

CALIFORNIA COASTAL COMMISSION

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



RECORD PACKET COPY

F-4b

Staff: CLD-SF
Staff Report: August 21, 2003
Hearing Date: September 12, 2003

**RECOMMENDATIONS AND FINDINGS FOR CEASE AND
DESIST ORDER AND RESTORATION ORDER**

CEASE AND DESIST ORDER: CCC-03-CD-08

RESTORATION ORDER: CCC-03-RO-06

PROPERTY LOCATION: 9965 Highway One and/or 9970 Highway One,
unincorporated Sonoma County (between
Jenner and Bodega Bay)

PROPERTY DESCRIPTION: The subject property is wooded with frontage
on the Russian River. It is currently being used
as a residential trailer park.

PROPERTY OWNERS AND
PERSONS SUBJECT TO THIS
ORDER: Anita O'Bryan and Jaime O'Bryan

VIOLATION FILE NO.: V-2-02-12 (Bridge Haven Trailer Park)

VIOLATION DESCRIPTION: Scraping of the riverbank and placement of a
riprap revetment along an approximately 40-
foot section of the Russian River shoreline at
the Bridge Haven Trailer Park without a coastal
development permit.

SUBSTANTIVE DOCUMENTS: Cease and Desist Order File No. CCC-03-CD-
08, Restoration Order File No. CCC-03-RO-06
Exhibits A through E.

CEQA STATUS: Exempt (CEQA Guidelines (GC) §§ 15060(c)
(2) and (3)) and Categorically Exempt (CG §§
15061(b)(2), 15307, 15308 and 15321)

I. SUMMARY

Commission staff recommends that the Commission issue the proposed Consent Cease and Desist Order (CDO) and Restoration Order (RO) to resolve the Coastal Act violation alleged above. The Consent Orders would require and authorize removal of the unpermitted development at the Bridge Haven Trailer Park and restoration of the impacted site to its pre-violation condition. The unpermitted development consists of scraping of the riverbank, and placement of riprap along an approximately 40-foot section of the Russian River shoreline without a coastal development permit (CDP).

The unpermitted development that occurred on the subject property meets the definition of "development" set forth in Section 30106 of the Coastal Act. Bridge Haven Trailer Park is located in Sonoma County, which has a certified Local Coastal Plan (LCP). The unpermitted development is located in an area of original jurisdiction because it is tidelands and therefore the Coastal Act is the standard of review.

The O'Bryans were given the opportunity to apply for a CDP to retain the riprap. In December 2002, the O'Bryans submitted an application, after-the-fact, to authorize the riprap. In January 2003, Commission staff notified that the O'Bryans that their application was incomplete and that they were required to complete their application by February 2003. The O'Bryans failed to complete their application and in March 2003, Commission staff returned their incomplete application to them.

The riprap and the ongoing maintenance of it are inconsistent with the Coastal Act, including Sections 30231 (Biological Productivity/Water Quality), 30240 (Environmentally Sensitive Habitat Area (ESHA)), 30233 (filling of wetlands and estuaries), 30235 (Construction altering natural shoreline), and 30251 (Scenic Resources and Alteration of Landforms) of the Public Resources Code (as fully discussed in the Findings below). The unpermitted development is also causing continuing resource damage, as that phrase is defined in Section 13190 of the Commission's regulations.

In order to issue a Consent CDO under Coastal Act Section 30810, the Commission must find that development has occurred either without a CDP or in violation of the terms and conditions of a previously issued CDP. In order to issue a Consent RO under Section 30811 of the Act, the Commission must find that development: (1) has occurred without a CDP, (2) is inconsistent with the Chapter 3 policies of the Coastal Act, and (3) is causing continuing resource damage.

In August, Commission staff and the O'Bryans agreed to the terms of the proposed Consent CDO and RO. The Orders would require the O'Bryans to remove the riprap and restore the site to its pre-violation condition in accordance

with a restoration plan approved by the Executive Director. The O'Bryans have also agreed to pay a \$7,000 penalty to the Commission. Commission staff recommends that the Commission approve the proposed Consent CDO and RO.

II. HEARING PROCEDURES

The procedures for a hearing on a proposed CDO and RO are outlined in Section 13185 and 13195 respectively of the California Code of Regulations Title 14, Division 5.5, Chapter 5, Subchapter 8. The CDO and RO hearing procedures are similar in most respects to the procedures that the Commission utilizes for permit and LCP matters.

For a CDO and RO hearing, the Chair shall announce the matter and request that all parties or their representatives present at the hearing identify themselves for the record, indicate what matters are already part of the record, and announce the rules of the proceeding including time limits for presentations. The Chair shall also announce the right of any speaker to propose to the Commission, before the close of the hearing, any question(s) for any Commissioner, at his or her discretion, to ask of any other party. 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 that has been introduced.

The Commission should receive, consider, and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceedings, as specified in California Code of Regulations Title 14 Section 13186, incorporating by reference Section 13065. The Chair will close the public hearing after the presentations are completed. The Commissioners may ask questions to any speaker at any time during the hearing or deliberations, including, if any Commissioner chooses, any questions proposed by any speaker in the manner noted above. Finally, the Commission shall determine, by a majority vote of those present and voting, whether to issue the proposed CDO and RO, 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 proposed CDO and RO.

III. MOTION

MOTION I: I move that the Commission issue Consent Cease and Desist Order No. CCC-03-CD-08, pursuant to the staff recommendation.

MOTION II: I move that the Commission issue Consent Restoration Order No. CCC-03-RO-07, pursuant to the staff recommendation.

COMMISSION STAFF RECOMMENDATION OF APPROVAL

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

RESOLUTION TO ISSUE CONSENT CEASE AND DESIST AND RESTORATION ORDER

The Commission hereby issues Consent Cease and Desist Order No. CCC-03-CD-08 and Restoration Order CCC-03-RO-06 set forth below and adopts the findings set forth below on grounds that development has occurred without a coastal development permit, the unpermitted development is not consistent with Coastal Act policies and the unpermitted development is causing continuing resource damages.

