

CALIFORNIA COASTAL COMMISSION

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Staff: S. Ryan/N. Cabalette-SF
Staff Report: August 25, 2006
Hearing Date: September 14, 2006

STAFF REPORT AND FINDINGS FOR ISSUANCE OF CEASE AND DESIST ORDER

CEASE AND DESIST ORDER: CCC-06-CD-07

RELATED VIOLATION FILE: V-1-04-011

PROPERTY LOCATION: Lot 18 in Block 29, Pacific Shores Subdivision, north of Crescent City, Del Norte County, APN 108-071-02 (**Exhibit 1**).

DESCRIPTION OF PROPERTY: Coastal property in Pacific Shores, near Lakes Earl and Tolowa in Del Norte County.

PROPERTY OWNER: Danny Wettengel

VIOLATION DESCRIPTION: Unpermitted development including (but not limited to): installation of a culvert, trench excavation, placement of fill (in or adjacent to wetlands), change in intensity of use from a vacant lot to residential uses, removal of major vegetation, (long term) placement of recreational vehicles, and construction of a lean-to building.

SUBSTANTIVE FILE DOCUMENTS:

1. Cease and Desist Order File No. CCC-06-CD-07
2. Exhibits 1 through 6

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

Staff recommends that the Commission issue Cease and Desist Order No. CCC-06-CD-07 (“Order”) to require removal of unpermitted development at Pacific Shores Subdivision Block 29, Lot 18, APN 108-071-02 in Del Norte County (“subject property”). The unpermitted development includes (but may not be limited to): installation of a culvert, trench excavation, placement of fill (in or adjacent to wetlands), change in intensity of use from a vacant lot to residential uses, removal of major vegetation, (long term) placement of recreational vehicles, and construction of a lean-to building (**Exhibit 2**). Danny Wettengel (“Respondent”) owns the subject property.

The subject property is located in the Pacific Shores subdivision in unincorporated Del Norte County, north of Crescent City. Pacific Shores is a 1,535-lot subdivision created in 1963. The subdivision has no developed community service or public utility infrastructure, minimal road improvements, and is situated tens of miles from police, fire, and ambulance emergency service responders. Estuarine areas and seasonal wetlands, which constitute significant environmentally sensitive habitat areas, are in close proximity to the subject property. The subject property and connecting roadways serving the subject property are subject to seasonal inundation by the waters of the nearby coastal lagoon system known as Lakes Earl and Tolowa. This large estuarine lagoon system is specifically called out for heightened protection from fill and other adverse environmental impacts in Section 30233(c) of the Coastal Act. The lagoon complex supports numerous habitat types including emergent wetlands, open water, mudflats, flooded pastures, woodland, sandy beach, and riverine habitat. The subject property has essentially flat relief and is located at an elevation of approximately 10 feet above sea level. The subject property and its connecting roadways are subject to seasonal inundation by the waters of Lakes Earl and Tolowa.

Regarding coastal planning and development, the entire subdivision is an Area of Deferred Certification (“ADC”) and was not included in the Commission’s October 1983 certification of the Del Norte County Local Coastal Program. The Commission therefore possesses jurisdiction for issuing Coastal Development Permits and for enforcing the provisions of the Coastal Act in this area.

Unpermitted activity that has occurred on the subject property meets the definition of “development” set forth in Section 30106 of the Coastal Act (Public Resources Code). The development was undertaken without a Coastal Development Permit (“CDP”), in violation of Public Resources Code section 30600. Therefore, the Commission may issue a Cease and Desist Order under Section 30810 of the Coastal Act. The proposed Order would direct the Respondent to: 1) cease and desist from conducting or maintaining unpermitted development on the property; 2) remove all unpermitted development from the property, in accordance with the terms of the Order; and 3) restore impacted areas of the property.

The Motion to issue the proposed Cease and Desist Order is found on page 3.

II. HEARING PROCEDURES

A. Cease and Desist Order

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

For a Cease and Desist Order hearing, the Chair shall announce the matter and request that all alleged violators or their representatives present at the hearing identify themselves for the record, indicate what matters are already part of the record, and announce the rules of the proceeding including time limits for presentations. The Chair shall also announce the right of any speaker to propose to the Commission, before the close of the hearing, any question(s) for any Commissioner, in his or her discretion, to ask of any other person. Commission staff shall then present the report and recommendation to the Commission, after which the alleged violator(s) or their representatives 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 Section 13185 and 13186, incorporating by reference Section 13065. The Chair will close the public hearing after the presentations are completed. The Commissioners may ask questions to any speaker at any time during the hearing or deliberations, including, if any Commissioner chooses, any questions proposed by any speaker in the manner noted above. Finally, the Commission shall determine, by a majority vote of those present and voting, whether to issue the Cease and Desist Order, either in the form recommended by the Executive Director, or as amended by the Commission. Passage of the motion listed below, per staff recommendation or as amended by the Commission, will result in issuance of the Order.

III. STAFF RECOMMENDATION

A. Cease and Desist Order

1. Motion

I move that the Commission issue Cease and Desist Order No. CCC-06-CD-07 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-07. 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-07, 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.

IV. FINDINGS FOR CEASE AND DESIST ORDER CCC-06-CD-07

A. History of Violation

The subject property is located in the Pacific Shores subdivision in unincorporated Del Norte County, north of Crescent City. Pacific Shores is a 1535-lot subdivision created in 1963. The subdivision has no developed community service and public utility infrastructure, minimal road improvements, and is situated tens of miles from police, fire, and ambulance emergency service responders. Estuarine areas and seasonal wetlands, which constitute significant environmentally sensitive habitat areas, are in close proximity to the subject property. The subject property and connecting roadways serving the subject property are subject to seasonal inundation by the waters of the nearby coastal lagoon known as Lakes Earl and Tolowa. This large estuarine lagoon is specifically called out for heightened protection from fill and other adverse environmental impacts in Section 30233(c) of the Coastal Act. The lagoon complex supports numerous habitat types including emergent wetlands, open water, mudflats, flooded pastures, woodland, sandy beach, and riverine habitat. The subject property has essentially flat relief and is located at an elevation of approximately 10 feet above sea level. The subject property and its connecting roadways are subject to seasonal inundation by the waters of Lakes Earl and Tolowa.

Regarding coastal planning and development, the entire subdivision is an Area of Deferred Certification (“ADC”) and was not included in the Commission’s October 1983 certification of the Del Norte County Local Coastal Program. The Commission therefore possesses jurisdiction for issuing Coastal Development Permits and for enforcing the provisions of the Coastal Act in this area.

In a letter dated February 13, 2004, Commission staff formally notified Respondent that the unpermitted development on the subject property, which Respondent owns, constituted a violation of the Coastal Act and that Respondent must resolve the Coastal Act violations (**Exhibit 3**). In a letter dated July 21, 2004, Commission staff reminded Respondent that the Coastal Act violations on the subject property had not yet been resolved and notified Respondent of the possibility that a NOVA could be recorded against the subject property (**Exhibit 4**).

In a letter dated June 21, 2006, the Executive Director of the Commission sent a Notice of Intent (NOI) to record a NOVA and to commence Cease and Desist Order and Restoration Order Proceedings to Respondent (**Exhibit 5**). Larry Wettengel, Respondent’s father, advised Commission staff that Respondent does not have a permanent address. To ensure that Respondent received the NOI, Commission staff sent a copy to his father’s address in Crescent City as well as to Respondent’s address in the Pacific Shores subdivision.

The NOI described the real property, identified the nature of the violations, named the owner of the property and informed him that if he objected to the filing of the Notice of Violation, he would be given an opportunity to present evidence on the issue on whether a violation has occurred. The NOI also stated the basis for issuance of the proposed Cease and Desist and Restoration orders, stated that the matter was tentatively being placed on the Commission's August 2006 hearing agenda, and provided Respondent with the opportunity to respond to allegations in the NOI with a Statement of Defense form. The NOI requested that Respondent submit his response or objection to Commission staff in writing by July 11, 2006, pursuant to the deadlines set forth in the Commission's regulations.

As of July 20, 2006, Commission staff had not received any response from Respondent. Certified and regular mail copies of the June 21, 2006 NOI that were mailed to Respondent at his only known address at Pacific Shores were returned by the U. S. Post Office as undeliverable, because there is no receptacle for receipt of mail. As mentioned above, staff also mailed a copy of the June 21, 2006 NOI to Respondent's father at his Crescent City address. This copy of the NOI has not been returned to staff, so given the standard practices of the local post office, which have been confirmed by staff, this copy of the NOI was presumably received at the father's Crescent City address. Staff telephoned Respondent's father several times on July 20 and 21, 2006 and left voicemails requesting information about whether Respondent received the NOI via his father. Respondent's father has not yet returned staff's phone calls.

