

CALIFORNIA COASTAL COMMISSION

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Go to original staff report

Th 8 and 9

ADDENDUM

July 9, 2013

TO: Coastal Commissioners and Interested Parties

FROM: Lisa Haage, Chief of Enforcement

SUBJECT: ADDENDUM TO **ITEM NO. 8 AND 9** – CONSENT CEASE AND DESIST AND RESTORATION ORDERS (LOWELL)
FOR THE COMMISSION MEETING OF **July 11, 2013**

I. Documents Received:

1. *Letter from County of Humboldt, Planning and Building Department, Supervising Planner, Steven P. Werner, dated July 2, 2013.*

II. Commission staff response to letter from Mr. Steven P. Werner, Supervising Planner:

Mr. Werner states in his letter that staff of the Humboldt County Planning and Building Department reviewed the staff report and recommendations for this matter. He conveys the County staff's concurrence with the proposed orders.

Commission staff will provide the property owner with the County's contact person and continue to keep the County informed about the Consent Orders.

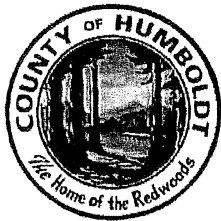
II. Errata

A. Changes to Consent Cease and Desist Order CCC-13-CD-05 and Consent Restoration Order CCC-13-RO-05:

Commission staff is hereby correcting one minor typographical error in the Lowell Consent Orders. Language to be deleted is shown in strikethrough and language to be added is shown in ***italic, bold, and underlined***.

1. On Page 12 of the Consent Cease and Desist Order CCC-13-CD-05 and Consent Restoration Order No. CCC-13-RO-05, paragraph D. (1), 4th line shall be amended as follows:

"...accordance with the requirements of Section ~~5-9~~ **6.1** (C)..."



COUNTY OF HUMBOLDT
PLANNING AND BUILDING DEPARTMENT
CURRENT PLANNING DIVISION

3015 H Street • Eureka CA 95501
Phone: (707) 445-7541 • Fax: (707) 268-3792

July 2, 2013

Th 8 & 9

Ms. Rene Ananda
California Coastal Commission
45 Freemont Street, Suite 200
San Francisco, CA 94105-2219

Re: Consent Cease and Desist Order and Consent Restoration Order; Rebecca L. Lowell,
Owner; property located at 1774 Ocean Drive, McKinleyville, CA; APN 508-161-011-000

Ms. Ananda,

The Department has reviewed the staff report and recommendations for the Lowell matter and we concur with the proposed orders.

We appreciate the efforts by Coastal staff and the property owner to reach an amicable resolution to this matter. Restoration of the site to the pre-development condition will be in keeping with the Coastal Act and the County's certified LCP.

Please keep us informed as to developments going forward. The Building Division should be contacted for permits associated with the corrective actions contemplated. Their contact number is (707) 445-7245. Please have the property owner contact Delilah Moxon, Permit Supervisor, for further information.

Feel free to contact me at (707) 268-3726 if you have any questions.

Sincerely,

Steven P. Werner
Supervising Planner

Pc: Book File 508

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Th 8 & 9

Staff: R. T. Ananda-SF
Staff Report: June 27, 2013
Hearing Date: July 11, 2013

**STAFF REPORT: RECOMMENDATIONS AND FINDINGS FOR CONSENT CEASE
AND DESIST ORDER AND CONSENT RESTORATION ORDER**

Consent Cease and Desist Order: CCC-13-CD-05

Consent Restoration Order: CCC-13-RO-05

Related Violation Files: V-1-04-002 (Lowell)

Property Location: 1774 Ocean Drive, McKinleyville, Humboldt County,
Assessor's Parcel Number 508-161-011-000

Property Description: Residential lot located west of Highway 101, directly adjacent to
the Mad River.

**Property Owner and
Person Subject to these
Consent Orders:** Rebecca L. Lowell (also known as Rebecca L. Howard)

Violation Description: Unpermitted development including, but not necessarily limited to,
construction of a 140-foot long revetment consisting of rock,
gravel, concrete, rebar, and other debris, on and above the banks of
and within the Mad River; and placement of rock and gravel
material on a level area landward of the revetment that resulted in
the removal of native riparian vegetation.

**Substantive File
Documents:**

1. Public documents in Violation File V-1-04-002
2. Humboldt County Local Coastal Program
3. Exhibits 1 through 12

4. Attachment A (Consent Cease and Desist and Restoration Orders)

**California Environmental
Quality Act (CEQA)**

Status:

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

SUMMARY OF STAFF RECOMMENDATION

A. OVERVIEW

Staff recommends that the Commission approve Consent Cease and Desist Order No. CCC-13-CD-05 and Consent Restoration Order No. CCC-13-RO-05 (hereinafter collectively referred to as “Consent Orders”) to address development undertaken in violation of the Humboldt County Local Coastal Program and Coastal Act on property located at 1774 Ocean Drive in the City of McKinleyville, Humboldt County¹ (“the Property”). The person subject to these Consent Orders is the owner of record for the property, Rebecca L. Lowell² (hereinafter “Ms. Lowell”). The violations at issue in this matter include the construction of a 140-foot long revetment, consisting of rock, gravel, and other debris; placement of rock and gravel material on the level area landward of the revetment; and removal of native riparian vegetation (hereinafter “Unpermitted Development”), which are also inconsistent with Coastal Act Sections 30231, 30233, 30235, 30236, 30240, 30251, and 30253, and Chapter 3, Section 3.40, 3.41A, 3.41F, and 3.42 of the Humboldt County Local Coastal Program (“LCP”).

Commission staff became aware of the violations at issue when the property was owned by Ms. Lowell’s father, Mr. David Lowell. Commission staff attempted to work with him to resolve the matter, but Mr. Lowell died before being able to resolve the matter. Ms. Lowell inherited the property in October 2007. Staff became aware of this change in ownership in February 2010 and began to work with Ms. Lowell in an effort to resolve the Coastal Act/LCP violations on the Property. This case arises in an unusual context, since Ms. Lowell inherited the Property from her late father and had no relationship with or knowledge of the violations, has never lived on the Property, and lives in Southern California, not near the Property. Staff contacted Ms. Lowell in February 2010, and informed her of the outstanding Coastal Act and LCP violations, and her responsibility, as the current owner, to resolve them, and offered to work with her to resolve the issues regarding the site. Ms. Lowell immediately began to work with Commission staff, and these Consent Orders are the result of those cooperative efforts to resolve the violations on the Property amicably and without the need for a contested hearing or any litigation.

B. DESCRIPTION OF PROPERTY

The Property is an approximately 2.5-acre lot located at 1774 Ocean Drive on the seaward side of a coastal bluff terrace in McKinleyville, an unincorporated area of Humboldt County. The

¹ Known by the Humboldt County Assessor’s office as APN 508-161-011. See Exhibit 1.

² Also known as Rebecca Howard.

Unpermitted Development occurred on the portion of the Property within and directly adjacent to the Mad River, approximately 0.5 mile to the south of the river mouth where the river terminates into the ocean. (Exhibit 2). The Mad River is one of five major rivers in Humboldt County. It extends approximately 113 miles from its headwaters in the Coast Range, flowing in a northwest direction through Trinity County and then Humboldt County. The Mad River drains a 497-square-mile watershed emptying into the Pacific Ocean north of Arcata near Arcata-Eureka Airport in McKinleyville. The river is an important coastal resource as it provides estuarine habitat, facilitates migration of aquatic organisms/species, and provides spawning, reproduction, and/or early development habitat for Rare, Threatened, and Endangered species, including Longfin smelt, a species listed by California Department of Fish and Wildlife as Threatened. Chinook and coho salmon also depend on the Mad River for migration and spawning.

The Property is oriented in an east-west direction with the eastern portion of the Property consisting of a coastal terrace and then sloping to the west down a coastal bluff, which then extends to the low-point of the Property ending at the Mad River. The Unpermitted Development occurred on the western portion of the Property, which is vegetated predominantly with riparian habitat, including willow and red alder.

C. SUMMARY OF VIOLATIONS AND PROPOSED RESOLUTION

The Coastal Act and LCP violations on the Property include but are not necessarily limited to, construction of a 140-foot long revetment consisting of rock, gravel, concrete, rebar, and other debris, on and above the banks of and within the Mad River; and placement of rock and gravel material on a level area landward of the revetment that removed the native riparian vegetation. The construction and placement of the above-described material and the removal of native riparian vegetation constitute development under the Coastal Act and the LCP, and as such are subject to Coastal Act and LCP permit requirements. In this case, the development was conducted without a CDP in violation of the Coastal Act and the LCP.

The Development at issue required but did not have a CDP, is inconsistent with the Coastal Act and LCP, and remains in place with the potential to cause continuing resource damages, as more fully described in Section 5.D on pages 12 to 23.

However, the current owner of the property has worked with staff and has agreed to resolve the matter via consent orders that would fully resolve the Coastal Act issues raised here. To this end, she has signed proposed Consent Orders, which staff recommends the Commission adopt and approve.

Under these proposed Consent Orders, Ms. Lowell has agreed to, among other things: 1) cease and desist from conducting any further unpermitted development on the Property; 2) remove the unpermitted physical items from the Property, meaning those that were placed or allowed to come to rest on the Property as a result of Unpermitted Development; 3) restore the areas impacted by the Unpermitted Development that is to be addressed under these Consent Orders; and 4) mitigate for the temporal losses of habitat and ecosystem function brought about by the Unpermitted Development by undertaking onsite mitigation.

TABLE OF CONTENTS

| | |
|--|----------|
| 1. HEARING PROCEDURES | 5 |
| 2. MOTION AND RESOLUTION | 5 |
| 3. JURISDICTION | 6 |
| 4. AUTHORITY | 7 |
| 5. FINDINGS | 7 |
| A. DESCRIPTION OF PROPERTY | 7 |
| B. DESCRIPTION OF COASTAL ACT VIOLATIONS | 8 |
| C. HISTORY OF DEVELOPMENT AND COMMISSION ACTIONS | 8 |
| D. BASIS FOR ISSUANCE OF THE ORDERS | 10 |
| E. PROVISION OF RECOMMENDED ACTIONS | 22 |
| F. CALIFORNIA ENVIRONMENTAL QUALITY ACT | 23 |
| G. SUMMARY OF FINDINGS OF FACT | 23 |

ATTACHMENTS

Attachment A – Proposed Consent Orders

EXHIBITS

Exhibit 1 – Regional Location Map
Exhibit 2 – Vicinity Location Map
Exhibit 3 – Unpermitted Development
Exhibit 4 – Notice of Violation Letters (3/24/04; 4/26/04; 7/30/04; 2/18/10; 4/13/10; 11/1/12)
Exhibit 5 – Notice of Intent to Commence Cease and Desist and Restoration Orders Proceedings
Exhibit 6 – Humboldt County Jurisdiction Map
Exhibit 7 – Humboldt County Jurisdiction Letter (11/21/12)
Exhibit 8 – Mad River Geographic Zones
Exhibit 9 – Mad River Photo
Exhibit 10 – Letter from Mr. Lowell to Commission Staff (5/22/04)
Exhibit 11 – State Lands Commission Jurisdiction Letter to Commission Staff (4/26/13)
Exhibit 12 – Humboldt Baykeeper Letter in Support of Consent Orders (6/12/13)

1. HEARING PROCEDURES

The procedures for a hearing on a Cease and Desist Order and Restoration Order are outlined in 14 CCR Section 13185 and 14 CCR Section 13195, respectively.

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 shall then recognize any other persons who have indicated a desire to speak concerning the matter by submitting a speaker slip, after which time Staff typically responds to the testimony and to any new evidence introduced.

The Commission will receive, consider, and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceedings, as specified in 14 CCR Sections 13186 and 13195, 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 so 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 Order, either in the form recommended by the Executive Director, or as amended by the Commission. Passage of the motion above, per the Staff recommendation or as amended by the Commission, will result in issuance of the Cease and Desist Order and Restoration Order.

2. MOTION AND RESOLUTION

Staff recommends that the Commission adopt the following two motions:

Motion No. 1:

*I move that the Commission **issue** Consent Cease and Desist Order CCC-13-CD-05 as set forth in the staff recommendation.*

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in issuance of the Cease and Desist Order and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution to Issue Consent Cease and Desist Order

The Commission hereby issues Consent Cease and Desist Order No. CCC-13-CD-05, as set forth below, and adopts the findings set forth below on grounds that development has occurred, and is being maintained, on the Property without a coastal development permit, in violation of the Coastal Act and the County LCP, and that the requirements of the Consent Cease and Desist Order are necessary to ensure compliance with the Coastal Act and the County LCP.

Motion No. 2:

I move that the Commission issue Consent Restoration Order CCC-13-RO-05 as set forth in the staff recommendation.

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in approval of the Consent Restoration Order and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution to Issue Restoration Order

The Commission hereby issues Consent Restoration Order No. CCC-13-RO-05, as set forth below, and adopts the findings set forth below on grounds that: 1) development has occurred on the Property without a coastal development permit; 2) the development is inconsistent with the Coastal Act and the County LCP; and 3) the development is causing continuing resource damage.

3. JURISDICTION

The Commission has enforcement jurisdiction in this matter. The Property is adjacent to the Mad River in Humboldt County, within the Coastal Zone. The majority of the Property is located within an area that is under the jurisdiction of Humboldt County's certified LCP, which gives the County authority to issue CDPs and to enforce its LCP in those particular locations. The portion of the Property below the Mean High Tide Line ("MHTL") is within the Commission's retained permitting jurisdiction. (Exhibit 6). The Commission has the authority to enforce both the Coastal Act and, in certain situations as discussed below, the County's LCP.

In a November 21, 2012 letter from the Humboldt County Planning and Building Department to Commission staff, the County requested that the Commission take over primary responsibility for enforcement regarding Coastal Act/LCP violations within the County's jurisdiction at this site. (Exhibit 7). Therefore, pursuant to Section 30810(a)(1), the Commission has enforcement jurisdiction to address the Unpermitted Development within the County's jurisdiction through these Consent Orders. The Commission also retains jurisdiction to address the Unpermitted Development below the MHTL in the Commission's "retained" permit jurisdiction area.

4. COMMISSION’S AUTHORITY TO ISSUE 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 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 CDP; (2) is inconsistent with the Coastal Act; and (3) is causing continuing resource damage. Each of the criteria set forth under Sections 30810 and 30811, for the Commission’s issuance of these Consent Orders, has been met in this case, as discussed in detail in Section 5.D, below.

5. FINDINGS AND DECLARATIONS³

A. DESCRIPTION OF PROPERTY

The Property is an approximately 2.5-acre lot located at 1774 Ocean Drive on the seaward side of a coastal bluff terrace in McKinleyville, in an unincorporated area of Humboldt County. The violations subject to these proceedings are located on the portion of the property directly adjacent to the Mad River, approximately 0.5 miles to the south of the river mouth. (Exhibit 2).

The Property is zoned for low-density residential development.⁴ Currently, a single-family residence and a manufactured home that was placed on the Property in 1989 are located on the Property. The existing residence was constructed in 1964/1965, prior to the creation of the Coastal Act. A CDP (CDP-66-89) was issued by the County in 1989 authorizing the placement of the manufactured home.

The Property is oriented in an east-west direction with the eastern portion of the Property consisting of a coastal terrace and then sloping to the west down a coastal bluff, which then extends to the low-point of the Property ending at the Mad River. The Unpermitted Development occurred on the western portion of the Property, which is vegetated predominantly with riparian habitat, including willow and red alder.

³ These findings also hereby incorporate by reference the Summary at the beginning of the June 27, 2013 staff report (“Staff Report: Recommendations and Findings for Consent Cease and Desist Order and Consent Restoration Order”) in which these findings appear, which section is entitled: “Summary of Staff Recommendation.”

⁴ It should be noted that the APN refers to the approximately 2.5-acre area that the prior owner sought to configure as a unique legal lot in 1989 by reconfiguring two pre-existing lots (12 and 13 of Tract 6, according to the Map thereof on file in the Office of the County Recorder of Humboldt County, California, in Book 12 of Maps, Pages 112 and 113). Although the County granted a conditional CDP in 1989 approving that lot line adjustment, the Commission has not been provided evidence that the condition of approval requiring recordation of a record of survey was ever fulfilled, and so cannot conclude that the new configuration ever occurred. As a result, the Commission takes no position as to whether the area identified as APN 508-161-011 is actually a legal lot, and references to “the Property” are not intended to suggest that the Commission recognizes the area as a legal lot or to waive any rights the Commission may have if the lot line adjustment is not valid.

B. DESCRIPTION OF COASTAL ACT VIOLATIONS

The development at issue in this matter includes, but may not be limited to: construction of a 140-foot long revetment consisting of rock, gravel, concrete, rebar, and other debris on and above the banks of and within the Mad River; and placement of rock and gravel material on a level area landward of the revetment that resulted in the removal of native riparian vegetation. (Exhibit 3).

C. HISTORY OF DEVELOPMENT AND COMMISSION ACTION ON THE SUBJECT PROPERTY

Violation History V-1-04-002

On December 3, 2003, the U. S. Army Corps of Engineers notified Commission staff by e-mail that activities apparently intended to increase bank stabilization had occurred at the Property. On December 11 and 18, 2003, staff of the U. S. Army Corps of Engineers notified Commission staff by telephone that development had occurred on the Property that included the clearing of willows, placement of development consisting of a revetment and rock and other materials, and the creation of a “rock lawn”. On December 14, 2003, Commission staff conducted a site visit, investigated the report, and confirmed that an approximately 140-foot-long revetment, consisting of rock, concrete, gravel, and other materials, had been constructed within and on the east bank of the Mad River; and rock and gravel material had been placed on a level area landward of the revetment.

On March 24, 2004, Commission staff sent Mr. Lowell, the property owner at that time, a “Notice of Violation” letter informing him that the construction of a revetment and placement of other materials and clearing of vegetation constituted “development” under the Coastal Act and that development without a CDP is a violation of the Coastal Act. Staff further explained that if Mr. Lowell submitted a CDP application seeking after-the-fact authorization to retain the revetment he must include in the application all the normal permit application materials, including a detailed, comprehensive project description, a wetland delineation and biological habitat assessment report, and engineering and/or geotechnical report, including a risk analysis. The March 24th letter also requested that Mr. Lowell contact Commission staff by April 14, 2004 to discuss the best method to resolve the violations quickly.

On April 20, 2004, Commission staff met with Mr. Lowell at the Property to conduct a review of the site, document its condition, and obtain information related to whether or not there was a need for shoreline protection based on Section 30235 of the Coastal Act. During the site visit, Mr. Lowell asserted that the former owner constructed the revetment in 1991. Commission staff informed him that even if some of the unpermitted development had been placed on the Property prior to Mr. Lowell’s ownership, Coastal Act violations run with the land and the current owner is responsible for addressing current violations of the Coastal Act. Also during the site visit, Mr. Lowell disclosed that he had placed additional rock material on the unpermitted revetment in approximately late 1999 or 2000. Prior to and during the April 20th site visit, Mr. Lowell stated his desire to retain the revetment and requested an extension of time to complete an after-the-fact CDP application.

