

CALIFORNIA COASTAL COMMISSION

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**F4c**

Staff: SMR-SF
Staff Report: August 22, 2003
Hearing Date: September 12, 2003

RECORD PACKET COPY

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

CEASE AND DESIST ORDER:	CCC-03-CD-11
RELATED VIOLATION FILES:	V-1-02-010
PROPERTY LOCATION:	720 Valentine Street, Pacific Shores, Del Norte County APN 108-251-010 (Exhibit 1)
DESCRIPTION OF PROPERTY:	Approximately 0.5-acre coastal property on Valentine Street in Pacific Shores, in the Lake Earl area of Del Norte County.
PROPERTY RESPONDENTS:	James and Debra Sharp
VIOLATION DESCRIPTION:	Unpermitted clearing of vegetation, fill, grading, and installation of a culvert, fence, playhouse, swing set, and trailer addition in wetland resource area.
SUBSTANTIVE FILE DOCUMENTS:	Cease and desist order file No. CCC-03-CD-11 Background exhibits 1 through 11
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 OF STAFF RECOMMENDATION

Staff recommends that the Commission approve and issue, respectively, Consent Agreement and Cease and Desist Order No. CCC-03-CD-11 ("Consent Order") to remove unpermitted development at 720 Valentine Street ("subject property"). The unpermitted development consists of clearing of vegetation, fill, grading, and installation of a culvert, fence, playhouse, swing set, and trailer addition in a wetland resource area (**Exhibits 2 and 3**). Commission staff site visits have confirmed the presence of wetland vegetation on the subject property.

The subject property is located in the Pacific Shores subdivision, north of Crescent City in Del Norte County. Pacific Shores is a 1535-lot subdivision created in 1963. Regarding coastal planning and development, the entire subdivision is an Area of Deferred Certification (ADC) and was not included in the Commission's October 1983 certification of the Del Norte County Local Coastal Program. The Commission therefore possesses jurisdiction for issuing Coastal Development Permits and for enforcing the provisions of the Coastal Act in this area.

The unpermitted activity that has occurred on the subject property meets the definition of "development" set forth in Section 30106 of the Coastal Act (Public Resources Code). The development was undertaken without a coastal development permit, in violation of Public Resources Code § 30600. Therefore, the Commission may issue a Cease and Desist Order under Section 30810 of the Coastal Act.

In telephone conversations with staff on August 1 and 3, 2003, the Respondents indicated their willingness to remove all of the unpermitted development on the subject property. The Respondents' stated willingness to completely resolve the violation, makes it possible to issue a Consent Cease and Desist Order directing and authorizing the removal of the unpermitted development on the subject property. The terms of the proposed Consent Order would require removal of all unpermitted development on the subject property. Commission staff is recommending that the Commission issue the Consent Order pursuant to Coastal Act Section 30810 to resolve the violation.

II. HEARING PROCEDURES

The procedures for a hearing on a proposed Cease and Desist Order are set forth in Section 13185 of the Commission's regulations (Title 14, Division 5.5, California Code of Regulations (CCR)). The Cease and Desist Order hearing procedures are similar in most respects to the procedures that the Commission uses for permit and Local Coastal Program matters.

For a Cease and Desist Order hearing, the Chair shall announce the matter and request that all alleged violators or their representatives present at the hearing identify themselves for the record, indicate what matters are already part of the record, and announce the rules of the proceeding including time limits for presentations. The Chair shall also announce the right of any speaker to propose to the Commission, before the close of the hearing, any question(s) for any Commissioner, in his or her discretion, to ask of any person, other than the violator or its representative. The Commission staff shall then present the report and recommendation to the Commission, after which the alleged violator(s) or their representative(s) may present their

position(s) with particular attention to those areas where an actual controversy exists. The Chair may then recognize other interested persons after which staff typically responds to the testimony and to any new evidence introduced.

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

III. STAFF RECOMMENDATION

Staff recommends that the Commission adopt the following motion:

1.A. Motion

I move that the Commission issue Consent Agreement and Cease and Desist Order No. CCC-03-CD-11 pursuant to the staff recommendation.

1.B. Staff Recommendation of Approval

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

1.C. Resolution to Issue Cease and Desist Order

The Commission hereby issues Consent Agreement and Cease and Desist Order No. CCC-03-CD-11, as set forth below, and adopts the findings set forth below on grounds that development has occurred without a coastal development permit.

IV. RECOMMENDED FINDINGS FOR CEASE AND DESIST ORDER CCC-03-CD-11

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

A. History of Violation

Commission staff first learned of the alleged violation on the subject property in September 2002. On October 15, 2002 Commission staff sent a "Notice of Violation" letter to the Respondents regarding the violation on the subject property (**Exhibit 4**). The letter pointed out

that the development on the property had occurred without a required Coastal Development Permit (CDP). The Notice of Violation letter requested that the Respondents submit a complete CDP application for either retention or removal of the unpermitted development and restoration of the subject property.

In a letter dated November 12, 2002, the Respondents indicated that they wanted to retain the existing development on the subject property and to add two more buildings, a greenhouse, additional fencing, and vegetation including fruit trees (**Exhibit 5**). In a letter dated November 15, 2002, staff responded with a detailed discussion about the information requirements for an application to retain the unpermitted development, and stated that it would be very difficult for staff to find the development consistent with Chapter 3 of the Coastal Act and recommend approval for an after-the-fact permit (**Exhibit 6**). In the November 15 letter, staff encouraged the Respondents to apply to remove the unpermitted development, and pointed out that the Respondents were required in either case to submit a complete CDP application.

In a letter dated November 30, 2002, the Respondents submitted a CDP application for a "removal and restore" permit (**Exhibit 7**). In a letter dated December 31, 2002, staff sent the Respondents a filing status letter that indicated that the Respondents' CDP application was incomplete. The information required for staff to file a complete application included evidence of ownership/property rights and clarification of the proposed project description (**Exhibit 8**). As of the date hereof, staff has not received any of the information required to complete the application.

On July 18, 2003, the Commission's enforcement unit sent a Notice of Intent to Commence Cease and Desist Order and Restoration Order Proceedings (NOI) to the Respondents (**Exhibit 9**). The NOI stated the basis for issuance of the proposed Cease and Desist and Restoration orders, stated that the matter was tentatively being placed on the Commission's September hearing agenda, and provided the opportunity to respond to allegations in the NOI with a Statement of Defense form.

In telephone conversations with staff on August 1 and 3, 2003, the Respondents indicated their willingness to remove all of the unpermitted development on the subject property, and that they had in fact already removed the culvert, trailer addition, play house, swing set, and fencing. Staff responded that the Respondents' stated willingness to completely resolve the violation, makes it possible to issue a Consent Order for the removal of the unpermitted development on the subject property. In a letter dated August 5, 2003, staff explained the advantages of resolving the violation through a Consent Order and requested that the Respondents sign and return the attached Waiver of Defenses form to indicate their intent to cooperatively resolve the matter (**Exhibit 10**). Staff received the signed Waiver of Defenses form on August 15, 2003 (**Exhibit 11**).

B. Description of Unpermitted Development

The unpermitted development, which is the subject matter of this Cease and Desist Order, consists of clearing of vegetation, fill, grading, and installation of a culvert, fence, playhouse, swing set, and trailer addition.

C. Basis for Issuance of Cease and Desist Order

The statutory authority for issuance of this 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...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.

The development activity that has occurred on the subject property (unpermitted clearing of vegetation, fill, grading, and installation of a culvert, fence, playhouse, swing set, and trailer addition) meets the definition of "development" set forth in Section 30106 of the Coastal Act. The development was undertaken without a coastal development permit, in violation of Public Resources Code § 30600. Therefore, the Commission may issue a Cease and Desist Order under Public Resources Code § 30810. 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 this division, including immediate removal of any development or material.

D. California Environmental Quality Act (CEQA)

The Commission finds that issuance of a consent agreement and cease and desist order to compel the removal of 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 Order is exempt from the requirement for the preparation of an Environmental Impact Report, based on Sections 15060(c)(3), 15061(b)(2) and (3), 15307, 15308 and 15321 of CEQA Guidelines.

E. 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 Respondents have agreed not to raise contested allegations, defenses, mitigating factors, rebuttal evidence and other unresolved issues pursuant to California Code of Regulations Section 13183.