IV. FINDINGS

A. Background and Administrative Resolution Attempts

Commission Enforcement staff received an initial report about the violation in April 2002, although the violation occurred in early July 2001. The unpermitted development was initially observed by Regional Water Quality Control Board (RWQCB) staff on July 5, 2001. In July 2001, RWQCB staff advised Jaime O'Bryan that he was required to contact the National Marine Fisheries Service, the U.S. Army Corps of Engineers, and the California Department of Fish and Game to obtain the appropriate permits for the project. RWQCB staff sent Jaime O'Bryan a RWQCB certification application to complete but it was never submitted.

On August 16, 2002, Commission staff conducted a site visit at the Bridge Haven Trailer Park. Commission staff met with Jaime O'Bryan, who identified himself as the manager of the Campground. Jaime O'Bryan indicated that when the Resident Manager observed a contractor working for the California Department of Transportation's placing riprap at a site about 100-150 feet upstream from the Trailer Park under the Highway 1 bridge, he hired the contractor to put some riprap along the shoreline in front of the Bridge Haven Trailer Park. During the site visit, Commission staff informed Mr. O'Bryan that the placement of the riprap is development that requires a CDP under the Coastal Act. Coastal Act Section 30600(a) provides that:

- (a) Except as provided in subdivision (e), and in addition to obtaining any other permit required by law from any local government or from any*

state, regional, or local agency, any person... wishing to perform or undertake any development in the coastal zone, other than a facility subject to Section 25500, shall obtain a coastal development permit.

Commission staff also informed Mr. O'Bryan that it is unlikely that Commission staff could recommend approval of a CDP after-the-fact for the riprap since it is probably inconsistent with Sections 30233 and 30235 of the Coastal Act, which regulates the filling of wetlands and estuaries and the placement of riprap.

On August 21, 2002, Commission staff sent Mr. O'Bryan a violation letter requesting that he submit a complete CDP application by September 23, 2002. Receiving no response and after several attempts to contact Mr. O'Bryan by telephone, on December 3, 2002 Commission staff sent a copy of the August 21, 2002 violation letter to Mr. O'Bryan's parents, Anita and John O'Bryan. Anita O'Bryan and Jaime O'Bryan are listed as the joint owners of the Bridge Haven Trailer Park.

In December, 2002, the O'Bryans submitted to the Commission's North Central Coast District Office. a CDP application to retain the riprap. On January 3, 2003, Commission staff sent Jaime O'Bryan a letter listing the eleven items required to complete the application and encouraging him to revise the project description to propose removal of the riprap since, under Section 30235 of the Coastal Act, it is unlikely that Commission staff could recommend approval of the project. Commission staff requested that the supplemental materials be submitted by February 5, 2003. The materials were not received by the deadline.

In a letter to Commission staff dated February 2003, Anita and John O'Bryan indicated that they were willing to resolve the violation and that they would like to discuss the CDP application after their return from vacation in early April 2003.

On March 5, 2003, Commission staff returned the O'Bryans' CDP application for incompleteness and refunded their application fee.

On March 10, 2003, Commission staff sent to Anita O'Bryan and Jaime O'Bryan separately notices of intent (NOI) to commence CDO and RO proceedings to compel them to resolve their Coastal Act violation through the removal of the unpermitted riprap. (EXHIBIT A) As subsequently amended, the NOI directed the O'Bryans to submit a statement of defense by June 1, 2003.

By letter dated April 25, 2003 the O'Bryans' attorney Eric Koenigshofer requested an extension of the deadline for submitting the O'Bryans' statement of defense. On May 9, 2003, Commission staff responded to Mr. Koenigshofer's letter setting a June 6, 2003 deadline for submittal of the statement of defense and explaining the various options for resolving the Coastal Act violation including Commission issuance of either a unilateral CDO or a Consent CDO and RO. No statement of defense was ever received by Commission staff.

On June 24, 2003 the California Regional Water Quality Control Board (WQCB), North Coast Region issued to Anita O'Bryan and Jaime O'Bryan Cleanup and Abatement Order No. R1-2003-0078. (EXHIBIT B) The Cleanup and Abatement Order required the Respondents to submit a work plan to remove the riprap by July 11, 2003 and to complete removal of the riprap and restoration of the site by October 15, 2003. Commission staff has determined that implementation of the work plan would require the O'Bryans to obtain a CDP from the Commission. In the interest of expediency and economy, Commission staff is recommending that the Commission issue the proposed Consent CDO and RO to authorize removal of the riprap and restoration of the site. Commission staff has coordinated with North Coast WQCB staff and incorporated the deadlines contained in the Cleanup and Abatement Order into the Consent CDO and RO.

In a telephone discussion on July 2003, Mr. Koenigshofer indicated to Commission staff that the O'Bryans were interested in resolving their Coastal Act violation through a Consent CDO. On August 20, 2003, Commission staff and the O'Bryans agreed to the terms of the proposed Consent CDO and RO to resolve the Coastal Act violations at the Bridge Haven Trailer Park.

B. Description of Unpermitted Development

The site of the alleged violation is a 40-foot section of the Russian River shoreline at the Bridge Haven Trailer Park located in unincorporated Sonoma County. The violation consists of the scraping of the riverbank causing destruction of riparian habitat and placement of riprap along the shoreline without a CDP.

C. Basis for Issuance of Cease and Desist Order

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

- (a) *If the Commission, after public hearing, determines that any person...has undertaken, or is threatening to undertake, any activity that 1) requires a permit from the commission without first securing the permit or 2) is inconsistent with any permit previously issued by the Commission, the Commission may issue an order directing that person...to cease and desist.*
- (b) *The cease and desist order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with this division, including immediate removal of any development or material...*

C. Basis for Issuance of Restoration Order

The statutory authority for issuance of this RO is provided in Coastal Act Section 30811, which states, in relevant part:

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

The following paragraphs set forth the basis for the issuance of the CDO and RO by providing substantial evidence that the development meets all of the required grounds for the Commission to issue a CDO and RO listed in Coastal Act Sections 30810 and 30811.

(1) Development Has Occurred Without a Coastal Permit

No CDP application was ever submitted and no CDP was ever issued for this development.

