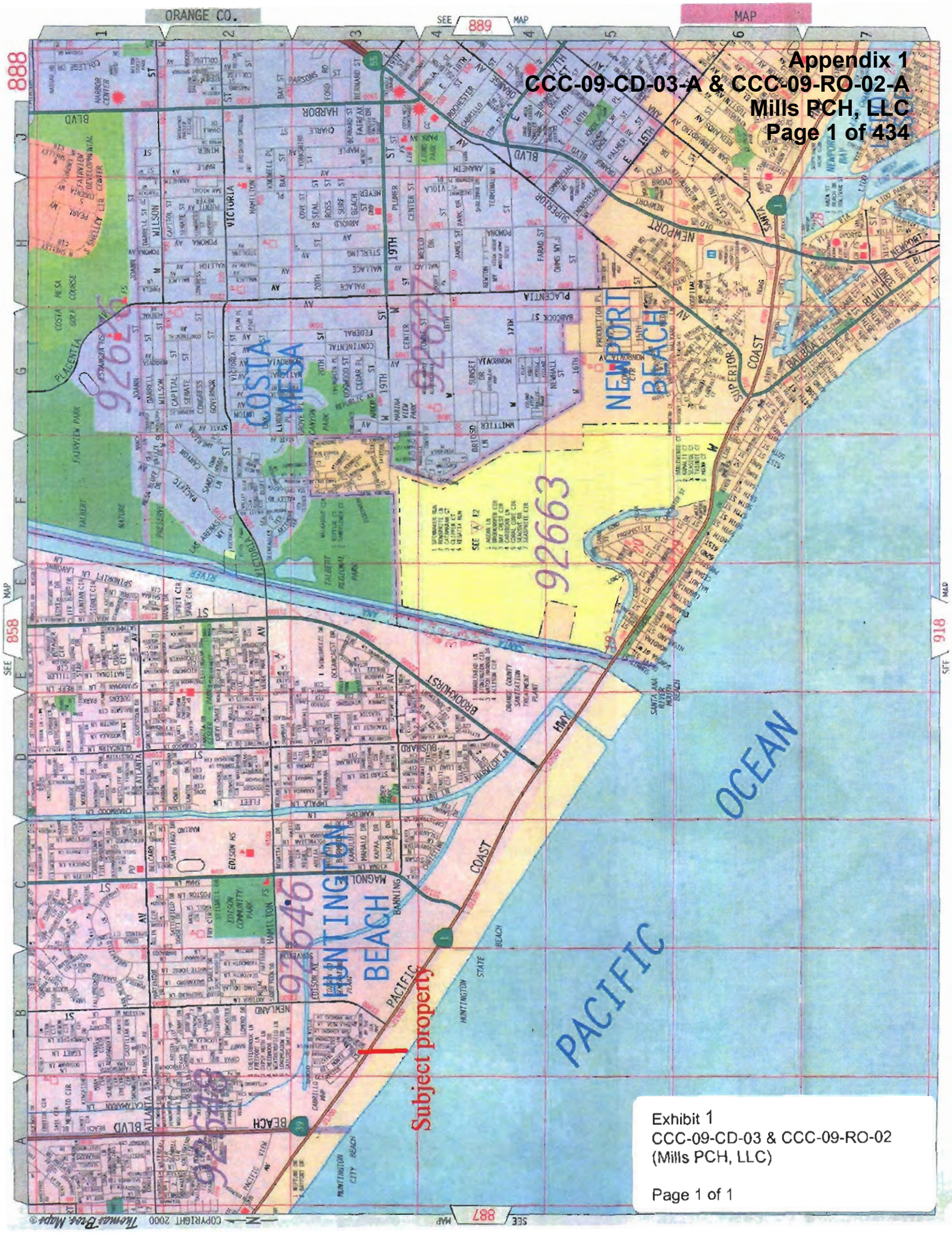


Exhibit 1
CCC-09-CD-03 & CCC-09-RO-02
(Mills PCH, LLC)

Page 1 of 1

Exhibit 2
CCC-09-CD-03 & CCC-09-RO-02
(Mills PCH, LLC)

Exhibit 2
CCC-09-CD-03 & CCC-09-RO-02
(Mills PCH, LLC)

Page 2 of 3 (Fenced portion)

Exhibit 2
CCC-09-CD-03 & CCC-09-RO-02
(Mills PCH, LLC)

Page 3 of 3 (Unfenced portion)

1940 Aerial Photograph

02.24.2008

02.24.2008

02.23.2008

Exhibit 4
CCC-09-CD-03 & CCC-09-RO-02
(Mills PCH, LLC)

Exhibit 4
CCC-09-CD-03 & CCC-09-RO-02
(Mills PCH, LLC)

Page 5 of 6 (Trench drain)

Exhibit 4
CCC-09-CD-03 & CCC-09-RO-02
(Mills PCH, LLC)

Page 6 of 6 (Drain outlet)

STATE OF CALIFORNIA - THE RESOURCES AGENCY

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

March 4, 2008

Mike Fuentes
Supervising Code Enforcement Officer
City of Huntington Beach, Planning Department
2000 Main Street
Huntington Beach, CA 92648

Re: Unpermitted Development at Cabrillo Mobilehome Park

Dear Mr. Fuentes,

Thank you for taking time to discuss with me the unpermitted development which occurred on February 23, 2008 at Cabrillo Mobilehome Park, which is located within the Coastal Zone at 21752 Pacific Coast Highway in the City of Huntington Beach. The unpermitted development included, but may not be limited to, the removal of major vegetation, including native, wetland vegetation; grading; and construction of a trench drain and change in the intensity of use of water.

As you know, Pursuant to Section 30600 (a) of the Coastal Act, and Section 245.06 of the Huntington Beach Zoning and Subdivision Ordinance, any person wishing to perform or undertake development in the Coastal Zone must obtain a coastal development permit ("CDP"), in addition to any other permit required by law. Development is broadly defined by Section 30106 of the Coastal Act and, similarly, by Section 245.04 of the Huntington Beach Zoning and Subdivision Ordinance, 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 any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of the use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvest of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations....***

Removal of major vegetation, grading, and construction of a trench drain and change in the intensity of use of water is "development" under the Coastal Act and the City of Huntington Beach's Commission-certified Local Coastal Program ("LCP"). Therefore, the above-mentioned development requires a CDP. Any development activity conducted in the Coastal Zone without a valid coastal development permit constitutes a violation of the Coastal Act and the City of Huntington Beach's LCP.

As we discussed on February 26, 2008, the City authorized the Commission to assume primary enforcement authority with regard to this violation pursuant to Public Resources Code Section 30810. Thus, the Commission will contact the property owner shortly and pursue enforcement action which may include initiation of litigation to seek injunctive relief and an award of civil fines and/or the issuance of a cease and desist and restoration order for all of the unpermitted development, including development within the City's LCP jurisdiction.

While enforcement action by the Commission does not preclude the City from pursuing resolution of violations of LCP policies, the Commission may assume primary responsibility for enforcement of Coastal Act violations pursuant to Section 30810(a) of the Act. Section 30810(a) provides that the Commission may issue an order to enforce the requirements of a certified LCP in the event that the local government requests the Commission to assist with or assume primary responsibility for issuing such order, if the local government declines to act or fails to act in a timely manner to resolve the violation after receiving a request to act from the Commission, or if the local government is a party to the violation.

Additionally, Section 30811 authorizes the Commission to order restoration of a site if it finds that development inconsistent with the Coastal Act, has occurred without a CDP, and is causing continuing resource damage.

I also note 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.

Thank you for providing me with a copy of the letter that the City sent to the on-site managers of the mobilehome park in August 2006 that informed them that vegetation removal in this location requires a CDP. We would appreciate the City sharing any other documents they have in their enforcement files that are relevant to this property and/or unpermitted development or enforcement actions on this property. We look forward to working with you and City staff to resolve this violation. Should you have questions, please contact me at (562) 590-5071.

Sincerely,

Andrew Willis
District Enforcement Analyst

cc: Mills PCH LLC
Jesse and Sabrina Haycock

Lisa Haage, Chief of Enforcement, CCC
Pat Veesart, Southern California Enforcement Supervisor, CCC
Teresa Henry, South Coast District Manager, CCC
Karl Schwing, Orange County Permitting and Planning Supervisor, CCC

STATE OF CALIFORNIA - THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, Governor

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

March 21, 2008

Mills PCH LLC
PO Box 7108
Huntington Beach, CA 92615

Property Location:	21752 Pacific Coast Highway, Huntington Beach, Orange County Assessor's Parcel No. #114-150-86
Unpermitted Development:	Removal of major vegetation, including native, wetland vegetation; placement of fill; grading; and construction of a trench drain and change in the intensity of use of water

Dear Mills PCH LLC:

Our staff has confirmed that development consisting of removal of major vegetation, including native, wetland vegetation; grading; and construction of a trench drain and change in the intensity of use of water has occurred at the property described above, which is located within the Coastal Zone area of the City of Huntington Beach, as well as the Coastal Commission appeal jurisdiction. Section 245.06 of the City's Zoning Code states that in addition to obtaining any other permit required by law, and with limited exceptions not applicable here, any person wishing to perform or undertake development in the Coastal Zone must obtain a coastal development permit ("CDP"), in addition to any other permit required by law. "Development" is defined by Section 245.04 of the Zoning Code as:

> ***The placement or erection of any solid material or structure on land, in or under water; discharge or disposal of any materials; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of the use of land, including, but not limited to, subdivision pursuant to Section 66410 of the Government Code, and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation.*** **[emphasis added]**

The activities described above constitute development and therefore require a CDP pursuant to the policies and ordinances of the certified Local Coastal Program ("LCP") for the City of Huntington Beach. Please note that Commission staff considers the removal of wetland plant species including, but not limited to, Distictlis spicata ("saltgrass") and Salicornia virginica ("pickleweed") to be removal of major vegetation. In the context of the definition of "development" within the Coastal Act, the word "major" has been interpreted to refer to the ecological significance of the vegetation and not necessarily the amount of vegetation. The ecological significance of pickleweed in particular is especially great because it comprises the favored habitat of a state listed endangered

species, the Belding's Savannah Sparrow, which has been sighted on the subject property. Our records indicate that the City has not issued a CDP for any of the development described above. Any non-exempt development performed without a CDP or a waiver constitutes a violation of the City's LCP and the Coastal Act.

Please be advised that 30809(a) authorizes the Executive Director of the Coastal Commission to issue an order directing a person to cease and desist if that person has undertaken, or threatened to undertake, any activity that may be inconsistent with any requirements of a certified LCP. Section 30809(a) provides that the Executive Director may issue an order to enforce the requirements of a LCP in the event that the local government requests the Commission to assist with or assume primary responsibility for issuing such order, if the local government declines to act or fails to act in a timely manner to resolve the violation after receiving a request to act from the Commission, or if the local government is a party to the violation. On February 26, 2008, the City requested that the Commission assume primary enforcement authority with regard to this violation pursuant to Public Resources Code Section 30809 and 30810.

Pursuant to Section 30810(a), the Commission may also issue a cease and desist order to enforce the requirements of a LCP in the event that the local government requests the Commission to assist with or assume primary responsibility for issuing such order, if the local government declines to act or fails to act in a timely manner to resolve the violation after receiving a request to act from the Commission, or if the local government is a party to the violation. As noted above, The City requested that the Commission assume primary enforcement authority with regard to this violation. A violation of either type of cease and desist order can result in civil fines of up to $6,000 for each day in which the violation persists.

Coastal Act Section 30811 also authorizes the Coastal Commission to order restoration of a site if it finds that development has occurred without a CDP from the local government, the development is inconsistent with this division, and the development is causing continuing resource damage.

In addition, we note 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. On August 14, 2006, the City of Huntington Beach informed the management of the Cabrillo Mobilehome Park in writing that removal of vegetation at this site requires a CDP. An inspection of the property by City staff on August 3, 2006 had revealed the unpermitted development. Thus, the subject activities were undertaken with full knowledge of the requirement for a CDP.

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.

We would like to work with you to resolve these issues cooperatively. One option that you may consider is agreeing to a "consent order". A consent order is similar to a settlement agreement. A

consent order would provide you with an opportunity to resolve this matter consensually, and to have input into the process and timing of removal of the unpermitted development and restoration of the subject property, and would allow you to negotiate a penalty amount with Commission staff. If you are interested in negotiating a consent order, please contact me at (562) 590-5071 or send correspondence to my attention at the address listed on the letterhead when you receive this letter to discuss options to resolve this case.

Thank you for your attention to this matter. If you have any questions regarding this letter, please feel free to contact me. In order to resolve this issue in a timely manner, please contact me by **April 14, 2008.**

Sincerely,

Andrew Willis
District Enforcement Analyst

cc: **Jesse and Sabrina Haycock**
Bill Zylla, City of Huntington Beach
Michael Fuentes, City of Huntington Beach
Jae Chung, U.S. Army Corps of Engineers
Adam Fischer, Regional Water Quality Control Board
Lisa Haage, Chief of Enforcement, CCC
Pat Veesart, Southern California Enforcement Supervisor, CCC
Teresa Henry, South Coast District Manager, CCC
Karl Schwing, Orange County Permit Supervisor, CCC

manatt
manatt | phelps | phillips

Susan K. Hori
Manatt, Phelps & Phillips, LLP
Direct Dial: (714) 371-2528
E-mail: shori@manatt.com

RECEIVED
South Coast Region
APR 17 2008
CALIFORNIA
COASTAL COMMISSION

April 14, 2008

Client-Matter: Y26051

VIA E-MAIL AND U.S. MAIL

Andrew Willis
District Enforcement Analyst
California Coastal Commission
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302

Re: Notice of Violation; 21752 Pacific Coast Highway, Huntington Beach County Assessor's Parcel No. 114-150-86

Dear Mr. Willis:

This response is submitted on behalf of Mills PCH, LLC ("Mills"), the owner of Parcel No. 114-150-86, a portion of which is the subject of the Coastal Commission's Notice of Violation dated March 21, 2008. Parcel No. 114-150-86 is an approximately 10.9 acre parcel located adjacent to Pacific Coast Highway between Newland Street and Beach Boulevard. Located within that parcel is an approximately 1.2 acre area (the "Site") that is the subject of the Commission's Notice. At the outset Mills wishes to acknowledge the gravity of the allegations regarding the activities that occurred at the Site, and takes very seriously the Commission's Notice of Violation and Coastal Act compliance, and intends to work cooperatively with the Coastal Commission to address the actions alleged in the Notice of Violation. Mills also wishes to advise the Coastal Commission and Commission staff that no work or "development" as defined in Coastal Act Section 30106 is being conducted at the Site.

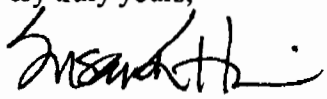
Upon receipt of your letter dated March 21, 2008, Mills contacted Mr. Tony Bomkamp of Glenn Lukos Associates and me to assist them in responding to the Notice of Violation. Since that time we have been working with Mills and the manager of the Cabrillo Mobile Home Park to familiarize ourselves with the long and extensive history of the Site and the surrounding properties, and to understand exactly what actions were taken by whom, when and under what circumstances. In addition to examining the site, Mr. Bomkamp and I have begun a review of the history of the site and its physical characteristics. We have also been in contact with representatives from the U.S. Army Corps of Engineers and the Regional Water Quality Control Board to respond to correspondence from those two agencies regarding the alleged activities. Enclosed with this letter is a memorandum prepared by Mr. Bomkamp outlining the steps that are being undertaken to respond to your letter.

695 Town Center Drive, 14th Floor, Costa Mesa, California 92626-1924 Telephone: 714.371.2500 Fax: 714.371.2550
Albany | Los Angeles | New York | Orange County | Palo Alto | Sacramento | San Francisco | Washington, D.C.

We believe that a preparation of a thorough history of the site and its physical characteristics would greatly benefit both the Commission staff and Mills when we meet to discuss responding to and resolving the issues identified in the Notice of Violation. We, therefore, would like to request an extension of time until April 30, 2008 to provide a full response to the Notice of Violation. After you have received that response, we would like to meet with you to begin working together to address the Notice of Violation in a cooperative fashion. In the meantime, it would be very helpful to begin discussions regarding possible avenues of resolution. In your letter, you outline the possibility of a consent order. We would like to understand the framework of such an option as well as other options the Commission staff has utilized in similar situations to achieve a consensual resolution of alleged violations. I will call you to discuss those options.

If you have any questions, please do not hesitate to contact me or Tony Bomkamp. I can be reached at 714-371-2528 and Mr. Bomkamp can be reached at 949-837-0404. Please be advised that all future communications regarding this matter should be addressed to Mr. Peter Wynn on behalf of Mills PCH, LLC to the Huntington Beach address Huntington Beach used for the Notice of Violation, with copies to me and Mr. Bomkamp. On behalf of Mills, we wish to reiterate our desire to work together to reach a consensual resolution in an expeditious manner. We look forward to working with you to resolve the alleged violation.

Very truly yours,



Susan K. Hori
Manatt, Phelps & Phillips, LLP

Enclosure

cc: Jesse and Sabrina Haycock (by U.S. mail)
Bill Zylla, City of Huntington Beach (by U.S. mail)
Michael Fuentes, City of Huntington Beach (by U.S. mail)
Jae Chung, U.S. Army Corps of Engineers (by U.S. mail)
Adam Fischer, Regional Water Quality Control Board (by e-mail)
Lisa Haage, California Coastal Commission (by e-mail)
Pat Veesart, California Coastal Commission (by e-mail)
Teresa Henry, California Coastal Commission (by e-mail)
Karl Schwing, California Coastal Commission (by e-mail)
Peter Wynn, Mills PCH, LLC (by e-mail)
Steve Kane, Esq. (by e-mail)

MEMORANDUM

GLENN LUKOS ASSOCIATES

Regulatory Services

PROJECT NUMBER: 08380002CABR

TO: Andrew Willis, California Coastal Commission

FROM: Tony Bomkamp

DATE: April 11, 2008

SUBJECT: **Notice of Violation; 21752 Pacific Coast Highway Huntington Beach County Assessor's Parcel No. 114-150-86**

Glenn Lukos Associates (GLA) has been retained to assist Mills PCH LLC with the Coastal Commission Notice of Violation associated with the above-referenced 1.2-acre property. At this time, GLA is investigating conditions on the site relative to the potential presence of wetlands and defined by the Coastal Act as well as other biological resources. In order to further understand the conditions on the site, we are also evaluating historic aerial photographs and historic land uses to the extent that such information informs the potential presence or extent of wetlands.

Within the next few weeks GLA will be submitting to the Coastal Commission (as well as the Corps and Regional Board) the following information:

- A Jurisdictional Wetland Determination (and delineation of wetland boundaries as appropriate);
- A report addressing biological resources, including habitat for special-status plants or animals.

We also note that the need for a detailed Habitat Restoration Plan will be determined upon review of the materials cited in the bullet points above. As such, we will defer that discussion until after we submit the informational materials. If there is any other information that would be of help to you in resolving this matter, please do not hesitate to contact me by phone or email.

My contact information is as follows:

Tony Bomkamp
Glenn Lukos Associates
29 Orchard
Lake Forest, California 92630

Office: 949.837-0404 ext 41
Cell: 949.929.1651
Fax: 949.837-5834
tbomkamp@wetlandpermitting.com

STATE OF CALIFORNIA— NATURAL RESOURCES AGENCY
CALIFORNIA COASTAL COMMISSION
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400

VIA CERTIFIED AND REGULAR MAIL

February 3, 2009

Mills PCH, LLC
Attn: Peter Wynn
P.O. Box 7108
Huntington Beach, CA 92615

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

Property Location: 21752 Pacific Coast Highway, Huntington Beach, Orange County Assessor's Parcel No. 114-150-86

Unpermitted Development: Construction of a fence and berm in a wetland; removal of major vegetation, including native wetland vegetation; placement of fill in a wetland; grading a wetland; construction of a trench drain in a natural wetland; and change in the intensity of use of water resulting from altering the hydrology of wetlands through soil compaction, grading, placement of fill and construction of a trench drain.

Dear Mills PCH, LLC:

The purpose of this letter is to notify you of my intent, as the Executive Director of the California Coastal Commission ("Commission"), to record a Notice of Violation of the Coastal Act against the property where the violations occurred and to commence proceedings for issuance of Cease and Desist and Restoration Orders to address unpermitted development at the site, which includes, but may not be limited to, construction of a fence and berm in a wetland; removal of major vegetation, including native wetland vegetation; placement of fill in a wetland; grading a wetland; construction of a trench drain in a natural wetland; and change in the intensity of use of water resulting from altering the hydrology of wetlands through soil compaction, grading, placement of fill and construction of a trench drain.

The unpermitted development occurred on property owned by Mills PCH, LLC and located at 21752 Pacific Coast Highway, Orange County Assessor's Parcel No. 114-150-86 in Huntington Beach ("Property"). A portion of the Property is developed with a mobilehome park that spans multiple parcels, including the one which is the subject of this letter. The remaining parcels upon which the mobilehome park is located are owned by Mills Land & Water Company. Mills Land & Water Company is the primary manager of Mills PCH, LLC. The unpermitted development impacted a wetland on the Mills PCH property, located approximately 400 feet northwest of the Newland Street and Pacific Coast Highway intersection. The affected wetland supports native wetland vegetation, including salt grass (Distichlis spicata) and pickleweed (Salicornia virginiaca).

The impacted wetland is a component of the larger Huntington Beach Wetlands complex, which is a remnant of an extensive historic wetland area that existed at the mouth of the Santa Ana River. Of California's remaining wetlands, southern California wetlands have been the most severely depleted. However, southern California's coastal wetlands still support numerous resident and migrant wildlife species, including birds migrating along the Pacific Flyway. The area's primary resource value is as habitat for marsh dependent bird species. The area presently serves as a waterfowl wintering area, providing resting and foraging areas on the migration routes. The Huntington Beach Wetlands provide a critical food source and breeding habitat for the endangered least tern and the endangered Belding's savannah sparrow.

The purpose of these enforcement proceedings is to address development on the Property that was not authorized with the necessary coastal development permit ("CDP"). The proceedings will propose to address that unpermitted development through the issuance of Cease and Desist and Restoration Orders ("Orders") that will direct you to: 1) cease from performing any additional unpermitted development activity (development not authorized pursuant to, or exempt from, the Coastal Act[1]), 2) remove all unpermitted development according to an approved removal plan, and 3) restore the impacted area pursuant to an approved restoration plan. In addition, the Commission seeks to record a Notice of Violation in this matter to protect prospective purchasers until the Coastal Act violations on the Property have been resolved.

1. Violation History

The unpermitted development activities at issue occurred in February 2008 and include removal of major vegetation, including native wetland vegetation; placement of fill in a wetland; grading a wetland; construction of a trench drain in a natural wetland; and change in the intensity of use of water resulting from altering the hydrology of wetlands through soil compaction, grading, placement of fill and construction of a trench drain. The unpermitted installation of a fence and berm in a wetland on this same property in February 2005 will also be addressed by these Orders.

The wetland impacted by the unpermitted development in February 2008 was also the site of unpermitted development in 2005, 2006 and 2007. In February 2005, a fence and berm were constructed through the wetland. The fence and berm remain on the property. In May 2005, several mounds of asphalt were placed on wetland vegetation. The City of Huntington Beach ("City") ordered the mobilehome park management to remove the asphalt and informed management that a permit must be obtained for any further such work.[2] In August 2006, City staff noticed that wetland vegetation had been removed from the area of the subject unpermitted development. The City informed the mobilehome park management in writing that vegetation could not be removed from the site – also the site of the unpermitted development at issue – without a CDP. In April 2007, several mounds of asphalt were again placed on top of wetland vegetation. The mounds were later removed.

In 1981, a Coastal Act violation (V-5-81-032) involving grading and removal of wetland vegetation from a parcel adjacent to the mobilehome park on the Property was resolved through a settlement

[1] The Coastal Act is codified in sections 30000 to 30900 of the California Public Resources Code ("PRC"). All further section references are to the PRC, and thus, to the Coastal Act, unless otherwise indicated.
[2] As discussed below, the Property is located within the City of Huntington Beach certified Local Coastal Program jurisdiction. The City requested the Commission assume primary enforcement authority with regard to the current violation pursuant to Section 30810.

agreement between the mobilehome park owner, Mills Land & Water Company, and the Office of the Attorney-General, which required Mills Land & Water Company to remove debris and trash from the parcel, notify the Attorney-General of the debris removal, and apply for a coastal development permit for any vegetation removal in the future. As at the time of the 1981 Coastal Act violation, Mills Land & Water Company, which is the primary manager of Mills PCH, presently owns the mobilehome park and would therefore have reason to both know of the protection the Coastal Act provides for wetlands and of the general need for coastal development permits and the role of the Coastal Commission in implementing the Coastal Act and its requirements.

The subject unpermitted development commenced on February 23, 2008 and was reported to staff on February 24. Photographs taken on February 23 and 24 documenting the activity accompanied the report. Staff visited the site on February 26 and confirmed that development, including grading and fill of wetlands, removal of wetland vegetation, and construction of a trench drain in a wetland, had occurred. At the site, staff observed graded wetland areas, placement of a trench drain and pipe, and areas where wetland vegetation had been removed and destroyed. Two pieces of heavy equipment - a mechanized soil compactor and a backhoe - were parked on the site. Commission staff researched the matter and confirmed that no application for a CDP had been submitted, and no CDP had been obtained, for any such activities.

Commission staff consulted with the City, during a telephone conversation on February 26, 2008, regarding what action would be appropriate and the appropriate entity to address the unpermitted development under the policies of the City's certified Local Coastal Program ("LCP"), as is provided for in Sections 30809 and 30810. City staff recommended that the Commission assume primary enforcement authority with regard to this violation.

Commission staff confirmed, in a letter dated March 4, 2008, that City staff had requested the Commission take action to enforce the policies of the City LCP, including but not limited to issuance of an order to enforce the requirements of the LCP pursuant to Section 30810 and/or 30811. As noted above, on February 26, 2008 the City recommended that Commission staff proceed with cease and desist and restoration order proceedings, and therefore, Commission staff is proceeding with this enforcement action.

Commission staff sent a Notice of Violation letter to you on March 21, 2008, that explained the subject unpermitted activity is "development" under the City LCP, development without a CDP is a violation of the LCP, and requested Mills PCH, LLC contact Commission staff to discuss Mills PCH's willingness to resolve the violations.

In your April 14, 2008 response to our March 21 Notice of Violation letter, your representative, Susan Hori, indicated your preference to resolve the matter through a consensual agreement. Subsequently, staff discussed with your representative during a telephone conversation on June 13, 2008, and a visit to the site on July 7, 2008, as well as in a letter dated October 27, 2008, the possibility of addressing this violation through a consent order. Throughout these discussions, both parties were amenable to resolving this matter through a consent order.

Following a January 6, 2009 telephone discussion regarding the matter, on January 13, 2009, City staff also recommended the Commission take action to enforce the policies of the City LCP with regard to an unpermitted fence and berm that were constructed in February 2005. Commission staff

confirmed, in a letter dated January 15, 2009, that City staff had requested the Commission take action to enforce the policies of the City LCP with regard to the fence and berm.

In a January 13, 2009 letter, Commission staff proposed draft consent orders that embody a settlement agreement that Commission staff is willing to recommend to the Commission in order to settle the matter of this violation regarding fill of wetlands on February 23, 2008, and the violation regarding placement of the unpermitted fence and berm, including settlement of penalties for these violations as well, in order to be able to avoid litigation over the subject Coastal Act violations on the Property.

On January 27, 2009, we received your response to the proposed draft Consent Orders, indicating your preference to continue to work towards a consent order. Staff continued discussions of this possibility with your representative on January 29 and remain willing and ready to discuss options that could involve agreeing to consent orders to resolve the violations on the Property.

2. Notice of Violation

By this letter, I am also notifying you of my intent to record a Notice of Violation of the Coastal Act for unpermitted development on the site, including construction of a fence and berm in a wetland; removal of major vegetation, including native wetland vegetation; placement of fill in a wetland; grading a wetland; construction of a trench drain in a natural wetland; and change in the intensity of use of water resulting from altering the hydrology of wetlands through soil compaction, grading, placement of fill and construction of a trench drain. The unpermitted development activities occurred on Mills PCH, LLC property located at 21752 Pacific Coast Highway, Orange County Assessor's Parcel No. 114-150-86 in Huntington Beach, which is located within the Coastal Zone area of the City of Huntington Beach.

Section 245.06 of the City's LCP states that, in addition to obtaining any other permit required by law, and with limited exceptions not applicable here, any person wishing to perform or undertake any development in the Coastal Zone must obtain a CDP. "Development" is defined by Section 245.04 of the LCP as follows:

> *The placement or erection of any solid material or structure on land, in or under water; discharge or disposal of any materials; 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...and the removal or harvesting of major vegetation other than for agricultural purposes...*

The subject activities that occurred on the Property constitute "development" within the meaning of the above-quoted definition and therefore are subject to the permit requirement of LCP Section 245.06. A CDP was not issued by the City or the Commission to authorize the subject development. Any non-exempt development performed without a CDP or a waiver constitutes a violation of the City's LCP and the Coastal Act.

The Commission's authority to record a Notice of Violation is set forth in Section 30812, subdivision (a) of which states the following:

> *Whenever the executive director of the Commission has determined, based on substantial evidence, that real property has been developed in violation of this division, the executive director may cause a notification of intention to record a notice of violation to be mailed by regular and certified mail to the owner of the real property at issue, describing the real property, identifying the nature of the violation, naming the owners thereof, and stating that if the owner objects to the filing of a notice of violation, an opportunity will be given to the owner to present evidence on the issue of whether a violation has occurred.*

I am issuing this Notice of Intent to record a Notice of Violation because, as discussed above, unpermitted development has occurred at the Property, in violation of the Coastal Act. **If you object to the recordation of a Notice of Violation in this matter and wish to present evidence on the issue of whether a violation has occurred, you must respond in writing to the Commission's Long Beach office at 200 Oceangate, 10th Floor, Long Beach CA, 90802, to the attention of Andrew Willis, within twenty days of the postmarked mailing of this notice.** If you fail to object within that twenty-day period, we shall record the Notice of Violation in the Orange County Recorder's office pursuant to Section 30812(b). It should also be noted that, pursuant to Section 30812, after final resolution of the violation, the Executive Director will record a rescission of this notice, which shall have the legal effect of a withdrawal or expungement of the original notice.

3. Cease and Desist Order

The Commission's authority to issue Cease and Desist Orders is set forth in Section 30810(a), which begins by stating the following:

> *If the commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person or governmental agency to cease and desist. The order may also be issued to enforce any requirements of a certified local coastal program or port master plan, or any requirements of this division which are subject to the jurisdiction of the certified program or plan, under any of the following circumstances:*
>
> > *(1) The local government or port governing body requests the commission to assist with, or assume primary responsibility for, issuing a cease and desist order.*
> >
> > *(2) The commission requests and the local government or port governing body declines to act, or does not take action in a timely manner, regarding an alleged violation which could cause significant damage to coastal resources...*

As noted above, the City requested the Commission to assume primary responsibility for issuing a cease and desist order to address this matter. I am issuing this notice of intent to commence Cease and Desist Order proceedings to compel the removal of the unpermitted development on the Property and to require you to cease and desist from conducting further unpermitted development.

The unpermitted development is located on property that you own in the Huntington Beach Wetlands complex.

Section 245.06 of the City's Zoning Code states that, in addition to obtaining any other permit required by law, and with limited exceptions not applicable here, any person wishing to perform or undertake any development in the Coastal Zone must obtain a CDP. "Development" is defined by broadly by LCP Section 245.04 (see page 4, above).

The subject activities constitute "development" within the meaning of the above-quoted definition and therefore are subject to the permit requirement of LCP Section 245.06. The unpermitted development includes construction of a fence and berm in a wetland; removal of major vegetation, including native wetland vegetation; placement of fill; grading; construction of a trench drain in a natural wetland; and change in the intensity of use of water resulting from altering the hydrology of wetlands through soil compaction, grading, placement of fill and construction of a trench drain. A CDP was not issued by the City or the Commission to authorize the subject unpermitted development.

