

**CALIFORNIA COASTAL COMMISSION**

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

**Item W6**

**Staff:** Aaron McLendon-SF  
**Staff Report:** March 27, 2008  
**Hearing Date:** April 9, 2008

**STAFF RECOMMENDATION AND FINDINGS  
FOR CONSENT CEASE AND DESIST ORDER**

<b>CEASE AND DESIST ORDER:</b>	CCC-08-CD-01
<b>RELATED VIOLATION FILE:</b>	V-5-06-021
<b>PROPERTY LOCATION AND DESCRIPTION:</b>	Sandy-beach area located seaward of and at 500 Monarch Bay Drive in the City of Dana Point, Orange County, APN 670-151-55, immediately upcoast of Salt Creek Beach
<b>PROPERTY OWNER:</b>	The Mathis Family 1996 Trust
<b>VIOLATION DESCRIPTION:</b>	Unpermitted grading, berming Salt Creek to restrict its natural flow pattern, artificial breaching of Salt Creek, and removal of beach wrack and other organic material from Monarch beach.
<b>PERSONS SUBJECT TO THIS CONSENT ORDER:</b>	<ol style="list-style-type: none"><li>1. The Mathis Family 1996 Trust;</li><li>2. St. Regis Resort, Monarch Beach; and</li><li>3. Makar Properties, LLC</li></ol>
<b>SUBSTANTIVE FILE DOCUMENTS:</b>	<ol style="list-style-type: none"><li>1. City of Dana Point certified Local Coastal Program</li><li>2. Environmental Assessment, Effects on Beach Berm Construction and Beach Grooming at the St. Regis Beach Resort, by Coastal Resources Management, Inc., 9/23/06</li><li>3. CDP No. 5-02-031 (County of Orange PFRD)</li><li>4. CDP No. 3-95-043-A2 (City of Santa Cruz)</li><li>5. CDP No. 4-05-155 (County of Santa Barbara)</li><li>6. Exhibits #1 through #10</li></ol>

**CEQA STATUS:**

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

**I. SUMMARY OF STAFF RECOMMENDATION**

Staff recommends that the Commission approve the Consent Cease and Desist Order attached as Exhibit #10 (hereinafter “Consent Order”) to require and authorize St. Regis Resort, Monarch Beach; the Mathis Family 1996 Trust; and Makar Properties, LLC (hereinafter collectively referred to as “Respondents”) to cease and desist from engaging in any further development at property located seaward of and at 500 Monarch Bay Drive, in the City of Dana Point, Orange County, APN 670-151-55 (“subject property”)(Exhibit #1) , including, but not limited to, grading, construction of sand berms, removing wrack<sup>1</sup> and other organic material, and breaching of Salt Creek or other breaching activities, unless authorized pursuant to the Coastal Act and, if applicable, the City of Dana Point certified Local Coastal Program. Commission staff has worked closely with Respondents to reach an agreement on the following Consent Order to resolve these issues amicably. Respondents, through the Consent Order, have agreed to resolve all Coastal Act violation matters addressed herein, including resolving Coastal Act claims under Section 30820 and 30822 of the Coastal Act.

Unpermitted Development

The unpermitted development that is the subject of this proceeding includes grading and creek breaching activities on Monarch Beach in the City of Dana Point, specifically including: 1) grading the natural beach foreshore berm (the natural beach profile nearest the high water line) flat with a bulldozer, which caused pooling water on the backbeach to flow back into the ocean, 2) construction of sand berms along the Salt Creek outlet to the water’s edge with a bulldozer, restricting its natural flow pattern, and 3) grading the entire beach, by using mechanized equipment, extending from the backbeach (the terrestrial/marine interface – where dry sand transitions to terrestrial habitat) to the water’s edge, and removing beach wrack and other organic material (See Exhibits #2-#4). The grading, berming, and “grooming” activities occurred both above and below the ambulatory high water mark, during an active grunion run. Any grunion eggs that were laid and any surface or burrowing intertidal/subtidal species that were present in this area would have been destroyed by the grading and “grooming” activities.

The unpermitted development occurred on and seaward of property owned by the Mathis Family 1996 Trust (“Mathis Trust”). The Mathis Trust property includes a private beach club and the sandy beach area that is located landward of the mean high tide line (“MHTL”). The private club and the private portion of the beach are used by residents within the Monarch Bay community and, through an agreement between the Mathis Trust and the St. Regis Resort, by guests of the St. Regis. Immediately downcoast of the subject property is Salt Creek Beach Park; and the Niguel Marine Life Refuge is located immediately offshore of both Salt Creek and the subject property.

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<sup>1</sup> The term “wrack” or “beach wrack” is used to describe the organic material such as kelp and sea grass that is cast up onto the beach by surf, tides, and wind.

### Jurisdiction

The local coastal program (“LCP”) for this area of the City of Dana Point was effectively certified on November 5, 1997. The unpermitted development occurred both on land owned by the Mathis Trust and on State tidelands that are located seaward of the Mathis Trust property. The Mathis Trust property is located within the City of Dana Point LCP area and State tidelands are located within the Commission’s retained jurisdiction. Pursuant to California Public Resources Code (“PRC”) section 30519(b), the Commission retains permitting jurisdiction over areas that are below the mean high tide line (“MHTL”). In addition, Section 9.69.030(c)(1) of the Dana Point Zoning Code (“DPZC”), which code serves as the Implementation Plan portion of the Dana Point LCP, states, in relevant part, as follows:

“Where a proposed development lies partially within the area of ‘Coastal Commission Permit Jurisdiction’ and partially within the Coastal Overlay District [the City’s permit jurisdiction], and the development is physically integrated, the Coastal Commission shall be the responsible agency for the issuance of any Coastal Development Permit for the entire development. That portion of the development that lies within the Coastal Overlay District shall be deemed to be within an area of deferred certification . . .”

Given that the development at issue here constituted a single, physically integrated project, this section required that the party performing the development obtain its Coastal Act permit from the Commission.

### Commission’s Authority

PRC section 30810 states that the Commission may issue a Cease and Desist Order whenever it determines that someone has undertaken “any activity that (1) requires a permit from the commission without securing the permit.” Since, pursuant to the section of the DPZC cited above, Respondents were required to obtain a permit from the Coastal Commission, this is the applicable portion of PRC section 30810, and the Commission has primary enforcement jurisdiction in this case.

The Commission can issue a Cease and Desist Order under Section 30810 of the Coastal Act in cases where it finds that the activity that is the subject of the order has occurred either without a required coastal development permit (“CDP”) or in violation of a previously granted CDP.

As described in more detail below, the unpermitted activity that has occurred on the subject property, including grading, construction of sand berms, breaching Salt Creek, and grooming the beach with heavy equipment to remove beach wrack and other organic material clearly meets the definition of “development” set forth in Section 30106 of the Coastal Act. No CDP was issued by the Commission or the City of Dana Point for the development; therefore, the development was undertaken in violation of PRC Section 30600.

### Resources of Sandy Beaches

While it is not an element that is required for issuance of a Cease and Desist Order, the unpermitted development has also adversely impacted resources protected by the Coastal Act, including marine resources, the biological productivity of Monarch Beach and the surrounding habitat, and the scenic and visual qualities of this coastal area. Grading sandy beaches, constructing sand berms along the beach, and creek breaching activities have a number of unfortunate negative ecological consequences, as discussed below, given the interdependence of the intertidal and shoreline species.

Intertidal sand is habitat to a variety of invertebrates such as amphipods, isopods, and polychaete worms. Beach wrack on the upper beach provides habitat for more invertebrates such as flies and their larvae. All these species are very significant food resources for shore birds. Within the swath of the earthmovers' grading of the beach, most of these organisms must be presumed to have been killed, and any accumulated wrack habitat that was present on the upper beach was destroyed.

Monarch Beach is also demonstrated grunion habitat. The unpermitted development occurred on or about June 16, 2006, during a specific period of grunion spawning.<sup>2</sup> Unfortunately most grunion eggs that were laid during the run prior to the unpermitted grading (June 11-14) were very likely destroyed by the activity as well. Even more significant is the fact that the habitat was altered in a way that would likely reduce the breeding success of grunion that continued to spawn on this beach during the 2006 spawning season.

In addition, the unpermitted development included grooming a large swath of beach area approximately 20,000 square feet from the water line to the landward-most edge of the beach (in front of the Monarch Bay Club). When wrack is removed from the beach, an important component of the food chain is lost. Numerous species of invertebrates, fish, and shorebirds depend on wrack, and the species associated with wrack, for their food supply, and thus wrack removal or "grooming" can reduce the biodiversity and biomass found on sandy beaches. Beach "grooming" can also remove significant quantities of sand and alter grain size; wrack helps prevent the loss of finer sediments to the wind so that groomed beaches tend to have a coarser texture. Finally, beach grooming can repress natural features such as coastal dunes and the native plants associated with them.

As noted above, a tentative settlement of this matter (Consent Order) has been reached, as more fully described herein and as reflected in Exhibit #10. Staff recommends that the Commission approve this Consent Order.

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<sup>2</sup> Grunion spawning occurs between the spring and summer months, starting as early as March and ending as late as September, with peak spawning periods between the months of April, May, and June. Grunion spawning occurs during full and new moon periods throughout this time when tides are at their most extreme, creating the high tides necessary for successful grunion spawning.

## **II. HEARING PROCEDURES**

The procedures for a hearing on a Cease and Desist Order are outlined in Title 14, Division 5.5, Section 13185 of the California Code of Regulations (CCR).

For a Cease and Desist Order hearing, the Chair shall announce the matter and request that all parties or their representatives present at the hearing identify themselves for the record, indicate what matters are already part of the record, and announce the rules of the proceeding including time limits for presentations. The Chair shall also announce the right of any speaker to propose to the Commission, before the close of the hearing, any question(s) for any Commissioner, at his or her discretion, to ask of any other party. Staff shall then present the report and recommendation to the Commission, after which the alleged violator(s) or their representative(s) may present their position(s) with particular attention to those areas where an actual controversy exists. The Chair may then recognize other interested persons after which time 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 Title 14, CCR Section 13186, incorporating by reference Section 13065. The Chair will close the public hearing after the presentations are completed. The Commissioners may ask questions to any speaker at any time during the hearing or deliberations, including, if any Commissioner chooses, any questions proposed by any speaker in the manner noted above. Finally, the Commission shall determine, by a majority vote of those present and voting, whether to issue the Cease and Desist Order, either in the form recommended by the Executive Director, or as amended by the Commission. Passage of a motion, per Staff recommendation or as amended by the Commission, will result in issuance of the Cease and Desist Order.

## **III. STAFF RECOMMENDATIONS**

Staff recommends that the Commission adopt the following motion:

### **Motion:**

*I move that the Commission issue Consent Cease and Desist Order No. CCC-08-CD-01 pursuant to the staff recommendation.*

### **Staff Recommendation of Approval**

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

**Resolution to Issue Consent Cease and Desist Order:**

The Commission hereby issues Consent Cease and Desist Order No. CCC-08-CD-01, as set forth below, and adopts the findings set forth below on grounds that development requiring a coastal development permit from the Commission has occurred without such a permit having been issued.