In a May 22, 2004 letter, Mr. Lowell requested an indefinite amount of time to complete the CDP application process. (Exhibit 10). In his letter he stated that he would advise staff “as soon as possible” of how much additional time he would need. Staff left Mr. Lowell a telephone message on June 24, 2004 requesting that he contact staff and provide an update on the status of his CDP application for the removal and restoration work or the retention of the revetment. Staff received no response to this June 24th telephone message.

In an effort to resolve the matter administratively and to continue to work cooperatively with Mr. Lowell, in a July 30, 2004 letter, Commission staff provided him a final opportunity to submit a CDP application for removal of the development and restoration of the impacted area or, if he could provide information that a shoreline protective device was necessary to protect the existing homes consistent with Section 30235 of the Coastal Act, for after-the-fact retention of the revetment. Commission staff set an August 26, 2004 deadline for submittal of a CDP application.

Commission staff received no response from Mr. Lowell over the years following the July 30, 2004 letter. Commission staff continued its attempt to contact Mr. Lowell through multiple telephone calls; however, Mr. Lowell did not respond to the telephone messages. As noted above, staff’s March 24th letter to Mr. Lowell explained that several technical studies would be necessary for the CDP application to be accepted. Although Mr. Lowell’s application efforts could not be closely tracked due to the staffing constraints of the North Coast District office, staff believed Mr. Lowell was pursuing these studies during this time.

In February 2010, after researching property records to discover who owned the Property because staff had received no response to our earlier attempts to contact Mr. Lowell, Commission staff became aware that Mr. Lowell’s daughter, Ms. Rebecca Lowell, had inherited the Property.

On February 18, 2010, staff sent Ms. Lowell a letter informing her of the unresolved Coastal Act violations on the Property and her responsibility under the Coastal Act to resolve the violations, and asking her to work with Commission staff to resolve the matter. The letter requested that she contact staff by March 1, 2010, to confirm her intent to resolve the matter. Commission staff requested that Ms. Lowell submit, by March 15, 2010, a CDP application for the removal of the Unpermitted Development and restoration of the site to address the violations because it would be unlikely that staff could recommend after-the-fact approval to retain the unpermitted revetment.

On June 1, 2010, Commission staff met with Ms. Lowell on the Property to discuss options for resolving the situation.

In September 2012, Headquarters Enforcement staff contacted Ms. Lowell to arrange a site visit, as was discussed by Ms. Lowell and staff in 2011, and to again discuss resolution of the matter.⁵ On October 29, 2012, staff again met with Ms. Lowell at the

⁵ Again, staffing constraints in 2010 were prohibitive for close follow-up on the Lowell application efforts. Close tracking of this enforcement case was reinitiated when an Enforcement staff position was filled in 2012.

Property to inspect the site conditions and determine the most efficient and effective way to remove the unpermitted development and restore the Property. Ms. Lowell expressed concern that removal of the revetment could exacerbate the damage. Commission staff explained that all work would need to be done carefully, under a Commission-approved plan, taking into account the site conditions so as to avoid further damage to coastal resources. Commission staff also explained that the goal of the restoration efforts would be to cease the continuing resource damage that was occurring. Staff explained that, based on a review of the site, the unpermitted revetment was not necessary to protect any existing structures on the property, and so, would not be approvable under the Coastal Act.⁶ Commission staff and Ms. Lowell discussed that the most expeditious and cost-effective way to address the violations would be through the consent order process.

On January 17, 2013, in order to initiate resolution through a consent order process, staff sent Ms. Lowell, via certified and regular U. S. mail, a Notification of Intent to Record a Notice of Violation of the Coastal Act and to Commence Cease and Desist and Restoration Order Proceedings (“NOI”). (Exhibit 5). A Statement of Defense form (“SOD”) was included with the NOI, affording Ms. Lowell the opportunity to present defenses to the allegations of the Coastal Act violations. The NOI provided twenty days from the postmarked date of mailing for submittal of a completed SOD form and written objection to the recordation of a Notice of Violation of the Coastal Act (NOVA). In a January 30, 2013 telephone conversation, Ms. Lowell restated her desire to resolve the violations by agreeing to a consent order.

Copies of the above-mentioned Notice of Violation letters are included as Exhibit 4 of the Staff Report.

Over the next few months, Commission staff and Ms. Lowell worked together to agree on the proposed Consent Orders, included below as Attachment A.

D. BASIS FOR ISSUANCE OF ORDERS

1. Statutory Provisions

a. Cease and Desist Order

The statutory authority for issuance of this Cease and Desist Order is provided in Coastal Act section 30810. Section 30810 of the Coastal Act states that the cease and desist order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with the Coastal Act – including the requirement for removal of any unpermitted development or material. Coastal Act Section 30810 states, in relevant part:

⁶ Section 30235, which governs the requirements for such shoreline protective devices, only requires that they be approved under specific conditions, including when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion. None of these conditions applies in this case.

(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... the commission may issue an order directing that person... to cease and desist. The order may also be issued to enforce any requirements of a certified local coastal program..., or any requirements of this division which are subject to the jurisdiction of the certified program or plan, under any of the following circumstances:

(1) The local government... requests the commission to assist with, or assume primary responsibility for, issuing a cease and desist order.

...

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

b. Restoration Order

The statutory authority for issuance of the proposed Restoration Order is provided in Coastal Act Section 30811. Section 30811 of the Coastal Act, 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 the development has occurred without a coastal development permit from the commission, local government, or port governing body, the development is inconsistent with this division, and the development is causing continuing resource damage.

The following paragraphs present the bases for the issuance of the proposed Consent Cease and Desist and Restoration Orders by providing substantial evidence that the development meets all the required grounds listed in Sections 30810 and 30811 for the Commission to issue Cease and Desist and Restoration Orders.

2. Application to the Facts

a. Development has occurred without a Coastal Development Permit

The subject development described above has occurred on the Property without a CDP. Section 30600(a) of the Coastal Act states that, in addition to obtaining any other permit required by law, and with limited exceptions not applicable here, any person wishing to perform or undertake any development in the Coastal Zone must obtain a CDP. The term “development” is defined broadly in Section 30106 of the Coastal Act and Chapter 6 of the LCP as follows:

“Development” means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or any gaseous,

liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of the use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvest of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations....(emphasis added)

As discussed above, 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 CDP. As shown above and discussed in this staff report, the activities at issue in these Consent Orders constitute “development” for which no permit was sought or obtained. The LCP contains provisions analogous to both 30600(a) and 30106 that are identical in all relevant respects, so this is equally a violation of the LCP. In addition, Zoning Regulations Section 312-3 requires that a CDP be obtained prior to initiating any development within the Coastal Zone of Humboldt County. Commission staff has confirmed that the subject development on the property was conducted without authorization through a CDP, in violation of Section 30600(a) and the analogous provision of the LCP, and that no exemption applies here. Therefore, the criterion for issuance of the proposed Consent Cease and Desist Order has been met and the first of three criterion necessary to support the Commission’s issuance of the proposed Consent Restoration Order has also been met.

b. Development is Inconsistent with the Coastal Act (30240, 30230, 30231, 30233, 30236, 30235, 30253, 30251) and the Certified LCP

The Coastal Act includes policies to protect, maintain, enhance and restore the quality of coastal resources within the coastal environment. Humboldt County’s certified LCP also has analogous policies for the protection of coastal resources.

The Unpermitted Development is inconsistent with the following Chapter 3 policies of the Coastal Act, which are more fully discussed below: Section 30240 (protection of environmentally sensitive habitat); Section 30230 (protection of marine resources); Section 30231 (protection of biological productivity and water quality); Section 30233 (limitations on filling, diking, and dredging of coastal waters); Section 30236 (limitations on stream alterations); Section 30235 (construction altering natural shoreline processes); Section 30253 (protections against erosion); and Section 30251 (protection of scenic and visual qualities). The Unpermitted Development is also inconsistent with analogous resource protection policies of the LCP, including Sections 3.40, 3.41A, 3.41F, and 3.42. The LCP also specifically provides that Coastal Act Sections 30240, 30230, 30231, 30233, 30236, 30253, and 30251 are enacted as the County’s policy; any inconsistency with these Sections of the Coastal Act is, therefore, also an inconsistency with the LCP.

(i) Environmentally Sensitive Habitat Areas

Coastal Act Section 30240 provides that:

- a) *Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed in those areas.*
- b) *Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

Section 30107.5 of the Coastal Act defines an “Environmentally Sensitive Area” and states 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.

Section 3.40 of the LCP, as mentioned above, enacts Section 30240 of the Coastal Act as a County policy. LCP Section 3.41A identifies environmentally sensitive habitats within Humboldt County. Policy 1 provides that:

- 1. *Environmentally sensitive habitats within the County McKinleyville planning area shall include:*
 - a. *Rivers, creeks, and associated riparian habitats including Little River, Widow White Creek, and other streams.*
 - b. *Wetlands, estuaries, including the Clam Beach ponds and the mouths of Little River, Widow White Creek, and Mad River.*
 - c. *Vegetated dunes at Clam Beach, Little River Beach, and the banks of the Mad River.*
 - d. *Other critical habitats for rare or endangered species listed on state or federal lists.*

Proposed development occurring within or containing these sensitive habitat areas, which requires a coastal development permit, shall be subject to conditions and requirements of this chapter ... [Emphasis added]

The Mad River and the Mad River estuary are located northwest of the City of Arcata and immediately to the south and west of McKinleyville in Humboldt County. (Exhibit 1). The Mad

River can be partitioned geomorphically into four distinct areas/zones: the upper, middle, and lower river zones, and the estuary.⁷ (Exhibit 8). The area extending upstream, approximately 5 miles starting from the river mouth is tidally influenced and forms the estuary.⁸ The estuary is a long, north-south oriented area that is bounded by sand spits to the west and a bluff to the east. The estuary and the lower river areas are inhabited by salmonid species that are anadromous,⁹ and it provides nursery habitat for juvenile coho salmon (*Oncorhynchus kisutch*)¹⁰ and Chinook salmon (*O. tshawytscha*) and steelhead trout (*Oncorhynchus mykiss*)¹¹. The quality and availability of coho and Chinook salmon rearing habitat in the estuary is poor or lacking entirely.¹² The migration and relocation of the mouth of the Mad River has increased the size of the estuary but there is little in-stream structure or diversity of habitat. Furthermore, there is less off-channel habitat and the function of the estuary is highly altered. The loss and degradation of estuarine habitat is a “high” to “very high” stress for coho salmon due to the loss of rearing habitat and refuge.¹³

Both Section 30240 of the Coastal Act and the LCP provide that ESHA shall be protected against any significant disruption of habitat values and that only development and uses that are dependent on the ESHA be allowed in those areas. Only uses that are dependent on the coastal resources should be allowed in ESHA; furthermore development adjacent to the estuary shall be designed to prevent impacts to ESHA and any other sensitive resources. The Unpermitted Development that occurred on the Property is not a coastal-dependent use, and the development activities conducted at the Property are not consistent with the Coastal Act or LCP.

Section 3.41A, Policy 1 of the LCP identifies estuaries and riparian habitats, specifically including the Mad River and the banks of the Mad River, as ESHA. The actions undertaken for the construction of the unpermitted revetment and placement of rock and gravel material on the level area landward of the revetment on the property has resulted in the displacement of ESHA. The unpermitted revetment has locally affected habitat conditions at the site and the adjacent areas. The material used for the revetment is not natural to the site, and due to the placement of this hard surface material, the habitat has been changed from its natural soft bottom substrate, which in turn precludes native riparian vegetation growth and occupies areas that could have otherwise been habitat to benthic invertebrate species (living in the soft bottom area). Adverse impacts to ESHA are inconsistent with Section 30240 of the Coastal Act. The unpermitted revetment has caused damage to the ESHA on the Property through the removal of native riparian vegetation. The placement of rock and other material has contributed to the disruption of habitat values at the site as it has taken away the opportunity for terrestrial and aquatic species

⁷ Humboldt Bay Municipal Water District *Habitat Conservation Plan*. April 2004.

⁸ H.T. Harvey & Associates, *Humboldt Bay Regional Spartina Eradication Plan – Draft*, November 2012.

⁹ Anadromous species require both freshwater and saltwater/marine habitat conditions as part of their life cycle. Salmonids live part of their lives in freshwater areas, such as rivers and streams and a part of the time in the ocean/sea.

¹⁰ Coho salmon is a special status species that is federally and state-listed as threatened.

¹¹ Both the steelhead trout and Chinook salmon, under the Endangered Species Act, are federally-listed as threatened.

¹² *Humboldt Bay Municipal Water District Habitat Conservation Plan*. April 2004.

¹³ SONCC Coho Salmon Recovery Plan, Volume II. January 2012.

to use essential resting, feeding/foraging, breeding, and nesting areas that would otherwise potentially be available. This disruption and potential impacts continue as long as the revetment and the rock and gravel material on the level area landward of the revetment remain in place. Furthermore, the removal of riparian vegetation has reduced cover and protection for animal movement along the banks of the estuary. Therefore, the subject development is inconsistent with the Coastal Act policies for the protection of ESHA.

(ii) Marine Resources; Biological Productivity and Water Quality

Section 30230 of the Coastal Act requires the following:

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

Section 30231 of the Coastal Act requires the following:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 3.40 (Resource Protection Policies and Standards) of the LCP enacts both Coastal Act Sections 30231 and 30233 as County policies. Therefore, activities which are inconsistent with these Sections of the Coastal Act correspondingly are in conflict with the LCP.

An approximately 5.5-mile stretch of the Mad River is located within the coastal zone. The Mad River is identified by the Statewide Critical Coastal Areas Committee¹⁴ as one of California's Critical Coastal Areas and was originally found in 1995 to be an impaired water-body in the North Coast Region. It has a high sediment load and there are water quality problems as a result of debris and habitat loss, among other things.

Coastal Act Section 30230 requires the protection of marine resources including the biological productivity of the marine environment and ensuring healthy populations of both aquatic animals

¹⁴ The Statewide Critical Coastal Areas Committee consists of representatives from 15 state agencies, and also includes National Ocean Atmospheric Administration, the U.S. Environmental Protection Agency, and the Ocean Conservancy.

and vegetation. It is important to protect these resources for commercial, recreational, scientific and educational purposes. The estuary is a long, north-south oriented system bounded by sand spits on the west and bluffs on the east. It takes on an east-west orientation along the stretch just past School Road, heading inland, (Exhibit 9) and is an important connection between the Mad River and the Pacific Ocean as it provides food sources and transitional habitat for anadromous fish going either from fresh water to saline conditions or vice versa. Species found in the estuary include Longfin smelt, which is a fish species listed by the California Department of Fish and Wildlife as threatened, coho salmon, winter-run and summer-run steelhead trout, and fall-run Chinook salmon. The estuary is where fresh water meets the saline water of the Pacific Ocean providing habitat for wildlife migration and spawning of aquatic species, and supporting shellfish harvesting.¹⁵

As mentioned earlier, the estuary provides nursery habitat for juvenile coho and Chinook salmon, and steelhead trout; and supports populations of western snowy plover, which is a Federally-listed as Threatened species. Materials and runoff deposited into the river are ultimately discharged to and can have a negative effect on the marine environment. The removal of estuarine habitat through its displacement by the revetment and the discharge of sediments and debris can reduce the availability of benthic invertebrate species and aquatic vegetation that serve as sources of food for aquatic species. The Unpermitted Development has the potential to affect the health and abundance of aquatic species by adversely affecting the quality of the marine environment, reducing available food sources for the fish and bird species of the area, and reducing vegetative cover that provides protection from predation. The Unpermitted Development has the potential to reduce the quality and productivity of the marine environment thereby having a negative impact on the marine ecosystem and the species that rely on it. The Unpermitted Development is therefore inconsistent with the Section 30230 of the Coastal Act.

Coastal Act Section 30231 requires the protection of the quality of coastal waters and estuaries. The unpermitted revetment can alter the composition, function, and biological productivity of the coastal water body in the area. Natural, estuarine and riparian habitat has been displaced by the artificial material that has little habitat/biological value. In addition, placement of a revetment such as the one being addressed here can cause the river to become more channelized by reducing its ability to dissipate energy laterally through erosion, thereby resulting in increased velocity of flow. Revetments generally can transfer the energy of the stream or river vertically and downstream and cause the stream or river to dig deeper channels (or “entrench”) and increase bank erosion to the areas adjacent to the areas with the revetments, and to damage natural riparian vegetation on the banks of the river and replace it with non-native habitat. The unpermitted revetment has the potential to increase sedimentation of the river that adversely affects the natural conditions and the behavior (foraging, reproduction, and ability to get oxygen from the water) of aquatic animals, such as fish and other sensitive aquatic species. Therefore, the Unpermitted Development is inconsistent with Section 30231 of the Coastal Act.

(iii) Water Supply and Flood Control

Section 30236 of the Coastal Act states:

¹⁵ California’s Critical Coastal Areas. *State of the CCAs Report*. June 8, 2006.

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

Section 30236 of the Coastal Act provides limitations on the types of development that involve substantial alterations to streams and rivers. Section 30236 of the Coastal Act provides that only a very limited type of river alteration is allowable under the Coastal Act, and even if such alteration falls within one of the three categories acceptable under Section 30236, as cited above, it must incorporate the best mitigation measures feasible. Even if the unpermitted revetment and placement of rock and gravel material on the level area landward of the revetment were in conformity with any of the three conditions mentioned above, which they have not been shown to be and appear not to be, they do not include measures to mitigate impacts to the environment. This development has reduced, and will continue to reduce, the breadth of the portion of the estuary fronting the property, and none of the allowable uses set forth in Section 30236 are applicable in this case. Therefore the unpermitted development is inconsistent with Section 30236 of the Coastal Act.

As noted above, LCP Section 3.40 enacts Coastal Act Section 30236 as policy, therefore, the unpermitted revetment is shown not only to be inconsistent with 30236 but with the LCP, as well.

(iv) Construction Altering Natural Shoreline; and Fill of Coastal Waters

Section 30235 of the Coastal Act states, in part:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. [Emphasis added]

Furthermore, Section 30233 of the Coastal Act states that:

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

(1) New or expanded port, energy, and coastal dependent industrial facilities...

(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels...

(3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access ...

(4) Incidental public service purposes including, but not limited to ... maintenance intake of existing intake and outfall line.

(5) Mineral extraction ... for restoring beaches, except in environmentally sensitive areas. ...

(6) Restoration purposes.

(7) Nature study, aquaculture, or similar resource dependent activities.

... [Emphasis added]

Section 30108.2 of the Coastal Act defines “Fill” as:

"Fill" means earth or any other substance or material... placed in a submerged area.

Section 3.40 (Resource Protection Policies and Standards) of the LCP enacts Coastal Act Section 30233 as County policy. Therefore, an inconsistency with this Section of the Coastal Act correspondingly is in conflict with the LCP.

Coastal Act Section 30235 requires seawalls, revetments, cliff retaining walls, groins and other such structures to be approved under certain limited circumstances. Section 30235, however, also acknowledges that seawalls, revetments, cliff retaining walls, groins and other such structural or “hard” solutions can alter natural shoreline processes. Thus, such devices are required to be approved only when the devices are: (1) necessary to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion; and (2) designed to eliminate or mitigate adverse impacts on shoreline sand supply.

