

CALIFORNIA COASTAL COMMISSION

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Item F 9a

Staff: AM-SF *AM*
Staff Report: Jan. 23, 2003
Hearing Date: Feb. 7, 2003

STAFF RECOMMENDATIONS AND FINDINGS FOR RESTORATION ORDER

RESTORATION ORDER:	CCC-03-RO-02
RELATED VIOLATION FILE:	V-5-02-039
PROPERTY LOCATION:	<p>*5100 Pacific Avenue (Lot Q – APN No. 4294-006-035) *5102 Pacific Avenue (Lot 16, Block 1, Del Rey Beach Tract – APN No. 4294-006-032) *City of Los Angeles owned property (APN No. 4294-006-901)</p>
DESCRIPTION OF PROPERTY	<p>Three individual lots adjacent to Ballona Lagoon, a designated Environmentally Sensitive Habitat Area (“ESHA”), bordered by Pacific Avenue to the west, Topsail Street to the north, Ballona Lagoon to the east, and Lot 17, Block 1, Del Rey Beach Tract to the south. Lot 16 (5102 Pacific Avenue), owned by Daniel Fitzgerald, currently has an application in with the South Coast District office of the Coastal Commission for a proposed single family home. Lot Q is a small, approximately 25' x 30' lot located partially below the high water level of Ballona Lagoon. The City of Los Angeles lot is situated between Pacific Avenue and Lot Q. No portion of this lot borders Ballona Lagoon.</p>
PROPERTY OWNER:	Dan Fitzgerald (Lot 16), Venice Peninsula Properties (Lot Q), City of Los Angeles (APN No. 4294-006-901)
VIOLATION DESCRIPTION:	Unpermitted development, including 1) grading, 2) stockpiling of material, 3)

storage of construction equipment, and 4) filling of wetlands habitat.

PERSONS SUBJECT TO THIS ORDER

1. VDH Development Inc.
2. Dan Fitzgerald

RESTORATION SOUGHT

Removal of all unpermitted fill to the contours that existed prior to the unpermitted development and revegetation of all disturbed areas with native plant species typical of sand dunes and tidal and non-tidal salt marsh areas.

SUBSTANTIVE FILE DOCUMENTS:

1. Coastal Development Permits 5-01-306, 5-01-307, and 5-01-257 & A-5-VEN-01-279
2. Coastal Development Permit application 5-02-133
3. Ballona Lagoon Enhancement Plan Phase III
4. Biota of the Ballona Region, Los Angeles County Natural History Museum Foundation, Edited by Ralph W. Schreiber, 1981
5. Background Exhibits 1-12

CEQA STATUS:

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

I. SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission approve a Restoration Order (as described below) to remove unpermitted development in and adjacent to Ballona Lagoon on properties located at 5102 Pacific Avenue (Lot 16, Block 1, Del Rey Beach Tract – APN No. 4294-006-032), 5100 Pacific Avenue (Lot Q – APN No. 4294-006-035), and City of Los Angeles owned property (APN No. 4294-006-901) and to restore the impacted area to its pre-violation condition. The unpermitted development includes grading, stockpiling of material, storage of construction equipment, and filling of wetlands habitat.

In order to issue a Restoration Order under Section 30811 of the Coastal Act, the Commission must find the development (as defined under the Public Resources Section Code 30106):

- 1) has occurred without a coastal development permit;

- 2) is inconsistent with Chapter 3 of the Coastal Act and
- 3) is causing continuing resource damage.

The unpermitted development located on the subject properties meets the definition of "development" under the Coastal Act and its regulations. The development that is the subject of this Restoration Order was undertaken without a coastal development permit, in violation of Public Resources Code 30600.

The construction and the ongoing maintenance of the unpermitted development are inconsistent with the California Coastal Act, including Sections 30230 (Marine Resources), 30231 (Biological Productivity/Water Quality), 30233 (Fill of Wetlands), 30240 (ESHA), and 30253 (Minimization of Adverse Impacts) of the Public Resources Code (as fully discussed below). The unpermitted development is also causing continuing resource damage, as defined by Section 13190 of the Commission's regulations.

The unpermitted development has impacted the marine resources, water quality, habitat values, and biological productivity of Ballona Lagoon (an identified ESHA). Such impacts meet the definition of damage provided in Section 13190(b): "any degradation or other reduction in quality, abundance, or other quantitative or qualitative characteristic of the resource as compared to the condition the resource was in before it was disturbed by unpermitted development." The unpermitted grading and stockpiling of material will lead to increased erosion and the sedimentation of Ballona Lagoon (as witnessed during a site investigation on November 6, 2002). Ballona Lagoon is an Environmentally Sensitive Habitat Area and provides foraging grounds for the endangered California Least Tern and several other shorebird, fish, and invertebrate species.

A substantial portion of the impacts from the unpermitted development remains at the subject property. In addition, the continued presence of the unpermitted development, as described above, will create adverse impacts to water quality, marine resources, sensitive habitat, and will create and/or contribute to erosion of the site. As of this date, some of the unpermitted stockpiled fill and all construction equipment has been removed from the properties subject to this restoration order. However, the subject properties have been graded to bare earth, erosion of the stockpiled fill has filled portions of the intertidal area of Ballona Lagoon and the lagoon itself, and the remaining stockpiled fill continues to erode into Ballona Lagoon. Thus, the unpermitted development that remains on the subject properties is causing continuing resource damage, as defined in Section 13190, Title 14 of the California Code of Regulations.

II. HEARING PROCEDURES

The procedures for a hearing on a proposed Restoration Order are set forth in section 13195, incorporating by reference sections 13185 and 13186 of the California Code of Regulations (CCR), Title 14, Division 5.5, Chapter 5, and Subchapter 9. The

Restoration Order hearing procedure is similar in most respects to the procedures that the Commission uses for permit and Local Coastal Program matters.

For a Restoration Order hearing, the Chair shall announce the matter and request that all alleged violators or their representatives present at the hearing identify themselves for the record, indicate what matters are already part of the record, and announce the rules of the proceeding including time limits for presentations. The Chair shall also announce the right of any speaker to propose to the Commission, before the close of the hearing, any question(s) for any Commissioner, in his or her discretion, to ask of any person, other than the violator or its representative. The Commission staff shall then present the report and recommendation to the Commission, after which the alleged violator(s) or their representative(s) may present their position(s) with particular attention to those areas where an actual controversy exists. The Chair may then recognize other interested persons after which staff typically responds to the testimony and to any new evidence introduced.

The Commission will receive, consider, and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceedings, as specified in CCR section 13195, incorporating by reference sections 13185, 13186 and 13065. The Chair will close the public hearing after the presentations are completed. The Commissioners may ask questions to any speaker at any time during the hearing or deliberations, including, if any Commissioner chooses, any questions proposed by any speaker in the manner noted above. Finally, the Commission shall determine, by a majority vote of those present and voting, whether to issue the Restoration Order, either in the form recommended by the Executive Director, or as amended by the Commission. Passage of a motion, per staff recommendation or as amended by the Commission, will result in issuance of the order.

III. STAFF RECOMMENDATIONS

A. Motion

Staff recommends adoption of the following motion:

I move that the Commission issue Restoration Order No. CCC-03-RO-02 pursuant to the staff recommendation.

B. Staff Recommendation of Approval

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

C. Resolution to Issue Restoration Order

The Commission hereby issues Restoration Order number CCC-03-RO-02, as set forth below, and adopts the findings set forth below on grounds that development has occurred without a coastal development permit, the development is inconsistent with the Coastal Act, and the development is causing continuing resource damage.

IV. RECOMMENDED FINDINGS FOR RESTORATION ORDER CCC-03-RO-02

Staff recommends the Commission adopt the following findings of fact in support of its action.

A. Background

On October 28, 2002, Commission staff conducted a site visit in the location of the subject properties.¹ At that time, no grading, stockpiling, storage of construction equipment, and filling of wetlands had taken place. In a subsequent site visit on November 6, 2002, Commission staff observed grading, placement of stockpiled fill, storage of construction equipment, and filling of wetlands habitat on the west bank of Ballona Lagoon (more specifically 5100 Pacific Avenue (Lot Q – APN No. 4294-006-035), 5102 Pacific Avenue (Lot 16 – APN No. 4294-006-032), and City-owned property adjacent to Lot Q (APN No. 4294-006-901)).

On December 2, 2002, Commission staff, Charles Posner, spoke with Reto Ryffel of VDH Development, the owner of and homebuilder of two homes under construction at 5106 and 5110 Pacific Avenue.² At that time, Mr. Ryffel acknowledged using Lot 16, Lot Q, and City property adjacent to Lot Q as a construction staging area. The homebuilder also asserted that Dan Fitzgerald had given permission to VDH Development (owners of 5106 and 5110 Pacific Avenue) to use all of the properties (Lot 16, Lot Q, and the City-owned lot-APN No. 4294-006-901) as a staging area for stockpiled fill and construction equipment.

During the same site visit of December 2, 2002, Commission staff observed gullies in the banks of Ballona Lagoon below the subject properties that were created by recent rains. Some of the unpermitted fill had eroded into the lagoon via these new gullies, creating small silt deltas and covering soft bottom habitat in the lagoon.

On the same day, Commission staff informed Mr. Ryffel that the stockpiling of soil, storage of construction equipment, and grading of the lot requires a coastal

¹ Staff was conducting a site visit to analyze a proposed project at 5102 Pacific Avenue – Lot 16 (Coastal Development Permit application 5-02-133).

² The two homes under construction at 5106 and 5110 Pacific Avenue were authorized by the Commission under Coastal Development Permits 5-01-306 and 5-01-307. The owner of these two properties is VDH Development.

development permit; and that such development would be inconsistent with the Coastal Act because of the possible resource damages to Ballona Lagoon.

Notice Prior to Issuance of Executive Director Cease and Desist Order and Notice of Intent to Commence Restoration Order Proceedings

On December 6, 2002, the Commission's statewide enforcement unit sent a *Notice Prior to Issuance of Executive Director Cease and Desist Order for Violation No. V-5-02-039 and Notice of Intent to Commence Restoration Order Proceedings* to Dan Fitzgerald and Venice Peninsula Properties (as owners of property where the alleged violation took place) and VDH Development (as alleged violator). The notices were also hand delivered to 5106 and/or 5110 Pacific Avenue (property owned by VDH Development). Randy Ward of R.L. Ward Construction, Inc. (a contractor of VDH Development) accepted the NOI on property where the subject violation occurred (Exhibit #12).

The Commission sent two NOIs to the alleged violator and property owners: 1) an NOI for an Executive Director's Cease and Desist Order ("NOI for an EDCDO) to stop work and perform immediate site security and 2) an NOI for a Restoration Order ("NOI for an RO") to restore resources damaged by the unpermitted development.

EDCDO

The NOI for an EDCDO required, in part, VDH Development, Dan Fitzgerald, and Venice Peninsula Properties to provide a response to the NOI. The NOI for an EDCDO states, in part:

To prevent the issuance of the Executive Director Cease and Desist Order to each of you, you must provide a response that satisfies the standards of sections 13180(a)(2)(B) and (C) of the Commission's regulations. This response should include:

- 1. Immediately and completely cease from performing any development including any grading, stockpiling of material, storage of construction equipment and/or filling wetland habitat at the subject properties unless authorized by the Commission through a CDP and,*
- 2. By 5:00 pm, December 6, 2002, VDH Development (who conducted the unpermitted development and to whom this letter will be hand delivered) confirm that all such activities have indeed ceased, and commit to perform no further unpermitted development at the subject properties. This confirmation should be provided by telephone to Aaron McLendon at (415) 904-5220 and followed by a written confirmation faxed to Aaron McLendon at (415) 904-5235 no later than 12:00 pm December 9, 2002.*

3. *By 5:00 pm, December 11, 2002, Dan Fitzgerald and Venice Peninsula Properties (owners of property where unpermitted development has taken place and to whom this letter has been sent certified mail) confirm that all such activities have indeed ceased, and commit to perform no further unpermitted development at the subject properties. This confirmation should be provided by telephone to Aaron McLendon at (415) 904-5220 and followed by a written confirmation faxed to Aaron McLendon at (415) 904-5235 no later than 12:00 pm December 12, 2002.*

VDH Development and Dan Fitzgerald responded to the EDCDO notice in a "satisfactory manner".³ Randy Ward, the general contractor for VDH Development who accepted the NOI for an EDCDO, telephoned Commission staff at 10:20 am on December 6, 2002. In that telephone conversation, Randy Ward agreed to stop all stockpiling, remove the construction equipment, pull back the fill away from the lagoon, and cover the properties with a tarp and place protective sandbags on the properties until the Commission directs VDH Development to restore the site. Randy Ward confirmed this telephone conversation in a faxed letter to Commission staff at 11:44 am on December 6, 2002 (Exhibit #8). This letter states, in part:

As per our telephone conversation, I just wish to inform you that we have stopped working in the area of question. As agreed we will pull back the soil in this area and re-install sand bags. We will move our construction equipment as you requested. We will fully cooperate with your wishes to make sure no damage to this area is done.