**IV. FINDINGS FOR CONSENT CEASE AND DESIST ORDER NO. CCC-08-CD-01<sup>3</sup>**

**A. Description of Unpermitted Development**

The unpermitted development that is the subject matter of this Consent Order, consists of: 1) grading the natural beach foreshore berm flat with a bulldozer, 2) construction of sand berms along the Salt Creek outlet to the water's edge (perpendicular to the ocean) with a bulldozer, restricting its natural flow pattern, and 3) grading the entire beach, using mechanized equipment, extending from the backbeach to the water's edge and removing beach wrack and other organic material. A member of the public who reported the violation described a tractor pulling a large rake to remove all wrack and other organic material from the beach. The person also saw a tractor grading the natural foredune flat and moving sand for the creation of berms on the upcoast side of Salt Creek. These reports were confirmed in photographs (Exhibits #2-#4) taken at the time of the unpermitted activity and by Commission staff during a site visit on June 22, 2006 (as described more fully in the following sections).

**B. Background: Commission's Actions and History of Violation on the Subject Property**

On June 16, 2006, a member of the public witnessed unpermitted beach grooming, grading, and berm construction on Monarch Beach and reported the violations to the California Department of Fish and Game, who in turn informed Commission staff of the alleged Coastal Act violations. The report stated that grunion eggs had previously been and would have still been present at and seaward of the subject property, because of a recent grunion run that occurred prior to the unpermitted grading, "grooming", and berm construction located on Monarch Beach.<sup>4</sup> The grunion eggs were believed to have been destroyed by the unpermitted activities. This observation was based on the presence of grunion eggs immediately downcoast of the unpermitted activity (where no disturbance had occurred) and no grunion eggs found in the area of the unpermitted development.

On June 22, 2006, Commission staff conducted a site visit and confirmed that the Monarch Bay Club graded Monarch Beach and constructed berms along Salt Creek. Staff spoke with the

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<sup>3</sup> These findings also hereby incorporate by reference Section I of the March 27, 2008 staff report ("Staff Recommendation and Findings for Consent Cease and Desist Order") in which these findings appear, which section is entitled "Summary of Staff Recommendation."

<sup>4</sup> Scheduled grunion runs confirmed by California Department of Fish and Game listed a grunion run taking place between June 11-14, 2006.

General Manager of the Monarch Bay Club, who confirmed that the Club graded the beach and had also built the upcoast sand berm along the Salt Creek outlet. The following day Commission staff notified the Monarch Bay Club that the unpermitted activities were development that required a CDP and any further work would also be considered violations of the Coastal Act. Makar Properties LLC (“Makar”), the owner of the St. Regis Hotel, contacted Commission staff on June 26, 2006 stating its intent to comply with the Coastal Act.<sup>5</sup>

A Notice of Violation (“NOV”) letter was sent to Makar on June 27, 2006 (Exhibit #5). The letter explained that the grading and berming activities were development under the Coastal Act and that such unpermitted activity had adverse impacts to numerous coastal resources. A second NOV letter was sent to Respondents on July 18, 2006 reiterating that the subject activities are development under the Coastal Act and do require a CDP (Exhibit #6).

On July 12, 2006, a representative of Makar responded to the June 27 letter and confirmed that, “on June 12-14, 2006 my client caused a loader to reposition the sand berm....” The letter continued by requesting a process by which Makar or some other party could maintain the outlet of Salt Creek (Exhibit #7). During July 14, 2006 and July 27, 2006 telephone conversations, representatives of Makar and/or the Monarch Bay Club asked Commission staff if work on construction of the berms and beach grooming could continue. Commission staff noted that, under the Coastal Act, no development could continue without authorization under the Coastal Act provisions.

According to Makar’s biological consultant, the Monarch Bay Club continued to groom the entire beach and construct berms along Salt Creek in August 2006, after Respondents were told that such work required a CDP (Exhibit #9). No CDP was applied for or obtained by Respondents.

In July 2007, Commission staff and Respondents began ongoing negotiations to resolve the subject Coastal Act violations. Because Commission staff and Respondents were able to amicably resolve the violations through this Consent Order (Attached as Exhibit #10), and because the Commission and Respondents wish to work cooperatively in the future, Respondents have not submitted a “Statement of Defense” form as provided for in Section 13181 of Title 14 of the California Code of Regulations and have agreed not to contest the legal and factual bases and the terms and issuance of this Consent Order. The parties agree that all of the necessary elements for issuance of an order under Coastal Act Section 30810 have been met.

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<sup>5</sup> The Respondents, the St. Regis Resort Monarch Beach (Starwood Hotels); the Mathis Family 1996 Trust; and Makar Properties, LLC are separate parties all of which are related to this proceeding. Makar Properties owns the St. Regis Resort and has contracted with St. Regis Resort Monarch Beach (Starwood Hotels) to manage the resort. The Mathis Family 1996 Trust owns the Monarch Bay Club and the sandy beach seaward of the club up to the MHTL. The Monarch Bay Club property is used by residents of the Monarch Bay community. However, in an agreement between the resort and the Monarch Bay Club, guests of the resort can use the Monarch Bay Club facilities. In addition, the employees of the Monarch Bay Club are employed by St. Regis Resort Monarch Beach (Starwood Hotels). The unpermitted development occurred on and seaward of the property owned by the Mathis Family 1996 Trust and the unpermitted development was conducted by employees of the St. Regis Resort Monarch Beach (Starwood Hotels).

### **C. Basis for Issuance of Cease and Desist Orders**

The statutory authority for issuance of this Cease and Desist Order is provided in section 30810 of the Coastal Act, 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... requires a permit from the commission without first securing the permit... 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 following paragraphs set forth the basis for the issuance of the Consent Cease and Desist Order by providing substantial evidence that the development meets all of the required grounds listed in Section 30810 for the Commission to issue a Cease and Desist Order.

#### **Development has Occurred without a Coastal Development Permit**

Unpermitted development consisting of grading, construction of berms along Salt Creek to restrict its natural flow pattern, artificial breaching of Salt Creek, and removal of beach wrack and other organic material from Monarch Beach using mechanized equipment, has occurred on and seaward of the subject property without a CDP. The unpermitted development that is the subject of this Consent Order meets the definition of “development” contained in PRC Section 30106, as explained below.

PRC Section 30600(a) states that, in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the coastal zone must obtain a coastal development permit. “Development” is defined by PRC Section 30106 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... change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973...”*

In this case, the grading of the beach, construction of sand berms along Salt Creek, and the mechanized “grooming” of the beach, which removed beach wrack and other organic material from the beach clearly constitute “development” within the meaning of the above-quoted definition and therefore are subject to the permit requirement of section 30600(a). The unpermitted activity included grading and removing materials, and the placement of solid



materials. The “grooming” activities involved in this case involved a tractor dragging equipment across the beach to “groom” and flatten the beach. This activity is also considered grading, which is specifically included as “development” as that term is defined by the Coastal Act. As the equipment was pulled behind the tractor, it physically altered the natural topography of the beach, removing areas of higher elevation and filling in areas of lower elevation, leaving behind a flat, graded beach area (Exhibit #2 & #3). The Commission has also found, in past permit decisions (See CDP No. 3-95-043-A2 and CDP No. 4-05-155), that such grooming activities are development under the Coastal Act.

A coastal development permit was not issued to authorize the subject unpermitted development, the unpermitted development is not exempt from the permit requirements, and therefore, the requirements for issuance of a Cease and Desist Order under Section 30810 of the Coastal Act have been met.

### **Inconsistent with Resource Policies of the Coastal Act**

It should be noted that this is not an element which is required for issuance of a Cease and Desist Order. That is, the Commission does not have to find that the nature of the unpermitted development is inconsistent with the Chapter 3 policies of the Coastal Act or the resource protection policies of the City of Dana Point LCP in order to issue Cease and Desist Orders under the Coastal Act (Section 30810). However, this section is provided as background information. The Commission finds that the unpermitted development is inconsistent with Chapter 3 policies of the Coastal Act regarding the protection of marine resources (including the loss of grunion and grunion eggs), the biological productivity of coastal waters, and the scenic and visual qualities of this coastal area.

The operation of heavy equipment on the beach, grading, and movement of sand on and seaward of the subject property threatens biological resources, aesthetic values, and public access. The beaches of Orange County, including Monarch Beach and Salt Creek Beach, are known to be frequented by California grunion (*Leuresthes tenuis*), and the grunion spawning season typically runs between the months of March and September, with peak spawning periods occurring during April, May, and June. During the grunion spawning season, eggs and developing embryos are buried in the sand to incubate between the highest tides of each month, at the full and new moon. The eggs have no defense against any kind of interference. Thus the California Department of Fish and Game has designated the sandy beaches as critical habitat for grunion management. Unfortunately, the unpermitted development occurred during and days after the June 11-14, 2006 grunion run and continued to impact subsequent grunion runs by covering spawning areas with the unpermitted berm and by additional grading and “grooming” activities that occurred in August 2006.

Beach grading and “grooming” and construction of sand berms may result in potential individual and cumulative adverse effects to coastal processes, shoreline sand supply, and public access including encroachment on lands subject to the public trust (thus physically excluding the public), interference with the natural shoreline processes necessary to maintain publicly-owned tidelands and other public beach areas, overcrowding or congestion of such tideland or beach areas, and visual or psychological interference with the public’s access to and the ability to use

public tideland areas. Additionally, sand berms could alter wave patterns, and increase the reflection of water, thereby disrupting grunion spawning activities and other intertidal natural resources.

**D. Consent Order is Consistent with Chapter 3 of the Coastal Act**

The Consent Order attached to this staff report (see Exhibit #10), and signed by Respondents, is consistent with the resource protection policies found in Chapter 3 of the Coastal Act, as also incorporated in the certified LCP for the City of Dana Point. The Consent Order requires Respondents to cease and desist from maintaining unpermitted development and from conducting further unpermitted development on the subject property. In addition, the Consent Order requires that Respondents cease and desist from grading, removing wrack and other organic material, and breaching of Salt Creek or conducting other breaching activities, unless authorized pursuant to the Coastal Act and, as applicable, the City of Dana Point certified Local Coastal Program. Therefore, the Consent Orders are consistent with the Chapter 3 policies of the Coastal Act and the Dana Point certified LCP.

**E. California Environmental Quality Act (CEQA)**

The Commission finds that issuance of this Consent Order is exempt from the California Environmental Quality Act (CEQA) of 1970 and will not have significant adverse effects on the environment, within the meaning of CEQA. The Consent Order is exempt from the requirement for the preparation of an Environmental Impact Report, based on Sections 15060(c)(2) and (3), 15061(b)(2), 15307, 15308 and 15321 of CEQA Guidelines (Title 14 of the California Code of Regulations).

**F. Consent Agreement: Settlement**

Chapter 9, Article 2 of the Coastal Act provides that violators may be civilly liable for a variety of penalties for violations of the Coastal Act, including daily penalties for knowingly and intentionally undertaking development in violation of the Coastal Act. Respondents have clearly stated their willingness to completely resolve the violation, including any penalties, administratively and amicably, through a settlement process. To that end, Respondents have committed to comply with all terms and conditions of the Consent Order. Additionally, in light of the intent of the parties to resolve these matters in a timely fashion and through settlement, Respondents have also agreed to pay a monetary settlement and install educational signs at the Monarch Bay Club describing the importance of beach wrack and the unique characteristics of California grunion (see Section 10.0 of the attached Consent Orders – Exhibit #10) to resolve the violations fully without litigation.

**G. Findings of Fact**

1. Respondent Mathis Family 1996 Trust is the owner of property located at 500 Monarch Bay Drive, in the City of Dana Point, Orange County, APN 670-151-55, which includes the Monarch Bay Club and sandy beach area fronting the Club.

