

## CALIFORNIA COASTAL COMMISSION

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

**Item W 12**

**Staff:** Aaron McLendon-SF  
**Staff Report:** March 29, 2006  
**Hearing Date:** April 12, 2006

**STAFF RECOMMENDATIONS AND FINDINGS FOR CONSENT AGREEMENT AND AMENDMENTS TO CEASE AND DESIST AND RESTORATION ORDERS****CONSENT AGREEMENT AND AMENDMENT TO CEASE AND DESIST ORDER:**

CCC-04-CD-09-A

**CONSENT AGREEMENT AND AMENDMENT TO RESTORATION ORDER:**

CCC-04-RO-03-A

**RELATED VIOLATION FILE:**

V-5-01-045

**PROPERTY LOCATION:**

Lot G (a dedicated and deed restricted public open space lot) and Lot 41 of Tract 32184 in the Palisades Highlands area of Pacific Palisades/Santa Monica Mountains, in the City of Los Angeles

**PERSONS SUBJECT TO THESE ORDERS:**

Joseph Fryzer

**AGENT/REPRESENTATIVE:**

Steven Siemens, Esq.  
Russ August & Kabat

**PROPERTY OWNER:**

Headland Properties Associates, LP

**VIOLATION DESCRIPTION:**

Unpermitted development and development in violation of the terms and conditions of an existing coastal development permit, including: 1) construction of an approximately 1,040 cubic yard capacity debris basin, 2) demolition of the unpermitted basin by removal of a concrete lining and filling approximately half of the unpermitted basin with earth, creating an extension of a flat building pad, and 3) placement of grass turf, palm trees, sand, fencing, and concrete paving on the filled

basin/building pad extension, creating a small, private golf pitching and putting area. This development violated the terms and conditions of Coastal Development Permit A-381-78 (as amended) and a recorded open space deed restriction.

**SUBSTANTIVE FILE DOCUMENTS:**

1. Cease and Desist Order file No. CCC-04-CD-09 (Fryzer)
2. Restoration Order file No. CCC-04-RO-03 (Fryzer)
3. Consent Cease and Desist Order file No. CCC-04-CD-08 (Headlands)
4. Consent Restoration Order file No. CCC-04-RO-02 (Headlands)
5. Coastal Development Permit A-381-78, as amended

**CEQA STATUS:**

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

**I. SUMMARY OF STAFF RECOMMENDATION**

The proposed Consent Agreement and Cease and Desist Order Amendment No. CCC-04-CD-09-A and Restoration Order Amendment No. CCC-04-RO-03-A ("Consent Agreement and Amendments") will modify and remove some existing, obsolete provisions from the original orders and append new, mutually acceptable language to the orders that will settle all Coastal Act related claims, including claims for monetary fines and penalties under Chapter 9 of the Coastal Act. Specifically, through the Consent Agreement and Amendments, Joseph Fryzer, the person subject to these orders ("Respondent"), has agreed to pay a monetary settlement to resolve remaining Coastal Act claims, and has agreed to not contest the issuance or enforceability of these amendments or the amended orders.

The violations that are the subject of these proceedings occurred on Lot G and Lot 41 of Tract 32184, in the Pacific Palisades area of the City of Los Angeles, which are owned by Headlands Properties Associates, LP ("HPA"). To resolve the Coastal Act violations and require restoration of the properties, on September 8, 2004, the Commission approved orders to both the property owner and to the adjacent property owner who conducted a majority of the violations: Consent Cease and Desist Order No. CCC-04-CD-08 and Consent Restoration Order No. CCC-04-RO-02 to the property owner, HPA,

and Cease and Desist Order No. CCC-04-CD-09 and Restoration Order No. CCC-04-RO-03 to Respondent. The adopted findings for the September 8, 2004 staff report and Orders are attached as Exhibit #1, and are hereby incorporated to this staff report.

Prior to the September 2004 hearing, HPA agreed to settle the violation through the Consent Cease and Desist and Restoration Orders, and agreed to voluntarily both remedy the violation and pay a penalty. These orders were approved by the Commission at the September 2004 hearing. HPA subsequently restored the site as described below, and paid the agreed upon penalty amount. At the time, Respondent did not settle the matter or agree to a Consent Order, and therefore did not participate in the restoration of the site and did not pay fines and penalties under Chapter 9 of the Coastal Act. Therefore, the Commission issued unilateral Orders against Respondent, which required him to cease and desist from conducting further unpermitted development and to cooperate and not impede the restoration work that HPA agreed to undertake under their Consent Orders.

Because Respondent did not resolve the violations through Consent Orders, the issue of fines and penalties under Chapter 9 of the Coastal Act remained unresolved. However, over the last several months, Respondent has worked closely with staff to resolve the outstanding issues regarding the violations and has agreed to pay fines and penalties through these amendment proceedings.

As of the date of this staff report, HPA has undertaken restorative grading across the subject property and has performed revegetation with native plant species endemic to this portion of the Santa Monica Mountains. In addition, Respondent is in compliance with all requirements of the original orders. The payment of a monetary settlement, therefore, resolves the remaining claims against Respondent for violations of the Coastal Act.

Staff recommends approval of these amendments since they would resolve this case amicably and to allow such resolution without need for any litigation.

