

CALIFORNIA COASTAL COMMISSION

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W 11 & 12

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original staff report](#)

ADDENDUM

December 9, 2014

TO: Coastal Commissioners and Interested Parties

FROM: Lisa Haage, Chief of Enforcement

SUBJECT: ADDENDUM TO **ITEM NOS. 11 & 12** – CONSENT CEASE AND DESIST
ORDER CCC-14-CD-05 AND RESTORATION ORDER CCC-14-RO-05
(BEIM) FOR THE COMMISSION MEETING OF **December 10, 2014**

Documents Received:

1. *Letter in support of the Consent Cease and Desist and Restoration Orders from Nadine Peterson, Deputy Executive Officer, State Coastal Conservancy, dated December 5, 2014.*
2. *Letter in support of Consent Cease and Desist and Restoration Orders from Richard G. Burg, Senior Environmental Scientist, Lands Program Supervisor, Department of Fish and Wildlife, dated December 4, 2014.*
3. *Geotechnical Review Memorandum from Dr. Mark Johnsson to Margaret Weber, regarding Beim Enforcement Matter (V-6-10-005), dated December 8, 2014.*



December 5, 2014

Steve Kinsey
Commission Chair
California Coastal Commission
45 Fremont, Suite 2000
San Francisco, CA 94105- 2219

Re: Support for Coastal Commission Consent Cease and Desist and Restoration Orders;
fee property under the jurisdiction of the Coastal Conservancy in the City of Carlsbad,
San Diego County, Assessor's Parcel Number ("APN") 155-221-19

Dear Chair Kinsey and Members of the Commission:

I am writing in support of the Coastal Commission staff recommendation scheduled to be heard on December 10, 2014, regarding alleged violations of the California Coastal Act in the City of Carlsbad. In particular, the Conservancy supports proposed Cease and Desist Order No. CCC-14-CD-05 and Restoration Order No.: CCC-14-RO-05, pertaining to the Commission's Related Violation File: V-6-10-005. The proposed orders address unpermitted development on fee property owned by Steven and Linda Beim at 2381 Buena Vista Circle; and unpermitted and, of special interest to the Conservancy, unauthorized development on adjacent property, San Diego County APN 155-221-19 ("the Lagoon property"), owned by the State of California in fee and under the jurisdiction of the Conservancy.

In 1989, the previous owner of the 2381 Buena Vista Circle property (which at that time included the Lagoon property) obtained a Coastal Commission permit to build a single-family house. A condition to the permit required that the owner record an irrevocable offer to dedicate ("OTD") the Lagoon property in fee to the Conservancy or to other specified entities, which he did that same year. The Beims acquired the property about ten years later. By letter of October 13, 2010, the Conservancy informed the Beims of its intent to accept the OTD; the Conservancy recorded its acceptance on October 25, 2010 as Document No. 2010-0571933.

When Conservancy and Commission staff met in October 2010 in preparation for the Conservancy's acceptance of the OTD over the Lagoon property, they became aware of the violations of the Coastal Act. With respect to the Lagoon property, the violations and

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Letter to Coastal Commission Chair Steve Kinsey
December 5, 2014

unauthorized activities included placement of a boat dock and supports, and removal of vegetation. Commission staff has since attempted to address these violations.

The Conservancy understands that the Beims signed the Commission consent orders on November 23, 2014. The Conservancy generally supports the agreed restoration, as well as the corresponding monetary settlement of \$130,000, to be deposited in the Violation Remediation Account of the Conservancy.

With respect to the intended restoration on and subsequent monitoring of the Lagoon property, an Environmentally Sensitive Habitat Area (ESHA), the Conservancy would like to review the plan that the Beims are required to submit to Commission staff. The Conservancy's consent to allow access to the Lagoon property will be contingent on the plan meeting with the Conservancy's approval. We would like to assure that the restoration occurs with due regard for the property's wetlands and sensitive flora and fauna, including migratory birds; and subject to all necessary permits and approvals, consistent with the Coastal Act and the Carlsbad local coastal program. We would like the plan, as much as feasible, to mitigate for the adverse effects of the violations to natural habitat, provide for replacement of the lost native vegetation and restoration of the visual qualities, while minimizing erosion, adverse effects on water quality, and greenhouse gas emissions. If the Commission's consent orders are adopted as proposed in the staff report, the Conservancy will grant permission for the Beims, Commission staff, and removal and restoration contractors to enter the Lagoon property to implement the consent orders, including for monitoring and maintenance activities, provided that the work will proceed under a restoration plan reviewed in advance by the Conservancy.

We appreciate the work of Coastal Commission staff on behalf of the Lagoon property under our jurisdiction.

Sincerely,



Nadine Peterson
Deputy Executive Officer



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
South Coast Region
3883 Ruffin Road
San Diego, CA 92123
www.wildlife.ca.gov

EDMUND G. BROWN JR., Governor
CHARLTON H. BONHAM, Director



December 4, 2014

California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, California 94105

Subject: Proposed Commission Action on the Owners of Property at 2381 Buena Vista Circle, Carlsbad

Dear Commissioners:

The Department of Fish and Wildlife (Department) is writing in support of the proposed administrative order to offset effects of unpermitted development near Buena Vista Lagoon Ecological Reserve. The proposed settlement would include the removal of unpermitted structures and restoration of these areas to native habitat as well as resolve civil liabilities incurred during these unauthorized actions. Collected funding would be directed to the State Coastal Conservancy (SCC) for use in wetland enhancement and access projects in northern San Diego County.

The Department supports this proposed settlement and would appreciate the opportunity to help SCC develop projects that benefit coastal habitats and sensitive species in this area, including on Department lands.

Please contact me at the letterhead address or Warren Wong, Buena Vista Lagoon Ecological Reserve Manager at (858) 467-4249 if you have questions or comments regarding this letter. We look forward to working with the Coastal Commission and State Coastal Conservancy on these projects.

Sincerely,

Richard G. Burg
Senior Environmental Scientist
Lands Program Supervisor
Department of Fish and Wildlife

Cc: Warren Wong, CDFW

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8 December 2014

GEOTECHNICAL REVIEW MEMORANDUM

To: Margaret Weber, Coastal Program Analyst
From: Mark Johnsson, Staff Geologist
Re: Beim Enforcement Matter (V-6-10-005)

In connection with the above-referenced case, I have reviewed the following documents:

- 1) GeoSoils, 2009, "Geotechnical evaluation of recent rear yard slope movement, 2381 Buena Vista Circle, Carlsbad, San Diego County, California", 23 p. geotechnical report dated 16 March 2009 and signed by R. G. Crisman (CEG 1934), D. W. Skelly (RCE 47857) and J. P. Franklin (CEG 1340).
- 2) Sivadge, 2009, "Observation/testing of rough grading", 1 p. report dated 28 July 2009 and signed by P. Yogeswaran (CE 68698).
- 3) GeoSoils, 2014, "Limited geotechnical review of site conditions, 2381 Buena Vista Circle, Carlsbad, San Diego County, California 92054", 5 p. letter report dated 35 June 2014 and signed by R. G. Crisman (CEG 1934) and D. W. Skelly (RCE 47857).

Although I have not visited the site, I have reviewed numerous photographs taken from the ground, as well as Google Earth images taken at various dates.

Reference (1) provides a geotechnical overview of the earth materials making up the site. These materials consist of fill or colluvium overlying approximately ten feet of marine terrace sands and gravels, which in turn overlie bedrock of the Santiago Formation. A slope approximately 30 feet high descends from the building pad at an elevation of approximately 40 feet toward Buena Vista Lagoon to the west. Neither the marine terrace deposits nor the Santiago Formation bedrock are exposed in the slope; rather it is mantled by the fill and/or colluvium deposits. The fill/colluvium was retained on the subject site by a series of low retaining walls that failed in 2008. This failure is, according to reference (1), surficial in nature and involved the upper 3 to 4 feet of the fill and colluvium mantling the slope. The failure reportedly had no effect on the existing residential structure. The failure did, however, involve the retaining walls, that were founded in the fill/colluvium. The report attributes the failure of these retaining walls to inadequate wall design (particularly lack of drainage), irrigation, and the nature of the fill/colluvium contact with the underlying marine terraces and Santiago Formation. Although a leak was detected in an adjacent irrigation system, that leak itself apparently did not contribute to the failure as it was downslope of the failure.

Regardless of the specific cause(s) of the slope failure, reference (1) reports on quantitative slope stability analyses, based on soil strength parameters from materials collected at the site, that demonstrate that *global* slope stability exceeds a minimum factor of safety of 1.5 (static) and 1.1 (pseudostatic) (they are 1.642 and 1.209, respectively). I concur with the methodology and conclusions of these analyses. Thus, the fact that a surficial slide occurred in the past indicates that the material mantling the slope is unstable under the right conditions; a deep seated landslide that could threaten the existing residential structure is, in my opinion, unlikely, and the slope meets the industry-standard definition of “stable” (factor of safety exceeding 1.5 for the static condition, 1.1 for the pseudostatic condition).

Reference (1) goes on to make recommendations for repair of the failure. One such recommendation involves the removal of the failed materials, benching of the slope, and installation of a recompacted fill. Others include drainage improvements, and construction of new walls with deep foundations consisting of piers bearing on the deep formational soils and bedrock.

In fact, two segmental walls 2-6 feet in height were constructed (reference 3). Reference (1) did not provide recommendations on how segmental walls were to be constructed so, as indicated in reference (3), it is unknown whether their construction meets the standard geotechnical design parameters that GeoSoils would recommend. Reference (2), does, however indicate that the rough grading pertaining to these walls meets the general standard of practice.

Reference (3) indicates that:

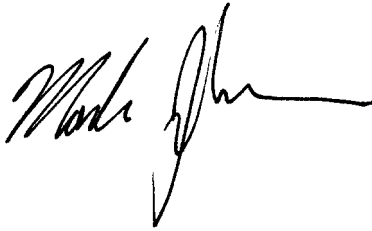
It is our opinion that the existing slope improvements [the segmented walls actually constructed] cannot be removed without further jeopardizing the stability of the structure and adjoining properties [referring to the residential structures on the bluff top]. Earthwork performed for the construction of the segmental wall resulted in the constriction of near vertical slope faces into the native soil that would not be considered stable, should these slopes be exposed without stabilization. Complete removal of the existing slope and wall system will adversely affect the overall performance of the slope and the existing residence.