Rivers and streams naturally undergo changes in characteristics that include succession of the riparian community. The shape of a river channel is the outcome of several processes and environmental conditions that include composition and erodibility of the bed and banks. Lateral migration and riparian succession promote diversity and vigor of the ecological system, which is important to long-term adaptation of ecosystems.¹⁶ No analysis was conducted to ascertain the unpermitted revetment’s impacts on shoreline processes adjacent to the Property, including to the north and south of its location.

¹⁶ J. Craig Fischenich. Army Corps of Engineers, Wetlands Regulatory Assistance Program. *Effects of Riprap on Riverine and Riparian Ecosystems*. April 2003.

Staff conducted site visits with the prior Property Owner and Ms. Lowell and found that the unpermitted structures do not appear to be necessary for the protection of an existing structure in danger from erosion. As mentioned above, no analysis was conducted to identify the least environmentally damaging alternative or appropriate measures that would be required to mitigate the impacts of the development. No supporting analyses have been conducted to show that the revetment and the rock and gravel material placed landward of the revetment are needed or appropriate at the Property. The construction of the revetment does not meet the provisions discussed above therefore it is inconsistent with the Coastal Act.

Coastal Act Section 30233 does not allow filling of wetlands and coastal waters unless this activity falls within one or more of the allowable uses provided in Section 30233, as set forth above. The fill placed within the estuary waters at the property does not align with any of the allowable reasons provided in Section 30233(a). The construction of the revetment entailed the placement of rock and other material in the Mad River estuary without authorization through a CDP, and therefore did not undergo an analysis as part of a permitting process; therefore no less-damaging alternatives to the structures were evaluated. Furthermore, if the revetment and placement of rock and gravel material on the level area landward of the revetment were found to be appropriate at the property, Section 30233 requires that mitigation measures be developed and implemented in order to reduce impacts to the area. This was not done. The Unpermitted Development is inconsistent with this section of the Coastal Act. The removal of riparian habitat contributes to the disruption of the habitat values upon which terrestrial and aquatic species in the area depend.

Filling, diking, or dredging estuaries and open coastal waters may be permissible (under certain circumstances) pursuant to the criteria found in Section 30233 of the Coastal Act. The unpermitted revetment, however, does not meet these criteria, as listed above; therefore it is inconsistent with these provisions of the Coastal Act and the LCP.

(v) Minimization of Adverse Impacts

Section 30253 of the Coastal Act states in part that new development shall:

- (a) *Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (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.*

Policy 3.41.H of the LCP states in part:

...

2. *Bank protection shall be permitted to:*

- (a) *Maintain necessary public or private roads.*
- (b) *Protect principal structures in danger from erosion*

The Unpermitted Development spans the width of the property, and is placed on soft-bottom substrate and the lower bank that extends approximately 140 feet adjacent to the river. The residence is setback on the property several hundred feet (at least 400 feet) away from the shoreline, and is in no imminent danger from, or exposure to, the forces of erosion. The Unpermitted Development is inconsistent with Section 30253 of the Coastal Act, as the unpermitted revetment and gravel and rock placed on the level area above it provide no protection to the principal house or any other development on the site. Furthermore because no CDP was applied for or obtained, there has been no analysis to support the need for, or keeping, the unpermitted structures at the property.

All stabilization structures and measures have the strong potential to affect sedimentation processes. They can reduce or eliminate sediment yield and often generate local scour at the toe or immediately downstream of its location.¹⁷ Placement of rock and other material to create a revetment can often result in impacts within the riparian system beyond the specific location where it is placed. (Exhibit 12). The Unpermitted Development can induce sediment deposition, thus changing the natural processes and conditions at the site. Therefore the Unpermitted Development is inconsistent with Section 30253 of the Coastal Act.

(vi) Scenic and Visual Qualities

The Coastal Act provides for the protection of the scenic and visual qualities of coastal areas. The unpermitted revetment and placement of rock and gravel material on the level area landward of the revetment has a negative impact on the visual quality of the area and is therefore inconsistent with the Coastal Act.

Section 30251 of the Coastal Act in relevant part states that:

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 minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas...

The Unpermitted Development is inconsistent with the provisions of Section 30251 of the Coastal Act. The revetment and placement of rock and gravel material on the level area landward of the revetment are unnatural features constructed within the estuary and on its banks. They are disruptive to the natural appearance of the area and are incompatible with the natural landforms of the estuary and negatively affect the visual quality of the area. This Unpermitted Development is incongruous with vegetation that naturally occurs along the banks and the estuary. The revetment and rock and gravel material on the level area landward of the revetment are not a part of the natural landscape or the original visual character of the area. (Exhibit 3).

¹⁷ J. Craig Fischenich. Army Corps of Engineers. Wetlands Regulatory Assistance Program. *Effects of Riprap on Riverine and Riparian Ecosystems*. April 2003.

As noted above, Section 30251 requires that development be designed to protect views along scenic coastal areas and minimize the extent to which natural landforms are altered. The Unpermitted Development within the Mad River estuary and along the bank of the Mad River has degraded the natural character through the removal of natural riparian vegetation and replacing that vegetation with rock, concrete, rebar, and other materials that were placed on the banks of and within the river. The visual appearance created by the unpermitted revetment and rock and gravel material on the level area landward of the revetment are inconsistent with the Coastal Act because they are incompatible with the visual character/qualities of the estuary. Therefore, the Unpermitted Development is also inconsistent with Section 30251 of the Coastal Act and analogous provisions of the LCP.

c. Unpermitted Development is Causing Continuing Resource Damage

The Unpermitted Development is causing ‘continuing resource damage’, as those terms are defined by Section 13190 of the Commission’s regulations, provided below in relevant part.

(i) Definition of Continuing Resource Damage

Section 13190(a) of the Commission’s regulations defines the term ‘resource’ as it is used in Section 30811 of the Coastal Act as follows:

‘Resource’ means any resource that 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.

The term ‘damage’ in the context of Restoration Order proceedings is defined in Section 13190(b) as follows:

‘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.

In this case, the Unpermitted Development that is the subject of these proceedings affects the coastal riparian habitat on the Property and ecosystem functions of the adjacent river. These resources are protected by the Coastal Act, and as long as the structures and materials that resulted from the Unpermitted Development remains within the estuary and on the banks of the Mad River, the resources discussed above will continue to be adversely affected.

The term ‘continuing’ is defined by Section 13190(c) of the Commission’s regulations as follows:

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

The physical items that were placed or allowed to come to rest on the Property have remained on the Property, resulting in impacts to coastal resources that include impacts to ESHA, the

biological productivity and quality of coastal waters, i.e., the river and estuary, and the natural shoreline of the Property. It affects the natural flow of the river and has prevented and continues to prevent the ecosystem from existing or functioning naturally. Therefore it is disruptive to the biological productivity of the area.

The Unpermitted Development is causing “continuing resource damage,” as defined by Section 13190 of the Commission’s regulations. It, at a minimum, has the potential to: (1) cause interference of water flow; (2) fail to preserve the natural riparian habitat, LCP-designated aquatic ESHA, and buffer, either as ESHA in and of itself or for the protection of the quality of adjacent and nearby coastal waters; (3) fail to maintain the biological productivity of coastal waters; (4) destroy/prevent the establishment and growth of native riparian vegetation communities in an environmentally sensitive habitat area; (5) contribute to the harm of the estuarine and riparian habitat on the site; (6) contribute to un-approvable stream alteration and erosion; and (7) degrade visual qualities. Such impacts meet the definition of damage provided in Section 13190(b), which includes, “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 harm to the resources from the development is continuing, in that the impacts from the Unpermitted Development continue to occur at the property, unmitigated.

The Unpermitted Development is causing adverse impacts to resources that are protected by the Coastal Act. These impacts continue to occur as of the date of these proceedings, and therefore damage to resources is “continuing” for purposes of Section 30811 of the Coastal Act. The damage caused by the Unpermitted Development, which is described in this staff report, satisfies the regulatory definition of “continuing resource damage.” Therefore, the third and final criterion for issuance of a Restoration Order is satisfied.

E. PROVISIONS OF RECOMMENDED ACTIONS

As described in Section C of these findings, Commission staff attempted initially to work with the prior property owner to resolve the Coastal Act violations on the Property. Subsequently, after the Property was transferred to the current owner of record, staff continued efforts towards an amicable resolution of the violations described herein by working with Ms. Lowell. Ms. Lowell has cooperatively agreed with staff to resolve the violations and to bring the property into compliance with the Coastal Act – both by completely removing the unpermitted revetment and rock and gravel material on the level area landward of the revetment, and by the restoration of the impacted areas. Staff recommends that the Commission approve the proposed Consent Cease and Desist and Restoration Orders. The proposed Consent Orders provide a means to bring the Property into compliance with the Coastal Act without the cost and delays of litigation, provide for timely removal and restoration of the site, and serve as a good resolution of this matter.

The proposed Consent Cease and Desist Order and Consent Restoration Order (included as Attachment A to this Staff Report) are consistent with the resource protection policies found in Chapter 3 of the Coastal Act. The proposed Consent Orders would require Ms. Lowell to: (1) cease and desist from maintaining or undertaking any future unpermitted development on the property; (2) remove, from the property, the unpermitted physical items that were placed or

allowed to come to rest on the Property as a result of the Unpermitted Development; and (3) restore the Property pursuant to the requirements of an approved Restoration Plan that includes provisions for a Removal Plan, Mitigation Plan, Revegetation Plan, and Monitoring Plan.

F. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The Commission finds that issuance of these Orders to compel the removal of the Unpermitted Development and restoration of the property is exempt from any applicable requirements of the California Environmental Quality Act of 1970 (CEQA), Cal. Pub. Res. Code §§ 21000 *et seq.*, and will not have significant adverse effects on the environment, within the meaning of CEQA. The Orders are exempt from the requirement for the preparation of an Environmental Impact Report, based on Sections 15060(c)(2) and (3), 15061(b)(2), 15307, 15308 and 15321 of CEQA Guidelines, also in 14 CCR.

H. SUMMARY OF FINDINGS OF FACTS

1. The Property is located at 1774 Ocean Drive, McKinleyville in Humboldt County. It is identified by the Humboldt County Assessor's Office as APN 508-161-011-000.
2. Ms. Rebecca Howard, also known as Rebecca Lowell, acquired title through an inheritance in October 2007 and is the sole property owner of record.
3. The Property is located within the Coastal Zone. The portion of the Property below the Mean High Tide Line ("MHTL") is in the Commission's retained permitting jurisdiction and the remainder of the Property, above the MHTL, is covered by the County of Humboldt's certified Local Coastal Program.
4. On December 3, 2003, Army Corps of Engineers staff transmitted an e-mail message to Commission staff that included a report of unpermitted development, including a revetment on the banks of the Mad River at 1774 Ocean Drive, in McKinleyville.
5. Staff became aware in February 2010 that Ms. Rebecca Howard was the new Property Owner.
6. On November 21, 2012, the County of Humboldt requested Commission take the lead for enforcement of the County's LCP regulating the Unpermitted Development at the Property.
7. On January 17, 2013, staff sent Ms. Rebecca Howard, via certified mail, a *Notification of Intent to Record a Notice of Violation of the Coastal Act and to Commence Cease and Desist Order and Restoration Order Proceedings* letter.

8. The Unpermitted Development has had negative impacts on coastal resources protected under Coastal Act Sections 30240, 30230, 30231, 30233, 30236, 30235, 30253, and 30251, and is inconsistent with those sections of the Coastal Act.
9. The subject Unpermitted Development is causing “continuing resource damage” as defined under Coastal Act Section 30811 and Title 14, California Code of Regulations, Section 13190.
10. The impacts to the Mad River and the adjacent coastal riparian area, caused by the development at issue, including, but not limited to: the temporal loss of the habitat provided by the riparian and river/estuarine habitat; the degradation of its scenic and visual qualities; the potential erosion associated with the alteration of the shoreline, and cumulative effects on water quality, are inconsistent with the Coastal Act. In addition, these impacts will continue until removal and revegetation activities are implemented and completed.
11. The requirements of Coastal Act Section 30810 and 30811 have been met here, and therefore, the Commission is authorized by the Coastal Act to issue a Cease and Desist Order and Restoration Order, for this matter.
12. The work to be conducted under the proposed Consent Orders, if completed in compliance with the Consent Orders and plans required therein, will be consistent with Chapter 3 of the Coastal Act.

ATTACHMENT A
(PROPOSED CONSENT ORDERS)

PROPOSED CONSENT CEASE AND DESIST ORDER CCC-13-CD-05 AND
CONSENT RESTORATION ORDER CCC-13-RO-05

1.0 CONSENT CEASE AND DESIST ORDER CCC-13-CD-05

Pursuant to its authority under California Public Resources Code ("PRC") Section 30810, the California Coastal Commission ("Commission") hereby orders and authorizes Rebecca L. Howard, formerly known as Rebecca L. Lowell, and all her successors, assigns, employees, agents, and anyone acting in concert with any of the foregoing (hereinafter collectively referred to as "Respondent") to:

- 1.1 Cease and desist from engaging in any further development, as that term is defined in PRC Section 30106 on any of the property identified in Section 5.4 below ("Subject Property"), unless authorized pursuant to, or exempt from, the Coastal Act (PRC Sections 30000-30900), which includes through these Consent Orders.
- 1.2 Cease and desist from maintaining on the Subject Property any Unpermitted Development as defined in Section 5.3, below, including, but not limited to, any of the unpermitted physical structures and materials on the Subject Property, or other unpermitted changes in the intensity of use to the Subject Property, resulting therefrom.
- 1.3 Remove, pursuant to an approved removal plan discussed in Section 6.3, below, and pursuant to the terms and conditions set forth herein, all physical items placed or allowed to come to rest on the Subject Property and adjacent public property as a result of Unpermitted Development, including, but not necessarily limited to: a revetment constructed of rock, concrete, rebar, and other debris extending the width of the Subject Property, and gravel material placed on top of and extending landward of the revetment.
- 1.4 Take all steps necessary to comply with the Coastal Act, including obtaining all obligatory approvals or other necessary permits, such as a California Department of Fish and Wildlife Streambed Alteration Agreement and Army Corps of Engineers, authorization for the removal of the unpermitted revetment and gravel material placed on top of and extending landward of the revetment, and restoration of the areas affected by the Unpermitted Development.
- 1.5 Fully and completely comply with the terms and conditions of the Consent Restoration Order CCC-13-RO-05, as provided in Section 2.0, below.

2.0 CONSENT RESTORATION ORDER CCC-12-RO-11

Pursuant to its authority under PRC Section 30811, the Commission hereby orders and authorizes Respondent to restore the Subject Property by complying with the Restoration

Order described in, and taking all other restorative actions listed in, Section 5.0, below, including by: 1) removing Unpermitted Development and materials and structures resulting therefrom; 2) implementing native riparian habitat revegetation, 2) mitigating for the temporal loss of riparian habitat, and 3) implementing a long-term monitoring program to ensure a successful restoration.

3.0 NATURE OF ORDERS AND OF CONSENT

- 3.1 Through the execution of Consent Restoration Order CCC-13-RO-05 and Consent Cease and Desist Order CCC-13-CD-05 (hereinafter collectively referred to as "these Consent Orders"), Respondent agrees to comply with the terms and conditions of these Consent Orders. These Consent Orders authorize and require removal and restoration activities, among other things, as outlined in these Consent Orders. Any development subject to Coastal Act permitting requirements that is not specifically authorized under these Consent Orders requires a coastal development permit ("CDP"). Nothing in these Consent Orders guarantees or conveys any right to development on the Subject Property other than the work expressly authorized by these Consent Orders. Through the execution of these Consent Orders, Respondent agrees to comply with these Consent Orders including the following terms and conditions.
- 3.2 Respondent further agrees to condition any contracts for work related to these Consent Orders upon an agreement that any and all employees, agents, and contractors; and any persons acting in concert with any of the foregoing, shall adhere to and comply with the terms and conditions set forth herein.
- 3.3 Nothing in these Consent Orders will restrict the submittal of any future application(s) by Respondent to Humboldt County and/or the Commission for CDPs for proposed development on the Subject Property. Nothing herein provides any assurance of the approval of any future application(s) by Respondent to Humboldt County and/or the Commission for CDPs.

PROVISIONS COMMON TO BOTH ORDERS

4.0 PERSONS SUBJECT TO THESE ORDERS

- 4.1 Rebecca Howard, also known as Rebecca L. Lowell, all her successors, assigns, employees, agents, and any persons acting in concert with any of the foregoing, are jointly and severally subject to all the requirements of these Consent Orders.
- 4.2 Respondent agrees to undertake the work required herein, and agrees to cause her current and future employees and agents, and any contractors performing any of the work contemplated or required herein and any persons acting in concert with any of these entities to comply with the terms and conditions of these Consent Orders.

5.0 DEFINITIONS

- 5.1 **"Consent Orders"** CCC-13-CD-05 and CCC-13-RO-05 are hereinafter collectively referred to as these Consent Orders.
- 5.2 **"Restoration Area"** Areas on the Subject Property where Unpermitted Development occurred, including the areas where the revetment and unpermitted gravel is located, and where the growth of native riparian vegetation is being inhibited.
- 5.3 **"Unpermitted Development"** All "development," as that term is defined in the Coastal Act (PRC section 30106), that has occurred on the Subject Property and required authorization pursuant to the Coastal Act, but for which no such authorization was obtained, including, but not necessarily limited to: the placement of rock, gravel, and other debris including concrete and rebar on and above the east bank of, and within, the Mad River resulting in the creation of a large revetment and placement of rock and gravel material on the level area on the landward side of the revetment that inhibited the growth of native riparian vegetation.
- 5.4 **"Subject Property"** The property that is the subject to these Consent Orders is described as follows: 1774 Ocean Drive, McKinleyville, in Humboldt County, California, which is also identified by the Humboldt County Assessor's Office as Assessor's Parcel Number 508-161-11.

