 90% of our original coastal wetlands in California. We can not let our precious remaining coastal wetlands be scraped off and filled without going through the proper permit process.

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 forged 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 1965 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 2-94 , 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-Serving 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 ask you to please help us protect our remaining coastal wetlands and support your staff in requiring a Cease and Desist Order and Restoration Order of the wetlands that have been damaged adjacent to the Cabrillo Mobile Home Park in Huntington Beach.

Thank you for your consideration.

Sincerely,

RECEIVED
South Coast Region
MAR 30 2009
CALIFORNIA
COASTAL COMMISSION

The Cabrillo Wetlands Conservancy
21752 Pacific Coast Highway
Space 23A
Huntington Beach, CA 92646

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ORANGE COUNTY
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EDUCATION / ADVOCACY / RESTORATION / ENFORCEMENT

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RECEIVED
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MAR 31 2009
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March 31, 2009

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FAX (562) 590-5084

**RE: Agenda Items Thursday April 9, Items 11 and 12, support staff recommendation**

Dear California Coastal Commissioners,

Orange County Coastkeeper is an environmental organization with the mission to preserve, protect and restore the watersheds and coastal environment of Orange County. In the interest of the people of Orange County, Coastkeeper asks the California Coastal Commission to support staff recommendations and issue a Cease and Desist Order and demand the restoration of the wetlands destroyed at the Cabrillo Mobile Home Park in Huntington Beach.

The unauthorized destruction of wetlands near the Cabrillo Mobile Home Park is a patent violation of state regulations the impact of which cannot be ignored or minimized. Since settlement began, the loss of wetlands in the United States has been dramatic and no state has seen more wetlands lost than California. Since the 1780's, California has lost approximately ninety-one percent of its historic wetlands.[1] This unenviable title brings with it a responsibility to ensure the health and protection of the remaining acres of California wetlands from both natural and anthropogenic harm.

Currently, California is seeking to enlarge the scope of wetland protection by broadly interpreting the application of land use laws regulations wetlands. Contemporaneous with this action, the State Water Quality Control Board is developing a policy to protect wetlands and riparian areas by broadening the state's understanding of the term "wetland" to ensure that existing wetlands receive the protection they deserve. It would be incongruous for one state agency to seek the expanded protection of wetlands while another agency permits private property owners to intentionally or negligently destroy protected wetlands without serious consequence. In order to ensure uniformity in regulatory design and enforcement, the Cabrillo Mobile Home Park must cease and desist from engaging in destructive activities on the property and restore the wetlands to at least their prior condition.

[1] Dahl, T.E., *Wetlands Losses in the United States 1780s – 1980s*, U.S. Fish & Wildlife Service

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Proactive policy decisions by responsible legislators and reasonable execution of state regulations by administrative agencies has led California to overall increases in wetland coverage over the past decade. For example, following western state's adoption of "no-net-loss" policies, such as California's Wetlands Conservation Policy, the U.S. Department of Agriculture began reporting an increase of wetlands on agricultural land in the lower forty-eight states of 26,000 acres annually.[2] Although this wetland is not located on existing agricultural land, the method of strict enforcement of state "no-net-loss" policies and the expansion of administrative jurisdiction is leading towards increased protection and a healthier wetland ecosystem. In order to ensure that this progress is not lost, violators of state regulations must be held responsible for their actions and liable for the restoration of property damaged through their intentional or negligent conduct.

Please help us protect our remaining coastal wetlands by issuing a Cease and Desist Order and Restoration Order against Cabrillo Mobile Home Park for the destruction of wetlands in Huntington Beach.

Thank you.

Sincerely,

Garry Brown

Garry Brown
Executive Director
Orange County Coastkeeper

[2] Natural Resources Conservation Service, U.S. Dep't of Agriculture, Natural Resources Inventory (2004).

Trestles
ENVIRONMENTAL CORPORATION

March 31, 2009

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Orange County Coastkeeper
441 Old Newport Blvd, Suite 103
Newport Beach, CA 92663

**Re: Affirmation of Coastal Commission's Conclusions on Cabrillo Wetlands NOV**

Dear Garry and Jan:

Per your request, I have reviewed both the March 26, 2009 Staff Recommendations and Findings for Cease and Desist and Restoration Orders for the Cabrillo Wetlands Property in Huntington Beach, CA (Order No: CCC-09-CD-03 & CCC-09-RO-02), as well as the Jurisdictional Delineation Report and associated memos prepared by the land owner's biological consultant, GLA.

Although I have not had direct access to the property in question, I am familiar with the violation. In March of 2008 shortly after the violation occurred I prepared a preliminary report of finding based upon empirical data and site observations to the Orange County Coastkeepers. One key observation based upon the February 2008 site photo and the March 2008 site visit that the land owner's consultant did not address was the fact that water in the excavated trench was less than 12 inches from the surface (see attached photos). This high water table or ponding creates on a seasonal basis hydrologic conditions sufficient for hydrophytic vegetation to establish and persist. GLA presented the argument in their report of finding as well as follow-up memos that the dominant vegetation was phreatophytic in nature (deep rooted), rather than water loving (hydrophytic) due to the fact that groundwater is too deep (GLA Nov 12 2008, pg 5) thus no "wetland" vegetation was present.

Site evidence show the contrary, that water level has been within 12 inches of the surface continuously from November 27, 2008 to March 14, 2009. Once can presume that for any of these wetland species to establish there must be sufficient soil moisture or ponding for these wetland plants to establish. Based upon the CCC definition of a wetland "*...at least periodically, the land supports predominantly hydrophytes*", this criteria has been met, thus CCC regulated wetlands are present. To clarify further the definition of hydrophytes, the Army Corps of Engineers defines hydrophytic vegetation as the following: "*Hydrophytic vegetation is defined herein as the sum total of macrophytic plant life that occurs in areas where the frequency and duration of inundation or soil saturation produce permanently or periodically saturated soils of sufficient duration to exert a controlling influence on the plant species present.*"

The argument that these wetland plants present are deep rooted rather than water-loving plants is not consistent with the CCC and Corps' definition, particularly his interpretation of the definition of hydrophytic. Unlike the Corp's definition, the CCC's definition does not require specific duration of saturation for the hydrology or the vegetation criteria to be met. Hydrophytic vegetation includes those species that establish and persist as a result of soil saturation. Both pickleweed and saltgrass require high soil moisture conditions and are considered hydrophytic.

1119 S Mission Ave #325, Fallbrook, CA 92028 Tel. (949) 246-3117 julie@TrestlesEC.net

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Upon further review of both the California Coastal Commission's (CCC) staff recommendations and GLA reports, I have to agree with the conclusions made by the CCC":

> *"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."* (pg 3)

> *" ...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."* (pg 4)

February 2008 excavated trench – water present in trench.

1119 S Mission Ave #325 Fallbrook, CA 92028 Tel. (949) 246-3117, julie@TrestlesEC.net

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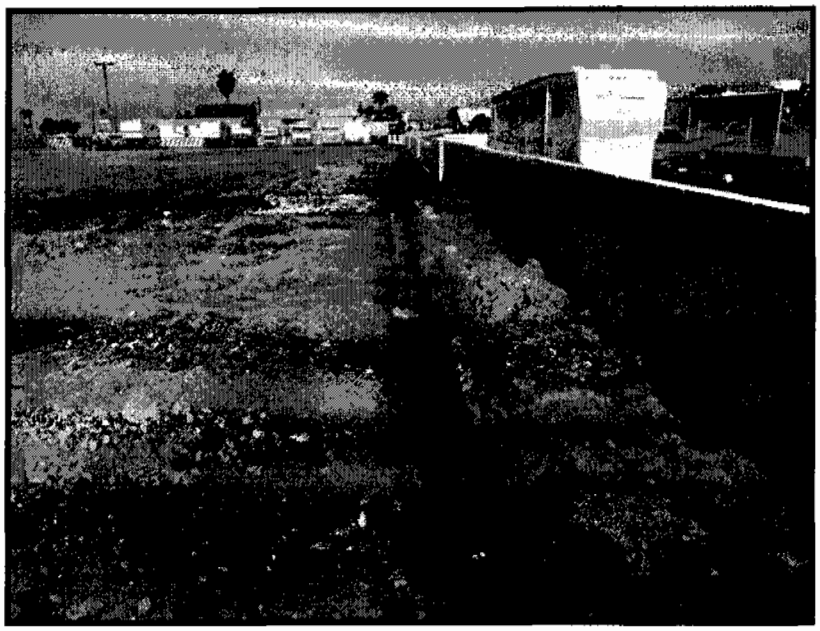

March 2008 excavated trench - water present in trench.

November 27, 2008 excavated trench- water present in trench.

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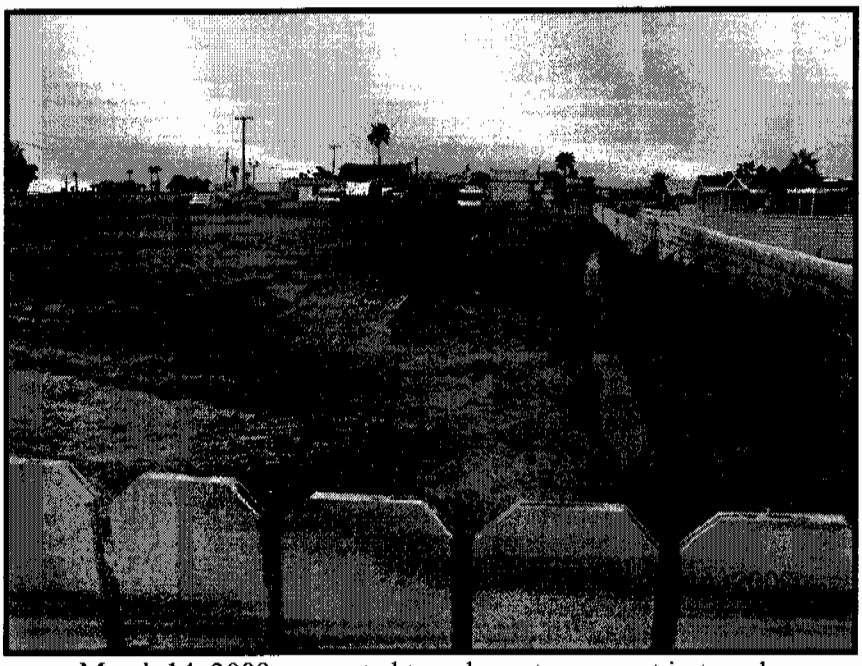

March 14, 2009 excavated trench- water present in trench.

Sincerely,
**TRESTLES ENVIRONMENTAL CORPORATION**

Julie E. Fontaine

Julie Fontaine
Wetland Ecologist

1119 S Mission Ave #325 Fallbrook, CA 92028 Tel. (949) 246-3117, julie@TrestlesEC.net

Sea & Sage Audubon

P.O. BOX 5447, IRVINE, CA 92616-5447

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April 3, 2009

Andrew Willis
Enforcement Officer, California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802

RE: Enforcement of Cabrillo Wetlands NOV

Dear Mr. Willis;

I am writing on behalf of Sea and Sage Audubon Society concerning the Cabrillo Wetlands and the birds, including Belding's Savannah Sparrows (*Passerculus sandwichensis beldingi*) that utilize the property. We are an Orange County chapter of National Audubon Society, dedicated to the protection and appreciation of birds, other wildlife, and their habitats through education, conservation, scientific research, and volunteer opportunities. We have been observing Savannah Sparrows, including the endangered Belding's sub-species at the Cabrillo Wetlands for many years. Belding's are completely dependent on coastal wetlands and associated habitats for all aspects of their life history. We are urging you to enforce the Notice of Violation and ensure the property is restored.

In coastal southern California we have lost most of our coastal salt marshes, estuaries, and wetlands, including large expanse of wetlands in Huntington Beach that included all the area surrounding the Cabrillo Wetlands, in almost all directions. The birds that inhabit the few remnants of these marshes are of great importance. We must protect every square foot of remaining wetlands in order to protect the few remaining birds that rely on them. Even the birds that are now considered common are greatly fewer in numbers than before most of our wetlands were drained. They are only common in comparison to bird species who's numbers are reduced to the level of facing extinction.

There has apparently some debate as to whether Belding's Savannah Sparrows utilize the property. As I already stated, members of Sea and Sage Audubon, including Sylvia Gallagher, who published the Breeding Bird Atlas of Orange County and teaches our advanced birding classes, have seen Belding's on the property since the 1980s. And, it is

well known that Belding's inhabit and breed in the Huntington Beach Wetlands, no less than 1000 feet away from the Cabrillo Trailer Park, therefore there is no reason to doubt that they use this nearby wetland and associated habitat for foraging. Recently Robb Hamilton shot photos of a Belding's Savannah Sparrow on the property. We have examined the pictures and agree that it was indeed a Belding's.

Many other wetland species have been observed using the property and adjacent sites. For instance, Great-blue Herons are regularly seen there. Although the property is small, it serves as a foraging habitat for important wetland birds.

In regards to the debate as to whether there are wetland obligate plant species on the site and whether they are now hydrophytic or phreatrphytic, it is clear that no matter what condition the plants are currently in after grading a 9 year drought, the area had to have been inundated for a significant time in the recent past in order for the plants to have taken hold. Salt grass and pickle weed do not just plop down anywhere and send roots into deep water sources. They do spread short distances from inundated areas, such as around the edges or slopes of a saturated area. But they do not establish themselves in non-wetland conditions. The issue of what condition the plants are hanging on in currently is elementary to the fact that the area had to be inundated for these plants to establish in the first place. The California Coastal Commission and Army Corp of Engineers definition of a wetland applies.

The use of obligate plant species to identify wetlands was established in part to avoid exactly this type of time wasting debate. The plants only exist if there has been sufficient inundation. The use of these plants to identify wetlands helps lessen the risk of decision makers and leaders of making anecdotal determinations about wetlands based on personal non-standardized opinions. Using wetland obligates sets a scientific standard that serves the public and helps protect the resources along California's coast well and fairly.

We agree with the CCC Staff conclusions that the Cabrillo Wetlands are in fact properly designated as such, and because it is being used regularly by birds, including endangered species, we urge you to enforce the Cease and Desist and Restoration Orders for the Cabrillo Wetlands Property. Protection of all of our coastal wetlands and the special birds that use them is of the utmost importance.

Thank you for you consideration,

Scott Thomas
Conservation Director, Sea and Sage Audubon Society
(949) 261-7962, (949) 293-2915
Redtail1@cox.net

Fax to (562) 590-5084

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Penny Elia Mar 30

From: Penny Elia [greenp1@cox.net]
Sent: Monday, March 30, 2009 5:28 PM
To: Teresa Henry; Meg Vaughn; Karl Schwing; Andrew Willis; Sherilyn Sarb
Subject: Coastal Commission April 9 Agenda Items 11,12, Cabrillo Wetlands, Support Staff

March 29, 2009

California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416
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 Thursday April 9, Items 11 and 12, support staff recommendation

Dear California Coastal Commissioners,

I am writing to ask that you support the Coastal Commission staff recommendation to issue a Cease and Desist Order and to restore the damage to the wetlands by unpermitted wetlands scraping and fill that was done in February of 2008 at the Cabrillo Mobile Home Park in Huntington Beach.

This wetlands is 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.. Some of the Huntington Beach wetlands is currrently undergoing restoration, so it is not appropriate for a part of it to be destroyed without permits.

It is estimated that we have lost close to 90% of our original coastal wetlands in California. We can not let our precious remaining coastal wetlands be scraped off and filled without going through the proper permit process.

Please help us protect our remaining coastal wetlands and support your staff in requiring a Cease and Desist Order and Restoration Order of the wetlands that have been damaged at the Cabrillo Mobile Home Park in Huntington Beach.

Thank you.

Sincerely,

Penny Elia
Sierra Club
30632 Marilyn Drive
Laguna Beach, CA 92651
949-499-4499

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Tom and Betty Kuhn Mar 30

From: Tom Kuhn [tkuhn2@gmail.com]
Sent: Sunday, March 29, 2009 10:17 PM
To: Teresa Henry; Meg Vaughn; Karl Schwing; Andrew Willis; Sherilyn Sarb
Subject: Coastal Commission April 9 Agenda Items 11,12, Cabrillo Wetlands, Support Staff

March 29, 2009

California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416
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 Thursday April 9, Items 11 and 12, support staff recommendation

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Please help us protect our remaining coastal wetlands and support your staff in requiring a Cease and Desist Order and Restoration Order of the wetlands that have been damaged at the Cabrillo Mobile Home Park in Huntington Beach.

Thank you.

Sincerely,

Tom and Betty Kuhn
8376 Terranova Circle
Huntington Beach, Ca. 92646

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Monica Ruzich Mar 30
From: Monica Ruzich Hamilton [mdruzich@earthlink.net]
Sent: Sunday, March 29, 2009 9:31 PM
To: Teresa Henry; Meg Vaughn; Karl Schwing; Andrew Willis; Sherilyn Sarb
Subject: Coastal Commission April 9 Agenda Items 11,12, Cabrillo Wetlands, Support Staff

March 29, 2009

California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416
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 Thursday April 9, Items 11 and 12, Support staff recommendation

Dear California Coastal Commissioners,

I am writing to ask that you support the Coastal Commission staff recommendation to issue a Cease and Desist Order and to restore the damage to the wetlands by unpermitted wetlands scraping and fill that was done in February of 2008 at the Cabrillo Mobile Home Park in Huntington Beach.

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Please help us protect our remaining coastal wetlands and support your staff in requiring a Cease and Desist Order and Restoration Order of the wetlands that have been damaged at the Cabrillo Mobile Home Park in Huntington Beach.

Thank you.

Sincerely,

Monica Ruzich
5401 Kenilworth Drive
Huntington Beach, California 92649
(714) 840-8901

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Marinka Horack Ma 30

From: Marinka Horack [horackm@hotmail.com]
Sent: Sunday, March 29, 2009 9:54 PM
To: Teresa Henry; Meg Vaughn; Karl Schwing; Andrew Willis; Sherilyn Sarb; Marinka Horack
Subject: Cabrillo Wetlands in HB Wetlands, Letters Needed to Coastal Commission Today

from: Marinka Horack
21742 Fairlane Circle
Huntington Beach

March 29, 2009

to:California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416
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 Thursday April 9, Items 11 and 12, support staff recommendation

Dear California Coastal Commissioners,

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Please help us protect our remaining coastal wetlands and support your staff in requiring a Cease and Desist Order and Restoration Order of the wetlands that have been damaged at the Cabrillo Mobile Home Park in Huntington Beach.

Thank you for your time and consideration, Than kyou for your service to the people of California.

Sincerely,
Marinka Horack
21742 Fairlane Circle
Huntington Beach, CA 92646
(714) 964-8170

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Mary Parsell, Conservation Chair El Dorado Audubon Ma 30

From: Mary Parsell [mfp2001@hotmail.com]
Sent: Tuesday, March 31, 2009 2:43 PM
To: Teresa Henry; Meg Vaughn; Karl Schwing; Andrew Willis; Sherilyn Sarb
Subject: April 9, Items 11 and 12, Support Staff Recommendation

March 29, 2009

California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416
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 Thursday April 9, Items 11 and 12, support staff recommendation

Dear California Coastal Commissioners,

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Thank you.

Sincerely,

Mary Parsell
Conservation Chair, El Dorado Audubon
562/252-5825

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From: Nancy Donaven [ndonaven@verizon.net]
Sent: Monday, March 30, 2009 3:08 PM
To: Teresa Henry; Sherilyn Sarb; Karl Schwing; Meg Vaughn; Andrew Willis
Subject: Coastal Commission April 9 Agenda, Items 11 and 12, Cabrillo WEtlands, Support Staff Recommendations

March 29, 2009

California Coastal Commission

200 Oceangate, 10th Floor
Long Beach, CA 90802-4416
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 Thursday April 9, Items 11 and 12, support staff recommendation

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People who are so out of control need to be checked, in my view!

Thaank you.

Nancy Donaven
4831 Los Patos Ave
Huntington Beach, CA 92649
714 840 7496

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Catherine Caufield Mar 30
From: Catherine Caufield [caufield@visionroad.us]
Sent: Monday, March 30, 2009 3:16 PM
To: Teresa Henry; Meg Vaughn; Karl Schwing; Andrew Willis; Sherilyn Sarb
Subject: Coastal Commission April 9 Agenda Items 11,12, Cabrillo Wetlands, Support Staff

March 30, 2009

California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416
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 Thursday April 9, Items 11 and 12, support staff recommendation

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Thank you.

Sincerely,

Catherine Caufield
Box 884
Inverness, CA 94937
415-669-1570

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Bob Smith, Ph.D. Mar 30

From: Bob Smith [bobsmithttl@gmail.com]
Sent: Monday, March 30, 2009 12:01 PM
To: Teresa Henry; Meg Vaughn; Karl Schwing; Andrew Willis; Sherilyn Sarb
Subject: Coastal Commission April 9 Agenda Items 11,12, Cabrillo Wetlands, Support Staff Recommendation

March 29, 2009

California Coastal Commission

200 Oceangate, 10th Floor

Long Beach, CA 90802-4416

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 Thursday April 9, Items 11 and 12, support staff recommendation

Dear California Coastal Commissioners,

Thank you for serving on this very important Commission and using your professional judgment to decide how best to comply with California's environmental policies.

You are likely aware of the key role that wetland destruction played in the Katrina disaster. So
I am writing to ask that you support the Coastal Commission staff recommendation to issue a Cease and Desist Order and to restore the damage to the wetlands by unpermitted wetlands scraping and fill that was done in February of 2008 at the Cabrillo Mobile Home Park in Huntington Beach.

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Thank you.

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Sincerely,

Bob Smith, Ph.D.
21352 Yarmouth Lane
Huntington Beach, CA
92646

714 536 1084

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Adele and Greg Jewell Ma 30

From: Greg Jewell [a-gjewell@worldnet.att.net]
Sent: Monday, March 30, 2009 7:46 AM
To: Teresa Henry; Meg Vaughn; Karl Schwing; Andrew Willis; Sherilyn Sarb
Subject: Cabrillo Wetlands in Huntington Beach

March 29, 2009

California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416
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 Thursday April 9, Items 11 and 12, support staff recommendation

Dear California Coastal Commissioners,

I am writing to ask that you support the Coastal Commission staff recommendation to issue a Cease and Desist Order and to restore the damage to the wetlands by unpermitted wetlands scraping and fill that was done in February of 2008 at the Cabrillo Mobile Home Park in Huntington Beach.

This wetlands is 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.. Some of the Huntington Beach wetlands is currrently undergoing restoration, so it is not appropriate for a part of it to be destroyed without permits.

It is estimated that we have lost close to 90% of our original coastal wetlands in California. We can not let our precious remaining coastal wetlands be scraped off and filled without going through the proper permit process.

Please help us protect our remaining coastal wetlands and support your staff in requiring a Cease and Desist Order and Restoration Order of the wetlands that have been damaged at the Cabrillo Mobile Home Park in Huntington Beach.

Thank you.

Sincerely,

Adele and Greg Jewell
8622 Laramie Circle
Westminster, CA 92683
714-891-1545

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MAR 30 2009

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COASTAL COMMISSION

March 30, 2009
>
> California Coastal Commission
> 200 Oceangate, 10th Floor
> Long Beach, CA 90802-4416
> 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 Thursday April 9, Items 11 and 12, support staff
> recommendation
>
> Dear California Coastal Commissioners,
>
> I am writing to ask that you support the Coastal Commission staff
> recommendation to issue a Cease and Desist Order and to restore the damage
> to the wetlands by unpermitted wetlands scraping and fill that was done in
> February of 2008 at the Cabrillo Mobile Home Park in Huntington Beach.
>
> This wetlands is 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.. Some of the
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>
> It is estimated that we have lost close to 90% of our original coastal
> wetlands in California. We can not let our precious remaining coastal
> wetlands be scraped off and filled without going through the proper permit
> process.
>
> Please help us protect our remaining coastal wetlands and support your staff
> in requiring a Cease and Desist Order and Restoration Order of the wetlands
> that have been damaged at the Cabrillo Mobile Home Park in Huntington Beach.
>
> Thank you.
>
> Sincerely,
>
> Flossie Horgan
207 21st Street
Huntington Beach, CA 92648

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From: John Scott [johnscott4@socal.rr.com]
Sent: Sunday, March 29, 2009 10:48 PM
To: Teresa Henry; Meg Vaughn; Karl Schwing; Andrew Willis; Sherilyn Sarb
Subject: [Possible Spam] Agenda Items

Importance: Low

March 29, 2009

California Coastal Commission

200 Oceangate, 10th Floor
Long Beach, CA 90802-4416
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 Thursday April 9, Items 11 and 12, support staff recommendation

Dear California Coastal Commissioners,

I am writing to ask that you support the Coastal Commission staff recommendation to issue a Cease and Desist Order and to restore the damage to the wetlands by unpermitted wetlands scraping and fill that was done in February of 2008 at the Cabrillo Mobile Home Park in Huntington Beach.

This wetlands is 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.. Some of the Huntington Beach wetlands is currrently undergoing restoration, so it is not appropriate for a part of it to be destroyed without permits.

It is estimated that we have lost close to 90% of our original coastal wetlands in California. We can not let our precious remaining coastal wetlands be scraped off and filled without going through the proper permit process.

Please help us protect our remaining coastal wetlands and support your staff in requiring a Cease and Desist Order and Restoration Order of the wetlands that have been damaged at the Cabrillo Mobile Home Park in Huntington Beach.

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Thank you.

Sincerely,

John F. Scott
22032 Capistrano Lane
Huntington Beach, CA 92646
(714) 962-1746

Vespa_1@yahoo.com

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Jan D. Vandersloot, MD Mar 30

From: JonV3@aol.com
Sent: Sunday, March 29, 2009 8:29 PM
To: Teresa Henry; Meg Vaughn; Karl Schwing; Andrew Willis; Sherilyn Sarb
Subject: Coastal Commission April 9 Agenda Items 11,12, Cabrillo Wetlands, Support Staff

March 29, 2009

California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416
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 Thursday April 9, Items 11 and 12, support staff recommendation

Dear California Coastal Commissioners,

I am writing to ask that you support the Coastal Commission staff recommendation to issue a Cease and Desist Order and to restore the damage to the wetlands by unpermitted wetlands scraping and fill that was done in February of 2008 at the Cabrillo Mobile Home Park in Huntington Beach.

This wetlands is 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.. Some of the Huntington Beach wetlands is currrently undergoing restoration, so it is not appropriate for a part of it to be destroyed without permits.

It is estimated that we have lost close to 90% of our original coastal wetlands in California. We can not let our precious remaining coastal wetlands be scraped off and filled without going through the proper permit process.

Please help us protect our remaining coastal wetlands and support your staff in requiring a Cease and Desist Order and restoration of the wetlands that have been damaged at the Cabrillo Mobile Home Park in Huntington Beach.

Thank you.