Staff recommends that the Commission issue the following Consent Agreement and Cease and Desist Order:

V. CONSENT AGREEMENT AND CEASE AND DESIST ORDER CCC-03-CD-11

Pursuant to its authority under Public Resource Code Sections 30810, the California Coastal Commission ("Commission") hereby orders and authorizes James and Debra Sharp ("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 3.0 hereof any development that requires a CDP, without obtaining such a permit, and 2) maintaining on said property any such development. Accordingly, through the execution of this Consent Order, the Respondents agree, and agree to cause all persons identified in Section 2.0 hereof, to comply with the following terms and conditions.

1.0 TERMS AND CONDITIONS**1.1 Removal of Unpermitted Development**

1. All unpermitted development, as identified in Section 4.0 hereof, on the property identified in Section 3.0 hereof shall be removed by October 15, 2003.
2. The dirt fill shall be removed with a small tractor in combination with hand labor utilizing rakes and shovels to avoid impacts to the underlying vegetation. The fill removal shall be conducted with great care for the adjacent and underlying vegetation, and shall not result in the excavation of pits or holes on the subject property. The fill shall be removed only as far as the level that reinstates the original site grade that existed prior to the placement of the fill on the subject property.
3. Photographs of the subject property shall be submitted to the Commission staff to document the completion of the removal activities (submit by October 31, 2003) and the regrowth of vegetation after one winter season (submit by July 1, 2004). These photographs should be sent to Sheila Ryan in the Commission's San Francisco office at 45 Fremont Street, Suite 2000, San Francisco, CA 94105.

1.2 Timing and Deadlines

The removal of all unpermitted development on the subject property shall be completed by October 15, 2003. Respondents shall submit photographs of the property that clearly document the completion of all removal activities no later than October 31, 2003, to the attention of Sheila Ryan in the Commission's San Francisco office at the address listed above. Respondents shall submit photographs of the subject property documenting vegetation regrowth after one winter season no later than July 1, 2004, to the attention of Sheila Ryan in the Commission's San Francisco office at the address listed above.

2.0 PERSONS SUBJECT TO THE ORDER

James and Debra Sharp, their agents, contractors and employees, and any persons acting in concert with any of the foregoing.

3.0 IDENTIFICATION OF THE SUBJECT PROPERTY

The property that is subject to this Consent Order is the property located at 720 Valentine Street in Pacific Shores, Del Norte County, APN 108-251-010.

4.0 DESCRIPTION OF ALLEGED COASTAL ACT VIOLATION

The unpermitted development that is the subject of this Consent Order consists of clearing of vegetation, fill, grading, and installation of a culvert, fence, playhouse, swing set, and trailer addition.

5.0 COMMISSION AUTHORITY TO ACT

The Commission has authority to issue this Consent Order pursuant to Public Resources Code Section 30810. The development was performed without the required Coastal Development Permit. Therefore, for the purposes of issuance and enforceability of this Consent Order, the Commission has legal authority to act as set forth in this Consent Order, and Respondents agree that they will not contest the Commission's authority to issue or enforce this Consent Order.

6.0 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 dated July 18, 2003. Specifically, Respondents have 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 legal authority 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.

7.0 FINDINGS

This Consent Order is issued on the basis of the findings adopted by the Commission, as set forth in the document entitled "Staff Report for Consent Agreement and Cease and Desist Order No. CCC-03-CD-11."

8.0 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.

9.0 EXTENSION REQUESTS

If Respondents feel they need an extension of time for any of the obligations in this Consent Order, Respondents may request from the Executive Director an extension of the deadlines prior to the expiration of the deadlines established by this Consent Order. 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, which shall be found 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.

10.0 COMPLIANCE OBLIGATION

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, not extended pursuant to Section 9.0 hereof, will constitute a violation of this Consent Order and shall result in Respondents being liable for stipulated penalties in the amount of \$100 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.

11.0 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 work is being performed pursuant to the requirements of the Consent Order for purposes including but not limited to inspecting and reviewing the progress of Respondents in carrying out the terms of this Consent Order.

12.0 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.

13.0 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.

14.0 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.

15.0 SUCCESSORS AND ASSIGNS

This Consent Order shall run with the land binding all successors in interest, future owners of the property, interest and facility, heirs and assigns. Respondents shall provide notice to all successors, heirs and assigns of any remaining obligations under this Consent Order.

16.0 MODIFICATIONS AND AMENDMENTS

Except as provided in Section 9.0, 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.

17.0 GOVERNMENTAL JURISDICTION

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

18.0 LIMITATION OF AUTHORITY

18.1 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.

18.2 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 Commission's legal authority to enforce said Order in accordance with its terms. Respondents have agreed that they do not contest that the Commission has jurisdiction to issue and enforce this Consent Order.

19.0 INTEGRATION

This Consent Order constitutes the entire agreement between the parties and may not be amended, supplemented, or modified except as specified in Section 16.0 hereof.

20.0 STIPULATION

Respondents and their representatives attest that they a) have reviewed and agree to the terms of this Consent Order, b) understand that their agreement thereto is final, and c) stipulate to the issuance of said Order by the Commission.

IT IS SO STIPULATED AND AGREED:

James A Sharp
James Sharp

A-20-03
Date

Debra I Sharp
Debra Sharp

8/21/03
Date

Executed in _____ on behalf of the California Coastal Commission:

By: Peter Douglas, Executive Director

Date _____

Exhibits

1. Site Map and Location.
2. Site photograph.
3. Site photograph.
4. Notice of Violation letter dated October 15, 2002 from Commission staff to Respondents.
5. Letter dated November 12, 2002 from Respondents to Commission staff.
6. Letter dated November 15, 2002 from Commission staff to Respondents.
7. Letter and CDP application dated November 30, 2002, from Respondents to Commission staff for removal of unpermitted development on the subject property.
8. Filing status letter dated December 31, 2002 from Commission staff to Respondents.
9. Notice of Intent to Commence Cease and Desist Order and Restoration Order Proceedings dated July 18, 2003.
10. Letter dated August 5, 2003 from Commission staff to Respondents.
11. Waiver of Defenses form submitted by Respondents to Commission staff dated August 15, 2003.

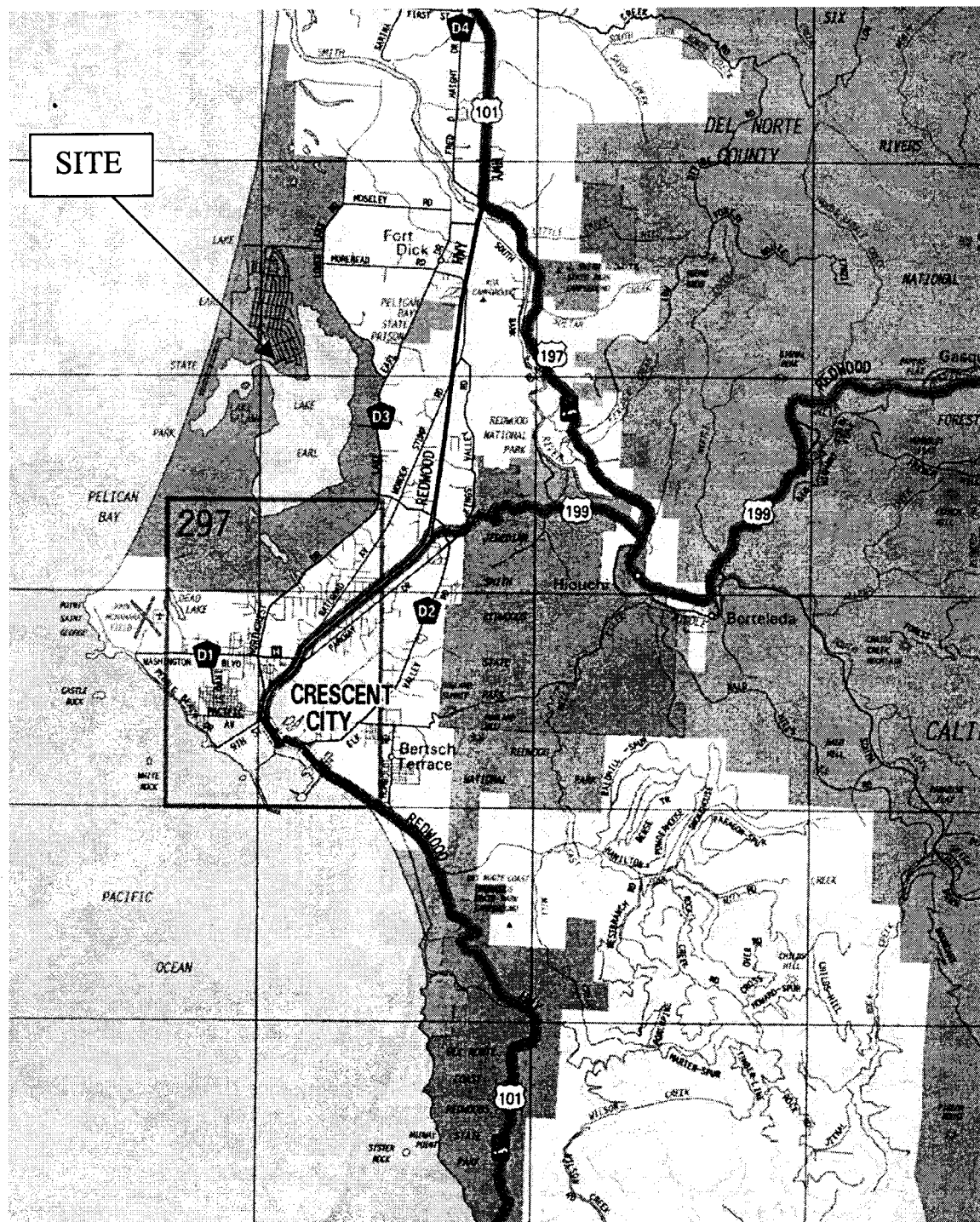


Exhibit 1. Site map and location.