I do not concur with this conclusion. As indicated in reference (1), the global stability of the slope has been demonstrated, and an original recommendation for the slope repair was removal of the failed soil and walls, benching of the slope, drainage improvements and installation of recompacted fill material. The vertical slope faces referred to above could be reduced in height through benching such that they meet standard criteria for support of recompacted fill. An alternative, as described in reference (3) was “complete removal of the existing slope and wall system in conjunction with drilled pier underpinning of the existing residence”, but this was deemed to be too expensive, and could result in adverse impacts on adjacent properties. The adverse impacts were not described in the report, however. It is my opinion that, precluding dramatic differences in topography between the subject parcel and the adjacent properties, the slope stability analyses provided in reference (1) indicate that such adverse impacts would be limited to surficial slumping. Such slumping could be reduced or eliminated by ensuring proper drainage and erosion control.

To summarize, it is my opinion that the segmental walls built without permits could be removed without endangering the existing residence, that off-site impacts would be limited to surficial slumping, and that such impacts could be reduced or eliminated by ensuring the proper drainage and erosion control measures were maintained on the slope.

I hope that this review is helpful. Please do not hesitate to contact me with any further questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Johnsson', with a long horizontal flourish extending to the right.

Mark Johnsson, Ph.D., CEG, CHG
Staff Geologist

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W 11 & 12

Staff: Maggie Weber- SF
Staff Report: 11/25/2014
Hearing Date: 12/10/14

STAFF REPORT: Recommendations and Findings for Consent Cease and Desist and Restoration Orders

Cease and Desist Order No.: CCC-14-CD-05

Restoration Order No.: CCC-14-RO-05

Related Violation File: V-6-10-005

Persons Subject to these Orders: Steven and Linda Beim

Property Location: 2381 Buena Vista Circle, City of Carlsbad, San Diego County, Accessor's Parcel Number ("APN") 155-221-18; and State Coastal Conservancy-owned APN 155-221-19

Description of Property: Residential lot that would be adjacent to the south shore of Buena Vista Lagoon Ecological Reserve but for the fact that the portion adjacent to the lagoon was divided off and dedicated as an open space parcel, located just west of Interstate 5, near the northern boundary of the City of Carlsbad; and the small publicly-owned lot carved out of the residential lot that is now between it and the lagoon.

Violation Description: Unpermitted development and activities inconsistent with Coastal Development Permit No. 6-89-190, including, but not limited to: construction of a boat dock within a wetlands/floodplain open space area now owned by the State Coastal Conservancy; grading and construction of concrete retaining walls, a wooden stairway, and a wooden deck within an area deed restricted for open space; and removal of major vegetation, including wetland vegetation.

Substantive File Documents:	1. Public documents in Cease and Desist Order No. CCC-14-CD-05 and Restoration Order No. CCC-14-RO-05 files. 2. Coastal Development Permit No. 6-89-190. 3. Exhibits 1 through 30 and Appendix A of this staff report.
CEQA Status:	Exempt (CEQA Guidelines (CG) §§ 15060(c)(2) and (3)) and Categorically Exempt (CG §§ 15061(b)(2), 15307, 15308, and 15321)

SUMMARY OF STAFF RECOMMENDATION

A. OVERVIEW

Staff recommends that the Commission approve Consent Cease and Desist Order No. CCC-14-CD-05 and Restoration Order No. CCC-14-RO-05 (hereinafter collectively referred to as “Consent Orders”) to address development undertaken without a coastal development permit (“CDP”) and in violation of CDP No. 6-89-190 (hereinafter “the CDP”) (Exhibit 2), which was issued by the Commission in 1989 for development of a single family home on property located at 2381 Buena Vista Circle in the City of Carlsbad, San Diego County (“Respondents’ Property”). This case involves both the Respondents’ Property and adjacent property owned by the State Coastal Conservancy (collectively referred to herein as, “the Property”). The persons subject to these Consent Orders are the owners of record of Respondents’ Property, Steven and Linda Beim (hereinafter “Respondents”).

The violations at issue in this matter include unpermitted development and activities inconsistent with CDP No. 6-89-190, including, but not limited to: construction of a boat dock within a wetlands/floodplain area protected as open space, and that was transferred via an offer to dedicate (“OTD”) to the State Coastal Conservancy pursuant to Special Condition 1 of the CDP; grading and construction of concrete retaining walls, a wooden stairway, and a wooden deck within an area deed restricted for open space pursuant to Special Condition 2 of the CDP; and removal of major vegetation, including wetland vegetation (hereinafter collectively referred to as the “Unpermitted Development”). In addition to being unpermitted and in violation of the CDP, the Unpermitted Development is also inconsistent with Coastal Act Sections 30240 (Environmentally Sensitive Habitat), 30253 (geologic stability/erosion), 30233 (filling/diking of open coastal waters, wetlands and estuaries), and 30231 (water quality), and similar policies of the City of Carlsbad Local Coastal Program (“the City LCP”).

The Commission approved the CDP issued to Respondents’ predecessors subject to several special conditions designed to address potential impacts to wetland resources and geologic stability that might otherwise have resulted from the proposed development on the residential lot

adjacent to the south shore of Buena Vista Lagoon Ecological Reserve (“Buena Vista Lagoon”). These special conditions include the requirements to record (1) a deed restriction prohibiting any development over the area of the property between the residence and wetlands boundary and (2) an irrevocable offer to dedicate (“OTD”) a property interest in the portion of the Property where wetlands are located, to protect it as open space. The OTD and deed restriction were properly recorded with the County of San Diego on October 26, 1989 (Exhibits 3 and 4, respectively).

Respondents purchased the Property in 1999 and performed the Unpermitted Development several years later. Commission staff became aware of the violations on the Property in October 2010 when Commission staff met with Coastal Conservancy staff to arrange the Conservancy’s acceptance of the OTD of the wetlands area of the Property. At the time, Commission and Conservancy staff discovered the Unpermitted Development located within the OTD and deed restricted areas. Since June 2011, Commission staff has worked closely with the Respondents and their counsel¹, in an effort to reach an amicable settlement of the Coastal Act violations on the Property. 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 THE PROPERTY

The location of the violations occurred on two properties, a residential lot owned by Respondents and located at 2381 Buena Vista Circle, identified by the San Diego County Assessor’s Office as Assessor’s Parcel Number (“APN”) 155-221-18, and a small lot comprised of wetlands, which was accepted by the State Coastal Conservancy (“SCC”) in fee to remain as open space, identified by the San Diego County’s Assessor’s Office as APN 155-221-19 (“Lagoon Property”), both located in the City of Carlsbad, San Diego County (Exhibit 1). The Property is just west of Interstate 5, within and adjacent to the south shore of Buena Vista Lagoon; Buena Vista Lagoon is located at the boundary between the City of Carlsbad to the south and the City of Oceanside to the north. The seaward extent of the north side of the Property abuts the south shore of the lagoon located in Carlsbad (Exhibit 7).

C. SUMMARY OF VIOLATION AND PROPOSED RESOLUTION

The Coastal Act and City LCP violations comprise unpermitted development and activities inconsistent with CDP No. 6-89-190, including, but not limited to: construction of a boat dock within a wetlands/floodplain open space area transferred via an offer to dedicate (“OTD”) to the State Coastal Conservancy (“SCC”) pursuant to Special Condition 1 of the CDP; grading and construction of concrete retaining walls, a wooden stairway, and a wooden deck within an area deed restricted for open space pursuant to Special Condition 2 of the CDP; and removal of major vegetation, including wetland vegetation, most of which is visible in Exhibit 8.

¹ Commission staff received written notice that Donald Detisch and Andrew Rauch’s firm, Rauch Detisch & Steinke, would be representing the Respondents on March 10, 2014. A few months later on July 3, 2014, Mr. Beim provided written notice that Jonathan Corn of Axelson and Corn was hired as new counsel and all future correspondences should be directed to Mr. Corn and not Mr. Detisch and Mr. Rauch.

Commission staff and Respondents worked together over the last several months to reach a resolution of this matter through Consent Orders, which are attached hereto as Appendix A. The Consent Orders authorize and require Respondents to: 1) remove the boat dock (or any section or support structure that remains in place) located in the Lagoon Property, and concrete retaining walls, wooden stairway, and a wooden deck located within an area of the Respondents' Property that is deed restricted for open space; 2) perform no further unpermitted development; 3) restore and revegetate the areas of the Property impacted by Unpermitted Development; 4) take all steps necessary to ensure compliance with the Coastal Act and these Consent Orders; and 5) pay a \$130,000 penalty to resolve civil liabilities under the Coastal Act and fund mitigation measures.

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APPENDICES

Appendix A Consent Cease and Desist and Restoration Orders

EXHIBITS

Exhibit 1	Site Map
Exhibit 2	Coastal Development Permit 6-89-190 and Findings
Exhibit 3	Recorded Offer to Dedicate Open Space
Exhibit 4	Recorded Deed Restriction
Exhibit 5	Recorded NOVA
Exhibit 6	Parcel Map
Exhibit 7	Aerial Photo
Exhibit 8	Overview Photograph of Unpermitted Development
Exhibit 9	Photograph of Boat Dock
Exhibit 10	Photograph of Grading and Retaining Wall
Exhibit 11	Photograph of Stairs
Exhibit 12	Photograph of Boat Dock
Exhibit 13	Letter from Staff to Respondents, dated June 15, 2011
Exhibit 14	Letter from Staff to Respondents, dated September 19, 2011
Exhibit 15	Letter from Staff, to Respondents dated November 14, 2011
Exhibit 16	Letter from Staff to Respondents, dated May 1, 2012

- Exhibit 17 Letter from Staff to Respondents, dated June 6, 2013
- Exhibit 18 Letter from Staff, to Respondents dated July 19, 2013
- Exhibit 19 2009 Engineering Report titled, “Geotechnical Evaluation of Recent Rear Yard Slope Movement, 2381 Buena Vista Circle, Carlsbad, San Diego County, California”
- Exhibit 20 Notice of Intent to Record a Notice of Violation of the Coastal Act and to Commence Cease and Desist Order and Restoration Order Proceedings, dated October 15, 2013
- Exhibit 21 Letter from Staff to Respondents, dated November 12, 2013
- Exhibit 22 Letter from Staff, to Respondents, dated December 17, 2013
- Exhibit 23 Letter from Respondents to Staff, dated March 10, 2014
- Exhibit 24 Letter from Staff to Respondents, dated April 28, 2014
- Exhibit 25 Letter from Staff to Respondents, dated June 11, 2014
- Exhibit 26 Email from Respondents to Staff, dated July 3, 2014
- Exhibit 27 Letter from Staff to Respondents, dated October 15, 2014
- Exhibit 28 Letter from Staff to City of Carlsbad, dated July 6, 2012
- Exhibit 29 Letter from Staff to City of Carlsbad, dated September 25, 2013
- Exhibit 30 Letter from SCC Staff to Respondents, dated October 13, 2010

I. MOTION AND RESOLUTION

Motion 1: Consent Cease and Desist Order

*I move that the Commission **issue** Consent Cease and Desist Order No. CCC-14-CD-05 pursuant to the staff recommendation.*

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in the issuance of the Consent Cease and Desist Order for real property identified by the San Diego County Assessor’s Office as Assessor’s Parcel Numbers 155-221-18 and 155-221-19, Carlsbad, in San Diego County. The motion passes only by an affirmative vote of a majority of Commissioners present.