For this reason, the criteria of Section 30810(a) have been met, and I am sending this letter to initiate proceedings for the Commission to determine whether to issue a Cease and Desist Order.

Based on Section 30810(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 the Coastal Act, including removal of any unpermitted development or material.

4. Restoration Order

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

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

Pursuant to Section 13191 of the Commission's regulations, I have determined that the specified activities meet the criteria of Section 30811 of the Coastal Act, based on the following:

1) Unpermitted development consisting of construction of a fence and berm in a wetland; removal of major vegetation, including native wetland vegetation such as pickleweed and saltgrass; placement of fill in a wetland; grading a wetland; construction of a trench drain in a natural wetland; and change in the intensity of use of water resulting from altering the hydrology of wetlands through soil compaction, grading, placement of fill and construction of a trench drain has occurred on the Property.

2) This development is inconsistent with the resource protection policies of the Coastal Act.

3) The unpermitted development remains in place and is thereby causing continuing resource damage, as defined by Section 13190 of the Commission's regulations. The impacts from the unpermitted development remain unmitigated; therefore, the damage to resources protected by the Coastal Act is continuing.

For the reasons stated above, I have decided to commence proceedings for the Commission's issuance of a Restoration Order in order to restore the Property. The procedures for the issuance of Restoration Orders are described in Sections 13190 through 13197 of the Commission's regulations, which are codified in Title 14 of the California Code of Regulations.

5. Response Procedure

In accordance with Sections 13181(a) and 13191(a) of the Commission's Regulations, you have the opportunity to respond to the Commission staff's allegations as set forth in this notice of intent to commence Cease and Desist and Restoration Order proceedings by completing the enclosed Statement of Defense (SOD) form. **The SOD form must be returned to the Commission's Long Beach office, directed to the attention of Andrew Willis, no later than February 23, 2009.**

Commission staff intends to schedule the hearings for the Cease and Desist and Restoration Order during the Commission's April 8-10, 2009 meeting in Ventura.

6. Civil Liability/Exemplary Damages

You should be aware that the Coastal Act includes a number of penalty provisions for unpermitted development. Section 30820(a)(1) provides for civil liability to be imposed on any person who performs or undertakes development without a CDP and/or that is inconsistent with any CDP previously issued by the Commission in an amount that shall not exceed $30,000 and shall not be less than $500 for each instance of development that is in violation of the Coastal Act. Section 30820(b) provides that additional civil liability may be imposed on any person who performs or undertakes development without a CDP and/or that is inconsistent with any CDP previously issued by the Commission when the person intentionally and knowingly performs or undertakes such development, in an amount not less than $1,000 and not more than $15,000 per day for each day in which each violation persists. Section 30821.6 provides that a violation of a cease and desist order, including an EDCDO, or a restoration order can result in civil fines of up to $6,000 for each day in which the violation persists. Section 30822 provides for additional exemplary damages.

7. Resolution

As we have stated in previous correspondence and communications, we would like to work with you to resolve these issues amicably and remain willing and ready to discuss options that could involve agreeing to consent orders. To that end, we sent you proposed draft consent orders on January 13, 2009. A consent cease and desist and restoration order would provide you with an opportunity to have more input into the process and timing of restoration of the Property and mitigation of the damages caused by the unpermitted activity, and could potentially allow you to negotiate a penalty amount with Commission staff in order to resolve the complete violation without any further formal legal action. A Commission cease and desist and restoration order would provide for a permanent resolution and restoration of the Property. We received a response to the proposed draft consent orders on January 27, in which you indicate your preference to resolve this matter through a consent order, and we are still open to negotiating such a consensual resolution to the Coastal Act violations on the Property. If you are interested in discussing the possibility of a consent order, as you have so indicated in your January 27 letter and your representative's conversation with staff on January 29, please contact or send correspondence to the attention of

Andrew Willis in the Commission's Long Beach office by no later than February 19, 2009 to discuss options to resolve this case.

Should you have any questions regarding any of the above items, please contact Andrew Willis at (562) 590-5071.

Sincerely,

PETER M. DOUGLAS
Executive Director
California Coastal Commission

Enclosure: Statement of Defense form

cc (w/enc.): Susan Hori

cc (w/o enc.): Bill Zylla, City of Huntington Beach
Lisa Haage, Chief of Enforcement, CCC
Alex Helperin, Staff Counsel, CCC
N. Patrick Veesart, Southern California Enforcement Supervisor, CCC
Andrew Willis, South Coast District Enforcement Analyst, CCC
Teresa Henry, South Coast District Manager, CCC

STATE OF CALIFORNIA – NATURAL RESOURCES AGENCY
ARNOLD SCHWARZENEGGER, GOVERNOR
CALIFORNIA COASTAL COMMISSION
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400

STATEMENT OF DEFENSE FORM

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

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

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

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

You must complete the form (please use additional pages if necessary) and return it no later than February 23, 2009 to the Commission's enforcement staff at the following address:

Andrew Willis
California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802

If you have any questions, please contact Andrew Willis at (562) 590-5071.

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

_____

_____

_____

2. **Facts or allegations contained in the cease and desist order or notice of intent that you deny (with specific reference to paragraph number in the order):**

3. **Facts or allegations contained in the cease and desist order or notice of intent of which you have no personal knowledge (with specific reference to paragraph number in the order):**

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

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

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

Recorded in Official Records, Orange County
Tom Daly, Clerk-Recorder
NO FEE
2009000092466 10:18am 02/27/09
100 211 N03 7
0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00

RECORDING REQUESTED BY:

California Coastal Commission

WHEN RECORDED MAIL TO:

California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802
Attention: Andrew Willis

[Exempt from recording fee pursuant to Cal. Gov. Code *§ 27383]*

DOCUMENT TITLE:

NOTICE OF VIOLATION OF THE COASTAL ACT

Re: Assessor's Parcel No. 114-150-86

Property Owner: Mills PCH, LLC

RECEIVED
South Coast Region
MAR 9 2009
CALIFORNIA
COASTAL COMMISSION

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

CALIFORNIA COASTAL COMMISSION
Attention: Andrew Willis
200 Oceangate, 10th Floor
Long Beach, CA 90802

STATE OF CALIFORNIA OFFICIAL BUSINESS
Document entitled to free recordation pursuant to:
California Government Code section 27383

NOTICE OF VIOLATION OF THE COASTAL ACT
(California Public Resources Code Section 30812)

I, Peter Douglas, declare:

1. I am the Executive Director of the California Coastal Commission (hereinafter referred to as the "Commission"). The Commission was created by the California Coastal Act of 1976 (hereinafter, "Coastal Act"), which act is codified in the California Public Resources Code (hereinafter, "PRC") at sections 30000 to 30900. PRC section 30812 provides for the Executive Director of the Commission to record Notices of Violation of the Coastal Act in the County Recorder's office for the county in which all or part of a property on which a violation of the Coastal Act has occurred is located.

2. A violation of the Coastal Act has occurred on a certain parcel situated in Orange County, California, more particularly described as follows:

   21622 PACIFIC COAST HIGHWAY, HUNTINGTON BEACH CA 92646
   CURRENTLY OWNED BY MILLS PCH, LLC HAVING A TAX ASSESSOR NUMBER OF 114-15-086

   AND/OR

   SEE EXHIBIT "A" ATTACHED HERETO

   Owner of Record: Mills PCH, LLC

   The violation consists of the undertaking of development activity without the authorization required by the Coastal Act.

3. This property is located within the Coastal Zone as that phrase is defined in the Coastal Act (PRC Section 30103).

4. The record owner of said real property is: Mills PCH, LLC.

5. The violation of the Coastal Act consisted of the performance of the following unpermitted development: removal of major vegetation, including native wetland vegetation; placement of fill in a wetland; grading a wetland; construction of a trench drain in a natural wetland; and change in the intensity of use of water resulting from altering the hydrology of a wetland through soil compaction, grading, placement of fill and construction of a trench drain. The Commission violation file for this matter is Violation File No. V-5-08-007.

6. The requirements set forth in PRC Section 30812 (attached hereto as Exhibit B) for notice and recordation of this Notice of Violation have been satisfied. Recording of this notice is authorized under Section 30812 of the California Public Resources Code.

7. The California Coastal Commission notified the record owner, Mills PCH, LLC, of its intent to record a Notice of Violation in this matter in a letter dated February 3, 2009.

8. No objection was received by February 23, 2009, the legal deadline for such an objection to be submitted. Therefore, the Commission has not received a timely written objection to the recordation of the Notice of Violation. Moreover, Mills PCH, LLC has represented to Commission staff that it does not object to such recordation. Therefore the Executive Director of the Commission is recording the Notice of Violation as provided for in the Coastal Act, under PRC Section 30812.

Executed in San Francisco, California, on Feb 24, '09.

I declare under penalty of perjury that the foregoing is true and correct.

PETER DOUGLAS
Executive Director, California Coastal Commission

SEE NOTARY ACKNOWLEDGMENT ON NEXT PAGE

State of California
County of San Francisco

On 02/24/09 before me, Jeff G Staben Notary Public, personally appeared Peter Douglas, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

JEFF G. STABEN
COMM. # 1782914
NOTARY PUBLIC - CALIFORNIA
SAN FRANCISCO COUNTY
My Comm. Expires December 3, 2011
CRS 2

(Seal)

Exhibit "A"

THOSE PORTIONS OF FRACTIONAL SECTION 13, TOWNSHIP 6 SOUTH, RANGE 11 WEST, IN THE RANCHO LAS BOLSAS AND IN THE CITY OF HUNTINGTON BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA LYING WITHIN PARCEL 1 OF STATE PARCEL NO. A1786 AS SAID LANDS ARE DESCRIBED IN A DEED RECORDED IN BOOK 7521, PAGE 125 OF OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AND ALSO LYING WITHIN A PORTION OF STATE PARCEL NO. 1787 AS SAID LANDS ARE DESCRIBED IN A DEED RECORDED IN BOOK 4882, PAGE 383 OF SAID OFFICIAL RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEASTERLY TERMINUS OF THAT CERTAIN COURSE DESCRIBED AS A PORTION OF THE NORTHEASTERLY LINE IN SAID DEED RECORDED IN BOOK 7521, PAGE 125 AS HAVING A BEARING AND A DISTANCE OF "S. 47°34'49" E., 686.33 FEET" AND SAID SOUTHEASTERLY TERMINUS ALSO BEING ON THE NORTHWESTERLY LINE OF NEWLAND STREET (40.00 FEET WIDE), AS DESCRIBED IN SAID DEED; THENCE ALONG SAID NORTHEASTERLY LINE THE FOLLOWING FIVE (5) COURSES:

(1) NORTH 47°36"05" WEST, 209.121 METERS TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 304.801 METERS; THENCE
(2) NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 06°28'24" AN ARC DISTANCE OF 34.437 METERS; THENCE
(3) NORTH 41°07'41" WEST, 143.747 METERS TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 304.801 METERS; THENCE
(4) NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 16°47'56" AN ARC DISTANCE OF 89.366 METERS; THENCE
(5) NORTH 24°19'45" WEST, 30.848 METERS;

THENCE LEAVING SAID NORTHEASTERLY LINE SOUTH 49°21'45" WEST, 86.647 METERS; THENCE NORTH 52°05'17" WEST, 158.287 METERS; THENCE NORTH 29°54'43" EAST, 5.859 METERS; THENCE NORTH 50°05'17" WEST, 52.000 METERS; THENCE SOUTH 57°54'43" WEST, 10.500 METERS; THENCE NORTH 52°05'17" WEST, 91.500 METERS TO AN INTERSECTION WITH A LINE PARALLEL WITH AND 26.822 METERS EASTERLY OF THE WESTERLY LINE OF THE SOUTHWEST QUARTER OF SAID FRACTIONAL SECTION 13; THENCE ALONG SAID PARALLEL LINE SOUTH 00°16'32" WEST, 37.760 METERS; THENCE SOUTH 23°44'30" EAST, 8.105 METERS; THENCE SOUTH 51°06'39" EAST, 175.913 METERS THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 45.000 METERS; THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 16°06'13" AN ARC DISTANCE OF 12.648 METERS AND THE BEGINNING OF A REVERSE CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 45.000 METERS; THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 16°46'08" AN ARC DISTANCE OF 13.170 METERS; THENCE SOUTH 51°46'34" EAST, 190.620 METERS TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 3454.134 METERS (A RADIAL LINE TO THE BEGINNING OF SAID CURVE BEARS SOUTH 37°54'43" WEST); THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 02°21'43" AN ARC DISTANCE OF 142.392 METERS; THENCE SOUTH 54°27'00" EAST, 79.237 METERS TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 30.000 METERS; THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 18°29'57" AN ARC DISTANCE OF 9.686 METERS TO THE BEGINNING OF A REVERSE CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 30.000 METERS; THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 18°36'00" AN ARC DISTANCE OF 9.739 METERS; THENCE SOUTH 54°33'03" EAST, 137.929 METERS; THENCE NORTH 80°17'50" EAST, 18.101 METERS TO AN INTERSECTION WITH A LINE PARALLEL WITH

AND 6.096 METERS NORTHWESTERLY OF THE AFORESAID NORTHWESTERLY LINE OF NEWLAND STREET; THENCE SOUTH 54°28'03" EAST, 6.096 METERS TO SAID NORTHWESTERLY LINE; THENCE ALONG SAID NORTHWESTERLY LINE NORTH 35°31'57" EAST, 13.294 METERS TO THE POINT OF BEGINNING.

THE BEARINGS AND METRIC DISTANCES IN THE ABOVE DESCRIPTIONS ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM OF 1983, ZONE 6, 1991.35 EPOCH. MULTIPLY ALL METRIC DISTANCES USED IN THE ABOVE DESCRIPTIONS BY 1.00002565 TO OBTAIN GROUND LEVEL DISTANCES.

CALIFORNIA COASTAL ACT – California Public Resources Code Section 30812 Notice of Violation

(a) Whenever the executive director of the commission has determined, based on substantial evidence, that real property has been developed in violation of this division, the executive director may cause a notification of intention to record a notice of violation to be mailed by regular and certified mail to the owner of the real property at issue, describing the real property, identifying the nature of the violation, naming the owners thereof, and stating that if the owner objects to the filing of a notice of violation, an opportunity will be given to the owner to present evidence on the issue of whether a violation has occurred.

(b) The notification specified in subdivision (a) shall indicate that the owner is required to respond in writing, within 20 days of the postmarked mailing of the notification, to object to recording the notice of violation. The notification shall also state that if, within 20 days of mailing of the notification, the owner of the real property at issue fails to inform the executive director of the owner's objection to recording the notice of violation, the executive director shall record the notice of violation in the office of each county records where all or part of the property is located.

(c) If the owner submits a timely objection to the proposed filing of the notice of violation, a public hearing shall be held at the next regularly scheduled commission meeting for which adequate public notice can be provided, at which the owner may present evidence to the commission why the notice of violation should not be recorded. The hearing may be postponed for cause for not more than 90 days after the date of the receipt of the objection to recordation of the notice of violation.

(d) If, after the commission has completed its hearing and the owner has been given the opportunity to present evidence, the commission finds that, based on substantial evidence, a violation has occurred, the executive director shall record the notice of violation in the office of each county recorder where all or part of the real property is located. If the commission finds that no violation has occurred, the executive director shall mail a clearance letter to the owner of the real property.

(e) (1) The notice of violation shall be contained in a separate document prominently entitled "Notice of Violation of the Coastal Act." The notice of violation shall contain all of the following information:

(A) The names of the owners of record.

(B) A legal description of the real property affected by the notice.

(C) A statement specifically identifying the nature of the alleged violation.

(D) A commission file number relating to the notice.

(2) The notice of violation, when properly recorded and indexed, shall be considered notice of the violation to all successors in interest in that property. This notice is for informational purposes only and is not a defect, lien, or encumbrance on the property.

(f) Within 30 days after the final resolution of a violation that is the subject of a recorded notice of violation, the executive director shall mail a clearance letter to the owner of the real property and shall record a notice of rescission in the office of each county recorder in which the notice of violation was filed, indicating that the notice of violation is no longer valid. The notice of rescission shall have the same effect of a withdrawal or expungement under Section 405.61 of the Code of Civil Procedure.

(g) The executive director may not invoke the procedures of this section until all existing administrative methods for resolving the violation have been utilized and the property owner has been made aware of the potential for the recordation of a notice of violation. For purposes of this subdivision, existing methods for resolving the violation do not include the commencement of an administrative or judicial proceeding

manatt
manatt | phelps | phillips

SUSAN HORI
Manatt, Phelps & Phillips, LLP
Direct Dial: (714) 371-2528
E-mail: shori@manatt.com

March 23, 2009

Client-Matter: 41524-030

BY E-MAIL AND HAND DELIVERY

Andrew Willis
California Coastal Commission
200 Oceangate, Suite 1000
Long Beach, CA 90802

Re: Statement of Defense of Beachfront Village, LLC (formerly Mills PCH, LLC) ("Beachfront") in Response to Notice of Violation of the Coastal Act; 21752 Pacific Coast Highway, Huntington Beach, CA (APN 114-150-86); Violation File No. V-5-08-007

Dear Andrew:

This letter together with the attached Statement of Defense and all exhibits, including my previously submitted letter dated March 2, 2009 regarding "Response to the Notice of Intent to Record a Violation for 21622 Pacific Coast Highway, Huntington Beach, California (APN 114-150-86)" constitute the Statement of Defense to the Notice of Violation issued by the Coastal Commission staff regarding this property that was transmitted to Mills PCH, LLC ("Mills) in the Letter from Andrew Willis to Susan Hori, Manatt Phelps & Phillips, LLP, dated February 19, 2009.

The unpermitted development as described in your February 19, 2009 letter is as follows:

> "The violation of the Coastal Act consisted of the performance of the following unpermitted development: removal of major vegetation, including native wetland vegetation; placement of fill in a wetland; grading a wetland; construction of a trench drain in a natural wetland; and change in the intensity of use of water resulting from altering the hydrology of a wetland through soil compaction, grading, placement of fill and construction of a trench drain."

The unpermitted development described in the February 19, 2009 statement of the Notice of Violation ("NOV") occurred on two parcels of property located within the larger parcel designated APN 114-150-86. These two parcels are 1.12 acre and 0.92 acres in size and are located at the corner of Newland and Pacific Coast Highway and are hereafter referred to as the "Subject Property." The 1.12 acre parcel is also referred to in the Statement of Defense and attached exhibits as the "Cabrillo RV Storage Lot" because of its permitted use as a parking and

695 Town Center Drive, 14th Floor, Costa Mesa, California 92626-1924 Telephone: 714.371.2500 Fax: 714.371.2550
Albany | Los Angeles | New York | Orange County | Palo Alto | Sacramento | San Francisco | Washington, D.C.

storage facility for recreational vehicles. A copy of the City-issued permit to use the 1.12 acre area as a parking and storage facility was previously provided to the Coastal Commission staff, and is attached as **Exhibit 1A**. As supported by the work performed by Glenn Lukos Associates (copies of which are enclosed with the Statement of Defense as **Exhibit 1B**), the 1.12 acre parcel was filled approximately 40-50 years ago, is not a wetland, and has been regularly maintained (as required by the terms of the permit) as a parking lot since the mid-1960's.

An aerial photograph depicting the two parcels that compose the Subject Property is attached as **Exhibit 2** to Mills' Statement of Defense. As we have previously discussed, because APN 114-150-86 encompasses a much larger property, a portion of which also includes land developed and used as a mobile home park, those areas should be excluded from the NOV and only the two parcels described above on which activity occurred constitute the "Subject Property" covered by the NOV.

As we have been trying to resolve these resource issues cooperatively with staff, there have been a site visit and a conference call among the biologists working on this matter. In connection with those discussions, additional information was provided to Dr. Engel and Dr. Dixon. We have attached copies of the memoranda as **Exhibits 4-7** and **Exhibit 9**. The memoranda address Dr. Engel's concerns that the trench excavation work that occurred resulted in the soil compaction observed on the site which affected hydrological conditions, the characteristics of the native vegetation growing on the 1.12 acre site along the Pacific Coast Highway fenceline which was not disturbed in February 2008 and has been monitored since then, and application of the "atypical" situation methodology as described in the U.S. Army Corps of Engineers Wetlands Delineation Manual. Those memoranda provided to and which respond to Dr. Engel's questions confirm our position that the soils on the site are not hydric, but reflect fill from over 40-50 years ago; that the site has been highly compacted as a result of over 40 years of use and maintenance of the site as a RV storage facility; the trench excavation that occurred in February 2008 was not the cause of the compacted nature of the soils; and that application of the Prevalence Index data to the undisturbed vegetation on the 1.12 acre site show them to be strongly upland, not wetland.

As our prior written and oral correspondence to you indicates, when the Notice of Violation letter, dated March 21, 2008, was received by Mills, we responded that our preference would be to resolve the violation through a consensual agreement, and over the course of the last ten (10) months, we have worked with Coastal Commission staff to develop a consent order that addressed the Coastal Act goal of restoring the 1.12 acre portion of the Subject Property to the condition that existed prior to the activities described in your letter of March 21, 2008, performing additional mitigation on the 0.92 acre area of the Subject Property, and paying a monetary settlement of $50,000. Unfortunately, while Mills was in agreement with the restoration described in the proposed consent order, it could not agree to accept Section 11 of the

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Andrew Willis
March 23, 2009
Page 3

proposed consent order which states that the consent order is issued on the basis of the findings adopted by the Coastal Commission. Mills disagrees with the Coastal Commission staff's proposed findings that the activities described occurred in a wetlands and that the resource protection policies of Section 30233 of the Coastal Act were violated. For this reason, Mills cannot execute the consent order as proposed and hereby submits the enclosed Statement of Defense.

Very truly yours,

Susan K. Hori
Manatt, Phelps & Phillips, LLP

cc w/enclosures:
Tony Bomkamp
Peter Wynn
Steve Kane

70072076.2

STATEMENT OF DEFENSE OF BEACHFRONT VILLAGE, LLC, FORMERLY KNOWN AS MILLS PCH, LLC VIOLATION V-5-08-007

Based upon our discussion with Andrew Willis, this Statement of Defense responds to the description of unpermitted development in Mr. Willis' letter dated February 19, 2009. As stated therein:

"The violation of the Coastal Act consisted of the performance of the following unpermitted development: removal of major vegetation, including native wetland vegetation; placement of fill in a wetland; grading a wetland; construction of a trench drain in a natural wetland; and change in the intensity of use of water resulting from altering the hydrology of a wetland through soil compaction, grading, placement of fill and construction of a trench drain."

1. Facts or allegations contained in the cease and desist order or the notice of intent that you admit (with specific reference to the paragraph number in the order).

Beachfront Village, LLC (formerly known as Mills PCH, LLC and referred to herein as "Beachfront") incorporates the letter from Susan Hori, Manatt Phelps & Phillips, LLP, to Andrew Willis, California Coastal Commission, dated March 2, 2009, attached as **Exhibit 1**.

As described in that letter, construction of a trench drain occurred on the 1.12 acre section of the "Subject Property." For purposes of this Statement of Defense, the Subject Property is described as the "Beachfront Village, LLC (formerly Mills PCH, LLC) property located at 21752 Pacific Coast Highway, consisting of approximately 2.04 acres located within Assessor's Parcel Number 114-150-86 in Huntington Beach, Orange County. The 2.04 acres are located on the corner of Newland and Pacific Coast Highway and are composed of a 0.92 acre unfenced area and a 1.12 acre fenced area." A map depicting the two components of the Subject Property is attached as **Exhibit 2.**

The 1.12 acre area is referred to in this Statement of Defense as the "Cabrillo RV Storage Lot" and has been used to park and store recreational vehicles since the 1960's pursuant to a permit issued by the City of Huntington Beach. A copy of the City permit (which was previously submitted with the March 2, 2009 letter) is attached as **Exhibit 1A**. The Cabrillo RV Storage Lot was filled in the 1950's-1960's and has been used and regularly maintained (as required by the terms of the permit) as a parking lot since 1966. The 1.12 acre area is not a "natural wetland."

A trench was excavated in this area in February, 2008, however, the 1.12 acre area is neither a wetland, nor do the existing conditions reflect "natural" unaltered land or terrain. The grading that occurred was limited to excavation of the trench and did not extend to the entire site. (In fact, when Coastal Commission staff visited the site areas of undisturbed vegetation along the fence line was observed.) The placement of fill was limited to the removal of soil from the trench and the deposition of that material immediately adjacent to the trench.

Although two small sections of native vegetation, specifically saltgrass and pickleweed, were removed, for the reasons stated in our March 2, 2009 letter and supporting documentation, the vegetation was not growing as wetland vegetation but as upland vegetation growing in upland (i.e., non-hydric soil) conditions.

2. Facts or allegations contained in the cease and desist order or the notice of intent that you deny (with specific reference to the paragraph number in the order).

Beachfront incorporates the letter dated March 2, 2009, and the Jurisdictional Wetland Status report prepared by Glenn Lukos Associates ("GLA") that was submitted with the March 2, 2009 letter, both of which are attached as **Exhibit 1** and **Exhibit 1B**.

Beachfront's disagreement with the Coastal Commission staff's statement of the violation, its proposed findings, and the Cease and Desist Order rests with the characterization of the site as a wetland or "natural wetland," and that the trench excavation work that occurred resulted in the unpermitted filling of a wetland inconsistent with Coastal Act Section 30233.

Beachfront has provided extensive expert studies demonstrating why the 1.12 acre Cabrillo RV Storage Lot is not a wetland, including (1) a jurisdictional delineation report utilizing Coastal Act standards; (2) a report on the site's hydrologic conditions as to why ponding caused by seasonal rainfall on the site is not wetland hydrology and does not support either wetland vegetation or the formation of hydric soils; and (3) a report on the nature of the vegetation on site and why they are not considered to be functioning as native wetland vegetation on this site.

The Coastal Commission staff has traditionally described its wetland delineation methodology as relying upon a "one parameter" test as opposed to the "three parameter" test used by other agencies including the U.S. Army Corps of Engineers. Even applying the "one parameter" test utilized by Commission staff, the Cabrillo RV Storage Lot is not a wetland.

First, there are no wetland or hydric soils on the site. Soil analysis was conducted and the results reported in the GLA Jurisdictional Wetland Status report. The Cabrillo RV Storage Lot has been substantially altered by human activity over the last 50 years. Beginning in the 1950s and 1960s, artificial fill ranging from 14 to 20 inches in thickness was imported and overlays native hydric soils or beach sand. The 14-20 inches of fill is composed of a mixture of sand, silt and clay, interbedded with asphalt, gravel, broken concrete and other debris. The soil is highly compacted due to over 40 years of use of the site as a parking lot. Soil tests demonstrate the lack of saturation within the upper 12 inches sufficient to create any semblance of hydric soils.

Second, as the site has been filled, natural surface hydrology, such as tidal influence or freshwater discharge, is missing from the site. The only hydrological source for the site is rainfall and limited runoff. Although due to the highly compacted nature of the 50 year old fill on the site, rainwater ponds after rain events, the ponding does result in either the formation of hydric soils or the growth of hydrophytic vegetation.

Finally, although saltgrass and pickleweed are present on the site, these plants are capable of growing and thriving in non-wetland conditions as documented by the GLA report (see Appendix C to **Exhibit 1B**). On the 1.12 acre Cabrillo RV Storage Lot, these plants are growing as "phreatophytes" not "hydrophytes" as there is insufficient surface hydrology necessary for these plants to survive on the site. Rather, both species are relying upon groundwater located 39-50 inches below the surface to survive. On the Cabrillo RV Storage Lot, these plants are not growing as wetland vegetation and to characterize them as wetland vegetation ignores the biological fact that they grow and are frequently found in upland conditions and the existing site conditions which clearly indicate that they are not capable of surviving on the site with only surface hydrology.

Over the past several months, Beachfront's biological team and the Coastal Commission staff have had ongoing discussions as to whether the Cabrillo RV Storage Lot supports use by sensitive wetland species – specifically, the Belding's savannah sparrow, and whether Belding's savannah sparrows utilize the saltgrass and pickleweed vegetation on the Cabrillo RV Storage Lot. Enclosed as **Exhibit 3,** is a memorandum from Jeff Ahrens, GLA, dated March 10, 2009, regarding photos in the possession of Coastal Commission staff that GLA was informed were taken of a savannah sparrow on the Cabrillo RV Storage Lot. Mr. Ahrens is an expert ornithologist with extensive experience in identifying Belding's savannah sparrows, and it is his conclusion that it is not possible based upon the photos alone to definitively conclude that Belding's savannah sparrows utilize the 1.12 acre Cabrillo RV Storage Lot. He has identified the various markings on the photographed birds and why they do not reflect the markings of a Belding's savannah sparrow. Moreover, given the habitat areas that are usually sought out by Belding's savannah sparrow, it is much more likely that the sparrows observed on the 1.12 acre site were migrant savannah sparrows that are more likely to use highly disturbed sites than the Belding's savannah sparrow.

In an effort to see if the opinions regarding the site's characteristics could be reconciled between Beachfront and the Coastal Commission staff, Tony Bomkamp, GLA, Dr. Jonna Engel and Dr. John Dixon of the Coastal Commission staff spoke on March 17, 2009 to review the GLA report submitted with the March 2, 2009 letter (**Exhibit 1B**). In preparation for that conference call, Tony Bomkamp provided the Commission's biologists with additional information regarding vegetation data for the Cabrillo RV Storage Lot. There exists on the 1.12 acre site, a band of vegetation that was not disturbed by the trench excavation work and which was examined by Dr. Engel and Andrew Willis during their site visit. This strip of vegetation along the fence line adjacent to Pacific Coast Highway on the Cabrillo RV Storage Lot was shown to be upland in character during the 2008 delineation data collection and was reevaluated in March 2009. The data collected on March 16, 2009 indicates that the vegetation along the fence line exhibits a strong upland character with an overall Prevalence Index of 3.83 using the 1988 Plant List as set forth in GLA's Memorandum dated March 16, 2009, enclosed as **Exhibit 4** (and provided to Dr. Jonna Engel for the March 17, 2009 conference call). Both saltgrass and pickleweed occur in this area, providing further support that these species are functioning as phreatophytes and therefore should be considered "upland" species on the site.

One of the issues that was discussed during the March 17, 2009 conference call was whether the use of equipment to excavate the trench resulted in soil compaction and thus the alteration of site hydrology. As discussed in both the GLA Jurisdictional Wetland Status Report (**Exhibit 1B**), and subsequent memoranda prepared by Tony Bomkamp, GLA and Tim Lawson of Lawson & Associates Geotechnical Consulting Co. ("LGC"), the soils on the site are composed of fill material brought in during the 1950s and 1960s, and which have been sprayed with oil and covered with gravel since the 1960s to support the use of the 1.12 acre site as a parking and storage lot for RVs. As a result of over 40 years of parking and driving on the site, the soils have become highly compacted. Consequently, the trench excavation work that occurred did not result in soil compaction that altered the hydrology of the site or the ability of the soils to drain water. The soil has been and continues to be highly compacted as a result of over 40 years of use as a storage facility. In fact, the attached report from LGC shows that current levels of soil compaction area as high as 100 percent, a condition that according to LGC would take years to develop.

Attached as **Exhibit 5** is a memorandum prepared by Tony Bomkamp, GLA, regarding the compacted nature of the soils and its effect on site hydrology, and attached as **Exhibit 6** is a letter to Steve Kane from Tim Lawson, LGC, regarding the constitution of the soils on site and the degree of compaction observed on site which in his opinion was not caused by the equipment used to excavate the trench.

Another issue raised during the March 17, 2009 conference call among Bomkamp, Engel and Dixon addressed the methodology that should be used by GLA in delineating the site and whether the site constituted an "atypical" situation as described in the U.S. Army Corps of Engineers Wetland Delineation Manual (1987). Tony Bomkamp has provided a summary of that discussion and the reasons why the site does not support use of the "atypical" situation methodology. This methodology is used when positive wetland indicators cannot be found due to "effects of recent human activities or natural events." As noted in the GLA memo, the previously-vegetated areas had recovered sufficient for accurate characterization; the soils (outside of the trenched area) had not been measurable disturbed so as to provide an accurate characterization; and a year-long monitoring program (from February 2008 to February 2009, and described in Appendix B to **Exhibit 1B**) provided accurate hydrology information sufficient to not require application of the "atypical" situation methodology. (See Memo to Dr. Jonna Engel from Tony Bomkamp, GLA, dated March 23, 2009 attached as **Exhibit 7**.)