Exhibit 2. Photograph of dirt fill on subject property.

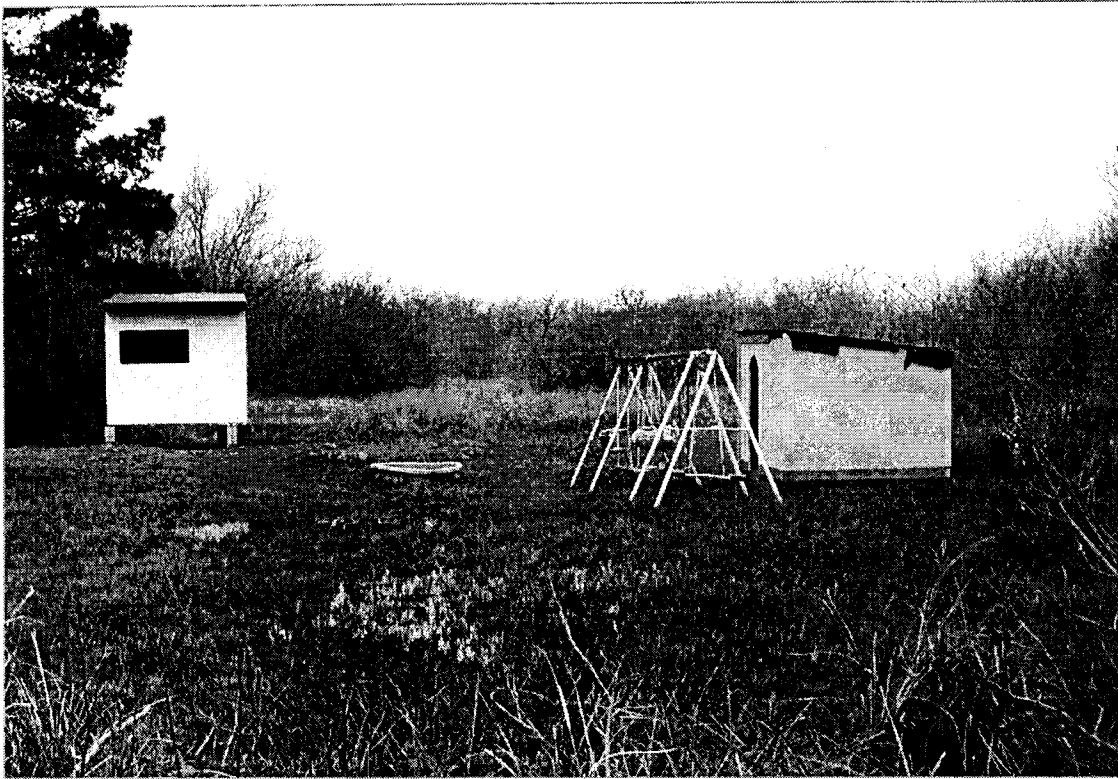


Exhibit 3. Photograph of unpermitted development on subject property.

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE

710 E STREET • SUITE 200

EUREKA, CA 95501-1865

VOICE (707) 445-7833

FACSIMILE (707) 445-7877

MAILING ADDRESS:

P. O. BOX 4908

EUREKA, CA 95502-4908



Regular and
CERTIFIED MAIL
7002 0460 0002 3429 3815

October 15, 2002

James and Debra Sharp
2140 Laurel Lane
Crescent City, CA 95531

RE: **Violation File No. V-1-02-010**; Alleged unpermitted clearing of vegetation, fill, and installation of a culvert on 720 Valentine Street, Crescent City, Del Norte County APN 108-251-10.

Dear James and Debra Sharp:

Coastal Commission (Commission) staff has become aware of unpermitted development at the above-referenced property. The unpermitted development performed on APN 108-251-10 consists of the clearing, limbing and mowing of rushes and brush over an area of approximately 2000 square feet, the installation of a 12-inch culvert, and the placement of approximately 10 cubic yards of fill material. The development in question occurred within the coastal zone in an area within the Commission's retained coastal development permit (CDP) jurisdiction.

Pursuant to Coastal Act section 30600, any person wishing to perform or undertake development in the coastal zone is required to obtain a CDP, in addition to any other permit required by law, authorizing such development before such development takes place.

"Development" is defined in section 30105 of the Coastal Act as follows:

"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 (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreation use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal

or harvest of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations... (emphasis added)

The installation of a culvert and the placement of fill constitute the placement of solid material on land. The clearing, limbing and mowing of rushes and brush over an area of approximately 2000 square feet qualifies as the removal of major vegetation. These activities constitute development under the Coastal Act, and as such are subject to Coastal Act permit requirements. Your failure to obtain a CDP from the Coastal Commission prior to carrying out this development is considered a violation of the Coastal Act.

To resolve this violation on the subject property with the Coastal Commission, you may follow one of two courses of action. You may choose to apply for a CDP with the Coastal Commission to remove the unpermitted development and restore the subject property to the condition it was in before the unpermitted development occurred, or you may choose to apply for an after-the-fact CDP with the Coastal Commission to authorize the unpermitted development. A coastal development permit application is enclosed.

If you choose to apply for an after-the-fact CDP to authorize the unpermitted development, your application must include a complete project description as required in Section II, No. 2 (p. 2) of the permit application. Please be sure to include all aspects of the alleged violation in your project description, specifically, clearing of vegetation, fill, and installation of a culvert. In the same application you may also apply for additional development activity you desire to perform on the property, however, please understand that any further development activities performed by you without you first obtaining a CDP from the Commission, would constitute knowing and intentional action on your part to violate the Coastal Act's permit requirements, and could result in formal enforcement action against you.

Should your application for an after-the-fact CDP be accepted for filing, Commission staff will evaluate the application and prepare a staff recommendation for Commission action. The Commission may approve, approve with conditions, or deny your CDP application. In the event that your after-the-fact CDP application is accepted for filing and subsequently denied by the Commission, we will expect that you will file the necessary CDP permit applications to remove the unpermitted development and to restore the property to the condition it was in before the unpermitted development occurred.

Furthermore, please be aware that both types of CDP applications – an after-the-fact CDP to authorize the unpermitted development, or a CDP to remove the unpermitted development and restore the property to the condition it was in before the unpermitted development occurred – may require further documentation to be provided by you as part of the application process. Further required documentation may include, but not necessarily be limited to, an environmental assessment of the subject property, including a wetland delineation, and a habitat assessment particularly addressing the presence or potential presence of threatened, endangered, or other listed plant or animal species.

It is critical that you stop immediately all unpermitted development activities and advise us within the next week (no later than **October 29, 2002**), as to how you plan to resolve this violation. Please submit to this office by **November 12, 2002**, a completed CDP application for

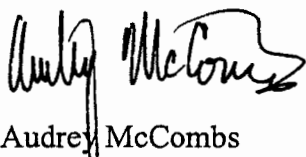
either removal of the unpermitted development and restoration of the site, or after-the-fact authorization to retain the unpermitted development. If you fail to meet our requested deadlines, Commission staff will be forced to conclude that you do not wish to resolve this violation administratively and we will be obligated to seek formal action by the Commission to resolve this matter. For that reason, I provide the following citations of the Coastal Act so that you fully understand the consequence of violation cases subject to formal action.