In order to ensure all proper notice was given, on July 25, 2006, staff retained a process server who visited the subject property on July 27, 2006 to confirm in person whether Respondent received the June 21, 2006 NOI and/or to deliver an updated NOI, dated July 26, 2006. During this site visit, the process server confirmed that Respondent and at least one other person are living on site, but Respondent would neither confirm nor deny receipt of the June 21, 2006 NOI. The process server confirmed hand delivery of the updated July 26, 2006 NOI, which established a new deadline of August 15, 2006, for written submittal to Commission staff of Respondent's response or objection, pursuant to the deadlines set forth in the Commission's regulations. The process server's proof of service and diligence report is included as **Exhibit 6**. As of the date of this staff report, Commission staff has not received any response from Respondent.

B. Description of Unpermitted Development

The unpermitted development consists of the construction, placement on the subject property, and maintenance of development, including (but not limited to): installation of a culvert, trench excavation, placement of fill (in or adjacent to wetlands), change in intensity of use from a vacant lot to residential uses, removal of major vegetation, (long term) placement of recreational vehicles, and construction of a lean-to building.

Unpermitted activity that has occurred on the subject property meets the definition of "development" set forth in Section 30106 of the Coastal Act (Public Resources Code). The development was undertaken without a Coastal Development Permit ("CDP"), in violation of Public Resources Code section 30600.

C. Basis for Issuance of 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 cited activities at issue in this matter clearly constitute development as defined in Coastal Act Section 30106 and, as such, are subject to the permit requirements provided in Coastal Act Section 30600(a).

No CDP was obtained for the development on the property, as required under Coastal Act Section 30600(a). Consequently, the Commission is authorized to issue CCC-06-CD-07 pursuant to Section 30810(a)(1). The proposed Cease and Desist Order will direct the Respondents to ensure compliance with the Coastal Act by removing the unpermitted development and restoring the impacted areas.

D. Inconsistency with Chapter 3 of the Coastal Act and Del Norte County Codes

As discussed above, the Commission may issue a Cease and Desist Order under Section 30810 of the Coastal Act for the unpermitted development on the subject property. A showing of inconsistency with Chapter 3 of the Coastal Act is not required for Cease and Desist Orders to be issued under Section 30810, but we provide this information for background purposes. Additionally, we have provided relevant sections of the Del Norte County Codes to underscore the inconsistencies of this development with local regulations and policies as well as with the Coastal Act.

1. Inconsistency with Chapter 3 of the Coastal Act

The unpermitted development is inconsistent with Sections 30230, 30231, 30233, 30240 and 30250(a) of the Coastal Act. The discussion regarding the inconsistency of the unpermitted development with Sections 30230, 30231, 30233, and 30240 of the Coastal Act is grouped together after the text excerpts of these four sections because the impact discussion for all four sections is related. The inconsistency of the unpermitted development with Section 30250(a) is discussed separately at the end of this section of the report.

i. Section 30230 – Marine resources; maintenance

Coastal Act Section 30230 states the following:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

ii. Section 30231 – Biological productivity; water quality

Coastal Act Section 30231 states the following:

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.

iii. Section 30233 – Diking, filling or dredging; continued movement of sediment and nutrients

Coastal Act Section 30233(c) states the following:

In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary. Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its report entitled “Acquisition Priorities for the Coastal Wetlands of California”, shall be limited to very minor incidental public facilities, restorative measures, nature study, commercial fishing facilities in Bodega Bay, and development in already developed parts of south San Diego Bay, if otherwise in accordance with this division.

iv. Section 30240 – Environmentally sensitive habitat areas; adjacent development

Coastal Act Section 30240 states the following:

(a) Environmentally 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.

Analysis of Chapter 3 Impacts

Lakes Earl and Tolowa are an estuarine lagoon that comprise the core of the approximately 5,624-acre Lake Earl Wildlife Area (“LEWA”), which is managed by the California Department of Fish and Game (“CDFG”). The U.S. Fish and Wildlife Service (“USFWS”) has characterized Lake Earl and Lake Tolowa as “one of the most unique and valuable wetland complexes in California.” This wetland complex is specifically called out for heightened protection from fill and other adverse environmental impacts in Section 30233(c) of the Coastal Act. The lagoon system supports numerous habitat types including emergent wetlands, open water, mudflats, flooded pastures, woodland, sandy beach, and riverine habitat. The subject property has essentially flat relief and is located at an elevation of approximately 10 feet above sea level. The subject property and its connecting roadways are subject to seasonal inundation by the waters of Lakes Earl and Tolowa.

The unpermitted development on the subject property constitutes a significant disruption and negative impact to marine resources and environmentally sensitive wetland habitat (**Sections 30230, 30233 and 30240** of the Coastal Act), because of adverse effects of the unpermitted fill and major vegetation removal. Any fill or alteration of wetland hydrology (including diversion or draining of water from or into wetland areas) reduces its ability to function. Water is the main requirement for a functional wetland. If water is removed, or isn’t present in the wetland for as long (for example, because of adjacent filled areas that prevent water from infiltrating into the ground), then wetland function will be degraded. Therefore, wetland function would be degraded by actions that 1) disrupt water supply through direct fill of a wetland, other sorts of covering of a wetland, diversion of water, or draining, 2) degrade water quality through chemical contamination or temperature modification, or 3) result in removal of wetland vegetation through grading, grazing, mowing, or placement of fill that covers and then eliminates the underlying vegetation. Degradation of function means that the same plants will not grow, the wetland will not provide the same water filtration, percolation, and stormwater runoff storage, and wildlife use of that feature could be reduced.

The unpermitted development is likely also affecting the biological productivity and water quality of the surrounding area (which is to be protected under **Section 30231** of the Coastal Act). The subject property has no septic system and no municipal water supply. Commission staff has no information regarding how Respondent may be disposing of sewage, or if any existing system is being adequately maintained. The potential for wastewater and septic waste streams percolating into the surrounding area and contaminating the groundwater is high given

the absence of waste disposal infrastructure. The subject property has a low elevation relative to the lagoon's surface level presenting the risk that untreated sewage from Respondent's property could contaminate the public waters. Furthermore, the Pacific Shores subdivision is characterized by shallow or perched groundwater conditions and underlying sandy soils that are highly permeable. The subject property's natural characteristics and geography, combined with Respondent's unpermitted development, present a high risk of release of untreated sewage into adjoining areas that would pose human health risks to persons who might come in contact with the waste. This unpermitted development also threatens to adversely affect the water quality and nearby environmentally sensitive habitat area.

Therefore, the unpermitted development is inconsistent with **Sections 30230, 30231, 30233 and 30240** of the Coastal Act.

v. Section 30250(a) – Location; existing developed area

Coastal Act Section 30250(a) states the following:

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

Analysis of Chapter 3 Impacts

No municipal water supply or wastewater treatment facilities are available to serve the subject property. Although the subject property is located within an established community services district, the Pacific Shores California Subdivision Water District has not developed water infrastructure or sewage disposal infrastructure to serve the subdivision.

The unpermitted development on the subject property has not been placed within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In fact, no such services are available and the unpermitted development is having significant adverse effects on coastal resources as described above. Therefore, the unpermitted development is inconsistent with **Section 30250(a)** of the Coastal Act.

2. Inconsistency with Del Norte County Code

The unpermitted development on the subject property is inconsistent with the following Del Norte County Health and Welfare (Title 7) and Building and Construction (Title 14) Codes regulating recreational vehicles and on-site sewage disposal:

i. County Health and Welfare Code; Recreational Vehicles and Tents

Section 7.09.110 – Purpose

Del Norte Health and Welfare Code Section 7.09.110 states the following:

The purpose of this chapter is to enhance the appearance of the county by limiting the proliferation of recreational vehicles and tents being used for temporary lodging on a protracted basis which constitute a visual blight and reduces the quality of life within the county to the extent that the overall public health is detrimentally affected. (Ord. 97-12 § 2 (part), 1997.)

Section 7.09.120 – Definitions

Del Norte Health and Welfare Code Section 7.09.120 states the following:

As used in this chapter

...

"Development permit" means and includes, but shall not be limited to, a valid building permit or other valid permit acquired for the development of property for residential purposes, and any other valid permit obtained for the development of property as defined in Section 21.04.195, both within and outside of the coastal zone.

...

"Enforcement official" means any officer or department head of the county or other public agency charged with the duty of enforcing county ordinances or laws of the state.

...

"Recreational vehicle" means and includes, but shall not be limited to, a motor home, travel trailer, truck camper, or camping trailer, with or without motive power, designed for human habitation for recreational, emergency, or other occupancy, and which is either self-propelled, truck-mounted, or designed to be towable on the highways. For purposes of this chapter, "recreational vehicle" shall also include tents which may or may not be designed to be towable on the highways. (Ord. 97-12 § 2 (part), 1997.)

Section 7.09.210 – Prohibited Activity

Del Norte Health and Welfare Code Section 7.09.210(a) states the following:

It is unlawful for any person to occupy or use any recreational vehicle, or attempt to occupy or use any recreational vehicle for purposes of sleeping or lodging on private or public property, unless otherwise excepted in this chapter, in the unincorporated area of Del Norte County for any period of time in excess of fourteen consecutive days during any thirty day period without first obtaining a permit for such use from the community development department.

