

Sonnie Consent Cease and Order

## CONSENT CEASE AND DESIST ORDER CCC-08-CD-08, SONNIE

### 1.0 CEASE AND DESIST ORDER CCC-08-CD-08

Pursuant to its authority under California Public Resource Code (hereinafter, "PRC") section 30810, the California Coastal Commission (hereinafter, "Commission") hereby authorizes and orders Richard Sonnie, Monica Sonnie, all their 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, as that term is defined in PRC section 30106, on the property located at 858-860 Neptune Avenue, City of Encinitas, San Diego County (APN 254-311-05) (hereinafter, "subject property"), unless authorized or exempt pursuant to the Coastal Act (PRC §§ 30000-30900) or authorized pursuant to the terms and conditions of any permit or order issued by the Commission or by a certified local government<sup>1</sup> in administering the Coastal Act, including this Consent Order, and 2) comply with the requirements of Section 2.0, as set forth below, including any requirement therein to comply with other sections of this Consent Order, and with all other terms of this Consent Order. Through the execution of this Consent Order, the Respondents agree to comply with the terms of this paragraph and with the following terms and conditions.

### 2.0 TERMS AND CONDITIONS

2.1. Cease and desist from engaging in any further unpermitted "development," as that term is defined in PRC section 30106, on the subject property.

2.2. Cease and desist from maintaining unpermitted "development," as that term is defined in PRC section 30106, on the subject property.

2.3. Completion of Coastal Development Permit ("CDP") Applications

2.3.1 Commission CDP

2.3.1.1 **Within 120 days from the issuance date of this Consent Order, or within such additional time as the Executive Director may grant for good cause as per Section X, Respondents shall submit to the Commission's San Diego District Office all materials that are required to complete a Coastal Development Permit ("CDP") application. The application shall address all alleged violations that are listed in Section III that are within the Commission's permitting jurisdiction, except for development identified in and addressed in Section 2.4, which is to be**

<sup>1</sup> A "certified local government" is a City or County that has a local coastal program that has been effectively certified by the Commission pursuant to Chapter 6 of the Coastal Act.

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removed under this Order, on the property identified in Section II. Notwithstanding the above, if Respondents believe that one or more items of development listed in Section III do not exist on the property, Respondents shall submit evidence supporting the claim(s) to Commission permit staff. If the Commission staff determines that the claim is correct, the Consent Order shall not apply to any such alleged development.

2.3.1.2 Respondents shall not withdraw the application submitted under Section 2.3.1.1 and shall allow the application to proceed through the Commission permitting process according to applicable laws.

2.3.1.3 If, after receiving Respondents' submittal, the Executive Director determines that additional information is required to complete the Commission CDP application, the Executive Director shall send a written request to the Respondents for the information, which request will set forth the additional materials required and provide a reasonable deadline for submittal. Respondents shall submit the required materials by the deadline specified in the request letter.

2.3.1.4 Respondents shall fully participate and cooperate in the Commission permitting process, provide timely responses, and work to move the process along as quickly as possible, including responding to requests for information.

### 2.3.2 City of Encinitas CDP and Major Use Permit

2.3.2.1 **Within 60 days from the issuance date of this Consent Order**, or within such additional time as the Executive Director may grant for good cause as per Section X, Respondents shall submit to City all materials that are required to complete a Coastal Development Permit ("CDP") application, and a Major Use Permit application, which shall address all alleged violations identified in Section III, except for development identified in and addressed in Section 2.4, which would be removed under this Order, on the property identified in Section II that is located within the City's Coastal Act permitting jurisdiction.

2.3.3 Respondents shall comply with requests from the City and/or Commission permit staff, which are made in order to complete the permit applications, within the timeframe provided in the requests.

2.3.4 Respondents shall comply fully with the terms and conditions of any permit that the Commission and/or the City may grant in response to the applications referenced in Sections 2.3.1 and 2.3.2 above.

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2.3.5 Within 20 days after the Commission acts on the coastal development permit application submitted by Respondents, Respondents shall submit plans for removal of all development, as identified in this Consent Order, that has not been approved in that action. The plans shall include a schedule of all actions required to restore affected areas to pre-development condition and are subject to Executive Director approval, and should include Restoration and Removal activities, as detailed in Section 2.4 below.

2.3.6 The parties agree that normal permitting procedures pursuant to the Coastal Act and the Commission's regulations, including Section 13166, apply to and will govern these procedures.

2.4. Removal and Restoration Plan

2.4.1. Within 60 days of issuance of this Order, Respondents will supply the Executive Director with a plan (the "Removal and Restoration Plan") to remove unpermitted development for which, and otherwise to address any of the violations on the subject property for which, Respondents do not want to apply for after-the-fact permit authorization to retain, including by restoring all disturbed areas of the property to which this section applies to their pre-development condition, including any revegetation needed to restore the affected area, as determined by a landscape architect.