Coastal Act section 30809 states that if the Executive Director of the Coastal Commission determines that any person has undertaken or is threatening to undertake, any activity that requires a permit from the Coastal Commission without first securing a CDP, the Executive Director may issue a temporary (valid for 90 days) order directing that person to cease and desist. Coastal Act section 30810 states that the Commission may, after conducting a public hearing, issue a permanent cease and desist order. Either type of cease and desist order may be subject to terms and conditions that are necessary to avoid irreparable injury to the area or to ensure compliance with the Coastal Act. Section 30811 of the Act allows the Commission to issue, after a public hearing an order to restore a site if the Commission finds that development has occurred without a CDP, is inconsistent with the Coastal Act and is causing continuing resource damage. A violation of a Commission or Executive Director issued order can result in civil fines up to \$6,000 daily, for each day that the violation continues.

Sections 30803 and 30805 of the Coastal Act authorize the Commission to initiate litigation to seek injunctive relief and an award of civil fines in response to any instance of violation of the Coastal Act. Section 30820(a)(1) of the Act provides that any person who violates any provision of the Coastal Act may be subject to a penalty amount not to exceed \$30,000, and shall not be less than \$500. Section 30820(b) states that, in addition to any other penalties, any person who "knowingly and intentionally" performs any development in violation of the Coastal Act can be subject to a civil penalty of not less than \$1,000 nor more than \$15,000 for each day in which the violation persists.

You may contact me at our Eureka Office, at (707) 445-7833, to discuss resolution of this matter. If you have any question about filling out a coastal development permit application, please contact our permit analyst Jim Baskin at (707) 445-7833.

Sincerely,



Audrey McCombs
Enforcement Staff
California Coastal Commission, North Coast Office

cc: Bob Merrill, North Coast District Manager
Nancy Cave, Statewide Enforcement Program Supervisor
Jim Baskin, North Coast Permit Analyst

enclosure: Coastal Development Permit application

Nov 12, 2002

California Coastal Commission
North Coast District Office
710 E. Street Suite 200
Eureka, CA 95501-1865

RECEIVED

NOV 13 2002

CALIFORNIA
COASTAL COMMISSION

Attention: Audrey McCombs
Enforcement Staff

RE: Violation File No. V -1-02-010; Alleged unpermitted clearing of vegetation, fill and installation of a culvert on 720 Valentine Street, Crescent City, Del Norte County APN 108-251-10.

Dear Audrey McCombs,

We, James and Debra Sharp are answering your request to let you know what we would like to do with the property. We would like at this time to get the after the fact permits and develop the land. We would like to know what it will cost to do this. We think it is stating \$600.00 to do that. We would like to keep the culvert and the dirt for the trailer pad in place. There are no vegetation except mowing down some swamp grass and dead limbs that were on the property.

This is the improvements we have done and they are:

Placed a 10 inch Culvert for access to property

Dirt pad for motorhome to park on

10x10 addition on the trailer for wood heat (temporary on blocks to be removed if lake rises)

8x8 playhouse for our daughter (temp. on blocks to be moved if needed due to the lake rising.

fence on three sides (woven wire with steel posts) for puppies to stay on the property and our daughter safety.

What other developments we would like to do is:

Fence on all four sides

10x10 building for generator and water tank behind the trailer out of sight from the road. (On blocks so we can remove if needed due to the lake

rising.)

10x10 building for tool shed behind the trailer out of sight from road. (On blocks so we can remove if needed due to the lake rising.)

Greenhouse along the back of the field to plant vegetable.

Plant flowers and fruit trees along the borders of the property

We will get a Biologist to come up and give us an assessment on the ground and submit this with our permits before December 2, 2002.

If the permits cost more than what we are expecting, then we will have to decide if we want to go ahead and get the removal permit. At this time this is what we would like to do. We will contact a biologist to get an appointment set up to get a report for your department.

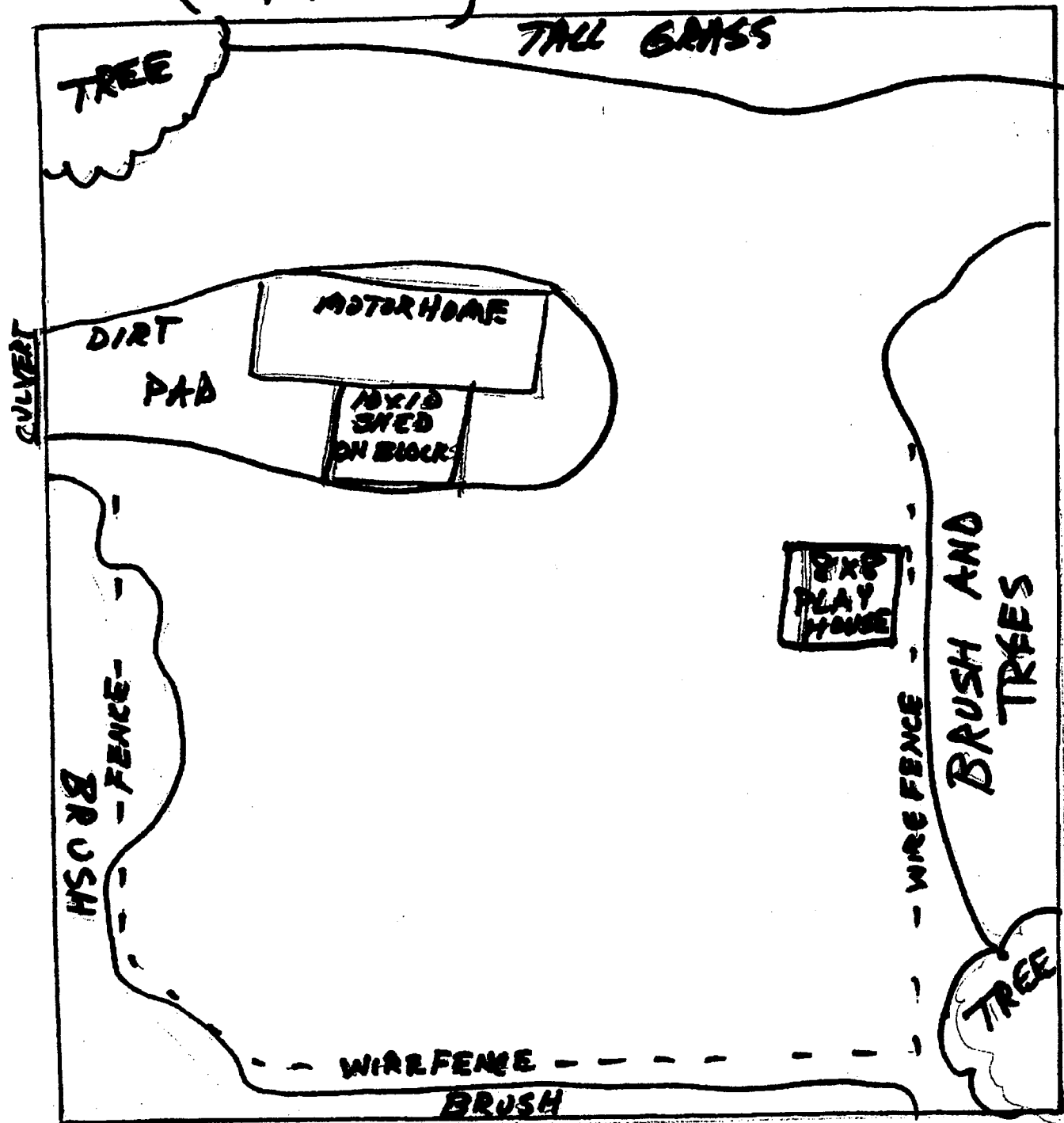
Enclosed is a lay out of the property and what we would like to do.

