

## CALIFORNIA COASTAL COMMISSION

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## RECORD PACKET COPY



# Item

## Th 14g & 14h

**Staff:** ANM-SF  
**Staff Report:** April 26, 2005  
**Hearing Date:** May 12, 2005

### STAFF RECOMMENDATIONS AND FINDINGS FOR CEASE AND DESIST AND RESTORATION ORDERS

<b>CEASE AND DESIST ORDER:</b>	CCC-05-CD-04
<b>RESTORATION ORDER:</b>	CCC-05-RO-03
<b>RELATED VIOLATION FILE:</b>	V-5-05-006
<b>PROPERTY LOCATION:</b>	5106 and 5110 Pacific Avenue, Venice, City and County of Los Angeles
<b>DESCRIPTION OF PROPERTY</b>	Two individual lots: 5106 Pacific Avenue (APN 4294-006-056) and 5110 Pacific Avenue (APN 4294-006-057), adjacent to Ballona Lagoon, a designated Environmentally Sensitive Habitat Area ("ESHA").
<b>PROPERTY OWNER:</b>	VDH Development, Inc.
<b>VIOLATION DESCRIPTION:</b>	Unpermitted construction of two wooden decks (one on each property) supported on concrete footings, construction of an approximately 70-foot long by 4-foot high retaining wall across both properties, placement of approximately 60 to 70 cubic yards of fill behind the retaining wall, and planting of non-native vegetation, located within the protective lagoon buffer area as well as in the structural set back area, on the West Bank of Ballona Lagoon, in violation of Coastal Development Permit No. 5-01-306 and No. 5-01-307 and the Coastal Act.

**PERSONS SUBJECT TO THIS ORDER:**

VDH Development Inc.

**SUBSTANTIVE FILE DOCUMENTS:**

1. Coastal Development Permits 5-01-306, 5-01-307, 5-01-257, A-5-VEN-01-279, and 5-02-133.
2. Restoration Order No. CCC-03-RO-02.
3. EDCDO No. ED-05-CD-03
4. Deed Restrictions Recorded on the Subject Properties on June 20, 2002 as Instrument Nos. 02-1403989 and 02-1403988 in Los Angeles County.

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**CEQA STATUS:**

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

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**I. SUMMARY OF STAFF RECOMMENDATION**

Staff recommends that the Commission approve Cease and Desist and Restoration Orders (as described below) to require VDH Development, Inc. (hereinafter "VDH") to remove unpermitted development located on properties at 5106 Pacific Avenue (APN 4294-006-056) and 5110 Pacific Avenue (APN 4294-006-057), and to restore the impacted area to its pre-violation condition. The unpermitted development includes construction of two wooden decks (one on each property) exceeding 18 inches in height and supported on concrete footings, construction of an approximately 70-foot long by 4-foot high retaining wall, placement of approximately 60 to 70 cubic yards of fill behind the retaining wall, and planting of non-native vegetation. The unpermitted development is located adjacent to Ballona Lagoon. Ballona Lagoon, which contains wetlands and wetlands habitat, is an Environmentally Sensitive Habitat Area and provides foraging grounds for the endangered California Least Tern and several other shorebird, fish, and invertebrate species. The banks of the lagoon that contain undisturbed or large zones of native plant species are also designated as ESHA.

The unpermitted development is also located within the protective lagoon buffer area as well as in the structural set back area, on the West Bank of Ballona Lagoon (Exhibit #1, #2, & #3), in violation of Coastal Development Permit (CDP) No. 5-01-306 and No. 5-01-307 and the Coastal Act. Special Condition #4 of both CDPs required the submittal of revised plans to comply with this setback and buffer area, as well as revised plans to comply with the height restriction and native landscaping requirements. Special

Condition 4.C of both CDPs required VDH to record a deed restriction on the subject properties incorporating all requirements of Special Condition #4, including the requirement to submit revised plans demonstrating compliance with the lagoon buffer and structural setback area, as well as the requirement to submit and implement a landscaping plan with Southern California native plants of the Ballona Lagoon habitat. The deed restrictions were recorded on the subject properties by VDH on June 20, 2002 as Instrument Nos. 02-1403989 and 02-1403988 in Los Angeles County.

As discussed in more detail below, the protective lagoon buffer area and the structural set back area were required as conditions of approval for CDP No. 5-01-306 and No. 5-01-307 (Exhibit #5 & #6), which authorized VDH, the owner of both properties, to construct a single-family home on each of the subject properties. Unpermitted development within the buffer area defeats the very purpose of a buffer, an area between authorized development and Ballona Lagoon and the associated ESHA. VDH exercised their CDPs and have completed construction of the two homes. Any portions of both decks located landward of the lagoon buffer that do not exceed 18 inches in height and are constructed only of permeable materials (and do not require fill or concrete footings) are consistent with the CDPs and therefore are not a part of these Order proceedings.

The City of Los Angeles Land Use Plan for Venice was effectively certified on June 14, 2001. However, the City of Los Angeles does not have a certified Local Coastal Program for the Venice area. Therefore, The Commission has jurisdiction over permit and enforcement matters in this area of the City of Los Angeles.

In order to issue a Cease and Desist Order under Section 30810 of the Coastal Act, the Commission must find that the activity that is the subject of the order has occurred either without a required coastal development permit (CDP) or in violation of a previously granted CDP. In order to issue a Restoration Order under section 30811 of the Coastal Act, the Commission must find that development 1) has occurred without a coastal development permit, 2) is inconsistent with Chapter 3 of the Coastal Act, and 3) is causing continuing resource damage.

The unpermitted activity that has occurred on the subject properties clearly 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. In addition, the unpermitted development is inconsistent with CDP No. 5-01-306 and No. 5-01-307. The underlying CDPs specifically required a 25 foot lagoon buffer area as measured from the high water line of Ballona Lagoon where no development is allowed and a 29-foot wide structural setback area as measured from the lagoon-side property line where only limited development is allowed (permeable decks no higher than 18 inches and fences or walls no higher than six feet). The buffer area and setback area were required by the Commission to protect against the disruption of the ESHA and to protect the marine resources of Ballona Lagoon (For more detail regarding the biological and ecological

significance of Ballona Lagoon, and the effects of the unpermitted development, thereon, please see Section iii (a) and (b) at pages 12 to 15). In the area where the structural setback and the lagoon buffer area overlap, no development is allowed. The unpermitted development is located within the lagoon buffer area as well as the structural setback area.

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

The unpermitted development has adversely impacted the marine resources, water quality, habitat values, and biological productivity of Ballona Lagoon (an identified ESHA). Such impacts meet the definition of damage provided in Section 13190(b), which defines "damage" as, "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 will lead to further impacts of Ballona Lagoon, an ESHA that provides foraging grounds for the endangered California Least Tern and several other shorebird, fish, and invertebrate species.

The unpermitted development remains at the subject properties. The continued presence of the unpermitted development, as described below, will create adverse impacts to water quality, marine resources, sensitive habitat, and will create and/or contribute to erosion of the site. Thus, the unpermitted development that remains on the subject properties is causing continuing resource damage, as defined in Section 13190, Title 14 of the California Code of Regulations.

## **II. HEARING PROCEDURES**

The procedures for a hearing on a Cease and Desist Order and Restoration Order are outlined in Title 14, Division 5.5, Section 13185 of the California Code of Regulations (CCR).

For a Cease and Desist Order and Restoration Order 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. 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 time Staff typically responds to the testimony and to any new evidence 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 Title 14, California Code of Regulations (CCR) 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 Cease and Desist Order and Restoration Order, either in the form recommended by the Executive Director, or as amended by the Commission. Passage of a motion, per Staff recommendation or as amended by the Commission, will result in issuance of the Cease and Desist Order and Restoration Order.

### **III. STAFF RECOMMENDATIONS**

Staff recommends that the Commission adopt the following two motions:

#### **1(a) Motion**

***I move that the Commission issue Cease and Desist Order No. CCC-05-CD-04 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 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 Cease and Desist Order No. CCC-05-CD-04, as set forth below, and adopts the findings set forth below on grounds that development has occurred without a coastal development permit and that development has occurred in violation of the terms and conditions of CDP No. 5-01-306 and No. 5-01-307.

#### **2(a) Motion**

***I move that the Commission issue Restoration Order No. CCC-05-RO-03 pursuant to the staff recommendation.***

## **2(b) Staff Recommendation of Approval**

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

## **2(c) Resolution to Issue Restoration Order**

The Commission hereby issues Restoration Order number CCC-05-RO-03, as set forth below, and adopts the findings set forth below on the grounds that VDH Development, Inc. has 1) conducted development without a coastal development permit and in violation of the terms and conditions of CDP No. 5-01-306 and No. 5-01-307, 2) the development is inconsistent with the Coastal Act, and 3) the development is causing continuing resource damage.

## **IV. FINDINGS FOR CEASE AND DESIST ORDER NO. CCC-05-CD-04 AND RESTORATION ORDER CCC-05-RO-03**

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

### **A. Description of Unpermitted Development**

The unpermitted development, which is the subject matter of these Cease and Desist and Restoration Orders, consists of construction of two wooden decks (one on each property) supported on concrete footings, construction of an approximately 70-foot long by 4-foot high retaining wall, placement of approximately 60 to 70 cubic yards of fill behind the retaining wall, and planting of non-native vegetation, located within the protective lagoon buffer area as well as in the structural set back area, on the West Bank of Ballona Lagoon, in violation of Coastal Development Permit No. 5-01-306 and No. 5-01-307 and the Coastal Act. Ballona Lagoon, which contains wetlands and wetlands habitat, is an Environmentally Sensitive Habitat Area and provides foraging grounds for the endangered California Least Tern and several other shorebird, fish, and invertebrate species.

### **B. Background: Commission's Actions and History of Violation on the Subject Properties**

On February 6, 2002, the Commission granted CDP No. 5-01-306 and No. 5-01-307 to VDH for the construction of a single-family residence at 5110 Pacific Avenue and a single-family residence at 5106 Pacific Avenue in the Venice area of the City of Los Angeles (Exhibit #5 & #6).

Pursuant to those permits, VDH agreed to several Special Conditions, including maintenance of a 25-foot wide protective lagoon buffer area extending inland from the high water line of Ballona Lagoon (Special Condition #1). No construction, grading, placement of fill or other development is permitted within the 25-foot wide buffer, with the exception of landscaping with plants native to Ballona Lagoon.

Additionally, Special Condition #3 of the CDPs required all portions of the dwelling, including stairways and balconies, to be set back at least 29-feet from the eastern (lagoon-side) property line, which is located on or just above the high water line. VDH is permitted to construct a permeable deck at ground level (no more than 18" high) in that portion of the 29-foot structural setback that is landward of the 25-foot lagoon buffer area, as well as fences or walls not exceeding six feet in height above natural grade. No deck, fence, wall or other accessory structure is permitted to encroach in the lagoon buffer area. Special Condition #4 of both CDPs required the submittal of revised plans to comply with this setback and buffer area, as well as revised plans to comply with the height restriction and native landscaping requirements. Special Condition 4.C of both CDPs required VDH to record a deed restriction on the subject properties incorporating all requirements of Special Condition #4, including the requirement to submit revised plans demonstrating compliance with the lagoon buffer and structural setback area, as well as the requirement to submit and implement a landscaping plan with Southern California native plants of the Ballona Lagoon habitat. The deed restrictions were recorded on the subject properties by VDH on June 20, 2002 as Instrument Nos. 02-1403989 and 02-1403988 in Los Angeles County.

On March 9, 2005, Commission staff visited the Subject Properties with surveyors from the City of Los Angeles Department of Engineering as part of a general survey of all property lines along the west bank of Ballona Lagoon. During the course of the survey, Commission staff identified unpermitted development under construction on the Subject Properties, including two wooden decks (one on each property) supported on concrete footings, an approximately 70-foot by 4-foot long retaining wall, approximately 60 to 70 cubic yards of fill behind the retaining wall, and planting of non-native vegetation. None of these structures is shown on the approved plans and they are not authorized by the CDPs. Furthermore, these structures are inconsistent with Special Conditions #1, #3, #4, and #8 of the CDPs and the deed restrictions recorded on the Subject Properties. The decks constructed on the lagoon-side of each property were built in excess of 18" above natural grade, are supported by concrete footings and approximately 60-70 cubic yards of unpermitted fill. Portions of the decks and fill extend into the area of the structural setback and in which development is limited to an 18" high permeable deck (e.g., the area of the structural setback that is located landward of the lagoon buffer area). Additionally, portions of these decks, along with the approximately 70-foot by 4-foot retaining wall and the planting of non-native vegetation, encroach into the lagoon buffer area, in which all development (with the exception of native plant landscaping) is prohibited. Special Condition #4 of the CDPs required the submittal and implementation of a landscaping plan using Southern California native plants of the Ballona Lagoon habitat. The area now covered by the extended decks, fill, and retaining wall violates

Special Condition #4 since this area was required to be planted with native plants of Ballona Lagoon, consistent with their approved landscaping plan (Exhibit #13).

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

On March 18, 2005, in an attempt to halt unpermitted development, the Executive Director of the Commission sent (via U.S. and Certified Mail and hand delivered to VDH at the Subject Properties on March 18, 2005) VDH a Notice Prior to Issuance of an Executive Director Cease and Desist Order (hereinafter "NOI for EDCDO") and a Notice of Intent to Commence Cease and Desist and Restoration Order proceedings (hereinafter "NOI for CDO/RO") (Exhibit #8). The NOI for EDCDO provided VDH the opportunity to provide assurances that would obviate the need to issue the EDCDO. The NOI for EDCDO stated:

*"To prevent the issuance of the Executive Director Cease and Desist Order to you, you must provide a response that satisfies the standards of sections 13180(a)(2)(B) and (C) of the Commission's regulations. If you do not comply with these requirements, an EDCDO will be issued to you, the violation of which could subject you to additional penalties. This response should include:*

- 1) Immediately and completely cease and desist from performing any unpermitted development on the Subject Properties, including construction of decks, retaining walls, or placement of fill, or any other violation of Coastal Development Permit No 5-01-306 and No. 5-01-307, unless authorized by the Commission through a CDP.*
- 2) By 1:00 pm, March 18, 2005, VDH Development (who conducted the unpermitted development and to whom this letter will be hand delivered) confirm that all such activities have indeed ceased, and commit to perform no further unpermitted development at the Subject Properties. This confirmation should be provided by telephone to Aaron McLendon at (415) 904-5220 and followed by a written confirmation faxed to Aaron McLendon at (415) 904-5235 no later than 5:00 pm March 18, 2005."*

On March 18, 2005, VDH sent a letter to Commission staff stating, "there are no construction activities going on any of the above referenced properties as VDH Development Inc. has concluded all developments and constructions in December 2004" (Exhibit #10). VDH's letter did not respond to any of the requirements provided in the NOI for EDCDO and specifically, VDH did not commit to perform no further unpermitted development at the Subject Properties. On March 18 and March 22, 2005, Commission staff conducted a site inspection of the Subject Properties and confirmed that construction of the decks was, despite the representations made by VDH, in fact, continuing. Staff found workers on the decks cutting lumber, nailing additions to the decks, and "water-proofing" and/or painting the decks.



Therefore, the Executive Director determined that VDH had undertaken and continued to undertake development that requires a permit without first securing a permit. The Executive Director also determined that VDH failed to respond to the NOI for EDCDO in a "satisfactory manner" as required by Section 30809 of the Coastal Act. In fact, the assurances provided by VDH on March 18, 2005 that no construction activities were occurring were in direct conflict to what was actually observed on the site on March 18 and 22, 2005; work was continuing and VDH did not comply with the requirements of the NOI for EDCDO. Therefore, on March 23, 2005, the Executive Director issued EDCDO No. ED-05-CD-03 to direct VDH to cease and desist from undertaking further unpermitted development or maintaining existing unpermitted development on the Subject Properties, to remove the unpermitted development, and to implement the landscaping plan approved under Coastal Development Permit Nos. 5-01-306 and 5-01-307 (Exhibit #9). As of this time, VDH has not removed any of the unpermitted development and has not implemented the approved landscaping plans and is therefore in violation of the EDCDO.