Section 7.09.240(a) – Permits

Del Norte Health and Welfare Code Section 7.09.240(a) states the following:

The community development department is authorized to issue permits for the use of recreational vehicles for a period of longer than fourteen days under the following circumstances:

- 1. The registered owner or other person in legal possession of the recreational vehicle has a development permit relating to the property upon which the recreational vehicle is parked; and*
- 2. Adequate and safe provisions have been made for water and sewage; and*
- 3. If electricity is supplied to the recreational vehicle, the connections have been approved for purposes of safety by the county's building inspector. (Ord. 97-12 § 2 (part), 1997.)*

Analysis of applicable LCP provisions:

There are at least two recreational vehicles, as defined by Del Norte County Health and Welfare Code Section 7.09.120, located on the subject property. These recreational vehicles and other development were first observed on the subject property on February 21, 2003 by Commission staff during a site inspection. The community development department has issued no permit for this use. Furthermore, none of the circumstances listed in section 7.09.240 of the County Health and Welfare Code that authorize the community development department to issue recreational use permits apply to the subject property. Photos of the subject property taken in February 2003 and December 2004 by Commission staff indicate that the recreational vehicles have remained on the property for nearly two years and are being used for lodging purposes in contravention of the Del Norte County Health and Welfare Code policies and ordinances.

ii. County Buildings and Construction Code; On-Site Sewage Disposal Systems

Section 14.12.050 – Permit or approval required

Del Norte Buildings and Construction Code Section 14.12.050 states the following:

A. No alternative on-site sewage disposal system shall be constructed, enlarged, altered, repaired, relocated, removed, or demolished unless a permit has first been obtained from the health officer.

B. No standard on-site sewage disposal system shall be constructed, enlarged, altered, repaired, relocated, removed, or demolished unless a permit has first been obtained from the building department.(Ord. 2005-25B § 4, 2005; Ord. 88-34 § 2 (part), 1988.).

Section 14.12.060 – General standards, prohibitions, requirements

Del Norte Buildings and Construction Code Section 14.12.060(a-b) states the following:

A. Approved Disposal Required. All sewage shall be treated and disposed of in an approved manner.

B. Discharge of Sewage Prohibited. Discharge of untreated or partially treated sewage or septic tank effluent directly or indirectly onto the ground surface or into public waters constitutes a public health hazard and is prohibited.

Analysis of applicable LCP provisions:

As discussed above, the Pacific Shores California Subdivision Water District has not developed a sewage disposal infrastructure. Additionally, Respondent has not obtained or applied for any of the above-mentioned permits required by Del Norte County for treatment and disposal of sewage generated on the subject property. Commission staff does not know how Respondent may be disposing of on-site sewage, but photos of the site indicate that a culvert and excavation trenches have been installed on the subject property. If Respondent has constructed an on-site sewage disposal system, he has done so without obtaining a permit from the county building inspection department as required by Del Norte County Buildings and Construction Code Section 14.12.050. Alternatively, if no such system has been constructed, then Respondent is likely in violation of Section 14.12.060, which prohibits the discharge of untreated sewage directly onto the ground surface or into public waters.

E. California Environmental Quality Act (CEQA)

The Commission finds that the issuance of Commission Cease and Desist Order CCC-06-CD-07, to compel removal of the unpermitted development and restoration of the property, is exempt from

any applicable requirements of the California Environmental Quality Act (CEQA) of 1970 and will not have significant adverse effects on the environment, within the meaning of CEQA. The Cease and Desist Order is 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.

F. Findings of Fact

1. Danny Wettengel owns the subject property, identified as Lot 18 in Block 29, APN 108-071-02, in the Pacific Shores Subdivision, north of Crescent City, Del Norte County.
2. Unpermitted development including installation of a culvert, trench excavation, placement of fill (in or adjacent to wetlands), change in intensity of use from a vacant lot to residential uses, removal of major vegetation, (long term) placement of recreational vehicles, and construction of a lean-to building, has occurred on the subject property.
3. No permit was applied for nor obtained for this development.
4. No exemption from the permit requirements of the Coastal Act applies to the unpermitted development on the subject property.
5. The unpermitted development is inconsistent with the Chapter 3 resource protection policies of the Coastal Act, including Sections 30230, 30231, 30233, 30240, and 30250(a).
6. The unpermitted development is causing continuing resource damages.
7. The unpermitted development is inconsistent with the Del Norte County Health and Buildings Codes, including Sections 7.09.210, 7.09.240, 14.12.050, and 14.12.060.
8. The unpermitted development on the site constitutes a violation of the Coastal Act.

G. Violators' Defenses and Commission's Response

The State legislature explicitly granted the Coastal Commission the right to “adopt or amend...rules and regulations to carry out the purposes and provisions of [the Coastal Act], and to govern procedures of the commission.” (Pub. Res. Code § 30333.) Relying on such powers, the Coastal Commission promulgated a set of regulations including one currently codified as Section 13181 in Title 14 of the California Code of Regulations, entitled “Commencement of Cease and Desist Order Proceeding before the Commission,” which became operative on September 3, 1992. (See Cal. Code of Regs., Title 14, § 13181, and historical comments thereto.) Subdivision (a) of Section 13181 provides in relevant part:

“If the executive director believes that the results of an enforcement investigation so warrant, he or she shall commence a cease and desist order proceeding before the commission by providing any person whom he or she believes to be engaging in development activity as described in Section 30810(a) of the Public Resources Code with notice of his or her intent to do so...The

notice of intent shall be accompanied by a “statement of defense form” that conforms to the format attached to these regulations as Appendix A. The person(s) to whom such notice is given shall complete and return the statement of defense form to the Commission by the date specified therein, which date shall be no earlier than 20 days from transmittal of the notice of intent.” (Cal. Code of Regs., title 14, § 13181, subd. (a); emphasis added.)

As of the date of this report, Respondent has not submitted the statement of defense form setting forth his response to staff’s allegations as set forth in the June 21, 2006 or the July 26, 2006 Notice of Intent to Commence Cease and Desist and Restoration Order Proceedings. The Notices of Intent established deadlines of July 11, 2006 and August 15, 2006 for submittal of the statement of defense form. Furthermore, Respondent never requested an extension of the time limit for submittal of the statement of defense form. (See Cal. Code of Regs., title 14, § 13181, subd. (b) (where executive director “may at his or her discretion extend the time limit...upon receipt within the time limit of a written request for such extension and a written demonstration of good cause”). Since the completion of Section 13181’s statement of defense form is mandatory, Respondent has failed to raise and preserve any defenses that he may have.

The defense form requirement serves an important function. (See, e.g., Horack v. Franchise Tax Board (1971) 18 Cal.App.3d 363, 368) (“Where administrative machinery exists for resolution of differences, such procedures must be “fully utilized and exhausted”). The Coastal Commission’s cease and desist hearings are “quasi-judicial.” Thus, if the Coastal Commission is to make findings of fact and conclusions at law in the form of an adopted Staff Report, Respondents must inform the Commission, precisely and in writing, which defenses he wishes the Commission to consider. The statement of defense form has six categories of information that Respondent should have provided to the Coastal Commission: (1) facts or allegations contained in the cease and desist order or the notice of intent that are admitted by respondent; (2) facts or allegations contained in the cease and desist order or the notice of intent that are denied by respondent; (3) facts or allegations contained in the cease and desist order or the notice of intent of which the respondent has no personal knowledge; (4) facts and/or a description of any documents, photographs or other physical evidence that may exonerate the respondent; (5) any other information, statement, etc. that respondent desires to make; and (6) a listing of any documents, exhibits, declarations or other materials that are being attached to the statement of defense form.

The Commission should not be forced to guess which defenses Respondent wants the Commission to consider and which defenses he may have raised informally prior to the hearing but now wishes to abandon. Section 13181, subdivision (a) is specifically designed to serve this function of clarifying the issues to be considered and decided by the Commission. (See Bohn v. Watson (1954), 130 Cal.App.2d 24, 37 (“It was never contemplated that a party to an administrative hearing should withhold any defense then available to him or make only a perfunctory or ‘skeleton’ showing in the hearing...The rule compelling a party to present all legitimate issues before the administrative tribunal is required...to preserve the integrity of the proceedings before that body and to endow them with a dignity beyond that of a mere shadow-play”).)

