

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
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W 11 & 12

ADDENDUM

April 13, 2010

TO: Coastal Commissioners and Interested Parties

FROM: Lisa Haage, Chief of Enforcement

SUBJECT: ADDENDUM TO **ITEM NOS. 11 & 12** – CONSENT CEASE AND DESIST
ORDER CCC-10-CD-02 & CONSENT RESTORATION ORDER CCC-10-RO-
02 (STEVEN & RONA GROMET)
FOR THE COMMISSION MEETING OF **APRIL 14, 2010**

Documents included in this addendum:

1. Letter in support of staff recommendation from Penny Elia (pg 2)
2. Letter regarding proposed Consent Orders from Stevan Gromet (pg 3)

Changes to staff report for CCC-10-CD-02 & CCC-10-RO-02:

Commission staff recommends revisions to the staff report. Language to be added is shown in **bold underline** and language to be deleted is in ~~strike-out~~, as shown below.

- Page 1. The hearing date is changed to read as follows:

Hearing Date: April **14** ~~15~~, 2010.



SIERRA
CLUB
FOUNDED 1892

W11 & 12

April 12, 2010

Chair Bonnie Neely
Members of the California Coastal Commission
c/o Elijah Davidian
45 Fremont Street Suite 2000
San Francisco, CA 94105-2219

SENT VIA FAX

Dear Chair Neely and Honorable Members of the Coastal Commission:

As you have been reminded many times over the past several years, the Sierra Club's Save Hobo Aliso Task Force was formed in 2001 in response to rising concerns over development threat and ongoing Coastal Act violations associated with this environmentally sensitive area that is connected to two wilderness parks. We have come before the Commission with numerous issues arising from the poor environmental stewardship of this invaluable acreage by its owners – both past and present. Regrettably, the violation you are hearing today involves an adjacent property owner who owns several properties in this immediate area.

Based on the large amount of testimony you have received over the years along with updates from Commission staff, the Commission understands that the endangered species that is struggling to survive in this area is singularly unique and in an incredibly precarious state due to ongoing human impacts. Dr. Dixon's exhaustive reports on ESHA and the state and federally listed as threatened Big-Leaf Crownbeard in this area point out the need to insure that everything is done to retain overstory and mitigate any losses that occur. The current restoration order for the Big-Leaf Crownbeard (CCC-06-RO-03 – July 2006) was found out of compliance several months ago. An endangered species will not survive without properly monitored restoration.

While the Sierra Club is pleased to see another "closet" of restoration occurring on this acreage, we continue to ask the Commission and staff to deal with the larger restoration at hand. Every square foot matters, but we still have acres of land in need of restoration. We thank staff for crafting a consent order that the property owners have agreed to, but it's been several years since the violation and delays are not in the best interest of insuring the existence of an endangered species.

We urge the Commission to support staff's recommendation and approve this consent order so that restoration can begin as soon as possible. Again, we also urge the Commission and staff to bring forward the remaining unpermitted development issues that remain on this acreage. Years and years of delays only benefit the landowners, not the species.

Thank you all for all you do to protect and preserve our coast's finite natural resources.

Sincerely,

Penny Elia
Save Hobo Aliso Task Force Chair
Sierra Club
30632 Marilyn Drive
Laguna Beach, CA 92651
949-499-4499

PAGE 2

STEVEAN & RONA GROMET
2250 PARK AVENUE
LAGUNA BEACH, CALIFORNIA 92651

April 12, 2010

Mr. Eli Davidian
Headquarters Enforcement Analyst
California Coastal Commission
45 Freemont, Suite 2000
San Francisco, California 94105

Re: V-5-07-009 (30662 Marilyn Drive, Laguna Beach, CA)

Dear Eli:

You have requested the following clarifications/supplemental work in connection with the above matter and proposed restoration/mitigation plan which has been submitted by Fred Roberts. We are pleased to provide the following responses:

1. That the myoporum trees (2 or 3), be removed from the slope as a part of the restoration and mitigation program.

Response: the myoporum trees that are within the upper portion of the slope will be removed as a part of the work to be performed; those (if any) on the lower slope shall be removed if determined by Fred Roberts to be potentially invasive or harmful to the restoration being undertaken on the upper slope. One of the myoporum trees is dead and will be removed regardless of location.

2. That weeding/removal of invasive grasses/ground cover be extended a slight distance (e.g., 10 feet) beyond the boundaries of the disturbed area.

Response: we are willing to perform the additional weeding/removal of invasive plants, to the extent it can be accomplished in a manner which does not disturb or harm the native species growing within such previously undisturbed areas, as determined by Fred Roberts.

3. In our recent discussions you have stated that the proposed \$20,000 in-lieu payment to a non-profit organization be earmarked for restoration projects only.

Response: As I mentioned on the phone today, I am pleased to inform you that I believe the San Diego Zoological Society has a program for funding restoration activities, and that a restoration project for rare/endangered plant species is being developed for the Dana Point Headlands. I believe this project would be an appropriate use of the funds, recognizing that approval of the project for our in-lieu funding will be subject to the approval of the Executive Director of the Coastal Commission.

Sincerely,



Stevan Gromet

CALIFORNIA COASTAL COMMISSION

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Items W 11 & 12

Staff: Elijah Davidian-SF
Staff Report: April 1, 2010
Hearing Date: April 15, 2010

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

CEASE AND DESIST ORDER: CCC-10-CD-02

RESTORATION ORDER: CCC-10-RO-02

RELATED VIOLATION FILE: V-05-07-009

PROPERTY LOCATION: Mostly undeveloped land, located at the northern terminus of Driftwood Drive, Laguna Beach, identified by the Orange County Assessor's Office as two properties, with Assessor's Parcel Numbers 056-240-65 and 656-191-40

DESCRIPTION OF PROPERTY: Approximately 3,500 square feet of hillside near the eastern property line of 30662 Marilyn Dr., Laguna Beach, Orange County

PROPERTY OWNER: Driftwood Properties, LLC

VIOLATION DESCRIPTION: Unpermitted removal of major vegetation (including, but not limited to southern maritime chaparral plant species), resulting in significant impacts to sensitive species, including the threatened big-leaved crownbeard

PERSONS SUBJECT TO THESE ORDERS: Stevan and Rona Gromet

SUBSTANTIVE FILE DOCUMENTS:

1. Cease and Desist and Restoration Order Nos. CCC-10-CD-02 & CCC-10-RO-02
2. Exhibits A through I and Appendix A of this staff report

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

I. SUMMARY OF STAFF RECOMMENDATION

Staff notes that a consent agreement was reached only hours before the late mailing deadline for the Commission's April Hearing. As such, this staff report has been modified only nominally to reflect the late consent agreement. A copy of the proposed Consent Orders is included as Appendix A of this staff report.

Staff recommends that the Commission approve Consent Cease and Desist Order No. CCC-10-CD-02 and Consent Restoration Order CCC-10-RO-02 ("Orders"), addressing the unpermitted removal of major vegetation (including, but not limited to southern maritime chaparral plant species) across an approximately 3,500 square foot area, resulting in significant impacts to sensitive species, including to an approximately 700 square foot area of big-leaved crownbeard (*Verbesina dissita*), which is listed as a "threatened" species by the United States Fish and Wildlife Service pursuant to the Federal Endangered Species Act (50 CFR § 17.12(2)(h)) and by the California Department of Fish and Game pursuant to the California Endangered Species Act (14 CCR § 670.2(b)(2)(D)).

The area that is the subject of these proceedings has been mapped as southern maritime chaparral.¹ As is discussed more fully in pages 9-11 of this staff report, the Commission's ecologist Dr. Dixon, after visiting the site and reviewing the associated literature, drafted a memo in which he explains why the southern maritime chaparral plant communities on the site meet the definition of environmentally sensitive habitat areas ("ESHA").² The plant communities surrounding the impacted area provide habitat for several rare and threatened species, including but not limited to the big-leaved crownbeard, summer holly, western dichondra, the California gnatcatcher, and the rufous-crowned sparrow, each of which has been observed at the site. Staff notes that the Commission has consistently treated southern maritime chaparral as ESHA.

The unpermitted development activities occurred on a steeply sloping hillside identified by the Orange County Assessor's Office as Assessor's Parcel Numbers (APNs) 056-240-65 and 656-191-40, in the City of Laguna Beach, Orange County ("subject property"). The site is largely undeveloped, with the exception of the unpermitted development that is the subject of these proceedings. Staff notes that other unpermitted development in violation of the Coastal Act exists on the subject property. However, those violations are being addressed under separate enforcement actions and therefore are not subject to these proceedings.³

The subject property is owned by Driftwood Properties, LLC and managed by Athens Development AC, LLC. The subject property is located in the Hobo/Aliso area of Laguna Beach. The Commission has jurisdiction over permit and enforcement matters in this area because it is

¹ LSA Associates, Inc. 2000. *Biological Resources Assessment-Driftwood Estates-Laguna Beach Project*. Prepared for Highpointe Communities, Inc.

² Dixon, John. (CCC). April 16, 2007. Memo to Ryan Todoro (CCC) re: Habitat Characteristics on the Athens Group LLC property at Hobo Aliso Ridge (formerly known as Driftwood Estates).

³ The unpermitted development previously detected on the subject property, and which is not subject to these proceedings, is being addressed under separate enforcement actions, identified by the following violation file numbers: V-5-05-031, V-5-06-029, and V-5-07-006.

an area of deferred certification and, therefore, is not subject to local regulation under the certified Laguna Beach Local Coastal Program.

The unpermitted development that is the subject of these proceedings was undertaken by Stevan and Rona Gromet (hereinafter collectively referred to as “Respondents”), owners of an adjacent property, located at 30662 Marilyn Drive, Laguna Beach, Orange County. Respondents have admitted to Commission staff and have not disputed the fact that they undertook the clearing. Consequently, Respondents are the parties subject to these Consent Order proceedings. Through these Consent Orders, Respondents have agreed to, among other things: (1) restore the crownbeard impacted by the unpermitted removal activities; (2) restore and revegetate southern maritime chaparral that was impacted during the vegetation clearance; (3) remove all non-native plant species from the impacted area of the subject property; and (4) actively monitor the progress of the restoration effort; (5) submit annual monitoring reports, for at least five years after initial restoration work is completed; (6) conduct further remediation where necessary; and (7) contribute \$20,000 to a not-for-profit organization, subject to the approval of the Executive Director, for the purpose(s) of advancing native plants restoration and/or education activities within the Coastal Zone of Southern California.

The owners of the subject property, Driftwood Properties, LLC, have agreed to allow Respondents access to perform the restoration work required by these Orders, within the impacted area of the subject property. The authorization extends to Commission staff for purposes of evaluating compliance with the terms of the Orders.

The Commission can issue a Cease and Desist Order under Section 30810 of the Coastal Act in cases where it finds that the activity that is the subject of the order has occurred either without a required Coastal Development Permit (CDP) or in violation of a previously granted CDP. The Commission can issue a Restoration Order under section 30811 of the Coastal Act if it finds that development: 1) has occurred without a coastal development permit; 2) is inconsistent with the Coastal Act; and 3) is causing continuing resource damage. These criteria have all been met in this case, as summarized briefly here, and discussed in more detail on pages 8-14, below.

The unpermitted activity that has occurred on the subject property clearly meets the definition of “development” set forth in Section 30106 of the Coastal Act. Development is defined broadly under the Coastal Act, and includes, among many other actions, the “...removal or harvesting of major vegetation other than for agricultural purposes...” All non-exempt development in the Coastal Zone requires a CDP. No exemption from the permit requirement applies here. The development was undertaken without a CDP, in violation of Coastal Act Section 30600. Furthermore, the unpermitted development is: 1) inconsistent with the policies in Chapter 3 of the Coastal Act, including Section 30240 (ESHA), Section 30251 (scenic areas) and Section 30253 (erosion), which require protection of coastal resources within the Coastal Zone; and 2) causing continuing resource damage, as discussed more fully below.

The unpermitted removal of vegetation has adversely impacted the resources associated with the dynamic habitats of this area of Laguna Beach. Such impacts meet the definition of damage provided in Section 13190(b) of Title 14 of the California Code of Regulations (14 CCR), which defines “damage” as, “any degradation or other reduction in quality, abundance, or other

quantitative or qualitative characteristic of the resource as compared to the condition the resource was in before it was disturbed by unpermitted development.” In addition to the removal of the vegetation that was on the property at the time of the unpermitted removal actions, the removal has impacted the overall abundance and health of the chaparral habitat here, including the crownbeard, by causing temporal losses and a decrease in the overall plant communities comprising the ESHA. Following the clearing of what was previously a relatively stable plant community, non-native and invasive species have rapidly colonized the impacted area. Non-native and invasive species threaten the success of any natives that have, or may have attempted to, become reestablished within the impacted area, thereby delaying the site’s overall recovery. In addition to the individual impacts discussed, the cumulative effect of these pressures amounts to a loss of several years during which the ESHA would have otherwise increased in area and ecosystem function. If the unpermitted development is allowed to persist without restoration and mitigation, additional impacts are expected to result (including the temporal continuation of the existing impacts) to the resources protected under Chapter 3 of the Coastal Act.

The unpermitted development and the impacts therefrom remain on the subject property. The continued presence of the unpermitted development and/or the maintenance of cleared areas on the subject property, as described below, will exacerbate adverse impacts to resources protected by the Coastal Act. Thus, without remediation, the violation is causing continuing resource damage, as defined in 14 CCR Section 13190. Therefore, the Commission has the authority to issue a Cease and Desist and a Restoration Order in this matter.

II. HEARING PROCEDURES

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

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

The Commission should receive, consider, and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceedings, as specified in Title 14, California Code of Regulations Section 13186, incorporating by reference Section 13065. The Chair will close the public hearing after the presentations are completed. The Commissioners may ask questions to any speaker at any time during the hearing or deliberations, including, if any Commissioner chooses, any questions proposed by any speaker in the manner noted above. Finally, the Commission shall determine, by a majority vote of those present and voting, whether to issue the

Cease and Desist Order and Restoration Orders, either in the form recommended by the Executive Director, or as amended by the Commission. Passage of the motions below, per staff recommendation or as amended by the Commission, will result in issuance of the Cease and Desist Order and Restoration Orders.

III. STAFF RECOMMENDATIONS

Staff recommends that the Commission adopt the following two motions:

1. Motion:

I move that the Commission issue Consent Cease and Desist Order No. CCC-10-CD-02 pursuant to the staff recommendation.

Staff Recommendation of Approval:

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

Resolution to Issue Consent Cease and Desist Order:

The Commission hereby issues Consent Cease and Desist Order No. CCC-10-CD-02, as set forth below, and adopts the findings set forth below on grounds that development requiring a coastal development permit from the Commission has occurred without such a permit having been issued.

2. Motion:

I move that the Commission issue Consent Restoration Order No. CCC-10-RO-02 pursuant to the staff recommendation.

Staff Recommendation of Approval:

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

Resolution to Issue Restoration Order:

The Commission hereby issues Consent Restoration Order No. CCC-10-RO-02, as set forth below, and adopts the findings set forth below on the grounds that: 1) Respondents have conducted development without a coastal development permit; 2) the development is inconsistent with the Coastal Act; and 3) the development is causing continuing resource damage.

IV. FINDINGS FOR CONSENT CEASE AND DESIST ORDER NO. CCC-10-CD-02 AND RESTORATION ORDER CCC-10-RO-02

A. Description of Property

The subject property is located north of Aliso Canyon and south of Hobo Canyon, in Laguna Beach, Orange County. Generally situated at the northern terminus of Driftwood Drive, the subject property is bounded by residential development to the west, and commercial and recreational development to the south. Open space and parklands bound the property to the east and north. The landscape of the surrounding undeveloped land is characterized by steeply sloping vegetated hillsides covered by southern maritime chaparral, coastal sage scrub, and mixed chaparral plant communities. These plant communities provide habitat for several rare and threatened species, including the big-leaved crownbeard, summer holly, western dichondra, the California gnatcatcher, and the rufous-crowned sparrow, among others. The unpermitted development that is the subject of these proceedings occurred on and continues to affect an approximately 3,500 square foot area of hillside, located approximately 200 feet northwest of the terminus of Driftwood Drive, on the subject property. A map showing the location of the subject property is included as Exhibit A.

B. Description of Coastal Act Violation

The violation consists of the unpermitted removal of major vegetation (including, but not limited to southern maritime chaparral plant species) across an approximately 3,500 square foot area, resulting in significant impacts to sensitive species, including to an approximately 700 square foot area of big-leaved crownbeard (*Verbesina dissita*), which is State and federally listed as a “threatened” species. The location and extent of the unpermitted development are generally depicted in Exhibit B. A photograph of the big-leaved crownbeard is included as Exhibit C.

C. History of Coastal Act Violation at Issue on the Subject Property

On January 22, 2007, staff received a report that an approximately 6,000 square foot area of hillside on the subject property had been cleared of vegetation. After further investigations, staff later determined that the area cleared by Respondents is approximately 4,000 square feet. The original report received by staff indicated that the impacted area may have contained sensitive species, including crownbeard. Photo documentation, showing the impacted area of the subject property, was included with the original violation report (Exhibit D). Staff investigated the report and confirmed that major vegetation, consisting of southern maritime chaparral, including the threatened big-leaved crownbeard, was removed from an approximately 3,500 square foot portion of the hillside. Staff also determined that the remaining 500 square foot area, towards the base of the subject hillside, was comprised of mature ornamental vegetation. Staff’s investigation also confirmed that Respondents were responsible.

On April 27, 2007, Commission staff mailed to Respondents a letter notifying them that: the clearing of the adjacent property owner’s hillside (1) constituted “development” as that term is

defined under Section 30106 of the Coastal Act; (2) required a coastal development permit; (3) was conducted in the absence of any permit; (4) constituted a violation of the Coastal Act; and (5) impacted an extremely rare State and federally listed as threatened species (crownbeard). Staff conveyed its interest in working with Respondents to resolve the violation amicably, but also noted that the Coastal Act provides specific provisions for resolving violations thereof (Exhibit E).