6.0 RESTORATION PLAN

These Consent Orders require the preparation and implementation of a Restoration Plan, as defined below, to govern the removal, restoration, and mitigation activities. Within sixty (60) days of issuance of these Consent Orders, Respondent shall submit, for the review and approval of the Commission's Executive Director ("Executive Director"), Erosion Control, Removal, Mitigation, Revegetation, and Monitoring Plans ("Restoration Plan"). The Restoration Plan shall set forth the measures Respondent proposes to use to remove the Unpermitted Development from the Subject Property, and restore and revegetate the Restoration Area, mitigate for the temporal loss of habitat impacted by the unpermitted activity, and monitor the site to ensure that such work has been successful. The Restoration Plan shall therefore contain the following components: (1) an Erosion Control Plan, (2) a Removal Plan; (3) a Mitigation Plan, (4) a Revegetation Plan, and (5) a Monitoring Plan. The Restoration Plan shall address all development specifically described in Section 5.3. The Restoration Plan shall be consistent with the provisions set forth below and Respondents shall implement the Restoration Plan consistent with the provisions set forth below and the schedules set forth in the approved components of the plan, and shall include the following elements and requirements:

6.1 General Provision

- A. The Restoration Plan shall outline all proposed erosion control measures, in accordance with Section 6.2, below; all proposed removal activities, in accordance with Section 6.3, below; all mitigation activities, in accordance with Section 6.4, below; all proposed restoration and revegetation activities, in accordance with Section 6.5, below; and all monitoring activities, in accordance with Section 6.6, below.
- B. The Restoration Plan shall be prepared by a qualified restoration ecologist(s), resource specialist(s), and/or engineer qualified to prepare plans for and perform restoration of coastal riparian habitat along the Mad River estuary in Humboldt County, or under conditions similar to those that exist in the Restoration Area ("Resource Specialist"). The proposed Restoration Specialist, in order to meet the necessary qualifications for this project, must be a trained professional with experience successfully completing restoration or revegetation of the habitat-type found on the Subject Property, using riparian plant species native to coastal Humboldt County. Within twenty (20) days of issuance of these Consent Orders, Respondent shall submit for the Executive Director's review and approval, a description of the qualifications of the proposed Resource Specialist, including a description of the proposed Resource Specialist's educational background, training, and experience related to the preparation and implementation of the Restoration Plan described herein. If the Executive Director determines that the qualifications of Respondent's Resource Specialist(s) are not adequate to conduct such restoration work, he/she shall notify Respondent and, within ten (10) days of such notification, Respondent shall submit for the Executive Director's review and approval qualifications for a different Resource Specialist.
- C. The Restoration Plan shall include the following provisions and elements:
 - (1) A schedule / timeline for the activities covered in the Restoration Plan, the procedures to be used, and identification of the parties who will be conducting the restoration activities. The schedule / timeline of activities covered by the Restoration Plan shall be in accordance with the deadlines included in Sections 6.2, 6.3, 6.4, 6.5, and 6.6, for the Erosion Control Plan, Removal Plan, Mitigation Plan, Revegetation Plan, and Monitoring Plan, respectively.
 - (2) A site plan identifying the Restoration Area, the location of all erosion control measures, areas for staging of any construction equipment and materials, including receptacles and temporary stockpiles of removed materials ("the Site Plan"). The limits/boundaries of the Restoration Area shall be depicted on the Site Plan. The Restoration Plan shall state that prior to the initiation of any erosion control, removal, or restoration activities, the boundaries of the Restoration Area shall be physically delineated in the field, using temporary measures such as fencing stakes, colored flags, or colored tape. The Restoration Plan shall state further that all delineation materials shall be

removed when no longer needed and verification of such removal shall be provided in the annual monitoring report that corresponds to the reporting period during which the removal occurs.

- (3) Identification of the location of the disposal site(s) for the off-site disposal of all material removed from the Subject Property and all waste generated during removal and restoration activities pursuant to these Consent Orders. If a disposal site is located in the Coastal Zone and is not an existing, licensed sanitary landfill or construction waste reclamation facility, a CDP is required for such disposal. All hazardous waste or substances must be disposed of at a suitable licensed disposal facility.
- (4) A detailed description of all equipment to be used. All tools utilized shall be hand tools unless the Resource Specialist demonstrates to the satisfaction of the Executive Director that mechanized equipment, such as equipment used to remove the unpermitted revetment pursuant to Section 6.3, below, is needed and will not impact resources protected under the Coastal Act, including, but not limited to: geological stability, integrity of landforms, water quality, and the existing native vegetation. The Restoration Plan shall specify limitations on the hours of operation for all mechanized equipment and a contingency plan that addresses, at a minimum, the following: (a) impacts from equipment use, including disruption of areas where revegetation will occur and areas outside of those designated on the site plan for restoration (Section 6.1B(2)), and responses thereto; (b) potential spills of fuel or other hazardous releases that may result from the use of mechanized equipment and responses thereto; and (c) any potential impacts to water quality. The Restoration Plan shall designate areas for staging of any construction equipment and materials, including receptacles and temporary stockpiles of graded materials, all of which shall be covered on a daily basis.

6.2 Erosion Control Plan

- A. Respondent shall submit an Erosion Control Plan, including a thorough description of all erosion control measures, prepared by a Resource Specialist, approved pursuant to Section 6.1.B, as part of the Restoration Plan, to address ground disturbance during and after any construction, removal, or restoration activities occurring on the Subject Property, including during the establishment of the vegetation planted pursuant to Section 6.5, below.
- B. The erosion control measures are required to be installed and fully functional on the Restoration Area prior to or concurrent with the initial removal and restoration activities required by these Consent Orders and maintained throughout the restoration process to minimize erosion across the site and sedimentation of the estuary and river.

- C. The Erosion Control Plan shall: 1) include a narrative report describing all temporary run-off and erosion control measures to be used during removal and restoration activities; 2) identify and delineate on a site or grading plan the locations of all temporary erosion control measures; and 3) specify that the removal work shall take place only during the dry season (April 1- November 1). This period may be extended for a limited period of time pursuant to the provisions of Section 16.0, below.
- D. The Erosion Control Plan shall specify the methods to be used during and after restoration to stabilize the soil and make it capable of supporting native vegetation. Such methods shall not include the placement of retaining walls or other permanent structures, grout, geogrid or similar materials. Any soil stabilizers identified for erosion control shall be compatible with native plant recruitment and establishment. The Erosion Control Plan shall specify the type and location of erosion control measures that will be installed on the Subject Property and maintained until the impacted areas have 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. Verification of such removal shall be provided in the annual monitoring report for the reporting period during which the removal occurred.
- E. The Erosion Control Plan shall indicate that all stock-piled and construction materials are covered, enclosed on all sides, and located as far away as possible from drain inlets and any waterway.
- F. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems.
- G. The discharge of any hazardous materials into any receiving waters shall be prohibited.
- H. All erosion control materials shall be comprised of bio-degradable materials and shall be fully removed from the Restoration Area once native plant habitat is established.
- I. The Erosion Control Plan shall indicate that Respondent shall commence implementation of the Erosion Control Plan within no more than thirty (30) days of approval of the Restoration Plan and prior to conducting any removal or restoration activities. Additionally, in those areas where the Executive Director has determined erosion control measures may be immediately necessary, Respondent shall install said measures in a timely manner so as to avoid further resource impacts.

6.3 Removal Plan

- A. The Restoration Plan shall include a plan for the removal of the Unpermitted Development ("Removal Plan") prepared by a Resource Specialist approved pursuant to Section 6.1.B, to govern the removal and off-site disposal of all Unpermitted Development required to be removed pursuant to these Consent Orders. The Removal Plan shall include a thorough description of the measures that will be taken to remove all Unpermitted Development from the Subject Property. Respondent shall implement the Removal Plan consistent with the schedule set forth in the Removal Plan and these Consent Orders.
- B. The Removal Plan shall include:
 - (1) A detailed description of proposed removal activities.
 - (2) A site plan that depicts the location and identity of all Unpermitted Development to be removed from the Subject Property.
 - (3) A timetable / schedule for the removal.
 - (4) A provision that removal activities shall not disturb areas outside the Restoration Area, as identified on the Site Plan (Section 6.1.C(2)).
 - (5) Measures for the restoration of any areas outside the Restoration Area disturbed by the removal activities shall be included within the Revegetation Plan. These measures shall include the restoration of the areas from which the unpermitted development was removed, and any areas disturbed by those removal activities.
- C. The Removal Plan shall indicate that Respondent initiate removal of the Unpermitted Development by commencing implementation of the Removal Plan no later than twenty-five (25) days of approval of the Restoration Plan by the Executive Director, and such removal shall proceed in accordance with the terms of the approved Restoration Plan.
- D. Within 30 days from commencing implementation of the Removal Plan, the removal shall be completed.
- E. Within fifteen (15) days of the completion of the removal of all Unpermitted Development from the Subject Property, Respondent shall submit evidence for the Executive Director's review and approval, in the form of a narrative report with supporting photographs, showing that the removal has been completed pursuant to the approved plans.

6.4 Mitigation Plan

- A. Within sixty (60) days of the effective date of these Consent Orders, Respondents shall submit, for the review and approval of the Commission's Executive Director, a plan, prepared by a Resource Specialist, to mitigate for the temporal loss of native habitat on the Subject Property caused by the Unpermitted Development ("Mitigation Plan"). The Mitigation Plan shall outline proposed mitigation to be undertaken on-site at a ratio of 3:1 (mitigation: damaged resources)
- B. The Mitigation Plan shall include the following:
 - (1) A map, to scale, overlain with the physical dimensions of the areas affected by each element of Unpermitted Development, and the dimensions of each proposed area of mitigation. Respondent shall additionally provide the aerial extent of each element calculated in square feet.
 - a. Respondent shall commence implementation of the Mitigation Plan within fifteen (15) days of the completion or concurrent with implementation of the Revegetation Plan (Section 6.5, below) and shall complete all elements of the Mitigation Plan based upon the deadlines provided in the Mitigation Plan, but in any case no later than one hundred and twenty (120) days from the approval of the Restoration Plan by the Executive Director.

6.5 Revegetation Plan

- A. The Restoration Plan shall include a Revegetation Plan, prepared by a Resource Specialist approved pursuant to Section 6.1.B that outlines the measures necessary to revegetate the Restoration Area. Respondent shall implement the approved Revegetation Plan consistent with its terms, including the schedule for activities required under these Consent Orders.
- B. The Revegetation Plan shall include:
 - (1) Documentation of the condition of the site prior to the Unpermitted Development. Respondent shall provide a detailed description, including graphic representations, mapping, written narrative/summary, and photographic evidence of the vegetation in the Restoration Area prior to any unpermitted activity undertaken at the Subject Property, and the current state of the Subject Property.
 - (2) A planting plan demonstrating that the Restoration Area will be revegetated using plant species native to and appropriate for the Mad

River estuary in Humboldt County, such as coastal-stream and riparian species. The planting plan shall include:

- a. Identification of the natural habitat type that is the model for the restoration and description of the desired relative abundance of particular species in each vegetation layer. This section shall explicitly lay out the restoration goals and objectives for the revegetation. Based on these goals, the Revegetation Plan shall identify the species that are to be planted, and provide a rationale for and describe the size and number of container plants and the rate and method of seed application, if seeding is necessary. The Revegetation Plan shall indicate that plant propagules, cuttings, and seeds must come from local, native stock of this region of coastal Humboldt County.
 - i. If plants, cuttings, or seed are obtained from a nursery, the nursery must certify that they are of local origin (Humboldt County) and are not cultivars. The Revegetation Plan shall provide specifications for preparation of nursery stock. Technical details of planting methods (e.g. spacing, mycorrhizal inoculation, etc.) shall be included.
- b. A detailed description of the methods that shall be utilized to restore the Restoration Area to natural riparian habitat.
- c. A map showing the type, size, and location of all plant materials that will be planted in the Restoration Area; the location of all non-native plants to be removed from the Restoration Area; the topography of all other landscape features on the site; and the location of photographs of the Restoration Areas that will provide reliable photographic evidence for annual monitoring reports, as described in Section 6.6, below.
- d. A schedule for planting and the removal of non-native plants. Respondents shall not employ non-native plant species, which could supplant native plant species in the Restoration Area. The Revegetation Plan shall require that willow cuttings be taken and planted during the period of November 1 to March 1. If the planting schedule requires planting to occur at a certain time of year beyond the deadlines set forth herein, the Executive Director may, at the written request of Respondent, extend the deadlines as set forth in Section 16.0 of these Consent Orders in order to achieve optimal growth of the vegetation. The Revegetation Plan shall demonstrate that all non-native vegetation within the Restoration Area will be eradicated prior to any restoration

activities on the Subject Property. The Restoration Plan shall include maintenance and success criteria. In addition, the Revegetation Plan shall specify that non-native vegetation removal shall occur year round for the duration of the restoration project, as defined in Section 6.6, below.

- (3) A description of the proposed use of any artificial inputs, such as irrigation, fertilizer, or herbicides, including the full range of amounts of the inputs that may be utilized. The Revegetation Plan shall indicate that the minimum amount necessary to support the establishment of the plantings for successful restoration will be utilized. No permanent irrigation system is allowed in the Restoration Area. Temporary above-ground irrigation to provide for the establishment of the plantings is allowed for a maximum of three (3) years or until the plantings are established, whichever comes first. If, after the establishment period, the vegetation planted pursuant to the Revegetation Plan has not become established, the Executive Director may, upon receipt of a written request from Respondent, allow for the continued use of the temporary irrigation system. The written request shall outline the need for and the duration of the proposed time extension.
 - (4) A detailed explanation of the performance standards that will be utilized to determine the success of the restoration. The performance standards shall identify that 'x' native species appropriate to the habitat should be present, each with at least 'y' percent cover or with a density of at least 'z' individuals per square meter. The methodology to be used to evaluate and determine the success of the revegetation shall be in a form such that an independent professional / specialist can replicate it.
- C. The Revegetation Plan shall specify that Respondent shall commence revegetation by implementing the Revegetation Plan consistent with Section 6.5.B.2.d of the Restoration Plan.
 - D. Planting that will occur pursuant to the Restoration Plan shall be completed within thirty (30) days of initiating implementation of the Revegetation Plan.

6.6 Monitoring Plan

- A. The Restoration Plan shall indicate that Respondents shall submit a Monitoring Plan, as part of the Restoration Plan, that describes the monitoring and maintenance methodology, including sampling procedures, sampling frequency, and contingency plans to address potential problems with restoration activities or unsuccessful restoration of the area. The Monitoring Plan shall specify that the Resource Specialist

shall conduct at least four site visits annually for the duration of the monitoring period set forth in Section 6.6(B), at intervals specified in the Restoration Plan, for the purposes of inspecting and maintaining, at a minimum, the following: all erosion control measures; non-native species eradication; trash and debris removal; and the health and abundance of existing vegetation and/or vegetation planted under these Consent Orders, pursuant to the Revegetation and Mitigation Plans.

- B. The Monitoring Plan shall provide that Respondent shall submit, on an annual basis and during the same one-month period of each year (no later than December 31st of the first year), for five (5) years from the completion of implementation of the Revegetation Plan, according to the procedure set forth under Section 7.0, a written report, for the review and approval of the Executive Director, prepared by the Resource Specialist, evaluating compliance with the approved Restoration Plan. The Monitoring Plan shall specify that these reports shall also include photographs taken during the periodic site inspections pursuant to 6.6.A above, at the same time of year, from the same pre-designated locations (as identified on the map submitted pursuant to Section 6.5.B.2.d) indicating the progress of recovery in the Restoration Area.

- (1) The Monitoring Plan shall require that the locations from which the photographs are taken not change over the course of the monitoring period unless recommended changes are approved by the Executive Director, pursuant to Section 10.0 of these Consent Orders.

- C. If periodic inspections or the monitoring reports indicate that the restoration or a portion thereof is not in conformance with the Restoration Plan, or these Consent Orders, or has failed to meet the goals and/or performance standards specified in the Restoration Plan, Respondent shall submit a revised or supplemental Restoration Plan ('Revised Restoration Plan') for review and approval by the Executive Director. The Monitoring Plan shall require that the Revised Restoration Plan shall be prepared by a Resource Specialist, approved by the Executive Director, and shall specify measures to correct those portions of the restoration that have failed or are not in conformance with the original, approved Restoration Plan, or these Consent Orders. The Monitoring Plan shall specify that the Executive Director will then determine whether the Revised Restoration Plan must be processed as a modification of these Consent Orders, a new Restoration Order, or a new CDP. The Monitoring Plan shall provide that after the Revised Restoration Plan has been approved, these measures, and any subsequent measures necessary to carry out the original, approved Restoration Plan, shall be undertaken by Respondent as required by the Executive Director until the goals of the original, approved Restoration

Plan have been met. The Monitoring Plan shall state that following completion of the Revised Restoration Plan's implementation, the duration of the monitoring period, set forth in Section 6.6.B, shall be extended for at least a period of time equal to that during which the project remained out of compliance, but in no case less than two annual reporting periods.

- D. At the end of the five-year (5-yr) monitoring period (or other duration, if the monitoring period is extended pursuant to Section 6.6.C, above), Respondent shall submit, according to the procedure set forth under Section 8.0, a final detailed report prepared by a Resource Specialist for the review and approval of the Executive Director.

(1) If this report indicates that the restoration has in part, or in whole, been unsuccessful, based on the requirements of the approved Restoration Plans, Respondents shall submit a Revised Restoration Plan, in accordance with the requirements of Section 5.9(C) of the Consent Orders, and the monitoring program shall be revised according to the requirements of these Consent Orders

7.0 IMPLEMENTATION AND COMPLETION

- 7.1 Upon approval of the Restoration Plan (including the Erosion Control, Removal, Mitigation Plan, Revegetation, and Monitoring Plans) by the Executive Director, Respondents shall fully implement each phase of the Restoration Plan consistent with all of its terms, and the terms set forth herein. The Executive Director may extend deadlines or modify the approved schedules for good cause pursuant to Section 16.0 of these Consent Orders.

- 7.2 Within fifteen (15) days of the completion of the work described pursuant to each phase (Erosion Control, Removal Plan, Mitigation, and Revegetation Plan), Respondents shall submit, according to the procedures set forth under Section 8.0, a written report, prepared by a qualified Specialist, for the review and approval of the Executive Director, documenting all restoration work performed on the Subject Property pursuant to the specific component of the Restoration Plan. This report shall include a summary of dates when work was performed and photographs taken from the pre-designated locations (as identified on the map submitted pursuant to Section 6.1.C(2)) documenting implementation of the respective components of the Restoration Plan, as well as photographs of the Subject Property before the work commenced and after it was completed.

8.0 SUBMITTAL OF PLANS, REPORTS, AND OTHER MATERIALS

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

California Coastal Commission
Attn: Ms. Renée T. Ananda
45 Fremont Street, Suite 2000
San Francisco, CA 94105

With a copy sent to:
California Coastal Commission
Attn: Nancy Cave
California Coastal Commission,
45 Fremont St., Suite 2000,
San Francisco, CA 94105

ADDITIONAL PROVISIONS COMMON TO BOTH ORDERS

9.0 COMPLIANCE WITH OTHER LAWS

All work to be performed under these Consent Orders shall be done in compliance with all applicable laws. Nothing in these Consent Orders shall be interpreted as requiring Respondent to take any action in violation of any government requirements.

10.0 REVISIONS OF DELIVERABLES

The Executive Director may require revisions to deliverables required under these Consent Orders, and Respondent shall revise any such deliverables consistent with the Executive Director's specifications, and resubmit them for further review and approval by the Executive Director, by the deadline established by the modification request from the Executive Director. The Executive Director may extend the deadline for submittals upon receipt of a written request by Respondent and a showing of good cause, pursuant to Section 16.0 of these Consent Orders.

11.0 COMMISSION JURISDICTION

The Commission has jurisdiction over resolution of the Coastal Act violations described in Section 5.3, above, pursuant to PRC Sections 30810 and 30811. In light of the desire to settle these matters, Respondent agrees to not contest the Commission's jurisdiction to issue or enforce these Consent Orders.