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

CEASE AND DESIST ORDER CCC-06-CD-07 (Wettengel)

Pursuant to its authority under Public Resource Code Section 30810, the California Coastal Commission hereby orders and authorizes Danny Wettengel, his agents, contractors and employees, and any person(s) acting in concert with any of the foregoing (hereinafter referred to as “Respondent”) to:

1. Cease and desist from engaging in any further unpermitted development on the property identified by Del Norte County as Pacific Shores Subdivision Block 29, Lot 18, Assessor’s Parcel Number 108-071-02 (hereinafter referred to as “subject property”).
2. Cease and desist from maintaining unpermitted development on the subject property.
3. Take all steps necessary to ensure compliance with the Coastal Act, including removal of all unpermitted development from the subject property and restoration of all areas impacted by the unpermitted development and/or its removal, according to the following terms and conditions:
 - a. All unpermitted development, including (but not limited to) installation of a culvert, trench excavation, placement of fill (in or adjacent to wetlands), change in intensity of use from a vacant lot to residential uses, removal of major vegetation, (long term) placement of recreational vehicles, and construction of a lean-to building and the unpermitted development specifically identified in Section III of this Order, on the property identified in Section II of this Order shall be removed no later than **November 17, 2006**. All materials that have been placed on the subject property without a CDP constitute unpermitted development and must be completely removed.
 - b. Any unpermitted fill materials consisting of soil, sand, concrete, culvert, or other similar materials that have been placed on the subject property shall be removed with hand labor utilizing rakes and shovels to avoid impacts to the underlying vegetation. All fill removal shall be conducted with great care for the adjacent and underlying vegetation and shall not result in the excavation of pits or holes on the subject property. The fill shall be removed only as far as the level that reinstates the original site grade that existed prior to the placement of the fill on the subject property.
 - c. The removal of all unpermitted development on the subject property shall be completed no later than **November 17, 2006**. Respondent shall submit photographs of the property that clearly document the completion of all removal activities no later than **December 1, 2006**, to the attention of Sheila Ryan in the Commission’s San Francisco office at the address listed above.

- d. Other than those areas subject to removal and restoration activities, the areas of the property and surrounding areas currently undisturbed shall not be disturbed by activities required by this Order.
- e. Waste materials must be disposed of at a licensed facility, preferably outside Coastal Zone (appropriate for the type of waste being disposed of). If the disposal site were located within the Coastal Zone, a CDP for such disposal would be required and must be obtained prior to such disposal.

I. Persons Subject to the Order

Persons subject to this Cease and Desist Order are Respondent, Respondent's agents, contractors and employees, and any persons acting in concert with any of the foregoing.

II. Identification of the Property

The property that is subject to this Order is identified by Del Norte County as Pacific Shores Subdivision Block 29, Lot 18, Assessor's Parcel Number 108-071-02.

III. Description of Unpermitted Development

Unpermitted development includes (but may not be limited to): installation of a culvert, trench excavation, placement of fill (in or adjacent to wetlands), change in intensity of use from a vacant lot to residential uses, removal of major vegetation, (long term) placement of recreational vehicles, and construction of a lean-to building.

IV. Commission Jurisdiction and Authority to Act

The Commission has jurisdiction over this matter, as the property at issue is located within the Coastal Zone and in an area not covered by a certified Local Coastal Program. The Commission is issuing this Order pursuant to its authority under Coastal Act Section 30810.

V. Submittal of Documents

All documents submitted pursuant to this Order must be sent to:

California Coastal Commission
Attn: Sheila Ryan
45 Fremont St., Suite 2000
San Francisco, CA 94105-2219

VI. Effective Date and Terms of the Order

The effective date of the Order is the date of approval by the Commission. The Order shall remain in effect permanently unless and until modified or rescinded by the Commission.

VII. Findings

The Order is issued on the basis of the findings adopted by the Commission at the September 2006 hearing, as set forth in the attached document entitled “Staff Report and Findings for Issuance of Cease and Desist Order”.

VIII. Compliance Obligation

Strict compliance with the Order by all parties subject thereto is required. Failure to comply strictly with any term or condition of the Order including any deadline contained in the Order will constitute a violation of this Order and may result in the imposition of civil penalties, as authorized under Section 30821.6, of up to SIX THOUSAND DOLLARS (\$6,000) per day for each day in which such compliance failure persists, in addition to any other penalties authorized under Section 30820.

IX. Extension of Deadlines

The Executive Director may extend deadlines for good cause. Any extension request must be made in writing to the Executive Director and received by Commission staff at least ten days prior to expiration of the subject deadline.

X. Appeal

Pursuant to Public Resources Code Section 30803(b), any person or entity against whom this Order is issued may file a petition with the Superior Court for a stay of this Order.

XI. Modifications and Amendments to this Order

This Order may be amended or modified only in accordance with the standards and procedures set forth in Section 13188(b) of the Commission’s administrative regulations.

XII. Government Liability

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

XIII. Successors and Assigns

This Order shall run with the land, binding all successors in interest, future owners of the property, heirs and assigns of Respondent. Notice shall be provided to all successors, heirs and assigns of any remaining obligations under this Order.

XIV. No Limitation on Authority

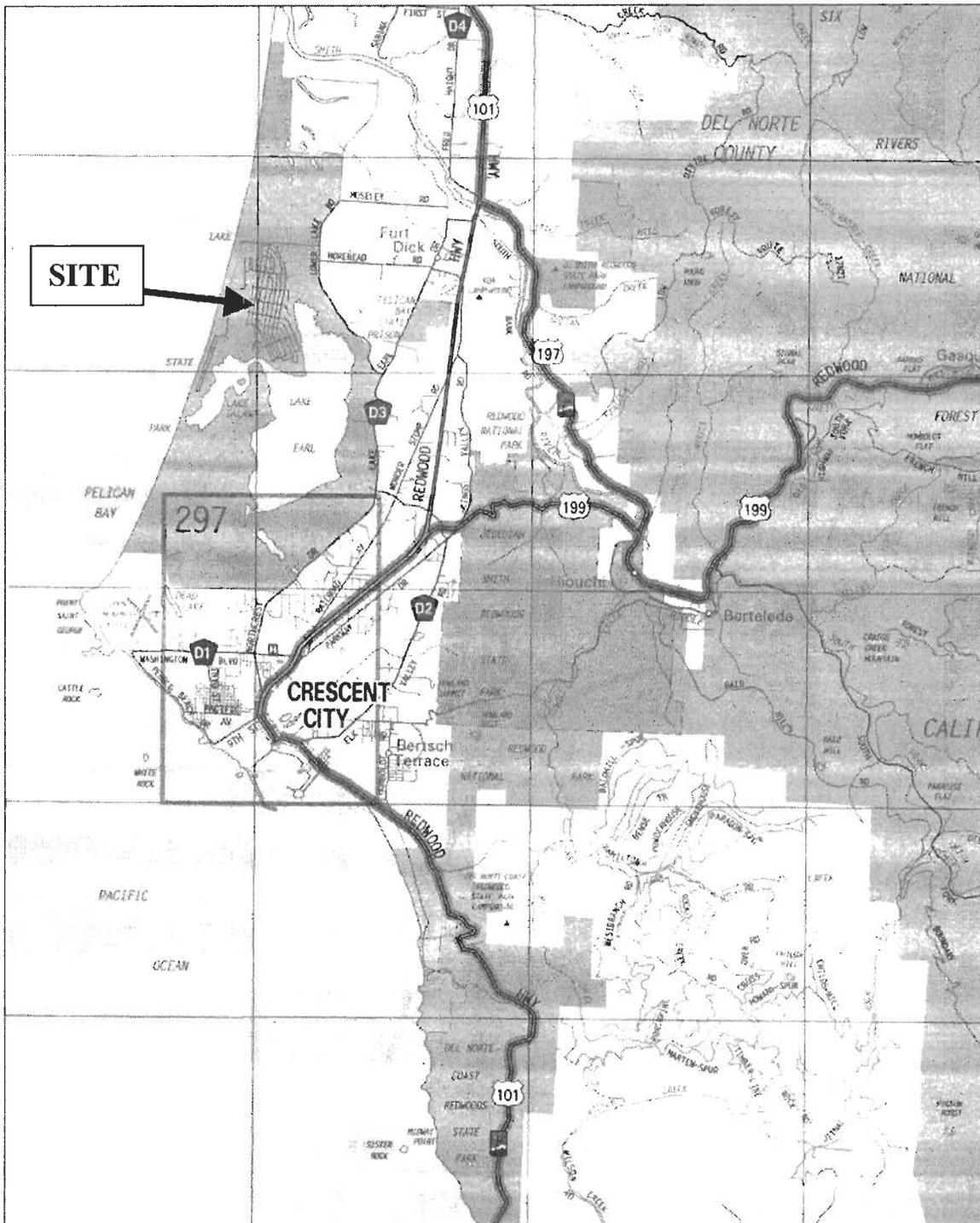
Except as expressly provided herein, nothing herein shall limit or restrict the exercise of the Commission's enforcement authority pursuant to Chapter 9 of the Coastal Act, including the authority to require and enforce compliance with this Order.

Executed in _____ on _____,
on behalf of the California Coastal Commission.

By: _____ Peter Douglas, Executive Director

Exhibits

1. Site map.
2. Site photos.
3. Notice of Violation letter dated February 13, 2004 from Commission staff to Respondent regarding the unpermitted development on the subject property.
4. Notice of Violation letter dated July 21, 2004 from Commission staff to Respondent with notification that a NOVA could be recorded against the subject property.
5. Notice of Intent to Record a Notice of Violation and to Commence Cease and Desist Order and Restoration Order Proceedings, from the Executive Director to the Respondents, dated June 21, 2006.
6. Proof of service and diligence report from process server dated July 27, 2006.