Respondent Stevan Gromet submitted a response, dated May 11, 2007, in which he stated that he was committed to working towards an amicable resolution to the violation. Staff met with Respondents on multiple occasions, including on October 26, 2007; November 8, 2007 and July 2, 2008, to inspect the site, photograph the impacted area, and to discuss potential avenues for resolution. Respondents and staff agreed that a biological survey of the impacted area would help facilitate a discussion regarding appropriate measures for resolution. Respondents retained Scott White Biological Consultants to survey the extent of the impacted area and propose restoration measures. Scott White's survey was conducted in April 2008. The results of that survey were submitted to Commission staff in the form of a letter from Scott White Consulting to Respondents (Scott White Report), dated September 8, 2008, and entitled "30662 Marilyn Dr., big-leaved crownbeard site visit and remediation strategies" (Exhibit F). Staff reviewed the Scott White Report and determined that additional restoration measures, beyond those recommended by the consultant, would be necessary to resolve the violation.

Staff has worked closely with Respondents over the ensuing months to reach an effective, amicable resolution to the violation. On February 11, 2010, Commission staff mailed to respondents draft Consent Orders. On February 18, 2010, staff also mailed to Respondents a letter notifying them of the Executive Director's intent to commence formal cease and desist and restoration order proceedings (NOI). The letter was accompanied by a Statement of Defense Form, in conformance with the provisions of 14 CCR Section 13181 (Exhibit G). Respondents informed staff that they would be retaining Fred Roberts, a renowned crownbeard expert, to review the terms of the proposed Restoration Orders, survey the subject hillside, and prepare a restoration plan for the site. On March 21, 2010, Mr. Roberts submitted to staff a letter and proposed restoration plan for the impacted area of the subject property (Exhibit H). Over the weeks that followed, staff spoke several times with Respondents and Mr. Roberts and ultimately reached consensus on the measures necessary to restore the subject property. On March 31, 2010, Respondents signed proposed Consent Cease and Desist Order No. CCC-10-CD-02 and Consent Restoration Order No. CCC-10-RO-02.

D. Basis for Issuance of Orders

Cease and Desist Order

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

If the commission, after public hearing, determines that any person...has undertaken, or is threatening to undertake, any activity that... requires a permit from the commission without

first securing the permit... the commission may issue an order directing that person...to cease and desist.

The cease and desist order may be subject to such terms and conditions as the commission may determine are necessary to ensure compliance with this division, including immediate removal of any development or material...

Restoration Order

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

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

The following paragraphs set forth the basis for the issuance of the proposed Cease and Desist and Restoration Orders by providing substantial evidence that the development meets all of the required grounds listed in Section 30810 and 30811 for the Commission to issue a Cease and Desist Order and Restoration Order.

1. Development has occurred without a Coastal Development Permit

Development, consisting of the unpermitted removal of major vegetation (including, but not limited to, southern maritime chaparral plant species) across an approximately 3,500 square foot area of ESHA, resulting in significant impacts to sensitive species, including impacts to an approximately 700 square-foot area of big-leaved crownbeard, has occurred on the subject property. The activity that is the subject of these Orders meets the definition of “development” as set forth in Section 30106 of the Coastal Act, and therefore required a coastal development permit. Respondents have admitted to Commission staff and have not disputed the fact that they undertook the clearing. However, Respondents did not obtain a CDP prior to conducting the unpermitted development.

Section 30600(a) of the Coastal Act states that, in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the coastal zone must obtain a coastal development permit. “Development” is defined by Section 30106 of the Coastal Act as follows:

***"Development"** means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land...change in the intensity of use of water, or of access thereto...and **the removal or harvesting of major vegetation other than for agricultural purposes...** (emphasis added)*

As previously discussed, the activities at issue in this matter consisted of removal of major vegetation in ESHA, including southern maritime chaparral species and the extremely rare and threatened big-leaved crownbeard.⁴ Southern maritime chaparral, which includes the big-leaved crownbeard, is a unique plant community that provides habitat for rare and threatened species that occur only in a select few coastal areas of Southern California and Baja California, Mexico. For that reason, it meets the definition of “major vegetation” as the Commission has consistently interpreted the use of that term in Section 30106 of the Coastal Act. Respondents’ actions clearly constitute “development” within the meaning of the above-quoted definition and therefore are subject to the Coastal Act permitting requirements set forth in Coastal Act Section 30600(a).

Commission staff has verified that the cited development on the property was conducted by Respondents without a CDP. Thus, the standard for the Commission’s issuance of the Cease and Desist Order pursuant to Coastal Act Section 30810 and the first element of the standard for the Commission’s issuance of the Restoration Order pursuant to Coastal Act Section 30811 have both been satisfied.

2. Unpermitted Development is Inconsistent with the Coastal Act

As described below, the unpermitted development described herein is not consistent with multiple resource protection policies of the Coastal Act, including: Section 30240 (protection of ESHA); Section 30251 (protection of scenic and visual resources); and Section 30253 (minimization of adverse impacts).

A. Environmentally Sensitive Habitat Areas

The unpermitted development is inconsistent with Coastal Act Section 30240, which requires protection of all environmentally sensitive habitat areas within the Coastal Zone and subject to regulation under the Coastal Act. Environmentally sensitive habitat areas are defined in Coastal Act Section 30107.5, as follows:

“Environmentally sensitive area” means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

Southern maritime chaparral, including the big-leaved crownbeard, is a sensitive plant community that is very limited in distribution among the coastal and inland hills of Southern California. It is a low, fairly open plant community, highly dependent on maritime climate. In the Laguna Beach area, southern maritime chaparral is generally characterized by the presence of big podded and/or warty-stemmed ceanothis, bush rue, bladder pod, and spiny or little-leaved redberry, among other species.⁵

⁴ Dixon, John. (CCC). April 16, 2007. Memo to Ryan Todoro (CCC) re: Habitat Characteristics on the Athens Group LLC property at Hobo Aliso Ridge (formerly known as Driftwood Estates).

⁵ Marsh, K. January 20, 1992. South Laguna Biological Resources Inventory. A report prepared for the City of Laguna Beach.

Crownbeard, a State and federally listed as threatened species, is a semi-woody perennial shrub that is a member of the sunflower family (*Asteraceae*).⁶ It can grow to just over three feet tall and is most often found growing on coastal hillsides and in canyons under the canopy of dense southern maritime chaparral and, to a lesser extent, coastal sage scrub and mixed chaparral. This species is extremely rare, found only in two places worldwide: along a two-mile stretch of the southern Laguna Beach coast, and along the northwestern coast of Baja California, Mexico. The Laguna Beach population is estimated to contain only a few thousand plants.⁷ Approximately 20% of those plants are located within Aliso & Wood Canyons Regional Park and are managed and protected by Orange County. The remaining 80% of the plants are located on private lands and are threatened by residential development and fuel modification.⁸

In 2007, the Commission's Senior Ecologist Dr. John Dixon drafted a memo summarizing his findings after visiting the subject property and reviewing the associated ecological and biological literature (Exhibit I). In that memo, Dr. Dixon described the areas adjacent to the graded pads on the subject property as consisting of southern maritime chaparral, coastal sage scrub, and habitats intermediate in character between the two. While their quality was observed to be varied across the subject property, Dr. Dixon noted that these sensitive plant communities provide essential habitat for rare and threatened species, such as the State and federally listed as threatened big-leaved crownbeard, the federally listed as threatened California gnatcatcher, and the rufous-crowned sparrow, a California Species of Special Concern. After considering the vegetative communities present; their ecosystem function; the rare and threatened species they support; as well as the landscape position, topography, physical environment, and climatic regime of the site; Dr. Dixon concluded that the southern maritime chaparral and coastal sage scrub communities on the subject property meet the definition of ESHA, as defined by the Coastal Act.⁹

The subject hillside upon which the unpermitted development occurred was also mapped as southern maritime chaparral in 2000 as part of a biological resources assessment for the proposed Driftwood Estates subdivision project.¹⁰ As previously discussed, southern maritime chaparral species, including big-leaved crownbeard, have also been observed by Commission staff on the subject property. These plant communities are considered by the U.S. Fish and Wildlife Service and the California Department of Fish and Game as "sensitive" and "special status."¹¹

⁶ For State listing, see 14 C.C.R. § 670.1 (2006). For federal listing, see 50 C.F.R. § 17.12(2)(h) (2005).

⁷ Federal Register. 1993. Endangered and Threatened Wildlife and Plants; Proposed Rule for Six Southern Maritime Chaparral Plant Taxa From Coastal Southern California and Northwestern Baja California, Mexico. Vol. 58, No. 189.

⁸ Id.

⁹ Dixon, John (CCC). April 16, 2007. Letter to Ryan Todoro (CCC) concerning habitat characteristics on the Driftwood Properties, LLC land at Hobo Aliso Ridge (formerly known as Driftwood Estates).

¹⁰ LSA Associates, Inc. 2000. *Biological Resources Assessment – Driftwood Estates – Laguna Beach Project*. Prepared for Highpointe Communities, Inc.

¹¹ Evans, K.E. (USFWS). December 21, 2001. Letter to A. Larson (City of Laguna Beach) re: "Draft Environmental Impact Report for the Laguna Beach Driftwood Estates (Tentative Tract Number 16035), City of Laguna Beach, County of Orange, California."

Tippets, William (CDFG). December 20, 2001. Letter to Ann Larson (City of Laguna Beach) re: "Environmental Impact Report for the Driftwood Estates Project, (Tentative Tract Number 16035), Laguna Beach. California. "

These plant communities in general and the crownbeard in particular have been subject to great pressures and losses. The US Fish and Wildlife Service reports that urbanization and agricultural conversion have caused the destruction of an estimated 82 to 93 percent of southern maritime chaparral communities in California.¹² Small-scale residential development and fuel modification in particular have significantly impacted the Laguna Beach population of big-leaved crownbeard.¹³ Individual plants are susceptible to removal during these development activities and large areas of chaparral habitat have been disturbed and destroyed as a result. Cumulative impacts from continued plant removal and habitat fragmentation threaten the survival of the species that depend upon these plant communities. As evidenced by its precipitous decline, southern maritime chaparral, including big-leaved crownbeard, is rare and easily degraded by human activities. Consequently, at the subject site, southern maritime chaparral, including the big-leaved crownbeard, as determined by Dr. Dixon in 2007, meets the definition of Environmentally Sensitive Habitat Area (ESHA) under the Coastal Act.

Coastal Act Section 30240 states the following:

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

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

The unpermitted development consists of the unpermitted clearing of vegetation across an approximately 3,500 square foot area of hillside on the subject property, resulting in impacts to sensitive southern maritime chaparral species, including the big-leaved crownbeard. The unpermitted activities do not constitute a resource dependent use and caused significant disruption to a unique and fragile habitat upon which numerous rare and threatened species rely, in violation of Section 30240(a). Moreover, the remaining disturbance on the site has degraded the habitat and provided for the introduction of non-native and invasive species throughout the impacted area, which may affect adjacent coastal sage scrub¹⁴ and southern maritime chaparral communities in a way that is not compatible with the continuance of these habitat communities, in violation of Section 30240(b). Therefore, the unpermitted development is inconsistent with Section 30240 of the Coastal Act.

¹² Federal Register. 1993. Endangered and Threatened Wildlife and Plants; Proposed Rule for Six Southern Maritime Chaparral Plant Taxa From Coastal Southern California and Northwestern Baja California, Mexico. Vol. 58, No. 189.

¹³ California Department of Fish and Game (CDFG). 2005. *The Status of Rare, Threatened, and Endangered Plants and Animals of California 2000-2004*. Accessed via Internet on February 16, 2010 at: http://www.dfg.ca.gov/wildlife/nongame/t_e_spp/new_te_rpt.html

¹⁴ In his memo, dated April 16, 2010, Dr. Dixon also identified the coastal sage scrub plant communities existing on the subject property as meeting the definition of ESHA.

B) Scenic Public Views and Visual Qualities of Coastal Areas

The unpermitted development is inconsistent with Coastal Act Section 30251, which requires that the scenic and visual qualities of the coast be protected and any permitted development be visually compatible with the surrounding area. Section 30251 of the Coastal Act states:

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

The resources that must be protected in this area include views to and across the few remaining unbroken tracts of coastal sage scrub and southern maritime chaparral plant communities that make Southern California's coastal hillsides and canyons so visually appealing. The unpermitted development at issue was neither sited nor designed to protect views of the scenic coastal hillsides and canyons of Laguna Beach. Instead, the unpermitted actions degraded a fundamental and defining component of their aesthetic character – the native vegetation. Rather than seeking to ensure the unpermitted activities were visually compatible with the surrounding area, which consists largely of native chaparral and coastal scrub plants, Respondents cleared most of the impacted area to bare earth. The resulting barren patch of earth contrasts sharply with the aesthetic character of the adjacent vegetated hillsides and canyons. The unpermitted development failed to protect, enhance, or ensure compatibility with the visual quality of the area. Therefore, the unpermitted development is inconsistent with Section 30251 of the Coastal Act.

C. Minimization of Adverse Impacts

The unpermitted development is inconsistent with Section 30253(b) of the Coastal Act, which requires new development to minimize erosion and associated impacts to the site. Section 30253(b) states:

New development shall... (b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

The unpermitted development exists on a steeply sloping hillside of the subject property. The subject hillside consists of a fill-over-cut slope, comprised mainly of non-uniformly compacted fill material, including sandy and silty soils, and decaying vegetation, all of which appears to have been generated from prior grading activities on or near the subject property. A Draft Environmental Impact Report (EIR) that was prepared for a proposed subdivision on the subject property notes that the native soils are susceptible to erosion. The EIR recommends mitigation in the form of an erosion control plan and best management practices for significant water quality impacts expected from vegetation clearance associated with the proposed project. In addition, to

ensure soil stability and erosion prevention on the subject hillside, the EIR recommends the planting of deep rooted ground cover.¹⁵

Chaparral plants typically help stabilize the soil and prevent erosion. Removal of these plants, especially on Southern California hillsides, increases the risk of erosion and slope failure. Southern California mudslides, which tend to occur on wildfire denuded hillsides, are a frequent reminder of the important role native vegetation plays in stabilizing slopes. Respondents' unpermitted clearing of all but a few shrubs within the impacted area of the subject hillside failed to assure the stability and structural integrity of that hillside. Moreover, by clearing much of the impacted area to bare earth, thereby exposing the underlying soils to erosive forces such as wind and rain, Respondents contributed significantly to the erosive potential of the hillside. For these reasons, the unpermitted activities are inconsistent with Section 30253(b) of the Coastal Act.

As noted above, Respondents' unpermitted actions are clearly inconsistent with numerous resource protection policies of the Coastal Act. As such, the second standard has been met for the Commission's issuance of a Restoration Order pursuant to Coastal Act Section 30811.

3. Unpermitted Development is Causing Continuing Resource Damage

The unpermitted development is causing continuing resource damage, as defined in Title 14, California Code of Regulations, Section 13190, which states:

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

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

'Damage' means any degradation or other reduction in quality, abundance, or other quantitative or qualitative characteristic of the resource as compared to the condition the resource was in before it was disturbed by unpermitted development. (emphasis added)

The southern maritime chaparral species, including the threatened big-leaved crownbeard, that occur on the subject property – in addition to the views they enhance and the soils they stabilize – are afforded protection under Coastal Act Sections 30240, 30351 and 30253(b), and are therefore a “resource” as defined in Title 14, California Code of Regulations, Section 13190(a). The unpermitted clearing of the subject hillside reduced the quality and abundance of these rare plant species, has degraded scenic views and contributed to erosion across the site, thereby causing “damage” to the resource, as defined in Title 14, California Code of Regulations, Section 13190(b). Without restoration, revegetation and careful monitoring, impacts, including but not

¹⁵ Michael Brandman Associates. 2001. *Draft Environmental Impact Report for Laguna Beach Driftwood Estates (Tentative Tract No. 16035)*. Appendix D.

limited to the following, will persist: temporal loss and loss of fitness due to removal of the reproductive elements of the plants (i.e., fruit, seeds, flowers, etc.); establishment of non-native and invasive species, which may delay or impede reestablishment of native plants within the impacted area; as well as the long-term exposure-related effects to the remaining crownbeard resulting from removal of the necessary shade and thermal canopy. The persistence of these impacts constitutes “continuing” resource damage, as defined in Title 14, California Code of Regulations, Section 13190(c).

For the reasons state above, Respondents’ unpermitted actions are causing continuing resource damage. As a result, the third standard has been met for the Commission’s issuance of a Restoration Order, pursuant to Coastal Act Section 30811. Therefore, the Commission has the authority under Coastal Act Section 30811 to issue a Restoration Order in this matter.

4. Provisions of Consent Cease and Desist Order No. CCC-10-CD-02 and Consent Restoration Order No. CCC-10-RO-02

All of the activities set forth in these Consent Orders are consistent with and, in fact, are designed to further Chapter 3 resource protection policies. Staff recommends that the Commission issue these Consent Orders to facilitate the restoration and revegetation activities necessary to fully resolve the violation at issue in these proceedings and to mitigate the significant impacts to sensitive resources that occurred as a result of the violation. The Consent Orders require not only restoration of the areas naturally recovering from the impacts of the unpermitted activities, but also the planting of additional native species to mitigate the temporal loss and loss of fitness experienced by the impacted species, as a result of the unpermitted development. To further facilitate the restoration and restore the property to the pre violation condition, the Consent Orders require Respondents to remove all non-native plant species from the restoration area, on a monthly basis during the rainy season, for the duration of the restoration effort. The Orders require that all restoration measures be detailed in a restoration plan, which must be submitted to and approved by the Executive Director before commencement of the restoration activities set forth in these Orders. This plan will include a restoration map, a description of all restoration methods and performance standards, the elements of necessary contingency plans, and a detailed monitoring and maintenance component. The Restoration Plan is a proactive measure that will ensure protection of natural resources and conformity of all restoration and mitigation activities with the policies of Chapter 3 of the Coastal Act.