12.0 RESOLUTION OF MATTER VIA SETTLEMENT

In light of the intent of the parties to resolve these matters in settlement, Respondent has not submitted a "Statement of Defense" form as provided for in Sections 13181 and 13191 of Title 14 of the California Code of Regulations ("14 CCR") and has agreed not to contest the legal and factual bases, the terms, or the issuance of these Consent Orders, including the allegations of Coastal Act violations contained in the "Notification of Intent to Record a Notice of Violation of the Coastal Act and to Commence Cease and Desist Order and Restoration Order Proceedings" dated January 14, 2013 ("the NOP"). Specifically, Respondent has agreed not to contest the issuance or enforcement of these Consent Orders at a public hearing or any other proceeding.

13.0 EFFECTIVE DATE AND TERMS OF THESE CONSENT ORDERS

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

14.0 FINDINGS

These Consent Orders are issued on the basis of the findings adopted by the Commission at its May, 2013 meeting, as set forth in the document entitled "Staff Report and Findings for Consent Cease and Desist Order No. CCC-13-CD-05 and Restoration Order No. CCC-13-RO-05." The activities authorized and required in 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.

15.0 COMPLIANCE OBLIGATION

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 16.0, will constitute a violation of these Consent Orders and shall result in Respondent being liable for stipulated penalties in the amount of \$500 per day per violation. If delays in completion of restoration are caused solely as a result of fire, flood, earthquake, storm, hurricane, tsunami, or other natural disaster, Respondent may not be subject to stipulated penalties during the time of such natural disaster. Respondent shall submit evidence, for the review and written approval of the Executive Director, that such act(s) prevented Respondent from completing the restoration. Respondent shall pay stipulated penalties regardless of whether Respondent has subsequently complied. If Respondent violates 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 imposition of civil penalties and other remedies pursuant to PRC Sections 30820, 30821.6, and 30822 as a result of the lack of compliance with the Consent Orders and for the underlying Coastal Act violations described herein.

16.0 DEADLINES

Prior to the expiration of any given deadline established by these Consent Orders, Respondent may request from the Executive Director an extension of the unexpired deadline. Such a request shall be made in writing and received by the Executive Director ten (10) days in advance of the deadline, and directed to the Executive Director care of Renée Ananda, in the Commission's San Francisco office. The Executive Director may grant an extension of any deadline upon a showing of good cause, if the Executive

Director determines that Respondent has diligently worked to comply with her obligations under these Consent Orders, but cannot meet deadlines due to unforeseen circumstances beyond her control. A violation of deadlines established pursuant to these Consent Orders will result in stipulated penalties, as provided for in Section 15.0, above.

17.0 SEVERABILITY

Should any provision of these Consent Orders be found invalid, void or unenforceable, such illegality or unenforceability shall not invalidate the whole, but the Consent Orders shall be construed as if the provision(s) containing the illegal or unenforceable part were not a part hereof.

18.0 SITE ACCESS

Respondent shall provide access to the Subject Property at all reasonable times to Commission staff and any agency having jurisdiction over the work being performed under these Consent Orders. Commission staff shall provide 48 hours advance notice to Respondent prior to entering the Subject Property. Commission staff will make every effort during the site inspection to not disturb occupants of the Subject Property. 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. Commission staff may enter and move freely about the portions of the Subject Property, and on adjacent areas of the Subject Property for purposes including, but not limited to: viewing the areas where removal and restoration activities are being performed pursuant to the requirements of these Consent Orders; inspecting records, operating logs, and contracts relating to the site; and overseeing, inspecting and reviewing the progress of Respondent's implementation of the Restoration Plan and compliance with the terms of these Consent Orders.

19.0 GOVERNMENT LIABILITY

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

20.0 SETTLEMENT

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, Respondent hereby agrees 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.

21.0 SETTLEMENT OF CLAIMS

The Commission and Respondent agree that these Consent Orders settle the Commission's monetary claims for relief from Respondent for the violations of the Coastal Act alleged in the NOI, occurring prior to the date of these Consent Orders, (specifically including claims for civil penalties, fines, or damages under the Coastal Act, including under PRC Sections 30805, 30820, and 30822), with the exception that, if Respondent fails to comply with any term or condition of these Consent Orders, the Commission may seek monetary or other claims for both the underlying violations of the Coastal Act and for the violation of these Consent Orders. In addition, these Consent Orders do not limit the Commission from taking enforcement action due to Coastal Act violations on the Subject Property beyond those that are the subject of the NOI.

22.0 SUCCESSORS AND ASSIGNS

These Consent Orders shall run with the land, binding Respondent, including successors in interest, future owners of the Subject Property, heirs, and assigns. Respondent agrees that she shall provide notice to all successors, heirs, assigns, and potential purchasers of the Subject Property of any remaining obligations under these Consent Orders. These Consent Orders are a personal legal obligation and Respondent is responsible for the work required by these Consent Orders without regard to her ownership of the Subject Property.

23.0 MODIFICATIONS AND AMENDMENTS

Except as provided for in Section 16.0, and for other minor, non-substantive modifications, subject to agreement between the Executive Director and Respondent, these Consent Orders may be modified or amended only in accordance with the standards and procedures set forth in 14 CCR Section 13188(b) and 13197.

24.0 GOVERNING JURISDICTION

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

25.0 LIMITATION OF AUTHORITY

- 25.1 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. Failure to enforce any provision of these Consent Orders shall not serve as a waiver of the ability to enforce those provisions or any others at a later time.
- 25.2 Correspondingly, Respondent has entered into these Consent Orders and waived her right to contest the factual and legal bases for issuance of these Consent Orders, and the

enforcement thereof according to their terms. Respondent has agreed not to contest the Commission's jurisdiction to issue and enforce these Consent Orders.

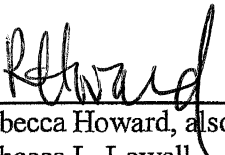
26.0 INTEGRATION

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.

27.0 STIPULATION

Respondent attests that she has reviewed the terms of these Consent Orders and understands that its consent is final, and stipulates to their issuance by the Commission.

IT IS SO STIPULATED AND AGREED:



Rebecca Howard, also known as
Rebecca L. Lowell

4/30/13

Dated

Executed in Long Beach, CA on behalf of the California Coastal Commission:

Charles Lester, Executive Director

Dated

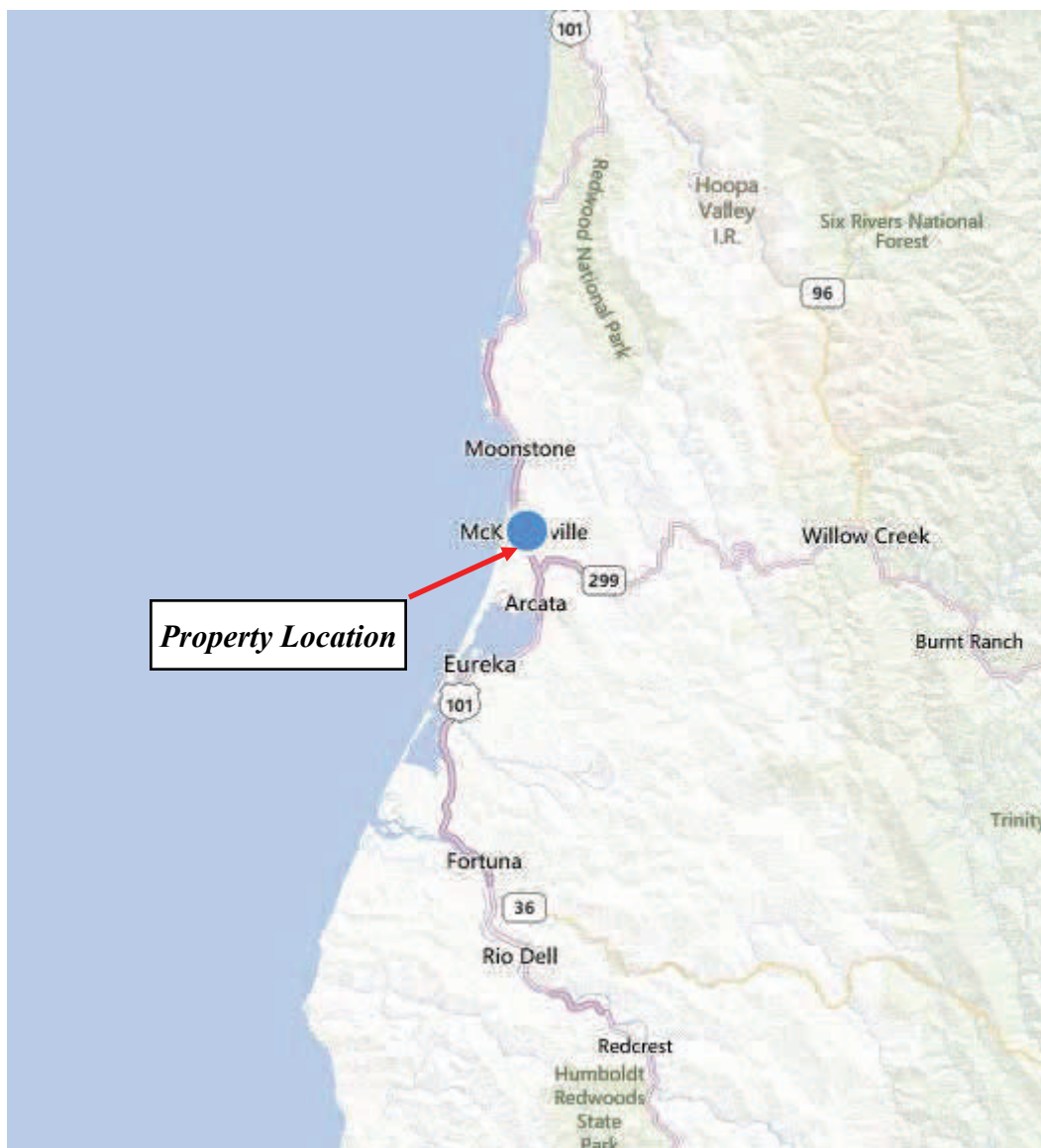


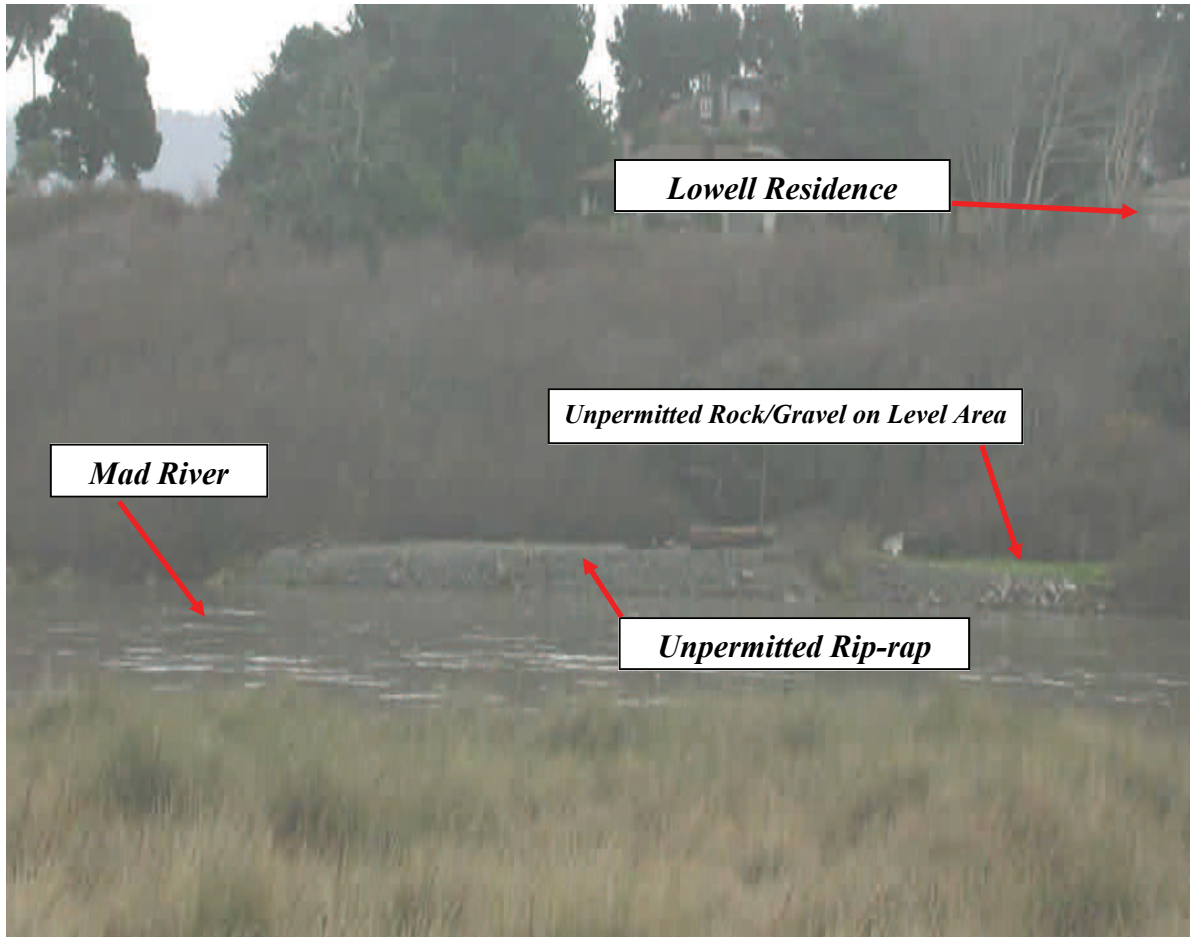
Exhibit 1

CCC-13-CD-05 & CCC-13-RO-05 (Lowell)



Exhibit 2

CCC-13-CD-05 & CCC-13-RO-05 (Lowell)



View looking east from estuary (i.e., west) of the property 12/14/03



Looking Southward 4/20/04



Looking Northward 4/20/04

Exhibit

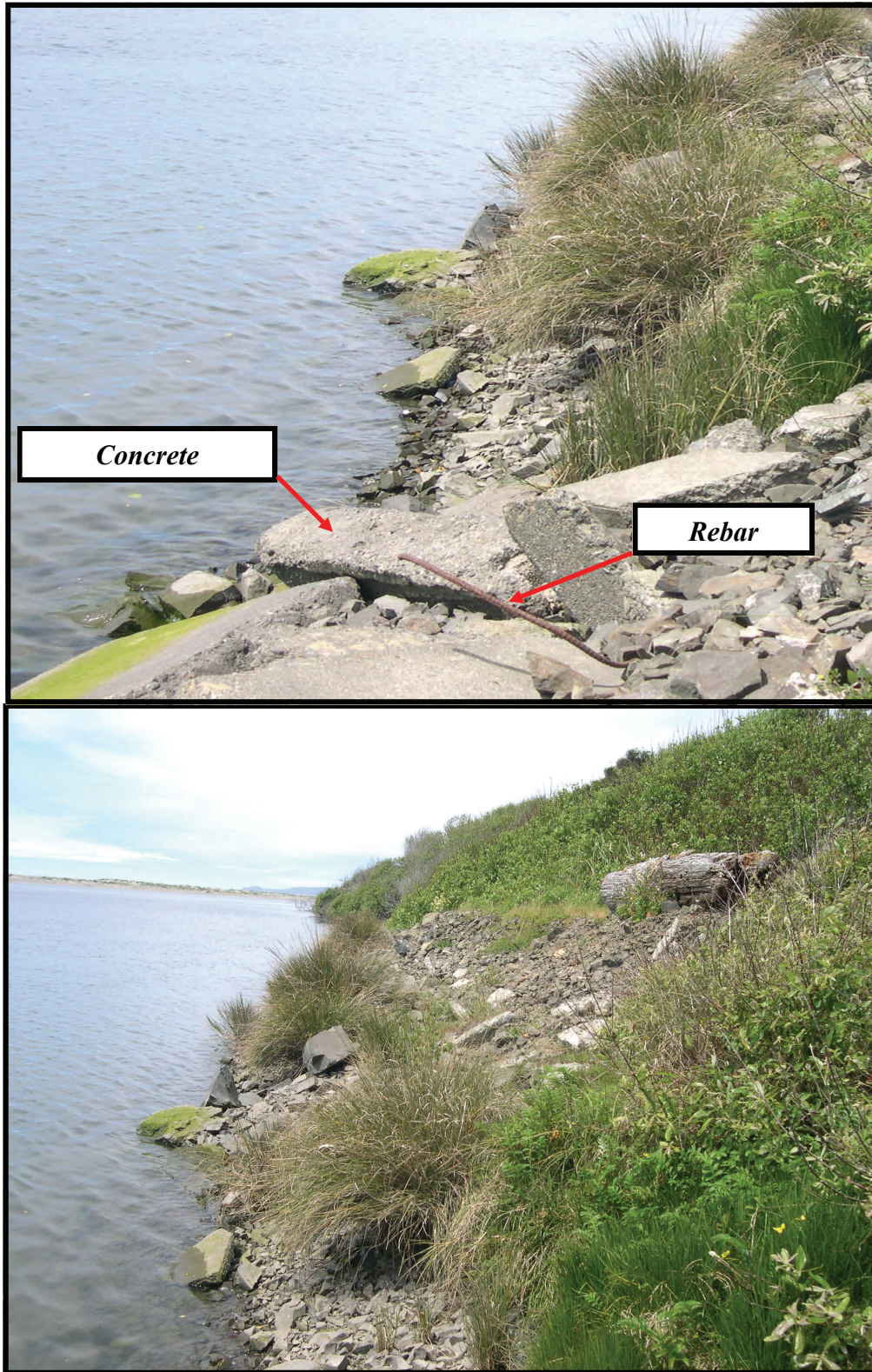


Exhibit 3 *Looking North 10/29/12*

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE

MAILING ADDRESS:

710 E STREET • SUITE 200

P. O. BOX 4908

EUREKA, CA 95501-1865

EUREKA, CA 95502-4908

VOICE (707) 445-7833

FACSIMILE (707) 445-7877



REGULAR MAIL AND CERTIFIED MAIL

7002 0460 0002 3429 3860

March 24, 2004

David W. Lowell

P.O. Box 1492

Redway, CA 95560

Subject: Notice of Violation of the Coastal Act**Violation File No.:** V-1-04-002**Violation Description:** Unpermitted development—bank stabilization project**Location:** 1774 Ocean Drive, McKinleyville, Humboldt County, APN 508-161-11

Dear Mr. Lowell:

Coastal Commission enforcement staff has investigated and verified reports of unpermitted development consisting of vegetation clearing and bank stabilization along the banks of the Mad River at the above-referenced location. As owners of record for this property you are responsible for any development activities that occur on this property.

In Section 30106 the Coastal Act defines development to include vegetation clearing and the placement of any solid material or structure:

"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...; removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations...

Pursuant to Coastal Act section 30600, any person wishing to perform or undertake development in the coastal zone is required to obtain a coastal development permit (CDP), in addition to any other permit required by law, authorizing such development before such development takes place. We have reviewed our records and the records of Humboldt County, and have determined that no such permit was issued for bank stabilization activities at the above-referenced location.