2. Respondent Makar Properties, LLC is the owner of the St Regis Resort in Monarch Beach.
3. Respondent St. Regis Resort, Monarch Beach (Starwood Hotels) is the manager and operator of the St. Regis Resort in Monarch Beach and employs staff that work at the Monarch Bay Club.
4. Respondents have undertaken development, as defined by Coastal Act Section 30106, at the subject property, including unpermitted grading, construction of sand berms along Salt Creek to restrict its natural flow pattern, artificial breaching of Salt Creek, and removal of beach wrack and other organic material from Monarch Beach without a CDP in violation of the Coastal Act.
5. Respondents did not obtain a coastal development permit to undertake any of the above-described unpermitted development.
6. The unpermitted development is not consistent with the Coastal Act.
7. Respondents have not submitted a "Statement of Defense" from as provided for in Section 13181 of Title 14 of the California Code of Regulations and have agreed not to contest the legal and factual bases and the terms and issuance of this Consent Order. The parties also agree that all of the necessary elements for issuance of a cease and desist order under Coastal Act Section 30810 have been met.

### **Exhibit List**

#### **Exhibit**

#### **Number      Description**

1. Site Map and Location
2. June 16, 2006 photograph of beach grading
3. June 16, 2006 photograph of beach grooming using mechanized equipment
4. June 16, 2006 photograph of berming of Salt Creek
5. June 27, 2006 Notice of Violation Letter
6. July 18, 2006 Notice of Violation Letter
7. July 12, 2006 letter from George S. Burns (Makar) to Commission staff
8. July 25, 2006 letter from George S. Burns to Commission staff
9. Environmental Assessment – Effects of Beach Berm Construction and Beach Grooming at the St. Regis Beach Resort, by Coastal Resources Management, Inc., September 23, 2006
10. Signed Consent Cease and Desist Order No. CCC-08-CD-01





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Exhibit #2  
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Exhibit #3  
CCC-08-CD-01

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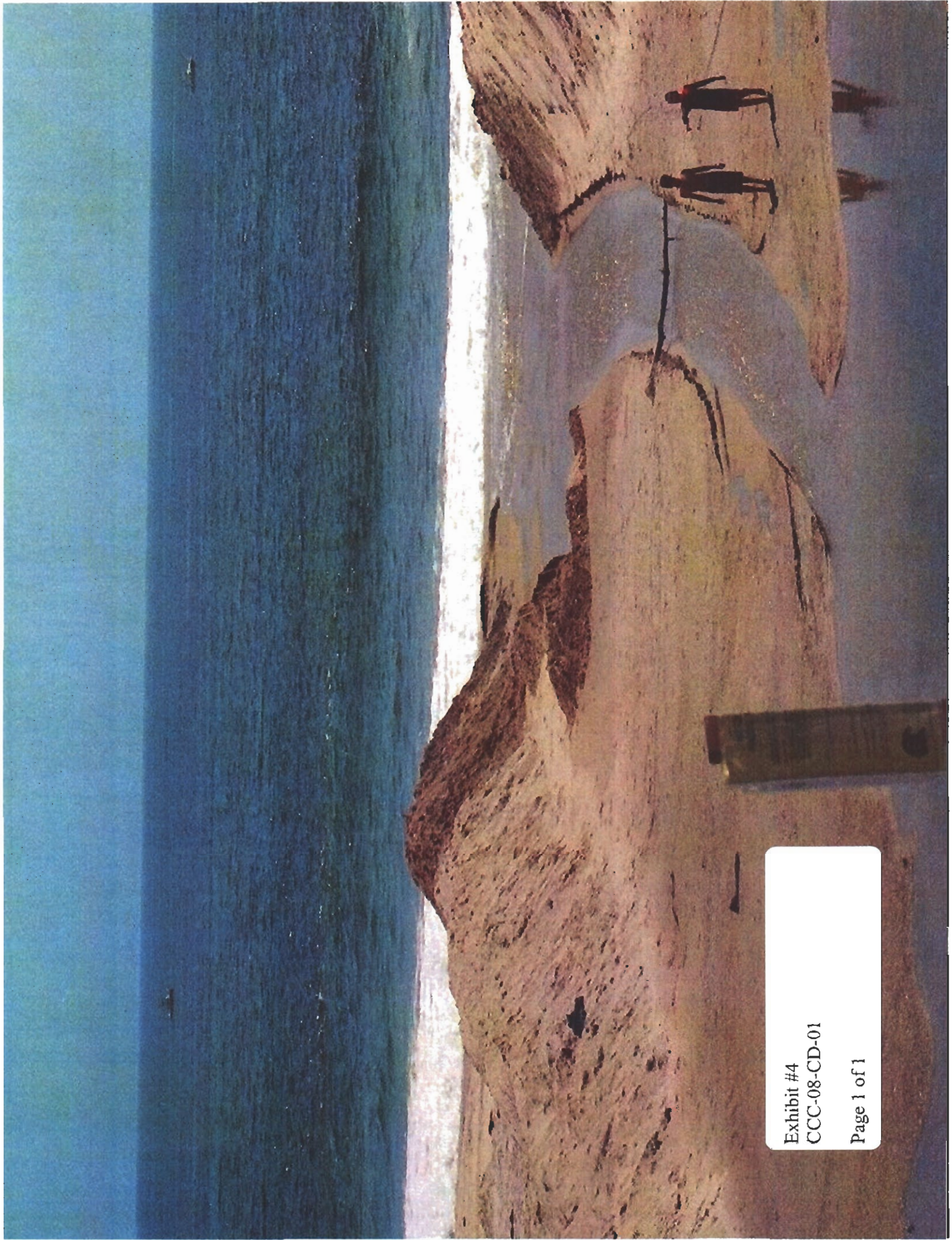


Exhibit #4  
CCC-08-CD-01

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**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
200 Oceangate, Suite 1000  
Long Beach, CA 90802-4302  
(562) 590-5071

**NOTICE OF VIOLATION OF THE CALIFORNIA COASTAL ACT  
REGULAR AND CERTIFIED MAIL**

June 27, 2006

Michael Gagnet  
CPH Monarch Hotel L.L.C  
4100 MacArthur Blvd., Suite 200  
Newport Beach, CA 92660-2069

Violation File Number: V-5-06-021

Property location: St. Regis Resort, Monarch Beach, 1 Monarch Beach  
Resort, Dana Point, CA 92629

Unpermitted Development: Beach grading and sand berm construction

Dear Mr. Gagnet:

Our staff conducted a site visit on June 22, 2006 and confirmed that the grading of Salt Creek Beach and the construction of sand berms on either side of the mouth of Salt Creek was undertaken by the Monarch Bay Club facility located at One Monarch Beach Resort in the City of Dana Point, and within Orange County assessor parcel's 672-46-461 and 670-15-055, and seaward of them.

The subject property is located within the Coastal Zone in an area of the California Coastal Commission's (CCC) retained jurisdiction. Commission staff have researched our permit files and concluded that no coastal development permits have been issued for any of the development described above.

Pursuant to Section 30600 (a) of the Coastal Act, in addition to obtaining any other permit required by law, any person wishing to undertake development in the coastal zone must obtain a coastal development permit. "Development" is defined by Section 30106 of the Coastal Act, in relevant part, as:

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

Any development activity conducted in the coastal zone without a valid coastal development permit constitutes a violation of the Coastal Act.

Exhibit #5  
CCC-08-CD-01



Salt Creek drains into the Pacific Ocean through an ocean outlet that is maintained by the County of Orange. The operation of heavy equipment on the beach, grading, and the construction of berms on the subject site threatens biological resources, aesthetic values, and public access. Salt Creek Beach is an area known to be frequented by grunion and grunion season runs to the end of the summer. Grading the beach near the shoreline and building sand berms could potentially disrupt grunion-spawning activities and threaten the survival of grunion eggs - negatively affecting the larger grunion population. Additionally, the grading of the beach is a physical obstruction that may prevent public access and give the appearance that the beach is private property.

Beach grading and the placement of sand berms could result in potential individual and cumulative adverse effects to coastal processes, shoreline sand supply, and public access including encroachment on lands subject to the public trust (thus physically excluding the public), interference with the natural shoreline processes necessary to maintain publicly-owned tidelands and other public beach areas, overcrowding or congestion of such tideland or beach areas, and visual or psychological interference with the public's access to and the ability to use public tideland areas. Additionally, sand berms could alter wave patterns, and increase the reflection of water, thereby disrupting grunion spawning activities and other intertidal natural resources.

Impacts to marine resources (including California grunion), public access, and scenic resources are regulated by several resource protection policies of the Coastal Act:

Section 30230 of the Coastal Act states:

***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.***

Section 30235 of the Coastal Act states:

***Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.***

Section 30236 of the Coastal Act states:

***Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.***

Section 30251 of the Coastal Act states:

***The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.***

Section 30211 of the Coastal Act states:

***Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.***

In most cases, violations involving unpermitted development may be resolved administratively by removal of the unpermitted development and restoration of any damaged resources or by obtaining a coastal development permit authorizing the development after-the-fact, potentially with conditions to ensure conformance with the resource protection policies of Chapter 3 of the Coastal Act. Removal of the development and restoration of the site also requires a coastal development permit. However, in this case, staff would not recommend approval of the development because of its potential impacts to coastal resources. Therefore, in order to resolve this matter administratively, you must submit a complete coastal development permit application to remove the unpermitted development and restore the site to its pre-violation condition.

In order to resolve this matter in a timely manner and avoid the possibility of a monetary penalty or fine, we are requesting that you stop all work and submit a complete coastal development permit application by **July 30, 2006** for removal of the unpermitted development and restoration of the site. For your convenience, a coastal development permit application has been enclosed. Please contact me, or Pat Veasart, by no later than **July 12, 2006** regarding how you intend to resolve this violation.

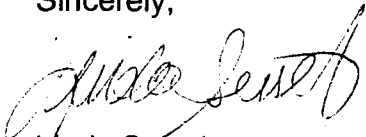
Although we would prefer to resolve this matter administratively, please be aware that if such resolution is not reached in a timely manner, Coastal Act Section 30809 states that if the Executive Director of the Commission determines that any person has undertaken, or is threatening to undertake, any activity that requires a permit from the Coastal Commission without first securing a permit, the Executive Director may issue an order directing that person to cease and desist. A cease and desist order may be subject to any terms and conditions that are necessary to ensure compliance with the Coastal Act. Coastal Act Section 30810 also authorizes the Coastal Commission to issue a cease and desist order and/or order restoration of a site if unpermitted development is inconsistent with the policies of the Coastal Act and is causing continuing resource damage. A violation of a cease and desist or restoration order can result in civil fines of up to \$6,000 for each day in which the violation persists.

In addition, we remind you that Sections 30803 and 30805 of the Coastal Act authorize the Commission to initiate litigation to seek injunctive relief and an award of civil fines in response to any violation of the Coastal Act. Section 30820(a)(1) of the Coastal Act provides that any person who performs development in violation of any provision of the Coastal Act may be subject to a penalty amount that shall not exceed \$30,000 and shall not be less than \$500. Coastal Act section 30820(b) states that, in addition to any other penalties, any person who "knowingly and intentionally" performs or undertakes any development in violation of the Coastal Act can be subject to a civil penalty of not less than \$1,000 nor more than \$15,000 for each day in which the violation persists.

Finally, the Executive Director is authorized, after providing notice and the opportunity for a hearing before the Commission as provided for in Section 30812 of the Coastal Act, to record a Notice of Violation against your property.

Thank you for your attention to this matter. If you have any questions regarding this letter or the pending enforcement case, please feel free to contact me at 562.590.5071, or Pat Veasart at 805.585.1800.

