

CONSENT CEASE AND DESIST ORDER NO. CCC-06-CD-12

1.0 Pursuant to its authority under Public Resources Code Section 30810, the California Coastal Commission (hereinafter "Commission") hereby authorizes and orders the Tennis Estates Homeowners Association, all its successors, assigns, employees, agents, and contractors, and any persons acting in concert with any of the foregoing (hereinafter, "Respondent") to:

- 1) Cease and desist from performing any unpermitted development on property located at Orange County Assessor's Parcel No. 178-601-64, Tennis Estates, City of Huntington Beach (hereinafter "Subject Property"), including, but not limited to, removal or trimming of trees that support active or inactive heron or egret nesting or roosting areas,
- 2) Refrain from conducting any future development on the Subject Property not authorized by a Coastal Development Permit or this Consent Cease and Desist Order (hereinafter "Consent Order"),
- 3) Cease and desist from undertaking any unpermitted development (as that term is used in the Coastal Act), including, but not limited to, any development which would have the effect of removing, disturbing, or harassing herons or egrets, themselves, and of removing or disturbing active heron or egret nests.
- 4) Plant three trees (*Pinus halepensis* (Aleppo Pine)) in a similar location to the tree that Respondent removed without Coastal Act authorization.
 - a. Within 14 days of issuance of the Consent Order, Respondent agrees to submit, for the review and approval of the Executive Director, a plan describing the species and size of the trees to be planted and the location on the Subject Property where the trees will be planted. The plan shall indicate that the trees to be planted will consist of the most mature trees that can feasibly be planted in this location. The plan shall be prepared by a qualified ecologist, biologist, or arborist (hereinafter, "qualified specialist"). The Executive Director may require revisions to this and any other deliverables required under this Consent Order, and Respondent agrees to revise and resubmit any such deliverables in compliance with the schedule set forth in this Consent Order. If Respondent does not agree with the revisions requested by the Executive Director, Respondent may request an opportunity to discuss the proposed revisions with Commission staff.
 - b. Within 14 days of written approval of the plan by the Executive Director, Respondent agrees to plant the trees in the approved location. The trees shall be planted using accepted planting procedures required by the qualified specialist. Such planting procedures may suggest that planting would best occur during a certain time of the year. If so, and if this necessitates a change

in the planting schedule, the 14 day deadline to implement the planting may be extended as provided for under the provisions of Section 10.0, herein.

- c. Within 14 days of completion of the planting of the trees, Respondent agrees to submit, for the review and approval of the Executive Director, a report documenting the planting. The report shall include a summary of dates when work was performed and photographs that clearly show all portions of the Subject Property relevant to 1) the original tree removal, 2) the newly planted trees, and 3) the location, type and size of the tree that was planted.
- d. Respondent agrees to ensure the establishment of the trees by providing adequate watering, fertilization, and other activities as recommended by the qualified specialist.
- e. Following tree removal and trimming at the Tennis Estates heronry, Respondent agrees to five years of monitoring the Subject Property to follow the status and recovery of this heron and egret colony. Respondent agrees to submit a monitoring plan to the Executive Director for review and approval by December 15, 2006. Respondent shall submit a monitoring report to the Executive Director for review and approval on an annual basis for a period of five years. The reports must be submitted by October 1st of each year with the first monitoring report due October 1, 2007, and subsequent reports due October 1, 2008, October 1, 2009, October 1, 2010, and October 1, 2011. The heron and egret monitoring and reporting must be conducted by a qualified avian biologist/resource specialist reasonably approved by the Executive Director. The monitoring program must follow protocols that will provide information on the size, distribution, and productivity of the heron and egret roosting and nesting colony. The monitoring procedure must include the following:
 1. Monitoring must occur minimally every two months between December and September of each year.
 2. Each monitoring session will include total bird counts, species counts, and behavioral observations (e.g. colony arrivals and departures on a species basis, compass heading of arrivals and departures, courting activities, nest building, incubating eggs, etc.). Once nesting has begun, observations must also include active nest counts per species, presence and number of chicks per nest, chick feeding, and fledgling success rates.
 3. Photographs will be taken each monitoring session and nest sketches will be made once active nesting begins. Sketch details will include location (tree) and nest identification (each nest will be assigned a unique number). Notes accompanying sketches will include species identification per nest and nest status (e.g. parents incubating egg (s), parents caring for chick, etc.). All nests will be monitored through the season to measure nest survivorship.