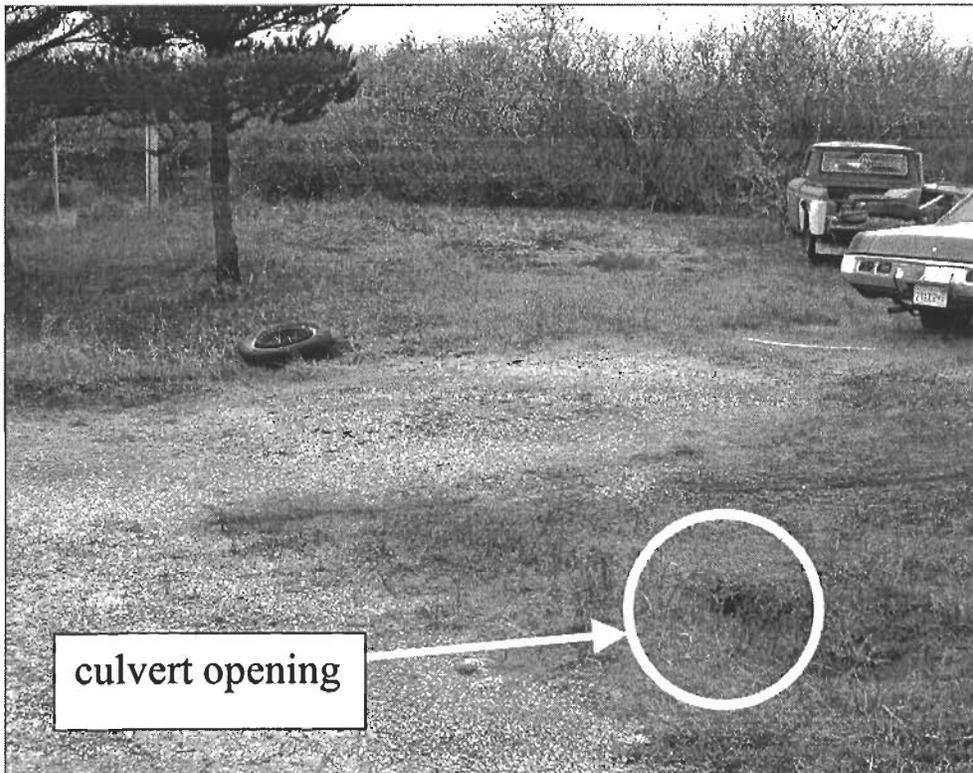


Exhibit 2a: Unpermitted culvert and gravel fill on subject property.



Exhibit 2b: Close-up view of unpermitted culvert on subject property.



Exhibit 2c: Unpermitted (long term) placement of recreational vehicles on subject property.

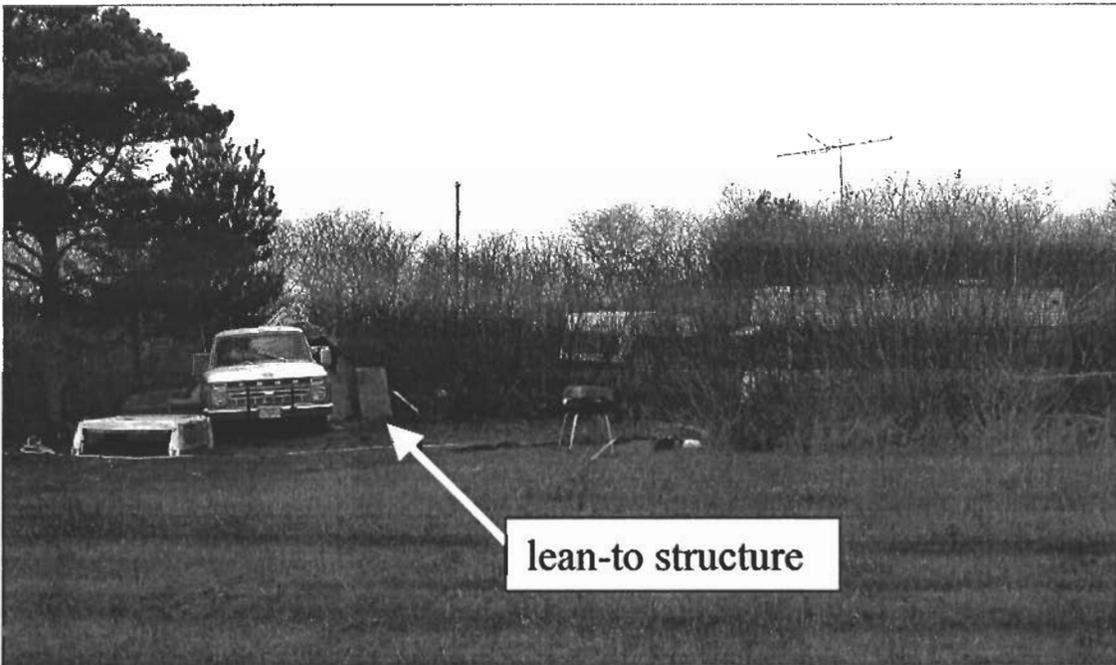


Exhibit 2d: Unpermitted (long term) placement of recreational vehicles and unpermitted lean-to building on subject property.



Exhibit 2e: Unpermitted (long term) placement of recreational vehicles and unpermitted trench excavation.



Exhibit 2f: Close-up view of unpermitted trench excavation on subject property.

CALIFORNIA COASTAL COMMISSION

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



REGULAR AND CERTIFIED MAIL

7003-1010-0005-0457-5608

February 13, 2004

Danny L. Wettengel
270 Ocean Dr.
Crescent City, CA 95531-7922

RE: Coastal Act Violation File No. V-1-04-011; Unpermitted placement of fill in wetlands, removal of vegetation, and installation of a culvert, change in intensity of use from a vacant lot to a residence, removal of vegetation, trench excavation, construction of a lean-to, and placement of recreational vehicles on Pacific Shores subdivision Block 33, Lot 13, APN 108-091-20 in Del Norte County.

Dear Mr. Wettengel:

Danny L. Wettengel is listed as the owner of record for property located in the Pacific Shores subdivision Block 33, Lot 13, APN 108-091-20 in Del Norte County. Coastal Commission staff has confirmed the existence of unpermitted development activities at the identified property, consisting of placement of fill, removal of vegetation, installation of a culvert, erection of a lean-to, change in intensity of use from a vacant lot to a residence, trench excavation, and placement of recreational vehicles. These activities constitute development as defined in section 30106 of the Coastal Act:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; ... change in the density or intensity of use of land; ... construction, reconstruction, demolition, or alteration of the size of any structure...

Pursuant to Coastal Act section 30600, any person wishing to perform or undertake development in the coastal zone is required to obtain a coastal development permit (CDP), in addition to any other permit required by law, authorizing such development before such development takes place. We have reviewed our records and have determined that no CDP exists authorizing the above-mentioned development activities on your property.

To begin resolution of this violation on the subject property with the Coastal Commission, you may follow one of two courses of action. You may submit an application for a CDP with the Coastal Commission, proposing to remove the unpermitted development and restore the subject property to the condition it was in before the unpermitted development occurred. Alternatively,

you may submit an application applying for after-the-fact CDP authorization of the unpermitted development.

If you choose to apply for after-the-fact authorization of the unpermitted development, your CDP application must include a detailed and comprehensive project description, outlining the exact nature of the development that has already occurred, including placement of fill, change in intensity of use from a vacant lot to a residence, clearing of vegetation, and the placement of the above-mentioned structures on the property. For each of the activities described above, your project description must include details as to the exact materials used in the development, the location of each aspect of the unpermitted development, the size of the development (in all three dimensions), the process of installation, and any equipment used in the development activities. Please indicate how your property will be serviced for water and sewer. Finally, please describe any exterior lighting that would be used to illuminate the site.

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

Typically, a permit applicant hires a consultant with expertise in these areas to prepare these reports. Hiring an environmental consultant can cost up to several thousand dollars, and preparing these reports can take several months. It is the responsibility of the applicant to find and hire a consultant, and to pay the relevant consulting fees.

A completed application for after-the-fact authorization to retain the unpermitted development must therefore contain, 1) a completed CDP application form, including a comprehensive and detailed project description, as well as any other material required in the application, 2) a \$1200 non-refundable application fee, 3) a wetlands delineation prepared by a qualified wetlands biologist, and 4) a biological habitat assessment report, outlining the presence or absence of any state or federal listed species on your land, prepared by a biologist with experience in this field.