3. Facts or allegations contained in the cease and desist order or the notice of intent of which you have no personal knowledge (with specific reference to the paragraph number in the order).

N/A

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

Beachfront incorporates the March 2, 2009 letter and the Jurisdictional Wetland Status report prepared by Glenn Lukos Associates that was submitted concurrently, attached as **Exhibits 1, 1A and 1B**. Those materials provide a historical overview of the Subject Property and its use as a RV parking and storage facility, together with the City-issued permit for construction and maintenance of a storage facility on the Cabrillo RV Storage Lot. Historical photos in **Exhibit 1B** show its use as a storage facility from 1967 (see Exhibits 9-13 in **Exhibit 1B**).

As a mobilehome park facility, the Cabrillo Mobilehome Park and its associated Cabrillo RV Storage Lot fall under the jurisdiction of the Department of Housing and Community Development ("HCD") acting as lead agency. Proper maintenance of the facility is required by HCD regulations including surfacing the site to mitigate against "excessive dust." (See Letter from Ronald S. Javor, Assistant Deputy Director, HCD to Mr. Richard Bessire, President, Bessire and Casehiser, Inc., dated February 18, 2008 attached as **Exhibit 8**.)

Beachfront provides this information in support of its position that the site is not a natural wetland, and that the soil compaction observed on the site is as a result of these historical activities as opposed to the trench excavation that occurred last year. Also in support of the position that the work did not result in soil compaction that altered the hydrology of the site are memoranda prepared by Tony Bomkamp and Lawson Geotechnical Consultants, attached as **Exhibits 5 and 6**, regarding the compacted nature of the soils that existed on the site well before the activities of February, 2008 occurred.

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

It was Beachfront's objective since receipt of the Notice of Violation in March 2008 to attempt to resolve the violation through a consensual agreement and we have worked with Coastal Commission staff to develop a proposed consent order and outline the components of a restoration plan to return the Subject Property to the condition before the trench excavation occurred.

As a result of the trench excavation, Beachfront acknowledges that the biological productivity of wetland areas on the adjacent 0.92 acre portion of the Subject Property was affected through the discharge of stormwater runoff from the 1.12 acre Cabrillo RV Storage Lot conveyed in part by the excavated trench. In light of the impact of the trench excavation work on coastal resources protected by Section 30231, we have worked cooperatively with Coastal Commission staff to develop a restoration and mitigation plan that would restore the 1.12 acre Cabrillo RV Storage Lot by replanting areas where the saltgrass and pickleweed were removed and filling in the trench and returning the site to the grades prior to February 2008, and to provide mitigation on the 0.92 acre portion of the Subject Property where wetlands affected by the trench excavation work could be enhanced to further the biological productivity of this area.

Beachfront would accept the proposed consent order but for the finding that the excavation of the trench occurred in a "natural wetland," that the deposit of materials resulted in the fill of wetlands, and the activities resulted in soil compaction that altered the natural hydrology

of a wetlands all of which were inconsistent with Section 30233 of the Coastal Act. For these reasons, Beachfront cannot execute the proposed consent order because of a fundamental disagreement with the characterization of the site.

Beachfront's position on the nature of the site and its lack of wetland indicators has remained consistent since the first meeting with Coastal Commission staff on the site, as well as subsequent visits with personnel from the U.S. Army Corps of Engineers. (See, e.g., Memorandum to Andrew Willis and Dr. Jonna Engel from Tony Bomkamp, GLA, dated October 31, 2008 and transmitted November 12, 2008, attached as **Exhibit 9**.) Despite these differences, Beachfront and Coastal Commission staff sought to develop a consent order and restoration order that would achieve mutual goals of site restoration and mitigation to enhance the biological productivity of the Subject Property and have worked cooperatively to do so. However, because the scientific evidence so strongly points to the fact that the site is not a wetlands, Beachfront cannot accept a proposed consent order that is based upon a findings that the 1.12 acre Cabrillo RV Storage Lot portion of the Subject Property is a wetland, natural or otherwise.

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

1. **Exhibits 1, 1A and 1B:** Letter to Andrew Willis, California Coastal Commission from Susan Hori, Manatt Phelps and Phillips, dated March 2, 2009, enclosing 1966 City of Huntington Beach Permit and report from Glenn Lukos Associates Jurisdictional Wetlands Status, dated February 28, 2009.

2. **Exhibit 2:** Map depicting the location and acreage of the Subject Property.

3. **Exhibit 3:** Memorandum to Andrew Willis from Jeff Ahrens, GLA, dated March 10, 2009, regarding Review of savannah sparrow photos taken at Cabrillo RV Parking Area, Huntington Beach.

4. **Exhibit 4:** Memorandum to Dr. Jonna Engel from Tony Bomkamp, GLA, dated March 16, 2009 regarding Additional Vegetation Data for Cabrillo.

5. **Exhibit 5:** Memorandum to Dr. Jonna Engel from Tony Bomkamp, GLA, dated March 23, 2009, regarding Soil Disturbance at Cabrillo RV Parking Areas, Huntington Beach, California.

6. **Exhibit 6:** Letter to Mr. Steve Kane, Charles, Kane & Dye, LLP from Tim Lawson, LGC, dated March 20, 2009 regarding Report of Geotechnical Observation and Testing to Address Comments from California Coastal Commission Regarding the Existing RV Storage Yard Located at 21752 Pacific Coast Highway, Huntington Beach, California.

7. **Exhibit 7:** Memorandum to Dr. Jonna Engel from Tony Bomkamp, GLA, dated March 23, 2009 regarding Use of Atypical Situation Methodology.

8. **Exhibit 8:** Letter from Ronald S. Javor, Assistant Deputy Director, HCD to Mr. Richard Bessire, President, Bessire and Casehiser, Inc., dated February 18, 2008.

9. **Exhibit 9:** Memorandum to Andrew Willis and Dr. Jonna Engel from Tony Bomkamp, GLA, dated October 31, 2008 and transmitted November 12, 2008, regarding Response to October 27, 2008 Letter.

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Shori Kobori
Manatt, Phelps & Phillips, LLP
Direct Dial: (714) 371-2528
E-mail: shori@manatt.com

March 2, 2009

Client-Matter: 41524-030

BY HAND DELIVERY

Andrew Willis
California Coastal Commission
200 Oceangate, Suite 1000
Long Beach, CA 90802

Re: Response to the Notice of Intent to Record a Notice of Violation for 21622 Pacific Coast Highway, Huntington Beach, California (APN 114-150-86)

Dear Andrew:

This letter will confirm our telephone call of February 23, 2009 regarding the response of Mills PCH, LLC ("Mills") to the Notice of Intent to Record a Notice of Violation of the Coastal Act and Notice of Intent to Commence Cease and Desist Order and Restoration Order Proceedings, dated February 3, 2009 ("NOI Letter"), and the Recordation of a Notice of Violation and Extension of the Statement of Defense Deadline, dated February 19, 2009 ("Extension Letter"). The Extension Letter requested that a Statement of Defense be submitted by February 27, 2009, which was subsequently extended by you to March 2, 2009, if the Commission receives affirmation of Mills' commitment to work on a Consent Order and not object to the recordation of the Notice of Violation.

Subsequent to our receipt of those letters, you informed me that because Mills has notified Coastal Commission staff of its desire to work with Commission staff to develop a Consent Cease and Desist and Restoration Order ("Consent Order") in its prior correspondence on this matter, that Mills should not file a Statement of Defense. Further, as you know, Mills did not file a written objection to the recordation of the Notice of Violation as it was described in the Extension Letter. Moreover, you informed me that because of our work on a Consent Order, it was Commission staff's intent to present the Consent Order to the Coastal Commission at an upcoming hearing (possibly at the April, 2009 hearing in Ventura) and would eliminate the need for a hearing on the Notice of Violation and Cease and Desist Order.

As we have indicated to you in our correspondence, including our letters dated November 12, 2008, January 27, 2009, and February 17, 2009, Mills intends to work with Coastal Commission staff to develop a Consent Order to resolve matters described in the Notice of Violation (V-5-08-007), dated March 21, 2008 and the Extension Letter. We have received from you a draft Consent Order and have provided comments and hope that we can arrive at a final

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draft shortly. Based upon our conversations regarding the revised Consent Order, I believe that we are in agreement regarding the description of the unpermitted development and the scope of restoration to be addressed. Nevertheless, due to the somewhat confusing nature of the written correspondence we have received with respect to whether a Statement of Defense should or should not be filed for parties engaged in the Consent Order process, we wish to submit the enclosed information for your consideration which addresses components of a Statement of Defense. Pursuant to your direction, this is not a formal Statement of Defense given our stated intent to work on a Consent Order. However, if we are unable to reach agreement on a Consent Order, Mills does not waive its rights to formally submit a Statement of Defense in the future.

The information that we would like to put before Commission staff and the Coastal Commission and which we would like to have taken into consideration in formulating the Consent Order is set forth below and in the enclosed documents.

1. Background.

By letter dated March 21, 2008, Mills was informed of a Notice of Violation of the California Act. As stated in the Extension Letter, the Notice of Violation describes the unpermitted development as: "removal of major vegetation, including native wetland vegetation; placement of fill in a wetland; grading a wetland; construction of a trench drain in a natural wetland; and change in the intensity of use of water resulting from altering the hydrology of a wetland through soil compaction, grading, placement of fill and construction of a trench drain."

The unpermitted development allegedly occurred on or about February 23-24, 2008 on an approximately 1.17 acre parcel of property known as the Cabrillo RV Storage Lot located at 21752 Pacific Coast Highway (the "Cabrillo Site").

2. Facts or allegations contained in the cease and desist order or the notice of intent that you admit.

We acknowledge that a trench was excavated on the Cabrillo Site on or about February 2008, that grading occurred to construct the trench, and that soil excavated from the trench was dispersed on the site. Based upon site delineation and survey work conducted by Glenn Lukos Associates, no sensitive vegetation (i.e., saltgrass or pickleweed) was present or is present in the area where the trench was excavated on the Cabrillo Site. That portion of the site generally consists of weedy, ruderal vegetation, none of which has been identified as sensitive. We also acknowledge that grading and removal of vegetation occurred in a small area in the southwest quadrant of the site.

We also acknowledge that gravel was placed on the northern portion of the site; however, this is a site maintenance activity that has taken place continuously on the Cabrillo Site since

before enactment of the Coastal Act. The Cabrillo Site has been used for the storage of vehicles since 1966 when the first documented permit was issued for this use by the City. (A copy of that permit is enclosed as Exhibit 1. Copies of photos showing the use of the site for vehicle storage are included as Exhibits 10-13 in the Glenn Lukos Associates Jurisdictional Wetland Status document, enclosed as Exhibit 2.) At that time, the site was under the ownership and control of CalTrans who had begun the site work of filling, compacting and oiling the site to use it for vehicle storage. In fact, as noted in the enclosed permit, the City required that the site be oiled. Since that time, the Cabrillo Site has been continuously used for vehicle storage, and executed leases for vehicle storage can be provided to document this use. The site is now under the regulatory jurisdiction of the Department of Housing and Community Development ("HCD") that regulates the use of mobile home parks. In addition to requiring that vehicular storage facilities be secured, HCD also requires that the site be maintained in a manner to make it suitable for storage, including placing gravel on the site to ensure a stable surface for vehicles. Therefore, as part of routine maintenance of the storage lot and to minimize dust and tracking of dirt, gravel – instead of oil -- was and is routinely placed on portions of the site. As this is a maintenance activity that has been performed on a site for a use that pre-dates the Coastal Act, we do not believe it constitutes a violation of the Coastal Act or resulted in impacts to sensitive coastal resources. There are no wetlands, sensitive vegetation or other sensitive habitat located on that portion of the Cabrillo Site where gravel was placed.

3. Facts or allegations contained in the cease and desist order or notice of intent that you deny.

We disagree with the characterization of the Cabrillo Site as a wetland. Photos from that time show that the majority of the site consisted of bare, compacted soil to support its use as a parking lot and vehicle storage facility with patches of vegetation, consisting of both sensitive plants such as saltgrass (*Distichlis spicata*), small patches of pickleweed (*Salicornia virginica*), and non-native ruderal species, such as five-hook bassia (*Bassia hyssopifolia*), small-flowered ice plant (*Mesembryanthemum nodiflorum*), and Italian ryegrass.

As we discussed during your site visit, although sensitive vegetation, specifically saltgrass and pickleweed, are present on site, these plants on this site are not hydrophytes growing in hydric soils. While in other coastal locations and properties, the presence of these plants may serve as wetland indicators, they are not indicators of wetlands on the Cabrillo Site. Therefore, while impacts to sensitive vegetation may have occurred, the activity in question did not result in either the filling of wetlands or the removal of wetland vegetation. These plants, the hydrology of the site, and why the presence of these plants do not support a wetland finding are discussed in detail in the enclosed Jurisdictional Delineation prepared by Tony Bomkamp of Glenn Lukos Associates.

As you and Dr. Engel observed during your site visit, the site is highly compacted, and consists in large part (the first 18-24 inches) of artificial fill. The fill had been placed on the site prior to 1976 as part of the ongoing site maintenance work to utilize the Cabrillo Site as a parking and storage facility. Over the years, as a result of site maintenance and the number of vehicles that have been stored there, the site and the underlying fill has become highly compacted. We all observed the difficulty Tony Bomkamp had in digging into the soil during our site visit. Consequently, as exhibited in the soil pits that were opened, the soils in which these plants are located are not hydric and do not exhibit hydric characteristics. Moreover, the vegetation growing in this area are not growing as hydrophytes; rather, the roots are drawing water from the groundwater table some 41-50 inches below ground surface and are more properly characterized as "phreatophytes" not "hydrophytes. Based upon over a year of site monitoring, soil sampling, and vegetation studies, it is, therefore, our conclusion that no wetlands were graded, nor wetland vegetation removed.

The Extension Letter also describes the unpermitted development as including "soil compaction" that changed the intensity of use of water, i.e., altered the site's wetland hydrology. As a result of the use of the Cabrillo Site for vehicle storage for over 40 years, the soils on the site are highly compacted. The compaction was not a result of the work that occurred in February, 2008, nor did that work result in alteration of wetland hydrology. As the enclosed material establishes, the soils are not hydric, and are not native. The soils reflect fill that was brought onto the site in the early 1960's and 1970's. Consequently, any "soil compaction" that has occurred on the site was a result of work done prior to the Coastal Act, and not the site work that occurred in February, 2008.

4. Other facts which may exonerate or mitigate your possible responsibility and any other information.

The Cabrillo Site has been used continuously since the 1960's for the storage of vehicles, including recreational vehicles. Its use as a storage lot was permitted by the City of Huntington Beach as early as 1966 prior to enactment of the Coastal Act. As the historical photos in the Glenn Lukos Associates document show (Exhibits 10-13), although historically the site was subject to tidal influence, a substantial amount of fill has been placed on the site and continually compacted to support the use of the site for vehicular storage.

We have previously reviewed the history of the site with Coastal staff in our prior correspondence and in correspondence submitted by Tony Bomkamp of Glenn Lukos Associates. With respect to any other information that we would like to have taken into consideration, we wish to incorporate by reference our prior letters dated November 12, 2008, January 27, 2009, and February 17, 2009, and the memoranda from Tony Bomkamp of Glenn Lukos Associates dated September 11, 2008 and November 12, 2008 (please note the first page

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of this memo shows the date of October 31, 2008; however, as noted in the header on subsequent pages, the memo was officially send on November 12, 2008).

5. Consent Order.

We have been working with Commission staff on development of a Consent Order. In that regard, we have reviewed the most recent revised draft Consent Order and submitted our comments in letters dated January 27, 2009, and February 17, 2009. We have initiated discussions regarding the proposed scope of a restoration plan. We have indicated our intent to fill in the trench and return the site to its pre-February, 2008 contours. In addition, we acknowledge the removal of two polygons of vegetation and will be developing a restoration plan for that area as well as providing mitigation on an adjacent parcel. As we have repeatedly reinforced in our communications, we hope to arrive at a Consent Order that can be submitted to the Commission for its approval and believe that the revised Consent Order take into consideration the unique factors that are exhibited at this site.

Thank you for your consideration of the enclosed information as you prepare a revised Consent Order. Tony Bomkamp is working on a restoration plan and will be contacting you directly to discuss our restoration proposal.

Very truly yours,

Susan K. Hori
Manatt, Phelps & Phillips, LLP

cc: Tony Bomkamp
Peter Wynn
Steve Kane

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ROLL CALL VOTE:
AYES: Larkin, Miller, Worthy, Bazil, Crabb, Tom, Lawson.
NOES: None.
ABSENT: None.
THE MOTION CARRIED.

USE VARIANCE NO 66-32
Applicant - Tom Nelson

To allow a motor vehicle storage yard in the M-1-O Light Industrial District combined with oil production.

The Staff Report was read by the Secretary.

The hearing was opened to the audience.

Tom Nelson, applicant, addressed the Commission and gave his reasons for the request.

Tim Talbert, representing the land owners of the subject property, addressed the Commission and spoke in favor of the request.

There being no other comment the hearing was closed.

A MOTION WAS MADE BY WORTHY AND SECONDED BY TOM TO APPROVE USE VARIANCE NO 66-32 UPON THE FOLLOWING CONDITIONS:

1. Use Variance No 66-32 shall expire July 19, 1967.
2. The applicant shall demonstrate that he has access to the proposed motor vehicle storage yard and said access road shall be surfaced.
3. A 6 ft. high chain link fence shall be constructed to Building Department Standards on all sides of the property.
4. Weed Control shall comply with Fire Department Standards.
5. There shall be no stacking of vehicles.
6. The entire storage yard shall be oiled. Application of said oil shall be 0.25 gallons of SC-70 per square yard on sterilized soil.
7. A detailed plot plan that includes all the above conditions shall be submitted to the Planning Department for approval prior to issuance of any building permits.

AND FOR THE FOLLOWING REASON:

1. The subject parcel is not adjacent to any streets.

Use Variance No 66-31
Applicant - R. C. Adams
Departmental Staff Report - Planning,
Building, Fire and Public Works
Date: July 19, 1966

This agenda item was continued from your last regular meeting so Mr. Adams could establish his authority to expand the existing Cabrillo Trailer Park. As you know, the park is on State of California property and we have received a letter authorizing Mr. Adams to proceed with his application.

It should be noted by the Planning Commission that there is an existing trailer park under construction immediately to the north which was established by Use Permit No. 231 in November of 1963. That use permit and the accompanying plot plan are still valid. The plan calls for an access point on the future frontage road that will parallel Pacific Coast Freeway.

The following conditions of approval are offered for your consideration:

1. A change of zone application from R-A to R-5 shall be filed on the property prior to final inspection.

2. The drainage, sewer, water and fire hydrant systems shall be approved by the Department of Public Works and Fire Department.

3. A 6 ft. masonry wall shall be constructed to City Standards along the southeast, southwest and northwest boundaries of the trailer park.

4. The entire trailer park shall be made to comply with minimum State laws governing mobile home parks.

5. Sewer, water and drainage fees shall be paid.

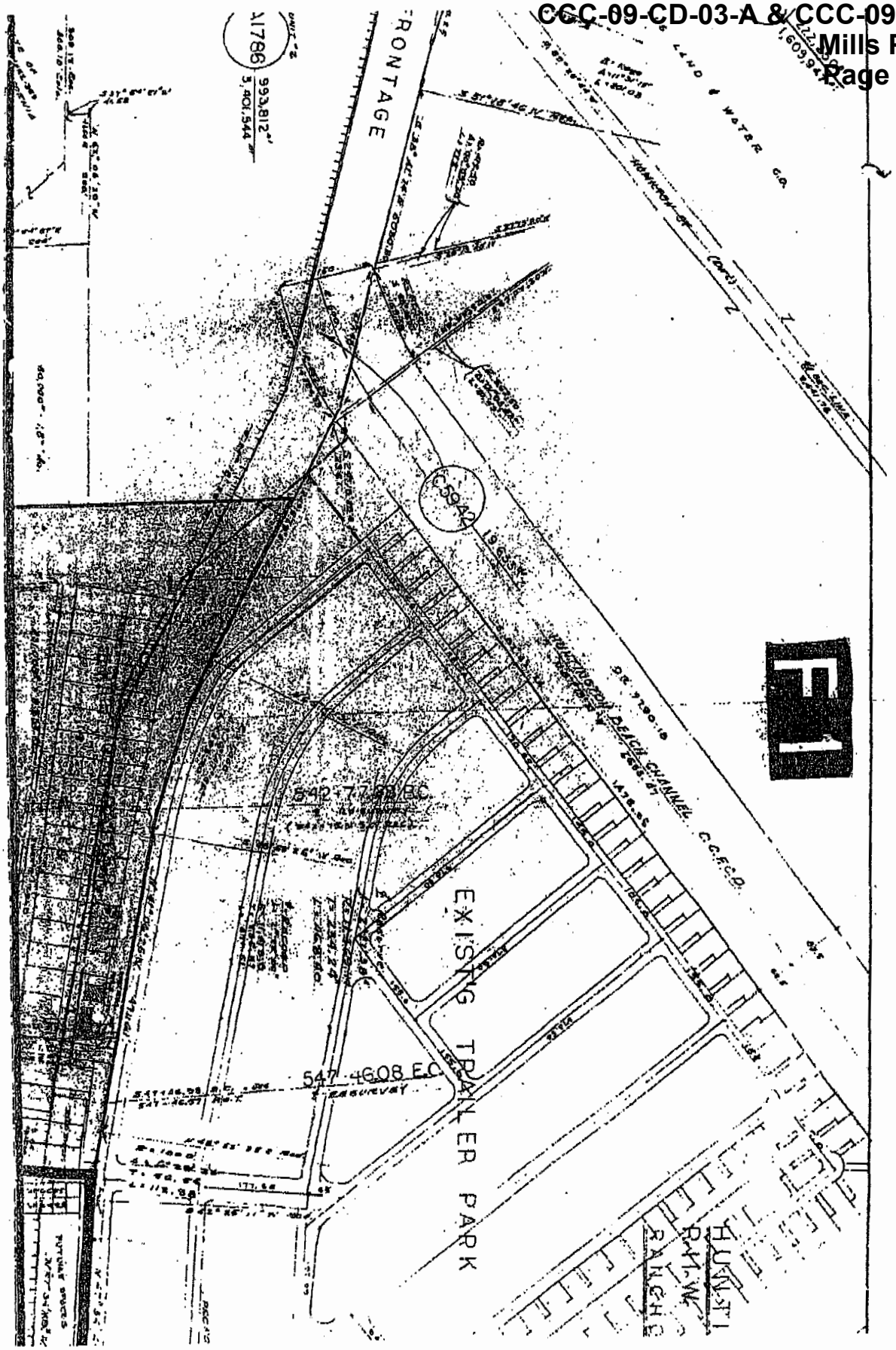


Exhibit 10
CCC-09-CD-03 & CCC-09-RO-02
(Mills PCH, LLC)

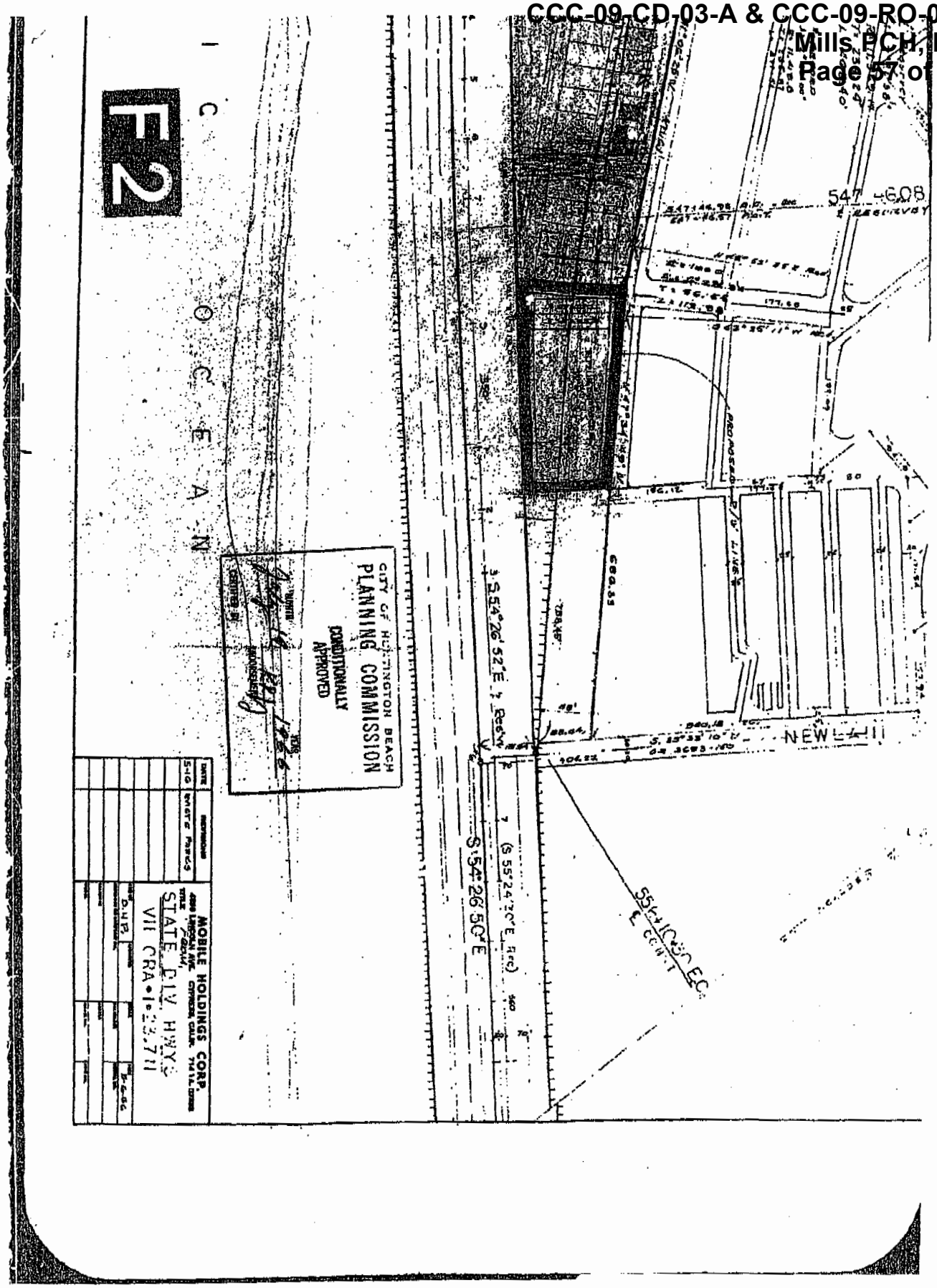
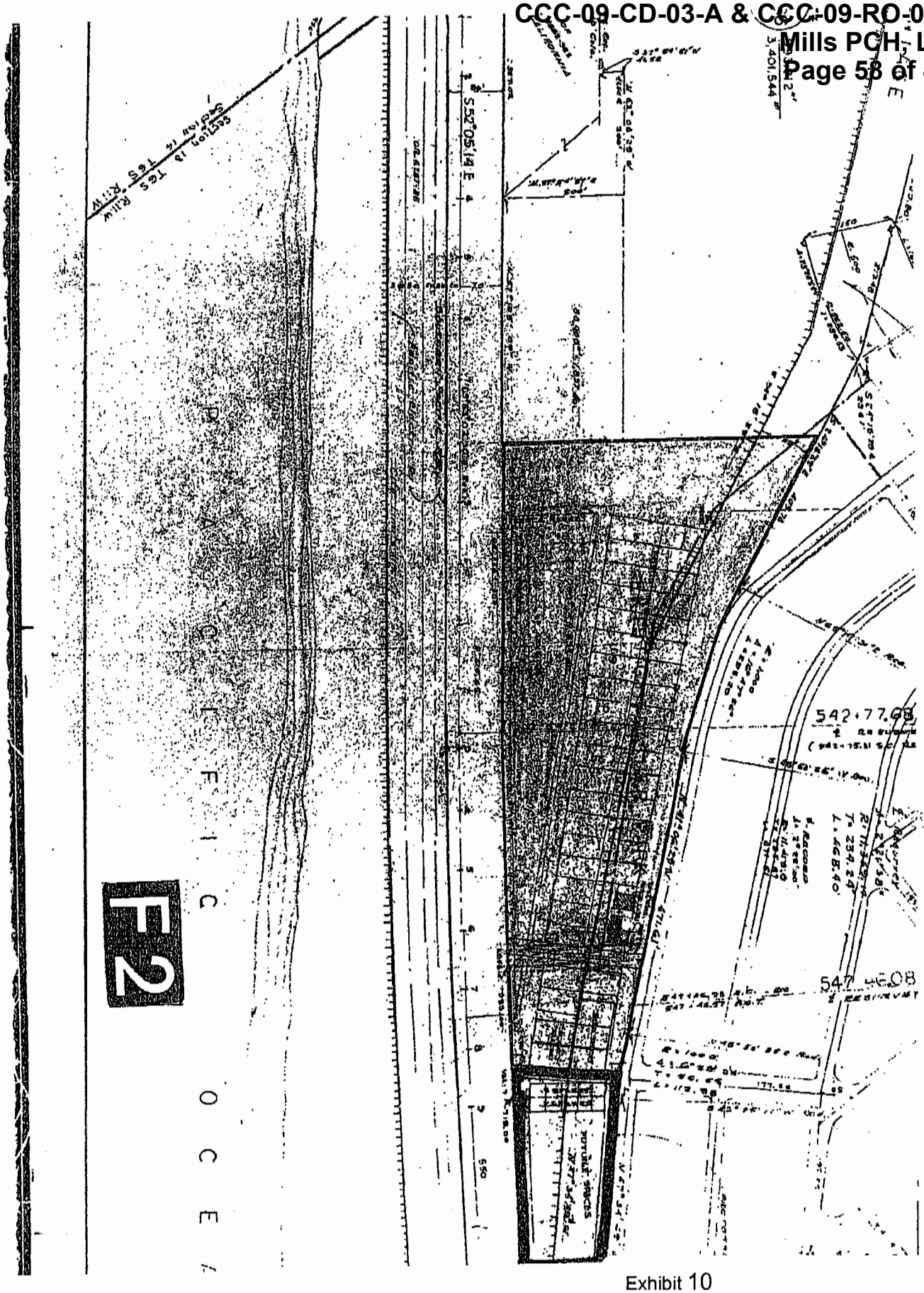


Exhibit 10
CCC-09-CD-03 & CCC-09-RO-02
(Mills PCH, LLC)


F2
542+77.68
547+46.08

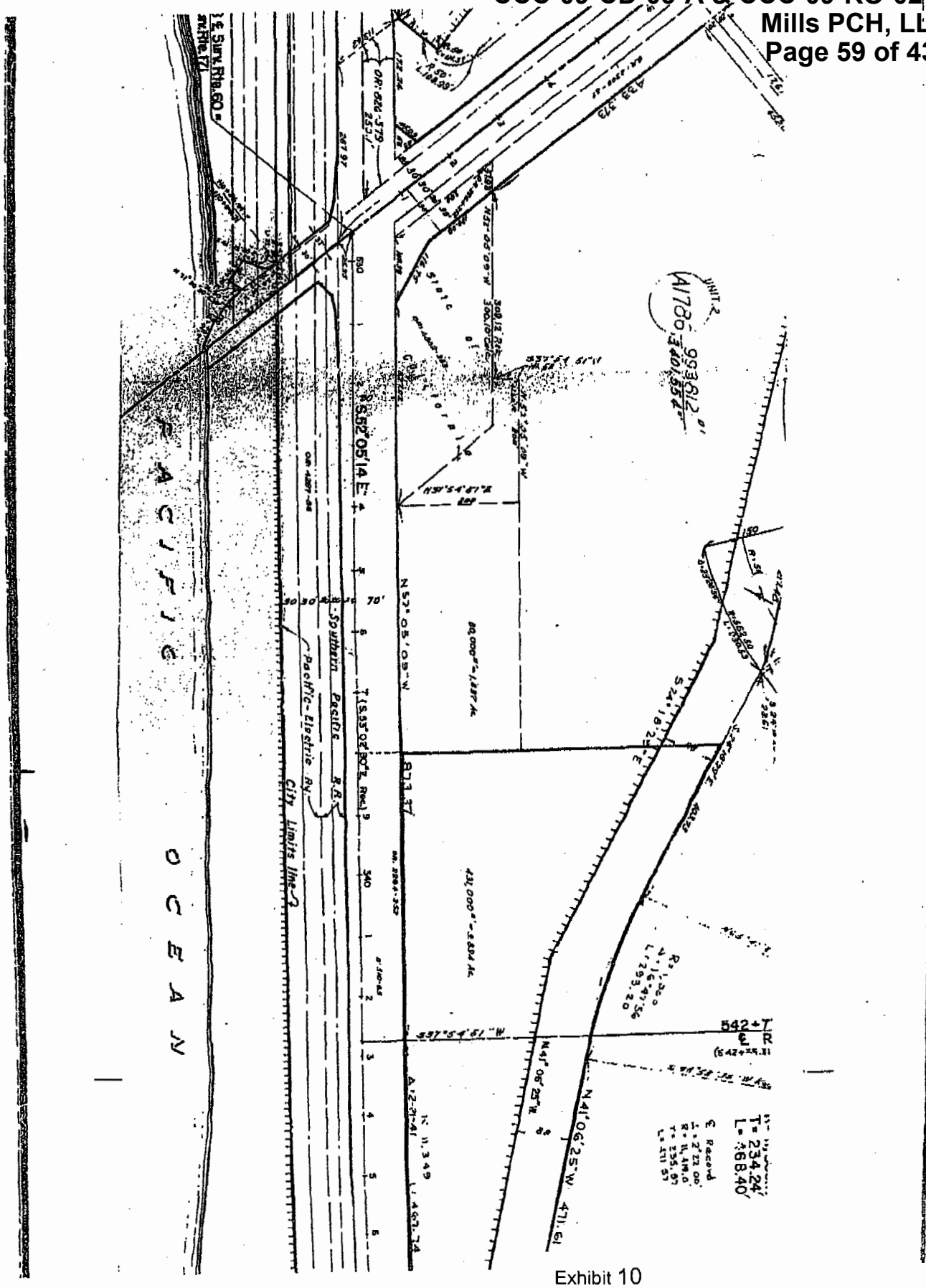


Exhibit 10
CCC-09-CD-03 & CCC-09-RO-02
(Mills PCH, LLC)

FILING FEE $75.00
CITY OF HUNTINGTON BEACH
P.O. BOX 190

Rowan C. Adams, Jr.
APPLICANT OR AGENT

21752 Coast Hwy. Huntington Beach
MAILING ADDRESS

536-8360
PHONE NO.