E. California Environmental Quality Act (CEQA)

The Commission finds that the issuance of Consent Cease and Desist Order No. CCC-10-CD-02 and Consent Restoration Order CCC-10-RO-02 to compel compliance with the Coastal Act, to restore resources impacted by unpermitted development activities, and to mitigate the impacts that resulted from the unpermitted development are exempt from any applicable requirements of the California Environmental Quality Act of 1970 (CEQA) and will not have any significant adverse effects on the environment, within the meaning of CEQA. The Orders are exempt from the requirements for the preparation of an Environmental Impact Report, based on Sections 15060(c)(2), 15060(c)(3), 15061(b)(2), 15037, 15038, and 15321 of the CEQA Guidelines.

F. Consent Agreement: Settlement

Chapter 9, Article 2 of the Coastal Act provides that violators may be civilly liable for a variety of penalties for violations of the Coastal Act, including daily penalties for knowingly and intentionally undertaking development in violation of the Coastal Act. Respondent has clearly stated their willingness to completely resolve the violation, including any penalties, administratively and amicably, through a settlement process. To that end, Respondent has committed to comply with all terms and conditions of these Consent Orders, and not to contest the issuance or implementation of these Consent Orders. Additionally, in light of the intent of the parties to resolve these matters in a timely fashion and through settlement, Respondent has also agreed to resolve their monetary liability under the Coastal Act (see Section 12.0 of the attached Consent Order – Appendix A).

G. Findings of Fact

1. Stevan and Rona Gromet are the owners of property located at 30662 Marilyn Drive in the City of Laguna Beach, Orange County (APN 656-201-14).
2. Driftwood Properties, LLC is the owner of property located at the northern terminus of Driftwood Drive in the City of Laguna Beach, in Orange County (APNs 056-240-65 and 656-191-40).
3. The property owned by Driftwood Properties, LLC is located immediately adjacent to the eastern boundary of property owned by Stevan and Rona Gromet and in an area not subject to a certified Local Coastal Program.
4. Stevan and Rona Gromet have undertaken development, as defined in Coastal Act Section 30106, consisting of the removal of major vegetation, including threatened big-leaved crownbeard, on property owned by Driftwood Properties, LLC, in an environmentally sensitive habitat area.
5. Stevan and Rona Gromet undertook the development described in finding #4 without obtaining a coastal development permit, in violation of the Coastal Act.
6. No permit exemption applied to the action at issue.
7. On January 22, 2007, staff received a report that vegetation had been cleared from an area of hillside on property owned by Driftwood Properties, LLC, immediately adjacent to property owned by Stevan and Rona Gromet.
8. After conducting a preliminary investigation, on March 13, 2007, staff confirmed that a violation had occurred on the property owned by Driftwood Properties, LLC, and that Stevan and Rona Gromet were responsible for the violation.

9. On April 27, 2007, staff mailed to Stevan and Rona Gromet a Notice of Violation letter explaining that the unpermitted clearing of vegetation from the adjacent property owner's hillside constituted "development" as that term is defined under Section 30106 of the Coastal Act, was conducted without the benefit of any permit, and therefore constituted a violation of the Coastal Act. The letter emphasized staff's preference to resolve the violation amicably through a consent order.
10. On February 18, 2010, the Executive Director issued to Stevan and Rona Gromet a Notice of Intent to Commence Cease and Desist and Restoration Order Proceedings, pursuant to Title 14 California Code of Regulations Sections 13181(a) and 13191(a), to address the unpermitted removal of major vegetation on the subject property.
11. On March 22, 2010, authorized representatives for Driftwood Properties, LLC notified Commission staff via email of their intent to allow Stevan and Rona Gromet, and their agents, contractors and representatives, permission to access and perform restoration work upon the impacted area of the subject property, pursuant to Consent Orders CCC-CD-10-02 and CCC-RO-10-02.
12. The southern maritime chaparral and coastal sage scrub plant communities on the subject property meet the definition of environmentally sensitive habitat areas, as defined in the Coastal Act.
13. The unpermitted development described in finding #4 had a severe negative impact on southern maritime chaparral species, including big-leaved crownbeard, a state and federally listed threatened species, and therefore is inconsistent with Coastal Act Section 30240.
14. The temporal loss and loss of fitness incurred by the southern maritime chaparral species, including big-leaf crownbeard, will continue until restoration and revegetation activities resolve the violation.
15. The unpermitted development described in finding #4 impacted scenic views of coastal hillsides and therefore is inconsistent with Coastal Act Section 30251.
16. The unpermitted development described in finding #4 contributed to increased erosion and therefore is inconsistent with Coastal Act Section 30253(b).
17. The unpermitted development is causing "continuing resource damage" within the meaning of Coastal Act Section 30811 and Title 14, California Code of Regulations, Section 13190.
18. Coastal Act Section 30810 authorizes the Commission to issue a cease and desist order. Coastal Act Section 30811 authorizes the Commission to issue a restoration order.
19. The work to be performed under this Order, if completed in compliance with the Order and the plans required therein, will be consistent with Chapter 3 of the Coastal Act.

Appendices and Exhibits

Appendices

Appendix A. Proposed Consent Cease and Desist and Restoration Orders Nos. CCC-CD-10-02 & CCC-RO-10-02.

List of Exhibits

Exhibit	Description
A.	Map showing the location of the subject property.
B.	Map depicting the Impacted Area of the subject property.
C.	Photograph of Big-Leaved Crownbeard (<i>Verbesina dissita</i>).
D.	Photographs of the impacted area, submitted on January 22, 2007 with report of violation.
E.	Notice of Violation Letter from Commission staff to Stevan and Rona Gromet, dated April 27, 2007.
F.	Letter from Scott White Consulting to Stevan and Rona Gromet, dated September 8, 2008.
G.	Notice of Intent to Commence Cease and Desist and Restoration Order Proceedings Letter, sent by Commission staff to Stevan and Rona Gromet, dated February 18, 2010.
H.	Letter and proposed restoration plan from Fred Roberts to Commission staff, dated March 21, 2010.
I.	Memo from Dr. John Dixon (CCC) to Ryan Todoro (CCC) re: Habitat Characteristics on the Athens Group LLC property at Hobo Aliso Ridge (formerly known as Driftwood Estates), dated April 16, 2007.

**CONSENT CEASE AND DESIST ORDER CCC-10-CD-02 AND
CONSENT RESTORATION ORDER CCC-10-RO-02**

1.0 CONSENT CEASE AND DESIST ORDER CCC-10-CD-02

Pursuant to its authority under California Public Resources Code (“PRC”) section 30810, the California Coastal Commission (“Commission”) hereby authorizes and orders Stevan Gromet and Rona Gromet; all their successors and assigns (hereinafter collectively referred to as “Respondents”) to: (1) cease and desist from trespassing upon or engaging in any further development on the property identified in Section 6.0, below (“subject property”), unless authorized pursuant to the Coastal Act, including through the terms and conditions of these Consent Orders; (2) cease and desist from undertaking any development on Respondents’ own property, located at 30662 Marilyn Drive, Laguna Beach, Orange County, unless authorized pursuant to a Coastal Development Permit; (3) take all steps necessary to ensure compliance with the Coastal Act; and (4) restore the Impacted Area of the subject property in accordance with these Consent Orders. Through the execution of Consent Cease and Desist Order No. CCC-10-CD-02, Respondents agree to comply with its terms and conditions.

2.0 CONSENT RESTORATION ORDER CCC-10-RO-02

Pursuant to its authority under PRC section 30811, the Commission hereby orders and authorizes Respondents to take the actions set forth below, including steps to restore and revegetate the Impacted Area of the subject property as described in Section 3.0, below. Through the execution of Consent Restoration Order CCC-10-RO-02, Respondents agree to comply with its terms and conditions. Respondents further agree to condition any contracts for work related to these Orders upon an agreement that any and all employees, agents, and contractors; and any persons acting in concert with any of the foregoing, adhere to and comply with the terms and conditions set forth herein.

PROVISIONS COMMON TO BOTH ORDERS

3.0 TERMS AND CONDITIONS

- 3.1 Within thirty days of the Commission’s issuance of these Consent Orders, Respondents shall submit a Restoration Plan for the review and approval of the Executive Director of the Commission. The Restoration Plan shall outline all removal, restoration, and erosion control activities; sampling and analyzing procedures; monitoring and maintenance protocols; contingency plans; and any other activities related to the remediation of the Coastal Act violation on the subject property pursuant to these Consent Orders. The Restoration Plan shall be prepared by a restoration ecologist or resource specialist (“restoration consultant”) qualified to perform restoration of southern maritime chaparral

(“chaparral”) – including restoration of big-leaved crownbeard (*Verbesina dissita*) – in the Laguna Beach area or under conditions similar to those that exist on the subject property. The Restoration Plan shall address the necessity of controls to prevent excessive erosion and sediment transport across the subject property and describe the measures that will be taken to control erosion and sediment transportation. Qualifications of the restoration consultant must be submitted to the Executive Director for his review and approval prior to the preparation of the Restoration Plan. The Restoration Plan shall include and address the following:

A. Definitions

1. Impacted Area: All areas of the subject property from which Respondents or any/either of them removed or caused to be removed major vegetation, areas that were impacted by the removal thereof, and any areas that may become impacted during the course of restoration and maintenance, as generally depicted in Exhibit 1, including but not limited to an approximately 3,500 square-foot area that, prior to the violation described in Section 7.0, below, contained maritime chaparral species, including big-leaved crownbeard.
2. Crownbeard Restoration Areas: Those portions of the Impacted Area on which these Consent Orders require big-leaved crownbeard (hereinafter “Crownbeard”) restoration and revegetation, consisting of an approximately 1,050 square foot area, as generally depicted in Exhibit 2.
3. Chaparral Revegetation Area: All portions of the Impacted Area, not including the Crownbeard Restoration Areas, that, prior to the Coastal Act violation, contained southern maritime chaparral species and upon which restoration and revegetation shall occur (approximately 2,450 square feet), as generally depicted in Exhibit 3.

B. Goals

1. Restoration on the subject property of the Crownbeard Restoration Areas.
2. Restoration on the subject property of the Chaparral Revegetation Area.
3. Removal of non-native and invasive plant species and prevention of regrowth or establishment of other non-native and invasive species across the entire Impacted Area.
4. Control of erosion across the subject property and prevention of sediments from entering the storm drain system and coastal waters by preserving and enhancing existing native vegetation, limiting disturbance on the subject property, utilizing best management practices (BMPs), and stabilizing and revegetating the Impacted Area with native plant species as soon as possible.

5. Monitoring and maintenance of the Crownbeard Restoration and Chaparral Revegetation Areas until such a time as the Executive Director determines the remediation is successful, but in no case less than five years.

C. Methods

1. General Provisions: The Restoration Plan shall include:
 - i. A map(s), drawn to scale, that shows the specific parameters, locations and extents of the following: (1) reference sites as defined in Section 3.1.C.1.iii of these Consent Orders; (2) the area of unpermitted vegetation clearing that is the subject of these proceedings, consistent with Section 3.1.A.1; (3) the Crownbeard Restoration Areas, consistent with Section 3.1.A.2; (4) the Chaparral Revegetation Areas, consistent with Section 3.1.A.3; (5) any existing non-native and invasive plants that shall be removed pursuant to Section 3.1.D.4; and (6) the specific locations and directions from which photographs will be taken annually and included in the annual monitoring reports to demonstrate restoration progress, as discussed in Section 3.1.E.3. Any proposed deviations in Respondents' delineations of the areas defined in Section 3.1.A, from those depicted in Exhibits 1, 2 and 3, shall be explained in writing and subject to the Executive Director's review and approval. The locations of all species planted shall each be individually delineated and labeled on the map(s), so that each can be clearly identified.
 - ii. A schedule/timeline of restoration activities that also identifies the parties who will be conducting these activities (i.e., agents, employees, contractors, resource specialists, etc.). Restoration procedures recommended by the restoration consultant charged with preparing the Restoration Plan shall be included in the Restoration Plan and utilized. If these procedures require planting to occur at a certain time of year, the Executive Director may, as provided for under Section 13.0 of these Consent Orders and at the written request of Respondents, extend the deadline for planting that is set forth in Section 3.2 of these Consent Orders, to achieve optimal growth of the Crownbeard and associated chaparral species.
 - iii. A description of the physical and biological parameters of the natural habitat type that is the model and establishes the goals for restoration, including the characteristic species. This section shall explicitly lay out the restoration goals and objectives. It shall also include a detailed description of Crownbeard reference sites, setting forth the rationale for selection, identifying the location and species composition, and describing the history of disturbance from fuel modification activities, fire, etc. The reference sites shall be located as closely as possible to the Impacted Area, shall be similar in all relevant respects to the habitat model, and shall provide the standard for measuring success of the Crownbeard restoration under these Consent Orders.

- iv. A list of the species that are to be planted (“palette”), including the rationale for and description of the size and number of container plants and the rate and method of seed application. The Restoration 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, Respondents must provide a nursery certification that they are of local origin and are not cultivars, and the Restoration 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 Restoration Plan shall include procedures for any plant salvage and methods of installing salvaged plants.
- v. A detailed description of all equipment to be used. Hand tools shall be utilized unless the Restoration Plan demonstrates to the satisfaction of the Executive Director that mechanized equipment is required and will not significantly impact resources protected under the Coastal Act, especially the threatened Crownbeard.
- vi. A detailed description of any artificial inputs, such as watering or fertilization that may be used to support the establishment of the vegetation. The description shall include a list of the full range of amounts of inputs that may be utilized, and a statement that the minimum amount necessary for successful restoration shall be utilized. Respondents shall not install a permanent irrigation system in the restoration area. If necessary, temporary above ground irrigation to provide for the establishment of the Crownbeard and associated chaparral species is allowed for a maximum of three years or until the vegetation has become sufficiently established to warrant cessation of the irrigation, whichever occurs first. If, after three years, the vegetation has not become established, the Executive Director may allow, upon written request from the Respondents, for the continued use of the temporary irrigation system. The written request shall include an explanation for why additional irrigation is needed, and the duration for which the extension is being sought.
- vii. An assessment of the possible impacts to sensitive resources on the subject property, including Crownbeard, from restoration and mitigation activities and procedures for both proactively and retroactively addressing these impacts. Respondents shall conduct restoration and removal activities in a way that minimizes impacts to the subject property. Any impacts to sensitive species that occur during and/or as a result of restoration, revegetation, or monitoring, shall be reported to the Executive Director in writing with accompanying photographs of the impacts, within five days of occurrence. Any impacts to sensitive species shall be remedied by the Respondents as soon as possible, after receiving approval from the Executive Director. Impacts to sensitive species shall be documented, remedial measures

taken, and their effectiveness shall be discussed in the annual report that corresponds to the reporting period during which the impact occurred.

Other than those areas subject to restoration activities, including areas for which Driftwood Properties, LLC has granted authorizing site access and restoration authorization, the subject property and surrounding areas shall not be disturbed by activities related to these Consent Orders and to the approved Restoration Plan, to the greatest extent practicable. Prior to the initiation of any restoration or removal activities, the boundaries of the Impacted Area shall be physically delineated in the field, using temporary measures such as fencing, stakes, colored flags, or colored tape. All temporary delineation materials shall be removed when no longer needed and verification of such removal shall be provided in the annual report that corresponds to the reporting period during which the removal occurred.

2. Crownbeard Restoration: The Restoration Plan shall detail the methods that will be used to successfully restore and maintain the Crownbeard Restoration Areas. The location of the Crownbeard Restoration Areas shall be clearly delineated and labeled on a Restoration Plan Map, prepared pursuant to Section 3.1.C.1.i of these Consent Orders. The planting of the Crownbeard within the Crownbeard Restoration Areas shall take place before the rainy season during the first year in which this agreement is in effect, but no later than December 1, 2010. The Restoration Plan shall detail the methods that will be used to ensure successful cultivation of the Crownbeard, in conformance with the provisions of 3.1.C. The Restoration Plan shall state that a total of nine crownbeard plants from one-gallon containers shall be planted within the Crownbeard Restoration Areas. The crownbeard propagules shall be planted in close proximity to those chaparral shrub plantings required in Section 3.1.C.3. The plantings shall be distributed such that for each chaparral shrub planted, three crownbeard propagules will be planted in sufficient proximity to allow for the crownbeard to benefit from the chaparral shrub canopy. All seed or propagating material shall come from onsite sources of plant stock, if possible. If this is not possible, seed or plants from a source as close to the property as is feasible shall be used to ensure the genetic integrity of the Crownbeard on the subject property.

A contingency plan outlining procedures to address unsuccessful restoration shall be included in the monitoring section of the Restoration Plan, as described in Section 3.1.E.1, below. The contingency plan shall state that if any Crownbeard plants within the Crownbeard Restoration Areas fail to become established within two years from the time of planting, they shall be replaced by container plants, the number of which shall be recommended by the restoration consultant, subject to the approval of the Executive Director or his or her designee, in order to ensure successful restoration under these Consent Orders. The contingency plan shall also state that if any established Crownbeard in the Crownbeard Restoration Areas fails to survive, it shall be mitigated at a replacement ratio of 3:1 (based on area of coverage), on the subject property, in accordance with the provisions set forth in Section 3.1.E.4, below.

The Restoration Plan shall state that all non-native and invasive plants, with the exception of any that are providing canopy shading for the impacted Crownbeard, shall be removed from the Crownbeard Restoration Areas and maintenance activities, as set forth in Section 3.1.E.1, shall prevent the re-establishment of non-native and invasive plants to levels above those specified in Section 3.1.D.4 of these Consent Orders.