## **II. MODIFICATION OF CEASE AND DESIST AND RESTORATION ORDERS**

The Commission may, after public hearing, modify a cease and desist or restoration order that it has issued. The requirements to qualify for and procedures for modifications of Commission Cease and Desist Orders and Restoration Orders are governed in Title 14, Division 5.5, Section 13188 and Section 13197 of the California Code of Regulations, which provide for public hearings to be held on such modifications.

## **III. 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 and Section 13195 of the California Code of Regulations.

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 the Commission typically gives Staff the opportunity to respond to the testimony and to any new evidence introduced.

The Commission will receive, consider, and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceedings, as specified in 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.

#### **IV. STAFF RECOMMENDATIONS**

Staff recommends that the Commission adopt the following two motions:

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

***I move that the Commission issue Consent Cease and Desist Order Amendment No. CCC-04-CD-09-A 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 Amendment. The motion passes only by an affirmative vote of a majority of Commissioners present.

##### **1(c) Resolution to Issue a Cease and Desist Order Amendment**

The Commission hereby issues Consent Cease and Desist Order Amendment No. CCC-04-CD-09-A, 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 non-compliance with the terms and conditions of CDP A-381-78, as amended.

**2(a) Motion**

***I move that the Commission issue Consent Restoration Order Amendment No. CCC-04-RO-03-A 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 Amendment. The motion passes only by an affirmative vote of a majority of Commissioners present.

**2(c) Resolution to Issue a Restoration Order Amendment**

The Commission hereby issues Restoration Order Amendment No. CCC-04-RO-03-A, as set forth below, and adopts the findings set forth below on the grounds that 1) development has occurred without a coastal development permit, 2) the development is inconsistent with the Coastal Act, and 3) the development is causing continuing resource damage.

**V. FINDINGS FOR CONSENT AGREEMENT AND CEASE AND DESIST ORDER AMENDMENT NO. CCC-04-CD-09-A AND CONSENT RESTORATION ORDER AMENDMENT CCC-04-RO-03-A**

Staff recommends the Commission adopt the following findings of fact in support of its action. As noted above, the Findings for the original orders issued in September 2004, Cease and Desist Order No. CCC-04-CD-09 and Restoration Order No. CCC-04-RO-03, are hereby incorporated by reference and attached hereto as Exhibit #1. In that original action, the Commission found that the development subject to these proceedings 1) occurred without a Coastal Development Permit and occurred in non-compliance with the terms and conditions of CDP A-381-78, as amended, 2) was inconsistent with the Coastal Act, 3) and was causing continuing resource damage. Therefore, the Commission has found that the criteria for issuance of a cease and desist order and restoration order under Section 30810 and Section 30811 of the Coastal Act have been met.

**A. Description of Unpermitted Development**

The unpermitted development that is the subject of these proceedings includes 1) construction of an approximately 1,040 cubic yard capacity debris basin, 2) demolition of the unpermitted basin by removal of a concrete lining and filling approximately half of the unpermitted basin with earth creating an extension of a flat building pad, and 3) placement of grass turf, palm trees, sand, fencing, and concrete paving on the filled basin/building pad extension, creating a small, private golf pitching and putting area.

**B. BASIS FOR MODIFICATION OF CEASE AND DESIST AND RESTORATION ORDERS**

The statutory authority for issuance of the proposed Consent Agreement and Cease and Desist and Restoration Order Amendments is provided in §30810 and §30811 of the Coastal Act and California Code of Regulations, Title 14, §13188 and §13197, which state, in relevant part:

Cease and Desist Order (Coastal Act §30810)

- 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 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 (Coastal Act §30811)

*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 [the Coastal Act], and [c] the development is causing continuing resource damage.*

Modification of Cease and Desist Orders (California Code of Regulations §13188)

- (b) The commission, after public hearing, may rescind or modify a cease and desist order that it has issued. A proceeding for such a purpose may be commenced by (1) any person to whom the cease and desist order is directed, (2) the executive director or (3) any two members of the commission.*

Modification of Restoration Orders (California Code of Regulations §13197)

*The commission, after public hearing, may rescind or modify a restoration order that it has issued. A proceeding for such a purpose may be commenced by (a) any person to whom the restoration order is directed, (b) the executive director or (c) any two members of the commission.*

In the present matter, both Respondent (as the person to whom the Cease and Desist and Restoration Orders was directed) and the Executive Director seek Commission

approval of the proposed Consent Agreement and Amendments. As described above, the Commission has already found that the criteria for issuance of cease and desist and restoration orders for this matter have been met. The Consent Agreement and Amendments that will modify the previously issued orders settle all outstanding issues related to the subject Coastal Act violations, including settling the Commission's claims for penalties under Chapter 9 of the Coastal Act.

Therefore, staff recommends that the Commission issue the Consent Agreement and Cease and Desist Order Amendment No. CCC-04-CD-09-A and Restoration Order Amendment No. CCC-04-RO-03-A attached as Exhibit 3 of this staff report.

### **Exhibit List**

[Click on this link to go to the exhibits.](#)

#### **Exhibit**

#### **Number      Description**

1.    Adopted Findings for Cease and Desist Order No. CCC-04-CD-09 and Restoration Order No. CCC-04-RO-03.
2.    Addendum to Cease and Desist Order No. CCC-04-CD-09 and Restoration Order No. CCC-04-RO-03 for the Commission Meeting of September 8, 2004.
3.    Consent Agreement and Cease and Desist Order Amendment No. CCC-04-CD-09-A and Restoration Order Amendment No. CCC-04-RO-03-A.