On December 9, 2002, Commission staff received a letter from VDH Development further confirming that they will take necessary steps in "immediate resolution of Violation No. V-5-02-039." (Exhibit #9)

On December 12, 2002, Commission staff received a letter from Dan Fitzgerald, owner of property located at 5102 Pacific Avenue (Lot 16) stating that he is the owner of Lot 16 and that he "will make sure [VDH Development] correct all the infringements, trespasses, disturbance of existing conditions, etc." In addition, Mr. Fitzgerald states that he has instructed VDH Development to proceed promptly with the correction of the unpermitted development.

Because VDH Development and Dan Fitzgerald have ceased from conducting any further development on the subject properties, have complied with all Commission requests, and have shown their willingness to resolve the Violation No. V-5-02-039, the Commission will not pursue the issuance of an Executive Director Cease and Desist Order against VDH Development, Inc. and Dan Fitzgerald. However, the Commission will continue with Restoration Order proceedings to restore the subject properties to the condition they were in prior to unpermitted development occurring.

³ The term "satisfactory manner" as that term is used in Section 30809(b) of the Coastal Act is defined in Section 13180(a) of Title 14, Division 5.5 of the California Code of Regulations as being, in part, "a response which is made in the manner and within the timeframe specified in the notice".

Commission staff did not receive a response from Venice Peninsula Properties ("VPP"). Because staff did not receive a return receipt from the certified mail that was sent to VPP, staff telephoned Sherman Stacey, legal counsel for that business entity, on January 14, 2003, in an attempt to discover if the mailing address for Venice Peninsula Properties had changed. During this telephone conversation, Mr. Stacey told staff that Venice Peninsula Properties is no longer located at 107 Roma Court in Venice (the current address found for the property owner of Lot Q at the Los Angeles County Assessors office and therefore the legal address staff used to send the NOI). Mr. Stacey stated that he would contact Venice Peninsula Properties to get the appropriate mailing address.

Later in that same day (January 14, 2002), staff received from the U.S. Postal Service ("U.S.P.S.") a returned certified envelope (Article No. 7001-2510-0009-2099-7378) addressed to VPP containing the above-described NOIs. The certified mail was marked as "refused" on December 18, 2002 and a second attempt to deliver the certified envelope occurred on December 24, 2002. The U.S.P.S. returned the certified envelope on December 31, 2002 and marked the letter "unclaimed".

During a phone conversation on January 15, 2003, Mr. Stacey confirmed that, while Venice Peninsula Properties no longer conducts business at 107 Roma Court in Venice, this address continues to be the mailing address for Venice Peninsula Properties. Therefore, staff resent the NOI for an EDCDO and RO to Venice Peninsula Properties both at 107 Roma Court and C/O Mr. Stacey. Staff also sent the NOI for an EDCDO and RO via facsimile to Mr. Stacey on January 16, 2003 (Exhibit #7).

In the recent NOI for an EDCDO Commission staff established a revised deadline for VPP to submit a satisfactory response thereto. The Commission's revised deadline to respond to the NOI, in part:

To prevent the issuance of the Executive Director Cease and Desist Order to you, you must provide a response that satisfies the standards of sections 13180(a)(2)(B) and (C) of the Commission's regulations. This response should include:

- 1. Immediately and completely cease from performing any development including any grading, stockpiling of material, storage of construction equipment and/or filling wetland habitat at the subject properties unless authorized by the Commission through a CDP and,*
- 2. By 12:00 pm, January 17, 2003, Venice Peninsula Properties (owners of property where unpermitted development has taken place and to whom this letter has been sent certified and regular mail) or representing agent or attorney (this letter and the attached NOI was sent via facsimile on January 16, 2003 and certified and regular mail) confirm that all such activities have indeed ceased, and commit to perform no further unpermitted development at the subject*

properties. This confirmation should be provided by telephone to Aaron McLendon at (415) 904-5220 and followed by a written confirmation faxed to Aaron McLendon at (415) 904-5235 no later than 12:00 pm January 17, 2003.

Commission staff also granted Venice Peninsula Properties a revised deadline for submitting a Statement of Defense (SOD) form in response to the Commission's RO proceedings. The revised deadline is February 5, 2003.

As of the date of this report, neither Venice Peninsula Properties nor Mr. Stacey has responded to the notice in a "satisfactory manner". Therefore, the Executive Director will proceed with the issuance to VPP of an Executive Director Cease and Desist Order to Venice Peninsula Properties while continuing Restoration Order proceedings with VDH Development, Inc. and Dan Fitzgerald.

B. Description of Unpermitted Development

The remaining unpermitted development, which is the subject matter of this Restoration Order, consists of grading and causing an unspecified amount of stockpiled material to erode into the intertidal area of Ballona Lagoon and Ballona Lagoon, itself, filling wetlands habitat. As previously mentioned, Ballona Lagoon is an Environmentally Sensitive Habitat Area and provides foraging grounds for the endangered California Least Tern and several other shorebird, fish, and invertebrate species.

C. Basis for Issuance of Restoration Order

Pursuant to Section 30811 of the Coastal Act, the Commission has the authority to issue a Restoration Order. This section states:

In addition to any other authority to order restoration, the commission, a local government that is implementing a certified local coastal program, or a port governing body that is implementing a certified port master plan may, after a public hearing, order restoration of a site if it finds that the development has occurred without a coastal development permit from the commission, local government, or port governing body, the development is inconsistent with this division, and the development is causing continuing resource damage.

The Commission has the authority to order restoration of the site if it determines that the development a) has occurred without a coastal development permit, b) is inconsistent with the Coastal Act and c) is causing continuing resource damage. The following paragraphs set forth the basis for the issuance of the Restoration Order by providing substantial evidence that the development meets all three of these criteria necessary for the Commission to issue a Restoration Order.

i. Development Has Occurred without a Coastal Development Permit ("CDP")

The unpermitted development that is the subject of this Restoration Order meet the definition of "development" contained in Section 30106 of the Coastal Act. This definition includes but is not limited to: the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials or change in the density or intensity of the use land. In this case, the placement of stockpiled soil, grading, filling of wetlands habitat, and storage of construction equipment are "development" as defined by Section 30106.

Under the Coastal Act, "development" requires a coastal development permit pursuant to section 30600(a). In this case, no coastal development permit has been applied for or issued for the subject unpermitted development.

The subject unpermitted development is not exempt from the Coastal Act's permitting requirements. As previously stated, on October 28, 2002, Commission staff conducted a site visit in the location of the subject properties. At this time, no grading, stockpiling, storage of construction equipment, and filling of wetlands had taken place. Therefore, the development took place subsequent to the enactment of the California Coastal Act of 1976. Further, the subject unpermitted development does not qualify for any exemption from permit requirements under section 30610 of the Coastal Act because the development is not an improvement to an existing single family home or other structure, is not a repair and maintenance activity, and would have a potential for significant adverse effects on coastal resources.

ii. Unpermitted Development is Inconsistent with the Coastal Act

The unpermitted development meets the definition of "development" which requires a Coastal Development Permit (CDP). A CDP may be approved only when development is consistent with the resource protection policies contained in Chapter 3 of the Coastal Act. The unpermitted development is not consistent with the following Chapter 3 policies of the Coastal Act: Sections 30230, 30231, 30240, and 30253

a) Environmentally Sensitive Habitat Area

Section 30240 of the Coastal Act states:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts

which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.

The subject properties are adjacent to and within Ballona Lagoon, an artificially confined tidal slough designated as an environmentally significant habitat area ("ESHA") in the certified Land Use Plan ("LUP") for Venice and identified by the California Department of Fish and Game ("CDFG") as critical habitat for the endangered Least Tern (Exhibit #2).

Ballona Lagoon provides habitat for a variety of benthic invertebrates, fish and shorebirds [See Biota of the Ballona Region, Los Angeles County Natural History Museum Foundation, Edited by Ralph W. Schreiber, 1981]. Polychaetes, mollusks and other invertebrates live in the mud bottom of the lagoon. Several species of fish have been documented and are known to inhabit the lagoon and canals, including: Topsmelt, California killifish, bay pipefish, longjaw mudsuckers, halibut, arrow goby, and diamond turbot. Fish eating birds such as egrets and green herons are often seen foraging at the water's edge. Willets, dowitchers and dabbling ducks also forage on the mud banks, while domesticated ducks are attracted by food and water left by nearby human residents. Ballona Lagoon is a critical habitat area for the California least tern, Sterna antillarum browni. Both the least terns and Brown pelicans can be seen foraging in the lagoon. Ballona Lagoon is located about five hundred feet east of the Venice Beach California least tern colony, one of the largest and most productive colonies of California least terns remaining in the state (Exhibit #1 & #2).

The banks of the lagoon are remnants of coastal sand dunes. The banks are generally steep, varying from 1:1 to 1:2, and are comprised primarily of sandy silt soils. Because of the steepness and composition of the banks, erosion has been a significant problem, especially where street drains and path drains run into the lagoon. Bank erosion is especially prevalent on the west bank of the lagoon at Jib Street and Topsail Street, where gullies extend as far inland as Pacific Avenue. The native vegetation on the lagoon banks is comprised of wetland, dune and coastal sage scrub communities.

The remaining unpermitted development, which is the subject matter of this Restoration Order, consists of grading and fill remaining from the stockpiling of soil on the upper portions of the properties resulting in sediment eroding into and adjacent to Ballona Lagoon. The eroded material filled an unspecified area of wetlands habitat. The filled area is considered ESHA and is identified by the CDFG as critical habitat for the endangered Least Tern. The area filled by the erosion of the stockpiled soil could have potentially contained wetlands plant species. In addition, the area filled provides foraging habitat for the many fish and shorebird species, including the endangered Least Tern. Therefore, the habitat values of the ESHA were disrupted and the unpermitted development was not sited and designed to prevent impacts, which would significantly degrade the ESHA. In addition, the unpermitted development is not found compatible with the continuance of such habitat areas. Therefore, the unpermitted development is found to be inconsistent with Section 30240 of the Coastal Act.

b) Fill of Wetlands

Section 30233 states, in part:

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to....

(1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.

(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.

(3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.

(4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

(5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

(6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

(7) Restoration purposes.

(8) Nature study, aquaculture, or similar resource dependent activities.

The Commission has found that the stockpiled fill placed on the subject properties eroded across the banks of Ballona Lagoon, filling wetlands habitat. Section 30233 does allow for fill of wetlands under narrow criteria, as shown above. The unpermitted development that resulted in wetlands fill does not fall under any of the allowable criteria

for wetlands fill. Therefore, the Commission finds that the unpermitted development is not consistent with Section 30233 of the Coastal Act.

c) **Water Quality and Marine Resources**

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act States:

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

Ballona Lagoon is an integral part of the larger Venice Canals/Ballona Lagoon wetlands system. Seawater enters the wetlands system through tidal gates, which control the flow from the Marina del Rey entrance channel into Ballona Lagoon. Water leaving the lagoon eventually enters the ocean after leaving the Marina del Rey entrance channel. The incremental fill of Ballona Lagoon could change the morphology of the lagoon and adds to the sedimentation of the surrounding marine resources. As stated in previous sections, portions of the stockpiled fill eroded into Ballona Lagoon, creating a delta-like formation over soft bottom habitat and wetlands species.

The discharge of sediment to coastal waters can cause cumulative impacts such as: eutrophication and anoxic conditions resulting in fish kills and diseases and the alteration of aquatic habitat, including adverse changes to species composition and size; sedimentation increasing turbidity which both reduce the penetration of sunlight needed by aquatic vegetation which provide food and cover for aquatic species; and disruptions to the reproductive cycle of aquatic species. These impacts reduce the biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes and reduce optimum populations of marine organisms and have adverse impacts on human health.