(2) Development is Inconsistent with Coastal Act Policies

Scraping of the riverbank and placement of the riprap along the shoreline (armoring) resulted in the destruction and displacement of riparian habitat in an area designated as ESHA.¹ The riprap also has the potential to accelerate erosion of the beach in front of the riprap and alter the configuration of the shoreline by causing end-erosion at both ends of the riprap. Lastly, the riprap is visually incompatible with the character of the rest of the shoreline.

Placement of the riprap meets the definition of "development," as that term is defined in Section 30106 of the Coastal Act and requires a CDP. A CDP may be approved when development is consistent with the resource protection policies contained in Chapter 3 of the Coastal Act. Placement of the riprap was not consistent with the following sections of the Coastal Act and policies of the Sonoma County certified LCP.

Biological Productivity

Coastal Act Section 30231 provides:

The biological productivity and the quality of coastal waters, stream, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health

¹ See Environmentally Sensitive Habitat below.

shall be maintained and where feasible, restored through... maintaining natural vegetation buffer areas that protect riparian habitats...

Scraping and armoring of the shoreline resulted in the removal of riparian vegetation and destruction of riparian habitat.

Environmentally Sensitive Habitat

The Sonoma County LCP establishes that the riparian corridors on both sides of the Russian River, including Respondents' property, are part of Sanctuary-Preservation Areas:

[These areas are]... the most environmentally sensitive areas along the coast. They correspond to "Environmentally Sensitive Habitat Areas" as defined in the 1976 Coastal Act Sections 30107.5 and 30240. No development other than nature trails and resource dependent uses shall be allowed within such areas. There shall be no significant disruption of habitat values.

The Sonoma County LCP designates the Russian River shoreline as a Sanctuary-Preservation Area and ESHA because it recognizes the ecological importance of the riparian corridors.

Coastal Act Section 30240 also provides for the protection of ESHA and limits development in areas adjacent to ESHA in order to mitigate potential degradation of those areas:

- (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*
- (b) Development in areas adjacent to environmentally sensitive habitat areas and parks shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

The Sonoma County LCP (Chapters 3, pages 13, 16, and 17) also includes the following policies applicable to riparian areas, anadromous fish streams, and areas of open water, including the Russian River:

Riparian –

- 9. Prohibit construction of permanent structures within riparian areas as Defined, or 100 feet from the lowest line of riparian vegetation, whichever is greater, except development dependent on resources in the riparian habitat, including public recreation facilities related to the*

resource. Any development shall be allowed only if it can be sited and designed to prevent impacts, which would significantly degrade such areas and shall be compatible with the continuance of riparian habitat. The riparian habitat area or 100 foot wide buffer zone should generally be maintained in a natural, undisturbed state...

- 11. Prohibit the removal of vegetation except commercial timber, subject to a timber harvest plan, from the riparian corridor unless it is shown to be essential to continued viability of the wetland.*
- 12. Prohibit filling, grading, dredging, excavation or construction in the watercourse of a riparian corridor unless it is shown that such action will maintain the value of the area as a habitat for wildlife and aquatic organisms and is compatible with continued viability of the habitat.*

The unpermitted development consisted of the placement of riprap along an approximately 40-foot section of the Russian River shoreline, and involved the scraping of the riverbank, which resulted in the removal of riparian vegetation and destruction of riparian habitat. The revetment is a permanent structure that has degraded the area by displacing the riparian habitat. The revetment was also not designed to minimize erosion of the beach and the adjacent shoreline, which is inconsistent with Section 30240 the LCP, and is causing continuing resource damages.

Filling of Wetland

Section 30233 of the Coastal Act provides that the filling of wetlands and estuaries is only permitted under specific circumstances identified in Section 30233(a)(1)-(8), where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects. The site where the riprap was placed is a wetland, as that term is defined in Section 30121 of the Coastal Act. "Wetland" is defined in 30121 as "lands within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open and closed brackish water marshes, swamps, mudflats, and fens." The area is also part of the Russian River estuary and a Sanctuary Preservation Area. The circumstances surrounding the placement of the riprap along the shoreline at the Bridge Haven Trailer Park (See Background and Administrative Resolution Attempts, above) do not meet the requirements for approval under Section 30233 of the Coastal Act.

Alteration of the Shoreline

Section 30235 of the Coastal Act provides:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal dependent uses or to protect existing structures or public beaches in danger of erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply...

The revetment is inconsistent with the requirements of Section 30235 since it does not does not serve a coastal dependent use or protect an existing structure or public beach in danger of erosion, and the revetment is not designed to minimize impacts to the shoreline. Moreover, while the revetment may be partially effective in preventing the 40-foot section of shoreline from eroding, it will accelerate the erosion of the beach in front of the revetment and the shoreline at either end of the revetment. The revetment will also block the sediment supply from the riverbank to the beach and will alter the configuration of the shoreline, which is also inconsistent with Section 30235.

Scenic and Visual Qualities

Viewed from the Russian River the riprap is obtrusive and visually incompatible with the natural riverbank. Coastal Act Section 30251 provides:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to... minimize the alteration of natural landforms, to be visually compatible with the character of surrounding areas...

(3) Is Causing Continuing Resource Damage

California Code of Regulations Section 13190 defines the term "continuing resource damage" (as that phrase is used in Section 30811 of the Public Resources Code) as meaning the following:

(a) "Resource" means any resource which 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 visual quality of coastal areas.

The unpermitted development occurred within the riverbed and along the Russian River shoreline, which is a riparian area classified as an ESHA by the

Sonoma County LCP. As stated above, Coastal Act Section 30231 provides for the protection of biological productivity and water quality and the maintenance of natural vegetation buffer areas that protect riparian areas. Section 30240 provides for the protection of ESHAs and areas adjacent to ESHAs to prevent impacts that would significantly degrade those areas. Section 30233 provides for the protection of coastal wetlands and estuaries and the prevention of filling of those environments. Section 30251 provides that the visual quality of scenic coastal areas is a protected resource and requires development in coastal areas be visually compatible with the character of surrounding areas.

