

CALIFORNIA COASTAL COMMISSION

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**F15a**

Staff: SMR - SF
Staff Report: May 22, 2003
Hearing Date: June 12, 2003

STAFF REPORT FOR
CONSENT AGREEMENT AND CEASE AND DESIST AND RESTORATION ORDER

**CONSENT AGREEMENT AND
CEASE AND DESIST AND
RESTORATION ORDER:**

CCC-03-CD-05 and CCC-03-RO-05

RELATED VIOLATION FILES:

V-2-03-002

PROPERTY LOCATION:

2050 Cabrillo Highway,
Pescadero, San Mateo County
APN 089-230-220 (**Exhibit 1**)

DESCRIPTION OF PROPERTY:

84.49-acre coastal property in Pescadero east of
Highway 1, adjacent to Ano Nuevo State Reserve.

PROPERTY RESPONDENTS:

David Lee and Cheryl Moser

AGENTS/REPRESENTATIVES:

Bill Sloan and John Briscoe, Esq.
Stoel Rives, LLP
111 Sutter Street, Suite 700
San Francisco, CA 94104

VIOLATION DESCRIPTION:

Unpermitted construction of an access road without
a coastal development permit (CDP) and in conflict
with the terms and conditions of CDP No. A-2
SMC-99-066. Non-compliance with terms and
conditions of CDP No. A-2 SMC-99-066.

SUBSTANTIVE FILE DOCUMENTS:

Consent agreement and cease and desist and
restoration order file Nos. CCC-03-CD-05 and
CCC-03-RO-05
Exhibits 1 through 7

CEQA STATUS:

Exempt (CEQA Guidelines (CG) §§ 15060 (c)(3)
and 15061 (b)(3)) and Categorically Exempt (CG
§§ 15061(b)(2), 15037, 15038 and 15321)

I. SUMMARY

David Lee and Cheryl Moser ("respondents") have undertaken development (as that term is defined in Section 30106 of the Coastal Act) without a coastal development permit, which constitutes a violation of Section 30600 of the Coastal Act. This unpermitted development consists of the construction of an access road on the subject property through portions of designated critical habitat areas for threatened and endangered species (the California red-legged frog and San Francisco garter snake). The on-site access road was not permitted as required under the Coastal Act, and moreover is not in compliance with previously issued CDP No. A-2 SMC-99-066, approved on August 9, 2001 (the "permit"), that required the use of a shared access road located on adjacent property. In addition, respondents failed to construct a plywood exclusion fence designed to protect the California red-legged frog (listed as federally threatened and a State species of special concern) and the San Francisco garter snake (listed as federally and State endangered) as required by Special Condition 5B of the permit. Special Condition 2B of the permit required that any proposed changes to the approved final plans must be reported to the Commission's Executive Director, and that no changes to approved final plans would occur without a Commission-approved amendment to the permit.

The respondents contacted staff in September of 2002, stating that the shared access road was not available for their use. Staff responded that any change to the approved permit would require an amendment, and provided amendment application materials to the respondents. Respondents did not submit an amendment application. Instead, staff learned in January of 2003 of the subsequent unpermitted construction of the on-site access road. The Commission therefore considers the violation to constitute a knowing and intentional violation of the permit.

Coastal Act Section 30820(b) provides that *"Any person who performs or undertakes development that is in violation of this division or that is inconsistent with any coastal development permit previously issued by the commission...when the person intentionally and knowingly performs or undertakes the development in violation of this division or inconsistent with any previously issued coastal development permit, may in addition to any other penalties, be civilly liable in accordance with this division."* All parties wish to avoid the potential of a lengthy and expensive litigation process to resolve this violation. Accordingly, in order to resolve the violation administratively, respondents have agreed 1) to pay a monetary settlement in lieu of the Commission litigating for monetary penalties in the amount of \$55,000, 2) not to contest the issuance of the proposed Consent Agreement and Cease and Desist and Restoration Order ("Consent Order"), and 3) not to contest enforcement of the Consent Order.

The terms of the proposed Consent Order would require compliance with all terms and conditions of the permit and restoration of the on-site access road. Commission staff is recommending that pursuant to Coastal Act Sections 30810 and 30811, the Commission issue the Consent Order to resolve the violation.

II. HEARING PROCEDURES

In light of the respondents' desire to resolve the violation through a Consent Order, the respondents have agreed to waive their right to a hearing to contest the Coastal Act violation alleged in the notice of intent (NOI) dated April 17, 2003 and agree to a hearing solely for the purpose of authorizing this Consent Order and the work authorized therein. The procedures for a hearing on a proposed Cease and Desist Order and Restoration Order are outlined in Section 13185 and 13186 of the California Code of Regulations (CCR), Title 14, Division 5.5, Chapter 5, Subchapters 8 and 9. The hearing procedures are similar in most respects to the procedures that the Commission utilizes for permit and LCP matters.

III. MOTIONS

MOTION I: I move that the Commission issue Consent Agreement and Cease and Desist Order No. CCC-03-CD-05 pursuant to the staff recommendation.

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. An affirmative vote by a majority of the Commissioners present will result in issuance of the Cease and Desist Order set forth in Exhibit 7 of this report.

RESOLUTION TO ISSUE CEASE AND DESIST ORDER:

The Commission hereby issues Consent Agreement and Cease and Desist Order No. CCC-03-CD-05 set forth in Exhibit 7 of this report and adopts the findings on grounds that development that requires a coastal development permit has occurred 1) without such a permit, and 2) in a manner inconsistent with a permit previously issued by the Commission.

MOTION II: I move that the Commission issue Consent Agreement and Restoration Order No. CCC-03-RO-05 pursuant to the staff recommendation.

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. An affirmative vote by a majority of the Commissioners present will result in issuance of the Restoration Order set forth in Exhibit 7 of this report.

RESOLUTION TO ISSUE RESTORATION ORDER:

The Commission hereby issues Consent Agreement and Restoration Order No. CCC-03-CD-05 set forth in Exhibit 7 of this report and adopts the findings on grounds that development has occurred without a coastal development permit, is inconsistent with Chapter 3 policies of the Coastal Act, and is causing ongoing resource damage.

IV. PROPOSED FINDINGS

A. DESCRIPTION OF UNPERMITTED DEVELOPMENT

Respondents have undertaken development (as that term is defined in Section 30106 of the Coastal Act) without a coastal development permit (CDP) in violation of Section 30600 of the Coastal Act. This development consists of the construction of an unpermitted access road on the subject property, in conflict with the permit, which required the use of a shared access road on adjacent property for site access and construction on the subject property. In addition, respondents failed to construct a plywood exclusion fence (for preventing California red-legged frogs and San Francisco garter snakes from entering work areas) as specified in Special Condition 5B of the permit.

B. BACKGROUND AND ATTEMPTS AT ADMINISTRATIVE RESOLUTION

On August 9, 2001, the Commission approved on appeal CDP No. A-2-SMC-99-066 (the "permit"). The findings for this permit contain an extensive discussion about the site's sensitive habitat, documented through field surveys conducted by qualified biologists to comprise much of the subject property, and the potential impacts from development to federally- and state-listed species that rely on this sensitive habitat. The permit findings noted that the presence of red-legged frogs, a federally listed endangered species and State listed species of Special Concern, had been confirmed on the subject property. The approved permit includes detailed special conditions regarding the protection of sensitive species during construction, as well as requirements for open space and future development deed restrictions regarding the long-term preservation of sensitive habitat and protection of sensitive species on the subject property. The respondents complied with all prior-to-issuance conditions, received approval for final project plans on April 22, 2002, and the Commission issued the permit on April 23, 2002.

In September 2002, respondents contacted staff and discussed the fact that the shared access road located adjacent to the subject property was not available for their use. Staff informed respondents that any changes to the approved permit would require an approved permit amendment and provided amendment application materials. Respondents did not submit an amendment application, and staff has confirmed that the on-site road was constructed in October 2002. Staff first learned in January of 2003 of the construction of the on-site road. Staff visited the site on January 31, 2003 and confirmed the presence of the unpermitted on-site access road.