Resolution to Issue Cease and Desist Order:

The Commission hereby issues Consent Cease and Desist Order No. CCC-14-CD-05, as set forth below, and adopts the findings set forth below on grounds that development has occurred without the requisite coastal development permit, and in violation of CDP 6-89-190, in violation of the City of Carlsbad Local Coastal Program and the Coastal Act.

Motion 2: Consent Restoration Order

*I move that the Commission **issue** Consent Restoration Order No. CCC-14-RO-05 pursuant to the staff recommendation.*

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in issuance of the Consent Restoration Order for real property identified by the San Diego County Assessor's Office as Assessor's Parcel Numbers 155-221-18 and 155-221-19, Carlsbad, in San Diego County. The motion passes only by an affirmative vote of a majority of Commissioners present.

Resolution to Issue Consent Restoration Order:

The Commission hereby issues Consent Restoration Order No. CCC-14-RO-05, for real property identified by the San Diego County Assessor's Office as Assessor's Parcel Numbers 155-221-18 and 155-221-19, Carlsbad, in San Diego County, as set forth below, and adopts the findings set forth below on the grounds that 1) development has occurred without a coastal development permit, 2) the development is inconsistent with the Coastal Act, and 3) the development is causing continuing resource damage.

II. JURISDICTION

The Commission has enforcement jurisdiction over the violations at issue herein. The violations on the Property relate directly to CDP No. 6-89-190, which was issued by the Commission in 1989, prior to certification of the City of Carlsbad's Local Coastal Program ("LCP") in 1996, and the Commission retains jurisdiction to enforce its permits after a local government's LCP is certified. In addition, although the City of Carlsbad now has a certified LCP, pursuant to Coastal Act Sections 30810 and 30811, in letters dated July 6, 2012 (Exhibit 28) and September 25, 2013 (September 29), staff confirmed that the City requested that the Commission assume the primary responsibility for issuing orders to resolve the violations in this matter, and as such, the Commission also has jurisdiction as related to the unpermitted development located on both the Respondents' Property and Lagoon Property. The Commission's authority to enforce any requirement of a certified LCP is set forth in Section 30810(a) of the Coastal Act, which states, in relevant 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 order may also be issued to enforce any requirements of a certified local coastal program or port master plan, or any requirements of this division which are subject to the jurisdiction of the certified program or plan, under any of the following circumstances:

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

The Commission's authority to order restoration after a public hearing is set forth in 30811 of the Coastal Act, which states, in relevant 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 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.

III. 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 13195 and 13186, incorporating by reference Section 13065. The Chair will close the public hearing after the presentations are completed. The Commissioners may ask questions to any speaker at any time during the hearing or deliberations, including, if any Commissioner 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.

IV. FINDINGS FOR CONSENT CEASE AND DESIST ORDER NO. CCC-14-CD-05 AND CONSENT RESTORATION ORDER NO. CCC-14-RO-05²

A. DESCRIPTION OF THE PROPERTY

The location of the violations occurred on two properties, a residential lot owned by Respondents and located at 2381 Buena Vista Circle, identified by the San Diego County Assessor's Office as APN 155-221-18 and a small lot comprised of wetlands, which was accepted by SCC in fee to remain as open space, identified by the San Diego County's Assessor's Office as APN 155-221-19, both located in the City of Carlsbad, San Diego County, within and adjacent to Buena Vista Lagoon on the southwest portion of the Lagoon's central basin; the central basin is delineated by Carlsbad Boulevard on the west and Interstate 5 on the east. Buena Vista Lagoon is 220 acres and home to a diverse collection of animal species from ten distinct wildlife habitat types found at the Lagoon. Buena Vista Lagoon was blocked from the Pacific Ocean several decades ago by a natural sand berm and a man-made weir, thereby creating the only lagoon in San Diego County that contains fresh water³.

The total area of the Property is 21,780 square feet. Respondents' Property is developed with a 4,305 square foot, two-story, single family home, which was approved by the Commission pursuant to CDP 6-89-190 in August 1989. The area where the residence is located is generally flat, and then the property descends at the northern edge of the building pad to the Buena Vista Lagoon, dropping from elevation +40 feet above mean sea level ("MSL") to the elevation of the open water of the Lagoon (+6 feet MSL) in a linear distance of about 58 feet. The slope area immediately lagoonward of the residence is the location upon which a deed restriction was recorded that prohibited development, as required by Special Condition 2 of the CDP. The Commission required the condition, which prohibited the removal of any vegetation, alteration of natural landforms or erection of any structure, to protect the lagoon habitat and native bluff vegetation, as well as ensure stability of the bluff.

The Lagoon Property is located in the wetland portion of the Property, and was accepted in fee by SCC to remain as open space. The Lagoon Property extends down into the open water and wetland areas of the Lagoon, lagoonward of the deed restricted area on the Respondents' Property. The Lagoon Property was required to be transferred to an appropriate public or non-profit agency pursuant to Special Condition 1 of the CDP to protect the wetland and prevent development for uses inconsistent with the continued productivity of the wetlands.

² These findings also hereby incorporate by reference the Summary at the beginning of the staff report ("STAFF REPORT: Recommendations and Findings for Consent Cease and Desist and Restoration Orders") in which these findings appear, which section is entitled "Summary of Staff Recommendations," and the section entitled "Jurisdiction".

³ Over many decades, the health of the lagoon has declined due to natural and man-made causes. San Diego Association of Governments ("SANDAG") is currently conducting studies and drafting an environmental impact report ("EIR") for the Buena Vista Lagoon Enhancement Project that equally evaluates four alternatives: three enhancement alternatives (freshwater, saltwater, and a freshwater/saltwater hybrid) and a no project alternative in which enhancement actions are not implemented. The final EIR should be completed by Spring 2015. The timing of any future enhancement efforts will depend on which alternative is selected and the proposed funding sources (keepsandiegomoving.com/BVLagoon).

B. PERMIT HISTORY

In 1989, the Commission issued CDP No. 6-89-190 to the previous owner, John Levy, for the construction of a 4,305 square foot, four bedroom, two story single-family residence. In order to ensure compliance with the requirements of the Coastal Act, including the protection of wetland resources, the Commission approved the CDP subject to several special conditions, including the requirement to record two documents designed to impose two distinct restrictions on the use of the Property, as described below.

Special Condition 1 of the Permit states, in part:

“Prior to issuance of the coastal development permit, the applicant shall record an irrevocable offer to dedicate in fee to the Wildlife Conservation Board, Coastal Conservancy, or to a private association acceptable to the Executive Director, an open space easement over the area shown on the attached Exhibit “2” and generally described as the wetland/floodplain portion of the applicant’s property.”

Special Condition 2 of the Permit states, in part:

“Prior to issuance of the coastal development permit, the applicant shall record a restriction against the subject property, free of all prior encumbrances, except for tax liens, and binding on the permittee’s successors in interest and any subsequent purchasers for any portion of real property. The restriction shall prohibit any alteration of landforms, removal of vegetation or the erection of structures of any type, except as herein permitted, in the area shown on Exhibit “3” and generally described as the area between the proposed residence and the wetlands boundary or southern limit of the area proposed to be dedicated to a public agency, and two foot wide vertical access easement located parallel and adjacent to the western property line.

Both the OTD and Deed Restriction were recorded by the permittee on October 26, 1989, providing subsequent purchasers of the Property with notice of the restrictions on the use of the Property. The 1989 recordings provided Respondents notice about the restrictions of use on the Property prior to their purchase from Levy on August 17, 1999.

C. DESCRIPTION OF COASTAL ACT VIOLATIONS

At some time on or before October 2010, Respondents conducted unpermitted development, all of which was also inconsistent with CDP No. 6-89-190, including, but not limited to: construction of a boat dock (Exhibit 9) within a wetlands/floodplain open space area transferred via an OTD to SCC pursuant to Special Condition 1 of the CDP; grading and construction of concrete retaining walls (Exhibit 10), a wooden stairway (Exhibit 11), and a wooden deck shaped like a boat (Exhibit 12) within an area deed restricted for open space pursuant to Special Condition 2 of the CDP; and removal of major vegetation, including wetland vegetation.

D. ENFORCEMENT ACTIVITIES

In October 2010, Commission staff met with SCC staff to arrange the SCC's acceptance of the OTD for the Lagoon Property; SCC accepted the Lagoon Property on October 25, 2010, thereby accepting a fee title interest in the parcel. During this time, Commission staff first became aware of the Coastal Act violations on the Property.

On June 15, 2011, Commission staff sent Respondents a Notice of Violation ("NOV") letter notifying them of the presence of Coastal Act violations and requesting the submittal of a complete CDP application for removal of all physical items that were placed on the Property as a result of Unpermitted Development and restoration of the site to its pre-violation condition (Exhibit 13). In response to the June NOV, Respondents contacted Commission staff on July 1, 2011 and followed up with staff on July 20, 2011, to discuss the content of the letter and to authorize a Commission staff site visit. On July 27, 2011, Commission staff met with Respondents on the Property and confirmed that Unpermitted Development and development inconsistent with the CDP had occurred, including development within the Lagoon Property and deed restricted area of the Respondents' Property.

On September 19, 2011, Commission staff sent Respondents a second NOV to address the additional Unpermitted Development and to reiterate that staff would like to work with Respondents to resolve the matter amicably (Exhibit 14). In the September NOV Commission staff again requested that Respondents submit a complete CDP application for removal of all unpermitted items and restoration of the Property to its pre-violation condition.

During the next two years, Commission Enforcement staff sent a number of letters to Respondents and/or their attorneys and spoke with them on several occasions in an ongoing attempt to resolve the matter without the need for a contested hearing and litigation. During this period, staff coordinated with City of Carlsbad regarding how to resolve the violations on the Property. During this time, the City of Carlsbad requested that the Commission assume primary responsibility for issuing Orders to resolve the violations in this matter (Exhibits 28 and 29).