#### Notification of Intent to Record a Notice of Violation of the Coastal Act

On March 23, 2005, the Executive Director also sent a Notification of Intent to Record a Notice of Violation of the Coastal Act (hereinafter, "NOI for NOV") to VDH (Exhibit #9).

The Commission's authority to record a Notice of Violation is set forth in Section 30812(a) of the Coastal Act, which states the following:

*Whenever the executive director of the commission has determined, based on substantial evidence, that real property has been developed in violation of this division, the executive director may cause a notification of intention to record a notice of violation to be mailed by regular and certified mail to the owner of the real property at issue, describing the real property, identifying the nature of the violation, naming the owners thereof, and stating that if the owner objects to the filing of a notice of violation, an opportunity will be given to the owner to present evidence on the issue of whether a violation has occurred.*

The Executive Director issued the NOI for NOV because unpermitted development had occurred at the Subject Properties, in violation of the Coastal Act. The NOI for NOV stated, "If you object to the recordation of a Notice of Violation in this matter and wish to present evidence on the issue of whether a violation has occurred, you must respond in writing, within 20 days of the postmarked mailing of this notification. If, within 20 days of the notification's mailing, you fail to inform the Commission of an objection to the recordation of a Notice of Violation, I shall record the Notice of Violation in the Los Angeles County recorder's office pursuant to Section 30812 of the Coastal Act." The deadline for VDH to object to the recordation of a Notice of Violation was April 12, 2005. VDH did not object to the recordation and therefore, on April 20, 2005, the Executive Director signed the Notice of Violation (hereinafter "Notices") and sent the Notices to the Los Angeles County Recorder's office to be recorded on the Subject Properties. On

April 22, 2005, the Los Angeles County Recorder's office recorded the Notices on the Subject Properties as Instrument Nos. 05-0949051 (5106 Pacific Avenue) and 05-0949052 (5110 Pacific Avenue).

**C. Basis for Issuance of Orders**

**Cease and Desist Order**

The statutory authority for issuance of this Cease and Desist Order is provided in §30810 of the Coastal, 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...*

**Restoration Order**

The statutory authority for issuance of this Restoration Order is provided in §30811 of the Coastal, 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 Cease and Desist and Restoration Orders by providing substantial evidence that the development meets all of the required grounds listed in Section 30810 and 30811 for the Commission to issue a Cease and Desist Order and Restoration Order.

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

The unpermitted development that is the subject of these Cease and Desist and Restoration Orders meet the definition of "development" contained in Section 30106 of the Coastal Act. This definition includes but is not limited to: the placement or erection

of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials or change in the density or intensity of the use land. In this case, the construction of two wooden decks (one on each property) supported on concrete footings, construction of an approximately 70-foot long by 4-foot high retaining wall, placement of approximately 60 to 70 cubic yards of fill behind the retaining wall, and planting of non-native vegetation, are all "development" as defined by Section 30106.

Section 30600(a) of the Coastal Act requires that any person wishing to undertake "development" must obtain a coastal development permit. In this case, no coastal development permit has been applied for or issued for the subject unpermitted development.

The unpermitted development is not exempt from the Coastal Act's permitting requirements under § 30610 of the Coastal Act and §§13250-13253, California Code of Regulations, Title 14 (hereinafter "Commission's Regulations"). Section 30610 of the Coastal Act provides that certain types of development are exempt from the CDP requirements. In this case, the only potentially applicable exemption is Section 30610(a) for improvements to existing single-family homes. However, this exemption does not apply here because Special Conditions #1, #3, #4, and #8 of the CDPs explicitly limits the types of development lagoonward of the residential footprint (e.g., the structural setback area and the protective lagoon buffer area).

Moreover, as required by Special Condition No. 8 of CDP Nos. 5-01-306 and 5-01-307, VDH recorded a "Future Improvements" Deed Restriction on the Subject Properties (Instrument Nos. 02-1403989 and 02-1403988 in Los Angeles County). The deed restrictions state that these permits are only for the development described in Coastal Development Permit 5-01-306 and 5-01-307. The deed restriction also states, "Pursuant to Title 14 California Code of Regulations §13250 (B)(6) and §13253 (B)(6), the exemptions otherwise provided in Public Resources Code of Regulations §30610 (a) and (b) shall not apply to the entire parcel[s]. Accordingly, any future structures, future improvements, or change in intensity of use to the permitted structures approved under Coastal Development Permit 5-01-306 [and 5-01-307] shall require an amendment... or shall require a new coastal development permit from the Commission."

The project description and the approved final plans for Coastal Development Permit No. 5-01-306 and 5-01-307 do not describe or show any of the subject unpermitted development. Therefore, for the reasons set forth above, the unpermitted development is not exempt from the requirement for authorization in a Coastal Development Permit.

## **ii. Inconsistency with Terms and Conditions of Previously Issued Permit**

On February 6, 2002, the Commission granted CDP No. 5-01-306 and No. 5-01-307 to VDH to construct a single-family residence at 5110 Pacific Avenue and a single-family

residence at 5106 Pacific Avenue in the Venice area of the City of Los Angeles. The special conditions included in CDP No. 5-01-306 and No. 5-01-307, including Special Conditions #1, #3, and #4, were designed to minimize impacts to coastal resources and ensure that the authorized development would comply with the Chapter 3 policies of the Coastal Act. The need for imposing Special Conditions #1, #3, and #4 to ensure consistency with the Chapter 3 policies of the Coastal Act is more fully discussed in the adopted findings for CDP No. 5-01-306 and No. 5-01-307, which are incorporated fully herein.

Special Condition #1 required in the CDPs included maintenance of a 25-foot wide protective lagoon buffer area measured inland from the high water line of Ballona Lagoon. No construction, grading, placement of fill or other development was permitted under the CDPs within the 25-foot wide buffer, with the exception of landscaping with plants native to Ballona Lagoon.

Additionally, Special Condition #3 of the CDPs required all portions of the dwelling, including stairways and balconies, to be set back at least 29-feet from the eastern (lagoon-side) property line. VDH was permitted to construct a permeable deck at ground level (no more than 18" high) in the 29-foot structural setback landward of the 25-foot lagoon buffer strip, as well as fences or walls not exceeding six feet in height above natural grade. No deck, fence, wall or other accessory structure was permitted to encroach into the lagoon buffer strip in order that it actually provides a buffer between authorized development and Ballona Lagoon. The placement of development within the buffer area defeats the very purpose of a buffer. Also, Special Condition #4 of the CDPs required the submittal of revised plans demonstrating compliance with this setback and buffer area. Furthermore, Special Condition #4(iii) of the CDPs required the submittal of a landscaping plan (Exhibit #13). Special Condition #4 also required all landscaping on both properties to use only southern California native plant species of the Ballona Lagoon habitat area. This Condition also required removal of all invasive plant species, preservation of all existing native plant species within the lagoon buffer area, and implementation of the landscaping plan on all portions of the Subject Properties, including the areas where the subject unpermitted development is located. On July 19, 2002, VDH submitted revised plans to the Commission's South Coast District office demonstrating that, among other things, no development was located within the protective lagoon buffer area and all landscaping consists of plants of the Ballona Lagoon habitat type. On July 26, 2002, the Executive Director approved the revised plans and issued the CDPs. Only that development shown on the approved final plan is authorized by the CDPs.

The unpermitted decks constructed on the lagoon-side of each property were built in excess of 18" above natural grade and are supported by concrete footings and approximately 60-70 cubic yards of unpermitted fill. Portions of the decks, fill, and concrete footings extend into the structural setback area landward of the lagoon buffer area in which development is limited to an 18" high permeable deck. Additionally, portions of these decks, along with the approximately 70-foot by 4-foot retaining wall, fill

material, and non-native plantings, encroach into the lagoon buffer area, in which all development (with the exception of native plant landscaping) is prohibited. This unpermitted development is clearly inconsistent with the terms and conditions of CDP No. 5-01-306 and No. 5-01-307. Only as conditioned, were the proposed single-family homes on the subject properties found consistent with the Coastal Act. The construction of decks and retaining walls, the placement of fill, and planting of non-native plant species within the lagoon buffer area and outside the structural setback area is in direct conflict with the terms and conditions of CDP No. 5-01-306 and No. 5-01-307.

### **iii. Unpermitted Development is Inconsistent with the Coastal Act**

The unpermitted development meets the definition of "development" which may not be performed without authorization in a Coastal Development Permit (CDP). A CDP may be approved only when development is consistent with the resource protection policies contained in Chapter 3 of the Coastal Act. The unpermitted development is not consistent with the following Chapter 3 policies of the Coastal Act (described in detail, below): Sections 30230, 30231, and 30240.

#### **a) Environmentally Sensitive Habitat Area**

Section 30240 of the Coastal Act states:

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

*(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.*

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

Ballona Lagoon provides habitat for a variety of benthic invertebrates, fish and shorebirds.<sup>1</sup> Polychaetes, mollusks and other invertebrates live in the mud bottom of the lagoon. Several species of fish have been documented and are known to inhabit the lagoon and canals, including: Topsmelt, California killifish, bay pipefish, longjaw mudsuckers, halibut, arrow goby, and diamond turbot. Fish eating birds such as egrets

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<sup>1</sup> Biota of the Ballona Region, Los Angeles County Natural History Museum Foundation, Edited by Ralph W. Schreiber, 1981

and green herons are often seen foraging at the water's edge. Willets, dowitchers and dabbling ducks also forage on the mud banks, while domesticated ducks are attracted by food and water left by nearby human residents. Ballona Lagoon is a critical habitat area for the California least tern, Sterna antillarum browni. Both the least terns and Brown pelicans can be seen foraging in the lagoon. Ballona Lagoon is located about five hundred feet east of the Venice Beach California least tern colony, one of the largest and most productive colonies of California least terns remaining in the state.

The banks of the lagoon are remnants of coastal sand dunes. The banks are generally steep, varying from 1:1 to 1:2, and are comprised primarily of sandy silt soils. The native vegetation on the lagoon banks is comprised of wetland, dune and coastal sage scrub communities.

The unpermitted development is located adjacent to and potentially within ESHA. The Commission's adopted Findings for CDP No. 5-01-306 and No. 5-01-307 illustrate the need for a protective buffer between the approved home location and the sensitive resources of Ballona Lagoon. The Findings state, in part, "The proposed development's adverse impacts include the increase in human activity that will occur on the project site during and subsequent to construction, the shading caused by the proposed 38-foot high building, the increase in runoff from the proposed building and landscaped yard areas, and impacts from increased noise and lighting. Each of these impacts can have an adverse effect on the biota of the wetland and water areas of the lagoon. The closer the impact is to the resource, the more adverse effect the impact will have on the resource. Therefore, the proposed development must be setback from the wetland and water in order to mitigate the adverse impacts."

The area covered by the deck, fill, concrete footings, retaining wall, and non-native plant species, within the lagoon buffer area, was required under the CDPs to be planted with native plant species of the Ballona Lagoon habitat. This area should have provided additional foraging habitat for the many animal and shorebird species, including the endangered Least Tern. Instead, the unpermitted development addressed herein includes development in the buffer and introduction of non-native plants and fill. Therefore, the habitat values were disrupted and the unpermitted development was not sited and designed to prevent impacts that would significantly degrade the ESHA. In addition, the unpermitted development is not compatible with the continuance of such habitat areas. Therefore, the unpermitted development is inconsistent with Section 30240 of the Coastal Act.

**b) Water Quality and Marine Resources**

Section 30230 of the Coastal Act states:

*Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a*

*manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.*

Section 30231 of the Coastal Act States:

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

Ballona Lagoon is an integral part of the larger Venice Canals/Ballona Lagoon wetlands system. Seawater enters the wetlands system through tidal gates, which control the flow from the Marina del Rey entrance channel into Ballona Lagoon. Water leaving the lagoon eventually enters the ocean after leaving the Marina del Rey entrance channel.

As mentioned above, the area covered by the deck, fill, concrete footings, retaining wall, and non-native plant species, within the lagoon buffer area, was required under the CDPs to be planted with native plant species of the Ballona Lagoon habitat. The unpermitted development increased the amount of impermeable surfaces and reduced the area of native vegetation, thereby increasing the potential for erosion across the subject properties and into Ballona Lagoon. The discharge of sediment to coastal waters can cause cumulative impacts such as: eutrophication and anoxic conditions resulting in fish kills and diseases and the alteration of aquatic habitat, including adverse changes to species composition and size; sedimentation increasing turbidity which both reduce the penetration of sunlight needed by aquatic vegetation which provide food and cover for aquatic species; and disruptions to the reproductive cycle of aquatic species. These impacts reduce the biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes and reduce optimum populations of marine organisms and have adverse impacts on human health.

Therefore, the unpermitted development does not maintain, enhance, and restore marine resources in a manner that will sustain the biological productivity of all species of marine organisms in coastal waters, and does not maintain and restore biological productivity and water quality of coastal waters (in this case Ballona Lagoon), as required by Sections 30230 and 30231 of the Coastal Act.

#### **iv. Unpermitted Development is Causing Continuing Resource Damage**

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

##### **a) Definition of Continuing Resource Damage**

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

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

On March 23, the Executive Director issued EDCDO No. ED-05-CD-03 to direct VDH to cease and desist from undertaking further unpermitted development or maintaining existing unpermitted development on the Subject Properties, to remove the unpermitted development, and to implement the landscaping plans approved under Coastal Development Permit Nos. 5-01-306 and 5-01-307. As of this time, VDH has not removed any of the unpermitted development and has not implemented the approved landscaping plans. The unpermitted decks, concrete footings, retaining wall, fill, and non-native vegetation remain at the subject properties. Therefore, there is a reduced amount of area for the lagoon buffer and a reduced area of native plant species. As described above, this results in less habitat for shorebirds and other animals and an increased potential for erosion across the subject properties and into Ballona Lagoon. As described below, the unpermitted development is causing adverse impacts to resources protected by the Coastal Act that continue to occur as of the date of this proceeding and damage to resources is "continuing" for purposes of Section 30811 of the Coastal Act.

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

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

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

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



In this case, the damage is the continuing degradation of an ESHA, marine resources and water quality caused by the reduced lagoon buffer area and increased erosion across the subject properties. The damage caused by the unpermitted development, which is described in the above paragraphs, satisfies the regulatory definition of "continuing resource damage."

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

The unpermitted development is causing ongoing adverse impacts to resources protected by the Coastal Act and is inconsistent with the policies of Chapter 3 of the Coastal Act (as addressed in subsection ii. above). The unpermitted development has taken place adjacent to coastal waters and adjacent to and potentially within an ESHA.

**D. California Environmental Quality Act (CEQA)**

The Commission finds that issuance of a cease and desist order and a restoration order to compel the removal of the unpermitted development and restoration of the subject properties to the conditions that existed prior to the unpermitted development are 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 cease and desist order and the restoration order are exempt from the requirement for the preparation of an Environmental Impact Report, based on Sections 15060(c)(2) and (3), 15061(b)(2), 15307, 15308 and 15321 of CEQA Guidelines.

**E. Findings of Fact**

1. VDH Development, Inc. is the owner of 5106 and 5110 Pacific Avenue, Venice, City and County of Los Angeles (hereinafter "the Subject Properties").
2. On July 26, 2002, CDPs 5-01-306 and 5-01-307 were issued to VDH Development, Inc., including conditions which required a 25-foot lagoon buffer area as measured from the high water line of Ballona Lagoon where no development is allowed and a 29-foot wide structural setback area as measured from the lagoon-side property line where only limited development is allowed (permeable decks no higher than 18 inches and fences or walls no higher than six feet).
3. On June 20, 2002, VDH Development, Inc. recorded the deed restrictions and "Offer-to-Dedicate" found at Los Angeles County Instrument Numbers 02-1403988 and 02-1403989 against the Subject Properties.
4. VDH Development, Inc. has undertaken development, as defined by Coastal Act Section 30106, at the Subject Properties, including construction of two wooden decks exceeding 18 inches in height (one on each property) supported on concrete footings, construction of an approximately 70-foot long by 4-foot high retaining wall,

placement of approximately 60 to 70 cubic yards of fill behind the retaining wall, and planting of non-native vegetation, located within the protective lagoon buffer area as well as in the structural set back area (both required in their CDPS), on the West Bank of Ballona Lagoon, in violation of Coastal Development Permit No. 5-01-306 and No. 5-01-307 and the Coastal Act.

