

CALIFORNIA COASTAL COMMISSION

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Items T 5a, 5b

Staff: Christine Chestnut-SF
Staff Report: July 27, 2006
Hearing Date: August 8, 2006

STAFF REPORT AND FINDINGS FOR CONSENT CEASE AND DESIST AND CONSENT RESTORATION ORDERS

**CEASE AND DESIST ORDER AND
RESTORATION ORDER:**

CCC-06-CD-03 and CCC-06-RO-04

RELATED VIOLATION FILE:

V-3-06-008

PROPERTY LOCATION:

The property is located at 1550 through 1590
Laguna Drive in Oceano, San Luis Obispo County
(**Exhibit 1**).

DESCRIPTION OF PROPERTY:

0.36-acre property identified by San Luis Obispo
County Assessor as APN 061-061-008.

PROPERTY OWNERS:

HMW Coastal Ventures, LLC

VIOLATION DESCRIPTION:

Unpermitted grading of, and removal of major
vegetation from, environmentally sensitive coastal
dune and wetland habitat; placement of vegetation
removed from the property onto Commission-
directed restoration sites onto adjacent public
property.

SUBSTANTIVE FILE DOCUMENTS:

1. Cease and Desist Order and Restoration
Order Files No. CCC-06-CD-03 and
CCC-06-RO-04;
2. Exhibits 1 through 8.

CEQA STATUS:

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

I. SUMMARY OF STAFF RECOMMENDATION

The property at issue in this enforcement matter is a 0.36-acre property located at 1550-1590 Laguna Drive, in the City of Oceano in San Luis Obispo County, identified by the San Luis Obispo County Assessor's Office as APN 061-061-008 ("property"). The property is owned by HMW Coastal Ventures, LLC ("HMW"). The entire property is composed of rare and valuable coastal dune and dune slack wetland areas. The Commission's staff biologist, Dr. John Dixon, has determined that the entire property constitutes environmentally sensitive habitat area (ESHA).

On July 7, 2004, HMW submitted a Coastal Development Permit (CDP) application, seeking authorization for the construction of five single-family residences on the property. Upon review of a Wetland Delineation Report, submitted by HMW as part of its application, and an ESHA determination by the Commission's biologist, staff contacted HMW to discuss the need to address and protect the sensitive habitats through wetland setbacks and other permit conditions. HMW, however, withdrew the application before the Commission could act on it.

In March, 2006, A contractor hired by HMW cleared the property of all vegetation, which included native willows, grasses, and brush, and graded the property, completely destroying the natural topography of the site. In addition, materials removed from the site were dumped onto adjacent public property that is currently being restored by the Oceano Community Services District (OCSD) as required by a condition of a separate and distinct Commission-issued CDP, impacting the restoration areas. Staff has worked cooperatively with HMW to resolve these violations effectively and amicably through the proposed Consent Cease and Desist and Consent Restoration Orders ("Consent Orders"), and staff greatly appreciates HMW's efforts. Through the Consent Orders, HMW has agreed not only to 1) restore the property to the condition it was in prior to the violations, but also to 2) reimburse OCSD for necessary repairs to the adjacent restoration sites that were impacted by the violations and 3) conduct an off-site dune and/or wetland mitigation project in the area to compensate for the temporal losses incurred as a result of the violations. HMW has also stipulated to the recordation of a Notice of Violation in this matter and will pay \$50,000 in penalties.

The unpermitted grading of the property significantly disrupted the coastal dune and wetland areas therein, which constitute ESHA as defined by Coastal Act Section 30107.5, altering these natural landforms and impacting the ecosystems that they support. Moreover, the unpermitted removal of vegetation from the property destabilized the dune areas, impacting the larger dune system of which they are a part, and impacted the biological productivity and quality of the wetlands. The vegetation that was removed from the property was deposited onto adjacent property that was undergoing dune restoration, in compliance with a condition of CDP No. 3-04-059, issued to OCSD. Two separate restoration sites were impacted by the unpermitted placement of the removed materials.

The cited activities undertaken on the property constitute development as defined in Coastal Act Section 30106 and were undertaken without a CDP, in violation of Coastal Act Section 30600. The property is located within the Commission's original jurisdiction, on historic tidelands associated with the confluence of Arroyo Grande Creek, Meadow Creek, and the Pacific Ocean. Thus, the Commission has the authority, under Coastal Act Section 30810, to issue a cease and desist order in this matter. Furthermore, the unpermitted development is inconsistent with the policies of Chapter 3 of the Coastal Act, including Sections 30231, 30240, and 30251, and, if unabated, the violations will cause continuing resource damage, as defined in Section 13190 of the Commission's regulations. Consequently, the Commission has the authority, under Coastal Act Section 30811, to issue a restoration order in this matter.

Staff recommends that the Commission approve Consent Cease and Desist Order CCC-06-CD-03 and Consent Restoration Order CCC-06-RO-04 as described below, directing HMW to: 1) cease all unpermitted development activities; 2) restore the impacted coastal dune and wetland areas of the property; 3) mitigate for the losses resulting from the violations; 4) reimburse OCSD for impacts to adjacent property; 5) stipulate to the recordation of a Notice of Violation under Coastal Act Section 30812; and 6) pay penalties. Staff believes that this is an excellent resolution, which addresses the impacts caused by the unpermitted development activities in a comprehensive and efficient manner.

II. HEARING PROCEDURES: CEASE AND DESIST AND RESTORATION ORDERS

The procedures for a hearing on a proposed Cease and Desist Order and Restoration Order are set forth in Section 13185 and 13195 of the California Code of Regulations, Title 14 ("14 CCR"), Division 5.5, Chapter 5, Subchapters 8 and 9.

For a Cease and Desist and Restoration Order hearing, the Chair shall announce the matter and request that all alleged violators or their representatives present at the hearing identify themselves for the record, indicate what matters are already part of the record, and announce the rules of the proceeding, including time limits for presentations. The Chair shall also announce the right of any speaker to propose to the Commission, before the close of the hearing, any question(s) for any Commissioner, in his or her discretion, to ask of any other person. Staff shall then present the report and recommendation to the Commission, after which the alleged violator(s) and/or their representative(s) may present their position(s) with particular attention to those areas where an actual controversy exists. The Chair may then recognize other interested persons, after which staff typically responds to the testimony and to any new evidence introduced.

The Commission will receive, consider, and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceedings, as specified in 14 CCR Sections 13185 and 13186, incorporating by reference Section 13065, and Section 13195, incorporating by reference all of the foregoing. 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 and Restoration Orders, either in the form recommended by the Executive Director, or as amended by the Commission. Passage of two separate motions, corresponding to the Cease and Desist Order and the Restoration Order, respectively, per staff recommendation or as amended by the Commission, will result in issuance of the Orders.

III. STAFF RECOMMENDATION

A. Cease and Desist Order

1. Motion

I move that the Commission issue Cease and Desist Order No. CCC-06-CD-03 pursuant to the staff recommendation.

2. Recommendation of Approval

Staff recommends a **YES** vote. Passage of this motion will result in the issuance of Cease and Desist Order CCC-06-CD-03. The motion passes only by an affirmative vote of the majority of Commissioners present.

3. Resolution to Issue Cease and Desist Order

The Commission hereby issues Cease and Desist Order No. CCC-06-CD-03, as set forth below, and adopts the findings set forth below on the grounds that development has occurred without a coastal development permit, in violation of the Coastal Act, and the requirements of the Order are necessary to ensure compliance with the Coastal Act.

B. Restoration Order

1. Motion

I move that the Commission issue Restoration Order No. CCC-06-RO-04, pursuant to the staff recommendation.

2. Recommendation of Approval:

Staff recommends a **YES** vote. Passage of this motion will result in the issuance of Restoration Order CCC-06-RO-04. The motion passes only by an affirmative vote of a majority of Commissioners present.

3. Resolution to Issue Restoration Order:

The Commission hereby issues Restoration Order number CCC-06-RO-04, as set forth below, and adopts the findings set forth below on the grounds that 1) development was conducted on the property without a coastal development permit, 2) the development is inconsistent with the Coastal Act, and 3) the development is causing continuing resource damage.

IV. FINDINGS FOR CONSENT CEASE AND DESIST ORDER CCC-06-CD-03 AND CONSENT RESTORATION ORDER CCC-06-RO-04

A. Description of the Property

The property is a 15,483 square foot parcel located between 1550 through 1590 Laguna Drive in Oceano in San Luis Obispo County (**Exhibit 1**). Before the unpermitted development activities at issue occurred, the entire property consisted of vegetated coastal dunes and wetlands (**Exhibit 2**).¹ The dunes are part of the Oceano dune complex, which is part of the larger Guadalupe-Nipomo dunes complex. The wetland on the property is located in a small dune swale in the southeast region of the property. The Oceano Specific Plan of the certified San Luis Obispo County Local Coastal Program designates the wetlands in this area as Sensitive Resource Area (SRA).²

B. Description of the Unpermitted Development

The unpermitted development at issue in this matter consists of the unpermitted grading of, and removal of major vegetation from, environmentally sensitive coastal dune and wetland habitat, and placement of materials removed from the property onto adjacent restoration and remediation sites established pursuant to a condition of a previously-issued CDP.

C. Permit History

On July 7, 2004, HMW submitted CDP application No. 3-04-042, seeking authorization for the construction of five single-family residences. The wetland delineation report that HMW submitted as part of its application identified a wetland area in the southeastern region of the property (**Exhibit 3**).³ Wetland vegetation was also found in another area of the property, just east of the center of the property. As part of the application review process, the Commission's

¹ Commission permit staff viewed the property on June 22, 2004, before the violations at issue occurred, and determined that the vegetation on the property consisted of dune scrub intermixed with dune slack wetland species.

² Whereas surrounding areas may be subject to regulation under the LCP, the property is located on historic tidelands and, therefore, is subject to Commission, rather than county, jurisdiction.

³ The report evaluated the presence of wetlands as defined in Section 13577 of the Commission's regulations, which states the following:

Wetlands shall be defined as land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes, and shall also include those types of wetlands where vegetation is lacking and soil is poorly developed or absent as a result of frequent and drastic fluctuations of surface water levels, wave action, water flow, turbidity or high concentrations of salts or other substances in the substrate.

staff biologist, Dr. John Dixon, visited the property and determined that the entire property consisted of coastal dune and wetland habitat, and constitutes ESHA. Upon review of the wetland delineation report and Dr. Dixon's ESHA determination, Commission permit staff contacted HMW and discussed the need to address and protect the ESHA through wetland setbacks and other permit conditions.

HMW withdrew its CDP application on February 9, 2005, before the Commission could act on it. No subsequent CDP application has been submitted and, consequently, no CDP has been obtained to authorize any development at the site, including that which is at issue in this enforcement matter.

D. Violation History

On March 16, 2006, Commission permit staff received a report that grading and vegetation removal had occurred on the property and that these activities were impacting an adjacent property. Staff also received photographs of the property, which confirm that all vegetation was removed from the property and that grading activities leveled the property's topography (**Exhibit 4**). Mechanized equipment on the property is visible in the photographs. On March 17, 2006, Commission permit staff contacted HMW by telephone to discuss the violation report. HMW stated that a construction company hired by HMW to conduct weed abatement activities on the property had performed the reported unpermitted development activities. At the request of staff, HMW ceased all unpermitted grading and vegetation removal activities and installed temporary erosion control devices consisting of protective fencing and straw waddles around the perimeter of the property and jute netting to stabilize the graded sand and hydric soil that distinguishes the wetland area. On March 20, 2006, staff received photographs from HMW verifying that the erosion control measures were in place (**Exhibit 5**).

On March 23, 2006, staff spoke with a representative from OCSD regarding impacts caused by the placement of the vegetation removed from the property onto adjacent properties. The unpermitted placement disturbed two areas where restoration was being undertaken by OCSD as required by a condition of a completely separate CDP issued by the Commission to OCSD on February 16, 2005 to OCSD.⁴ In order to address the damage done to the project by this restoration, OCSD has replanted the areas at a 3:1 ratio to account for the greater mortality rate that may result from planting after the optimum planting time. The consultant and engineer hired to manage the restoration has verified that the replanting adequately addressed the impacts, and that long-term monitoring by HMW is not necessary. HMW has, as stated above, stipulated in the Consent Orders to fully reimbursing OCSD for this replanting.

Staff sent a Notice of Violation to HMW on April 5, 2006 and received a letter from HMW on April 17, 2006, in which HMW expressed its willingness to cooperate with staff to resolve the

⁴ The permit authorized OCSD to replace an insufficiently-sized water main. During replacement of a portion of the water main running under Strand Way, temporary access roads were established, as the only feasible way to accommodate normal and emergency services to the surrounding neighborhood (Strand Way is the only means of ingress and egress in this area). The Commission attached a condition to the permit requiring OCSD to restore the coastal dune ESHA impacted by the temporary roads.

violations (**Exhibits 6 and 7**). Since that date, staff has worked with HMW to resolve the violations efficiently and amicably through consent cease and desist and restoration orders. On May 4, 2006, the Executive Director issued a Notice of Intent to Record a Notice of Violation of the Coastal Act and to Commence Cease and Desist and Restoration Order Proceedings, to resolve the violations through formal enforcement actions regardless of the outcome of consent order discussions (**Exhibit 8**). The attorney representing HMW contacted staff on May 16, 2006 and since that date, HMW has worked cooperatively with staff to resolve the violations amicably and efficiently through consent orders. Through the Consent Orders, HMW has also stipulated to the recordation of a Notice of Violation which shall be recorded in the chain of title for this property.

E. Basis for Issuance of Orders

1. Cease and Desist Order

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

(a) If the commission, after public hearing, determines that any person...has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without 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 activities at issue were undertaken by a contractor acting on behalf of HMW, and include grading, removal of major vegetation, and placement of materials onto adjacent public property without a coastal development permit. The activities meet the definition of “development” set forth in Section 30106 of the Coastal Act:

“Development” means, on land, in or under water, the placement of erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code, and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational 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 harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a

timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511). (emphasis added)

Section 30600(a) of the Coastal Act provides:

Except as provided in subdivision (e), and in addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency, any person, as defined in Section 21066, wishing to perform or undertake any development in the coastal zone, other than a facility subject to Section 25500, shall obtain a coastal development permit.