The Removal and Restoration Plan should provide for:

A. Appropriate operation of any mechanized equipment necessary to complete removal and restoration work, and follow other operational procedures to minimize impacts, including but not limited to the following:

1. Hours of operation of mechanized equipment shall be limited to weekdays between sunrise and sunset, excluding the Memorial Day, Fourth of July, and Labor Day Holidays;
2. Equipment shall be stored in an approved location inland from the beach when not in use;
3. Disposal of removed materials and structures which are to be disposed of must occur at a licensed disposal facility located outside of the Coastal Zone. Any hazardous materials must be transported to a licensed hazardous waste disposal facility;
4. Removal of any fill materials consisting of soil, sand, or other similar materials shall be accomplished using hand tools or other

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means that provide the least impact possible on the subject property;

5. The number of trips to and from the site shall be minimized;

6. Measures to protect against impacts to water quality from removal and restorative grading shall be described and followed.

2.4.2. If the Executive Director determines that any modifications or additions to a proposed Removal and Restoration Plan are necessary, he shall notify Respondents. Respondents shall complete requested modifications and resubmit the Removal and Restoration Plan for approval within 10 days of the postmarked date of the notification.

2.4.3. The Plan shall provide for access to the site per Section XIV below for the purpose of monitoring compliance with this Consent Order.

#### 2.5. Plan Implementation

2.5.1 Within 30 days after approval of any Removal and Restoration Plan, and in compliance with all plan terms, including schedule for activities, Respondents shall commence removal in compliance with the terms of the Consent Cease and Desist Order. Respondents shall:

2.5.1.1. Remove all development listed in the approved Removal and Restoration Plan as being proposed for removal.

2.5.1.2. Cease maintaining or conducting new unpermitted development except that for which authorization is still being sought under through the CDP process listed above.

2.5.1.3. Restore the area to pre-development condition.

2.5.1.4. Revegetate in accordance with any approved Revegetation Plan.

2.6. 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.

2.7. Within 30 days of the completion of work outlined in any Removal and Restoration Plan, Respondents shall submit, for the review and approval of the Executive Director, a report indicating that the removal and restoration has taken place in accord with the approved Removal and Restoration Plan, along with photos documenting all work done. All documents submitted by Respondents shall be submitted according to Section V. of this Order.

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**I. Persons Subject to the Consent Order**

Persons subject to this Consent Cease and Desist Order are Respondents, as defined above to include Richard Sonnie, Monica Sonnie, Lupe Sonnie their 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 Consent Order is identified by San Diego County as 858-860 Neptune Avenue, City of Encinitas, San Diego County (APN 254-311-05).

**III. Description of Alleged Coastal Act Violations**

The development that is the subject of this Order includes (but may not be limited to): 1) unpermitted development including, but not limited to, grading of bluff slope, placement of gravel on bluff face, and unpermitted construction of blufftop deck, and 2) failure to obtain follow-up regular coastal development permits to authorize temporary emergency work (including grading and a seawall) as permanent development, as required by Emergency Permits 6-96-84-G, 6-96-117-G, 6-00-171-G, and 6-01-042-G.

**IV. Commission Jurisdiction and Authority to Act**

The Commission has jurisdiction over resolution of the alleged Coastal Act violations pursuant to Public Resources Code Sections 30810 and 30811. Respondents agree to not contest the Commission's jurisdiction to issue or enforce this Consent Order.

**V. Submittal of Documents**

All documents and payments submitted pursuant to this Consent Order must be sent to:

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

With a copy sent to:  
 California Coastal Commission  
 San Diego Coast District  
 Attn: Enforcement Unit  
 7575 Metropolitan Drive Ste. 103  
 San Diego, CA 92108-4402

**VI. Settlement of Matter Prior to Hearing**

In light of the intent and preference of the parties to resolve these matters in settlement and avoid litigation and costs, Respondents have agreed not to contest the legal and

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factual bases of, or the terms or issuance of, this Consent Order, including the allegations of Coastal Act violations contained in the Notice of Intent to Commence Cease and Desist Order and Restoration Order Proceedings (NOI) dated July 15, 2008. Specifically, Respondents agree to this settlement and therefore not to contest the issuance of the Consent Order or to object to the recordation of a Notice of Violation pursuant to PRC Section 30812.

### VII. Effective Date and Terms of the Consent Order

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

### VIII. Findings

This Consent Order is issued on the basis of the findings adopted by the Commission at its October 2008 hearing, as set forth in the attached document entitled "Staff Report and Findings for Consent Cease and Desist Order".