State of California
PROPERTY OWNER

Box 2304
MAILING ADDRESS

S.D.M. [illegible]
PRESENT ZONE R.A.-0
AV [illegible]
UV [illegible]
DV [illegible]

RECEIVED JUN 13 1968

DO NOT WRITE IN THIS SPACE

COMMISSION ACTION DATE
- [x] APPROVED
- [x] CONDITIONALLY APPROVED
- [x] DENIED
- [x] WITHDRAWN

APPEALED [ ] YES [x] NO

COUNCIL ACTION DATE
- [ ] SUSTAINED COMMISSION
- [ ] APPROVED WITH CONDITIONS OTHER THAN COMMISSIONS
- [ ] DENIED
- [ ] WITHDRAWN

EFFECTIVE DATE

TO PERMIT

Adjustment of present mobile home park--move existing fences to property line along highway 101 and adding 15 or more spaces.

LOCATION OF PROPERTY (SIDE OF STREET, STREET NAME, DISTANCE FROM NEAREST INTERSECTING STREET)

Newland ave. and Beach Blvd. on Highway 101

LEGAL DESCRIPTION

Attached

JUSTIFICATION —
FILL OUT COMPLETELY (IF MORE SPACE IS REQUIRED ATTACH ADDITIONAL PAGES)

A) WHAT EXCEPTIONAL CIRCUMSTANCES APPLY TO THIS PROPERTY (INCLUDING: SIZE, SHAPE, TOPOGRAPHY, LOCATION OR SURROUNDINGS) THAT DEPRIVE THE SUBJECT PROPERTY OF PRIVILEGES ENJOYED ON OTHER PROPERTIES IN THE VICINITY AND UNDER IDENTICAL ZONE CLASSIFICATION ?

Property is on State right-a-way for future freeway. Existing lease may be canceled by State at any time on a notice of 60 days. State will not permit any major improvements other than a holding project.

B) WILL THIS CONDITIONAL EXCEPTION CONSTITUTE A GRANT OF SPECIAL PRIVILEGE INCONSISTENT WITH LIMITATIONS UPON OTHER PROPERTIES IN THE VICINITY AND UNDER IDENTICAL ZONE CLASSIFICATION ?

Yes. City requires 5' masonry type fence. State will not permit such improvements. We request permission to extend existing fence as per plans submitted.

C) WHY IS THIS CONDITIONAL EXCEPTION NECESSARY FOR THE PRESERVATION AND ENJOYMENT OF ONE OR MORE SUBSTANTIAL PROPERTY RIGHTS ?

Recreation area used by several 100 people during summer season.

D) STATE REASONS WHY THE GRANTING OF THIS CONDITIONAL EXCEPTION WILL NOT BE MATERIALLY DETRIMENTAL TO THE PUBLIC WELFARE OR INJURIOUS TO PROPERTY IN THE SAME ZONE CLASSIFICATION.

Adjoining area presently under identical usage.

Rowan C. Adams Jr.
SIGNATURE OF PROPERTY OWNER OR AUTHORIZED AGENT

THE ATTACHED SUPPLEMENTAL SHEET MUST BE READ AND SIGNED BY THE APPLICANT

GLENN LUKOS ASSOCIATES

Regulatory Services

February 28, 2009

Mr. Steve Kane
Charles, Kane & Dye, LLP
1920 Main Street
Suite 1070
Irvine, California 92614

SUBJECT: Jurisdictional Wetland Status of the Cabrillo Mobile Home RV Parking Area, an approximately 1.15-Acre Site in the City of Huntington Beach, Orange County, California

Dear Mr. Kane:

This letter report summarizes our preliminary findings regarding the extent of wetlands as defined under the California Coastal Act for the above-referenced property.

The Cabrillo Mobile Home Parking Area Property in the City of Huntington Beach, Orange County [Exhibit 1], comprises approximately 1.15 acres and contains no blue-line drainages (as depicted on the U.S. Geological Survey (USGS) topographic map Newport Beach, California [dated 1978 and photorevised in 1981]) [Exhibit 2]. On March 14, April 7, June 3, 17, and 23, December 4, 9, 18, 22, and 29 2008, January 28, and February 10, 20, 24, and 26, 2009 regulatory specialists of Glenn Lukos Associates, Inc. (GLA) examined the project site to determine the limits of potential wetlands as defined under the California Coastal Act. Enclosed is a set of 60-scale maps [Exhibits 3a – 3c], which depicts the area evaluated for wetland indicator plants, hydric soils, and wetland hydrology. Photographs that address vegetation, soil conditions, and site hydrology are provided as Exhibit 4. Wetland data sheets are attached as Appendix A. Appendix B is a Technical Memorandum that addresses photographs of ponding provided by Coastal Staff to GLA that cover the period between October 10, 2004 and February 24, 2008 as well as additional hydrological analysis of the site. [1] Appendix C is a Technical Memorandum that addresses monitoring of offsite "Upland Pickleweed" sites in Newport Beach

[1] Glenn Lukos Associates. February 27, 2009. Technical Memorandum: "Analysis of Hydrological Conditions at Cabrillo RV Parking Area Including Ground-Level Photographs Provided by Coastal Commission Staff." Addressed to Andrew Willis and Dr. Jonna Engel.

and Huntington Beach that provide data relative to GLA's hypothesis that pickleweed is functioning as a phreatophyte on the Cabrillo RV Parking Area.[2]

The 1.15-acre RV Parking Area does not support wetlands as defined by the Coastal Act. While portions of the site consisted of wetlands prior to regulation under the Coastal Act, the site was legally filled between 1958 and 1971 with between 14 and 20 inches of fill material (average 17 inches), which in conjunction with development of the adjacent mobile home park and eliminated wetland hydrology from the site. Limited areas support a predominance of plants with a wetland indicator status of facultative (FAC) or wetter; however, in this instance, these plants are not functioning as hydrophytes, as they are not dependant on wetland hydrology (e.g., surface water or ponding). Furthermore, as the 1.15-acre site lacks hydric soils in the upper 12 inches and lacks wetland hydrology, it is not a wetland under the Coastal Act.

On or about February 23, 2008, a trench was excavated that extended from within the 1.15-acre parking area to the adjacent site immediately south of the fence that demarcates the southern boundary of the 1.15-acre parking area. In the area south of the 1.15-acre site, a small amount of side-cast material was hand-deposited into pickleweed-dominated wetland. The area filled by the side-cast is minimal, covering less than 15 square feet, and the impacts can easily be remediated through hand-removal of the side-cast material.

I. METHODOLOGY

Prior to the jurisdictional delineation, a series of historic aerial photographs were examined to better understand placement of historic fill on the site. The jurisdictional wetland determination included two phases: review of existing materials/information ("Background Review") and field data collection for plants with a wetland indicator status, hydric soils and hydrology ("Field Procedures").

For a positive determination of wetlands pursuant to the Coastal Act, it is necessary for at least one of three wetland criteria or parameters to be present: (1) a predominance of plant species with an indicator status of facultative (FAC) or wetter that are functioning as hydrophytes; (2) hydric soils; and (3) and wetland hydrology. Although the site was disturbed by vegetation removal during late February of 2008, it was not necessary to use the atypical approach set forth in the 1987 Manual because sufficient vegetation has resprouted or germinated within the 1.15-

[2] Glenn Lukos Associates. February 25, 2009. Technical Memorandum: "Monitoring Results for "Offsite" Pickleweed Areas in Support of Jurisdictional Determination for Cabrillo 1.2-Acre RV Parking Area." Addressed to Andrew Willis and Dr. Jonna Engel.

acre parking area allowing for species identification. Also, while the top few inches of the soil was disturbed within portions of the 1.15-acre parcel, there was no addition of soil/fill from offsite sources to the 14 to 20 inches of highly compacted fill deposited between the late 1950s through about 1970/71. Overall the depth of fill averages about 17 inches. Impacts to the wetland area south of the fence and outside the 1.15-acre parking area were limited to the side-cast of a few shovels of dirt on top of the pickleweed with no disturbance of the substrate or removal or burying of the vegetation.

A. Historic Aerial Photographic Analysis

In order to better understand historic site conditions and document the timing of fill placement for the parking area construction associated with the 1.15-acre site, GLA conducted an analysis of historic aerial photographs covering the period between 1927 and 1976 [Exhibits 5 – 13].

B. Selective Ground Photographs

Selective ground-level photographs of the site were provided by Coastal Commission staff to GLA. Typically, the photographs were taken immediately following storm events and were intended to show ponding on the site. The earliest photographs were taken on October 19, 2004 with the final photographs from February 23. 2008. Appendix B provides a detailed analysis of the subject site photographs.

C. Soil Map Review

Prior to beginning the field delineation a 200-scale aerial photograph and 100-scale base topographic map of the property and the Natural Resources Conservation Service (NRCS) soil map for the area[3] were evaluated to determine potential areas of wetlands as defined by the Corps and [Exhibit 14].

D. Delineation Field Procedures

Suspected jurisdictional areas were field checked for the presence of wetland vegetation, hydric soils and wetland hydrology using the methodology set forth in the U.S. Army Corps of Engineers 1987 Wetland Delineation Manual[4] (Wetland Manual) and the 2006 *Interim Regional*

[3] http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx

[4] Environmental Laboratory. 1987. Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1, U.S. Army Engineer Waterways Experimental Station, Vicksburg, Mississippi.

Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region[5] (Arid West Supplement), which was superseded during the course of the investigation by the *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (Version 2.0)* (Arid West Version 2.0).[6] While in the field, locations where vegetation, soils, and hydrology data were collected were recorded onto a 100-scale base topographic map using visible landmarks or recorded using a hand-held GPS unit, and areas that exhibited potential wetland characteristics were also mapped using GPS. Site-specific data regarding vegetation, soils and hydrology were recorded onto wetland data sheets [Attached as Appendix A]. It is important to note, that in evaluating the vegetation, soils, and hydrology on the site, it was important to carefully consider all relevant factors, not treating the Arid West Supplement in a "cook-bookish" manner. For example, relative to hydrology, portions of the 1.15-acre RV parking area exhibit shallow ponding due to the relatively flat topography and highly compacted soil caused by decades of RV parking. For such ponding to be considered indicative of wetland hydrology, it must result in reducing conditions caused by anaerobiosis within a minimum of four inches of the upper 12 inches of the soil profile in most years[7], which in turn promotes formation of hydric soils (i.e., soils that formed under anaerobic conditions) and promotes the growth of hydrophytes (i.e., plants that are adapted to anoxic environments and not just plants that need mesic environments or as further discussed below, phreatophytes).

Also, for purposes of comparison, the adjacent wetland area immediately south of the site was used for comparison purposes as this area exhibits wetland hydrology and the soils, which also consist of fill, exhibiting strong hydric characteristics.

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[5] U.S. Army Corps of Engineers. December 2006. Interim Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region. Wetlands Regulatory Assistance Program, ERDC/EL TR-06-16. Washington, DC 20314-1000.

[6] U.S. Army Corps of Engineers. September 2008. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (Version 2.0). Wetlands Regulatory Assistance Program, ERDC/EL TR-08-28. Washington, DC 20314-1000. The changes between the Arid West Supplement and Arid West Version 2.0 did not affect the delineation for this site.

[7] See for example, pp. 50-51 of the Arid West Version 2.0: F6 Redox Dark Surface, which is the most applicable hydric soil indicator for this site.

1. Wetland Indicator Plants

The presence of hydrophytic wetland indictor plant species was determined based on *The National List of Plant Species that Occur in Wetlands*[8] and as needed *The National List of Vascular Plant Species that Occur in Wetlands: 1996 National Summary (1996 National List).*[9] Where differences occur, the 1988 National List was given priority for this study as the 1996 National List is a draft update of the 1988 list and while it is presumed to be more accurate, has not been officially adopted by the Corps.[10] The indicator lists categorize plants according to their affinity for occurrence in wetlands summarized as follows:

- Obligate Wetland Plants (OBL) are associated with wetlands 99-percent of the time
- Facultative Wetland Plants (FACW) occur in wetlands between 67- and 99-percent of the time
- Facultative species (FAC) occur in wetlands between 34- and 66-percent of the time
- Facultative Upland species occur in wetlands only 1- to 33-percent of the time (meaning they occur in uplands from 67- to 99-percent of the time
- Upland (UPL) species occur in wetlands less than one-percent of the time

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[8] Reed, P.B., Jr. 1988. *National List of Plant Species that Occur in Wetlands.* U.S. Fish and Wildlife Service Biological Report 88(26.10).

[9] U.S. Fish and Wildlife Service. 1997. *The National List of Vascular Plant Species that Occur in Wetlands: 1996 National Summary (1996 National List).* Published by the U.S. Fish and Wildlife Service, National Wetlands Inventory, St. Petersberg, Florida. This list was used where particular species, (e.g., *Salix laevigeta* were excluded in the 1988 list but correctly included in the 1996 list as a FACW species.)

[10] The Corps of Engineers has not adopted the 1996 National List of Vascular Plant Species that Occur in Wetlands (1996 National List); however, it is not due to any deficiencies or inaccuracies in the 1996 National List; rather the list has not gone through the proper rule making at the federal level necessary for adoption by the Corps. Development of the 1996 National List was implemented to incorporate new information into the 1988 National List, thereby improving the accuracy. The second paragraph on page one of the 1996 List states:

> *The 1996 National List reflects a significant amount of new information that has become available since 1988 on the wetland affinity of vascular plants. The new information has resulted from the extensive use of the 1988 National List in the field by individuals involved in wetland and other resource inventories, wetland identification and delineation, and wetland research.*

While the Corps continues to use the 1988 List, they also recognize the improvements in the 1996 National List: "This list is not approved for use for Wetland Delineations. This list however does correct many of the errors in the 1988 list but does not replace it."

For each data collection point depicted on Exhibit 3a [see attached data sheets in Appendix A and discussion below for each of the areas investigated], vegetation data was collected using both the 50/20 rule and the Prevalence Index using the methodology set forth in the Arid West Version 2.0.[11] Use of the Prevalence Index, which takes a "weighted average" of all the vegetation and not just the dominant species was deemed appropriate as it results in a more accurate characterization of the vegetation and wetland conditions than the basic dominance rule/test - 50/20 rule because it considers all of the species present, not just the dominant species. Relative to the advantage of the Prevalence Index over the basic dominance rule in certain instances the Arid West Version 2.0 notes on page 23:

> *"The prevalence index is a weighted-average wetland indicator status of all plant species in the sampling plot, where each indicator status category is given a numeric code (OBL = 1, FACW = 2, FAC = 3, FACU = 4, UPL = 5) and weighting is by abundance (percent cover).* ***It is a more comprehensive analysis of the hydrophytic status of the community than one based on just a few dominant species. It is particularly useful (1) in communities with only one or two dominants, (2) in highly diverse communities where many species may be present at roughly equal cover...***" [Emphasis Added]

Use of the Prevalence Index was determined to be particularly important in this case because of the fairly high diversity of weedy species exhibiting an indicator status of FAC and the presence of a number of UPL species, which while only locally dominant clearly suggest that the site is not exhibiting saturation for sufficient duration to preclude UPL species. A review of data sheets V-1 through V-10 (using Reed, 1988) show that using the 50/20 rule, which only includes the "dominant species" all ten sample sites exhibit a predominance for "wetland" indicator plants with in all cases only FAC species as the dominant wetland indicators. Data point V-5 exemplifies how this approach can be a very poor predictor of the actual presence of wetlands as there were two FAC species and one UPL species with the Prevalence Index of 3.93. Nevertheless, using the 50/20 rule leads to the very inappropriate conclusion that the area exhibits a predominance of "wetland vegetation." While use of the 50/20 Rule leads to the conclusion that the vegetation associated with data points V-1 through V-10 is "hydrophytic," use of the Prevalence Index, as implemented for this delineation, leads to the opposite conclusion as discussed in more detail below.

[11] The 1987 Wetland Manual (page 65) suggests that herbaceous vegetation be sampled using a five-foot radius.

Ralph Tiner addresses the problem of basing any determination of wetlands on Facultative (FAC) vegetation and the importance of using a tool with more accurate measurement capabilities (i.e., the Prevalence Index), which is why it has been selected for this delineation:

> *A plant community with a weighted average index (prevalence index) of 3.0 (±0.5) therefore is equivalent to a FAC species that occurs equally in wetlands and non-wetlands. Such communities (2.5 through 3.5) are inconclusive regarding their wetland status as assessed by vegetation analysis alone; in other words, other features* [hydrology and soils] *must be examined to determine whether they are wetland or not.*[12]

Because of the documented phreatophytic nature of saltgrass and the same potentially for pickleweed, GLA conducted evaluation of pickleweed in other upland areas within Newport Beach and Huntington Beach, where pickleweed was growing on upland areas and was hypothesized as functioning as a phreatophyte. In these areas, an auger was used to evaluate soils, hydrology, and the occurrence of roots at depths up to 54 inches [see Appendix C].

2. Hydric Soils

The presence of hydric soils was determined in accordance with the 1987 Manual and the Arid West Supplement Version 2.0, which in turn has largely adopted *Field Indicators of Hydric Soils in the United States v. 6.0*[13]. As depicted on Exhibit 3b, a total of 18 data points distributed more-or-less evenly across the southern two-thirds of the 1.15-acre site were sampled. The soil at the site consists of a 14- to 20-inch thick layer of highly compacted fill material that was deposited in the late 1950s to the late 1960s over the native material, and contains a significant amount of concrete and cobble. A pick was used to excavate though the compacted fill material to reach the native material; however, at five of the 18 sampling points, even with the use of a pick, excavation to the native material was not possible due to cobble and rubble that comprises the fill. At the 13 data collection point where excavation was possible, the overlying fill and underlying native soil was evaluated for characteristics consistent with the presence of hydric soils such as (but not limited to) sulfidic odor, gleyed soils, and low-chroma matrix with redoximorphic features (i.e., F6 – Redox Dark Surface). At seven locations, a hand-auger was also used to evaluate the soil at depth as well as to determine the depth to groundwater.

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[12] Tiner, Ralph W. 1999. *Wetland Indicators: A Guide to Wetland Identification, Delineation, Classification, and Mapping*. Lewis Publishers, New York, pp. 111-113.
[13] USDA, NRCS. 2006. *Field Indicators of Hydric Soils in the United States v. 6.0*. G.W. Hurt, G.M Vasilas (eds). USDA, NRCS in cooperation with the National Technical Committee for Hydric Soils, Fort Worth TX.

The Soil Conservation Service (SCS)[14] has mapped the following soil types as occurring in the general vicinity of the project site:[15]

> ***Tidal Flats (211)***
> Tidal flats are nearly level areas adjacent to bays and lagoons along the coast. Periodically these are covered by tidal overflow. Some of the higher areas are covered only during very high tides. Tidal flats are stratified clayey to sandy deposits. They are poorly drained and high in salts.
>
> ***Beaches (115)***
>
> Beaches consist of sandy, gravelly, or cobbly coastal shores that are washed and rewashed by tidal and wave action. These areas may be partly covered with water during high tides or stormy periods. Runoff is slow, and the erosion hazard is high.

Approximately 0.90 acre of the Site is mapped as tidal flats [Exhibit 14 - Soil Map]. However, as demonstrated by the historic aerial photograph analysis, and confirmed in the field by excavating soil sampling pits, the tidal flats soil has been covered by fill material, which varies in depth from 14 to 20 inches and averaging about 17 inches.

The soil series Tidal Flats and Beaches are not included in the SCS's publication, *Hydric Soils of the United States*[16]; however, both Tidal Flats and Beaches are identified as hydric in the local hydric soils list for Orange County, California. It is important to note that under the Arid West Supplement and subsequent Arid West Version 2.0, the presence of mapped hydric soils is no longer dispositive for the presence of hydric soils. Rather, the presence of hydric soils must now be confirmed in the field. According to the local hydric soils list, the Beaches soil type is considered hydric because this soil type is frequently flooded for long duration or very long duration during the growing season. The Tidal Flats soil type is considered hydric because this soil type is frequently flooded and/or frequently ponded for long durations or very long durations during the growing season. However, since the Site has been filled, and these criteria assume tidal influence, which has been eliminated for decades by construction of Pacific Coast Highway

[14] SCS is now known as the National Resource Conservation Service or NRCS.
[15] United States Department of Agriculture, Soil Conservation Service. 1969. Report and General Soil Map, Los Angeles County, California. Foldout map accompanying report is dated 1994.
[16] United States Department of Agriculture, Soil Conservation Service. 1991. Hydric Soils of the United States, 3rd Edition, Miscellaneous Publication Number 1491. (In cooperation with the National Technical Committee for Hydric Soils.)

(PCH) (Exhibit 7, the 1955 aerial photograph shows PCH and State Park Beach improvements already in place), these criteria for hydric soils are not applicable for the Site.

3. Wetland Hydrology

The presence of wetland hydrology was determined in accordance with the 1987 Manual and the field indicators set forth in the Arid West Supplement and Arid West Version 2.0. Depth to groundwater at seven locations was determined by use of a hand auger. Surface ponding occurs on the site due to the flat topography and highly compacted fill material. While the occurrence of limited ponding is not in debate (as documented by some ground-level photographs taken between October 2004 and February 2008 and provided by Coastal Staff), the key question is whether such ponding meets the minimum requirements for wetland hydrology in accordance with the Arid West Version 2.0. Appendix B addresses the site photographs provided by Commission Staff is detail.

Because the fill has been in place since the late 1950s, it is reasonable to assume that with sufficient hydrological conditions, i.e., saturation in the upper 12 inches of the soil profile associated with regular ponding of sufficient duration that results in reducing conditions, indicators of hydric soil formation would be evident (e.g., redoximorphic features). Conversely, the absence of such indicators for the presence of hydric soil formation is indicative that wetland hydrology, based on sufficient periods and duration of surface ponding, is absent.

In order to test the effects of hydrology on the fill soils, GLA examined soil pits in the adjacent wetlands in the parcel immediately south of the 1.15-acre Parking Area that does exhibit inundation during most years [see Exhibit 4, Photographs 1 and 2].

II. JURISDICTION

A. <u>California Coastal Commission</u>

Pursuant to the California Coastal Act (California Public Resources Code Section 30233), the CCC regulates the diking, filling, or dredging of wetlands within the coastal zone. The Coastal Act Section 30121 defines "wetlands" as land "*which may be covered periodically or permanently with shallow water.*" The 1981 CCC Statewide Interpretive Guidelines state that hydric soils and hydrophytic vegetation, "*are useful indicators of wetland conditions, but the presence or absence of hydric soils and/or hydrophytes alone are not necessarily determinative when the Commission identifies wetlands under the Coastal Act. In the past, the Commission has considered all relevant information in making such determinations and relied upon the*

advice and judgment of experts before reaching its own independent conclusion as to whether a particular area will be considered wetland under the Coastal Act. The Commission intends to continue to follow this policy."

III. RESULTS

As discussed in more detail below, the 1.15-acre parking area presents a variety of difficulties for wetland determination/delineation due to the history of the site and existing conditions that include: (1) limited areas with a predominance of wetland indicator species that, based on all evidence collected to date, including hydrology and soils data during a "normal" rainfall year, lack wetland hydrology; (2) the presence of facultative phreatophytes and shallow groundwater (39 to 50 inches); (3) the presence of wetland indicator plants that have inaccurate designations on the *National List of Plants that Occur in Wetlands*; and (4) the presence of moderately to highly compacted fill that ranges in depth from 14 to 20 inches (average = 17 inches) across the site, which was placed in the late 1950s and 1960s, well before regulation of the site under the Coastal Act.

The presence of facultative phreatophytes[17] and shallow groundwater is of particular interest because groundwater depths across the site range from 39 to 50 inches with a clear gradient from shallowest (i.e., 39 to 41 inches) along the western boundary of the 1.15-acre site to depths of 50 inches along the eastern boundary. The narrow strip of saltgrass along the western site boundary (just inside the fence line) is on a slight slope and is mapped as "Beach" on the soils map. This is an important observation, because the saltgrass (*Distichlis spicata*, FACW) is a well-documented phreatophyte that can extend its roots to depths of between 8 and 11 feet to reach groundwater[18] and which thrives where groundwater depths are between 0.8 and 1.2 meters (31 and 47 inches).[19] As such, the presence of saltgrass in areas that clearly lack wetland hydrology but that have a water table at depths of 39-41 inches indicates that saltgrass is not acting as a hydrophyte but as a phreatophyte and optimal conditions relative to water table depths are present on the site

[17] Phreatophytes are species that extend roots to the groundwater table. Facultative phreatophytes are plants that have the ability to depend on surface water or when such water is not available, to extend roots to the groundwater zone. Saltgrass is widely recognized as species that functions as a phreatophyte in arid environments. See for example: Moore, Julie, James King, A.S. Bawazir, and T.W. Samis. 2000 (updated 2004). *A Bibliography of Evapotranspiration with Special Emphasis on Riparian Vegetation:* New Mexico Water Resource Institute. http://wrri.nmsu.edu/publish/miscrpt/m28/m28.pdf
[18] Young, A.A. and H.F. Blaney. 1942. *Use of Water by Native Vegetation.* Bulletin No. 50, prepared for the State of California Department of Public Works, Division of Water Resources.
[19] Moore, et al. p. 36.

for saltgrass.[20] The ability of saltgrass to thrive in non-wetland conditions where groundwater is available is depicted on Exhibit 4, Photograph 3, which shows saltgrass growing through existing asphalt at the northwest corner of the site where depth to groundwater is at approximately 48 inches below the surface (at the time of site photograph).

In addition to saltgrass, a brief review of the literature indicates that pickleweed is also a phreatophyte in arid climates (i.e., outside of tidally influenced areas). The inconsistent use of common names and failure to use the Latin binomials, make it difficult to determine whether *Salicornia virginica* is specifically referenced in some of the references or other closely related species such as *Allenrolfia occidentalis.*[21] Nevertheless, the presence of pickleweed in areas such as depicted in Exhibit 4, Photographs 4 - 6 is best explained by ability to tolerate drought or more likely by phreatophytic capabilities, which would be consistent with the fact that other closely related species are phreatophytes. Appendix 3 is a Technical Memorandum that provides support for the hypothesis that pickleweed is growing as a phreatophyte within the RV Parking Area and that it is not an indicator or wetlands.

A. Review of Historic Conditions

An aerial photograph from 1927 [Exhibit 5] indicates that historically, the site was part of the Huntington Beach wetland complex located at the mouth of the Santa Ana River, and that the site supported salt marsh vegetation and possible sand dunes. The site remained largely undeveloped until after 1955, as indicated by aerial photographs from 1955 [Exhibit 6]. Between 1955 and 1958, fill was placed adjacent to the site to create the Newland Street alignment and for construction of the power plant southeast of the site. The 1958 photo and 1960 photo [Exhibit 7] also show the first clear signs of grading/fill placement on the site as well as in adjacent areas. It appears that additional fill was placed in 1963 [Exhibit 8], with the site attaining its present day grade and configuration between 1967 [Exhibit 9], 1970 or 1971 [Exhibits 10 and 11]. The depth of the fill ranges from 14 to 20 inches (average = 17 inches) based on numerous test pits and the trench that was excavated along eastern boundary of the site. In general, the 1.15-acre area has since been used continuously as a parking lot/RV storage facility as is apparent in the 1972 photograph and especially the 1976 photograph [Exhibits 12 and 13], consistent with a permit issued by the City of Huntington Beach in 1966 which authorized use of the site for parking.

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[20] Also, see discussion of phreatophytes on pages 90 and 91 of the Arid West Supplement Version 2.0.
[21] DeMeo, G., R, Laczniak, R. Boyd, J. LaRue Smith, and W. Nylund. 2003. Estimated Groundwater Dischargeby Evapotranspiration from Death Valley, California 1997-2001. U.S. Geological Survey Water-Resources Investigation Report 03-4254. http://pubs.usgs.gov/wri/wrir034254/wrir034254.pdf

B. Trench Excavation South of the 1.15-acre Parking Area

The area immediately south of the fenced 1.15-acre parking area supports pickleweed-dominated marsh that exhibits a predominance of wetland indicator plants with an indicator status of FAC or wetter, hydric soils and wetland hydrology. As previously discussed, a very small portion of this pickleweed marsh was subject to hand-placement of unauthorized fill consisting of approximately eight to ten discreet clumps of side-cast material deposited by shovel, which was excavated from adjacent upland to create a small trench. Each discreet shovel-sized clump has retained its shape, allowing for easy and rapid removal by hand. Less than 15 square feet of wetland were impacted, and with removal of the side-cast material, no sign of this impact would remain. Exhibit 4, Photographs 7 and 8 depict the sidecast material within the pickleweed.

C. Wetland Determination of 1.15-acre Parking Area

Site topography of the approximately 1.15-acre parking area is generally flat, with a slight upslope along the western edge of the site associated with the mapped "beach," which is depicted on the historic soils map [see Exhibits 3c and 14]. The majority of the site is unvegetated and the substrate consists of a layer of compacted fill ranging in depth from 14 to 20 inches that overlays native wetland soils that formed under the historic tidal conditions, which were eliminated beginning with the construction of PCH, up to the filling of the site in the late 1950s and 1960s. Vegetation is limited to a narrow strip along the western boundary of the site along with two small patches or saltgrass and pickleweed that are apparent in ground-level photographs taken before the disturbance and as detected based upon re-growth or germination [Exhibit 15].