Exhibit 4

CCC-13-CD-05 & CCC-13-RO-05
(Lowell)

Shore bank stabilization and revetment projects are in some instances permitted under the Coastal Act, and attached to this letter I include text from sections of the Coastal Act that outline some of those instances. However, there is no evidence that this project has been performed under these statute provisions, i.e. to protect an existing structure (Section 30235), to protect a public beach from erosion (Section 30235), or to serve coastal-dependent uses (Section 30235). The project is not a flood control project under Section 30236, nor has it been put in place for water supply or improving fish and wildlife habitat (Section 30236). Furthermore, the project does not seem to be serving the maintenance of natural vegetation buffers that protect riparian habitats (Section 30231).

To begin resolution of this violation on the subject property with the Coastal Commission, you may follow one of two courses of action. (1) You may submit an application for a Coastal Development Permit (CDP) to restore the impacted area to the condition it was in prior to the unpermitted development. The project description of such an application must include a detailed description of how the removal of the bank stabilization materials will be achieved, including a description of any equipment to be used in removal, and a clear indication of the disposal site(s) proposed for the removed bank stabilization material. Because of the presence of wetlands, riparian habitat and/or other environmentally sensitive habitat (ESHA) at the site, an application for removal and restoration of the property may also require the submittal of a biological assessment addressing the presence, extent, and possible impacts to wetlands, riparian habitat, and other ESHA of the removal of the bank stabilization. The application fee for removal of the bank stabilization would be \$200 or \$600, depending on whether the application could be processed as a permit waiver or not. If you choose to submit an application for removal, we would recommend submitting the \$200 application fee initially. After staff has a chance to review the application, staff will be able to determine whether the project qualifies for processing as a permit waiver. If the application does not qualify for processing as a permit waiver, staff will ask you for the \$400 balance of the fee.

Alternatively, (2) you may submit an application for after-the-fact authorization of the unpermitted development, keeping in mind the above discussion of the types of bank stabilization project that are permissible under the Coastal Act. A completed CDP application requesting after-the-fact authorization must include a detailed and comprehensive project description, outlining the exact nature of the development that has already occurred, including details as to the exact materials used in the development, the size of the development (in all three dimensions), the process of installation, and any equipment used in the development activities. Assuming the total project cost of installation of the bank stabilization was less than \$100,000, the application fee for after-the-fact authorization of the bank stabilization would be \$1,200. This figure reflects the fact that fees for after-the-fact applications are doubled.

In addition, the application would need to indicate the specific purpose of the bank stabilization and why it was installed. If the bank stabilization was installed to protect certain existing development from flood or from erosion, the application must indicate what specific development the bank stabilization is designed to protect and include an engineering and/or geotechnical analysis detailing the specific risk to the development of not installing the bank

stabilization. The engineering and/or geotechnical analysis must (1) estimate the time period before the development would be affected by the flooding or erosion without installation of the bank stabilization, (2) estimate the bluff retreat rate based on an examination of aerial photographs and other historical information (if the bank stabilization is designed to protect the existing house or other existing development on the bluff top of the property), (3) provide a slope stability analysis of the bluff (if the bank stabilization is designed to protect the existing house or other existing development on the bluff top of the property); (4) analyze the impacts on shoreline sand supply caused by construction of the bank stabilization; and (5) examine the relative impact to environmentally sensitive habitat and to project objectives of alternatives to the bank stabilization including the "no project" alternative of not installing the bank stabilization, construction of a bank stabilization at an alternative location, closer to the face of the bluff, and installation of a sheet pile bulkhead.

An application for after-the-fact authorization of the bank stabilization must also be accompanied by a wetlands delineation and biological habitat assessment report for the project site. The wetland delineation must be prepared by a qualified wetlands biologist, and must describe the exact location and nature of the wetlands, riparian habitat, and other environmentally sensitive habitat on the property. Your application must show the location of bank stabilization in relation to any wetlands, riparian habitat, or other ESHA present on or in proximity to the project site, and must identify adequate mitigation to mitigate for the adverse impacts to such habitat that resulted from the installation of the bank stabilization. The biological assessment portion of the report must be prepared by a biologist with experience in reviewing the impacts of development to riverine and riparian habitat. The report must address the issue of any impacts of the development to fish or wildlife species that use the ESHA present on your property.

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

Regardless of your choice of action, please contact me at this office no later than **April 14, 2004**, to respond to these allegations. You may contact me at our Eureka Office, at (707) 445-7833, or in writing at the letterhead address. I have included a blank coastal development permit application with this letter. If you have any questions about applying for a CDP, you may contact a permit analyst in our office at the same phone number. Deadline for CDP application with this office is **April 28, 2004**.

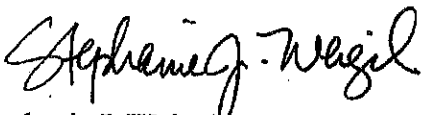
Commission enforcement staff prefers to work cooperatively with alleged violators to resolve Coastal Act violations administratively. However, if you fail to meet our requested permit application deadline, Commission staff will be forced to conclude that you do not wish to resolve this violation administratively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

Section 30803 of the Coastal Act authorizes the Commission to maintain a legal action for declaratory and equitable relief to restrain any violation of the Act. Coastal Act section 30809 states that if the Executive Director of the Coastal Commission determines that any person has undertaken or is threatening to undertake any activity that requires a permit from the Coastal Commission without first securing a CDP, the Executive Director may issue an order directing that person to cease and desist. Coastal Act section 30810 states that the Commission may also issue a permanent cease and desist order. A cease and desist order may be subject to terms and conditions that are necessary to avoid irreparable injury to the area or to ensure compliance with the Coastal Act. Section 30811 authorizes the Commission to order restoration of a site where development occurred without a CDP, is inconsistent with the Coastal Act, and is causing continuing resource damage. Section 30812 of the Coastal Act allows the Executive Director, after providing notice and opportunity for a hearing, to record a notice of violation of the Coastal Act against your property.

In addition, section 30820(a) provides for civil liability to be imposed on any person who performs or who undertakes development without a coastal development permit or in a manner that is inconsistent with any coastal development permit previously issued by the Commission, in an amount that shall not exceed \$30,000 and shall not be less than \$500. Section 30820(b) provides that additional civil liability may be imposed on any person who performs or undertakes development without a coastal development permit or that is inconsistent with any coastal development permit previously issued by the Commission, when the person knowingly and intentionally performs or undertakes such development, in an amount not less than \$1,000 and not more than \$15,000 per day for each day in which the violation persists. Section 30821.6 provides that a violation of either type of cease and desist order or of a restoration order can result in the imposition of civil fines of up to \$6000 for each day in which the violation persists. Finally, Section 30822 allows the Commission to maintain a legal action for exemplary damages, the size of which is left to the discretion of the court. In exercising its discretion, the court shall consider the amount necessary to deter further violations.

Thank you for your attention to this matter.

Sincerely,



Stephanie J. Weigel
Enforcement Staff, North Coast District Office

cc: Bob Merrill, North Coast District Manager, California Coastal Commission
Nancy Cave, Statewide Enforcement Program Supervisor, California Coastal Commission
Carol Heidsiek, US Army Corps of Engineers

Attachments: Coastal Act Sections 30231, 30235, 30236
Application for Coastal Development Permit

Exhibit 4
CCC-13-CD-05 & CCC-13-RO-05
(Lowell)

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE

MAILING ADDRESS:

710 E STREET • SUITE 200

P. O. BOX 4908

EUREKA, CA 95501-1866

EUREKA, CA 95502-4908

VOICE (707) 445-7833

FACSIMILE (707) 445-7877



REGULAR MAIL AND CERTIFIED MAIL

7003 1010 0000 1962 6659

April 26, 2004

David W. Lowell
1774 Ocean Drive
McKinleyville, CA 95519-3828

Subject: Follow up to site visit on April 20, 2004; extension of Coastal Development Permit application deadline

Violation File No.: V-1-04-002

Violation Description: Unpermitted development—bank stabilization project

Location: 1774 Ocean Drive, McKinleyville, Humboldt County, APN 508-161-11

Dear Mr. Lowell:

The Coastal Commission appreciates your willingness to cooperate with our investigation of the above violation, and the opportunity to meet with you at the site in McKinleyville on April 20, 2004.

As I indicated prior to and during our visit, the intention of the site visit was to view the site and record the conditions as well as any history of the site you were able to provide. During that visit I was able to take photographs depicting the site as it is today and to record your observations of the history of the site. My report and the photographs will be shared internally with my supervisors during our next staff meeting, and following that time I will be able to report to you the results of that consultation, with regard to the expectations for the Coastal Development Permit (CDP) application that was requested of you in our letter dated March 24, 2004.

In that March 24, 2004 letter a deadline for submittal of a CDP application to resolve this violation was given of April 28, 2004. In order to allow adequate time for internal consultation by our staff as well as for you to prepare your application materials, I am **extending the CDP application deadline to May 24, 2004.**

Exhibit 4
CCC-13-CD-05 & CCC-13-RO-05
(Lowell)

Lowell V-1-04-002

April 26, 2004

Page 2 of 2

If you have questions regarding this enforcement matter please contact me at 707-445-7833 or via mail at the letterhead address above. Again I thank you for your attention to this matter.

Sincerely,



Stephanie J. Weigel

Enforcement Staff, North Coast District Office

cc: Bob Merrill, North Coast District Manager, California Coastal Commission
Nancy Cave, Statewide Enforcement Program Supervisor, California Coastal
Commission
Carol Heidsiek, US Army Corps of Engineers

Exhibit 4
CCC-13-CD-05 & CCC-13-RO-05
(Lowell)

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE

710 E STREET • SUITE 200

EUREKA, CA 95501-1885

VOICE (707) 445-7833

FACSIMILE (707) 445-7877

MAILING ADDRESS:

P. O. BOX 4908

EUREKA, CA 95502-4908



REGULAR MAIL AND CERTIFIED MAIL

7004 0750 0000 3314 3500

July 30, 2004

David W. Lowell
1774 Ocean Drive
McKinleyville, CA 95519-3828

Subject: Final notice of CDP application deadline, discussion of possible Notice of Violation recordation

Violation File No.: V-1-04-002

Violation Description: Unpermitted development—bank stabilization project

Location: 1774 Ocean Drive, McKinleyville, Humboldt County, APN 508-161-11

Dear Mr. Lowell:

In my letter to you dated March 24, 2004 I notified you that the Coastal Commission had opened a violation case regarding unpermitted development activities consisting of bank stabilization and vegetation clearing at the above location, where you are the owner of record. In that letter I requested the submission of a Coastal Development Permit (CDP) application to either restore the impacted area to its former condition, or to request after-the-fact authorization of the unpermitted development. At that time it was noted that a request for after-the-fact authorization to retain the development would involve submittal of a detailed justification of the project including several reports by expert consultants. For your convenience, a copy of my March 24, 2004 letter that delineates the Commission's requirements for after-the-fact permit authorization of the unpermitted development is included as an attachment to this letter.

My March 24, 2004 letter imposed an April 28, 2004 deadline for your CDP application. After I conducted an April 20, 2004 site visit to your property, I extended your CDP application deadline to May 24, 2004, at your request, to allow you additional time to prepare your application. On May 24, 2004 our office received your letter dated May 22, 2004, stating that you needed an unspecified amount of additional time to complete the CDP application process. In that letter you stated your intent to file a CDP. A month passed and we did not receive your

Exhibit 4
CCC-13-CD-05 & CCC-13-RO-05
(Lowell)

July 30, 2004

Page 2 of 3

CDP application. On June 24, 2004 I left a phone message asking you to contact me and update me on the status of your CDP application; no return call has been logged or received at our office. In addition, no CDP application has been received by our office from you as of today's date.

I have contacted Humboldt County to determine whether a CDP or other permits for bank stabilization or for a bank revetment were ever issued by the County for the location referenced above. A search of County records back to 1971 did not provide evidence of a CDP or other permits for a bank stabilization or revetment project. In addition, a search of Commission permit records does not indicate that a CDP has ever been issued for a bank stabilization or revetment project at this location by the Coastal Commission.

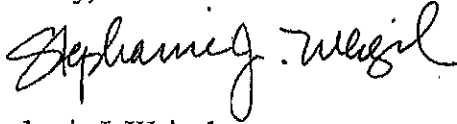
As noted in my letter of March 24, 2004, the Coastal Act contains many enforcement remedies for Coastal Act violations. We hope to avoid using these remedies and still desire to reach an administrative resolution of this situation. For that reason, I am establishing a final opportunity for you to submit a CDP for either removal and restoration or for after-the-fact retention to our office, with a deadline of **August 26, 2004**. We hope that you decide to resolve this violation voluntarily, and comply with this deadline. However, should we fail to reach an administrative resolution on this matter, Section 30812 of the Coastal Act authorizes the Commission to record a Notice of Violation on your property. This possibility was noted in my letter to you of March 24, 2004.

Pursuant to Section 30812, if you fail to submit a the requested CDP application by our deadline of **August 26, 2004**, we will send you notice of the Executive Director's intent to record a Notice of Violation with the Humboldt County Recorder's Office. On receipt of this notice, you will have twenty (20) days to inform the Executive Director of the Commission of any objections you might have to the recordation of the Notice, and of your desire to have the Commission conduct a public hearing before recording such a Notice.

If you do not object within 20 days, the Notice of Violation will be recorded on your property. However, if you object to the Notice of Violation being recorded, you would be entitled to a public hearing at a Commission meeting on whether or not your development is a violation of the Coastal Act's permit requirements. If at that public hearing the Commission finds that no violation has occurred, the Executive Director of the Commission will mail you notice of that finding. If the Commission finds that, based on substantial evidence, a violation has occurred, the Notice of Violation will be recorded. Should a Notice of Violation be recorded on your property, it may be "extinguished" or removed by the Commission once you resolve the violation, by the filing of a notice of rescission by the Executive Director in the office of the County Recorder where the Notice of Violation was filed.

If you have questions regarding this enforcement matter please contact me at 707-445-7833 or via mail at the letterhead address above. Thank you for your attention to this matter.

Sincerely,



Stephanie J. Weigel
Enforcement Staff, North Coast District Office

cc: Bob Merrill, North Coast District Manager, California Coastal Commission
Nancy Cave, Statewide Enforcement Program Supervisor, California Coastal
Commission
Carol Heidsiek, US Army Corps of Engineers

Attachment: Copy of March 24, 2004 letter to David W. Lowell by Stephanie J. Weigel

CALIFORNIA COASTAL COMMISSION

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



SENT CERTIFIED & REGULAR MAIL

February 18, 2010

Rebecca L. Lowell
548 Drake Drive
Santa Rosa, CA 95409-3266
Certified Mail: 7006 2760 0005 5883 6030

Coastal Act Violation File Number: V-01-04-002

Property Location: 1774 Ocean Drive, McKinleyville, Humboldt County, APN 508-161-11

Violation Description: Unpermitted development consisting of bank stabilization and vegetation clearing

Dear Ms. Lowell,

I have recently been made aware that real property belonging to your father, Mr. David Lowell, located at 1774 Ocean Drive in McKinleyville, has been transferred to you. Unfortunately, the property is the subject of an unresolved Coastal Act violation case, involving the unpermitted placement of revetment rock within and clearing of vegetation along the Mad River. In 2004, Commission staff sent Mr. Lowell three letters notifying him that the unpermitted development constituted violations of the Coastal Act and expressed a willingness to work with him to resolve the matter.¹ Mr. Lowell expressed interest in applying for Commission approval of an after-the-fact Coastal Development Permit (CDP). Commission staff informed Mr. Lowell there were no guarantees the Commission would approve such an after-the-fact CDP application; Mr. Lowell maintained he was interested in seeking after-the-fact CDP approval. However, Mr. Lowell never submitted a completed CDP application.

As the owner of record on this property, it is now your responsibility to resolve the existing Coastal Act violations. Commission staff would like to work with you to resolve the violations amicably. We prefer to see removal of the cited unpermitted development as it appears unlikely that an application to retain such development would be recommended for approval. As such, we recommend that you submit a new application for a Coastal Development Permit to remove the bank stabilization and restore the area to its pre-violation condition. For your convenience, I

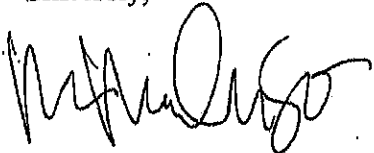
¹ These letters were dated March 24, 2004, April 26, 2004, and May 22, 2004.

Exhibit 4
CCC-13-CD-05 & CCC-13-RO-05
(Lowell)

have included with this letter a CDP application form. In order to avoid formal enforcement action, please submit a completed application to the Commission's North Coast office no later than March 15, 2010. The mailing address for the North Coast office is included on the CDP application form. If you have any questions concerning CDP application filing requirements, please contact North Coast office staff at 707-445-7833.

The Commission would prefer to resolve this case cooperatively. Please contact me by March 1, 2010 at 415-904-5396 (or Elijah Davidian at 415-904-5292 if I am not available), to confirm your intent to resolve these violations. I appreciate your attention to this matter and am available to answer any questions you may have. I look forward to working with you.

Sincerely,



Monica Macaluso
Enforcement Division

Encl: Application for Coastal Development Permit

Cc: Elijah Davidian, Headquarters Enforcement Analyst
Robert Merrill, North Coast District Manager

Exhibit 4
CCC-13-CD-05 & CCC-13-RO-05
(Lowell)

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 & REGULAR MAIL

April 13, 2010

Rebecca L. Howard
16824 Hart Street
Van Nuys, CA 91406
Certified Mail: 7007 1490 0000 8798 9395

RE: Site Visit to 1774 Ocean Drive, McKinleyville, CA

Dear Ms. Howard,

This letter is to memorialize our prior conversations regarding the site visit to 1774 Ocean Drive. We have scheduled you to meet at your property with our North Coast staff on **June 1, 2010**. We believe the site visit will take place mid-morning on June 1st, and we will contact you prior to the date to confirm the arrival time. If you have any questions in the interim please do not hesitate to contact either Elijah Davidian of the Commission's statewide Enforcement Program (415) 904-5292 or North Coast Planner Melissa Kraemer at (707) 445-7833.

Thank you for your cooperation.

Sincerely,

Monica Macaluso
Enforcement Division

cc: Nancy Cave, Headquarters Northern California Supervisor
Elijah Davidian, Headquarters Enforcement Analyst
Robert Merrill, North Coast District Manager
Melissa Kraemer, North Coast Planner

Exhibit 4
CCC-13-CD-05 & CCC-13-RO-05
(Lowell)

CALIFORNIA COASTAL COMMISSION

45 FREMONT ST. SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5260
FAX (415) 904-5400
TDD (415) 597-5885



November 1, 2012

Rebecca L. Howard
16824 Hart Street
Van Nuys, CA 91406

**Re: Coastal Act Violation File No. V-01-04-002 at 1774 Ocean Drive, McKinleyville,
Humboldt County, APN 508-161-11**

Dear Ms. Howard:

Thank you for taking the time to travel up to McKinleyville on October 29, 2012 to meet with Commission staff at your property to discuss the above-referenced matter. We appreciate the time you took to show us the location of the unpermitted revetment at issue and to discuss the options of resolving this matter amicably through a "Consent Order". As you know, staff visited the property with you on June 1, 2010, at which time you indicated your willingness to resolve the violation case, and our recent visit with you was to conduct a further site investigation and to talk through all the options that are available to you to fully comply with the Coastal Act.