Thank you, Debra and James Sharp

James D Sharp
Debra D Sharp

Also Audrey, Nancy Cave wanted us to let you know how we plan to use the land. We would like to be able to go out to our property and camp for the some weekends, even a week or two at a time. When ever we feel like we would like to go out there and stay. When the weather is bad and the lake is high we would stay in our regular home. When the weather gets good we would like to stay a week or two at a time. Depending on what we feel like doing at the time. But when we leave the place we need to be able to lock up the buildings there is so much vandalism out there. If the lake rises to the property we will put axel under the buildings and get a permit from the DMV to get them home on a trailer. We would take the fence down and anything that would get damaged due to the water. I will enclose pictures of the property with this letter and send them to you to review. Thanks Debra Sharp

(EXISTING)
11-12-02



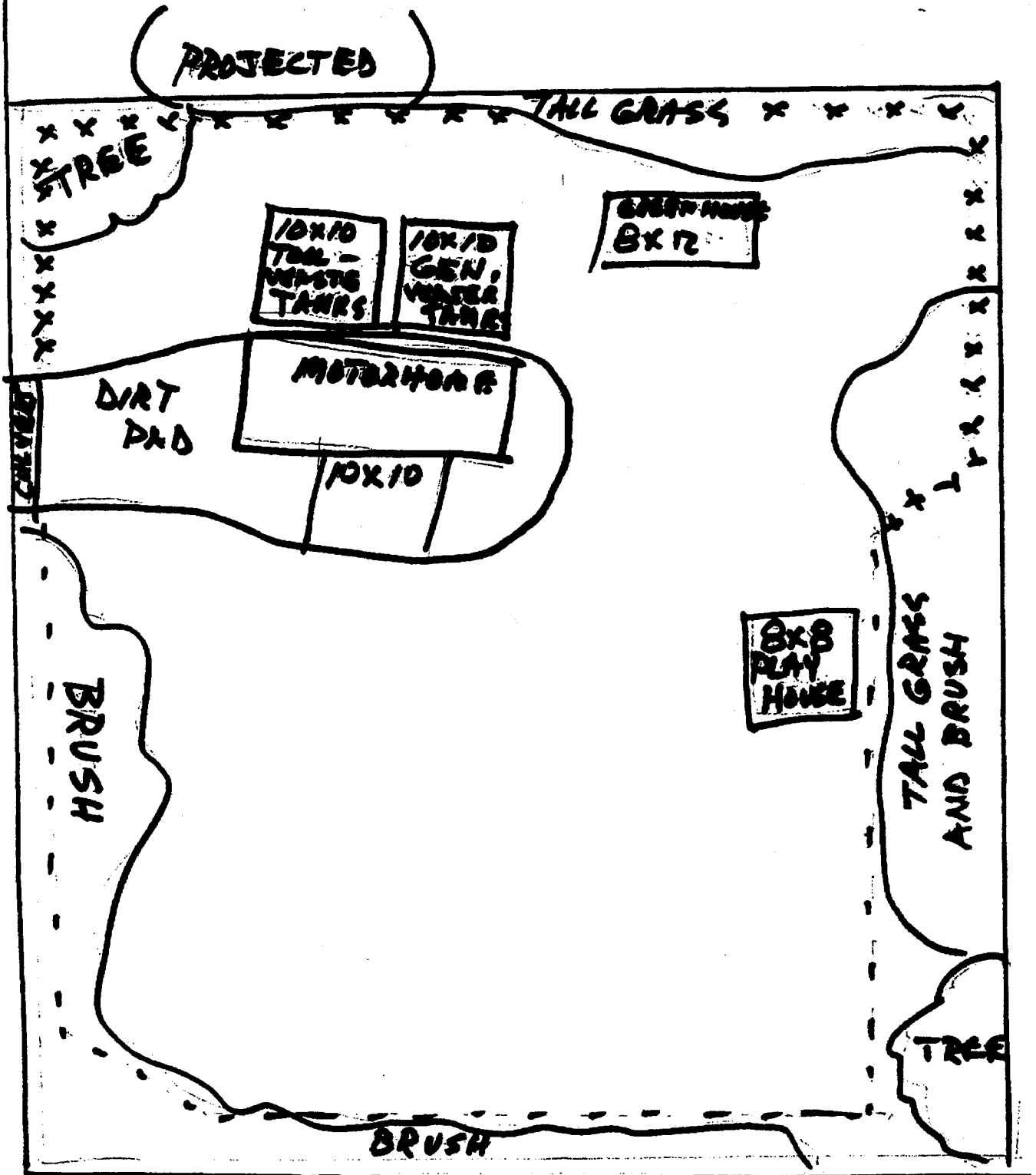
SURF ST.

EXISTING FENCE ---

PROPOSED FENCE x x x

WASTE TANKS PORTABLE FOR DUMPING AT
DUMP STATION IN RV PARK AT CRESENT CITY

PROTECTED



VALENTINE ST.

SURF ST.

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE

710 E STREET • SUITE 200

EUREKA, CA 95501-1865

VOICE (707) 445-7833

FACSIMILE (707) 445-7877

MAILING ADDRESS:

P. O. BOX 4908

EUREKA, CA 95502-4908



Regular and Certified Mail
7002 2030 0000 2594 2325

November 15, 2002

James and Debra Sharp
2140 Laurel Lane
Crescent City, CA 95531

RE: **Violation File No. V-1-02-010**; Alleged unpermitted clearing of vegetation, fill, grading, and installation of a culvert, fence, eight-foot square playhouse, and ten-foot square trailer addition on 720 Valentine Street, Crescent City, Del Norte County APN 108-251-10.

Dear James and Debra Sharp:

I received your letters of November 3, 2002, and November 13, 2002, and forwarded copies of those letters on to Nancy Cave in San Francisco. After discussions with her and Jim Baskin, I am writing this letter to both respond and to clarify some of the points you raise in your letters.

In your letter of November 3rd, you express concern that we are pursuing an enforcement investigation against you, but not against other alleged violators in the Pacific Shores subdivision. At the time we opened our enforcement investigation regarding your property, Commission staff had only received reports of alleged violations on APN 108-251-10, 720 Valentine Court. After a site visit confirming the presence of the alleged violation at this location, we sent our initial violation letter of October 15, 2002. Since that time, we have received further reports of alleged violations at other locations in the Pacific Shores subdivision. We have opened enforcement investigations with regard to these other alleged violations, and will be following up on the reports we have received. If you have any reports of alleged violations that you wish to submit for our consideration, we are available to receive those reports from you.

Neither Nancy Cave nor I recall having stated to you or your husband that we would be sending further violation letters to these alleged violators. Commission enforcement staff may decide, after reviewing the violation reports, that the alleged violations warrant further enforcement action. In that case, violation letters may be sent. However, the details of all Commission enforcement investigations, including the one we are pursuing with you, are confidential, and we are not at liberty to discuss the status of other enforcement actions with you.

In several places in your November 3rd letter you express concerns regarding our authority to regulate your use of your property. The property on which the alleged violations have occurred lies within the Coastal Zone, and as such is subject to statutory regulations set forth in the Coastal Act. As I explained in my letter of October 15th, section 30600 of the Coastal Act requires any person wishing to perform or undertake development in the Coastal Zone to obtain a coastal development permit (CDP). Some of the actions you have performed constitute development, and are therefore subject to CDP requirements.

Commission staff has previously confirmed the installation of a culvert, the placement of fill, and the removal of major vegetation on your property. In addition, both your November 3rd letter and your November 13th letter mention grading, and the installation of a fence, an eight-foot square playhouse, and a ten-foot square trailer addition. All these activities fall under the definition of development set forth in section 30105 of the Coastal Act, as cited in my previous letter of October 15th. As such, all these activities are subject to Coastal Act permit requirements.

The definition of development also encompasses, "change in the density or intensity of use of land." Camping may or may not constitute a change in the intensity of use of the land. If you wish to continue to camp on your land, before doing so I would encourage you to discuss your plans with Del Norte County planning staff. The County of Del Norte may have local ordinances which specify, among other things, whether camping is allowed at all, any limits on duration of stay, and what manner of camping is allowed, for example, motor home camping, tent camping, etc.

Whether or not camping on your land falls within the scope of activities regulated by the Coastal Act depends on the exact nature of the camping activities. We understand from your letter of November 13th that you intend to camp on your land up to, but no longer than, two weeks at a time, and would camp frequently during the dry season. We further understand that you would like to install buildings to house a generator, water tank, tool shed, and waste tank, and that your installation of these buildings is directly connected to your intended camping use. The buildings would be temporary, would be removed via trailer when Lake Earl threatened to flood the property, and would be returned at the start of the dry season.

Commission staff is currently deciding whether the activities described above constitute a change in the intensity of land use. If they do, these activities would also constitute development and require a CDP. We will contact you when a determination has been made. If the above description is incomplete, or inaccurate in any way, please contact me as soon as possible.

I suggest that you study carefully the definition of development I cite in my letter of October 15th, in order to gain a clear understanding of what activities are subject to

regulation by the Coastal Commission. Jim Baskin or I will be happy to discuss with you the scope of that definition if you feel you would like further clarification.

It is my hope that we will be able to resolve the matter of unpermitted development on your property through administrative, rather than formal, means. As I mention in my letter of October 15th, alleged violators subject to formal action by the Commission may be subject to, among other things, litigation and substantial fines. To avoid formal enforcement action against you, you must submit a completed CDP application to this office no later than December 2, 2002. As has been discussed in previous correspondence and phone conversations with you, you may either submit a completed CDP application for removal of the unpermitted development and restoration of the site, or for after-the-fact authorization to retain the unpermitted development. Your letter of November 13th indicates that you intend to apply for after-the-fact authorization to retain the previously installed unpermitted development, as well as authorization to perform future development on your property.