1. Vegetation

The majority of the parking area is unvegetated, (which was also the condition prior to the work that occurred in late February 2008. Vegetation in the current condition (as well as during the time immediately preceding the February 2008 work) is limited to a narrow strip along the western edge of the site and to two small patches in the south-central portion of the 1.15-acre area.

The narrow strip along the western boundary is dominated by saltgrass (*Distichlis spicata*, FACW), which in this area is functioning as a phreatophyte due to groundwater at about 39 to 41 inches in conjunction with a lack of surface hydrology. Other plants in this area include a mix of upland and facultative species including yellow sweet clover (*Melilotus indica*, FAC), alkali sida (*Malvella leprosa*, FAC), five-hook bassia (*Bassia hyssopifolia*, FAC), lambs quarters (*Chenopodium album*, FAC), beach sand spurrey (*Spergularia marina*, FAC), small flowered

iceplant (*Mesembryanthemum nodiflorum*, UPL/FAC[22]), cheese weed (*Malva parviflora*, UPL), wild oats (*Avena fatua*, UPL), ripgut (*Bromus diandrus*, UPL), crystalline iceplant (*Mesembryanthemum crystallinum*, UPL/FAC), Bermuda grass (*Cynodon dactylon*, FAC/FACU), bristly ox-tongue (*Picris echioides*, FAC), and sow thistle (*Sonchus oleraceus*, NI). Because of the large number of plants in each of the ten plots examined along a line transect depicted on Exhibit 3a, the Prevalence Index was used to determine whether a predominance of wetland indicator species were present. Because the saltgrass is functioning as a phreatophyte it was not included in the evaluation (though it was recorded on the data sheets). Exclusion of the saltgrass from the calculation of the Prevalence Index is consistent with guidance provided by the Corps in the Arid West Supplement when phreatophytes are on a site. Specifically, the Arid West Supplement states:

> *These areas may have a high frequency of phreatophytic species that, when mature are able to exploit groundwater that is too deep to support wetlands. In such situations, there may be a hydrophytic overstory and a non-hydrophytic understory. If the soils are Entisols lacking hydric soil features and/or wetland hydrology is problematic, more emphasis should be placed on the understory, which may by more indicative of current wetland or non-wetland conditions.* Arid West Version 2.0, pp. 90-91)

Based on this guidance, the saltgrass is considered analogous to the riparian canopy species (e.g., willow or cottonwoods) and the weedy annual species are analogous to an understory that is more indicative of non-wetland conditions.

Based on this remaining weedy annual vegetation, the Prevalence Index scores ranged from 3.0 (one instance only) to 3.93 using Reed 1988 and from 3.07 to 3.46 using the 1996 List. Cumulative scores, for the 10 data points combined were 3.22 using Reed 1988 and 3.27 using the 1996 List. As such, the strip of vegetation along the western edge of the site is in the "drier" range between 2.5 and 3.5 and combined with the lack of hydric soils and the lack of wetland hydrology, is determined to be upland with the saltgrass functioning as a phreatophyte. Strict adherence to the Arid West Version 2.0, which classifies any vegetation community (in the absence of wetland hydrology and hydric soils) with a Prevalence Index higher than 3.0 as upland, the vegetation community would be considered "upland."

Based on site photographs taken prior to the February disturbance and photographs of the areas of re-growth, two other patches of plants with an indicator status of FAC or wetter occurred on

[22] In cases where two indicator statuses are noted, the first listed is from Reed, 1988 and the second is from the 1996 List).

the site in the areas depicted on Exhibit 3. The larger area was dominated by common pickleweed (*Salicornia virginica*, OBL) that is functioning as a phreatophyte due to groundwater at depths ranging from about 39-50 inches. As previously discussed, pickleweed is often found outside of wetlands in coastal areas as depicted on Exhibit 4, Photographs 4-6. It is likely that the pickleweed is either functioning as a phreatophyte, like the saltgrass, or is obtaining sufficient moisture from the heavier clay-rich soils that occur beneath the compacted fill. Neither the saltgrass nor common pickleweed are functioning as hydropytes (wetland plants) within these patches. The remaining plants, including alkali mallow (reported Orange County Register on March 26, 2008), five-hook bassia, and small flowered ice plant are FAC or UPL species and in this context of the highly compacted fill, are not functioning as hydrophytes (see alkali mallow in Exhibit 4, Photograph 9 growing in crack in asphalt at northwest corner of site indicating that this species is a poor indicator of wetlands as it has wide ecological tolerances). The smaller area currently has not revegetated and based on the pre-disturbance photograph was similar to the larger area, with the same conclusion that the plants were not functioning as hydrophytes based on the absence of wetland hydrology [see Appendix B].

Vegetation data was collected at three points within the larger area, one point at the northern end, one in the middle of the polygon, and one near the south end. The Prevalence Index values using Reed 1988 were 3.42, 2.94, and 2.67 with a cumulative value of 3.07. Because the value is between 2.5 and 3.5 (though technically "upland" as it is greater than 3.0), the vegetation is not considered sufficiently reliable for making a wetland determination. However, given the lack of wetland hydrology and hydric soils, this area is also determined to be upland, as is the smaller area by extrapolation.

2. Soils

As noted, soils across the entire 1.15-acre parking area consist of fill that varies from 14 to 20 inches in thickness [Exhibit 4, Photograph 10], overlaying native hydric soils or beach sand.

The soils along the western boundary, which is the limited portion of the site that is mapped as "beach," includes a surface layer of fill that consists of clayey soils inter-bedded with sands. The clayey soils consist of upland soils as well as dredge spoils that clearly formed in a wet environment as they exhibit a matrix color of 2.5Y 3/2 with prominent relictual redox concentrations. The sandy areas that are mixed with the clays were not colored. The depth of this fill varies between 18 and 20 inches and overlays sandy soils. At about 40 inches, the soils are very dark soils with a matrix of "Gley 2.5 10Y," consistent with the aquic moisture regime due to the shallow groundwater (39 to 41 inches) [Exhibit 4, Photograph 11].
Soils throughout the remaining portions of the site consist of 14 to 20 inches of fill composed of a mixture of sands, silts and clays inter-bedded with gravel, broken concrete, asphalt and other

debris. Central portions of the site were very compacted, likely due to more RV traffic and parking. The fill in the central area also exhibited much more broken concrete and gravel, making excavation of soil pits, even with a pick, impossible as indicated by the locations where "refusal" was noted on Exhibit 3b.

Below the fill, the native soils appear to have formed in a wet environment, as evidenced by matrix colors of 2.5Y 3/3 and 2.5Y 3/2 with prominent redox concentrations typically 7.5YR 4/4. As noted in the methods section above, the tidal flats soil type is considered hydric by the Soil Survey because this soil type is frequently flooded and/or frequently ponded for long duration or very long duration during the growing season. However, these conditions are no longer present. First, as noted in the discussion of historic aerials/site history, the site was part of the wetland complex associated with the Santa Ana River mouth that received both tidal influence and freshwater discharge from inland areas. Both the historic tidal and freshwater hydrology sources have been completely eliminated from the site and direct precipitation is only potential source of hydrology that could influence hydic soil formation. There is no evidence of hydric soil formation in the fill layer anywhere on the site. The only evidence of current hydric soil formation is at the water table boundary and below, starting at depths that range from 39 to 50 inches, which is well below the fill layer and upper 12 inches of native relictual hydric soils [see photograph 9].[23]

As noted in the methods section, soils in the adjacent wetland area immediately south of the 1.15-acre site were sampled because unlike the 1.15 acre area, these soils are saturated for weeks or months during most years. Exhibit 4, Photographs 1 and 2 depict ponding and the fennel-leaved pondweed (*Potamogeton pectinatus*, OBL) is a true hydrophyte that, while rooted in the substrate, is not emergent (i.e., it is entirely submersed). The fill soils in this area exhibited reducing conditions (positive test for reduced iron using alpha, alpha dipyridyl – see Photograph 12), a depleted matrix as seen in photograph 13, which also shows redox formation.

By way of contrast, the fill material within the 1.15-acre RV parking area lacks any indication of saturation within the upper 12 inches sufficient to create even the weakest indicators of hydric soil formation. It is important to note that it is possible to have signs of hydric soil formation without having soils that are considered hydric. For example, soils with faint redox in very low concentrations (e.g., less than two percent) would indicative of occasional anaerobic/reducing conditions, but would not be sufficient to make a determination that the soils are hydric. On the

[23] The 39- to 50-inch range represents the range using the highest reading for each of the seven points where groundwater was monitored. Each location show some variation, which may in part be due to tidal influence. For example, level of free water ranged from 39 to 43 inches at data station 15 while station 18 ranged from 41 to 48 inches.

majority of the 1.15-acre site, the matrix of the (average) 17 inches of fill exhibits a color of 2.5Y 3/2 or 10YR 3/3 with no redox.

The noted exception, as described above, it along the western boundary where the "beach" was covered with soils that formed in a wet environment. It is clear that these soils did not form in this environment for two reasons. First, fill, which averages about 18 inches deep along the western boundary, has a high clay content where the soil survey shows "beach [see Exhibit 3c]. Below the fill, sand is encountered confirming the soil map. Second, the strong hydric characteristics of the fill as shown on Exhibit 4, Photograph 11, could not have formed in place as there is insufficiently hydrology to result in any hydric soil characteristics, let alone the very prominent redox observed in this fill.

In summary, processes associated with formation of hydric soils, consistent with the presence of wetlands as described in the 1987 Manual or the Arid West Supplement are not present anywhere within the 1.15-acre parking area.

3. Hydrology

As described above, historic surface hydrology, consisting of both tidal influence and freshwater discharges, has been eliminated from the site during construction during the late 1950s, extending into the late 1960s, terminating in 1970 or 1971. Currently, the only hydrological source for the site is rainfall that falls directly on the site and limited runoff from the adjacent trailer park that collects in the northeast corner. Localized ponding occurs following rainfall events; however, due to the highly compacted condition of the soils, this localized ponding is limited to the surface and no indicators for the formation of hydric soils were detected (e.g., F6 – Redox Dark Surface). Therefore, it does not appear that surface ponding is sufficient to create anaerobic conditions within the upper 12 inches of the soil profile and the site does not exhibit wetland hydrology. As noted throughout this report, Appendix B is a Technical Memorandum that addresses the lack of wetland hydrology through analysis of ground-level photographs, along with the results of direct observations to detect soil saturation in the upper 12 inches during periods of ponding, testing with alpha alpha dipyridyl during periods of ponding and associated saturation of the upper 2-3 inches, as well as a water budget.

Groundwater along the western boundary of the site was detected at approximately 39 to 48 inches. In the center of the site, groundwater varied from about 44 to 48 inches. Along the eastern site boundary, groundwater was detected consistently at about 50 inches.

IV. DISCUSSION

As previously discussed, the 1.15-acre site presents a number of challenges that require careful analysis, that avoids using a "cookbook" approach to delineation and instead considers all relevant information. Key to interpreting this information is the definition of wetlands, which include the concept of saturation or inundation sufficient to cause anaerobic conditions, which in turn result in the formation of hydric soils or which promote the growth of vegetation that is adapted to anaerobic conditions. Examples of such definitions include:

> *Wetlands shall be defined as land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes...for purposes of this section, the upland limit of a wetland shall be defined as*
>
> > *(A) the boundary between land with predominantly hydrophytic cover and land with predominatly mesophytic or xerophytic cover;*
> > *(B) the boundary between soil that is predominately hydric and soil that is predominately nonhydric...*(Section 13577(b)(1) of the Coastal Commission Regulations).
>
> *...macrophytic plant life growing in water, soil or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content.* [24]
>
> *Plants that live in conditions of excess wetness. For purposes of this manual, hydrophytes are defined as macrophytic plant life growing in water or on submerged substrates, or in soil or on a substrate that is at least periodically anaerobic (deficient in oxygen) as a result of excessive water content.* [25]

It is also important to note the distinction between true "hydrophytes," that is plants growing in anoxic conditions and "wetland indicator species," many of which actually function as hydrophytes less than 50-percent of the time (in many cases as little as 34-percent of occurrences). When all of the relevant information is considered, it is clear that the 1.15-acre RV Parking area does not meet the definition of a wetland under the Coastal Act as summarized in the following points:

---

[24] Federal Interagency Committee for Wetland Delineation. 1989. Federal Manual for Identifying and Delineating Jurisdictional Wetlands. U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, and U.S.D.A. Soil Conservation Service, Washington, D.C. Cooperative technical publication.

[25] Government Printing Office. 1991. Federal Register, "1989 Federal Manual for Identifying Jurisdictional Wetlands; Proposed Revisions." August 14, 1991, Vol. 56, No. 157, pp 40446-40480.

1. The site was legally filled prior to the Coastal Act, between 1958 and 1971, with approximately 14 to 20 inches (17-inch average) of fill spread across the site during construction of the adjacent mobile home park and other facilities.
2. Even prior to filling and continuing until construction of the mobile home park, site hydrology was substantially modified such that the only source of hydrology since the 1960s has been direct rainfall and limited runoff from the adjacent mobile home park.
3. The site has been maintained for use and actually used for RV parking/storage since the early 1970s. More specifically, the City permitted this site for use as a parking area in 1966, with the condition that the site be sprayed with oil to control dust. This practice was discontinued and gravel was substituted as a dust-control measure. Importantly, the decades of such use has resulted in highly compacted soil, which was the condition of the site at the time of the February 2008 maintenance activities.
4. Groundwater varies from a minimum of about 39 inches along the western boundary to 50 inches or more along the eastern boundary, meaning that groundwater is not a source of "wetland" hydrology, though importantly it is a source of water for one dominant wetland indicator species, (salt grass).
5. Pickleweed, which is designated as an OBL, can and does grow in non-wetland areas (as depicted in Photographs 4 – 6 and discussed in detail in Appendix C) and is not a reliable indicator of wetland conditions in such disturbed settings. The most likely sources of water for the pickleweed is the groundwater or potentially moist clay soils beneath the fill.
6. The remaining vegetation consists of UPL and FAC species with a Prevalence Index of 3.25 for the strip along the westerly boundary and 3.07 for the area in the central portion of the site. As discussed, a vegetation community with a Prevalence Index between 2.5 and 3.5 is not a reliable indicator of wetland conditions in the absence of other positive indicators for either wetland hydrology or hydric soils. The Prevalence Index scores that are greater than 3.0, combined with the lack of wetland hydrology and hydric soils are clear indicators of upland conditions.
7. Other than periods of brief surface ponding immediately following storm-events due to the highly compacted soil, there are no indictors for wetland hydrology. Furthermore, even during periods of ponding, soils do not exhibit saturation below the upper two inches and the very shallow surface saturation disappears within a few hours upon dissipation of ponding. Reducing conditions do not develop within the upper two inches during these brief periods of saturation as determined by testing with alpha alpha-dipyridyl.
8. Finally, there is no evidence of active hydric soil formation in the upper two or three inches (where periods of saturation were observed), let alone the upper 12 inches of fill layer that has been the existing condition during the last 40 to 50 years. This observation

is particularly noteworthy given that in the wetland area immediately adjacent to the southern boundary of the 1.15 acre area, the same fill soils, which are saturated for periods during most years, exhibits clear signs of hydric soil formation, including the presence of reducing conditions, providing a clear and indisputable contrast between upland conditions on the Cabrillo 1.15-acre RV Parking Area and nearby wetland areas.

Given these considerations, the 1.15-acre parking area is not a wetland under the Coastal Act as it clearly lacks surface hydrology, hydrology based on high groundwater (i.e., in the upper 12 inches), and hydric soils. Specifically, wetland hydrology due to surface water is lacking due to the highly compacted condition of the soil that prevents infiltration and saturation in most years within the upper 12 inches. Finally, the presence saltgrass and pickleweed is due to groundwater at depths of 39 to 50 inches. The remaining vegetation consists of UPL and FAC species that fall in the upland category (i.e., > 3.0 at 3.25 and 3.07 respectively) and in the absence of hydric soils and wetland hydrology is not considered dispositive for the presence of wetland conditions.

If you have any questions about this letter report, please contact Tony Bomkamp at (949) 837-0404 ext. 41.

Sincerely,

GLENN LUKOS ASSOCIATES, INC.

Tony Bomkamp

Tony Bomkamp
Senior Wetland Specialist

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SUBJECT PROPERTY
Approximate Location of Proposed Boring/CPT
1 inch equals 200 feet

EXHIBIT 2

MEMORANDUM

GLENN LUKOS ASSOCIATES
Regulatory Services

PROJECT NUMBER: 08380002CABR

TO: Andrew Willis
Cc: Tony Bomkamp

FROM: Jeff Ahrens

DATE: March 10, 2009

SUBJECT: Review of savannah sparrow photos taken at Cabrillo RV Parking Area, Huntington Beach

---

I am a wildlife biologist with Glenn Lukos Associates (GLA). Tony Bomkamp asked me to review the savannah sparrow (*Passerculus sandwichensis*) photographs you obtained at the Cabrillo RV Parking Area on December 18, 2008 to determine whether the birds depicted in the photographs are Belding's savannah sparrow (*P.s. Beldingi*) or a migrant savannah sparrow (*P.s. nevadensis*). I have conducted wildlife surveys for GLA for approximately 10 years throughout southern California[1] including focused bird surveys for the southwestern willow flycatcher, least Bell's vireo, California gnatcatcher, burrowing owl and other species (I hold a Section 10(a)(1)(A) Permit for the southwestern willow flycatcher and California gnatcatcher). I recently conducted extensive monitoring of a breeding population of Belding's savannah sparrow at a nearby Project site (southwest of the intersection of Newland Street and Hamilton Street extended), and have opportunistically observed this sparrow at Bolsa Chica and environs on numerous occasions. I am fully knowledgeable regarding the diagnostic characters that distinguish the varieties of savannah sparrows and therefore believe I am qualified to offer my opinion on the taxonomic status of the bird depicted in your photographs.

The bird depicted in the photographs labeled sasp 12.18.08a.JPG to sasp 12.18.08e.JPG is clearly a savannah sparrow. This is not in dispute. I understand from the email that you transmitted to Tony Bomkamp on February 19, 2009, that Vic Leipzig reviewed the photographs and determined the sparrow was of the Belding's variety. I also understand that Mr. Leipzig has years of experience monitoring the wetlands in Huntington Beach and has taught birding classes through the Emeritus programs of Saddleback and Irvine

[1] Prior to joining GLA, I worked for USFWS and National Park Service performing a variety of avian monitoring and survey projects in California, Oregon and Alaska. I have a Bachelor's Degree in Wildlife with a Minor in Fisheries from California State University, Humboldt and a Master's Degree in Environmental Studies from California State University, Fullerton. For my Master's thesis, I studied the effects of traffic noise on scrub bird diversity and richness in fragmented areas of coastal sage scrub within southern California.

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EXHIBIT 3

Valley Colleges. I do not doubt that Mr. Leipzig is a knowledgeable birder and familiar identifying Belding's savannah sparrows.

However, I would respectively disagree with Mr. Leipzig ability to make a positive Belding's identification based only on the above-mentioned photographs. In my opinion your photographs do not provide the necessary level of detail or clarity required to make this determination with even a high level of certainty. A positive determination of Belding's in my opinion should be based on the appearance of multiple field identification marks.

The best field mark identifiable in your photographs can be seen on photograph 12.18.08e.JPG (Exhibit 1, Photograph 1) in which the bird's breast is mostly visible. In my opinion, the breast does not appear to be as heavily streaked or dark in color when compared to that of a typical Belding's. In addition, the streaking does not appear to approach the belly as is typical in Belding's. If you look at my photographs of a Belding's taken at Bolsa Chica (Exhibit 1, Photographs 3 and 4), you can clearly see the heavy streaking and dark color on the breast in addition to the streaking that approaches the belly. However, because the extent of streaking can vary to some degree among individuals, other diagnostic features should be also be used.

Unfortunately, additional diagnostic features including, primarily the color of the median crown stripe and to a lesser extent the length of the bill and color of the legs are not sufficiently clear in your photographs and therefore making an identification with a high level of certainty is not possible. For example, in photograph 12.18.08c.JPG (Exhibit 1, Photograph 2), the bird's back is to the camera and in my opinion you can discern a bit of white in the median crown stripe when you zoom in on the individual in the photograph. Belding's median crown stripes are predominantly indistinct when compared to adjacent lateral crown stripes. The median crown stripe in migrants common to this area in fall and winter including migrants is typically white or a light color and therefore stands out from the lateral crown stripes as depicted with a migrant savannah sparrow I photographed in Chino (Exhibit 1, Photograph 5 & 6). However, because the median crown stripe in your photograph is not entirely visible, one cannot positively make an identification that has a high level of confidence based on this feature.

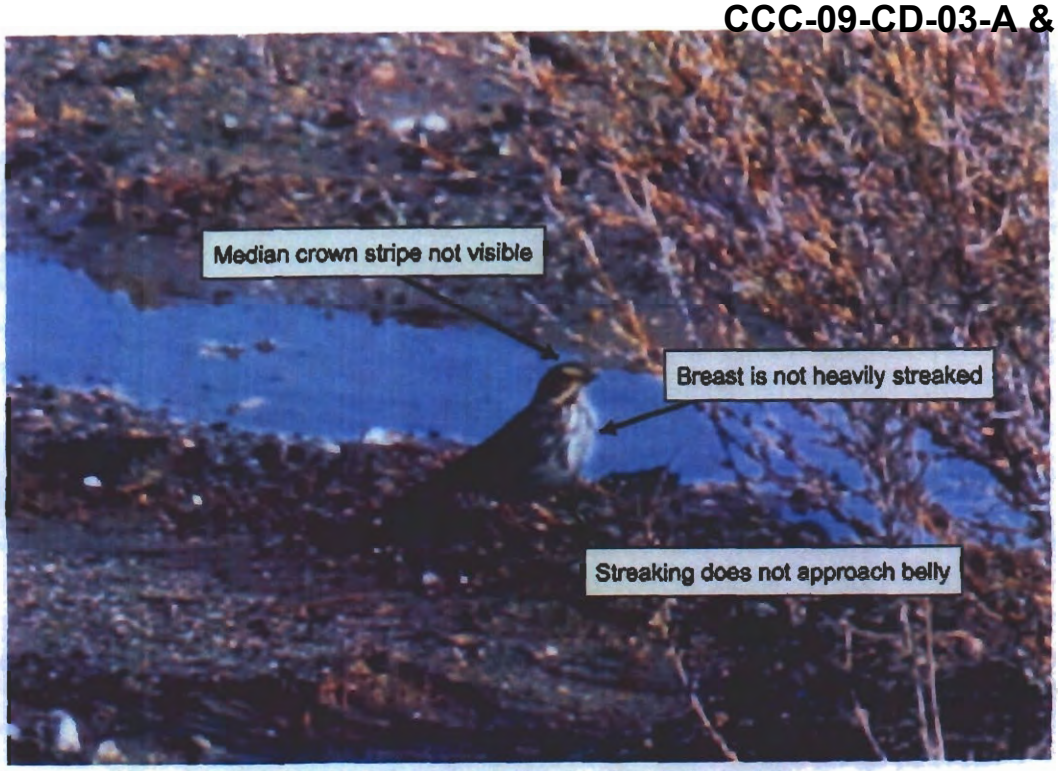
The length of the bill in my opinion (Exhibit 1, Photograph 1) appears shorter and less slender then Belding's (Exhibit 1, Photograph 4). In addition, the color of the legs (Exhibit 1, Photoraph 1) appear a brighter pink more typical of migrants (Exhibit 1, Photograph 5 & 6), than Belding's. Nevertheless, because your photos do not clearly depict the diagnostic features including the median crown stripe, streaking on the breast, bill shape, bill length, leg color, etc in detail, the bird in question cannot positively be identified beyond savannah sparrow.

The time of year in which the photographs were taken (December 18) are also the period when migrants are very common in coastal Southern California (Hamilton and Willick 1996). In fact, I have observed migrants immediately adjacent to the site on several visits this year. In addition, the area in which the sparrow was photographed would not be typically associated or regarded as suitable nesting or foraging habitat for Belding's, as they are generally restricted to larger areas of pickleweed-dominated coastal salt marsh. The site has been heavily disturbed by RV parking for decades and has been predominantly unvegetated for decades. The site does not support coastal salt marsh habitat, and the very small patches of pickleweed that occur on the site (and has occurred on the site prior to February 2008) does not constitute suitable habitat for Belding's.

Based on the following characteristics, I believe that it is more likely that the individual that you photographed is a migrant:

- Streaking on breast is not heavy and does not appear to extend to the belly (this is by far the best diagnostic character available in your photographs);
- The median crown strip appears light (distinct), consistent with a migrant (however, as noted this character is not very clear in your photograph);
- The bill size and shape is more consistent with a migrant (though not definitive in your photograph);
- The leg color is more consistent with a migrant (though not definitive in your photograph).
- The habitat where the bird was photographed is not coastal salt marsh. Migrants have been observed in very close proximity to where the photograph was taken.

As I have noted, I do not believe that the photographs have adequately captured the diagnostic features that a determination that the pictured individual is a Belding's savannah sparrow can be made with a high level of confidence. What I can say with a high level of confidence is that it is **not possible** to make a determination that the individual pictured is a Belding's savannah sparrow. However, if asked to opine on the identity of the sparrow in your photographs, I would select the migrant as the most likely.



Photograph 1: Lateral view of a savannah sparrow photographed at the Cabrillo RV Parking Area. Note that the striations on the breast do not approach the belly and do not appear heavily streaked.

Photograph 2: Posterior view of a savannah sparrow photographed at the Cabrillo RV Parking Area. Note that some white is discernible from the median crown stripe, however, the clarity is not sharp enough to make a positive identification.

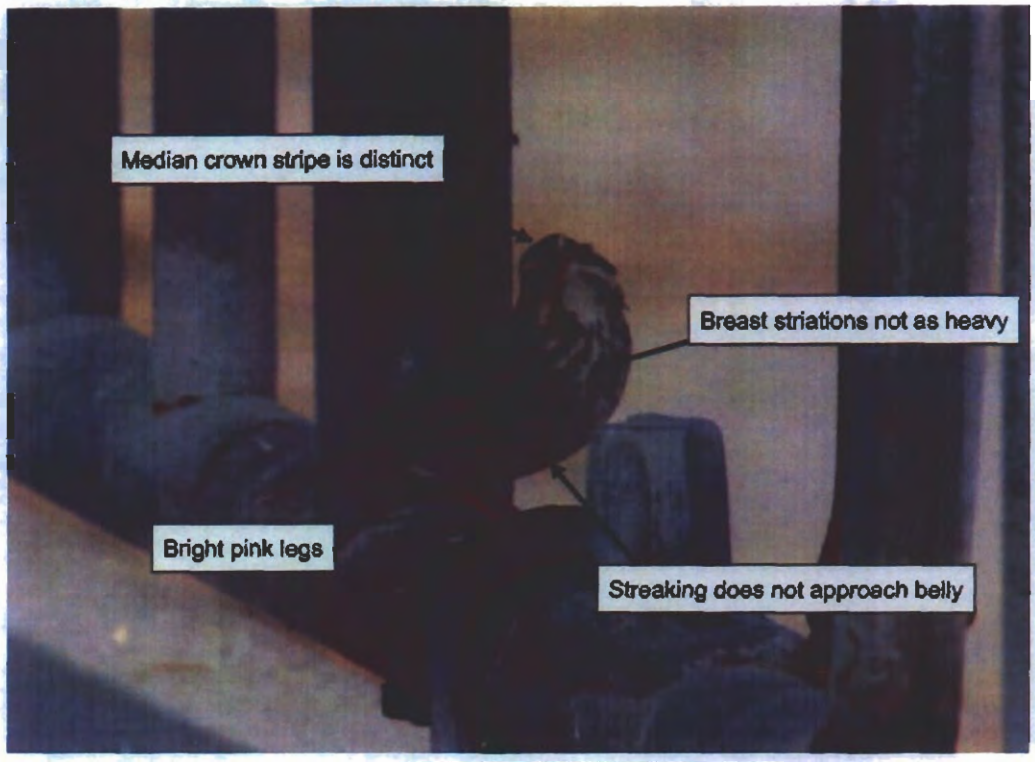
GLENN LUKOS ASSOCIATES

Exhibit 1

CABRILLO RV PARKING AREA

Comparison Photos

Photograph 5: Photograph of migrant savannah sparrow taken in Chino. Note the white stripe within the median crown stripe and pinkish colored legs. Also note that the streaking in breast is not heavy and does not approach the belly.



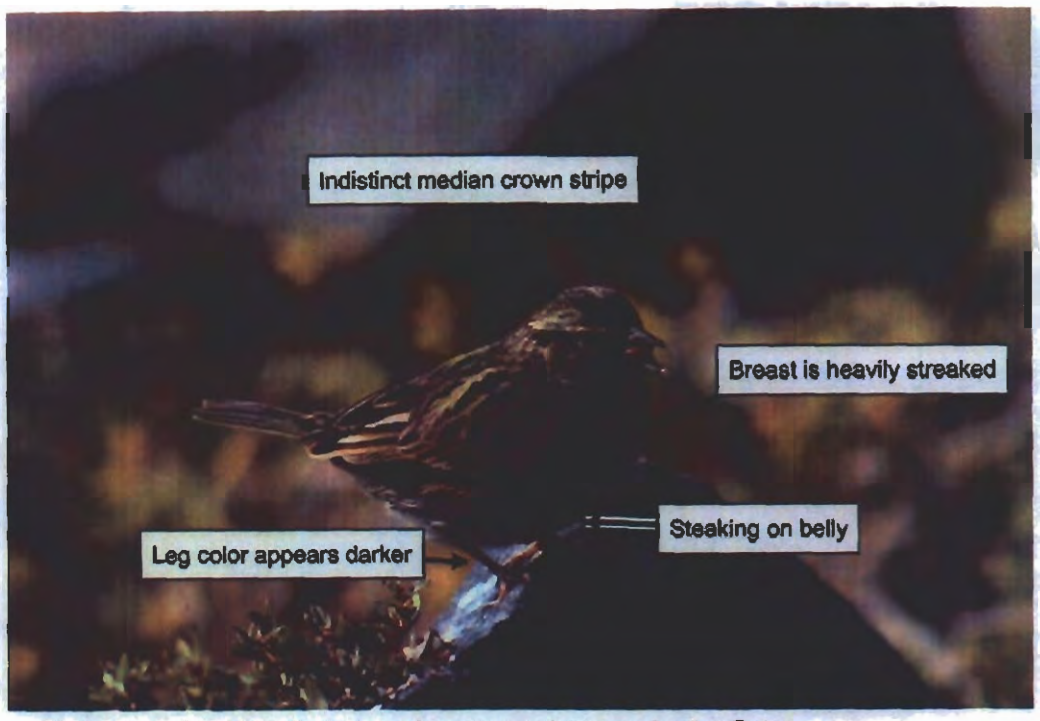
Photograph 6: Lateral view of a second migrant savannah sparrow taken in Chino. Note the white median crown stripe, pinkish colored legs and, streaking on the breast does not approach the belly.

GLENN LUKOS ASSOCIATES

Exhibit 1

CABRILLO RV PARKING AREA

Comparison Photos



Photograph 3: Belding's savannah sparrow photographed at Bolsa Chica. Note the indistinct median crown stripe. Also note that the breast is heavily streaked and the streaking approaches the belly.

Photograph 4: A second view of the same Belding's. Note that the median crown stripe is not white, the bill is extended, and the streaking in the breast is heavy and approaches the belly.

GLENN LUKOS ASSOCIATES

Exhibit 1

CABRILLO RV PARKING AREA

Comparison Photos

GLENN LUKOS ASSOCIATES
Regulatory Services

PROJECT NUMBER: 088380002CABR

TO: Dr. Jonna Engel

FROM: Tony Bomkamp

DATE: March 16, 2009

SUBJECT: Additional Vegetation Data for Cabrillo

During a site visit on March 16, 2009, I noted that the vegetation along the fence line immediately adjacent to and parallel with Pacific Coast Highway (PCH) exhibits a much higher upland component than last year. The attached figure shows the points where data was collected. Table 1 below provides a summary of the vegetation data using both the 50/20 rule and Prevalence Index based on the 1988 and 1996 Plant Lists. In this case, I have included Saltgrass and Pickleweed in the data; however, I still believe these plants should be excluded as they are functioning as phreatophytes. Either way, the Prevalence Index data shows the vegetation to be strongly upland. Excluding the Saltgrass and Pickleweed would result in PI values of 4.0/3.88 for data point 09-6 and 3.0/3.14 for data point 09-9 using the 1988 and 1996 lists respectively.