Sincerely,

Jan D. Vandersloot, MD
2221 E 16th Street
Huntington Beach, CA 92663
949-548-6326

---

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James T. Mansfield Mar 30
Coastal Commission April 9 Agenda Items 11,12, Cabrillo Wetlands, Support StaffFrom: Jim Mansfield [jtmansfield@ca.rr.com]
Sent: Sunday, March 29, 2009 10:29 PM
To: Teresa Henry; Meg Vaughn; Karl Schwing; Andrew Willis; Sherilyn Sarb
Subject: Coastal Commission April 9 Agenda Items 11,12, Cabrillo Wetlands, Support Staff

March 29, 2009

California Coastal Commission

200 Oceangate, 10th Floor
Long Beach, CA 90802-4416
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 Thursday April 9, Items 11 and 12, support staff recommendation

Dear California Coastal Commissioners,

I am writing to ask that you support the Coastal Commission staff recommendation to issue a Cease and Desist Order and to restore the damage to the wetlands by unpermitted wetlands scraping and fill that was done in February of 2008 at the Cabrillo Mobile Home Park in Huntington Beach.

This wetlands is 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.. Some of the Huntington Beach wetlands is currrently undergoing restoration, so it is not appropriate for a part of it to be destroyed without permits.

It is estimated that we have lost close to 90% of our original coastal wetlands in California. We can not let our precious remaining coastal wetlands be scraped off and filled without going through the proper permit process.

Please help us protect our remaining coastal wetlands and support your staff in requiring a Cease and Desist Order and Restoration Order of the wetlands that have been damaged at the Cabrillo Mobile Home Park in Huntington Beach.

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Thank you.

Sincerely,

James T, Mansfield
1857 Rhodes Drive
Costa Mesa, CA 92626

Phone Number: 714-751-2243
Email: jtmansfield@ca.rr.com

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Iryne Black and Family Ma 30
From: Iryne Black [ayeblack@sbcglobal.net]
Sent: Monday, March 30, 2009 12:03 PM
To: Teresa Henry; Meg Vaughn
Cc: Karl Schwing; Andrew Willis; Sherilyn Sarb
Subject: Agenda items 11 & 12, Commission meeting April 9 Support of CoastalCommission staff recommendation

California Coastal Commission
200 Oceangate, 10th floor
Long Beach, Ca. 90802

Re: Agenda Items April 9: No. 11 and 12

Dear Members of the Commission:

This is to ask that you support the staff recommendations on the above items. The wetlands are historic and their maintenance pursuant to the staff report is of enormous value to the environment and to the citizens of California.

Thank you in advance for your support.

Sincerely,

Iryne Black & Family
1646 Irvine Avenue
Newport Beach, Ca. 92660

March 30, 2009

Region
MAR 3 0 2009
COMMISSION

Irwin Haydock, Ph.D Mar 30

From: HAYDOCKI@aol.com
Sent: Monday, March 30, 2009 12:41 PM
To: Teresa Henry; Meg Vaughn; Karl Schwing; Andrew Willis; Sherilyn Sarb
Cc: JonV3@aol.com
Subject: Subject: Coastal Commission April 9 2009 Agenda Items 11,12, Cabrillo Wetlands

March 30, 2009
California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416
Phone (562) 590-5071
FAX (562) 590-5084

Subject: Coastal Commission April 9 2009 Agenda Items 11,12, Cabrillo Wetlands, Letter in Support of Coastal Commission Staff Recommendation.

c/o Coastal Commission staff Teresa Henry, Sherilyn Sarb, Karl Schwing, Meg Vaughn, Andrew Willis
Re: Agenda: Thursday April 9, Items 11 and 12, Cabrillo Wetlands

Dear California Coastal Commissioners,

I am writing to ask that you support the Coastal Commission staff recommendation to issue a Cease and Desist Order and to restore the damage to the wetlands by unpermitted wetlands scraping and fill that was done in February of 2008 at the Cabrillo Mobile Home Park in Huntington Beach.

This site is clearly part of the historic wetlands complex that still exists from the Santa Ana River mouth to Beach Blvd in Huntington Beach. It is not acceptable that without permits a landowner should scrape the wetlands vegetation from the Cabrillo Parcel, 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. Some adjacent parcels to the east are currently undergoing restoration, so it is inappropriate to destroy this parcel without thorough justification and issuing the proper permits.

Estimates are that we have lost almost 90% of our original southern California coastal wetlands, along with a rich diversity of endemic plants and animals which require these special circumstance to thrive. We must not let our precious remaining coastal wetlands be scraped off and filled without going through the proper permit process and public vetting. Please protect our precious remaining coastal wetlands by supporting your staff's recommendation in requiring a Cease and Desist Order and Restoration Order for the wetlands that have been damaged at the Cabrillo Mobile Home Park in Huntington Beach.

Thank you for this consideration.
Sincerely,

Irwin Haydock, Ph.D.
11570 Aquamarine Circle
Fountain Valley, CA 92708
(714) 775-4415

---

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Cynthia Breatore Mar 30

From: cynthia breatore [cbreatore@yahoo.com]
Sent: Monday, March 30, 2009 7:43 AM
To: Teresa Henry; Meg Vaughn; Karl Schwing; Andrew Willis; Sherilyn Sarb
Subject: Coastal Commission April 9 Agenda Items 11,12, Cabrillo Wetlands, Support Staff

March 29, 2009

California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416
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 Thursday April 9, Items 11 and 12, support staff recommendation

Dear California Coastal Commissioners,

I am writing to ask that you support the Coastal Commission staff recommendation to issue a Cease and Desist Order and to restore the damage to the wetlands by unpermitted wetlands scraping and fill that was done in February of 2008 at the Cabrillo Mobile Home Park in Huntington Beach.

This wetlands is 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.. Some of the Huntington Beach wetlands is currrently undergoing restoration, so it is not appropriate for a part of it to be destroyed without permits.

It is estimated that we have lost close to 90% of our original coastal wetlands in California. We can not let our precious remaining coastal wetlands be scraped off and filled without going through the proper permit process.

Please help us protect our remaining coastal wetlands and support your staff in requiring a Cease and Desist Order and Restoration Order of the wetlands that have been damaged at the Cabrillo Mobile Home Park in Huntington Beach.

Thank you.

Sincerely,
Cynthia Breatore
1989 Federal Ave.
Costa Mesa, CA 92627
949-645-8735

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MAR 30 2009

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Elmer F. Smith
From: Elmer F. Smith [efuddsmith@dslextreme.com]
Sent: Tuesday, January 01, 2002 12:44 AM
To: Teresa Henry; Meg Vaughn; Karl Schwing; Andrew Willis; Sherilyn Sarb
Subject: Coastal Wetland:

March 29, 2009

California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416
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 Thursday April 9, Items 11 and 12, support staff recommendation

Dear California Coastal Commissioners,

I am writing to ask that you support the Coastal Commission staff recommendation to issue a Cease and Desist Order and to restore the damage to the wetlands by unmerited wetlands scraping and fill that was done in February of 2008 at the Cabrillo Mobile Home Park in Huntington Beach.

This wetlands is 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.. Some of the Huntington Beach wetlands is currently undergoing restoration, so it is not appropriate for a part of it to be destroyed without permits.

It is estimated that we have lost close to 90% of our original coastal wetlands in California. We can not let our precious remaining coastal wetlands be scraped off and filled without going through the proper permit process.

Please help us protect our remaining coastal wetlands and support your staff in requiring a Cease and Desist Order and Restoration Order of the wetlands that have been damaged at the Cabrillo Mobile Home Park in Huntington Beach.

Thank you.

Sincerely,

Name Elmer F. Smith
Address Cabrillo Mobile Home Park
21752 Pacific Cst Hy #17A
Phone Number 714-536-2682

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MAR 3 0 2009

CALIFORNIA
COASTAL COMMISSION

Jeanne Whiteshell Mar 30

From: jswhitesell3211@yahoo.com
Sent: Monday, March 30, 2009 12:58 PM
To: Andrew Willis
Subject: Coastal Commission April 9 Agenda Items 11,12, Cabrillo Wetlands, Support Staff

March 29, 2009

California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416
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 Thursday April 9, Items 11 and 12, support staff recommendation

Dear California Coastal Commissioners,

I am writing to ask that you support the Coastal Commission staff recommendation to issue a Cease and Desist Order and to restore the damage to the wetlands by unpermitted wetlands scraping and fill that was done in February of 2008 at the Cabrillo Mobile Home Park in Huntington Beach.

This wetlands is 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.. Some of the Huntington Beach wetlands is currrently undergoing restoration, so it is not appropriate for a part of it to be destroyed without permits.

It is estimated that we have lost close to 90% of our original coastal wetlands in California. We can not let our precious remaining coastal wetlands be scraped off and filled without going through the proper permit process.

Please help us protect our remaining coastal wetlands and support your staff in requiring a Cease and Desist Order and Restoration Order of the wetlands that have been damaged at the Cabrillo Mobile Home Park in Huntington Beach.

Thank you.

Sincerely,

Jeanne Whitesell
17922 Shoreham Lane
Huntington Beach, CA 92649

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MAR 31 2009
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Deborah Koken
1778 Kenwood Place
Costa Mesa, CA 92627

March 31, 2009

California Coastal Commission
200 Oceangate 10th Floor
Long Beach, CA 90802-4416
Phone (562) 590-5071
FAX (562) 590-5084

Subject: April 9 Agenda Items 11 & 12: Please Support Staff Recommendations on Cabrillo Wetlands

Dear California Coastal Commissioners:

I am writing to ask that you support the Coastal Commission staff recommendation and issue a Cease and Desist Order and to restore the damage to the Cabrillo wetlands by the unpermitted scraping and fill that was committed in February of 2008 at the Cabrillo Mobile Home Park in Huntington Beach.

It is unacceptable that a landowner should scrape the wetlands vegetation from the Cabrillo Parcel without permits, fill it, and then claim that it 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..

Some of the Huntington Beach wetlands are currently undergoing restoration, making it even more inappropriate for a portion of it to be destroyed without permits.

We have lost close to 90% of our original coastal wetlands in California. We cannot let part of our precious remaining coastal wetlands be illegally turned into a parking lot.

Please support your staff in protecting our remaining coastal wetlands by requiring a Cease and Desist Order and Restoration Order of the wetlands that have been damaged at the Cabrillo Mobile Home Park in Huntington Beach.

Thank you.

Sincerely,

Deborah Koken

Debby Koken
949-574-0333

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South Coast Region

MAR 31 2009

CALIFORNIA
COASTAL COMMISSION

Terry Welsh Mar 31
From: Terry Welsh [terrymwelsh@hotmail.com]
Sent: Tuesday, March 31, 2009 5:00 PM
To: Teresa Henry; Meg Vaughn; Karl Schwing; Andrew Willis; Sherilyn Sarb
Subject: Coastal Commission April 9 Agenda Items 11,12, Cabrillo Wetlands, Support Staff

March 31, 2009

California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416
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 Thursday April 9, Items 11 and 12, support staff recommendation

Dear California Coastal Commissioners,

I am writing to ask that you support the Coastal Commission staff recommendation to issue a Cease and Desist Order and to restore the damage to the wetlands by unpermitted wetlands scraping and fill that was done in February of 2008 at the Cabrillo Mobile Home Park in Huntington Beach.

This wetlands is 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.. Some of the Huntington Beach wetlands is currrently undergoing restoration, so it is not appropriate for a part of it to be destroyed without permits.

It is estimated that we have lost close to 90% of our original coastal wetlands in California. We can not let our precious remaining coastal wetlands be scraped off and filled without going through the proper permit process.

Please help us protect our remaining coastal wetlands and support your staff in requiring a Cease and Desist Order and Restoration Order of the wetlands that have been damaged at the Cabrillo Mobile Home Park in Huntington Beach.

Thank you.

Sincerely,

Terry Welsh
Costa Mesa, CA
714-432-1385

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MAR 31 2009
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Carolyn Longstreth Mar 31
From: Carolyn Longstreth [cklongstreth@gmail.com]
Sent: Tuesday, March 31, 2009 8:07 AM
To: Teresa Henry; Meg Vaughn; Karl Schwing; Andrew Willis; Sherilyn Sarb
Subject: Coastal Commission April 9 Agenda Items 11,12, Cabrillo Wetlands, Support Staff

March 31, 2009

California Coastal Commission
c/o Coastal Commission staff Teresa Henry, Sherilyn Sarb, Karl Schwing, Meg Vaughn, Andrew Willis
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416
Phone (562) 590-5071
FAX (562) 590-5084

Re: Agenda Items Thursday April 9, Items 11 and 12, support staff recommendation

Dear California Coastal Commissioners,

I am writing to ask that you support the Coastal Commission staff recommendation to issue a Cease and Desist Order and to require restoration of the wetlands damaged by unpermitted wetlands scraping and fill that was done in February of 2008 at the Cabrillo Mobile Home Park in Huntington Beach.

This wetlands is 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 (1) this is not a wetlands, (2) the vegetation is not hydrophytic even though it occurs in ponding areas, and (3) the wetland is not a natural wetland, even though it is part of the Huntington Beach wetlands complex.. Some of the Huntington Beach wetlands is currrently undergoing restoration, so it is not appropriate for a part of it to be destroyed without permits.

It is estimated that we have lost close to 90% of our original coastal wetlands in California. We can not let our precious remaining coastal wetlands be scraped off and filled without going through the proper permit process.

Please help us protect our remaining coastal wetlands and support your staff in requiring a Cease and Desist Order and Restoration Order of the wetlands that have been damaged at the Cabrillo Mobile Home Park in Huntington Beach.

Thank you.

Sincerely,

Carolyn Longstreth
Inverness CA

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Mark D. Bixby Mar 30

From: Mark Bixby [mark@bixby.org]
Sent: Monday, March 30, 2009 9:07 PM
To: Andrew Willis; Teresa Henry; Meg Vaughn; Sherilyn Sarb; Karl Schwing
Subject: comments re TH11 & 12 Mills PCH LLC CD/RO at Cabrillo Mobile Home Park

Dear California Coastal Commissioners,

I strongly support the April 9, 2009 TH11 & 12 staff report recommendations regarding the cease & desist and restoration order resulting from the Mills PCH LLC (aka Beachfront Village LLC) unpermitted development at Cabrillo Mobile Home Park during February 2008.

This is the same kind of unpermitted "pre-development" activity that we've seen before in Huntington Beach at Bolsa Chica with the Shea property. Both the Shea and Cabrillo sites exhibited prolonged surface ponding and hydrophytic vegetation (2 wetland parameters), and both sites have undergone unpermitted grading with the stated intent of improving drainage.

I strongly urge the commission to adopt the staff recommendation in the Cabrillo matter to issue a cease & desist order and to require restoration of the destroyed wetland resources. This sort of flagrant flouting of the Coastal Act must not be allowed to continue.

Sincerely,

Mark D. Bixby
17451 Hillgate Ln
Huntington Beach, CA 92649-4707
714-625-0876

--
mark@bixby.org
Remainder of .sig suppressed to conserve expensive California electrons...

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Don Harvey, JD, PHD, Executive Director Orange County Bicycle Coalition
From: Don Harvey [harveydonw@juno.com]
Sent: Monday, March 30, 2009 8:47 PM
To: Teresa Henry; Meg Vaughn; Karl Schwing; Andrew Willis; Sherilyn Sarb
Subject: Coastal Commission 4/9/2009 Agenda Items 11,12; Cabrillo Wetlands: Support staff recommendation

California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416
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 for 4/9/2009, Items 11 and 12: Support staff recommendation

Dear California Coastal Commissioners:

I am writing in support of the Coastal Commission staff recommendation to issue a Cease and Desist Order and to restore the damage to the wetlands by unpermitted wetlands scraping and fill that was done in February 2008 at the Cabrillo Mobile Home Park in Huntington Beach.

Thank you.

Sincerely,

Don Harvey, JD, PhD

Executive Director

Orange County Bicycle Coalition (OCBC)

2039 Port Weybridge Place

Newport Beach, CA 92660

harveydonw@juno.com

(949) 759-0219

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MAR 31 2009
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John Kaiser Mar 31

From: John Kaiser [jkai39@gmail.com]
Sent: Tuesday, March 31, 2009 4:26 PM
To: Teresa Henry; Meg Vaughn; Karl Schwing; Andrew Willis; Sherilyn Sarb
Subject: Coastal Commission April 9 Agenda Items 11,12, Cabrillo Wetlands, Support Staff

March 31, 2009

California Coastal Commission

200 Oceangate, 10th Floor
Long Beach, CA 90802-4416
Phone (562) 590-5071
FAX (562) 590-5084

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

Re: Agenda Items Thursday April 9, Items 11 and 12, support staff recommendation

Dear California Coastal Commissioners,

I am writing to ask that you support the Coastal Commission staff recommendation to issue a Cease and Desist Order and to restore the damage to the wetlands by unpermitted wetlands scraping and fill that was done in February of 2008 at the Cabrillo Mobile Home Park in Huntington Beach.

This wetland is 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.. Some of the Huntington Beach wetlands are currently undergoing restoration, so it is not appropriate for a part of it to be destroyed without permits.

It is estimated that we have lost close to 90% of our original coastal wetlands in California. We can not let our precious remaining coastal wetlands be scraped off and filled without going through the proper permit process.

Please help us protect our remaining coastal wetlands and support your staff in requiring a Cease and Desist Order and Restoration Order of the wetlands that have been damaged at the Cabrillo Mobile Home Park in Huntington Beach.

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Thank you.

Sincerely,

John Kaiser
20592 Minerva Lane
Huntington Beach
714-968-4677

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Charles Olsen Mar 31
From: rockit thrust [rthrust@gmail.com]
Sent: Tuesday, March 31, 2009 8:47 AM
To: Teresa Henry; Meg Vaughn; Karl Schwing; Andrew Willis; Sherilyn Sarb
Cc: Mary Baretich
Subject: Coastal Wetlands

March 31, 2009

California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416
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 Thursday April 9, Items 11 and 12, support staff recommendation

Dear California Coastal Commissioners,

I am writing to ask that you support the Coastal Commission staff recommendation to issue a Cease and Desist Order to Mills PCH, LLC and to order them to restore the damage to the wetlands caused by their unpermitted wetlands scraping and fill that was done in February of 2008 at the Cabrillo Mobile Home Park in Huntington Beach.

This wetlands is 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.. Some of the Huntington Beach wetlands is currrently undergoing restoration, so it is not appropriate for a part of it to be destroyed without permits.

It is estimated that you have lost close to 90% of your original coastal wetlands in California. We can not let our precious remaining coastal wetlands be scraped off and filled without at least going through the proper permit process.

Please help us protect Americas remaining coastal wetlands and support your staff in requiring a Cease and Desist Order and Restoration Order of the wetlands that have been damaged at the Cabrillo Mobile Home Park in Huntington Beach.

Thank you.

Sincerely,

Charles Olsen
St Johns, MI
989 430 4396

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MAR 31 2009
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COASTAL COMMISSION

Cathleen Brannon Mar 31

From: cathleen [cathleen.brannon@cox.net]
Sent: Tuesday, March 31, 2009 8:15 AM
To: Teresa Henry; Meg Vaughn; Karl Schwing; Andrew Willis; Sherilyn Sarb
Subject: Coastal Commission April 9 Agenda Items 11,12 Cabrillow Wetlands, Support Staff

March 31, 2009

California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416
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 Thursday April 9, Items 11 and 12, support staff recommendation

Dear California Coastal Commissioners,

I am writing to ask that you support the Coastal Commission staff recommendation to issue a Cease and Desist Order and to restore the damage to the wetlands by unpermitted wetlands scraping and fill that was done in February of 2008 at the Cabrillo Mobile Home Park in Huntington Beach.

This wetlands is 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.. Some of the Huntington Beach wetlands is currrently undergoing restoration, so it is not appropriate for a part of it to be destroyed without permits.

It is estimated that we have lost close to 90% of our original coastal wetlands in California. We can not let our precious remaining coastal wetlands be scraped off and filled without going through the proper permit process.

Please help us protect our remaining coastal wetlands and support your staff in requiring a Cease and Desist Order and Restoration Order of the wetlands that have been damaged at the Cabrillo Mobile Home Park in Huntington Beach.

Thank you.

Sincerely,

Cathleen Brannon
28141 Via Rueda
San Juan Capistrano, CA 92675
(949) 489-9725

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MAR 31 2009
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COASTAL COMMISSION

Charlotte Masarik Mar 31
From: Charlotte Masarik [charlottemasarik@cox.net]
Sent: Tuesday, March 31, 2009 4:56 PM
To: Teresa Henry; Meg Vaughn; Karl Schwing; Andrew Willis; Sherilyn Sarb
Subject: Coastal Commission April 9 Agenda Items 11,12, Cabrillo Wetlands, Support Staff

March 29, 2009

California Coastal Commission

200 Oceangate, 10th Floor
Long Beach, CA 90802-4416
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 Thursday April 9, Items 11 and 12, support staff recommendation

Dear California Coastal Commissioners,

I am writing to ask that you support the Coastal Commission staff recommendation to issue a Cease and Desist Order and to restore the damage to the wetlands by unpermitted wetlands scraping and fill that was done in February of 2008 at the Cabrillo Mobile Home Park in Huntington Beach.

This wetlands is 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.. Some of the Huntington Beach wetlands is currrently undergoing restoration, so it is not appropriate for a part of it to be destroyed without permits.

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Please help us protect our remaining coastal wetlands and support your staff in requiring a Cease and Desist Order and Restoration Order of the wetlands that have been damaged at the Cabrillo Mobile Home Park in Huntington Beach.

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Thank you.

Sincerely,

Charlotte Masarik
761 Oak Street
Laguna Beach, Ca 92651
949-494-1630 Land
949-295-8040 Mobile
charlottemasarik@cox.net

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March 30,2009

California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416
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 Thursday April 9, Items 11 and 12, support staff recommendation

Dear California Coastal Commissioners,
I am writing to ask that you support the Coastal Commission staff recommendation to issue a Cease and Desist Order and to restore the damage to the wetlands by unpermitted wetlands scraping and fill that was done in February of 2008 at the Cabrillo Mobile Home Park in Huntington Beach.

This wetlands is 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.. Some of the Huntington Beach wetlands is currrently undergoing restoration, so it is not appropriate for a part of it to be destroyed without permits.

Please help us protect our remaining coastal wetlands and support your staff in requiring a Cease and Desist Order and Restoration Order of the wetlands that have been damaged at the Cabrillo Mobile Home Park in Huntington Beach.

Thank you for your efforts in saving California's precious coastal wetlands.

Eileen Murphy

Eileen Murphy
201 21st Street
HB CA 92648-714-374-0380

Dennis Baker, Board President, Newport Bay Naturalists and Friends Apr 6
From: Dennis Baker [Dennis.Baker@spamcop.net]
Sent: Sunday, April 05, 2009 10:42 AM
To: Teresa Henry; Meg Vaughn; Karl Schwing; Andrew Willis; Sherilyn Sarb
Subject: [Possible Spam] Coastal Commission April 9 Agenda Items 11,12, Cabrillo Wetlands, Support Staff

Importance: Low

April 5, 2009

California Coastal Commission

200 Oceangate, 10th Floor
Long Beach, CA 90802-4416
Phone (562) 590-5071
FAX (562) 590-5084

Re: Agenda Items Thursday April 9, Items 11 and 12, support staff recommendation

Dear California Coastal Commissioners,

Please support the Coastal Commission staff recommendation to issue a Cease and Desist Order and to restore the damage to the wetlands by unpermitted wetlands scraping and fill that was done in February of 2008 at the Cabrillo Mobile Home Park in Huntington Beach.

This wetlands is 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.

This wetlands is ESHA, habitat for the state endangered Belding's Savannah Sparrow, which has been recently photographed on the site.

Please protect our remaining coastal wetlands and support your staff in requiring a Cease and Desist Order and Restoration Order of the wetlands that have been damaged at the Cabrillo Mobile Home Park in Huntington Beach.

Dennis Baker

Board President and Volunteer Naturalist, Newport Bay Naturalists and Friends

Dennis Baker, Board President, Newport Bay Naturalists and Friends Apr 6
706 ½ Begonia Avenue

Corona del Mar, CA 92625

949.675.2199

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Cc: Teresa Henry, Sherilyn Sarb, Karl Schwing, Meg Vaughn, Andrew Willis

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From: Swrighthb@aol.com
Sent: Sunday, April 05, 2009 9:24 PM
To: Teresa Henry; Meg Vaughn; Karl Schwing; Andrew Willis; Sherilyn Sarb
Cc: Swrighthb@aol.com; mjbaretich@hotmail.com
Subject: Coastal Commission April 9 Agenda Items 11,12, Cabrillo Wetlands, Support Staff

April 5, 2009

California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416
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 Thursday April 9, Items 11 and 12, support staff recommendation

Dear California Coastal Commissioners,

I am writing to ask that you support the Coastal Commission staff recommendation to issue a Cease and Desist Order and to restore the damage to the wetlands by un-permitted wetlands scraping and fill that was done in February of 2008 at the Cabrillo Mobile Home Park in Huntington Beach.

This wetlands is 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.. Some of the Huntington Beach wetlands is currrently undergoing restoration, so it is not appropriate for a part of it to be destroyed without permits.

It is estimated that we have lost close to 90% of our original coastal wetlands in California. We can not let our precious remaining coastal wetlands be scraped off and filled without going through the proper permit process.

Please help us protect our remaining coastal wetlands and support your staff in requiring a Cease and Desist Order and Restoration Order of the wetlands that have been damaged at the Cabrillo Mobile Home Park in Huntington Beach.

Thank you.

Sincerely,

Sharon L. Dana
20701 Beach Blvd. #200
Huntington Beach, CA 92648
(714) 374-0082
swrighthb@aol.com

---
A Good Credit Score is 700 or Above. See yours in just 2 easy steps!

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Phil Drachman Apr 6

From: Phil Drachman [phildrachman@hotmail.com]
Sent: Monday, April 06, 2009 9:26 AM
To: Teresa Henry; Meg Vaughn; Karl Schwing; Andrew Willis; Sherilyn Sarb
Subject: Coastal Wetlands -- Huntington Beach, CA

April 3, 2009

California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416
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 Thursday April 9, Items 11 and 12, support staff recommendation

Dear California Coastal Commissioners,

I am writing to ask that you support the Coastal Commission staff recommendation to issue a Cease and Desist Order and to restore the damage to the wetlands by unpermitted wetlands scraping and fill that was done in February of 2008 at the Cabrillo Mobile Home Park in Huntington Beach.

This wetlands is 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.. Some of the Huntington Beach wetlands is currently undergoing restoration, so it is not appropriate for a part of it to be destroyed without permits.

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This wetlands is also ESHA, being habitat for the state endangered Belding's Savannah Sparrow, which has been recently photographed on the site.

Please help us protect our remaining coastal wetlands and support your staff in requiring a Cease and Desist Order and Restoration Order of the wetlands that have been damaged at the Cabrillo Mobile Home Park in Huntington Beach.

Best regards,

Phil Drachman
1001 Grove Lane
Newport Beach, CA 92660

Office: 949 642 3304
Cell: 714 904 9008

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South Coast Region
APR 0 6 2009
CALIFORNIA COASTAL COMMISSION

Laura Pickett Apr 6

From: Laura Pickett [lkpickett@gmail.com]
Sent: Sunday, April 05, 2009 9:49 AM
To: Teresa Henry; Meg Vaughn; Karl Schwing; Andrew Willis; Sherilyn Sarb
Subject: Coastal Commission April 9 Agenda Items 11,12, Cabrillo Wetlands, Support Staff

April 3, 2009

California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416
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 Thursday April 9, Items 11 and 12, support staff recommendation

Dear California Coastal Commissioners,

I am writing to ask that you support the Coastal Commission staff recommendation to issue a Cease and Desist Order and to restore the damage to the wetlands by unpermitted wetlands scraping and fill that was done in February of 2008 at the Cabrillo Mobile Home Park in Huntington Beach.