In an effort to bring this resolution to a formal hearing, on October 15, 2013, the Executive Director sent a letter to Respondents providing notice of his intent to commence proceedings for issuance of Cease and Desist and Restoration Orders and recordation of a Notice of Violation ("NOI") to address the matter (Exhibit 20). The letter also set forth a suggested framework to legally resolve the matter via a settlement in the form of "consent orders". In accordance with 14 CCR Sections 13181 and 13191, the letter was accompanied by a Statement of Defense (SOD) form, and established a deadline of November 4, 2013 for its completion and return. The letter reminded Respondents, as they had been informed in prior letters⁴, that the Coastal Act contains a provision for notifying potential, future purchasers of real property of the existence of a Coastal Act violation on a property. The Executive Director may record a Notice of Violation ("NOVA") against the title to the property pursuant to PRC Section 30812, after providing notice

⁴ Prior NOVA notification included in letters from staff to Respondents dated June 15, 2011, November 14, 2011, May 1, 2012, and June 6, 2013.

and the opportunity for a hearing. The Coastal Act provides the owner of real property an opportunity to object, in writing, to the NOVA recording within 20 calendar days of the postmarked mailing of the NOI, also November 4, 2013. Respondents did not respond to the NOI or submit a SOD or written objection to the NOVA before November 4 and the NOVA was recorded on November 18, 2013 (Exhibit 5).

On November 12, 2013, after receiving no response to the NOI, Commission staff sent Respondents another letter expressing disappointment that staff hadn't heard from them, but also indicating the desire of staff to continue to work together to achieve an amicable resolution of the matter (Exhibit 21). After not receiving a response from this letter, either, Commission staff called Respondents on November 22, 2013, and during this conversation, Mrs. Beim confirmed receiving the NOI and November 12 letter and, among other things, she indicated a willingness to work with staff and that Mr. Beim and their attorney would contact staff the following week.

On December 17, 2013, Commission staff sent Respondents a letter thanking them for their cooperation and reiterating that staff would like to work together with Respondents to reach an amicable resolution to the Coastal Act violations on the Property (Exhibit 22). The December 17 letter also provided a general overview of the consent order process, which would allow Respondents to have more input into the restoration process and to establish a means to resolve the complete violation without any formal legal action. On January 27, 2014, Respondents contacted Commission staff in response to the December 17 letter and informed staff that they hired an attorney to represent them in this matter.

On March 24, 2014, staff sent Respondents proposed Consent Orders and over the following three months staff worked with the attorney to resolve the issues amicably. Throughout 2014, Commission staff spoke with the Beim's attorneys, Donald Detisch and Andrew Rauch, and attempted to resolve this matter consistent with their permit, the Coastal Act and the LCP, and made a variety of offers and sent draft Consent Orders to the Beims and their representatives.

On June 11, 2014, Commission staff sent Mr. Detisch and Mr. Rauch a letter to memorialize the various conversation and to reiterate that staff wanted to continue to find ways to work together to reach a consensual resolution of the Coastal Act violations on the Property (Exhibit 25).

On June 30, 2014, Mr. Rauch sent staff a letter styled as an informal SOD. On July 3, 2014, Mr. Beim notified staff that Mr. Rauch and Mr. Detisch would no longer be representing him and his wife and that a new attorney, Jon Corn, had been retained (Exhibit 27). On July 3, 2014, Commission staff spoke with Mr. Corn and provided a summary of the matter and efforts to resolve the violations. Mr. Corn informed staff that Respondents did want to resolve the Coastal Act issues amicably and move forward with the consent order process.

On July 10, 2014 Commission staff spoke with Mr. Corn, who assured staff of Respondents' desire to settle and bring this item before the Commission. Mr. Corn agreed to review the proposed Consent Orders and agreed to discuss any issues the Respondents had with the proposed settlement the following week. On July 14, 2014, Mr. Corn met with staff in the San Francisco office; during this meeting staff learned that the Respondents had issues with the proposed settlement offer. Through the next four months and through numerous phone calls and

letters, Commission staff and Respondents were able to work through the issues and agree to terms of Consent Orders. Staff appreciates all the hard work and effort Respondents and Mr. Corn have made in reaching this resolution and recommends the Commission issue these Consent Orders⁵.

E. 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, which states, in relevant part:

(a) If the commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person or governmental agency to cease and desist. The order may also be issued to enforce any requirements of a certified local coastal program or port master plan, or any requirements of this division which are subject to the jurisdiction of the certified program or plan, under any of the following circumstances:

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

(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 this Restoration Order is provided in Section 30811 of the Coastal Act, which states, in relevant part:

In addition to any other authority to order restoration, the commission... may, after a public hearing, order restoration of a site if it finds that [a] the development has occurred without a coastal development permit from the commission, local government, or port governing body, [b] the development is

⁵ Including conversations on July 24, 2014, July 28, 2014, July 31, 2014, August 15, 2014, September 5, 2014, September 9, 2014, September 11, 2014, September 12, 2014, September 22, 2014, September 30, 2014, October 14, 2014 (see Exhibit 27), October 17, 2014, October 23, 2014, October 27, 2014, October 29, 2014, November 12, 2014, November 17, 2014, November 19, 2014, November 20, 2013, and November 21, 2014.

inconsistent with this division, and [c] the development is causing continuing resource damage.

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

2) FACTUAL SUPPORT FOR STATUTORY ELEMENTS

(a) Development has occurred without a Coastal Development Permit and inconsistent with CDP 6-89-190, which the Commission Previously Issued

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. These criteria are all met in this case, as discussed below.

The unpermitted activity that has occurred on the Property clearly meets the definition of “development” set forth in Section 30106 of the Coastal Act. Development is defined broadly under the Coastal Act, and includes, among many other actions, the “placement of any solid material or structure; grading, removing, dredging, mining, or extraction of any materials;...change in the density or intensity of use of land;...construction, reconstruction, demolition or alteration of the size of any structure...; and the removal or harvesting of major vegetation other than for agricultural purposes...” (emphasis added). Pursuant to Section 30600 of the Coastal Act, all non-exempt development in the Coastal Zone requires a CDP. No CDP was obtained for the activity at issue, nor was the development exempt from permitting requirements. Because the development occurred without the required Coastal Act authorization, nor the authorization required by Carlsbad Municipal Code 21.201 that requires CDPs be issued for all development in the Coastal Zone, this is a violation even independent of the requirements of the existing permit, and is a violation of City LCP and Coastal Act requirements to obtain a CDP for such development.

In addition to the Unpermitted Development being performed in violation of City LCP and Coastal Act policies, all of the unpermitted activities are also inconsistent with the CDP, which authorized the construction of a single-family residence but required the recordation of an OTD and deed restriction as conditions of the permit. The CDP was approved subject to these conditions, among others, in order to mitigate the impacts to wetland resources on and adjacent to the Property likely to result from authorizing development on the Property. The conditions related to the recordation of the deed restriction and the OTD and the steps taken to implement them are as follows:

Special Condition 1:

Transfer of Title of the Wetlands/Floodplain Area. *Prior to the issuance of the coastal development permit, the applicant shall record an irrevocable offer to dedicate in fee to the Wildlife Conservation Board, Coastal Conservancy, or to a private association acceptable to the Executive Director, an open space easement over the area shown on the attached Exhibit "2" and generally described as the wetland/floodplain portion of the applicant's property. The document shall include legal descriptions of both the applicant's entire parcel(s) and the easement area.*

The offer shall be irrevocable for a period of 21 years, shall run in favor of the People of the State of California, binding successors and assigns of the applicant and/or landowners, and shall be recorded prior to all other liens and encumbrances, except tax liens. The offer to dedicate shall be in a form and content acceptable to the Executive Director.

Special Condition 1 requires the portion of the Property identified as the Lagoon Property be offered for dedication. Respondents' predecessor recorded the OTD in 1989, offering fee title to the Lagoon Property. In October 2010, SCC accepted the OTD, taking fee title to the Lagoon Property. At that time, Commission and Conservancy staff discovered that unpermitted development, including construction of a boat dock and removal of major vegetation, including wetland vegetation, had occurred on the Lagoon Property, which was dedicated pursuant to the conditions of the CDP to remain as an open space, inconsistent with Special Condition 1 of the CDP.

Special Condition 2:

Open Space Deed Restriction. *Prior to the issuance of the coastal development permit, the applicant shall record a restriction against the subject property, free of all prior encumbrances, except for tax liens, and binding on the permittee's successors in interest and any subsequent purchasers for any portion of real property. The restriction shall prohibit any alteration of landforms, removal of vegetation or the erection of structures of any type, except as herein permitted, in the area shown on Exhibit "3" and generally described as the area between the proposed residence and the wetlands boundary or southern limit of the area proposed to be dedicated to a public agency, and two foot wide vertical access easement located parallel and adjacent to the western property line.*

Special Condition 2 requires a portion of the Respondents' Property to be restricted by recordation of a deed restriction prohibiting development in the restricted area. Prior to issuance of the CDP, the deed restriction was recorded with the County of San Diego in October of 1989. In 2010, Commission staff became aware that development had occurred in the deed restricted portion of the Respondents' Property including, grading; construction of concrete retaining walls, a wooden stairway, a wooden deck; and removal of major vegetation, including wetland vegetation, all inconsistent with Special Condition 2 of the CDP.

Therefore, not only was the development undertaken without a CDP, but is also inconsistent with a previously issued CDP. Thus, the criterion for issuance of a cease and desist order, and the first of three criteria for issuance of a restoration order, has been met.

(b) The Unpermitted Development at Issue is not Consistent with the Coastal Act

The Unpermitted Development described herein is not consistent with Section 30240 (ESHA protection), Sections 30231 (water quality), Section 30251 (Scenic and Visual Qualities) of the Coastal Act, and Section 30253 (limiting adverse impacts/ Geologic Stability), in addition to the analogous sections of City LCP.

i) Protection of Environmentally Sensitive Habitat Areas (ESHA)

Environmentally Sensitive Habitat Areas (ESHA) is defined by Coastal Act Section 30107.5 as:

‘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.

Coastal Act Section 30240 states:

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

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

Carlsbad LCP Section II-2, Policy 3-1.2 states:

Pursuant to Section 30240 of the California Coastal Act, environmentally sensitive habitat areas, as defined in Section 30107.5 of the Coastal Act, shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

Carlsbad LCP Section 3-1.12 states, in part, that:

Buffers shall be provided between all preserved habitat areas and developments. Minimum buffer widths shall be provided as follows:

a. 100 feet for wetlands...

No development, grading, or alterations, including clearing of vegetation, shall occur in the buffer area...