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

The unpermitted development included scraping of the riverbank, which caused the removal of riparian vegetation and the destruction of ESHA and the placement of riprap along an approximately 40-foot section of the Russian River shoreline, which resulted in the displacement of riparian habitat and degraded the visual and scenic quality of the shoreline.

(d) "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 resource impacts caused by the placement of the riprap are continuing. The destruction of the riparian ESHA habitat, acceleration of erosion of the shoreline in front and at either end of the revetment, and the visual impact of the riprap along the shoreline (see above) are all ongoing and are causing continuing resource damages, as those terms are defined in Coastal Act Section 30811 and its implementing regulations.

V. UNCONTESTED ALLEGATIONS

The Commission alleges, and the alleged violators do not contest, the following:

1. Anita and Jaime O'Bryan are the owners of the Bridge Haven Trailer Park
2. In early July 2001, an employee of Jaime O'Bryan performed development at the Bridge Haven Trailer Park consisting of the scraping of the riverbank and placement of riprap along an approximately 40 foot section of the Russian River shoreline without a CDP.
3. Neither Jaime O'Bryan nor John and Anita O'Bryan have submitted a complete CDP application to authorize the riprap after-the-fact.

VI. CEQA COMPLIANCE

The Commission finds that issuance of the proposed Consent CDO and RO 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 Consent CDO and RO 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.

Exhibits

- A. Notice of intent to issue a Commission Cease and Desist Order and Restoration Order dated March 10, 2003 and addressed to Jaime O'Bryan and John and Anita O'Bryan.
- B. Cleanup and Abatement Order No. R1-2003-0078 issued by the California Regional Water Quality Control Board, North Coast Region, dated June 24, 2003.



CALIFORNIA COASTAL COMMISSION

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



VIA REGULAR AND CERTIFIED MAIL

March 10, 2003

**INTENT TO COMMENCE CEASE AND DESIST AND RESTORATION ORDER
PROCEEDINGS**

Jamie O'Bryan
Bridgehaven Trailer Park
Box 59
Jenner, CA 95450

John and Anita O'Bryan
1161 Robertson Way
Sacramento, CA 95818

Subject: Coastal Commission Cease and Desist Order

Property Location: 9960 Highway 1 and/or 9970 Highway 1, unincorporated
Sonoma County (between Jenner and Bodega Bay)

Alleged Coastal Act Violation: Scraping of the riverbank, trenching within the
riverbed and placement of rock rip-rap along
the shoreline at the Bridgehaven Trailer Park
without a coastal development permit.

Dear Misters and Ms. O'Bryan:

Pursuant to the requirements of Coastal Act Section 13181(a), I am writing to
inform you that Commission staff is commencing a cease and desist-order
proceeding against you regarding the unpermitted development listed above.

Description of Coastal Act Violation

Coastal Act Section 30600(a) requires that any person wishing to undertake
development in the coastal zone shall obtain a coastal development permit
(CDP) from the Commission or local government in addition to any other permit
required by law. Development is defined in the Coastal Act as "on land, in or
under water, the placement or erection of any solid material or structure..." The
scraping of the riverbank, trenching within the riverbed and placement of rock rip-

F-4b

CCC-03-CD-08 (O'Bryan & O'Bryan)
CCC-03-RO-06 (O'Bryan & O'Bryan)

EXHIBIT A

PAGE 1 of 4

rap along the shoreline in front of the Bridgehaven Trailer Park in July 2001 without a CDP issued by the Commission was a violation of the Coastal Act.

On August 16, 2002, Commission staff conducted a site visit at the Bridgehaven Trailer Park. They met with Jamie O'Bryan, the manager of the Campground. Jamie O'Bryan indicated that when on July 5, 2001 he observed the Department of Transportation's contractor placing rip-rap at a site about 100-150 feet upstream under the Highway 1 bridge, he asked the contractor to put some rip-rap along the shoreline in front of the Bridgehaven Trailer Park. Commission staff informed Mr. Jamie O'Bryan that the placement of the rip-rap is unpermitted development that requires a CDP and that may not be approvable under the Coastal Act Section 30235, which governs revetments and rip-rap. Under Section 30235, such structures are to be permitted in the coastal zone only "when required to... protect existing structures or public beaches in danger of erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply."

Commission staff sent Mr. Jamie O'Bryan a violation letter dated August 21, 2002, requesting that he submit a complete CDP application by September 23, 2002. There was no response. On four occasions beginning in early October 2002, Commission staff attempted to reach Mr. Jamie O'Bryan by telephone and left messages each time. Mr. Jamie O'Bryan did not return any of the calls. On December 3, 2002 Commission staff sent a copy of the August 21, 2002 violation letter to the property owners, John and Anita O'Bryan.

A CDP application was finally submitted to the Commission's North Central Coast District Office in December 2002. The application was to retain the rip-rap but was very incomplete. On January 3, 2003, Commission staff sent Mr. Jamie O'Bryan a letter listing all the materials missing from the application and encouraging him to revise his application to propose removal of the rip-rap since, under the Coastal Act section noted above, it is unlikely that Commission staff will recommend approval of the rip-rap. Commission staff requested that the materials be submitted by February 5, 2003. The materials have not been received and the application remains incomplete.

Cease and Desist and Restoration Orders

Persons subject to issuance of a cease and desist and/or restoration order include the individual who performed the unpermitted development and the legal owners of the property where the unpermitted development occurred. Consistent with Coastal Act Sections 30810(a) and 30811, the proposed orders would require you to (1) cease and desist from carrying out any future development at the site without a CDP, and maintaining unpermitted development; and (2) remove the unpermitted development and restore the site to its pre-violation condition.

Authority for Cease and Desist and Restoration Orders

Pursuant to Public Resources Code Section 30810, the Commission has the authority to order any person to cease and desist violating the Coastal Act if the Commission, after a public hearing, determines that any person has engaged in activity that requires a CDP from the Commission without securing the permit. Additionally, 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, including immediate removal of any development or material.