5. VDH Development did not obtain a coastal development permit or amendment to their coastal development permits to undertake the above-described unpermitted development.
6. No exemption from the permit requirements of the Coastal Act applies to the unpermitted development on the property.
7. A representative of VDH sent a letter to the Executive Director on March 18, 2005 stating that no further construction activities were occurring at the Subject Properties.
8. Contrary to the statement by VDH on March 18, 2005 that no further construction activities were occurring at the Subject Properties, on March 18 and 22, 2005, Commission staff observed ongoing construction of the decks on the Subject Properties.
9. On March 18, 2005 Commission staff informed VDH Development that pursuant to Title 14, California Code of Regulations, Section 13191(a), the Commission intended to initiate cease and desist and restoration order proceedings against them, and outlined steps in the cease and desist and restoration order process.
10. On March 23, 2005, the Executive Director issued EDCDO No. ED-05-CD-03 to direct VDH Development to cease and desist from undertaking further unpermitted development or maintaining existing unpermitted development on the Subject Properties, to remove the unpermitted development, and to implement the landscaping plans approved under Coastal Development Permit Nos. 5-01-306 and 5-01-307. VDH Development did not comply with the EDCDO and did not remove any of the unpermitted development and has not implemented the approved landscaping plans. VDH is currently in violation of the requirements of the EDCDO.
11. The unpermitted development described in allegation #4 violates Special Conditions #1, #3, #4, and #8 of Coastal Development Permit Nos. 5-01-306 and 5-01-307. VDH is currently in violation of their CDPs.
12. The unpermitted development described in allegation #4 is inconsistent with the policies set forth in Sections 30230, 30231 and 30240 of the Coastal Act. VDH is currently in violation of the Coastal Act.
13. The unpermitted development described in allegation #4 is causing "ongoing resource damage" within the meaning of Section 30811 of the Coastal Act and Section 13190, Title 14, California Code of Regulations.

**F. VDH Has Failed to Raise Any Defenses to Issuance of the Orders**

VDH was provided the opportunity to identify its defenses to issuance of the Orders in a written Statement of Defense, as provided in the Commission's Regulations, but has failed to do so.

Section 13181(a) of the Commissions Regulations states, in part:

*"The notice of intent shall be accompanied by a 'statement of defense form' that conforms to the format attached to these regulations as Appendix A. The person(s) to whom such notice is given shall complete and return the statement of defense form to the Commission by the date specified therein, which date shall be no earlier than 20 days from transmittal of the notice of intent."*

As of the date of this report, VDH has not presented any defenses, or any other response, to staff's allegations as set forth in the March 18, 2005 NOI. The final date for submittal of the statement of defense form ("SOD") was April 7, 2005. VDH did not submit the SOD by the April 7, 2005 deadline, and did not request additional time to do so. Since the completion of Section 13181's statement of defense form is mandatory, VDH has failed to raise and preserve any defenses that it may have. The SOD is necessary to enable the Executive Director to prepare a recommendation to the Commission as required by Section 13183 of the Commission's Regulations that includes rebuttal evidence to matters raised in the SOD and summarizes any unresolved issues. Since VDH did not submit an SOD, VDH has waived its right to present defenses for the Commission's consideration in this matter.

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

The statutory authority for issuance of this Cease and Desist Order is provided in Section 30810 of the Coastal, 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...*

The statutory authority for issuance of this Restoration Order is provided for in Section 30811 of the Coastal Act, which states the following:

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

The procedures for the issuance of Cease and Desist and Restoration Orders are described in the Commission's Regulations in Sections 13180 through 13188 and 13190 through 13197. Section 13196(e) of the Commission's regulations states the following:

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

Accordingly, the purpose of these Cease and Desist and Restoration Orders is to order removal of unpermitted development and restoration of the subject properties to the conditions that existed prior to the occurrence of the unpermitted development described below.

Staff recommends that the Commission issue the following Cease and Desist and Restoration Orders to VDH Development, Inc.:

**CEASE AND DESIST ORDER NO. CCC-05-CD-04 AND**  
**RESTORATION ORDER NO. CCC-05-RO-03**

1.0 General Provision

Pursuant to its authority under Public Resources Code Sections 30810 and 30811, the California Coastal Commission (hereinafter "Commission") hereby orders and authorizes VDH Development, Inc., all their employees, agents, contractors, and any persons acting in concert with any of the foregoing (hereinafter, "Respondent"), to take all actions required by these Orders, including:

- A) Cease and desist from maintaining unpermitted development on 5106 Pacific Avenue (APN 4294-006-056) and 5110 Pacific Avenue (APN 4294-006-057), Venice, (hereinafter "Subject Properties"),
- B) Refrain from conducting any future development on the Subject Properties not authorized by a CDP or this Cease and Desist Order and Restoration Order (hereinafter "Orders"), and
- C) Refrain from undertaking any activity that violates the terms or conditions of Coastal Development Permit Nos. 5-01-306 and/or 5-01-307 and comply with the terms and conditions of Coastal Development Permit Nos. 5-01-306 and 5-01-307.

- 1.1 Accordingly, all persons subject to these Orders shall, within 15 days of approval of the Restoration Plan by the Executive Director of the Coastal Commission (see Section 2.1 of the Restoration Order, below), commence removal of all unpermitted development on the Subject Properties including, but not necessarily limited to, decks, deck support structures, fill material, retaining walls, and non-native vegetation within the lagoon buffer area and within the 29-foot structural setback area (with the exception of decks constructed of only permeable materials, no higher than 18 inches above natural grade and that do not require fill or impermeable support structures, in the structural setback area that is landward of the lagoon buffer area) as defined in Exhibit #4 of Coastal Development Permit Nos. 5-01-306 and 5-01-307.
- 1.2 Removal of the unpermitted development shall be completed within 10 days from the day removal commences. Thereafter, Respondent shall restore the Subject Properties in accordance with Section 2.0, below.
- 1.3 Within 15 days of completion of the removal, Respondent shall submit, for the review and approval of the Executive Director, a report documenting the complete removal of the unpermitted development specified above. The report shall include plans showing the location, height above grade, dimensions and

support structures of any portions of the decks that have not been removed from the Subject Properties and shall include a reference to the CDP provision authorizing such development. The plans shall include a survey, from a licensed surveyor, showing all development retained on the Subject Properties after removal of the unpermitted development. The report shall also include photographs that clearly show all portions of the Subject Properties, the locations of which are annotated to a copy of the plans required by Section 1.3.

## 2.0 RESTORATION ORDER

In addition, pursuant to its authority under Public Resources Code Sections 30811, the Commission hereby orders and authorizes the following:

- 2.1 Within 15 days of the issuance of these Orders, Respondent shall submit for the review and approval of the Executive Director a Restoration Plan. The Restoration Plan shall have the following two components:

### A) Restorative Grading Plan

The Restorative Grading Plan shall demonstrate that the topography of the Subject Properties will be restored to the condition that existed prior to the unpermitted development (as shown on Exhibit #4 of the findings for CDP Nos. 5-01-301 and 5-01-307. The Restorative Grading Plan shall include sections showing existing, unpermitted grades and finished grades, and quantitative breakdown of grading amounts (cut/fill) if grading is necessary, drawn to scale with contours that clearly illustrate the original topography of the subject site prior to any grading disturbance or fill. Original contours are shown on Exhibit #4 of Coastal Development Permit No. 5-01-306 and No. 5-01-307 (as shown on Exhibit #4 of the staff report for these Orders). The location for any excavated material to be removed from the site as a result of the restoration of the impacted areas shall be identified. If the dumpsite is located in the Coastal Zone and is not an existing sanitary landfill, a Coastal Development Permit shall be required.

### B) Erosion Control Plan

1) The Erosion Control Plan shall be prepared by a qualified restoration ecologist or resource specialist and shall demonstrate that no erosion and dispersion of sediments across the Subject Properties via rain, tides, nuisance flow runoff, or wind will occur during the removal of unpermitted development, during restorative grading, and during implementation of the landscaping plans.

2) The Erosion Control Plan shall specify the erosion control measures that shall be installed on the Subject Properties prior to or concurrent with the

removal actions required by Section 1.0 and maintained until the impacted areas have been revegetated to minimize erosion and transport of sediment outside of the disturbed areas.

3) Temporary erosion control measures, including but not limited to the following, shall be used: temporary hay bales, silt fences, swales, sand bag barriers, wind barriers, and biodegradable erosion control material. In addition, all stockpiled material shall be covered with geofabric covers or other appropriate cover and all graded areas shall be covered with geotextiles or mats.

4) The Erosion Control Plan shall include, at a minimum, 1) a narrative describing and identifying all erosion control measures to be used, 2) detailed site plan showing the location of all temporary erosion control measures, and 3) a schedule for installation and removal of temporary erosion control measures, in coordination with the long-term Restoration Plan.

2.2 Within 15 days of approval of the Restoration Plan in Section 2.1, Respondent shall commence implementation of the Plan.

2.3.0 Immediately following the complete removal of all unpermitted development and recontouring of the disturbed banks of Ballona Lagoon to its pre-violation condition and no later than 10 days after implementation of the Restorative Grading Plans, Respondent shall implement the Landscaping Plans approved under Coastal Development Permit Nos. 5-01-306 and 5-01-307 (Special Condition Nos. 1 and 4 of CDP No. 5-01-306 and No. 5-01-307) (See Exhibit #13 of the Staff Report and findings for these Orders). The Landscaping Plans shall be carried out by a professionally licensed restoration ecologist or resource specialist acceptable to the Executive Director. All planting in the approved Landscaping Plans shall be installed in accordance with the requirements of the approved Landscaping Plans and these Orders and shall be completed no later than 15 days after the completion of the components of the Restoration Plan.

2.3.1 Other than those areas subject to restoration and/or revegetation activities, the areas of the site and surrounding areas currently undisturbed shall not be disturbed by activities required by these Orders. Prior to initiation of any activities resulting in physical alteration of the subject property, the disturbance boundary shall be physically delineated in the field using temporary measures such as stakes or colored tape.

2.3.2 Within 30 days of the implementation of the Landscaping Plans, the Respondent shall submit to the Executive Director a report documenting the project's completion. The report shall include photographs that clearly show the entire protective lagoon buffer area, the structural setback area, and the revegetated area on the Subject Properties. The report shall also include a statement by the

professionally licensed restoration ecologist or resource specialist indicating that the Landscaping Plans has been implemented and describing the success of the plantings.

- 2.4 Respondent shall submit, on an annual basis for a period of five years (no later than December 31<sup>st</sup> of each year) a written report, for the review and approval of the Executive Director, prepared by a qualified restoration ecologist or resource specialist, evaluating compliance with the approved Landscaping Plans and these Orders. The annual reports shall include further recommendations and requirements for additional restoration activities in order for the project to meet the objectives of the Landscaping Plans. These reports shall also include photographs taken from pre-designated locations (annotated to a copy of the site plans) indicating the progress of the revegetation. At the end of the five-year period, Respondent shall submit a final detailed report for the review and approval of the Executive Director. If this report indicates that the restoration project has in part, or in whole, been unsuccessful, based on the approved Landscaping Plans and these Orders, Respondent shall submit a revised or supplemental plan to compensate for those portions of the original program that were not successful including a schedule for the work to be performed. After approval by the Executive Director, Respondent shall implement the revised or supplemental restoration plan according to the approved schedule.
- 2.5 Respondent shall allow Commission staff to conduct site visits to determine whether the terms and conditions of the Orders were complied with, and, if necessary, ensure that any other parties, including subsequent purchasers of the Subject Properties addressed by these Orders, also provide such access.
- 2.6 All plans, reports, photographs and any other materials required by these Orders shall be sent to:

California Coastal Commission  
Headquarters Enforcement Program  
Attn: Aaron McLendon  
45 Fremont Street, Suits 2000  
San Francisco, California 94105  
Facsimile (415) 904-5235

With a copy sent to:  
California Coastal Commission  
South Coast District Office  
Attn: Chuck Posner  
200 Oceangate, 10th Floor  
Long Beach, CA 90802-4416  
Facsimile (562) 590-5084

### 3.0 PERSONS SUBJECT TO THESE ORDERS

- 3.1 The persons subject to this Cease and Desist Order and Restoration Order are VDH Development, Inc., its employees, agents, contractors, and anyone acting in concert with the foregoing.



#### 4.0 IDENTIFICATION OF SUBJECT PROPERTIES

- 4.1 The properties that are the subject of these Orders are located at 5106 Pacific Avenue (APN 4294-006-056) and 5110 Pacific Avenue (APN 4294-006-057), Venice, adjacent to Ballona Lagoon, a designated Environmentally Sensitive Habitat Area ("ESHA").

#### 5.0 DESCRIPTION OF COASTAL ACT VIOLATION

- 5.1 Respondent's Coastal Act violations consist of performing and maintaining development that is not authorized in a coastal development permit, and therefore are violations of the Coastal Act, and that also violates the terms and conditions of Coastal Development Permit Nos. 5-01-306 and No. 5-01-307 and deed restrictions recorded on the Subject Properties. The unpermitted development consists of: 1) construction of two wooden decks exceeding 18 inches in height (one on each property) supported on concrete footings, 2) construction of an approximately 70-foot long by 4-foot high retaining wall, 3) placement of approximately 60 to 70 cubic yards of fill behind the retaining wall, and 4) planting of non-native vegetation, located within the protective lagoon buffer area and structural set back area, on the West Bank of Ballona Lagoon, required in Coastal Development Permit Nos. 5-01-306 and 5-01-307.

#### 6.0 COMMISSION AUTHORITY TO ACT

- 6.1 The Commission is issuing these Orders pursuant its authority under Sections 30810 and 30811 of the Public Resources Code.

#### 7.0 FINDINGS

- 7.1 These Orders are being issued on the basis of the findings adopted by the Commission on May 12, 2005, as set forth in the foregoing document entitled: STAFF RECOMMENDATIONS AND FINDINGS FOR CEASE AND DESIST AND RESTORATION ORDERS.

#### 8.0 EFFECTIVE DATE

- 8.1 These Orders 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 COMPLIANCE OBLIGATION

- 9.1 Strict compliance with the terms and conditions of these Orders is required. If the Respondent fails to comply with the requirements of these Orders, including any deadline contained herein, it will constitute a violation of these Orders and

may result in the imposition of civil penalties of up to six thousand dollars (\$6,000) per day for each day in which compliance failure persists.

#### 10.0 EXTENSIONS OF DEADLINES

- 10.1 If the Executive Director determines that the Respondent has made a showing of good cause, he/she shall grant extensions of the deadlines contained herein. Any extension requests must be made in writing to the Executive Director and received by the Commission staff at least 10 days prior to the expiration of the subject deadline.

#### 11.0 APPEALS AND STAY RESOLUTION

- 11.1 Pursuant to Public Resources Code Section 30803(b), the Respondent, against whom these Orders are issued, may file a petition with the Superior Court for a stay of these Orders.

#### 12.0 GOVERNMENT LIABILITY

- 12.1 The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by the Respondent in carrying out activities authorized under these Orders, nor shall the State of California be held as a party to any contract entered into by the Respondent or their agents in carrying out activities pursuant to these Orders.

#### 13.0 GOVERNING LAW

- 13.1 These Orders shall be interpreted, construed, governed and enforced under and pursuant to the laws of the State of California, which apply in all respects.

#### 14.0 NO LIMITATION OF AUTHORITY

- 14.1 Except as expressly provided herein, nothing herein 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 Order.