### IX. Settlement/Compliance Obligation

- A. In light of the intent of the parties to resolve these matters in settlement, Respondents have agreed to pay a monetary settlement in the total amount of \$40,000. Penalty payments will be made in four \$10,000 installments, one of which will be made every six months beginning with the first payment of \$10,000 due November 1, 2008, the second due May 1, 2009, the third due November 1, 2009, and the final payment due May 1, 2010. Should the Respondents decide to sell the property before the settlement payments are completed, they must provide Commission staff with a notice of the sale, submitted according to Section V of this Order, and the balance of the penalties shall be due at the time of sale. The settlement monies shall be deposited in the Violation Remediation Account of the California Coastal Conservancy Fund (see Public Resources Code Section 30823). Respondents shall submit the settlement payments to the attention of Enforcement Unit of the Commission, payable to the California Coastal Commission/Coastal Conservancy Violation Remediation Account.
- B. Strict compliance with this Consent Order by all parties subject thereto is required. Failure to comply with any term or condition of this Consent Order, including any deadline contained in this Consent Order, unless the Executive Director grants an extension under Section X (in which case failure to comply with that deadline shall have the same effect), shall constitute a violation of this Consent Order and shall result in Respondents being liable for stipulated penalties in the amount of \$500 per day per provision of the Order violated. 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 this

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Consent Order, nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of the Commission to seek any other remedies available, in addition to these stipulated penalties, including the imposition of civil penalties and other remedies pursuant to Public Resources Code Sections 30821.6, 30822 and 30820 as a result of the lack of compliance with the Consent Order and for the underlying Coastal Act violations as described herein.

### **X. Extension of Deadlines**

The Executive Director may extend the deadlines set forth in this Order 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.

### **XI. Waiver of Right to Appeal and Seek Stay**

Persons against whom the Commission issues a Cease and Desist and/or Restoration Order have the right pursuant to PRC Section 30803(b) to seek a stay of the order. However, in light of the desire to settle this matter and avoid litigation, pursuant to the agreement of the parties as set forth in this Consent Order, Respondents hereby agree not to seek a stay or to challenge the issuance and enforceability of this Consent Order in a court of law.

### **XII. Modifications and Amendments to this Consent Order**

Except as provided in Section X, this Consent Order may be amended or modified only in accordance with the standards and procedures set forth in Section 13188(b) or 13197 of Title 14 of the California Code of Regulations.

### **XIII. Government Liability**

Neither the State of California, the Commission, nor its employees shall be liable for injuries or damages to persons or property resulting from acts or omissions by Respondents in carrying out activities pursuant to this Consent Order, 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 this Consent Order.

### **XIV. Site Access**

Respondents shall provide access to the property at all reasonable times to Commission staff and any agency working in cooperation with the Commission or having jurisdiction over the work being performed under this Consent Order. Nothing in this Consent Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Commission staff may enter and move freely about the following areas: (1) the portions of the subject property on which the

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violations are located, (2) any areas where work is to be performed pursuant to this Consent Order or pursuant to any plans adopted pursuant to this Consent Order, (3) adjacent areas of the property, and (4) any other area where evidence of compliance with this Order may lie, as necessary or convenient to view the areas where work is being performed pursuant to the requirements of this Consent Order, for purposes including but not limited to overseeing, inspecting, documenting, and reviewing the progress of Respondent in carrying out the terms of this Consent Order.

### **XV. Settlement of Claims**

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

### **XVI. Successors and Assigns**

This Order shall run with the land, binding all successors in interest, future owners of the property, heirs and assigns of Respondents. Respondents shall provide notice to all successors, heirs and assigns of any remaining obligations under this Order.

### **XVII. Governmental Jurisdiction**

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

### **XVIII. No Limitation on Authority**

- A. 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.
- B. Correspondingly, Respondents have entered into this Consent Order and agreed not to contest the factual and legal bases for issuance of this Consent Order, and the enforcement thereof according to its terms. Respondents have agreed not to contest the Commission's jurisdiction to issue and enforce this Consent Order.

### **XIX. Integration**

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

**XX. Severability**

If a court finds any provision of this agreement invalid or unenforceable under any applicable law, such provision shall, to that extent, be deemed omitted, and the balance of this agreement will be enforceable in accordance with its own terms.

**XXI. Non-Waiver**

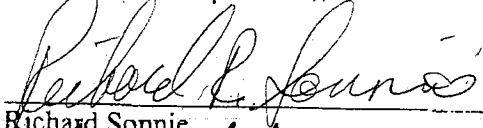
The failure of either party to exercise any of its rights under this agreement for a breach thereof shall not be deemed a waiver of such rights or waiver of any subsequent breach.

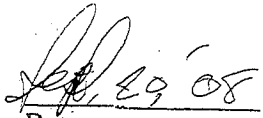
**XXII. Stipulation**

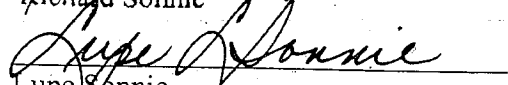
Respondents and their representatives attest that they have reviewed the terms of this Consent Cease and Desist Order and understand that their consent is final and stipulate to their issuance by the Commission.


IT IS SO STIPULATED AND AGREED:

On behalf of Respondents:

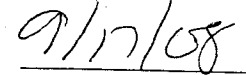
  
Richard Sonnie

  
Date


  
Lupe Sonnie


  
Date

  
Monica Sonnie-Hoch (agent)

  
Date

Executed in Ventura on behalf of the California Coastal Commission:

  
PETER DOUGLAS, Executive Director

  
Date