Vegetation Data Summary: March 16, 2009

	Dominance Test (50/20 Rule)		Prevalence Index	
Data Point	1988	1996	1988	1996
09-1	0 percent	0 percent	4.25	3.90
09-2	50 percent	50 percent	4.05	3.55
09-3	0 percent	0 percent	4.74	3.84
09-4	0 percent	0 percent	4.75	4.35
09-5	33 percent	33 percent	3.55	3.85
09-6	100 percent	100 percent	2.70	2.65
09-7	50 percent	0 percent	3.63	3.95
09-8	67 percent	33 percent	3.40	3.80
09-9	100 percent	75 percent	2.53	2.70
09-10	33 percent	33 percent	4.11	3.67
Total	3/10 meet test	2/10 meet test	3.83 (upland)	3.65 (upland)

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EXHIBIT 4

09-10
09-9
09-8
09-7
09-6
09-5
09-4
09-3
09-2
09-1

MEMORANDUM

GLENN LUKOS ASSOCIATES

Regulatory Services

PROJECT NUMBER: 08380002CABR

TO: Dr. Jonna Engle
cc: Dr. John Dixon
Andrew Willis

FROM: Tony Bomkamp

DATE: March 23, 2009

SUBJECT: Soil Disturbance at Cabrillo RV Parking Area, Huntington Beach, California

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During our teleconference with Dr. Dixon on Tuesday, March 17, 2009 you indicated that it was your opinion that the soil profile on the site had been significantly disturbed by the unpermitted maintenance activities that occurred in late February 2008. This opinion was in the context of whether the site should be treated as an "Atypical" Situation. The purpose of this memo is not to debate whether or not the site should be treated as "Atypical" but rather to provide further clarification regarding the effects on the soil profile by the unpermitted maintenance work.

In order to obtain an independent evaluation, I contacted LCG: Lawson & Associates Geotechnical Consulting (LGC), a highly respected geotechnical firm, and requested that they analyze the soil conditions on the site (Dr. Dixon will remember that Tim Lawson was the geotechnical consultant for Marblehead). LGC has conducted some non-invasive soil compaction tests on the site as well as making general observations. Their report is being submitted to you in a package that also includes this memorandum. The following is a summary of both my observations as well as those by LGC, which were consistent with my observations.

1. The upper 12+ inches of the substrate on the site is obvious fill that has been highly compacted due to years of use as a RV parking and storage facility and ongoing maintenance.
2. The soil profile was not generally affected anywhere on the site other than the trench; except for the upper two or three inches in localized areas which were subject to "scarification" by the equipment.
3. The (approximately) eastern one-third of the site exhibits spoil material from the excavated trench that was left on top of the original surface, which was not significantly disturbed during the subject work other than the top few inches due to scarification by the equipment.
4. The soil compaction observed on the site could not be achieved by the equipment pictured in the photograph that you transmitted to me just before our 3:00 p.m. call on

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EXHIBIT 5

March 17th, and as noted above is consistent with the long history of the site as a parking area. The final table in the LGC Report includes the soil compaction data that, based on nine sample locations spread evenly around the site, range from 90- to 100-percent with an average of 96.4 percent.

The primary purpose of this memorandum is to note that your characterization of the site is not accurate and does not correspond to the site conditions as observed during numerous hours over the last year and as confirmed by LGC. During this period, I excavated numerous soil pits on the site as depicted on Exhibit 3 of the February 28, 2009 JD Report and the findings regarding the soils were consistent across the site: highly compacted soil, which in some areas could not be penetrated below six to eight inches using a pick.

GLA's observation that the soil structure was not modified below the upper two to three inches is important because it provides the basis that water does not and did not, prior to the subject work, percolate/infiltrate due to the high level of compaction that is still present across the entire site (I was not surprised to see the compaction data, which included two points with 100-percent compaction and two other points with 99-percent compaction). Rather rainwater that accumulates on the site evaporates quickly due to the high evaporation rates (as addressed in Appendix B of the GLA Jurisdictional Delineation) and is not available to support the vegetation on-site and also does not exert an influence on the soils that lead to hydric soil formation (as further confirmed though testing of the soil during the 2008/2009 rainy season with alpha alpha dipyridyl). During the site visit with LGC on March 18, it was noted that the soil within the "pickleweed" area in the southwest quadrant of the site (see data points V-11 through V-13 on Exhibit 3 of the JD for location) was already very dry at three inches within 22 days of the last ponding event that occurred between February 16 and 25.

Conclusion

Any assertion by the Coastal Commission that the unpermitted work altered the structure of the soil on the site outside of the trench, localized areas where the upper few inches of the soil surface was scarified, or the area where spoil materials were left on the surface, is false and not based on careful observations during the previous year by GLA and now by LGC.

Furthermore, GLA's observation that the site did not exhibit wetland hydrology prior to the work conducted in late February 2008, due to the high level of compaction, which significantly limited infiltration by rainwater has been confirmed by LGC.

Finally, any suggestion that hydric soil indicators were present in the soil and that such indicators were destroyed by the subject maintenance work is not warranted because the soil profile was not substantially affected by the subject work.

LGC Lawson & Associates Geotechnical Consulting, Inc.

March 20, 2009

Project No. 081124-01

Mr. Steve Kane
C/O Charles, Kane & Dye, LLP
1920 Main Street, Ste. 1070
Irvine, CA 92614

Subject: ***Report of Geotechnical Observation and Testing to Address Comments from California Coastal Commission Regarding the Existing RV Storage Yard Located at 21752 Pacific Coast Highway, Huntington Beach, California***

Introduction

In accordance with your request, Lawson & Associates Geotechnical Consulting, Inc. (LGC) has prepared this letter-report to present the findings of our recent geotechnical observations and testing performed within the subject site. Our geotechnical consulting services have been provided in order to address comments and concerns by the California Coastal Commission (CCC). The main concern raised by the CCC is that the recent excavation of a drainage trench (to alleviate flooding conditions during the recent rainy period) on the site resulted in the entire site being disturbed and subsequently recompacted and that the current condition of highly compacted soil were caused by these actions. This letter-report presents LGC's professional opinions regarding the current condition of the site and what effect the recent excavation and associated maintenance has had on it.

Current Site Conditions

The subject site is roughly rectangular in shape and measures approximately 330 feet by 140 feet. Currently the northwestern portion of the site is being used for RV/boat storage (approximately ¼ of the entire site, as depicted on Figure 2 and in Photograph 4) and the remainder of the site is essentially unused. Some existing vegetation is present along the southwestern boundary of the site, adjacent to Pacific Coast Highway and some sparse patches of vegetation are present within the site (as depicted on Figure 2 and in Photographs 3 and 4).

The site is generally underlain by a blanket (1-foot thick or more) of undocumented fill material, unrelated to recent activity at the site, which is comprised of a base type material predominantly containing gravel and sand (see Photograph 2). A thin layer of clayey silty sediments has also accumulated above the undocumented fill material, probably over many years, and has evidence of rutting caused by the construction equipment during the rainy weather. The undocumented fill layer overlies the native alluvial clayey materials that are typically found in the vicinity of this site. In the area of the trench that was recently excavated, the undocumented fill layer is covered by a thin veneer (with some areas up to approximately 1-foot thick) of spoil material that was generated from the excavation. The spoil material was spread out by the construction equipment used for the excavation and the approximate limits of this spoil material are depicted on Figure 2.

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Conclusions

Field density tests performed on the preexisting undocumented fill layer that blankets the site indicate that it is highly compacted and has been generally undisturbed by the recent excavation. The only notable result of the excavation is the thin layer of spoils spread within the approximate limits shown on Figure 2. Furthermore, with regards to the concerns of the CCC, that the entire site had been processed and recompacted, it is our opinion that the degree of compaction across the whole site would not be achievable by the small construction equipment used to make the recent excavation. In fact, the level of compaction observed across the site would take years to develop and as noted could not be achieved if a substantial portion of the soil profile had been recently disturbed.

We appreciate this opportunity to be of service. If you should have any questions, please do not hesitate to contact this office.

Sincerely,

LAWSON & ASSOCIATES GEOTECHNICAL CONSULTING, INC.

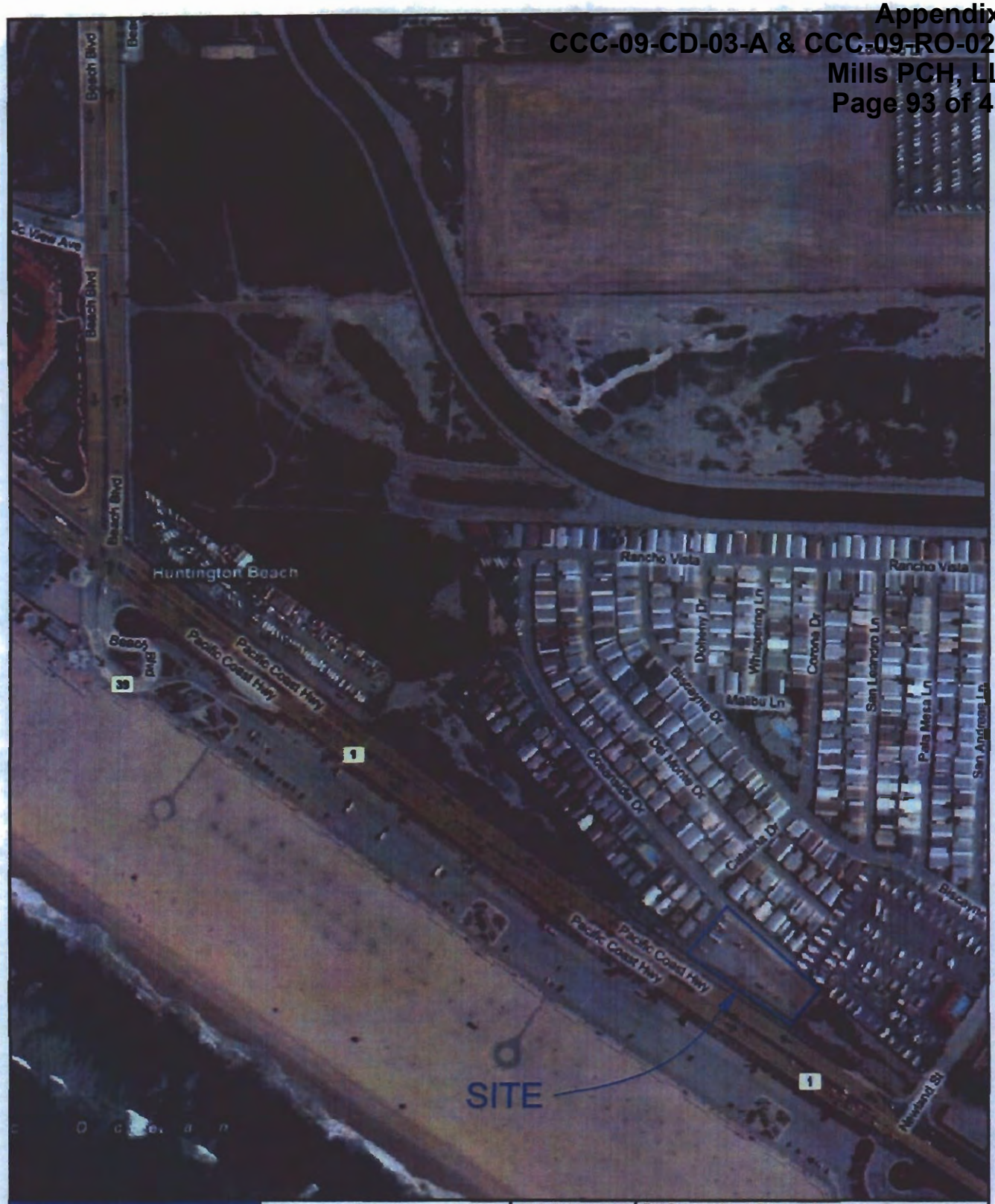
Tim Lawson, CEG 1821, GE 2626
Principal Engineer/Geologist

REGISTERED PROFESSIONAL ENGINEER
TIMOTHY LAWSON
No. 2626
EXP. 06/30/09
GEOTECHNICAL
STATE OF CALIFORNIA

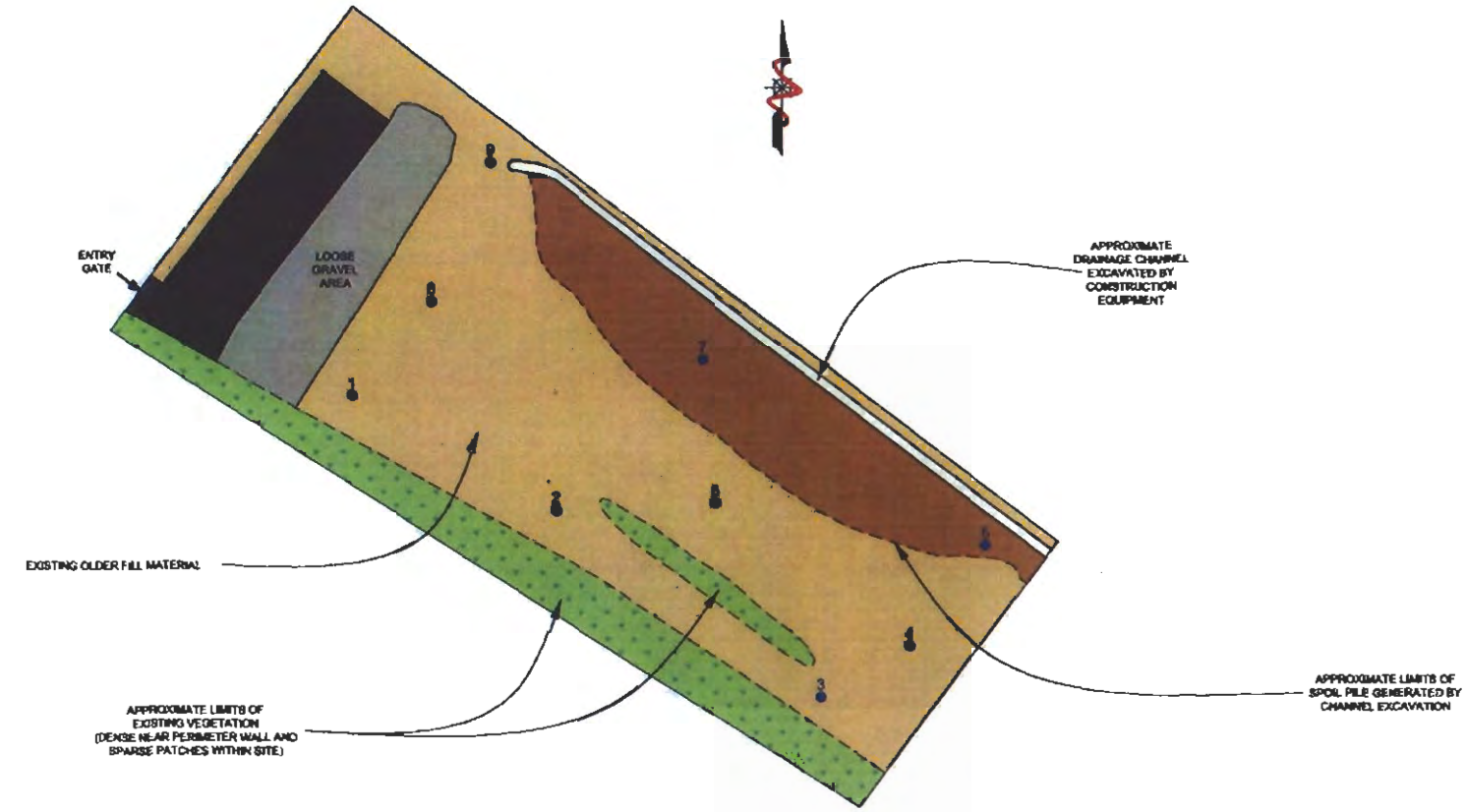
JRT/TJL/sec

Attachments: Figure 1 – Site Location Map
Figure 2 – Site Observations and Field Density Test Location Map
Figure 3A – Photographs
Figure 3B – Photographs
Field Density Tests

Distribution: (2) Addressee (wet-signed copies)



LGC	**FIGURE 1** **Site Location Map**	PROJECT NAME	RV Storage Yard Observations
		PROJECT NO.	081124-01
		ENG. / GEOL.	TJL
		SCALE	Not to Scale
		DATE	March 2009



LGC

FIGURE 2
Site Observations and Field Density Test Location Map

PROJECT NAME	RV Storage Yard Observation
PROJECT NO.	081124-01
ENG. / GEOL.	TJL
SCALE	1"=40' (approximate)
DATE	March 2009

PHOTOGRAPH 1
View of excavated trench and soils

PHOTOGRAPH 2
View of typical existing fill material above native soils

LGC	*FIGURE 3A Photographs*	*PROJECT NAME*	*RV Storage Yard Observations*
		PROJECT NO.	*081124-01*
		ENG. / GEOL.	*TJL*
		SCALE	*Not to Scale*
		DATE	*March 2009*

PHOTOGRAPH 3
View of sparse vegetation and spoils from trench excavation

PHOTOGRAPH 4
View of existing vegetation along southern boundary and asphalt and gravel RV storage areas

LGC	FIGURE 3B Photographs	PROJECT NAME	RV Storage Yard Observations
		PROJECT NO.	081124-01
		ENG. / GEOL.	TJL
		SCALE	Not to Scale
		DATE	March 2009

Field Density Test Results

Test No.	Test Method	Test Date	Test of	Tech	Approximate Test Location	Test Elev. (feet)	Soil Type	Dry Density (pcf) Field	Moisture Content (%) Field	Relative Compaction (%)
1	N	3/19/2009	CF	JRT	See Figure 2	~7	1	117.4	9.3	100
2	N	3/20/2009	CF	JRT	See Figure 2	~7	1	107.7	11.2	92
3	N	3/21/2009	CF	JRT	See Figure 2	~7	1	121.2	8.4	100
4	N	3/22/2009	CF	JRT	See Figure 2	~7	1	110.7	9.1	95
5	N	3/23/2009	CF	JRT	See Figure 2	~7	1	115.8	10.3	99
6	N	3/24/2009	CF	JRT	See Figure 2	~7	1	115.0	9.6	99
7	N	3/25/2009	CF	JRT	See Figure 2	~7	1	103.3	17.7	90
8	N	3/26/2009	CF	JRT	See Figure 2	~7	1	112.7	10.2	97
9	N	3/27/2009	CF	JRT	See Figure 2	~7	1	111.5	9.0	96

MEMORANDUM

GLENN LUKOS ASSOCIATES
Regulatory Services

PROJECT NUMBER: 08380002CABR

TO: Dr. Jonna Engel
cc: Andrew Willis

FROM: Tony Bomkamp

DATE: March 23, 2009

SUBJECT: Cabrillo 1.15 Acre RV Parking Area: Use of Atypical Situation Methodology

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During our phone conversation on March 17, 2009, you suggested that the methodology for "Atypical Situations" as set forth in the Corps 1987 Manual (page 83), was appropriate for the Cabrillo 1.15-acre RV Parking Area given the site disturbance that occurred on or about February 23, 2008. Specifically, the 1987 Manual States in Paragraph 71:

> *Methods described on this section should be used only when a determination has already been made in Section D or E that positive indicators of hydrophytic vegetation, hydric soils, and/or wetland hydrology could not be found due to the effects of recent human activities or natural events*. [Emphasis in original]

Paragraph 71.a. provides additional guidance as follows:

> *Unauthorized discharges requiring enforcement actions my result in the removal or covering of indicators of one or more wetland parameters. Examples include, but are not limited to: (1) alteration or removal of vegetation; (2) placement of dredged or fill material over hydric soils; and or (3) construction of levees, drainage systems, or dams that significantly alter the areas hydrology.*

GLA began the delineation work on the site in March 2008, in response to the Coastal Commission Notice of Violation. As noted in the February 28, 2009 Jurisdictional Wetland Status Report, site visits for purposes of investigating the vegetation, soils and hydrology were conducted during numerous visits between March 2008 and February 26, 2009, two days before completion of the report. Based on the numerous field visits, GLA determined that there was no destruction or elimination of positive indicators for hydrophytic vegetation, hydric soils, and/or wetland hydrology as detailed below for each "parameter."

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EXHIBIT 7

Hydrophytic Vegetation

By June 23, 2008, areas that had been previously vegetated with pickleweed and saltgrass (and a variety of weedy species) as depicted in site photographs taken prior to the February 2008 maintenance work showed sufficient recovery for accurate characterization. The vegetation detected is recorded on the data sheets in the GLA Report. Given the recovery of the vegetation, GLA determined that the vegetation "could be found" and that the effects of the maintenance work had not resulted in conditions that required application of the "Atypical Situation" methodology relative to the vegetation. Specifically, GLA found conditions, sufficiently similar to Photographs 1-9 of Appendix B attached to the February 28, 2009 Jurisdictional Wetland Status Report, which were taken before the subject work, leading to the conclusion that the "Atypical" approach was not appropriate.

Hydric Soils

During detailed investigations of the site, beginning in March 2008, GLA determined that the soil profile, outside the trench had not been measurably disturbed by the unpermitted February 2008 maintenance work. The limited trench spoils in the (approximately) eastern one-third of the site were generally very shallow and did not preclude examination of the soils immediately below the spoils (see Exhibit 3b of the February 28, 2009 Jurisdictional Wetland Status Report which show that data points 1-7 were in the "spoils" area). Also, see LGC Report and GLA March 23, 2009 Memorandum that address the soil conditions on the site prior to the February 2008 unpermitted work. To summarize these reports, GLA determined that no hydric soils were affected by the unpermitted work and application of the "Atypical" approach was not necessary or appropriate.

Wetland Hydrology

Appendix B of the February 28, 2009 GLA Jurisdictional Wetland Status Report addresses in detail the hydrological conditions on the site, which included monitoring visits through February 26, 2009. Based on the detailed hydrological monitoring, including testing of the soil profile with alpha alpha dipyridyl during the 2008/2009 wet season in conjunction with a review of ground-level site photographs correlated with rainfall events, GLA found no evidence of wetland hydrology on the site. As noted for soils and vegetation above, application of the "Atypical" approach was not appropriate relative to wetland hydrology as wetland hydrology demonstrably was not present prior to the unpermitted maintenance.

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DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF CODES AND STANDARDS
1800 Third Street, Room, 260, P.O. Box 1407
Sacramento, CA 95812-1407
From TDD Phones 1 (800) 735-2929
(916) 445-9471 FAX (916) 327-4712
www.hcd.ca.gov

February 18, 2008

Mr. Richard Bessire, President
Bessire and Casehiser, Inc.
430 S. San Dimas Ave.
San Dimas, CA 91773

RE: Regulations Applicable to Cabrillo MHP, Huntington Beach

Dear Mr. Bessire:

This is in response to two questions you posed with respect to the Cabrillo Mobilehome Park in Huntington Beach.

Question 1. Is any HCD permit required to replace a deteriorated fence on the south side of the property with a like-kind wood fence under six feet in height?

Answer 1. No permit is required to replace a fence, in the same place, with another fence under six feet tall. (Title 25, California Code of Regulations [CCR], section 1018 (d)(10)). Department staff was on-site when the fence replacement was discussed and correctly did not require a permit. A permit would have been required if the fence had been reconstructed in a different place and modified any lot lines. (Health & Safety Code [H&SC] section 18610.5. In addition, local government approval might have been required if the fence were on the public street frontage (H&SC section 18300(g)(1).

Question 2. Do HCD regulations require, in a parking area, that either asphalt or compacted crusher be placed in order to prevent dust?

Answer 2. HCD regulations prohibit "excessive dust" (25 CCR section 1120 (c)) and require grading and surfacing appropriate to avoid surface water accumulations (25 CCR sections 1106, 1116). While paving expressly generally is not required (25 CCR section 1106(f)), some type of surfacing may be required if high winds or excessive moisture or dust accumulates. Given the coastal location of the park, it is likely that some surfacing would have been required if HCD had received complaints regarding excessive dust or moisture accumulations

Please let me know if we can provide further assistance.

Sincerely,

Ronald S. Javor
Assistant Deputy Director

EXHIBIT 8

MEMORANDUM

GLENN LUKOS ASSOCIATES

Regulatory Services

PROJECT NUMBER: 08380002CABR

TO: Andrew Willis
Dr. Jonna Engel

FROM: Tony Bomkamp

DATE: October 31, 2008

SUBJECT: Response to October 27, 2008 Letter from Coastal Commission Staff regarding Potential Unpermitted Development at 21752 Pacific Coast Highway, Huntington Beach

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In your October 27, 2008 letter, you indicate that our request for additional time to collect hydrology data and data regarding vegetation that we believe is required to make an accurate wetland determination for the subject site is not necessary. Specifically, you make two assertions relative to our proposal to collect more data before making a final wetland determination. The first assertion addresses hydrological conditions on the site:

> *We note however, that this is not necessary for the current purpose. Staff notes the questionable value of a time extension to collect additional hydrology data during the upcoming wet season, given that the unpermitted grading, trenching, placement of fill, and soil compaction have significantly modified the site topography and consequently, site hydrology. It is staff's opinion that the existing documentation consisting of ground-level photographs showing ponding on the site over consecutive days through several wet seasons adequately addresses the site hydrologic characteristics.*

The second assertion relates to the character of the vegetation on the site:

> *Moreover, we also note the questionable value, in the context of a wetland delineation, of collecting additional data regarding the potential phreatophytic characteristics of salt grass and pickleweed. A determination that the salt grass and pickleweed on site have phreatophytic characteristics would not diminish their function as wetland indicators. While woody plants or trees like willow may be described as phreatophytic, herbaceous annuals as well as perennials, like salt grass*

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> *and pickleweed, even when phreatophytic, will not solely rely on groundwater and thus would still be considered wetland indictors.*

Finally, you state:

> *Since the information that you propose to gather during the time extension isn't necessary or relevant to our ability to make a wetland determination, staff respectfully denies your request for an extension. In order to address the impacts to coastal resources resulting from the subject unpermitted development in a timely manner, we feel it is necessary to move forward expeditiously.*

In order to aid your review of my responses to these assertions, I have further broken down the assertions and reproduced each relevant discussion item in bold italics. Before addressing the specifics of these assertions, I believe it is important to note that in your letter, you have ignored a substantial portion of the information provided to you in my September 11, 2008 Memorandum that indicates that the site exhibits upland conditions rather than wetland conditions. The Memorandum was very clear on this point, while also recognizing that the additional data would provide for a more definitive understanding of the site. Certainly, implicit in our request, is the potential that upon collection of the additional data, the preliminary conclusion that no wetlands occur on the site could be shown to be wrong. Nevertheless, based on the current data collected to date, the evidence is strong that wetlands are not present on the site. In summary, this includes the following points that are addressed more fully in the September 11, 2008 Memorandum:

- The site was legally filled with up to 20 inches of fill in the late 1950s and early 1960s, coupled with a complete elimination of historic sources of wetland hydrology; the only source of wetland hydrology is now from rainfall that falls directly on the site.

- There is no evidence of hydric soil formation on the site during the last 40-50 years due (presumably) to a lack of wetland hydrology; whereas the adjacent site to the south that exhibits wetland hydrology also exhibits strong hydric soil characteristics that formed during the same 40-50 year period.

- The annual vegetation on the site is dominated by facultative species and fall on the "upland" side of the break between wetland and upland indicators (e.g., 3.22 Prevalence Index).

- The hypothesis that the presence of salt grass and pickleweed despite the lack of wetland hydrology is best explained by their phreatophytic character, which

> in this instance is supported by the fact of demonstrable ground water depths ranging from 43 to 50 inches.

In the September 11, 2008 Memorandum, I also noted that: "[b]ecause of the serious nature of the issues that surround this site, I believe that a "cookbookish" approach to the wetland determination must not be applied. Rather, careful analysis that looks at all relevant factors, such as the potential for the saltgrass and pickleweed to be functioning as phreatophytes, is necessary before reaching a conclusion. I believe that this is also the case relative to the potential for wetland hydrology to occur on the site, which is why we have proposed more detailed monitoring during the upcoming wet season."

Responses to Specific Issues Raised in Coastal Commission Letter

Staff notes the questionable value of a time extension to collect additional hydrology data during the upcoming wet season, given that the unpermitted grading, trenching, placement of fill, and soil compaction have significantly modified the site topography and consequently, site hydrology.

This misses the point of the monitoring. We acknowledge that the unpermitted work performed on the site likely has some effect on the hydrological conditions; however, this effect is minimal given site topography and the location of the trench. The trench was excavated approximately two to three feet from the fence that demarcates the eastern property boundary with the intention of draining surface water that collected in the center of the site during rainfall events. However, as site topography is generally concave with the center of the property lower than that the edges, the trench failed to drain the site as intended. Consequently, the only alteration to onsite hydrological regime is to the trench area itself and the area between the trench and the eastern fence, which comprises approximately two-percent of the site [Exhibit 1].

Given that 98-percent of the site was unaffected by trench excavation, the question still remains to be answered as to whether the site exhibits wetland hydrology. Based on all the evidence, including the soils data, it does not appear that the site exhibits saturation in the upper 12 inches in most years and therefore does not exhibit wetland hydrology. As such, the need for additional data during the wet season is intended to answer the question of whether wetland hydrology actually is associated with the site (or at least portions of the site). If it is demonstrated through the monitoring that wetland hydrology is absent, then all that can be concluded is that the unpermitted work occurred in an "upland" area with hydrological conditions consistent with an upland site.

It is staff's opinion that the existing documentation consisting of ground-level photographs showing ponding on the site over consecutive days through several wet seasons adequately addresses the site hydrologic characteristics.

We request that any photographic evidence that the Commission possesses be shared with us so that we can also evaluate such evidence. We are not aware of ground-level photographs that encompass consecutive days during several wet seasons. Such evidence would be helpful in evaluating the site. As already noted, the soils evidence is very compelling and indicates that saturation is not a common condition in the upper 12 inches of the soil profile. During our site visit, Dr. Engel acknowledged the highly compacted character of the soils on the site and the resulting condition that would potentially limit percolation of surface ponding. It is important to note that these soils have exhibited high levels of compaction for decades due to the ongoing parking of RVs on the site (and not just from the recent unpermitted work as you appear to suggest).

Localized surface ponding would not necessarily be an indicator of wetland hydrology, if it does not exhibit potential to affect soil formation (which it demonstrably has not), and/or vegetation (which, again is why we are requesting the additional time to determine this in a definitive manner). Ralph Tiner makes an important observation in *Wetland Indicators: A Guide to Wetland Identification, Delineation, Classification, and Mapping*:[1]

> *Reliance on certain plants and soils of wetland has been and will undoubtedly continue to be the main criteria used to identify and delineate wetlands, since they are more readily observed than the presence of water at a given site, especially during a single visit. Furthermore, the presence of water at a given point of time does little to indicate the presence of wetland, given the temporal nature of water in most wetlands and uplands. Observation of water in the soil on a given day does not give any indication of how long it has been there, how long it will persist, and how frequently such events occur. Plants and soils properties at a site are, in large part, the expressions or manifestations or site wetness and are the indicators of how wet the site really is, provided it has not been drained.* [p. 19]

In addressing identification of wetland/upland boundaries, Tiner makes an important observation relevant to the subject site:

> *Identifying the point on the gradient at which wetland begins and upland (dryland) ends can be straightforward in areas of high relief or* ***extremely***

[1] Tiner, Ralph, W. 1999. *Wetland Indicators: A Guide to Wetland Identification, Delineation, Classification, and Mapping.* Lewis Publishers, New York,

> ***difficult in relatively flat terrain***. *In the former situations, plants may be used as boundary delineators,* ***but in the latter, soil properties tend to be more indicative of prolonged saturation at or near the surface***. [p. 51 – emphasis added]

In summary, given the very clear lack of hydric soil indicators in the upper 12 inches, which strongly suggests the lack of wetland hydrology, I believe that collection of hydrology data, including testing for reduced iron (C4 in Arid West Supplement) during the wet season is the best tool for determining whether wetland hydrology is associated with the site.