On February 11, 2003 a "Notice of Violation" letter was sent to the respondents regarding the unpermitted development on the subject property (**Exhibit 2**). The letter stated that, in order to avoid the initiation of enforcement proceedings pursuant to Chapter 9 of the Coastal Act, the respondents must stop all development on the property pending the resolution of all outstanding Coastal Act violations and non-compliance with permit conditions. By letter to the Commission dated February 20, 2003, the respondents' representatives stated that no further development would occur on the property other than the development authorized by the permit (**Exhibit 3**). Commission staff responded in a letter dated February 21, 2003, explaining that this was not a

satisfactory response to the Notice of Violation letter, and that all development must cease, including any development approved under the permit, since the permit was conditioned upon the use of the shared access road during the construction phase of the development (**Exhibit 4**). Furthermore, the permit required that no work on the site could occur before the construction of the above-discussed plywood exclusion fence.

Commission staff met with respondents' representatives on March 11, 2003 and discussed potential resolution of the violation through settlement and issuance of a Consent Order. The Consent Order requires compliance with all conditions of the previously issued permit and restoration of the on-site access road. Respondents have indicated their willingness to resolve the violation through a settlement process including the issuance of a Consent Order and coming into full compliance with the permit conditions. As the first step in the settlement process, on April 17, 2003 the Executive Director sent the respondents a Notice of Intent to Commence Cease and Desist and Restoration Order proceedings (**Exhibit 5**). The Notice of Intent discusses the regulatory basis for the Commission's issuance of enforcement orders for the resolution of Coastal Act violations, and notes that the respondents are willing to resolve the violation through a cooperative settlement process. Accordingly, the respondents have submitted a Waiver of Defenses form dated May 21, 2003 (**Exhibit 6**).

C. BASIS FOR ISSUANCE OF CEASE AND DESIST ORDER

The statutory authority for issuance of the proposed cease and desist order is provided in §30810 of the Coastal Act, which states, in relevant part:

If the commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person or governmental agency to cease and desist.

Pursuant to Section 30810(b), the cease and desist order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with the Coastal Act.

The development was performed without obtaining the required CDP or CDP amendment. The unpermitted development is also inconsistent with the previously issued permit.

D. BASIS FOR ISSUANCE OF 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.

As previously discussed, unpermitted development occurred on the subject property, consisting of the construction of a new on-site access road. This development is inconsistent with the resource protection policies of the Coastal Act, including Section 30240 (environmentally sensitive habitat areas or ESHA). The unpermitted road passes through designated, deed-restricted sensitive habitat on the subject property. The unpermitted development is causing continuing resource damage, as defined by Section 13190 of the Commission's regulations and is impacting 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 road has directly impacted sensitive habitat areas and its continuation may adversely impact threatened and endangered species dependent upon these habitat areas. As noted above, the permit had specific conditions designed to protect federally listed endangered species and state listed species of special concern, and specific provisions to protect their habitat. This matter involves violations of those very provisions. The unpermitted development continues to exist at the subject property; therefore, the damage to resources protected by the Coastal Act is continuing.

E. CONSENT AGREEMENT: SETTLEMENT

Section 30820(a)(1) of the Coastal Act provides that "civil liability may be imposed by the superior court in accordance with this article on any person who performs or undertakes development that is in violation of this division or that is inconsistent with any coastal development permit previously issued by the commission...in an amount that shall not exceed thirty thousand dollars (\$30,000) and shall not be less than five hundred dollars (\$500)." Section 30820(b) of the Coastal Act further provides that "when the person intentionally and knowingly performs the development in violation of this division or inconsistent with any previously issued coastal development permit, may, in addition to any other penalties, be civilly liable in accordance with this subdivision. Civil liability may be imposed by the superior court in accordance with this article for a violation as specified in this subdivision in an amount which shall not be less than one thousand dollars (\$1,000), not more than fifteen thousand dollars (\$15,000), per day for each day in which the violation persists. There are additional provisions under Section 30822 for knowing and intentional violations.

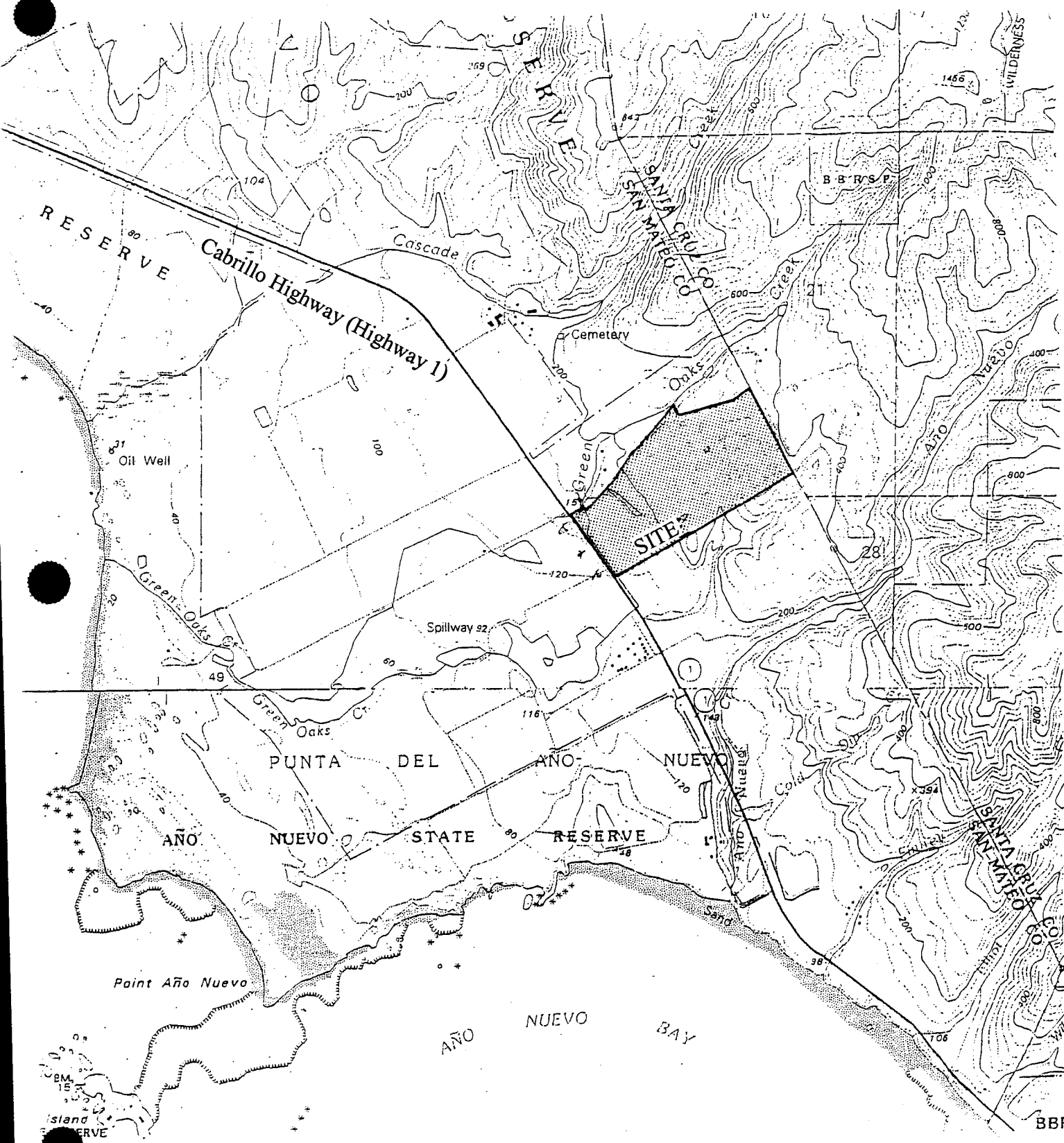
As previously discussed in Section I. of this document, staff considers the violation to be knowing and intentional. Permit conditions were clearly stated in the approved permit issued by the Commission, and staff subsequently discussed with respondents the need for an amendment to approve any proposed changes to the project plans. However, the respondents have clearly stated their willingness to completely resolve the violation administratively and through a settlement process. To that end, the respondents have stated their intent to comply with all terms and conditions of the previously issued permit, and have already submitted a draft restoration plan for the on-site access road. Additionally, in light of the intent of the parties to resolve these matters in a timely fashion and through settlement, respondents have agreed to pay a monetary settlement in the amount of \$55,000 (see Section 9.0 of the attached Consent Order (**Exhibit 7**)).