Therefore, the cited activities undertaken on the property constitute development under the Coastal Act and require a CDP. HMW did not obtain a CDP for the development. As indicated above, the site is within the Commission's permit jurisdiction. Therefore, unpermitted development has occurred, and the Commission has the authority under Section 30810 to issue a cease and desist order. HMW does not contest the issuance of Consent Cease and Desist Order No. CCC-06-CD-03.

2. Restoration Order

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

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

a. Development Has Occurred Without a Coastal Development Permit

As previously presented in Section E.1 of this report, the activities at issue in this matter clearly constitute "development" as defined in the Coastal Act and are subject to Coastal Act permitting requirements. Staff has verified, and HMW does not dispute, that the cited development on the property was conducted without a CDP. The following paragraphs provide evidence that the unpermitted development is inconsistent with the Coastal Act and is causing continuing resource damage.

b. The Unpermitted Development is Inconsistent with the Coastal Act

The unpermitted development is inconsistent with the following resource protection policies of Chapter 3 of the Coastal Act:

i. Environmentally Sensitive Habitat Area

Section 30240 of the Coastal Act states:

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

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

The Commission's staff biologist, Dr. John Dixon, evaluated the site and determined that the entire property consisted of coastal dune and wetland habitat. Moreover, based on the definition of environmentally sensitive habitat area (ESHA) in Coastal Act Section 30107.5, he determined that the entire property constitutes ESHA. The property contains a delineated wetland and an additional area containing wetland vegetation. The wetland is located in a swale in the southern region of the property. The swale was impacted when the dunes it is located between were leveled. The wetland vegetation from both areas was also removed. As stated below in Section E.2.b.ii., the unpermitted development rendered the wetland incapable of performing its habitat and water quality functions, which is inconsistent with Coastal Act Section 30240(a).

The wetland on the property is part of the larger Oceano wetland complex, which includes adjacent wetlands around Oceano Lagoon and the mouth of Meadow Creek, both of which are considered ESHA under the certified San Luis Obispo County LCP.⁵ This wetland complex has been historically degraded and fragmented as a result of development in the area. Consequently, any further loss of wetlands in Oceano is a significant issue. The unpermitted development further degraded and fragmented the Oceano wetland complex, impacting adjacent wetlands, which is inconsistent with Coastal Act Section 30240(b).

The property also contains sensitive coastal dunes, vegetated predominantly with dune scrub and dune slack wetland species.⁶ Coastal dune habitat is considered ESHA because both the physical dune habitat and the associated natural community are rare in California and easily disturbed by human activities. The dune complex is a dynamic system, with flora and fauna that have adapted to work within the system. Therefore, the entire dune area is considered ESHA, not solely where dune flora and fauna are located at any given time. The unpermitted grading of, and removal of vegetation from, the dunes on the property significantly disrupted the entire environmentally sensitive dune ecosystem on the property and is therefore inconsistent with Coastal Act Section 30240(a).

The property is located within the Oceano dunes complex, which is part of a much larger system of dunes called the Guadalupe-Nipomo dunes complex. Several rare species have been identified in the Oceano dunes complex, including the threatened Western snowy plover

⁵ San Luis Obispo County LCP, The Land Use and Circulation Elements of the General Plan *Oceano Lagoon, Coastal Dune and Beach Area (SRA)*, Chapter 7.

⁶ Dune slacks are low lying depressions or troughs between dunes. The "slack" area at issue in this matter is the swale located in the southern region of the property.

(*Charadrius alexandrinus nivosus*) and the following endangered species: California least tern (*Sterna antillarum brown*), Marsh sandwort (*Arenaria paludicola*), and Nipomo lupine (*Lupinus nipomoensis*).⁷ Impacts to the dunes on the property can fragment the system, causing more extensive impacts to the whole system and to the flora and fauna that it supports. The unpermitted development is not compatible with the continuance of this sensitive adjacent dune habitat and is, therefore, inconsistent with Coastal Act Section 30240(b).

In addition to the impacts to adjacent dunes and to the Oceano Lagoon area, the unpermitted development on the property also impacted adjacent restoration sites. Piles of large branches and other plant materials, which had been removed from the affected property, were placed onto adjacent publicly-owned property, impacting two areas that were being restored by OCSD as required by a condition of a 2005 CDP. The CDP designated these restoration areas as dune ESHA. The unpermitted placement of the materials impacted adjacent ESHA and is inconsistent with Coastal Act Section 30240(b).

ii. Water Quality

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. (emphasis added)

The unpermitted grading of the property significantly impacted the wetland on the property, and all of the wetland vegetation, located in the delineated wetland area and in another area northwest of the delineated wetland, was removed from the property. As stated above, wetlands are extremely rare and important ecosystems. This habitat was destroyed by the unpermitted development at issue. Furthermore, any alteration of wetland hydrology or removal of wetland vegetation reduces a wetland's ability to function. The unpermitted development has significantly impeded the functioning of this wetland area. Mitigation is necessary in this case, due to the fact that even with proper restoration of the wetland, the interim loss of ecosystem value and water quality functioning will have a significant impact that will be experienced into the future.

iii. Scenic Public Views and Visual Qualities of Coastal Areas

Section 30251 of the Coastal Act provides that:

⁷ With the exception of the Western snowy plover, which is not listed as threatened by the state of California, the designation provided for each species is the federal and state designation.

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas... (emphasis added)

The property contains natural dune formations, dune vegetation and coastal wetlands. The unpermitted development at issue leveled the dunes and stripped the entire area of vegetation, including an entire stand of Arroyo Willows (*Salix lasiolepis*). The bare, flat ground is visually incompatible with the natural dune formations of surrounding areas, and diminishes the scenic values of the community. The unpermitted development is, therefore, inconsistent with Coastal Act Section 30251.

c. The Unpermitted Development is Causing Continuing Resource Damage

The unpermitted development is causing continuing resource damage, as defined in Section 13190 of the Commission's regulations, which states:

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

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

'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. (emphasis added)

The unpermitted grading and removal of vegetation that were conducted on the property destroyed approximately 15,483 square feet of dune and wetland habitat. Appropriate restoration and mitigation are necessary to return the ESHA to its pre-violation condition, and to compensate for the interim losses that occurred, including the temporal loss of wetland functions and the loss of fitness caused by the removal and offsite disposal of all dune and wetland vegetation from the property. The impacts resulting from the unpermitted development activities have caused resource damage as discussed above. In addition, since the situation remains, the resource damage is "continuing" as required by Coastal Act Section 30811.

3. Provisions of CCC-06-CD-03 and CCC-06-RO-04

The unpermitted development significantly disrupted 15,483 square feet of environmentally sensitive coastal dune and wetland habitat, altering the natural landforms and impacting the natural communities that they support. Furthermore, the unpermitted development resulted in

visual impacts and in impacts to the biological productivity and quality of the wetland on the property. The unpermitted development is therefore inconsistent with the resource protection policies of the Coastal Act, and the resource damage caused by the unpermitted development will continue unless the unpermitted activities cease and the property is properly restored. Issuance of the Orders, directing HMW to cease and desist from further unpermitted development on the property and requiring HMW to restore the property and mitigate for temporal losses, is essential to resolving the violations and to ensure compliance with the Coastal Act.

F. California Environmental Quality Act (CEQA)

The Commission finds that the issuance of Consent Commission Cease and Desist Order No. CCC-06-CD-03 and Consent Restoration Order No. CCC-06-RO-04 is exempt from any applicable requirements of the California Environmental Quality Act of 1970 (CEQA) and will not have significant adverse effects on the environment, within the meaning of CEQA. The Consent Orders are exempt from the requirement of preparation of an Environmental Impact Report, based on Sections 15061(b)(2), 15307, 15308 and 15321 of the CEQA Guidelines.

G. Findings of Fact

1. HMW Coastal Ventures, LLC is the owner of the property located between 1550 and 1590 Laguna Drive in the City of Oceano in San Luis Obispo County. The property is identified by the San Luis Obispo County Assessor's Office as APN 061-061-008. The property is located within the Coastal Zone, on historic tidelands which are within the Commission's jurisdiction.
2. Unpermitted development has occurred, including grading of coastal dunes on the property, removal of major vegetation from dune and wetland areas from the property, and placement of materials removed from the property onto restoration sites located on adjacent property.
3. No CDP was issued prior to the undertaking of the development set forth in #2 above, in violation of Coastal Act Section 30600(a). No exemption from the permit requirements of the Coastal Act applies to the unpermitted development set forth in #2 above.
4. The unpermitted development set forth in #2 above is inconsistent with the resource protection policies of the Coastal Act, including Sections 30240, 30231, and 30251.
5. The unpermitted development set forth in #2 above is causing continuing resource damage, within the meaning of Coastal Act Section 30811 and Section 13190 of the Commission's Regulations.
6. On March 16, 2006, staff received a report that unpermitted grading and vegetation removal had occurred on the property.
7. Staff contacted HMW on March 17, 2006 to discuss the violation report. Staff requested that HMW cease from any further unpermitted development on the property and install temporary

erosion control devices around the perimeter of the property and in severely impacted areas. On March 20, 2006, staff received photographs from HMW verifying that the erosion control devices had been installed on the property.

8. On March 23, 2006, staff spoke with a representative from the Oceano Community Services District (OCSO) regarding the impacts to two restoration areas on adjacent properties from the unpermitted development set forth in #2 above.

9. On April 5, 2006, staff sent a Notice of Violation to HMW, notifying HMW of the potential for the recordation of a Notice of Violation in this matter.

10. In an April 17, 2006 letter to staff, HMW expressed its willingness to resolve the violations.

11. On May 4, 2006, the Executive Director issued a Notice of Intent to Commence Cease and Desist and Restoration Order Proceedings and to Record a Notice of Violation to HMW.

12. On May 16, 2006, the attorney representing HMW contacted staff to discuss resolution of the violations through consent cease and desist and restoration orders.

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

CONSENT CEASE AND DESIST ORDER CCC-06-CD-03 AND
CONSENT RESTORATION ORDER CCC-06-RO-04

1.0 CEASE AND DESIST ORDER CCC-06-CD-03

Pursuant to its authority under Public Resource Code § 30810, the California Coastal Commission hereby authorizes and orders HMW Coastal Ventures, LLC, all its employees, agents, and contractors, and any persons acting in concert with any of the foregoing (hereinafter, “Respondents”) to: 1) cease and desist from engaging in any further development on the property identified in Section 5.0 (hereinafter, “property”), unless authorized pursuant to the Coastal Act or to the terms and conditions of these Consent Orders, and 2) restore the property by complying with requirements of Section 3.0 as set forth below. Accordingly, through the execution of these Consent Orders, the Respondents agree to comply with the terms of the above-referenced order and with the following terms and conditions.

2.0 RESTORATION ORDER CCC-06-RO-04

Pursuant to its authority under Public Resource Code §30811, the California Coastal Commission hereby orders and authorizes HMW Coastal Ventures, LLC, all of its employees, agents, and contractors, and any persons acting in concert with any of the foregoing (hereinafter collectively referred to as “Respondents”) to restore the property as described below. The restoration and mitigation required under this Consent Order is necessary to resolve a Coastal Act violation, consisting of the unpermitted grading and removal of major vegetation from Environmentally Sensitive Habitat Areas (ESHA) on property owned by Respondent HMW, located between 1550 and 1590 Laguna Drive in Oceano, San Luis Obispo County (APN 061-061-008) (hereinafter referred to as “the property”). The only activities authorized by this Consent Order are those outlined herein. Any development subject to Coastal Act permitting requirements that is not specifically authorized under this Consent Order requires a Coastal Development Permit. Through the execution of this Consent Order, the Respondents agree to comply with the following requirements:

3.0 TERMS AND CONDITIONS

- 3.1 Within sixty days of issuance of these Consent Orders, the Respondents shall submit for the review and approval of the Executive Director of the Commission a Restoration Plan. The Restoration Plan shall outline all restoration activities, the sampling and analyzing procedure, monitoring and maintenance protocols, contingency plans, and any other activities related to the restoration of the property under these Consent Orders, and shall include the following provisions:

A. General Terms and Conditions

1. The Restoration Plan shall outline the restoration and revegetation of the coastal dune and wetland habitat on the property that was impacted by the removal of vegetation and grading on the property. The Executive Director may require revisions to this and any other deliverables required under this Consent Order, and the Respondents shall revise any such deliverables consistent with the Executive Director's specifications, and resubmit them for further review and approval by the Executive Director, within ten days of receipt of a modification request from the Executive Director. The Executive Director may extend time for submittals upon a written request and a showing of good cause, pursuant to Section 13.0 of this Consent Order.
2. The Restoration Plan shall include a schedule/timeline of restoration activities that identifies the parties who will be conducting the activities (HMW employees, contractors, resource specialists, etc.). Restoration procedures included in the Restoration Plan by the restoration ecologist or resource specialist charged with preparing the plan, as set forth in Section 3.0.A.5 of this Consent Order and included in the final Restoration Plan as approved by the Executive Director, shall be utilized. If these procedures require planting to occur at a certain time of year, the Executive Director may, at the written request of Respondent, extend the deadlines as set forth in Section 3.3 of this Consent Order in order to achieve optimal growth of the dune and wetland vegetation.
3. The Restoration Plan shall include a detailed description of all equipment to be used. Hand tools shall be utilized unless the information contained in the Restoration Plan demonstrates to the satisfaction of the Executive Director that mechanized equipment is needed and will not significantly impact resources protected under the Coastal Act. The Restoration Plan shall designate areas for staging of any construction equipment and materials, including receptacles and temporary stockpiles of graded materials, all of which shall be covered on a daily basis. The Restoration Plan shall include the hours of operation for all equipment and a contingency plan(s) that addresses: 1) impacts from equipment use including disruption of revegetation and/or restorative grading, 2) potential spills of fuel or other hazardous releases that may result from the use of mechanized equipment, and 3) water quality concerns.
4. The Restoration Plan shall identify the location of the disposal site(s) for the disposal of all materials removed from the site and all waste generated during restoration activities pursuant to this Consent Order. Hazardous waste must be disposed of at a suitable licensed disposal facility. If a disposal site is located in the Coastal Zone and is not an existing sanitary landfill, a Coastal Development Permit is required.