Buena Vista Lagoon is a 220-acre primarily fresh water wetland and became California's first State Ecological Reserve in 1969, acknowledging the lagoon's significance as home to a diverse range of plant and animal species. The lagoon offers sanctuary to many species and is home to more than 103 bird species, 18 mammals, 14 amphibians and reptiles, and a variety of sensitive species, including California Least tern, Belding's savannah sparrow, and Light-Footed Clapper Rail that live in and around the lagoon. The lagoon is also located on the annual migration route known as the Pacific Flyway and millions of birds pass through the area during both winter and summer migrations; more than 235 types of birds have been spotted there, including the California Quail, Vermillion Flycatcher and the Great Blue Heron.⁶

Buena Vista Lagoon's special role in the region's ecosystem qualifies the ecological reserve as ESHA⁷ because of its rich and significant biological value to many species that call the wetland home in addition to as the many ecological benefits of coastal wetlands including water purification, flood control, and shoreline stability through the ability of habitat to reduce the speed and height of waves and floodwaters. In issuing the CDP, the Commission required Special Conditions 1 and 2 to protect against any significant disruption of habitat values, by preventing development in the submerged Lagoon Property and a buffer area known as the deed restricted area of the Respondents' Property located between the Lagoon Property and the development authorized by the CDP. The Commission and City LCP typically require a minimum buffer of 100 feet between all preserved habitat areas and development⁸, however given the size and configuration of the existing flat pad on Respondents' Property, the Commission determined the typical 100 foot buffer from wetland areas would be difficult to maintain at this location. The Commission found the 56 feet of buffer from the closet point of authorized development to the upper edge of the wetland area, in addition to the 28 feet grade differential between the wetland area and the closest portion of the proposed structure would offer sufficient isolation of wetland resources, and the full 100 foot buffer was not necessary in this particular case. Special Condition 2 of the CDP required the recordation of a deed restriction to prevent development from occurring in the buffer area in order to ensure sufficient protection of the coastal resources.

The disturbance of the wetlands and removal of upland vegetation associated with the Unpermitted Development is not an allowable use in the deed restricted area or in bluff or wetlands habitat, and has resulted in impacts to an undetermined amount of ESHA that is protected under the Coastal Act and City LCP and is inconsistent with Special Condition 1 and 2 of the CDP. The vegetation that was removed serves as habitat for the Light Foot Clapper Rail, which is a federally and state listed endangered subspecies. Although the

⁶ www.carlsbadca.gov/residents/fun/lagoons/buena.asp

⁷ The Ecological Reserve includes the wetland and adjacent areas.

⁸ Carlsbad LCP Sections 3-1.12 h and 3.2.

Commission found the buffer was acceptable as substantially below the typical requirement because of the elevation of the deed restricted slope area, the Coastal Act and City LCP require *some buffer* in between sensitive habitat and development and because of the Unpermitted Development, there is no buffer protecting the lagoon from the development on the Property. Therefore, the Unpermitted Development is inconsistent with the Coastal Act and City LCP.

ii) **Water Quality**

Coastal Act Section 30231 states:

The biological productivity and the quality of coastal waters... 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 waterflow.

Carlsbad LCP Section II-2, Policy 4-5(d) states:

Post-development runoff from a site shall not contain pollutant loads which cause or contribute to an exceedance of receiving water quality objectives or which have not been reduced to the maximum extent practicable.

Adding to the importance of water quality discussion that was mentioned within the “Minimization of Adverse Impacts/ Geologic Stability” section below, the Coastal Act and City LCP both recognize the importance of protecting the biological productivity of coastal waters, including Buena Vista Lagoon. The Property is directly adjacent and partially submerged in the Lagoon and the CDP was specifically conditioned (Special Condition 1 and 2) in order to address the potential negative impacts that development may cause to coastal resources, such as water quality and ESHA, consistent with the Coastal Act (see pages 6-7 of Exhibit 2). Special Condition 1 required the Respondents’ predecessor in interest to offer to dedicate the wetland portion of the Property to an appropriate public agency such as the Coastal Conservancy in order to protect the submerged portion of the Property from development uses inconsistent with the productivity of wetlands⁹. Special Condition 2, required a deed restriction prohibiting the removal of any vegetation, alteration of natural landforms, or erection of structures on the slope lagoonward of the residence. These conditions together, were required in the CDP, in part, to protect water quality consistent with Section 30231 of the Coastal Act (see pages 6-7 of Exhibit 2).

Disturbances on a slope adjacent to and within wetlands and other bodies of water may lead to erosion that would likely cause disturbed, loose soil to enter into the Lagoon. This soil brings into the Lagoon sediment and other pollutants that contribute to degradation of the quality of coastal waters. Unpermitted Development, including construction of a boat dock within the Lagoon Property and grading, construction of concrete retaining walls, wooden stairway, and wooden deck on steep slopes and removal of major vegetation, including wetland vegetation, on

⁹ The Coastal Conservancy accepted the Lagoon Property in fee October 25, 2010.

the Property has occurred in locations that were restricted from development, causing disturbance to the soil and the placement of foreign materials in and adjacent to Buena Vista Lagoon. This development is not consistent with the CDP or Coastal Act Section 30231 that requires that development not impact the biological productivity and quality of coastal waters and minimize sediment discharges. City LCP Section II-2, Policy 4-5(d) also requires pollutants that may impact water quality be contained. Thus, pursuant to these Consent Orders, by carefully removing unpermitted items and restoring impacted areas with native plant species, water quality and the biological productivity of Buena Vista Lagoon will be protected, consistent with the CDP, Coastal Act, and LCP.

iii) Scenic and Visual Qualities

Coastal Act Section 30251 states, in part, 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 protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural landforms, to be visually compatible within the character of the surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

The western edge of the City of Carlsbad is characterized by sandy beaches and three lagoons, including Buena Vista in the northwest city limits. The lagoons dominate the city's coastal landscape and provide habitat for a variety of resident and migratory bird species. The coastal portions of the city are largely developed; however, natural vegetation communities remain in and around the three coastal lagoons. The scarcity of natural vegetation in the area validates the importance of maintaining Buena Vista Lagoon's scenic and visual qualities for the overall natural quality of the region.

The Property is located on the eastern shore of Buena Vista Lagoon, directly adjacent to and partially submerged by the lagoon. When the Commission authorized the development on the Respondents' Property, the Commission determined that the site was highly visible from various vantage points across the lagoon and from the south shore of the lagoon, and required the authorized development to limit its visual impacts by setting the house away from the bluff edge and restricting development on the bluff, itself. The removal of native vegetation and the transformation of a natural sloping bluff into an artificially graded slope developed with retaining walls, concrete walkways, stairways, and a deck degrades the natural visual qualities of the eastern shore of Buena Vista Lagoon and is inconsistent with Section 30251 of the Coastal Act that protects the scenic and visual qualities of coastal areas.

iv) Minimization of Adverse Impacts/ Geologic Stability

Coastal Act Section 30253 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.*

Carlsbad LCP Section II-2, Policy 4-3(e) states, in part, that:

Development projects should be designed to comply with the following site design principles:

- 1. Protect slopes and channels to decrease the potential for slopes and/or channels from eroding and impacting storm water runoff.*
- 2. To the extent practicable, cluster development on the least environmentally sensitive portion of a site while leaving the remaining land in a natural undisturbed condition.*
- 3. Preserve, and where possible, create or restore areas that provide important water quality benefits, such as riparian corridors, wetlands, and buffer zones. Land acquisition of such areas shall be encouraged.*
- 4. Provide development-free buffer zones for natural water bodies.*
- 5. Minimize the amount of impervious surfaces and directly connected impervious surfaces in areas of new development and redevelopment...*

Section 30253 of the Coastal Act requires that any new development minimize risk to life and property in areas of high geologic hazard and must neither create nor contribute to erosion, or geologic instability from subsurface drainage or otherwise. In fact, the Commission found in its adopted findings in support of approving the CDP that Special Condition 2 was required to address stability and protection the bluff on the Property adjacent to the wetland, consistent with Section 30253 of the Coastal Act (see pages 6-7 in Exhibit 2). Special Condition 2 required Respondents' predecessor in interest, the applicant, to record a deed restriction prohibiting the removal of any vegetation, alteration of natural landforms, or erection of any structures on the bluff, in the sloped area lagoonward of the residence, in order to prevent potential for bluff instability. This deed restriction was recorded on October 26, 1989 with the County of San Diego.

A majority of the Unpermitted Development, including grading, removal of bluff and wetland vegetation and construction of concrete retaining walls, wooden stairway and a lagoon overlook deck, occurred directly within the deed restricted area, a steep slope adjacent to a natural water body, Buena Vista Lagoon, is not consistent with Coastal Act Section 30253, analogous City LCP Section II-2, Policy 4-3(e), or Special Condition 2 of the CDP. The disturbance of soil, removal of vegetation, and the placement of structures, such as walls, concrete walkways, and decks, on the slope has the potential to cause slope instability that may accelerate erosion and would not minimize potential adverse impacts. The City LCP also requires that slopes, particularly those located adjacent to natural water bodies, must be protected and left in a natural, undisturbed condition when possible in order to preserve coastal resources, protect bluffs from erosion, and prevent impacts to water quality caused by such erosion.

In addition, the issue of stability in this location has been previously addressed. Respondents submitted to staff a 2009 Engineering Report (Exhibit 19) for the Property that was completed prior to the date that the Unpermitted Development still present on the site occurred, but after a prior retaining wall was installed within the deed restricted area without a permit, and inconsistent with the CDP.¹⁰ The Report concludes that the Property is “grossly stable” but for some surficial instability that, the Report finds, was caused by poor drainage resulting from the prior unpermitted retaining wall that was installed without A CDP and inconsistent with Special Condition 2 of the CDP.¹¹ These Consent Orders require the removal of the physical items that were placed or allowed to come to rest on the Property as a result of Unpermitted Development and revegetation of the bluff and wetland area with native plant species in order to ensure the slope is stable, consistent with the Section 30253 of the Coastal Act and City LCP Section II-2, Policy 4-3(e).

As found above, the Unpermitted Development is inconsistent with the Coastal Act and the City LCP, and therefore, the second criteria for issuance of a restoration order has been met.

(c) Unpermitted Development is Causing Continuing Resource Damage

The unpermitted development is causing ‘continuing resource damage’, as those terms are defined by 14 CCR Section 13190.

(i) Definition of Continuing Resource Damage

14 CCR Section 13190(a) 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 14 CCR 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 resources affected include: geologic stability of the coastal bluff located on the Property adjacent to Buena Vista Lagoon; water quality of Buena Vista Lagoon; ESHA on the

¹⁰ Commission staff never discovered the former unpermitted walls that were previously located in the deed restricted area of the Respondents’ Property and learned about the violation inadvertently from the 2009 Engineering Report.

¹¹ This retaining wall was removed by Respondents prior to the undertaking of the Unpermitted Development being addressed by these Consent Orders.

Property and Buena Vista Lagoon; and the visual resources of Buena Vista Lagoon. As discussed above, all of these resources are afforded protection under Chapter 3 of the Coastal Act and the City LCP.

The term ‘continuing’ is defined by 14 CCR 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 Consent Restoration Order.