Pursuant to Public Resources Code Section 30811, the Commission also has the authority to order restoration of a site if it finds, after a public hearing, that the development has occurred without CDP from the Commission, local government, or port governing body, the development is inconsistent with this division, and the development is causing continuing resource damage. Accordingly, any restoration order that the Commission may issue will have as its purpose the restoration of the site to its pre-violation condition.

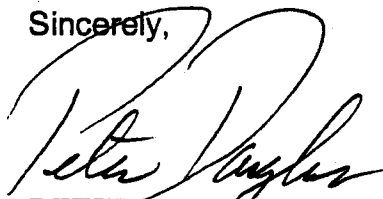
Please be advised that if the Commission issues a cease and desist order and/or a restoration order, Coastal Act Section 30821.6(a) authorizes the Commission to seek monetary daily penalties for any intentional or negligent violation of the order for each day in which the violation persists. The penalty for intentionally and negligently violating a cease and desist order or a restoration order can be as much as \$6,000 per day for as long as the violation persists.

At this time, the Commission is planning to hold a hearing on the issuance of a cease and desist order in this matter at the Commission meeting that is scheduled for the week of May 5, 2003.

In accordance with the California Code of Regulations Sections 13181(a) and 13196, you have the opportunity to respond to the staff's allegations as set forth in this notice by completing the enclosed Statement of Defense form.—The completed Statement of Defense form must be received by this office no later than March 30, 2003.

If you have questions concerning the filing of the Statement of Defense form, please contact Chris Darnell in the Commission's Enforcement Unit at 415- 904-5294.

Sincerely,



PETER M. DOUGLAS
Executive Director

Enclosure

cc: Lisa Haage, Chief of Enforcement
Nancy Cave, Northern California Enforcement Supervisor
Chris Kern, North Central Coast District Permitting



California Regional Water Quality Control Board

North Coast Region



Winston H. Hickox
Secretary for
Environmental
Protection

William R. Massey, Chairman

Gray Davis
Governor

Internet Address: <http://www.swrcb.ca.gov/rwqcb1/>
5550 Skylane Boulevard, Suite A, Santa Rosa, California 95403
Phone: 1 (877) 721-9203 (toll free) • Office: (707) 576-2220 • FAX: (707) 523-0135

June 24, 2003

Ms. Anita O'Bryan and Mr. Jamie O'Bryan
Bridgehaven Resort
9965 Highway 1
Jenner, CA 95450

F-4b
CCC-03-CD-08 (O'Bryan & O'Bryan)
CCC-03-RO-06 (O'Bryan & O'Bryan)

EXHIBIT B

PAGE 1 of 9

Dear Ms. Anita O'Bryan and Mr. Jamie O'Bryan:

Subject: Cleanup and Abatement Order for the Bridgehaven Riprap Project

File: Bridgehaven Riprap Project

Enclosed is a copy of Cleanup and Abatement Order No. R1-2003-0078. Please contact Andrew Jensen of my staff at (707) 576-2683 if you have any questions.

Sincerely,

Susan A. Warner
Executive Officer

AJJ:tab/bridgehavenresortcao.doc

Certified-Return Receipt Requested

Enclosure: Cleanup and Abatement Order No. R1-2003-0078

cc: Mr. Oscar Balaguer, SWRCB, Water Quality Certification Unit, Division of Water Quality

Mr. Erik Spiess, SWRCB, Office of the Chief Counsel

Ms. Jane Hicks, U.S. Army Corps of Engineers, Regulatory Branch, 333 Market Street, San Francisco, CA 94105



California Environmental Protection Agency



Recycled Paper

"The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Web-site at: <http://www.swrcb.ca.gov/>."

Mr. Bill Cox, Department of Fish and Game, Region 3, P.O. Box 47, Yountville, CA 94599

Mr. Dick Butler, National Marine Fisheries Service, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404-4731

Director of Water Division (WTR-1), U.S. EPA, Region 9, Re: Water Quality Certification, 75 Hawthorne Street, San Francisco, CA 94105

Mr. Ben Neuman, County of Sonoma, Permit and Resource Management Department, Code Enforcement Division, 2550 Ventura Avenue, Santa Rosa, CA 95403

Mr. Chris Darnell, California Coastal Commission, 45 Fremont, Suite 2000, San Francisco, CA 94105-2219

F-4b
CCC-03-CD-08 (O'Bryan & O'Bryan)
CCC-03-RO-06 (O'Bryan & O'Bryan)

EXHIBIT A

PAGE 2 of 9

California Environmental Protection Agency



Recycled Paper

"The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Web-site at: <http://www.swrcb.ca.gov/>."

California Regional Water Quality Control Board
North Coast Region

Cleanup and Abatement Order No. R1-2003-0078

For

Ms. Anita O'Bryan and Mr. Jamie O'Bryan

Sonoma County

The California Regional Water Quality Control Board, North Coast Region (hereinafter Regional Water Board), finds that:

1. Ms. Anita O'Bryan and Mr. Jamie O'Bryan (hereinafter Discharger), whose mailing address is Bridgehaven Resort, 9965 Highway 1, Jenner, California, 95450, constructed a section of rock riprap material along the bank of the Russian River near the City of Jenner, California, without appropriate permitting. The riprap is located on the south bank of the Russian River approximately 200 feet downriver of the Highway 1 bridge crossing. The riprap consists of approximately 100 cubic yards (yd³) of rock fill material in an area approximately 75 feet long, 12 feet wide, and 3 feet deep. The Discharger installed the rock riprap along the bank of the Russian River during the spring of 2002. Prior to the installation of the riprap, Regional Water Board staff member Mr. Andrew Jensen informed the Discharger that a Clean Water Act (CWA) Section 404 permit and a CWA Section 401 certification would be required for the proposed activities, but the Discharger failed to obtain them.
2. On July 5, 2001, Mr. Jensen observed an excavator working in the Russian River Estuary at an elevation below the high tide level, just downstream of the Russian River Highway 1 Bridge, located just south of City of Jenner. Mr. Jensen drove to Bridgehaven Resort, where he observed the excavator clearing the riverbank prepping for the placement of riprap in the above-described area. Mr. Jensen approached the heavy equipment operator, Mr. Rob Dixon. Mr. Dixon stated that he was installing the riprap for the Discharger, and that the Discharger would be the one to contact to discuss the work. Mr. Jensen informed Mr. Dixon that the project was not covered under the necessary permits and therefore his work was in violation of the CWA and subject to enforcement. Mr. Jensen also telephoned and left a message for the Discharger indicating that the riprap installation was not permitted, and asked the Discharger to call immediately. Mr. Jensen also left contact information for Ms. Jane Hicks of the U.S. Army Corps of Engineers, and told the Discharger to contact her in regards to obtaining a CWA Section 404 permit for his project. The Discharger returned Mr. Jensen's call the same day and discussed the issue with Mr. Jensen. The Discharger was told that the project could not proceed until the appropriate permits were obtained. Mr. Jensen then sent a Water Quality Certification and/or Waiver of Waste Discharge Requirements (Dredge/Fill Projects) (Application) packet to the Discharger. No Application was received from the Discharger.