5. The Restoration Plan shall be prepared by a qualified restoration ecologist(s) or resource specialist(s), and shall include a description of the education, training, and experience of said ecologist/specialist. A qualified ecologist/specialist for this project shall have experience successfully completing restoration or revegetation (using California native plant species) of coastal dune and wetland habitats, preferably in the Oceano or San Luis Obispo County areas.

B. Restorative Grading Plan

1. The Restorative Grading Plan shall include: 1) graphic representations of both the original topography of the property prior to any grading disturbance that has taken place after January 1, 1972, and the topography after the unpermitted grading activities were conducted, drawn to scale with contours clearly marked and labeled, and 2) a quantitative breakdown of the amount of grading (cut/fill) that was performed and is the subject of this Consent Order. The Restorative Grading Plan shall identify the source and date of all data used to produce this information. The Restorative Grading Plan shall also demonstrate that the proposed restoration of the property will create a successful sand dune system similar to a natural, undisturbed sand dune habitat, that as closely as possible restores the original topography of the property to the condition that existed prior to any disturbance that has taken place after January 1, 1972.
2. If the ecologist/specialist determines that alterations to the original topography, or to any other aspect of the property from its pre-violation state, are necessary to ensure successful restoration of the dune and wetland habitat, the Restorative Grading Plan shall include this proposed topography or a description of the aspects that are proposed to be changed and the methods that shall be used to attain the modified outcome. The Restorative Grading Plan shall include a narrative report, citing any reference sites, case studies, or other data that was used in the analysis and provides reasons for altering the topography from the original contours or changing any other aspect of the pre-violation condition of the property.
3. Implementation of the Restorative Grading Plan shall be undertaken in a way that minimizes the impacts from disturbances to the property caused by the restoration of the impacted areas. Adjacent areas shall not be disturbed by activities related to this restoration project. Prior to initiation of any activities resulting in physical alteration of the property, the disturbance boundary shall be physically delineated in the field using temporary measures such as stakes or colored tape.
4. Respondents shall complete implementation of the Restorative Grading Plan within thirty days of the approval of the Restorative Grading Plan described in

Section 3.1.B of these Consent Orders and to implement the work in compliance with the schedule set forth herein.

C. Revegetation Plan

1. Respondents shall submit a Revegetation Plan. The Revegetation Plan shall include detailed descriptions, including graphic representations, narrative reports, and photographic evidence as necessary, of the vegetation on the property prior to any grading and vegetation removal activities were undertaken on the property after January 1, 1972 and the current state of the property.
2. The Revegetation Plan shall include a detailed description of the methods that shall be utilized to restore the habitat on the property to that which existed prior to the violations, and demonstrate that these methods will result in dune and wetland vegetation on the property with a similar plant density, total cover and species composition as that typical of undisturbed dune/wetland vegetation in the surrounding area within five years from the initiation of revegetation activities. This section shall include a detailed description of reference site(s) including rationale for selection, location, species composition, and history of disturbance from fuel modification activities, fire, etc. The reference sites shall be located as close as possible to the restoration areas, shall be similar in all relevant respects, and shall provide the standard for measuring success of the restoration under these Consent Orders.
3. Revegetation of the site shall be conducted in accordance with all applicable fuel modification guidelines as required by the Oceano Community Services District and/or the San Luis Obispo County Fire Department.
4. The vegetation planted on the property shall consist only of native, non-invasive plants endemic to southern California sand dune communities. All plantings used shall consist of native plants that were propagated from plants as close as possible to the property, in order to preserve the genetic integrity of the flora in and adjacent to the planting area. The Revegetation Plan shall include a map showing the type, size, and location of all plant materials that shall be planted in the Planting Area, all invasive and non-native plants to be removed from the Planting Area, the topography of the site, all other landscape features, and a schedule for installation of plants and removal of invasive and/or non-native plants. The Revegetation Plan shall include Performance Standards to determine the success of the dune/wetland restoration. The Performance Standards shall identify that “x” native species appropriate to the habitat should be present, each with at least “y” percent cover or with a density of at least “y” / square meter.

5. Respondents shall not plant or maintain invasive plant species on the property, which could supplant native plant species. The Revegetation Plan shall demonstrate that all non-native vegetation has been eradicated from the Planting Area prior to any restorative grading or revegetation activities on the property.
6. The Revegetation Plan shall describe the use of artificial inputs, such as watering or fertilization, including the full range of amounts of the inputs that may be utilized. The minimum amount necessary to support the establishment of the plantings for successful restoration shall be utilized. No permanent irrigation system is allowed on the property. Temporary above ground irrigation to provide for the establishment of the plantings is allowed for a maximum of three years or until the Revegetation has become established, whichever occurs first. If, after the three-year time limit, the Revegetation has not established itself, the Executive Director may allow for the continued use of the temporary irrigation system until such time as the Revegetation is established.
7. All planting in the approved Revegetation Plan shall be installed in accordance with the schedule and requirements of the approved Revegetation Plan and no later than 15 days after the completion of the components of the Restorative Grading Plan. The Revegetation shall be planted using accepted planting procedures recommended by the restoration ecologist or resource 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 15 day deadline to implement the Revegetation Plan in Section 3.1.B., may be extended as provided for under the provisions of Section 12.0, herein.
8. The qualified restoration ecologist or resource specialist shall specify the methods to be used after restoration to stabilize the dunes and wetlands and make these areas capable of supporting native vegetation. Such methods shall not include the placement of retaining walls or other permanent structures, grout, geogrid or similar materials. Any soil stabilizers identified for erosion control shall be compatible with native plant recruitment and establishment. The Restoration Plan shall specify the type and location of erosion control measures that shall be implemented on the project site prior to or concurrent with the initial grading operations and maintained until the impacted areas have been revegetated to minimize erosion, sedimentation and pollutant. Such measures shall be provided at all times of the year for at least three years or until the plantings have been established, whichever occurs first, and then shall be removed or eliminated by Respondents.

D. Monitoring and Maintenance

1. The Restoration Plan shall include maintenance and monitoring methodology, including sampling procedures, sampling frequency, and contingency plans to address potential problems with restoration activities or unsuccessful restoration of the area. Monitoring and maintenance activities shall be conducted in a way that does not impact the sensitive resources on the property or on adjacent properties. Any impacts shall be remedied by the Respondents to ensure successful restoration.
 2. Respondents shall submit, on an annual basis for a period of five years (during the same one-month period each year, as specified in the Restoration Plan) a written report, for the review and approval of the Executive Director, prepared by a qualified resource specialist, evaluating compliance with the approved Revegetation Plan. The annual reports shall include further recommendations and requirements for additional restoration activities as necessary in order for the project to meet the objectives of the Revegetation Plan. These reports shall also include photographs taken annually from the same pre-designated locations (annotated to a copy of the site plans) indicating the progress of recovery in the Planting Area.
 3. 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 restoration project has in part, or in whole, been unsuccessful, based on the approved Restoration 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 restoration plan must be processed as a CDP, a new Restoration Order, or a modification of these Consent Orders.
- 3.2 Within sixty days from the issuance of these Consent Orders, Respondents shall submit, for the review and approval of the Executive Director, an Offsite Dune/Wetland Mitigation Plan for offsetting the continuing temporal loss and loss of fitness that has resulted from the Coastal Act violations that are the subject of these Consent Orders.
- A. The plan shall identify an offsite mitigation site within Oceano Dunes or the surrounding area on which 31,000 square feet of dune and/or wetland habitat will be restored and permanently protected. The Offsite Mitigation Plan shall include an analysis by a qualified expert that considers the specific condition of the site including soil, exposure, temperature, moisture, and wind, as well as restoration goals, methods, and monitoring schedule. Alternatively, Respondents could satisfy this offsite mitigation requirement by funding an offsite mitigation project that is consistent with the criteria set forth in this provision and that costs Respondents no more than to \$45,000. Respondents will submit a project description for the project within thirty days of the issuance of this Consent Order,

pursuant to Section 3.5 of this Consent Order for review and approval by the Executive Director. If the Executive Director finds the project to be acceptable and consistent with the Coastal Act and this Consent Order, and the Executive Director approves the project, Respondents will provide the funding pursuant to this provision within ten days of receipt of such approval. If Respondents chose to fund an offsite mitigation project, and the project is reviewed and approved by the Executive Director and implemented by Respondents pursuant to and in compliance with provision 3.2 of this Consent Order, including any applicable deadlines, Provisions 3.2.B, 3.2.C, and 3.2.D do not apply.

- B. Respondents shall undertake the mitigation project pursuant to the approved plan, according to a schedule/timeline set forth in the approved plan. Any extensions of deadlines or modifications of the plan shall be conducted according to Section 13.0 of this Consent Order.
- C. Within thirty days of the completion of mitigation work outlined in the plan, Respondents shall submit a report from the project coordinator indicating that the restoration has taken place in accord with the approved Offsite Mitigation Plan and describing long-term maintenance requirements for the mitigation area. At a minimum, long-term maintenance requirements shall include periodic site inspections (at an interval designated in the plan) by a qualified biologist, ecologist, or resource specialist to assess the success of the restoration efforts, identify maintenance concerns, and recommend solutions to those concerns.
- D. Annually, for five years (at a date or during a month specified by Respondents in the Offsite Mitigation Plan), Respondent or successors in interest shall submit, for the review and approval of the Executive Director, a monitoring report, prepared by a qualified biologist, ecologist, or resource specialist, that certifies the mitigation is in conformance with the approved Offsite Mitigation Plan. The reports shall contain photographic documentation, taken from fixed locations specified in the Offsite Mitigation Plan, of the success of the project.
- E. If the periodic inspections or the monitoring report indicate that the project or a portion thereof is not in conformance with the plan or has failed to meet the goals and/or performance standards specified in the plan, Respondent or successors in interest shall submit a revised or supplemental mitigation plan for review and approval by the Executive Director. The revised plan shall be prepared by a qualified biologist, ecologist, or 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. These measures, and any subsequent measures necessary to carry out the original approved plan, shall be carried out by Respondents, in coordination with the Executive Director until the goals of the original approved plan have been met.

- 3.3 Upon approval of the Restoration Plan by the Executive Director, Respondents shall undertake development in accordance with the approved Restoration Plan. Respondents shall implement the plan completely, pursuant to the approved schedule/timeline as set forth pursuant to Section 3.1.A.2 of this Consent Order, with all work to be completed as early as possible pursuant to recommendations by the consulting resource specialist. The Executive Director may extend this deadline or modify the approved schedule upon a showing of good cause, pursuant to Section 13.0 of this Consent Order.
- 3.4 Within thirty days of the completion of the activities set forth in the Restoration Plan described in Section 3.1, Respondents shall submit to the Executive Director of the Commission a report documenting the restoration of the property. This report shall include a summary of dates when work was performed and photographs that show implementation of the restoration plan, as well as photographs of the property before and after the grading and plantings required by the Restoration Plan have been completed.
- 3.5 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: Christine Chestnut
45 Fremont Street, Suite 2000
San Francisco, California 94105-2219
(415) 904-5220
Facsimile (415) 904-5235

With a copy sent to:
California Coastal Commission
Attn: Sharif Traylor
725 Front Street, Suite 200
Santa Cruz, CA 95060-4508
(831) 427-4863
Facsimile (831) 427-4877

4.0 RECORDATION OF A NOTICE OF VIOLATION

Respondents do not object to recordation by the Executive Director of a notice of violation, pursuant to Public Resources Code Section 30812(b). Accordingly, a notice of violation will be recorded after issuance of this Consent Order. No later than thirty days after the Commission determines that Respondents have fully complied with this Consent Order, the Executive Director shall record a notice of rescission of the notice of violation, pursuant to Section 30812(f). The notice of rescission shall have the same effect of a withdrawal or expungement under Section 405.61 of the Code of Civil Procedure.

5.0 PERSONS SUBJECT TO THESE CONSENT ORDERS

HMW Coastal Ventures, LLC, all its employees, agents, and contractors, and any persons acting in concert with any of the foregoing agree to undertake the work required herein and to comply with all the requirements of these Consent Orders and therefore shall be subject to the requirements herein. In the event that Respondent moves or changes its mailing address, Respondent shall notify Commission staff of its new contact

information, including address and phone number. This notification shall be submitted in writing, to the addresses listed in Section 3.5 of these Consent Orders.

6.0 IDENTIFICATION OF THE PROPERTY

The property that is the subject of these Consent Orders and Notice of Violation is described as follows:

A .36-acre property located at 1550-1590 Laguna Drive in Oceano, San Luis Obispo County (APN 061-061-008).⁸

7.0 DESCRIPTION OF ALLEGED COASTAL ACT VIOLATION

Unpermitted grading and removal of major vegetation in an environmentally sensitive coastal dune and wetland habitat; unpermitted placement of removed materials onto adjacent property, in Commission-directed restoration sites.

8.0 COMMISSION JURISDICTION

The Commission has jurisdiction over resolution of this alleged Coastal Act violation pursuant to Public Resources Code Sections 30810 and 30811. Respondents shall not contest the Commission's jurisdiction to issue or enforce these Consent Orders nor to record the Notice of Violation pursuant to Coastal Act Section 30812.

9.0 WAIVER OF DEFENSES

In light of the intent of the parties to resolve these matters in settlement, Respondents have waived their right to contest the legal and factual bases and the terms and issuance of these Consent Orders, including the allegations of Coastal Act violations contained in the Notice of Intent to Record a Notice of Violation of the Coastal Act and to Commence Cease and Desist Order and Restoration Order Proceedings (NOI) dated May 4, 2006. Specifically, Respondents waive their right to present defenses or evidence at a public hearing to contest the issuance of the Consent Orders or object to the recordation of a Notice of Violation pursuant to Coastal Act Section 30812.