The Unpermitted Development, and its effects on coastal resources remain unaddressed. As described in previous sections, the Unpermitted Development has had an adverse effect and continues to have an adverse effect on the erosion of the coastal bluff, water quality of the lagoon, wetland habitat, and scenic and visual resources of the lagoon and this coastal region. Clearly, the Unpermitted Development is occupying land that would have otherwise been available for native plants and animals or its necessary habitat buffer, is increasing the bluff’s erosion rate, which leads to impacts to water quality. The Unpermitted Development, and the results thereof, continue to impact these coastal resources by preventing the native ecosystem from existing or functioning properly.

As described above, the adverse impacts to resources protected by the Coastal Act and the City LCP continue to occur as of the date of this proceeding, and therefore damage to resources is “continuing” for purposes of Section 30811 of the Coastal Act. The damage caused by the Unpermitted Development described above satisfies the regulatory definition of “continuing resource damage.” Therefore, the third and final criterion for issuance of a Restoration Order is satisfied.

(d) Orders are Consistent with Chapter 3 of the Coastal Act

These Consent Orders, attached to this staff report as Appendix A, are consistent with the resource protection policies found in Chapter 3 of the Coastal Act and the City LCP. These Consent Orders require Respondents to remove the physical items that were placed or allowed to come to rest on the Property as a result of Unpermitted Development and restore the areas impacted by Unpermitted Development. Additionally, these Consent Orders require Respondents to cease and desist from conducting any further unpermitted development on the Property. Failure to restore the site would have the potential to increase the erosion rate of the coastal bluff, negatively impact water quality from runoff, further impact ESHA, diminish scenic and visual qualities, and would ultimately be inconsistent with the resource protection policies of the Coastal Act and the City LCP. The intent of the Consent Orders is to remove development and restore the site to be consistent with the Coastal Act, the CDP, and the City LCP. Additionally, the Consent Orders would restore the Property with native plants, reduce risks to bluff instability and runoff into Buena Vista Lagoon, and restore the site’s ecosystem and natural visual qualities. Therefore, the proposed Consent Orders are consistent with Sections 30253, 30231, 30240, and 30251, and the analogous sections of the City LCP.

Therefore, the Consent Orders are consistent with the Chapter 3 policies of the Coastal Act.

F. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

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

G. SUMMARY OF FINDINGS OF FACT

1. In 1989, the Commission approved Coastal Development Permit (CDP) No. 6-89-190 for development of a single family residence at 2381 Buena Vista Circle, Carlsbad, San Diego County ("Property").
2. In its approval, the Commission found that the property is visually important, contains Environmentally Sensitive Habitat Areas that require protection from development, and there is an inherent risk of shoreline development on steep slopes. Accordingly, the Commission required the applicant to record an offer to dedicate a portion of the site and a deed restriction over another portion of the site, to protect the resources.
3. The offer to dedicate and the deed restriction were recorded with San Diego County in October of 1989, as required by Special Conditions 1 and 2 of the CDP. The offer to dedicate was subject to a provision that the land be protected as open space.
4. The State Coastal Conservancy accepted the offer to dedicate that portion of the Property on October 25, 2010. This property is identified by the San Diego Assessor's Office as APNs 155-221-19. The Property is located within the Coastal Zone.
5. Steven and Linda Beim are the owners of the Respondents' Property. The Respondents' Property is identified by the San Diego Assessor's Office as APN 155-221-18. The State Coastal Conservancy owns the Lagoon Property, which is identified by San Diego Assessor's Office as APN 155-221-19. The Property is located within the Coastal Zone.
6. Steven and Linda Beim undertook development on the Property without the required Coastal Act authorization and inconsistent with CDP 6-89-190. The Unpermitted Development is *development* as that term is defined in the Coastal Act and City LCP.
7. On July 6, 2012 and September 24, 2013, the City of Carlsbad requested that the Commission assume primary responsibility for issuing the Orders pursuant to Sections 30810 and 30811 of the Coastal Act.

8. Steven and Linda Beim are liable for the removal and restoration activities, and payment of penalties pursuant to the Coastal Act.
9. The Unpermitted Development is not consistent with Chapter 3 of the Coastal Act, including Sections 30253, 30231, 30240, and 30251, and the analogous sections of the City LCP and is causing “continuing resource damage” within the meaning of Coastal Act Section 30811 and Title 14, California Code of Regulations, Section 13190.
10. Coastal Act Section 30810 authorizes the Commission to issue a cease and desist order in these circumstances, when the Commission determines that any person or government agency has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing a permit or (2) is inconsistent with any permit previously issued by the Commission. Coastal Act Section 30811 authorizes the Commission to issue a restoration order when it finds that development (1) has occurred without a CDP, (2) is inconsistent with the Coastal Act, and (3) is causing continuing resource damages. All of these elements have been met in this case.
11. The work to be performed under these Consent Orders, if completed in compliance with the Consent Orders and the plans required therein, will be consistent with Chapter 3 of the Coastal Act.
12. Steven and Linda Beim signed the Consent Orders on November 23, 2014.

<p style="text-align: center;">CONSENT CEASE AND DESIST ORDER CCC-14-CD-05 AND CONSENT RESTORATION ORDER CCC-14-RO-05</p>
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1.0 CONSENT CEASE AND DESIST ORDER CCC-14-CD-05.

Pursuant to its authority under California Public Resources Code ('PRC') Section 30810, the California Coastal Commission ('Commission') hereby orders and authorizes Steven and Linda Beim, and all their successors, assigns, employees, agents, contractors, and any persons or entities acting in concert with any of the foregoing (hereinafter collectively referred to as 'Respondents') to:

- 1.1 Cease and desist from engaging in any further development, as that term is defined in PRC Section 30106, on the properties identified in Sections 4.2(A) and 4.2(B) below ("Properties"), unless authorized pursuant to, or exempt by, the Coastal Act (PRC Sections 30000-30900), which includes through these Consent Orders.
- 1.2 Cease and desist from performing or maintaining on the Properties any Unpermitted Development, or noncompliance with the terms and conditions of CDP 6-89-190, as that phrase is defined in Section 4.3, below, or results thereof.
- 1.3 Remove, pursuant to an approved Restoration Plan, as discussed in Section 5.3, below, and pursuant to the terms and conditions set forth herein, all physical items placed or allowed to come to rest on the Properties as a result of Unpermitted Development.
- 1.4 Fully and completely comply with the terms and conditions of Consent Restoration Order CCC-14-RO-05 as provided in Section 2.0, below.

2.0 CONSENT RESTORATION ORDER CCC-14-RO-05.

Pursuant to its authority under PRC Section 30811, the Commission hereby orders and authorizes Respondents to restore the Properties by complying with the restoration requirements described in Section 5.0, below, including taking all restorative actions listed therein, including among other things: (1) undertaking restorative grading; (2) implementing drainage control measures; (3) revegetating the Restoration Area, as defined in Section 4.4 below, with native habitat; (5) mitigating for impacts to natural habitat, including wetland habitat; and (6) implementing a long term monitoring and maintenance program.

3.0 NATURE OF ORDERS AND OF CONSENT.

Through the execution of Consent Restoration Order CCC-14-RO-05 and Consent Cease and Desist Order CCC-14-CD-05 (hereinafter collectively referred to as "Consent Orders"), Respondents agree to comply with the terms and conditions of

these Consent Orders. These Consent Orders authorize and require the removal of unpermitted development and performance of 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 or under the prior Coastal Development Permit (“CDP”) pertaining to the site, CDP No. 6-89-190, requires a CDP. Nothing in these Consent Orders guarantees or conveys any right to development other than the work expressly authorized by these Consent Orders. Nothing in these Consent Orders will restrict the submittal of any future application(s) by Respondents for coastal development permits and/or amendments to existing permits, for proposed development on the Respondent’s Property, including but not limited to, retaining walls or other structures. Nothing herein provides any assurance of the Commission’s approval of any future application(s) by Respondents for coastal development permits and/or amendments to existing permits. Through the execution of these Consent Orders, Respondents agree to comply with these Consent Orders including the following terms and conditions, below.

Respondents further agree 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 or entities acting in concert with any of the foregoing or with any of the other Respondents, adhere to and comply with the terms and conditions set forth herein.

PROVISIONS COMMON TO BOTH ORDERS.

4.0 DEFINITIONS

4.1 **Consent Orders.** Consent Cease and Desist Order No. CCC-14-CD-05 and Consent Restoration Order No. CCC-14-RO-05 are referred to in this document as Consent Orders.

4.2 **The Properties.** The Properties that are the subject of these Consent Orders are described as follows:

- (A) The property located at 2381 Buena Vista Circle, Carlsbad, San Diego County, California, which is also identified by San Diego County Assessor’s Parcel Number (“APN”): 155-221-18. When this property is referred to individually in these Consent Orders, it will be referred to as the “Respondents’ Property”.
- (B) The wetlands/floodplain open space area that was transferred via an offer to dedicate in fee title (“OTD”) to the State Coastal Conservancy (“SCC”) pursuant to Special Condition 1 of CDP No. 6-89-190, located on Buena Vista Lagoon, Carlsbad, San Diego County and identified by San Diego County Assessor’s Parcel Number (“APN”): 155-221-19. The OTD was accepted by

State Coastal Conservancy (“SCC”) on October 18, 2010. When this property is referred to individually in these Consent Orders, it will be referred to as the “Lagoon Property”.

- 4.3 **Unpermitted Development.** All “development”, as that term is defined in the Coastal Act (PRC Section 30106), that has occurred on the Properties and required authorization pursuant to the Coastal Act, but for which no such authorization was obtained, and/or development inconsistent with CDP No. 6-89-190, including, but not necessarily limited to: construction of a boat dock within the Lagoon Property; grading and construction of concrete retaining walls, a wooden stairway, and a wooden deck within an area deed restricted for open space; and removal of major vegetation, including wetland vegetation.
- 4.4 **Restoration Area.** The area on the Properties that was impacted by the Unpermitted Development, which encompasses portions of the Properties.
- 4.5 **Persons Responsive to the Consent Orders.** Steven and Linda Beim; and all their successors, assigns, employees, agents, contractors, and any persons or entities acting in concert with any of the foregoing (collectively referred to as ‘Respondents’). All entities, collectively referred to as ‘Respondents’, will be held joint and severally subject to all of the requirements of these Consent Orders.

5.0 **RESTORATION PLAN**

These Consent Orders require the preparation and implementation of a Restoration Plan, as defined below, to govern the removal of all Unpermitted Development, and restoration of the Restoration Area.