The unpermitted development does not maintain, enhance, and restore marine resources in a manner that will sustain the biological productivity of all species of marine

organisms in coastal waters, and does not maintain and restore biological productivity and water quality of coastal waters (in this case Ballona Lagoon) by controlling polluted runoff, consistent with Section 30230 and 30231 of the Coastal Act.

d) Soil Erosion

Section 30253 of the Coastal Act States, in part:

New development shall:

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

The banks of Ballona lagoon are remnants of coastal sand dunes. The banks are generally steep, varying from 1:1 to 1:2, and are comprised primarily of sandy silt soils. Because of the steepness and composition of the banks, erosion has been a significant problem in the lagoon. After heavy rains in November 2002, the stockpiled soil placed on the upland portions of the subject properties eroded into Ballona Lagoon, creating a delta-like formation below the lagoon bank. This erosion will continue with future rain or urban runoff due to the lack of vegetation on the graded areas and the proximity of fill near the lagoon banks. Section 30253 states, in part, that new development shall neither create nor contribute significantly to erosion of the site or surrounding area. In this case, the unpermitted development did cause significant erosion across the banks of and into the lagoon, burying a small amount of wetlands habitat, inconsistent with Section 30253 of the Coastal Act.

iii. Unpermitted Development is Causing Continuing Resource Damage

The unpermitted development is causing continuing resource damage, as defined by §13190 of the Commission's regulations.

a) Definition of Continuing Resource Damage

The term "continuing" is defined by Section 13190(c) of the Commission's regulations as follows:

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

The alleged violator has removed a majority of the stockpiled fill from the subject properties; however, some fill remains and the subject properties have been graded to bare earth. Therefore, soil continues to erode into Ballona Lagoon and fill remains on the subject properties. As described below, such unpermitted development is causing impacts to resources protected by the Coastal Act that continue to occur as of the date

of this proceeding and damage to resources is "continuing" for purposes of Section 30811 of the Coastal Act.

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

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

The term "damage" in the context of Restoration Order proceedings is provided in Section 13190(b) as follows:

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

In this case, the damage is the continuing fill of an ESHA caused by erosion across the subject properties, where fill has been placed and which has been graded to bare earth. The damage caused by the development, which is described in the above paragraphs, satisfies this regulatory definition.

b) Description of Continuing Resource Damage on the subject properties and Ballona Lagoon

The unpermitted development is causing ongoing adverse impacts to resources protected by the Coastal Act and is inconsistent with the policies of Chapter 3 of the Coastal Act (as addressed in the subsection ii. above). The unpermitted development has taken place adjacent to and in an ESHA located at 5100 Pacific Avenue (Lot Q – APN No. 4294-006-035), 5102 Pacific Avenue (Lot 16, Block 1, Del Rey Beach Tract – APN No. 4294-006-032), and City of Los Angeles owned property (APN No. 4294-006-901).

D. California Environmental Quality Act (CEQA)

The Commission finds that issuance of a restoration order to compel the removal of the unpermitted development and restoration of the property to the conditions that existed prior to the unpermitted development is exempt from any applicable requirements of the California Environmental Quality Act (CEQA) of 1970 and will not have significant adverse effects on the environment, within the meaning of CEQA. The Restoration Order is exempt from the requirement for the preparation of an Environmental Impact Report, based on Sections 15060(c)(2) and (3), 15061(b)(2), 15307, 15308 and 15321 of CEQA Guidelines.

E. Allegations

1. VDH Development, Inc. is the owner of 5106 and 5110 Pacific Avenue, two properties adjacent to the properties where unpermitted development has taken place. Dan Fitzgerald is the owner of 5102 Pacific Avenue (Lot 16 – APN No. 4294-006-032), Venice Peninsula Properties is the owner of 5100 Pacific Avenue (Lot Q – APN No. 4294-006-035), and the City of Los Angeles is the owner of APN No. 4294-006-901. The subject properties (Lot 16, Lot Q, and APN No. 4294-006-901) are located on the west bank of Ballona Lagoon within the Silver Strand/Marina Peninsula area of Venice in the City of Los Angeles.
2. VDH Development, Inc. has undertaken development, as defined by Coastal Act Section 30106, at the subject properties, including grading, stockpiling of soil, storage of construction equipment, and filling of wetland habitat, without benefit of a coastal development permit.
3. Dan Fitzgerald gave VDH Development, Inc. permission to use Lot 16 as a staging area for the construction of two single-family homes on adjacent properties (5106 and 5110 Pacific Avenue).
4. No exemption from the permit requirements of the Coastal Act applies to the unpermitted development on the property.
5. During a site visit on December 2, 2002 and in a letter dated December 6, 2002, Commission staff informed Mr. Ryffel of VDH Development, Inc that grading, stockpiling of soil, and storage of construction material on the subject properties required a CDP, and that failure to obtain a CDP prior to such activities constituted a violation of the Coastal Act. The letter dated December 6, 2002 informed Mr. Ryffel, Mr. Fitzgerald, and Venice Peninsula Properties that pursuant to California Code of Regulations, Title 14, Section 13191(a), the Commission intended to initiate restoration order proceedings against him, and outlined steps in the restoration order process.

F. Violators' Defenses and Commission's Response

VDH Development, Inc. submitted a Statement of Defense (SOD), which was received by the Commission staff on January 7, 2003, and is included as Exhibit #6. The following paragraphs describe the defenses contained in the SOD and set forth the Commission's response to each defense. Mr. Fitzgerald did not submit a SOD.

The following are the statements made by Reto Ryffel of VDH Development, Inc.:

i. VDH Development, Inc. admits the following statements:

- 1) "[There was] [t]emporary stockpiling of material, (that may have caused a small overspill of soil over the protective sandbags placed around the subject properties)."

- 2) “[There was] [s]torage of construction equipment, moving of construction equipment through the property (for traffic safety reasons).”

VDH Development, Inc.’s Defense:

1. “There was absolutely no grading on subject properties, only temporary stockpiling of soil.”

Commission’s Response:

On November 6, 2002 and December 2, 2002, Commission staff conducted site visits to the subject properties. During those site visits, Commission staff confirmed stockpiled fill had been placed on the subject properties with bare, graded areas surrounding the stockpiled area. In some locations (as shown in a photograph taken during the November 6, 2002 site visit) flat pads were extended toward Ballona Lagoon. The stockpiling of soil and extending flat pad areas (for temporary purposes or not) constitute grading. VDH Development argues that stockpiling of fill does not constitute grading. However, grading includes removal, fill, and import and export of soil from or to an area. In this case VDH Development has admitted to stockpiling material on the subject properties. The Commission does consider, whether temporary or not, the placement of fill to be grading. In fact, item No. 8 of the Commission’s coastal development permit application form asks applicants if grading is proposed for projects. “Grading”, as listed under item No. 8, is separated into three sections, “Amount of cut”, “Amount of fill”, and “Amount of import or export”. V.D.H. Development, Inc. was informed of this characterization of grading when they completed their coastal development permit application 5-01-306 and 5-01-307. Furthermore, even if stockpiling does not constitute grading, it does constitute development because it involves the placement of solid material.

VDH Development, Inc.’s Defense:

2. “Furthermore, the ‘filling of wetlands habitat’ did not occur on subject properties.”

Commission’s Response:

On November 6, 2002 and December 2, 2002, Commission staff observed sand deltas in Ballona Lagoon. Staff had been to the site previously and had observed the lagoon without the sand deltas. Staff also observed that there were gullies in the fill pile that lead directly to the new deltas. Thus, the Commission finds that the sand in the lagoon came from the stockpiled fill.

The lower banks of Ballona Lagoon and the lagoon itself contain saturated soils and do support wetland habitat.

Page 11 of the Commission adopted findings for Coastal Development Permit Nos. 5-01-306 and 5-01-307 state:

"The certified Venice LUP designates the 4,000-foot long lagoon as an Environmentally Sensitive Habitat Area (ESHA). The lagoon is 150-200 feet wide and contains approximately sixteen acres of open water and wetland area. The California Department of Fish and Game has also identified the Ballona Lagoon as critical habitat for the Least Tern, and has recommended that the Commission establish a minimal protective lagoon buffer strip of 30-to-40 feet, measured inland from the high water line."

In addition, Dan Fitzgerald, owner of property located at 5102 Pacific Avenue (Lot 16), property where unpermitted development has occurred, submitted a Biological Resources Report prepared for the site (Impact Sciences, 9/17/02) with Coastal Development Permit application 5-02-133. The report states that a narrow band of salt scrub vegetation (Jaumea, alkali heath and pickleweed) exists in the tidal zone along the water's edge. Commission staff has also visited the site and confirmed the existence of wetland vegetation along the tidal zone, which runs along the three-foot contour line very close to the Mr. Fitzgerald's eastern property line.

Therefore, Ballona Lagoon is a designated environmentally sensitive habitat area that supports wetlands habitat, wetlands habitat exists at the lower portions of Lot 16 and Lot Q (along the waterline of Ballona Lagoon), and staff has confirmed that the stockpiled fill has eroded into portions of the wetlands habitat.

VDH Development, Inc.'s Defense:

3. "Paragraph #2 – points a-h – None occurred as was indicated in the restoration order."

Commission's Response:

Staff confirmed in a January 14, 2003 telephone conversation with VDH Development, Inc. that the statement above is intended to deny that the development is inconsistent with the Chapter 3 policies of the Coastal Act identified in the NOI, which stated:

"2) This development is inconsistent with the resource protection policies of the Coastal Act, including, but not limited to the following:

- a. *Sections 30230 and 30231 (marine resources, biological productivity and water quality),*
- b. *Section 30233 (diking, filling or dredging),*
- c. *Section 30236 (substantial alterations of rivers and streams),*
- d. *Section 30240 (environmentally sensitive habitat areas or ESHA),*
- e. *Section 30251 (scenic and visual qualities), and*

h. Section 30253 (geologic and flood hazards, erosion and natural landform alteration)."

The analysis of the unpermitted development's inconsistency with the Coastal Act is discussed on page 9 through page 14 of this report.

VDH Development, Inc.'s Defense:

4. **"There was absolutely no resource damage, continuous or otherwise, inflicted on subject properties as during the temporary stockpiling of soil material, the embankments were protected by sandbags strategically placed along the dividing fence – please see picture attachments (**However, prior to development, previous earth erosion on the embankments of subject properties has been noted and photographed – please see enclosed photographs)"**

Commission's Response:

As previously stated, Commission staff has confirmed that soil from the stockpiled material eroded into Ballona Lagoon, an Environmentally Sensitive Habitat Area. As discussed on page 13 of this staff report, continuous resource damage is occurring. Even though VDH Development, Inc. removed the piles of soil from the subject properties, the site has been denuded of vegetation and graded to bare earth. Heavy winter rains and urban runoff from Pacific Avenue could cause further erosion across the subject properties into Ballona Lagoon.

The Commission acknowledges that past erosion across the banks of Ballona Lagoon. The Commission has found, in past permit actions (A-5-VEN-01-279, 5-01-257, 5-01-306, and 5-01-307), that the west bank of the lagoon has eroded over time. The Commission adopted findings for Coastal Development Permit 5-01-257 (West Bank Ballona Lagoon Enhancement Plan) states:

"The banks of the lagoon are remnants of coastal sand dunes. The banks are generally steep, varying from 1:1 to 1:2, and are comprised primarily of sandy silt soils. Because of the steepness and composition of the banks, erosion has been a significant problem, especially where street drains and path drains run into the lagoon. Bank erosion is especially prevalent on the west bank of the lagoon at Jib Street and Topsail Street, where gullies extend as far inland as Pacific Avenue. Due to the bank erosion on the west side of the lagoon, part of the unimproved Esplanade West City right-of-way is submerged or within the intertidal area."

Additional erosion has occurred here as a result of the stockpiling of material so close to the lagoon. The fact that erosion has occurred over time in this location prior to the unpermitted development does not give authorization to cause further erosion of the banks of the lagoon and additional destruction of wetlands habitat.