Sincerely,



Linda Serret  
District Enforcement Analyst

**cc:** Teresa Henry, District Manager  
Pat Veasart, Enforcement Supervisor  
Andrew Willis, District Enforcement Officer  
Karl Schwing, Supervisor, Planning and Regulation  
George S. Burns, Attorney at Law  
Kyle Butterwick, City of Dana Point - Community Development Department  
Jamie Carsey, Orange County - Harbor, Beaches, and Parks

**Encl:** Coastal Development Permit Application

Exhibit #5  
CCC-08-CD-01

**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
200 Oceangate, Suite 1000  
Long Beach, CA 90802-4302  
(562) 590-5071

Page 1 of 3

**NOTICE OF VIOLATION OF THE CALIFORNIA COASTAL ACT  
REGULAR AND CERTIFIED MAIL**

July 18, 2006

George S. Burns  
Law Offices of George S. Burns  
4100 MacArthur Blvd., Suite 305  
Newport Beach, CA 92660

Violation File Number: V-5-06-021

Property location: St. Regis Resort, Monarch Beach, 1 Monarch Beach  
Resort, Dana Point, CA 92629

Unpermitted Development: Beach grading and sand berm construction

Dear Mr. Burns:

On June 27, 2006 we issued a Notice of Violation (NOV) letter addressing the unpermitted beach grading and sand berm construction that occurred adjacent to Salt Creek by the Monarch Bay Club. Thank you for contacting us promptly and agreeing to halt the unpermitted beach grading and sand berm construction on the property described above. However, please be advised that upon further evaluation of the facts of the situation, due to the extent of the damage to a sensitive coastal resource resulting from the grading and berming activities, and because that damage cannot be fully remediated, Commission staff is prepared, if necessary, to seek litigation for the imposition of all appropriate monetary penalty amounts allowed in Chapter 9 of the Coastal Act. Enclosed are photographs from Dr. Karen Martin that show the June 16, 2006 grading that took place below the MHTL, an area which supports sensitive coastal resources, including grunion eggs after a run. Judging from the presence of eggs at different locations along Salt Creek beach, a grunion run occurred previous to the grading. As Andrew Willis of our staff discussed with you on July 14<sup>th</sup>, it is the preliminary opinion of one esteemed biologist who surveyed the beach after the grading that the unpermitted development destroyed the grunion eggs in the area of the development.

Please note that Coastal Act Sections 30803 and 30805 authorize the Coastal Commission to initiate litigation to seek injunctive relief and an award of civil penalties in response to any violation of the Coastal Act, regardless of the extent of the resource damage and whether the damage can be remediated. 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 for each 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 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.

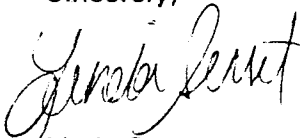
In the June 27<sup>th</sup> NOV letter, we requested that you submit a complete coastal development permit application to remove the unpermitted development and restore the site to its pre-violation condition by July 30, 2006. Upon further evaluation of the facts, we now believe that the damage cannot be fully remediated. However, we would like to extend you the opportunity to identify alternatives that might partially address the impacts of the unpermitted development. As we stated in our prior letter, Commission staff would not recommend approval of the unpermitted development through an 'after-the-fact' authorization due to the significant adverse impacts to coastal resources. However, some type of restoration to partially address the unpermitted development may be possible. Thus, we recommend that your response to this letter include technical evaluations that fully document the impacts of the grading and berming activities upon the coastal resources of Salt Creek Beach, and identify potential remedies. Please respond to this letter by **August 1, 2006**.

In response to your letter dated July 12, 2006, we reiterate that the Coastal Act requires a coastal development permit for the work that was conducted by the Monarch Bay Club. The permitting process is the way that we, as an agency, can review potential impacts to coastal resource before any activities proceed. At present, the County of Orange alone is authorized to maintain the outlet at Salt Creek, however, their permit is limited in scope and does not include the extensive grading and berming activities as conducted by the Monarch Bay Club. Moreover, conditions are placed upon their ability to carry out any work to ensure that sensitive resources, such as the California grunions, are not impacted, and to provide for maximum public access. Public access to the beach must not be precluded by maintenance activities during the peak season, which runs from the day before Memorial Day weekend and ending the day after Labor Day weekend. In addition, the County must adhere to the Ocean Outlet Maintenance Manual when performing any work to ensure that they are in compliance with permitting requirements. Work must also comply with Best Management Practices to minimize the impact of maintenance activities upon coastal resources. Please find enclosed a copy of the coastal development permit and accompanying staff report that authorizes the County to perform maintenance of the creek outlet.

We are more than willing to resolve these issues through settlement and we would be happy to discuss a mutually agreeable settlement amount for the above-listed violations. Staff will contact you to negotiate a monetary penalty as part of the resolution of this matter. Please send us any technical evaluations that document the impacts of the grading and berming activities upon the coastal resources of Salt Creek Beach and identify potential remedies so that we can include them in our settlement discussions.

Thank you for your attention to this matter. If you have any questions regarding this letter or the pending enforcement case, please feel free to contact me at 562.590.5071, or Pat Veasart at 805.585.1800.

Sincerely,



Linda Serret  
District Enforcement Analyst

**cc: Teresa Henry, District Manager**  
**Pat Veesart, Enforcement Supervisor**  
**Andrew Willis, District Enforcement Officer**  
**Karl Schwing, Supervisor, Planning and Regulation**  
**Michael Gagnet, CPH Monarch Hotel L.L.C**  
**Kyle Butterwick, City of Dana Point - Community Development Department**  
**Jamie Carsey, Orange County - Harbor, Beaches, and Parks**

**LAW OFFICES OF  
GEORGE S. BURNS**  
4100 MACARTHUR BOULEVARD, SUITE 305  
NEWPORT BEACH, CALIFORNIA 92660  
TELEPHONE: (949) 263-6777  
FACSIMILE: (949) 263-6780  
SENDER'S E-MAIL: GSB@GSBURNSLAW.COM

July 12, 2006

Ms. Linda Serret  
District Enforcement Analyst  
California Coastal Commission  
South Coast Area Office  
200 Oceangate, Suite 1000  
Long Beach, CA 90802-4302

Violation File Number: V-5-06-021  
Property Location: St. Regis Resort, Monarch Beach, 1 Monarch Beach  
Resort, Dana Point, CA 92629

Dear Ms. Serret:

I respond to your June 27<sup>th</sup> letter to my client CPH Monarch Hotel, LLC, which, through affiliate entities, is the sponsor member of the Monarch Bay Club. My client of course intends to fully comply with all its obligations under the Coastal Act. However, as it appears from your letter that you may be misinformed in this matter, please allow me to set out the factual context.

As you may know, my client was a major participant in the creation of the Dana Point ozone water treatment facility that opened in September 2005. My client donated land for the facility, gave perpetual easements, helped pay for it and contributed engineering and design assistance. The facility treats contaminated water flowing down from Laguna Niguel through Salt Creek into the ocean that has for years fouled the beach and resulted in frequent beach closures. Since the facility opened last year, there has been a dramatic change in the quality of the water that flows into the ocean from Salt Creek, and a corresponding reduction in the frequency of beach closures of Monarch and Salt Creek beaches.

Exhibit #7  
CCC-08-CD-01

Page 1 of 3

Ms. Linda Serret  
Re: St. Regis Resort  
July 12, 2006  
Page 2

However, this system cannot work if the treated water, after it is discharged from the outflow point of the facility, is allowed to pool on the shore, rather than flowing directly into the ocean. Sitting fresh water attracts shore birds. In such case, the treated water sits stagnant, becoming fouled with shore bird waste and other debris before flowing into the ocean, resulting in bacterial discharge.

Therefore, the County has for years shored up the berm on the south side of the creek approximately twice a year to ensure that the water does not pond on the shore. The County did so again in the final stage of the project, and apparently did so from time to time over the winter in 2005 when it raked the beach to the south of the creek.

To our knowledge, no corresponding shoring was done to the north side of the berm for months after the facility opened. Therefore, by May 2006, the berm on the north side had been worn down by the tides, resulting in frequent large ponds of brown water. To avoid further contamination, on June 12-14, 2006 my client caused a loader to reposition the sand berm back to the approximate location that had been established when the facility opened, to again allow the treated water from the facility to flow into the ocean, rather than ponding on shore. My client estimates that it shored up a section of 100-150 square feet, increasing the berm height about three to four feet, approximating the height of the berm at the time that the facility opened.

If my client's action was in violation of any laws or regulations, it was an inadvertent and good faith error based on the circumstances I describe.

Your letter suggests that my client apply for a CDP to restore the berm. They will do so if you request, but I make two observations. First, the tidewaters have already effectively reduced the berm to its approximate size as of June 2006, when my client restored it. Therefore, there is nothing to restore.

Second, it would appear to be in the public interest to establish a system under which my client, or some other party, would be allowed to periodically shore up the north edge of the berm to prevent ponding of fresh water discharged from the water treatment facility, just as the County periodically restores the south edge. Otherwise, the facility simply will not work. I would appreciate your office's input on this suggestion.

Exhibit #7  
CCC-08-CD-01



Ms. Linda Serret  
Re: St. Regis Resort  
July 12, 2006  
Page 3

Please call me after you've had a chance to review and consider the points raised in this letter.

Very truly yours,

A handwritten signature in black ink, appearing to read "George S. Burns". The signature is stylized with a large, sweeping "G" and a long horizontal stroke at the end.

George S. Burns

GSB/lc

Exhibit #7  
CCC-08-CD-01

Page 3 of 3

LAW OFFICES OF  
**GEORGE S. BURNS**  
4100 MACARTHUR BOULEVARD, SUITE 305  
NEWPORT BEACH, CALIFORNIA 92660  
TELEPHONE: (949) 263-6777  
FACSIMILE: (949) 263-6780  
SENDER'S E-MAIL: GSB@GSBURNSLAW.COM

July 25, 2006

RECEIVED  
South Coast Region

JUL 25 2006

CALIFORNIA  
COASTAL COMMISSION

Ms. Linda Serret  
District Enforcement Analyst  
California Coastal Commission  
South Coast Area Office  
200 Oceangate, Suite 1000  
Long Beach, CA 90802-4302

Violation File Number: V-5-06-021  
Property Location: St. Regis Resort, Monarch Beach, 1 Monarch Beach  
Resort, Dana Point, CA 92629

Dear Ms. Serret:

Your July 18<sup>th</sup> letter requests a response thereto in which my client provide "technical evaluations that fully document the impacts of the grading and berming activities upon the coastal resources of Salt Creek Beach and identify potential remedies." My client has engaged an environmental consultant to assist us in compiling that information. While you've requested a response by August 1<sup>st</sup>, we request that you allow us to respond by August 14<sup>th</sup> to allow time to provide that technical information.

On a related note, as you know my client intends to fully comply with its obligations and has agreed to not conduct any grading or other action to shore up the berm pending our dialogue concerning this event. I want to be clear, however, exactly what activity is in question. Specifically, your letter includes three photographs which you reference as documenting the activity in question. One photo is of a bulldozer. However, the other picture is of a John Deere tractor pulling a sand groomer to remove excess seaweed, well above the MHTL. Please confirm that such grooming activity is not the subject of your letter, and that my client can continue to groom the beach.