F-4b

CCC-03-CD-08 (O'Bryan & O'Bryan)
CCC-03-RO-06 (O'Bryan & O'Bryan)

3. On May 6, 2002, Mr. Jensen received a phone complaint from a California Department of Fish and Game Warden regarding the construction of rock riprap at two locations along the mainstem of the Russian River near the Highway 1 Bridge. The warden indicated that in early May 2002, he/she had personally observed active riprap installation occurring. Regional Water Board staff confirmed with the warden that the location of the installation was Bridgehaven Resort slightly downriver of the Russian River Highway 1 Bridge.
4. On May 21, 2002, and again on July 5, 2002, Mr. Jensen called the Discharger and left messages regarding the complaint and asked for a return phone call. The Discharger left a message on Mr. Jensen's voicemail on July 10, 2002, in which he stated that the California Department of Transportation (Caltrans) placed the riprap and that Bridgehaven representatives had never asked Caltrans to do the construction along the Bridgehaven portion of riverbank.
5. On June 7, 2002, Mr. Jensen and another Regional Water Board staff member, Ms. Sherri Shelly, conducted a site inspection and verified that rock riprap had been placed along the riverbank on the Discharger's property, Bridgehaven Resort, 9965 Highway 1, Jenner, California.
6. On July 15, 2002, the Regional Water Board sent Mr. Randall Iwasaki of Caltrans a California Water Code Section 13267 Order regarding apparent unauthorized bank stabilization in the Russian River Estuary at the Bridgehaven Resort, 9965 Highway 1, Jenner, Sonoma County.
7. On August 29, 2002, Caltrans submitted a report in response to the 13267 Order. The report stated "the work conducted by Caltrans was limited to the rock slope protection installed directly under the Russian River Bridge on the bank below the maintenance access road" and thus had no involvement in the placement of rock riprap along the Bridgehaven Resort property. In addition, the report states that during a site visit, Mr. Dragomir Bogdanic of Caltrans District 4, met with the Discharger and discussed the work that had taken place on the Discharger's property. The Discharger (Mr. O'Bryan) told Mr. Bogdanic that he had hired a contractor to do the work on his property and that he had used some rocks he already had available.
8. On November 22, 2002, Regional Water Board staff sent the Discharger an After-the-Fact Request for a Report of Waste Discharge (ROWD) for unpermitted rock riprap installation. Due to the fact that the Caltrans project was not directly linked to the Bridgehaven Resort project, a separate ROWD was required for each of the two projects. The Report of Waste Discharge was to include, at a minimum, an Application along with the appropriate fees, by December 18, 2002.
9. On December 10, 2002, Mr. O'Bryan submitted an Application, on behalf of himself and Ms. Anita O'Bryan. The Discharger failed to sign the Application and to include the appropriate fee.

10. On December 30, 2002, the Regional Water Board sent the Discharger a letter explaining that a valid Application must include a fee of \$2,250 and a signed copy of the Application.
11. On February 4, 2003, Mr. Jensen called the Discharger and left a message asking whether the required Application fee and signature page had been sent yet. On February 28, 2003, the Discharger called Mr. Jensen and left a message stating that he had left out the Application fee and signature page until a riparian restoration plan could be completed.
12. As of the date of this Order, neither the fee nor an executed signature page have been received from the Discharger.
13. The Russian River beneficial uses, as designated in the Water Quality Control Plan for the North Coast Region (Basin Plan), include:
 - a. Municipal and domestic supply
 - b. Agricultural supply
 - c. Industrial supply
 - d. Industrial service supply
 - e. Groundwater recharge
 - f. Navigation
 - g. Hydropower generation
 - h. Water contact recreation
 - i. Non-contact water recreation
 - j. Commercial and sport fishing
 - k. Warm freshwater habitat
 - l. Cold freshwater habitat
 - m. Rare, threatened, or endangered species
 - n. Wildlife habitat
 - o. Fish migration
 - p. Fish spawning
 - q. Estuarine habitat
 - r. Aquaculture
14. The Basin Plan contains specific standards and provisions for maintaining high quality waters of the state that provide for the beneficial uses listed above. The Action Plan for Logging, Construction and Associated Activities (Action Plan) included in the Basin Plan includes two prohibitions:
 - Prohibition 1 - *"The discharge of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature into any stream or watercourse in the basin in quantities deleterious to fish, wildlife, or other beneficial uses is prohibited."*