Moreover, we also note the questionable value, in the context of a wetland delineation, of collecting additional data regarding the potential phreatophytic characteristics of salt grass and pickleweed. A determination that the salt grass and pickleweed on site have phreatophytic characteristics would not diminish their function as wetland indicators. While woody plants or trees like willow may be described as phreatophytic, herbaceous annuals as well as perennials, like salt grass and pickleweed, even when phreatophytic, will not solely rely on groundwater and thus would still be considered wetland indictors.

The Arid West Supplement addresses the problem of phreatophytes under the heading "Specific Problematic Vegetation Situations" using riparian habitats dominated by species such as willows and cottonwoods as an example. The Arid West Supplement states:

> *These areas may have a high frequency of phreatophytic species that, when mature, are able to exploit groundwater that is* ***too deep to support wetlands***. [p. 82 – emphasis added]

Given groundwater depths on the site, which range from 43 to 50 inches, it is highly likely that the salt grass and pickleweed are tapped into the ground water or moist zone immediately above it and are not functioning as "wetland plants," i.e., plants with roots in the upper 12 inches, where saturated conditions lead to reducing conditions in most years. **A reliance on soil moisture in the upper 12 inches is very different than saturation within the upper 12 inches in most years**.

During the last 20 years I have spent much of my professional career as a botanist, and more recently my academic career, looking at wetland plants in California. During this time, I have regularly observed plants such as saltgrass growing in upland areas, including areas with all "upland" plants. The well-documented phreatophytic character of salt grass has provided an explanation for most (if not all) of these occurrences. In

performing wetland determinations and delineations, it is always critical to connect the observed hydrological conditions with the soil and vegetation observations, and when areas demonstrably lacking wetland hydrology support wetland indicators such as salt grass or other phreatophytes, it is necessary to determine the conditions associated with such occurrences. Excavation of trenches or use of hand augers has regularly shown the presence of perched groundwater. On the Cabrillo RV Parking Area, the presumed absence of wetland hydrology (for reasons described above) requires an alternative explanation as discussed in the September 11, 2008 Memorandum:

> *The pickleweed and saltgrass on the site are functioning in three potential ways. As 1) hydrophytes (we believe that based on evidence collected to date that this is the least likely possibility), 2) phreatophytes, and 3) as upland plants that are sufficiently drought tolerant to survive on this site with limited soil moisture.*

Coastal Staff's assertion that the salt grass and pickleweed may be relying on soil moisture other than in the groundwater zone is entirely unproven and unfounded, and we respectfully request the references that coastal staff used to conclude that "herbaceous annuals as well as perennials, like salt grass and pickleweed, even when phreatophytic, will not solely rely on groundwater and thus would still be considered wetland indictors". Furthermore, as noted above, anything short of saturation/reducing conditions in the upper 12 inches during most years would be insufficient to make a determination that the plants are "hydrophytes." The proposed data collection would provide the opportunity to address this issue in a definitive manner.

Since the information that you propose to gather during the time extension isn't necessary or relevant to our ability to make a wetland determination, staff respectfully denies your request for an extension.

I have to admit that I am baffled by Staff's statement. The September 11, 2008 Memorandum provided substantial information regarding the site history and current conditions, none of which leads one to conclude that wetlands occur on the site (while still leaving the question open). To say that such information "isn't necessary or **relevant**" is surprising as the proposed data would be both relevant and is indeed necessary to make an informed determination regarding the upland/wetland status of the site.

On the second page of the letter, you note the following:

> ***Coastal Act Section 30811 also authorizes the Coastal Commission to order restoration of the site if it finds that development has occurred***

> ***without a coastal development permit from the local government, the development is inconsistent with this division, and the development is causing continuing resource damage. Such is the case here.***

I would like to address two related issues raised in this paragraph: "restoration of the site" and "continuing resource damage."

Restoration of the Site

Ongoing site visits indicate that pickleweed and saltgrass is recovering within the two areas from which it was removed during the work conducted in late February; albeit very slowly in the smaller more easterly area. I would note that since the work was performed during the rainfall events of February 21-25, 2008 there has been very little precipitation, specifically, 0.04 inch on March 30, 0.03 inch on April 3, 0.02 inch on April 23, and 0.08 inch on May 8. As I am sure you remember, during our site visit on July 7, the ground was rock hard and in some areas it was impossible to dig a soil pit even with a pick. Nevertheless, the pickleweed and saltgrass have grown and some of the plants exhibit substantial growth. I believe that this is further confirmation that the plants are tapped into the groundwater, because moisture in the upper 12 inches is clearly not sufficient to support these plants through the past summer with above average temperatures (I just heard a news report that October was the warmest October in many decades!). It is also noteworthy that the pickleweed and saltgrass survived the drought conditions beginning in 2006, including one of the driest years in recorded history in 2007, which accounted for less than three inches of rain. Such persistence during extreme drought conditions is by far the best explanation for the presence of the saltgrass and pickleweed.

Because the site lacks wetland hydrology, it will not be feasible to conduct wetland restoration on this site. It would be possible to re-establish the pickleweed through implementation of deep irrigation in order to encourage the roots of the pickleweed to reach to the water table, which as noted ranges from 43 to 50 inches. Nevertheless, as described in our September 11, 2008 Memorandum as well as above, all of the preliminary data indicates that the pickleweed and saltgrass are functioning as phreatophytes and not as hydrophytes.

Even with restoration of the pickleweed and saltgrass, the site will not exhibit wetland characteristics due to the lack of hydrology. Furthermore the site would not exhibit any measurable ecological functions due to its location between Pacific Coast Highway (which is approximately 12 feet from the western boundary) and adjacent development to the north and east. From an ecological perspective, because of its location, this site would never make a good candidate for restoration, even if suitable hydrology was present.

Continuous Resource Damage

As described in the September 11, 2008 Memorandum, beginning in the 1950s, extending into the late 1960s, the site was legally filled and sources of hydrology were eliminated. Beginning in the early 1970s and continuing to the present, the site has been used for parking of RVs, with the intensity of the using varying during that time. This has resulted in highly compacted soils and very limited vegetative growth. This history, combined with the location discussed above, has resulted in conditions that limit the ecological functions on the site. The site exhibits no potential to support even common species including small mammals, avifauna, or reptiles. Even common ground-nesting insects are generally precluded from using the site due to the extreme compaction. The removal of small areas of pickleweed and saltgrass would not have resulted in the measurable loss of any ecological functions. It is also important to note that the pickleweed that was present on the site exhibited no potential for either breeding or foraging habitat for the state-listed Belding's savannah sparrow. Any suggestion that the site exhibited potential to support this species is unfounded and not supported by the literature that addresses the ecological requirements of this species.

CEASE AND DESIST ORDER NO. CCC-09-CD-03 AND RESTORATION ORDER NO. CCC-09-RO-02

1.0 CEASE AND DESIST ORDER CCC-09-CD-03

Pursuant to its authority under Public Resources Code § 30810, the California Coastal Commission ("Commission") hereby authorizes and orders Mills PCH, LLC[1]; all its successors, assigns, employees, agents, and contractors; and any persons acting in concert with any of the foregoing (hereinafter, "Respondents") to: 1) cease and desist from engaging in any further development on the property identified in Section 5.0, below ("subject property"), unless authorized pursuant to the Coastal Act, including through the terms and conditions of these Orders, 2) to remove the unpermitted development including all fill (whether resulting from direct deposition, side-casting, indirectly from earth movement on-site or sediment discharge from the trench drain, or otherwise); including wetland fill resulting from earth movement on the site, sediment discharge from a trench drain and from construction of the trench drain; and a trench drain, consistent with the requirements of Section 2 as set forth below, 3) take all steps necessary to ensure compliance with the Coastal Act and to return the impacted area of the property its pre-violation condition, including by complying with the requirements of these Orders as described herein.

2.0 RESTORATION ORDER CCC-09-RO-02

Pursuant to its authority under PRC Section 30811, the Commission hereby orders and authorizes the Respondents to restore and undertake mitigation efforts on the subject property as described below. The restoration and mitigation required under this order is necessary to resolve a Coastal Act violation.

2.1. TERMS AND CONDITIONS

Within 30 days of issuance of these Orders, Respondents shall submit for the review and approval of the Executive Director of the Commission a Restoration Plan, including sections covering Restorative Grading, Revegetation, and On-site Mitigation ("Restoration Plan"). The Restoration Plan will outline the restoration of the pre-violation topography of the site and revegetation, with appropriate species native to southern California saltmarshes, of the areas of the subject property where the unpermitted development occurred that were vegetated with plant species that are native to southern California saltmarshes, as those areas are generally identified in the March 26, 2009 memorandum from Jonna D. Engel, Ph.D, Commission staff ecologist. The Restoration Plan shall include the following components and satisfy the following criteria:

[1] Mills PCH, LLC has informed staff that Mills PCH, LLC is now known as Beachfront Village, LLC. All references to Mills PCH, LLC or Respondents are to Beachfront Village, LLC (formerly known as Mills PCH, LLC).

A. General Terms and Conditions

1. The Restoration Plan shall outline the steps and schedule to be taken, in accordance with sections 2.1.B and C, below, to achieve restoration of the pre-violation topography of the site and revegetation, with appropriate species native to southern California saltmarshes, of the areas of the subject property where the unpermitted development occurred that were vegetated with plant species that are native to southern California saltmarshes, as those areas are generally identified in the March 26, 2009 memorandum from Jonna D. Engel, Ph.D, Commission staff ecologist..

2. The Restoration Plan shall be prepared by a qualified restoration ecologist(s) or resource specialist(s) ("Specialist"), and shall include a description of the education, training, and experience of said Specialist. A qualified Specialist for this project shall have experience successfully completing restoration or revegetation (using California native plant species) of habitat native to this area, including wetland habitats. The Restoration Plan shall include a schedule/timeline of restoration activities and identification of the parties who will be conducting the activities. If these procedures require planting to occur at a certain time of year beyond the deadlines set forth herein, the Executive Director may, at the written request of Respondents, extend the deadlines as set forth in Section 11.0 of the Orders in order to achieve optimal growth of the vegetation.

3. The Restoration Plan shall include a detailed description of all equipment to be used. It shall indicate that only hand tools shall be utilized, unless the information contained in the Restoration Plan demonstrates to the satisfaction of the Executive Director that mechanized equipment is needed and will not have a significant adverse impact on resources protected under the Coastal Act. The Restoration Plan shall designate areas for staging of any construction equipment and materials, including receptacles and temporary stockpiles of graded materials, all of which shall be covered on a daily basis. The Restoration Plan shall include identification of the maximum hours of operation for all equipment and a contingency plan that addresses and provides responses to: 1) impacts from equipment use, including disruption of areas where revegetation and/or restorative grading occurs; 2) potential spills of fuel or other hazardous releases that may result from the use of mechanized equipment; and 3) any water quality concerns.

4. The Restoration Plan shall identify the location of the disposal site(s) for the disposal of all materials removed from the site and all waste generated during restoration activities pursuant to the Orders. If a disposal site is located in the Coastal Zone and is not an existing sanitary landfill, a Coastal Development Permit is required. All hazardous waste must be disposed of at a suitable licensed disposal facility.

B. Restorative Grading Portion of the Restoration Plan

1. Respondents shall submit a plan to: (a) remove all unpermitted materials placed at the site, including fill, which, in turn, includes sediment discharge from the trench drain and construction of the trench drain; and (b) fill the trench drain ("Restorative Grading Plan"). The Restorative Grading Plan shall demonstrate that the topography of the subject property will be restored to the condition that existed prior to the unpermitted development. The Restorative Grading Plan shall include sections, drawn to scale with contours that clearly illustrate original (pre-violation), current, and proposed grades, and quantitative breakdown of grading amounts (cut/fill).

2. If the restoration specialist determines that alterations to the original topography, or to any other aspect of the property from its pre-violation state, are necessary to ensure successful revegetation of the site, as described in Section 2.1.C below, then notwithstanding any other provision of these Orders, the Restorative Grading Plan shall include this proposed topography or a description of the aspects that are proposed to be changed and the methods that shall be used to attain the modified outcome. The Restorative Grading Plan shall include a narrative report of the proposed alterations to the original topography, citing any reference sites, case studies, or other data that was used in the analysis and provides reasons for altering the topography from the original contours or changing any other aspect of the pre-violation condition of the property.

3. The Restorative Grading Plan shall provide for any relief of soil compaction in the restoration area necessary to achieve the goals of the Restoration Plan.

4. Other than those areas subject to revegetation activities, the areas of the site and surrounding areas currently undisturbed shall not be disturbed by activities related to this restoration project, unless such activities include removal of non-native, invasive plant species, as defined in Section 2.1.C.4 below, and/or the planting of native plant species within the subject property, or for any mitigation work to be done on the subject property. Prior to initiation of any activities resulting in physical alteration of the subject property, the disturbance boundary shall be physically delineated in the field using temporary measures such as stakes or colored tape.

5. Respondents shall complete implementation of the Restorative Grading Plan within 30 days of approval of the Restoration Plan and implement the work in compliance with the schedule and terms set forth therein.

C. Revegetation Portion of the Restoration Plan

1. Respondents shall submit a Revegetation Plan. The Revegetation Plan shall be prepared by a qualified Specialist, like all other parts of the Restoration Plan, and it shall include detailed descriptions, including graphic representations, narrative reports, and photographic evidence as necessary, of the vegetation on the subject property prior to any unpermitted activities undertaken on the subject property, and the current state of the subject property, as well as a description of the location, type, and implementation steps for the proposed revegetation as forth in these Orders.

2. The Revegetation Plan shall address all areas impacted by the unpermitted development, including all native vegetation characteristic of southern California saltmarshes impacted by the unpermitted development listed in Section 6.0 on the subject property, including the area impacted by the unpermitted trench drain (hereinafter collectively referred to as the "Planting Area").

3. The Revegetation Plan shall identify and describe the physical and biological parameters of the natural habitat type that is the model and that establishes the goals for the restoration including the particular characteristic species. This section shall explicitly lay out the restoration goals and objectives. It shall also include a detailed description of reference site(s) including rationale for selection, location, and species composition. The reference sites shall be located as close as possible to the restoration area, shall be similar in all relevant respects to the habitat model, and shall provide the standard for measuring success of the restoration under the Orders.

4. Based on the natural habitat model and reference site(s), the plan shall identify the species that are to be planted (plant "palette"), and provide a rationale for and describe the size and number of container plants and the rate and method of seed application. The Revegetation Plan shall indicate that plant propagules shall come from local native stock (the plan shall not employ any non-native or invasive plant species: no plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council or as may be identified from time to time by the State of California shall be utilized). If plants, cuttings, or seeds are obtained from a nursery, the nursery must certify that they are of local origin and are not cultivars, and the Revegetation Plan shall provide specifications for preparation of nursery stock (e.g., container size & shape to develop proper root form, hardening techniques, watering regime, etc.). Technical details of planting methods (e.g., spacing, micorrhyzal inoculation, etc.) shall also be included. The Revegetation Plan shall include procedures for any plant salvage and methods of installing salvaged plants. It shall also include a map showing the type, size, and location of all plant materials that will be planted in the Planting

Area, all invasive and non-native plants to be removed from the Planting Area, the topography of the site, all other landscape features and a schedule for installation of plants and removal of invasive and/or non-native plants.

5. The Revegetation Plan shall include a plan for weed eradication, which shall include the following: 1) weeding should be monthly and shall impose a zero tolerance on non-native, invasive species; 2) weeding shall occur at this frequency and care until the native vegetation is sufficiently well-established to resist continued colonization by exotics; and 3) weeding shall be done by hand and must be supervised by a restoration biologist to ensure that the native plants are not disturbed.

6. All plantings in the approved Revegetation Plan shall be installed in accordance with the schedule and requirements of the approved Revegetation Plan and no later than 15 days after the completion of the components of the Restorative Grading Plan. The plants shall be planted using accepted planting procedures required by the Specialist. Such planting procedures may suggest that planting would best occur during a certain time of the year. If so, and if this necessitates a change in the planting schedule, the 15 day deadline to implement the Revegetation Plan may be extended as provided for under the provisions of Section 11.0, herein.

7. The Revegetation Plan shall describe the proposed use of artificial inputs, such as watering or fertilization, including the full range of amounts of the inputs that may be utilized. The minimum amount necessary to support the establishment of the plantings for successful restoration shall be utilized. No permanent irrigation system is allowed on the subject property. Temporary above ground irrigation to provide for the establishment of the plantings is allowed for a maximum of three years or until the restored native vegetation has become established, whichever occurs first. If, after the three-year time limit, the restored native vegetation has not established itself, the Executive Director may allow for the continued use of the temporary irrigation system until such time as the restored native vegetation is established.

8. The Specialist shall specify the methods to be used after restoration to stabilize the soil and make it capable of supporting native vegetation. Such methods shall not include the placement of retaining walls or other permanent structures, grout, geogrid or similar materials. Any soil stabilizers identified for erosion control shall be compatible with native plant recruitment and establishment. The Revegetation Plan shall specify the type and location of erosion control measures that shall be installed on the subject property prior to or concurrent with the initial grading operations and maintained until the impacted areas have been revegetated

to minimize erosion and transport of sediment. Such measures shall be provided at all times of the year for at least three years from the effective date of these orders or until the plantings have been established, whichever occurs first, and then shall be removed or eliminated by Respondents.

9. The Revegetation Plan shall include performance standards to determine the success of the native vegetation restoration. The performance standards shall be based on the restoration objectives and goals and the reference site(s) characteristics, in order to determine the success of the native vegetation restoration. The Performance Standards shall identify that "x" native species appropriate to the habitat should be present, each with at least "y" percent cover or with a density of at least "y" / square meter. The Restoration Plan shall include a monitoring program (detailed below) designed to assess whether the restoration results in wetland vegetation on the subject property with a similar plant density, total cover and species composition as that typical of an undisturbed wetland area in the surrounding area within five years from the initiation of revegetation activities.

10. The Revegetation Plan shall describe the monitoring and maintenance methodology and shall include the following provisions:

    a. The Revegetation Plan shall include maintenance and monitoring methodology, including sampling procedures, sampling frequency, and contingency plans to address potential problems with restoration activities or unsuccessful restoration of the area. Monitoring and maintenance activities shall be conducted in a way that does not impact the sensitive resources on the subject property or on adjacent properties. Any impacts shall be remedied by the Respondents to ensure successful restoration.

    b. Respondents shall submit, on an annual basis for a period of five years from the date of issuance of these orders (no later than December 31st of each year) a written report, for the review and approval of the Executive Director, prepared by a qualified Specialist, evaluating compliance with the approved Revegetation Plan. The annual reports shall include further recommendations and requirements for additional restoration activities, as necessary, in order for the project to meet the objectives of the Revegetation Plan. These reports shall also include photographs taken annually from the same pre-designated locations (annotated to a copy of the site plans) indicating the progress of recovery in the Planting Area.

    c. At the end of the five-year period, Respondents shall submit a final detailed report prepared by a qualified Specialist for the review and approval of the Executive Director. If this report indicates that the restoration project has in part, or in whole, been unsuccessful, based on the approved Restoration Plan, Respondents shall submit a revised or

supplemental plan to compensate for those portions of the original program that were not successful. The Executive Director shall determine if the revised or supplemental restoration plan must be processed as a CDP, a new Restoration Order, or a modification of these Orders. Respondents shall implement the approved plan.

D. Onsite Mitigation Portion of the Restoration Plan

1. Respondents shall submit, for the review and approval of the Executive Director, an Onsite Mitigation Plan for offsetting the continuing temporal loss and loss of fitness that has resulted from the Coastal Act violations that are the subject of these Orders.

2. The plan shall identify a mitigation site on the subject property, separate from and in addition to the areas being revegetated pursuant to the Revegetation Plan required by Section 2.1.C. In the mitigation area, a native wetland plant community will be restored and permanently protected at a ratio of 4:1 to the Planting Area. The Onsite Mitigation Plan shall include an analysis by a qualified Specialist that considers the specific condition of the site including soil, exposure, temperature, moisture, and wind, as well as restoration goals, methods, and monitoring schedule, including the requirements contained in Section 2.1.A – 3.1.C, above.

3. The Onsite Mitigation Plan shall include maintenance and monitoring methodology, including sampling procedures, sampling frequency, and contingency plans to address potential problems with mitigation activities or unsuccessful restoration of the area. Monitoring and maintenance activities shall be conducted in a way that does not impact the sensitive resources on the subject property or on adjacent properties. Any impacts shall be remedied by the Respondents to ensure successful restoration. At a minimum, long-term maintenance requirements shall include periodic site inspections (at an interval designated in the plan) by a qualified Specialist to assess the success of the restoration efforts, identify maintenance concerns, and recommend solutions to those concerns.

4. Annually, for five years from the date of issuance of these orders (no later than December 31st of each year), Respondents shall submit, for the review and approval of the Executive Director, a monitoring report, prepared by a qualified Specialist, that certifies whether the mitigation is in conformance with the approved Onsite Mitigation Plan. The reports shall contain photographic documentation, taken from fixed locations specified in the Onsite Mitigation Plan, of the success of the project. Respondents may incorporate the Onsite Mitigation monitoring report into the monitoring report required in Section 2.1.C.9, above.

5. If the periodic inspections or the monitoring report indicate that the project or a portion thereof is not in conformance with the plan or has failed to meet the goals and/or performance standards specified in the Onsite Mitigation Plan, Respondents shall submit a revised or supplemental Onsite Mitigation Plan for review and approval by the Executive Director. The revised Onsite Mitigation Plan shall be prepared by a qualified Specialist and shall specify measures to remediate those portions of the original Onsite Mitigation Plan that have failed or are not in conformance with the original approved Onsite Mitigation Plan. These measures, and any subsequent measures necessary to carry out the original approved plan, shall be carried out by Respondents in coordination with the Executive Director until the goals of the original approved Onsite Mitigation Plan have been met.

2.2 Upon approval of the Restoration Plan (including the Restorative Grading, Revegetation, and On-site Mitigation Portions) by the Executive Director, Respondents shall fully implement the entire plan pursuant to its terms, including the approved schedule, with all restoration and mitigation work to be completed as early as possible consistent with recommendations by the consulting Specialist. Unless the Restoration Plan provides otherwise, the restoration and mitigation work shall be completed no later than 45 days after the approval of the Restoration Plan. The Executive Director may extend this deadline or modify the approved schedule for good cause pursuant to Section 11.0 of the Orders.

2.3 Within 30 days of the completion of the work described in the Restoration Plan (Section 2.1), Respondents shall submit to the Executive Director of the Commission a report documenting the restoration and mitigation work on the subject property. This report shall include a summary of dates when work was performed and photographs that show implementation of the Restoration Plan(both restoration and mitigation work), as well as photographs of the subject property before and after the grading and plantings required by the Restoration Plan have been completed.

2.4 All plans, reports, photographs and any other materials required by these Orders shall be sent to:

California Coastal Commission	California Coastal Commission
Attn: Andrew Willis	Attn: Pat Veesart
200 Oceangate, 10th Floor	89 S. California St., Ste 200
Long Beach, CA 90802	Ventura, CA 93001
(562) 590-5071	(805) 585-1800
Facsimile (562) 590-5084	Facsimile (805) 641-1732

2.5 All work to be performed under the Orders shall be done in compliance with all applicable laws.

3.0 REVISIONS OF DELIVERABLES

The Executive Director may require revisions to deliverables required under these Orders, and the Respondents shall revise any such deliverables consistent with the Executive Director's specifications, and resubmit them for further review and approval by the Executive Director, within ten days of receipt of a modification request from the Executive Director. The Executive Director may extend the time for submittals upon a written request and a showing of good cause, pursuant to Section 11.0 of the Orders

4.0 PERSONS SUBJECT TO THESE ORDERS

Mills PCH, 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 these Orders, and shall undertake the work required herein.

5.0 IDENTIFICATION OF THE SUBJECT PROPERTY

The property that is the subject of these Orders is described as follows:

1.12 acre fenced portion of Mills PCH, LLC property located at 21622 Pacific Coast Highway, Assessor's Parcel Number 114-150-86 in Huntington Beach, Orange County and 0.92 acre unfenced portion of the same property at the Northeast corner of the Newland Street and Pacific Coast Highway intersection.

6.0 DESCRIPTION OF COASTAL ACT VIOLATION

The Coastal Act violations addressed by these Orders include removal of major vegetation; placement of fill in a wetland; grading a wetland; construction of a trench drain in a wetland; and change in the intensity of use of water resulting from altering the wetland hydrology of the site through soil compaction, grading, placement of fill and construction of a trench drain.

7.0 COMMISSION AUTHORITY TO ACT

The Commission is issuing these Orders pursuant its authority under Sections 30810 and 30811 of the Public Resources Code.

8.0 FINDINGS

These Orders are issued on the basis of the findings adopted by the Commission, as set forth in the document entitled "Findings for Cease and Desist Order No. CCC-09-CD-03 and Restoration Order No. CCC-09-RO-02." The activities authorized and required in these Orders are consistent with the resource protection policies set forth in Chapter 3 of the Coastal Act. The Commission has

authorized the activities required in these Orders as being consistent with the resource protection policies set forth in Chapter 3 of the Coastal Act.

9.0 EFFECTIVE DATE

These Orders shall become effective as of the date of issuance by the Commission and shall remain in effect permanently unless and until rescinded by the Commission.

10.0 COMPLIANCE OBLIGATION

Strict compliance with the terms and conditions of these Orders is required. If the Respondents fails to comply with the requirements of these Orders, including any deadline contained herein, it will constitute a violation of these Orders and may result in the imposition of civil penalties of up to six thousand dollars ($6,000) per day for each day in which compliance failure persists, in addition to any other penalties authorized under Chapter 9 of the Coastal Act, including exemplary damages under Section 30822. Whether or not such violations of these Orders occur, and if they do, whether or not liability is imposed for such violations, the Commission also retains its right to seek penalties under Chapter 9 for the original underlying violation.

11.0 EXTENSIONS OF DEADLINES

If the Executive Director determines that the Respondents have made a showing of good cause, he/she may grant extensions of the deadlines contained herein. Any extension requests must be made in writing to the Executive Director and received by the Commission staff at least 10 days prior to the expiration of the subject deadline.

12.0 SITE ACCESS

Respondents shall provide Commission staff and staff of any agency having jurisdiction over the work being performed under these Orders with access to the subject property at all reasonable times. Nothing in these Orders are 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 and other relevant agency staff may enter and move freely about the following areas: (1) the portions of the subject property on which the violations are located, (2) any areas where work is to be performed pursuant to these Orders or pursuant to any plans adopted pursuant to these Orders, (3) adjacent areas of the property, and (4) any other area where evidence of compliance with these Orders may lie, as necessary or convenient to view the areas where work is being performed pursuant to the requirements of these Orders or evidence of such work is held, for purposes including but not limited to inspecting records, operating logs, and contracts

relating to the subject property and overseeing, inspecting, documenting, and reviewing the progress of Respondents in carrying out the terms of these Orders.

13.0 APPEAL

Pursuant to Public Resources Code Section 30803(b), the Respondents, against whom these Orders are issued, may file a petition with the Superior Court for a stay of this Cease and Desist Order. Under 30803(b), a court may only impose or continue such a stay if it is not against the public interest.

14.0 GOVERNMENT LIABILITY

The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by the Respondents in carrying out activities authorized under these Orders, nor shall the State of California be held as a party to any contract entered into by the Respondents or their agents in carrying out activities pursuant to these Orders.

15.0 GOVERNING LAW

These Orders shall be interpreted, construed, governed and enforced under and pursuant to the laws of the State of California, which apply in all respects.

16.0 NO LIMITATION OF AUTHORITY

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

Issued this 9th day of April, 2009 in Oxnard, California

_____ _____

Peter M. Douglas, Executive Director
California Coastal Commission

Date

CALIFORNIA COASTAL COMMISSION
SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 585-1800

MEMORANDUM

FROM: Jonna D. Engel, Ph.D.
Ecologist

TO: Andrew Willis
Coastal Enforcement Analyst

SUBJECT: Mills PCH, LLC property, 21622 Pacific Coast Highway, Huntington Beach, Orange County; Development on 1.12-acre fenced portion of the property impacted wetlands

DATE: March 26, 2009

Documents Reviewed:

Glenn Lukos Associates. Feb. 28, 2009. Letter report: Jurisdictional Wetland Status of the CabrilloMobile Home RV Parking Area, an approximately 1.15-Acre Site in the City of Huntington Beach, Orange County, California. Prepared for Mr. Steve Kane by Tony Bomkamp of Glenn Lukos Associates.

Bomkamp, T. Feb. 27, 2009. Technical Memorandum: Analysis of Hydrological Conditions at Cabrillo RV Parking Area Including Ground-Level Photographs Provide by Coastal Commission Staff. To: Dr. Jonna Engel and Andrew Willis, California Coastal Commission. Appendix B of Feb. 28, 2009 Letter Report.

Bomkamp, T. Feb. 25, 2009. Technical Memorandum: Monitoring Results for "Offsite" Pickleweed Areas in Support of Jurisdictional Determinatio for Cabrilllo 1.2-Acre RV Parking Area. To: Andrew Willis and Dr. Jonna Engel, California Coastal Commission. Appendix C of Feb. 28, 2009 Letter Report.

Trestles Environmental Corporation. Mar. 21, 2008. Letter report: Cabrillo Wetlands Report of Findings for Recent Activities. Prepared for Orange County Coastkeeper by Trestles Environmental Corporation, Julie Fontaine principal.

Trestles Environmental Corporation. Oct. 2005. Preliminary Jurisdictional Evaluation of Wetlands and Waters of the United States and State of California on the "Cabrillo Wetland" Parcels", City of Huntington Beach, Orange County, California. Prepared for Orange County Coastkeeper by Trestles Environmental Corporation, Julie Fontaine principal.

U.S. Army Corps of Engineers, Engineer Research and Development Center. September 2008. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (ERDC/EL TR-08-28,Version 2.0). Wetlands Regulatory Assistance Program. 135 pgs.

Reed, P.B. Jr. 1988. National list of plant species that occur in wetlands: California (Region 0). National Wetland Inventory, U.S. Fish and Wildlife Service. 126 pgs.

Introduction

On July 7, 2008, I visited 21622 Pacific Coast Highway, Assessor's Parcel Number 114-150-86, in Huntington Beach, Orange County (Mills PCH, LLC property), with Andrew Willis, CCC Enforcement Division Analyst; Tony Bomkamp, Glen Lucas Associates Biologist; and Susan Hori, Manatt, Phelps & Phillips, LLP Attorney. I was informed that in February 2008 development took place within a 1.12-acre fenced area of the property (Figure 1). The development consisted of grading and compacting the entire area, removing all vegetation, digging a drainage trench along the eastern boundary, and placing fill from the trench on the adjacent substrate within the fenced area and on a portion of the 0.92-acre unfenced portion of the property to the south (northeast corner of the Newland Street and Pacific Coast Highway intersection). The purpose of the July site visit was to observe the nature and extent of the development and document the extent and species composition of vegetation that had re-grown in the area. Subsequent to visiting the site I have reviewed the history of the site, including past disturbances, historical and contemporary photos, relevant literature, and applicable wetland survey reports, in order to assess the likely status of the area prior to the above-referenced development. I conclude that, prior to the development described above, one large area and a few smaller areas on the 1.12-acre fenced portion of the Mills PCH, LLC property exhibited wetland hydrology and supported a preponderance of wetland vegetation (hydrophytes) and, therefore, met the definition of wetlands in the Coastal Commission regulations and the City of Huntington Beach Local Coastal Program (LCP). Even now that the development described above has occurred, these areas continue to be inundated following rainfall, and the wetland vegetation appears to be recolonizing.