10.0 EFFECTIVE DATE AND TERMS OF THE CONSENT ORDERS

⁸ This property is also described as "Lots 1, 2, 3, 4 and 5 of Block 39, of the Oceano Beach Subdivision No. 2, in the County of San Luis Obispo, State of California, according to the map recorded August 10, 1905 in Book A, Page 150 of Maps," according to a title report submitted to staff by HMW on October 8, 2004.

The effective date of these Consent Orders is the date on which they are approved by the Commission. These Consent Orders shall remain in effect permanently unless and until rescinded by the Commission.

11.0 FINDINGS

The Commission has based these Consent Orders on the findings adopted by the Commission at its June 2006 meeting, as set forth in the attached document entitled “Findings for Consent Cease and Desist Order No. CCC-06-CD-03 and Consent Restoration Order No. CCC-06-RO-04.” The Commission has authorized the activities required in these Consent Orders as being consistent with the resource protection policies set forth in Chapter 3 of the Coastal Act. Respondents agree that the Commission has met all the necessary grounds to issue these Consent Orders under Section 30810 and 30811 of the Coastal Act and Respondents shall not challenge these Consent Orders, including any challenge based on the Commission’s jurisdiction to issue or enforce these Consent Orders.

12.0 SETTLEMENT/COMPLIANCE OBLIGATION

- 12.1 In light of the intent of the parties to resolve these matters in settlement, Respondent HMW has agreed to, and therefore shall, pay a monetary settlement in the amount of \$50,000. Respondent HMW agrees to: 1) make an initial payment of \$25,000 within 90 days of the issuance of these Consent Orders; and 2) make a subsequent payment of the remaining balance of the monetary settlement, \$25,000, within 180 days of the issuance of these Consent Orders. These two penalty payment checks shall be made payable to the “California Coastal Commission/Coastal Conservancy Violation Remediation Account”. Respondent HMW also agrees to reimburse the Oceano Community Services District, according to the invoice submitted by the Oceano Community Services District, for all expenses incurred as a result of the violations at issue. This reimbursement check shall be made payable to the Oceano Community Services District. All payments shall be sent to the attention of Christine Chestnut to the address listed in Section 3.5 of these Consent Orders.
- 12.2 Strict compliance with these Consent Orders by all parties subject thereto is required. Failure to comply with any term or condition of these Consent Orders, including any deadline contained in these Consent Orders, unless the Executive Director grants an extension under Section 13.0, shall constitute a violation of these Consent Orders and shall result in Respondents being liable for stipulated penalties in the amount of \$500 per day per violation. Respondents shall pay stipulated penalties within 15 days of receipt of written demand by the Commission for such penalties regardless of whether Respondents have subsequently complied. If Respondents violate these Consent Orders, 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 Orders and for the underlying Coastal Act violations as described herein.

13.0 DEADLINES

Prior to the expiration of any deadline established by this Consent Order, Respondents may request from the Executive Director an extension of that deadline. Such a request shall be made in writing ten 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 any deadline upon a showing of good cause, if the Executive Director determines that Respondents have diligently worked to comply with its obligations under this Consent Order but cannot meet deadlines due to unforeseen circumstances beyond its control.

14.0 SITE ACCESS

Respondents shall provide access to the property at all reasonable times to Commission staff and any other agency having jurisdiction over the work being performed under these Consent Orders. Nothing in these Consent Orders is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. Respondents shall not prevent Commission staff from entering and moving freely about the property to view the areas where development is being performed pursuant to the requirements of the Consent Orders or areas where information relevant to these Consent Orders is kept for purposes including but not limited to inspecting records, operating logs, and contracts relating to the site and overseeing, inspecting and reviewing the progress of Respondents in carrying out the terms of these Consent Orders.

15.0 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 Respondents in carrying out activities pursuant to these Consent Orders, nor shall the State of California, the Commission or its employees be held as a party to any contract entered into by Respondents or their agents in carrying out activities pursuant to these Consent Orders.

16.0 WAIVER OF RIGHT TO JUDICIAL REVIEW

Persons against whom the Commission issues a Cease and Desist or Restoration Order have the right to seek judicial review of the order. However, pursuant to the agreement of the parties as set forth in these Consent Orders, Respondents hereby waive whatever right it may have to seek judicial review of these Consent Orders in a court of law.

17.0 SETTLEMENT OF CLAIMS

The Commission and Respondents agree that these Consent Orders settle their monetary claims for relief for those violations of the Coastal Act alleged in the NOI occurring prior to the date of these Consent Orders, (specifically including claims for civil penalties, fines, or damages under the Coastal Act, including Sections 30805, 30820, and 30822), with the exception that, if Respondents fail to comply with any term or condition of these Consent Orders, the Commission may seek monetary or other claims for both the underlying violations of the Coastal Act and for the violation of these Consent Orders. In addition, these Consent Orders do not limit the Commission from taking enforcement action due to Coastal Act violations at the property other than those that are the subject of these Consent Orders.

18.0 SUCCESSORS AND ASSIGNS

These Consent Orders shall run with the land, binding Respondents and all successors in interest, heirs, assigns, and future owners of the property. Respondents shall provide notice to all successors, assigns, and potential purchasers of the property of any remaining obligations under these Consent Orders.

19.0 MODIFICATIONS AND AMENDMENTS

Except as provided in Section 13.0, these Consent Orders 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.

20.0 GOVERNMENTAL JURISDICTION

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

21.0 LIMITATION OF AUTHORITY

Except as expressly provided herein, nothing in these Consent Orders 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 these Consent Orders.

22.0 INTEGRATION

These Consent Orders constitute the entire agreement between the parties and may not be amended, supplemented, or modified except as provided in these Consent Orders.

23.0 STIPULATION

Respondents and their representatives attest that they have reviewed the terms of these Consent Orders 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:



ANTHONY E. WELLS, HMW Coastal Ventures, LLC

7/26/06
Date

Executed in Long Beach on behalf of the California Coastal Commission:

PETER DOUGLAS, Executive Director

Date

CCC-06-CD-03 and CCC-06-RO-04
Exhibit List

Exhibit Number	Description
1.	Site map.
2.	Photographs of the property showing its condition prior to the occurrence of the unpermitted development activities.
3.	Report titled, " <i>Cape Cottages Wetland Delineation Report</i> ", prepared for HMW by Dave Hacker and Kate Ballantyne, dated January 8, 2003.
4.	Photographs of the property showing the unpermitted development activities in progress, submitted with the initial violation report on March 17, 2006.
5.	Photographs of erosion control measures installed on the property by HMW.
6.	Notice of Violation sent from staff to HMW, dated April 5, 2006.
7.	Letter to staff from HMW, including two photographs of erosion control measures that were installed on the property by HMW, dated April 17, 2006.
8.	Notice of Intent to Commence Cease and Desist Order and Restoration Order Proceedings and to Record a Notice of Violation, sent to HMW from the Executive Director, dated May 4, 2006.



Exhibit 1: Site Map



Exhibit 2: Aerial (the property is outlined in yellow) and site photographs of the property before the violations occurred.

Cape Cottages Wetland Delineation Report

Prepared for:

Wayne Madden
HMW Coastal Ventures, LLC
124 W. Main Street, #G
Santa Maria, CA 93458

Prepared by:

Dave Hacker
Kate Ballantyne
580 Elena Street
Morro Bay, CA 93442

January 8, 2003

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I. INTRODUCTION

HMW Coastal Ventures, LLC is proposing to develop five residential units on the Cape Cottages property. The property is located at the corner of Surf Avenue and Laguna Drive in Oceano, between existing homes and a lagoon at the mouth of Meadow Creek (see Figures 1 and 2).

This wetland delineation was completed to determine which areas of the property might be subject to US Army Corps of Engineers jurisdiction, under Section 404 of the Clean Water Act. This delineation was also completed to determine which areas meet the definition "wetland" under the California Coastal Act because the property lies within the Coastal Zone.

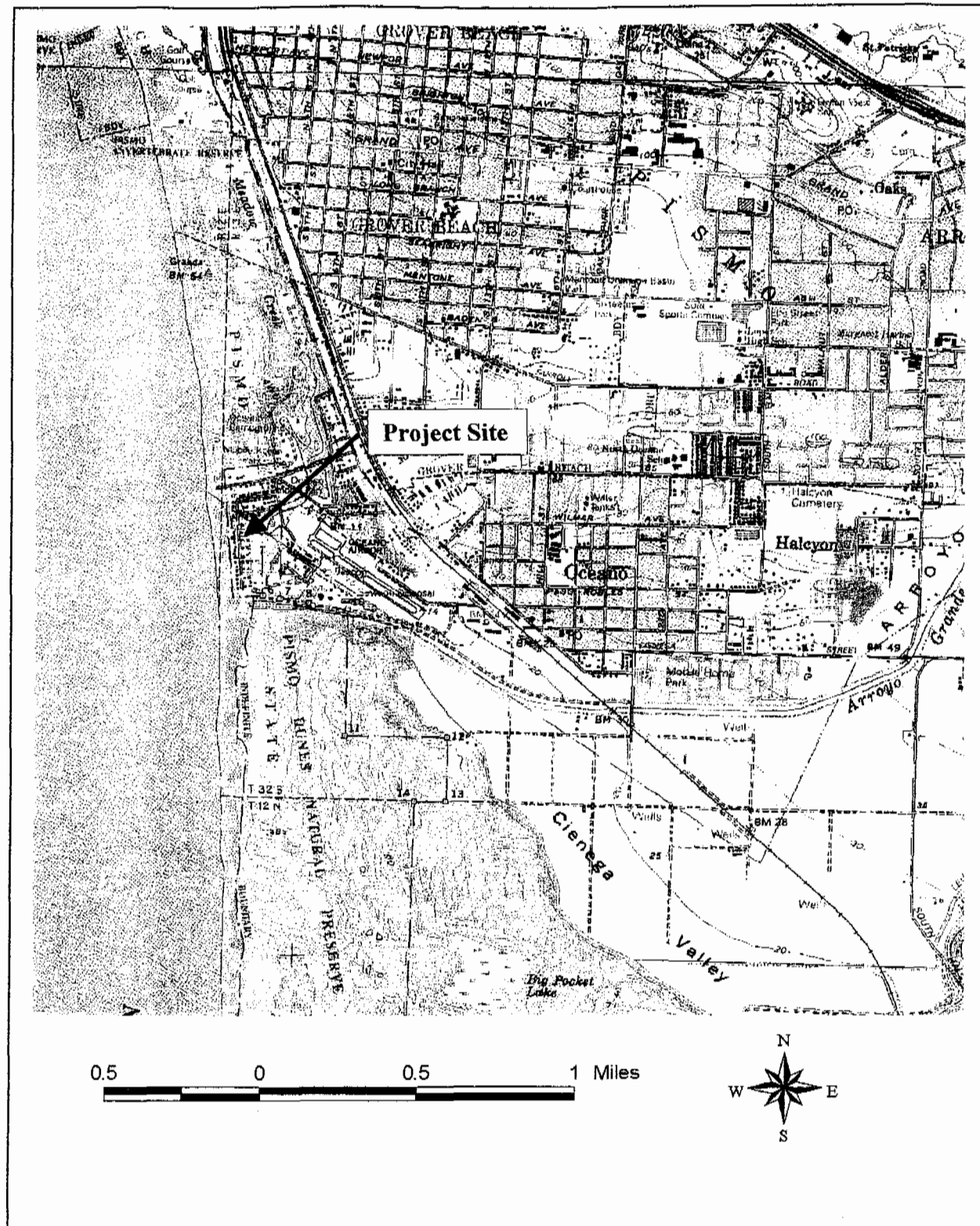
II. METHODS

The 1987 US Army Corps of Engineers routine wetland delineation method (Wetland Training Institute 1995) was followed. Five data points were selected in representative locations. Three data points were excavated in the bottom of the dune swale on the south side of the property. Two data points were selected in the swale on the north side of the property, including one underneath a group of arroyo willows (*Salix lasiolepis*). Refer to Figure 3 for data point locations.

Each data point was assessed to determine if it met any of the following three criteria: hydrophytic vegetation, wetland hydrology, or hydric soils. Sixteen-inch pits were dug at each data point. Hydrologic indicators were sought to determine whether the site met the hydrologic criteria of being saturated or indundated for 5% of the growing season (18 days). Soil indicators sought were specific to sandy soils, including an organic surface horizon, albic soils, or organic streaking. Vegetation received the most detailed analysis.

Vegetation within approximately five feet of each pit was identified to species and assessed to determine whether 50% or more of the dominant species were facultative wetland (FACW), facultative (FAC), and/or obligate wetlands species (OBL). Wetland plant indicator status was obtained from the 1988 list of wetland plants (US Fish and Wildlife Service 1988). If the species was not found on the 1988 list, then the 1996 list was used (US Fish and Wildlife Service 1997). If neither list contained the species, then the delineators' professional judgment (based on experience and familiarity with the species) and on-site observations were used to assign an indicator status. On-site observations consisted of noting a plant's community associations, landscape positions, or morphological adaptations to wet environments.

Iceplant (*Carpobrotus edulis*), coyote brush (*Baccharis pilularis*), and heather goldenbush (*Ericameria ericoides*) were not found on either the 1988 or 1996 list. Both coyote brush and iceplant were known to occur in many upland communities and to sometimes grow in seasonal wetlands, especially during drought periods; these were considered facultative upland species (FACU). Heather goldenbush was known to be a dune scrub and maritime chaparral species and was observed in only dry areas of the site; it was considered an upland species.