F. WAIVER OF DEFENSES

In recognition of the value of resolving this matter in a timely manner and for the purposes of agreeing to the issuance and enforcement of the Consent Order, the parties agree not to raise contested allegations, defenses, mitigating factors, rebuttal evidence and other unresolved issues pursuant to California Code of Regulations Section 13183.

Exhibits

1. Site Map and Location.
2. Notice of Violation letter dated February 11, 2003 from Commission staff to respondents.
3. Letter dated February 20, 2003 from respondents' representatives to Commission staff.
4. Letter dated February 21, 2003 from Commission staff to respondents.
5. Notice of Intent to commence cease and desist and restoration order proceedings dated April 17, 2003.
6. Waiver of Defenses form submitted by respondents to Commission staff dated May 21, 2003.
7. Consent Agreement and Cease and Desist Order CCC-03-CD-05 and Restoration Order CCC-03-RO-05.



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45 FREMONT, SUITE 2000
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**SENT BY CERTIFIED MAIL****No. 7001 1140 0000 0784 8089**

11 February 2003

David Lee
Cheryl Moser
545 Middlefield Road, Suite 250
Menlo Park, CA 94019 94025

RE: **Alleged Coastal Act Violation No. V-2-03-002** (Lee), consisting of the construction of an access road without a coastal development permit and in conflict with the terms and conditions of **CDP No. A-2-SMC-99-066** at 2050 Cabrillo Highway, Pescadero, San Mateo County, APN No. 089-230-220

Dear Mr. Lee and Ms. Moser:

It has come to our attention that there appears to be a Coastal Act violation on the above-referenced property, consisting of the unpermitted construction of an access road without a coastal development permit, and which is inconsistent with the terms and conditions of **Coastal Permit No. A-2-SMC-99-066**.

On August 9, 2001, the Coastal Commission approved with conditions **CDP No. A-2-SMC-99-066**, authorizing construction of a two-story, 6,000-square-foot single-family residence with attached four-car garage, 700-square-foot detached accessory building, lap pool, and driveway, and installation of a septic system and water pipeline on an 84.49-acre lot. Access to the site was proposed and approved via an existing shared roadway that parallels the subject parcel. The Commission had many concerns about sensitive habitat and visual impacts of the proposed project, and attached a number of special conditions to the permit. All prior-to-issuance special conditions were met, and the coastal permit was issued on April 23, 2002.

As you know, Chanda Meek of our staff received your authorization for Commission staff to conduct a site visit on your property on January 24, 2003. On that site visit, we confirmed that development, as defined by the Coastal Act, had commenced, and that a former "farm road" path on the property had been significantly widened, graded, and graveled such that it now constitutes a new road. We walked most of the length of this new road.

This letter serves to provide you notice that the Executive Director is considering issuing a Cease and Desist Order pursuant to Section 30809 of the Coastal Act to order you to cease and desist from carrying out any additional development activities until this matter is resolved to the Executive Director's satisfaction. Under this provision of the Coastal Act, the Executive Director may, after providing this notice, issue an Executive Director Cease and Desist Order ("ED CDO") unless a "satisfactory response" is received. To avoid issuance of such an order, you must confirm by telephone within 24 hours of receipt of this letter that you agree to do no more development on the subject property until this violation is resolved. You must also confirm in writing by February 19, 2003 that you will do no further development on your site until the Coastal Act violation is resolved.

Pursuant to Section 30106 of the Coastal Act:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act...change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, ... and the removal or harvesting of major vegetation other than for agricultural purposes...(Emphasis added)

As such, the construction of the new access road on your property constitutes development under the Coastal Act. Section 30600(a) of the Act requires that any person wishing to perform or undertake development in the coastal zone must first obtain a coastal development permit, in addition to any other permit required by law, before carrying out any development. Any development activity conducted in the coastal zone without a valid coastal development permit constitutes a violation of the Coastal Act.

The Coastal Act contains enforcement remedies for Coastal Act violations. As referenced above, Coastal Act section 30809 states that if the Executive Director determines that any person has undertaken, or is threatening to undertake, any activity that may require a permit from the Coastal Commission without first securing a permit, the Executive Director may issue an order directing that person to cease and desist. Coastal Act section 30810 states that the Coastal Commission may also issue a cease and desist order. A cease and desist order may be subject to terms and conditions that are necessary to ensure compliance with the Coastal Act. Moreover, Section 30811 authorizes the Commission to order restoration of a site where development occurred without a coastal development permit from the commission, is inconsistent with the Coastal Act, and is causing continuing resource damage. Finally, the Executive Director is authorized, after providing notice and the opportunity for a hearing as provided for in Section 30812 of the Coastal Act, to record a Notice of Violation against your property.

In addition, Section 30820(a) provides for civil liability to be imposed on any person who performs or undertakes development without a coastal development permit and/or that is inconsistent with any coastal development permit previously issued by the commission in an amount that shall not exceed \$30,000 and shall not be less than \$500. Section 30820(b) provides that additional civil liability may be imposed on any person who performs or undertakes development without a coastal development permit and/or that is inconsistent with any coastal development permit previously issued by the commission when the person intentionally and knowingly performs or undertakes such development, in an amount not less than \$1,000 and not more than \$15,000 per day for each day in which the violation persists. Section 30821.6 provides that a violation of either a cease and desist order or a restoration order can result in civil fines of up to \$6,000 for each day in which the violation persists.

In addition to the fact that you have undertaken unpermitted development by constructing an unauthorized on-site access road, you and/or your authorized agents also appear to have knowingly and intentionally violated the terms and conditions of Coastal Permit No. A-2-SMC-99-066.

Section 13172 of the California Code of Regulations states that:

Violation of a permit or any term, condition, or provision of a permit is grounds for enforcement under this section and under Chapter 9 of the California Coastal Act of 1976.

The construction of a new, unauthorized on-site access road conflicts with a number of special conditions of your coastal permit, including conditions 1A, 2A(5), 2A(6), 2B, 5A, 5B, 5D, 6A and B, 7A and B, 8A and B, and 10A and B.

Special Condition No. 1A of your permit required recordation of a deed restriction concerning future development. On March 28, 2002, you recorded a deed restriction stating that you agree that:

- a. The permit is only for the development authorized in the Permit.*
- b. The exemptions otherwise provided in Public Resources Code Section 30610(b) shall not apply on APN 089-230-220.*
- c. Accordingly, any future improvements, including, but not limited to, construction of fences, gates, additions, or outbuildings that might otherwise be exempt under Zoning Code Section 6328.5...as well as repair and maintenance identified as requiring a permit under Zoning Code Section 6328.5, will require an amendment to this permit or will require an additional coastal development permit from San Mateo County.*
(Emphasis added)

The roadwork that you undertook required a coastal permit amendment from the Coastal Commission or coastal permit from San Mateo County; as you did not obtain a coastal permit

amendment or new coastal permit for the roadwork, this roadwork is inconsistent with **Special Condition No. 1A**, and, therefore is a violation of your coastal permit, the deed restriction you recorded, and the Coastal Act.

Special Condition No. 2A required submittal of final project plans that satisfied a number of requirements. **Condition 2A(5)** states:

Access to the site shall be from the shortest, most direct route from the existing shared roadway behind the residence so that it is not visible. The driveway shall be no wider than 12 feet, and no shoulders shall be included.

This condition limits all access to the site to the existing shared roadway. Construction of a new access road is inconsistent with **Special Condition 2A(5)**, and is a violation of your coastal permit and the Coastal Act.