- f. At the end of the five-year period, Respondents shall submit a final detailed report prepared by a qualified resource specialist for the review and approval of the Executive Director. If this report indicates that the planting of the trees has in part, or in whole, been unsuccessful at mitigating the effects that the unpermitted tree removal and trimming had on the heron and egret colony, based on the approved planting plan, Respondents shall submit a revised or supplemental plan to compensate for those portions of the original program that were not successful. The Executive Director shall determine if the revised or supplemental planting plan must be processed as a CDP, a new Restoration Order, or a modification of these Consent Orders.
- g. All plans, reports, photographs and any other materials required by these Consent Orders and all notices or other correspondence related to these Consent Orders shall be sent to:

California Coastal Commission
Headquarters Enforcement Program
Attn: Aaron McLendon
45 Fremont Street, Suite 2000
San Francisco, California 94105
(415) 904-5220
Facsimile (415) 904-5235

With a copy sent to:
California Coastal Commission
Attn: Andrew Willis
200 OceanGate, 10th Floor
Long Beach, CA 90802
(562) 590-5071
Facsimile (562) 590-5084

- 1.2 Through the execution of this Consent Order, Respondent agrees to comply with all the terms and conditions of this Consent Order

2.0 PERSONS SUBJECT TO THE ORDER

The Tennis Estates Homeowners Association, including all its successors, assigns, employees, agents, and contractors, and any persons acting in concert with any of the foregoing are subject to all the requirements of this Consent Order. Tennis Estates Homeowners Association agrees to undertake the work required herein, and to direct all employees, agents and contractors, and all persons acting in concert with any of the foregoing, to undertake such work in compliance with this Consent Order.

3.0 IDENTIFICATION OF THE PROPERTY

The property that is the subject of this Consent Order is described as follows:

An approximately four-acre lot within the Tennis Estates residential complex seaward of Humboldt Drive and Saybrook Lane, adjacent to Huntington Harbor, Orange County Assessor's Parcel No. 178-601-64, City of Huntington Beach, Orange County.

4.0 DESCRIPTION OF ALLEGED COASTAL ACT VIOLATION

Unpermitted removal of major vegetation consisting of complete removal of one pine tree and removal of several large limbs of other pine trees that supported active Great Blue Heron, Great Egret, and Snowy Egret nesting and roosting.

5.0 COMMISSION JURISDICTION

The Commission has jurisdiction over resolution of this alleged Coastal Act violation pursuant to Public Resources Code Section 30810. Respondent agrees to not contest the Commission's jurisdiction to issue or enforce this Consent Order.

6.0 WAIVER OF DEFENSES

In light of the intent of the parties to resolve these matters in settlement and in a desire to resolve this matter amicably, Respondent has waived its right to contest the legal and factual bases and the terms and issuance of this Consent Order, which are based on the allegations of Coastal Act violations contained in the "Notice of Intent to Commence Cease and Desist and Restoration Order Proceedings", dated July 21, 2006 (hereinafter, "NOI"). Specifically, Respondent waives its right to present defenses or evidence to contest the issuance or enforcement of the Consent Order at a public hearing.

7.0 EFFECTIVE DATE AND TERMS OF THE ORDER

The effective date of this Consent Order is the date this Consent Order is approved by the Commission. This Consent Order shall remain in effect permanently unless and until rescinded by the Commission, but shall not prevent Respondent from proceeding with any development properly authorized by a Coastal Development Permit.

8.0 FINDINGS

This Consent Order is issued on the basis of the findings adopted by the Commission on November 15, 2006, as set forth in the attached document entitled "Findings for Cease and Desist Order No. CCC-06-CD-12." The activities authorized and required in this Consent Order are consistent with the resource protection policies set forth in Chapter 3 of the Coastal Act and the City of Huntington Beach Local Coastal Program.

9.0 SETTLEMENT/COMPLIANCE OBLIGATION

Strict compliance with this Consent Order by all parties subject thereto is required. Failure to comply with any term or condition of this Consent Order, including any deadline contained in this Consent Order, unless the Executive Director grants an extension under 10.0, will constitute a violation of this Consent Order and will result in Respondent being liable for stipulated penalties in the amount of \$500 per day per violation. Respondent agrees to pay stipulated penalties within 15 days of receipt of

written demand by the Commission for such penalties regardless of whether Respondent has subsequently complied. If Respondent violates this Consent Order, nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of the Commission to seek any other remedies available, including the imposition of civil penalties and other remedies pursuant to Public Resources Code Sections 30821.6, 30822 and 30820 as a result of the lack of compliance with the Consent Order and for the underlying Coastal Act violations as described herein.