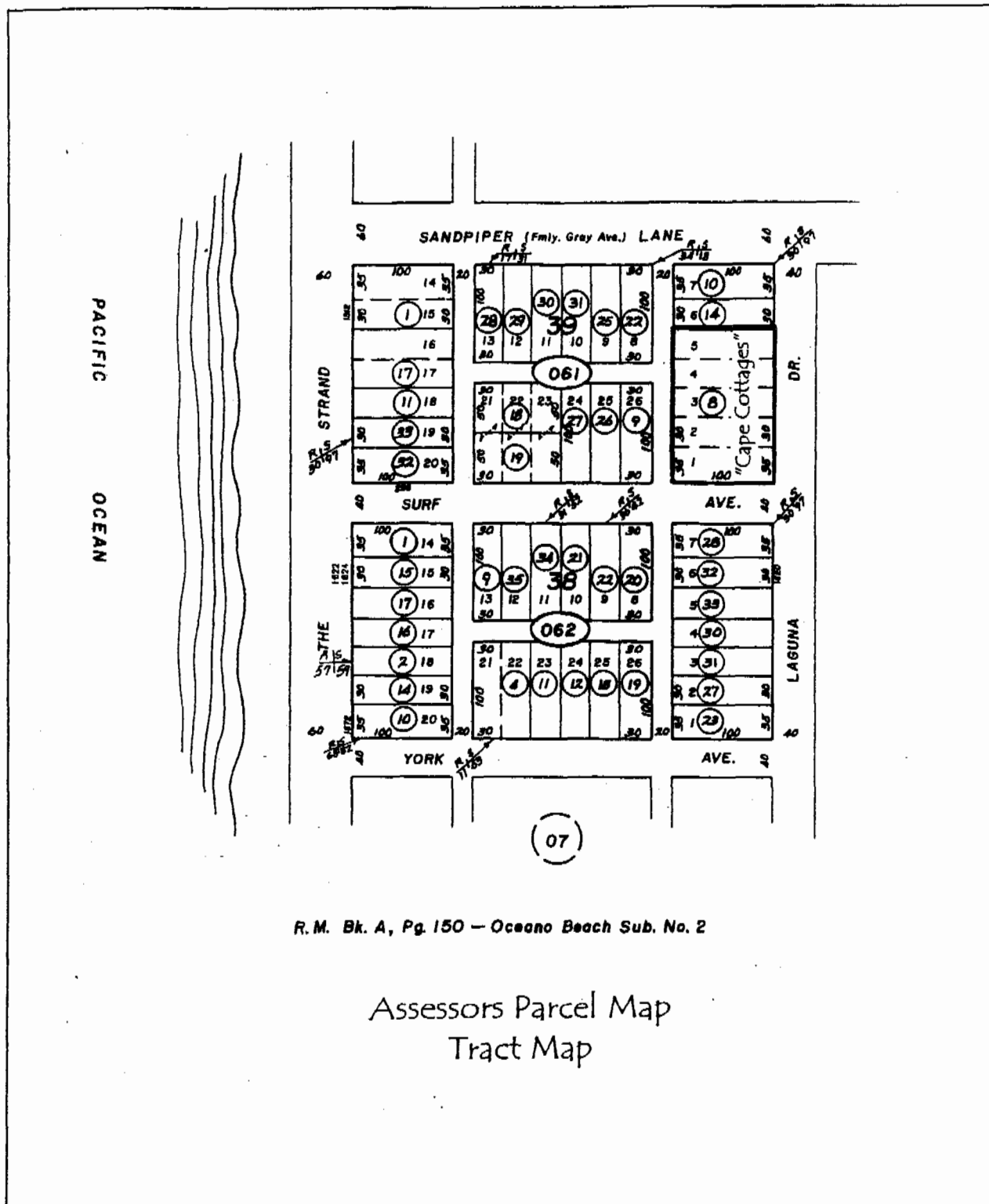


Cape Cottages Wetland Delineation

Figure 1

Source: USGS Quadrangle Oceano

Project Vicinity Map



R.M. Bk. A, Pg. 150 — Oceano Beach Sub. No. 2

Assessors Parcel Map Tract Map

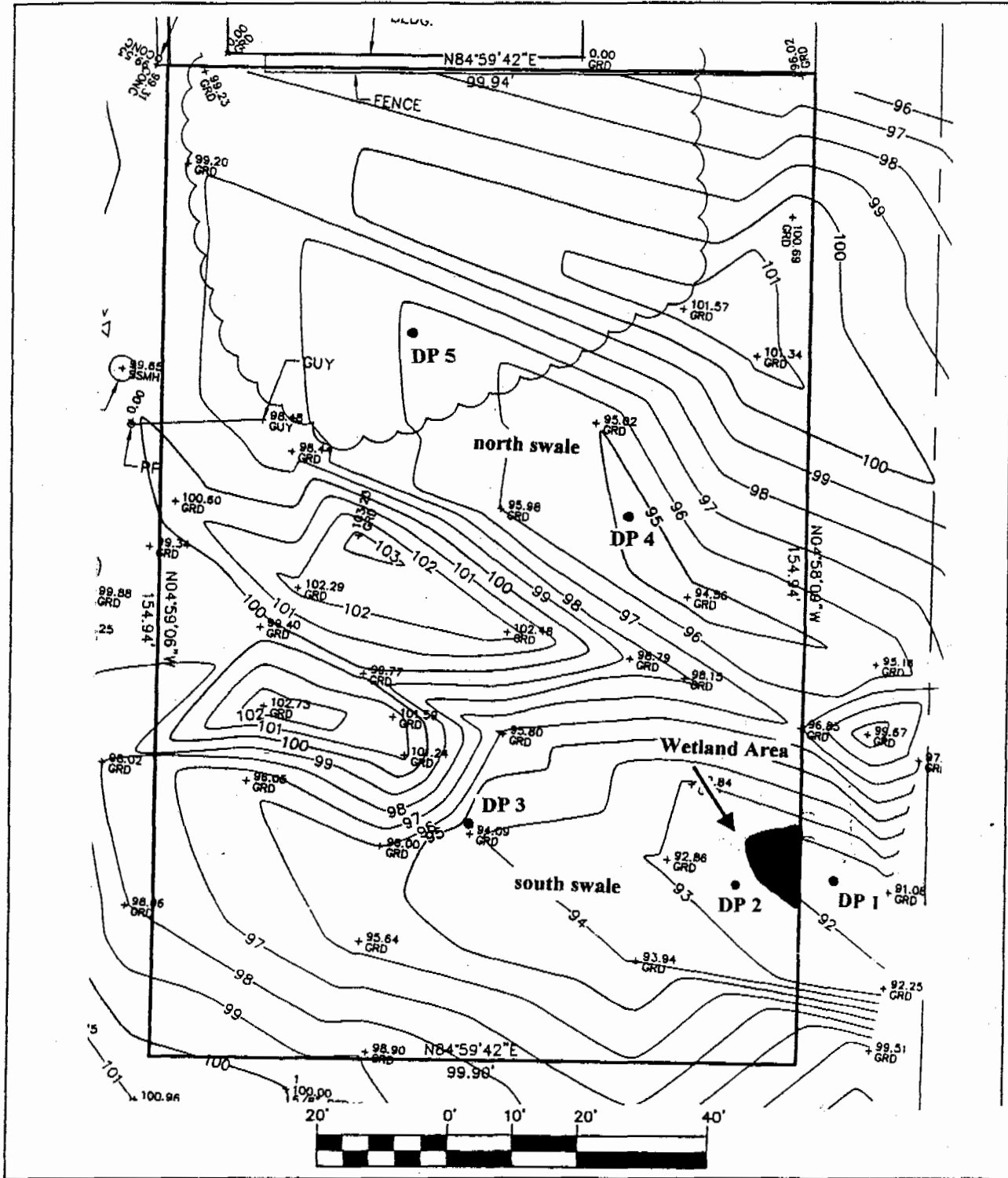
Cape Cottages Wetland Delineation

Figure 2

Source: Fargen Surveys, Inc.



Project Location Map



Cape Cottages Wetland Delineation

Figure 3

Topographic Data from Fargen Surveys, Inc.



Data Points and Wetland Boundary

An unknown, annual grass was found on the site. It was not flowering, so it could not be identified. It was found only under the willows and in disturbed, upland areas near homes, so was considered a FACU species.

A. DETERMINING SECTION 404 WETLANDS

To be considered a wetland under section 404 of the federal Clean Water Act, an area would have to contain hydrophytic vegetation, wetland hydrology, and hydric soils. The area would also have to be adjacent to a Water of the United States as defined in the federal Clean Water Act. An "adjacent" wetland must abut or be connected by surface waters to Waters of the United States. Wetlands that are not "adjacent" are often called "isolated," and are no longer regulated by the federal Clean Water Act.

B. DETERMINING COASTAL ZONE WETLANDS

Chapter 8, Article 18, Section 13577 of the California Coastal Commission regulations define wetlands as areas where the water table is at or near the surface long enough to promote the formation of hydric soils or the growth of hydrophytes. Wetland boundaries should be drawn between land with predominantly hydrophytic cover and land with predominantly mesophytic or xerophytic cover, between soil that is predominantly hydric and soil that is predominantly nonhydric, or between areas that are flooded or saturated at some time during normal precipitation years and those that are not.

III. RESULTS AND DISCUSSION

A. SITE DESCRIPTION

The Cape Cottages property consists of vegetated sand dunes. Two small swales run east-west across the property. These swales are small sinks that have no outlets, formed by wind-deposited sand and then stabilized by vegetation. The swales were considered to have the best potential to contain wetlands. No creek channels were found. The plant community is primarily a dense stand of European beachgrass (*Ammophila arenaria*), an introduced and invasive species. Salt rush (*Juncus lesueurii*), a rhizomatous species, grows throughout most of the site, from the bottoms of swales to the tops of dunes.

A group of arroyo willows grows on the north side of the property. These willows initially were considered potential wetland indicators. Closer inspection revealed that the willows grew at an upland site, as willows often do in dunes. They may have rooted at lower elevations, closer to the water table, and continued to grow as sand deposits built up around their trunks and branches. This is the reason why willows are often found to be growing from the tops and sides of sand dunes.

B. FINDINGS

Isolated wetlands are not regulated under Section 404 of the Clean Water Act. All hydrology on the Cape Cottages site is isolated from Waters of the United States by vegetated sand dunes. Any surface waters on the property would drain through the sandy soils. Therefore, no potential wetlands on the site would be subject to US Army Corps of Engineers jurisdiction. However, one area met criteria for Coastal Zone wetlands.

Data Point 1 met all three wetland criteria (hydrology, hydrophytic vegetation, hydric soils). Data Point 1 had a dense mat of salt rush (FACW) and marsh baccharis (*Baccharis douglasii*) (OBL) and was located at the lowest point of the swale. This wetland area appeared to not hold surface waters, but did have a seasonally high water table. Hydrologic indicators included standing water at seven inches depth and oxidized rhizospheres in the upper twelve inches of soil. Soil indicators consisted of high organic content in the surface horizon, a histic epipedon, and organic streaking. One arroyo willow grew in this low area, but beyond the property line. The absence of European beachgrass (FACU) correlated with a break in topography. The wetland border delineated in Figure 3 was based on the presence or absence of European beachgrass, the noticeable change in topography, and the extent of the organic surface horizon. This wetland area extends beyond the property boundary, but was mapped only on the Cape Cottages property.

Data Point 4 met only the vegetation criteria. No hydrology or soil indicators were found. If Data Point 4 was within a wetland, then its soil should have been saturated such as data point 1's soil, considering that it had recently rained heavily. The vegetation criterion was met because only two species were dominant, and one (salt rush) was a FACW species. Using salt rush as a sole indicator is debatable because the species was found on site in the bottoms of swales as well as the tops of dunes which, judging by their landscape positions, clearly were not functioning as wetlands. The salt rush does not indicate a high water table on the sides or tops of dunes. Using this species as the sole indicator for wetlands would lead to the tops of sand dunes being delineated as wetlands. It is apparent from Data Point 1 that other hydrophytic vegetation indicators are attainable and should be used at the Cape Cottages site. Salt rush is not a reliable, sole wetland indicator in this area. Figure 4 illustrates how salt rush on the site can form dense mats in clearly upland areas, growing with FACU and UPL species such as European beachgrass and heather goldenbush.

Data Points 2, 3, and 5 met no wetland criteria.



Photo 1:

Site overview, facing west from southeast corner of property. Willows can be seen in back-right of photo.

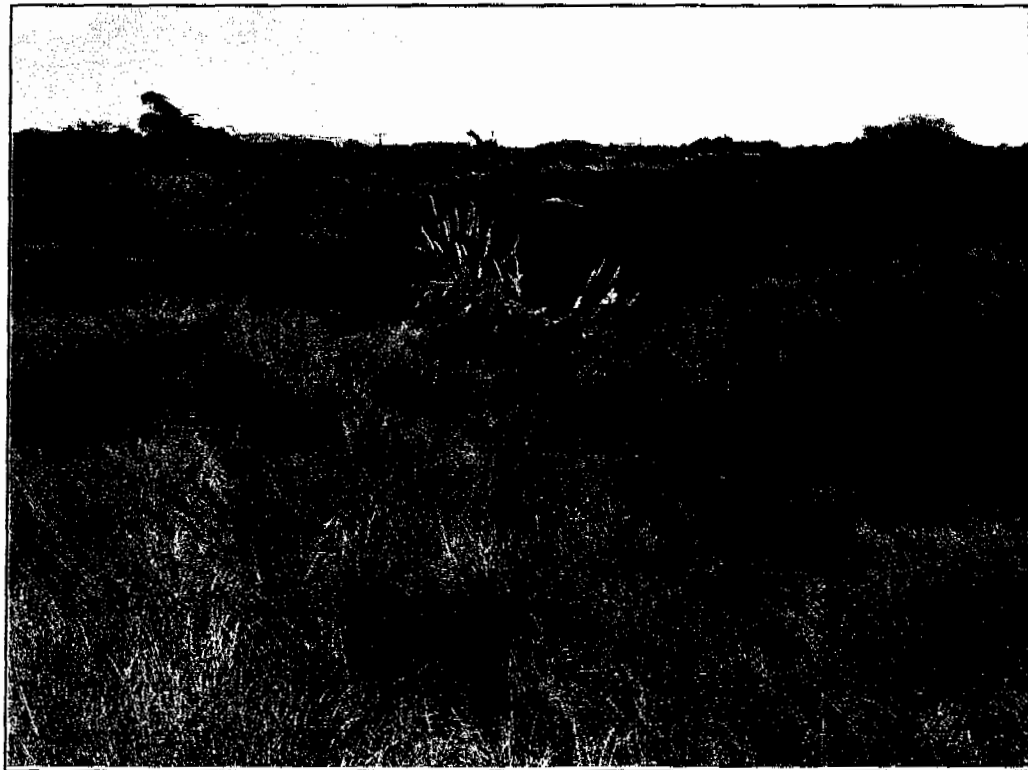


Photo 2:

Viewing east from central portion of the property. One small wetland area is located near the willows in the central portion of the photo.