In your letter to Chanda Meek dated January 29, 2003, you indicate that the road in question ("farm road") is not a new road, but has been in existence for at least five years and has been used routinely over the years. There is no coastal development permit authorizing construction of any road in this location, nor was the road proposed in your coastal permit application nor approved in your coastal permit. In fact, as reflected in **Special Condition No. 2A(5)**, there was a clear understanding that access to the site was to be from the existing, shared roadway.

You state "We have always intended to use this dirt road as access to our proposed home by various construction vehicles, cement mixers and the like during construction, rather than damaging the shared road used regularly by our neighbors." However, Chris Kern, North Central Coast District Supervisor for the Coastal Commission, indicates that the "farm road" was little more than a badly overgrown set of ruts at the time of staff's many visits to the site during 2000 and 2001, and that substantial improvements would have been required for this route to serve as any type of access road. Mr. Kern also indicates you had never proposed the use of this "farm road" or any other access route, whether temporary or permanent, rather than the existing, shared road. Mr. Kern also indicates that he informed you when you called him a couple of months ago to say that your neighbor, Mr. Hinman, was refusing to allow you to use the approved access road ("shared road") that you would first need to apply to the Coastal Commission for an amendment to your coastal permit if you needed to construct a different access road.

In addition, as set forth below, many of the special conditions of the permit clearly indicate that a road in this location was not contemplated, and in fact would be inconsistent with numerous permit conditions.

Special Condition No. 2A(6) states:

No development, including but not limited to installation of water and septic lines, shall be sited within 300 feet of the upland limit of the sag pond as generally depicted in Figure 29 or within the 300-foot-wide California red-legged frog dispersal corridors as generally depicted in Figure 29.

It appears that a portion of the access road you constructed is within 300 feet of the upland limit of the sag pond and within the 300-foot-wide California red-legged frog dispersal corridors; thus the roadwork you undertook is inconsistent with **Special Condition No. 2A(6)**, and is a violation of your coastal permit and the Coastal Act.

Special Condition No. 5A states:

Grading, installation of the water line, and foundation work shall not occur between November 1 and May 1 but shall be conducted between May 2 and October 31 to minimize potential impacts to San Francisco garter snakes and California red-legged frogs.

It appears that the grading work was done on the site between November 1 and May 1, inconsistent with **Special Condition No. 5A**, and in violation of your coastal permit and the Coastal Act.

In addition, **Special Condition No. 5B** requires construction of a four-foot-high plywood exclusion fence around the work areas to prevent California red-legged frogs and San Francisco garter snakes from entering the area. During our site visit on January 24, 2003, we did not observe such a fence around any construction zones. Please provide all documentation available that relates to your past compliance with **Special Condition No. 5B**. Please erect the fence immediately pursuant to **Special Condition No. 5** of your coastal permit, and send photo documentation once it has been erected. Please note that **Special Condition No. 5C** requires that two days prior to construction of the exclusion fence, a qualified biologist shall survey the building site and construction access route for California red-legged frogs and San Francisco garter snakes.

Special Condition No. 5D states:

Grading is prohibited at any time that either species is present in the construction area. A qualified biological monitor experienced with the San Francisco garter snake and California red-legged frog shall be present at the site during all grading activities. The biological monitor shall have the authority to halt all construction activities as necessary to protect habitat and individual animals. The monitoring shall be conducted in accordance with USFWS and CDFG protocol. The biological monitor shall complete daily monitoring reports that indicate the date and time of work, weather conditions, the

monitoring biologist's name, project activity/progress, and any sensitive species observed. These reports shall be compiled and submitted to the Executive Director upon completion of grading work.

Road grading or other grading activities on the site that occurred when a biological monitor was not present is inconsistent with **Special Condition No. 5D**. We have not received any monitoring reports to date. Please submit all documentation available that relates to your past compliance with Special Condition No. 5D. If any grading was done without a biological monitor present, and it is determined that there were adverse impacts to the San Francisco garter snake and/or the California red-legged frog, mitigation measures may be required.

Special Condition No. 6A requires that no development shall occur in the sag pond or the surrounding area within 300 feet of the upland limit of riparian vegetation associated with the sag pond except for removal of vegetation for fire safety as required in writing by the California Department of Forestry and Fire Protection or removal of invasive non-native plant species.

Special Condition No. 6B required recordation of an offer to dedicate an open space and conservation easement for the purpose of habitat conservation over the sag pond and all areas within 300 feet of the upland limit of the riparian vegetation associated with the sag pond. You recorded this offer on March 28, 2002. It appears that development (a portion of the new roadwork) occurred within 300 feet of the upland limit of riparian vegetation associated with the sag pond (within the recorded easement area) inconsistent with **Special Condition No. 6**, and in violation of your coastal permit and the Coastal Act.

Special Condition No. 7A states that no development shall occur within the dispersal corridors except vegetation removal for fire safety, habitat management activities, or installation of the waterline. **Special Condition No. 7B** requires recordation of a deed restriction that restricts development within the designated open space area. You recorded this restriction on March 28, 2002. Development (construction of the new road) has occurred within the deed-restricted area, inconsistent with **Special Condition No. 7**, and in violation of your coastal permit, the deed restriction you recorded, and the Coastal Act.

Special Condition No. 8A requires submittal of an erosion control plan that includes a number of criteria, including that clearing and grading activities must avoid the rainy season (November 1 through May 1). Please provide us with documentation demonstrating when the roadwork and other site grading took place. If it took place after November 1, it is inconsistent with **Special Condition No. 8A**, and would be a violation of your coastal permit and the Coastal Act.

Special Condition No. 10A required submittal of a final grading plan, and **Special Condition No. 10B** requires the permittee to undertake development in accordance with the approved final plans. It states:

Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission

amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

The final grading plans submitted to the Executive Director do not include grading of the new access road. Thus, any proposed change to the final plans should have been reported to the Executive Director and the additional grading should not have occurred without a Commission amendment or a determination by the Executive Director that no amendment was legally required. Grading and gravelling the new access road is inconsistent with **Special Condition No. 10**, and is a violation of your coastal permit the Coastal Act.

When reviewing your proposed project, the Commission, as well as the California Department of Fish and Game and U.S. Fish and Wildlife Service, had serious concerns about adverse impacts to the San Francisco garter snake (state and federally listed as endangered) and its prey, the California red-legged frog (federally listed as threatened), which have been found on and near your property. When the Commission approved your proposed project to construct a residence and other associated developments on your property, it was done so with the explicit understanding that you would be using the existing shared road located adjacent to your property to access your property. Because there was an existing shared road, no new road would need to be graded to provide access to the site. In its findings, the Commission found:

To reduce impacts associated with the driveway, Special Condition 2A(5) requires that the driveway to the proposed new residence and accessory building be from the shortest, most direct route from the existing shared roadway and that it be no wider than 12 feet.

Nowhere in your coastal permit application did you propose using the "farm road" path for access. Nowhere in the findings does the Commission address the use of a "farm road" for access. The Commission approved a coastal permit requiring site access from the shared road, and you signed this permit. These facts lead us to draw the conclusion that at one time you believed that you had the legal right to use this shared road. However, recently you have indicated to Chanda Meek and Chris Kern of our planning staff that the shared roadway is no longer available for your use. It appears from our examination of your recorded deed restrictions that you may have legal access to the shared roadway, and, in fact, may own a part thereof. If you do not have the legal ability to use the shared road to access your property, as is required by the coastal permit approved by the Coastal Commission and signed by you, you must provide us with written documentation to that effect. Please provide us with a copy of your property deed, including a description of all easements, and your legal right to use the shared roadway.