3. Chaparral Revegetation Areas: The Restoration Plan shall outline the methods that will be used to reestablish the southern maritime chaparral plant species across the remaining portion of the subject property impacted by the unpermitted development (approximately 2,450 square feet), and shall conform to the provisions set forth in Section 3.C.1.iv. The plant palette for the Chaparral Revegetation Areas shall include medium and large, shade-producing native chaparral shrubs/trees of local stock (i.e., Bush-rue, Lemonade Berry or Ceanothus) and native grasses. The Restoration Plan shall state that at least three shade-producing chaparral shrubs/trees from containers shall be planted within the Chaparral Revegetation Areas, in locations where crownbeard has not been observed to be resprouting (generally in the central-eastern portion of the Impacted Area). The locations of the shrubs/trees to be planted within the Chaparral Revegetation Areas shall be delineated on a Restoration Plan Map, as set forth in Section 3.1.C.1. The planting of the chaparral shrubs within the Chaparral Revegetation Areas shall take place before the rainy season during the first year in which this agreement is in effect, but no later than December 1, 2010.

The restoration plan shall also state that the portions of the Chaparral Revegetation Areas not planted with chaparral shrubs/trees shall be seeded with big-pod ceanothus and native grasses. Seeding shall occur during the first year of restoration, in advance of the rainy season, but not earlier than November 2010. A contingency plan, outlining procedures to address unsuccessful growth of the chaparral species shall be included in the monitoring section of the Restoration Plan, as set forth in Section 3.1.E.1, below. All non-native and invasive plant species shall be removed from the Chaparral Revegetation Areas and maintenance of the areas shall prevent the establishment of non-native and invasive plants to levels above those specified in the Section 3.1.D.4 of these Consent Orders.

4. Non-Native Plant Species Removal: The Restoration Plan shall detail the methods that will be used to remove non-native and invasive plant species from the Impacted Area, including the Crownbeard Restoration and Chaparral Revegetation Areas, and shall include a weeding schedule, information about the location of plants to be removed, the equipment to be used in the removal activities, and disposal procedures. Weeding shall occur on a monthly basis during the rainy season (i.e., January through April). Any non-native plants that are currently shading the impacted Crownbeard shall not be removed as their removal could compromise the Crownbeard survival. A contingency plan, which sets forth maintenance activities and alternative eradication methods to prevent regrowth, shall be included in the monitoring section of the Restoration Plan as set forth in Section 3.1.E.1, below.

5. Erosion Control: The Restoration Plan shall specify the methods to be used during and after remediation 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 Restoration Plan shall specify the type and location of erosion control measures that will be installed on the subject property and maintained until the Impacted Area has been revegetated to minimize erosion and transport of sediment. Such measures shall remain in place and maintained at all times of the year for at least three years or until the plantings have become established, whichever occurs first, and then shall be removed or eliminated by Respondents. All erosion control materials shall be removed when no longer needed and verification of such removal shall be provided in the monitoring report for the reporting period during which the removal occurred.

D. Performance Standards

1. General: The Restoration Plan shall include performance standards against which the success of the Crownbeard restoration, chaparral revegetation and non-native and invasive plant species eradication efforts can be evaluated. The performance standards shall be based on the restoration objectives and goals and the reference sites' characteristics, as set forth in Section 3.1.C.1. For each of the respective remediation areas (i.e., Crownbeard Restoration and Chaparral Revegetation Areas) on the subject property, the Restoration Plan shall specify performance standards to be used, the method of measurement or assessment of the standard, the sampling size, and the frequency of sampling and monitoring. For absolute standards, the Restoration Plan shall specify the success criteria and sampling/evaluation procedure. If absolute performance standards cannot reasonably be formed, clear relative standards shall be specified. For relative standards, the Restoration Plan shall specify the comparison procedure to be used and the basis for judging differences to be significant. If the comparison between a Restoration Area and the appropriate reference sites requires a statistical test, the test will be described, including the desired magnitude of difference to be detected, the desired statistical power of the test, and the alpha level at which the test will be conducted. The design of the sampling program shall relate logically to the performance standards and chosen methods of comparison. **The sampling programs and data analysis procedures shall be described in sufficient detail to enable an independent scientist to duplicate them.**
2. Crownbeard: A relative performance standard shall be utilized, requiring comparison of Crownbeard in the Restoration Areas to three reference sites located as close to the areas as is feasible, as set forth in Section 3.1.C.1.iii of these Consent Orders. The basal stem densities of the Crownbeard located in the Restoration Areas and the approved reference sites shall be measured. Successful Crownbeard restoration under

these Consent Orders requires the basal stem density of the Crownbeard in the Restoration Areas to be equivalent to at least 80% of the average basal stem density of the Crownbeard located within the reference sites.

3. Chaparral Species: Performance standards for the southern maritime chaparral species shall be based on the restoration objectives and goals and the reference sites' characteristics. Absolute performance standards shall be utilized, and shall be detailed in the Restoration Plan. The health of each individual plant shall be evaluated. Successful growth of the chaparral species shall be attained when all species have met the approved success criteria specified in the Restoration Plan.
4. Non-Native Plant Species: Non-native and invasive plant species shall be removed from the Impacted Area during the maintenance and monitoring period. If, during the maintenance period, non-native or invasive species are found in the Impacted Area, they shall be removed according to the maintenance provisions included in the Restoration Plan, pursuant to Section 3.1.E.1 or according to the suggestions made by the qualified restoration consultant and detailed in the relevant annual monitoring report(s) pursuant to Section 3.1.E.3 of these Consent Orders.. At the end of the five-year monitoring period, two absolute success criteria shall be utilized to evaluate the success of non-native and invasive plant eradication. Herbaceous non-native plants shall make up less than 20% of the total vegetation cover across the Impacted Area and woody non-natives shall make up less than 10% of the total vegetation cover across the Impacted Area.
5. Total Vegetative Cover: In addition to the criteria specified herein, successful restoration under these Consent Orders requires the Impacted Area to achieve a total vegetative cover, including woody and herbaceous species, of at least 75%, or a percentage of vegetative cover not statistically different from that of the reference sites identified pursuant to Section 3.1.C.1.iii.

E. Monitoring and Maintenance

1. The Restoration Plan shall include maintenance and monitoring methodology, including sampling procedures, sampling frequency, and contingency plans to address potential problems with restoration activities and/or unsuccessful remediation of the Restoration and Revegetation Areas. 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 addressed in the appropriate annual report and shall be remedied by the Respondents to ensure successful remediation. At a minimum, long-term maintenance requirements shall include periodic site inspections by the restoration consultant, at intervals specified in the Restoration Plan, eradication of non-native and invasive plant species, weed control, implementation and maintenance of erosion control measures as set forth in Section 3.1.C.5 of these Consent Orders, trash and debris removal, and/or replacement plantings as necessary.

2. Within 30 days of the completion of the restoration and remediation work described in the Restoration Plan (Section 3.1.C), Respondents shall submit to the Executive Director a report documenting the restoration, revegetation and non-native and invasive species removal 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, including photographs of the subject property before and after the plantings required by the Restoration Plan have been completed.
3. On an annual basis, for five years from the date of the approved restoration report required pursuant to Section 3.1.E.2 of these Consent Orders (during the same one-month period each year, as specified in the Restoration Plan, and no later than December 31 of the first year), Respondents shall submit a written report for the review and approval of the Executive Director. The report shall be prepared by a restoration consultant, with qualifications as set forth in Section 3.1 of these Consent Orders, and shall evaluate compliance with the approved Restoration Plan. The report shall provide recommendations for additional action, as necessary, to ensure that restoration and mitigation activities fully comply with the Restoration Plan and these Consent Orders. The annual reports shall include current photographs, taken from locations specified in the Restoration Plan, showing the progress of the remedial activities. The locations shall be clearly marked and labeled on a Restoration Plan Map prepared pursuant to Section 3.1.C.1.i of these Consent Orders and shall not change over the course of the monitoring period unless recommended changes are submitted, pursuant to Section 4.0 of these Consent Orders, for the review and approval of the Executive Director. Changes shall only be made upon a determination of good cause by the Executive Director. In addition, the monitoring reports shall include a map delineating the location and extent of the crownbeard clusters observed during the growing season that corresponds to the report's monitoring period. The basal stem densities corresponding to each cluster delineated shall also be included in the report.
4. If the periodic inspections or the monitoring report indicate that the project or a portion thereof is not in conformance with the Restoration Plan or has failed to meet the goals and/or performance standards specified in the Plan, the duration of the monitoring period as set forth in Section 3.1.E.3 shall be extended for a period of time equal to that during which the project remained out of compliance, in no case less than 2 years, and Respondents shall submit a revised or supplemental Restoration Plan for review and approval by the Executive Director. The revised Restoration Plan shall be prepared by a qualified restoration consultant, with qualifications as set forth in Section 3.1 of these Consent Orders, and shall specify measures to correct those portions of the remediation that have failed or are not in conformance with the original approved Plan. These measures, and any subsequent measures necessary to carry out the original approved plan, shall be carried out by Respondents in coordination with the Executive Director until the goals of the original approved Restoration Plan have been met.

5. At the end of the five-year monitoring period, Respondents shall submit a final report prepared by a restoration consultant, with qualifications as set forth in Section 3.1 of these Consent Orders, for the review and approval of the Executive Director. If this report indicates that restoration and mitigation activities have been unsuccessful, in part or in whole, based on the requirements contained in the approved Restoration Plan, Respondents shall submit a revised or supplemental plan to bring the Restoration and Revegetation Areas into full compliance with these Consent Orders. If the restoration or revegetation activities are unsuccessful at the end of the five-year period set forth in Section 3.1.E.3, Respondents shall mitigate by a replacement ratio of 3:1 using container stock and the Restoration Plan shall include a description of the methods of this mitigation. The Executive Director will determine if the revised or supplemental Restoration Plan must be processed as a coastal development permit, a new Restoration Order, or an amendment/modification of the these Consent Orders.
- 3.2 Upon approval of the Restoration Plan by the Executive Director, Respondents shall fully implement the Restoration Plan pursuant to the approved schedule, with all restoration revegetation, and initial non-native and invasive species removal work to be completed as early as possible pursuant to recommendations by the consulting specialist and approvals by the Executive Director. Unless the Restoration Plan provides otherwise, the restoration, revegetation and non-native and invasive species removal work shall be completed no later than 60 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 13.0 of these Consent Orders.
- 3.3 All restoration and revegetation activities undertaken pursuant to these Consent Orders are intended to be consistent with the Laguna Beach Fire Department's Landscape/Fuel Modification Guidelines and Maintenance Program and with all other applicable Laguna Beach Fire Department regulations. A written explanation of any possible conflicts must be submitted to the Executive Director and any suggested modifications made pursuant to a conflict shall be submitted, pursuant to Section 4.0 of these Consent Orders, for the review and approval of the Executive Director.
- 3.4 All plans, reports, photographs and any other materials required by these Consent Orders shall be submitted in both digital (i.e., PDF or similar file type) and hard copy format to:

California Coastal Commission
Attn: Elijah Davidian

45 Fremont Street, Suite 2000
San Francisco, CA 94131
(415) 904-5200
Facsimile (415) 904-5235

With a copy to:

California Coastal Commission
Attn: Andrew Willis

200 Oceangate, 10th Floor
Long Beach, CA 90802
(562) 590-5071
Facsimile (562) 590-5084

- 3.5 All work to be performed under these Consent Orders shall be done in compliance with all applicable laws.

4.0 REVISIONS OF DELIVERABLES

The Executive Director may require revisions to deliverables required under these Consent 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 13.0 of the Consent Orders.

5.0 PERSONS SUBJECT TO THE CONSENT ORDERS

Stevan Gromet and Rona Gromet, 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 Consent Orders, and shall undertake the work required herein.

6.0 IDENTIFICATION OF THE SUBJECT PROPERTY

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

Vacant land, owned by Driftwood Properties LLC, located at the northern terminus of Driftwood Drive, identified by the Orange County Assessor's Office as Assessor's Parcel Numbers 056-240-65 and 656-191-40, in Laguna Beach, Orange County.

7.0 DESCRIPTION OF ALLEGED COASTAL ACT VIOLATION

Unpermitted removal of major vegetation (including, but not limited to southern maritime chaparral plant species) across an approximately 3,500 square foot area, resulting in significant impacts to sensitive species, including to an approximately 700 square foot area of big-leaved crownbeard (*Verbesina dissita*), which is listed as a "threatened" species by the United States Fish and Wildlife Service pursuant to the Federal Endangered Species Act (50 CFR § 17.12(2)(h)) and by the California Department of Fish and Game pursuant to the California Endangered Species Act (14 CCR §670.2(b)(2)(D)), from the subject property.

8.0 COMMISSION JURISDICTION

The Commission has jurisdiction over resolution of this alleged Coastal Act violation under Public Resources Code Sections 30810 and 30811. Respondents have agreed not to and shall not contest the Commission's jurisdiction to issue or enforce these Consent Orders.

9.0 SETTLEMENT OF MATTER PRIOR TO HEARING

In light of the intent of the parties to resolve these matters in settlement, Respondents have agreed not to contest the legal and factual bases and the terms and issuance of these Consent Orders, including the allegations of Coastal Act violations contained in the Notice of Violation letter, dated April 27, 2007. Specifically, Respondents agree to this settlement and shall not contest the issuance or enforcement of these Consent Orders at a public hearing or any other proceeding by or before the Commission, any other governmental agency, any administrative tribunal, or a court of law.

10.0 EFFECTIVE DATE AND TERMS OF THE CONSENT ORDERS

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

11.0 FINDINGS

These Consent Orders are issued on the basis of the findings adopted by the Commission, as set forth in the document entitled "Findings for Consent Cease and Desist Order No. CCC-10-CD-02 and Restoration Order No. CCC-10-RO-02." The activities authorized and required under these Consent 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 Consent Orders as being consistent with the resource protection policies set forth in Chapter 3 of the Coastal Act.

12.0 SETTLEMENT/COMPLIANCE OBLIGATION

- 12.1 Respondents have agreed to pay a monetary settlement in the amount of \$20,000. The settlement monies shall be paid to a not-for-profit organization for purposes of facilitating conservation, restoration, and/or education regarding native plant species Southern California's Coastal Zone agreed upon between the parties, and to be paid under the terms set forth in this agreement. Respondents shall propose the project and recipient organization(s) for the Executive Director's approval, but they may include the Zoological Society of San Diego and/or the Laguna Greenbelt. Respondents shall submit the settlement payment directly to the

approved organization in four separate payments of \$5,000 on or before the following dates: December 1, 2010, April 1, 2011, April 1, 2012, and April 1, 2013, with a copy of the check and accompanying transmittal letter to be sent to Elijah Davidian of the Commission staff at the address in section 3.4. A copy of each payment receipt shall be submitted by Respondents, within one week of the foregoing dates, to the attention of Elijah Davidian of the Commission at the address in section 3.4.

- 12.2 Strict compliance with these Consent Orders by all parties subject thereto is required. Failure to comply with any term or condition of these Consent Orders, including any deadline contained in these Consent Orders, unless the Executive Director grants an extension under Section 13.0, will constitute a violation of these Orders and shall result in Respondents being liable for stipulated penalties in the amount of \$1,000 per day per violation. Respondents shall pay stipulated penalties within 15 days of receipt of written demand by the Commission for such penalties regardless of whether Respondents have subsequently complied. If Respondents violate these Consent Orders, nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of the Commission to seek any other remedies available, including the imposition of civil penalties and other remedies pursuant to Public Resources Code Sections 30821.6, 30822 and 30820 as a result of the lack of compliance with these Consent Orders and for the underlying Coastal Act violations as described herein.

13.0 DEADLINES

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

14.0 SITE ACCESS

- 14.1 Respondents have obtained consent and will provide within 30 days of the execution of this agreement, written documentation from Driftwood Properties, LLC that Respondents, and other parties including Commission staff, have permission to access and perform restoration activities as set forth in these Consent Orders, on the subject property identified as APNs 056-240-65 and 656-191-40. If at any time Respondents are denied permission to access or perform

restoration activities on the subject property, they shall refrain from accessing or performing work on the subject property and notify the Executive Director immediately. Respondents agree that at any point prior to their completion of the obligations set forth in these Consent Orders, if they are denied permission to access or perform restoration activities on the subject property and that denial results in their inability to carry out the terms and conditions of these Consent Orders, their obligation to resolve the violation described in Section 7.0 shall remain in effect and they shall utilize all reasonable efforts in a timely fashion to re-secure permission to access to and complete restoration work upon the subject property. Should Respondents fail to re-secure access after of six months, the portion of the restoration that has not been completed shall be carried out at an off-site location, subject to the approval of the Executive Director, at a ratio of 3:1, and under a plan submitted by Respondents conforming substantively with the contents of the plan required under this order, and subject to the approval of the Executive Director, within one and a half (1.5) years from the date Respondents were denied permission to access or perform restoration on the site.

- 14.2 Respondents agree to provide access to the subject property at all reasonable times to Commission staff and any agency having jurisdiction over the work being performed under these Consent Orders. Nothing in these Consent Orders is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Commission staff may enter and move freely about the portions of the subject property on which the violations are located, and on adjacent areas of the properties to view the areas where development is being performed pursuant to the requirements of these Consent Orders for purposes including but not limited to inspecting records, operating logs, and contracts relating to the site and overseeing, inspecting and reviewing the progress of Respondents in carrying out the terms of these Consent Orders.

15.0 GOVERNMENT LIABILITIES

Neither the State of California, the Commission, nor its employees shall be liable for injuries or damages to persons or property resulting from acts or omissions by Respondents in carrying out activities pursuant to these Consent Orders, nor shall the State of California, the Commission or its employees be held as a party to any contract entered into by Respondents or their agents in carrying out activities pursuant to these Consent Orders.

16.0 SETTLEMENT VIA CONSENT ORDER

In light of the desire to settle this matter via these Consent Orders and avoid litigation, pursuant to the agreement of the parties as set forth in these Consent Orders, Respondents hereby agree not to seek a stay pursuant to PRC section 30803(b) or to challenge the issuance and enforceability of these Consent Orders in a court of law or equity.