By way of background, staff was informed that the property was originally owned by Mr. David Lowell (your father) and then transferred to your ownership. Commission staff informed you, as the owner of record for the property, that it is now your responsibility to resolve the existing Coastal Act violations. Commission staff sent you a letter dated February 18, 2010, which informed you of the unresolved Coastal Act violation case that involves placement of a rock revetment without the required Coastal Development Permit (CDP) on property at 1774 Ocean Drive in McKinleyville, Humboldt County. Staff has referred the subject violation case to the Commission Statewide Enforcement Office (Headquarters) for further action.

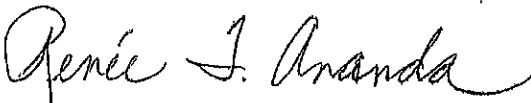
One of the key purposes of the October 29th site visit was to confirm that removal of the unpermitted revetment material would be feasible, without causing further damage to coastal resources. Once we confirmed that the revetment could be removed without causing further resource damage we discussed with you the option of resolving the matter through a Consent Order, which would include an agreement to remove the revetment and restore the area by planting native vegetation endemic to this area. As we stated during our meeting, Commission staff could not recommend to the Commission approval of a project that includes the retention of the unpermitted revetment because the revetment is inconsistent with numerous policies of the Coastal Act and the certified Local Coastal Program (LCP). As discussed during our telephone conversation on October 26, 2012 and our October 29th site visit, our hope and preferred option to resolve this matter administratively is through the Consent Order process.

Exhibit 4
CCC-13-CD-05 & CCC-13-RO-05
(Lowell)

The Consent Order process is an expeditious way, with less associated costs, to resolve the violations. Consent Orders are similar to settlement agreements in that you would have the opportunity to participate in the crafting of the terms and conditions of such an agreement. Consent Orders would avoid litigation, thereby requiring less time and incurred costs to you for resolving the subject violations. As we agreed during the October 29th site visit, I will provide you with a draft Consent Order for your review since you stated you are interested in pursuing this option to resolve this matter through a Consent Order. Under our Administrative Regulations, we are required to provide you with a notice of the Commission's Executive Director's intent to commence these Order proceedings. This is simply a formal step that we must first take before a hearing can be set. While the notice letter may seem complicated, it in no way prevents us from continuing our discussions to resolve this matter amicably and through the Consent Order process.

During our October 29th site visit you expressed your concern about finding a contractor that would be capable of appropriately removing the revetment and restoring the site and asked for some guidance in finding someone. As we discussed, staff cannot provide you with a referral. However, we would be happy to review the résumés and/or work experience of potential contractors under your consideration, to ensure that they have the qualifications necessary to do the work. We are available to help in any way we can. I look forward to assisting you with resolving this matter. Thank you again for your time and attention you have put into this. I can be contacted in writing at the address listed above in the letter head if you have questions regarding your case. Feel free, also, to reach me by telephone at (415) 904-5220.

Sincerely,



Renée T. Ananda
Statewide Enforcement Analyst

Lisa Haage, Chief of Enforcement
Aaron McLendon, Statewide Enforcement Supervisor
Robert Merrill, District Manager
Nancy Cave, North Coast District Enforcement Supervisor
Melissa Kraemer, North Coast District

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5260
FAX (415) 904-5400
TDD (415) 597-5885

**VIA CERTIFIED AND REGULAR U.S. MAIL**

January 17, 2013

Rebecca Howard
16824 Hart Street
Van Nuys, CA 91406
Certified Mail No. 7006 2760 0005 5883 7402

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

Violation File Number: V-1-04-002

Location: 1774 Ocean Drive, McKinleyville, Humboldt County
(APN 508-161-11)

Violation Description: Unpermitted development including, but not limited to, placement of rip-rap (rock, gravel, and other debris including concrete, rebar, and asphalt material) on and above the banks of the Mad River estuary for the creation of a large revetment and graded pad; and removal of major vegetation comprising native riparian species such as willow.

Dear Ms. Howard:

As California Coastal Commission ("Commission") staff discussed with you during an October 29, 2012 meeting at your property and in a November 1, 2012 letter, the purpose of this letter is to notify you of my intent, as the Executive Director of the Commission, to record a Notice of Violation of the Coastal Act¹ and to commence proceedings for issuance of Cease and Desist and Restoration Orders to address unpermitted development on property that you own located at 1774 Ocean Drive, McKinleyville, Humboldt County, APN 508-161-11² ("subject property").

¹ The Coastal Act is codified in the California Public Resources Code at sections 30000 to 30900. All further references to sections of the Coastal Act are to that code.

² This APN refers to an approximately 2.5 acre area that the prior owner sought to configure as a unique legal lot in 1989 by reconfiguring two pre-existing lots (Lots 12 and 13 of Tract No. 6, according to the Map thereof on file in the Office of the County Recorder of Humboldt County, California, in Book 12 of Maps, Pages 112 and 113). Although the County approved that lot line adjustment, the Commission does not have evidence that the condition of approval requiring recordation of a record of survey to show the new configuration ever occurred. As a result, the Commission takes no position as to whether the area identified as APN 508-161-11 is actually a legal lot, and references to the "subject property" in this letter are not intended to suggest that the Commission recognizes the area as a legal lot or to waive any rights the Commission may have if the lot line adjustment is not valid.

Commission staff appreciates the efforts you have made thus far to work cooperatively towards a resolution of the alleged Coastal Act violations on the subject property. As we have stated in previous correspondence and communications, we would like to continue to work with you to resolve these issues amicably and remain willing and ready to discuss options that could involve agreeing to a consensual resolution to the Coastal Act violations listed above, such as entering into consent cease and desist and restoration orders. This notification is a procedural step along that path that is legally mandated and does not prevent, in any way, our current dialogue and our mutual goal of resolving these issues through consent orders.

Commission staff has confirmed that unpermitted development has occurred on the subject property including, but not limited to: 1) placement of rip-rap (rock, gravel, and other debris including concrete, rebar, and asphalt material) on and above the banks of the Mad River estuary for the creation of a large (approximately 120-ft long) revetment and graded pad; and 2) removal of major vegetation including native riparian species such as willow, both without the required coastal development permit ("CDP"). In addition to being unpermitted, much of this unpermitted development also occurred in areas of the property specifically identified in Section 3.41A of the County's Local Coastal Program ("LCP") as an Environmentally Sensitive Habitat Area ("ESHA"). The site of the unpermitted development is an Environmentally Sensitive Area as defined by Section 30107.5 of the Coastal Act, as set forth below:

"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.

Pursuant to Section 30600(a) of the Coastal Act, and Humboldt County Zoning Regulations ("Zoning Code"), Chapter 2, Section 312-3, 3.1.4, with limited exceptions not applicable here, any person wishing to perform or undertake development in the Coastal Zone must obtain a CDP, in addition to any other permit required by law. 'Development' is defined by Section 30106 of the Coastal Act, and Zoning Code, Chapter 3, Section 313-139, as set forth below in relevant part:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; ... grading, removing, ... any materials; ...; change in the intensity of use of water, or of access thereto; construction, ... of any structure, ...; and the removal or harvest of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations... (Emphasis added)

The alleged violations have occurred on property in the Coastal Zone in Humboldt County. The majority of the subject property is located within an area that is under the jurisdiction of Humboldt County's certified Local Coastal Program ("LCP"), which gives the County authority to issue CDPs and to enforce its LCP in those particular locations.³

³ The portion of the subject property below the high water mark of the Mad River estuary, however, is within the Commission's retained jurisdiction. The Commission is the permit-issuing authority in areas of its retained

Coastal Act section 30810(a)(1) allows the Commission to issue Cease and Desist orders to enforce the requirements of a certified LCP when the local government requests that the Commission do so. The above-listed violations occurred both above and below the high water mark, meaning that the unpermitted development is located in both the County's jurisdiction (above the high water mark) and the Commission's jurisdiction (below the high water mark), however, the County has requested that the Commission also take the lead in enforcing the above-described violations located in the County's jurisdiction.

The placement of rip-rap (rock, gravel, and other debris including concrete, rebar, and asphalt material) on and above the banks of the Mad River estuary for the creation of a large revetment and graded pad; and the removal of major vegetation comprising native riparian species such as willow, constitute development under the Coastal Act, and as such are subject to Coastal Act permit requirements. A search of Commission permit records indicates that no CDP has been issued for the above-described development at this location. In addition, a search of Humboldt County records dating back to 1971 found that no building or planning permits have been issued for the cited development. In addition, even if a CDP application were submitted for the retention of this development, Commission staff could not recommend approval of such development since the rock/rip-rap revetment and vegetation removal could not be found consistent with the resource protection policies of the Coastal Act or the County LCP, as described below.

Violation History V-1-04-002

In 2003, Commission staff investigated and verified reports of unpermitted development that included placement of rip-rap (rock, gravel, and other debris including concrete, rebar, and asphalt material) on and above the banks of the Mad River estuary for the creation of a large revetment and graded pad, and removal of major vegetation comprising native riparian species such as willow, all on the subject property. Commission staff sent Mr. David W. Lowell, the property owner at that time, a "Notice of Violation" letter, dated March 24, 2004, that explained that the subject unpermitted activities constitute "development" under the Coastal Act and that development without a CDP is a violation of the Coastal Act. The letter also requested that Mr. Lowell contact Commission staff by April 14, 2004 to start the process of resolving the violations on the subject property. The March 24th letter also stated that it would be difficult to obtain authorization of the unpermitted revetment because such development is inconsistent with numerous resource protection policies of the Coastal Act. On April 20, 2004, Commission staff conducted a site visit with Mr. Lowell to view the site, document its condition, and obtain any history of the site or other information related to the need for the revetment. Subsequently, staff made several attempts to contact Mr. Lowell; including sending a letter dated July 30, 2004. We received no responses to our attempted contacts over the following years.

Staff became aware that you were the new owner of the property in 2010 and sent you a letter dated February 18, 2010, informing you of unresolved violations on the subject

jurisdiction. The Commission also has enforcement authority in its retained jurisdiction and, under certain circumstances, as discussed below, in areas of the County's permitting jurisdiction as well.

property. The letter explained your responsibility under the Coastal Act to resolve the violations and requested that you contact us by March 1, 2010 to confirm your intent to resolve the matter.

On June 1, 2010, Commission staff met you at the property, at which time you indicated your willingness to resolve this violation. During the meeting, Commission staff conducted further site investigation and discussed with you options to fully resolve the Coastal Act violations.

You again met with staff on October 29, 2012 so that staff could confirm whether or not the unpermitted revetment and graded pad are necessary to protect any existing structures, such as the residence on the subject property, and also to evaluate the feasibility of removal of the unpermitted material. During the October 29th site review, staff was able to evaluate the option of removing the unpermitted revetment and graded pad and ensuring that such removal would not cause further damage to coastal resources, such as the habitat within and the water quality of the Mad River estuary and the ESHA along its banks. Staff discussed with you the need to remove the unpermitted rip-rap (rock, gravel, and other debris including concrete, rebar, and asphalt material) revetment and graded pad and to restore the site by planting native riparian vegetation, and how such activities could be undertaken expeditiously through the consent order process.

On November 1, 2012, Commission staff sent you a letter reiterating our goal of resolving this matter amicably and through consent orders and offered our assistance to you to reach this goal.

Cease and Desist and Restoration Order Authority

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

If the commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person or governmental agency to cease and desist.

The Commission's authority to issue Restoration Orders is set forth in Section 30811 of the Coastal Act, which states, in part, the following:

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.

Although the County has a certified LCP, the development located in the County's jurisdiction is within the purview of the Commission's enforcement jurisdiction pursuant to Section 30810(a),⁴ which goes on to provide that the Commission may enforce requirements of a certified LCP under specified circumstances, including, but not limited to, when:

- (1) The local government... requests the commission to assist with, or assume primary responsibility for, issuing a cease and desist order.*
- (2) The commission requests and the local government... declines to act, or does not take action in a timely manner, regarding an alleged violation which could cause significant damage to coastal resources.*

As stated above, in a November 21, 2012 letter, the County requested the Commission to take the primary responsibility for enforcement regarding activities within the County's jurisdiction. Therefore, the Commission has enforcement jurisdiction to address the unpermitted development within the County's jurisdiction pursuant to Section 30180(a)(1).

Cease and Desist Order

As previously discussed, 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 CDP. As noted previously, "development" is defined by Section 30106 of the Coastal Act and Zoning Code, Chapter 3, Section 313-139 of the LCP. The activities at issue in this Cease and Desist Order constitute "development" within the meaning of the definition quoted on page 2 of this letter, and therefore anyone performing or undertaking those activities was required to first obtain a CDP. A CDP was not issued to authorize the subject unpermitted development. Therefore, the criterion of Section 30810(a) of the Coastal Act has been met. For this reason, I am issuing this Notice of Intent to commence Cease and Desist Order proceedings. The procedures for the issuance of Cease and Desist Orders, including the requirement for this notice, are described in Sections 13180 through 13188 of the Commission's regulations, which are codified in Title 14 of the California Code of Regulations.

The proposed Cease and Desist Order will authorize and direct you to (1) cease and desist from maintaining any development on the subject property not authorized pursuant to the Coastal Act or the County LCP; (2) cease and desist from engaging in any further development on the subject property unless authorized pursuant to the Coastal Act; (3) remove all unpermitted development from the property; and (4) take all steps necessary to comply with the Coastal Act.

Restoration Order

As indicated above, Coastal Act section 30811 authorizes issuance of a Restoration Order when three criteria are satisfied: (1) development has occurred without the requisite CDP, (2) that development is inconsistent with the Coastal Act, and (3) it is causing continuing resource

⁴ The Commission also has enforcement authority to address the violations that occurred within the Commission's retained jurisdiction – the area of land below the high water mark shown on the attached Exhibit from the County of Humboldt, Planning and Building Department, GIS Mapping.

damage. Pursuant to that section and Section 13191 of the Commission's regulations, I have determined that the development activities at issue in this letter meet the criteria of Section 30811 of the Coastal Act, based on the following:

- 1) The development at issue, including, but not limited to placement of rip-rap (rock, gravel, and other debris including concrete, rebar, and asphalt material) on and above the banks of the Mad River estuary for the creation of a large (approximately 120-ft long) revetment and graded pad; and removal of major vegetation comprising riparian species such as willow; was not permitted.
- 2) This development is inconsistent with the resource protection policies of the Coastal Act, including, but not limited to: Section 30231 (requiring the protection of biological productivity and water quality), Section 30253 (prohibiting development that has adverse physical impacts), Section 30236 (restricting substantial alterations of rivers), Section 30240 (requiring the protection of environmentally sensitive habitat areas, or ESHA), Section 30251 (scenic and visual qualities), and 30233 (diking, filling or dredging).
- 3) The unpermitted development remains in place and is thereby causing continuing resource damage, as defined by Section 13190 of the Commission's regulations. The impacts from the unpermitted development remain unmitigated; therefore, the damage to resources protected by the Coastal Act is continuing.

The unpermitted rip-rap (rock, gravel, and other debris including concrete, rebar, and asphalt material) placed for the creation of a large revetment and graded pad is neither necessary for the protection of an existing structure nor does it serve a coastal-dependent use. It is inconsistent with Coastal Act sections 30231, 30233, 30236, 30240, 30251, and 30253 and does not meet the criteria of Section 30235 of the Coastal Act that would trigger that section's override provisions and thereby render the development consistent with the Coastal Act policies as a whole, if that section were to apply; therefore, it is not approvable and must be removed. By way of background, such unpermitted rip-rap is a concern because it can alter the composition, function, and biological productivity of the ESHA. Natural, estuarine and riparian habitat types are displaced by artificial material and non-native weedy vegetation that have comparatively little habitat value. An increase in sediments and turbidity of the water can also adversely affect the behavior (foraging, reproduction, and ability to get oxygen from the water) of aquatic animals, such as fish and other sensitive aquatic species. The unpermitted rip-rap includes not only concrete, but rebar and asphalt material that can release pollutants to the estuary and also adversely affect aquatic species and the biological productivity of this ecosystem. Thus, the unpermitted development is inconsistent with Section 30231 of the Coastal Act because it adversely affects the biological productivity and water quality of the estuary. Moreover, the revetment and graded pad negatively affect the visual quality of the area as it is incongruous with vegetation that naturally occurs along the banks and the estuary. Therefore, it also is inconsistent with Section 30251 of the Coastal Act. Chapter 3 of the Coastal Act requires that ESHA shall be protected against significant disruption of habitat values and only allows uses that are dependent on the ESHA be allowed in those areas. Furthermore, development adjacent to ESHA must be designed so as not to result in impacts to the sensitive resources. The unpermitted development on the subject property has resulted in the removal of ESHA (riparian habitat), inconsistent with

Section 30240 of the Coastal Act. The removal of the riparian habitat contributes to the disruption of the habitat values upon which terrestrial and aquatic species in the area depend. There is a reduction in the availability of resting, foraging/feeding, and nesting areas. Filling, diking, or dredging estuaries and open coastal waters may be permissible (under certain circumstances) pursuant to the criteria found in Section 30233 of the Coastal Act. The unpermitted rip-rap, however, does not meet these criteria therefore it cannot be approved to remain on the property. The unpermitted development does not satisfy the criteria of Section 30236, as it is not necessary for flood protection, and Section 30253 that requires new development minimize risks to life and property. Therefore it is inconsistent with the Coastal Act.

I have decided, for the reasons stated above, to commence proceedings for the Commission's issuance of a restoration order to restore the subject property. The procedures for issuance of a restoration order are described in Sections 13190 through 13197 of the Commission's regulations.

Response Procedure

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 and Restoration Order proceedings by completing the enclosed Statement of Defense ("SOD") form. The SOD form must be returned to the Commission's San Francisco office, directed to the attention of Renée Ananda, no later than, February 6, 2013. However, should this matter be resolved via a settlement agreement / consent orders, a statement of defense form would not be necessary. In any case, and in the interim, staff would be happy to accept any information you wish to share regarding this matter.

Commission staff currently intends to schedule the hearings for the Cease and Desist and Restoration Orders during the Commission's March 2013 meeting in San Diego.

Notice of Violation of the Coastal Act

The Coastal Act contains a provision for notifying potential, future purchasers of real property of the existence of a Coastal Act violation on the property. The Executive Director of the Commission may record a Notice of Violation ("NOVA") against the title of the property pursuant to Coastal Act Section 30812, after providing notice and the opportunity for a hearing. Section 30812 states, in part:

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

I am issuing this notice of intent to record a Notice of Violation to you as the current owner of record because unpermitted development including, but not limited to, placement of rip-rap (rock, gravel, and other debris such as concrete, rebar, and asphalt material) on and above the banks of the Mad River estuary for the creation of a large revetment and graded pad; and removal of major vegetation comprising native riparian species such as willow, has occurred at the subject property, in violation of the Coastal Act, as noted above. This determination is based on Commission staff's (a) observations of the subject property made during site visits on April 20, 2004, June 1, 2010, and October 29, 2012; (b) review of Humboldt County and Commission permit records; and (c) analysis of both recent and historical aerial photographs of the subject property.