A CDP application for after-the-fact authorization to retain the unpermitted development and perform further future development will take more of your time and would be more complicated than a CDP application for removal and restoration. Your CDP application in this case must include a detailed and comprehensive project description, outlining the exact nature of the development that has already occurred, as well as the nature of the development activities you wish to perform in the future. The past unpermitted activities you must describe include the installation of a culvert, the placement of fill, grading, the clearing of vegetation, and the installation of a fence, an eight-foot square playhouse, and a ten-foot square trailer addition. You have also indicated that you would like to install a ten-foot square building to house a generator and water tank, a ten-foot square building to house tools and a waste tank, and a greenhouse. You would also like to extend the currently existing unpermitted fence along the fourth side of your property.

For each of the activities described above, your project description must include details as to the exact materials used in the development, the location of each aspect of the proposed and unpermitted development, the size of the development (in all three dimensions), the process of installation, and any equipment used in the development activities. Please indicate which structures would be permanent, and which would be temporary and removed during the wet season. For the temporary structures, please indicate when they will be present on the property, and describe in detail how they will be transported on and off the property. Please also clarify the intended use of the "waste tank," specifying whether this is a trash can, a chemical toilet, or some other waste disposal unit. In addition, please describe any exterior lighting which would be used to illuminate the site.

Your property is located in an area with pervasive environmentally sensitive habitat, specifically wetlands and forested sand dunes. Therefore, in addition to a detailed project description and other requirements spelled out in the CDP application, an application for

after-the-fact authorization must also be accompanied by a wetlands delineation and a biological habitat assessment report for your property. The wetlands delineation must be prepared by a qualified wetlands biologist, and must describe the exact location and nature of the wetlands on the property, pursuant to the Coastal Act's definition of wetlands. Your application must show the location of all development activities in relation to any wetlands present on or in proximity to the property, and must identify adequate buffer areas as needed to protect the wetland areas. The biological habitat assessment report must be prepared by a biologist with experience in reviewing habitat critical to species listed by the federal or state government as threatened or endangered, and that are known to be or have the potential to be present in the Pacific Shores subdivision area. The report must address the issue of any fish or wildlife species which use any non-wetland environmentally sensitive habitat areas (ESHAs) present on your property.

Typically, a permit applicant hires a consulting firm with expertise in these areas to prepare these reports. Hiring an environmental consultant can cost up to several thousand dollars, and preparing these reports can take several months. It is the responsibility of the applicant to find and hire a consultant, and to pay the relevant consulting fees. Mr. Baskin has indicated that you have contacted a consultant. Please have your consultant contact Mr. Baskin as soon as possible, so that he can discuss with the consultant the necessary expertise and protocols to be followed in preparing the reports described above.

A completed application for after-the-fact authorization to retain the unpermitted development must therefore contain, 1) a completed CDP application form, including a comprehensive and detailed project description, as well as any other material required in the application, 2) a \$600 non-refundable application fee, 3) a wetlands delineation prepared by a qualified wetlands biologist, and 4) a biological habitat assessment report, outlining the presence or absence of any state or federal listed species on your land, prepared by a biologist with experience in this field.

At this point in time, you may still choose to apply for a permit to remove the unpermitted development, and restore the property to the condition it was in before the unpermitted development activities occurred. An application for a permit to "remove and restore" is simpler, and potentially less time consuming than an application for after-the-fact authorization of the unpermitted development. Removal of the unpermitted development and restoration of the property would involve: removing the culvert, the fill material, the fence, the eight-foot square playhouse, and the ten-foot square trailer addition, and allowing the vegetation to grow back to the state it was in before the rushes and brush were cleared, limbed, and mowed. Your project description must include a detailed description of how the removal of the structures will be achieved, including a description of any equipment to be used in removal, and a clear indication of the disposal site(s) proposed for the removed structures and fill material.

Your application for removal and restoration would most likely not require a wetlands delineation or a biological habitat assessment report. Mr. Baskin will not be able to make a final determination with regard to this requirement until he has seen a complete and detailed project description; however, if he does determine that these reports are unnecessary, you would not have to hire a consultant, or wait for these reports to be prepared.

Furthermore, it is possible that the Commission could process your application to remove and restore as a de minimis waiver, as authorized by section 30624.7 of the Coastal Act and sections 13238.1 and 13238.2 of the Code of Regulations. Typically, staff turn-around time on a de minimis waiver is much shorter than on a regular permit. The fee for a de minimis waiver is \$200, as opposed to \$600 for a regular permit.

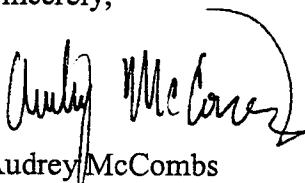
A determination as to whether your project qualifies as de minimis development cannot be made until staff has a complete and detailed project description, included in your permit application. Furthermore, de minimis waivers are subject to Commission approval. Section 30624.7 of the Coastal Act states, "If one-third of the appointed membership of the commission so request, ... such issuance [of a de minimis waiver] shall not be effective and, instead, an application for a coastal development permit shall be required..." This means that even if staff determines that your application could be processed as a de minimis waiver, the Commission could disagree and require you to go through a regular permit process. Typically the Commission accepts its staff recommendation but we cannot guarantee you an approval in advance of Commission action. Mr. Baskin can discuss with you in more detail the process involved in applying for a de minimis waiver.

Both Mr. Baskin and I feel that there are advantages to applying for a permit to remove the unpermitted development and restore the property to the condition it was in before the unpermitted development occurred. These advantages include, first, a simplified project description; second, the likelihood that a wetlands delineation and biology report would not be required; and third, the possibility of processing your application as a de minimis waiver, saving you both time and money.

After our office receives your completed permit application, your project will be reviewed by staff for consistency with Chapter 3 policies of the Coastal Act. Based on this consistency analysis, staff will make a recommendation for approval, approval with conditions, or denial of your project. The staff report and recommendation will then be scheduled for a public hearing before the Commission, and the Commission will at that time make a final decision concerning your project. Based on our understanding of the development activities, as described earlier in this letter, it is our belief that it will be easiest for staff to find an application to remove and restore consistent with Chapter 3 policies of the Coastal Act. Finding an application for after-the-fact authorization to be consistent with the Coastal Act will be more difficult, if not impossible.

I hope that this letter has addressed the concerns you raise in your letters of November 3rd and November 13th. Unless we hear from you otherwise, we will assume that you intend to apply for a CDP application for after-the-fact authorization to retain the unpermitted development and perform further future development, as described in the early part of this letter. However, we encourage you to consider applying to remove the unpermitted development and restore the property to the condition it was in before the unpermitted development activities occurred. In any case, your completed application must be submitted to this office no later than December 2, 2002. Please be sure to look through the permit application carefully, as it can take some time to gather all the materials required for a complete application. If you have any questions or would like to discuss the content of this letter further, please feel free to call me or Jim Baskin at (707) 445-7833.


Sincerely,



Audrey McCombs

Enforcement Division, North Coast Office

cc: Bob Merrill, North Coast District Manager
Nancy Cave, Statewide Enforcement Program Supervisor
Jim Baskin, North Coast Permit Analyst

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</p> <p>Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>A. Signature </p> <p><input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>	
<p>1. Article Addressed to: James & Debra Sharp 2140 Laurel Lane Crescent City, CA 95531</p>		<p>B. Received by (Printed Name)</p>	<p>C. Date of Delivery 11-16-02</p>
<p>2. Article Number (Transfer from service label) PS 3811, August 2001</p>		<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
<p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
<p>Postage Here</p>		<p>7002 2030 0000 2594 2325</p>	
<p>11/15/02</p>		<p>Domestic Return Receipt</p>	
<p>102595-01-M-250</p>			

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For delivery information visit our website at www.usps.com	
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Certified Fee	2.30
Return Receipt Fee (Endorsement Required)	1.75
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 4.42

Sent To	
James & Debra Sharp	
Street, Apt. No., or PO Box No. 2140 Laurel Lane	
City, State, ZIP+4 Crescent City, CA 95531	

PS Form 3800, June 2002 See Reverse for Instructions

Exhibit 6
CCC-03-CD-11
(Sharp) Page 6 of 6

Nov. 30, 2002

California Coastal Commission
North Coast District Office
710 E. Street Suite 200
Eureka, CA 95501-1865

Attention: Audrey McCombs
Enforcement Staff

RE: Violation File No. V -1-02-010; Alleged unpermitted clearing of vegetation, fill and installation of a culvert, fence, eight-foot square playhouse, and ten-foot square trailer addition on 720 Valentine Street, Crescent City, Del Norte County APN 108-251-10.