This wetlands is 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.. Some of the Huntington Beach wetlands is currrently undergoing restoration, so it is not appropriate for a part of it to be destroyed without permits.

It is estimated that we have lost close to 90% of our original coastal wetlands in California. We can not let our precious remaining coastal wetlands be scraped off and filled without going through the proper permit process.

Please help us protect our remaining coastal wetlands and support your staff in requiring a Cease and Desist Order and Restoration Order of the wetlands that have been damaged at the Cabrillo Mobile Home Park in Huntington Beach.

Thank you.

Sincerely,

Laura Pickett
9344 Fleetwood St
Cypress 90630
714-386-0001

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Laurel Telfer Apr 6

From: Laurel telfer [latelfer@surfcity.net]
Sent: Sunday, April 05, 2009 2:06 PM
To: Teresa Henry; Meg Vaughn; Karl Schwing; Andrew Willis; Sherilyn Sarb
Subject: Coastal Commission April 9 Agenda Items 11,12, Cabrillo wetlands, Support Staff

April 4, 2009

California Coastal Commission

200 Oceangate, 10th Floor
Long Beach, CA 90802-4416
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 Thursday April 9, Items 11 and 12, support staff recommendation

Dear California Coastal Commissioners,

I am writing to ask that you support the Coastal Commission staff recommendation to issue a Cease and Desist Order and to restore the damage to the wetlands by UNPERMITTED wetlands scraping and fill that was done in February of 2008 at the Cabrillo Mobile Home Park in Huntington Beach.

This wetlands is 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. Some of the Huntington Beach wetlands is currently undergoing restoration, so it is not appropriate for a part of it to be destroyed without permits.

I am extremely concerned about the continuing blatant disregard of wetlands conservation by developers and private land owners. Just two weeks ago, my fellow Long Beach residents and I watched in horror as a private land owner hired a bulldozer company to scrape and denude a ten acre parcel of land directly adjacent to the protected Los Cerritos Wetlands. Although this area was included in the Long Beach area SEADIP protection agreement, it was destroyed in a few hours, demolishing the entire habitat and all of the nesting activity that had been flourishing. My community continues to be up in arms, the city is scrambling to figure out how this happened, and legal action is being taken against the property owner and the bulldozer company. The important relevance of my example to the Huntington Beach case is that it also took place WITHOUT PERMITS. It is yet another clear case of mow down the habitat now and worry about the consequences later, just as in Huntington

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Beach.

As I know you are aware, it is estimated that we have lost close to 90% of our original coastal wetlands in California. We can not let our precious remaining coastal wetlands be scraped off and filled without going through the proper permit process.

Please help us protect our remaining coastal wetlands and support your staff in requiring a Cease and Desist Order and Restoration Order of the wetlands that have been damaged at the Cabrillo Mobile Home Park in Huntington Beach. The timely precedent you set now in Huntington Beach will have long-reaching ramifications for all remaining coastal wetlands communities in California.

Thank you very much for your consideration.

Sincerely,

Laurel Telfer

321 Lakeview Ave.

Long Beach, CA 90803

562-439-4347

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CALIFORNIA
COASTAL COMMISSION

Mark Stirdivant Apr 6
From: Marc Stirdivant [stirdivant@charter.net]
Sent: Sunday, April 05, 2009 5:48 PM
To: Teresa Henry; Meg Vaughn; Karl Schwing; Andrew Willis; Sherilyn Sarb
Subject: Coastal Commission April 9 Agenda Items 11 and 12 - Support Staff Recommendation

April 5, 2009

California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416
Phone (562) 590-5071
FAX (562) 590-5084

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

Re: April 9, 2009 - Agenda Items 11 and 12 - Support Staff Recommendation

Dear California Coastal Commissioners,

I am writing to ask that you support the Coastal Commission staff recommendation to issue a Cease and Desist Order and to restore the damage to the wetlands by unpermitted wetlands scraping and fill that was done in February of 2008 at the Cabrillo Mobile Home Park in Huntington Beach.

This wetlands is 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.. Some of the Huntington Beach wetlands is currently undergoing restoration, so it is not appropriate for a part of it to be destroyed without permits.

It is estimated that we have lost close to 90% of our original coastal wetlands in California. We can not let our precious remaining coastal wetlands be scraped off and filled without going through the proper permit process.

Please help us protect our remaining coastal wetlands and support your staff in requiring a Cease and Desist Order and Restoration Order of the wetlands that have been damaged at the Cabrillo Mobile Home Park in Huntington Beach.

Thank you.

Sincerely,

Marc Stirdivant
1401 Shady Glen Road,
Glendale, CA 91208
(818) 399-6595

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APR 06 2009
CALIFORNIA COASTAL COMMISSION

John Strada Ap 3

From: John [john@manachi.com]
Sent: Friday, April 03, 2009 10:33 PM
To: Andrew Willis
Subject: Cease and Desists Order - Wetlands Protection

March 29, 2009

California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416
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 Thursday April 9, Items 11 and 12, support staff recommendation

Dear California Coastal Commissioners,

I am writing to ask that you support the Coastal Commission staff recommendation to issue a Cease and Desist Order and to restore the damage to the wetlands by unpermitted wetlands scraping and fill that was done in February of 2008 at the Cabrillo Mobile Home Park in Huntington Beach.

This wetlands is 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.. Some of the Huntington Beach wetlands is currrently undergoing restoration, so it is not appropriate for a part of it to be destroyed without permits.

It is estimated that we have lost close to 90% of our original coastal wetlands in California. We can not let our precious remaining coastal wetlands be scraped off and filled without going through the proper permit process.

Please help us protect our remaining coastal wetlands and support your staff in requiring a Cease and Desist Order and Restoration Order of the wetlands that have been damaged at the Cabrillo Mobile Home Park in Huntington Beach.

Thank you.

Sincerely,

John Strada
20701 Beach Blvd. #199
HUNTINGTON BEACH, CA 92648
714 960 2190

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CALIFORNIA COASTAL COMMISSION

Lorraine B. Levitan Apr 6

From: babslevitan@yahoo.com
Sent: Sunday, April 05, 2009 1:19 PM
To: Teresa Henry; Meg Vaughn; Karl Schwing; Andrew Willis; Sherilyn Sarb
Subject: Coastal Commission April 9 Agenda Items 11,12, Cabrillo Wetlands, Support Staff

April 5, 2009

California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416
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 Thursday April 9, Items 11 and 12, support staff recommendation

Dear California Coastal Commissioners,

I am writing to ask that you support the Coastal Commission staff recommendation to issue a Cease and Desist Order and to restore the damage to the wetlands by unpermitted wetlands scraping and fill that was done in February of 2008 at the Cabrillo Mobile Home Park in Huntington Beach.

This wetlands is 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.. Some of the Huntington Beach wetlands is currrently undergoing restoration, so it is not appropriate for a part of it to be destroyed without permits.

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Please help us protect our remaining coastal wetlands and support your staff in requiring a Cease and Desist Order and Restoration Order of the wetlands that have been damaged at the Cabrillo Mobile Home Park in Huntington Beach.

Thank you.

Sincerely,

Lorraine B. Levitan
16444 Ladona Circle
Huntington Beach, CA 92649
714-840-2889

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Mr. and Mrs. Julian Vocheli Apr 6
From: Julian Vochelli [jvochelli@socal.rr.com]
Sent: Sunday, April 05, 2009 11:32 PM
To: Teresa Henry; Meg Vaughn; Karl Schwing; Andrew Willis; Sherilyn Sarb
Subject: Coastal Commission April 9 Agenda Items 11,12, Cabrillo Wetlands, Support Staff

April 4, 2009

California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416
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 Thursday April 9, Items 11 and 12, support staff recommendation

Dear California Coastal Commissioners,

We are writing to ask that you support the Coastal Commission staff recommendation to issue a Cease and Desist Order and to restore the damage to the wetlands by unpermitted wetlands scraping and fill that was done in February of 2008 at the Cabrillo Mobile Home Park in Huntington Beach.

This wetlands is 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.. Some of the Huntington Beach wetlands are currently undergoing restoration, so it is not appropriate for a part of it to be destroyed without permits.

It is estimated that we have lost close to 90% of our original coastal wetlands in California. We can not let our precious remaining coastal wetlands be scraped off and filled without going through the proper permit process.

Please help us protect our remaining coastal wetlands and support your staff to require a Cease and Desist Order and Restoration Order of the wetlands that have been damaged at the Cabrillo Mobile Home Park in Huntington Beach.

Thank you.

Sincerely,

Mr. and Mrs. Julian Vochelli
19322 Pitcairn Lane
Huntington Beach, CA 92646
(714) 963-3143

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South Coast Region
APR 0 6 2009
CALIFORNIA
COASTAL COMMISSION

Barbara L. McCoy Apr 6

From: Babs McCoy [babs_mccoy@yahoo.com]
Sent: Monday, April 06, 2009 9:49 AM
To: Teresa Henry; Meg Vaughn; Karl Schwing; Andrew Willis; Sherilyn Sarb
Subject: Coastal Commission April 9 Agenda Items 11,12, Cabrillo Wetlands, Support Staff

April 3, 2009

California Coastal Commission

200 Oceangate, 10th Floor
Long Beach, CA 90802-4416
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 Thursday April 9, Items 11 and 12, support staff recommendation

Dear California Coastal Commissioners,

I am writing to ask that you support the Coastal Commission staff recommendation to issue a Cease and Desist Order and to restore the damage to the wetlands by unpermitted wetlands scraping and fill that was done in February of 2008 at the Cabrillo Mobile Home Park in Huntington Beach.

This wetlands is 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.

It is estimated that we have lost close to 90% of our original coastal wetlands in California. We can not let our precious remaining coastal wetlands be scraped off and filled without going through the proper permit process.

Please help us protect our remaining coastal wetlands and support your staff in requiring a Cease and Desist Order and Restoration Order of the wetlands that have been damaged at the Cabrillo Mobile Home Park in Huntington Beach.

Thank you.

South Coast Region
APR 0 6 2009
CALIFORNIA
COASTAL COMMISSION



Sincerely,

Barbara L. McCoy

1021 Glendale Dr., Spc. 34

McKinleyville, CA 95519

(707) 826-7645

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South Coast
APR 0 6 2009
CALIFORNIA
COASTAL

Elaine Linhoff Apr 6

From: Teresa Henry
Sent: Monday, April 06, 2009 9:16 AM
To: Andrew Willis
Subject: FW: Cabrillo Mobile PARK WETLANDS

Teresa Henry
District Manager
South Coast District
California Coastal Commission
(562) 590-5071
(590) 590-5084 (fax)

-----Original Message-----
From: Elaine Linhoff [mailto:elinhoff@sbcglobal.net]
Sent: Monday, April 06, 2009 6:54 AM
To: Teresa Henry
Subject: Cabrillo Mobile PARK WETLANDS

Dear Coastal Commissioners:

Please support the staff recommendations regarding the wetlands at the Cabrillo Mobile Park. We need to preserve the few remaining wetalnds in California.

Elaine Linhoff
1760 E. Ocean Blvd.
Newport Beach CA 92661

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South Coast Region
APR 0 8 2009
CALIFORNIA
COASTAL COMMISSION

Catherine Parker Apr 6

From: Catherine Parker [cparker13@ca.rr.com]
Sent: Monday, April 06, 2009 10:02 AM
To: Teresa Henry; Meg Vaughn; Karl Schwing; Andrew Willis; Sherilyn Sarb
Subject: Coastal Commission April 9 Agenda Items 11,12, Cabrillo Wetlands, Support Staff

April 6, 2009

California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416
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 Thursday April 9, Items 11 and 12, support staff recommendation

Dear California Coastal Commissioners,

I am writing to ask that you support the Coastal Commission staff recommendation to issue a Cease and Desist Order and to restore the damage to the wetlands by unpermitted wetlands scraping and fill that was done in February of 2008 at the Cabrillo Mobile Home Park in Huntington Beach.

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It is estimated that we have lost close to 90% of our original coastal wetlands in California. We can not let our precious remaining coastal wetlands be scraped off and filled without going through the proper permit process.

Please help us protect our remaining coastal wetlands and support your staff in requiring a Cease and Desist Order and Restoration Order of the wetlands that have been damaged at the Cabrillo Mobile Home Park in Huntington Beach.

Thank you.

Sincerely,

Catherine Parker
11669 Midway Drive
Cypress, CA 90630
714-898-3038

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COASTAL COMMISSION



From: Allan Beek [abeek@flash.net]
Sent: Sunday, April 05, 2009 2:03 AM
To: Teresa Henry; Meg Vaughn; Karl Schwing; Andrew Willis; Sherilyn Sarb
Subject: Coastal Commission April 9 Agenda, Items 11 & 12 (Cabrillo Wetlands):
Please support staff
April 5, 2009

California Coastal Commission

200 Oceangate, 10th Floor
Long Beach, CA 90802-4416
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 Thursday April 9, Items 11 and 12, support staff recommendation

Dear California Coastal Commissioners,

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It is estimated that we have lost close to 90% of our original coastal wetlands in California. We can not let our precious remaining coastal wetlands be scraped off and filled without going through the proper permit process.

This wetlands is also ESHA, being habitat for the state endangered Belding's Savannah Sparrow, which has been recently photographed on the site.

Please help us protect our remaining coastal wetlands and support your staff

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APR 0 8 2008

in requiring a Cease and Desist Order and Restoration Order of the wetlands that have been damaged at the Cabrillo Mobile Home Park in Huntington Beach.

Thank you.

Sincerely,

Allan Beek

2007 Highland Drive, Newport Beach CA 92660

949-645-1419

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South Coast Region
APR 06 2009
CALIFORNIA
COASTAL COMMISSION

Juliann Blake Apr 6

From: Siameseldy@aol.com
Sent: Sunday, April 05, 2009 10:14 AM
To: Teresa Henry; Meg Vaughn; Karl Schwing; Andrew Willis; Sherilyn Sarb
Subject: Coastal Commission April 9 Agenda Items 11,12, Cabrillo Wetlands, Support Staff
April 3, 2009

California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416
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 Thursday, April 9, Items 11 and 12, support staff recommendation

Dear California Coastal Commissioners,

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Please help us protect our remaining coastal wetlands and support your staff in requiring a Cease and Desist Order and Restoration Order of the wetlands that have been damaged at the Cabrillo Mobile Home Park in Huntington Beach.

Thank you.

Sincerely,
Juliann Blake
5362 Kenilworth Drive
Huntington Beach, CA 92649

**********
Worried about job security? Check out the 5 safest jobs in a recession.
(http://jobs.aol.com/gallery/growing-job-industries?ncid=emlcntuscare00000003)

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South Coast Region
APR 0 6 2009
CALIFORNIA
COASTAL COMMISSION

Joe and Linda Kimes Apr 6

From: jskimes [jskimes@aol.com]
Sent: Saturday, April 04, 2009 6:42 AM
To: Teresa Henry; Meg Vaughn; Karl Schwing; Andrew Willis; Sherilyn Sarb
Subject: Coastal Commission April 9 Agenda Items 11,12, Cabrillo Wetlands, Support Staff
April 4, 2009

California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416
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 Thursday April 9, Items 11 and 12, support staff recommendation

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Please help us protect our remaining coastal wetlands and support your staff in requiring a Cease and Desist Order and Restoration Order of the wetlands that have been damaged at the Cabrillo Mobile Home Park in Huntington Beach..

Thank you.

Sincerely,

Joe & Linda Kimes
20701 Beach Blvd., SPC 198
Huntington Beach, CA 92648

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South Coast Region
APR 0 6 2009
COASTAL COMMISSION

Fred Galluccio, MD, FAAFP Apr 6
From: paxfred@earthlink.net
Sent: Sunday, April 05, 2009 11:42 PM
To: Teresa Henry; Meg Vaughn; Karl Schwing; Andrew Willis; Sherilyn Sarb
Subject: Coastal Commission April 9 Agenda Items 11,12, Cabrillo Wetlands, Support Staff

April 4, 2009

California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416
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 Thursday April 9, Items 11 and 12, support staff recommendation

Dear California Coastal Commissioners,

THe following is a letter that I copied and pasted. But, it does express my ideas and I letting you know this with this fist sentence. Please feel free to contact me if you like at my office (where I am Fred GAlluccio, MD, FAAFP) (949) 646-4865 if you have any ?'s. Also, I sat on the Huntington Beach Environmental Board for almost 8 years.

I am writing to ask that you support the Coastal Commission staff recommendation to issue a Cease and Desist Order and Restoration Order to restore the damage to the wetlands by unpermitted wetlands scraping and fill that was done in February of 2008 at the Cabrillo Mobile Home Park in Huntington Beach.

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Please help us protect our remaining coastal wetlands and support your staff in requiring a Cease and Desist Order and Restoration Order of the wetlands that have been damaged at the Cabrillo Mobile Home Park in Huntington Beach.

Thank you.

Sincerely,

Fred Galluccio, MD, FAAFP
901 Dover. Dr. #102
Newport Beach, CA 92660
(949) 646-4865

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APR 0 6 2009
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COASTAL COMMISSION

Julie Bixby Apr 6

From: Julie Bixby [julie@bixby.org]
Sent: Sunday, April 05, 2009 11:43 AM
To: Teresa Henry; Meg Vaughn; Karl Schwing; Andrew Willis; Sherilyn Sarb
Subject: Coastal Commission April 9 Agenda Items 11,12, Cabrillo Wetlands, Support Staff

April 5, 2009

California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416
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 Thursday April 9, Items 11 and 12, support staff recommendation

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Please help us protect our remaining coastal wetlands and support your staff in requiring a Cease and Desist Order and Restoration Order of the wetlands that have been damaged at the Cabrillo Mobile Home Park in Huntington Beach.

Thank you.

Sincerely,

--
Julie Bixby
Huntington Beach, CA

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APR 0 6 2009
CALIFORNIA
COASTAL COMMISSION

Don Schulz Apr6

From: Donald Schulz [surfdad@hotmail.com]
Sent: Monday, April 06, 2009 1:14 PM
To: Teresa Henry; Meg Vaughn; Karl Schwing; Andrew Willis; Sherilyn Sarb
Subject: Coastal Commission April 9 Agenda Items 11,12, Cabrillo Wetlands, Support Staff

April 3, 2009

California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416
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 Thursday April 9, Items 11 and 12, support staff recommendation

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Please help us protect our remaining coastal wetlands and support your staff in requiring a Cease and Desist Order and Restoration Order of the wetlands that have been damaged at the Cabrillo Mobile Home Park in Huntington Beach.

Thank you.

Sincerely,

Name Don Schulz
Address 2722 Main Way Dr.
Los Alamitos CA 90720
Phone Number (562)430-2260

---

Windows Live™: Keep your life in sync. Check it out.

[redacted]

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COASTAL COMMISSION

**From:** Judy Todd [judithtodd@mac.com]
**Sent:** Sunday, April 05, 2009 9:57 AM
**To:** Teresa Henry
**Cc:** Karl Schwing
**Subject:** Coastal Commission April 9 Agenda Items 11,12, Cabrillo Wetlands, Support Staff

Re: Agenda Items Thursday April 9, Items 11 and 12, support staff recommendation

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Thank you.

Sincerely,

Judy Todd
408 Jade Cove
Seal Beach, CA 90740

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South Coast Region
APR 06 2009
CALIFORNIA
COASTAL COMMISSION

Robert and Grace Winchell Ap 6

From: Grace Winchell [winchellg@yahoo.com]
Sent: Sunday, April 05, 2009 11:39 AM
To: Teresa Henry; Meg Vaughn; Karl Schwing; Andrew Willis; Sherilyn Sarb
Cc: Grace Hauge Winchell
Subject: 4/9/09 Agenda Items 11 and 12

April 5, 2009

California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416
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 Thursday April 9, Items 11 and 12, support staff recommendation

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Please help us protect our remaining coastal wetlands and support your staff in requiring a Cease and Desist Order and Restoration Order of the wetlands that have been damaged at the Cabrillo Mobile Home Park in Huntington Beach.

Thank you.

Sincerely,

Robert & Grace Winchell
6411 Weber Circle
Huntington Beach, CA 92647
(714) 846-4003

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APR 06 2009
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COASTAL COMMISSION

April 6, 2009

California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416
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 Thursday April 9, Items 11 and 12, support staff recommendation

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Thank you.

Sincerely,

Michael McMahan
4892 Maui Circle
Huntington Beach, Ca 92649
(714) 846-8571

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APR 07 2009
CALIFORNIA
COASTAL COMMISSION

**Andrew Willis**

**From:** Madeline Seymour [ausvan@earthlink.net]
**Sent:** Tuesday, April 07, 2009 8:29 AM
**To:** Teresa Henry; Meg Vaughn; Karl Schwing; Andrew Willis; Sherilyn Sarb
**Subject:** Coastal Commission April 9 Agenda Items 11,12, Cabrillo Wetlands, Support Staff

April 7, 2009

California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416
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 Thursday April 9, Items 11 and 12, support staff recommendation

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Thank you.

Sincerely,

Madeline Seymour
20701 Beach Blvd.
Spc. #290
Huntington Beach, Ca. 92648

**FORM FOR DISCLOSURE OF EX-PARTE COMMUNICATIONS**

RECEIVED
MAR 27 2009
CALIFORNIA COASTAL COMMISSION

Name or description of the project: Agenda Item Thursday 11 & 12.

11. Commission Cease and Desist Order No. CCC-09-CD-03 (Mills PCH, LLC, Orange Co.)

12. Commission Restoration Order No. CCC-09-RO-02 (Mills PCH, LLC, Orange Co.)

Time/Date of communication: Friday, March 27th, 2009, 9:30 am

Location of communication: La Jolla

Person(s) initiating communication: Dave Grubb (for Cabrillo Wetlands Conservancy)

Person(s) receiving communication: Patrick Kruer

Type of communication: Meeting

Cabrillo Wetlands Conservancy and Orange County Coastkeeper support the Staff Recommendation for Cease and Desist Order and Restoration Order.

- Unpermitted fill of wetlands, and other damage including bulldozing habitat.

- Owner has previous violations on the site, this is a deliberate violation.

Date: March 27, 2009

Patrick Kruer

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COASTAL COMMISSION

# FORM FOR DISCLOSURE OF EX PARTE COMMUNICATION

**Date and time of communication:** April 6, 2009, 1:30 p.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:** Telephone Conference
(For communications sent by mail or facsimile, or received as a telephone or other message, indicate the means of transmission.)

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

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

**Name or description of project:** Agenda Item Th11 & 12: Mills PCH, LLC Cease and Desist Order, Orange County

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

ORCA's opinion is that the developer's biologist is trying to change the definition of wetland vegetation from wetlands to phreatophytes which are deep rooted plants in an arid area growing into the water table and therefore not qualifying as wetlands vegetation. This proposed change by the developer has statewide ramifications for wetlands definitions and protections. ORCA strongly opposes this change in definition so that a statewide precedent is not established.

Date: April 6, 2009

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 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

manatt
manatt | phelps | phillips

**Susan K. Hori**
Manatt, Phelps & Phillips, LLP
Direct Dial: (714) 371-2528
E-mail: shori@manatt.com

April 7, 2009

Client-Matter: 41524-030

**VIA ELECTRONIC MAIL**

Andrew Willis
South Coast District
California Coastal Commission
200 Oceangate, 10th floor
Long Beach, CA 90802

**Re: Cease and Desist Order No. CCC-09-CD-03 and Restoration Order No. CCC-09-RO-02**

Dear Andrew:

Beachfront Village, LLC (formerly known as Mills PCH, LLC) will be submitting a response to the Staff Recommendation and Findings for the above-enumerated Cease and Desist and Restoration Orders later today; however, in reviewing the Cease and Desist Order and Restoration Order attached as Exhibit 11 (the "Orders") we had some immediate questions which we wish to clarify in advance of the hearing in order to determine if these clarifications also need to be raised before the Coastal Commission. When Beachfront was working with Commission staff on a Consent Order, the next step in the process was the submittal of a revegetation and restoration plan for staff's review. As we terminated our efforts on the Consent Order, we were not able to discuss the restoration plan, and questions regarding the scope of the restoration plan were never fully addressed. Therefore, Beachfront requests the following clarifications regarding the terms of the proposed Orders.

**Clarification 1:** Section B.3 on page 3 of the Orders requires that the Restorative Grading Plan to "provide for any relief of soil compaction in the restoration area necessary to achieve the goals of the Restoration Plan." As we have stated in our Statement of Defense, the site has been historically compacted to an average degree of 96%. None of the observed compaction resulted from the work that as conducted on site in February 2008. (See report from Lawson & Associates Geotechnical Consulting, Inc., attached as Exhibit 6 to the Statement of Defense.) The site will be prepared for revegetation and replanting, but the phrase "relief of soil compaction" implies work unrelated to the violation based upon existing site conditions. We request that it be revised to read: *"3. The Restorative Grading Plan shall provide for site work in the restoration area sufficient to achieve the goals of the Restoration Plan."*

**Clarification 2:** Section C.2. on page 4 of the Orders requires the Revegetation Plan to address "all areas impacted by the unpermitted development, including all native vegetation characteristic of Southern California saltmarshes impacted by the unpermitted development" including the area impacted by the unpermitted trench drain, and defines these areas as the "Planting Area." Prior to February, 2008, the majority of the site was barren of vegetation, and the area in which the trench was excavated was also generally barren and at most contained a mix of non-native ruderal species, such as five-hook Bassia (*Bassia hyssopifolia*) and a small-flowered ice plant (*Mesembryanthemum nodiflorum*). When we were discussing the proposed Consent Order, the Commission staff's language required that the revegetation plan address "all areas of native wetland vegetation impacted by the unpermitted development." We have discussed with you that Commission staff's objective was the revegetation of the only the areas of saltgrass and pickleweed that were removed by the unpermitted development. As the language has been modified, we would like clarification as to the intended scope of the revegetation plan and the components of the "Planting Area." Given that only sparse patches of ruderal vegetation were located in the area of the trench, Beachfront does not interpret the Orders to require replanting of the trench area with Bassia, or that it be included in the definition of "Planting Area." Dr. Engel did not identify the trench area as containing any saltgrass, pickleweed or other wetland vegetation and did not include the trench area as one of the identified wetland areas. The areas identified as wetlands in her memorandum ("one large area and a few smaller areas") were those areas in which saltgrass and pickleweed were observed in the more central portion of the 1.12 acre parcel. Therefore, these were the areas that compose the "Planting Area" which Beachfront interprets to be included in the revegetation plan mandated by the Orders.

**Clarification 3:** Section D.1. on page 7 of the Orders requires Beachfront to submit an onsite mitigation plan to offset the temporal loss and loss of fitness that has resulted from the unpermitted work. We understand the concept of "temporal loss," but please define "loss of fitness."

**Clarification 4:** Section D.2. on page 7 of the Orders require preparation of an Onsite Mitigation Plan where a native wetland plant community will be restored and permanently protected at a ratio of 4:1 to the Planting Area. As discussed in Clarification 2, we wish to confirm that the Planting Area consists of those areas of native vegetation, consisting of saltgrass and pickleweed, which were removed by the February 2008 grading and site work. These areas were also identified by Dr. Engel as meeting the definition of wetlands. These areas will be revegetated per the revegetation plan and comprise the "Planting Area." The impacts to these areas will be mitigated at a ratio of 4:1 on the subject property. As no native vegetation was growing in the area where the trench was excavated, and the trench was not delineated by Dr. Engel as wetlands, Beachfront wishes to confirm with staff that the "Planting Area" does not

include either the trench or any ruderal vegetation that may have been growing in the trench excavation area, and that the 4:1 mitigation does not require replanting ruderal vegetation.