17.0 SETTLEMENT OF CLAIMS

The Commission and Respondents agree that these Consent Orders settle the Commission's monetary claims for relief for those violations of the Coastal Act alleged in Section 7.0 of these Consent Orders, (specifically including claims for civil penalties, fines, or damages under the Coastal Act, including under Public Resources Code Sections 30805, 30820, and 30822), with the exception that, if Respondents fail to comply with any term or condition of these Consent Orders, the Commission may seek monetary or other claims violation of these Consent Orders. In addition, these Consent Orders do not limit the Commission from taking enforcement action due to Coastal Act violations at the subject property or elsewhere, other than those specified herein.

18.0 CONTRACTUAL OBLIGATION

These Consent Orders constitute both administrative orders issued to Respondents personally and a contractual obligation between Respondents and the Commission, and therefore shall remain in effect until all terms are fulfilled, regardless of whether Respondents own property adjacent to the subject property upon which the violation exists.

19.0 MODIFICATIONS AND AMENDMENTS

Except as provided in Section 13.0, and for minor, immaterial matters upon mutual written agreement of the Executive Director and Respondents, these Consent Orders may be amended or modified only in accordance with the standards and procedures set forth in section 13188(b) and section 13197 of the Commission's administrative regulations.

20.0 GOVERNMENTAL JURISDICTION

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

21.0 NO LIMITATION OF AUTHORITY

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

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

22.0 INTEGRATION

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

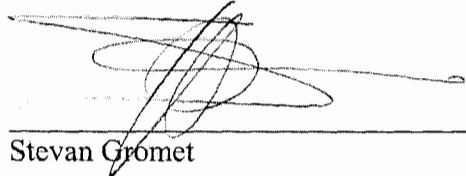
23.0 STIPULATION

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

24.0 EXECUTION IN COUNTERPARTS


The parties agree that this agreement may be executed in counterparts and each shall be treated as the original.

IT IS SO STIPULATED AND AGREED:
On behalf of Respondents:



Stevan Gromet

3-31-10
Date



Rona Gromet

3-31-10
Date

Executed in Ventura on behalf of the California Coastal Commission:

Peter M. Douglas, Executive Director
California Coastal Commission

Date



Impacted Area

Appendix A
CCC-10-CD-02 & CCC-10-RO-02
(Gromet)
Page 18 of 20

COASTAL
COMMUNITIES

Technical Services Division - GIS Unit

All Locations Approximate.
For Illustrative Purposes Only.

0 25 50 75 100
Feet

N

Exhibit 1
Gromet: Violation File # V-5-07-009

All Locations Approximate.
For Illustrative Purposes Only.







All Locations Approximate.
For Illustrative Purposes Only.

0 25 50 75 100
Feet



Gromet: Violation File # V-5-07-009



Exhibit B
CCC-10-CD-02 & CCC-10-RO-02
(Gromet)
Page 1 of 1

City of Laguna Beach

9002 11 MJC

Cleared Area



Crownbeard



Debris piles





Exhibit D
CCC-10-CD-02 & CCC-10-RO-02
(Gromet)
Page 4 of 6

1/22/2007 - 4:41pm

APN 656-191-40

Normal conditions

Cleared condition





Exhibit D
CCC-10-CD-02 & CCC-10-RO-02
(Gromet)
Page 6 of 6

1/22/2007 - 4:41pm

APN 656-191-40

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**

April 27, 2007

Stevan and Rona Gromet
30662 Marilyn Drive
Laguna Beach, CA 92651

Violation File Number: V-5-07-009

Property Location: Approximately 6000 square feet of hillside adjacent to 30662 Marilyn Dr., Laguna Beach

Unpermitted Development: Removal of major vegetation in an environmentally sensitive area.

Dear Mr. and Mrs. Gromet:

The owner of the property immediately east of your residence at 30662 Marilyn Drive recently reported to Commission staff that an area of hillside, approximately 6,000 square feet in size, was cleared of all vegetation except for 2 or 3 non-native shrubs. The area of cleared hillside is roughly a square, the sides of which are extensions of your property lines on to the adjacent property. Thus, it is quite clear that the vegetation removal is as an encroachment from your property.

Two biologists employed by the adjacent property owner have pointed out that the vegetation clearance impacted an extremely rare state and federally listed threatened plant, the Big-leaved Crownbeard ("Crownbeard"), which is restricted in the United States to the hillsides of South Laguna. The presence of Crownbeard on the hillside adjacent to your property has been well documented, particularly in the 2001 Draft Environmental Impact Report prepared for the proposed subdivision of Tentative Tract 16035. Commission staff also recently reviewed the habitat value of the adjacent property and in a memo dated April 16, 2007, the Commission's staff biologist, Dr. John Dixon, recommended that this location be considered an environmentally sensitive habitat area (ESHA) due, in part, to the presence of Crownbeard.

The Commission found in a previous action relating to the adjacent property - in 2006, the Commission ordered restoration of Crownbeard that was inadvertently mowed during fuel modification on the adjacent property - that Crownbeard is "major vegetation" for the purposes of the Coastal Act. Pursuant to Section 30600 (a) of the Coastal Act, any person wishing to perform or undertake development in the Coastal Zone must obtain a coastal development permit, in addition to any other permit required by law. "Development" is defined by Section 30106 of the Coastal Act, in relevant part, as:

Exhibit E
CCC-10-CD-02 & CCC-10-RO-02
(Gromet)
Page 1 of 3

"Development" means, on land, in or under water... the removal or harvest of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations....

The adjacent property owner provided documentation of the impacts to the Crownbeard, which include both disturbance of Crownbeard and removal of surrounding southern maritime chaparral. Crownbeard is typically found in the understory or on the periphery of chaparral. Although Crownbeard may initially flourish after the sheltering overstory is removed, it will die out after prolonged exposure to sunny situations. Thus, removal of surrounding chaparral, as well as direct disturbance of Crownbeard, will reduce the Crownbeard population on the hillside. For this reason, both the direct disturbance of the Crownbeard and removal of surrounding chaparral is "removal of major vegetation" pursuant to the Coastal Act.

Commission staff researched our permit files and concluded that no coastal development permits have been issued for the removal of Crownbeard and surrounding chaparral on the adjacent property, which is located within the Coastal Zone. The Crownbeard and chaparral removal constitutes development under the Coastal Act and, therefore, requires a coastal development permit. Any development undertaken in the Coastal Zone without a valid coastal development permit constitutes a violation of the Coastal Act. Please note that the Landscape/Fuel Modification Guidelines and Maintenance prepared by the Laguna Beach Fire Department do not advise the removal of sensitive or protected plant species. In fact, the guidelines require that sensitive species be identified and flagged in the field for special consideration. I provide this information for background, as the fire department's guidelines do not supplant the need for a coastal development permit or alleviate your responsibility to comply with the Coastal Act.

We would like to work with you to resolve this violation 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 have input into the process and timing of restoration of the impacted area and mitigation of the damages caused by the unpermitted activity, and, if appropriate, would allow you to negotiate a penalty amount with Commission staff. At a minimum, restoration of the impacted area will require you to 1) restore all Crownbeard impacted by direct disturbance of the plant or removal of surrounding chaparral; 2) mitigate for the temporal loss and loss of fitness incurred by the impacted Crownbeard as a result of the direct disturbance and chaparral removal; 3) replace the southern maritime chaparral that provided the protection that is essential for Crownbeard growth; and 4) monitor the success of restoration and mitigation efforts and perform any necessary maintenance activities, such as weeding or planting container stock, to ensure that the restoration and mitigation goals are accomplished. Please contact me by no later than **May 14, 2007**, regarding how you intend to resolve this violation.

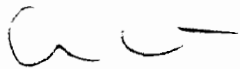
Although we would prefer to resolve this matter cooperatively, please be aware that Coastal Act Section 30809 states that if the Executive Director of the Commission determines that any person has undertaken, or is threatening to undertake, any activity that requires a permit from the Coastal Commission without first securing a permit, the Executive Director may issue an order directing that person to cease and desist. A cease and desist order may be subject to any terms and conditions that are necessary to ensure compliance with the Coastal Act. Coastal Act Sections 30810 and 30811 also authorize the Coastal Commission to issue a cease and desist order and/or order restoration of a site if unpermitted development is inconsistent with the

policies of the Coastal Act and is causing continuing resource damage. A violation of a cease and desist or restoration order can result in civil fines of up to \$6,000 for each day in which the violation persists.

In addition, 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 your attention to this matter. If you have any questions regarding this letter or the pending enforcement case, please feel free to contact me at (562) 590-5071, or in the event of my absence, Southern California Enforcement Supervisor Pat Veasart at (805) 585-1800.

Sincerely,



Andrew Willis
District Enforcement Analyst

cc: **Martyn Hoffmann, The Athens Group**
Ken Frank, City of Laguna Beach
Lisa Haage, Chief of Enforcement, CCC
Pat Veasart, Southern California Enforcement Supervisor, CCC
Teresa Henry, South Coast District Manager, CCC
Karl Schwing, Orange County Permit Supervisor, CCC

8 September 2008



SCOTT WHITE
BIOLOGICAL CONSULTING

Stevan J. Gromet
c/o Gromet & Associates
114 Pacifica, Suite 250
Irvine, California, 92618

Reg: 30662 Marilyn Dr., big-leaved crownbeard site visit and remediation strategies

Dear Mr. Gromet,

I have visited the big-leaved crownbeard site on the slope east of 30662 Marilyn Drive in the City of Laguna Beach and reviewed what is known of the plant's biology to assess adverse effects to it on the property and recommend follow up measures.

I. BACKGROUND

I. A. Big-leaved crownbeard legal status and conservation status

Big-leaved crownbeard (*Verbesina dissita*) is listed as a threatened species under the California and federal Endangered Species Acts. In California, it occurs at four sites, all in coastal Orange County around Laguna Beach and Laguna Niguel (California Dept. of Fish and Game 2008). Two of the sites have been described in some detail (see Natural History section, below) but minimal data are available for the other two. There also is a report of an "adventive" occurrence from Mill Creek in the San Bernardino Mountains (Munz 1974), but that report was evidently based on a misidentified or mislabeled specimen (S. Eliason, San Bernardino National Forest, pers. comm.).

Big-leaved crownbeard also occurs at numerous sites in coastal Baja California, Mexico, far disjunct from the Orange County locations. It has been collected at 23 Baja California sites, between Punta Descanso and San Telmo (about a 100 mile distance extending southward from near Rosarito). But conservation practice in Mexico has been poor, and more than 20 percent of known occurrences in Mexico had been extirpated by agricultural, resort, and residential land uses by the time big-leaved crownbeard was federally listed (USDI Fish and Wildlife Service 1996). In its final listing rule, the Fish and Wildlife Service reported that enforcement of conservation law in Mexico is lacking, and the federal listing applies to plants in both California and Baja California.

Big-leaved crownbeard is a member of the sunflower family (Asteraceae). It is a low, semi-woody perennial shrub, about 18" to 40" tall, with distinctive coarse leaves. It has large, bright yellow flowers on stems that extend well above the foliage. It resembles California encelia (*Encelia californica*), which also occurs in coastal Orange County, but can be distinguished by leaf surface texture and the arrangement of flowers. Big-leaved crownbeard is an attractive plant. It is grown in cultivation and sometimes is available at native plant sales (e.g., Rancho Santa Ana Botanic Garden in 2003).

Exhibit F

CCC-10-CD-02 & CCC-10-RO-02

In California, almost all big-leaved crownbeard occurrences are on private land, though some plants also are known from Aliso and Wood Canyons Regional Park. On private land, ongoing residential development and fuel modification for wildfire protection threaten the plants themselves and contribute to isolation of small populations by surrounding them with by unsuitable habitat (California Native Plant Society 1990). The Fish and Wildlife Service (1996) cited several new homes built on known occurrences even after the state listing as threatened in 1989. At Aliso and Wood Canyons Regional Park, big-leaved crownbeard is somewhat protected by management for biological conservation, but remains subject to adverse impacts from recreational land uses and fuel modification for fire protection.

All known Orange County big-leaved crownbeard occurrences are within the Natural Communities Conservation Plan for the Central and Coastal Subregion of Orange County (1996) but only a few occurrences are protected by the plan. The Fish and Wildlife Service determined that it is not adequately conserved by the NCCP and it is not considered a "covered species" under the plan. Thus, adverse impacts to big-leaved crownbeard are not considered "covered" by existing conservation measures.

I. B. Vegetation clearing at Marilyn Drive site and adjacent upslope property

The 30662 Marilyn Drive property is on a steep slope facing toward the west. The home is at about street level and the backyard slopes steeply above it. Part of the slope is covered with irrigated landscaping, but the slope above the irrigation line (roughly at the property boundary) is not irrigated and generally has not been maintained. Behind the site (i.e., to the east), adjacent land is vacant but building sites have been graded there, reportedly in the 1960s or 1970s. That property can be accessed from Driftwood Drive. I understand that big-leaved crownbeard is known from this adjacent property as documented in an Environmental Impact Report.

It is my understanding that you were instructed by your insurer to clear vegetation behind the home at 30662 Marilyn Drive for fire hazard reduction, and that you hired a landscape crew to do the clearing. That crew evidently cut an unknown number of big-leaved crownbeard plants that were growing on the property adjacent to yours.

I. C. CCC notification

On April 27 2007 the California Coastal Commission notified you that clearing the big-leaved crownbeard from the site violated of the California Coastal Act and requested your cooperation to resolve the violation.

II. FIELD VISIT

On 29 April 2008 I visited the site with you and Justin Wood (of Scott White Biological Consulting). We observed numerous big-leaved crownbeard plants in the area where vegetation had been cleared (as evidenced by cut stems of larger shrubs). We prepared a rough sketch map

of big-leaved crownbeard locations (enclosed). We estimated the size of the area on-site by pacing and estimated the extent of occupied crownbeard habitat from the sketch map. By our estimate, the affected area of big-leaved crownbeard habitat is about 90 ft. wide (the width of the rear boundary of the residential lot) by about 30 ft., all upslope from a white plastic irrigation line that crosses the slope near the property boundary and below an adjacent graded building site. We saw no crownbeard plants below the irrigation line; that part of the slope is covered by mulch and landscaping plants with scattered weeds and native "volunteers." Above the irrigation line, big-leaved crownbeard plants are found in a series of "clumps," each several feet across or larger. In total these clumps cover about 25% of our mapped area, or about 700 square feet. The clumps seem to be resprouting from below-ground rootstocks or rhizomes that evidently were not damaged by the clearing work. We cannot census the plants because we don't know whether each clump is a cluster of separate plants or a single plant spreading by rhizomes. This pattern of resprouting clumps corresponds to the clonal growth pattern described by Ayers and Showers (2006, see Natural History section, below). In addition to the crownbeard, various other native shrubs are returning to the site, evidently germinating from seed (surprisingly, the cut chaparral shrub stumps were not resprouting). There is high cover of non-native weedy herbs, mainly garland daisy (*Chrysanthemum coronarium*), short-pod mustard (*Brassica geniculata*), red brome (*Bromus madritensis* subsp. *rubens*) and tocalote (*Centaurea melitensis*). There also are a few tree tobacco (*Nicotiana glauca*). We cannot be certain whether any big-leaved crownbeard were killed by the clearing work, but there are numerous living crownbeard plants on the site now and we see little value in attempting to reintroduce more of them.

III. BIG-LEAVED CROWNB Beard NATURAL HISTORY

At the time of state listing, big-leaved crownbeard was known from only two locations, described in a report to the state Fish and Game Commission (Pardes-Wickenheiser 1989). Each occurrence was comprised of "several thousand plants which occur in dense stands or as scattered individuals." The plants were primarily on steep rocky north-facing slopes within a few miles of the ocean. The densest populations were in the understory of other shrubs on shaded slopes. They were on rugged slopes, mainly in vegetation known as southern maritime chaparral (Hogan et al. 1996), but also in mixed chaparral and coastal sage scrub (US Fish and Wildlife Service 1996). Within the maritime chaparral matrix, big-leaved crownbeard does well in small partially open areas, where its microsite habitat may include "soft chaparral" or coastal sage scrub species (F. Roberts, pers. comm. 2008).

Only minimal information on big-leaved crownbeard's ecological requirements or its interactions with surrounding vegetation is available. Vegetation clearing in its habitat for fire hazard reduction has been qualitatively monitored since the 1980s. Pardes-Wickenheiser (1989, citing communications with K. Marsh and F. Roberts) wrote:

"Initial response of big-leaved crownbeard to clearing for fuel modification zones in several sites has been favorable. Local botanists feel, however, that this initial response should be viewed with caution because removal of the overstory shrubs has created a drier, sunnier environment than that in which this species is typically found; it is too early to determine what the long-term response to this clearing will be."

Roberts (pers. comm. 2008) observed that those occurrences had generally declined over the following years and speculated that big-leaved crownbeard may require some thermal cover from surrounding vegetation to prevent frost damage. It has followed similar patterns on sites burned by wildfires. Yet there is one site where it and the surrounding vegetation were cleared and it has persisted well without special management or manipulation.

Ayers and Showers (2006) speculated that big-leaved crownbeard's below-ground rhizomes would survive grazing and trampling by goats in a City fuels reduction plan but presented no supporting data. They did not speculate on crownbeard's relationship with surrounding vegetation.

Roberts (pers. comm.) has never seen big-leaved crownbeard reestablish from seed on disturbed sites. Instead, in every case he knows of, reestablishment has been from below-ground roostocks or rhizomes. Big-leaved crownbeard seedlings are rarely if ever seen, though Michael Wall (pers. comm. 2008) has readily grown the plants from seed collected in the wild.

IV. RECOMMENDED REMEDIATION STRATEGY

Based on the site conditions and big-leaved crownbeard natural history described above, I recommend remediating impacts to big-leaved crownbeard at the Marilyn Drive site by removing non-native species; retaining native shrubs already volunteering onto the site; and monitoring site conditions and big-leaved crownbeard survival and vigor over a period of several years. At present, I do not recommend introducing more big-leaved crownbeard because plants already on-site are numerous and appear healthy. I also do not recommend planting other native shrubs because several native species are volunteering onto the site without special revegetation efforts. I would expect that careful weeding of non-native herbs and shrubs would benefit continued growth by big-leaved crownbeard and the other native species, and return the site to the condition that preceded the vegetation clearing. However, if progress is unacceptable after a 3-year period then further measures might be necessary.