RECEIVED

DEC 02 2002

Mc Combs:

CALIFORNIA
COASTAL COMMISSION

We James and Debra Sharp are requesting at this time a removal and restore permit on our property. We will remove the item as listed:

<u>vegetation:</u>	allow to grow back
<u>culvert:</u>	use of a shovel and take home
<u>fill dirt:</u>	front end loader- place dirt into back of pickup and take home
<u>fence:</u>	pull up the stakes and roll up the fence and take home
<u>eight-foot playhouse:</u>	load up on a trailer and take home
<u>ten- foot addition:</u>	take down the side walls-floor- roof and load in trailer and take home possible use of a hammer

We have spoke with an attorney and he advised us of our rights as property owner and what we can request.

We want to know who reported the violation, the date and what the report stated. We want a copy of this report which the attorney states we have a right to get. We also want to know if the violations that applied to us will they be enforced to the others in the California Coastal Zone and when.

James D Sharp
Debra S Sharp

Exhibit 7
CCC-03-CD-11
(Sharp)

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE
710 E STREET • SUITE 200
EUREKA, CA 95501-1865
VOICE (707) 445-7833
FACSIMILE (707) 445-7877

MAILING ADDRESS:
P. O. BOX 4908
EUREKA, CA 95502-4908



December 31, 2002

James D. and Debra S. Sharp
2140 Laurel Lane
Crescent City, CA 95531

RE: Review of Coastal Development Permit Amendment Application No. 1-02-160 for Removal of Unpermitted Development; 720 Valentine Street, Crescent City, Del Norte County California (APN 108-251-10)

Dear Mr. And Ms. Sharp:

We have completed an initial review of the coastal development permit amendment request you submitted for the above-referenced development project. This evaluation showed the information submitted in support of your application is not sufficient for complete analysis of all potential project impacts and for your application to be considered complete. Please submit the information requested below, so that we can finish our evaluation of your project, file your application as complete, and schedule the matter for consideration by the Commission. Relevant incomplete sections of the application form are provided in brackets for your reference.

1. Identification of Applicants, Representatives, Proposed Development, and Adequacy of Property Rights.

Please refer to the enclosed section of the Commission's administrative regulations and complete those portions of the returned application left blank regarding your contact information, whether you will have an agent or representative, and the location of the project site. Applicants for coastal development permits must demonstrate that they possess all necessary ownership or rights to the affected property where the proposed development is to be undertaken. Please provide evidence of your ownership/property rights indicating how you possess the rights to conduct the proposed residential construction on APN 108-251-10. [Transmittal Checklist, I.1, I.2, II.1, IV.1]

2. Clarification of Project Description.

Several aspects of the proposal are not fully explained or illustrated. As discussed below, these aspects include: a) removal of the culvert; b) the location and extent of the proposed work; and c) site grading.

- a) Culvert Removal – Your description of this portion of your restoration proposal states, "use of a shovel and take home." Please explain further what condition the area beneath the culvert would be left (i.e., will you reestablish the original ground contour or leave a depression where the excavation was made for the culvert's installation?). [II.1]
- b) Project Mapping – The application also did not include a dimensioned site map of the project site. Please provide a dimensioned, drawn-to-scale site map that shows the full bounds of the project site and all aspects of the proposed development. A

vicinity map is also needed, showing the regional location of the project site. The plans and maps to be submitted should be in 8½" x 11" format. In addition, a copy of Assessors Parcel Map page 108-25 is needed for determining which of the adjoining parcels are within 100 feet of the project site property boundaries for the purpose of providing hearing notices. [II.2, IV.2, IV.6, IV.7]

- c) Site Grading – The permit request indicates that the previously-placed fill dirt will be removed with a front end loader and pick-up truck. Please elaborate as to what condition the original ground will be left. For example, if scraping of the ground to remove the fill dirt causes the ground cover to be removed, would you re-seed the area? [II.2, II.8]

Please fill in the missing application form items, sign it at Section(s) VII (and VIII, as needed), and return it along with the other information listed above. [II.2, II.2 – II.11]

3. Required Attachments.

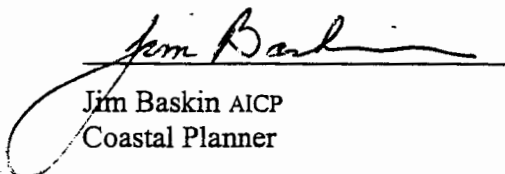
In addition to the items requested above, please complete and sign the Appendices A, B and D. I have enclosed another site Pending Permit Notice to be posted in a conspicuous place in public view as close as possible to the Valentine Street project site.

4. Fees.

Enclosed, please find your copy of Permit Application Fee Receipt No. 4430.

Thank you for your assistance cooperation in providing the above-listed items. Should you have any questions regarding this letter or the status of your application, please call me at (707) 445-7833. If it would be helpful for you, we are also available to meet with you here in our office to go over the needed information and provide additional guidance on how to complete your application. If you would like to set up an appointment for such a meeting, please call me.

Sincerely,



Jim Baskin AICP
Coastal Planner

Encl: 14 CCR § 13053.5
Returned Incomplete *Application for Coastal Development Permit*
Notice of Pending Permit Site Posting Placard
Fee Receipt No. 4430

RSM:JB/jb

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

July 18, 2003

James and Debra Sharp
2140 Laurel Lane
Crescent City, CA 95531

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

Violation No.: V-1-02-010

Location: 720 Valentine Street, Pacific Shores, Del Norte County
(APN 108-251-010)

Violation Description: Unpermitted clearing of vegetation, fill, grading, and installation of a culvert, fence, eight-foot square playhouse, swing set, and trailer addition.

Dear Mr. and Mrs. Sharp:

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 a Cease and Desist Order and Restoration Order for unpermitted development. The unpermitted development, which would have required a permit under the Coastal Act (Public Resources Code Section 30600), consists of unpermitted clearing of vegetation, fill, grading, and installation of a culvert, fence, eight-foot square playhouse, swing set, and trailer addition. This development is located at 720 Valentine Street in Del Norte County, APN 108-251-010 ("subject property"). The subject property is located within the Pacific Shores subdivision near Lake Earl. You own the 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. Collectively,

the Cease and Desist Order and Restoration Order will direct you to cease and desist from maintaining any unpermitted development and will compel the removal of unpermitted development and restoration of the areas impacted by the unpermitted development. The Cease and Desist Order and Restoration Order are discussed in more detail in the following sections of this letter.

The Pacific Shores subdivision is located in an area of pervasive wetlands, forested sand dunes, and habitat for several listed or candidate endangered species. The entire subdivision is located in an Area of Deferred Certification, and therefore within the Commission's original permit jurisdiction. Commission staff site visits have confirmed the presence of wetland vegetation on the site. Therefore, not only is the development unpermitted, the development is causing ongoing adverse impacts to environmentally sensitive habitat areas, through the removal of vegetation and grading and fill in an area that contains wetland resources.

History of the Violation Investigation

Commission staff first learned of the alleged violation on the subject property in September of 2002, and confirmed the presence of the unpermitted development during a September 12, 2002 site visit. Clearing of vegetation, fill, grading, and installation of a culvert, fence, eight-foot square playhouse, and trailer addition constitute development under the Coastal Act. You did not apply for nor obtain the required Coastal Development Permit (CDP) for this development on your property, as required by the Coastal Act.

On October 15, 2002 a "Notice of Violation" letter was sent to you regarding the unpermitted development on the subject property. The letter stated that you could either apply for a CDP to remove the unpermitted development and restore the subject property to its pre-development condition, or apply for an after-the-fact CDP to authorize the unpermitted development. By letter to the Commission dated October 29, 2002, you stated that you had been unable to contact Commission staff regarding the alleged violation. In response, on October 31, 2002, staff sent you a letter, which repeated the description of the alleged violation on the subject property and stated that you could either apply for a CDP to remove the unpermitted development and restore the subject property to its pre-development condition, or apply for an after-the-fact CDP to authorize the unpermitted development. This letter set a December 2, 2002 deadline for you to submit a complete CDP application.