You may instead choose to apply for a permit to remove the unpermitted development, and restore the property to the condition it was in before the unpermitted development activities occurred. Removal of the unpermitted development and restoration of the property would

involve: abandoning the use of the property as a residence, and removing all structures on the property as well as any fill that has been placed on the property. Your project description must include a detailed description of how the removal of the structures and fill will be achieved, including a description of any equipment to be used in removal, and a clear indication of the disposal site(s) proposed for the removed structures and fill material. Because of the potential presence of wetlands and/or other ESHA, an application for removal and restoration of the property may also require the submittal of a biological assessment addressing the presence, extent, and possible impacts to wetlands and other EHSA.

No matter which type of project application you choose to submit, after our office receives your permit application and accepts it as complete for filing, your project will be reviewed by staff for consistency with Chapter Three policies of the Coastal Act. Based on this consistency analysis, staff will make a recommendation for approval, approval with conditions, or denial of your project. The staff report and recommendation will then be scheduled for a public hearing before the Commission, and the Commission will at that time make a final decision concerning your project. Based on our understanding of the development activities, as described earlier in this letter, it is our belief that it will be easiest for staff to find an application to remove and restore consistent with Chapter Three policies of the Coastal Act. Finding an application for after-the-fact authorization to be consistent with the Coastal Act will be more difficult, if not impossible, due to the significant wetland and habitat resources already mentioned.

It is critical that you stop immediately all unpermitted development activities, and advise us within the next week (no later than **February 20, 2004**), as to how you plan to resolve this violation. Please submit to this office by **March 3, 2004**, a completed CDP application for either removal of the unpermitted development and restoration of the site, or after-the-fact authorization to retain the unpermitted development. I have included a blank CDP application form with this letter. I have also included a general letter we have written regarding Pacific Shores, and permit requirements.

Commission enforcement staff prefers to work cooperatively with alleged violators to resolve Coastal Act violations administratively, through the permitting process. However, if you fail to meet our requested permit application deadline, Commission staff will be forced to conclude that you do not wish to resolve this violation administratively and we will be obligated to seek formal action by the Commission to resolve this matter. For that reason, I provide the following citations of the Coastal Act so that you fully understand the consequence of violation cases subject to formal action.

Section 30803 of the Coastal Act authorizes the Commission to maintain a legal action for declaratory and equitable relief to restrain any violation of the Act. Coastal Act section 30809 states that if the Executive Director of the Coastal Commission determines that any person has undertaken or is threatening to undertake any activity that requires a permit from the Coastal Commission without first securing a CDP, the Executive Director may issue an order directing that person to cease and desist. Coastal Act section 30810 states that the Commission may also issue a permanent cease and desist order. A cease and desist order may be subject to terms and conditions that are necessary to avoid irreparable injury to the area or to ensure compliance with the Coastal Act. Moreover, section 30811 authorizes the Commission to order restoration of a

site where development occurred without a CDP, is inconsistent with the Coastal Act, and is causing continuing resource damage.

In addition, section 30802(a) provides for civil liability to be imposed on any person who performs or who undertakes development without a coastal development permit 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. Section 30802(b) provides that additional civil liability may be imposed on any person who performs or undertakes development without a coastal development permit or that is inconsistent with any coastal development permit previously issued by the Commission, when the person knowingly and intentionally 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 type of cease and desist order or of a restoration order can result in the imposition of civil fines of up to \$6000 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 necessary to deter further violations.

You may contact me at (415) 904-5298, or in writing at the letterhead address, to discuss resolution of this enforcement action. If you have questions concerning applying for a CDP, please contact Permit Analyst Jim Baskin at (707) 445-7833.

Sincerely,



Dan Segan
Enforcement Staff
California Coastal Commission,

cc: Bob Merrill, North Coast District Manager
Nancy Cave, Statewide Enforcement Program Supervisor
Jim Baskin, North Coast Permit Analyst
Ernie Perry, Del Norte County Planning Director

enclosures: coastal development permit application form
copy of letter to Pacific Shores California Water District

CALIFORNIA COASTAL COMMISSION

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



July 21, 2004

SENT BY REGULAR & CERTIFIED MAIL
7003 1010 0005 0457 5745 and 7003 1010 0005 0457 5301

Danny Wettengel
270 Ocean Drive
and
270 Cessna Drive
Crescent City, CA 95531

SUBJECT: Coastal Act Violation File No. V-1-04-011: Unpermitted placement of fill in wetlands; change in intensity of use from a vacant lot to residential use; vegetation removal; and placement of recreational vehicles on property within the Pacific Shores subdivision Block 29, Lot 18, APN 108-071-02, Del Norte County.

Dear Mr. Danny Wettengel:

On February 13, 2004, the California Coastal Commission sent you a letter (copy enclosed) detailing an alleged violation of the California Coastal Act's permit requirements located on your property, in the Pacific Shores subdivision at Block 29, Lot 18, (APN 108-071-02) in Del Norte County.¹ The letter requested that you: a) inform us of how you intend to resolve this violation no later than February 20, 2004, and b) submit a completed Coastal Development Permit (CDP) application by March 3, 2004. United States Postal records indicate that you received this letter on February 26, 2004, but to date you have still not contacted this office, nor have you submitted a CDP application.

The unpermitted development on your property consists of: 1) the placement of fill in wetlands; 2) changing the intensity of use of a vacant lot to residential use; 3) vegetation removal; and 4) the placement of recreational vehicles.

As outlined in the previous letter, you have two options for resolution of this Coastal Act violation. You can: 1) submit a CDP application to remove the unpermitted development and restore the affected property; or 2) submit a CDP application for after-the-fact CDP authorization to retain the unpermitted development.

¹ The 13 February 2004 letter incorrectly listed the block and lot numbers, as well as the incorrect Assessor's Parcel Number. The current letter accurately reflects the block, lot and Assessor Parcel numbers and this property is shown to be owned by Danny Wettengel.

In our letter of February 13, 2004 , and in the "Pacific Shores California Water District" letter sent as an attachment (second copy enclosed), we said that option 2 above, application to retain the cited unpermitted development, would require additional resource studies, because of the numerous resource issues associated with the Pacific Shores subdivision.

We hope that you will decide to resolve the violation voluntarily. However, should we fail to reach an administrative resolution of this matter, and if "the Commission finds, based on substantial evidence, a violation has occurred," sections 30812 and in particular, subsection 30812(d) of the Coastal Act authorize the Commission to record a Notice of Violation on your property.

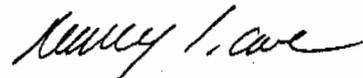
Pursuant to Section 30812, if you fail to respond by the stated deadline, we will send you notice of the Commission's intent to record a Notice of Violation with the County Recorder's Office. Upon receipt of this notice, you will have twenty (20) days to inform the Executive Director of any objection you might have to the recordation of the Notice, and your desire to have the Commission conduct a public hearing before recording such a notice.

If no objection is raised within twenty days, the Notice of Violation will be recorded with the County. However, if you object to the Notice of Violation being recorded, you would be entitled to a public hearing at a Commission hearing. If at that public hearing the Commission finds that a violation exists, the Notice will be recorded. If the Commission finds that no violation has occurred, the Executive Director of the Commission will mail you notice of that finding.

It is my understanding that you still have not contacted Commission staff to discuss your permitting options. Thus I will extend your deadline to **August 4, 2004** to contact us so that we might discuss the appropriate. You can also contact Bob Merrill of our North Coast office at 707-445-7833 to discuss any concerns you may have about the permitting process.

If you have any questions about this letter or this enforcement action, please do not hesitate to contact me at the letterhead above, or at 415-904-5290.

Sincerely,



Nancy L. Cave

Cc: Bob Merrill, North Coast District Manager
Diane Livia, Enforcement staff
Ernie Perry, Del Norte Planning Director

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400
TDD (415) 597-5885

Via Certified and Regular Mail

June 21, 2006

Danny Wettengel
270 Ocean Drive
Crescent City, CA 95531-7922

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

Violation No.: V-1-04-011

Location: Block 29, Lot 18, Pacific Shores, Del Norte County; APN 108-071-02

Violation Description: Unpermitted placement of fill (in or adjacent to wetlands), installation of culvert, trench excavation, change in intensity of use from a vacant lot to residential uses, removal of major vegetation, (long term) placement of recreational vehicles, and construction of a lean-to building.

Dear Mr. Wettengel:

The purpose of this letter is to notify you of my intent, as Executive Director of the California Coastal Commission ("Commission"), to record a Notice of Violation ("NOVA") against your property for unpermitted development, and to commence proceedings for issuance of a Cease and Desist Order and Restoration Order for unpermitted development. The unpermitted development includes placement of fill (in or adjacent to wetlands), installation of culvert, trench excavation, change in intensity of use from a vacant lot to residential uses, major vegetation removal, (long term) placement of recreational vehicles, and construction of a lean-to building. This unpermitted development is located on property you own at Block 29, Lot 18, Pacific

Shores, Del Norte County, APN 108-071-02 ("subject property"). The subject property contains and is adjacent to environmentally sensitive habitat.