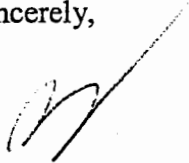
Please submit a written response to this letter by February 24, 2003, addressing all questions and issues raised in this letter, including clarification and documentation concerning dates of grading and monitoring. Failure to respond in a timely manner may result in more formal action by the Commission to resolve the Coastal Act violation. The formal action could include a civil lawsuit, the issuance of an ED CDO or Commission cease and desist and/or restoration order,

DAVID LEE
CHERYL MOSER
Page No. 8

and/or imposition of monetary penalties, pursuant to Coastal Act sections 30810 and 30820(a) and (b).

If you have any questions about any enforcement matters, you may contact me at (415) 904-5269. Thank you for your cooperation.

Sincerely,



JO GINSBERG
Enforcement Analyst

cc: Stan Field, Architect
Chris Kern, Coastal Commission, North Central Coast District Supervisor
Chanda Meek, Coastal Commission Permit Analyst
Gary Warren, San Mateo County Code Enforcement
Jim Eggemeyer, San Mateo County Planning

MORRISON & FOERSTER LLP

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February 20, 2003

Writer's Direct Contact
(415) 268-6718
MZischke@mof.com

By Telefacsimile and U.S. Mail

Jo Ginsberg
Enforcement Analyst
California Coastal Commission
45 Fremont Street, Suite 2900
San Francisco, CA 94105-2219

**Re: Coastal Development Permit No. A-2-SMC-99-066 -- Alleged
Coastal Act Violation No. V-2-03-002 (Lee)**

Dear Ms. Ginsberg:

We represent David Lee and Cheryl Moser, the owners of this property. They received your letter yesterday, Wednesday, February 19, 2003. In compliance with your request for telephone confirmation in the letter, this letter is to confirm that they will do no further development on their site other than the development authorized by the Coastal Development Permit referenced above. If you have any questions, please contact me or Tom Umberg.

Very truly yours,


Michael H. Zischke

MHZ/jd

cc: Stan Field, Architect (*via regular mail*)
Chris Kern, Coastal Commission, North Central Coast District Supervisor
(*via regular mail*)
Chanda Meek, Coastal Commission Permit Analyst (*via regular mail*)
Gary Warren, San Mateo County Code Enforcement (*via regular mail*)
Jim Eggemeyer, San Mateo County Planning (*via regular mail*)
Nancy Cave, Coastal Commission Statewide Enforcement Program
(*via regular mail*)

sf-1453640

Exhibit 3
CCC-03-CD-05 and CCC-03-RO-05
(Lee and Moser)

CALIFORNIA COASTAL COMMISSION

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



SENT BY REGULAR MAIL AND BY FAX

21 February 2003

Michael Zischke
Morrison & Foerster
425 Market Street
San Francisco, CA 94105-2482

RE: Alleged Coastal Act Violation No. V-2-03-002 (Lee and Moser), consisting of the construction of an access road without a coastal development permit, and non-compliance with the terms and conditions of CDP No. A-2-SMC-99-066 at 2050 Cabrillo Highway, Pescadero, San Mateo County, APN No. 089-230-220

Dear Mr. Zischke:

We are in receipt of your letter dated February 20, 2003 and your emails dated February 20, 2003 and February 21, 2003 concerning the above-referenced Coastal Act violation. As I mentioned on the telephone yesterday, in my letter of February 11, 2003 I stated that your clients needed to confirm by telephone and in writing that they agree to cease all development on the site if they wished to avoid the issuance of an Executive Director Cease and Desist Order. What this means is that all development must cease, including all development approved by CDP No. A-2-SMC-99-066 ("the Permit"), not merely unpermitted development. There are several reasons for this requirement. First of all, the new road is unpermitted, and use of the road, which passes through sensitive, protected habitat, is a violation of the Permit. **Special Condition No. 2A(5)** requires that *"Access to the site shall be from the shortest, most direct route from the existing shared roadway..."* Thus, accessing the site from the new road, rather than the shared road, violates the Permit.

Furthermore, **Special Condition No. 5B** requires construction of a four-foot-high plywood exclusion fence around all work areas to prevent California red-legged frogs and San Francisco garter snakes from entering the areas. **Special Condition No. 5C** requires that two days prior to construction of the exclusion fence, a qualified biologist shall survey the building site and construction access route for California red-legged frogs and San Francisco garter snakes. During our site visit on January 23, 2003, Commission staff did not observe a four-foot-high plywood exclusion fence around the work areas. Thus, any work done without proper erection of the required fence, subsequent to a survey by a qualified biologist, is a further violation of the Permit. No work of any kind can take place at the site prior to the survey by a biologist and

subsequent erection of the required fence around all work areas. Please submit at once all evidence that **Special Conditions 5A** and **5B** have been met. Our files do not include any submitted survey.

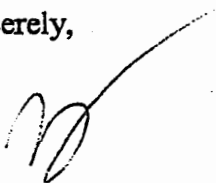
The reason given by Mr. Lee for why the new road was graded, widened, and graveled was that the existing shared road, which was approved by the Commission as the only acceptable access route to the site, is no longer available for use by the property owners. The question of what legal rights to the shared roadway are possessed by the property owners is still outstanding.

There are a number of other issues still to be clarified, as outlined in my very detailed letter of February 11, 2003. In this letter, I gave your clients a deadline of February 24, 2003 to respond to the issues and questions in my letter. I will extend the deadline to February 26, due to the fact that the letter was not received by Mr. Lee until February 19.

Should your clients wish to properly erect an exclusion fence, subject to the results of a survey by a qualified biologist per **Special Condition No. 5** of the Permit, and should your clients be able to demonstrate the legal right to use the shared road, development approved by the Permit may continue to be carried out at the site. However, such development should not occur until further discussions with Coastal Commission staff have taken place and express authorization has been given by Coastal Commission staff to allow you to resume development. Until the measures identified above are carried out and verified by Coastal Commission staff, your clients must agree that *all* development on the property will cease until all aspects of the outstanding Coastal Act violation are resolved, or the Executive Director will issue a Cease and Desist Order to ensure that all development so ceases.

Thank you for your cooperation.

Sincerely,



JO GINSBERG
Enforcement Analyst

cc: David Lee and Cheryl Moser
Stan Field
Chris Kern
Chanda Meek

CALIFORNIA COASTAL COMMISSION

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



VIA CERTIFIED and REGULAR MAIL

April 17, 2003

David Lee and Cheryl Moser
c/o White and Lee LLP
545 Middlefield Road, Suite 250
Menlo Park, CA 94025

Subject: Notice of Intent to Commence Cease and Desist and
Restoration Order Proceedings

Violation No.: V-2-03-002

Location: 2050 Cabrillo Highway, Pescadero, San Mateo County
(APN 089-230-220)

Violation Description: Construction of an access road without a coastal development
permit (CDP) and in conflict with the terms and conditions of CDP
No. A-2-SMC-99-066. Non-compliance with terms and conditions
of CDP No. A-2-SMC-99-066.

Dear Mr. Lee and Ms. Moser:

The purpose of this letter is to notify you of my intent, as the Executive Director of the California Coastal Commission ("Commission"), to commence proceedings for issuance of 1) a Cease and Desist Order to restrain the undertaking of any activity in non-compliance with conditions of coastal development permit (CDP) No. A-2-SMC-99-066 and 2) a Restoration Order to compel the restoration of all areas affected by unpermitted development. The unpermitted development consists of the construction of an access road without a CDP and in a

manner that is in conflict with the terms and conditions of CDP No. A-2-SMC-99-066. This development is located on property owned by you at 2050 Cabrillo Highway in Pescadero, San Mateo County, APN 089-230-220 ("subject property").

The purpose of these enforcement proceedings is to resolve outstanding issues associated with the unpermitted development activities that have occurred at the subject property. The Cease and Desist Order will direct you to comply with all conditions of CDP No. A-2-SMC-99-066. The Restoration Order will direct you to restore the areas impacted by the unpermitted development. The Cease and Desist and Restoration Orders are discussed in more detail in the following sections of this letter.