Please call me at your earliest convenience to discuss these clarifications. Thank you.

Very truly yours,

Susan K. Hori
Manatt, Phelps & Phillips, LLP

cc: Lisa Haage
Steve Kane, Esq.
Peter Wynn
Tony Bomkamp

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April 7, 2009

Client-Matter: 41524-030

**HAND DELIVERED – COPIES DELIVERED TO STAFF CONCURRENTLY**

Chair Bonnie Neely and Commissioners
California Coastal Commission
45 Fremont, Suite 2000
San Francisco, CA 94105-2219

**Re: CCC-09-CD-03; CCC-09-RO-02; Cease and Desist Order and Restoration Order (Thursday, April 9, Items 11 and 12)**

Dear Chair Neely and Commissioners:

This letter and enclosed Response to the Staff Recommendation and Findings for Cease and Desist and Restoration Orders, dated March 26, 2009 ("Staff Report") is submitted on behalf of Beachfront Village, LLC (formerly Mills PCH, LLC). Also enclosed is a report from Tony Bomkamp of Glenn Lukos Associates that addresses the technical issues raised in the memorandum prepared by Dr. Jonna Engel regarding the Mills PCH, LLC Property that was attached to the Staff Report as Exhibit 12. The properties that are the subject of these Orders are owned by Beachfront Village, LLC ("Beachfront") and consist of a 1.12 acre RV parking lot, and an adjacent 0.92 acre undeveloped parcel.

Upon receiving the Notice of Violation dated March 21, 2008, Beachfront initiated discussions with the Coastal Commission staff in an effort to resolve the violations through a Consent Decree. It was our hope to work out a restoration plan and resolution that both staff and landowner could support. Beachfront expressed its willingness to the Commission staff to undertake site restoration work to return the 1.12 acre site to the condition existing prior to February, 2008, and to conduct additional restoration and mitigation activities on the adjacent 0.92 acre parcel, a portion of which was affected by the trench excavation. In mid-March, however, it became apparent that there was one fundamental issue that could not be resolved: we could not agree with Commission staff's position that the 1.12 acre RV parking lot where the development occurred is a wetland.

Beachfront's technical experts have studied the 1.12 acre site for well over a year and find no evidence that the property is a wetland under the definitions set forth in the Coastal Act and City of Huntington Beach Local Coastal Program. All of our reports and studies were submitted to Commission staff with our Statement of Defense. As staff was only able to visit the site once, last July before the studies were completed, we request that the Coastal Commission direct staff to work with Beachfront to re-examine the technical studies and data and to conduct

an additional site visit so that the parties can work towards resolution and agreement of the matter with revised findings.

Beachfront's key points, set forth in greater detail in the enclosed Response document, are as follows:

- The 1.12 acre RV parking lot is not a wetland because:
  - The *vegetation* on site is not wetland vegetation and is growing under upland soil conditions, not wetland conditions;
  - No *hydric soils* are present on site as the pre-Coastal Act fill of the site and 40 year use as a parking lot has so compacted the soils that water is incapable of saturating the soil to create wetland conditions;
  - The *hydrology* observed is short-term ponding after rain events, which quickly evaporates and does not saturate the soil to support wetland vegetation.
- The characterization of the entire site 1.12 acre site as a wetland is not supported by the scientific evidence nor the Commission's own staff ecologist. Although Beachfront disagrees with Dr. Engel's conclusions that any wetlands are present, even Dr. Engel found that only "one large area and a few smaller areas" on the 1.12 acre Cabrillo Lot exhibited wetland hydrology and wetland vegetation, not the entire 1.12 acre site.
- The Staff Report's description of unpermitted development is inaccurate and must be revised. Respondent Beachfront disputes the characterization of the vegetation as "native wetland vegetation"; the work did not grade or fill wetlands; and the work did not alter site hydrology by soil compaction.
- Coastal Commission staff's reliance on "one parameter" to support a wetland finding is (as previously articulated by Dr. John Dixon and re-confirmed by Dr. Engel) a "rebuttable presumption" which can be *"rebutted by strong, independent evidence of upland condition."* The reports submitted with the Statement of Defense support a finding of upland conditions on the 1.12 acre RV parking lot because:
  - the site was filled over 40 years ago and the fill isolated the site hydrologically and converted it to uplands;

- use of the site for a RV storage and parking lot since 1966 has resulted in over 96% compaction on site, and alteration of the soils through dust control measures such as spreading oil has eliminated wetland soil characteristics;

- the vegetation growing on site is growing as upland, not wetlands, as demonstrated by evidence of the lack of water in the upper soil layer and the need for its root systems to rely upon groundwater;

- site photos depicting "ponding" were all taken with 24 hours of major rain events over the last 4 years, but none of the "ponding" resulted in the creation of hydric soils, fundamental to supporting wetland vegetation.

- The Staff Report's Findings should be revised to eliminate characterization of the entire 1.12 acre Cabrillo RV Lot as a "wetland" and to revise the remainder of the Staff Report and the Cease and Desist and Restoration Orders consistent with our comments.

As a final note, because of the discussions that were ongoing in the last several weeks to see if a Consent Decree could be agreed to, Coastal Commission staff asked Beachfront to waive its right to submit a Statement of Defense. For those reasons, Beachfront did not submit its Statement of Defense until March 23 when it became apparent that the parties could not agree regarding the wetland findings. We note that the complete Statement of Defense was not included as Exhibit 10 to the Staff Report, and are submitting two technical memos that were omitted for your information with this Response.

We appreciate your consideration of our submitted evidence. It was Beachfront's desire to reach agreement with staff on a Consent Order, insofar as we had agreed to restoration of the site and additional mitigation; however, because the evidence so strongly demonstrates that the trench excavation occurred in uplands and did not impact wetlands, we could not agree to the Consent Order and are requesting the Coastal Commission to direct staff to revise the Staff Report and the Cease and Desist and Restoration Orders to accurately describe the site conditions and the restoration that should occur to remedy the work that has occurred.

Respectfully submitted,

Susan K. Hori
Manatt, Phelps & Phillips, LLP

Attachments:
A: Beachfront Village Response to the Staff Recommendation and Findings
B: Glenn Lukos Associates Response to Dr. Engel March 26, 2009 Memorandum

cc: Andrew Willis
Lisa Hagge
Alex Helperin
Tony Bomkamp
Peter Wynn
Steve Kane

**RESPONSE OF BEACHFRONT VILLAGE, LLC TO THE STAFF RECOMMENDATION AND FINDINGS FOR CEASE AND DESIST AND RESTORATION ORDERS, DATED MARCH 26, 2009**

This response to the Staff Recommendation and Findings for Cease and Desist and Restoration Orders, dated March 26, 2009 ("Staff Report") is submitted on behalf of Beachfront Village, LLC (formerly Mills PCH, LLC). For the reasons set forth in this letter, and the attached report from Tony Bomkamp of Glenn Lukos Associates, as well as the extensive material submitted with the Statement of Defense, the 1.12 acre Cabrillo Lot has been inaccurately characterized as a wetland. For the reasons set forth below, the Staff Report and the Orders should be revised to accurately describe the site conditions and the restoration that should occur to remedy the unpermitted work.

Beachfront first wishes to clarify for the record information with respect to the description of the property, the description of unpermitted development, the submission of the Statement of Defense, and the validity of the 1966 use variance to construct and maintain a RV storage parking lot.

1. **Description of the Subject Property Should be Corrected to Reflect the Proper Site Address and Application of the Orders to 1.31 Acres (Staff Report Page 1).**

The property that is the subject of the Cease and Desist and Restoration Orders ("Orders") consist of two components: a fenced 1.12 acre parcel that has been used for over forty years as a RV storage lot ("the Cabrillo Lot") and an adjacent, unfenced 0.92 acre parcel (the "Newland Parcel"). (See **Exhibit 1.)** Although the Staff Report describes a larger 10.78 acre property located at 21622 Pacific Coast Highway that description is inaccurate. The address of the Cabrillo Lot and Newland Parcel is 21752 Pacific Coast Highway. Only 1.31 acres should be covered by the Orders, as the remainder of the 10.78 acre property consist of a developed mobile home park and RV park, neither of which are the subject of the Orders.

2. **The Description of Unpermitted Development is Inaccurate in its References to Wetland Impacts (Staff Report Page 7).**

The description of unpermitted work on the Cover Page of the Staff Report and the Summary of Staff Recommendation and Findings on Page 2 includes numerous references to the site as a "wetland." The entire 1.12 acre site is not a wetland, and the characterization of the entire site as a "wetland" is not even supported by the Commission's staff ecologist. Dr. Jonna Engel acknowledges that at most, only "one large area and a few smaller areas" exhibited "wetland hydrology and supported a preponderance of wetland vegetation" to meet the definition of wetlands.

As the 1.12 acre site is not a wetland for the reasons set forth in our Statement of Defense, all references to work in wetlands as it pertains to the 1.12 acre site should be revised to remove reference to wetlands.

On February 23, 2008, work was undertaken to excavate a trench drain on the easternmost edge of the Cabrillo Lot. At the time the excavation was undertaken, there was no native vegetation on this portion of the property. The site where the trench was excavated was barren or partially covered by ruderal upland weedy species. The soil excavated from the trench was placed adjacent to the trenched area. As described by Dr. Engel in her memorandum dated March 26, 2009, this area would not constitute a "wetland" and while the work may not have been permitted, it was also not conducted in wetlands.

One of the elements of the description of the violation and a basis for Dr. Engel's wetland finding was that the work compacted the soil thereby altering the hydrology of the site. For the reasons set forth in our Statement of Defense, including the analysis conducted by Lawson & Associates Geotechnical Consultants (LGC), the work did not result in soil compaction. As documented by LGC, because of its use as a RV parking and storage lot, the site has been significantly altered and the soil averages 96% compaction as a result of the ongoing use. The excavation of the trench and presence of equipment did not compact the site in a manner to alter the hydrology as alleged by staff.

The trench drain extended a short distance (approximately 4-6 feet) onto the Newland Parcel which Beachfront acknowledges does include areas determined to be wetlands. As a result of that extension, an area of approximately 2 feet by 15 feet received runoff from the trench drain. The majority of the Newland Parcel was unaffected by the excavation of the trench drain on the adjacent Cabrillo Lot and did not receive runoff from the trench drain.

3. **The Statement of Defense Was Timely Submitted After Beachfront Was Asked to Waive its Right to Submit a Statement of Defense (Staff Report Page 9). Statement of Defense Documents Not Attached to the Staff Report are Resubmitted and Incorporated by Reference.**

Beachfront wishes to correct statements in the Staff Report implying a delay in its Statement of Defense submittal. As the Staff Report summarizes, as late as mid-March, Beachfront and staff were attempting to arrive at a Consent Order. Consequently, Commission staff had requested Beachfront to not submit a Statement of Defense and to waive its right to do so. In consideration of staff's request to not submit a Statement of Defense so that the parties could continue to prepare a Consent Order, Beachfront submitted on March 2, 2009, a "Response to the Notice of Intent to Record a Notice of Violation." In order to avoid waiving its rights to submit a Statement of Defense should the circumstances require, Beachfront submitted information that addressed components of a Statement of Defense, and reserved its right to submit a formal Statement of Defense in the future should circumstances require. When Commission staff and Beachfront finally agreed on March 19 that a Consent Order could not be agreed upon, Beachfront formally submitted its Statement of Defense on March 23, 2009.

Beachfront's Statement of Defense transmitted a number of technical studies in support of its position that the 1.12 acre Cabrillo Lot is not a wetland, including Jurisdictional Wetland Status Report prepared by Glenn Lukos Associates. Missing from the Statement of Defense are two memoranda that were submitted as exhibits to the Jurisdictional Wetland Status Reports. These two reports are attached as **Exhibits 2A and 2B** and provide an "Analysis of Hydrological Conditions at Cabrillo RV Parking Area," dated February 27, 2009, and "Monitoring Results for

"Offsite" Pickleweed Areas in Support of Jurisdictional Determination for Cabrillo 1.2 –Acre RV Parking Area," dated February 25, 2009. These reports provide substantial evidence that the ponding reflected in site photos reviewed by Commission staff does not support a finding of inundation or soil saturation sufficient to support plants growing as hydrophytes, and evidence of nearby areas in the coastal zone where pickleweed is growing and thriving in upland conditions.

Also missing from the Statement of Defense that was attached to the Staff Report are a number of photos, exhibits, and data sheets that were attached to the memos prepared by Glenn Lukos Associates. Although not reprinted for the Staff Report, these documents have been submitted for the record and are hereby incorporated by reference into this Response.

## 4. The 1.12 acre Cabrillo Lot Continues to be Validly Permitted as a Parking Lot and Its 40 Year Use Has Eliminated Wetlands Condition on the Site.

When the mobilehome park and RV park were established in the mid-1960's, permission was requested by the then-owner to extend the RV park to the Cabrillo Lot, and in 1966, a permit was issued by the City of Huntington Beach to allow for the development of a "motor vehicle storage yard." (Previously submitted as Exhibit 1A to the Statement of Defense.) The permit was issued in order to allow the then-owner to expand the existing Cabrillo Trailer Park. Condition 6 required that the entire storage yard be oiled as a dust control measure. ("Application of said oil shall be 0.25 gallons of 80-70 per square yard on sterilized soil.")

### The Use Variance Did Not Expire in 1967 but Remains Valid

Condition 1 to the 1966 permit states that the approval was to expire on July 19, 1967 or one year from the date of approval. Commission staff has incorrectly interpreted this condition to mean that a valid permit to use the site as a storage facility no longer exists and that all approvals expired on July 19, 1967. This is incorrect. Under the Huntington Beach Zoning and Subdivision Ordinance, use permits and variances shall be null and void one year after its date of approval unless construction has commenced, or the use is established or the permit is extended. (HBZSO, Chapter 241, Section 241.16.) Once the use is established within that year, no extensions or additional approvals are required and that use may continue as a permitted, valid use. Therefore, the use of the Cabrillo Lot was established in 1966 and has continued uninterrupted for the last 43 years. The permit remains valid and the use established.

### Fill of the Site in the 1950's Converted the Site to Uplands

The fact that the site has been used for over 43 years as a parking and storage lot is critical to whether the site is a wetland. First, beginning in the 1950's during construction of the AES power plant across Newland from the subject property, fill averaging 17 inches over the entire property was deposited on the site and consequently whatever wetland or marsh conditions may have existed at that time were removed and all historic hydrologic connections terminated. The site was filled and converted to uplands. Second, once filled and used as a parking lot, the soil became heavily compacted thus significantly altering its ability to hold water and take on hydric soil characteristics. Third, due to the substantial alteration of the site including the periodic spreading of oil and gravel on the site to maintain its use as a RV lot, natural wetland conditions simply do not exist on the site.

The Staff Report assumes that Beachfront asserts that the excavation of the trench was routine maintenance exempt from Coastal permit requirements. This is not the case. The importance of the 1966 permit and citation to over 40 years of use is that as a result of that continuing use, wetlands condition no longer exist on the site due to activities to alter the site condition prior to enactment of the Coastal Act.

The Staff Report also claims that the use of the site as a RV storage facility has been episodic and that photos do not show vehicle storage in the impacted wetlands. Attached as **Exhibit 3** are a series of historical photos showing use of the entire site for vehicle storage and parking. Also, while there have been periods where the number of vehicles stored on the site have been low, maintenance of the site continued on a regular basis as required in the City's permit.

For the reasons set forth below, and in the technical reports submitted with Beachfront's Statement of Defense, and the attached report from Tony Bomkamp of Glenn Lukos Associates, the Cabrillo Lot has been inaccurately characterized as a wetland. The Staff Report and the Orders should be revised to accurately describe the site conditions and the restoration that should occur to remedy the unpermitted work.

## 5. The Cabrillo Lot is Not a Wetlands.

### a. The "One Parameter" Definition to Support a Wetlands Determination is a Rebuttable Presumption That Has Been Rebutted by Evidence of Upland Condition on the 1.12 acre Cabrillo Lot.

Although the Coastal Commission has historically described its wetland delineation as a "one parameter definition," even Commission biologist Dr. John Dixon has acknowledged that the "one parameter" criteria is a rebuttable presumption of a wetland.

Public Resources Code Section 30121 defines wetlands as follows:

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

Thus, irrespective of any "parameter" test, the area under consideration as a wetland must be "covered periodically or permanently with shallow water."

The relevant portions of Section 13577 of the Commission's regulations (*California Code of Regulations,* Title 14, Division 5.5) (the "Regulations")) (often referred to as the "one-Parameter Definition") provide as follows:

> *"For purposes of Public Resources Code Sections 30519, 30600.5, 30601, 30603, and all other applicable provisions of the Coastal Act, the precise jurisdictional areas described therein shall be determined using the following criteria:*
> *"....*
> *"(b) Wetlands.*

*"(1) .... Wetland shall be defined as land where the water table is at, near, or above land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes....[T]he 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...."*

Implicit in this definition is the presence of anaerobic conditions caused by the prolonged inundation or saturation. Where inundation does not occur for sufficient duration in most years to create anaerobic conditions, the wetland criteria is not met for hydrophytes or hydric soils.

The Commission's "one parameter" test only establishes a presumption that the other indicator(s) also are present. That presumption can be rebutted. The presence of hydrophytic vegetation is an indicator that wetlands hydrology, as well as hydric soils, may be present. The presence of hydrophytic vegetation and hydric soils *suggests* to yet a greater degree that wetlands hydrology is present. None of these scenarios establishes with certainty that the site is a wetland. The Commission, however, unlike the U.S. Army Corps of Engineers and the California Department of Fish and Game, takes the position that even if only one indicator is present, a ***presumption*** is nonetheless established that a wetland is present -- unless the presumption is *"rebutted by strong, independent evidence of upland condition."* (Quoting Staff Ecologist Dr. John Dixon, November 5, 2003.) Dr. Dixon also wrote in an opinion referenced in a staff report prior to that 2003 hearing that ***"In recognition of the fact that a proportion of wetland indicator plants occur in uplands, the wetland presumption may be falsified where there is strong, positive evidence of upland conditions."***

Though it is never stated this way, the Commission has a three-parameter test which differs from the federal methodology because it infers the presence of the second and third indicators from the presence of the first indicator. Whereas under the Corps of Engineers delineation methodology, the agency (i.e., Corps) has the burden to demonstrate that all three indicators exist, the Coastal Commission has the burden to show that only one indicator exists. However, even if the Commission demonstrates the presence of one parameter, the applicant can -- where there is evidence of upland conditions – rebut the presumption of the site as wetlands if it can prove that one or both of the other indicators ***does not exist***.

Therefore, the Commission's position is that the presence of one of the three wetlands parameters creates a ***"rebuttable presumption"*** that the area in question is a wetland. It is important to note the wording of Section 13577 quoted above, that describes a wetland as "*land where the water table is at, near, or above land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes.*" Because this is a regulation applying the Coastal Act, that definition cannot be interpreted in a way which overrides the Act's definition ("covered periodically or permanently with shallow water"). Therefore, it is absolutely critical to note that simply because enough water was present to grow a plant which might be considered a hydrophyte in some circumstances, *it may not be growing as a hydrophyte in all circumstances*. Dr. Dixon, in his November 5, 2003, testimony, described this tricky part of the analysis as follows:

*"A difficulty arises because the hydrophytic nature of plants is determined by their existence on a list put out by the U.S. Fish and Wildlife Service. It is based on looking at floras in the best professional judgment of specialists.*

***"By definition, nearly all of those plants also occur some of the time in upland situations, and when they are growing in those situations, they are not growing as hydrophytes, and therefore there is a danger if one relies purely on vegetation of identifying upland areas as wetlands.***

*"In order to deal with this problem, I have recommended to the Commission – and the Commission has accepted in past actions – that the predominance of indicator species is presumptive evidence that the plants are growing as hydrophytes, and the area is a wetlands. However, this presumption can be rebutted by strong, independent evidence of upland condition."*

Taking Dr. Dixon's statements and applying it to the current situation, vegetation – saltgrass and pickleweed – are acknowleged to be present on the site, and also that under certain conditions those plants are hydrophytic vegetation. However, as Dr. Dixon noted that, ***"In recognition of the fact that a proportion of wetland indicator plants occur in uplands, the wetland presumption may be falsified where there is strong, positive evidence of upland conditions."***

Beachfront's Statement of Defense provides strong evidence that:

- Saltgrass and pickleweed can and do occur in uplands;
- The Cabrillo Lot exhibits strong, positive evidence of upland conditions because:
- No hydric soils are present; the soils are so compacted that they totally lack any hydric characteristics which is supported by tests with alpha alpha dipyridyl and visual observation. [Alpha alpha dipyridyl is a clear reagent that turns color (purplish red) when there is reduced iron in soil, i.e., when the soil is anaerobic, and provides a simple, visual method of detecting the presence of hydric soils].
- Wetland hydrology is not present based on the demonstrable lack of reducing conditions as demonstrated throughout the 2008/2009 rainfall season through soil testing with alpha alpha dipyridyl;
- The site photos relied upon by Commissions staff to demonstrate ponding were taken immediately after rain events and within days all of the ponding had dissipated as did soil saturation thus demonstrating the absence of hydric soil conditions;
- The majority of the saltgrass is growing in an upland community and is surviving by being tapped into groundwater at depths of about 40 inches. The pickleweed is able to survive based on the short-term seasonal ponding and it ability to obtain moisture from the clays that lie beneath the fill.

For these reasons, the presence of saltgrass and pickleweed alone do not support a wetlands finding even applying the "one parameter test" as articulated by Dr. Dixon.

**b. The Coastal Commission Staff's Analysis in Dr. Engel's Memorandum Is Based Upon Inaccurate Assumptions Regarding Site Hydrology and Soil Conditions.**

Enclosed with this Response is a detailed analysis prepared by Tony Bomkamp of Glenn Lukos Associates responding to the analysis of wetland conditions prepared by Dr. Jonna Engel. As noted previously, Dr. Engel herself only identifies several specific areas as wetlands, not the entire 1.12 acre site. The primary indicator relied upon by Dr. Engel is the presence of "wetland vegetation" and photos of ponding whereby Dr. Engel has concluded that the ponding has contributed to the formation of hydric soils to support the "wetland vegetation." As discussed in the technical reports submitted with the Statement of Defense, and the enclosed memorandum from Tony Bomkamp, the vegetation observed by Dr. Engel can grow in both upland and wetland conditions and in this situation, the vegetation is growing in upland conditions. The soil on the site, as documented by the LGC report, has been heavily compacted (tests indicate 90-100 percent compaction) as a result of its long history as a parking lot. There is no evidence that the presence of equipment on the site in February, 2008, resulted in soil compaction that altered the hydrology of the site. In fact, to the contrary, the site was compacted well before February 2008, and as a result the hydrology on the site (exclusively rainfall) failed to create wetlands on the site. Soil tests clearly indicate that the soils are not inundated by surface water as assumed by Dr. Engel, but are in fact non-hydric.

**6. The Findings Should be Revised to Accurately Describe the Existing Conditions.**

The Staff Report, beginning at page 16, fails to accurately describe the existing conditions of the 1.12 acre Cabrillo Lot and adjacent Newland Parcel. The Report states that the unpermitted development disrupted water supply through direct fill as well as from discharge from the trench drain and draining of a wetland. Although Beachfront acknowledges that runoff flowed onto the Newland Parcel, the area of effect was limited to the northeast corner of the Newland Parcel consisting of approximately 30-50 square feet. Beachfront disputes the finding that the unpermitted development resulted in the removal of wetland vegetation on the Cabrillo Lot (which is the only area where vegetation was removed), or that the work resulted in the alteration of wetland hydrology. The Staff Report's findings with respect to wetland hydrology is based upon an inaccurate assumption that the work resulted in soil compaction. As has been discussed previously and in the submitted technical reports by GLA and LGC, the work in February 2008 had no effect on the already-compacted nature of the soils and in way disrupted or otherwise affected site hydrology.

**No Impact to Belding's Savannah Sparrow Use**

The discharge of a small amount of water from the trench drain onto the Newland Parcel did not so adversely affect the wetlands present there so as to have any impact on the use of that site by avian species. No pickleweed was removed by the very limited and short-term discharge and no observable impacts to the pickleweed habitat occurred as a result. Therefore, there were

no impacts to Belding's savannah sparrow or any other avian species associated with the de minimis impacts.

The removal of vegetation on the Cabrillo Lot has little or no effect on the ability of wildlife to utilize other adjacent wetland areas, such as the nearby Huntington Beach wetlands. The use of the vegetation on the Cabrillo Lot has not been documented to the extent that it can be demonstrated that the short-term loss of approximately 60 square feet of vegetation has in any way disrupted or otherwise impacted the wildlife.

**No Evidence of Continuing Resource Damage**

There is no evidence that the excavation of the trench drain has resulted in continuing resource damage. Currently, the only evidence of February 2008 work on site is the presence of the trench drain which Beachfront has agreed to restore to original site contours. Much of the vegetation in the areas in which equipment was operated has begun to grow back. Any runoff from the site from the rainfalls of 2008-2009 has not flowed into the trench drain and/or flowed onto the adjacent Newland Parcel. Despite Dr. Engel's assumption to the contrary, the trench does not drain water from the site, thereby either altering the hydrology of the Cabrillo Lot or discharging water on the Newland Parcel. As documented in the enclosed memorandum from Tony Bomkamp, with the exception of the excavated trench, the soil profile on the Cabrillo Lot was not disturbed by the unpermitted work. There are only a few isolated areas in which even the top 2-3 inches of soil were subject to "scarification" by the equipment. No compaction occurred from the February 2008 work which would cause continuing resource damage. There is absolutely no physical evidence to support Dr. Engel's claim that grading disrupted the soil column to a depth of 8-12 inches (outside of the trench).

**7. Conclusion.**

In conclusion, Beachfront would like to initiate work to return the Cabrillo Lot to its pre-February 2008 condition, but cannot accept a finding that the Cabrillo Lot is a wetland. The evidence so clearly demonstrates that although Commission staff is correct in identifying the presence of two plants – saltgrass and pickleweed – that are found in wetlands and that ponding did occur after large rain events, the site is not a wetland. The Cabrillo Lot is an upland site due to historical changes that occurred in the 1950's and 1960's, and the scientific evidence of the upland character of the soil (supported by tests indicating a lack of anaerobic conditions), the highly compacted nature of the soil which was not at all affected by the February 2008 work, the absence of wetland hydrology to promote either the development of hydric soils or wetland vegetation, and the examination of the vegetation shown to be thriving on groundwater and moisture in a subsurface clay layer.

Beachfront requests that the Commission direct staff to work with respondent to re-examine the technical studies, conduct additional site visits, and work towards resolution of this violation with revised findings consistent with the scientific and technical studies submitted with Beachfront's Statement of Defense and Response.