Development is defined, for purposes of the Coastal Act,¹ in Section 30106 of the Coastal Act as follows:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any 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... (emphasis added)

The placement of fill (in this case, in or adjacent to wetlands), installation of culvert, trench excavation, change in intensity of use from a vacant lot to residential uses, major vegetation removal, (long term) placement of recreational vehicles, and construction of a lean-to building that has occurred on the subject property each constitute development under the Coastal Act, and as such, all are subject to Coastal Act requirements. Primarily, they are subject to the requirement in Section 30600(a), which requires that anyone performing such non-exempt development within the Coastal Zone obtain a Coastal Development Permit ("CDP"). These activities all occurred without the benefits of CDPs, which means they are violations of the Coastal Act.

The purpose of these enforcement proceedings is to resolve outstanding issues associated with the unpermitted development activities that have occurred at the subject property. The purpose of the NOVA is to warn prospective buyers about the Coastal Act violations on the subject property. Collectively, the Cease and Desist Order and Restoration Order will direct you to cease and desist from performing or maintaining any unpermitted development, will require the removal of unpermitted development, and will order any necessary restoration of the areas impacted by the unpermitted development to return it to its pre-violation condition. The NOVA, Cease and Desist Order and Restoration Order are discussed in more detail in the following sections of this letter.

In letters dated February 13, 2004 and July 21, 2004, the Coastal Commission sent you notices of violation regarding the unpermitted development on the subject property, which you own. We have received no response from you regarding the Coastal Act violations on the subject property, and the violations remain unresolved.

¹ The Coastal Act is codified in Section 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.

Notice of Violation

The Commission's authority to record a Notice of Violation against your property 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 development has occurred in violation of the Coastal Act on the subject property. If you object to the recordation of a Notice of Violation against your property in this matter and wish to present evidence to the Commission at a public hearing on the issue of whether a violation has occurred, you must respond, in writing, within 20 days of the postmarked mailing of this notification. If, within 20 days of mailing of the notification, you fail to inform Commission staff in writing of an objection to recording a Notice of Violation, I shall record the Notice of Violation in the Del Norte County Recorder's Office as provided for under Section 30812 of the Coastal Act.

If you object to the recordation of a Notice of Violation in this matter and wish to present evidence on the issue of whether a violation has occurred, **you must do so in writing, to the attention of Sheila Ryan in the Coastal Commission's San Francisco office, no later than July 11, 2006.** Please include the evidence you wish to present to the Coastal Commission in your written response and identify any issues you would like us to consider.

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, in part, 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.

As the Executive Director of the Commission, I am issuing this Notice of Intent to commence Cease and Desist Order proceedings because unpermitted development has occurred at the subject property. This unpermitted development includes placement of fill (in or adjacent to wetlands), installation of culvert, trench excavation, change in intensity of use from a vacant lot to residential uses, major vegetation removal, (long term) placement of recreational vehicles, and

construction of a lean-to building. The Cease and Desist Order would order you to desist from maintaining unpermitted development and from performing any further unpermitted development on your property.

Based on Section 30810(b) of the Coastal Act, the Cease and Desist Order may also 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. Staff will recommend that the Cease and Desist Order include terms requiring such removal and requiring additional site investigations to ensure removal of all unpermitted development on the subject property, with a schedule for removing the unpermitted development.

Restoration Order

Section 30811 of the Coastal Act authorizes the Commission to order restoration of a site in the following terms:

In addition to any other authority to order restoration, the commission, a local government that is implementing a certified local coastal program, or a port governing body that is implementing a certified port master plan 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, local government, or port governing body, the development is inconsistent with this division, and the development is causing continuing resource damage.

Commission staff has determined that the specified activity meets the criteria of Section 30811 of the Coastal Act, based on the following:

- 1) Unpermitted development consisting of placement of fill (in or adjacent to wetlands), installation of culvert, trench excavation, change in intensity of use from a vacant lot to residential uses, major vegetation removal, (long term) placement of recreational vehicles, and construction of a lean-to building has occurred on the subject property.
- 2) This development is inconsistent with the resource protection policies of the Coastal Act. The subject property is adjacent to (and may contain some) biologically significant wetlands. The project may involve fill of wetland (see Section 30233), but even if it does not, the unpermitted development constitutes a significant disruption and negative impact to the quality of environmentally sensitive wetland habitat (see Section 30240), as well as to the quality of coastal waters contained in nearby Lakes Earl and Tolowa (see Sections 30230 and 30231). The unpermitted placement of vehicles and structures has resulted in major vegetation removal and disturbance to the natural habitat (see Sections 30240(a) and (b)). The unpermitted development has also not been placed "within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or...in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources," as is required by Section 30250(a) of the Coastal Act.

- 3) The unpermitted development is causing continuing resource damage, as defined by Section 13190 of the Commission's regulations. Cal. Code Regs., Title 14 § 13190. The unpermitted development has impacted environmentally sensitive habitat. Such impacts meet the definition of damage provided in Section 13190(b) of those regulations: "*any degradation or other reduction in quality, abundance, or other quantitative or qualitative characteristic of the resource as compared to the condition the resource was in before it was disturbed by unpermitted development*". The unpermitted development includes placement of fill (in or adjacent to wetlands), installation of culvert, trench excavation, change in intensity of use from a vacant lot to residential uses, major vegetation removal, (long term) placement of recreational vehicles, and construction of a lean-to building. The unpermitted development continues to be present and persists at the subject property; therefore, the damage to resources protected by the Coastal Act is continuing.

For the reasons stated above, I have decided to commence a Cease and Desist and Restoration Order proceeding before the Commission in order to restore the subject property to the condition it was in before the unpermitted development occurred. Restoration will require removal of all unpermitted development on the subject property and may include other actions required to restore the subject property to its prior condition.

The procedures for the issuance of Cease and Desist and Restoration Orders are described in Sections 13190 through 13197 of the Commission's regulations. See Title 14 of the California Code of Regulations. Section 13196(e) of the Commission's regulations states the following:

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

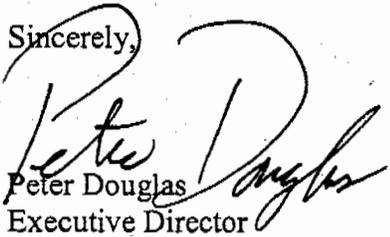
Accordingly, any Restoration Order that the Commission may issue will have as its purpose the restoration of the subject property to the conditions that existed prior to the occurrence of the unpermitted development described above.

Additional Procedures

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, respectively, 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 per violation. 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 per violation for each day in which each 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 Sections 13181(a) and 13191(a) of the Commission's regulations, you have the opportunity to respond to the Commission staff's allegations as set forth in this Notice of Intent to commence Cease and Desist Order and Restoration Order proceedings by completing the enclosed Statement of Defense form. **The Statement of Defense form must be returned to the Commission's San Francisco office, directed to the attention of Sheila Ryan, no later than July 11, 2006.**

The Commission staff is tentatively scheduling the hearing for the NOVA, Cease and Desist Order and Restoration Order during the Commission meeting that is scheduled for the week of August 9-11, 2006 in San Pedro, CA. If you have any questions regarding this letter or the enforcement case, please contact Sheila Ryan at 415-597-5894, or send correspondence to her attention at the San Francisco address listed on the letterhead. We look forward to hearing from you and appreciate your anticipated cooperation.

Sincerely,

Peter Douglas
Executive Director

cc without encl: Lisa Haage, Chief of Enforcement
Alex Helperin, Staff Counsel
Nancy Cave, Northern California Enforcement Supervisor

Encl: Statement of Defense form for Cease and Desist Order and Restoration Order

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7005 1160 0002 8198 8587

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SAN FRANCISCO, CA 94102

Sent To: Danny Wettengel c/o Lancy Wettengel
Street, Apt. No., or PO Box No.: 214 Lagoon AVE
City, State, ZIP+4: Crescent City CA 95531-8834

PS Form 3800, June 2002 See Reverse for Instructions

Sent To: Danny Wettengel
Street, Apt. No., or PO Box No.: 210 OCEAN DR.
City, State, ZIP+4: Crescent City CA 95531-7922

PS Form 3800, June 2002 See Reverse for Instructions

CALIFORNIA COASTAL COMMISSION

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



STATEMENT OF DEFENSE FORM

DEPENDING ON THE OUTCOME OF FURTHER DISCUSSIONS THAT OCCUR WITH THE COMMISSION ENFORCEMENT STAFF AFTER YOU HAVE COMPLETED AND RETURNED THIS FORM, (FURTHER) ADMINISTRATIVE OR LEGAL ENFORCEMENT PROCEEDINGS MAY NEVERTHELESS BE INITIATED AGAINST YOU. IF THAT OCCURS, ANY STATEMENTS THAT YOU MAKE ON THIS FORM WILL BECOME PART OF THE ENFORCEMENT RECORD AND MAY BE USED AGAINST YOU.

YOU MAY WISH TO CONSULT WITH OR RETAIN AN ATTORNEY BEFORE COMPLETING THIS FORM OR OTHERWISE CONTACT THE COMMISSION ENFORCEMENT STAFF.