VDH Development, Inc.'s Defense:

5. **“VDH Development, and its personnel, was not aware that stockpiling of soil material was in violation with any of the resource protection policies of the Coastal Act.”**

Commission's Response:

On July 26, 2002, VDH Development received Coastal Development Permit Nos. 5-01-306 and 5-01-307 for the construction of two single-family homes located at 5106 and 5110 Pacific Avenue (lots adjacent to the subject properties where unpermitted development took place). During the application process, VDH Development, Inc. met with Commission staff on several occasions to discuss the proposed projects and the sensitivity of developments adjacent to Ballona Lagoon. In addition, the staff reports for CDP Nos. 5-01-306 and 5-01-307 explained the sensitive resources in Ballona Lagoon and how development can affect such resources. Therefore, VDH Development, Inc. was aware that the subject properties are located in the Coastal Zone, was knowledgeable of the Coastal Act requirements, and understood the sensitivity of development near Ballona Lagoon.

VDH Development, Inc.'s Defense:

6. **“As indicated in the enclosed letter, dated August 22, 2002, addressed to Mr. Daniel Fitzgerald, Mr. Fitzgerald had given permission to VDH Development to use all of the subject properties as a construction staging area (please see note acceptance signature on bottom of letter). Since we were not advised otherwise, it was assumed by VDH Development that Mr. Fitzgerald is the owner of all of the subject property lots.”**

Commission's Response:

Commission staff acknowledges that Mr. Fitzgerald gave permission to VDH Development, Inc. to use his lot (Exhibit #11). The letter that was referred to in the above defense statement states, in part, “Thanks for the use of **your lot**.... As far as **your lot** goes, we will fence it for protection. We will be storing materials and equipment on it” (emphasis added). Nothing in this letter implies that Mr. Fitzgerald owned more than his lot (Lot 16) or gave permission to use other lots. Regardless of whether Mr. Fitzgerald gave permission for the work to occur on his property or other properties, stockpiling of material and grading falls under the definition of development that requires a coastal development permit. In addition, such development has been found inconsistent with the Chapter 3 policies of the Coastal Act. Finally, such unpermitted development is causing continuous resource damage to Ballona Lagoon and the lagoon habitat.

VDH Development, Inc.'s Defense:

7. **“To the best of abilities (sic), VDH development (sic) has been conducting its development/home construction business with the outmost caution and sensitivity to the environment (i.e. erecting protective fence around subject properties, providing sandbags to protect the embankment of said properties, etc.). Please believe, that we are in great respect of the Ballona Lagoon and its natural habitat as the natural resources of the area is the primary factor of subject properties desirability as a family home location.”**

Commission's Response:

While the Commission acknowledges the effort on the part of VDH Development Inc. to construct their homes with caution and sensitivity to the environment, stockpiling of material, grading, and storing construction equipment falls under the definition of development that requires a coastal development permit. In this case, such development is found inconsistent with the Chapter 3 policies of the Coastal Act. Ballona Lagoon is identified as an ESHA in the City of Los Angeles' Land Use Plan for Venice and is designated as critical habitat for the endangered Least Tern. The Unpermitted development has caused and continues to cause resource damage to this sensitive coastal resource.

VDH Development, Inc.'s Defense:

8. **“In remedy of Violation No. V-5-02-039, all construction equipments have been removed and all stockpiled soil material has been exported from the subject properties. As enclosed photographs (Exhibit #4 – taken 1/6/03) indicate, subject properties have been restored to their original condition as they were before. (**Again, please note erosion of embankment revealed on photographs – Exhibit #2 & #3, that were taken prior to the beginning of on-site development/construction work).”**

Commission's Response:

The Commission appreciates the immediate actions taken by VDH Development in response to the EDCDO and NOI. VDH Development immediately stopped work on all the subject properties and, by December 10, 2002, had removed all construction equipment and most of the stockpiled material. While the pile of soil has been removed, some of the fill was graded across the subject properties, extending over the banks of the lagoon (on lot Q). Some of this material eroded into the lagoon burying an unspecified area of wetlands habitat.

G. Actions in Accordance with Authority Granted to Commission and Staff

The Commission's authority to take action on Restoration Orders is provided for in Section 30811 of the Coastal Act, which states the following:

In addition to any other authority to order restoration, the commission...may, after a public hearing, order restoration of a site if it finds that the development has occurred without a coastal development permit from the commission... the development is inconsistent with this division, and the development is causing continuing resource damage.

The procedures for the issuance of Restoration Orders are described in the Commission's regulations in Sections 13190 through 13197 of the California Code of Regulations, Title 14. Section 13196(e) of the Commission's regulations states the following:

Any term or condition that the commission may impose which requires removal of any development or material shall be for the purpose of restoring the property affected by the violation to the condition it was in before the violation occurred.

Accordingly, the purpose of this Restoration Order is to order restoration of the subject property to the conditions that existed prior to the occurrence of the unpermitted development described below.

The authority of the Executive Director to commence Restoration Order proceedings is provided for in Section 13191 of the Commission's regulations. Section 13191 specifically authorizes the Executive Director to commence Restoration Order proceedings by providing a notice of intent to the person(s) subject to the order. The notice of intent dated December 6, 2002 that was sent by the Executive Director to the VDH Development, Inc., Dan Fitzgerald, and Venice Peninsula Properties (See Notice of Intent, Exhibit 10) met the requirements set forth in Section 13191 for commencing Restoration Order proceedings before the Commission.

Staff recommends that the Commission issue the following Restoration Order:

RESTORATION ORDER

Pursuant to its authority under Public Resource Code §30811, the California Coastal Commission has found that development on the subject property has occurred without a coastal development permit from the Commission, the development is inconsistent with the Coastal Act, and the development is causing continuing resource damage. The Commission orders VDH Development, Inc. and Dan Fitzgerald, their agents, contractors and employees, and any person acting in concert with any of the foregoing (hereinafter referred to as "Respondents") to restore the subject property to the condition it was prior to the undertaking of development activity.

Accordingly, the Coastal Commission hereby authorizes and orders the following:

- A. Within 14 days of issuance of this Restoration Order, Respondents shall submit for the review and approval of the Executive Director of the Commission a Restoration, Revegetation and Monitoring Plan. The Executive Director may extend this time for good cause.

The Restoration, Revegetation and Monitoring Plan (hereinafter referred to as the "Restoration Plan") shall be prepared by a qualified restoration ecologist and/or resource specialist, as described in section (d), below and shall include the following:

- a) Restoration Objectives. The Restoration Plan shall present the goals and objectives of the Restoration Plan, including the following:
1. Restoration of the properties to the condition that existed prior to the unpermitted development through restorative grading of the topography in the areas impacted by the unpermitted development. Restorative grading plans should include sections showing original and finished grades, and quantitative breakdown of grading amounts (cut/fill), drawn to scale with contours that clearly illustrate the original topography of the subject site prior to any grading disturbance. Original contours are shown on **Exhibit #4** taken from the West Bank Ballona Lagoon Enhancement Plan survey. The location for any excavated material to be removed from the site as a result of the restoration of the impacted areas shall be identified. If the dump site is located in the Coastal Zone and is not an existing sanitary landfill, a Coastal Development Permit shall be required.
 2. Revegetation of all graded areas and areas disturbed by the restorative grading with southern California native plant species appropriate to the Ballona Lagoon natural habitat type (coastal sand dune and tidal/non-tidal salt marsh species).

3. Measures shall be taken to prevent erosion and dispersion of sediments across the subject property via rain, surf, tide or wind. Such measures shall be provided at all times of year.
4. Minimization of the amount of artificial inputs such as watering that shall be used to support the revegetation of the impacted areas. The use of chemical pesticides, herbicides, and/or fertilizers shall not be used within 25 feet of the high water mark of Ballona Lagoon (elevation +2.65). The Restoration and Revegetation Project for the revegetated areas must meet the performance standards for at least three years without maintenance or remedial activities other than nonnative species removal.
5. Stabilization of soils so that soil is not exported off the subject property or into the chaparral or riparian ESHA and so that slumping, gulying, or other surficial instability does not occur.
6. Section A of the Restoration Plan shall also include specific ecological and erosion control performance standards that relate logically to the restoration and revegetation goals. Where there is sufficient information to provide a strong scientific rationale, the performance standards shall be absolute (e.g., specified average height within a specified time for a plant species).
7. Where absolute performance standards cannot reasonably be formulated, clear relative performance standards will be specified. Relative standards are those that require a comparison of the restoration site with reference sites. In the case of relative performance standards, the rationale for the selection of reference sites, the comparison procedure, and the basis for judging differences to be significant will be specified. If the comparison between the revegetation area and the reference sites requires a statistical test, the test will be described, including the desired magnitude of difference to be detected, the desired statistical power of the test, and the alpha level at which the test will be conducted. The design of the sampling program shall relate logically to the performance standards and chosen methods of comparison. The sampling program shall be described in sufficient detail to enable an independent scientist to duplicate it. Frequency of monitoring and sampling shall be specified for each parameter to be monitored. Sample sizes shall be specified and their rationale explained. Using the desired statistical power and an estimate of the appropriate sampling variability, the necessary sample size will be estimated for various alpha levels, including 0.05 and 0.10.

- b) Restoration and Revegetation Methodology. Section B of the Restoration Plan shall describe the methods to be used to remove the unpermitted development, stabilize the soils and revegetate the impacted areas. Section B shall be prepared in accordance with the following directions:
1. The plan shall minimize the size of the area and the intensity of the impacts from disturbances caused by the restoration of the impacted areas. Other than those areas subject to revegetation activities, the areas of the site and surrounding areas currently undisturbed shall not be disturbed by activities related to this restoration project. Prior to initiation of any activities resulting in physical alteration of the subject property, the disturbance boundary shall be physically delineated in the field using temporary measures such as stakes or colored tape.
 2. Specify that the removal of all of the development that is the subject of this Restoration Order, shall be performed using hand tools, unless it is demonstrated to the satisfaction of the Executive Director that heavy equipment will not contribute significantly to impacts to resources protected by the Coastal Act, including, but not limited to geological instability, minimization of landform alteration, erosion, and impacts to native vegetation and the Ballona Lagoon.
 3. Specify that the topography of the areas impacted by the unpermitted development shall be restored to the original condition shown on **Exhibit #4**.
 4. The qualified geologist and restoration ecologist or soil scientist shall specify the methods to be used after restoration to stabilize the soil and make it capable of supporting native vegetation. Such methods shall not include the placement of retaining walls or other permanent structures, grout, geogrid or similar materials. Any soil stabilizers identified for erosion control shall be compatible with native plant recruitment and establishment. The plan shall specify the erosion control measures that shall be installed on the project site prior to or concurrent with the initial grading operations and maintained until the impacted areas have been revegetated to minimize erosion and transport of sediment outside of the disturbed areas. The soil treatments shall include the use of mycorrhizal inoculations of the soil, unless it can be demonstrated to the satisfaction of the Executive Director that such treatment will not likely increase the survival of the plants to be used for revegetation.

5. Describe the methods for revegetation of the site. All plantings shall be the same species, or sub-species, if relevant, as those documented as being located in the reference sites. The planting density shall be at least 10% greater than that documented in the reference sites, in order to account for plant mortality. All plantings shall be performed using native plants that were propagated from plants as close as possible to the subject property, in order to preserve the genetic integrity of the flora in and adjacent to the revegetation area.
 6. Describe the methods for detection and eradication of nonnative plant species within the restoration area. Herbicides shall not be used within 25 feet of the high water line (elevation +2.65). Beyond this area, herbicides shall only be used if physical and biological control methods are documented in peer-reviewed literature as not being effective at controlling the specific nonnative species that become established in the revegetation area. If herbicides are to be used in the revegetation area, specify the precautions that shall be taken to protect native plants and workers, consistent with all applicable laws and regulations.
 7. Describe the use of artificial inputs, such as watering that shall be used to support the plantings becoming established. The use of chemical pesticides, herbicides, and/or fertilizers shall not be used within 25 feet of the high water mark of Ballona Lagoon (elevation +2.65). Specify that only the minimal amount of inputs shall be used.
 8. Specify the measures that will be taken to identify and avoid impacts to sensitive species. Sensitive species are defined as: (a) species which are listed by state or federal agencies as threatened or endangered or which are designated as candidates for such listing; (b) California species of special concern; (c) fully protected or "special animal" species in California; and (d) plants considered rare, endangered, or of limited distribution by the California Native Plant Society.
- c) Monitoring and Maintenance. Section C of the Restoration Plan shall describe the monitoring and maintenance methodology and shall include the following provisions:
1. The applicant shall submit, on an annual basis for a period of five years (no later than December 31st each year) a written report, for the review and approval of the Executive Director, prepared by a qualified restoration ecologist and qualified geologist, evaluating compliance with the performance standards. The annual reports shall include further recommendations and requirements for additional restoration

activities in order for the project to meet the goals and performance standards specified in the Restoration Plan. These reports shall also include photographs taken from pre-designated locations (annotated to a copy of the site plans) indicating the progress of recovery in the area of each item of denied development.