Issued this 12<sup>th</sup> day of May, 2005 in Palo Alto, California

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Peter M. Douglas, Executive Director  
California Coastal Commission

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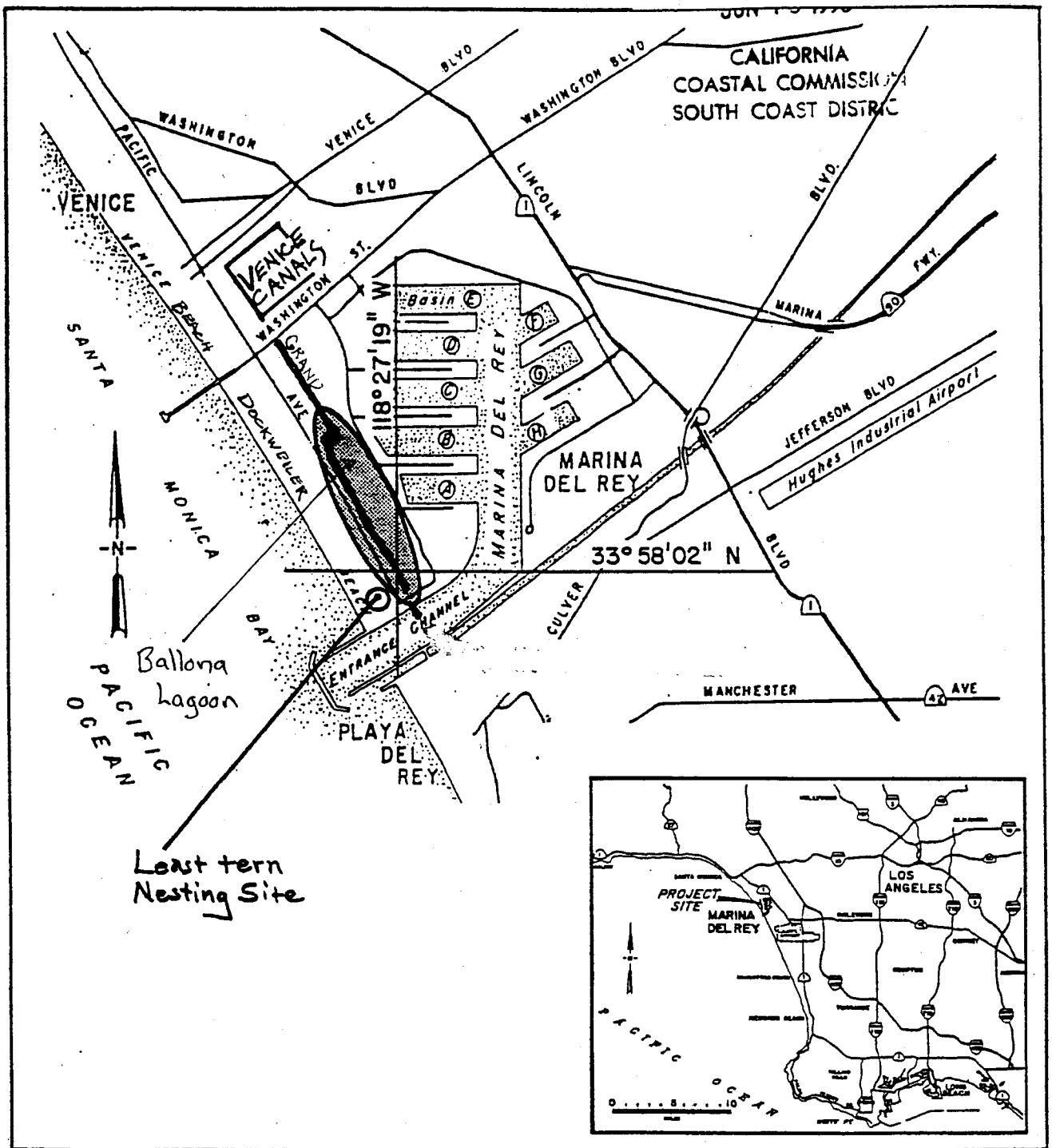
Date

**CCC-05-CD-04 and CCC-05-RO-03  
Exhibit List**

<b>Exhibit Number</b>	<b>Description</b>
---------------------------	--------------------

- |     |   |
|-----|---|
| 1.  | Site Map and Location   |
| 2.  | Location of ESHA  |
| 3.  | Site Map  |
| 4.  | Exhibit #4 of staff report for CDP Nos. 5-01-306 and 5-01-307 showing Original Contour Lines, Protective Lagoon Buffer Area, and Structural Setback Area                            |
| 5.  | Coastal Development Permit No. 5-01-306   |
| 6.  | Coastal Development Permit No. 5-01-307   |
| 7.  | Approved Final Site Plan for CDP Nos. 5-01-306 and 5-01-307 depicting protective lagoon buffer area and structural setback area.  |
| 8.  | Notice Prior to Issuance of Executive Director Cease and Desist Order and Notice of Intent to Commence Cease and Desist and Restoration Order Proceedings, March 18, 2005           |
| 9.  | Executive Director Cease and Desist Order No. ED-05-CD-03 and Notification of Intent to Record a Notice of Violation of the Coastal Act   |
| 10. | March 18, 2005 letter from VDH Development, Inc. to Aaron McLendon, Commission Statewide Enforcement Analyst  |
| 11. | Notice of Violation recorded on the Subject Properties June 22, 2005 as Instrument Nos. 05-0949051 (5106 Pacific Avenue) and 05-0949052 (5110 Pacific Avenue) in Los Angeles County |
| 12. | Original Contour Lines Surveyed During the Ballona Lagoon West Bank Enhancement Plan  |
| 13. | Commission approved Landscaping Plans for Coastal Development Permit Nos. 5-01-306 and 5-01-307   |





PURPOSE: WETLAND RECLAMATION

DATUM:

ADJACENT PROPERTY OWNERS:  
SEE ATTACHED LIST

#### VICINITY MAP



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

# Ballona Lagoon

Exhibit #1  
CCC-05-CD-04 & CCC-05-RO-03  
(VDH Development, Inc.)

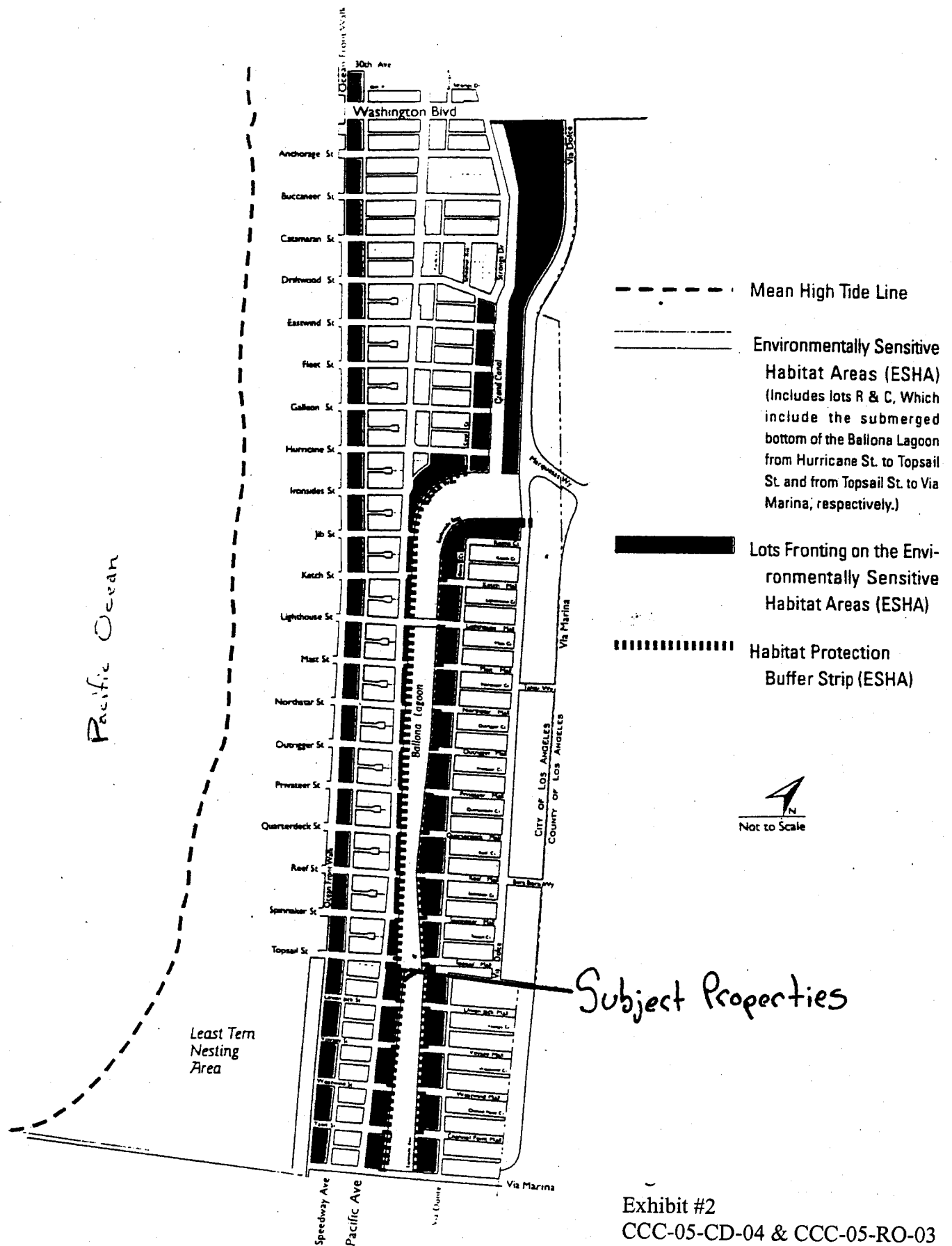


Exhibit #2  
 CCC-05-CD-04 & CCC-05-RO-03  
 (VDH Development, Inc.)

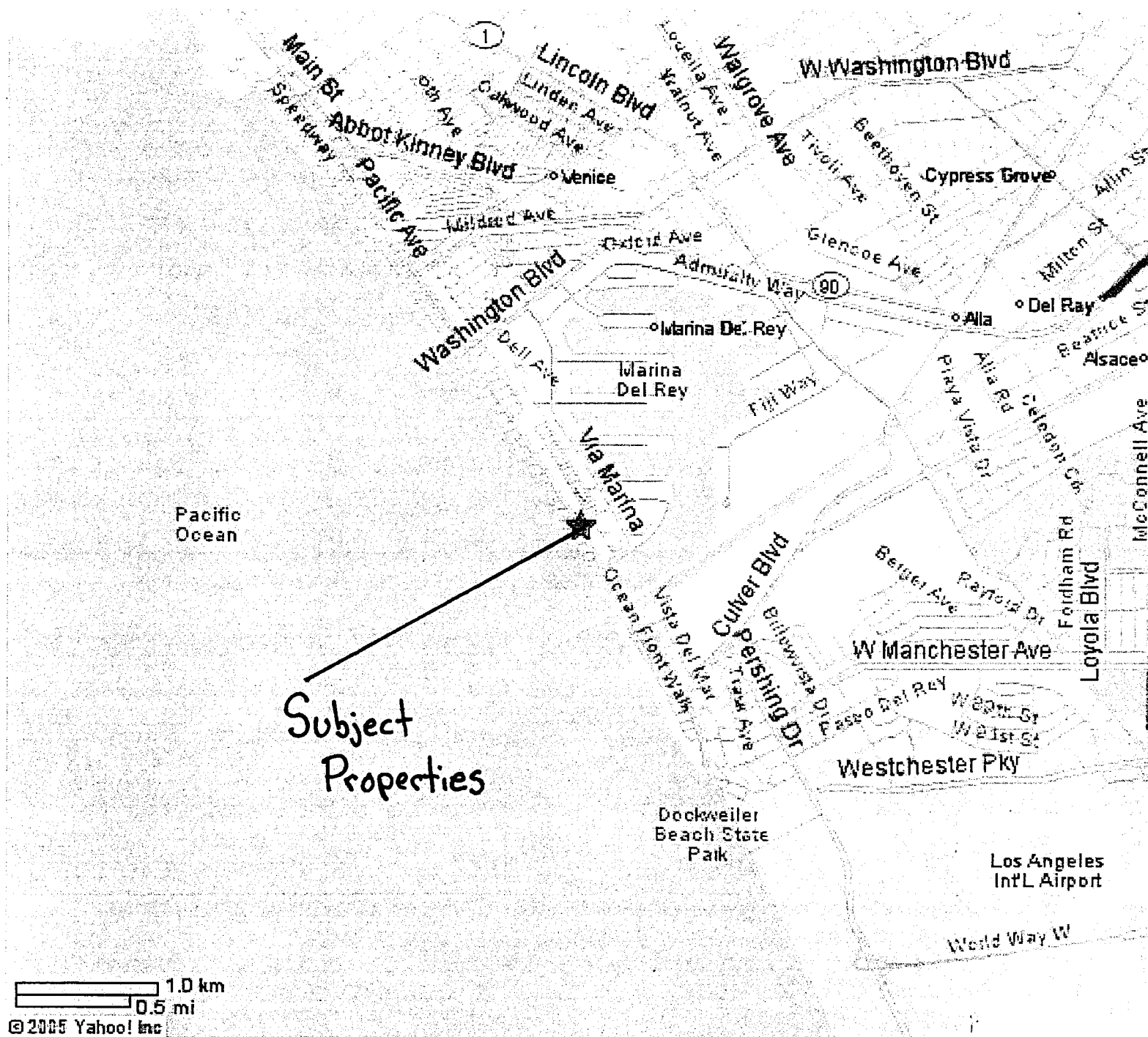


Exhibit #3  
CCC-05-CD-04 & CCC-05-RO-03  
(VDH Development, Inc.)





**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
200 Oceangate, Suite 1000  
Long Beach, CA 90802-4302  
(562) 590-5071

Page 1 of 7  
Date: July 26, 2002  
Permit No: 5-01-306



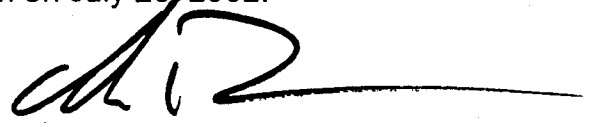
## COASTAL DEVELOPMENT PERMIT 5-01-306

On **6 February 2002**, the California Coastal Commission granted to **VDH Development** Coastal Development Permit **5-01-306**, subject to the attached Standard and Special Conditions, for development consisting of: **Construction of a five-level, 38-foot high (above average grade), 3,000 square foot (aprox.) single family residence with an attached three-car garage on a vacant lagoon-fronting lot.** More specifically described in the application file in the Commission offices.

The development is within the coastal zone in Los Angeles County at **5106 Pacific Avenue (Lot 17, Block 1, Del Rey Beach Tract), Venice, City of Los Angeles.**

Issued on behalf of the California Coastal Commission on July 26, 2002.

**PETER DOUGLAS**  
Executive Director

By:   
Title: Coastal Program Analyst

### ACKNOWLEDGMENT

The undersigned permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions thereof.

The undersigned permittee acknowledges that Government Code Section 818.4 which states in pertinent part, that: "A public entity is not liable for injury caused by the issuance . . . of any permit . . ." applies to the issuance of this permit.

**IMPORTANT:** THIS PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT WITH THE SIGNED ACKNOWLEDGMENT HAS BEEN RETURNED TO THE COMMISSION OFFICE. 14 CAL. ADMIN. CODE SECTION 13158(a).

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Permittee

Please sign and return one copy of this form to the Commission office at the above address.

Exhibit #5  
CCC-05-CD-04 & CCC-05-RO-03  
(VDH Development, Inc.)

## **STANDARD CONDITIONS**

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

## **SPECIAL CONDITIONS**

### 1. **Protective Lagoon Buffer Strip**

A 25-foot wide protective lagoon buffer strip (lagoon buffer), measured from the high water line (elevation +2.65 as shown on **Exhibit #4 of the 1/17/02** staff report), shall be maintained between the approved development and Ballona Lagoon. The 25-foot wide lagoon buffer includes the proposed fifteen-foot (15') wide easement over the entire width of the applicant's property as described in Special Condition Two below. No construction, grading, placement of fill, or other development shall occur within the 25-foot wide lagoon buffer, with the exception of landscaping with plants native to the Ballona Lagoon habitat area (and a public path if approved by the Commission).