This form is accompanied by either a cease and desist order and restoration order issued by the Executive Director or a notice of intent to initiate cease and desist order and restoration order proceedings before the Coastal Commission. This document indicates that you are or may be responsible for, or in some way involved in, either a violation of the Coastal Act or a permit issued by the Commission. This form asks you to provide details about the (possible) violation, the responsible parties, the time and place the violation that (may have) occurred, and other pertinent information about the (possible) violation.

This form also provides you the opportunity to respond to the (alleged) facts contained in the document, to raise any affirmative defenses that you believe apply, and to inform the staff of all facts that you believe may exonerate you of any legal responsibility for the (possible) violation or may mitigate your responsibility. You must also enclose with the completed statement of defense form copies of all written documents, such as letters, photographs, maps, drawings, etc. and written declarations under penalty of perjury that you want the commission to consider as part of this enforcement hearing.

You must complete the form (please use additional pages if necessary) and **return it no later than July 11, 2006** to the Commission's enforcement staff at the following address:

Sheila Ryan
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

If you have any questions, please contact Sheila Ryan at 415-597-5894.

- 1. **Facts or allegations contained in the notice of intent that you admit (with specific reference to the paragraph number in the notice of intent):**

4. Other facts which may exonerate or mitigate your possible responsibility or otherwise explain your relationship to the possible violation (be as specific as you can; if you have or know of any document(s), photograph(s), map(s), letter(s), or other evidence that you believe is/are relevant, please identify it/them by name, date, type, and any other identifying information and provide the original(s) or (a) copy(ies) if you can:

5. Any other information, statement, etc. that you want to offer or make:

6. Documents, exhibits, declarations under penalty of perjury or other materials that you have attached to this form to support your answers or that you want to be made part of the administrative record for this enforcement proceeding (Please list in chronological order by date, author, and title, and enclose a copy with this completed form):

<p>ATTORNEY OR PARTY WITHOUT ATTORNEY OR GOVERNMENTAL AGENCY (under Family Code, §§ 17400, 17406 (Name, state bar number, and address):</p> <p>CALIFORNIA COASTAL COMMISSION 45 FREMONT, SUITE 2000 SAN FRANCISCO, CA. 94105-2219</p> <p>TELEPHONE NO.: 415-904-5200 FAX NO.: 415-904-5400</p> <p>ATTORNEY FOR (Name):</p>	<p>FOR COURT USE ONLY</p>
<p>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</p> <p>STREET ADDRESS:</p> <p>MAILING ADDRESS:</p> <p>CITY AND ZIP CODE:</p> <p>BRANCH NAME:</p>	
<p>PETITIONER/PLAINTIFF: CALIFORNIA COASTAL COMMISSION</p> <p>RESPONDENT/DEFENDANT: DANNY WETTENGEL</p> <p>OTHER PARENT:</p>	
<p>PROOF OF PERSONAL SERVICE</p>	<p>CASE NUMBER:</p>

1. I am at least 18 years old, not a party to this action, and not a protected person listed in any of the orders.
2. Person served (name): **DANNY WETTENGEL**
3. I served copies of the following documents (specify):
NOTICE OF INTENT TO COMMENCE CEASE AND DESIST ORDER AND RESTORATION ORDER PROCEEDINGS
4. By personally delivering copies to the person served, as follows:
 - a. Date: **07-27-2006**
 - b. Time: **11:35 A.M.**
 - c. Address:
270 OCEAN DRIVE
CRESCENT CITY, CA. 95531-7922
5. I am
 - a. not a registered California process server.
 - b. a registered California process server.
 - c. an employee or independent contractor of a registered California process server.
 - d. exempt from registration under Bus. & Prof. Code section 22350(b).
 - e. a California sheriff or marshal.
6. My name, address, and telephone number, and, if applicable, county of registration and number (specify):
HETZEL W. AKERS JR.
P.O. BOX 1191
CRESCENT CITY, CA. 95531
COUNTY OF DEL NORTE RPS# 2002-01
7. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
8. I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date: 07-27-2006

HETZEL W. AKERS JR.

 (TYPE OR PRINT NAME OF PERSON WHO SERVED THE PAPERS)



 (SIGNATURE OF PERSON WHO SERVED THE PAPERS)

DANNY WETTENGEL - DILIGENCE REPORT

On July 27th, 2006 at approximately 11:30 a.m. the Process Server was able to determine the location of Danny Wettengels' property according to the map provided by the California Coastal Commission.

The property located at 270 Ocean Drive, Crescent City, Ca. 95531, was at the corner of 9th & Ocean Drive. There was one drive way entering 270 Ocean Drive off of 9th Street. The Process Server parked on 9th Street and walked up the driveway. There were two vehicles & two travel trailers observed parked at this location. While walking toward the trailer with vehicles parked nearby, the Process Server called out "Danny, Danny hello?". At this point a woman came to the doorway. She was asked if Danny Wettengel was home. She asked me why I wanted to know. Server explained to her that he had a letter for him, but wanted to know if by chance he may have already received a copy of it in the mail during the month of June, and again asked her if Danny was home. She replied, "I'm not going to tell you anything until I see some identification". Server explained to her that he was a Process Server and showed her my registration ID.

She then began to get angry and spoke about people from the Triplicate Newspaper who had come out and taken photograph's. He explained that He was not from the Newspaper, and that these were important papers that Danny needed to see if he had not already received them.

She then stated, "I think that you should probably really get off of the property". Server said okay, He would He then asked if she would give the papers to Danny. She replied, "I want you just to leave." Server explained to her that he would need to post the papers in a visible location so that Danny could see them. She told the server that he was not allowed to post anything on the property. At this time I turned and walked back to my car which was parked on 9th Street, approximately 50 feet away.

As Server opened his car door to leave, Process Servers family dog exited the car without permission running onto the property at 270 Ocean Drive trying to play with two other dogs on the property at that time.

The woman previously noted, came out of the trailer yelling that the dog better not hurt her dogs. At this point the Process Server re-entered the property and apologized to the woman, and reassured her that the dog was not mean and was just a young dog, and not to worry he will not hurt anything. The Process Server was able to call the young dog back to him quickly without incident. By this time the woman had walked to the other trailer on the property and was banging on the door yelling, "Danny, Danny, come out here - there is a guy here who is trespassing who I've told to leave and sicked his dog on me, you need to come out here and take care of him."

After hearing this statement, the Process Server realized Danny Wettengel was most likely on the property, and there was a possibility of violence directed toward him. The Process Server stayed still, in a kneeling position, petting the young family dog next to him on the ground.

The male subject who exited the second trailer was approximately 5'7" to 5'10", 25 to 30 years of age with short dark hair. As the male subject approached the Process Server's position, it was explained to him that the young dog had not been "sicked" on anyone, that he was just a young dog and no threat at all. He was then asked if he was Danny Wettengel. The male subject had not replied yet when the woman went over to the

6

Process Server's vehicle, opened the drivers side door and removed the car keys from the ignition. After doing this, the woman said she wanted to call the police and appeared to be making a call from her cell phone. Danny did not confirm or deny his identity.

The Process Server explained to the male subject, who he believed to be Danny Wettengel, that he had some papers for him from the Coastal Commission, and asked if he had received them through the mail at an earlier date.

Mr. Wettengel response was "You need to leave the property." The Process Server's stated that he was trying to, but this woman has taken the car keys. Danny went over to the woman to retrieve the keys and returned them to the Process Server. The Process Server returned to his car and was preparing to leave when Danny approached the drivers side window. The Process Server believed that if the papers were dropped onto the ground and Danny was told that the he was served, that the situation could develop into violence.

The Process Server then began to back out of 9th Street proceeding onto Ocean Drive in front of Danny's property, where he took out a wooden stake with copies of the documents to be served attached. The stake with attached documents were then placed in the ground on the edge of 270 Ocean Drive. As the Process Server attempted to return to his car to retrieve a camera and get a photograph of the posted documents as requested by the Coastal Commission, the man believed to be Danny Wettengel came quickly from the end of 9th toward the Process Server, swearing. Danny then pulled out the stake and pulled off the documents which were attached to it. Danny was holding the stake in one hand and the Notice of Intent in the other. He then rushed the Process Server with the stake raised above his head in a motion to strike the Process Server. While doing this he stated, "I thought I told you to leave the property." The Process Server explained to him that he was not on his property, that he was on public property at this time. Danny repeated what the Process Server had just said and lunged at him, coming within inches of making contact, as if to strike him in the head with the wooden stake.

The Process Server explained that he was leaving, and that there was no problem because he (Danny) now had the papers in his hand. Danny realizing this fact became more furious throwing the stake in an attempt to hit the Process Server who was entering his car. The stake missed him striking the back of the car instead.



Hetzel W. Akers Jr.
P.O. Box 1191
Crescent City, CA 95531
707 464-8544
Del Norte County Reg. #2002-01