Final authority and verification powers regarding potential wetlands on the Cape Cottages site reside with the US Army Corps of Engineers (for the Clean Water Act) and the County of San Luis Obispo (for California Coastal Act and Local Coastal Plan regulations).

V. REFERENCES

Hickman, J.C. (ed). 1993. The Jepson manual; higher plants of California. Berkeley, CA; University of California Press.

US Fish and Wildlife Service. 1988. National list of plant species that occur in wetlands: California (Region 10). Biological report 88(26.10).

US Fish and Wildlife Service. 1997. National wetlands inventory.

Wetland Training Institute, Inc. 1995. Field guide for wetland delineation: 1987 Corps of Engineers manual. Poolesville, Md. WTI 95-3. 143pp.

Appendix A

Routine Wetland Delineation Forms

Routine Wetland Determination Data Form

Applicant: HMW Corporation **Project:** Cape Cottages **Date:** 1/1/03
State: CA **County:** San Luis Obispo **Transect/Pit No.:** 1
Investigators: Dave Hacker, Kate Ballantyne **Transect/Pit Area:** south swale
Vegetation Community Classification (Holland 1986, others): back dunes

VEGETATION

Species	Indicator	% Cover	% Relative Cover	Species	Indicator	% Cover	% Relative Cover
<i>Rubus ursinus</i> (=R. vitifolius) California blackberry	FACW	10	5				
<i>Baccharis douglasii</i> marsh baccharis	OBL	70	35				
<i>Baccharis pilularis</i> coyote brush	not listed— FACU	50	25				
<i>Juncus lesueurii</i> salt rush	FACW	70	35				
Percent of Dominant Species that are OBL, FACW, or FAC: <u>66%</u>				Taxonomic Reference: <u>Hickman 1993</u>			

HYDROLOGY

Inundated?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	Saturated Soil?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Depth:	<u>14 inches</u>
Sediment Deposits?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	Drift Lines?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No		
Depth of Surface Water:			Water Marks?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No		
Depth to Free Water in Pit:	<u>7 inches</u>		Oxidized Rhizospheres?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No		
Other Indicators: <u>(rained previous day)</u>							

SOIL

Map Unit:	Profile Description:
Phase:	Oa: 0-2 inches
Taxonomic Subgroup	C: 2-10 inches, 10 YR 6/4, fine sand
Field Observations Confirm Mapped Type?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Histosol	<input type="checkbox"/>
Histic Epipedon	<input checked="" type="checkbox"/>
Sulfidic Odor	<input type="checkbox"/>
Aquic Moisture Regime	<input type="checkbox"/>
Reducing Conditions	<input type="checkbox"/>
Other Indicators:	

WETLAND DETERMINATION

Vegetation Criterion Met?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Normal Circumstances?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Hydric Soil Criterion Met?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No			
Hydrology Criterion Met?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Is this Plot within a Wetland?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Comments:					

Determination by: F. Ballantyne

Routine Wetland Determination Data Form

Applicant: HMW Corporation **Project:** Cape Cottages **Date:** 1/1/03
State: CA **County:** San Luis Obispo **Transect/Pit No.:** 2
Investigators: Dave Hacker, Kate Ballantyne **Transect/Pit Area:** south swale
Vegetation Community Classification (Holland 1986, others): back dunes

VEGETATION

Species	Indicator	% Cover	% Relative Cover	Species	Indicator	% Cover	% Relative Cover
<i>Ammophila arenaria</i> European beachgrass	FACU	90	64				
<i>Baccharis douglasii</i> marsh baccharis	OBL	5	4				
<i>Baccharis pilularis</i> coyote brush	not listed— FACU	25	18				
<i>Juncus lesueurii</i> salt rush	FACW	20	14				
Percent of Dominant Species that are OBL, FACW, or FAC: <u>0%</u>				Taxonomic Reference: <u>Hickman 1993</u>			

HYDROLOGY

Inundated? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Sediment Deposits? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Depth of Surface Water: _____ Depth to Free Water in Pit: _____ Other Indicators: <u>(rained previous day)</u>	Saturated Soil? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Drift Lines? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Water Marks? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Oxidized Rhizospheres? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Depth: <u>15 inches</u>
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SOIL

Map Unit: _____ Phase: _____ Taxonomic Subgroup: _____	Profile Description: Oa: 0-2 inches C: 2-12 inches, 2.5 Y 5/4, fine sand
Field Observations Confirm Mapped Type? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Histosol <input type="checkbox"/> Histic Epipedon <input checked="" type="checkbox"/> Sulfidic Odor <input type="checkbox"/> Aquic Moisture Regime <input type="checkbox"/> Reducing Conditions <input type="checkbox"/>	Concretions: depth= <input type="checkbox"/> High Organic Content in Surface layer of Sandy Soils <input checked="" type="checkbox"/> Listed on Local Hydric Soils List <input type="checkbox"/> Listed on National Hydric Soils List <input type="checkbox"/> Gleyed or Low-Chroma Soils <input type="checkbox"/>
Other Indicators: _____	

WETLAND DETERMINATION

Vegetation Criterion Met? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Hydric Soil Criterion Met? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Hydrology Criterion Met? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Normal Circumstances? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Is this Plot within a Wetland? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Comments: _____		

Determination by: K Ballantyne

Routine Wetland Determination Data Form

Applicant: HMW Corporation Project: Cape Cottages Date: 1/1/03
 State: CA County: San Luis Obispo Transect/Pit No.: 3
 Investigators: Dave Hacker, Kate Ballantyne Transect/Pit Area: south swale
 Vegetation Community Classification (Holland 1986, others): back dunes

VEGETATION

Species	Indicator	% Cover	% Relative Cover	Species	Indicator	% Cover	% Relative Cover
<i>Ammophila arenaria</i>	FACU	90	90				
European beachgrass							
<i>Juncus lesueurii</i>	FACW	10	10				
salt rush							
Percent of Dominant Species that are OBL, FACW, or FAC: 0%				Taxonomic Reference: <i>Hickman 1993</i>			

HYDROLOGY

Inundated?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Saturated Soil?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Depth:	
Sediment Deposits?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Drift Lines?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Depth of Surface Water:		Water Marks?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Depth to Free Water in Pit:		Oxidized Rhizospheres?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Other Indicators: <u>(rained previous day)</u>					

SOIL

Map Unit:	Profile Description:
Phase:	C: 0-14 inches, 2.5 Y 6/4, fine sand
Taxonomic Subgroup	
Field Observations Confirm Mapped Type?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Histosol	<input type="checkbox"/>
Histic Epipedon	<input type="checkbox"/>
Sulfidic Odor	<input type="checkbox"/>
Aquic Moisture Regime	<input type="checkbox"/>
Reducing Conditions	<input type="checkbox"/>
Other Indicators:	

Concretions: depth=	<input type="checkbox"/>
High Organic Content in Surface layer of Sandy Soils	<input type="checkbox"/>
Listed on Hydric Soils List	<input type="checkbox"/>
Organic Streaking in Sandy Soils	<input type="checkbox"/>
Gleyed or Low-Chroma Soils	<input type="checkbox"/>

WETLAND DETERMINATION

Vegetation Criterion Met?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Normal Circumstances?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Hydric Soil Criterion Met?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Hydrology Criterion Met?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Is this Plot within a Wetland?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Comments:			

Determination by: *K Ballantyne*

Signature

Routine Wetland Determination Data Form

Applicant: HMW Corporation **Project:** Cape Cottages **Date:** 1/1/03
State: CA **County:** San Luis Obispo **Transect/Pit No.:** 4
Investigators: Dave Hacker, Kate Ballantyne **Transect/Pit Area:** north swale
Vegetation Community Classification (Holland 1986, others): back dunes

VEGETATION

Species	Indicator	% Cover	% Relative Cover	Species	Indicator	% Cover	% Relative Cover
<i>Ammophila arenaria</i> European beachgrass	FACU	30	20				
<i>Baccharis pilularis</i> coyote brush	not listed— FACU	20	13				
<i>Ericameria ericoides</i> heather goldenbush	not listed— UPL	20	13				
<i>Juncus lesueurii</i> salt rush	FACW	80	53				
Percent of Dominant Species that are OBL, FACW, or FAC: <u>50%</u>				Taxonomic Reference: <u>Hickman 1993</u>			

HYDROLOGY

Inundated?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	Saturated Soil?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	Depth: _____
Sediment Deposits?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	Drift Lines?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
Depth of Surface Water: _____			Water Marks?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
Depth to Free Water in Pit: _____			Oxidized Rhizospheres?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
Other Indicators: <u>(rained previous day)</u>						

SOIL

Map Unit:	Profile Description:
Phase:	<u>C: 0-14 inches, 2.5 Y 6/4, fine sand</u>
Taxonomic Subgroup	
Field Observations Confirm Mapped Type?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Histosol	<input type="checkbox"/>
Histic Epipedon	<input type="checkbox"/>
Sulfidic Odor	<input type="checkbox"/>
Aquic Moisture Regime	<input type="checkbox"/>
Reducing Conditions	<input type="checkbox"/>
Other Indicators:	
Concretions: depth=	<input type="checkbox"/>
High Organic Content in Surface layer of Sandy Soils	<input checked="" type="checkbox"/>
Listed on Hydric Soils List	<input type="checkbox"/>
Organic Streaking in Sandy Soils	<input type="checkbox"/>
Gleyed or Low-Chroma Soils	<input type="checkbox"/>

WETLAND DETERMINATION

Vegetation Criterion Met?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Normal Circumstances?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Hydric Soil Criterion Met?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No			
Hydrology Criterion Met?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	Is this Plot within a Wetland?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Comments:					

Determination by: K Ballantyne

Routine Wetland Determination Data Form

Applicant: HMW Corporation **Project:** Cape Cottages **Date:** 1/1/03
State: CA **County:** San Luis Obispo **Transect/Pit No.:** 5
Investigators: Dave Hacker, Kate Ballantyne **Transect/Pit Area:** north swale
Vegetation Community Classification (Holland 1986, others): back dunes

VEGETATION

Species	Indicator	% Cover	% Relative Cover	Species	Indicator	% Cover	% Relative Cover
<i>Ammophila arenaria</i> European beachgrass	FACU	40	25	<i>Salix lasiolepis</i> arroyo willow	FACW	60	38
unknown annual grass	not listed— FACU	40	25				
<i>Carpobrotus edulis</i> iceplant	not listed-- FACU	20	13				
Percent of Dominant Species that are OBL, FACW, or FAC: 33%				Taxonomic Reference: Hickman 1993			

HYDROLOGY

Inundated? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Sediment Deposits? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Depth of Surface Water: _____ Depth to Free Water in Pit: _____ Other Indicators: (rained previous day)	Saturated Soil? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Drift Lines? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Water Marks? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Oxidized Rhizospheres? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Depth: _____
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SOIL

Map Unit: Phase: Taxonomic Subgroup Field Observations Confirm Mapped Type? <input type="checkbox"/> Yes <input type="checkbox"/> No Histosol <input type="checkbox"/> Histic Epipedon <input type="checkbox"/> Sulfidic Odor <input type="checkbox"/> Aquic Moisture Regime <input type="checkbox"/> Reducing Conditions <input type="checkbox"/> Other Indicators:	Profile Description: Oa: 0-3 inches C: 3-14 inches, 2.5 Y 6/4, fine sand Concretions: depth= _____ High Organic Content in Surface layer of Sandy Soils <input checked="" type="checkbox"/> Listed on Hydric Soils List <input type="checkbox"/> Organic Streaking in Sandy Soils <input type="checkbox"/> Gleyed or Low-Chroma Soils <input type="checkbox"/>
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WETLAND DETERMINATION

Vegetation Criterion Met? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Hydric Soil Criterion Met? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Hydrology Criterion Met? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Comments:	Normal Circumstances? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Is this Plot within a Wetland? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
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Determination by: _____

K. Ballantyne
Signature

Appendix B

Photographs

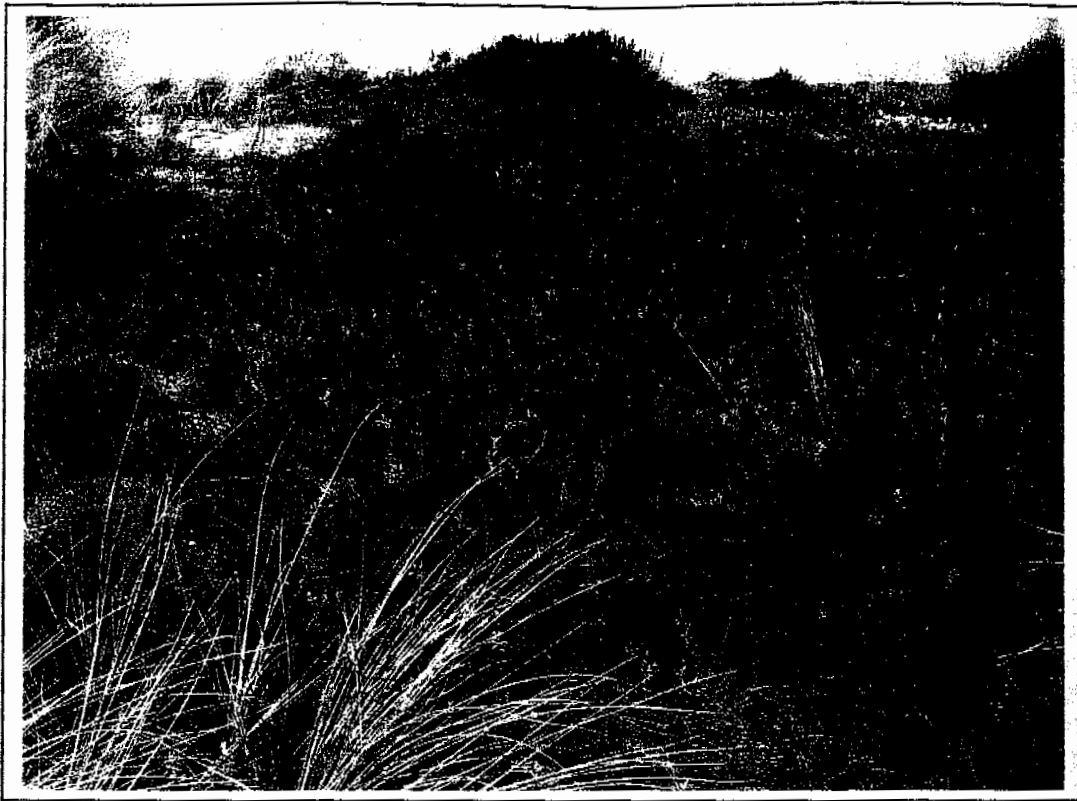


Figure 4. A dense mat of the FACW wetland species, salt rush, growing up the side of a dune with the FACU species European beachgrass and the UPL species heather goldenbush.