All existing plants within the 25-foot wide lagoon buffer that are native to the Ballona Lagoon habitat area shall be preserved in place. The applicant shall remove by hand all non-native plants from the applicant's property situated within the 25-foot wide lagoon buffer, and shall landscape and maintain the lagoon buffer with native plants consistent with the landscape plan approved pursuant to Special Condition Four. The native plants shall be installed immediately following completion of grading for the development and prior to or concurrent with

commencement of construction of the dwelling authorized under this permit. The applicant may authorize the City of Los Angeles, or other agency approved by the Executive Director, to implement and maintain the landscape plan approved pursuant to Special Condition Four. The applicant's responsibility to maintain the lagoon buffer area within the proposed fifteen-foot (15') wide easement described in Special Condition Two will end when the City of Los Angeles, or other agency approved by the Executive Director, accepts the offer to dedicate.

2. Offer to Dedicate Easement for Public Access and Habitat Protection

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, and in accordance with the applicant's offer to do so, the applicant shall execute and record a document, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association acceptable to the Executive Director an easement for public access and habitat protection. The easement shall include a fifteen-foot (15') wide strip of land over the entire width of the applicant's property as measured from the applicant's eastern (lagoon-side) property line as shown on **Exhibit #4 of the 1/17/02 staff report**.

The recorded document shall include the following paragraph: No disturbance of vegetation or development shall occur within the dedicated area, with the exception of landscaping with native vegetation compatible with the preservation of the wetland coastal strand and dune environment, and the development of a Commission approved pervious public walkway not exceeding five feet in width for public access and passive recreation use. Prohibited development within the dedicated area includes installation of permanent irrigation devices and the planting of non-native vegetation. The accepting agency or association shall have the right to access the easement to landscape it with native vegetation compatible with the preservation of the wetland coastal strand and dune environment (and to construct a public walkway if approved by the Commission).

The document shall be recorded free of prior liens and any other encumbrances that may affect said interest. The offer and restriction shall run with the land in favor of the People of the State of California, binding successors and assigns. The offer shall be irrevocable for a period of 21 years commencing upon the date of recording.

3. Building Stringline – Structural Setback from Property Line

All portions of the dwelling (including stairways, balconies, and bay windows) shall be set back at least 29 feet from the eastern (lagoon-side) property line. Any area situated between the 25-foot wide protective lagoon buffer strip described in Special Condition One and the 29-foot structural setback may be used only for native landscaping or for an uncovered and permeable deck at ground level (no more than 18" high) and fences and walls not exceeding six feet in height above natural grade. No deck, fence, wall or other accessory structure shall encroach into the lagoon buffer strip described in Special Condition One.

**4. Revised Plans**

**A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit revised plans to the Executive Director for review and approval. All plans associated with the project shall be revised to incorporate the following revisions to the project:

- (i) **Building Setback.** All portions of the dwelling (including stairways, balconies, and bay windows) shall be set back at least 29 feet from the eastern (lagoon-side) property line. Any area situated between the 25-foot wide protective lagoon buffer strip described in Special Condition One and the 29-foot structural setback may be used only for native landscaping or for an uncovered and permeable deck at ground level (no more than 18" high) and fences and walls not exceeding six feet in height above natural grade. No deck, fence, wall or other accessory structure shall encroach into the lagoon buffer strip described in Special Condition One.
- (ii) **Building Height.** The height of the structure within sixty horizontal feet of the mean high tide line of Ballona Lagoon at the adjacent shoreline, or within sixty horizontal feet of the inland side of the Esplanade (City right-of-way), whichever is furthest from the water, shall not exceed thirty (30') feet above the average natural grade of the lot. For every two feet further away from the lagoon, the structure may be one foot higher in height to a maximum height of 38 feet above the average grade of the lot. No portion of any structure (including roof access structures, roof deck railings and architectural features) shall exceed the thirty-foot height limit within sixty horizontal feet of the mean high tide line of Ballona Lagoon or the inland side of the Esplanade, whichever is furthest from the water. Chimneys, exhaust ducts, ventilation shafts and other similar devices essential for building function may exceed the specified height limit by five feet.
- (iii) **Landscaping.** A landscape plan for the entire lot shall be prepared and submitted to the Executive Director for review and approval. All landscaping for the entire development shall be of southern California native plants appropriate to the natural habitat type, and shall be consistent with all of the following requirements:
  - a) No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or as may be identified from time to time by the State of California shall be utilized on the property. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property.
  - b) Within the 25-foot wide protective lagoon buffer strip (lagoon buffer) described in Special Condition One, the applicant shall preserve all existing plants that are native to the Ballona Lagoon habitat area, and

shall remove all non-native plants by hand. The lagoon buffer described in Special Condition One shall be landscaped only with plants native to the Ballona Lagoon habitat area.

- c) All landscaping shall be maintained by the applicant or successor(s)-in-interest (including the City of Los Angeles pursuant to the implementation of Coastal Development Permit 5-01-257/A5-VEN-01-279). All required plantings shall be maintained in good growing condition through-out the life of the project, and whenever necessary, shall be replaced with new plant materials which conform to the requirements of this condition to ensure continued compliance with the landscape plan.
- d) The landscape plan shall include a map showing the type, size and location of all plant materials that will be on the developed site, the irrigation system, topography of the developed site, and all other landscape features, and a schedule for installation of plants. The landscape plan to be submitted to the Executive Director shall be accompanied by an analysis prepared by a licensed Landscape Architect or a qualified Resource Specialist that documents that the landscape plan includes the appropriate size and types of plants for the Ballona Lagoon habitat area.
- e) Landscaping for the 25-foot wide protective lagoon buffer strip (lagoon buffer) described in Special Condition One shall be installed immediately following completion of grading for the development and prior to or concurrent with commencement of construction of the dwelling authorized under this permit. No grading or presence of heavy machinery shall occur within the lagoon buffer described in Special Condition One. The plantings shall provide 70% cover in 90 days, unless the Executive Director grants additional time for good cause.
- f) Monitoring. Five years from the date of the completion of the installation of landscaping as required in item (e.) above, the applicant shall submit for the review and approval of the Executive Director, a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies the on-site landscaping is in conformance with the landscape plan approved pursuant to this special condition. The monitoring report shall include photographic documentation of plant species and plant coverage. If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the applicant, or successors in interest, shall submit a revised or supplemental landscape plan for the review and approval of the Executive Director. The revised landscaping plan must be prepared by a licensed Landscape Architect or a qualified Resource Specialist

and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan. The applicant or successor in interest shall implement the supplemental landscaping plan approved by the Executive Director and/or seek an amendment to this permit if required by the Executive Director.

(iv) Lighting. No lighting associated with the project shall significantly impact adjacent environmentally sensitive habitat including adjacent wetlands and the lagoon buffer described in Special Condition One. All lighting within the development shall be directed and shielded so that light is directed away from Ballona Lagoon. The lighting plan to be submitted to the Executive Director shall be accompanied by an analysis of the lighting plan prepared by a qualified biologist which documents that the lighting is designed to avoid impacts upon adjacent environmentally sensitive habitat including wetlands.

(v) Drainage. All drainage on the site (excluding the lagoon buffer described in Special Condition One) shall be directed away from Ballona Lagoon and into the City stormwater system (Pacific Avenue). During construction of the proposed project, no runoff, site drainage or dewatering shall be directed from the site into the lagoon.

B. The permittee shall undertake development in accordance with the final plans approved by the Executive Director. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

C. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, incorporating items (i) through (v) of Special Condition 4.A. The deed restriction shall include a legal description of the applicant's entire parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. The deed restriction shall not be removed or changed without a Commission approved amendment to this coastal development permit.

## 5. Lagoon Buffer Strip Protection

Prior to the commencement of construction, the applicant shall erect and maintain for the period of construction a six-foot high fence and place sandbags between the lagoon buffer strip described in Special Condition One and the building site. No site preparation, grading or construction shall occur until the fence is constructed and the sandbags are placed inland of the lagoon buffer strip. No

COASTAL DEVELOPMENT PERMIT

5-01-306

Page 7 of 7

stock piling, storage, grading, construction, runoff, or trash disposal shall occur in the lagoon buffer strip at any time.

6. Pacific Avenue Sidewalk

In accordance with the applicant's offer to do so, the applicant shall provide an improved concrete walkway across the site along the eastern curb of Pacific Avenue as shown on **Exhibit #4 of the 1/17/02** staff report.

7. On-site Parking Supply

In accordance with the applicant's offer to do so, the applicant shall provide and maintain a minimum of three off-street parking spaces on the project site.

8. Future Improvements

A. This permit is only for the development described in Coastal Development Permit **5-01-306**. Pursuant to Title 14 California Code of Regulations §13250 (b)(6) and §13253 (b)(6), the exemptions otherwise provided in Public Resources Code §30610 (a) and (b) shall not apply to the entire parcel. Accordingly, any future structures, future improvements, or change in intensity of use to the permitted structures approved under Coastal Development Permit **5-01-306**, shall require an amendment to Coastal Development Permit **5-01-306** obtained from the Commission or shall require a new coastal development permit from the Commission.

B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, incorporating all of the above terms of this condition. The deed restriction shall include legal descriptions of the applicant's entire parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

G:\PERMITS\2001 permits\5-01-306 vdh development permit.doc

Exhibit #5  
CCC-05-CD-04 & CCC-05-RO-03  
(VDH Development, Inc.)

**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
200 Oceangate, Suite 1000  
Long Beach, CA 90802-4302  
(562) 590-5071

Page 1 of 7  
Date: July 26, 2002  
Permit No: 5-01-307



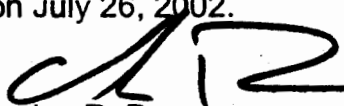
## COASTAL DEVELOPMENT PERMIT 5-01-307

On **6 February 2002**, the California Coastal Commission granted to **VDH Development** Coastal Development Permit **5-01-307**, subject to the attached Standard and Special Conditions, for development consisting of: **Construction of a five-level, 38-foot high (above average grade), 3,000 (approx.) square foot single family residence with an attached three-car garage on a vacant lagoon-fronting lot.** More specifically described in the application file in the Commission offices.

The development is within the coastal zone in Los Angeles County at **5110 Pacific Avenue (Lot 18, Block 1, Del Rey Beach Tract), Venice, City of Los Angeles.**

Issued on behalf of the California Coastal Commission on July 26, 2002.

**PETER DOUGLAS**  
Executive Director

By:   
Title: Coastal Program Analyst

### ACKNOWLEDGMENT

The undersigned permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions thereof.

The undersigned permittee acknowledges that Government Code Section 818.4 which states in pertinent part, that: "A public entity is not liable for injury caused by the issuance . . . of any permit . . ." applies to the issuance of this permit.

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\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Permittee

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Exhibit #6  
CCC-05-CD-04 & CCC-05-RO-03  
(VDH Development, Inc.)



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All existing plants within the 25-foot wide lagoon buffer that are native to the Ballona Lagoon habitat area shall be preserved in place. The applicant shall remove by hand all non-native plants from the applicant's property situated within the 25-foot wide lagoon buffer, and shall landscape and maintain the lagoon buffer with native plants consistent with the landscape plan approved pursuant to Special Condition Four. The native plants shall be installed immediately following completion of grading for the development and prior to or concurrent with

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  - b) Within the 25-foot wide protective lagoon buffer strip (lagoon buffer) described in Special Condition One, the applicant shall preserve all

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must be prepared by a licensed Landscape Architect or a qualified Resource Specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan. The applicant or successor in interest shall implement the supplemental landscaping plan approved by the Executive Director and/or seek an amendment to this permit if required by the Executive Director.

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(v) Drainage. All drainage on the site (excluding the lagoon buffer described in Special Condition One) shall be directed away from Ballona Lagoon and into the City stormwater system (Pacific Avenue). During construction of the proposed project, no runoff, site drainage or dewatering shall be directed from the site into the lagoon.

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COASTAL DEVELOPMENT PERMIT

5-01-307

Page 7 of 7

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7. On-site Parking Supply

In accordance with the applicant's offer to do so, the applicant shall provide and maintain a minimum of three off-street parking spaces on the project site.

8. Future Improvements

A. This permit is only for the development described in Coastal Development Permit **5-01-307**. Pursuant to Title 14 California Code of Regulations §13250 (b)(6) and §13253 (b)(6), the exemptions otherwise provided in Public Resources Code §30610 (a) and (b) shall not apply to the entire parcel. Accordingly, any future structures, future improvements, or change in intensity of use to the permitted structures approved under Coastal Development Permit **5-01-307**, shall require an amendment to Coastal Development Permit **5-01-307** obtained from the Commission or shall require a new coastal development permit from the Commission.

B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, incorporating all of the above terms of this condition. The deed restriction shall include legal descriptions of the applicant's entire parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

G:\PERMITS\2001 permits\5-01-307 vdh development permit.doc

Exhibit #6

CCC-05-CD-04 & CCC-05-RO-03  
(VDH Development, Inc.)

BALLONA LAGOON

RECEIVED FROM VDH  
DATE 11/12/03

+2.65'

58'-0"  
PROPERTY WIDTH

3.53

PROPERTYLINE (PL)

25' from  
2.C.S.

Protected  
Lagoon  
Buffer

15' EASEMENT TO  
BE DEDICATED FOR  
PUBLIC ACCESS AND  
HARVESTING  
OF FISHES

No dev here

29'-0"

5'-10"  
SIDE YARD SETBACK

GROUND LEVEL DECK  
max. height 18"  
above ground

9.17

29'  
bldg  
spring like

9.89

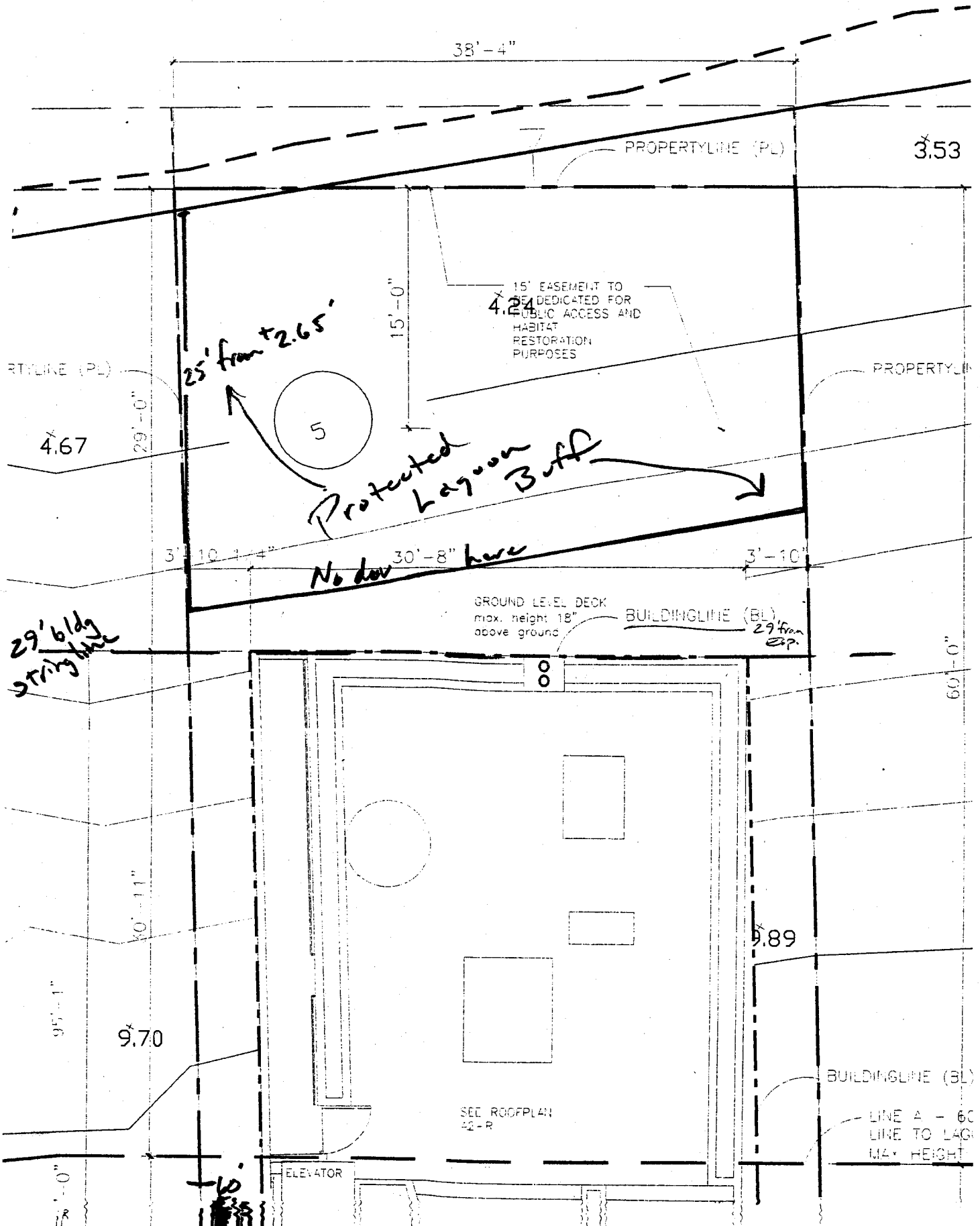
BUILDINGLINE (BL)

PROPERTY

Exhibit #7  
CCC-05-CD-04 & CCC-05-RO-03  
(VDH Development, Inc.)