- 5.1 **Required Elements.** Within 60 days of issuance of these Consent Orders, Respondents shall submit, for the review and approval of the Commission’s Executive Director, a Restoration Plan that includes the following components: Removal, Remedial Grading, Geotechnical, Erosion Control, Revegetation, and Monitoring (“Restoration Plan”). The Restoration Plan shall set forth the measures Respondents propose to use to remove Unpermitted Development subject to these Consent Orders, restore the pre-violation topography, restore and revegetate the Restoration Area with appropriate native habitat, mitigate for impacts to habitat resulting from the Unpermitted Development, and monitor the site and undertake any necessary adaptive mitigation measures to ensure that such work has been successful. The Restoration Plan shall therefore contain the following components: (1) Removal; (2) Remedial Grading; (3) Geotechnical; (4) Erosion Control; (5) Revegetation; and (6) Monitoring. The Restoration Plan shall address all Unpermitted Development, and the results thereof.

5.2 General Provisions.

- (A) The Restoration Plan shall outline all proposed removal activities, in accordance with Section 5.3, below; all restorative grading activities, in accordance with Section 5.4, below; all proposed geotechnical and erosion control activities, in accordance with Section 5.5, below; restoration of the native habitat, including all proposed revegetation activities, in accordance with Section 5.6 below, and all proposed monitoring activities, in accordance with Section 5.7, below.
- (B) The Restoration Plan, any reports or revisions prepared pursuant to the Restoration Plan or the terms of these Consent Orders, the implementation of the Restoration Plan, and the monitoring component required by Section 5.7, shall be prepared by a qualified engineer, restoration ecologist(s) and/or resource specialist(s) (“Specialist”). Prior to the preparation of the Restoration Plan, Respondents shall submit for the Executive Director’s review and approval the qualifications of the proposed Specialist(s), including a description of the proposed Specialists’ educational background, training, and experience. To meet the requirements to be a qualified Specialist for the Revegetation, and Monitoring components of this project, one must have experience successfully completing restoration or revegetation (using California native plant species) of marsh habitats, preferably in the coastal region of San Diego and/or Orange Counties. If the Executive Director determines that the qualifications of Respondents’ Specialist(s) are not adequate to conduct such restoration work, he shall notify Respondents and, within 10 days of such notification, Respondents shall submit for the Executive Director’s review and approval a different Specialist(s).
- (C) The Restoration Plan shall include a schedule/timeline of activities, 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 5.3, 5.4, 5.5, 5.6, and 5.7 for the Removal, Remedial Grading, Geotechnical, Erosion Control, Revegetation, and Monitoring components, respectively.
- (D) The Restoration Plan shall include a detailed description of all equipment to be used. All tools utilized shall be hand tools, unless the Specialist demonstrates to the satisfaction of the Executive Director that mechanized equipment is needed to successfully implement the Restoration Plan and will not significantly impact resources protected under the Coastal Act, including, but not limited to: geological stability, integrity of landforms, freedom from erosion, and existing native vegetation. If the use of mechanized equipment is proposed, the Restoration Plan shall include limitations on the hours of operations for all equipment and a contingency

plan that addresses, at a minimum: 1) impacts from equipment use, including disruption of areas where revegetation will occur, and responses thereto; 2) any potential water quality impacts; and 3) in the event the Executive Director determines the use of mechanized equipment is necessary, potential spills of fuel or other hazardous releases that may result from the use of mechanized equipment and responses thereto. 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.

- (E) The Restoration Plan shall identify the location of the disposal site(s) for the off-site disposal of all removed materials to be disposed of and all waste generated during restoration activities pursuant to these Consent Orders. If a disposal site is located in the Coastal Zone and is not an existing sanitary landfill, a CDP is required for such disposal. All hazardous waste must be disposed of at a suitable licensed disposal facility.
- (F) The Restoration Plan shall include a map of the Restoration Area. The Restoration Plan shall also state that prior to the initiation of any restoration or removal 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 occurred.

5.3 **Removal.**

- (A) As part of the Restoration Plan, Respondents shall submit a Removal component, prepared by a qualified Specialist, approved pursuant to Section 5.2(B), to govern the removal and off-site disposal of all Unpermitted Development required to be removed pursuant to these Consent Orders.
 - (1) The Removal component shall include a site plan showing the location and identity of all Unpermitted Development to be removed from the Properties.
- (B) The Removal Plan shall indicate that removal activities shall not disturb areas outside of the Restoration Area. Measures for the restoration of any area 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 component shall indicate that Respondents shall commence removal of the Unpermitted Development by commencing implementation of the Removal component within no more than thirty (30) days of approval of the Restoration Plan and work diligently to complete the work in an expeditious manner but no later than 30 days after implementation of Removal component.
- (D) All removal activities shall be consistent with Section 5.2, above and these Consent Orders.

5.4 **Remedial Grading.**

- (A) The Remedial Grading component shall include sections showing original and finished grades, and quantitative breakdown of grading amounts (cut/fill), drawn to scale with contours that clearly illustrate, as accurately as possible, the original topography of the Restoration Area before and after the grading disturbance. The Remedial Grading component shall identify the source and date of the data that produced the pre- and post-disturbance topography. The Remedial Grading component shall also demonstrate how the proposed remedial grading will restore the Properties to the original, pre-violation topography. If the Specialist determines that alterations to the original topography are necessary to ensure a successful restoration of the Restoration Area, the Remedial Grading component shall also include this proposed topography. A narrative report shall also be included, that explains the justification for needing to alter the topography from the original contours.
- (B) The goal of the Remedial Grading component is to restore the Properties to the original topography, while minimizing the size of the area and the intensity of the impacts associated with any proposed remedial grading. Other than the Restoration Area, the areas of the site and surrounding areas currently undisturbed shall not be disturbed by activities related to this restoration project, unless such activities include the removal of non-native or invasive plant species, and/or the planting of native plant species within the Properties.
- (C) Respondents shall commence restoration of the Properties' topography by implementing the Remedial Grading component within 30 days of completion of the Removal phase of the Restoration. Respondents shall complete topographic restoration of the Properties within 30 days of commencing remedial grading.

5.5 **Geotechnical and Erosion Control.**

- (A) Respondents shall submit a Geotechnical/Erosion Control component, prepared by a qualified Specialist, approved pursuant to Section 5.2(B), as part of the Restoration Plan, to address changes in drainage and any ground disturbance from Unpermitted Development and the activities required by the Restoration Plan.
 - 1) The drainage and erosion control measures must 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 removal/restoration process to minimize geologic instability and erosion across the site and sedimentation of the adjacent wetland, tributaries, drains and/or culverts.
- (B) The Erosion Control component shall specify the methods, including type and location, to be used during and after restoration to stabilize the soil and make it capable of supporting native vegetation and minimizing erosion and transport of sediment. Such methods shall not include the placement of retaining walls or other permanent structures, grout or similar materials. Any soil stabilizers identified for erosion control shall be compatible with native plant recruitment and establishment. After the plantings have become established, such measures 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.
- (C) The Geotechnical and Erosion Control component shall: 1) include a narrative report describing all run-off and drainage changes resulting from the removal of Unpermitted Development and Restoration of the Properties; 2) include a narrative report describing all temporary erosion control measures to be used during removal/restoration activities; 2) identify and delineate on a site or grading plan the locations of all drainage and temporary erosion control measures; 3) specify the methods to be used during and after restoration to stabilize the soil and make it capable of supporting native vegetation; and 4) specify that the remedial grading work, removal work, and construction of the erosion control features shall take place only during the dry season (April 1- November 1). This period may be extended for a limited period pursuant to the provisions of Section 13.0, below.
- (D) All erosion control materials shall be comprised of bio-degradable materials and shall be removed from the Properties once the permanent erosion control features are established, if deemed necessary.

- (E) The Restoration Plan shall indicate that Respondents shall commence implementation of the Geotechnical and Erosion Control component within no more than thirty (30) days of approval of the Restoration Plan; the temporary erosion control measures shall be completed prior to conducting any removal or grading activities. Additionally, in those areas where drainage and erosion control measures may be immediately necessary, Respondents shall install said measures in a timely manner as to avoid further resource impacts.

5.6 **Revegetation.**

- (A) Respondents shall submit a Revegetation component, prepared by a qualified Specialist approved under Section 5.2(B), above, as part of the Restoration Plan, outlining the measures necessary to revegetate all areas of the Restoration Area from which native vegetation was disturbed or removed as a result of the unpermitted activities, consistent with the provisions of these Consent Orders.
- (B) The Revegetation component shall include detailed descriptions, including graphic representations, narrative reports, and photographic evidence, of the vegetation in the Restoration Area, prior to any Unpermitted Development undertaken on the Properties, and the current state of the Properties, submitted pursuant to requirements of Section 5.7(C)(1).
- (C) The Revegetation component shall demonstrate that the Restoration Area will be restored using plant species indigenous to and appropriate for the naturally occurring habitats on the Properties.¹
- (D) The Revegetation component shall identify natural habitat that is the model for the restoration and describe the relative abundance of particular species in each vegetation layer. The Revegetation component shall include a detailed description of the methods that shall be utilized to restore the Restoration Area's habitat to a condition similar to a natural brackish marsh habitat in coastal San Diego and/or Orange Counties. The Revegetation component shall also demonstrate that these methods will result in vegetation with a similar plant density, total cover, and species composition as that typical of undisturbed brackish marsh habitat. This section shall include a detailed description of reference site(s) including

¹ The Buena Vista Lagoon Enhancement Project is presently proposed to provide the following restoration alternatives for restoring the lagoon to either (i) freshwater; (ii) saltwater; (iii) a hybrid saltwater-freshwater; or (iv) no project being conducted and allowing the lagoon's current degraded freshwater condition to remain. All plant species on the Revegetation plant palette for planting on the Lagoon Property shall be adaptable to both freshwater and saltwater marsh habitats and sustainable in/near brackish water to ensure successful revegetation regardless of the restoration alternative to be selected in the future.

rationale for selection, location, and species composition. The reference site(s) shall be located as close as possible to the Restoration Area, shall be similar in all relevant respects, and shall provide the standard for measuring success of the restoration under these Consent Orders. This section shall explicitly lay out the restoration goals and objectives for the revegetation. Based on these goals, the plan shall identify these species that are to be planted (plant “palette”) and provide the rationale for and describe the size and number of container plants and the rate and method of seed application. The Revegetation component shall indicate that plant propagules and seeds must come from local, native stock of coastal San Diego and/or Orange Counties.