2. At the end of the five-year period, a final detailed report shall be submitted for the review and approval of the Executive Director. If this report indicates that the restoration project has in part, or in whole, been unsuccessful, based on the approved performance standards, the applicant shall be required to submit a revised or supplemental plan to compensate for those portions of the original program that were not successful. The Executive Director will determine if the revised or supplemental restoration plan must be processed as a CDP, a new Restoration Order, or modification of Restoration Order CCC-03-RO-02.
- d) Appendix A shall include a description of the education, training and experience of the qualified geologist, restoration ecologist and soil scientist, if relevant, who shall prepare the Restoration Plan. A qualified restoration ecologist for this project shall be an ecologist or botanist who has experience successfully completing restoration or revegetation of wetland/sand dune habitats. If this qualified restoration ecologist does not have experience in creating the soil conditions necessary for successful revegetation of chaparral vegetation, a qualified soil scientist shall be consulted to assist in the development of the conditions related to soils in the Revegetation and Monitoring Plan. A qualified soil scientist for this project shall be a soil scientist who has experience in assessing, designing, and implementing measures necessary to create soil conditions to support revegetation and prevent instability or erosion. A qualified geologist for this project shall be a geologist who has experience evaluating and designing soil stabilization projects in the Ballona Lagoon or other wetlands habitat areas of southern California.
 - e) Submit interim erosion control plans for the review and approval of the Executive Director. The Interim Erosion Control Plan shall be prepared by a qualified restoration ecologist and shall include the following:
 1. The Interim Erosion Control Plan shall demonstrate that:
 - a. Erosion on the site shall be controlled to avoid adverse impacts on adjacent properties and Ballona Lagoon.
 - b. The following temporary erosion control measures shall be used during construction: installation of temporary sediment basins

(including debris basins, desilting basins or silt traps), installation of temporary drains and swales, sand bag barriers, and silt fencing, stabilize any stockpiled fill with geofabric covers or other appropriate cover, and installation of geotextiles or mats on all cut or fill slopes.

2. The Interim Erosion Control Plan shall include, at a minimum, the following components:
 - a. A narrative report describing all temporary runoff and erosion control measures to be used and any permanent erosion control measures to be installed for permanent erosion control.
 - b. A detailed site plan showing the location of all temporary erosion control measures.
 - c. A schedule for installation and removal of temporary erosion control measures, in coordination with the long-term restoration, revegetation and monitoring plan discussed below.
- B. Within 30 days of the approval by the Executive Director of the documents submitted under paragraph A, or within such additional time as the Executive Director may grant for good cause, Respondents shall complete the following actions, in compliance with the plans approved under paragraph A:
 1. Restore the topography as described in paragraph A.
 2. Submit to the Executive Director a report documenting the restoration of the topography. This report shall include photographs that show the restored site. This report shall include a topographic plan that is prepared by a licensed surveyor, shows two-foot contours, and represents the topographic contours after removal of the development and grading to achieve restoration of the topography to the maximum extent possible, as described in paragraph A.
- C. Within 15 days of the approval by the Executive Director of the documents submitted under paragraph B2, or within such additional time as the Executive Director may grant for good cause, revegetate the disturbed areas with native plants, following the specifications of the Restoration Plan approved by the Executive Director, pursuant to paragraph A above.
- D. In accordance with the schedule set forth in the Restoration Plan, approved by the Executive Director pursuant to paragraph B above, submit to the Executive Director monitoring reports.
- E. After approval of the monitoring reports by the Executive Director, implement within such timeframe as the Executive Director may specify all measures specified by

the Executive Director to ensure the health and stability of the restored areas, as required by the Restoration Plan.

- F. For the duration of the restoration project, including the monitoring period, all persons subject to this order shall allow the Executive Director of the Commission, and/or his/her designees to inspect the subject property to assess compliance with the Restoration Order, subject to twenty-four hours advance notice.

Persons Subject to the Order

VDH Development, Inc., Dan Fitzgerald, and its or his agents, contractors and employees, and any persons acting in concert with any of the foregoing.

Identification of the Property

The property that is subject to this Restoration Order is described as follows: Three individual lots adjacent to Ballona Lagoon, a designated Environmentally Sensitive Habitat Area, bordered by Pacific Avenue to the west, Topsail Street to the north, Ballona Lagoon to the east, and Lot 17, Block 1, Del Rey Beach Tract to the south. They are 5102 Pacific Avenue (Lot 16, Block 1, Del Rey Beach Tract – APN No. 4294-006-032), 5100 Pacific Avenue (Lot Q – APN No. 4294-006-035), and City of Los Angeles owned property (APN No. 4294-006-901).

Description of Unpermitted Development

The development that is the subject of this Restoration Order consists of grading, stockpiling of material, and filling an unspecified area of wetlands habitat.

Effective Date and Terms of the Order

The effective date of this order is the date the order is signed by the Executive Director after approval by the Commission. This order shall remain in effect permanently unless and until modified or rescinded by the Commission.

Findings

This order is issued on the basis of the findings adopted by the Commission at the February 2003 hearing, as set forth in the attached document entitled "Recommended Findings for Restoration Order CCC-03-RO-02".

Compliance Obligation

Strict compliance with this order by all parties subject thereto is required. Failure to comply strictly with any term or condition of this order including any deadline contained in this order will constitute a violation of this order and may result in the imposition of civil penalties of up to SIX THOUSAND DOLLARS (\$6,000) per day for each day in

which such compliance failure persists, in addition to any other penalties authorized under Section 30820.

Deadlines

Deadlines may be extended by the Executive Director for good cause. Any extension request must be made in writing to the Executive Director and received by Commission staff at least 10 days prior to expiration of the subject deadline.

Appeal

Pursuant to Public Resources Code Section 30803(b), any person or entity against whom this order is issued may file a petition with the Superior Court for a stay of this order.

Executed in _____ on _____, on behalf of the California Coastal Commission.

Peter Douglas, Executive Director

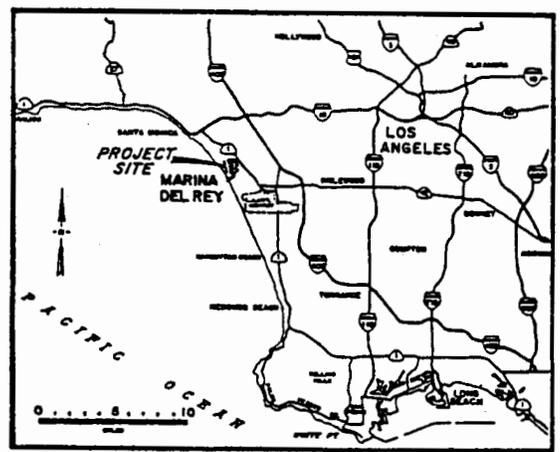
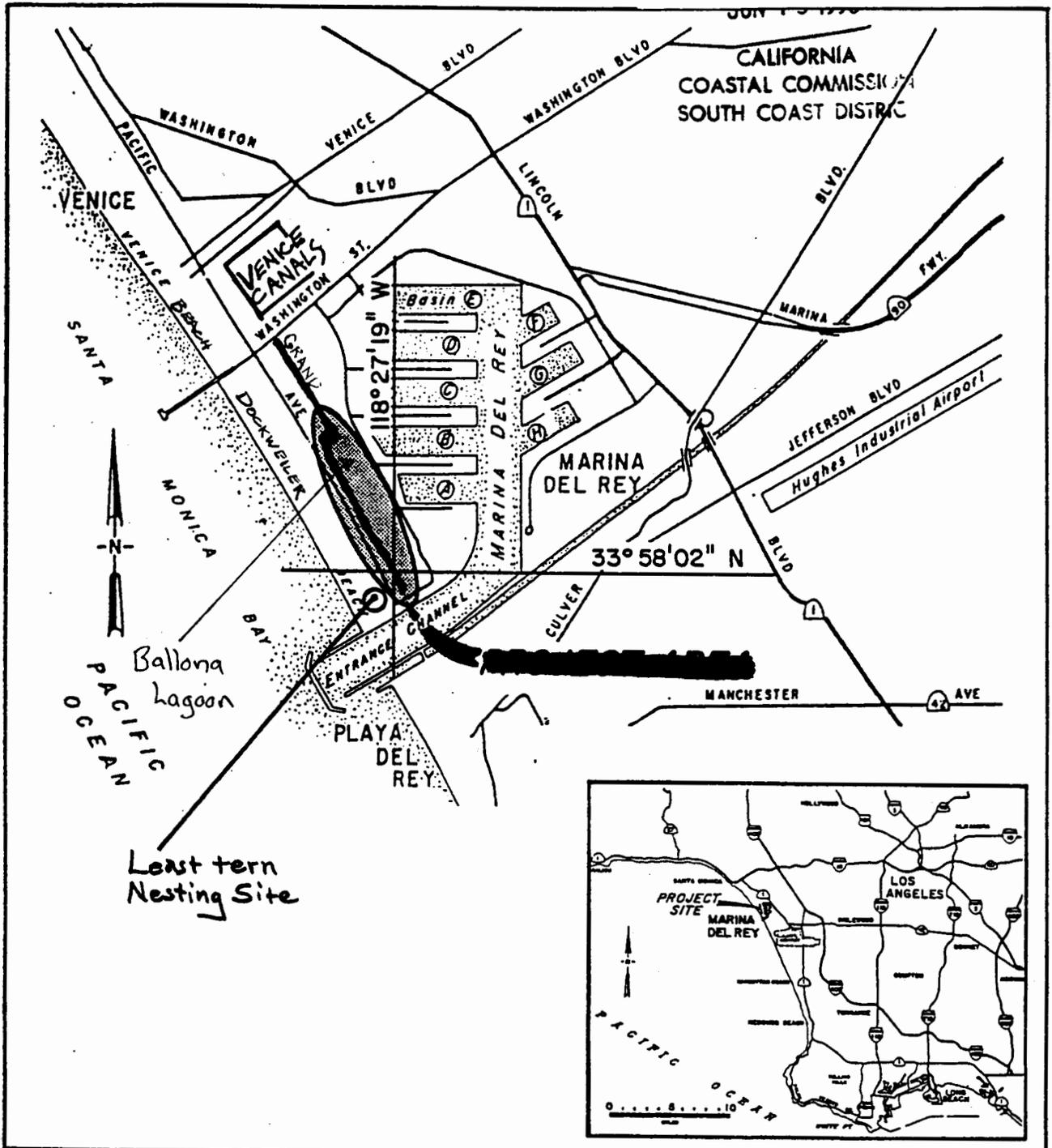
By: _____

CCC-03-RO-02
Exhibit List

**Exhibit
Number Description**

1. Site Map and Location
2. Location of ESHA
3. Site Map
4. Original Contour Lines Surveyed During the Ballona Lagoon West Bank Enhancement Plan
5. Notice Prior to Issuance of Executive Director Cease and Desist Order and Notice of Intent to Commence Restoration Order Proceedings, December 6, 2002
6. Statement of Defense by VDH Development, Inc.
7. Letter to Venice Peninsula Properties and Sherman Stacey, Revised NOI for EDCDO and RO Proceedings, January 16, 2003
8. Response from R.L. Ward Construction, Inc. to the NOI for an EDCDO, December 6, 2002
9. Response from VDH Development, Inc. to the NOI for an EDCDO, December 9, 2002
10. Response from Dan Fitzgerald to the NOI for an EDCDO, December 9, 2002
11. Agreement Letter between R.L. Ward Construction, Inc. and Dan Fitzgerald, August 22, 2002
12. Declaration of Service to Randy Ward by Pam Emerson





PURPOSE: WETLAND RECLAMATION

DATUM:

ADJACENT PROPERTY OWNERS:
SEE ATTACHED LIST

VICINITY MAP

0 1/2 1
MILE

BALLONA LAGOON MARINE PRESERVE
P.O. BOX 9244
MARINA DEL REY, CA. 90295

Ballona Lagoon

Fr, 9a
CCC-03-RO-2 (VDH Devt, Fitzgerald)