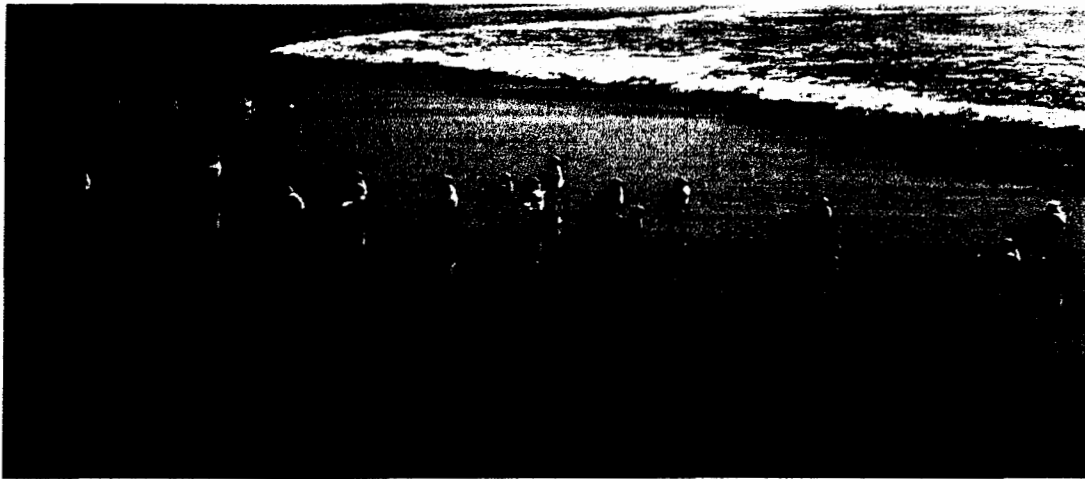
Very truly yours,

  
George S. Burns

Exhibit #8  
CCC-08-CD-01

Page 1 of 1

**ENVIRONMENTAL ASSESSMENT**  
**EFFECTS OF BEACH BERM CONSTRUCTION AND**  
**BEACH GROOMING AT THE**  
**ST. REGIS BEACH RESORT**  
**MONARCH BEACH, DANA POINT, CALIFORNIA**



**Prepared for:**

**BonTerra Consulting**  
**151 Kalmus Drive, Suite E-200**  
**Costa Mesa, CA 92626**  
**Contact: Gary Meideros**  
**(714) 444-9199**

**Prepared by:**

**Coastal Resources Management, Inc.**  
**PMB 327, 3334 E. Coast Highway, Corona del Mar, CA 92625**  
**Contact: Rick Ware, Principal**  
**(949) 412-9446**



**September 23<sup>rd</sup>, 2006**

**Exhibit #9**  
**CCC-08-CD-01**

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## **1.0 INTRODUCTION AND BACKGROUND**

On June 27<sup>th</sup>, 2006 the California Coastal Commission (CCC) issued a Notice of Violation (NOV) letter (N-5-06-021) to the Law Offices of George S. Burns addressing unpermitted beach grading below the mean high tide line and sand berm construction adjacent to Salt Creek by the Monarch Bay (St. Regis) Beach Club at Monarch Beach, 1 Monarch Beach Resort, Dana Point, CA 92629.

The unpermitted activities were conducted on a sandy beach that was an active California grunion (*Leuresthes tenuis*) spawning habitat during the 2006 grunion spawning season. Dr. Karen Martin, Pepperdine University observed the grading at the site on June 16<sup>th</sup>, 2006 and judging from the presence of eggs at different locations along Salt Creek beach, a grunion run had occurred previous to the grading. According to Mr. Andrew Willis, of the CCC staff, it was the preliminary opinion of one esteemed biologist who surveyed the beach after the grading that the unpermitted development destroyed the grunion eggs in the area of development (California Coastal Commission Notice of Violation V-5-06-021, letter to George S. Burns, July 18<sup>th</sup>, 2006).

The CCC additionally requested that a complete coastal development permit application to remove the unpermitted development and restore the site to its pre-violation condition by July 30<sup>th</sup>, 2006. However, the CCC believed that the damage could not be fully remediated, and suggested that alternatives be developed to partially address the impacts of the unpermitted grading and berming development activities on coastal resources and identify remedies so that they can be included in any settlement discussions related to NOV V-5-066-021.

### **1.1 PROJECT PURPOSE**

The firms of BonTerra Consulting and Coastal Resources Management, Inc. (CRM) were retained by the Law Offices of George S. Burns to address these issues. The purpose of this environmental assessment is to identify site-specific impacts of berming and beach grading on the coastal resources located along the Monarch Beach shoreline. The assessment also includes a discussion of alternatives that mitigate the loss of grunion spawning habitat along the Monarch Beach shoreline.

## **2.0 ENVIRONMENTAL SETTING**

### **2.1 PHYSICAL ENVIRONMENT**

Monarch Bay beach is located in the City of Dana Point, Orange County, California (Figure 1). The beach is maintained for the residents of Monarch Bay and guests at the St. Regis Monarch Bay Beach Resort.

The Monarch Bay Beach Resort is protected by rip rap along the backshore and there are four storm drain outlets that discharge to the beach, the largest of which is from Salt Creek. The Salt Creek outlet structure is surrounded by rip rap to reduce beach erosion. The County of Orange maintains the integrity of the rip rap under California Coastal Commission Coastal Development Permit # 05-02-31 to "retrieve and re-establish blown-out rock materials used for channel outlet's revetment, remove accumulated sediments on the outlet's apron and dispose of excavated sediments to adjacent beach using a front loader".

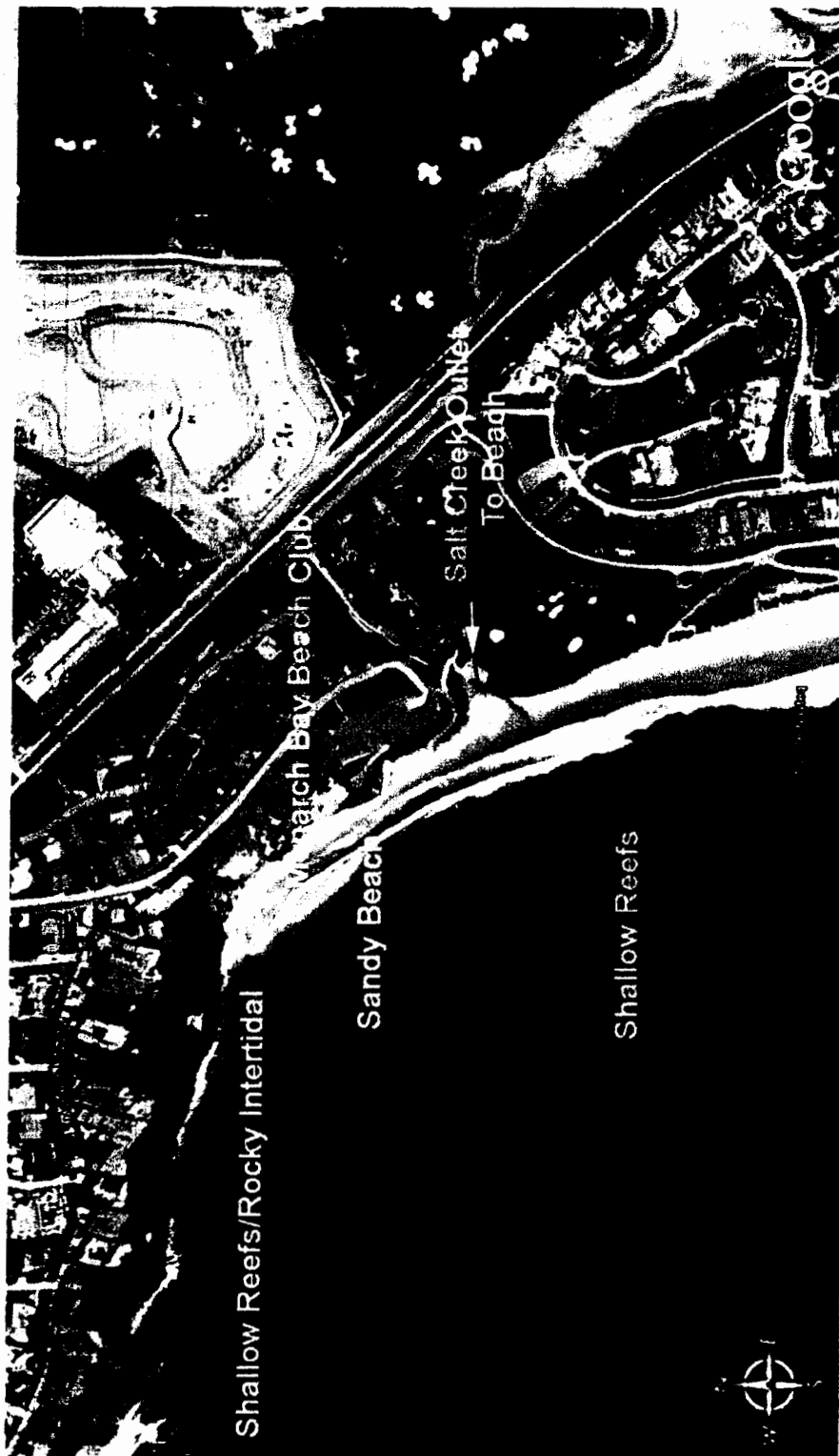


Figure 1. Aerial of Project Area (2006). Source Photo: Google

The size and configuration of the run-off channel and pools are dependent upon tidal and wave conditions, runoff flow volumes, time of year. For years, the County has shored up the berm on the south side of the creek approximately twice a year to ensure that water does not pond on the shore, through winter 2005. No corresponding shoring was done to the north side of the berms for months after the facility was opened. Therefore, by May 2006, the berm on the north side had been worn out by the tides, resulting in frequent large ponds of brown water. To avoid further contamination, The St. Regis Resort had a loader reposition the sand berm back to the approximate location that had been established when the facility opened, to again allow treated wastewater runoff from the Dana Point Ozone Water Treatment Facility to flow into the ocean rather than ponding onshore (Letter from George Burns, Attorney at Law to Ms. Linda Serret, California Coastal Commission July 12, 2006). Approximately 100-150 sq ft of berm was shored up, increasing the berm height about three to four feet, approximating the height of the berm at the time the water treatment facility was opened.

A historical perspective of beach and berm conditions at the site are presented in Figures 2 through 10. These include photographs of the Salt Creek drainage area and berm conditions on November 18<sup>th</sup>, 2002 (Coastal Resources Management, 2003), June 12<sup>th</sup>, 2006 (Coastal Resources Management 2006), June 16<sup>th</sup>, 2007 (Karen Martin, in CCC NOV letter), and August 9<sup>th</sup>, 2006, (Coastal Resources Management unpublished data), shown in Figures 2-10.

**November 2002** On November 12<sup>th</sup>, 2002, the Salt Creek runoff was limited to a single pool and an outlet channel to the wave zone with berm on the upcoast side of Salt Creek ( Figures 2 and 3; Coastal Resources Management, 2003). These photographs were taken prior to the construction of the Dana Point Ozone Wastewater Treatment Facility.

**June 12<sup>th</sup>, 2006** CRM biologist Rick Ware photographed the Salt Creek channel and the shoreline of Monarch Beach on June 12<sup>th</sup>, 2006. These photographs illustrate (1) the degradation in the berms which allowed the Salt Creek flow to pond along the entire backshore between the rocky intertidal at the south end of Three Arch Bay to the Salt Creek channel (Figures 4-5). Salinity in the pooled areas along the shoreline in front of the Beach Resort facility averaged 9.9 parts per thousand (n=9 samples) indicating the source of the pooled water was from Salt Creek. Sampling was conducted during on a flood tide ranging between +2 and +3 ft MLLW (Coastal Resources Management 2006).

**June 16<sup>th</sup>, 2006** Karen Martin of Pepperdine University photographed the Monarch Beach shoreline on June 16<sup>th</sup>, 2006 (Figures 6-8) The photographs illustrate mechanical grading and berming of the shoreline between the tide zone and the backshore habitat and beach grooming. Tides during the afternoon on that day ranged between 3.4 ft (1300 hrs) and 4.0 ft MLLW (1600 hrs). It appears that the photographs were taken during afternoon hours.