History of the Violation Investigation

On August 9, 2001, the Coastal Commission approved with conditions CDP No. A-2-SMC-99-066. The permit authorized (among other development) construction of a two-story, 6,000-square-foot single-family residence with attached four-car garage. The subject property contains a great deal of sensitive habitat, including critical habitat for the federally threatened California red-legged frog and the State and federally endangered San Francisco garter snake. The Commission approved the project in part because vehicular access to the subject property was to be provided by means of a shared road on an adjacent parcel, which meant that no new access road crossing sensitive habitat would have to be constructed.

Commission staff first learned of the alleged violation on the subject property in January of 2003, when Commission staff received a copy of a letter dated January 8, 2003, written by Stan Field Associates, the project architect, which noted that the "farm road" had been "widened to 14', resurfaced, and drainage provided." On January 31, 2003, Commission staff visited the subject property and confirmed that a new access road across the site had been graded and graveled without benefit of a CDP. Construction of the new on-site access road and use of this road constitute development under the Coastal Act. In addition, construction of the new on-site access road conflicted with Special Conditions 1, 2(A)(5), 7 and 10 of CDP No. A-2-SMC-99-066. As noted by staff during their site visit, these conflicts include, but are not limited to, failure to construct a plywood exclusion fence (for preventing California red-legged frogs and San Francisco garter snakes from entering work areas) as required by Special Condition 5B of the CDP.

On February 11, 2003 a "Notice of Violation" letter was sent to you regarding the unpermitted development on the subject property. The letter stated that, in order to avoid the initiation of enforcement proceedings pursuant to Chapter 9 of the Coastal Act, you must stop all development on the property pending the resolution of all outstanding Coastal Act violations and non-compliance with permit conditions. By letter to the Commission dated February 20, 2003, your representatives stated that no further development would occur on the property other than the development authorized by CDP No. A-2-SMC-99-066. Commission staff responded in a letter dated February 21, 2003, explaining that this was not a satisfactory response to the Notice of Violation letter, and that all development must cease, including any development approved under the CDP, since the CDP required the use of the shared access road during the construction phase of the development. Furthermore, the CDP required that no work on the site could occur before the construction of the above-discussed plywood exclusion fence.

On March 11, 2003 Commission staff met with your representatives to discuss the violation and its resolution. At this meeting, your representatives indicated that you were attempting to obtain legal access to the shared road. Staff indicated they intended to issue to you an Executive Director Cease and Desist Order, unless you agreed that 1) all construction activity would cease until Commission staff has stated in writing that construction may resume, 2) no use of the on-site road would occur unless and until legally authorized by the Commission, and 3) an existing wire mesh exclusion fence would be replaced by a four-foot plywood fence, as required by Special Condition 5B of the CDP.

At the meeting Commission staff also discussed with your representatives the possibility of settlement with the Commission and resolution of the violation through a Consent Agreement and Cease and Desist and Restoration Order. Through a Consent Agreement, you would agree to the issuance of a Cease and Desist and Restoration Order requiring compliance with permit conditions of CDP No. A-2-SMC-99-066 and the restoration of the on-site road to the condition it was in before the unpermitted development occurred. Your representatives were receptive to the idea of resolving this violation in such a manner.

On March 18, 2003, the Commission received written confirmation of the three points listed above, and therefore the Executive Director has not issued an Executive Director Cease and Desist Order.

Furthermore, staff is willing to work with your representatives to prepare a Consent Agreement and Cease and Desist and Restoration Order to restore the on-site road to its pre-development condition and enable work authorized by the CDP to resume. The first step in this process is the issuance of this NOI letter.

Cease and Desist Order

Pursuant to Coastal Act Section 30810, the Commission has the authority to issue an order directing any person to cease and desist if the Commission, after a public hearing, determines that such person has engaged in "any activity that (1) requires a permit from the commission without securing a permit or (2) is inconsistent with any permit previously issued by the Commission." Pursuant to section 30810(b), the cease and desist order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with the Coastal Act.

I have determined that the construction of the new on-site access road without a CDP and in conflict with Special Conditions 1, 2(A)(5), 7 and 10 of CDP No. A-2-SMC-99-066, meets the criteria of Section 30810 of the Coastal Act. In addition, the failure to construct a plywood exclusion fence (for preventing California red-legged frogs and San Francisco garter snakes from entering work areas) violates the requirements of Special Condition 5B of the CDP. An order issued pursuant to Section 30810 would require that you refrain from undertaking any further unpermitted development on the subject property and that you comply with all permit conditions of CDP No. A-2-SMC-99-066.

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.

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 the construction of a new on-site access road.
- 2) This development is inconsistent with the resource protection policies of the Coastal Act, including Section 30240 (environmentally sensitive habitat areas or ESHA). The unpermitted road passes through designated, deed-restricted sensitive habitat on the subject property.
- 3) The unpermitted development is causing continuing resource damage, as defined by Section 13190 of the Commission's regulations and is impacting 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 road has directly impacted sensitive habitat areas and its continuation may adversely impact threatened and endangered species dependent upon these habitat areas. The unpermitted development continues to exist at the subject property; therefore, the damage to resources protected by the Coastal Act is continuing.

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.

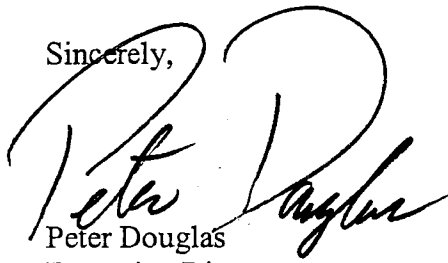
Please be advised that if the Commission issues a Cease and Desist or Restoration Order, Section 30821.6(a) of the Coastal Act authorizes the Commission to seek monetary daily penalties for any intentional or negligent violation of the order(s) for each day in which the violation persists.

The penalty for intentionally or negligently violating a Cease and Desist Order and/or Restoration Order can be as much as \$6,000 per day for as long as the violation persists.

In accordance with Sections 13181(a) and 13191(a) of the Commission's regulations, you have the opportunity to respond to the Commission staff's allegations as set forth in this notice of intent to commence Cease and Desist Order and Restoration Order proceedings by completing the enclosed Statement of Defense form. The Statement of Defense form must be returned to the Commission's San Francisco office, directed to the attention of Sheila Ryan, no later than May 12, 2003. However, as discussed above in History of the Violation Investigation, staff has discussed with you the possibility of pursuing a Consent Agreement. Should you wish to pursue settlement and resolution of the violation through a Consent Agreement and Cease and Desist and Restoration Order, please immediately sign and return the enclosed Waiver of Defenses form, rather than the Statement of Defense.

At this time, the Commission staff is planning to hold a hearing on the issuance of a Consent Agreement and Cease and Desist and Restoration Order in this matter during the Commission meeting that is scheduled for June 10-13, 2003 in Long Beach. If you have any questions regarding this letter or the enforcement case, please call Sheila Ryan at (415) 597-5894 or send correspondence to her attention at the address listed on the letterhead.

Sincerely,



Peter Douglas
Executive Director

cc: Sheila Ryan, Headquarters Enforcement Officer
Lisa Haage, Chief of Enforcement
Chris Kern, North Central District Supervisor

cc with Encl.: William Sloan and John Briscoe, attorneys representing David Lee and Cheryl Moser

Encl. Statement of Defense Form for Restoration Order
Waiver of Defenses Form

CALIFORNIA COASTAL COMMISSION

16 PREMONT, SUITE 2000
SAN FRANCISCO, CA 94108-3310
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FAX (415) 884-5400

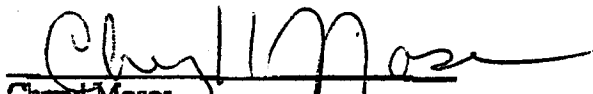
WAIVER OF DEFENSES

Pursuant to Public Resources Code Section 13181, respondents to a Coastal Commission Notice of Intent to Commence Restoration Order Proceedings (NOI) are provided with the opportunity to assert a statement of defense contesting the Coastal Act violations alleged in the NOI or raise mitigating factors related to the alleged violations.