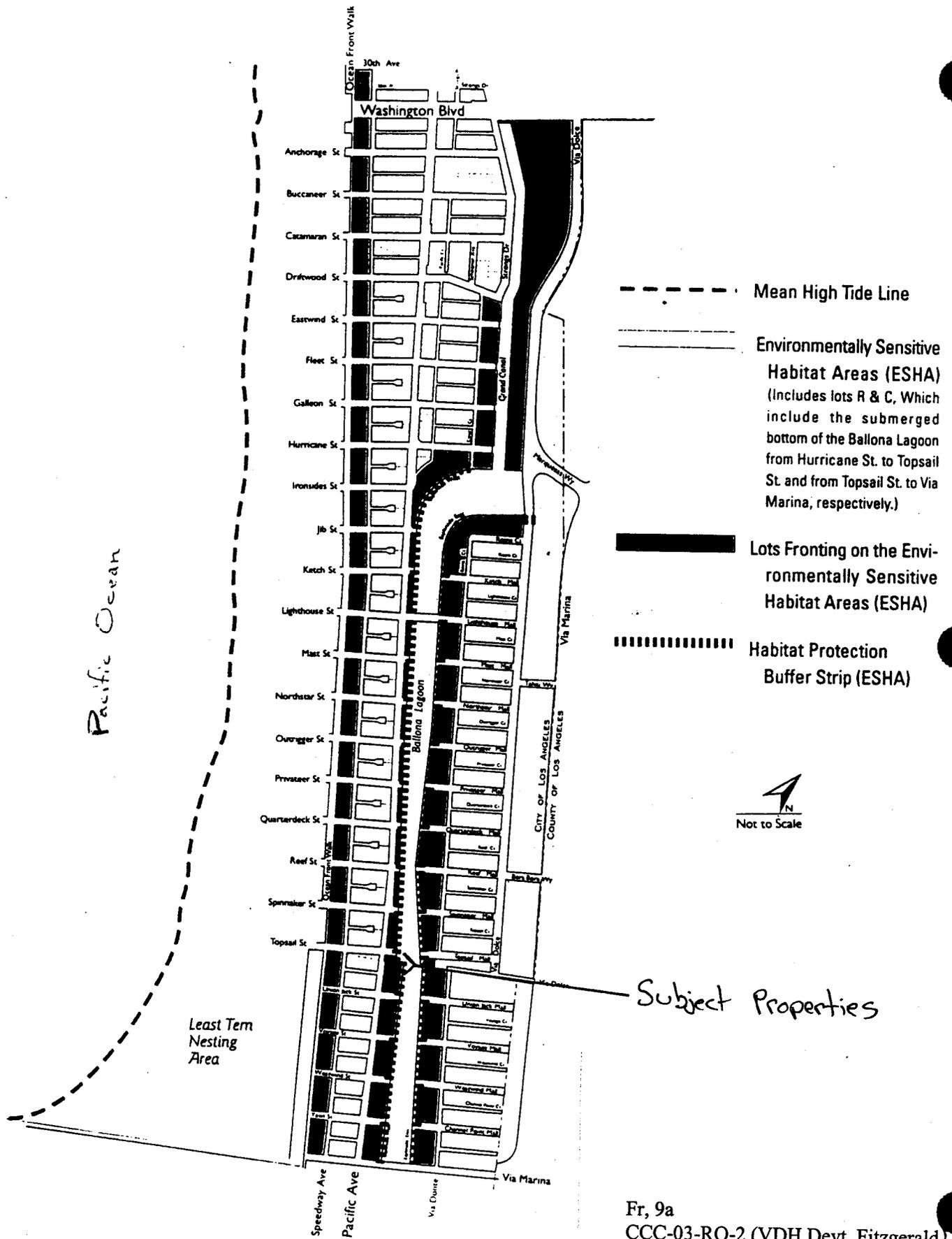
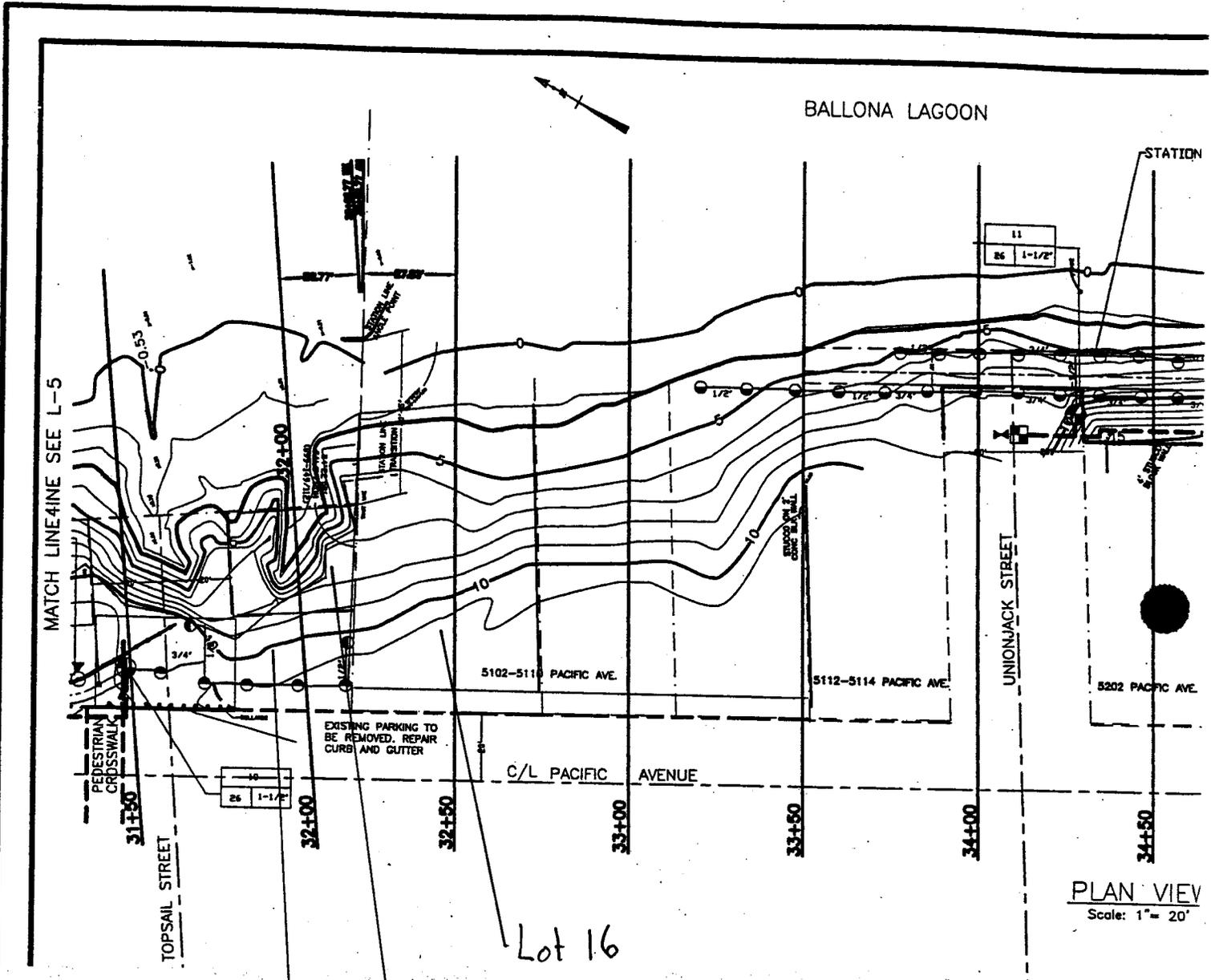


Exhibit 22c
Environmentally Sensitive Habitat Areas

Fr, 9a
 CCC-03-RO-2 (VDH Devt, Fitzgerald)



Lot 16
Lot Q
City-owned Property

CALIFORNIA COASTAL COMMISSION

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



VIA CERTIFIED and REGULAR MAIL
(HAND DELIVERED TO VDH DEVELOPMENT)

REVISED VERSION

December 6, 2002

Dan Fitzgerald
10131 Constellation Blvd.
Los Angeles, CA 90067
(Certified Mail Article No. 7001 2510 0009 2099 7385)

Fr, 9a
CCC-03-RO-2 (VDH Devt, Fitzgerald,

EXHIBIT 5

PAGE 1 of 6

Venice Peninsula Properties
107 Roma Court
Venice, CA 90292
(Certified Mail Article No. 7001 2510 0009 2099 7378)

VDH Development
Attn: Reto M. Ryffel
1007 Montana Avenue
Santa Monica, CA 90403
(Certified Mail Article No. 7001 2510 0009 2099 7866)
(HAND DELIVERED to:
5106 and/or 5110 Pacific Avenue
Venice, CA 90292)

Subject: Notice Prior to Issuance of Executive Director Cease and Desist Order for Violation No. V-5-02-039 and Notice of Intent to Commence Restoration Order Proceedings

Location: 5100 Pacific Avenue (Lot Q – APN No. 4294-006-035)
5102 Pacific Avenue (Lot 16 – APN No. 4294-006-032)
City of Los Angeles Owned Property (APN No. 4294-006-901)
Venice, City and County of Los Angeles

Violation Description: Unpermitted grading, stockpiling of material, and storage of construction equipment on the West Bank of Ballona Lagoon, filling an unspecified area of wetland habitat.

Dear Mr. Fitzgerald, Mr. Ryffel, and Venice Peninsula Properties:

The purpose of this letter is to notify you of my intent, as the Executive Director of the California Coastal Commission ("Commission"), to 1) issue an Executive Director Cease and Desist Order directing you to cease and desist from further unpermitted grading, stockpiling, storage of construction equipment, and fill of wetland habitat and 2) to commence proceedings

for issuance of a Restoration Order to require you to remove all unpermitted development and to restore the subject properties to the condition they were in before the unpermitted development occurred.

The unpermitted development consists of grading, stockpiling of material, and storage of construction equipment on the West Bank of Ballona Lagoon, filling an unspecified area of wetland habitat. This development is located at 5100 Pacific Avenue (Lot Q – APN No. 4294-006-035), 5102 Pacific Avenue (Lot 16 – APN No. 4294-006-032), and City-owned property (APN No. 4294-006-901) in Venice, City and County of Los Angeles (“subject properties”). The subject properties are located on the west bank of Ballona Lagoon. The respondents include the owners of property of which the unpermitted development occurred (Dan Fitzgerald – Lot 16 and Venice Peninsula Properties – Lot Q) and the owner of two adjacent properties who performed the unpermitted development (VDH Development). The City of Los Angeles owns Lot 24 (APN No. 4294-006-901) upon which some of the unpermitted development occurred.

Ballona Lagoon and the attached Venice Canals system is an Environmentally Sensitive Habitat Area (ESHA) as defined by Section 30107.5 of the Coastal Act (Division 20 of the Public Resource Code). In addition, the Commission’s certified Land Use Plan for Venice designates Ballona Lagoon as an Environmentally Sensitive Habitat Area. The lagoon also provides habitat and foraging grounds for the California least tern, Sterna antillarum browni. The California Least Tern is a State and federally listed endangered species. This habitat is necessary for the California Least Tern to feed on small fish while nesting at the protected nesting site on Dockweiler State Beach, located less than 2,000 feet west of Ballona Lagoon.

History of the Violation Investigation

On October 28, 2002, Commission staff conducted a site visit in the location of the subject properties. At this time, no grading, stockpiling, storage of construction equipment, and filling of wetlands had taken place. In a subsequent site visit on November 6, 2002, Commission staff observed grading, placement of stockpiled fill, storage of construction equipment, and filling of wetlands habitat on the west bank of Ballona Lagoon (more specifically 5100 Pacific Avenue (Lot Q – APN No. 4294-006-035), 5102 Pacific Avenue (Lot 16 – APN No. 4294-006-032), and City-owned property adjacent to Lot Q (APN No. 4294-006-901)).

On December 2, 2002, Commission staff person Charles Posner spoke with the homebuilder of two homes under construction at 5106 and 5110 Pacific Avenue.¹ At this time, the homebuilder acknowledged using Lot 16, Lot Q, and City property adjacent to Lot Q as a construction staging area. The homebuilder also asserted that Dan Fitzgerald (the owner of 5102 Pacific Avenue (Lot 16) had given permission to VDH Development (owners of 5106 and 5110 Pacific Avenue) to use all of the properties (Lot 16, Lot Q, and the City-owned lot-APN No. 4294-006-901) as a staging area.