By letter dated November 12, 2002, you stated that you would be applying for an after-the-fact permit. By letter dated November 15, 2002, staff outlined the detailed information required for an application to retain the unpermitted development. Staff also indicated to you that it would likely be very difficult to find the unpermitted development consistent with Chapter 3 policies of the Coastal Act. By letter dated November 30, 2002, you submitted a CDP application for what you described as a "removal and restore permit."

By letter dated December 31, 2002, Commission staff explained that your CDP application could not be filed as complete and requested additional information including evidence of property rights, clarification of your project description, and a completed CDP application form.

On January 3, 2003, Commission permit staff spoke with Mrs. Sharp regarding the permit application. During this conversation, Mrs. Sharp contended that she did not think the Coastal Commission had any authority to issue a permit or to pursue an enforcement action in this matter. As of today's date, you have not completed the CDP application to remove the unpermitted development and restore the site.

Cease and Desist Order

The Commission's authority to issue Cease and Desist Orders is set forth in Section 30810(a) of the Coastal Act, which states the following:

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

The Executive Director of the Commission is issuing this Notice of Intent to commence Cease and Desist Order proceedings since unpermitted development has occurred at the subject property. This unpermitted development consists of clearing of vegetation, fill, grading, and installation of a culvert, fence, eight-foot square playhouse, swing set, and trailer addition. No CDP was applied for nor obtained for the development on the subject property.

Based on Section 30810(b) of the Coastal Act, 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.

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 clearing of vegetation, fill, grading, and installation of a culvert, fence, eight-foot square playhouse, swing set, and trailer addition has occurred on the subject property.
- 2) This development is inconsistent with the resource protection policies of the Coastal Act, including Section 30231 (biological productivity; water quality) Section 30233 (diking, filling or dredging) Section 30240 (environmentally sensitive habitat areas or ESHA) and

Section 30250 (location; existing developed areas). Commission staff site visits have confirmed the presence of wetland vegetation on the site. Therefore, the unpermitted development is causing ongoing adverse impacts to environmentally sensitive habitat areas, through the removal of vegetation and grading and fill in an area that contains wetland resources.

- 3) The unpermitted development is causing continuing resource damage, as defined by Section 13190 of the Commission's regulations. The unpermitted development has impacted environmentally sensitive habitat area through the removal of vegetation and the grading and fill of wetland areas. 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 development continues to exist at the subject property; therefore, the damage to resources protected by the Coastal Act is continuing.

For the reasons stated above, I have decided to commence a Restoration Order proceeding before the Commission in order to restore the subject property to the condition it was in before the unpermitted development occurred. The procedures for the issuance of Restoration Orders are described in Sections 13190 through 13197 of the Commission's regulations. Section 13196(e) of the Commission's regulations states the following:

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

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

Please be advised that Coastal Act Sections 30820 and 30821.6 authorize the Commission to seek, respectively, penalties for violations of the Coastal Act and daily penalties for any intentional or negligent violation of a Cease and Desist and Restoration Order for each day in which the violation persists. The penalty for intentionally and negligently violating a Cease and Desist and Restoration Order can be as much as \$6,000 per day for as long as the violation persists. Finally, Coastal Act Section 30822 enables the Commission to bring an action, for exemplary damages where it can be shown that a person has intentionally and knowingly violated the Coastal Act or any order issued pursuant to the Coastal Act.

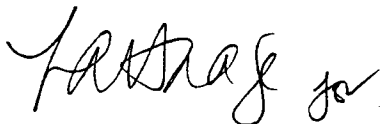
In accordance with Sections 13181(a) and 13191(a) of the Commission's regulations, you have the opportunity to respond to the Commission staff's allegations as set forth in this notice of intent to commence Cease and Desist Order and Restoration Order proceedings by completing the enclosed Statement 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 August 8, 2003.**

The Commission staff intends to tentatively schedule the hearing for the Cease and Desist Order and Restoration Order during the Commission meeting that is scheduled for September 9-12, 2003 in Eureka. 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.

Options for Resolving this Violation

You can prevent this hearing from taking place by completing your pending Coastal Development Permit Application No. 1-02-160 to remove the existing development and restore the site to its pre-violation condition within a specified period of time. Staff's December 31, 2002 letter to you outlined the information that is required to complete this application. As staff previously indicated in their November 15, 2002 letter to you, it may be possible to process such an application as a de minimis waiver. If you wish to pursue this option, contact Sheila Ryan immediately at 415-597-5894 to indicate your intention to complete the pending application, and then submit the completed application to the attention of Jim Baskin in the North Coast office no later than **August 18, 2003**.

Sincerely,



Peter Douglas
Executive Director

cc: Sheila Ryan, Headquarters Enforcement Officer
Lisa Haage, Chief of Enforcement
John Bowers, Staff Counsel
Nancy Cave, Northern California Enforcement Supervisor
Bob Merrill, North Coast District Manager

Encl.: Statement of Defense Form for Cease and Desist Order and Restoration Order

CALIFORNIA COASTAL COMMISSION

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



VIA REGULAR MAIL

August 5, 2003

James and Debra Sharp
2140 Laurel Lane
Crescent City, CA 95531

Subject: **Proposed Consent Order**

Violation No.: V-1-02-010

Location: 720 Valentine Street, Pacific Shores, Del Norte County
(APN 108-251-010)

Violation Description: Unpermitted clearing of vegetation, fill, grading, and installation of a culvert, fence, eight-foot square playhouse, swing set, and trailer addition.

Dear Mr. and Mrs. Sharp:

I am writing to follow up on the telephone conversations I had with Mr. Sharp yesterday and last Friday. Last Friday, Mr. Sharp indicated that all of the unpermitted development except for the dirt fill has been removed from your Valentine Street property. I explained that the removal of the fill would still be required before the Commission could consider the violation resolved. After discussing the matter with staff in our Eureka and San Francisco offices, I spoke with Mr. Sharp yesterday to propose a solution. If you agree to the issuance of a Consent Order, which would include specific terms regarding the removal of the fill material, staff anticipates a complete resolution of the violation that would enable us to close our file on this case. Mr. Sharp indicated an interest in pursuing this option. I explained some of the procedures for Consent Orders and that I would send this letter to begin a settlement process.

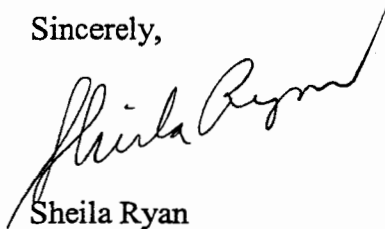
The advantages to a Consent Order include the following:

1. Through a Consent Order, the Commission could authorize you to remove the fill through an enforcement proceeding next month at its September hearing in Eureka. Your pending permit application to remove unpermitted development and restore the site would be returned to you, and the application fee would be refunded. Since the pending application is incomplete and has not yet been scheduled for hearing, it would be faster as well as less expensive to resolve this matter through a Consent Order.
2. The staff report and presentation at the public hearing for your case would be substantially shorter and more positive in tone than what is typically presented to the Commissioners for a contested enforcement order. When the parties have reached an agreement in advance of the hearing, staff naturally will focus its presentation on the affirmative aspects of the timely and cooperative resolution of the violation.

We would very much like to work with you on a prompt resolution of this matter. If you wish to pursue the Consent Order option, please sign the enclosed Waiver of Defenses form and return it to me **immediately**. Please send the signed form via FAX to my attention at 415-904-5235 and then mail the signed original to my attention at the San Francisco address listed on the letterhead. This document would replace the Statement of Defense form that we recently sent to you in our July 18, 2003 Notice of Intent letter. Signing and returning the Waiver of Defenses form to us indicates your intent to pursue a Consent Order to resolve the violation.

The next step in the process is the preparation of a staff report, which for a Consent Order includes a signature page indicating your agreement to the Commission's issuance of the Consent Order. I will provide you with a copy of the staff report well in advance of the September hearing, so that you can review the terms of the Order and ask any questions you might have about the Order before signing it. Please note, however, that we will require you, or your authorized representatives, to sign the Consent Order several weeks prior to the hearing date in September. Please do not hesitate to call me at 415-597-5894 if you have any questions.

Sincerely,



Sheila Ryan
Headquarters Enforcement Officer

cc: Lisa Haage, Chief of Enforcement
Nancy Cave, Northern California Enforcement Supervisor
Bob Merrill, North Coast District Manager

Encl: Waiver of Defenses form

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WAIVER OF DEFENSES

Pursuant to Public Resources Code Sections 13181 and 13191, respondents to a Coastal Commission Notice of Intent to Commence Cease and Desist and 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 Cease and Desist 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.

James D Sharp
James Sharp

8-15-03
Date

Debra S Sharp
Debra Sharp

8/15/03
Date