IV. CONCLUSION

No wetlands or other Waters of the United States, subject to the Clean Water Act and the US Army Corps of Engineers jurisdiction, were found on the property. The small patch of wetlands found in the south swale were isolated from any Waters of the United States, and are therefore not regulated.

One area was found that met the Coastal Zone definition of wetlands. Sixty-four square feet (0.0015 acre) of Coastal Zone wetlands were found on the property in the east end of the south swale (see Figure 3 on page 4). The lowest part of the south swale meets all three wetland criteria.

The vegetation criterion was met at Data Point 3. However, the swale in which Data Point 3 was located should not be considered a wetland. The only indicator found was one FACW species that was equally abundant in clearly upland areas such as the sides and tops of sand dunes. The Coastal Commission regulations define a wetland as an area where the water table is at or near the surface long enough to promote hydrophytes; the hydrophytic plant in this case did not indicate a high water table or saturated soil.

CALIFORNIA COASTAL COMMISSION

725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
VOICE (831) 427-4863
FAX (831) 427-4877



SENT VIA REGULAR AND CERTIFIED MAIL (7000 1670 0007 7215 9028)

April 5, 2006

Anthony E. Wells, Member/Manager
HMW Coastal Ventures, LLC
124 W. Main Street, Suite G
Santa Maria, CA 93458

Subject: Unpermitted grading and removal of major vegetation on property located at 1550 through 1590 Laguna Drive, Oceano, CA, APN 061-061-008

Dear Mr. Wells,

Enforcement staff of the California Coastal Commission (Commission) have confirmed that unpermitted "development," as that term is defined in the Coastal Act Section 30106, was undertaken on property located at 1550 through 1590 Laguna Drive, Oceano, CA, APN 061-061-008 (subject property), owned by HMW Coastal Ventures, LLC, (Company) in which you are the manager and one of the members. The development includes grading and complete removal of major vegetation. As noted below, all development conducted in the Coastal Zone requires a Coastal Development Permit, and our records indicate that no permit was applied for nor issued for these activities.

Moreover, the grading flat of the site and removal of all major vegetation has resulted in the destruction of native plants, environmentally sensitive dunes, wetlands and wetland setback area, and possibly has negatively impacted the Oceano Community Services District (OCSD) waterline replacement project's restoration and remediation area. The OCSD restoration and remediation area was previously required by the Commission as a condition of approval under Coastal Development Permit (CDP) # 3-04-059. Section 30106 of the Coastal Act states that:

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, 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...and any other division of land, including lot splits.... change in the intensity and use of water, or 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 harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511).

The grading of the site using heavy equipment and removal of all major vegetation, including native plants and willow trees, and destruction of environmentally sensitive dunes, wetlands and wetland set-back area falls within the definition of development contained in Section 30106 of the Coastal Act. Section 30600 of the Coastal Act requires any person wishing to perform any development in the coastal zone to first obtain a coastal development permit.

On July 7, 2004, HMW Coastal Ventures, LLC submitted a CDP application to the Central Coast District Commission office for five, two-story single-family residences (SFR) with two-car garages, consisting of four 1,513 square foot units with three bedrooms and two bathrooms, and one 1,388 square foot unit with two bedrooms and two bathrooms. A Wetland Delineation Report submitted with the CDP application identified the presence of sensitive wetlands on the property (Cape Cottages Wetland Delineation Report, by Dave Hacker and Kate Ballantyne, dated January 8, 2003). During the application process, Dr. John Dixon, Commission Biologist, visited the site and determined that the entire site was considered coastal dunes and contained wetland environmentally sensitive habitat area (ESHA). As a result, the Central Coast planning staff processing your Company's CDP application discussed, in person and over the phone, with you the need to address on-site habitats and preserve as much ESHA as possible. Commission planning staff also discussed the need to establish appropriate wetland setbacks onsite. HMW Coastal Ventures, LLC decided to withdraw the CDP application on February 9, 2005 prior to a final written staff recommendation being published and before the matter could be considered by the Coastal Commission in a public hearing. Thus, the Commission had not granted a CDP for any development to occur on the subject property.

Jonathan Bishop, Commission analyst, contacted you by phone on March 17, 2006 concerning the reported unpermitted development that had occurred on the subject property. His phone call was precipitated by photographs taken of the property and forwarded to the District Office showing the development described above. In this conversation, you stated that only weeds were removed from that site. Per your request, Mr. Bishop forwarded you the same set of photos he had been provided. You then stated that a grading company hired by HMW Coastal Ventures, LLC performed this work without your knowledge and that you wanted to know what could be done to correct the problem.

Mr. Bishop responded by email on March 17, 2006, informing you that he had spoken with his supervisors and the Commission's District Office enforcement officer about the unpermitted activity, and that you could expect a letter from Commission enforcement staff concerning the matter. In the meantime, he requested that no additional unpermitted development be performed on the site and that erosion control devices (silt fencing, hay bales and roles, etc.) be immediately installed around the perimeter of the site and any other disturbed area in an attempt to reduce the ongoing adverse impact on the habitat from uncontrolled runoff from the disturbed property. He also asked that you follow-up with photographic evidence illustrating that these requested interim erosion control protection measures had been implemented on the subject property. You responded by email on the same day, stating that laborers hired by you had already began hand digging and removing the spoils from the sensitive wetland habitat area. You went on to state that you would fence the sensitive habitat area with protective orange barrier fencing and install straw waddles to prevent run-off and protect the habitat. You sent photos to Mr. Bishop on March 20, 2006 showing plastic cosmetic fencing installed around the disturbed wetland area and the adjacent area placed by your workers.

Although we appreciate your willingness to take steps to reduce the impact on the disturbed habitat area from possible erosion and sedimentation, we want to make sure that the measures you take to protect adjacent habitat does not cause additional resource damage. We also want to evaluate whether additional steps are needed. Therefore, recognizing that you have installed the fencing noted above, you need to detail in writing to us what other measures have been implemented to control erosion and runoff from the impacted area. Please provide this information as soon as possible and no later than April 19, 2006.

In addition, on March 23, 2006, Mr. Bishop spoke with a representative working with the OCSD, Malcolm McEwen, who visited the site with a biologist and conducted a visual observation of the OCSD's waterline replacement project's restoration and remediation area. He said the area located adjacent to the alleyway on Laguna Avenue was smothered with piles of large branches and other plant materials that had been removed from your Company's property and dumped on the OCSD's restoration site. The placement of removed vegetation on OCSD's restoration site is also development as defined by the Coastal Act. Mr. McEwen also said that the biologist would track the growing progress and health of the plants to determine if any adverse impacts become noticeable over time. Five of the plantings on the OCSD site were damaged. OCSD planted an additional 16 plants to help mitigate this damage. Because the replanting is occurring after the optimal time for planting without irrigation, the OCSD biologist expects a greater mortality rate than for the plants installed earlier in the year. Mr. McEwen mentioned that the OCSD restoration area was posted with signage and orange cosmetic fencing, prior to disturbance, to keep development activity, people and cars out of the restoration area. A visual inspection of another restoration area located at the intersection of Surf and Laguna Avenues, which has been reseeded with a native plant mix, not individual plants, appears to also have been disturbed, but the OCSD representative and biologist were unable to determine whether there had been adverse impacts from the activity; and if so, how extensive they were, as it was too early in the growth stage to determine if the reseeded area was adversely impacted. The biologist will be following up and monitoring both restoration areas to determine impacts. Commission staff would like to discuss these impacts with our biologist and have him determine the nature and extent of resource impacts.

With respect to grading the site flat and the unpermitted removal of all of the property's major vegetation, as the Commission's District Office enforcement officer, I am obligated to inform you that the Coastal Act contains many enforcement remedies to resolve such a situation. Coastal Act section 30809 states that if the Executive Director determines that any person has undertaken, or is threatening to undertake, any activity that may require a permit from the Commission without first securing a permit, the Executive Director may issue an order directing that person to cease and desist. Coastal Act section 30810 states that the Commission may also issue a cease and desist order. A cease and desist order may be subject to terms and conditions that are necessary to ensure compliance with the Coastal Act. Moreover, section 30811 authorizes the Commission to order restoration of a site where development occurred without a permit from the Commission, is inconsistent with the Coastal Act, and is causing continuing resource damage. Section 30812 authorizes the Commission's Executive Director, after providing notice and the opportunity for a public hearing, to record a Notice of Violation (NOVA) against your property.

In addition, section 30820(a) provides for civil liability to be imposed on any person who performs or undertakes development without a CDP or in a manner that is inconsistent with any

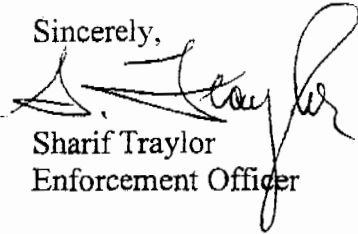
coastal development permit previously issued by the Commission in an amount that shall not exceed \$30,000 and shall not be less than \$500 for each violation of the Coastal Act. Section 30820(b) provides that additional civil liability may be imposed on any person who performs or undertakes development without a CDP or that is inconsistent with any CDP 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 either a cease and desist order or of a restoration order can result in the imposition of civil fines of up to \$6,000 for each day in which the violation persists. Finally, Section 30822 allows the Commission to maintain a legal action for exemplary damages, the size of which is left to the discretion of the court. In exercising its discretion, the court shall consider the amount of liability necessary to deter further violations.

It is clear that your property contained environmentally sensitive habitat and that you knew of this fact, based upon the prior Coastal Act CDP application submitted and withdrawn, discussions with Coastal Commission planning staff, and based upon the "Cape Cottages Wetland Delineation Report" by Hacker and Ballantyne done at your request (dated January 8, 2003). Thus, we believe the action to grade the site and remove all vegetation on the subject property is a knowing and intentional action which violates the Coastal Act's permitting requirements. We believe restoration of the site should occur pursuant to a formal order action by the Commission, so that the Commission can continue to monitor the status of restoration and recommend additional mitigation as needed through subsequent monitoring of the site. Based on the potential coastal resource impacts and extent of the unpermitted activity on site and the surrounding habitat area, I am elevating this case to the Commission's statewide enforcement unit for appropriate formal action which may include a Commission Cease and Desist Order and Restoration Order to stop all unpermitted development and restore the site. The Executive Director may also seek to record a Notice of Violation on the subject property and we will pursue appropriate civil penalties as provided for in Chapter 9 of the Coastal Act.

Once this case has been elevated, you will receive notification of the Executive Director's intention to schedule a public hearing for the Cease and Desist Order and Restoration Order at a future Commission public hearing. Commission enforcement staff is prepared to work with you to resolve the issues of Coastal Act violation activity amicably and as quickly as possible. One option that you may wish to consider is reaching an agreement with the Commission via a "consent order" which would provide the authority to conduct the restoration of the site. A consent order is analogous to a settlement agreement. A consent order would provide you with an opportunity to resolve this matter consensually, and to have input into the process and timing of restoration of the subject property and would allow you to negotiate a monetary penalty amount with Commission staff, avoiding further court action to impose such a penalty as provided for in section 30820 of the Coastal Act. If you are interested in negotiating a consent order, please let me know as soon as possible, and I will convey your interest to the statewide enforcement staff assigned to your case.

If you have any questions regarding this action or the Commission's enforcement response, please contact me at the address or phone number above.

Sincerely,



Sharif Traylor
Enforcement Officer

Cc: Lisa Haage, Chief of Enforcement
Nancy Cave, Northern California Enforcement Program Supervisor
Steve Monowitz, Coastal Program Manager, Central Coast District
Jonathan Bishop, Coastal Planner, Central Coast District
Marsha Lee, San Luis Obispo County Planning
Kari Scamara, San Luis Obispo County Code Enforcement
Mitch Cooney, Director, Oceano Community Services District
Peter Candy, Counsel for HMW Coastal Ventures, LLC

Dear Mr. Traylor:

The unfortunate incident of grubbing the above referenced lots occurred without malice or even the forethought that we would be in violation of any portion of the Coastal Act.

Annually, we have Cal-West Construction abate the growth of weeds and grasses for fire protection on properties of our ownership that are awaiting development permits. Last year Cal-West abated six properties. Following the rains of this season we had them get a jump start on the fire season by discing a proposed 44 lot subdivision in Orcutt / Santa Maria. Being that Cal-West recently moved its base of operation from Santa Maria to Pismo Beach, the owner asked if he might weed abate the lots on Laguna Drive. I was leaving for Hawaii with my children and grandchildren and without much forethought, told him to go ahead, but wait until I had our surveyor, Fargen Surveys, Inc., of Santa Maria, set the boundaries to keep his Cal-West crew from infringing on any sensitive habitat.