# The Cabrillo RV Site and Newland Parcel



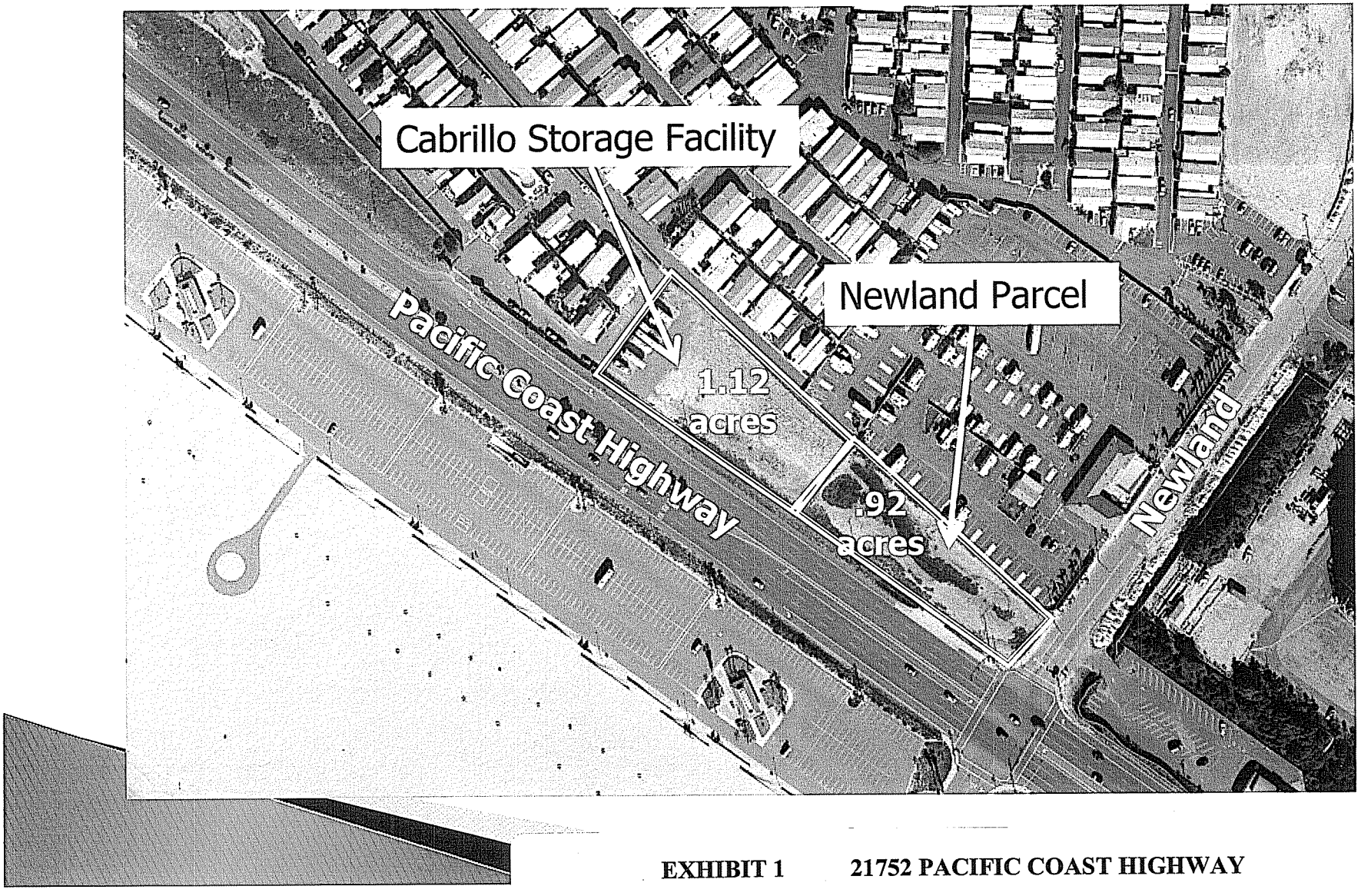


**EXHIBIT 1** **21752 PACIFIC COAST HIGHWAY**

# TECHNICAL MEMORANDUM

GLENN LUKOS ASSOCIATES
Regulatory Services

**PROJECT NUMBER:** 08380002CABR

**TO:** Dr. Jonna Engel, California Coastal Commission
Andrew Willis, California Coastal Commission

**FROM:** Tony Bomkamp

**DATE:** February 27, 2009

**SUBJECT:** Analysis of Hydrological Conditions at Cabrillo RV Parking Area Including Ground-Level Photographs Provided by Coastal Commission Staff

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I have reviewed the ground-level photographs that were provided by Mr. Willis that depict ponding on the Cabrillo RV Parking Area. The photographs cover portions of the 2004/2005, 2005/2006 and 2007/2008 rainfall seasons. In your letter dated January 13, 2009, relative to these photographs you note the following:

> *The existing documentation consisting of ground-level photographs showing ponding on site over consecutive days through several wet seasons adequately addresses the site's hydrologic characteristics. Given the documented surface hydrology, hypothesizing that the wetland plants on the site must rely on ground water is unnecessary and unconvincing.*

After review of the photographs in conjunction with other data set forth below, it is my professional opinion that the Cabrillo Site does not exhibit wetland hydrology. As set forth below, this conclusion is based on the lines of evidence set forth below. It is also important to note that this Technical Memorandum addresses the entire area of the RV Parking Area, including all areas up to the fence line as it occurred prior to replacement of the fence in 2005 along the southern boundary.

**Site Photographs**

The photographs that you provided document conditions on the RV Parking Area on selected dates between October 10, 2004 and February 24 2008. You assert that the photos show ponding "over consecutive days through several wet seasons" and more importantly you note that the information contained in the photos "adequately addresses the site's hydrologic characteristics," which leads to your conclusion that the site exhibits wetland hydrology. You make this assertion without any reference to accepted or standardized criteria for wetland hydrology and no analysis of the photographs relative to antecedent rainfall events. As demonstrated below, when standard

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criteria for wetland hydrology are included in the analysis, it is clear that the subject photographs do not demonstrate the presence of wetland hydrology and in fact provide evidence of the lack of wetland hydrology.

**Photographs from 2004/2005 Rainfall Year**

Photographs from the 2004/2005 rainfall year are clustered into three separate periods that coincide with three separate rainfall periods during the 2004/2005 rainfall season. These periods include photographs taken between October 19 and November 6, 2004; January 15 and January 31, 2005, and February 15 and March 2, 2005 [Exhibit 1 is the daily rainfall from Orange County Public Works]. What is important to note regarding these photographic periods is that each coincides with excessive rainfall periods:

October 17 – 28 = 6.03 inches of rain (60-percent of annual average rainfall in 12 days)

December 28 – January 11 = 9.38 inches of rain (93-percent of annual average rainfall in 15 days)

February 11 – February 23 = 8.22 inches of rain (82-percent of annual average rainfall in 13 days)

The 2004/2005 Rainfall Year was the wettest in the last 50 years [see Exhibit 2] with essentially all of the rainfall concentrated in the three periods that the photographs were taken. Regarding this point, the guidance in the Corps' Arid West Supplement Version 2.0 is very informative.

> a. *Direct hydrologic observations.* Verify that the plant community occurs in an area subject to prolonged inundation or soil saturation during the growing season. This can be done by visiting the site at 2- to 3-day intervals during the portion of the growing season when surface water is most likely to be present or water tables are normally high. Hydrophytic vegetation is considered to be present, and the site is a wetland, if surface water is present and/or the water table is 12 in. (30 cm) or less from the surface for 14 or more consecutive days during the growing season **during a period when antecedent precipitation has been normal or drier than normal.** If necessary, microtopographic highs and lows should be evaluated separately. The normality of the current year's rainfall must be considered in interpreting field results, as well as the likelihood that wet conditions will occur on the site at least every other year (for more information, see the section on "Wetlands that Periodically Lack Indicators of Wetland Hydrology" in this chapter). [Emphasis not in original]

Given that the photographs represent the wettest year in the last 50 years and were taken in rainfall clusters that coincided with the three wettest periods of the 2004/2005 season, drawing

conclusions that the site exhibits wetland hydrology based on these photographs is not consistent with accepted practice as described in Version 2.0 of the Arid West Maunal.One final point is worth noting that reinforces the conclusions that the site does not exhibit wetland hydrology. Due to the compacted soils on the site, water stays on the surface and quickly evaporates (see below for more detailed discussion). Site photographs from the 2004/2005 rainy season demonstrate this. The site photograph dated November 3, 2004 was taken five days following 2.13 inches of rain that fell on October 27-28 and the November 3 photograph shows that ponding has already dissipated [Exhibit 3, Photograph 1]. Similarly, the photograph dated January 24, 2005, was taken 13 days following 3.41 inches of rain that fell on January 10-11, which ended a 9.38-inch rainy period that occurred between December 28 and January 11. By January 24, 13 days later, ponding had dissipated [Exhibit 3, Photograph 2]. Even in extreme rainfall years, ponding does not persist on this site once the rainfall has ended.

**Photographs from 2005/2006 Rainfall Year**

Photographs from this rainfall year are limited to September 21 and 23, 2005; January 10 and 20 2006, and March 4, 2006. The September 21, 2005 photograph was taken on the second day of a three-day event that dropped 0.53 inches and shows very minimal ponding. The photograph taken on September 23 following another 0.02 inches show that the ponding has already dissipated [Exhibit 3, Photographs 3 and 4].

The January 10 photographs were taken seven days following a three-day event that accounted for 1.17 inches of rain and shows that the ponding had already dissipated at some point during the intervening seven days (the January 20 photographs also shows no ponding) [Exhibit 3, Photograph 5]. Finally, the March 4 photograph was taken on the day of a 0.43-inch event, which was preceded by 0.98 inches five days earlier on February 28 [Exhibit 3, Photograph 6]. No follow-up photographs are included; however, given the rapid dissipation of a similar amount of rainfall as demonstrated by the January 10 photograph, ponding would not persist for 14 days.

**Photographs from 2006/2007 Rainfall Year**

Photographs from the 2006 rainfall season are limited to three dates, December 10, 14, and 16, 2006. The December 10 photograph was taken on the day of 0.28 inches of rain and shows limited ponding. By December 14 the ponding has dissipated, which is further documented by the December 16 photograph [Exhibit 3, Photographs 7 and 8].

**Photographs from 2007/2008 Rainfall Year**

Photographs from the 2007/2008 rainfall season are limited to two dates, February 23-24, 2008, which coincided with 1.62 inches of rain that fell between February 20 and 24, with 0.53 occurring on the day of the February 24 photograph. No follow-up photographs are included;

however, given dissipation rates noted above, it is concluded that ponding would not persist for 14 days.

**Ponding and Soil Saturation**

Version 2.0 of the Arid West Manual referenced above, includes soil saturation along with inundation (i.e., surface ponding in this case) as indicators of wetland hydrology. During the 2008/2009 rainfall season, GLA has been monitoring the site following each rainfall event, and areas that exhibit ponding have been checked for subsurface saturation to depths of 12 inches, immediately prior to the dissipation of ponding (and adjacent to areas that are still ponded).[1] In no instance has soil saturation been detected in other than the upper two or three inches and testing for reducing conditions using alpha alpha-dipyrdyl has been negative, indicating that wetland hydrology is not present (see Indicator C-4 on page 78 of Version 2.0 of Arid West Manual). Based on these observations, GLA believes that even in the most extreme years, ponding on the site does not lead to soil saturation below the immediate surface.[2]

Exhibit 4, Photograph 1 shows the site on February 20, with the photographs taken two days following cessation of an 0.88-inch rainfall event over four days. Consistent with previous monitoring, only the upper two or three inches of the soil profile exhibited saturation with an abrupt change occurring between two or three inches due to compaction of the soil. Below three inches the fill material is only slightly moist and very "crumbly" as depicted in Photographs 1 and 2. The upper two to three inches were negative for reducing conditions using alpha alpha-dipyridyl. Below the upper two or three inches, the soil profile was only slightly moist, and very crumbly as seen in Photograph 2. It is clear that historic fill of this area with soil, cobble and asphalt, followed by compaction due to over 30 years of vehicle parking has rendered the soil/substrate essentially impervious below the upper couple of inches. This is important confirmation that meaningful surface hydrology does not reach areas below the upper few inches and that such hydrology would be sufficient to support plants growing as hydrophytes.

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[1] Sampling in areas of approximately one or two mm of water were found to be most appropriate as more water than this resulted in water running into the pit making it possible to accurate characterize soils at depth. However, by placing pits adjacent to areas with a few inches of ponding (no where on the site does ponding exceed more that two or three inches and this occurs only in ruts that are typically subject to maintenance), it is possible to determine whether such areas could be charging the soil (a condition which was not detected).

[2] It is important to note that the "Cautions and User Notes" for C-4, stipulate that in order to establish the presence of saturation of sufficient duration to cause reducing conditions, more than half of the soil layer in question must exhibit a positive test with alpha alpha-dipyridyl. Because the fill layer on the site generally exceeds 14 inches, seven inches of this layer would have to show a positive test for reducing conditions, in order to make a positive determination for wetland hydrology. In the subject "pickleweed" area, the depth of the fill layer is less than other areas on the site, ranging from seven to 11 inches, meaning that at a minimum, the soil saturation would have to reach to between 3.5+ inches to 5.5+ inches. This condition does not occur on this site based on direct observation.

Consistent with the brief ponding durations during the very high rainfall periods associated with the 2004/2005 rainfall season, the ponding observed on February 20, was reduced by to a single tire rut on February 24 and completely dissipated by February 26, confirming the short-lived character of the ponding.

**Conclusions Regarding Site Photographs**

A detailed evaluation of the site photographs using daily rainfall totals shows that the site does not exhibit the wetland hydrology criteria set forth in the Corps' (latest) Version 2.0 of the Arid West Supplement. Specifically, the site does not exhibit inundation or saturation for 14 consecutive days in most years, the hydrology standard for disturbed sites provided in Version 2.0 of the Supplement. The only photographs that depict ponding for up to or more than 14 days were taken during the wettest year of the last 50 years, data which the Corps specifically excludes for use in making a wetland determination. Also, as noted above, even following periods of rain exceeding 80 or 90 percent of the mean annual rainfall fell in two weeks, following cessation of the rain, ponding typically dissipates in less than 14 days. This rapid dissipation is explained by a simple fact: evaporation rates, even during the rainy season in coastal southern California, exceed rainfall rates, meaning that for sites such as the RV Parking Area, very little rainfall is available for vegetation in the upper 12 inches of the soil profile. This point is critical in addressing the presence of plants with an indicator status of FAC or wetter that occured on limited portions of the site, when the February 2008 maintenance work was performed.

**Water Use/Budget Data**

In addition to the analysis of the site photographs provided by Coastal Staff, I have conducted a separate line of investigation that seeks to correlate the site hydrology and vegetation to determine whether surface hydrology on the site is sufficient to support the pickleweed (*Salicornia virginica*) and saltgrass (*Distichlis spicata*) as asserted by Coastal Staff. Given that the site does not appear to have wetland hydrology based on the site photographs and detailed soil sampling by GLA, including regular testing with alpha alpha dipyridyl during the rainy season, I have sought confirmatory evidence through the use of a water budget.

Coastal Staff indicated in the January 13, 2009 letter that the saltgrass and pickleweed are functioning as hydrophytes based on a surface ponding moisture regime rather than on the ground water. Water use data for saltgrass indicates that surface hydrology is not sufficient to support saltgrass on this site. Measurements of water use by saltgrass from a three-year study[3] are provided in the table below:

[3] State of California Department of Public Works, Division of Water Resources. 1942. Bulletin No. 50: *Use of Water by Native vegetation.*

| Table 1: Water Use by Saltgrass | |
|---|---|
| Average Depth to Water Table (inches below surface) | Water Used by Saltgrass (inches/year) |
| 12 | 42.76 |
| 24 | 35.31 |
| 36 | 23.79 |
| 48 | 13.37 |

In areas where the upper 12 inches remain saturated or near saturated throughout the year (as in a coastal salt marsh) saltgrass will use over 42 inches of water per year. However, where it is using deeper ground water, usage decreases. Based on groundwater depths on the Cabrillo RV Parking area, it is estimated that the saltgrass and pickleweed require about 18 inches per year (given average ground water depths average about 41-43 inches).[4]

Average rainfall for the site totals approximately 10.07 inches per year, with the majority (about 8.5 inches) falling between November 1 and March 31. Evaporation data indicates that during this same period, evaporation totals 17.48 inches. As noted above, during our investigation of the site, including examination of soil pits within ponded areas, soil saturation was not observed below the upper two to three inches due to the highly compacted soils meaning that the ponded water was not percolating into the ground and was therefore evaporating and unavailable for vegetation. This means that during a normal rainfall year of about 10 inches, only a small percentage of the water would be available for support of the saltgrass or pickleweed leading to two possible conclusions, or a combination thereof:

1. The plants are functioning as phreatophytes, a conclusion consistent with the groundwater levels on the site, or
2. The plants exhibit high levels of drought tolerance and are not reliable indicators of wetland conditions on problem sites such as the subject site, or
3. a combination of 1 and 2 above, which still leads to the conclusion that on this site, the saltgrass and pickleweed are not reliable indicators for the presence of wetland conditions under all circumstances.

It is also very interesting that the saltgrass and pickleweed continue to persist on the site in a healthy condition through drought years such as 2003/2004 with 5.80 inches of rain with only one month exceeding one inch for the entire rainy season and 2006/2007 which totaled 2.65 inches for the entire season with the highest rainfall month for the entire season at 0.80 inch. How is this possible, unless the plants are obtaining water from other sources or are actually

[4] Groundwater depths have remained fairly consistent from June 2008, when the initial groundwater measurements were recorded to January 2009. Overall, during this period groundwater depths have ranged from as high as 39 inches to 48 inches in the four monitoring locations adjacent to the fence line that parallels PCH, suggesting that there may be a slight tidal influence.

highly tolerant of drought or dry conditions. Along these lines, the site photograph from December 16, 2006 is instructive [Exhibit 3, Photograph 9]. The majority of saltgrass along the fence line appears healthy with only plants along the very edge showing signs of stress. During the preceding seven months a total of 0.83 inches of rain had fallen and yet the majority of the plants are healthy. This is best explained by the fact that the healthy plants are tapped into deeper water sources, while the plants along the edge, which are spreading outward by means of rhizomes have not yet established roots where they can access deeper water and are therefore they are stressed or possibly dead.

GLA has additional data, which supports both 1 and 2 above, suggesting that in some instances these plants are functioning phreatophytes while in other cases, they appear to exhibit higher-than expected levels of drought tolerance. These data are provided in a separate Technical Memorandum dated February 25, 2009.[5]

**Ponding, Compaction and Evaporation**

A review of the site photographs provided by Commission Staff shows that the ground surface surrounding the pickleweed that occurs in the southwest quadrant of the site, is typical of the ground surface for other portions of the site. It has historically been well maintained, generally free of ruts and the few photographs that show shallow ruts during wet periods suggest that the soil is highly compacted and capable of supporting vehicles even with inundated. This is important for a couple of reasons. First, as noted above, evaporation rates exceed rainfall during the peak rainfall months and the highly compacted soil, which has occurred during more than three decades of vehicle parking, prevents deep infiltration, resulting in evaporation of the rainfall that falls on the site.

Second, it shows that the maintenance activities that occurred in late February 2008 did not in fact change the site conditions from a condition of "wetland" hydrology to upland. Rather, the surface condition at the time the activity occurred was already highly compacted soils that precluded the presence of wetland hydrology and in so doing, precluded the establishment of "hydrophytes" on the site due to the lack of wetland hydrology.

**Conclusions**

When all of the evidence is considered, the 1.2-acre RV Parking Area does not exhibit wetland hydrology. Rather, the site ponds for varying durations following storm events; however, infiltration is limited by the soils that have become highly compacted through use as an RV

[5] Glenn Lukos Associates. February 25, 2009. Technical Memorandum: "Monitoring Results for "Offsite" Pickleweed Areas in Support of Jurisdictional Determination for Cabrillo 1.2-Acre RV Parking Area." Addressed to Andrew Willis and Dr. Jonna Engel.

Parking Area for about 35 years. The lack of infiltration coupled with high evaporation results in the loss of most water that falls on the site to any plants, which occur on the site.

The native plants that occur, pickleweed and saltgrass, are not capable of surviving on the site based on the surface hydrology and their presence can only be explained by the presence of deep (i.e., generally 39+ inches) groundwater that is present throughout the year. As such, the pickleweed and saltgrass are not functioning as hydrophytes and are not indicators of wetland conditions. In summary, the hydrology data indicates that the site is not a wetland.

As such, the activities that resulted in the removal of the limited areas of pickleweed and saltgrass during site maintenance did not result in impacts to "wetland vegetation" as wetlands are not associated with the 1.15-acre RV Parking Area.

# TECHNICAL MEMORANDUM

GLENN LUKOS ASSOCIATES
Regulatory Services

**PROJECT NUMBER:** 08380002CABR

**TO:** Andrew Willis, California Coastal Commission
Dr. Jonna Engel, California Coastal Commission

**FROM:** Tony Bomkamp

**DATE:** February 25, 2009

**SUBJECT:** Monitoring Results for "Offsite" Pickleweed Areas in Support of Jurisdictional Determination for Cabrillo 1.2-Acre RV Parking Area

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In my memorandum dated September 11, 2008 I presented the hypothesis that the saltgrass and pickleweed on the Cabrillo RV Parking Area were not growing as hydrophytes but were rather tapped into the groundwater which occurs between approximately 41 and 50 inches on the site. In that memorandum I proposed a program that would provide additional data to further support the hypothesis.

In your letter dated January 13, 2009, relative to data collection you noted the following:

> *Given the documented surface hydrology, hypothesizing that the wetland plants on the site must rely on ground water is unnecessary and unconvincing.*

Provided below is a summary of the data/information that I have collected to date that I believe is both convincing and very necessary to the discussion of whether the subject site supports wetlands and that illegal impacts to wetlands or wetland vegetation occurred on the site.

**Background**

The hypothesis that saltgrass functions as a phreatophyte on the subject site is well supported in the scientific literature and during the last 14 years, I have observed this phenomenon on many sites, most notably on Rancho Mission Viejo in south Orange County where I have conducted extensive delineation work and rare plant surveys since the mid-1990s. I have also observed this at other south Orange County sites including Talega, Marblehead, and Forster Ranch, sites which support groundwater driven alkali wetlands, including a variety of slope wetlands that support saltgrass (and often pickleweed). Often, on these sites, I have observed saltgrass, pickleweed (though less often) and other species such as Mexican rush (*Juncus mexicanus*) growing in "upland" areas dominated by coastal sage scrub upslope of slope wetland discharge points, where it was apparent that the saltgrass (or other "wetland" plants) were tapped into subsurface

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lenses of water that ranged (based on elevations) up to 6 or 8 feet below the surface. In other instances, such as at Talega, saltgrass and pickleweed were observed growing on terraces three to four feet above areas that exhibit wetland hydrology, indicating that they were tapped into deeper subsurface water.

Beginning in 1998, I had the opportunity to oversee a substantial wetland restoration effort in the Gobernadora Ecological Restoration Area (GERA) on Rancho Mission Viejo, an area which I was able to monitor for surface and subsurface hydrology for a couple of years prior to implementing the restoration program. During the monitoring, I determined that there was substantial shallow groundwater in portions of the proposed restoration areas and project grading was designed to locate the ground surface of the wetlands within a few to 24 inches above the seasonally high groundwater table. Following grading and installation of the plant material, which included extensive areas of saltgrass in the "drier" areas, we installed piezometers (i.e., shallow monitoring wells) to document the hydrology as part of the five-year monitoring program. We ultimately found that the saltgrass thrived in areas where the groundwater ranged from 36 inches during the dry season up to 18 inches during a typical wet season. Saltgrass also thrived on higher berms where the groundwater was an estimated four to six feet below the surface throughout the year. This opportunity to monitor groundwater levels and the response of saltgrass (and a variety of other species such as Mexican rush) provided empirical data that saltgrass often functions as a phreatophyte, which as noted has been well documented in the scientific literature.

More recently, I have been involved in a number of jurisdictional delineations that have included extensive areas of non-tidal areas dominated by pickleweed. While some of these areas exhibit wetland hydrology, which allows for the persistence of the pickleweed, other areas clearly were lacking in both wetland hydrology and hydric soils and in many cases, failed to exhibit a predominance of wetland indicator plants. Because saltgrass was often a component of the vegetation in these areas along with the pickleweed, it led me to consider whether pickleweed might function as a phreatophyte under certain circumstances. This project has provided an opportunity to further investigate whether pickleweed does in fact function as a phreatophyte on sites that lack wetland hydrology but which have at a minimum, seasonally high groundwater or saturated soils.

To further test the potential for pickleweed to function as a phreatophyte, GLA reviewed three sites that entirely or in large portions clearly lack wetland hydrology and hydric soils. A detailed discussion of each site is provided below following the methods section.

On each of the three sites, GLA has collected detailed data regarding hydrology, soils and vegetation. At each site, a number of auger holes were examined to depths of 50 inches to evaluate the potential for permanent groundwater, seasonal groundwater, and/or zones of saturated soils. In most cases, auger sampling was conducted within areas of dense monocultures of pickleweed or adjacent to large individual pickleweed plants so as to rule out the possibility that roots found at depth could be associated with other species. The auger samples were carefully examined for living roots.

**Results**

The three sites represent a range of conditions with the driest site (Upland Pickleweed Site 1) [Exhibit 1] exhibiting a complete lack of wetland conditions, including vegetation, soils and hydrology, and the wettest site (Upland Pickleweed Site 3) [Exhibit 2], exhibiting a mosaic of upland and wetland conditions with pickleweed growing in both upland and wetland areas.

**Upland Pickleweed Site 1** is within the Upper Newport Bay Ecological Reserve, at an elevation approximately fifteen feet msl and consists of fill or dredge spoils. This area entirely lacks a predominace of wetland indicator plants, hydric soils and wetland hydrology. The area is dominated by upland vegetation with tocalote (*Centaurea melitensis*, UPL), Black mustard (*Brassica nigra*, UPL), summer mustard (*Hirschfeldia incana*, UPL), white sweet clover (*Melilotus alba*, FACU), red brome (*Bromus madritensis rubens*, UPL), ripgut (*Bromus diandrus*, UPL), soft chess (*Bromus hordeaceus*, FACU), coastal sagebrush (*Artemesia californica*), bedstraw (*Galium aparine*, UPL), and common pickleweed (*Salicornia virginica*, OBL), which accounts for approximately 10-percent cover over the area that covers approximately three acres [Exhibit 3, Photographs 1-3]. The site exhibits a high degree of uniformity and four sampling points, with detailed soil analysis conducted at each location. Data Sheets for each location are provided in Appendix A and labeled as Upland Pickleweed Sites 1a, 1b, 1c, and 1d. Table 1 below, provides a summary of the findings that are included in more detail within the data sheets and Exhibit 1 depicts the location of the data points.