I recommend preparing and implementing a weeding and monitoring plan, to include the following provisions:

1. Baseline conditions. An inventory or census of big-leaved crownbeard on the site, to include more precise mapping data than the sketch map included in this report.
2. Weeding schedule and methods. Work site specifications to ensure that weeding efforts are effective but do not damage crownbeard or other native species; should require that one

person on the work site confirm native/non-native status of all plants before removing them and minimize trampling or other damage to native species.

3. Annual monitoring to determine trends of big-leaved crownbeard plants and evaluate need (if any) for further weeding or to supplement natural chaparral regeneration with additional plantings.

4. Contingency measures to be implemented if monitoring data indicate poor progress.

I note, however, that the big-leaved crownbeard plants are found on property not under your ownership or control and that any management or monitoring efforts could only be done with the agreement and cooperation of the landowner.

Thank you for the opportunity to work with you on this project. Please contact me at your convenience with any questions or concerns you might have.

Sincerely,

SCOTT WHITE BIOLOGICAL CONSULTING



Scott D. White
Consulting Biologist

Enclosures:

1. Site sketch map
2. Aerial view
3. Photo exhibit

Persons Consulted

S. Eliason, San Bernardino National Forest, Mountaintop Ranger District, Fawnskin, California.

F. Roberts, F.M. Roberts Publications, San Luis Rey, California.

M. Wall, Rancho Santa Ana Botanic Garden, Claremont, California.

Literature cited

Ayers, D. and M.A. Showers. 2006. Recommendation for fire management by grazing of *Verbesina dissita* habitat in Laguna Beach, CA. Unpublished report, California Dept. of Fish and Game, Sacramento, California.

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
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USDI Fish and Wildlife Service. 1996 (7 Oct). Endangered and threatened wildlife and plants; determination of endangered or threatened status for four southern maritime chaparral plant taxa from coastal southern California and northwestern Baja California, Mexico. Federal Register 61:52370-52384.

X = Shrub seedling with two letter code

 = Verbesina dissecta

X = Shrub seedling with two letter code

A.f. = Adenostoma fasciculatum

$$\text{E.C.} = \frac{\text{Encelia}}{\text{californica}}$$

E. f. = Eriogonum fasciculatum

M. f. = Malacothamnus fasciculatus

M. L. = Malsma laurina

R.C. = Rhamnus crocea

R. i. = Rhus integrifolia

S. m. = Salvia mellifera

[illegible]



250 Feet

Area of Concern

Scott White Biological Consulting

Map source: Google Earth
JW: 29 Apr. 2008

Exhibit F
CCC-10-CD-02 & CCC-10-RO-02
(Gromet)
Page 8 of 9



NORTH



Photo 1: Site overview; big-leaved crownbeard at front right and scattered throughout.



Photo 2: Big-leaved crownbeard on site (laurel sumac in background).

Exhibit F
CCC-10-CD-02 & CCC-10-RO-02
(Gromet)
Page 9 of 9

CALIFORNIA COASTAL COMMISSION

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

**VIA CERTIFIED AND REGULAR MAIL****Certified Mail # 7007 1490 0000 8798 9494**

February 18, 2010

Mr. Stevan Gromet &
Mrs. Rona Gromet
c/o Gromet & Associates
114 Pacifica, Suite 250
Irvine, California 92618

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

Violation File Number: V-5-07-009

Property Location: Approximately 6000 square feet of hillside adjacent to the eastern property line of 30662 Marilyn Dr., Laguna Beach, Orange County, APNs 056-240-65 and 656-191-40

Unpermitted Development: Unpermitted removal of major vegetation (including, but not limited to, southern maritime chaparral plant species), resulting in significant impacts to sensitive species, including to the threatened big-leaved crownbeard.

Dear Mr. & Mrs. Gromet:

The California Coastal Act¹ was enacted by the State Legislature in 1976 to provide long-term protection of California's 1,100-mile coastline through implementation of a comprehensive planning and regulatory program designed to manage conservation and development of coastal resources. The California Coastal Commission ("Commission") is the state agency created by, and charged with administering, the Coastal Act of 1976. In making its permit and land use planning decisions, the Commission carries out Coastal Act policies, which, amongst other goals, seek to protect and restore sensitive habitats; protect natural landforms; protect scenic landscapes and views of the sea; protect against loss of life and property from coastal hazards; and provide maximum public access to the sea.

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

The purpose of this letter is to formally notify you of my intent, as the Executive Director of the Commission, to commence proceedings for issuance of Cease and Desist and Restoration Orders to address unpermitted development, which may include, but not be limited to, the unpermitted removal of major vegetation (including, but not limited to, southern maritime chaparral plant species) across an approximately 6,000 square foot area, resulting in significant impacts to sensitive species, including impacts to an approximately 700 square-foot area of big-leaved crownbeard (*Verbesina dissita*), which is listed as a "threatened" species by the United States Fish and Wildlife Service pursuant to the Federal Endangered Species Act (50 CFR 17.12(2)(h)) and by the California Department of Fish and Game pursuant to the California Endangered Species Act (14.CCR § 670.2(b)(2)(D)). As you know, my staff has been discussing resolving these matters with you for some time now, and this letter is a formal step in that process. We, as more fully discussed below, would strongly prefer to resolve this amicably and are committed to working with you to do so expeditiously.

The unpermitted development activities at issue occurred on a portion of the property located at the northern terminus of Driftwood Drive in the City of Laguna Beach in Orange County, and specifically on that portion adjacent to the eastern boundary of your 30662 Marilyn Dr. property. The area where the unpermitted development activities occurred is treated by the Orange County Assessor's Office as two parcels, with Assessor Parcel Numbers (APNs) 056-240-65 and 656-191-40, and is therefore hereinafter referred to as the "subject properties".² The subject properties are owned by Driftwood Properties LLC, which purchased the land in 2004, and managed by the Athens Group.

The purpose of these enforcement proceedings is to address, through Cease and Desist and Restoration Orders ("Orders"), development on the subject properties that did not receive the requisite authorization under the Coastal Act. Commission staff is proposing Orders that will direct you to: 1) cease and desist from engaging in any further development on the subject properties unless authorized pursuant to the Coastal Act; 2) cease and desist from undertaking any development on your own property, located at 30662 Marilyn Drive, Laguna Beach, Orange County, unless authorized pursuant to the Laguna Beach Local Coastal Program (LCP) and the Coastal Act; 3) take all steps necessary to ensure compliance with the Coastal Act; and 4) restore and revegetate the impacted area of the subject properties pursuant to an approved restoration plan.

Violation History

On January 22, 2007, Commission staff received a report that an approximately 6,000 square foot area of hillside on the subject properties, immediately east of your residence at 30662 Marilyn Drive, was cleared of all vegetation except for 2 or 3 non-native shrubs. The area of cleared hillside is roughly a square, the western (down-slope) side of which is formed by your eastern property line and the eastern (up-slop) side of which is formed by a line of sandbags. The

² There is some disagreement over the legal status of some of the lot lines in this area. That disagreement is not relevant to the instant enforcement action, so the Commission uses the above-referenced APNs and the phrase "subject properties" for convenience, without waiving its position on these issues.

northern and southern boundaries of the impacted area are essentially eastward extensions of your property's northern and southern boundary lines. Commission staff has confirmed that the impacted area contained sensitive maritime chaparral species, including the threatened big-leaved crownbeard (hereinafter referred to as "crownbeard").

Pursuant to Section 30600(a) of the Coastal Act, any person wishing to perform or undertake development in the coastal zone must obtain a coastal development permit (CDP), with limited exceptions not applicable here, in addition to any other permit required by law. "Development" is defined, in relevant part, by Section 30106 of the Coastal Act to include "...removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations..." The removal of major vegetation, which in this case includes removal of environmentally sensitive southern maritime chaparral species, including the threatened crownbeard, from your neighbor's property, constitutes non-exempt development under the Coastal Act and therefore requires a CDP. No CDPs were issued and no exemptions were granted for the removal of major vegetation on the hillside adjacent to your property.

On April 27, 2007, Commission staff mailed to you a Notice of Violation letter, notifying you that the clearing of the adjacent property owner's hillside constituted "development" as that term is defined under Section 30106 of the Coastal Act, required a coastal development permit, was conducted without the benefit of any permit, impacted an extremely rare State and federally listed threatened species, and therefore constituted a significant violation of the Coastal Act. Staff also noted that the Laguna Beach fuel modification guidelines do not recommend removal of sensitive plant species, but rather require that sensitive species be identified and flagged in the field for special consideration in connection with modification activities.

Staff has subsequently discussed with you the possibility of resolving this violation through a consent order(s). As we have stated previously, we would strongly prefer to resolve the violations amicably if possible and welcome working with you to achieve this goal. A consent order would provide you with an opportunity to resolve this matter consensually, to have greater input into the process and timing of the restoration of the subject properties, and to negotiate an appropriate penalty amount with Commission staff. As you know, however, the terms and conditions of a consent order in this matter would need to be, by law, consistent with Coastal Act resource protection policies and in compliance with the Coastal Act and applicable regulations. Moreover, a precondition to resolving this matter via settlement agreement would be that you secure and provide written documentation of approvals from the owner of the subject properties allowing you and your representatives, agents, and consultants to access and perform restoration work upon the impacted area of the subject properties.

Cease and Desist Order

The Commission's authority to issue Cease and Desist Orders is set forth in Section 30810 of the Coastal Act, which states, in part, the following:

- (a) If the commission, after public hearing, determines that any person...has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the*

commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person...to cease and desist.

One procedural requirement for the issuance of such an order is set forth in section 13181 of the Commission's regulations (14 CCR § 13181), which begins by stating:

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

As the Executive Director of the Commission, I am issuing this Notice of Intent to commence Cease and Desist Order proceedings because unpermitted development has occurred at the subject properties. The unpermitted development at issue in this matter may include, but not be limited to, removal of major vegetation (including, but not limited to, southern maritime chaparral plant species) across an approximately 6,000 square foot area, resulting in significant impacts to sensitive species, including impacts to an approximately 700 square-foot area of big-leaved crownbeard. The proposed Cease and Desist Order will direct you to desist from maintaining any development on the subject properties or performing any further development on the subject properties or your own property unless it is authorized pursuant to the Laguna Beach LCP and/or the Coastal Act.

Restoration Order

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

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

The specified activities meet the criteria of Section 30811 of the Coastal Act, based on the following:

- 1) Development has occurred on the subject properties without a permit from the Commission, in violation of Section 30600(a);
- 2) The unpermitted development is inconsistent with Coastal Act Section 30240 (protection of environmentally sensitive habitat);

- 3) The unpermitted development is causing "continuing resource damage," as defined by Section 13190 of the Commission's regulations. The unpermitted development has removed, damaged, and degraded environmentally sensitive habitat. Such impacts meet the definition of resource damage provided in Section 13190(a) and (b), the latter of which defines damage as: "any degradation or other reduction in quality, abundance, or other quantitative or qualitative characteristic of the resource as compared to the condition the resource was in before it was disturbed by unpermitted development." In addition, the resource damage from the development is continuing, in that the impacts from the unpermitted development continue to occur at the property.

Section 13191 of the Commission's regulations (14 CCR § 13191) includes the same noticing requirement for restoration orders as section 13181 imposes for cease and desist orders. For the reasons stated above, I am issuing this Notice of Intent to commence a Restoration Order proceeding before the Commission. The procedures for the issuance of Restoration Orders are described in Sections 13190 through 13197 of the Commission's regulations, which are, again, codified in Title 14 of the California Code of Regulations.

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

In accordance with Section 13181(a) and 13191(a) of the Commission's regulations, you have the opportunity to respond to the Commission staff's allegations as set forth in this notice of intent to commence Cease and Desist Order and Restoration Order proceedings by completing the enclosed Statement of Defense form. The Commission's regulations require that we provide you with at least 20 days for completion and submission of the Statement of Defense form. In this case, the deadline for submittal of the Statement of Defense form is March 10, 2010. However, should this matter be resolved via a settlement agreement, a statement of defense form would not be necessary.

Commission staff has tentatively scheduled the hearing for the proposed Cease and Desist and Restoration Orders for the April 14-16, 2010 Commission meeting and hope any such meeting would be on a Consent Order. If you have any questions regarding this letter or the enforcement case, please call Elijah Davidian at (415) 904-5200 or send correspondence to his attention using the address provided on the letterhead.

We are encouraged by the discussions we have had with you and hope ultimately to resolve this violation through consent agreements. We appreciate your cooperation in this matter and look forward to continuing to work with you to reach an amicable resolution of the violation.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Douglas", followed by a checkmark.

Peter Douglas
Executive Director

Encl.: Statement of Defense Form for Cease and Desist Order

cc (without Encl): Lisa Haage, Chief of Enforcement
Alex Helperin, Staff Counsel
Pat Veesart, Southern California Enforcement Team Leader
Andrew Willis, District Enforcement Analyst
Elijah Davidian, Headquarters Enforcement Office

P.O. Box 517
San Luis Rey, CA 92068
antshrike@cox.net
760-439-6244

Elijah Davidian
Headquarters Enforcement Analyst
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

March 21, 2010

RE: Restoration Plan Response to Restoration Order CCC-10-RO-02

Dear Mr. Davidian,

Attached is a Restoration Plan for big-leaved crownbeard (*Verbesina dissita*) and chaparral shrub species at 30662 Marilyn Drive as requested under Restoration Order CCC-10-RO-02. This plan addresses the disturbance and removal of big-leaved crown-beard on the slopes above 30662 Marilyn Drive in 2006.

I have studied and worked with big-leaved crown-beard for 28 years and have considerable expertise regarding its ecology and distribution in the United States and Mexico. In 1989 I successfully petitioned the California Department of Fish and Game to add big-leaved crown-beard to the list of California Threatened and Endangered plants based on its decline and loss of habitat in Laguna Beach. In 1992 while working as a Botanist for the U.S. Fish and Wildlife Service, I was the principle author on the proposed rule to add big-leaved crown-beard to the Federal list of endangered and threatened plants. In 1998 I was the principle author on the final rule to list this species as a threatened species under the U.S. Endangered Species Act. Between 2000 and 2009 I have advised various State and Federal Wildlife biologist, California Coastal Commission staff, and a number of consultant firms regarding status and mitigation for impacts of crown-beard, especially in association with impacts along Nyes Place.

At the request of Stevan Gromet, on February 25, 2010, I examined the slopes above 30662 Marilyn Drive in Laguna Beach. According to Mr. Gromet, big-leaved crown-beard and its associated habitat was cleared in 2006 in association with fire protection. The site where the impact took place is relatively small, less than 1,500 square feet on slopes immediately adjacent to residential property. The soils were not disturbed at the site and native vegetation is gradually returning.

At the time of the examination in February 2010, big-leaved crown-beard was the most abundant species at the site, representing about 40-50 percent of the vegetation, which covered about 25 percent of the upper slope. Several species of native shrubs were also recovering at this site, including black sage (*Salvia mellifera*), laurel sumac (*Malosma laurina*), flat-topped buckwheat (*Eriogonum fasciculatum*), and red berry (*Rhamnus crocea*). The lower slope, consisting of a steeply cut slope, was dominated by ornamental vegetation with trunk sizes suggesting it is on the order of 15 to 25 -years old and predates the clearing.

Big-leaved crown-beard appears to do best in habitat with a dense over story. However, especially on southern slopes, this density is often only moderate and in some cases crown-beard associates with coastal sage scrub, a lower, more open vegetation type. Due to the small size of the impact area, the lack

Exhibit H
CCC-10-CD-02 & CCC-10-RO-02
(Gromet)
Page 1 of 17

of soil disturbance in 2006, and the apparent gradual recovery of native shrubs on the parcel, it would appear that controlling non-native species should be the primary focus of a restoration plan at this site. Although reintroduction of larger shrub species could accelerate the recovery process there is also a risk that planting shrubs will damage big-leaved crown beard root clusters at the site.

Scott White (2007), who prepared an assessment of the Marilyn Drive site, also noted that passive recovery and exotic control was the best restoration solution for this site. Mr. White noted that big-leaved crown-beard distribution in 2007 was of a similar extent as compared to 2010, about one third of the plants observed by Mr. White in 2007 were not seen in 2010 and about a third of the plants seen in 2010 were not observed in 2007. Probably all these plants are present in underground structures and respond differently in different years.

This plan largely promotes a passive restoration with minimum soil disturbance. Additional limited shrub plantings are proposed if monitoring demonstrates that passive recovery and weed control are insufficient to fully restore the property by 2013.

If you have any questions, please feel free to contact me at the e-mail and phone number above. Thank you for your consideration.

Fred M. Roberts, Jr.