BALLON LAGOON

Page 2 of 2





## 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  
(Hand Delivered to VDH Development)

March 18, 2005

VDH Development  
Attn: Reto M. Ryffel  
1007 Montana Avenue  
Santa Monica, CA 90403  
(Certified Mail Article No. 7004 1160 0003 4567 7601)  
(Hand Delivered to:  
5106 and/or 5110 Pacific Avenue  
Venice, CA 90292)

Subject: **Notice Prior to Issuance of Executive Director Cease and Desist Order for Violation No. V-5-05-006 and Notice of Intent to Commence Cease and Desist and Restoration Order Proceedings**

Location: 5106 and 5110 Pacific Avenue  
Venice, City and County of Los Angeles

Violation Description: Unpermitted construction of wooden decks supported on concrete footings, construction of an approximately 70-foot long by 4-foot high retaining wall, and placement of approximately 60 to 70 cubic yards of fill behind the retaining wall, located within the protective lagoon buffer area as well as in the structural set back area, on the West Bank of Ballona Lagoon, in non-compliance of Coastal Development Permit No. 5-01-306 and No. 5-01-307.

Dear Mr. Ryffel:

The purpose of this letter is to notify you of my intent, as the Executive Director of the California Coastal Commission ("Commission"), to: 1) issue an Executive Director Cease and Desist Order directing you to cease and desist from conducting any further unpermitted development and from undertaking or maintaining any unpermitted

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(VDH Development, Inc.)

development inconsistent with Coastal Development Permits ("CDPs") 5-01-306 and 5-01-307, including, but not limited to the construction of decks, deck foundations, retaining walls, and fill, and 2) to commence proceedings for issuance of Cease and Desist and Restoration Orders to require you to remove all unpermitted development and to restore the Subject Properties to the condition they were in before the unpermitted development occurred.

The unpermitted development consists of the construction of wooden decks supported on concrete footings, the construction of an approximately 70-foot long by 4-foot high retaining wall, and the placement of approximately 60 to 70 cubic yards of fill behind the retaining wall, located within the protective lagoon buffer area, as well as in the structural setback area, on the West Bank of Ballona Lagoon, in non-compliance of CDP No. 5-01-306 and No. 5-01-307. This unpermitted development is located at 5106 Pacific Avenue and 5110 Pacific Avenue in Venice, City and County of Los Angeles ("subject properties").

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

### **History of the Violation Investigation**

On February 6, 2002, the Commission granted CDP No. 5-01-306 and No. 5-01-307 to VDH Development to construct a single-family residence at 5110 Pacific Avenue and a single-family residence at 5106 Pacific Avenue in the Venice area of the City of Los Angeles.

Pursuant to those permits, VDH Development agreed to several Special Conditions, including maintenance of a 25-foot wide protective lagoon buffer strip, measured from the high water line, between the approved development and Ballona Lagoon (Special Condition #1). No construction, grading, placement of fill or other development was permitted under the CDPs within the 25-foot wide buffer, with the exception of landscaping with plants native to Ballona Lagoon.

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Additionally, Special Condition #3 of the CDPs required all portions of the dwelling, including stairways and balconies, to be set back at least 29-feet from the eastern (lagoon-side) property line, which is located on or just above the high water line. VDH Development was permitted to construct a permeable deck at ground level (no more than 18" high) between the 29-foot structural setback and the 25-foot lagoon buffer strip, as well as fences or walls not exceeding six feet in height above natural grade. No deck, fence, wall or other accessory structure was permitted to encroach in the lagoon buffer strip. Special Condition #4 of both CDPs required the submittal of revised plans to comply with this setback and buffer area.

On March 9, 2005, Commission staff visited the Subject Properties with surveyors from the City of Los Angeles Department of Engineering as part of a general surveying of all property lines along the west bank of Ballona Lagoon. During the course of the survey, Commission staff identified unpermitted development on the Subject Properties, including wooden decks supported on concrete footings, an approximately 70-foot by 4-foot long retaining wall, and approximately 60 to 70 cubic yards of fill behind the retaining wall. None of these structures was authorized by the CDPs. Further, these structures are inconsistent with the CDPs. The decks constructed on the lagoon-side of each property were built in excess of 18" above natural grade, were supported by the approximately 60-70 cubic yards of unpermitted fill, and both portions of the decks and fill extend into the area between the structural setback and lagoon buffer area in which development is limited to an 18" high permeable deck. Additionally, portions of these decks, along with the approximately 70' x 4' retaining wall, encroach into the lagoon buffer area, in which all development (with the exception of native plant landscaping) is prohibited.

#### **Executive Director Cease and Desist Order**

Section 30809 of the Coastal Act authorizes the Executive Director to issue an order directing a person to cease and desist if that person has undertaken, or threatened to undertake, any activity that may require a permit without securing a permit or may be inconsistent with any permit previously issued by the Commission. The construction of wooden decks supported on concrete footings, the construction of an approximately 70-foot long retaining wall, and the placement of approximately 60 to 70 cubic yards of fill behind the retaining wall, located within the protective lagoon buffer area on properties located at 5106 and 5110 Pacific Avenue, in non-compliance of CDP No. 5-01-306 and No. 5-01-307 constitute development which requires a coastal development permit. Since this development was performed in an area in which the Commission and the City of Los Angeles share jurisdiction to issue permits under the Coastal Act (there is not a certified Local Coastal Program for this or any other section of the City of Los Angeles), the performance of this development requires a CDP from both the City and the Commission. No such permit or permit amendment has been issued by either entity nor has a permit application been applied for.

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As you know, Special Condition #1 of your CDPs required a 25-foot wide lagoon buffer strip measured from the high water line. With the exception of landscaping with plants native to Ballona Lagoon, no development as defined by Section 30106 of the Coastal Act could occur within the 25-foot wide lagoon buffer. In addition, Special Condition #3 of your CDPs required that all portions of the dwelling on the Subject Properties be set back at least 29 feet from the lagoon-side property line. The CDPs allowed the construction of a permeable deck at ground level, no more than 18" high between the 29-foot structural setback and the 25-foot lagoon buffer strip, as well as fences or walls not exceeding six feet in height above natural grade. As previously addressed, Commission staff identified wooden decks built in excess of 18" above natural grade and supported by approximately 60-70 cubic yards of unpermitted fill, extending into the structural setback area. Additionally, portions of these decks, along with the approximately 70' x 4' retaining wall, encroach into the lagoon buffer area, in non-compliance with your CDPs. Therefore, the unpermitted development was placed within the protective lagoon buffer and the 29-foot structural setback, in non-compliance of your CDPs.

As demonstrated above, the unpermitted development is a violation of your CDPs, and therefore of the Coastal Act. A violation of a Cease and Desist and/or Restoration Order may subject the violator to additional fines, subject to Sections 30820, 30821.6, and 30822 of the Coastal Act (PRC Division 20 §30809(b)(3)).

Section 30809(b) of the Coastal Act states:

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

Section 13180(a) of the Commission's regulations (Title 14, Division 5.5 of the California Code of Regulations (CCR)) defines the term "satisfactory manner" as that term is used in Section 30809(b) as being, in part, "a response which is made in the manner and within the timeframe specified in the notice." **To prevent the issuance of the Executive Director Cease and Desist Order to you, you must provide a response that satisfies the standards of sections 13180(a)(2)(B) and (C) of the Commission's regulations. If you do not comply with these requirements, an EDCDO will be issued to you, the violation of which could subject you to additional penalties. This response should include:**

1. Immediately and completely cease and desist from performing any unpermitted development on the Subject Properties, including construction of decks, retaining walls, or placement of fill, or any other violation of Coastal Development Permit No 5-01-306 and No. 5-01-307, unless authorized by the Commission through a CDP.

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2. By 1:00 pm, March 18, 2005, VDH Development (who conducted the unpermitted development and to whom this letter will be hand delivered) confirm that all such activities have indeed ceased, and commit to perform no further unpermitted development at the Subject Properties. This confirmation should be provided by telephone to Aaron McLendon at (415) 904-5220 and followed by a written confirmation faxed to Aaron McLendon at (415) 904-5235 no later than 5:00 pm March 18, 2005.

The Executive Director Cease and Desist Order may be subject to such terms and conditions as the Executive Director may determine are necessary to avoid irreparable injury to any area within the jurisdiction of the Commission pending action by the Commission under Section 30810 and 30811 of the Coastal Act (which grants the Commission the authority to issue Cease and Desist and Restoration Orders). The Executive Director Cease and Desist Order shall be effective upon its issuance.

#### **Notice of Intent to Commence Commission Cease and Desist and Restoration Order Proceedings**

By this *Notice Prior to Issuance of Executive Director Cease and Desist Order for Violation No. V-5-05-006*, I am also notifying you of my intent to commence proceedings for issuance by the Commission of a Cease and Desist and Restoration Order to direct you to cease and desist from undertaking further development or maintaining existing unpermitted development on the Subject Properties and to restore the Subject Properties to the conditions that existed prior to the occurrence of the unpermitted development.

#### **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 to compel the removal of the unpermitted development on the Subject Properties. The unpermitted development is located in a protective lagoon buffer area and within the 29-foot structural setback (required by the underlying Coastal Development Permits.

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Section 30600(a) of the Coastal Act states that, in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the coastal zone must obtain a coastal development permit (CDP). "Development" is defined by Section 30106 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...change in the intensity of use of water, or of access thereto...and the removal or harvesting of major vegetation other than for agricultural purposes...*

The unpermitted development clearly constitutes "development" within the meaning of the above-quoted definition and therefore is subject to the permit requirement of section 30600(a). A CDP was not issued to authorize the subject unpermitted development. Further, the unpermitted development is inconsistent with CDP Nos. 5-01-306 and 5-01-307.

For these reasons, the criteria of Section 30810(a) of the Coastal Act have been met and I am sending this letter to initiate proceedings for the Commission to determine whether to issue a Cease and Desist Order.

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 removal of any unpermitted 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.*

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

- 1) Unpermitted development consisting of the construction of wooden decks supported on concrete footings, the construction of an approximately 70-foot long by 4-foot high retaining wall, and the placement of approximately 60 to 70 cubic

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(VDH Development, Inc.)

yards of fill behind the retaining wall, located within the protective lagoon buffer area and the 29-foot structural setback, on the West Bank of Ballona Lagoon, in non-compliance of CDP No. 5-01-306 and No. 5-01-307 has occurred on the subject property.

- 2) This development is inconsistent with the resource protection policies of the Coastal Act, including, but not limited to the following:
  - a) Sections 30230 and 30231 (marine resources, biological productivity and water quality),
  - b) Section 30233 (diking, filling or dredging),
  - c) Section 30240 (environmentally sensitive habitat areas or ESHA),
  - d) Section 30251 (scenic and visual qualities), and
  - e) Section 30253 (geologic and flood hazards, erosion and natural landform alteration).
- 3) The unpermitted development is causing continuing resource damage, as defined by Section 13190 of the Commission's regulations. The unpermitted development has impacted the resources listed in the previous paragraph (item number two). Such impacts meet the definition of damage provided in Section 13190(b): "any degradation or other reduction in quality, abundance, or other quantitative or qualitative characteristic of the resource as compared to the condition the resource was in before it was disturbed by unpermitted development." The existence of the unpermitted development will lead to adverse impacts to Ballona Lagoon. As mentioned previously, Ballona Lagoon is an Environmentally Sensitive Habitat Area and provides foraging grounds for the endangered California Least Tern and several other shorebird, fish, and invertebrate species.

In addition, the continuation of the unpermitted development, as listed above, will create further adverse impacts to water quality, marine resources, the scenic and visual qualities of this natural area, the alteration of natural landforms, and would create and/or contribute to erosion of the site. The impacts from the unpermitted development continue to exist at the subject properties; therefore, the damage to resources protected by the Coastal Act is continuing.

As addressed in the Commission's adopted findings for your CDPs (as thoroughly described on pages 10-24 of the adopted findings), the protective lagoon buffer area and the 29-foot structural setback requirement were imposed on your project to protect the ESHA from impacts of the development. Without the buffer area and the setback requirement, the development would have damaged the sensitive resources of Ballona Lagoon; and therefore, the Commission could not have found the project consistent with the Chapter 3 Policies of the Coastal Act. Furthermore, the adopted findings for Restoration Order CCC-03-RO-02 (which you were a party to) also explained the sensitive nature of Ballona Lagoon and its surrounding resources and how development

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within lagoon buffer areas and adjacent to ESHA damages these sensitive resources (as described more fully on pages 10-15 of the Commission's adopted findings for the Restoration Order).

For the reasons stated above, I have decided to commence proceedings for a Restoration Order before the Commission in order to restore the Subject Properties to the condition they were 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 Properties to the conditions that existed prior to the occurrence of the unpermitted development described above.

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 and Restoration Order proceedings by completing the enclosed Statement of Defense (SOD) form. **The SOD form must be returned to the Commission's San Francisco office, directed to the attention of Aaron McLendon, no later than April 7, 2005.**

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

In addition, the Commission may commence action to record a Notice of Violation against the subject properties, pursuant to section 30812 of the Coastal Act.

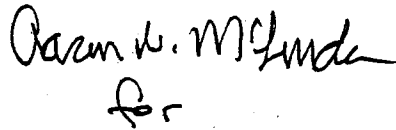
The Commission staff intends to schedule the hearings for the Cease and Desist and Restoration Order during the Commission's May 11-13, 2005 meeting in Palo Alto. If you have any questions regarding this letter or the enforcement case, please call Aaron

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McLendon at (415) 904-5220 or send correspondence to his attention at the address listed on the letterhead.

Sincerely,



Peter Douglas  
Executive Director

cc: Aaron McLendon, Statewide Enforcement Analyst  
Lisa Haage, Chief of Enforcement  
Sandy Goldberg, Staff Counsel  
Pat Veesart, Southern California Enforcement Team Leader  
Steve Hudson, South Central Coast District Supervisor  
Chuck Posner, Coastal Program Analyst, South Coast District  
Kimberly Carter, South Coast District Enforcement Officer

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

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(VDH Development, Inc.)

**CALIFORNIA COASTAL COMMISSION**

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

**SENT VIA REGULAR AND CERTIFIED MAIL  
AND FACSIMILE**

March 23, 2005

VDH Development, Inc.  
Attn: Reto M. Ryffel  
1007 Montana Avenue  
Santa Monica, CA 90403  
(Certified Mail Article No. 7005 0390 0001 2132 2320)

**Subject: Executive Director Cease and Desist Order No. ED-05-CD-03 and  
Notification of Intent to Record a Notice of Violation of the Coastal  
Act**

**Date Issued:** March 23, 2005

**Expiration Date:** June 21, 2005

**Violation File No.:** V-5-05-006

**Property Location:** 5106 and 5110 Pacific Avenue  
Venice, City and County of Los Angeles

**Alleged Coastal Act Violation:** Unpermitted construction of wooden decks supported on concrete footings, construction of an approximately 70-foot long by 4-foot high retaining wall, and placement of approximately 60 to 70 cubic yards of fill behind the retaining wall, located within the protective lagoon buffer area as well as in the structural set back area, on the West Bank of Ballona Lagoon, in non-compliance of Coastal Development Permit No. 5-01-306 and No. 5-01-307 and the Coastal Act.