¹ The two homes under construction at 5106 and 5110 Pacific Avenue were approved by the Commission under Coastal Development Permits 5-01-306 and 5-01-307. The owner of these two properties is VDH Development. At this time, Commission staff believed this homebuilder to be associated with VDH Development.

During the same site visit of December 2, 2002, Commission staff observed gullies in the banks of Ballona Lagoon below the subject properties that were created by recent rains. Some of the unpermitted fill had eroded into the lagoon via these new gullies, creating small silt deltas and covering soft bottom habitat in the lagoon. As of the date of this letter, grading, stockpiling of material, storage of construction material, and the fill of wetlands continues to occur.

Executive Director Cease and Desist Order

Section 30809 of the Coastal Act authorizes the Executive Director to issue an order directing a person to cease and desist if that person has undertaken, or threatened to undertake, any activity that may require a permit without securing a permit. The grading, stockpiling of material, and storage of construction equipment on the West Bank of Ballona Lagoon, filling an unspecified area of wetland habitat at the subject properties constitutes development which requires a coastal development permit ("CDP"). Since this development was performed in an area in which the Commission shares with the City of Los Angeles jurisdiction to issue permits under the Coastal Act (there is not a certified Local Coastal Program for this or any other section of the City of Los Angeles), the performance of this development requires a CDP from both the City and the Commission. No such permit has been issued nor has a permit application been applied for. The Executive Director Cease and Desist Order will direct you to cease and desist from undertaking any activity that may require a permit from the Commission without obtaining a permit. A violation of a Cease and Desist Order may subject the violator to additional fines, subject to Sections 30820, 30821.6, and 30822 of the Coastal Act (PRC Division 20 §30809(b)(3)).

Section 30809(b) of the Coastal Act states the following:

The cease and desist order shall be issued only if the person or agency has failed to respond in a satisfactory manner to an oral notice given in person or by telephone, followed by a written confirmation, or a written notice given by certified mail or hand delivered to the landowner or the person performing the activity.

Section 13180(a) of the Commission's regulations (Title 14, Division 5.5 of the California Code of Regulations (CCR)) defines the term "satisfactory manner" as that term is used in Section 30809(b) as being, in part, "a response which is made in the manner and within the timeframe specified in the notice." **To prevent the issuance of the Executive Director Cease and Desist Order to each of you, you must provide a response that satisfies the standards of sections 13180(a)(2)(B) and (C) of the Commission's regulations. This response should include:**

1. Immediately and completely cease from performing any development including any grading, stockpiling of material, storage of construction equipment and/or filling wetland habitat at the subject properties unless authorized by the Commission through a CDP and,
2. By 5:00 pm, December 6, 2002, VDH Development (who conducted the unpermitted development and to whom this letter will be hand delivered) confirm that all such activities have indeed ceased, and commit to perform no further unpermitted development at the subject properties. This confirmation should be provided by telephone to Aaron McLendon at (415) 904-5220 and followed by a written confirmation faxed to Aaron McLendon at (415) 904-5235 no later than 12:00 pm December 9, 2002.

3. By 5:00 pm, December 11, 2002, Dan Fitzgerald and Venice Peninsula Properties (owners of property where unpermitted development has taken place and to whom this letter has been sent certified mail) confirm that all such activities have indeed ceased, and commit to perform no further unpermitted development at the subject properties. This confirmation should be provided by telephone to Aaron McLendon at (415) 904-5220 and followed by a written confirmation faxed to Aaron McLendon at (415) 904-5235 no later than 12:00 pm December 12, 2002.

The Executive Director Cease and Desist Order may be subject to such terms and conditions as the Executive Director may determine are necessary to avoid irreparable injury to any area within the jurisdiction of the Commission pending action by the Commission under Section 30810 (which grants the Commission the authority to issue Cease and Desist Orders). The Executive Director Cease and Desist Order shall be effective upon its issuance.

Restoration Order

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

In addition to any other authority to order restoration, the commission...may, after a public hearing, order restoration of a site if it finds that the development has occurred without a coastal development permit from the commission... the development is inconsistent with this division, and the development is causing continuing resource damage.

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

- 1) Unpermitted development consisting of grading, stockpiling of material, storage of construction equipment and filling of wetlands habitat has occurred on the subject property.
- 2) This development is inconsistent with the resource protection policies of the Coastal Act, including, but not limited to the following:
 - a) Sections 30230 and 30231 (marine resources, biological productivity and water quality),
 - b) Section 30233 (diking, filling or dredging),
 - c) Section 30236 (substantial alterations of rivers and streams),
 - d) Section 30240 (environmentally sensitive habitat areas or ESHA),
 - e) Section 30251 (scenic and visual qualities), and
 - h) Section 30253 (geologic and flood hazards, erosion and natural landform alteration).
- 3) The unpermitted development is causing continuing resource damage, as defined by Section 13190 of the Commission's regulations. The unpermitted development has impacted the resources listed in the previous paragraph (item number two). Such impacts meet the definition of damage provided in Section 13190(b): "any degradation or other

reduction in quality, abundance, or other quantitative or qualitative characteristic of the resource as compared to the condition the resource was in before it was disturbed by unpermitted development." The existence of unpermitted grading and stockpiling of material will lead to increased erosion and the sedimentation of Ballona Lagoon (as witnessed during a site investigation). As mentioned previously, Ballona Lagoon is an Environmentally Sensitive Habitat Area and provides foraging grounds for the endangered California Least Tern and several other shorebird, fish, and invertebrate species.

In addition, the continuation of the unpermitted development, as listed above, will create adverse impacts to water quality, marine resources, the scenic and visual qualities of natural areas, the alteration of natural landforms, and would create and/or contribute to erosion of the site. A substantial portion of the impacts from the unpermitted development continues to exist at the subject property; therefore, the damage to resources protected by the Coastal Act is continuing.

For the reasons stated above, I have decided to commence a Restoration Order proceeding before the Commission in order to restore the subject property to the condition it was in before the unpermitted development occurred.

The procedures for the issuance of Restoration Orders are described in Sections 13190 through 13197 of the Commission's regulations. Section 13196(e) of the Commission's regulations states the following:

Any term or condition that the commission may impose which requires removal of any development or material shall be for the purpose of restoring the property affected by the violation to the condition it was in before the violation occurred.

Accordingly, any Restoration Order that the Commission may issue will have as its purpose the restoration of the subject property to the conditions that existed prior to the occurrence of the unpermitted development described above.

In accordance with Sections 13191(a) of the Commission's regulations, you have the opportunity to respond to the Commission staff's allegations as set forth in this notice of intent to commence Restoration Order proceedings by completing the enclosed Statement of Defense (SOD) form. **The SOD form must be returned to the Commission's San Francisco office, directed to the attention of Aaron McLendon, no later than January 6, 2003.**

The Commission staff intends to schedule the hearings for the Restoration Order during the Commission meeting that is scheduled for February 5-8, 2003 in San Diego. If you have any questions regarding this letter or the enforcement case, please call Aaron McLendon at (415) 904-5220 or send correspondence to his attention at the address listed on the letterhead.

Sincerely,



Peter Douglas
Executive Director

cc: Aaron McLendon, Headquarters Enforcement Officer
Lisa Haage, Chief of Enforcement
John Bowers, Staff Counsel
Amy Roach, Deputy Chief Counsel
Steve Hudson, Southern California Enforcement Supervisor
Deborah Lee, Deputy Director, Southern California
Teresa Henry, South Coast District Coastal Program Manager
Pam Emerson, Los Angeles County Supervisor, South Coast District
Chuck Posner, Coastal Program Analyst, South Coast District
Christine Numano-Huira, Deputy City Attorney, City of Los Angeles
Sandy Kievman, Councilwoman Cindy Miscikowski

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

ATTACHMENT TO STATEMENT OF DEFENSE FORM

1. **Facts or allegations contained in the restoration order or the notice of intent that you admit (with specific reference to the paragraph number in the order):**

VDH Development acknowledges the following facts as stated in the restoration order:

Paragraph #1

- Temporary stockpiling of material, (that may have caused a small overspill of soil over the protective sandbags placed around subject properties),
- Storage of construction equipment, moving of construction equipment through the property (for traffic safety reasons)

2. **Facts or allegations contained in the restoration order or the notice of intent that you deny (with specific reference to the paragraph number in the order):**

Paragraph #1

- There was absolutely no grading on subject properties, only temporary stockpiling of soil. Furthermore, "filling of wetlands habitat" did not occur on subject properties.

Paragraph #2 - points a-h

- None occurred as was indicated in the restoration order

Paragraph #3

- There was absolutely no resource damage, continuous or otherwise, inflicted on subject properties as during the temporary stockpiling of soil material, the embankments were protected by sandbags strategically placed along the dividing fence – please see picture attachments (**However, prior to development, previous earth erosion on the embankments of subject properties has been noted and photographed – please see enclosed photographs)

3. **Facts or allegations contained in the restoration order or the notice of intent of which you have no personal knowledge (with specific reference to the paragraph number in the order):**

Paragraph #3

- VDH Development, and its personnel, was not aware that stockpiling of soil material was in violation with any of the resource protection policies of the Coastal Act.

Fr, 9a
CCC-03-RO-2 (VDH Devt, Fitzgerald,

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

Paragraph #1

-As indicated in enclosed letter, dated August 22, 2002, addressed to Mr. Daniel Fitzgerald, Mr. Fitzgerald had given permission to VDH Development to use all of the subject properties as a construction staging area (please see note acceptance signature on bottom of letter). Since we were not advised otherwise, it was assumed by VDH Development that Mr. Fitzgerald is the owner of all of the subject property lots.

Paragraph #2 & #3

- To the best of abilities, VDH development has been conducting its development/home construction business with the outmost caution and sensitivity to the environment (i.e. erecting protective fence around subject properties, providing sandbags to protect the embankment of said properties, etc.). Please believe, that we are in great respect of the Ballona Lagoon and its natural habitat as the natural resources of the area is the primary factor of subject properties desirability as a family home location.

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

Paragraph #1

- In remedy of Violation No. V-5-02-039, all construction equipments have been removed and all stockpiled soil material has been exported from subject properties. As enclosed photographs (Exhibit #4 - taken 1/6/03) indicate, subject properties have been restored to their original condition as they were before. (**Again, please note erosion of embankments revealed on photographs - Exhibit #2 & #3, that were taken prior to the beginning of on-site development/construction work).

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

Exhibit #1 - Copy of letter dated August 22, 2002, author: R.L. Ward Construction, Inc. Re: Agreement Letter regarding the use of Mr. Daniel Fitzgerald's property for construction staging area purposes (please not acceptance signature on bottom)

Exhibit #2 & Exhibit #3 - Photographs of subject property sites, taken 5/3/02 (please note previously existing land erosion)

Exhibit #4 - most recent photographs of subject property sites, taken 1/6/03 (please note, all equipment and stockpiled materials have been removed and properties have been restored to original condition).

CALIFORNIA COASTAL COMMISSION

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



VIA CERTIFIED and REGULAR MAIL
(Sent via facsimile to Sherman Stacey)

January 16, 2003

Venice Peninsula Properties
Attn: Cliff Rome
107 Roma Court
Venice, CA 90292
(Certified Mail Article No. 7001 2510 0009 2099 7835)

Venice Peninsula Properties
C/O Sherman Stacey
1111 Bayside Drive, Suite 150
Corona del Mar, CA 92625
(Certified Mail Article No. 7001 2510 0009 2099 7828)
(Via facsimile to Sherman Stacey, 1/16/03)

Subject: Notice Prior to Issuance of Executive Director Cease and Desist Order for Violation No. V-5-02-039 and Notice of Intent to Commence Restoration Order Proceedings

Dear Mr. Rome and Mr. Stacey,

On December 6, 2002, the Coastal Commission sent the attached *Notice Prior to Issuance of Executive Director Cease and Desist Order for Violation No. V-5-02-039 and Notice of Intent to Commence Restoration Order Proceedings* ("NOI") and Statement of Defense form ("SOD") via certified mail to Venice Peninsula Properties (owner on record of 5100 Pacific Avenue - Lot Q), Dan Fitzgerald (owner on record of 5102 Pacific Avenue - Lot 16), and VDH Development, Inc. (owner on record of 5106 and 5110 Pacific Avenue (lot 17 & 18)). The NOI was also hand delivered to VDH Development, Inc. at 5106/5110 Pacific Avenue. Dan Fitzgerald received the certified mail on December 9, 2002 and VDH Development, Inc. received the certified mail on December 11, 2002.