- Prohibition 2 - *"The placing or disposal of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature at locations where such material could pass into any stream or watercourse in the basin in quantities which could be deleterious to fish, wildlife, or other beneficial uses is prohibited."*
15. The Action Plan states: "where investigations indicate that the beneficial uses of water may be adversely affected by waste dischargers, the staff shall require the submission of Reports of Waste Discharge."
16. Section 3 of the Basin Plan contains water quality objectives that specify limitations on certain water quality parameters not to be exceeded as a result of waste discharges. The water quality objectives (pages 3-2.00 and 3-3.00) that are considered of particular importance in protecting the beneficial uses from unreasonable effects due to discharges from logging, construction, or associated activities, include the following:
- Color: Waters shall be free of coloration that causes nuisance or adversely affects beneficial uses.
 - Suspended Material: Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.
 - Settleable Material: Waters shall not contain substances in concentrations that result in deposition of material that causes nuisance or adversely affect beneficial uses.
 - Sediment: The suspended sediment load and suspended discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses.
 - Turbidity: Turbidity shall not be increased more than 20 percent above naturally occurring back ground levels. Allowable zones within which higher percentages can be tolerated may be defined for specific discharges upon the issuance of discharge permits or waiver thereof.
17. The following sections of the Porter-Cologne Water Quality Control Act authorize the Regional Water Board to require persons to remediate unpermitted discharges of waste:
- Section 13267(a) - *"A regional board, in establishing or reviewing any water quality control plan or waste discharge requirements, or in connection with any action relating to any plan or requirement or authorized by this division, may investigate the quality of any waters of the state within its region."*
 - Section 13267(b) - *"In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or proposes to discharge waste within its region...that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires."*

- Section 13267(c) - *"In conducting an investigation pursuant to subdivision (a), the regional board may inspect the facilities of any person to ascertain whether the purposes of this division are being met and waste discharge requirements are being complied with. The inspection shall be made with the consent of the owner or possessor of the facilities or, if the consent is withheld, with a warrant duly issued pursuant to the procedure set forth in Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure. However, in the event of an emergency affecting the public health or safety, an inspection may be performed without consent or the issuance of a warrant."*
 - Section 13304(a) - *"Any person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board, clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts."*
18. As explained above, the Discharger has placed a riprap structure into the Russian River and has therefore caused a discharge of waste into waters of the state.
19. The quantity and manner in which the rock fill material was placed caused the direct loss of riparian habitat and its associated functions, which is deleterious to fish, wildlife, and other beneficial uses, and therefore violates Prohibitions 1 and 2 in the Action Plan. Riparian habitat generally consists of trees, shrubs and woody species, that perform important functions related to water quality including but not limited to: providing shade to the river; reducing water flow velocities along the river bank; increasing habitat complexity; adding organic matter to the river; reducing erosion potential by providing stability to the river bank through root structures. Removal of this habitat is deleterious to fish, wildlife, and other beneficial uses, and therefore violates Prohibitions 1 and 2 in the Action Plan. These detrimental effects also constitute the creation of pollution or nuisance. The discharge of the rock fill material is therefore subject to cleanup and abatement under California Water Code Section (CWC) 13304.
20. The rock fill material also threatens to create pollution or nuisance because they threaten to exacerbate loss of riparian habitat and increase erosion upstream and/or downstream of the riprap structure, which unreasonably interfere with beneficial uses. Unless properly engineered, rock fill structures placed on the bank of a watercourse have the potential to increase bank erosion because they create vortices at high flows that undercut the structure. The placement of the rock fill material has increased erosion potential threatening to create pollution or nuisance and is therefore subject to cleanup and abatement under CWC 13304.

21. The workplan required by this Order is necessary to ensure that the prior harm and future threat to water quality created by the discharges described above are properly abated and controlled. More detailed information is available in the Regional Water Board's public file on this matter.
22. This is an enforcement action by a regulatory agency, being taken for the protection of the environment, and is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code, Section 21000 et seq.) in accordance with California Code of Regulations (CCRs), Title 14, Sections 15308 and 15321.
23. Failure to comply with the terms of this Order may result in enforcement under the CWC. Any person failing to provide technical reports containing information required by this Order by the required date(s) or falsifying any information in the technical reports is, pursuant to CWC Section 13268, guilty of a misdemeanor and may be subject to administrative civil liabilities of up to one thousand dollars (\$1,000.00) for each day in which the violation occurs. Any person failing to cleanup or abate threatened or actual discharges as required by this Order is, pursuant to CWC Section 13350(e), subject to administrative civil liabilities of up to five thousand dollars (\$5,000.00) per day or ten dollars (\$10) per gallon of waste discharged.
24. Any person affected by this action of the Regional Water Board may petition the State Water Resources Control Board (State Water Board) to review the action in accordance with CWC Section 13320 and Title 23, CCRs, Section 2050. The petition must be received by the State Water Board within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request. In addition to filing a petition with the State Water Board, any person affected by this Order may request the Regional Water Board to reconsider this Order. To be timely, such request must be made within 30 days of the date of this Order. Note that even if reconsideration by the Regional Water Board is sought, filing a petition with the State Water Board within the 30-day period is necessary to preserve the petitioner's legal rights. If you choose to request reconsideration of this Order or file a petition with the State Water Board, be advised that you must comply with the Order while your request for reconsideration and/or petition is being considered.

THEREFORE, IT IS HEREBY ORDERED that, pursuant to CWC Sections 13267(b) and 13304, the Discharger shall perform the following cleanup and abatement actions:

1. Submit a workplan to the Regional Water Board, for Executive Officer concurrence, on or before July 11, 2003, that describes: (1) a plan for removing the riprap; (2) mitigation measures that will be incorporated to protect water quality; and (3) all necessary permits to be obtained prior to commencement of work.

2. Following Executive Officer written concurrence, implement the workplan. All work to remove the riprap and restore the affected streambed and bank shall be completed before October 15, 2003.

Ordered by Frank Reith for
Susan A. Warner
Executive Officer

June 24, 2003

(bridgehavenresortcao)

CALIFORNIA COASTAL COMMISSION

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



CONSENT CEASE AND DESIST ORDER NO. CCC-03-CD-08
AND RESTORATION ORDER NO. CCC-03-RO-06

Commission Staff recommends the Commission issue the following Consent Cease and Desist Order and Restoration Order (hereinafter referred to as "Consent Order").