A NOVA would not result in anyone obtaining any financial interest or stake in your property. A NOVA is intended to, should you decide to sell the subject property: (a) protect innocent potential purchasers of the property from unwittingly taking title to property where outstanding violations exist; (b) avoid creating additional complications associated with the potential sale of the property to an uninformed party; and (c) provide notice in the chain-of-title for the property to prospective purchasers that a violation of the Coastal Act has occurred on the property. You may choose to object to the recordation of a Notice of Violation in this matter and could present evidence to the Coastal Commission at a public hearing on the issue of whether a violation has occurred. If you object to the recordation of a NOVA you must do so in writing, within 20 days of the postmarked mailing of this notification letter. The written objection should be sent to Renée T. Ananda, Statewide Enforcement Analyst at the Commission's headquarters office (the address is provided above in the letterhead), no later than February 6, 2013. If you decide not to object within 20 days of my mailing of this notification, I shall record the Notice of Violation in the Humboldt County Recorder's Office pursuant to Section 30812 of the Coastal Act. The Notice of Violation will be rescinded once the violations are fully resolved.

Resolution

As we have stated in previous correspondence and communications, we would like to work with you to resolve these issues amicably, and to continue the discussions we have had in the past regarding this matter. My staff has explained through discussions with you that the most expeditious way of resolving this matter would be through a Consent Cease and Desist Order and a Consent Restoration Order ("Consent Orders"). Section 30810(b) of the Coastal Act states that any Cease and Desist Order issued by the Commission may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with the Coastal Act – including the requirement for removal of any unpermitted development or material. Consent Orders are similar to a settlement agreement and would outline the terms and conditions of removal of the alleged violations and restoration of the subject property. Consent Orders would also provide you with an opportunity to have more input into the process and timing of restoration of the subject property and mitigation of the damages caused by the unpermitted activity with the Commission staff in order to resolve the complete violation without any further formal action. You indicated in previous conversations with Commission staff that you are interested in resolving the violations through this Consent Order process. If you are still interested in discussing the possibility of agreeing to consent orders, please contact or send correspondence to the attention of Renée Ananda at (415) 904-5220 in the Commission's San

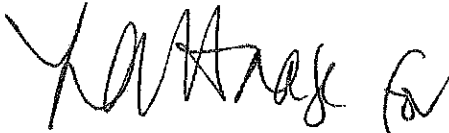
Rebecca Howard
V-1-04-002 (Lowell)
January 17, 2013
Page 9 of 9

Francisco office by no later than January 24, 2013 to discuss options to resolve this case. Again, should we settle this matter, you do not need to expend the time and resources to fill out and return the SOD form mentioned above.

Please note that, as staff informed you during our October 30, 2012 telephone conversation, due to the sensitive nature of the area, it is critical that any removal and restoration work be done under an approved restoration plan, which would provide for measures to protect coastal resources. Please do not attempt to resolve this violation by performing restorative work without coordinating with us first.

Once again, we look forward to working cooperatively to resolve this matter amicably avoiding any unnecessary costs and litigation. We are happy to assist you in any way we can to get through this process as quickly as possible. If you have questions regarding this letter or the enforcement case, feel free to contact Renée Ananda, Statewide Enforcement Analyst at (415) 904-5220.

Sincerely,



CHARLES LESTER
Executive Director

Enclosure: Statement of Defense Form

cc without encl.: Steven Werner, Supervising Planner, County of Humboldt
 Lisa Haage, Chief of Enforcement
 Alex Helperin, Senior Staff Counsel
 Bob Merrill, North Coast District Manager
 Nancy Cave, North Coast District Enforcement Supervisor
 Aaron McLendon, Statewide Enforcement Supervisor
 Renée Ananda, Statewide Enforcement Analyst

JURISDICTION MAP

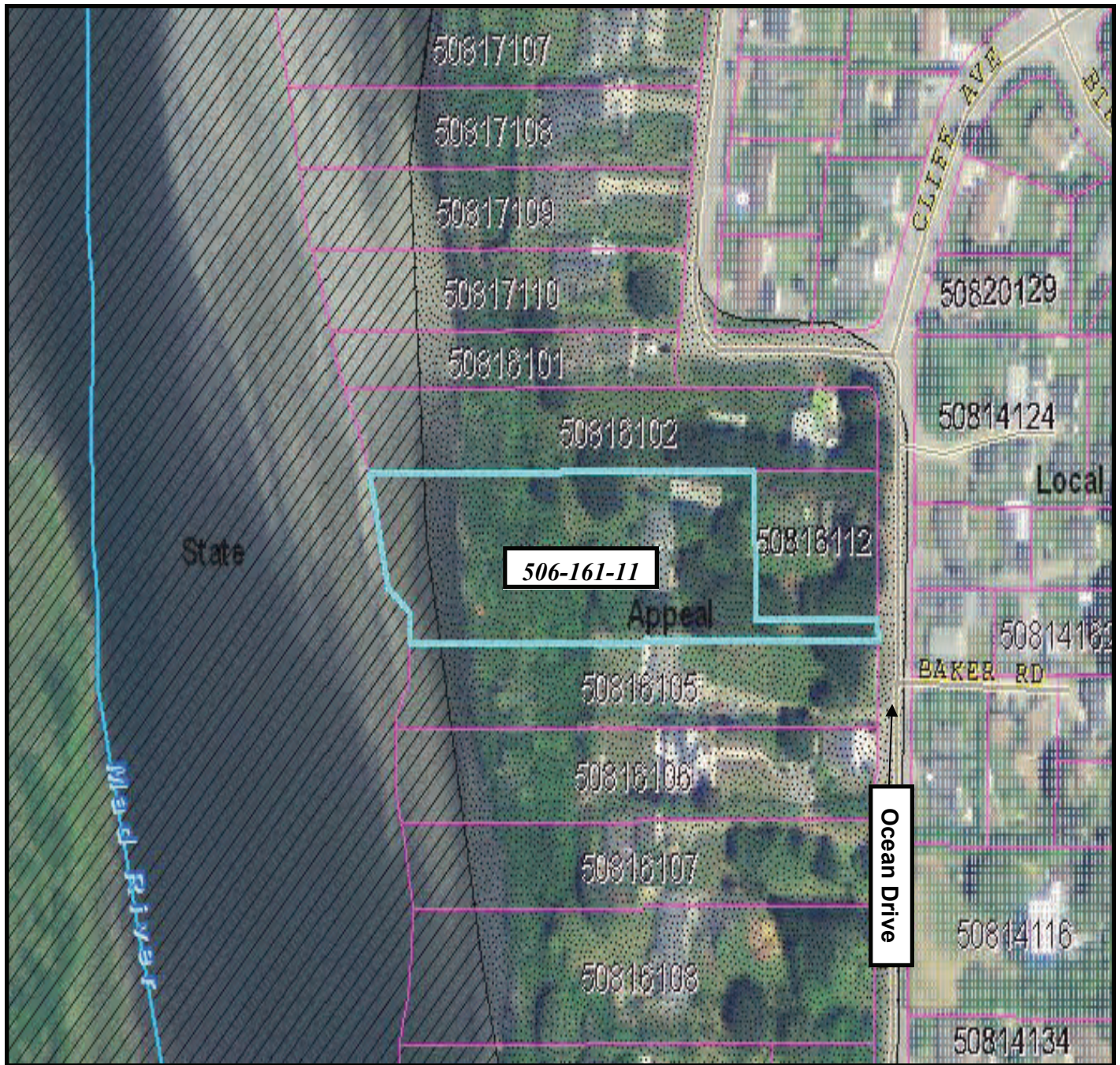


Exhibit 6

CCC-13-CD-05 & CCC-13-RO-05 (Lowell)

Page 1 of 1



**PLANNING AND BUILDING DEPARTMENT
CURRENT PLANNING DIVISION**

3015 H Street Eureka CA 95501 Fax: (707) 268-3792 Phone: (707) 445-7541
<http://www.co.humboldt.ca.us/planning/>

November 21, 2012

Renée T. Ananda
Statewide Enforcement Analyst
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

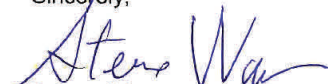
RE: Request for enforcement of the Humboldt County LCP (McKinleyville Area Plan) and all other
State laws regulating unpermitted bank stabilization and vegetation clearing at 1774 Ocean Drive,
McKinleyville Area, APN 508-161-11

Dear Ms. Annada,

Pursuant to Sections 30809, 30810 and 30811 of the Coastal Act the Humboldt County Planning and Building Department is requesting that the Coastal Commission take the lead on enforcement for the above referenced violation. I have enclosed a letter from Monica Macaluso of the Enforcement Division of the Coastal Commission dated February 18, 2010 to the current owner Rebecca L. Lowell describing the violation and efforts to date to secure compliance. We are asking for your assistance as this development may have occurred in areas of both County and State-retained Coastal Development Permit jurisdiction.

Please let me know if I can be of further assistance. My contact number is (707) 268-3726.

Sincerely,


Steven Werner
Supervising Planner

C: Christian Nielsen, Code Enforcement Division

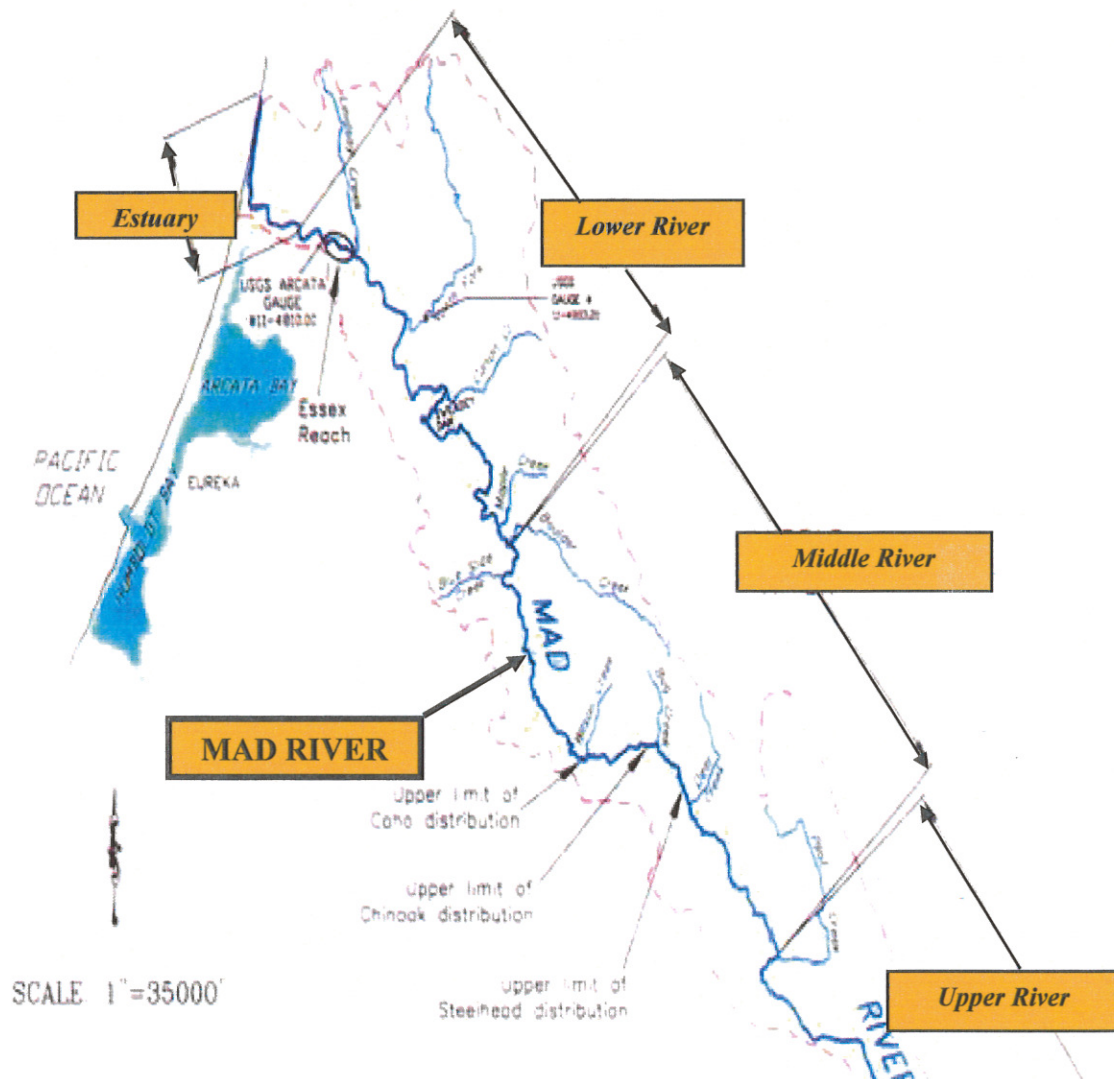
Enclosure

Exhibit 7

CCC-13-CD-05 & CCC-13-RO-05 (Lowell)

Page 1 of 1

GEOGRAPHIC ZONES OF THE MAD RIVER



Estuary: River Mile 0—4 (Tidally Influenced)

Lower: River Mile 4—34 (Mile 4 up to the Confluence of Boulder Creek)

Middle: River Mile 34—61 (Mile 34 up to the Confluence of Pilot Creek)

Upper : Above River Mile 61

Source: Humboldt Bay Water District

Exhibit 8

CCC-13-CD-05 & CCC-13-RO-05 (Lowell)

Page 1 of 1

MAD RIVER



Exhibit 9

CCC-13-CD-05 & CCC-13-RO-05 (Lowell)

Page 1 of 1

May 22, 2004

TO Stephanie Weigel
Calif. Coastal Commission
File # V-1-04-002

RECEIVED

MAY 24 2004

CALIFORNIA
COASTAL COMMISSION

Dear Stephanie Weigel

After a review of the complete permit process my attorney has advised me to ask for an extension of the filing date. I do not yet know how much time I will need to complete such a lengthy process. I will advise you as soon as possible of the extra time that will be needed.

Thank You for your understanding

Sincerely



David Lowell

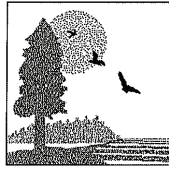
Exhibit 10

CCC-13-CD-05 & CCC-13-RO-05 (Lowell)

Page 1 of 1

CALIFORNIA STATE LANDS COMMISSION

100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202



RECEIVED
MAY 01 2013

CA COASTAL COMMISSION
LEGAL DIVISION

April 26, 2013

JENNIFER LUCCHESI, Executive Officer

(916) 574-1800 FAX (916) 574-1810

California Relay Service From TDD Phone 1-800-735-2922
from Voice Phone 1-800-735-2929

Contact Phone: (916) 574-1869

Contact FAX: (916) 574-1925

File Ref: SD 2013-04-11.2

Renee Ananda
California Coastal Commission
45 Fremont, Suite 2000
San Francisco, CA 94105-2219

SUBJECT: **Unpermitted Development, Mad River, Adjacent to 1774 Ocean Drive, McKinleyville, Humboldt County**

Dear Ms. Ananda:

This letter is in response to your request for a determination by the California State Lands Commission (CSLC) whether it asserts a sovereign title interest in the property that the above-referenced development occupies.

The CSLC has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. The CSLC also has certain residual and review authority for tidelands and submerged lands legislatively granted in trust to local jurisdictions (PRC §6301 and §6306). All tidelands and submerged lands, granted or ungranted, as well as navigable lakes and waterways, are subject to the protections of the Common Law Public Trust.

As general background, the State of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable lakes and waterways upon its admission to the United States in 1850. The State holds these lands for the benefit of all people of the State for statewide Public Trust purposes, which include but are not limited to waterborne commerce, navigation, fisheries, water-related recreation, habitat preservation, and open space. On tidal waterways, the State's sovereign fee ownership extends landward to the mean high tide line, except for areas of fill or artificial accretion or where the boundary has been fixed by agreement or a court. On navigable non-tidal waterways, including lakes, the State holds fee ownership of the bed of the waterway landward to the ordinary low water mark and a Public Trust easement landward to the ordinary high water mark, except where the boundary has been fixed by agreement or a court. Such boundaries may not be readily apparent from present day site inspections.

Exhibit 11

CCC-13-CD-05 & CCC-13-RO-05 (Lowell)

Page 1 of 2

Renee Ananda
California Coast Commission
Page 2

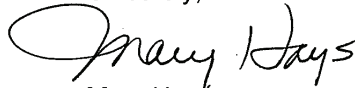
As we understand, unpermitted development occurred adjacent on or above the bank of the Mad River at 1774 Ocean Drive in McKinleyville. The development included placement of rip-rap creating a revetment and graded pad and the removal of major vegetation compromising native riparian species. These development activities were completed without the required coastal development permit from Humboldt County under their Local Coastal Program or the California Coastal Commission (CCC). We also understand that staff of the CCC has notified the upland owner of intent to record a notice of violation of the Coast Act and commence cease and desist order and restoration order proceedings.

The Mad River, at this location, is State sovereign land under the jurisdiction of the CSLC. However, based on our review of the information submitted, we do not have sufficient information to determine whether this unpermitted development intrudes upon state sovereign lands in the Mad River. Development of information sufficient to make such a determination would be expensive and time-consuming. We do not think such an expenditure of time, effort and money is warranted in this situation, given the limited resources of this agency and the circumstances set forth above. Therefore, the State's interest at the development's location is undetermined at this time.

This conclusion is without prejudice to any future assertion of state ownership or public rights, should circumstances change, or should additional information come to our attention. This letter is not intended, nor should it be construed as, a waiver or limitation of any right, title, or interest of the State of California in any lands under its jurisdiction.

Please do not hesitate to contact Ninette Lee at (916) 574-1869 or by e-mail at ninette.lee@slc.ca.gov should you have questions concerning the above.

Sincerely,



Mary Hays
Public Land Manager II

cc: Ninette Lee

Exhibit 11

CCC-13-CD-05 & CCC-13-RO-05 (Lowell)

Page 2 of 2



June 13, 2013

Ms. Rene Ananda
Statewide Enforcement Analyst
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Via Email

RE: Violation File No V-1-04-002, 1774 Ocean Drive, McKinleyville, Humboldt County

Dear Ms. Ananda:

Humboldt Baykeeper appreciates the opportunity to comment on the Cease and Desist Order for Violation No. V-1-04-002, for unpermitted placement of rip-rap or other materials on the banks of the Mad River estuary. We support the Coastal Commission's action to seek removal of this material. Removal of this unpermitted material and restoration with appropriate native plant species is important for maintaining the habitat value of this ecologically sensitive site. Furthermore, rip-rap which is typically placed for erosion control purposes often backfires, with impacts elsewhere in the riparian system. We would encourage interested residents to work with a fluvial geomorphologist to address any concerns about scour or erosion, as well as to obtain proper permits prior to taking action.

Sincerely,


Jessica Hall
Executive Director