In light of our desire to resolve our Coastal Act violations through settlement with the Coastal Commission, we have agreed to stipulate to the issuance by the Commission of a Consent Agreement and Restoration Order ("Consent Order"). To facilitate this settlement, we hereby waive our right to assert defenses contesting the alleged Coastal Act violations alleged in the NOI and the Consent Order.


David Lee

5/21/03
Date


Cheryl Moser

5/21/03
Date

CONSENT CEASE AND DESIST AND RESTORATION ORDERS
Lee and Moser

Pursuant to its authority under Public Resource Code Sections 30810 and 30811, the California Coastal Commission ("Commission") hereby orders and authorizes David Lee and Cheryl Moser ("respondents"), their employees, agents, and contractors, and any persons acting in concert with any of the foregoing to cease and desist from 1) undertaking on the property identified in Section 2.0 hereof any development that either a) requires a CDP, without obtaining such a permit, or b) is inconsistent with any permit previously issued by the Commission, and 2) maintaining on said property any development that satisfies either, or both, of the foregoing standards. Accordingly, through the execution of this Consent Order, the respondents agree, and agree to cause their employees, agents, and contractors, and any persons acting in concert with any of the foregoing, to comply with the terms of the above-stated order and with the following terms and conditions.

1.0 TERMS AND CONDITIONS

1.1 Cease and Desist Order CCC-03-CD-05 Respondents agree to comply with all conditions of previously issued CDP No. A-2-SMC-99-066, including particular non-compliance issues that resulted in the preparation of this Consent Order including the following provisions:

1. Special Condition 1A (future development deed restriction).

This condition states that any development not authorized in the CDP shall not be exempt and shall require a CDP amendment or additional CDP from San Mateo County. The condition also required the recordation of a future development deed restriction, which the respondents recorded on April 10, 2002 as San Mateo County Document No. 2002-069772. Respondents agree to comply with the terms of the future development deed restriction.

2. Special Condition 2(A)5 (use of shared access road).

This condition requires that all access to the subject property be from the shared access road on adjacent properties. In letters dated March 19, 2003, April 2, 2003 and April 4, 2003, the respondents obtained written consent for use of shared access road, and agree to have all future access to the site in compliance with Special Condition 2(A)5.

3. Special Condition 2B (development in accordance with approved final plans).

This condition notes that any proposed changes to the approved final plans shall be reported to the Executive Director, and that no changes to the approved final plans shall occur without a Coastal Commission approved amendment of the CDP. Respondents agree to comply with Special Condition 2B.

4. Special Condition 5B (plywood exclusion fence).

This condition requires that prior to commencement of construction, a four-foot high plywood exclusion fence would be constructed around work areas. Instead, a two-foot high wire mesh fence was constructed, which FWS has commented is not sufficient for the protection of the California red-legged frog and San Francisco garter snake. Respondents agree to construct the plywood exclusion fence as specified in the permit condition and to maintain the fence during the duration of construction work on the subject property. **Within one week of the issuance of the Consent Order**, respondents shall conduct the necessary surveys and commence construction of the exclusion fence as discussed below.

As required in special condition 5C of the permit, two days prior to the construction of the exclusion fence, the applicant shall survey the building site and construction access route for California red-legged frogs and San Francisco garter snakes. The surveys shall be conducted by a qualified biologist in accordance with USFWS and CDFG protocol. The fence shall be composed of plywood boards four feet in height buried to a depth of six inches below the ground surface (i.e., the above-ground height of the fence shall be approximately three feet six inches tall). Removal of the existing wire mesh fence shall be performed concurrently with the installation of the plywood exclusion fence.

Seams where the edges of plywood pieces meet shall be linked with t-posts on the inside of the enclosure in order to present a smooth external surface. Plywood pieces shall overlap each other by approximately 2 inches, with seam edges sealed using a quick-drying polyurethane spray foam sealant (one example brand name is "Great Stuff"). The construction access route shall be closed at night using a removable plywood "gate" that can be staked into the ground against the inside of the exclusion fence and clamped at each end of the gate to the top edges of the exclusion fence.

Monitoring inspections shall be performed by a qualified biological monitor to check for rodent burrows or other breaches in the fence two times per work week: once at the beginning of the week after the weekend and once at the end of the work week when construction is stopped for the weekend. If the plywood pieces shift over time, the dried foam may crack and an opening may develop along a seam in the fence, which must be repaired. Respondents agree to maintain and, as necessary, repair the

fence as directed by a qualified biological monitor throughout the duration of the construction period.

5. Special Condition 7 (open space deed restriction).

This condition states that no development shall occur within the (frog) dispersal corridors, except for the removal of vegetation for fire safety, for habitat management activities in accordance with an approved Habitat Conservation Plan for the site. The condition also required the recordation of an open space deed restriction, which the respondents recorded on April 10, 2002 as San Mateo County Document No. 2002-069770. Respondents agree to comply with the terms of the open space deed restriction.

6. Special Condition 10B (grading).

This condition requires that development shall be undertaken in accordance with the approved final plans. Any proposed changes to the final plans shall be reported to the Executive Director, and no changes shall occur without a Commission amendment to the CDP. Respondents agree to comply with Special Condition 10B.

- 1.2 Requirements for timing of other work permitted under CDP No. A-2-SMC-99-066 in relation to Special Condition 5B (the plywood exclusion fence) and restoration of the on-site access road. Primary grading for the construction of the house has been completed; however, power and phone line conduits must still be linked from the nearest off-site utility pole to the home site. Permit conditions specify that "All new power and telephone utility lines from the street or nearest utility pole to the main dwelling and/or any other structure on the property shall be placed underground starting at the closest property line." This process will involve trenching and installation of an approximately 16-inch wide trench at a depth of approximately 36 inches. To minimize further resource impacts and because the on-site access road is slated for full restoration, respondents agree that this trenching and conduit installation work shall occur within the road bed of the on-site access road, after the construction of the plywood exclusion fence and prior to the restoration of the on-site access road.

All other terms and conditions of previously issued CDP No. A-2-SMC-99-066 that pertain to the trenching and installation work shall remain in full force and effect. For example, Special Condition 5A of the permit restricts all grading to the period between May 2 and October 31.

- 1.3 Restoration Order CCC-03-RO-05 Respondents have already submitted a draft road restoration plan for the on-site access road and Commission staff is working with the respondents' representatives to finalize this plan. Within 14 days of the issuance of the Consent Order, respondents shall submit for the review and approval of the Executive Director of the Commission a final road restoration plan. The restoration plan shall include the following elements:

1. Soil preparation, which shall be performed in summer or fall, prior to the rainy season.
2. Seeding/revegetation.
3. Erosion control measures. Erosion from the restoration site shall be controlled to avoid adverse impacts on adjacent properties and resources. In order to prevent erosion during the early winter rainy season, sterile straw shall be applied to the soil surface following seeding.
4. Success criteria and monitoring. The restoration shall be considered successful when the former roadway supports vegetative cover exceeding 75 percent absolute cover (less than 25 percent cover by bare ground). In order to document the success of the restoration effort, plant establishment shall be monitored each Spring for five years, beginning the first Spring following seeding.
5. In accordance with the monitoring schedule set forth in the restoration plan, submit to the Executive Director monitoring reports. The first monitoring report shall be submitted to the Executive Director no later than June 15, 2004.
6. Place physical barriers (stumps, logs, etc.) at each end of the road to prevent future use of this corridor.

1.4 Timing and Deadlines

The general timeline for implementation of the Consent Order shall be as follows: 1) within one week of the issuance of the Consent Order, respondents shall conduct all necessary site surveys and commence construction of the exclusion fence, 2) after construction of the exclusion fence is completed, respondents shall perform the power line trenching work as authorized under the previously issued permit (see Section 1.2 above), and 3) after the power line trenching work is completed, respondents shall commence implementation of the restoration order. The soil preparation, seeding and erosion control elements of the restoration order shall be implemented by October 31 (the onset of the rainy season).

2.0 IDENTIFICATION OF THE SUBJECT PROPERTY

The property that is subject to this Consent Order is the property located at 2050 Cabrillo Highway in Pescadero, San Mateo County, APN 089-230-220.