10.0 DEADLINES

Prior to the expiration of any of the deadlines established by this Consent Order, Respondent may request from the Executive Director an extension of the deadline. Such a request shall be made in writing 10 days in advance of the deadline and directed to the Executive Director in the San Francisco office of the Commission. The Executive Director shall grant an extension of a deadline upon a showing of good cause, if the Executive Director determines that Respondent has diligently worked to comply with its obligations under this Consent Order, but cannot meet the deadline due to unforeseen circumstances beyond its control.

11.0 SITE ACCESS

Respondent agrees to provide Commission staff and staff of any agency having jurisdiction over the work being performed under this Consent Order with access to the Subject Property at all reasonable times. Nothing in this Consent Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Commission and other relevant agency staff may enter and move freely about the following areas: (1) the portions of the Subject Property on which the violations are located, (2) any areas where work is to be performed pursuant to this Consent Order or pursuant to any plans adopted pursuant to this Consent Order, (3) adjacent areas of the property, and (4) any other area where evidence of compliance with this Consent Order may lie, as necessary or convenient to view the areas where work is being performed pursuant to the requirements of this Consent Order or evidence of such work is held, for purposes including but not limited to inspecting records, operating logs, and contracts relating to the Subject Property and overseeing, inspecting, documenting, and reviewing the progress of Respondent in carrying out the terms of this Consent Order.

12.0 GOVERNMENT LIABILITIES

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

13.0 WAIVER OF RIGHT TO APPEAL AND SEEK STAY

Persons against whom the Commission issues a Cease and Desist and/or Restoration Order have the right pursuant to Section 30803(b) of the Coastal Act to seek a stay of the order. However, pursuant to the agreement of the parties as set forth in this Consent Order and in the interest of avoiding any adverse proceedings, Respondent agrees to waive whatever right it may have to seek a stay or to challenge the issuance and enforceability of this Consent Order in a court of law.

14.0 SETTLEMENT OF CLAIMS

The Commission and Respondent agree that this Consent Order settles their monetary claims for relief for those violations of the Coastal Act alleged in the NOI occurring prior to the date of this Consent Order, (specifically including claims for civil penalties, fines, or damages under the Coastal Act, including Sections 30805, 30820, and 30822), with the exception that, if Respondent fails to comply with any term or condition of this Consent Order, the Commission may seek monetary or other claims for both the underlying violations of the Coastal Act (in which case Respondent may assert all defenses to these alleged violations) and for the violation of this Consent Order (in which case Respondent has agreed not to challenge the issuance or enforceability of this Consent Order). In addition, this Consent Order does not limit the Commission from taking enforcement action due to Coastal Act violations at the subject property other than those that are the subject of the NOI.

15.0 SUCCESSORS AND ASSIGNS

This Consent Order shall run with the land binding Respondent and all successors in interest, heirs, assigns, and future owners of the property. Respondent shall provide notice thereof to all its successors and assigns.

16.0 MODIFICATIONS AND AMENDMENTS

Except as provided in Section 10.0, this Consent Order may be amended or modified only in accordance with the standards and procedures set forth in Section 13188(b) of the Commission's administrative regulations.

17.0 GOVERNMENTAL JURISDICTION

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

18.0 LIMITATION OF AUTHORITY

18.1 Except as expressly provided herein, nothing in this Consent Order shall limit or restrict the exercise of the Commission's enforcement authority pursuant to Chapter 9 of the

Coastal Act, including the authority to require and enforce compliance with this Consent Order.

18.2 Correspondingly, Respondent has entered into this Consent Order and waived its right to contest the factual and legal basis asserted by the Commission for issuance of this Consent Order, and the enforcement thereof according to its terms. Respondent has agreed not to contest the Commission's jurisdiction to issue and enforce this Consent Order pursuant to the terms of this Consent Order. However, Respondent's agreement is not an admission of liability of wrongdoing.

19.0 INTEGRATION

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

20.0 STIPULATION

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

IT IS SO STIPULATED AND AGREED:
On behalf of Respondent:


Ron Moyer, President, JAMES BUCHANAN
Tennis Estates Homeowners Association

08-03-2009
Date

Executed in San Francisco on behalf of the California Coastal Commission:


Peter Douglas, Executive Director

9/9/09
Date