**Table 1: Summary of Observation of Upland Pickleweed Site 1**

| Soil Profile Data | Upland PW1a | Upland PW1b | Upland PW1c[1] | Upland PW1d |
|---|---|---|---|---|
| Non-hydric Loamy Sand | 0-14" | 0-30" | 0-18" | 0-14" |
| **Clay Layer(s) with Roots** | | | Clay layer with Roots at 25" and 2nd clay layer with roots at 44" | Clay layer with Roots at 18-22" and 2nd clay layer with roots at 46-49" |
| **Clay Layer with redox immediately above** | Clay Lens at 28" with sandy redox between 22-28 | Clay Loam at 18" with layer of sandy redox at 14-18 | | |
| **Significant Wetness or Saturation** | Moist clay at 47-54 | Saturation at 49-52" + αα-dypirdyl | | |

For Upland Pickleweed Site 1, the upper 14 to 30 inches consists of a loamy sand, 2.5Y 3/2 with no redox concentrations or other indicators of hydric soils. Below the loamy sand was typically a mixture of dredged materials, consisting of silts and clayey soils mixed with layers or pockets of sand, which in many cases exhibited relictual redoximorphic features. Of particular note was the occurrence at each location of clay lenses with living roots at variable depths (e.g., depths ranging from 18 inches to 46+ inches) [Exhibit 3, Photographs 4-7] or clay lenses with sandy redox immediately above the clay indicating that water was locally perched.

**Upland Pickleweed Site 2** is located in southwest Newport Beach, near the mouth of the Santa Ana River. This area is dominated by alkali heath (*Frankenia salina*, FACW), which appeared to be highly stressed, and myoporum (*myoporum laetum*, UPL), which also appeared very stressed with numerous withered leaves. Pickleweed accounts for about 10- to 15-percent cover and showed no signs of stress.

At Upland Pickleweed Site 2, the upper 30 inches consists of fill with a matrix of 2.5Y3/3 and no redoximorphic features. Gravel was common throughout this upper 30 inches making augering difficult. The soil was very dry in the upper 18 inches with slight moisture between 18 and 30 inches. At 30 inches, the fill transitioned abruptly to tidal flat soils, which is consistent with the soil map for this location. From 30 to 42 inches the clayey soils are moist with redoximorphic features. Importantly, prominent live roots were common between 30 and 42 inches, with many prominent roots still visible at 42 inches, suggesting that either the pickleweed, or alkali heath are tapped into the moist clay soils between 30 and 42 inches, indicating the phreatophytic character of the vegetation (the auger hole was place between two robust individuals of pickleweed. Given the highly stressed character of the alkali heath and the robust healthy condition of the pickleweed, and the proximity of the auger pit to the pickleweed, it is likely that

[1] For both PW1c and PW1d, pickleweed was the only perennial plant species in the vicinity of the auger hole. All other plants were annuals and rooting depths could be easily seen in soil cross section to only four of five inches.

the roots encountered in the moist clay were associated with the pickleweed, confirming its phreatophytic character.

**Upland Pickleweed Site 3** is located immediately east of the subject Cabrillo RV Parking Area, between the trailer park and Hamilton Street (extended) and west of Newland Street (referred to as "Newland Site"). This area has been subject to an exhaustive investigation associated with a Master's Project by a CSU Fullerton graduate student. The 17-acre area includes approximately 12 acres of nearly monocultural stands of pickleweed as well as an area of about three acres at the eastern end of the site that includes pickleweed growing with upland grasses and forbs. The eastern one-quarter of the site consists of approximately 18 to 24 inches of fill, overlying the native soils, while the western three-quarters of the site exhibit areas of no fill or areas of limited fill (typically no more than six inches). Portions of the eastern one-quarter of the site, while supporting patches of pickleweed are upland, lacking wetland hydrology, hydric soils and a predominance of wetland indicator plants.

The lower, western three-quarters of the site, includes concave or depressional areas with wetland hydrology and hydric soils and flat or slightly convex surfaces where wetland hydrology and hydric soils are lacking. As with sites 1 and 2, we have found both pickleweed roots at depth as well as saturated zones. In some instances, we have found areas of roots concentrated in moist zones at depths of 40+ inches.

Upland Pickleweed Site 3 is the most complex of the sites and includes upland areas dominated by upland grasses and forbs with scattered patches or pickleweed and alkali heath (*Frankenia salina*, FACW). The eastern one-quarter of the site consists of fill material that overlays native wetland soils and this area clearly lacks wetland hydrology, hydric soils and other than a few localized dense patches of alkali heath or pickleweed, does not exhibit a predominance of hydrophytes.

The western three-quarters of the site are generally 18 to 24 inches lower than the eastern quarter of the site and support predominately pickleweed with scattered patches of alkali heath. Some of these areas have exhibited ponding during the 2008/2009 rainy season; however, no areas have exhibited reducing conditions in the upper 12 inches. Hydric soil indicators are common throughout this area; however, these likely formed before hydrological modifications eliminated all sources of hydrology to this area other than rainfall.

Table 2 below, provides a summary of Auger holes that support the pickleweed/phreatophyte hypothesis. Newland Site Data Point 2 exhibited no hydric characteristics in the upper 15 inches, with a clay layer at 15 inches. Pickleweed was the only plant in this area and roots were concentrated in the zone immediately above the clay layer, which also exhibited a positive test with alpha alpha-dipyridyl, indicating saturation. Similarly at Newland Site Data Point 21, thick roots were observed between 13 and 17 inches (similar to the root shown in Photograph **) with

many living roots concentrated in a zone of high moisture between 28 and 35 inches (pickleweed was again the only plant in the area). At the Newland Site Data Point 25, living roots were observed throughout the soil profile with roots concentrated between 24 and 29 inches just above a zone of saturation observed between 29-36 inches. Again, pickleweed was the only plant growing in the area.

**Table 2: Summary of Observation of Upland Pickleweed Site 3**

| Soil Profile Data | Newland 2 | Newland 21 | Newland 25 |
|---|---|---|---|
| Non-hydric Sandy loam | 0-15" | 0-13 (fill) | 0-24 loamy soils |
| Clay Layer(s) with Roots | Clay layer starts at 15" with Root concentrated at interface | Thick root at 13 to 17 inches | Silty Clay from 24-29 with living roots |
| Clay Layer with redox immediately above | N/A | NA | N/A |
| Significant Wetness or Saturation | + αα-dypirdyl at 15-25" and 36 to 48" | 28-35 inches moist zone with numerous living roots | Perched zone with saturation between 29-36" living roots above to about 29 inches. |

## Conclusions

The purpose of this memorandum is to show that under certain conditions, pickleweed is a facultative phreatophyte and that this provides the best explanation as to why it occurs on the Cabrillo RV Parking Area, where it could not be functioning as a hydrophyte due to the absence of wetland hydrology.[2] As demonstrated in the February 23, 2009 GLA Technical Memorandum that addresses the hydrology of the RV Parking Area, the amount of water available to plants on the site is very limited due to the soils that have been compacted due to decades-long use as an RV Parking Area, and the high evaporation rates, which leave little water for the plants.

A point of comparison with other plant communities is worth noting. In coastal southern California, the dominant hillside community is coastal sage scrub, a community composed of largely drought deciduous shrubs. In areas with loamy or sandy soils, approximately 80-percent of the precipitation that falls, occurs at rates that are less than the percolation rates of the soil meaning that a large measure is stored in the soil and becomes available to the plants. Only about 20-percent of the rainfall exceeds percolation rates and results in runoff. Even with a large proportion of the rainfall available for the plants, most of the species (e.g., California encelia,

[2] Because saltgrass is well documented in the scientific literature as a phreatophyte we have not included detailed discussions regarding its functioning on the Cabrillo site; however, see the discussion on Page 6 of the February 8, 2009 GLA Technical Memorandum that addresses the hydrology of the RV Parking Area and behavior of saltgrass.

California sagebrush, and black sage) exhibit leaf drop and drought stress by late summer or early fall. This is true for Upland Pickleweed Site 1, where species such as California sagebrush show drought stress and the pickleweed looks unexplainably healthy and was in fact in flower on July 26, 2008. The last significant rainfall occurred over five months before this photograph when 1.68 inches fell during the period of February 20-25 (March total = 0.04, April total = 0.02 and May total = 0.08). As noted above, GLA found pickleweed roots at depths of 44 and 46 inches at separate locations and also found soil saturation at 49 inches at a third location all factors consistent with pickleweed healthy and in flower in late July, five months after the last meaningful rainfall.

While Upland Pickleweed site 3 contains some wetlands, much of the site is demonstrably upland, failing to meet any of the wetland criteria/parameters. At three locations on this site, pickleweed roots were found at depths of 14 inches, 24-29 inches and 20-35 inches, in each case associated with saturated or wet soils. The difference in depth between this site and Upland Pickleweed Site 1 appears to be due to difference in depth of clay zones or zones where moisture is high. In conjunction with Upland Pickleweed Sites 1 and 2, we see a substantial plasticity in pickleweed to adapt to site-specific conditions in order to survive and persist.

The 1.2-acre Cabrillo RV Parking Area is functionally much drier than Upland Pickleweed Site 1 because on Upland Pickleweed Site 1, the upper 14-30 inches of soil is loamy sand with little slope meaning that all of the rain that falls on the site, infiltrates quickly, passes through the root zone of most of the annual plants and remains available at depth for pickleweed and the low number of deeper rooted shrubs. By way of contrast, nearly all of the rain that falls on Cabrillo is lost to evaporation and unavailable to the plants. I draw two important conclusions from this:

First, as already noted, pickleweed has the ability to utilize deep water, functioning as a phreatophyte. Second, and what is even more interesting, is the ability of pickleweed to survive on ambient rainfall on such dry sites as Upland Pickleweed Site 1. It would appear that while it is common on the site, it is not dominant, and likely at carrying capacity on this site [see Photographs 1 and 2]. Given the rooting depths detected and the data for saltgrass that indicates the ability to survive on 13+ inches of water where groundwater at about 48 inches, it appears that pickleweed has very similar ecological characteristics as saltgrass, with the ability to survive on upland sites under a narrow set of conditions. The Cabrillo 1.2-acre RV Parking Area is far too dry to support pickleweed in the absence of high groundwater (i.e., approximately 39-48 inches in the area of the plants); however with the high groundwater, pickleweed and saltgrass thrive on the site.

In my February 23, 2009 Memorandum, I noted the following relative to the occurrence of pickleweed and saltgrass in areas that lack wetland hydrology such as the Cabrillo RV Parking Area:

1. The plants are functioning as phreatophytes, a conclusion consistent with the groundwater levels on the site, or
2. The plants exhibit high levels of drought tolerance and are not reliable indicators of wetland conditions on problem sites such as the subject site, or
3. a combination of 1 and 2 above, which still leads to the conclusion that on this site, the saltgrass and pickleweed are not reliable indicators for the presence of wetland conditions under all circumstances.

Data from Upland Pickleweed Sites 1, 2, and 3 indicate that in general, #3 above is the best explanation for the behavior of these plants on many or most upland sites where they occur, as it appears that these plants exhibit a range of abilities including:

1. The ability to tap into persistent sources of groundwater as is well documented for saltgrass and as observed on the Cabrillo RV Parking Area.
2. The ability to tap into sources of seasonal groundwater.
3. The ability to persist on sites during periods of drought in the apparent absence of substantial moisture (e.g., drought years such as 2006/2007 when even seasonal groundwater would not be available).

Nevertheless, because of the persistent groundwater on the Cabrillo RV Parking Area site coupled with the very low available water derived from surface hydrology, I believe that the groundwater is the source of hydrology of the plants and that "drought tolerance" is not a factor in the persistence of the saltgrass and pickleweed on this site.

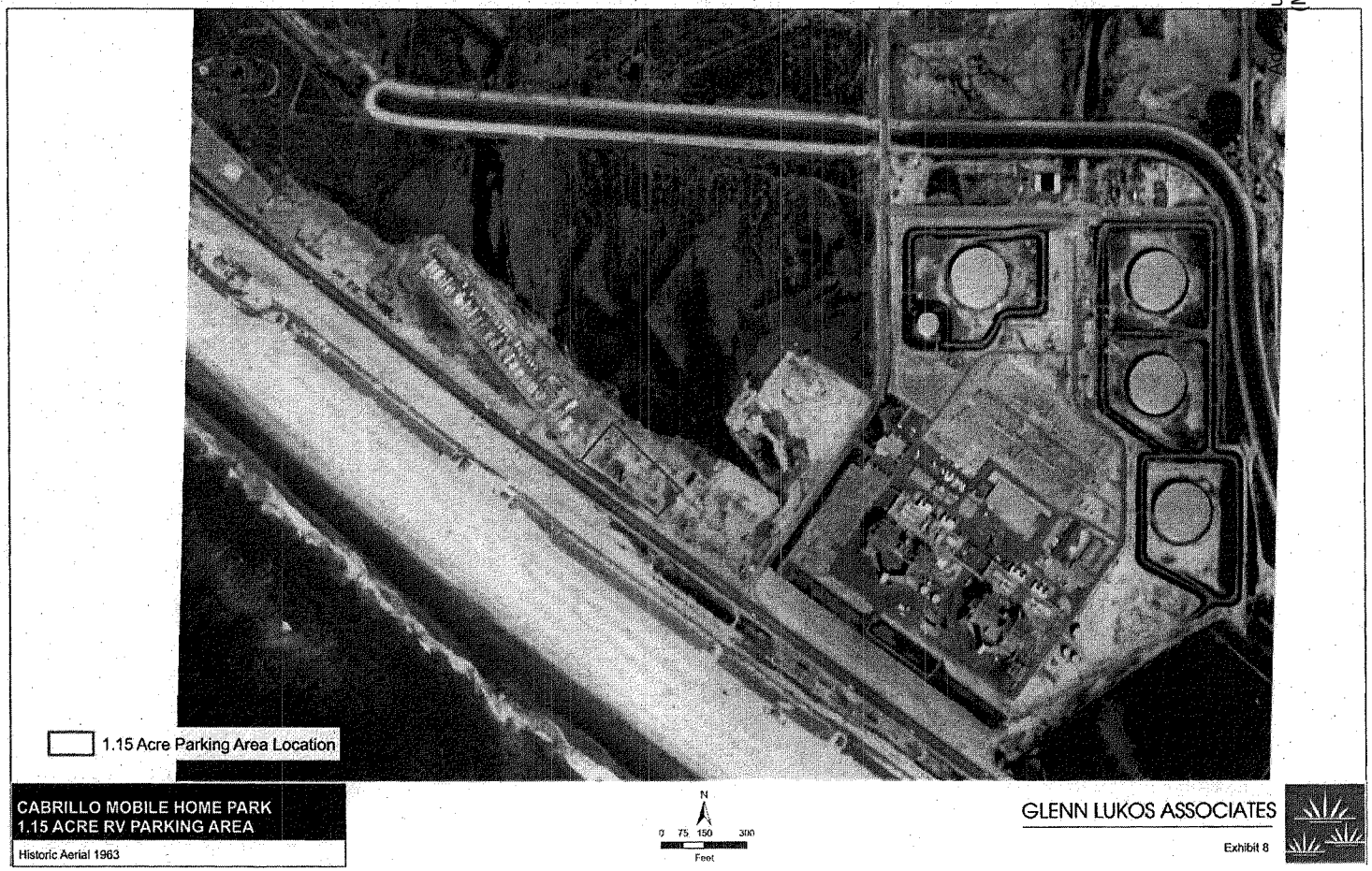
1.15 Acre Parking Area Location
CABRILLO MOBILE HOME PARK
1.15 ACRE RV PARKING AREA
Historic Aerial 1963
N
0 75 150 300
Feet
GLENN LUKOS ASSOCIATES
Exhibit 8

**EXHIBIT 3A**

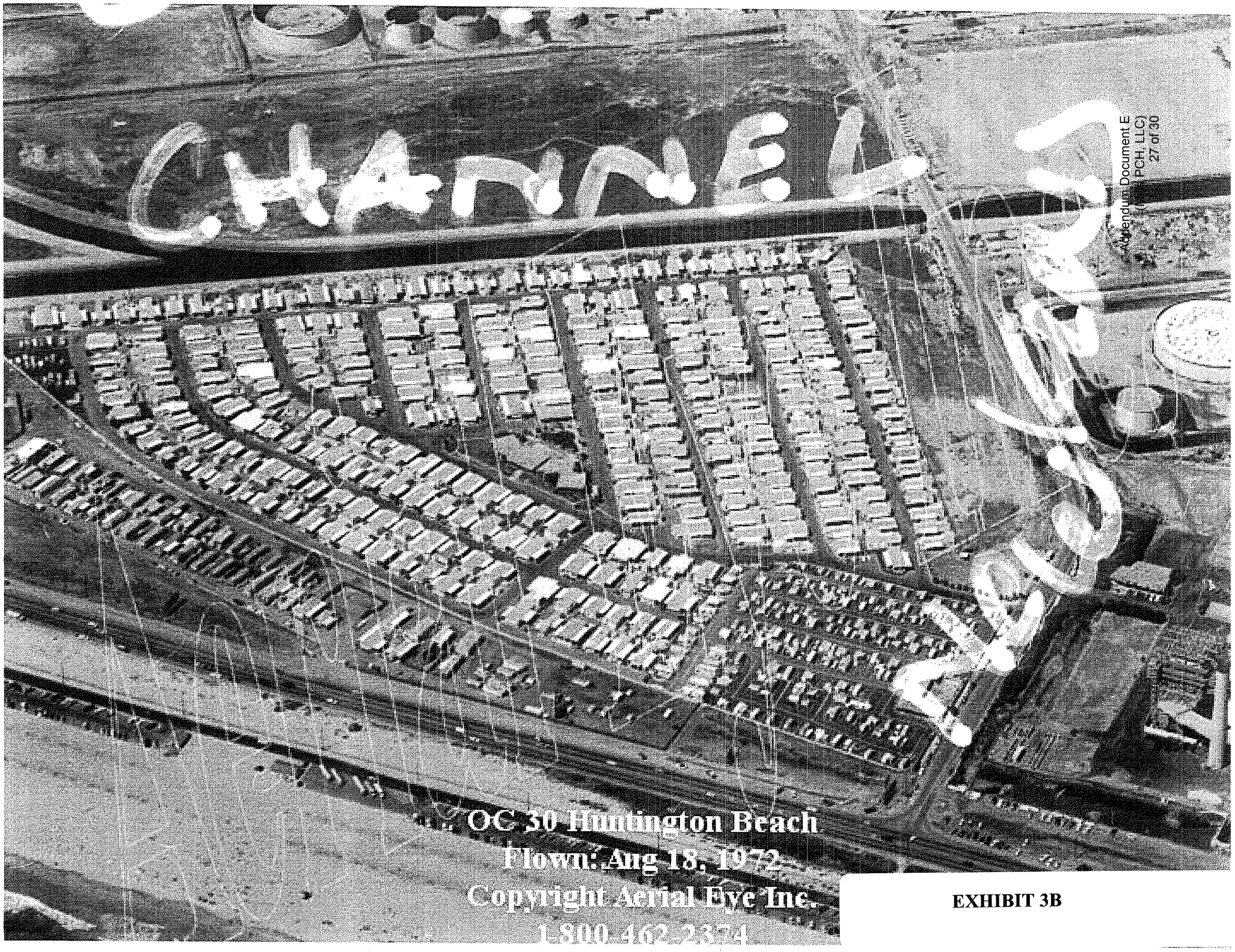
OC 30 Huntington Beach
Flown: Aug 18, 1972
Copyright Aerial Eye Inc.
1-800-462-2374



**EXHIBIT 3B**

EXHIBIT 3C

Addendum Document E
(Mills PCH, LLC)
28 of 30

2/17/1975

12/28/1976

**EXHIBIT 3D**

10-2002

EXHIBIT 3E

# MEMORANDUM

GLENN LUKOS ASSOCIATES
Regulatory Services

**PROJECT NUMBER:** 08380002CABR

**TO:** Andrew Willis
Dr. Jonna Engel

**FROM:** Tony Bomkamp

**DATE:** April 6, 2009

**SUBJECT:** Responses to Dr. Jonna Engel Memorandum dated March 26, 2009 Addressing Purported Wetland Conditions at Cabrillo RV Parking Area, Huntington Beach, California

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I have reviewed Dr. Engel's March 26, 2009 Memorandum attached as Exhibit 12 to the Coastal Commission Staff Report dated March 26, 2009, Items TH11 and TH12, that asserts the presence of wetlands on portions of the Cabrillo RV Parking Area.

## I. OVERVIEW COMMENTS ON THE ENGEL MEMORANDUM

What is in question is whether the area or areas on the subject site that exhibit brief periods of ponding (a few days to a approximately two weeks during normal rainfall years) actually meet the definition of wetlands provided in the Coastal Act or City of Huntington Beach LCP. Each definition includes the following:

1. The land supports a predominance of hydrophytic cover;
2. The substrate is predominately hydric soil;
3. Where the substrate is non-soil, it must be saturated or covered with shallow water at some point during each growing season.

Number 3 does not apply in this case because the site does exhibit a cover of soils that were placed as fill in the late 1950s and early 1960s. Therefore, the question reduces to whether the plants on portions of the site are growing as hydrophytes or whether the predominance of the soils are hydric. A positive answer to either of these for any portion of the site would lead to a conclusion that such areas are wetlands under the Coastal Act.

Implicit in the definition of hydrophyte and hydric soils is the presence of anaerobic/reducing conditions during most years. Most plants that occur in wetlands are also capable of growing in non-wetland areas given suitable conditions, so the presence of plants with an indicator status of FAC or wetter is no guarantee that such a site actually exhibits anaerobic/reducing conditions in

most years. Similarly, soils may become wet or saturated for brief periods during most years; however, such wetness may not be of sufficient duration to lead to anaerobic/reducing conditions. For example, Dr. Michael Vepraskas a nationally recognized expert and researcher on hydric soils from North Carolina State University has shown that reducing conditions can take weeks or months to form based on site-specific conditions. To this point, on another site in Huntington Beach, Glenn Lukos Associates (GLA) conducted intensive sampling of saturated soils within an area that was being evaluated for its wetland status and found that it took from 27 to 35 days for reduced iron to be detected. Dr. John Dixon, discussed this finding in the associated Staff Report where he observed:

> *Although there remains considerable uncertainty in the estimates of the time required for the development of anaerobic conditions, the available evidence suggests that it likely requires more than 7 days of saturation or inundation for anaerobic conditions to develop at AP and WP, probably due to the low organic content of the soil at WP and relatively high pH at both locations.*[1]

The fill material that comprises the upper 14+ inches (17-inch average) on the Cabrillo RV Parking Area exhibit very low organics, consisting of sands, gravels and other debris, a condition that would significantly extend the time required for anaerobic conditions to form.

Dr. Engel states in her memorandum: "…the Army Corps of Engineers defines wetland hydrology as 14 days of continuous inundation or shallow soil saturation in most years, and the National Technical Committee on Hydric Soils (NTCHS) accepts 7 days of inundation as an indicator of hydric soils." What she fails to note, and this is a critical point, is that the Natural Resources Conservation Service also notes the following:

> *Only criteria 1, 3, and 4 can be used in the field to determine hydric soils; however,* ***proof of anaerobic conditions must also be obtained for criteria*** *1,* ***3,***[2] *and 4* ***either through data*** *or best professional judgment.*[3]

While Dr. Engel is correct that the NTCHS accepts 7 days of inundation as an indicator of hydric soils (it is Criteria 3 "Soils that are frequently ponded for long duration or very long duration

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[1] Dr. John Dixon. 2006. Memorandum addressing Subject: Wetlands at Shea Homes Parkside, addressed to Meg Vaughn, dated July 27, 2006.

[2] Criteria 3 is stated as follows: Soils that are frequently ponded for long duration or very long duration during the growing season. Long Duration = 7 days to one month and Very Long Duration is greater than one month. http://soils.usda.gov/use/hydric/criteria.html

[3] http://soils.usda.gov/use/hydric/overview.html. In many instances, the 7-day period of inundation is accepted because additional data has not been collected and anaerobic conditions are assumed (whether or not such conditions are actually present); however, in cases such as this where site specific data show that reducing conditions have not developed, than it is not consistent with the guidance from the USDA to make a positive determination for hydric soils, or by extension, that the vegetation is hydrophytic.

during the growing season"), in order to rely upon this to support a wetlands determination, NTCHS also requires the documented presence of anaerobic conditions. As discussed in more detail below, GLA tested the soil throughout the periods of ponding during the 2008/2009 rainy season that were referenced on page 5 of Dr. Engel's memorandum and reducing conditions were not detected. Without evidence of reducing condition there are no wetlands. This is a conclusion supported by every definition and delineation methodology for wetlands, including the Coastal Commission's "one parameter" method.

In the February 28, 2009 Wetland Status Report that was submitted with the Statement of Defense, we stated that a "cook-bookish" approach for this site was not appropriate due to the history of the site. Another way to state this is that any accurate evaluation of the site could not be superficial: wetland indicator plants also grow in uplands, dirt parking lots pond water. Neither condition alone would support a finding that the uplands or the dirt lot should be defined as a wetland. In order to determine whether the ponded water is actually promoting the growth of native vegetation as hydrophytes (as opposed to "phreatophytes"), a more careful analysis is required. When that analysis is applied to the Cabrillo RV Parking Area, it supports the conclusion that the site does not support areas of wetland.

Set forth below are:

- Additional information regarding the assumptions and approaches used by GLA in evaluating the site;

- Additional discussion regarding the site conditions and how the unpermitted maintenance affected the site, as this would seem to be a critical part of the discussion as it greatly influences the ultimate conclusions that derive from the data

- Specific discussion of hydrology, soils and vegetation, some of which expands upon the previously-submitted materials.

## II. ASSUMPTIONS AND APPROACHES USED BY GLA TO EVALUATE THE CABRILLO RV PARKING AREA

As a wetland scientist, when I approach a difficult or "tricky" site, the first question I ask is: "how do I explain the conditions I am observing?" For this site, given its history, the first question was: "how do I explain the presence of pickleweed (*Salicornia virginica*, OBL) and saltgrass (*Distichlis spicata*, FACW) within a dirt parking lot that appears to lack wetland hydrology (or at least does not exhibit an obvious source of wetland hydrology such as tidal influence, stream discharge, or even dry season urban runoff)?" In asking such questions, I draw on 20 years of wetlands delineation experience and over 30 years of botanical experience.

I do not treat the 1987 Manual nor the Arid West Supplement, Version 2.0 as "cookbooks" but as sources of accumulated scientific knowledge.

Years of observing plants tell me that pickleweed and saltgrass occur in non-wetland areas on a regular basis. Saltgrass has an indicator status of FACW meaning that it occurs in non-wetland areas up to 33-percent of the time. Furthermore, while pickleweed has an OBL status, years of observations tell me that its occurrence in uplands is not uncommon (see discussion below). It is also worth noting that the U.S. Army Corps of Engineers ("Corps"), which is currently in the process of updating the plant list is proposing to re-designate pickleweed (*Salicornia virginica*) as a FACW.[4] Based on my extensive experience, it is not appropriate to assume that either of these plants is growing as a hydrophyte where obvious or compelling sources of wetland hydrology are absent.

One of the best indicators that a site exhibits wetland hydrology is the presence of hydric soil indicators. Therefore, the first thing I looked at upon beginning my investigation of the site was the soils. In fact, Exhibit 3 of the February 28, 2009 Wetland Status Report depicts soil sampling locations distributed evenly throughout the site. The function of these pits was to provide data from across the site, such that differences in localized areas (e.g., identifying the potential presence of hydric soil indicators) would greatly inform conditions on the site. It was though examination of these pits in conjunction with examination of the excavated trench that it was possible to map the depth of the fill material placed on the site during the 1950s and 1960s at up to 20 inches and averaging about 17 inches. This was important because it indicated that any historic wetland "surface" had been covered by sufficient fill to potentially convert the area to upland. And, in fact, the upland character of the site was confirmed in that there was no active hydric soil formation occurring anywhere within the RV Parking Area based on the presence of indicators. I further noted that the strip of vegetation along the fence that runs parallel to Pacific Coast Highway was mapped as "Beach" on the USDA Soils map, which coincided with the area of highest density of saltgrass. I also noted that this area exhibited a slight upward slope, sufficient to prevent any ponding or surface-generated wetland hydrology.