TERMS AND CONDITIONS

- (1) Pursuant to its authority under Public Resources Code Sections 30810 the California Coastal Commission hereby orders and authorizes Anita and Jaime O'Bryan (hereinafter referred to as "Respondents"), owners of the Bridge Haven Trailer Park (hereinafter referred to as "Subject Site"), their agents and any persons acting in concert with any of the foregoing to cease and desist from:
 - a. Continuing to maintain any unpermitted development at the Subject Site, in violation of the Coastal Act, including the riprap along the Russian River shoreline.
 - b. Engaging in any further development at Subject Site not specifically authorized by a coastal development permit.
- (2) Pursuant to its authority under Public Resources Code Section 30811, the Commission hereby orders and authorizes you to remove the unpermitted development and restore the Subject Site to its pre-violation condition according to the following terms and conditions:
 - a. By September 29, 2003, submit for the Executive Director's approval a plan (hereinafter referred to as "Restoration Plan") for removal of the riprap and its disposal outside of the coastal zone, and restoration of the Subject Site to its pre-violation condition, including revegetation of the riverbank with riparian plants native to the Russian River estuary. The Restoration Plan shall include mitigation measures to stabilize the riverbank and prevent further erosion, and the protect water quality of the Russian River.
 - b. Complete removal of the riprap and restoration of the Subject Site to its pre-violation condition by October 15, 2003.
 - c. Provide the Executive Director, by November 1, 2003, photographs showing that the Subject Site has been completely restored

according to the Restoration Plan. The photographs must be sent to the attention of Planning Supervisor Chris Kern in the Commission's North Central Coast District, 45 Fremont Street, San Francisco, CA 94105.

- d. Pay to the Commission within 30 days of issuance of this Consent Order a penalty in the amount of \$7,000 for deposit into the Violation Remediation Fund.

IDENTIFICATION OF THE PROPERTY

The property that is the subject of this Consent Order is Bridge Haven Trailer Park, located at 9965 Highway One and/or 9970 Highway One, in unincorporated Sonoma County (APN 099-080-039, and/or 099-080-036; 099-080-037; 099-050-014).

PERSONS SUBJECT TO THIS ORDER

Persons subject to this Consent Order are Anita O'Bryan and Jaime O'Bryan, their agents and any persons acting in concert with any of the foregoing.

DESCRIPTION OF THE UNPERMITTED DEVELOPMENT

Scraping of the riverbank and placement of riprap along an approximately 40-foot section of the Russian River shoreline at the Bridge Haven Trailer Park without a coastal development permit.

EFFECTIVE DATE

The effective date of this Consent Order is the date the Consent Order is approved by the Commission. This Consent Order shall remain in effect permanently unless and until rescinded by the Commission.

COMMISSION JURISDICTION

The Commission is issuing this Consent Order pursuant to Sections 30810 and 30811 of the Coastal Act. Respondents agree that they will not contest the Commission's authority to issue or enforce this Consent Order.

FINDINGS

This Consent Order is issued on the basis of the findings adopted by the Commission on September 12, 2003, as set forth in the attached document entitled Staff Report for Consent Cease and Desist Order No. CCC-03-CD-08 and Restoration Order No. CCC-03-RO-06.

WAIVER OF DEFENSES

In light of the intent of the parties to resolve this Coastal Act violation through settlement, Respondents agree to waive their right to submit a statement of defense pursuant to California Code of Regulations Title 14, Section 13181.

HEARING

In light of the intent of the parties to resolve this Coastal Act violation through settlement, Respondents agree to waive their right to a public hearing before the Commission under California Code of Regulations Title 14, Section 13185 for the purpose of contesting the legal and factual basis, 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 order dated March 10, 2003.

COMPLIANCE OBLIGATION

Strict compliance with these orders by all parties subject thereto is required. Failure to comply strictly with any term or condition of these Orders including any deadline contained in these Orders as approved by the Commission will constitute a violation of these Orders and shall result in Respondents being liable for stipulated penalties in the amount of \$100 per day for each day in which such compliance failure persists. 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 other remedies available, including the imposition of civil penalties and other remedies pursuant to Public Resources Code Section 30821.6, 30822, and 30820 as a result of the lack of compliance with the Consent Order and for the underlying Coastal Act violation described herein.

EXTENSION REQUESTS

The Executive Director for good cause may extend deadlines contained in this Consent Order. Any extension requests must be made in writing to the Executive Director and received by Commission staff at least 10 days prior to expiration of the deadline for which the extension is requested.

APPEAL AND STAY RESOLUTION

Pursuant to Public Resources Code Section 30803(b), any person or entity against whom an order is issued may file a petition with the Superior Court for a stay. The parties to this Consent Order, however, agree that this Order settles all unresolved issues related to Respondents' Coastal Act violation. Accordingly, Respondents agree to waive whatever right they may have to challenge in a court of law the legal basis, issuance and enforceability of this Consent Order.

GOVERNMENT LIABILITY

The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent in carrying out activities pursuant to this Consent Order, nor shall the State of California be considered to be a party to any contract entered into by Respondents or their agents in carrying out activities pursuant to this Consent Order.

SUCCESSORS AND ASSIGNS

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

MODIFICATIONS AND RESCISSION

This Consent Order may be modified or rescinded only in accordance with the standards and procedures set forth in section 13188(b) of the Commission's administrative regulations, and with the consent of both parties.

GOVERNING LAW

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

LIMITATION OF AUTHORITY

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.

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.

SITE ACCESS

Respondents agree to provide full access to the Subject Site at all reasonable times to Commission staff and any other state or federal agency having jurisdiction over the work being performed pursuant to this Consent Order.

Aug 22 03 02:25p O'Bryan

1-916-447-1139

p.2

08/22/2003 18:52 7075458256

PERRY, JOHNSON, ETAL

PAGE 02/02

Consent Cease and Desist Order No. CCC-03-CD-08, Restoration Order No. CCC-03-RO-08
September 12, 2003
Page 5

Commission staff may enter and move freely about the Subject Site for the purposes including and not limited to inspecting and reviewing the progress of work being carried in compliance with the terms of this Consent Order.

STIPULATION

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

By their execution of this Consent Order, Respondents agree to comply with the terms and conditions contained herein.

IT IS SO STIPULATED AND AGREED:


Anita O'Bryan, Respondent

8/22/2003
Dated


Jaime O'Bryan, Respondent

8/21/2003
Dated

Peter M. Douglas, Executive Director



Eric Koenigshofer, Attorney for O'Bryans

8.21.03
Dated