Fred M. Roberts

RESTORATION PLAN
for
BIG-LEAVED CROWN-BEARD (*Verbesina*
***dissita*)**
& Chaparral Shrub Species

30662 Marilyn Drive
Laguna Beach, California

Restoration Order CCC-10-RO-02

March 19, 2010

This Restoration Plan was prepared at the request of Stevan and Rona Gromet, in fulfillment of requirements set forth in Restoration Order CCC-10-RO-02. The principal authors were Mr. Fred Roberts, a consulting botanist with expertise in the Crownbeard and the flora of Orange County, and Edward Almanza, a local consultant in habitat conservation. Technical support was provided by Scott White, a biologist who is also familiar with the flora and plant ecology of Orange Count

CONTENTS

	Page
Executive Summary	1
Introduction	2
Current Site Conditions & Restoration Recommendations	2
Restoration Actions	4
Methods for Remedial Planting	5
Performance Standards	6
Schedule & Timeline	7
Monitoring & Management	8

Appendix – White, 2007. “Letter Reg: 30662 Marilyn Dr., big-leaved crownbeard site visit and remediation strategies”

EXECUTIVE SUMMARY

This Restoration Plan fulfills requirements of California Coastal Commission Consent Restoration Order CCC-10-RO-02 addressing vegetation removal on the upper slope of the property located behind 30662 Marilyn Drive, Laguna Beach, California. The Restoration Plan was prepared by Fred Roberts, consulting botanist for the restoration program. An assessment of the vegetation removal by Mr. Roberts (based on a site visit and previous site visits and documentation by others [White, 2007]) yielded the following findings:

- ◆ The percentage of local crownbeard population impacted by vegetation removal is estimated to be extremely small, less than 1/10th of 1%.
- ◆ Vegetation removal at the site was limited to above-ground clearing, leaving both native soils and crownbeard root clusters intact.
- ◆ Impacts to the local crownbeard population appear to be only temporary. Based on visits to the site, it is clear that both crownbeard and native chaparral species are well on the way to recovery.
- ◆ Restoration efforts should focus on controlling exotic plants and monitoring the site for a minimum of three years. In the event that the consulting botanist determines that remedial measures are warranted during the 3-year monitoring period, the consulting botanist may require the planting of two to five chaparral shrubs of 3- to 5-gallon size, to provide additional overstory for recovering crownbeard. All activities should emphasize minimal disturbance of soils and recovering crownbeard on site.
- ◆ Implementation of the restoration actions defined in this Restoration Plan will ensure the full recovery and long-term establishment of crownbeard and chaparral and coastal sage scrub species to a density and distribution equal or superior to pre-impact conditions.

INTRODUCTION

This Restoration Plan identifies the goals, methods, monitoring requirements and performance standards for a crownbeard (*Verbesina dissita*) and chaparral habitat restoration program, designed to address the site-specific conditions and resources of the upper slope at the rear of the property located behind 30662 Marilyn Drive, Laguna Beach, California. Implementation of this Restoration Plan and its prescribed actions are in fulfillment of Consent Cease and Desist and Restoration Orders CCC-10-CD-02 and CCC-10-RO-02 as adopted by the Coastal Commission.

CURRENT SITE CONDITIONS AND RESTORATION RECOMMENDATIONS

Based on a site visit on February 25, 2010, current conditions at the site present a mix of recovering native species and exotic plants. The current status of recovering vegetation indicates that the clearing of 2006 did not disturb the native soils onsite, and was limited to the cutting of the above ground portions of plants, leaving the root structures of crownbeard intact. The limited level of site disturbance explains the significant recovery of crownbeard to date.

Vegetation onsite currently includes both shrubs and sub-shrubs, providing an overall vegetative cover of approximately 30 percent. Judging from the mix of species that inhabit the slope on adjoining properties, the native species that dominated the site prior to clearing are members of the mixed chaparral and coastal sage scrub plant communities with some elements of southern maritime and toyon-sumac chaparral plant communities, rather than true southern chaparral.

Few native plants, mostly limited to a few small individuals of laurel sumac (*Malosma laurina*), are in evidence on the lower, steeper portion of the site. It is clear that this portion of the site (approximately one-third of the site, closest to the residence) is a cut-slope, graded at the time of the original lot development several decades ago. The lower cut slope is the only portion of the site on which the soil layer has not only been disturbed but has also been removed, a condition that predates the 2006 vegetation removal. This condition has direct relevance to the scope and feasibility of native plant restoration activities at the site. The lack of a well-developed, soil horizon, along with the artificial steepness of the slope, account for the almost complete absence of native vegetation (especially crownbeard), and is consistent with pre-clearing photographs that show only ornamental vegetation on this portion of the site.

The ornamental species on the lower slope are also well established with many plants that, based on their trunk size, are probably more than 20-years old. Conditions on the lower slope indicate that native plant species were not present (or at most, were present in very low numbers) on this portion of the site immediately prior to the vegetation clearing action. Because of its steepness and the prior removal of native soils, the lower slope is not conducive to the establishment of native plant species in significant numbers. Moreover, even if native plant restoration on the lower slope were feasible, its proximity to the existing residence (less than 30 feet) makes it a poor site in terms of any long-term benefit to the crownbeard or chaparral habitat as these areas are clearly within areas the fire department requires to be cleared of native vegetation even under their most lenient interpretations. Restoration activities on this portion of the property are therefore considered inappropriate and infeasible.

The upper portion of the slope is vegetated by a mix of native chaparral species, including crownbeard, coastal sage scrub species, and several exotics. In addition to crownbeard, native plant species include several shrub species capable of providing an overstory of shrub cover when fully developed, including lemonadeberry (*Rhus integrifolia*), laurel sumac, black sage (*Salvia mellifera*), red berry (*Rhamnus crocea*), and California buckwheat (*Eriogonum fasciculatum*). Wild cucumber (*Marah macrocarpus*) is also present. Exotic plants include tree tobacco (*Nicotiana glauca*), fountain grass (*Pennisetum setaceum*), and annual grasses.

A visual assessment of site conditions indicates that the crownbeard is recovering according to a distribution and density similar to pre-event conditions. The most recent site visit (February 2010) corroborates findings of earlier site visits by Scott White, a biologist who is also familiar with the species and its ecology (White, 2007). On the upper slope (where native soils were not removed during earlier site development), the regrowth of crownbeard occupies an area representing approximately 40 to 50 percent of the total vegetative cover. The presence of viable underground root clusters is evident in the pattern and density of regrowth, indicating that the clearing activity did not result in permanent damage to the crownbeard onsite. The primary impact was to the primary matrix habitat (chaparral) that is necessary to the long-term viability of the population. Since further clearing was not conducted nor is it anticipated to occur in the future, this habitat damage, in light of visible evidence that shrub species are also recovering onsite, is also temporary and not continuing. Restoration efforts should focus on removal of all ornamental shrubs and to the extent feasible, exotic perennials and annual plants, on the upper portion of the site and where possible, exotic perennials and annuals.

Assessment of site conditions indicates that chaparral shrubs are also recovering onsite. Observations of crownbeard recovery elsewhere suggest that the presence of shrub cover is critical to the successful long-term viability of the species. If, at the end of the third year of monitoring, the consulting botanist determines that additional remedial actions are warranted, restoration activities may also include planting of chaparral shrub species to accelerate re-establishment of shrub cover, thus enhancing full recovery of crownbeard plants onsite. This measure should be achieved with minimal disturbance to the surrounding soils, so as to avoid damage to the root clusters of the recovering crownbeard. The planting of native shrub species, such as lemonadeberry and big-pod ceanothus (*Ceanothus megacarpus*), should occur in carefully selected locations on the upper portion of the site, in sufficient numbers to provide shrub cover to a substantial portion of the recovering crownbeard plants. Site specific conditions indicate that this strategy would be most effectively implemented by planting two to five plants in 3- or 5-gallon size specimens at locations pre-selected by the consulting biologist during the February 2010 site visit. Plantings should be of lemonadeberry obtained from Tree of Life Nursery or a comparable source with specimens from the southern California region. Big-pod ceanothus, if used, should be from a local source, as the San Joaquin Hills plants are somewhat distinct from other southern California plants. Native shrub plantings should not be irrigated, but it is recommended that they be planted at the beginning of the rainy season (November). This would also offer the opportunity to collect seed off big-pod ceanothus in May and June from plants growing adjacent to the site and spread it over the site to further encourage chaparral recovery.

Site conditions (and observations of crownbeard recovery at other sites) suggest that with implementation of these restoration actions the crownbeard onsite can be expected to be fully recovered within three to four years after implementation.

Goals of the Restoration Program

The goal of the Restoration Program is to restore the local population of crownbeard and appropriate chaparral species to the density and distribution of pre-clearing (2006) conditions, or better. The principal means of achieving this goal is the control of exotic plants during the recovery period. If determined necessary following three years of monitoring and control of exotic species, chaparral overstory shrubs will be planted to enhance the habitat for recovering crownbeard onsite, thereby further enhancing the probability of its long-term survival.

Scope of Restoration Activities

Exhibit A depicts conditions and resources of the project site in late February 2010. The restoration program applies to the upper slope of the site (i.e., the area above the cut slope) extending just below the irrigation line, but not including the area mapped as ornamental vegetation. The distribution of recovering crownbeard is shown, along with the locations of chaparral shrub species. Areas that appear white on the Exhibit in the restoration area are predominately bare ground (about 40-50 percent of the site) or vegetated with non-native annual grasses (about 10-20 percent of the site).

RESTORATION ACTIONS

1. Non-Native Plant Species Removal

Non-native plant species will be removed from the area identified on Exhibit A (upper slope). Initial non-native species removals will occur 30-days after approval of this plan, starting with removal of woody and perennial exotics. Weeding of annuals and any reoccurring non-native perennials will be repeated monthly during the months of January through April until the end of the monitoring period (see below). Removals will be performed by a crew of no more than two persons using handtools only. Removal crews will be instructed and supervised by a botanist familiar with the local flora and crownbeard to avoid direct and indirect impacts to the recovering crownbeard and to all native plant species onsite.

2. Crownbeard Restoration

Restoration methods for crownbeard will emphasize passive restoration. A passive restoration strategy has been determined to be the optimal method for restoration due to current site conditions, principally:

- The native crownbeard onsite is presently in a state of recovery;
- Native chaparral shrubs are also recovering; and
- Active restoration (other than that described in section 3 below) would likely disturb native soil and crownbeard root clusters in situ, thereby jeopardizing successful restoration.

Passive restoration of the recovering crownbeard onsite will be achieved principally through implementation of restoration action 1 above.

3. Chaparral Revegetation

During the late spring of 2010, seeds from big-pod ceanothus adjacent to the site will be collected and planted in October or November over the site to enhance recovery. The successful germination and establishment of only one or two plants would be consistent with local chaparral densities.

At the discretion of the consulting botanist, additional remedial actions may include planting of chaparral shrubs. Plant materials will consist of two to five specimens of lemonadeberry or big-pod ceanothus in 3- or 5-gallon containers. Potential locations for planting are shown in Exhibit A (Restoration Plan Map).

4. Erosion Control

Soil erosion is not anticipated to be an issue because (a) the site was not denuded by the clearing action, and there are not significant portions of the site that are bare of vegetation; (b) artificial irrigation will not be a part of the restoration program. However, onsite monitoring will include observation of site conditions to ensure that erosion is not occurring onsite.

METHODS FOR REMEDIAL PLANTING (if deemed necessary)

All monitoring and management activities will be performed or overseen by a qualified botanist with unique expertise in crownbeard ecology and other rare native plants in Southern California.

1. Plant Palette

The plant palette consists of the following:

- One to three lemonadeberry plants of 3 to 5-gallon size
- One to two big-pod ceanothus plants of 3 to 5-gallon size

Planting stock will be obtained from Tree of Life Nursery in San Juan Capistrano. Plants will be from a local source population (south Orange County). A certificate will be provided by Tree of Life Nursery verifying that plants are from a local population.

Planting methods will emphasize low-impact planting, to minimize disturbance of in situ soils. Planting will be done manually, using only shovels, pick axes and similar handtools, by a crew of no more than two persons. Plants will be placed in the ground at locations selected from the seven potential locations shown in Exhibit A. Supplemental hand watering will be applied for the initial planting and during subsequent establishment if rainfall fails to provide adequate moisture. Following establishment, the plants will be allowed to respond to natural conditions, relying on seasonal precipitation. Artificial irrigation will not be a part of the restoration program.

2. Equipment

Planting methods will rely on handtools only. No mechanical equipment will be used onsite.

3. Watering

Watering will be conducted by hand (container or hose) upon planting and at several day intervals if measurable rainfall does not occur within three days of watering. Rainfall totals of one inch or more within this time frame may end the need for supplemental watering. At least during the first month of establishment, supplemental watering maybe necessary on a periodic basis during any period of one week or more without rainfall. No fertilizers will be applied. Natives prefer poor soils.

4. Potential Impacts During Restoration

The restoration program is intended to capitalize on the recovering crownbeard plants already in situ. Methods are designed to minimize intrusion during the planting of overstory shrub species as well as during subsequent monitoring. Planting sites for the shrub overstory plants were carefully selected to avoid disturbance to root clusters of the recovering crownbeard. Access to and from the site by the restoration crew will be from the subject property (30662 Marilyn Drive) to ensure complete avoidance of potential impacts to native plants outside the restoration area. Implementation of the restoration program in accordance with the methods outlined in this Restoration Plan will result in no direct or indirect impacts to the crownbeard onsite or to other native species.

PERFORMANCE STANDARDS

Performance standards are based on the objectives and goals of the Recovery Plan:

Re-establishment of sufficient shrub cover at an accelerated rate to ensure full recovery of the native crownbeard population onsite to its pre-clearing density and distribution.

Crownbeard

Crownbeard restoration shall be deemed successful when crownbeard on-site has attained a distribution and density similar to that of pre-clearing conditions, estimated to be 40 to 50 percent total vegetative cover of the upper slope. The distribution of crownbeard on Exhibit A is probably similar to the distribution in any given year. For example, White (2007) included an exhibit with a similar percent cover but the distribution was markedly different. Probably the root clusters are present in the locations described by White (2007) but they did not come up in 2010 just as the plants now seen in 2010 probably did not sprout leaves in 2007. To ensure full recovery of the on-site local crownbeard population, sufficient shrub cover must be restored to the site to enable passive restoration of recovering crownbeard to succeed.

Crownbeard restoration will be monitored through onsite mapping of crownbeard distribution during the months of February or March during each monitoring year.

Chaparral Species

Performance standards for planting of overstory shrubs (if implemented) are based on the objective of establishing the target chaparral species (lemonadeberry, big-pod ceanothus).

Establishment shall be deemed successful if, after a monitoring period of 3 years, planted shrub species are determined to be in good health.

Non-Native Plant Species

Non-native and invasive plant species shall be removed in the area identified in Exhibit A during the maintenance and monitoring period. If non-native and invasive plants are found during the monitoring and maintenance period, they will be removed according to the maintenance procedures identified above. At the end of the five-year monitoring period, two absolute success criteria shall be utilized to evaluate the success of non-native and invasive plant eradication. Herbaceous non-native plants will make up less than 20% of the total vegetation cover (on the upper portion of the site) and no woody non-natives will be present on the upper portion of the site.

SCHEDULE & TIMELINE

Implementation of the actions set forth in this plan will commence immediately upon approval of the plan's approval by the Executive Director of the California Coastal Commission. Restoration actions will be implemented in phases, as some actions are seasonally dependent, while others can be implemented immediately. An outline of major actions along with phasing and timeline is presented below. Specific methods and performance criteria associated with each action are identified in detail in subsequent sections.

Restoration Action	Timing
1. Initial removal of non-native & invasive plants	Within 30 days of Restoration Plan Approval
2. Maintenance & Monitoring Site check & repeat removal of Non-native & invasive plants	Monthly between January and April throughout monitoring period
3. Installation of chaparral overstory shrubs	If deemed necessary after 3 years of monitoring, planting will occur in the month of November
4. Reporting	Annually in January throughout monitoring period

Monitoring Period

The monitoring period is defined as the period beginning immediately upon approval of this Restoration Plan and ending with the finding by a qualified botanist that all restoration goals have been achieved in accordance with performance standards set forth above. In no case will the monitoring period be less than three years, the length of time believed necessary to meet the program's goals. However, the period could be longer, if one or more of the elements of the program fail to meet their performance standards at the end of three year's time.

MONITORING AND MANAGEMENT

Annual Monitoring Report

In January of each year during the monitoring period, a qualified botanist will supply an annual monitoring report. The monitoring report will provide an assessment of the status of each element of the Restoration Plan as detailed below. For all management actions prescribed in the Annual Monitoring Report, the qualified botanist will also identify a time-frame within which each management action will be completed, along with specific methods for its implementation.

1. Crownbeard Recovery

The monitoring report will provide a written assessment of the status of the population on the site. The report will describe the apparent distribution, density and vigor of crownbeard. The distribution of crownbeard will be mapped and compared to the distribution of crownbeard recovery goals. The report will identify any management actions the restoration biologist feels are warranted to ensure the attainment of recovery goals.

2. Non-native and Invasive Plant Species

The report will provide an assessment of site conditions as they relate to restoration goals for non-native and invasive plant species. The assessment will include estimates of the percent cover of both herbaceous and woody non-native and invasive species. If the assessment finds that the percent cover for herbaceous or woody non-native and invasive species does not meet the stipulated performance criteria, the restoration biologist will identify management actions designed to achieve compliance with the performance standards.

3. Chaparral Species

The report will provide an assessment of the status of chaparral habitat onsite, including planted overstory shrub species, if appropriate. The assessment will describe the status of the planted shrub species in the context of their ability to provide an overstory for a substantial portion of the recovering crownbeard onsite. If, in the opinion of the restoration biologist planted shrubs show signs of stress or other threats to their survival are evident, the restoration biologist is authorized to take supplemental steps, including but not limited to, monitoring the site with increased frequency, initiating an irrigation regime, replacing stressed or dead shrubs with healthy

specimens, and relocating planted shrubs to different locations that increase their likelihood for survival while still enhancing the suitability of habitat for crownbeard onsite.

In addition to the planted shrub species, the report will provide an assessment of overall chaparral habitat onsite, to ensure that planting and restoration activities do not disrupt existing chaparral plants so as to substantially affect the health, diversity or distribution of chaparral habitat onsite.