**August 9<sup>th</sup>, 2006** Coastal Resources Management, Inc. and BonTerra Consulting conducted a site visit at the Monarch Beach project site. During the site visit, biologists observed that the berms had again been substantially degraded on both the upcoast and downcoast sides of flow from Salt Creek due to wind and wave activity, and there was a break in the berm approximately 100 ft from the backshore in the same approximate vicinity observed during the June 12<sup>th</sup>, 2006 CRM survey allowing a shallow "pond" to exist between the natural beach berm and the backshore (Figures 9-10). The foreshore below the natural beach berm had been mechanically groomed (Figure 11). The tide at the time of the beach survey was 2.0 ft at 1700 hrs.



Figure 2. Salt Creek Culvert Runoff Apron and Upcoast Berm, November 2002



Figure 3. Salt Creek Drainage Channel and Upcoast Berm, November 2002





Figure 4. Break in Upcoast Berm, June 12<sup>th</sup>, 2006



Figure 5. Lagoon Formed Due to Break in Upcoast Berm June 12, 2006



Figure 6. Beach Grooming Activity, June 16<sup>th</sup>, 2006.  
Source: CCC Notice of Violation V-5-06-021.



Figure 7. Grading Activity Conducted at the Project Site In Preparation For Berm Construction.  
Grading extended down to the tide zone.



Figure 8. Berms Constructed in Salt Creek Runoff Channel, June 16<sup>th</sup>, 2006.  
Source: CCC Notice of Violation V-5-06-021



Figure 9. Break in Berm, August 4<sup>th</sup>, 2006 following June 2006 Repair.



Figure 10. Break In Berm Allowing Ponding To Occur In Front of Beach Resort, August 9, 2006



Figure 11. Mechanical Beach Grooming Seaward of The Natural Longshore Beach Berm. August 9th, 2006. Darker areas of beach sand and seaweed beach wrack represent the previous day's high tide line (approximately +6.8 ft MLLW). A grunion run began later in the evening.

**August 12-13<sup>th</sup>, 2006.** During the late evening of August 12th through the early morning of August 13<sup>th</sup>, Coastal Resources Management, Inc. biologists were at the project site to conduct a grunion survey to determine the potential extent of damage caused by berm construction and beach grooming. Prior to the period when the grunion were to run, major features of the shoreline were mapped in order to establish baseline conditions for the grunion run survey. The survey was conducted using Wide Area Augmentation System (WAAS) GPS (Global Positioning System) technology and a Thales Mobile Mapper Pro GPS/GIS Unit to map shoreline features. The features mapped included the location of constructed berms, the high tide line limit during the grunion run, the location of the longshore natural beach berm, the Salt Creek flow area, and the backshore limit of the project area. The estimated GPS error of the Thales Mobile Mapper unit with post-processing correction is less than 1 meter. GPS data were entered into the Mobile Mapper Software and then transferred into GPS TRACKER and ARCVIEW GIS software from which areal and length/width calculations were made.

The results of the mapping effort are shown in Figure 12. The berm lining the upcoast edge of the creek flow was 274 ft long and a maximum of 28 feet in width. A break in the upcoast berm previously observed on August 9<sup>th</sup> (see figure 10) had been mechanically repaired. The repair in the berm encompassed a 10 ft wide by 20 ft-long area (200 sq ft) and it was restored to approximately 3 feet in height. Additionally, the ponded area between the natural wave-influenced, longshore berm and the backshore beach limit had been mechanically groomed and was nearly dry. Two smaller berms, offset from each other formed the southern boundary of the creek flow. The shoreward berm was not well defined, but overall encompassed a length of 131 feet in length and 19 ft in width. The shorter but more defined, seaward berm was 92 long and 18 ft in length.

The maximum high tide observed during the survey was 6.8 ft MLLW at 2200 on August 12<sup>th</sup>. The location of the natural beach berm relative to the tide observed at 0025 hours on August 13<sup>th</sup> (2 hours after the projected time for the grunion run on August 13<sup>th</sup>) indicated that the high-tide terrace below the long-shore berm was wider downcoast of Salt Creek than upcoast of the berms and creek flow. The location of the 5.1 ft tide (MLLW) represents a rough average between the Mean Higher High Water (MHHW) and the Mean High water (MHW) marks for this section of coastline, based on local tidal corrections (Table 1). It should be noted that these were field measurements based upon wave and debris markings and was not an engineering survey.

Based upon the location of the berms relative to the tideline on August 13<sup>th</sup>, the seaward location of the berms at the time of the survey approximates the MHT line, whereas beach grooming activity occurred seaward of the berm at approximately the MHT line, as throughout the higher-elevation backshore of the beach. It is not known at what tide elevations the original berms were constructed at, although gauging from the photos taken by Karen Martin the seaward end of the berms were at an elevation of approximately +4 ft MLLW.

## 2.2 PROJECT AREA BIOLOGICAL ENVIRONMENT

Project area intertidal marine habitats occur between the extreme low and extreme high water marks (-1.8 to +7.0 feet (ft) relative to Mean Lower Low Water [MLLW]). The types of habitats in this zone include sandy and rocky intertidal habitats. Subtidal (underwater) habitats below the tide line include sand bottom, boulder/cobble reef, and low-to-high relief platform reef. Of these habitats, sandy intertidal is the dominant habitat within the St. Regis shoreline study area. Additionally, Salt Creek forms a channel flow between the backshore and foreshore environment.

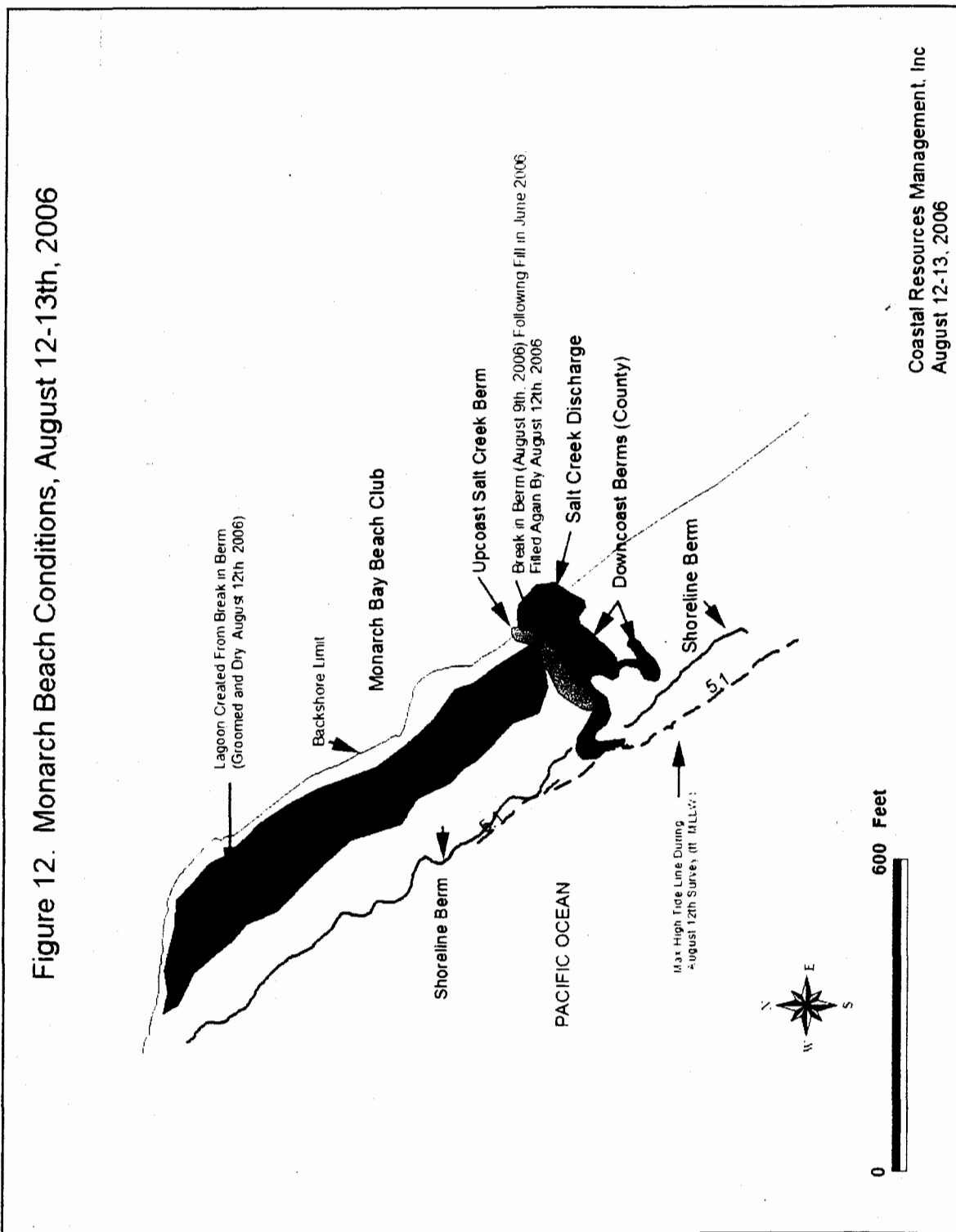


Table 1

TIDAL DATUM INFORMATION		
(Based on Mean Lower Low Water)		
	L.A.	
	Outer Harbor	San Clemente **
HIGHEST OBSERVED WATER LEVEL (01/27/1983)	7.96	7.80
MEAN HIGHER HIGH WATER (MHHW)	5.52	5.41
MEAN HIGH WATER (MHW)	4.77	4.67
MEAN LOW WATER (MLW)	0.95	0.76
MEAN LOWER LOW WATER (MLLW)	0	0.00
LOWEST OBSERVED WATER LEVEL (12/17/1933)	-2.95	-2.36
** correction factor of .98 for high tides, and .80 for low tides, from National Ocean Service Tide Tables		

#### Intertidal Habitat Characterization

**Salt Creek Shoreline Drainage** Biological surveys and an impact assessment were conducted along the Monarch Beach shoreline by LSA Associates, Inc. and Coastal Resources Management in November 2002 (LSA Associates, 2004; Coastal Resources Management, 2003 and again by CRM in June 2006 to evaluate the types of biological resources that are found within the influence of the Salt Creek drain outlet (Coastal Resources Management 2006). During the 2002 survey, there was no evidence of any marine plant life living between the storm drain to the water's edge. A light cover of green algae or blue/green algae was present on the portions of the rip rap rocks during the 2006 survey. No invasive algae (*Caulerpa taxifolia*) was found at the project site.

No rocky intertidal or soft bottom benthic marine organisms were observed living on the protective rip rap or within the pools surrounded by the rip rap during either the 2002 or 2006 surveys. No marine plants, invertebrates, or fish were observed within creek flow leading to the sandy beach shoreline, although seabirds and shorebirds congregated on the shoreline near the terminus of the creek mouth as it emptied into the wave zone during both surveys.

No sensitive, endangered, rare, or threatened species of plants or wildlife were found within ponded Salt Creek waters by CRM biologists during the 2002 or June 2006 surveys. The Salt Creek habitat is not considered critical habitat for the tidewater goby (*Eucyclogobius newberryi*), a federally-listed endangered fish that lives in brackish water coastal lagoons along southern and northern California (Federal Register: November 20, 2000 (Volume 65, Number 224)) Rules and Regulations] [Page 69693].