Being that we have purchased and remediated several former oil company sites, we are always concerned over the unknown conditions that might be present and hidden from sight by the weeds that cover a parcel of land. Immediately upon my return from Hawaii I visited the Laguna Drive lots and noted that the weeds and grasses had been cut and were left on site in a couple of piles. Later that day I received a call from a representative of the Oceano Community Services District about the piles of debris on certain areas in the alley right-of-way and called Cal-West to set a meeting with the engineer and remove the debris.

A couple of days later, I received a call from Coastal's Mr. Jonathan Bishop, accusing me of grading the site and asking why I had done it. I advised Mr. Bishop that we had not graded the site and that all existing contours remained. In fact, I offered to wager \$1,000 that the site had not been graded. I'm certain that Mr. Bishop must have thought me a complete buffoon, as he had photographic evidence of the grading that had taken place without my consent or knowledge. I immediately called the owner of Cal-West and asked what had happened and why were the property contours not left as I had originally observed. He advised that he thought that he was doing me a favor by further grubbing and leveling the site as he had a couple of men and pieces of machinery with nothing to do.

I immediately dispatched one of our staff members, (Mr. Wayne Madden), a very environmentally concerned individual and former Santa Barbara County Planner, to oversee the cleaning of the sensitive habitat, and installing erosion control measures and security fencing around the area.

Mr. Bishop advised that I would be hearing from you, thus we have taken no additional measures until your letter of April 5, 2006 arrived. There are statements in your letter that I disagree with, however they are not revilement to my making peace with Coastal.

We have been monitoring the site and can state that even with the above normal rainfall, Oceano has been inundated with, no water ever stands in the area you describe as a wetlands. Our investigation of the origin of that depression was due to a previous developer or the County of San Luis Obispo's construction of Laguna Drive from Surf Street southerly. Aerial photographic history will show that this lowland depression was actually,

a borrow pit for fill material used in the building of the roadway. The depression is totally isolated, retains no water and connects to no body of water, salt or fresh.

Following the heavy rains of this past week, we visited the site again yesterday, and noted a slight bit of erosion, thus have dispatched our Mr. Wayne Madden to again oversee additional measures of protection with the Cal-West Construction crew. Please see the attached photographs taken yesterday afternoon (4/13/06).

With all of this being said, I am not in the least bit interested in battling the Coastal Commission and must ask why your letter did not offer me the option of applying for and obtaining a Coastal Permit for site restoration.

In the 42 years that I have been in the land development / home building industry, I have never been required to obtain permitting to cut or remove weeds from a parcel of property. The grading was not of our doing, but of a subcontractor thinking he was doing me a favor. It has now come to home to bite me, thus I seek your assistance in working through to resolving the issue in the most painless and amicable manner possible.

Please advise if a Coastal Permit for site restoration is possible or some other avenue of appeasement that will allow us to make peace with Coastal without the need of a hearing, undue fines and excessive legal fees.

In closing, let me state that we are human beings and human beings make mistakes and judgmental errors, but that does not make us criminals.

*Sincerely Yours,
HMW Coastal Ventures, LLC
Anthony E. Wells*

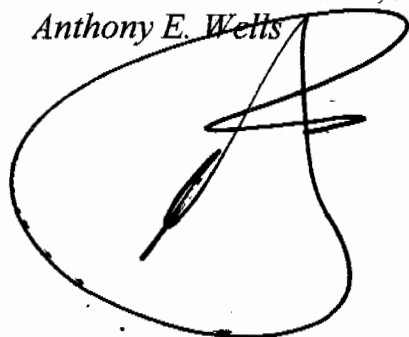
A large, stylized handwritten signature in black ink, appearing to be 'A. Wells'.

Exhibit 7
CCC-06-CD-03 & CCC-06-RO-04
(HMW Coastal Ventures, LLC)
Page 2 of 4



Exhibit 7
CCC-06-CD-03 & CCC-06-RO-04
(HMW Coastal Ventures, LLC)
Page 3 of 4



Exhibit 7
CCC-06-CD-03 & CCC-06-RO-04
(HMW Coastal Ventures, LLC)
Page 4 of 4

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

May 4, 2006

Anthony E. Wells
HMW Coastal Ventures, LLC
124 W. Main Street, Suite G
Santa Maria, CA 93458

Cal-West Construction
P.O. Box 2007
Pismo Beach, CA 93448-2007

Subject: **Notification of Intent to Commence Cease and Desist Order
and Restoration Order Proceedings and to Record a Notice of
Violation**

Violation No.: V-3-06-008

Property Location: Property located at 1550 through 1590 Laguna Drive Oceano in
San Luis Obispo County, APN 061-061-008

Violation Description: Unpermitted grading and removal of vegetation in an
environmentally sensitive habitat area; placement of removed plant
materials in restoration sites located on adjacent public property.

Dear Mr. Wells and Cal-West Construction:

The purpose of this letter is to notify you of my intent, as the Executive Director of the California Coastal Commission ("Commission"), to commence proceedings for issuance of a Cease and Desist Order and Restoration Order to require you to: 1) cease all unpermitted development activities; 2) restore the impacted coastal dune and wetland areas of the property located at 1550 through 1590 Laguna Drive in Oceano in San Luis Obispo County (APN 061-061-008) (hereinafter referred to as "the property"); and 3) mitigate for the impacts to two

restoration sites located on adjacent County--owned right-of-way areas that were caused by the unpermitted development activities. The proposed Cease and Desist and Restoration Orders are discussed in more detail in the following sections of this letter. In addition, the Commission also seeks to record a Notice of Violation against the property in this matter to protect prospective purchasers of the property.

The unpermitted development activities were undertaken by Cal-West Construction on property owned by HMW Coastal Ventures, LLC. The unpermitted development at issue in this matter includes grading and removal of major vegetation, including native vegetation, from coastal dune and wetland areas on the property, and the placement of solid materials onto adjacent publicly-owned areas that have been designated as restoration and remediation areas, to be managed by the Oceano Community Services District (OCSO) as part of a Commission coastal development permit approval for a waterline replacement project. The unpermitted activities constitute "development" as defined by Section 30106 of the Coastal Act¹ and require a Coastal Development Permit (CDP). No CDP was obtained to authorize the development. HMW Coastal Ventures, LLC did submit a CDP application on July 7, 2004 seeking authorization for the construction of five single-family residences with garages on the property but withdrew the application prior to Commission action. A Wetland Delineation Report submitted with the CDP application identified sensitive wetlands on the property. Commission staff discussed the provision of wetland setbacks as part of the proposed development in order to adequately protect the sensitive wetland areas from development activities. Moreover, the Commission's biologist, Dr. John Dixon, conducted a site visit and determined that the entire site consists of dune and wetland habitat, which constitutes environmentally sensitive habitat areas (ESHA), as defined in the Coastal Act.

The property contains coastal dune habitat, which is part of the larger Oceano Dunes dune complex, a system of dunes that extends across thousands of acres along the southern coast of San Luis Obispo County. The dunes are an extremely scarce and valuable natural resource that support rare flora and fauna and are considered ESHA under both the Coastal Act and the San Luis Obispo County Local Coastal Program (LCP). Dune vegetation decreases erosion, helping to stabilize the dunes. All dune vegetation has been removed from the property, and mechanized equipment was used to completely level the dunes. These activities constitute development as defined in the Coastal Act and were undertaken without a CDP.

In addition to coastal dunes, as noted above, the property also contains wetland habitat, which is considered ESHA under the Coastal Act. Wetlands provide habitat for threatened and endangered species, and healthy wetland ecosystems provide valuable water quality functions. The unpermitted removal of wetland vegetation from the wetland areas on the property has impacted the biological productivity and quality of the wetlands.

In addition to impacting ESHA on the property, the unpermitted development activities which are the subject of this action also impacted two restoration areas on adjacent publicly-owned

¹ The Coastal Act is codified in sections 30,000 to 30,900 of the California Public Resources Code. All further section references are to that code, and thus, to the Coastal Act, unless otherwise indicated.

land. The valuable dune and wetland vegetation that was removed from the property was dumped into nearby public right-of-ways, impacting Commission-mandated restoration and remediation projects taking places in those areas.

The property is located within the Commission's original CDP jurisdiction, on historic tidelands associated with the confluence of Arroyo Grande Creek, Meadow Creek, and the Pacific Ocean. Thus, the Commission has the authority to take enforcement action in this matter.

Notice of Violation

The Commission's authority to record a Notice of Violation is set forth in Section 30812 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, as discussed above, unpermitted development has occurred at the property, in violation of the Coastal Act. Commission staff notified you of the potential for recordation of a Notice of Violation in this matter in a letter dated April 5, 2006. **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 Christine Chestnut's attention by May 24, 2006, using the address provided on the letterhead.** If you fail to object within that twenty-day period from the mailing of this notice, as set forth in the Commission's regulations, which runs on May 24, 2006, we shall record the Notice of Violation in the Los Angeles County Recorder's office pursuant to Section 30812 of the Coastal Act.

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:

(a) 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 unpermitted development described in this notice of intent clearly constitutes "development" as defined in Section 30106 of the Coastal Act. The development requires a coastal development

permit under Section 30600(a) of the Coastal Act, and no coastal development permit has been issued authorizing the development. Therefore, I am issuing this notice of intent to commence Cease and Desist Order proceedings because development was undertaken at the property without a permit. Based on Section 30810(b) of the Coastal Act, any Cease and Desist Order issued in this matter may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with the Coastal Act, including immediate removal of any development or material.

Restoration Order

Section 30811 of the Coastal Act authorizes the Commission to order restoration of a site as follows:

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

I have determined that the specified activities meet the criteria of Section 30811 of the Coastal Act, based on the following:

- 1) The cited development is unpermitted pursuant to Section 30600(a) of the Coastal Act and has occurred on the property without a CDP.
- 2) The unpermitted development is inconsistent with the resource protection policies of the Coastal Act, including, but not limited to: Section 30231 (maintenance of biological diversity); Section 30240 (protection of environmentally sensitive habitat areas); Section 30251 (protection of scenic and visual qualities, minimization of landform alteration

The unpermitted development on the property destroyed rare, valuable, and sensitive coastal dune and wetland habitat on the property and impacted the entire ecosystems that these landforms support. The unpermitted development has altered these natural landforms, was not conducted in a way that minimized adverse impacts to the protected resources on the property, and has impeded the water quality functions of the wetland areas. In addition, the unpermitted development impacted ongoing native vegetation restoration on adjacent public property.

- 3) The unpermitted development is causing continuing resource damage, as defined by Section 13190 of the Commission's regulations. Cal. Code Regs., tit. 14, § 13190. 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." All of the impacts from the

unpermitted development continue to occur at the property; therefore, the damage that said development is causing to resources protected by the Coastal Act is continuing.

For the reasons stated above, I have decided to commence a Restoration Order proceeding before the Commission. The procedures for the issuance of Restoration Orders are described in Sections 13190 through 13197 of the Commission's regulations. Cal. Code Regs., tit. 14, § 13190-97. 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 property to the conditions that existed prior to the occurrence of the unpermitted development.

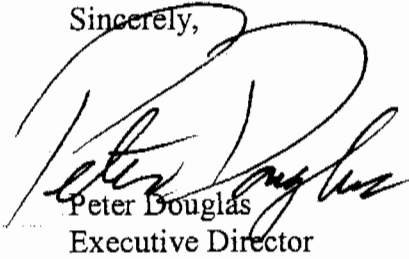
Please be advised that Coastal Act Sections 30803 and 30805 authorize the Coastal Commission to initiate litigation to seek injunctive relief and an award of civil penalties in response to any violation of the Coastal Act. Coastal Act Section 30820(a) provides that any person who violates any provision of the Coastal Act may be subject to a penalty not to exceed \$30,000. Further, Section 30820(b) states that, in addition to any other penalties, any person who "knowingly and intentionally" performs any development in violation of the Coastal Act can be subject to a civil penalty of up to \$15,000 for each day in which the violation persists. Additional penalties of up to \$6,000 per day can be imposed if a cease and desist or restoration order is violated. Section 30822 further provides that exemplary damages may also be imposed for knowing and intentional violations of the Coastal Act or of any orders issued pursuant to the Coastal Act.

In accordance with Section 13181(a) and 13191(a) of the Commission's regulations, you have the opportunity to respond to the Commission staff's allegations as set forth in this notice of intent to commence Cease and Desist Order and Restoration Order proceedings by completing the enclosed Statement of Defense form. **The Statement of Defense form must be returned to the Commission's San Francisco office, directed to Christine Chestnut's attention, no later than May 24, 2006.**

Commission staff has tentatively scheduled the hearing for the proposed Cease and Desist and Restoration Orders (and for the proposed Notice of Violation, should you additionally request **in writing** a hearing on this issue) during the June 14-16, 2006 Commission meeting. However, we would prefer to work with you to resolve these issues amicably prior to the hearing, through consent cease and desist and restoration orders. A consent order is similar to a settlement agreement and would provide you with an opportunity to resolve this matter collaboratively with Commission staff. The process of crafting a consent orders allows you to have input in the process and timing of removal of any unpermitted development and restoration of the property and provides you with the opportunity to negotiate an appropriate penalty amount with Commission staff and resolve the matter completely without any litigation. Please contact Christine Chestnut at (415) 904-5220 or send correspondence to her attention at the address

listed on the letterhead if you have any questions or wish to discuss options to resolve this matter.

Sincerely,



Peter Douglas
Executive Director

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

Cc w/o Enc.: Lisa Haage, Chief of Enforcement
Alex Helperin, Staff Counsel
Nancy Cave, Northern California Enforcement Program Supervisor
Sharif Traylor, Enforcement Officer
Jonathan Bishop, Coastal Planner, Central Coast District
Christine Chestnut, Statewide Enforcement Analyst