4. Erosion Control

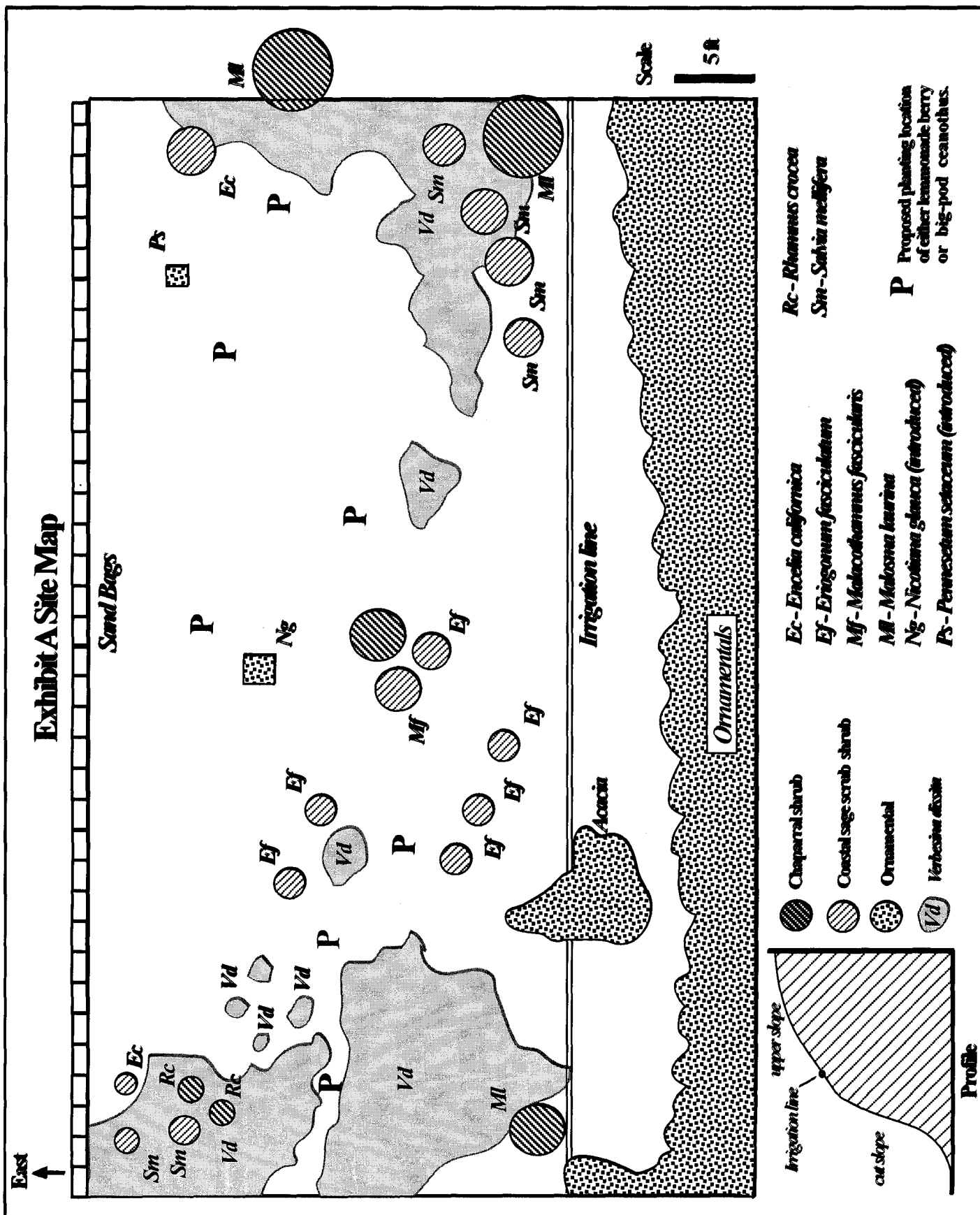
The report will make note of any evidence of excessive erosion onsite. Erosion is not expected to be an issue because the site is vegetated and automated irrigation will not be used onsite.

Contingency Monitoring

In the case that the consulting botanist determines that planting of additional overstory shrubs is necessary, additional monitoring will be implemented following shrub planting. The site will be visited by a qualified botanist, at least twice during the week of establishment and once a week for three weeks following. If the establishment appears successful, at least one additional visit will be made during the rainy season, or as needed, to ascertain that the planted shrubs have established. In October (or just prior to the first rains), the status of the restoration will be accessed. If, in the opinion of the qualified botanist the planted shrubs show signs of stress or other threats to their survival are evident, the qualified botanist is authorized to take supplemental steps, including but not limited to, monitoring the site with increased frequency, additional supplemental watering, replacing stressed or dead shrubs with healthy specimens, and relocating planted shrubs to different locations that increase their likelihood for survival while still enhancing the suitability of habitat for crownbeard onsite.

Final Monitoring Report

At the end of the monitoring period, the restoration biologist will prepare a final monitoring report that provides an assessment of site conditions and evaluates those conditions in terms of the program's performance standards. The final monitoring report, like the annual reports, will include photographs and mapping of restoration elements to document the conclusions of the assessment.



APPENDIX
to Restoration Plan

White, 2007, Letter reg: 30662 Marilyn Dr. big -leaved Crownbeard site visit and remediation strategies”

[see attached pages]

For the Appendix,
please see staff report Exhibit F.

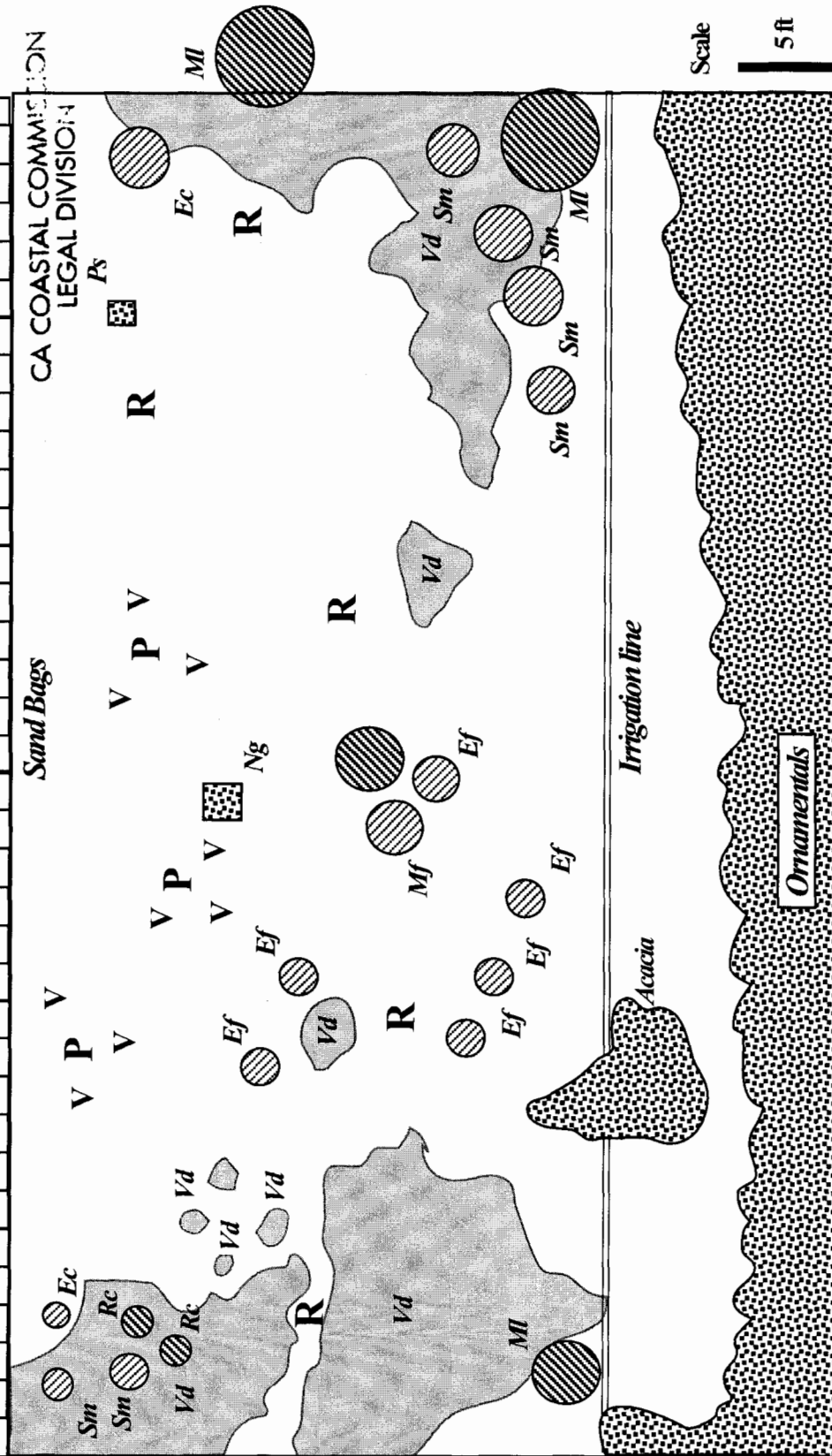
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MAR 29 2010

Exhibit A Site Map

CA COASTAL COMMISSION
LEGAL DIVISION

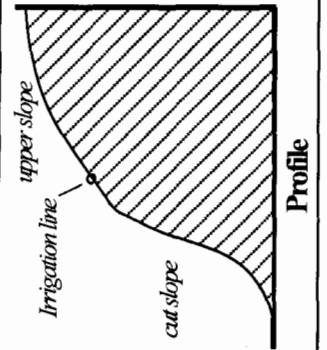
Sand Bags



Scale
5 ft

- P** Proposed planting location of shrub typical of local chaparral community. Initial planting phase.
- R** Proposed remedial shrub planting locations.
- V** Proposed initial planting locations for crown-beard
- All proposed planting sites approximate

- Ec** - *Encelia californica*
Ef - *Eriogonum fasciculatum*
Mf - *Malacothamnus fascicularis*
MI - *Malosma laurina*
Ng - *Nicotiana glauca* (introduced)
Ps - *Pennisetum setaceum* (introduced)
- Ec** - *Encelia californica*
Rc - *Rhamnus crocea*
Sm - *Savia mellifera*
- Chaparral shrub
Coastal sage scrub shrub
Ornamental
Verbesina discolor



CALIFORNIA COASTAL COMMISSION

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MEMORANDUM

FROM: John Dixon, Ph.D.
Ecologist

TO: Ryan Todaro

SUBJECT: Habitat Characteristics on the Athens Group LLC property at Hobo-Aliso Ridge (formerly known as Driftwood Estates)

DATE: April 16, 2007

Documents reviewed:

Marsh, K. January 20, 1992. South Laguna Biological Resources Inventory. A report prepared for the City of Laguna Beach.

J. Gustafson (Investigator, City of Laguna Beach). June 16, 1994. Response to complaint that Esslinger property was bulldozed on June 4 and June 5, 1994. Includes this summary of the site visit: "Site visit revealed recent grading or brush removal."

U.S. Fish and Wildlife Service. October 7, 1996. Determination of Endangered or Threatened Status for Four Southern Maritime Chaparral Plant Taxa from Coastal Southern California and Northwestern Baja California, Mexico. Final rule. Federal Register Volume 61, Number 195, pages 52370-52384. [Listing of Bigleaf Crownbeard, *Verbesina dissita*, as Threatened]

Shelley, D.A. (John M. Tettemer & Associates). June 30, 1999. Letter to M. Vaughn (CCC) concerning proposed development on Esslinger property, now known as Driftwood Estates.

LSA Associates. August 17, 2000. Biological Resources Assessment, Driftwood Estates – Laguna Beach Project. A report prepared for Highpointe Communities, Inc.

Michael Brandman Associates. November 2001. Draft Environmental Impact Report, Laguna Beach Driftwood Estates (Tentative Tract No. 16035). State Clearinghouse No. 2001011112. Prepared for City of Laguna Beach.

Tippets, W.E. (CDFG). December 20, 2001. Letter to A. Larson (City of Laguna Beach) re: "Draft Environmental Impact Report for the Driftwood Estates Project (Tentative Tract Number 16035), Laguna Beach, California (SCH 200101112 (sic)).

Evans, K.E. (USFWS). December 21, 2001. Letter to A. Larson (City of Laguna Beach) re: "Draft Environmental Impact Report for the Laguna Beach Driftwood Estates (Tentative Tract Number 16035), City of Laguna Beach, County of Orange, California

Almanza, E. and D. Bramlet. June 2003. Technical Review, Biological Resources Assessment, Driftwood Estates. A critical assessment of proposed alterations to the City of Laguna Beach's habitat ranking system written by E. Almanza based on a Dave Bramlet's site survey and technical information, with a note from Karlin Marsh dated February 21, 2003.

The subject property includes an irregular, more-or-less flat graded area bounded to the south and west by residential development (single-family homes and a trailer park), to the north by native habitat and a trailer park, and to the east by native habitat. This disturbed area was graded out of a natural, generally ocean-facing hillside on the south side of Hobo Canyon in an area known locally as the "Hobo Aliso Ridge." The relatively undisturbed adjacent native habitat is mainly comprised of southern maritime chaparral, coastal sage scrub, and habitats intermediate in character between maritime chaparral and coastal sage scrub. These habitats, especially maritime chaparral, support populations of bigleaf crownbeard¹, which is listed as "threatened" under both federal and state law and is endemic to this part of Orange County.

Prior to the grading of this site, its habitat was almost certainly southern maritime chaparral because the landscape position, topography, physical environment, and climatic regime was essentially the same as that of the adjacent maritime chaparral. If left undisturbed, it is reasonable to expect that the site would eventually again support a maritime chaparral community since such a successional sequence has been observed at other disturbed sites. This is also suggested by recent changes in the vegetation. The vegetation was periodically removed by bulldozing prior to 1999.² Ground-level photographs taken in 1999 show a barren site, nearly devoid of vegetation, bounded by a line of sandbags. Ground cover was extremely sparse, suggesting that the area had

¹ In the United States, natural populations of bigleaf crownbeard are only found on coastal hillsides and canyons in Laguna Beach. Although generally restricted to southern maritime chaparral, bigleaf crownbeard also occurs to a lesser extent in coastal sage scrub and mixed chaparral. There has been an 82 to 93 percent loss of maritime chaparral habitat in southern California due to urbanization and agriculture. The majority of remaining populations are on private land and threatened with residential development.

² The site was scraped at least in 1994 (Gustafson 1994) and in 1997 or 1998 (P. Alia, personal communication to J. Dixon, April 14, 2007). According to local residents, the vegetation was removed on other occasions prior to 1999 (P. Alia, personal communication to J. Dixon, April 14, 2007). A 1979 aerial photograph shows most of the site vegetated. An aerial from the City that is labeled "1997/1978 Aerial Photos" shows discrete, rectilinear unvegetated areas that suggest grading had recently taken place.

recently been scraped, closely mowed,³ or both. Apparently, the vegetation removal has ceased because by 2001 the graded portion of the site supported developing Venturan-Diegan transitional coastal sage scrub, sage scrub-grassland ecotone/sere⁴, coastal sage-chaparral ecotone/sere, and southern maritime chaparral, in addition to weedy vegetation (Michael Brandman Assoc. 2001). Bigleaf crownbeard was documented on the graded portion of the site in both 2000 and 2003 (LSA 2000, Almanza & Bramlet 2003).

When southern maritime chaparral is disturbed, the early colonizers are generally exotic grasses and other weeds followed by coastal sage scrub species. With time, the coastal sage scrub is expected to be replaced by maritime chaparral, which is considered the climax community. Based on observations of recovery on nearby sites, the process could take 30 years or longer (Fred Roberts, personal communication to J. Dixon, April 13, 2007). Therefore, had this site been left undisturbed beginning in 1972 it mostly likely now would be covered with a patchwork of mature coastal sage scrub and maritime chaparral. However, as pointed out by the Department of Fish and Game (Tippets 2001), "...past and ongoing clearance of vegetation on much of the previously-graded portion of the site has prevented the establishment of mature coastal sage scrub and southern maritime chaparral."

Both the Department and the U.S. Fish and Wildlife Service (Evans 2001) consider the various types of coastal sage scrub and the maritime chaparral that occur on the property to be "sensitive" or "special status" plant communities. Southern maritime chaparral is listed as a rare plant community by the Department of Fish and Game's Natural Diversity Data Base and it performs the important ecosystem function of providing habitat to rare and threatened species such as bigleaf crownbeard. Although there are thousands of acres of coastal sage scrub still in existence in California, over 85 percent of the original acreage has been lost. The loss in the coastal zone is probably much higher and is especially significant because coastal sage scrub provides critical habitat for the coastal California gnatcatcher, a "threatened" species under the Endangered Species Act. In its review of the Driftwood Estates proposal at the subject site, the Department of Fish and Game (Tippets 2001) found that, "The quality of the coastal sage scrub on the site varies, but it is generally not high quality. However, this vegetation community is widely regarded as threatened, and any loss is generally considered directly and cumulatively significant. In addition, rufous-crowned sparrow, a species of special concern strongly associated with coastal sage scrub, was observed on the site." California gnatcatchers have also been observed at the site.⁵ In this setting, both the southern maritime chaparral and the coastal sage scrub are rare habitat types, they perform the important ecosystem function of providing habitat for rare species, and they are also obviously easily degraded by human activities.

³ Shelley (1999) reports "cut grasses."

⁴ An "ecotone" is a transitional zone between two communities that typically contains elements of each. A "sere" is a successional sequence of community types. The meaning here is apparently "seral stage."

⁵ California Department of Fish and Game Natural Diversity Database: Laguna Beach Quad (No. 3311757/071D), California gnatcatcher (*Polioptila californica*) observation 836.

Therefore, at the subject site, coastal sage scrub and maritime chaparral meet the definition of Environmentally Sensitive Habitat Area (ESHA) under the Coastal Act.

It is clear that the habitat that was destroyed when the area was graded would have met the definition of ESHA and that the surrounding, ungraded area is currently ESHA. The current status of the graded area is a more difficult determination, because until recently it was repeatedly disturbed by scraping, vegetation clearance, and by the placement of sandbags, which take up space and prevent the establishment of any plant community. However, the fact that the area was rapidly colonized by coastal sage scrub and by maritime chaparral vegetation, including bigleaf crownbeard, in areas where disturbance ceased demonstrates that the necessary physical and environmental characteristics for these rare vegetation types are present. The evidence suggests that it is only because of ground disturbance, repeated cutting of vegetation, and sandbag placement that coastal sage scrub and maritime chaparral are not now well-established. Therefore, I recommend that the entire graded portion of the site be considered degraded ESHA.