**I. ORDER**

Pursuant to my authority under California Public Resources Code (PRC) Section 30809, I hereby order you, as the legal owners of the property identified below, your employees, agents and contractors, and any other persons acting in concert with you to cease and desist from undertaking further unpermitted development or maintaining

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existing unpermitted development on 5106 and 5110 Pacific Avenue, Venice, City and County of Los Angeles (hereinafter, "Subject Properties"), including decks, retaining walls, or placement of fill, or any other violation of Coastal Development Permit No 5-01-306 and No. 5-01-307 or the Coastal Act. The Executive Director Cease and Desist Order is subject to the following terms and conditions to avoid irreparable injury to the Subject Properties pending action by the Commission under Section 30810 and 30811 of the Coastal Act:

1. VDH Development (who conducted the unpermitted development and to whom this letter will be sent certified mail) shall immediately and completely cease from all such activities and shall not perform further unpermitted development at the Subject Properties.
2. VDH Development shall immediately and completely cease from additional maintenance of any unpermitted development on the Subject Properties including, but not necessarily limited to any construction of decks, retaining walls, or placement of fill, or any other violation of Coastal Development Permit No 5-01-306 and No. 5-01-307 or the Coastal Act, at the Subject Properties until and unless it is authorized through a CDP.
3. By April 1, 2005, VDH Development shall remove all unpermitted development located within the protective lagoon buffer area as well as in the structural set back area, including but not limited to: 1) wooden decks, 2) concrete support footings, 3) retaining walls, and 4) fill behind the retaining wall from the Subject Properties. The unpermitted development shall be disposed of at an appropriate debris disposal site in compliance with all applicable local and state laws. VDH Development shall provide the Commission with photographic evidence that the above-unpermitted development was removed from the Subject Properties. Photographs shall be submitted to the Commission's San Francisco office to the attention of Aaron McLendon at the address on this letterhead no later than 5:00 pm April 6, 2005.
4. Concurrent with the removal of the unpermitted development listed above, VDH Development shall implement temporary erosion control measures to prevent runoff across the lagoon buffer strip and into Ballona Lagoon. Such measures may be removed once native landscaping has established.
5. By April 8, 2005, VDH Development shall implement the landscaping plans approved under Coastal Development Permit Nos. 5-01-306 and 5-01-307 (Special Condition Nos. 1 and 4 of CDP 5-01-306 and 5-01-307). VDH Development shall provide the Commission with photographic evidence that the landscaping plans were implemented. Photographs shall be submitted to the Commission's San Francisco office to the attention of Aaron McLendon at the address on this letterhead no later than 5:00 pm April 15, 2005.

## II. IDENTIFICATION OF THE PROPERTY

The properties that are the subject of this cease and desist order are 5106 and 5110 Pacific Avenue, Venice, in the City and County of Los Angeles.

## III. DESCRIPTION OF ACTIVITY

The activity that is the subject of this order consists of the unpermitted construction of wooden decks supported on concrete footings, construction of an approximately 70-foot long by 4-foot high retaining wall, and placement of approximately 60 to 70 cubic yards of fill behind the retaining wall, located within the protective lagoon buffer area as well as in the structural set back area, on the West Bank of Ballona Lagoon, in non-compliance of Coastal Development Permit No. 5-01-306 and No. 5-01-307 and the Coastal Act.

## IV. FINDINGS

The development has occurred and continues to be undertaken without the required authorization in a coastal development permit (CDP). Section 30600(a) of the Coastal Act states that, in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the coastal zone must obtain a CDP. "Development" is defined by Section 30106 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...change in the intensity of use of water, or of access thereto...and the removal or harvesting of major vegetation other than for agricultural purposes...*

The unpermitted development clearly constitutes "development" within the meaning of the above-quoted definition and therefore requires a CDP. Since this development was performed in an area in which the Commission and the City of Los Angeles share jurisdiction to issue permits under the Coastal Act (there is not a certified Local Coastal Program for this or any other section of the City of Los Angeles), the performance of this development requires a CDP from both the City and the Commission. No such permit or permit amendment has been issued by either entity nor has a permit application been applied for.

The unpermitted development is also not exempt from the Coastal Act's permitting requirements under §30610 of the Coastal Act and/or Title 14, California Code of Regulations §§13250-13253.

Even if the unpermitted development could be found exempt under the Coastal Act or the Commission's Regulations, Special Condition No. 8 of CDP Nos. 5-01-306 and 5-

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01-307 required VDH Development to record a "Future Improvements" Deed Restriction. As a condition of issuance of these CDPs, VDH Development recorded the deed restrictions on the Subject Properties. The deed restrictions states that these permits are only for the development described in Coastal Development Permit 5-01-306 and 5-01-307. The deed restriction also state also states, "Pursuant to Title 14 California Code of Regulations §13250 (B)(6) and §13253 (B)(6), the exemptions otherwise provided in Public Resources Code of Regulations §30610 (a) and (b) shall not apply to the entire parcel[s]. Accordingly, any future structures, future improvements, or change in intensity of use to the permitted structures approved under Coastal Development Permit 5-01-306 [and 5-01-307] shall require an amendment... or shall require a new coastal development permit from the Commission."

The project description and the approved final plans for Coastal Development Permit No. 5-01-306 and 5-01-307 do not describe or show any of the subject unpermitted development. Therefore, even if the unpermitted development qualified for an exemption under 30610 of the Coastal Act, pursuant to Section 13250(b)(6) of the Commission's regulations such development would still require a Coastal Development Permit because of the "Future Improvements" deed restriction recorded on the Subject Properties by VDH Development.

On February 6, 2002, the Commission granted CDP No. 5-01-306 and No. 5-01-307 to VDH Development to construct a single-family residence at 5110 Pacific Avenue and a single-family residence at 5106 Pacific Avenue in the Venice area of the City of Los Angeles.

Pursuant to those permits, VDH Development agreed to several Special Conditions, including maintenance of a 25-foot wide protective lagoon buffer strip, measured from the high water line, between the approved development and Ballona Lagoon (Special Condition #1). No construction, grading, placement of fill or other development was permitted under the CDPs within the 25-foot wide buffer, with the exception of landscaping with plants native to Ballona Lagoon.

Additionally, Special Condition #3 of the CDPs required all portions of the dwelling, including stairways and balconies, to be set back at least 29-feet from the eastern (lagoon-side) property line, which is located on or just above the high water line. VDH Development was permitted to construct a permeable deck at ground level (no more than 18" high) between the 29-foot structural setback and the 25-foot lagoon buffer strip, as well as fences or walls not exceeding six feet in height above natural grade. No deck, fence, wall or other accessory structure was permitted to encroach in the lagoon buffer strip. Special Condition #4 of both CDPs required the submittal of revised plans to comply with this setback and buffer area.

On March 9, 2005, Commission staff visited the Subject Properties with surveyors from the City of Los Angeles Department of Engineering as part of a general surveying of all property lines along the west bank of Ballona Lagoon. During the course of the survey,

Commission staff identified unpermitted development on the Subject Properties, including wooden decks supported on concrete footings, an approximately 70-foot by 4-foot long retaining wall, and approximately 60 to 70 cubic yards of fill behind the retaining wall. None of these structures was authorized by the CDPs. Further, these structures are inconsistent with the CDPs. The decks constructed on the lagoon-side of each property were built in excess of 18" above natural grade, were supported by the approximately 60-70 cubic yards of unpermitted fill, and both portions of the decks and fill extend into the area between the structural setback and lagoon buffer area in which development is limited to an 18" high permeable deck. Additionally, portions of these decks, along with the approximately 70' x 4' retaining wall, encroach into the lagoon buffer area, in which all development (with the exception of native plant landscaping) is prohibited.

On March 18, 2005, the Executive Director of the Coastal Commission sent you a Notice Prior to Issuance of an Executive Director Cease and Desist Order (NOI) and provided VDH Development the opportunity to provide assurances which would obviate the need to issue this Order. The NOI stated:

*To prevent the issuance of the Executive Director Cease and Desist Order to you, you must provide a response that satisfies the standards of sections 13180(a)(2)(B) and (C) of the Commission's regulations. If you do not comply with these requirements, an EDCDO will be issued to you, the violation of which could subject you to additional penalties. This response should include:*

- 1) Immediately and completely cease and desist from performing any unpermitted development on the Subject Properties, including construction of decks, retaining walls, or placement of fill, or any other violation of Coastal Development Permit No 5-01-306 and No. 5-01-307, unless authorized by the Commission through a CDP.*
- 2) By 1:00 pm, March 18, 2005, VDH Development (who conducted the unpermitted development and to whom this letter will be hand delivered) confirm that all such activities have indeed ceased, and commit to perform no further unpermitted development at the Subject Properties. This confirmation should be provided by telephone to Aaron McLendon at (415) 904-5220 and followed by a written confirmation faxed to Aaron McLendon at (415) 904-5235 no later than 5:00 pm March 18, 2005."*

On March 18, 2005, VDH Development sent a letter to Commission staff stating, "there are no construction activities going on any of the above referenced properties as VDH Development Inc. has concluded all developments and construction in December 2004." Unfortunately, this was not what was requested and specifically, VDH Development did not commit to perform no further unpermitted development at the Subject Properties. On March 18 and March 22, 2005, Commission staff conducted a site inspection of the Subject Properties and confirmed that construction of the decks was continuing. Staff

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found workers on the decks cutting lumber, nailing additions to the decks, and "water-proofing" and/or painting the decks.

The Executive Director has determined that you have undertaken and continue to undertake development that requires a permit without first securing a permit. The Executive Director has also determined that VDH Development failed to respond to the NOI in a "satisfactory manner". In fact, the assurances provided by VDH Development that no construction activities were occurring were in direct conflict to what was actually occurring on the site; work was continuing and you did not comply with the requirements of the NOI. Therefore the Executive Director is issuing an EDCDO to direct you to cease and desist from undertaking further unpermitted development or maintaining existing unpermitted development on the Subject Properties.

#### V. COMPLIANCE OBLIGATION

Strict compliance with this order by all parties subject thereto is required. Failure to comply strictly with any term or condition of this order may result in the imposition of civil penalties up to Six Thousand Dollars (\$6,000) per day for each day in which such compliance failure persists and other such penalties and relief as provided for in the Coastal Act. In addition, the Executive Director is authorized, after providing notice and the opportunity for a hearing as provided for in section 30812 of the Coastal Act, to record a Notice of Violation against your property (see pages 6-7 of this letter).

#### VI. APPEAL

Pursuant to PRC section 30803(b), any person or entity against whom this order is issued may file a petition with the Superior Court seeking a stay of this order.

#### **Notification of Intent to Record a Notice of Violation of the Coastal Act**

By this Executive Director Cease and Desist Order, I am also notifying you of my intent to record a Notice of Violation of the Coastal Act for unpermitted development consisting of unpermitted construction of wooden decks supported on concrete footings, construction of an approximately 70-foot long by 4-foot high retaining wall, and placement of approximately 60 to 70 cubic yards of fill behind the retaining wall, located within the protective lagoon buffer area as well as in the structural set back area, on the West Bank of Ballona Lagoon, in non-compliance of Coastal Development Permit No. 5-01-306 and No. 5-01-307. The unpermitted development is located on properties that you own at 5106 and 5110 Pacific Avenue, Venice, in the City and County of Los Angeles.

"Development" is defined in Section 30106 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*

Exhibit #9

CCC-05-CD-04 & CCC-05-RO-03  
(VDH Development, Inc.)



*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...*

The unpermitted development that has occurred on the Subject Properties constitutes development under Section 30106 of the Coastal Act, and as such is subject to Coastal Act permit requirements. No Coastal Development Permit has been issued for this development.

Previous attempts to resolve this matter have been unsuccessful. Unpermitted development remains on the Subject Properties in violation of the Coastal Act. Therefore, as discussed above, on March 18, 2005, I sent you a *Notice Prior to Issuance of Executive Director Cease and Desist Order for Violation No. V-5-05-006 and Notice of Intent to Commence Cease and Desist and Restoration Order Proceedings*. You did not comply with the requirements of the NOI and therefore, the Executive Director is issuing an Executive Director Cease and Desist Order to you.

### **Notice of Violation**

The Commission's authority to record a Notice of Violation is set forth in Section 30812(a) of the Coastal Act, which states the following:

*Whenever the executive director of the commission has determined, based on substantial evidence, that real property has been developed in violation of this division, the executive director may cause a notification of intention to record a notice of violation to be mailed by regular and certified mail to the owner of the real property at issue, describing the real property, identifying the nature of the violation, naming the owners thereof, and stating that if the owner objects to the filing of a notice of violation, an opportunity will be given to the owner to present evidence on the issue of whether a violation has occurred.*

I am issuing this notice of intent to record a Notice of Violation because unpermitted development has occurred at the Subject Properties, in violation of the Coastal Act. This determination is based on staff's observations of the Subject Properties made during site visits on March 9, 18, and 22, 2005, and an analysis of CDP Nos. 5-01-306 and 5-01-307, which authorized the construction of the two homes on the Subject

Exhibit #9  
CCC-05-CD-04 & CCC-05-RO-03  
(VDH Development, Inc.)



March 23, 2005

Page 8

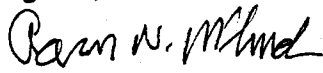
Properties. If you object to the recordation of a Notice of Violation in this matter and wish to present evidence on the issue of whether a violation has occurred, you must respond in writing, within 20 days of the postmarked mailing of this notification. If, within 20 days of the notification's mailing, you fail to inform the Commission of an objection to the recordation of a Notice of Violation, I shall record the Notice of Violation in the Los Angeles County recorder's office pursuant to Section 30812 of the Coastal Act.

**If you object to the recordation of a Notice of Violation in this matter and wish to present evidence on the issue of whether a violation has occurred, you must respond in writing, to the attention of Aaron McLendon, no later than April 12, 2005.**

Should you have any questions regarding this matter, please contact Aaron McLendon, Statewide Enforcement Analyst, at (415) 904-5220.

Executed at San Francisco, California on March 23, 2005.

Signed,

  
for

PETER M. DOUGLAS  
Executive Director  
California Coastal Commission

cc: Lisa Haage, Chief of Enforcement, CCC  
Aaron McLendon, Statewide Enforcement Analyst, CCC  
Sandy Goldberg, Staff Counsel, CCC  
Pat Veesart, Southern California Enforcement Team Leader  
Steve Hudson, South Central Coast District Supervisor  
Chuck Posner, Coastal Program Analyst, South Coast District  
Kimberly Carter, South Coast District Enforcement Officer

Exhibit #9  
CCC-05-CD-04 & CCC-05-RO-03  
(VDH Development, Inc.)

*development, inc.***v.d.h.****Builders of  
Fine Homes**

March 18, 2005

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

**SENT VIA FAX: 415-904-5235**

**Re: Notice to Prior Issuance of Executive Director Cease and Desist Order for  
Violation No. V-5-05-006 and Notice of Intent to Commence Cease and Desist  
and Restoration Order Proceedings Restoration Order CCC-03-RO-02 -  
Property Locations: 5106 and 5110 Pacific Ave - Venice, City of Los Angeles**

Dear Mr. McLendon:

This letter is in confirmation of the receipt of the Coastal Commissions' "Notice to Prior Issuance of Executive Director and Desist Order" that was hand delivered to us today, March 18, 2005.

This letter is to advise you that currently, there are no construction activities going on any of the above referenced properties as VDH Development Inc. has concluded all developments and constructions in December 2004. Certificate of Completion was signed off by the City Inspector in December 2004 and the Certificate of Occupancy has been issued by the City of Los Angeles on December 16, 2004.