**Sandy Beach Environment** The beach fauna along the Dana Strands sandy shoreline, approximately 2 miles southeast of Monarch Beach was studied by Patterson (1974), who sampled the sand beach fauna living between the low-to-high tide zones seven times between December 1970 and December 1971. Patterson described the area as a semi-sheltered, fine grained, flat, sloping beach, and this site is relatively similar to that occurring at Monarch Beach. The sandy beach fauna at Dana Strands consisted of 12 species of crustaceans, insect larvae, and polychaete worms. Common taxa include beach hoppers (*Orchestoidea* spp.=*Malorchestoidea*), isopods (*Exocirrolina* spp.), sand crabs (*Emerita analoga*) and polychaete worms (*Euzonus mucronata*, *Nerinides acuta*) in the upper and mid zones and polychaetes (*Nephtys californiensis*, *Nerinides acuta*, *Pygospio californica*), and sand crabs in the mid-to-low tide zone. Other species which occur in the low intertidal zone of other Orange County sand beaches include purple olive snails (*Olivella biplicata*), bean clams (*Donax gouldii*), sand crabs (*Blepharipoda occidentalis*), polychaete worms (*Eteone*, *Dispio*, *Glycera*, *Hemipodus*, *Lumbrineris*, *Magalona*, and *Scolecipis*), and amphipod crustaceans (*Grandifoxus* and *Eohaustorius*). These species are fed upon by foraging shorebirds and by fishes which are found in the surf zone along sandy beaches. During the CRM field survey conducted at the Monarch Beach project site on August 12<sup>th</sup> and 13<sup>th</sup>, 2006, sand crabs were extremely abundant in the mid-tide zone. Beach wrack (organic debris) such as kelp, surfgrass, and decaying organisms will collect on the upper beach after a high tide. Crustaceans and insects will feed upon decaying vegetation.

### **California Grunion**

The California grunion (*Leuresthes tenuis*) is a fish that uses the high intertidal sandy beach habitat of many southern California beaches as spawning habitat (Walker 1952), including Monarch Beach (Karen Martin, pers. communication). Grunion are members of the silversides family, Atherinidae, along with the jacksmelt and topsmelt. They normally occur from Point Conception, California, to Point Abrejos, Baja California. Occasionally, they are found farther north to Monterey Bay, California and south to San Juanico Bay, Baja California. They inhabit the nearshore waters from the surf to a depth of 60 feet. Tagging studies indicate that they are nonmigratory (<http://www.dfg.ca.gov/mrd/grusched.htm>).

Grunion use the energy of waves to strand themselves onto sandy beaches generally over a 3-4 night period following the highest semilunar tides. Typically, grunion "runs" last about 1 to 2 hours (Walker 1952). Female dig themselves tail-first into wet sand. The males then curl around the females and deposit milt. Normally, the eggs develop above the water line buried in moist sands and are triggered to hatch in nine days at the high tide of the next new or full moon by waves that reach high enough on shore to wash out the sand and carry the eggs into the ocean (Walker 1952; Middaugh et al. 1983 in Darken et al., 1998). If the eggs are washed out to sea during the next high tides, they hatch rapidly into free-swimming larvae (Walker 1952). If the waves do not reach the eggs, as happens frequently along the southern California coast, the eggs are able to remain viable for at least two more weeks (Walker 1952) and up to 35 days (Darken et al., 1998). This period encompasses the next two highest semilunar tides. However, hatching success decreases over time (Darken et al. 1998).

Spawning occurs from March through August, and occasionally in February and September. Peak spawning period is between late March and early June. After July, spawning is erratic, and the number of fish observed in a grunion run greatly decreases.

**Site-Specific Grunion Data** No quantitative information is available as to the number of grunion spawning at Monarch Beach during the 2006 season, although it is a documented grunion run site



(Karen Martin, pers. comm. with R. Ware, August 10<sup>th</sup>, 2006. Additionally, Martin found eggs buried in the sand during a site visit to Monarch Beach on June 16<sup>th</sup>, 2006.

Coastal Resources Management, Inc. conducted a one-night grunion survey at Monarch Beach on August 12<sup>th</sup>, 2006. The purpose of the survey was to try and collect after-the-fact, site-specific information on grunion activity at the site where unpermitted berm construction and beach grooming activity occurred in June 2006, despite the lateness of the grunion spawning season. Only one grunion was observed over a 4 hour spawning period along a 1,200 linear foot area of Monarch Beach between 2100 (August 12<sup>th</sup>) and 0200 (August 13<sup>th</sup>) by Coastal Resources Management, Inc. biologists. Anecdotally, approximately 200 fish were observed on the beach during the first night of the August spawning period in the general area by local residents (R. Ware, pers. com with local beachgoers, August 12<sup>th</sup>, 2006).

The lateness of the season precluded obtaining estimates of either egg volumes or an estimated number of grunion per linear area of beach along the beach-groomed Monarch Beach or downcoast of the Salt Creek channel flow.

While the California grunion is not a formally listed federal-or-state rare, threatened, or endangered species, grunion spawning habitat it is considered "sensitive" because of the overlap between beach spawning activity and shoreline management activities such as (1) the removal of debris and grooming beaches by mechanical means that rake, remove, or crush eggs (2) beach erosion; (3) harbor construction; and (4) pollution (Martin, 2002, <http://www.dfg.ca.gov/mrd/grusched.html>).

### **3.0 EFFECTS OF BERM CONSTRUCTION AND BEACH GROOMING ON INTERTIDAL MARINE RESOURCES AT THE PROJECT SITE**

#### **3.1 BERM CONSTRUCTION**

Construction of the berm upcoast of the Salt Creek Discharge was intended to re-create a berm originally constructed by the County of Orange to prevent ponding of creek water in front of the Monarch Bay Beach Resort. Based upon GIS mapping measurements, the grading impact by mechanical dozers in June 2006 between the backshore and the intertidal zone (Figure 7) was approximately 21,000 sq ft. This includes (1) the upcoast berm (2) the realigned Salt Creek Channel and the south berm (Figures 6, 7, and 11). The surface area of the upcoast berm by itself in August 2005 was 6,535 sq ft, following degradation by wave and wind activity.

While the condition of the berm in August 2006 indicated that berm was not located below the MHT line (likely due to wave erosion), photographs taken earlier at the project site in June 2006 suggested the seaward end of the constructed berm was at the tideline. The approximate elevation in the afternoon was +4 ft MLLW and there appeared to be moderate wave activity. Therefore, a portion of this berm was likely constructed near or below the MHT line, but the exact elevation at which the berm was constructed and the surface area of the berm potentially below the MHT line cannot be precisely determined based upon the available data. An estimation, based upon the CRM GIS mapping in August 2006 and the June 16<sup>th</sup>, 2006 photographs is 1,200 sq ft (60 ft long x 20 ft wide).

Although unpermitted, beach grading and reconstruction of the berm assisted in beneficially reducing the amount of stagnated channel water in front of the beach resort facilities, and effectively eliminated a sort of bacteria from (1) channel runoff and (2) roosting gulls that

congregated within the shallow pools. A portion of this berm was later re-constructed between August 9<sup>th</sup> and August 12<sup>th</sup>, 2006 to fill in a break causing additional ponding in front of the Monarch Beach Resort (R. Ware, pers. observation). The amount of sand fill between the gap in the berm was approximately 200 sq ft.

Biological losses above the MHT line relative to berming and grading were likely minimal due to the paucity of organisms that can live in the high intertidal and supratidal dry, sand beach environment. However, biological losses of polychaete worms, beach hoppers, sand crabs, and grunion eggs probably occurred within the approximate 1,200 sq ft area at the seaward end of the berm (Figure 6-7). These losses would be considered a locally significant environmental impact.

### **3.2 BEACH GROOMING**

Beach grooming using tractors and a rake may uncover eggs, damage them, or compact the sand above them. These perturbations can reduce egg viability and grunion numbers (Martin 2002).

Beach grooming at the Monarch Beach Resort is accomplished using a John Deere tractor pulling a sand rake to remove excess seaweed and debris from the beach. This activity has been conducted well above the MHT line (George Burns, letter to Ms. Linda Serret, California Coastal Commission, July 25, 2006). Additional evidence of beach grooming activity however was observed seaward of the natural longshore beach berm, 150 ft upcoast of the lifeguard tower and as far downcoast as the Salt Creek runoff channel (Figure 9). Based on the August 9<sup>th</sup> photos taken by CRM biologists, the area raked appeared to be limited to the high tide zone at or above the kelp drift line at the time of the survey.

However, given that (1) grooming activity was conducted during grunion season, (2) the high tide line varies daily, and (3) grunion eggs were likely buried in the sand in the vicinity of the grooming activity, this beach maintenance activity on the foreshore beach slope may have resulted in some adverse impacts including mortality of eggs buried in the sand and disruption of grunion's physical spawning habitat. The degree of adverse effects (i.e., the percentage of the eggs affected by grooming activity and avoidance of the area by grunion because of habitat disruption) cannot be determined because there is a lack of scientific data collected immediately before and after grooming activities.

## **4.0 PROPOSED MITIGATION MEASURES TO AVOID, REDUCE, OR COMPENSATE FOR LOSSES OF MARINE RESOURCES**

### **4.1 MITIGATION MEASURES TO AVOID FUTURE IMPACTS TO SHORELINE MARINE RESOURCES**

- Beach maintenance activities including berm maintenance and beach grooming shall be conducted under an approved Coastal Development Permit;
- Beach maintenance activities shall conform with the County of Orange Public Facilities and Resources Department Best Management Practices of Ocean Outlet Maintenance Activities where applicable (see CDP Application 5-02-031, Appendix H);

- No beach berms shall be constructed below the Mean High Tide Line between late February and early September to avoid disturbances to California grunion populations during the spawning periods.
- Maintenance to berms can be conducted above the Mean High Tide Line to repair breaks in the berm during grunion season provided that a biological monitoring plan is prepared, approved by the Coastal Commission, and implemented to avoid adverse impacts to marine resources during construction. A qualified biological monitor shall be on site during all construction activity who be responsible for ensuring that no adverse impacts on grunion habitat, eggs, or adult grunion occur during construction or maintenance activities.
- Beach grooming with a mechanical rake, or the use of hand rakes shall be limited to beach areas above the bimonthly high-tide line during grunion season (late February through early September) according to procedures established by Dr. Karen Martin, Pepperdine University. These procedures include (1) marking the line after the highest tide of a new or full moon with a grooming line (2) Grooming only above this high tide mark and (3) Resetting the grooming line every 2 weeks after the next semilunar tide. (See [www.grunion.org](http://www.grunion.org)).
- A qualified biological monitor shall be onsite during beach grooming operations.
- Beach grooming shall be allowed below the bimonthly high-tide line during periods when grunion season is not in effect.

#### **4.2 POTENTIAL MITIGATION OPTIONS FOR IDENTIFIED LOSSES OF GRUNION AND DISRUPTION TO GRUNION HABITAT FROM UNPERMITTED ACTIVITIES**

- Due to the lack of sufficient monitoring data related to grunion spawning cycles and the period in which grunion studies were attempted, there is no appropriate method to quantify losses of adult grunion or grunion eggs or impacts on the local grunion population from berm construction, site grading, and beach grooming activities.
- Based upon GIS information and photographs taken at the project site, grading and berming activities disrupted a total of 21,000 sq ft of beach habitat in June 2006, of which approximately 1,200 sq ft of habitat was at or below the MHT line.
- Restoration of this habitat is not a viable option due to additional, and potential adverse effects on marine resources as a consequence of beach restoration and the potential future need of continuing a berm maintenance program. Losses are within a highly active wave zone regime, and it is likely that natural processes will assist in repopulating disturbed areas along the shoreline if the disturbances are one-time occurrences.
- Longer-term losses are anticipated if additional berming and beach grading will continue. Therefore, a monetary compensation settlement is proposed that will be used to (1) fund a grunion effects study at Monarch Beach to investigate the short-and-long term effects of permitted beach maintenance activities at the site during the 2007 grunion run period; (2) fund a local symposium on effects of beach maintenance activities in Orange County on local sensitive habitats; or (3) fund a 2007 site-specific grunion run survey at Monarch Beach.