3.0 DESCRIPTION OF ALLEGED COASTAL ACT VIOLATION

The development that is the subject of this Consent Order includes the unpermitted construction of an on-site access road and other violations of permit conditions. This development is not in

compliance with previously issued CDP No. A-2-SMC-99-066, which required the use of a shared access road on adjacent properties. In addition, a required plywood exclusion fence designed to protect sensitive species was not constructed as specified in Special Condition 5B of the CDP.

4.0 COMMISSION JURISDICTION

The Commission has jurisdiction over resolution of this alleged Coastal Act violation pursuant to Public Resources Code Section 30810. The development was performed without the required CDP or CDP amendment authorization, and in non-compliance with previously issued CDP No. A-2-SMC-99-066. Therefore, for the purposes of issuance and enforceability of this Consent Order, the Commission has jurisdiction to act as set forth in this Consent Order, and respondents agree that they will not contest the Commission's jurisdiction to issue or enforce this Consent Order.

5.0 WAIVER OF DEFENSES

In light of the intent of the parties to resolve these matters in settlement, respondents have waived their right to contest the legal and factual basis and the terms and issuance of this Consent Order, including the allegations of Coastal Act violations contained in the Notice of Intent to issue a Cease and Desist and Restoration Order dated April 17, 2003. Specifically, respondents decided not to file a statement of defense and to waive their right to present defenses or evidence at a public hearing to contest the issuance of the Consent Order. Respondents do not contest the Commission's jurisdiction and basis for the purposes of adoption, issuance and enforcement of this Consent Order. Respondents' waiver herein is limited to a hearing on the Commission's adoption, issuance and enforcement of this Consent Order and no other hearing or proceeding.

6.0 FINDINGS

This Consent Order is issued on the basis of the findings adopted by the Commission, as set forth in the attached document entitled "Staff Report for Consent Agreement and Cease and Desist and Restoration Order No. CCC-03-CD-05 and CCC-03-RO-05."

7.0 EFFECTIVE DATE

This Consent Order shall become effective as of the date of issuance by the Commission and shall remain in effect permanently unless and until rescinded by the Commission.

8.0 EXTENSION REQUESTS

Prior to the expiration of the deadlines established by this Consent Order, respondents may request from the Executive Director an extension of the deadlines. Such a request shall be made in writing and directed to the Executive Director in the San Francisco office of the Commission. The Executive Director shall grant an extension of deadlines upon a showing of good cause, if

the Executive Director determines that respondents have diligently worked to comply with their obligations under this Consent Order, but cannot meet deadlines due to unforeseen circumstances beyond their control.

9.0 SETTLEMENT/COMPLIANCE OBLIGATION

- 9.1 In light of the intent of the parties to resolve these matters in settlement, respondents have agreed to pay a monetary settlement in the amount of \$55,000. The settlement monies shall be deposited in the Violation Remediation Account of the California Coastal Conservancy Fund (see Public Resources Code Section 30823). Respondents shall submit the settlement payment amount by Monday, August 11, 2003 to the attention of Sheila Ryan of the Commission, payable to the California Coastal Commission/Coastal Conservancy Violation Remediation Account. Commission staff will forward the settlement payment to the Coastal Conservancy, and will request of the Conservancy that the settlement monies be used, if possible, for restoration project(s) on coast side San Mateo County.
- 9.2 Strict compliance with this Consent Order by all parties subject thereto is required. Failure to comply with any term or condition of this Consent Order, including any deadline contained in this Consent Order, unless the Executive Director grants an extension, will constitute a violation of this Consent Order and shall result in respondents being liable for stipulated penalties in the amount of \$500 per day per violation. Respondents shall pay stipulated penalties within 15 days of receipt of written demand by the Commission for such penalties. If respondents violate this Consent Order, nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of the Commission to seek any other remedies available, including the imposition of civil penalties and other remedies pursuant to Public Resources Code Sections 30821.6, 30822 and 30820 as a result of the lack of compliance with the Consent Order and for the underlying Coastal Act violations as described herein.

10.0 SITE ACCESS

Respondents agree to provide access to the subject property at all reasonable times to Commission staff and any agency having jurisdiction over the work being performed under this Consent Order. Nothing in this Consent Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Commission staff may enter and move freely about the portions of the subject property on which the violations are located, and on adjacent areas of the property to view the areas where development is being performed pursuant to the requirements of the Consent Order for purposes including but not limited to inspecting records, operating logs, and contracts relating to the site and overseeing, inspecting and reviewing the progress of respondents in carrying out the terms of this Consent Order.

11.0 GOVERNMENT LIABILITIES

The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by respondents in carrying out activities pursuant to this Consent Order, nor shall the State of California be held as a party to any contract entered into by respondents or their agents in carrying out activities pursuant to this Consent Order. Respondents acknowledge and agree (a) to assume the risks to the property that is the subject of this Consent Order and damage from such hazards in connection with carrying out activities pursuant to this Consent Order; and (b) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents and employees for injury or damage from such hazards.

12.0 WAIVER OF RIGHT TO APPEAL AND SEEK STAY

Persons against whom the Commission issues a cease and desist and/or restoration order have the right pursuant to Section 30803(b) of the Coastal Act to seek a stay of the order. However, pursuant to the agreement of the parties as set forth in this Consent Order, respondents agree to waive whatever right they may have to challenge the issuance and enforceability of this Consent Order in a court of law.

13.0 SETTLEMENT OF CLAIMS

The Commission and respondents agree that this Consent Order settles all monetary claims for relief for those violations of the Coastal Act alleged in the NOI occurring prior to the date of this Consent Order, (specifically including but not limited to claims for civil penalties, fines, or damages under the Coastal Act, including Sections 30805, 30820, and 30822), with the exception that, if respondents fail to comply with any term or condition of this Consent Order, the Commission may seek monetary or other claims for both the underlying violations of the Coastal Act and for the violation of this Consent Order. However, this Consent Order does not limit the Commission from taking enforcement action due to Coastal Act violations at the subject property other than those that are the subject of this order.

14.0 SUCCESSORS AND ASSIGNS

This Consent Order shall run with the land binding all successors in interest, future respondents of the property, interest and facility, heirs and assigns. Notice shall be provided by respondents to all successors, heirs and assigns of any remaining obligations under this Consent Order.

15.0 MODIFICATIONS AND AMENDMENTS

Except as provided in Section 8.0, this Consent Order may be amended or modified only in accordance with the standards and procedures set forth in Section 13188(b) of the Commission's administrative regulations.

16.0 GOVERNMENTAL JURISDICTION

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

17.0 LIMITATION OF AUTHORITY

- 17.1 Except as expressly provided herein, nothing in this Consent Order shall limit or restrict the exercise of the Commission's enforcement authority pursuant to Chapter 9 of the Coastal Act, including the authority to require and enforce compliance with this Consent Order.
- 17.2 Correspondingly, respondents have entered into this Consent Order and waived their right to contest the factual and legal basis for issuance of this Consent Order, and the enforcement thereof according to its terms. Respondents have agreed that they do not contest that the Commission has jurisdiction to issue and enforce this Consent Order.

17.0 INTEGRATION

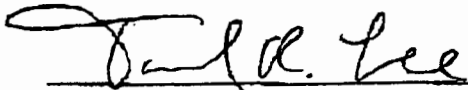
This Consent Order constitutes the entire agreement between the parties and may not be amended, supplemented, or modified except as provided in this Consent Order.

18.0 STIPULATION

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

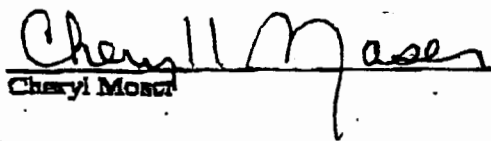
IT IS SO STIPULATED AND AGREED:

On behalf of respondents:



David Lee

5/22/03
Date



Cheryl Moser

5-22-03
Date

On behalf of the California Coastal Commission:

Peter Douglas, Executive Director

Date