During the early stages of my analysis, these soil/hydrology observations fed back into the vegetation question: if the site lacks wetland hydrology (at that point in the investigation, hydrology was still an open question), is there another explanation for the presence of pickleweed and saltgrass?

An obvious solution immediately came to mind for the saltgrass: it could be tapped into a groundwater source. In order to test this, I augered holes at various locations on the site and initially found groundwater at depths of 43 to 50 inches (monitoring over the last year has caused

[4] Personal Communication with Mr. Jae Chung. U.S Army Corps of Engineers, Tony – get date.

a slight revision to 39 to 50 inches)[5], providing substantial support that the saltgrass was indeed functioning as a phreatophyte. (I address in greater detail below Dr. Engel's critique of this set out at page 7 of her memorandum.)This caused me to then question whether the pickleweed could also be functioning as a phreatophyte. I suggested this as a working hypothesis during our field visit on July 7, 2008 and Dr. Engel asked if I had actual evidence for this and I indicated that I did not but would pursue additional data to support (or falsify as dictated by the data) this hypothesis. As set forth in Appendix 3 of the February 28, 2009 Wetland Status Report, I found compelling evidence that pickleweed behaves as a facultative phreatophyte and that it can send roots to depths of 46 inches into zones of perched water or zones of sufficient moisture to allow the plants to persist in obvious upland conditions.

Before addressing specific issues relative to the hydrology, soils and vegetation, it is necessary to address the conditions of the site both before and after the unpermitted work performed in late February 2008 as assumptions regarding the effects of the unpermitted work are critical in accurately answering the question as to whether there are wetlands associated the RV Parking Area.

## III. THE ENGEL MEMO INACCURATELY DESCRIBES THE EFFECTS OF THE UNPERMITTED WORK

Based on the numerous soil pits that GLA evaluated on the RV Parking Area, it was apparent that the soil profile was not disturbed by the unpermitted work. Clearly, some spoil piles ranging from an inch or two to well over 12 inches were left on the approximately eastern one-third of the site; however, these spoil piles were left on top of the generally undisturbed surface that was unaffected by the work performed on the site.

During the teleconference that you, Dr. Engel, Dr. Dixon and I participated in onTuesday, March 17, 2009 in Beachfront's continuing efforts to work with staff, Dr. Engel indicated that it was her opinion that the soil profile on the site had been significantly disturbed by the unpermitted maintenance activities that occurred in late February 2008. Dr. Engel also stated that as much as the upper 12 inches of the soil profile had been disturbed and then recompacted by machinery following the work. Implicit in Dr. Engel's assertion is the assumption that prior to the work, the soils were not compacted prior to the work and that it was specifically because of the work and associated compaction that the site exhibits the current condition (a position that you also taken and included in the Cease and Desist Order).

[5] Appendix 3 attached to the February 28, 2008 Wetland Status Report, provides detailed discussion of observations of saltgrass functioning as a phreatophyte. See additional discussion below regarding the extensive literature on saltgrass as a phreatophyte.

As I noted in my Memorandum dated March 23, 2009, immediately after completing the teleconference, I contacted Lawson & Associates Geotechnical Consulting (LGC), a highly respected geotechnical firm, and requested that they analyze the soil conditions on the site. LGC conducted non-invasive soil compaction tests on the site as well as making general observations. Their report was submitted to you in the Statement of Defense. The following is a summary of both my observations as well as those by LGC.

1. The upper 12+ inches of the substrate on the site is obvious fill that has been highly compacted due to years of use as a RV parking and storage facility and ongoing maintenance.
2. The soil profile was not generally affected anywhere on the site other than the trench; except for the upper two or three inches in localized areas which were subject to "scarification" by the equipment.
3. The (approximately) eastern one-third of the site exhibits spoil material from the excavated trench that was left on top of the original surface, which was not significantly disturbed during the subject work other than the top few inches due to scarification by the equipment.
4. The soil compaction observed on the site could not be achieved by the equipment pictured in the photograph that you transmitted to me just before our 3:00 p.m. call on March 17th, and as noted above is consistent with the long history of the site as a parking area. The final table in the LGC Report includes the soil compaction data that, based on nine sample locations spread evenly around the site, range from 90- to 100-percent with an average of 96.4 percent.

I note that neither the March 20, 2009 LGC Report nor my March 23, 2009 Memorandum are referenced in Dr. Engel's March 26, 2009 Memorandum. This is unfortunate as it appears that you and Dr. Engel share grossly inaccurate perceptions regarding the "before" and "after" conditions relative to the February 2008 unpermitted work and the continuing inaccurate references to "soil compaction" resulting from the unpermitted work

In her March 26, 2009 Memorandum Dr. Engel describes the unpermitted work as follows:

> *The grading eliminated all vegetation and disrupted the soil column to a depth of 8 to 12 inches in some areas (Figure 4). The 2-foot deep trench drains water from the site, thereby altering the hydrology (Figure 5). In addition, soil from the trench was side-cast and surface soils compacted with a roller (Figure 6).*

Exhibit 1, Photographs 1 and 2 are site photographs from January and December 2006 showing the surface conditions prior to the February 2008 work. With the exception of the very small patches of native vegetation, the site was highly maintained and exhibited a well-compacted surface. Exhibit 1, Photographs 3 and 4 are equally informative. Photograph 3 was taken on the

first day of work and is looking at the area where the small patch of pickleweed was removed. What is noteworthy is that this work did not disturb the soil profile as is evident from the roots that are clearly seen in the photograph. The top of the plants were scraped off and the roots and soil profile left intact. Interestingly, the truck pictured in the upper left of the photograph was able to drive across the wetted surface (over an inch of rain in the preceding three days) without leaving a rut (only minimal tire tracks), strong evidence of the highly compacted character of the soil. Photograph 4, taken the following day after another 0.53 inch of rain, similarly shows that only the upper couple of inches were disturbed (at most) and both the roller and tractor show no signs of sinking or leaving any imprint whatsoever.

The soil compaction tests and observations of LGC, who is expert on grading and soil compaction, state that the soil compaction that they observed on the site, could not be achieved through the pictured equipment but could only be achieved over significant periods of time.

The statement that the soil column was disturbed at depths of 8 to 12 in some areas references Figure 4a-c. These locations correspond best with LGC's data points 7, 5, and 6 respectively, two of which, 7 and 5 are within an area that was not subject to rolling after the unpermitted work was completed and yet they exhibit high levels of compaction with data point 5, pictured in 4b with a compaction of 99 percent, the same as data point 6, outside the area of the spoils and an area which may have received rolling.

These observations are important for two reasons. First, when the evidence is accurately evaluated, there is no indication that the soil column was disrupted at depths of 8 to 12 inches or that indicators of hydric soils would have been destroyed by the subject work. Rather, LGC's report and GLA's observations show that the 17 inches (average) of fill soil remains intact and exhibits no indicators for the presence of hydric soils. Secondly, as discussed below, the highly compacted soils (100 percent in some locations), greatly limit the infiltration of surface water resulting in drier than normal upland conditions, which was discussed in the "Conclusion" Section of Appendix 3 of the February 28, 2009 Wetland Status Report.

Finally, the statement on page 4 of Dr. Engel's March 26, 2009 Memorandum "(T)herefore current conditions are not indicative of the condition of the site prior to disturbance" is not accurate as it relates to the ability to evaluate soil conditions or the soil column and as discussed below is also not accurate relative to site hydrology or vegetation.

## IV. RESPONSES TO SPECIFIC STATEMENTS IN MARCH 26, 2009 MEMORANDUM

In the section below, I address specific statements in Dr. Engel's March 26, 2009 Memorandum. I have included each statement that I address in a different font.

> …the Army Corps of Engineers defines wetland hydrology as 14 days of continuous inundation or shallow saturation during most years, and the National Technical Committee on Hydric Soils accepts 7 days of inundation as a field indicator of hydric soils. The Commission's Regulations simply require sufficient water to support the growth of wetland vegetation or to promote the formation of hydric soils.

As noted above, both the wetland hydrology criteria of 14 days and the 7-day hydric soil criteria assume anaerobic conditions. The USDA is clear on this relative to making a determination for the presence of hydric soils in that "proof of anaerobic conditions must be obtained." In the absence of data or if in the judgment of the delineator anaerobic conditions are present, the 7-day standard may be used; however, where data show that anaerobic conditions are not present (as is the case here based on testing with alpha alpha dipyridyl), then wetland hydrology and hydric soils should not be assumed. Relative to the Commission's Regulations, "wetland vegetation" and "hydric soils" require the presence of anaerobic conditions. Plants with an indictor status of FAC or wetter, growing in moist conditions but that never become anaerobic are not "wetland plants" but would be growing as upland plants. Similarly, soils that are wet or even saturated for brief periods, that do not become anaerobic in most years, are not "hydric" soils by definition

> During the exceptionally wet winter of 2004-2005 (c. 28 inches of rainfall), there were several documented periods of long-term inundation and wet soil. It rained 1.07 inches on October 17 and photos document inundation October 19-24, 2004. The soil is wet in photos taken on November 4 and 6, 2004 (Figure 7). Rain fell almost every day from December 28, 2004 through January 11, 2005 and photos document inundation and wet soil January 15 through January 31,2005 (Figure 8). Sixteen days of inundation was captured in a series of photos taken between February 14 and March 2, 2005 (Figure 9).

During the teleconference with Dr. Engel and Dr. Dixon on March 17, 2009, we discussed the use of the 2004/2005 rainfall data and Dr. Engel agreed that because of the extraordinary rainfall during that season, use of this data was not appropriate for making a positive determination for the presence of wetland hydrology. It seems this was either forgotten or that Dr. Engel has chosen to ignore the guidance from the Corps that was cited in Appendix B of the February 28, 2009 Wetland Status Report and provided again in the italicized section immediately below (please note that references to exhibits and photos relate to Appendix B):

> ***Photographs from 2004/2005 Rainfall Year***
>
> *Photographs from the 2004/2005 rainfall year are clustered into three separate periods that coincide with three separate rainfall periods during the 2004/2005 rainfall season. These periods include photographs taken between October 19 and November 6, 2004; January 15 and January 31, 2005, and February 15 and March 2, 2005 [Exhibit 1 is the daily rainfall from Orange County Public Works].*

*What is important to note regarding these photographic periods is that each coincides with excessive rainfall periods:*

*October 17 – 28 = 6.03 inches of rain (60-percent of annual average rainfall in 12 days)*

*December 28 – January 11 = 9.38 inches of rain (93-percent of annual average rainfall in 15 days)*

*February 11 – February 23 = 8.22 inches of rain (82-percent of annual average rainfall in 13 days)*

*The 2004/2005 Rainfall Year was the wettest in the last 50 years [see Exhibit 2] with essentially all of the rainfall concentrated in the three periods that the photographs were taken. Regarding this point, the guidance in the Corps' Arid West Supplement Version 2.0 is very informative.*

> *a. Direct hydrologic observations. Verify that the plant community occurs in an area subject to prolonged inundation or soil saturation during the growing season. This can be done by visiting the site at 2- to 3-day intervals during the portion of the growing season when surface water is most likely to be present or water tables are normally high. Hydrophytic vegetation is considered to be present, and the site is a wetland, if surface water is present and/or the water table is 12 in. (30 cm) or less from the surface for 14 or more consecutive days during the growing season* ***during a period when antecedent precipitation has been normal or drier than normal.*** *If necessary, microtopographic highs and lows should be evaluated separately. The normality of the current year's rainfall must be considered in interpreting field results, as well as the likelihood that wet conditions will occur on the site at least every other year (for more information, see the section on"Wetlands that Periodically Lack Indicators of Wetland Hydrology" in this chapter). [Emphasis not in original]*

*Given that the photographs represent the wettest year in the last 50 years and were taken in rainfall clusters that coincided with the three wettest periods of the 2004/2005 season, drawing conclusions that the site exhibits wetland hydrology based on these photographs is not consistent with accepted practice as described in Version 2.0 of the Arid West Manual. One final point is worth noting that reinforces the conclusions that the site does not exhibit wetland hydrology. Due to the compacted soils on the site, water stays on the surface and quickly evaporates (see below for more detailed discussion). Site photographs from the 2004/2005 rainy season demonstrate this. The site photograph dated November*

> *3, 2004 was taken five days following 2.13 inches of rain that fell on October 27-28 and the November 3 photograph shows that ponding has already dissipated [Exhibit 3, Photograph 1]. Similarly, the photograph dated January 24, 2005, was taken 13 days following 3.41 inches of rain that fell on January 10-11, which ended a 9.38-inch rainy period that occurred between December 28 and January 11. By January 24, 13 days later, ponding had dissipated [Exhibit 3, Photograph 2]. Even in extreme rainfall years, ponding does not persist on this site once the rainfall has ended.*
>
> Total rainfall for the 2005-2006 wet season was 8.9 inches, a bit less than average. Photo documentation is patchy but inundation and saturation were documented from September 21 to 23, 2005 and on October 19, 2005 and again on January 10 and March 4, 2006 (Figure 10). The bulk of the wet season's rain fell in January, February, March, and April (1.25, 1.15, 2.45, and 2.01 inches, respectively) and although photo documentation is unavailable, several episodes of inundation and saturation likely occurred during this time.

While Dr. Engel notes photographic evidence of ponding, in no instances does she acknowledge that in each case, ponding was dissipated within a few days of the ponding events. Dr. Engel then noted that the "bulk of the wet season's rain fell in January, February, March, and April (1.25, 1.15, 2.45, and 2.01 inches, respectively), and although photo documentation is unavailable, several episodes of inundation and saturation likely occurred during this time." This is very misleading as these are monthly totals and it is important to note that during the entire four-month period, no single one-day event exceeded 1.07 inches and there were no three-day periods that exceeded 1.17 inches. In fact, the largest three-day event during this period occurred on January 1-3 when 1.17 inches of rain fell and within 7 days, ponding was not evident. Nevertheless, Dr. Engel concludes: "several episodes of inundation and saturation likely occurred during this time".

This conclusion is unfounded. Based on the largest (reference) event of 1.17 inches, a period for which we have photographic evidence and which demonstrably failed to account for ponding of even 7 days it is inappropriate to conclude that smaller events resulted in longer periods of ponding.

> The 2006-2007 wet season was extremely dry with a rainfall total of only 2.83 inches. On December 10, 2006, 0.28 inches of rain was recorded followed by no precipitation until 0.15 inches was [sic] recorded on December 17. Despite the small amount of precipitation, photographs taken on December 10 and 14 show standing water and the ground was still wet on December 16 (Figure 11).

December 14 does not show ponding; rather it shows surface wetness (discussed in additional detail below). By December 16, the soil is no longer saturated. Clearly, no case for wetland hydrology is possible from this data.

> The 2008-2009 wet season has totaled 8.42 inches to date, with 7.81 inches of rainfall between November 26, 2008 and February 22, 2009, a roughly normal amount for southern California. There is a daily photographic record for the periods November 26 - December 2, 2008, December 15,2008 - January 4,2009, February 6 - February 15, February 17, and February 19-22 (Figure 12). Three separate inundation events were documented, each followed by a long period when the soil was still wet (and perhaps saturated for an undeterminable period): (1) about 7 days of inundation (11/26 - 12/2) followed by about 12 days of wet soil (12/3 -12/14); (2) about 21 days of inundation (12/15 -1/4) followed by about 15 days of wet soil (1/5 -1/23); and, (3) about 15 days of inundation (2/6 to 2/22).

We concur that this is a period of normal rainfall when the entire season is considered; however, one period in question, December 15 to January 4 was not a normal period. In fact, the rainfall for December was approximately twice the normal. Specifically, according to Costa Mesa Station 219, approximately 2.87 inches of rainfall fell between December 15 and 23, accounting for 202 percent of the monthly average in a nine-day period. In accordance with the Corps' guidance referenced above, the "antecedent" conditions were double normal and this period should be discounted for use in making a positive hydrology determination.

GLA also conducted detailed hydrological monitoring during this period and conducted soil testing with alpha alpha dipyridyl to determine whether reducing conditions were present in the upper 12 inches. During each period of ponding that exceeded seven days, GLA tested the soil profile to a depth of 12 inches (saturation was never observed at depths below three inches) every few days until ponding and potential soil saturation was dissipated. A number of noteworthy observations were made during this period as recorded in Appendix 2 of the February 28, 2009 Wetland Status Report:

No reducing conditions were determined to be present. The final tests were conducted on February 20, 2009 when limited ponding was still present after 14-15 days of ponding and again on February 24, 2009 when ponding was completely dissipated. The testing on these two dates was very revealing for a couple of reasons. First, the tests continued to confirm the complete absence of reducing conditions, meaning that "wetland" conditions by definition were not present on the site during a normal rainfall year. Equally important, were the observations regarding saturation within the soil profile:

1. Within hours of the dissipation of ponding, soil saturation within the upper two to three inches was also no longer evident.

2. Even with a normal rainfall year, saturation was never deeper than three inches and as noted, reducing conditions were never detected in the upper zone when saturated.
3. The only area where any saturation was evident was the "scarified" zone on top of the compacted fill, which was present on the site prior to the unpermitted work in February 2008. If Dr. Engel's assertion that the soil profile was disturbed to 12 inches and then recompacted by rolling, one would expect that the compacted areas would be at the surface with deeper areas exhibiting less compaction. This is the complete opposite of what is actually observed on the site where a thin veneer of one to three inches has been loosened and is able to some hold water, whereas the compacted layer was "crumbly dry" below three inches when water was still ponded immediately above it.

Dr. Engel's notes in her memorandum that the inundation events were, "each followed by a long period when the soil was still wet (and perhaps saturated for an undeterminable period)."

There is absolutely no evidence for this assertion and it is completely fallacious. I personally dug numerous soil pits in or immediately adjacent to the ponded areas during the 2008/2009 monitoring period as well (focused on the three time periods that Dr. Engel indicated ponding to be present) as well as in the wetted areas within a day or two of the dissipation of ponding. Soil saturation does not last for more than a day following dissipation of ponding.

The reason that the pre- and post-work conditions and associated assumptions are so critical is because it is the historic compaction that has prevented wetland conditions from developing on the site. First, by preventing infiltration of surface water, the surface compaction has never allowed water to influence the soils, leading to the formation of hydric soils. Similarly, this compaction has ensured that nearly all of the water that reaches the vegetated portions of the site, evaporates and is not available to vegetation, creating conditions that are actually drier than a typical southern California upland area. Specifically, as noted in Appendix 2 of the Wetland Status Report, average rainfall for the site totals approximately 10.07 inches per year, with the majority (about 8.5 inches) falling between November 1 and March 31. Evaporation data indicates that during this same period, evaporation totals 17.48 inches meaning that because of the compacted soils, a high percentage of the water that reaches the site evaporates and is never available to the plants.

> The photographic record described above provides ample evidence that portions of this site are periodically under standing water for long periods, even long enough to satisfy the ACOE definition, and, as indicated below, that this frequency and duration was sufficient to support wetland vegetation.

To the contrary, none of the photographic evidence from 2004/2005, 2005/2006, or 2006/2007 demonstrates the presence of wetland hydrology. Specifically, 2004/2005 cannot be used because it was the wettest year in the last 50 years. The data from 2005/2006 is limited; however, the best rainfall reference period that can be validated with site photographs show

ponding dissipating in less than seven days. Finally, the 2006/2007 data show very limited ponding on the day of a rainstorm (not unexpected given the compaction of the soils) with no ponding four days later (and also no saturation for the reasons discussed above).

Finally, while the 2008/2009 data does show ponding, the December data is not useful for making a positive hydrology determination because it represents a rainfall period exceeding 200-percent of normal. More importantly, the other data, specifically, the February 2009 data collected by GLA indicated that even at the end of a normal rainfall year that reducing conditions were not present and that soil saturation does not occur for more than 24 hours following dissipation of ponding.

> The existing undisputed wetland on the 0.92-acre unfenced section of the Mills PCH, LLC property that is south of the 1.12-acre fenced area, is dominated by the wetland indicator plants pickleweed (Salicornia virginica; OBL) and saltgrass (Distichlis spicata; FACW). Photographs taken in the fenced area in 2004, 2005, and 2007 show vegetation in the areas that become inundated and saturated, that is predominantly pickleweed that appears to be intermixed with saltgrass; wetland habitat that is similar to the adjacent wetland (Figure 13). These plants are also now patchily colonizing the fenced area that was graded and cleared of all vegetation in February 2008, such that portions of the area continue to be wetland.

The presence of "wetland" conditions, including vegetation, requires the presence of anaerobic conditions during most years. As discussed above, detailed monitoring conducted by GLA in 2008/2009 found that even during periods of ponding, soils were not saturated below the immediate one to three inches due to the historic high levels of compaction, which in some areas reached 99 or 100 percent. This prevents the development of anaerobic conditions, the condition required for a positive determination for the presence of wetlands. As discussed in more detail below, the vegetation is not growing as "wetland" vegetation, specifically because such anaerobic or reducing conditions are absent.

Also, many of the photographs taken during the 2004-2007 time period show extensive areas of upland vegetation mixed with the pickleweed and saltgrass a condition consistent with current conditons, for example along the fenceline where the vegetation is predominately upland in character. Exhibit 1, Photographs 5, 6 and 7 show areas where upland and facultative plants (light green vegetation) surround the pickleweed, are common and may be predominant. This is important because it shows that there is not sufficient hydrology to exclude or limit the presence of upland plants as would be expected if periods of anaerobic conditions were present when many of the common annuals germinate (i.e., during the rainy season). Exhibit 1, Photograph 5 shows the area along the fence was dominated by upland grasses including bromes and oats, demonstrating that even in an extremely wet year, saturation is not sufficient to cause anaerobic conditions to develop that would in turn exclude upland species. For comparison, Photograph 8

is from March of 2009 (a normal rainfall year and conditions are no different following the disturbance.

> Mr. Bomkamp's decision to treat the site as "normal" is contrary to both common sense and the guidance provided by the Corps of Engineers. The fact that some vegetation has colonized is beside the point. The disturbance has so altered the site that current conditions cannot reasonably be considered to mirror the conditions that existed prior to the disturbance. The 'recent human activities', as evidenced by the series of photos presented above (Figures 4-6), resulted in such significant site alterations that all indicators of wetland hydrology, vegetation, and soil parameters were severely compromised. The trench drains water from the site, clearly altering the hydrology. The grading and soil compaction also impacted the site hydrology. The vegetation was extirpated, and although recent recruitment and growth of some wetland species shows that the site can still support wetland vegetation, additional information is needed to estimate the distribution and abundance of such species prior to scraping and grading.

Dr Engel's determination that the "Atypical" methodology is the appropriate approach for the site derives from her incorrect understanding regarding the effects of the unpermitted activities. As detailed above, the soil profile was not affected and the assertion that: the "…disturbance has so altered the site that current conditions cannot reasonably be considered to mirror the conditions that existed prior to the disturbance. The 'recent human activities', as evidenced by the series of photos presented above (Figures 4-6), resulted in such significant site alterations that all indicators of wetland hydrology, vegetation, and soil parameters were severely compromised…" is not true, because in fact the conditions have not been significantly altered by the trench excavation work in February 2008. [I want to make it clear that when she says use "atypical" methodology – it's because she says the feb 2008 work removed the indicators –and that we don't allow her to relate back to 1960 filling]

Specifically regarding application of the "Atypical Methodology", the 1987 Manual States in Paragraph 71:

> *Methods described on this section should be used <u>only</u> when a determination has already been made in Section D or E that positive indicators of hydrophytic vegetation, hydric soils, and/or wetland hydrology could not be found due to the effects of recent human activities or natural events* **.** [Emphasis in original]

Paragraph 71.a. provides additional guidance as follows:

> *Unauthorized discharges requiring enforcement actions my result in the removal or covering of indicators of one or more wetland parameters. Examples include, but are not limited to: (1) alteration or removal of vegetation; (2) placement of*

*dredged or fill material over hydric soils; and or (3) construction of levees, drainage systems, or dams that significantly alter the areas hydrology.*

GLA began the delineation work on the site in March 2008, in response to the Coastal Commission Notice of Violation. As noted in the February 28, 2009 Jurisdictional Wetland Status Report, site visits for purposes of investigating the vegetation, soils and hydrology were conducted during numerous visits between March 2008 and February 26, 2009, two days before completion of the Wetland Status Report. Based on the numerous field visits, GLA determined that there was no destruction or elimination of positive indicators for hydrophytic vegetation, hydric soils, and/or wetland hydrology as detailed below for each "parameter."

**Hydrophytic Vegetation**

By June 23, 2008, areas that had been previously vegetated with pickleweed and saltgrass (and a variety of weedy species) as depicted in site photographs taken prior to the February 2008 maintenance work showed sufficient recovery for accurate characterization. The vegetation detected is recorded on the data sheets in the GLA Report. Given the recovery of the vegetation, GLA determined that the vegetation "could be found" and that the effects of the maintenance work had not resulted in conditions that required application of the "Atypical Situation" methodology relative to the vegetation. Specifically, GLA found conditions, sufficiently similar to Photographs 1-9 of Appendix B attached to the February 28, 2009 Jurisdictional Wetland Status Report, which were taken before the subject work, leading to the conclusion that the "Atypical" approach was not appropriate.

**Hydric Soils**

During detailed investigations of the site, beginning in March 2008, GLA determined that the soil profile, outside the trench had not been measurably disturbed by the unpermitted February 2008 maintenance work. The limited trench spoils in the (approximately) eastern one-third of the site were generally very shallow and did not preclude examination of the soils immediately below the spoils (see Exhibit 3b of the February 28, 2009 Jurisdictional Wetland Status Report which show that data points 1-7 were in the "spoils" area). Also, see LGC Report and GLA March 23, 2009 Memorandum that address the soil conditions on the site prior to the February 2008 unpermitted work. To summarize these reports, GLA determined that no hydric soils were affected by the unpermitted work because none exist on the site, and application of the "Atypical" approach was not necessary or appropriate.

**Wetland Hydrology**

Appendix B of the February 28, 2009 GLA Jurisdictional Wetland Status Report addresses in detail the hydrological conditions on the site, which included monitoring visits through February

26, 2009. Based on the detailed hydrological monitoring, including testing of the soil profile with alpha alpha dipyridyl during the 2008/2009 wet season in conjunction with a review of ground-level site photographs correlated with rainfall events, GLA found no evidence of wetland hydrology on the site. As noted for soils and vegetation above, application of the "Atypical" approach was not appropriate relative to wetland hydrology as wetland hydrology demonstrably was not present prior to the unpermitted maintenance.

With regard to whether the trench is actually draining water from the small pickleweed depression in the southeast quadrant, a review of the ground-level photographs that you provided to GLA are noteworthy. For example, a site photograph taken on February 23, 2005 [Exhibit 1, Photograph 5], the day of a 2.37-inch rainfall event that ended a six-day period of rain that accounted for 6.45 inches of rainfall does not show a continuous hydrological connection from the northeast corner to the pickleweed depression.