As it is our sincerest intent to be in full compliance with the Order, we have immediately made contact with Dr. Rudy Mattoni and Mr. John Hodder, Director of the California Wetlands Research to enlist their help and counsel in resolution of the allegations raised in your notice of intent. After careful assessment and counsel, we will be returning the completed SOD form to you by the deadline, along with any additional information we may want to present. In the meantime, please don't hesitate to contact us if you have any questions or require additional information, Ph: 310-437-6348.

Many thanks and kind regards,



Edith Kiss  
Executive Assistant  
to Mr. Reto Byffel

13763 Fiji Way CC: Dr. Rudy Mattoni  
Marina del Rey Mr. John Hodder  
California 90292 USA  
Gaines & Stacey, Legal Counsel

Exhibit #10  
CCC-05-CD-04 & CCC-05-RO-03  
(VDH Development, Inc.)

# COPY

APR 22 2005

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

CALIFORNIA COASTAL COMMISSION  
Attention: Aaron McLendon  
45 FREMONT STREET, SUITE 2000  
SAN FRANCISCO, CA 94105

STATE OF CALIFORNIA OFFICIAL BUSINESS  
Document entitled to free recordation  
Pursuant to Government Code §27383

**COPY** of Document Recorded  
**05 0949051**

Has not been compared with original.  
Original will be returned when  
processing has been completed.  
LOS ANGELES COUNTY REGISTRAR - RECORDER

## NOTICE OF VIOLATION OF THE COASTAL ACT (Public Resources Code Section 30812)

I, Peter Douglas, declare:

1. I am the Executive Director of the California Coastal Commission.
2. The real property at:

**5106 Pacific Avenue**

**Venice, City and County of Los Angeles, California**

has been developed in violation of the Coastal Act of 1976 (Public Resources Code Section 30000, et seq.). This real property is identified as Assessor's Parcel Number 4294-006-056.

3. This property is located within the Coastal Zone as that term is defined in Section 30103 of the Coastal Act.
4. The record owner of said real property is: VDH Development, Inc.

Exhibit #11  
CCC-05-CD-04 & CCC-05-RO-03  
(VDH Development, Inc.)

5. The development that violates the Coastal Act consists of a wooden deck supported on concrete footings at the rear (lagoon-side) of the residence, an approximately 35-foot long by 4-foot high retaining wall across the width of the property, placement of fill behind the retaining wall, and planting of non-native vegetation, located within the protective lagoon buffer area as well as in the structural set back area required by Coastal Development Permit No. 5-01-306, on and adjacent to the West Bank of Ballona Lagoon. This development violates the Coastal Act because it is not authorized in a coastal development permit and is inconsistent with the terms and conditions of Coastal Development Permit No. 5-01-306. This violation is the subject of Coastal Commission Violation File No. V-5-05-006.
6. The requirements set forth in Section 30812 for notice and recordation of this Notice of Violation have been complied with. Recording this notice is authorized under Section 30812 of the California Public Resources Code.
7. The California Coastal Commission notified the record owner, VDH Development, Inc., of its intent to record a Notice of Violation in this matter in a letter dated March 23, 2005.
8. As of this date, the Commission has not received a written objection to the recordation of the Notice of Violation. Therefore the Executive Director of the Commission is recording the Notice of Violation as provided for under Section 30812 of the California Coastal Act.

Executed at San Francisco, California, on April 20, 2005.

I declare under penalty of perjury that the foregoing is true and correct.

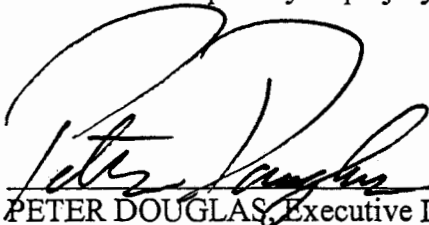
  
PETER DOUGLAS, Executive Director

Exhibit #11  
CCC-05-CD-04 & CCC-05-RO-03  
(VDH Development, Inc.)

STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

On this 20 day of APRIL, in the year 2005, before me the undersigned Notary Public, personally appeared Peter Douglas, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument as Executive Director of the California Coastal Commission and acknowledged to me that the California Coastal Commission executed it.

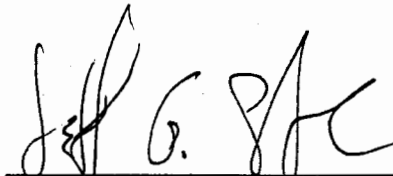
  
\_\_\_\_\_  
Notary Public in and for Said State and County



Exhibit #11  
CCC-05-CD-04 & CCC-05-RO-03  
(VDH Development, Inc.)

# COPY

ATE 2.2.2003

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

CALIFORNIA COASTAL COMMISSION  
Attention: Aaron McLendon  
45 FREMONT STREET, SUITE 2000  
SAN FRANCISCO, CA 94105

STATE OF CALIFORNIA OFFICIAL BUSINESS  
Document entitled to free recordation  
Pursuant to Government Code §27383

**COPY** of Document Recorded  
**05 0949052**

Has not been compared with original.  
Original will be returned when  
processing has been completed.  
LOS ANGELES COUNTY REGISTRAR - RECORDER

## NOTICE OF VIOLATION OF THE COASTAL ACT (Public Resources Code Section 30812)

I, Peter Douglas, declare:

1. I am the Executive Director of the California Coastal Commission.
2. The real property at:

**5110 Pacific Avenue**

**Venice, City and County of Los Angeles, California**

has been developed in violation of the Coastal Act of 1976 (Public Resources Code Section 30000, et seq.). This real property is identified as Assessor's Parcel Number 4294-006-057.

3. This property is located within the Coastal Zone as that term is defined in Section 30103 of the Coastal Act.
4. The record owner of said real property is: VDH Development, Inc.

Exhibit #11  
CCC-05-CD-04 & CCC-05-RO-03  
(VDH Development, Inc.)

5. The development that violates the Coastal Act consists of a wooden deck supported on concrete footings at the rear (lagoon-side) of the residence, an approximately 35-foot long by 4-foot high retaining wall across the width of the property, placement of fill behind the retaining wall, and planting of non-native vegetation, located within the protective lagoon buffer area as well as in the structural set back area required by Coastal Development Permit No. 5-01-307, on and adjacent to the West Bank of Ballona Lagoon. This development violates the Coastal Act because it is not authorized in a coastal development permit and is inconsistent with the terms and conditions of Coastal Development Permit No. 5-01-307. This violation is the subject of Coastal Commission Violation File No. V-5-05-006.
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7. The California Coastal Commission notified the record owner, VDH Development, Inc., of its intent to record a Notice of Violation in this matter in a letter dated March 23, 2005.
8. As of this date, the Commission has not received a written objection to the recordation of the Notice of Violation. Therefore the Executive Director of the Commission is recording the Notice of Violation as provided for under Section 30812 of the California Coastal Act.

Executed at San Francisco, California, on April 20, 2005.

I declare under penalty of perjury that the foregoing is true and correct.

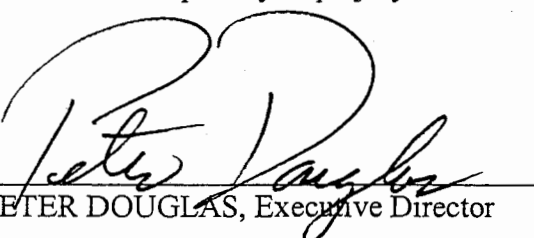
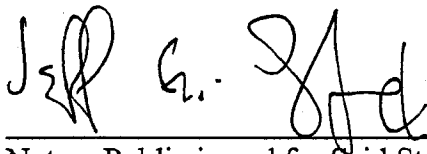
  
PETER DOUGLAS, Executive Director

Exhibit #11  
CCC-05-CD-04 & CCC-05-RO-03  
(VDH Development, Inc.)

STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

On this 20 day of APRIL, in the year 2005, before me the undersigned Notary

Public, personally appeared Peter Douglas, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument as Executive Director of the California Coastal Commission and acknowledged to me that the California Coastal Commission executed it.



Notary Public in and for Said State and County

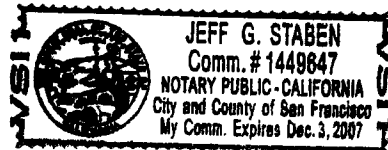
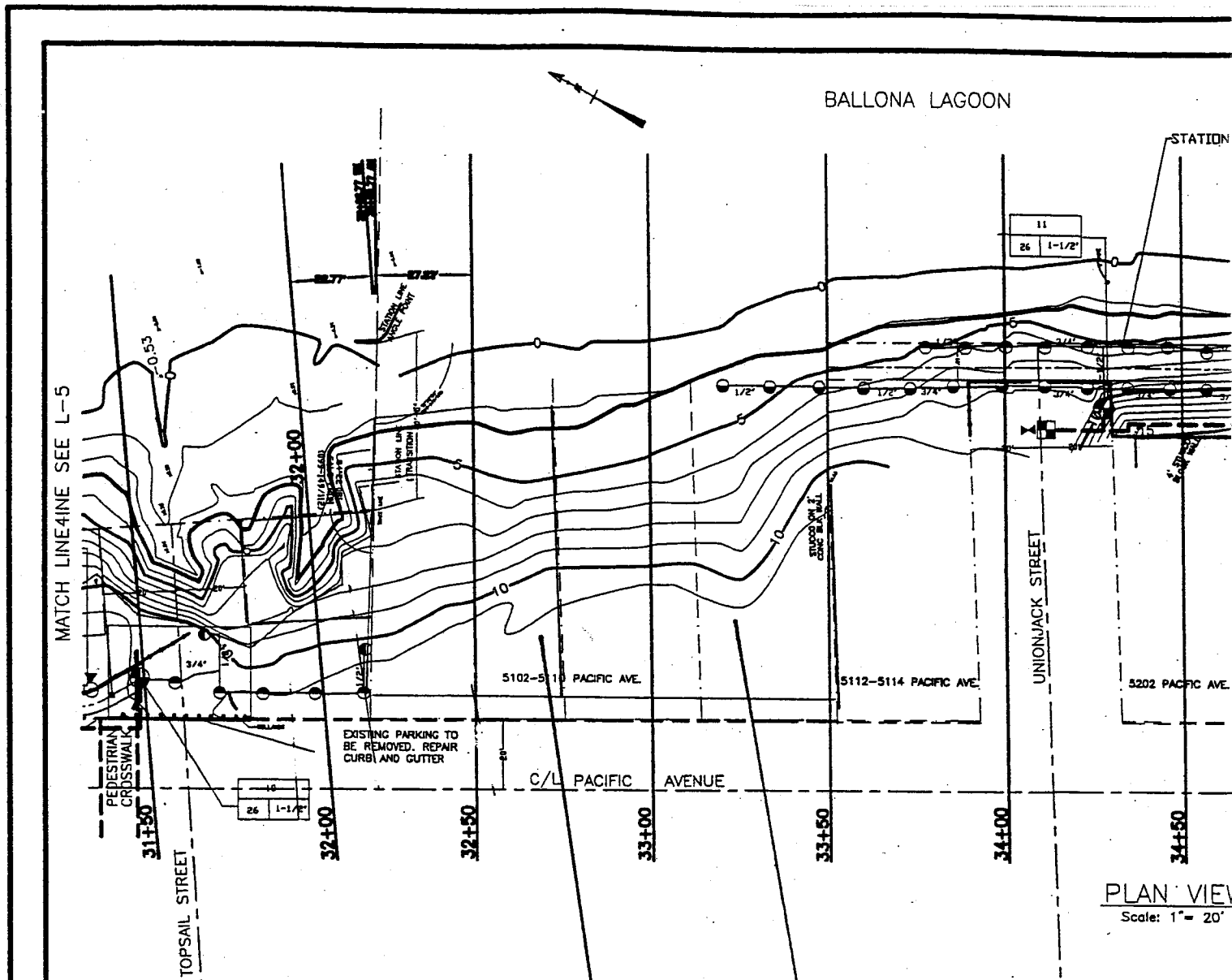


Exhibit #11  
CCC-05-CD-04 & CCC-05-RO-03  
(VDH Development, Inc.)





5106  
Pacific Ave.

5110  
Pacific Ave.

Exhibit #12  
CCC-05-CD-04 & CCC-05-RO-03  
(VDH Development, Inc.)

**V.D.H. Residence  
5106 and 5110  
Pacific Ave.  
Ballona Lagoon  
Marine Preserve**

**July 19, 200**

**PREPARED BY:**

**Deborah Richie  
Landscape Architect**

205 Avenue I, Suite 2  
310-540-3612  
310-540-4129fax  
RdeborahLA@aol.com

**RECEIVED**  
South Coast Region

**JUL 19 2002**

**CALIFORNIA  
COASTAL COMMISSION**

**CALIFORNIA COASTAL COMMISSION  
SOUTH COAST DISTRICT  
SPECIAL CONDITION  
COMPLIANCE DOCUMENT  
CDP NO. 5- 01 - 306 & 307  
CONDITION NO. 411  
ACCEPTED BY: [Signature]  
DATE: 7/19/2002**

Exhibit #13  
CCC-05-CD-04 & CCC-05-RO-03  
(VDH Development, Inc.)

**Native Plant Landscape Plan  
for the  
Permit Application No. 5-01-307, Venice, California  
V.D.H. Residence at Ballona Lagoon Marine Preserve**

Robert Roy van de Hoek  
Director of Research and Restoration  
Wetlands Action Network  
P. O. Box 1145  
Malibu, CA 90265  
(310) 456-5604  
28 June 2002

The landscaping at the VDH residence adjacent to the Ballona Lagoon Marine Preserve is designed to contribute to furthering the natural ecosystem processes for both animals and plants. Native plants were selected that will benefit future recovery of sensitive and endangered species found in the wetland/coastal strand transition.

**Tidal Salt Marsh Natural Ecosystem:**

**Plant Species Already Present**

*Batis maritima* (Maritime Batis)  
*Jaumea carnosa* (Marsh Jaumea) in flower in June  
*Salicornia virginica* (Pickleplant)

**Animal Species Already Present**

*Uca crenulata* (Fiddler Crab)  
*Cerithidea californica* (California Horn Snail)

**Non-tidal Upper Salt Marsh Natural Ecosystem**

*Distichlis spicata* (Saltgrass) - already present and spreading  
*Monanthochloe littoralis* (Shore Grass) not present and will be planted  
*Juncus acutus* (Rush) - not present, to be planted in two clusters of five  
*Suaeda taxifolia* (Sea Lite) - not present, to be planted near *Juncus*

**Coastal Strand and Sand Dune Natural Ecosystem**

*Lupinus chamissonis* (Dune Lupine) not present but to be planted  
*Eriogonum parviflorum* (Dune Buckwheat) not present but to be planted  
*Abronia umbellata* (Sand Verbena), not present but to be planted.  
*Camissonia cheiranthifolia* (Dune Primrose), not present but to be planted.

Ice plant has already been removed, and both *Distichlis spicata* and *Jaumea carnosa* have colonized the ice plant area. The dead leaf litter will be raked away to prevent weeds from establishing next winter.

Two boulders to be placed in coastal strand marsh transition, which will provide habitat for marine life transition, such as sensitive shrew in the future and Lizards

*Lupinus chamissonis* (Dune Lupine) will provide habitat for Silvery Legless Lizard.

Exhibit #13  
CCC-05-CD-04 & CCC-05-RO-03  
(VDH Development, Inc.)

Eriogonum parviflorum (Dune Buckwheat) will provide habitat for future recovery of El Segundo Blue Butterfly.

No landscaping will be done on the side of the houses or between the houses, just a walkway of cobble-gravel. (SCREENING REQUIRED)

Landscaping in front of the house that faces Pacific Avenue will consist of native plant green landscaping, either Sugar Bush, Lemonade Berry, Dune Lupine, Elderberry.

Southern California native plants appropriate to the natural habitat, and shall be consistent with all of the following requirements.

..... copy the Permit information.

Fence will be constructed to protect native plants during construction of the houses.