## 6.0 LITERATURE CITED

- Burns, George S. 2006. Letter response from Law Offices of George S. Burns to Ms. Linda Serret, District Enforcement Analyst, California Coastal Commission re: Notice of Violation # V-5-06-021. July 12<sup>th</sup>, 2006. 3pp.
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- Walker, Boyd W. 1952. A guide to the grunion. *Calif. Fish Game* 38 (3):410-420.

## **CONSENT CEASE AND DESIST ORDER CCC-08-CD-01**

### **1.0 CONSENT CEASE AND DESIST ORDER CCC-08-CD-01**

- 1.1 Pursuant to its authority under California Public Resources Code ("PRC") section 30810, the California Coastal Commission ("Commission") hereby authorizes and orders St. Regis Resort, Monarch Beach; the Mathis Family 1996 Trust; Makar Properties, LLC; and all their successors, assigns, employees, agents, and contractors, and any persons acting in concert with any of the foregoing (hereinafter, "Respondents") to: cease and desist from engaging in any further development, as that term is defined by PRC section 30106 located at or seaward of 500 Monarch Bay Drive, in the City of Dana Point, Orange County, APN 670-151-55 ("subject property"), including, but not limited to, grading, construction of berms, removing wrack and other organic material (noting that this is not intended to prohibit the removal of trash and other inorganic material by hand raking as needed or minor, incidental relocation of wrack within the subject property), and breaching of Salt Creek or other breaching activities, unless authorized pursuant to the Coastal Act, PRC §§ 30000-30900, and/or the City of Dana Point certified Local Coastal Program, or recognized, in writing, by the Commission to be exempt.
- 1.2 Nothing herein limits or in any way prohibits the ability of Respondents from applying for a coastal development permit from the Commission and/or the City of Dana Point to authorize proposed grading, beach grooming, breaching activities, or other development activities on the subject property.

### **2.0 PERSONS SUBJECT TO THE ORDER**

St. Regis Resort, Monarch Beach; the Mathis Family 1996 Trust; Makar Properties, LLC; all their successors, assigns, employees, agents, and contractors; and any persons acting in concert with any of the foregoing are jointly and severally subject to all the requirements of this Cease and Desist Order No. CCC-08-CD-01 ("Consent Order"), and agree to the terms and conditions required herein.

### **3.0 RESOLUTION AND COOPERATION**

It is the expressed desire of Respondents and the Commission to resolve the Coastal Act violations described in Section 5.0 of this Consent Order through the signing of this Consent Order, to avoid litigation, and to cooperate amicably in carrying out the provisions of the Consent Order.

### **4.0 IDENTIFICATION OF THE PROPERTY**

The property that is the subject of this Consent Order is described as follows:  
500 Monarch Bay Drive, in the City of Dana Point, Orange County, APN 670-151-55.

Exhibit #10  
CCC-08-CD-01

5.0 DESCRIPTION OF ALLEGED COASTAL ACT VIOLATION

Grading, berming Salt Creek to restrict its natural flow pattern, artificial breaching of Salt Creek, and removal of beach wrack and other organic material from Monarch Beach, without a coastal development permit.

6.0 COMMISSION JURISDICTION

The Commission has jurisdiction over resolution of this alleged Coastal Act violation pursuant to PRC Section 30810. Respondents agree to not contest the Commission's jurisdiction to issue or enforce this Consent Order. In light of the extensive history of communications between Respondents and Commission Enforcement staff on this matter, and the intent of the parties to resolve these matters amicably through this Consent Order, Respondents agree that a Notice of Intent to Commence Cease and Desist Order Proceedings, pursuant to section 13181 of the Commission's regulations (codified in California Code of Regulations Title 15, Division 5.5), is not necessary.

7.0 NONSUBMISSION OF STATEMENT OF DEFENSE

In light of the intent of the parties to resolve these matters in settlement, and the fact that the Commission and Respondents wish to work cooperatively in the future, Respondents have not submitted a "Statement of Defense" form as provided for in Section 13181 of Title 14 of the California Code of Regulations and have agreed not to contest the legal and factual bases for, or the terms and issuance of this Consent Order. Accordingly, Respondents have agreed not to contest the issuance or enforcement of this Consent Order at a public hearing or any other proceeding.

8.0 EFFECTIVE DATE AND TERMS OF THE ORDER

The effective date of this Consent Order is the date the Consent Order is issued by the Commission. This Consent Order shall remain in effect permanently unless and until rescinded by the Commission.

9.0 FINDINGS

This Consent Order is issued on the basis of the findings adopted by the Commission as set forth in the document entitled "Findings for Consent Cease and Desist Order No. CCC-08-CD-01." The activities authorized and required in this Consent Order are consistent with the resource protection policies set forth in Chapter 3 of the Coastal Act. The Commission has authorized the activities required in this Consent Order as being consistent with the resource protection policies set forth in Chapter 3 of the Coastal Act.

10.0 SETTLEMENT/COMPLIANCE OBLIGATION

- 10.1 In light of the intent of the parties to resolve these matters in settlement, within 30 days of issuance of this Consent Order Respondents shall contribute \$75,000 to fund existing or proposed not for profit programs for restoration, habitat enhancement, research, and/or education purposes directly related to the two main coastal resources that were impacted by the unpermitted development: California grunion and beach wrack. The \$75,000 shall be divided evenly between the two projects: \$37,500 to fund project(s) benefiting California grunion; and \$37,500 to fund project(s) benefiting beach wrack. In order to effectuate this, and in light of the following individual's expertise in these topic areas and in the geographic area where the development occurred, Respondents agree to fund California grunion and beach wrack projects by Dr. Karen Martin of Pepperdine University and Dr. Jenifer Dugan of the University of California at Santa Barbara, respectively ("Resource Experts).
- 10.2 In the event that either or both of these projects should prove impracticable, Respondents shall, within 10 days after the deadline in 10.1, notify the Executive Director of the Commission ("Executive Director") of such an outcome ("Notification"). Within 30 days of sending the Notification, Respondents shall identify alternative project(s), for the review and approval of the Executive Director, that will have the greatest benefit to grunion and beach wrack, with similar goals noted in 10.1, and shall fund them at the levels in 10.1.
- 10.3 Respondents shall send a copy of the check(s) and cover letter(s) to the attention of Aaron McLendon of the Commission at the same time that the checks are transmitted.
- 10.4 Respondents shall install two (2) informational/educational signs which describe, through text and photographs/graphics, the importance and biological significance of beach wrack and grunion. The signs shall be, at a minimum, 24 inches by 30 inches, installed three feet above grade, located at the Monarch Bay Club in a conspicuous location where people would likely be walking to the beach area, made easily accessible to children, and maintained so that the text and photographs/graphics are readable.

Respondents and Commission staff agree to work cooperatively on creating language and photographs/graphics that will be placed on the educational signs consistent with the requirements of Section 10.4 of this Consent Order. Within sixty (60) days of issuance of this Consent Order, Respondents shall submit a final educational sign plan, for review and approval of the Executive Director that describes the location, size, and content of the signs to be placed at the Monarch Bay Club. Respondents shall hire a graphic designer to typeset and professionally arrange the final sign content and a sign-maker to produce the final product. Respondents shall install the two signs consistent with the approved signage plan within 60 days of approval of the signage plan, or within such additional time as the Executive Director may grant for good cause pursuant to Section 12.0 of this Consent Order. The two signs shall not be moved or removed unless such action is authorized by the Executive Director of the Commission.



10.5 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 12.0, will 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 violation. Respondents shall pay stipulated penalties within 15 days of receipt of written demand by the Commission for such penalties regardless of whether Respondents have subsequently complied. In addition, if Respondents violate this Consent Order, nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of the Commission to seek any other remedies available, including the imposition of civil penalties and other remedies pursuant to Public Resources Code Sections 30821.6, 30822 and 30820 as a result of the lack of compliance with the Consent Orders and for the underlying Coastal Act violations as described herein.

11.0 All plans, reports, photographs and any other materials required by this Consent Order shall be sent to:

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

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

12.0 DEADLINES

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

13.0 SITE ACCESS

Respondents shall provide access to the subject property at all reasonable times to Commission staff and any agency 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 portions of the subject property on which the violations are located, and on adjacent areas of the subject property to view the areas where development is being performed pursuant to the requirements of

the Consent Order for purposes including but not limited to inspecting records, operating logs, and contracts relating to the site and overseeing, inspecting and reviewing the progress of respondents in carrying out the terms of this Consent Order.

14.0 GOVERNMENT LIABILITIES

Neither the State of California, the Commission, nor its employees shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondents in carrying out activities pursuant to 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.

15.0 NON APPEAL

Persons against whom the Commission issues a Cease and Desist Order have the right pursuant to PRC section 30803(b) to seek a stay of the order. However, pursuant to the agreement of the parties as set forth in this Consent Order, and in light of the settlement contained herein, Respondents hereby waive whatever right they may have to seek a stay or to challenge the issuance and enforceability of this Consent Order in a court of law.

16.0 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 Section 5.0, above, (specifically including claims for civil penalties, fines, or damages under the Coastal Act, including under PRC §§ 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 subject property other than those that are the subject of this Consent Order.

17.0 SUCCESSORS AND ASSIGNS

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

18.0 MODIFICATIONS AND AMENDMENTS

Except as provided in Section 12.0, this Consent Order may be amended or modified only in accordance with the standards and procedures set forth in Section 13188(b) of Title 14 of the California Code of Regulations.

19.0 GOVERNMENTAL JURISDICTION

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

20.0 LIMITATION OF AUTHORITY

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

21.0 INTEGRATION

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

22.0 REPRESENTATIVE AUTHORITY

The signatories below attest that they have the authority to represent and bind in this agreement the Respondents.

23.0 EXECUTION IN COUNTERPARTS

The parties hereto, in order to more expeditiously implement the terms set forth herein, agree that the Consent Order may be executed in three or more counterparts as if all parties signed one document and each executed counterpart shall be regarded as an original document. The original executed counterparts shall be kept in the custody of the Coastal Commission. Execution may be by facsimile copy, with an original hard copy sent to the attention of Aaron McLendon at the address listed in 11.0 of this Consent Order.

Consent Cease and Desist Order No. CCC-08-CD-01  
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24.0 STIPULATION

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

IT IS SO STIPULATED AND AGREED:

On behalf of Respondents:

\_\_\_\_\_  
The Mathis Family 1996 Trust

\_\_\_\_\_  
Date

\_\_\_\_\_  
St. Regis Resort, Monarch Beach

*JOHNNY SO, GENERAL MANAGER*

*March 27 2008*  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Makar Properties, LLC

*MICHAEL GAGNET  
SVP - DEVELOPMENT*

*25 MAR 08*  
\_\_\_\_\_  
Date

Executed in Santa Barbara, CA on behalf of the California Coastal Commission:

\_\_\_\_\_  
Peter Douglas, Executive Director

\_\_\_\_\_  
Date

Exhibit #10  
CCC-08-CD-01

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