Because we did not receive a return receipt from the certified mail that was sent to you, I telephoned Sherman Stacey on January 14, 2003, in an attempt to discover if your mailing address had changed.¹ At this time I confirmed that you are still a client of Mr. Stacey. During this telephone conversation, Mr. Stacey told me that you no longer lived at 107 Roma Court in Venice

¹ I telephoned Mr. Stacey after researching the property and discovering that he received a letter from the State Attorney General's office on December 2, 2002 in response to his letter of September 17, 2002, with regards to your property (Lot Q). At that time Mr. Stacey was the only available contact we had on file other than the property address of 107 Roma Court, Venice, CA.

Fr, 9a
CCC-03-RO-2 (VDH Devt, Fitzgerald,

January 16, 2003
Venice Peninsula Properties

EXHIBIT 7 PAGE 2 of 3

(the current address found for the property owner of Lot Q at the Los Angeles County Assessors office and therefore the legal address we used to send the NOI). Mr. Stacey stated that he would contact you to get the appropriate mailing address.

Later in that same day (January 14, 2002), I received a returned certified envelope (Article No. 7001-2510-0009-2099-7378) from the U.S. Postal Service ("U.S.P.S."). The certified mail was marked as "refused" on December 18, 2002 and a second attempt to deliver the certified envelope occurred on December 24, 2002. The U.S.P.S. returned the certified envelope on December 31, 2002 and marked the letter "unclaimed".

On January 15, 2003, I telephoned Mr. Stacey to obtain the proper mailing address for Venice Peninsula Properties. He confirmed that, while you no longer reside at 107 Roma Court in Venice, this address continues to be your mailing address. Therefore, we are resending the attached NOI to both you at this address and C/O Mr. Stacey. We are also sending, via facsimile, this cover letter and NOI to Mr. Stacey.

This letter serves several functions: 1) to provide a notice prior to issuance of an Executive Director cease and desist order to address immediate action at the property and 2) to provide you notice of commencement of the Commission's intent to commence with restoration order proceedings.

EDCDO

You may disregard the response deadline dates indicated on page 3 and page 4 of the attached NOI and replace them with the response deadlines set forth below. **Therefore, to prevent the issuance of the Executive Director Cease and Desist Order to you, you must provide a response that satisfies the standards of sections 13180(a)(2)(B) and (C) of the Commission's regulations. This response should include:**

1. Immediately and completely cease from performing any development including any grading, stockpiling of material, storage of construction equipment and/or filling wetland habitat at the subject properties unless authorized by the Commission through a CDP and,
2. By 12:00 pm, January 17, 2003, Venice Peninsula Properties (owners of property where unpermitted development has taken place and to whom this letter has been sent certified and regular mail) or representing agent or attorney (this letter and the attached NOI was sent via facsimile on January 16, 2003 and certified and regular mail) confirm that all such activities have indeed ceased, and commit to perform no further unpermitted development at the subject properties. This confirmation should be provided by telephone to Aaron McLendon at (415) 904-5220 and followed by a written confirmation faxed to Aaron McLendon at (415) 904-5235 no later than 12:00 pm January 17, 2003.

Commission RO

In accordance with Sections 13191(a) of the Commission's regulations, you have the opportunity to respond to the Commission staff's allegations as set forth in the attached notice of intent to commence Restoration Order proceedings by completing the enclosed Statement of Defense

January 16, 2003
Venice Peninsula Properties

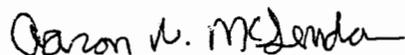
EXHIBIT 7 PAGE 3 of 3

(SOD) form. The SOD form must be returned to the Commission's San Francisco office, directed to the attention of Aaron McLendon, no later than February 5, 2003.

It is my understanding from telephone conversations with Mr. Stacey (January 14 and 15, 2003) that you will object to the order because you feel you should not be liable for the violation and you do not think the order should be directed at you because the CA Coastal Conservancy has accepted an "Offer to Dedicate" lot Q. While an owner of property is clearly liable for addressing Coastal Act violations on his or her property, this NOI was sent to all property owners and the alleged violator.² Therefore, the NOI is directed to the alleged violator and all property owners where the alleged violation took place. However, we are willing to discuss resolving the possible violation without issuing you, the owner in fee of Lot Q, the restoration order if you formally agree to allow the alleged violator access to your property to conduct any restoration work authorized by the Commission. If you choose to object to the issuance of the restoration order please let us know how you plan to resolve this violation.

Thank you for your continued cooperation and attention to this matter. Please call me if you have any questions. You may contact me at (415) 904-5220.

Sincerely,



Aaron N. McLendon
Headquarters Enforcement Officer

cc: Lisa Haage, Chief of Enforcement
Steve Hudson, Southern California Enforcement Supervisor

Enclosures: EDCDO and NOI, 12/6/02
SOD Form

² In *Leslie Salt Company v. San Francisco Bay Conservation and Development Commission* 153 Cal.App.3d 605, the Court found that "...whether the context be civil or criminal, liability and the duty to take affirmative action flow not from the landowner's active responsibility for a condition of his land that causes widespread harm to others or his knowledge of or intent to cause such harm but rather, and quite simply, from his very possession and control of the land in question."

R.L. WARD CONSTRUCTION, INC.

831 DICKSON STREET
MARINA DEL REY, CA 90292
PHONE (310) 301-0284
FAX (310) 827-7390

DECEMBER 6, 2002

AARON MCLENDON
CALIFORNIA COSTAL COMMISSION

RE: NOTICE PRIOR TO ISSUANCE OF EXECUTIVE DIRECTOR CEASE AND
DESIST ORDER
DAN FITZGERALD
V.D.H. DEVELOPMENT
5106 & 5110 S. PACIFIC AVE.

DEAR AARON MCLENDON,

AS PER OUR TELEPHONE CONVERSATION, I JUST WISH TO INFORM
YOU THAT WE HAVE STOPPED WORKING IN THE AREA OF QUESTION. AS
AGREED WE WILL PULL BACK THE SOIL IN THIS AREA AND RE-INSTALL SAND
BAGS. WE WILL MOVE OUR CONSTRUCTION EQUIPMENT AS YOU
REQUESTED. WE WILL FULLY COOPERATE WITH YOUR WISHES TO MAKE
SURE NO DAMAGE TO THIS AREA IS DONE. PLEASE CONTACT ME DIRECTLY IF
YOU WOULD LIKE.

THANK YOU,



RANDY WARD
CELL # 310-699-9779

Fr, 9a
CCC-03-RO-2 (VDH Devt, Fitzgerald,

v.d.h.

Builders of
Fine Homes

December 9, 2002

Aaron McLendon
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

FAX: 415-904-5235

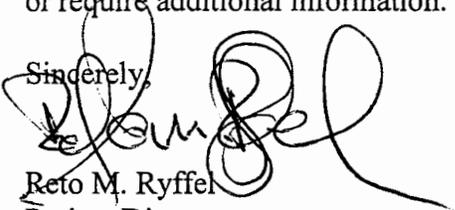
**Re: Notice Prior to Issuance of Executive Director Cease and Desist Order for
Violation No. V-5-02-039 - VHD Development 5106 & 5110 S. Pacific Ave.**

Dear Mr. McLendon:

This letter is to serve as a confirmation that in compliance with your notification letter of December 6, 2002, VDH Development has fully authorized R.L. Ward Construction, Inc. (Lic.#456355) to carry out the necessary steps (on behalf of VDH Development) in immediate resolution of Violation No. V-5-02-039.

Thank you very much and please don't hesitate to contact me if you have any questions or require additional information.

Sincerely,



Reto M. Ryffel
Project Director
VDH Development, Inc.
Ph: 310-869-9494

cc: R.L. Ward Construction, Inc.

13763 Fiji Way

Marina del Rey

California 90292 USA

Telephone: 310-451-4018

Facsimile: 310-451-4208

Email: vdhgroup@adelphia.net

Fr, 9a

CCC-03-RO-2 (VDH Devt, Fitzgerald,

EXHIBIT 9

PAGE 1 of 1

DANIEL S. FITZGERALD
10131 CONSTELLATION BLVD
LOS ANGELES, CA 90067
(310) 553-1480 OFFICE
(310) 203-9701 FAX

December 9, 2002

Via Certified Mail

Certified Mail Article No. 7002 0510 0001 7648 6508

Peter Douglas
Executive Director
California Coastal Commission
45 Fremont, Suite 2000
San Francisco, CA 94105-2219

RE: Notice Prior to Issuance of Executive Director Cease and Desist Order
Location: 5102 Pacific Avenue (Lot 16 - APN No. 4294-006-901)
Venice, City and County of Los Angeles

Dear Mr. Douglas:

I, Dan Fitzgerald, am the owner of the above-referenced property. I am currently out of town and will be returning Friday, December 13, 2002. My Assistant, Monique, informed me of your letter. I hasten to answer your request on my lot at 5102 Pacific Avenue.

Let me start by saying I was attempting to be a good neighbor to Reto M. Ryffel from VDH Development, who are currently building on two properties south of my lot. Unbeknownst to me, they have been performing illegal grading, over-extending their foundation (basement grading) onto my property, and storing construction equipment.

I have not seen this and I strongly admonish them and will make sure they correct all the infringements, trespasses, disturbance of existing conditions, etc.

Please be advised all infractions are not part of my doing. I have instructed VDH Development that they are to proceed promptly with the correction of all their mistakes and trespasses.

Sincerely yours,

Monique McGowan

For Daniel S. Fitzgerald
DSF/mm

Fr, 9a
CCC-03-RO-2 (VDH Devt, Fitzgerald,

EXHIBIT 10

PAGE 1 of 1

RECEIVED
DEC 12 2002
CALIFORNIA
COASTAL COMMISSION

EXHIBIT

R.L. WARD CONSTRUCTION, INC.

831 DICKSON STREET
MARINA DEL REY, CA 90292
310-301-0284
FAX 310-837-7390

August 22, 2002

Con-Tez Development
Daniel Fitzgerald
10131 Constellation Blvd.
Los Angeles, CA 90067

Re: Agreement Letter

As per Roger Kurath, the use of your property on Pacific Ave. just north of 5106 and 5110 Pacific Ave.

Dear Daniel,

Thanks for the use of your lot while we are working on Reto Ryffel's houses. In consideration for your generosity Roger said he would waive your portion of the 1st installment of the sewer fee, which I believe is 1/3 of \$2070.00. I would also like to add to your benefits by offering my services in installing your other street utilities at our cost with no mark up on our part at all. We are not sure what the costs will be at this point but I will open my books to you and keep you informed. You can rest assured none of the work will be done without your approval.

Also I will be faxing you a certificate of liability insurance naming you as additionally insured just for your protection.

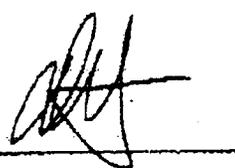
As far as the use of you lot goes; we will fence it for protection. We will be storing materials and equipment on it. We will make a small earth cut on our side and re-compact it when we are done.

If at anytime you want us off your land all we ask is for a 15-day notice in order to put it back the way it was.

And finally if you need a bid on your new home I would be glad to build it for you.

Sincerely,

Randall Ward
President



Accepted _____

Fr, 9a

CCC-03-RO-2 (VDH Devt, Fitzgerald,

EXHIBIT 11

PAGE 1 of 1

DECLARATION OF SERVICE

I, Pam Emerson, declare:

I am, and was at the time of the service of the attached paper, over the age of 18 years and not a party to the proceedings involved.

On December 6, 2002, 2002, I served the attached:

Notice Prior to Issuance of Executive Director Cease and Desist Order for Violation No. V-5-02-039 and Notice of Intent to Commence Restoration Order Proceedings

on Randy Ward, an employee of VDH Development, as follows:

contractor

(name of employee served)

By Personal Service, by personally delivering to and leaving with the above-identified employee a copy at the following address: 5100-5102 Pacific Ave., Los Angeles, CA.

By Service by Mail, by placing a true copy in a sealed envelope addressed to the last known address of the party identified below at the address set forth below, and depositing the envelope in the United States Mail, registered, with return receipt requested and postage thereon fully prepaid, at _____, California.

Name and address of party served by certified mail:

____ VDH Development
Attn: Reto M. Ryffel
1007 Montana Avenue Santa Monica, CA 90403

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on December 6, 2002 at Long Beach, California.



Pam Emerson

Fr, 9a
CCC-03-RO-2 (VDH Devt, Fitzgerald,