Furthermore, as noted for the data from 2005/2006, before the trench was excavated the best rainfall reference period that can be validated with site photographs show ponding dissipating in less than seven days, meaning that even if some water from the northeast corner reaches the pickleweed depression (which is not a certainty during "normal events and years), ponding still dissipates rapidly. In other words, wetland hydrology did not exist prior to the trench so that the trench did not result in a modification to wetland hydrology.

> Following a normal wet season (9.54 inches of rainfall), Mr. Bomkamp visited the site on April 7 and June 3, 13, 17, and 23, 2008. He recorded no evidence of surface water or of primary or secondary wetland hydrology indicators. Yet, during our July 2008 site visit, I observed several primary indicators of wetland hydrology from the previous winter, including surface soil cracks, sediment deposits, surface crusts, and salt crust (Figure 14).

Dr. Engel reports four primary indicators for the presence of wetland hydrology: "surface soil cracks, sediment deposits, surface crusts, and salt crust." "Surface crust" is not listed in the Arid West Supplement, Version 2.0, though she may have meant "B-12, -Biotic Crust." These are in addition to inundation, which she has already reported (though as we have demonstrated, her interpretation is not accurate). Each of these four is an indicator for surface ponding, for which Dr. Engel has reported direct observations as discussed above, so these add no new information. It is important to note that some of these indicators can only be reliably used when soil and vegetation indicators are intact. For example, the Arid West Supplement, Version 2.0 describes soil cracks as follow:

> **General Description:** Surface soil cracks consist of shallow cracks that form when fine-grained mineral or organic sediments dry and shrink, often creating a network of cracks or small polygons (Figure 24).

> **Cautions and User Notes:** Surface soil cracks are often seen in recent fine sediments and in concave landscape positions where water has ponded long enough to destroy surface soil structure, such as in seasonally ponded depressions, lake fringes, tidal flats, and floodplains. Use caution, however, as they may also occur in temporary ponds and puddles in nonwetlands; these situations are easily distinguished by the absence of hydrophytic vegetation and/or hydric soils. This indicator does not include deep cracks due to shrink-swell action in clay soils (e.g., Vertisols). This indicator is distinguished from biotic crusts by the lack of visible algal layers, remains, or flakes on the soil surface.

In order to utilize this indicator, Dr. Engel must assume that the soil and vegetation indicators were sufficiently intact to appropriately use this indicator. It is not sound wetland practice to state that the site has been sufficiently disturbed that indicators for vegetation, soils, and hydrology have been destroyed while noting that four field indicators for hydrology are easily observed.

A critical point needs to be included at this point. As noted, these indicators can be used to make a positive determination for the presence of wetland hydrology; however, as stated throughout these responses, wetland hydrology assumes the development of anaerobic conditions. Detailed soil testing on this site during the 2008/2009 rainy season has shown due to the extreme historic soil compaction and short-term ponding (and other reasons such as low amount of organic carbon in the soil) that anaerobic conditions do not form on this site in most years. Therefore, the presence of hydrology indicators such as soil cracks only indicate that water ponds and not whether anaerobic conditions actually develop.[6]

There is no need to comment on each of the four indicators as I note that the inundation that creates the soil crack still must lead to anaerobic conditions and where such conditions are lacking, the site does not exhibit wetland hydrology. We believe that in this situation, the significance of both salt crust and sediment deposits has been misapplied. Salt crusts are described as follows in the Arid West Supplement, Version 2.0:

> **General Description:** Salt crusts are hard or brittle deposits of salts formed on the ground surface due to the evaporation of saline surface water.
>
> **Cautions and User Notes:** Hard or brittle salt crusts form in ponded depressions, seeps, and lake fringes when saline surface waters evaporate (Jones 1965, Boettinger 1997) (Figure 25). They may form a white ring at the high-water line as the water recedes. Salt crusts do not include fluffy

[6] Dr. Engel notes that the Coastal Commission relies on a one-parameter test, meaning that an area is considered to be a wetland if it is shown that hydrophytic vegetation is present, hydric soils are present or wetland hydrology is present. When a site exhibits clear indicators for hydric soils for example, the presence of soil cracks would be considered to be a reliable indicator for wetland hydrology because the soils support such as determination. However, on a site such as the one in question, where the soils clearly lack any indicators for hydric soils, a delineator must question whether a relatively weak indicator such as soil cracks are actually associated with periods of inundation that lead to anaerobic conditions.

> or powdery salt deposits or efflorescences resulting from capillary rise and evaporation of saline groundwater that may be derived from a deep water table.

The surface salt depicted on Figures 13a-d is not the white ring describe in the user note above; rather the salt crusts are the efflorescences resulting from capillary rise and evaporation of saline groundwater that is derived from a deep water table.

> Mr. Bomkamp performed wetland surveys in June 2008, and exhibits 3a-c of his February 29, 2008 letter report depict his uniform (evenly spaced) sampling scheme. Most of his sample locations were along a partially vegetated narrow berm next to the south fence or on bare ground. Three were in the general vicinity of the depression where inundation and saturation has been documented over the years. The uniform sampling scheme appears to under-sample low areas on the site that have supported wetland vegetation. However, such criticisms are moot since sampling after the disturbance cannot quantify the conditions prior to the disturbance.

The vegetation transect referenced by Dr. Engel was located within an area dominated by a mix of upland annual plants and saltgrass. What makes this area interesting is that it is on a slight slope and is mapped on the soils map as "Beach". In 2008, this area supported high densities of saltgrass, which had grown back sufficiently between February and June to allow sampling of the vegetation. Because of the mix of upland and facultative vegetation a fairly intensive sampling regime was determined to be appropriate. A comparison with this year shows an even higher numbers of upland weedy species leading to a strong "upland" conclusion based on 2009 data.

The depressional area that supported a mixture of pickleweed and upland vegetation appeared to exhibit the same vegetation prior to disturbance and after the unpermitted disturbance. In fact, the "pickleweed depression" in the southwest quadrant of the site appears to have supported between 51 and 64 square feet of pickleweed prior to the disturbance.

> Bomkamp reports no evidence of wetland vegetation in any of his samples, this is because he has erected an ad hoc hypothesis that the wetland indicator species at this site are acting as phreatopytes and shouldn't be considered wetland vegetation. This hypothesis is based on scanty evidence: photographs of some roots he observed 42 inches below the surface, references to the literature that saltgrass can function as a phreatophyte, inappropriate citations to artificial experiments where saltgrass was grown in containers with an ad libidum [sic] supply of water, and 3 personal observations of pickleweed in upland situations elsewhere.

Dr. Engels assertion that I report no evidence of wetland vegetation is not accurate. On data sheets 8, V-1, V-2, V-3, V-4/16, V-5, V-6, V-7/17, V-8, V-9, V-10/18, V-11/13, V-12, V-13, very detailed vegetation sampling is recorded including a breakdown according to the dominance test as well as the Prevalence Index. All of these data points were located along the fence line

that parallels PCH with the exception of V-11/13, V-12, and V-13. These 11 data points were located in an area that do not exhibit wetland hydrology and lack hydric soil formation. Furthermore, the area is mapped a "Beach" on the soils map, which was confirmed in the field as sand is located immediately below the fill layer. A mix of FAC and UPL species are present along with the saltgrass plus a few individuals of pickleweed (OBL).

Dr. Engel further describes my hypothesis as an "ad hoc hypothesis," which I find very disconcerting. While the term can have slightly different meanings, I suspect that she is asserting that the hypothesis that saltgrass and pickleweed are phreatophytes has been developed to fit the facts of this case or to explain away facts that are undesirable. This is not the case for this site and it is certainly not a site or case specific hypothesis. Some examples will provide clarification.

**Calistoga Example**

I have been working on a delineation of a very difficult site in Calistoga, California. The site is an abandoned glider port and as such exhibits little topographic relief. Portions of the site exhibit dense stands of saltgrass (similar to the Cabrillo site) and Baltic rush (*Juncus balticus*, OBL), which are growing at the same or in some cases higher elevations that adjacent upland vegetation. Soils on a large portion of the site (approximately half) consist of a highly porous volcanic soil that varies in thickness from 12 to 20 inches that is overlain on a clay loam of about 18 inches, which is in turn sitting on top of a layer of fairly moist sandy clay loam with obvious redoximorphic features. The upper 18 inches exhibited no redox and indicators for wetland hydrology were not present. In attempting to understand the site, I requested the property owner to provide a backhoe for a few hours to dig trenches on the site. The trenches revealed dense roots at about 40 inches in the moisture rich zone, which explained the presence of the wetland indicator plants in this area (they were functioning as phreatophytes). Other portions of the site, where the volcanic layer was very thin or absent, were determined to be wetlands due to the presence of surface water and saturation in the upper 12 inches and redoximorphic features. During a site verification with Mr. Dan Martel of the Corps, Mr. Martel agreed with my hypothesis that for the approximate half of the site with the thick layer of porous volcanic soils, that wetland hydrology and hydric soils were absent and that saltgrass and Baltic rush were tapped into subsurface water not indicative of wetlands (the plants were behaving as facultative phreatophytes on a large portion of the site). The important point is that if I had not taken the time to engage the backhoe, which resulted in the discovery of numerous roots at depths of 40 inches, there would still be a knowledge deficit regarding this site. The hypothesis is not ad hoc, rather it is one that has accurately explained conditions on a similar site (i.e., site with FACW and OBL species but lacking wetland hydrology and hydric soils). The only difference is that in the Calistoga case, water falling on the soil moves quickly through the upper profile such that hydric soils and wetland hydrology are absent as verified by the Corps. On Cabrillo, the compacted soils prevent the majority of water from ever reaching deeper than 1 to 3 inches.

Dr. Engel asserts that the evidence supporting the phreatophytic character of the saltgrass and pickleweed is scanty. This is certainly not the case for saltgrass. Water Bulletin 50 was the first document I read many years ago that noted the ability of saltgrass to send roots as deep as 11 feet and 8 feet at two different sites to reach the groundwater table. A quick search of the internet reveals a number of references to saltgrass as a phreatophyte. Here are just three of numerous examples:

- A 1954 article by Harry F. Blaney entitled: *Consumptive Use of Groundwater by Phreatophytes and Hydrophytes*,[7] lists saltgrass as a phreatophyte along with cottonwoods, salt cedar and willows and not as a "hydrophyte."[8]

- An undated article from the U.S. Geological Survey by T.W. Robinson entitled: *The Importance of Desert Vegetation in the Hydrological Cycle*[9] lists saltgrass in a table of phreatophytes with a rooting depth of 5 feet.

- A 2006 article by Steinwand, Harrington and Or entitled: *Water balance for Great Basin phreatophytes derived from eddy covariance, soil water, and water table measurements*[10] looked at water use by phreatophytic meadow species including saltgrass.

In summary, there is nothing scanty regarding the evidence for the phreatophytic character of saltgrass.

Listing the "scanty evidence", Dr. Engel also includes: "inappropriate citations to artificial experiments where saltgrass was grown in containers with an ad libidum [sic] supply of water." This reference to Water Bulletin 50 completely confuses the issue of water use versus phreatophytic character of the vegetation. The experiment that is referenced consisted of growing various plants in large containers and providing an unlimited supply of water to determine maximum usage. Saltgrass was included in these experiments and water depths were varied to determine if water use changed with depth. The "take home" from this experiment was not the potentially flawed nature of the experiment but that saltgrass was able to use groundwater at depths of 48 inches, further evidence of its phreatophytic character.

While the support for the phreatophytic character of saltgrass is extensive in the literature, it is not as strong for pickleweed (*Salicornia virginica*). There are literature citations for pickleweed

[7] http://www.cig.ensmp.fr/~iahs/redbooks/a037/037006.pdf
[8] I am not stating that saltgrass is not oftentimes functioning as a hydrophyte; only that it has long been recognized as a phreatophyte.
[9] http://www.cig.ensmp.fr/~iahs/redbooks/a044/044052.pdf
[10] http://www.sciencedirect.com/science?_ob=ArticleURL&_udi=B6V6C-4K0FK06-2&_user=10&_rdoc=1&_fmt=&_orig=search&_sort=d&view=c&_acct=C00

as a phreatophyte;[11] however at least some are likely referring to the closely related *Allenrolfea occidentalis,* which is very similar to *Salicornia virginica* as shown on Exhibit 1, Photograph G. During the July 7, 2008, I suggested this as a possible explanation for the presence of pickleweed on the site and Dr. Engel asked if we had found pickleweed roots at depth. I indicated that we had not looked but that I would attempt to find empirical evidence of pickleweed roots at depth, indicting phreatophytic behavior. Appendix 3 of the February 28, 2009 Wetland Status Report details the information that we generated.

Dr. Engel dismisses the "scanty evidence" as: "photographs of some roots he observed 42 inches below the surface." The evidence was far more extensive than characterized by Dr. Engel, including pickleweed roots at a variety of locations occurring at a variety of depths, oftentimes with concentrations of pickleweed roots at clay lenses where seasonal groundwater would be trapped. What she also fails to acknowledge is that many of the areas where pickleweed roots were found at depth are obvious upland areas where pickleweed is growing with California sagebrush as set forth in detail in Appendix 3. As explained in Appendix 3, not all of the pickleweed occurrences in upland areas were explainable through the phreatophytic hypothesis as acknowledged in Appendix 3; however, many fit this hypothesis and it continues to be the best explanation for the presence of pickleweed on the Cabrillo RV Parking Area.

Finally, with regard to the three "Upland Pickleweed" sites that were used as reference sites, they were chosen as they reflect a range from very dry with all upland (Upland Pickleweed Site 1) to a site that exhibits a mix of upland and wetland (Upland Pickleweed Site 3). Numerous other sites are available where pickleweed is growing in undisputed upland areas and additional such examples with site photographs could be provided upon request. Nevertheless, to label this evidence collected on these three sites as scanty is not a reasonable or a fair-minded position.

> Even if one assumes that saltgrass and pickleweed can obtain a portion of their water from deep roots, there is absolutely no evidence that they do not use surface water at this site. In addition, staff at the Corp of Engineers point out that phreatophytic species generally do not rely solely on groundwater and should be considered wetland indicators.

The hypothesis that saltgrass and pickleweed are functioning as phreatophytes does not exclude the use of surface water by the plants when it is available. I agree that many phreatophytes depend on surface hydrology for establishment. In fact, in southern California coastal salt marshes, pickleweed typically germinates in response to freshwater runoff during winter and spring storms and the short-term ponding provide conditions wherein it is able to germinate. The question that must be answered is whether the hydrology on the site sufficient to allow

[11] http://www.treknature.com/gallery/North_America/United_States/photo139303.htm and http://www.jstor.org/pss/3670205, an article that includes pickleweed and saltgrass described as members of the "phreatophyte community."

persistence of the pickleweed and saltgrass in most years. Because the site demonstrably lacks wetland hydrology as confirmed by soil testing with alpha alpha dipyridyl during the 2008/2009 wet season, and because the site exhibits drier than normal conditions for even upland areas due to the highly compacted soil and high evaporation rates, it is necessary to explain the persistence of these plants. It is necessary to explain the persistence of pickleweed and saltgrass through extreme periods of drought such as 2006/2007 when beginning on May 22 when 0.45 inch of rain occurred, there was no rain during June, July, August and September and then only 0.20 inch in October and only 0.18 inch in November. From December until late September 2007 only another 2.45 inches of rain fell and yet the pickleweed continued to persist until early 2008 with only 2.83 inches during a 16-month period (May 22, 2006 – September 22 2008).

A similar scenario is provided for upland pickleweed in Appendix 3 that makes a similar case for the phreatophytic character of the pickleweed.

> Mr. Bomkamp collected 10 additional vegetation samples in March 2009. The data for saltgrass and a qualitative assessment of the photos suggest that the saltgrass is denser in low areas than in high areas, suggesting that they are relying on the greater availability of surface water in these areas. When I asked Mr. Bomkamp why he didn't re-sample the large area of inundation and saturation, he stated "We have already acknowledged that the "ponded" area supports pickleweed and saltgrass.... the question is do they have wetland hydrology or are they growing there because they are phreatophytes or highly drought tolerant." However, he presented no reliable means of determining that.

The vegetation transect referenced Dr. Engel was located within an area dominated by a mix of upland annual plants and saltgrass. As already noted, what makes this area interesting is that it is on a slight slope and is mapped on the soils map as “Beach”. In its current condition, the soils include fill material lying over sand. Furthermore, because it is on a slight slope and exhibits a high component of sand mixed into the fill, it has not been subject to the same degree of compaction as the rest of the site. Because of this, the saltgrass exhibits much higher densities because its rhizomes (horizontal, usually underground stems that often sends out roots and shoots from nodes) are able to extend through the non-compacted sandy material much more easily than through the highly compacted fill and underlying clay that is typical of the rest of the site. This condition observed along the western edge of the site also allows the plants to reach the groundwater much more easily. Finally, the groundwater is shallowest in this portion of the site. When these three factors are combined (low compaction, highest groundwater, and sandier soils, the presence of the saltgrass is easily explained.

> Conversely, I note that pickleweed was only observed in 1 of the 10 samples collected from the elevated area along the fence in June 2008 and was not observed in any of the samples collected there in March 2009. In fact, pickleweed and saltgrass are growing in the depressions that are inundated and saturated, but don't occur or occur only sparsely

> in slightly higher elevations. If Mr. Bomkamp's theory were correct that saltgrass and pickleweed have such a well-developed ability to rely on deep ground water and are so strikingly drought tolerant, why aren't they growing in similar densities throughout the site?

Dr. Engel is correct that pickleweed was only captured at one of the data points in the 2008 transect and was not captured in the 2009 transect. While it exhibits a sparse distribution along the fence it does occur at three locations, in each instance growing with the saltgrass in an area that lacks wetland hydrology, hydric soils and supporting a variety of upland and facultative weedy species suggesting that in this area it is functioning as a phreatophyte. Saltgrass is actually far more common along the fence than in the depression where it currently accounts for less than four square feet. As explained above, saltgrass is rhizomatous and the sandy soils along the fence (mapped as "Beach" on the soil survey map) allow for much more rapid growth, both lateral and downward, than do other areas on the site. I have already noted above that the soil conditions along the fence parallel to PCH are much more conducive to plant growth due to the lack of compaction as demonstrated by the saltgrass and a suite of mostly upland and Facultative weeds that grow there at high densities. Over against Dr. Engel's assertion, probably 95-percent of the saltgrass is growing in uplands along the fence line and not associated with the depressional area, supporting my hypothesis. I also feel it necessary to reiterate that it is not my "theory" that saltgrass has a "well-developed ability to rely on deep ground water". This is very well established in the literature (see footnote 10 for example) and to question this fact simply shows that Dr. Engel has not become familiarized with the robust data that documents the phreatophytic character of saltgrass.

With regard to the pickleweed in the depression, between November 2004 and January 2005, the depressional area in the southwest quadrant of the site supported between 51 and 64 square feet of pickleweed based on two separate independent analyses of site photographs. [Exhibit 1, Photographs 6 and 7][12] The total square feet of pickleweed associated with the sandy slope (or berm as referred to by Dr. Engel) supports approximately 15 square feet distributed in three areas that are spread over a much larger area that is historic "Beach" and lacks wetland hydrology and hydric soils.

Dr. Engel questions why the saltgrass and pickleweed are not growing on other portions of the site and I believe the answer provides further confirmation that site was already highly compacted prior to the unpermitted work. As noted for the area along the fence that parallels

[12] Photographs from November 6, 2004 and January 15 and 16, 2005 were used for the analysis. Photographs from this period were most useful because the pickleweed could be easily distinguished from the non-native grasses and forbs, which had germinated due to the high rainfall totals for the season. To conduct the analysis, two GLA wetland specialists examined the three photographs and using visible features such as road ruts or vehicle tracks for scale estimated the total cover of pickleweed. Each analysis was performed without input or influence from the other wetland specialist. One wetland specialist estimated 54, 53 and 51 square feet respectively for the three photographs and the other estimated 64, 60, and 59 square feet.

PCH, it was the most heavily vegetated area before the work and has essentially completely recovered in a little over one year. Other portions of the site exhibit little recovery, as there was nothing to recover. These areas were so highly compacted that the vegetation could not become established. The best explanation for the vegetation in the pickleweed depression, it that it is marginally wetter, just wet enough in some years that some vegetation such as pickleweed and saltgrass were able to establish and get roots deep enough that they could persist. Once established, the roots would provide openings in the soil and loosen the subsurface substrate to allow additional recruitment during optimal years. Nevertheless, the soils in the depression remain highly compacted and prevent saturation below the upper couple of inches, thereby precluding anaerobic conditions, which by definition need to be present to make a positive wetland determination.

> In past actions, the Commission has operated on the presumption that, where they form the predominant vegetation, wetland indicator plants are growing as hydrophytes and the area in which they are predominant is a wetland. This is at the heart of the Commission's one-parameter wetland definition. The Commission has required strong evidence of upland conditions to rebut the wetland presumption - evidence that has not been provided in this case.

The documented absence of anaerobic conditions during the 2008/2009 wet season using alpha alpha dipyridyl is strong evidence of upland conditions. The vegetation is not growing as hydrophytes as the site clearly lacks wetland hydrology with the associated reducing conditions in most years.

> In addition, when I applied the dominance test to Mr. Bomkamp's vegetation data, all his samples were positive for wetland vegetation. In conclusion, I find that portions of the 1.12-acre fenced area of the Mills PCH, LLC property support wetland hydrology and wetland vegetation.

Dr. Engel and I have discussed the appropriateness of using the dominance test (50/20 rule) versus the Prevalence Index test for both this site and other sites. Dr. Engel maintains that the dominance test is sufficient as the Corps only requires use of the Prevalence Index in situations where the hydrology and hydric soils are positive for wetlands and the dominance test results in an upland determination.

What Dr. Engels seems to ignore is it that Corps depends on all three parameters unlike the Coastal Commission, which can make a positive wetland determination based on only a single parameter. When all the “weight” is placed on a single parameter (vegetation) which it often is, it is my professional opinion that the more precise tool should be used, especially where these is disagreement between the two methods. This point was set forth in the February 28, 2009 Wetland Status Report and is worth repeating here:

It is not just my opinion but the opinion of Arid West Supplement, Version 2.0 that the Prevalence Index is indeed more accurate (pp. 23-24).

> *"The prevalence index is a weighted-average wetland indicator status of all plant species in the sampling plot, where each indicator status category is given a numeric code (OBL = 1, FACW = 2, FAC = 3, FACU = 4, UPL = 5) and weighting is by abundance (percent cover).* ***It is a more comprehensive analysis of the hydrophytic status of the community than one based on just a few dominant species. It is particularly useful (1) in communities with only one or two dominants, (2) in highly diverse communities where many species may be present at roughly equal cover****..."* [Emphasis Added]

Use of the Prevalence Index was determined to be particularly important in this case because of the fairly high diversity of weedy species exhibiting an indicator status of FAC and the presence of a number of UPL species, which while only locally dominant clearly suggest that the site is not exhibiting saturation for sufficient duration to preclude UPL species. A review of data sheets V-1 through V-10 (using Reed, 1988) show that using the 50/20 rule, which only includes the "dominant species" all ten sample sites exhibit a predominance for "wetland" indicator plants with in all cases only FAC species as the dominant wetland indicators. Data point V-5 exemplifies how this approach can be a very poor predictor of the actual presence of wetlands as there were two FAC species and one UPL species with the Prevalence Index of 3.93. Nevertheless, using the 50/20 rule leads to the very inappropriate conclusion that the area exhibits a predominance of "wetland vegetation." While use of the 50/20 Rule leads to the conclusion that the vegetation associated with data points V-1 through V-10 is "hydrophytic," use of the Prevalence Index, as implemented for this delineation, leads to the opposite conclusion as discussed in more detail below.

Ralph Tiner, a prominent wetland scientist, addresses in his textbook, *Wetland Indicators: A Guide to Wetland Identification, Delineation, Classification, and Mapping* the problem of basing any determination of wetlands on Facultative (FAC) vegetation and the importance of using a tool with more accurate measurement capabilities (i.e., the Prevalence Index), which is why it has been selected for this delineation:

> *A plant community with a weighted average index (prevalence index) of 3.0 (±0.5) therefore is equivalent to a FAC species that occurs equally in wetlands and non-wetlands. Such communities (2.5 through 3.5) are inconclusive regarding their wetland status as assessed by vegetation analysis alone; in other words, other features* [hydrology and soils] *must be examined to determine whether they are wetland or not.*[13]

[13] Tiner, Ralph W. 1999. *Wetland Indicators: A Guide to Wetland Identification, Delineation, Classification, and Mapping*. Lewis Publishers, New York, pp. 111-113.

Finally, the justification for not counting the saltgrass in the data in the 2008 transects is derived from the Arid West Supplement's treatment of phreatophytes. Specifically, the Supplement notes that:

> In such situations, there may be a hydrophytic overstory and a nonhydrophytic understory. If the soils are Entisols lacking hydric soil features and/or wetland hydrology is problematic, more emphasis should be placed on the understory, which may be more indicative of current wetland or non-wetland conditions.

Given this guidance, in 2008, saltgrass was treated as the hydrophytic overstory and the other annual plants as the nonhydrophytic understory. Using this convention, consistent with the Ariod West Supplement and using the Prevalence Index, the area along the fence was determined to exhibit upland vegetation. The depressional area included two points with a Prevalence Index between 2.5 and 3.5 and were considered upland based on the lack of hydric soils and wetland hydrology. The third data point exhibited a PI of greater than 3 and was also considered upland.

**CONCLUSIONS**

The Cabrillo RV Parking Area is not a wetland under the Coastal Act as it clearly lacks surface hydrology, hydrology based on high groundwater (i.e., in the upper 12 inches), and hydric soils. Specifically, wetland hydrology due to surface water is lacking due to the highly compacted condition of the soil that prevents infiltration and saturation in most years within the upper 12 inches. The presence of vegetation alone cannot support a wetland finding when there is no evidence that the vegetation is growing in hydric soils or supported by surface hydrology and when there is strong evidence to the contrary that the site exhibits upland conditions.

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Cabrillo site prior to disturbance. Note compacted character of soils.

# CABRILLO RV PARKING AREA

Site Photograph

GLENN LUKOS ASSOCIATES

Exhibit 1 Photo 1


Cabrillo site prior to disturbance. Note compacted character of soils.

**CABRILLO RV PARKING AREA**

Site Photograph

GLENN LUKOS ASSOCIATES

Exhibit 1 Photo 2


Note compacted character of soils even when wet.

## CABRILLO RV PARKING AREA

Site Photograph

GLENN LUKOS ASSOCIATES

Exhibit 1 Photo 3


Note that roller does not make any imprint indicating existing high levels of compaction.

# CABRILLO RV PARKING AREA

Site Photograph

GLENN LUKOS ASSOCIATES

Exhibit 1 Photo 4


# CABRILLO RV PARKING AREA

Site Photograph

GLENN LUKOS ASSOCIATES

Exhibit 1 Photo 5


# CABRILLO RV PARKING AREA

Site Photograph

GLENN LUKOS ASSOCIATES

Exhibit 1 Photo 6


# CABRILLO RV PARKING AREA

Site Photograph

GLENN LUKOS ASSOCIATES

Exhibit 1 Photo 7

Predominance of upland vegetation along fence line, March 2009.

**CABRILLO RV PARKING AREA**

Site Photograph

GLENN LUKOS ASSOCIATES

Exhibit 1 Photo 8