Wetland Definition

The Coastal Act (California Public Resources Code section 30121) defines wetlands as lands "*which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens.*" Section 13577(b) of the Commission's regulations further defines wetlands as "*land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes.*" It goes on to state that the upland boundary may be defined by vegetation, in which case it is "*the boundary between land with predominantly hydrophytic cover and land with predominantly mesophytic or xerophytic cover.*"

The Huntington Beach City LCP also defines a wetland as:

> *Land which may be covered periodically or permanently with shallow water and includes saltwater marshes, freshwater marshes, open or closed brackish water*

marshes, swamps, mudflats, and fens. Wetlands are lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For purposes of this classification[1], wetlands must have one or more of the following attributes:

1. *At least periodically, the land supports predominantly hydrophytes; or*
2. *The substrate is predominantly undrained hydric soil; or*
3. *The substrate is non-soil and is saturated with water or covered by shallow water at some point during the growing season of each year.*

The LCP wetland definition does not provide a standard for wetland hydrology. However, as noted above, Section 13577 of the Commission's Regulations defines wetlands as "...land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes...." Prior to the development, portions of the subject site were covered with shallow water at a frequency and duration that did support vegetation that was comprised predominantly of hydrophytes. It appears that, despite the recent alterations, the site continues to be wet enough to support wetland vegetation.

Background

The Mills PCH, LLC property, which includes the Cabrillo Mobile Home Park, a 1.12-acre fenced area south of the park, and an 0.92-acre unfenced area further to the south, is located within the historic bounds of the Huntington Beach Wetlands complex located at the mouth of the Santa Ana River (Figure 2). Historic photos dating back to 1927 suggest that the fenced area once supported wetland habitat that would best be characterized as salt marsh. Historic photographs suggest that grading and fill occurred on the fenced area by 1971. Review of aerial photographs suggests that the fenced area has been used for parking intermittently over the years[2]. The area has also been periodically subjected to other disturbances, including grading and filling with asphalt and soil (Figure 3).

Atypical Situation

As a result of the recent vegetation removal, grading, trenching, and filling, the 1.12-acre fenced area of the Mills PCH, LLC property constitutes an atypical situation. An atypical situation is defined by the Army Corp of Engineers (ACOE) as one "where vegetation, soil, or hydrology indicators are absent due to recent human activities or natural events"[3]. The

[1] *" Classification of Wetlands and Deep-Water habitats of the United States" by Lewis M. Cowardin, et al, United States Department of Interior, Fish and Wildlife Service, December 1979.*

[2] Glenn Lukos Associates. Feb. 28, 2009. Letter report: Jurisdictional Wetland Status of the CabrilloMobile Home RV Parking Area, an approximately 1.15-Acre Site in the City of Huntington Beach, Orange County, California. Prepared for Mr. Steve Kane by Tony Bomkamp of Glenn Lukos Associates.

[3] U.S. Army Corps of Engineers, Engineer Research and Development Center. September 2008. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (ERDC/EL TR-08-28,Version 2.0). Wetlands Regulatory Assistance Program. 135 pgs.

grading eliminated all vegetation and disrupted the soil column to a depth of 8 to 12 inches in some areas (Figure 4). The 2-foot deep trench drains water from the site, thereby altering the hydrology (Figure 5). In addition, soil from the trench was side-cast and surface soils compacted with a roller (Figure 6). Therefore, current conditions are not indicative of the condition of the site prior to disturbance. The Army Corps of Engineers provides guidance for analyzing atypical situations. This entails comparisons to nearby similar sites, use of historical evidence (e.g., photographs), and consideration of topography and landscape position. In the present instance, the size and character of the wetland that was disturbed is best estimated from photographs taken prior to the development. These show patches of wetland vegetation and areas that were inundated following rainfall events.

Evidence of Inundation and Soil Saturation

The average annual rainfall along this section of the coast ranges from about 10 inches (Los Alamitos Station) to about 13 inches (John Wayne Airport)[4], with most falling from November through March. The available photographs that document conditions on the 1.12-acre fenced area of the Mills PCH, LLC property during the winter rainy seasons of the last several years were haphazardly taken by members of the public. Portions of the site form a shallow depression, which is a landscape position that is likely to collect or concentrate water. The opportunistic photographic record demonstrates that, in fact, the site has periodically ponded for long periods. To put these data in perspective, the Army Corps of Engineers defines wetland hydrology as 14 days of continuous inundation or shallow soil saturation during most years, and the National Technical Committee on Hydric Soils accepts 7 days of inundation as a field indicator of hydric soils. The Commission's Regulations simply require sufficient water to support the growth of wetland vegetation or to promote the formation of hydric soils

During the exceptionally wet winter of 2004-2005 (c. 28 inches of rainfall)[5], there were several documented periods of long-term inundation and wet soil. It rained 1.07 inches on October 17 and photos document inundation October 19-24, 2004. The soil is wet in photos taken on November 4 and 6, 2004 (Figure 7). Rain fell almost every day from Dececmber 28, 2004 through January 11, 2005 and photos document inundation and wet soil January 15 through January 31, 2005 (Figure 8). Sixteen days of inundation was captured in a series of photos taken between February 14 and March 2, 2005 (Figures 9).

Total rainfall for the 2005-2006 wet season was 8.9 inches[6], a bit less than average. Photo documentation is patchy but inundation and saturation were documented from September 21 to 23, 2005 and on October 19, 2005 and again on January 10 and March 4, 2006 (Figure 10). The bulk of the wet season's rain fell in January, February, March, and April (1.25, 1.15, 2.45, and 2.01 inches, respectively) and although photo documentation is unavailable, several episodes of inundation and saturation likely occurred during this time.

[4] San Diego Forecast Office, National Weather Service and Dixon, J. July, 27, 2007. Memorandum to Meg Vaughn, Coastal Analyst. "Wetlands at Shea Homes Parkside."

[5] Orange County Public Works (OCPW) Rainfall Data. 2004 to Present. (http://www.ocwatersheds.com/rainfall/default.aspx?ID=1000376); Costa Mesa Station, OCPFRD No. 19.

[6] OPCW Rainfall Data. (2004 to Present) op. cit.

The 2006-2007 wet season was extremely dry with a rainfall total of only 2.83 inches.[7] On December 10, 2006, 0.28 inches of rain was recorded followed by no precipitation until 0.19 inches was recorded on December 17. Despite the small amount of precipitation, photographs taken on December 10 and 14 show standing water and the ground was still wet on December 16 (Figure 11).

No photographs are available for assessing inundation and saturation on the fenced area during the 2007-2008 wet season when a total of 9.54 inches were recorded.

The 2008-2009 wet season has totaled 8.42 inches to date, with 7.81 inches of rainfall between November 26, 2008 and February 22, 2009, a roughly normal amount for southern California. There is a daily photographic record for the periods November 26 – December 2, 2008, December 15, 2008 – January 4, 2009, February 6 – February 15, February 17, and February 19-22 (Figure 12). Three separate inundation events were documented, each followed by a long period when the soil was still wet (and perhaps saturated for an undeterminable period): (1) about 7 days of inundation (11/26 – 12/2) followed by about 12 days of wet soil (12/3 – 12/14); (2) about 21 days of inundation (12/15 – 1/ 4) followed by about 15 days of wet soil (1/5 – 1/23); and, (3) about 15 days of inundation (2/6 to 2/22).

The photographic record described above provides ample evidence that portions of this site are periodically under standing water for long periods, even long enough to satisfy the ACOE definition, and, as indicated below, that this frequency and duration was sufficient to support wetland vegetation.

Vegetation

The existing undisputed wetland on the 0.92-acre unfenced section of the Mills PCH, LLC property that is south of the 1.12-acre fenced area, is dominated by the wetland indicator plants pickleweed (*Salicornia virginica*; OBL) and saltgrass (*Distichlis spicata*; FACW). Photographs taken in the fenced area in 2004, 2005, and 2007 show vegetation in the areas that become inundated and saturated, that is predominantly pickleweed that appears to be intermixed with saltgrass; wetland habitat that is similar to the adjacent wetland (Figure 13). These plants are also now patchily colonizing the fenced area that was graded and cleared of all vegetation in February 2008, such that portions of the area continue to be wetland.

Summary

In summary, specific areas within the 1.12-acre fenced area on the Mills PCH, LLC property meet the LCP and Commission's criteria for wetland hydrology and wetland vegetation. These areas are wet enough, long enough and frequently enough to support a preponderance of hydrophytes and therefore are wetlands.

[7] OPCW Rainfall Data. (2004 to Present) op. cit.

Review of Mr. Bomkamp's Findings

The property owner's consultant Mr. Bomkamp has disputed these findings. He begins his analysis by assuming a normal situation. He states:

> *"Although the site was disturbed by vegetation removal during late February of 2008, it was not necessary to use the atypical approach set forth in the 1987 Manual because sufficient vegetation has resprouted or germinated within the 1.15-acre parking area allowing for species identification. Also, while the top few inches of the soil was disturbed within portion of the 1.15-acre parcel, there was no addition of soil/fill from offsite sources to the 14 to 20 inches of highly compacted fill deposited between the late 1950s through about 1970/71."*

Mr. Bomkamp's decision to treat the site as "normal" is contrary to both common sense and the guidance provided by the Corps of Engineers. The fact that some vegetation has colonized is beside the point. The disturbance has so altered the site that current conditions cannot reasonably be considered to mirror the conditions that existed prior to the disturbance. The 'recent human activities', as evidenced by the series of photos presented above (Figures 4-6), resulted in such significant site alterations that all indicators of wetland hydrology, vegetation, and soil parameters were severely compromised. The trench drains water from the site, clearly altering the hydrology. The grading and soil compaction also impacted the site hydrology. The vegetation was extirpated, and although recent recruitment and growth of some wetland species shows that the site can still support wetland vegetation, additional information is needed to estimate the distribution and abundance of such species prior to scraping and grading.

Following a normal wet season (9.54 inches of rainfall), Mr. Bomkamp visited the site on April 7 and June 3, 13, 17, and 23, 2008. He recorded no evidence of surface water or of primary or secondary wetland hydrology indicators. Yet, during our July 2008 site visit, I observed several primary indicators of wetland hydrology from the previous winter, including surface soil cracks, sediment deposits, surface crusts, and salt crust (Figure 14).

Mr. Bomkamp performed wetland surveys in June 2008, and exhibits 3a-c of his February 29, 2008 letter report depict his uniform (evenly spaced) sampling scheme. Most of his sample locations were along a partially vegetated narrow berm next to the south fence or on bare ground. Three were in the general vicinity of the depression where inundation and saturation has been documented over the years. The uniform sampling scheme appears to under-sample low areas on the site that have supported wetland vegetation. However, such criticisms are moot since sampling after the disturbance cannot quantify the conditions prior to the disturbance.

Nevertheless, the results of Mr. Bomkamp's after-the-fact sampling indicate that some scraped areas have already developed a preponderance of wetland plants[8]. Although Mr.

[8] Mr. Bomkamp's data sheets record the presence of mostly wetland indicator species (Avena fatua (upland), *Bassia hyssopfolia* (Fac), *Bromus diandrus* (upland), *Cakile maritima* (FacW), *Chenopodium album* (Fac), *Cyondon dactylon* (Fac), *Distichlis spicata* (FACW), *Heliotropium curassavicum* (OBL*), *Hordeum murinum leporinum* (NI), *Lolium multiflorum* (Fac), Malvella *leprosa (Fac), Malva parviflora (upland) Melilotus indica (Fac), Mesembryanthemum* crystallinum (upland), *Picris echioides* (Fac), *Polygonum argyrocoleon* (Fac), *Salicornia*

Bomkamp reports no evidence of wetland vegetation in any of his samples, this is because he has erected an *ad hoc* hypothesis that the wetland indicator species at this site are acting as phreatopytes[9] and shouldn't be considered wetland vegetation. This hypothesis is based on scanty evidence: photographs of some roots he observed 42 inches below the surface, references to the literature that saltgrass can function as a phreatophyte, inappropriate citations to artificial experiments where saltgrass was grown in containers with an *ad libidum* supply of water, and 3 personal observations of pickleweed in upland situations elsewhere. Even if one assumes that saltgrass and pickleweed can obtain a portion of their water from deep roots, there is absolutely no evidence that they do not use surface water at this site. In addition, staff at the Corp of Engineers point out that phreatophytic species generally do not rely solely on groundwater and should be considered wetland indicators[10].

Mr. Bomkamp collected 10 additional vegetation samples in March 2009. The data for saltgrass and a qualitative assessment of the photos suggest that the saltgrass is denser in low areas than in high areas, suggesting that they are relying on the greater availability of surface water in these areas. When I asked Mr. Bomkamp why he didn't re-sample the large area of inundation and saturation, he stated "We have already acknowledged that the "ponded" area supports pickleweed and saltgrass....the question is do they have wetland hydrology or are they growing there because they are phreatophytes or highly drought tolerant"[11]. However, he presented no reliable means of determining that. Conversely, I note that pickleweed was only observed in 1 of the 10 samples collected from the elevated area along the fence in June 2008 and was not observed in any of the samples collected there in March 2009. In fact, pickleweed and saltgrass are growing in the depressions that are inundated and saturated, but don't occur or occur only sparsely in slightly higher elevations. If Mr. Bomkamp's theory were correct that saltgrass and pickleweed have such a well-developed ability to rely on deep ground water and are so strikingly drought tolerant, why aren't they growing in similar densities throughout the site?

In past actions, the Commission has operated on the presumption that, where they form the predominant vegetation, wetland indicator plants are growing as hydrophytes and the area in which they are predominant is a wetland. This is at the heart of the Commission's one-parameter wetland definition. The Commission has required strong evidence of upland conditions to rebut the wetland presumption – evidence that has not been provided in this case.

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virginica (Obl) and *Stenfularia marina* (Fac)). Using the standard dominance test of the Corps of Engineers wetland manual and supplements, I find that many of his samples have a preponderance of hydrophytes. *This species is thought by many to be misclassified; it may be FAC.

[9] Phreatophytes are plants with deep roots that generally transpire groundwater. Typical phreatophytes are riparian species like willows and cottonwoods.

[10] Personal Communication on March 18, 2009 with Jae Chung, ACOE Regulatory Division. Jae and I discussed that even if a particular plant is phreatophytic, this does not negate that fact that the respective plant may require periods of inundation and saturation, especially non-woody herbaceous species such as saltgrass and pickleweed.

[11] March 20, 2009, Email from T. Bomkamp to J. Engel

Conclusion

Photographs taken haphazardly[12] from 2004 to the present demonstrate that portions of the 1.12-acre fenced area of the Mills PCH, LLC property are periodically under standing water for long periods; demonstratively in excess of 14 days in several instances. This is unequivocal evidence of wetland hydrology. Of note is the fact that the development that took place in February 2008 included creation of a drainage trench; a clear indication that the site tends to have excess water. Saltgrass and pickleweed, wetland indicator species, have been observed growing in the areas on the site subject to inundation and saturation prior to, and following, the unpermitted development. In addition, when I applied the dominance test to Mr. Bomkamp's vegetation data, all his samples were positive for wetland vegetation. In conclusion, I find that portions of the 1.12-acre fenced area of the Mills PCH, LLC property support wetland hydrology and wetland vegetation.

[12] Except during winter 2008-2009 when photographs were obtained frequently.

Figure 1. In February 2008, unpermitted development took place within the 1.12-acre fenced area of the Mills PCH, LLC property located at 21622 Pacific Coast Highway, Assessor's Parcel Number 114-150-86 in Huntington Beach, Orange County.

Figure 2a. Historical extent of the Huntington beach wetlands. The blue box bounds the 1.12-acre fenced area of the Mills PCH, LLC property located at 21622 Pacific Coast Highway.

Figure 2b. Close-up of the historical extent of the Huntington Beach wetlands – blue box bounds the 1.12-acre fenced area of the Mills PCH, LLC property located at 21622 Pacific Coast Highway.

Figure 3a. Asphalt fill placed on the 1.12-acre fenced area in May 2005.

Figure 3b. Fill placed on the 1.12-acre fenced area in April 2007.

Figure 3c. Grading on 1.12-acre fenced area in April 2007

Figure 4a. Close-up showing unpermitted work perfomed on February 23, 2008. Tractor in process of spreading fill from drainage trench.

Figure 4b. Unpermitted work occurring on February 23, 2008 on the 1.12 fenced area of the Mills PCH, LLC property located at 21622 Pacific Coast Highway

Figure 4c. Tractor and soil compactor on site February 24, 2008.

Figure 5a. View looking from North to South. Site is flooded and February 24, 2008. Drainage trench is full and is located next to concrete block wall along eastern (left) side of property.

Figure 5b. View looking South to North. Drainage trench is full and located next to concrete block wall on eastern side of property (right in this photo).

Figure 5c. Drainage trench going under the fence to the unfenced 0.92 property south of the fenced area.

Figure 5d. Drainage Trench – Observed July 7, 2008.

Figure 5e. Drainage Trench –Observed July 7, 2008, South-east corner –soil plug added between fenced and non-fenced area.

Figure 6a. Compactor in center. Dark earth is where pickleweed formerly existed.

Figure 6b. Close-up of Compactor.

Figure 6c. Compactor on site March 8, 2008. Trench along eastern wall, with water, and fill material along the sides

10-23-2004

11-3-04

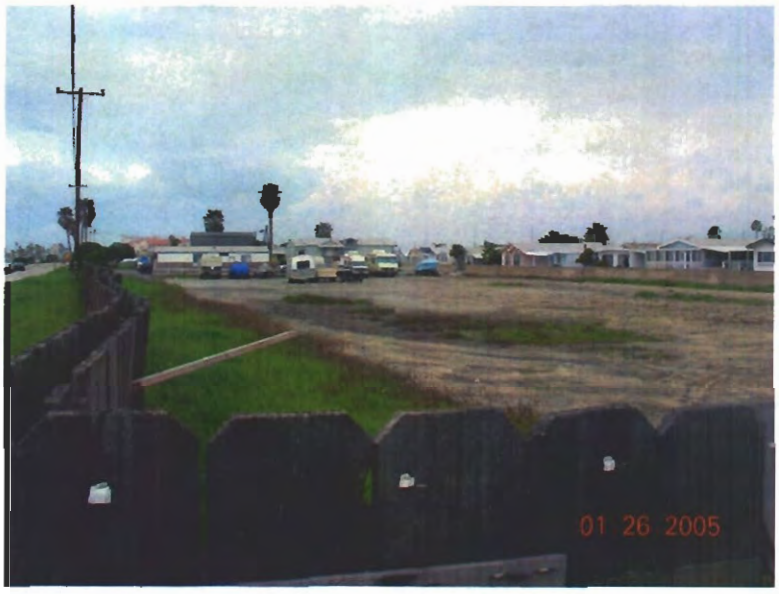
Figure 7. Photos document inundation for Oct. 19 through Oct. 24, 2004. It rained 1.07 inches on Oct. 17. Wet soil is shown for Nov. 4 and 6, 2004.

01 15 2005

01 18 2005

01 20 2005

01.21.2005


01 26 2005

01 27 2005

Figure 8. Rain fell almost every day starting on Dec 28, 2004 through January 11. Photos show inundation and wet soil January 15 through January 31.

02 14 2005

02 16 2005

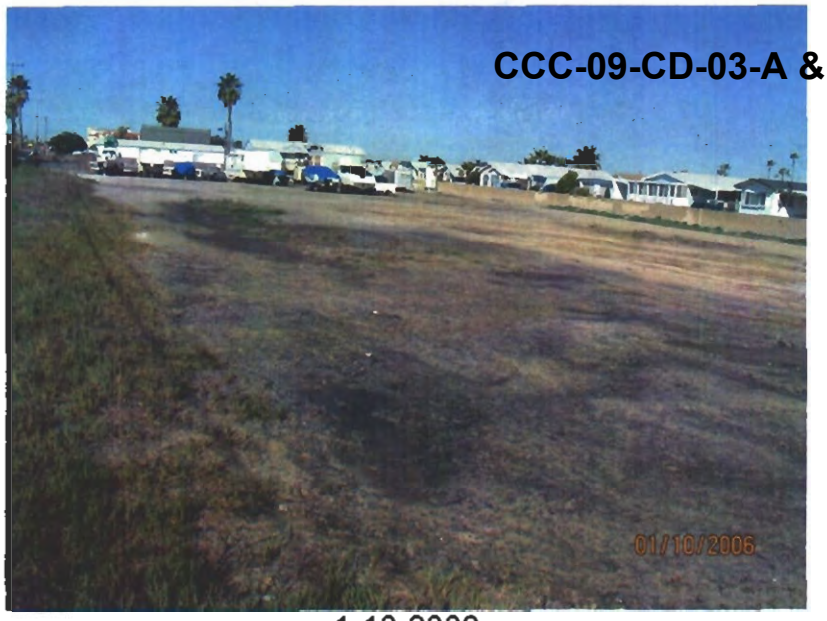
02 23 2005

Figure 9. Photo documentation of inundation from Feb. 14 though March 2, 2005.

9-21-2005

9-23-2005

10-19-2005



1-10-2006

3-4-2006

Figure 10. Photo documentation is patchy but inundation and saturation were documented from September 21 to 23 and October 19, 2005 and again on January 10 and March 4, 2006 during the 2005-2006 wet season.

12-10-06

12-14-2006

12-16-2006

Figure 11. Despite a very dry wet season (2.83 inches of rainfall), photographs taken on December 10 and 14 show standing water and the ground was still wet on December 16.

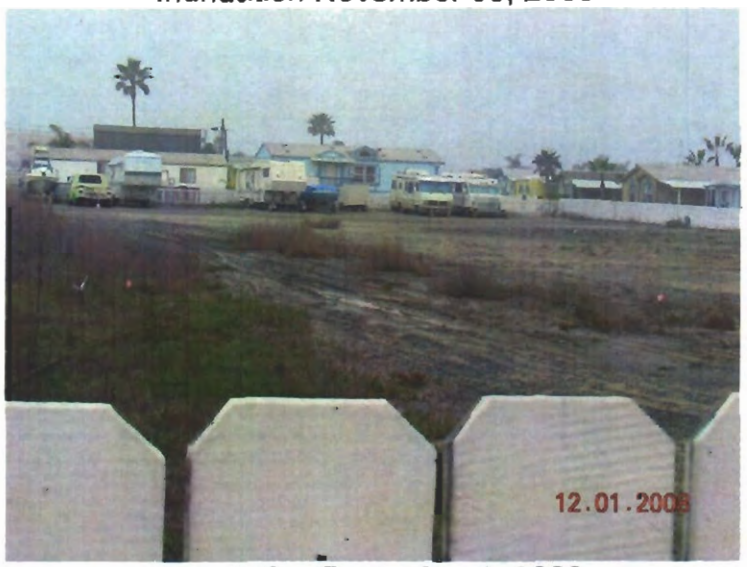
Inundation November 26, 2008

Inundation November 27, 2008

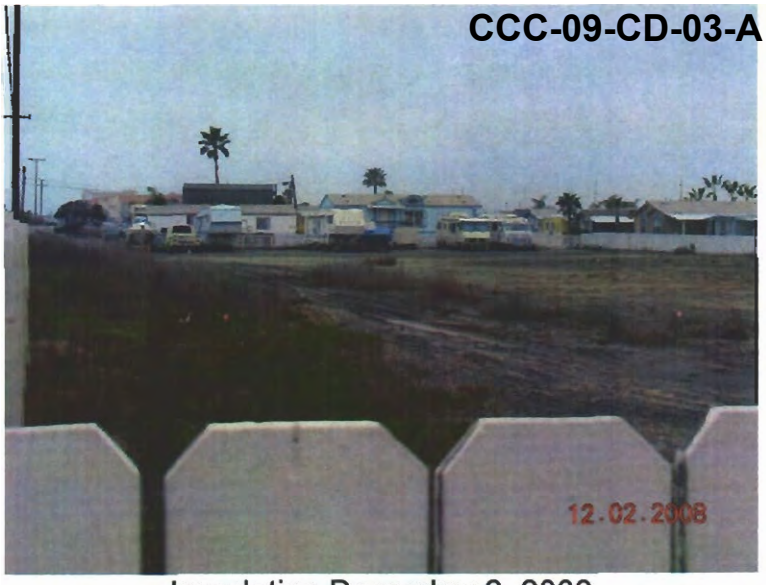
Inundation November 28, 2008

Inundation November 29, 2008

Inundation November 30, 2008



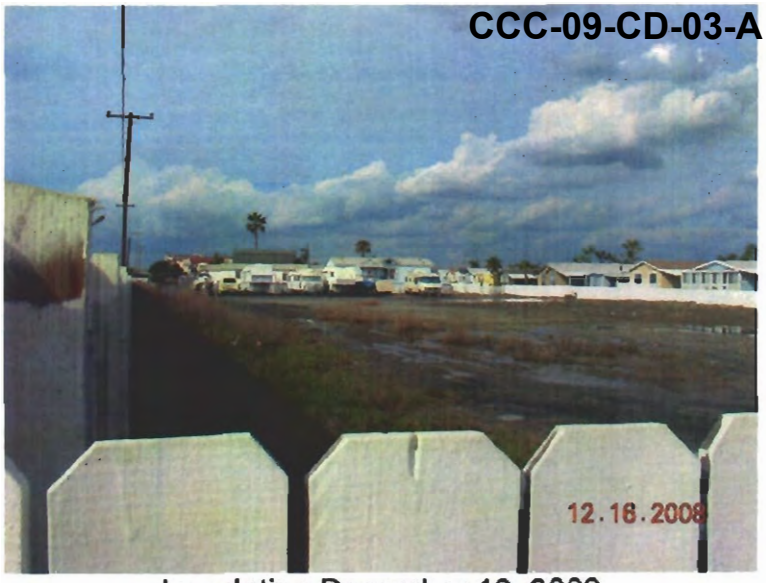
Inundation December 1, 2008



Inundation December 2, 2008

Note: wet soils continued through December 15, 2008 at which time Inundation began again coinciding with a precipitation event.

Inundation December 15, 2008



Inundation December 16, 2008

Inundation December 17, 2008

Inundation December 18, 2008

Inundation December 19, 2009

Inundation December 20, 2008

Inundation December 21, 2008

Inundation December 22, 2008

Inundation December 23, 2008

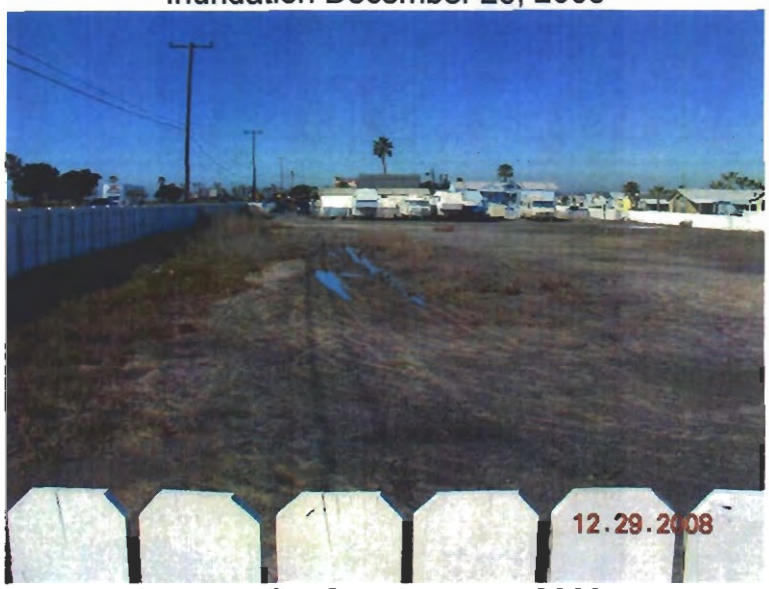
Inundation December 24, 2008

Inundation December 25, 2008

Inundation December 26, 2008

Inundation December 27, 2008

Inundation December 28, 2008



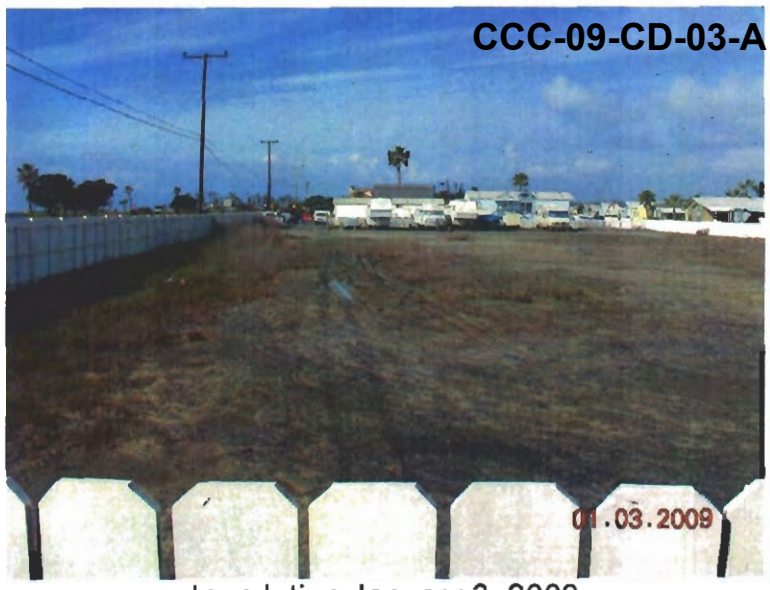
Inundation December 29, 2008

Inundation December 30, 2008

Inundation December 31, 2008

Inundation January 1, 2009

Inundation January 2, 2009



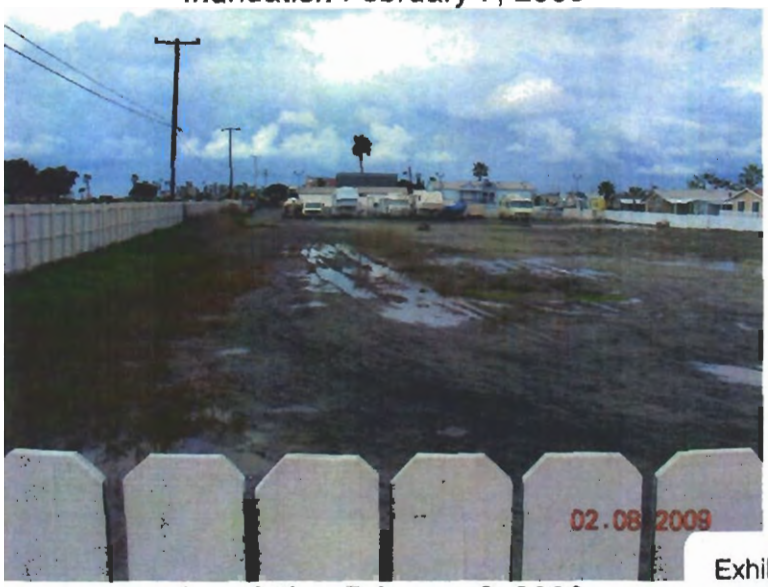
Inundation January 3, 2009

Wet Soil January 4, 2009

Note: wet soils continued through January 24, 2009 when Inundation occurred for one day coinciding with a precipitation event. Wet soils continued through February 6, 2009, at which time Inundation began again following a precipitation event.

Inundation February 6, 2009

Inundation February 7, 2008



Inundation February 8, 2009

Inundation February 9, 2009

Inundation February 10, 2009

Inundation February 11, 2009

Inundation February 12, 2009

Inundation February 13, 2009

Inundation February 14, 2009

Inundation February 15, 2009

Inundation February 17, 2009

Inundation February 19, 2009

Inundation February 20, 2009

Inundation February 21, 2009

Inundation February 22, 2009

Figure 12. Daily photos of inundation and wet soil for the 2008-2009 wet season.

Figure 13a. July 7, 2008 site visit; observed surface and salt crust.

Figure 13b. July 7, 2008 site visit; observed surface soil cracks, sediment deposits, surface crusts, and salt crust.

Figure 13c. July 7, 2008 site visit; observed surface and salt crust.

Figure 13d. July 7, 2008 site visit; observed surface soil cracks, sediment deposits, and salt crust.

Figure 14a. Areas of inundation and saturation supporting pickleweed and saltgrass. Photo dated August 26, 2004.

Figure 14b. Areas of inundation and saturation supporting pickleweed and saltgrass. Photo dated January 16, 2005.

Figure 14c. Close-up of pickleweed in area of inundation and saturation. Photo dated January 16, 2005.

Figure 14d. Areas of inundation and saturation supporting pickleweed and saltgrass. Photo dated April 18, 2007.