- (1) The Revegetation component shall require that if plants, cuttings, or seed are obtained from a nursery, the nursery must certify that they are of local origin (San Diego and/or Orange Counties) and are not cultivars. The Revegetation component shall provide specifications for preparation of nursery stock. Technical details of planting methods (e.g. spacing, micorrhyzal inoculation, etc.) shall be included in the Revegetation component.
- (E) The Revegetation component shall include a detailed description of the methods that shall be utilized to restore natural habitats to the Restoration Area that are consistent with the naturally occurring habitats in the vicinity of the Properties.
- (F) The Revegetation component shall include a map showing the type, size, and location of all plant materials that will be planted in the Restoration Area; the location of all invasive and non-native plants to be removed from the Restoration Area; the topography of all other landscape features on the site; the location of reference sites; and the location of photograph sites that will provide reliable photographic evidence of the Restoration Area for annual monitoring reports, as described in Section 5.7(C)(1), below.
- (G) The Revegetation component shall include 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 description of restoration success shall be described in sufficient detail to enable an independent specialist to duplicate it.
- (H) The Revegetation component shall include a schedule for installation of plants and removal of non-native/invasive plants, from the Restoration Area. Respondents shall not employ non-native plant species, which could supplant native plant species in the Restoration Area.

- (1) If the planting schedule requires planting to occur at a certain time of year beyond deadlines set forth herein, the Executive Director may, at the written request of Respondents, extend the deadlines as set forth in Section 13.0 of these Consent Orders in order to achieve optimal growth of the vegetation.
 - (2) The Revegetation component shall demonstrate that all non-native vegetation within the Restoration Area will be eradicated prior to any removal, grading and revegetation activities within the Restoration Area. In addition, the Revegetation component shall specify that non-native vegetation removal shall occur year round, including on a monthly basis during the rainy season (January through April) for the duration of the restoration project.
- (I) The Revegetation component shall describe the proposed use of artificial inputs, such as irrigation, fertilizer or herbicides, including the full range of amounts of the inputs that may be utilized. The minimum amount necessary to support the establishment of the plantings for successful restoration shall be utilized. The Revegetation component shall specify that no permanent irrigation system is allowed in the Restoration Area. The Revegetation component may provide that temporary, above-ground irrigation to provide for the establishment of plantings is allowed for a maximum of three (3) years or until the revegetation has become established, whichever comes first. Respondents must ensure that if temporary, above-ground irrigation is utilized, all of the system's lines and connections are operated, maintained, and monitored to avoid line breaks, leaks, or any other incident that could cause the release of water, unless specifically intended for appropriate irrigation of the Restoration Area.
- (1) If, after the three (3) year time limit, the vegetation planted pursuant to the Revegetation component has not become established, the Executive Director may, upon receipt of a written request from Respondents, allow for the continued use of the temporary irrigation system. The written request shall outline the need for and duration of the proposed extension.
- (J) The Revegetation component shall specify that Respondents shall commence revegetation by implementing the Revegetation component within 30 days of completion of the Remedial Grading component of this project. Respondents shall complete revegetation of the Restoration Area within 30 days of implementation of the Revegetation component of the Restoration Plan.

5.7 **Monitoring.**

- (A) As part of the Restoration Plan, Respondents shall submit a Monitoring component 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 Specialist shall conduct at least four site visits annually for the duration of the monitoring period set forth in Section 5.7(C), at intervals specified in the Restoration Plan, for the purposes of inspecting and maintaining, at a minimum, the following: all restorative grading; 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 component of the Restoration Plan.
- (B) Monitoring and maintenance activities shall be conducted in a way that does not impact the sensitive resources on the Properties or on adjacent properties. Any such impacts shall be addressed in the appropriate annual report required pursuant to Section 5.7(C), and shall be remedied by the Respondents to ensure successful remediation.
- (C) The Monitoring component shall provide that Respondents 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 6.1, a written report, for the review and approval of the Executive Director, prepared by the Specialist, evaluating compliance with the approved Restoration Plan. These reports shall also include photographs taken during the periodic site inspections pursuant to 5.7(A) above, at the same time of year, from the same pre-designated locations (as identified on the map submitted pursuant to Section 5.6(F)) indicating the progress of recovery in the Restoration Area.
 - (1) The locations from which the photographs are taken will not change over the course of the monitoring period unless recommended changes are approved by the Executive Director, pursuant to Section 7.0 of these Consent Orders.
- (D) If periodic inspections or the monitoring reports indicate that the restoration project 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, Respondents shall submit a revised or supplemental Restoration Plan ('Revised Restoration Plan') for review and approval by the Executive Director. If a Revised Restoration Plan is necessary, the plan shall be

prepared by a qualified 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 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 or amended CDP. 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 Respondents as required by Executive Director until the goals of the original, approved Restoration Plan have been met. Following completion of the Revised Restoration Plan's implementation, the duration of the monitoring period, set forth in Section 5.7(C), 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.

- (E) At the end of the five (5) year monitoring period (or other duration, if the monitoring period is extended pursuant to Section 5.7(D), above), Respondents shall submit, according to the procedure set forth under Section 6.1, a final detailed report prepared by a 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 5.7(D) of the Consent Orders, and the monitoring program shall be revised according to the requirements of these Consent Orders.

6.0 Implementation and Completion

- (A) Upon approval of the Restoration Plan (including the Removal, Remedial Grading, Geotechnical, Erosion Control, Revegetation, and Monitoring components) 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. Respondents shall complete implementation of each phase of the Restoration Plan within the schedule specified therein, and by the deadlines included in Sections 5.3, 5.4, 5.5, 5.6, and 5.7 of these Consent Orders. Respondents shall complete all work described in the Restoration Plan no later than one hundred twenty (120) days after the Restoration Plan is approved, at the latest. The Executive Director may extend this deadline or modify the approved schedule for good cause pursuant to Section 13.0 of the Orders.

- (B) Within thirty (30) days of the completion of the work described pursuant to each phase (removal, remedial grading, geotechnical, erosion control, revegetation, and monitoring) of restoration, Respondents shall submit, according to the procedures set forth under Section 6.1, a written report, prepared by a qualified Specialist, for the review and approval of the Executive Director, documenting all restoration work performed on the Properties 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 5.6(F)) documenting implementation of the respective components of the Restoration Plan, as well as photographs of the Properties before the work commenced and after it was completed.

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

California Coastal Commission
Statewide Enforcement Unit
Attn: John Del Arroz
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

With a copy sent to:

California Coastal Commission
San Diego District Office
Attn: Marsha Venegas, Enforcement Officer
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4402

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

ADDITIONAL PROVISIONS COMMON TO BOTH CONSENT ORDERS

- 7.0 **Revision of Deliverables.** The Executive Director may require revisions to deliverables under these Consent Orders, and Respondents shall revise any such deliverables consistent with the 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.

8.0 **Commission Jurisdiction.** The Commission has jurisdiction over resolution of these alleged Coastal Act violations pursuant to PRC Section 30810 and 30811. In light of the intent of the parties to resolve these matters, Respondents agree not to contest the Commission's jurisdiction to issue or enforce these Consent Orders.

9.0 **Resolution of Matter via Settlement.**

9.1 In light of the intent of the parties to resolve these matters in settlement, Respondents have agreed to withdraw their "Statement of Defense" form submitted on June 30, 2014 and October 23, 2014 and have 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 October 15, 2013. Specifically, Respondents have agreed not to contest the issuance or enforcement of these Consent Orders at a public hearing or any other proceeding.²

10.0 **Effective Date and Terms of the 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.

11.0 **Findings.** These Consent Orders are issued on the basis of the findings adopted by the Commission, as set forth in the document entitled "Staff Report and Findings for Consent Cease and Desist Order No. CCC-14-CD-05 and Consent Restoration Order No. CCC-14-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.

12.0 **Settlement/Compliance Obligation.**

12.1 In light of the intent of the parties to resolve these matters in settlement, Respondents have agreed to pay a monetary settlement in the amount of \$130,000 for the purpose of promoting conservation and restoration of sensitive habitats in

² This list of specific violations is not necessarily a complete list of all development on the Properties that is in violation of the Coastal Act and/or that may be of concern to the Commission. Accordingly, Commission's silence regarding (or absence of Commission action to address) other unpermitted development on the Properties is not indicative of the Commission's acceptance of, or acquiescence in, any such development.

coastal San Diego County. Respondents agree to make 5 payments of \$26,000 annually, with the first payment to be made by September 1, 2015, and four additional payments to be made no later than September 1, 2016, September 1, 2017, September 1, 2018, and September 1, 2019, respectively. The settlement monies shall be deposited into the Violation Remediation Account of the California Coastal Conservancy Fund (see Public Resources Code Section 30823) with a check made out to the Violation Remediation Account, or into such other public account as authorized by applicable California law at the time of the payment, and as designated by the Executive Director, with a check made out to that account. The settlement payment shall be submitted to the Commission's San Francisco Office, at the address provided in Section 6.1, to the attention of John Del Arroz of the Commission. Settlement payments shall include a reference to the numbers of these Consent Orders.


- 12.2 Failure to comply with any term or condition of these Consent Orders, including any deadline contained in these Consent Orders, unless the Executive Director grants an extension under Section 13.0, will constitute a violation of these Consent Orders and shall result in Respondents being liable for stipulated penalties in the amount of \$1,000 per day per violation. Respondents shall pay stipulated penalties regardless of whether Respondents have subsequently complied. If Respondents violate these Consent Orders, nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of the Commission to seek any other remedies available for the violations addressed herein, including imposition of civil penalties and other remedies pursuant to Public Resources Code 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.
- 13.0 **Deadlines.** Prior to the expiration of the deadlines established by these Consent Orders, Respondents may request from the Executive Director an extension of the deadlines. Such a request shall be made in writing and received by the Executive Director 10 days in advance of the deadline, and directed to the Executive Director, care of John Del Arroz, in the San Francisco office of the Commission. The Executive Director may grant an extension of deadlines upon a showing of good cause, if the Executive Director determines that Respondents have diligently worked to comply with their obligations under these Consent Orders, but cannot meet deadlines due to unforeseen circumstances beyond their control.
- 14.0 **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.
- 15.0 **Site Access.**

- 15.1 Respondents have obtained consent and will provide within 30 days of the execution of these Consent Orders, written documentation from SCC that Respondents, and other parties including Commission staff, have permission to access and perform restoration activities as set forth in these Consent Orders, on the Lagoon Property. If at any time Respondents are denied permission to access or perform restoration activities on the Lagoon Property, they shall refrain from accessing or performing work on the Lagoon Property and notify the Executive Director immediately. Respondents agree that at any point prior to their completion of the obligations set forth in these Consent Orders, if they are denied permission to access or perform restoration activities on the Lagoon Property and that denial results in their inability to carry out the terms and conditions of these Consent Orders, their obligation to resolve the violation described in Section 4.3 shall remain in effect and they shall utilize all reasonable efforts in a timely fashion to re-secure permission to access to and complete restoration work upon the Lagoon Property. Should Respondents fail to re-secure access after six months, the portion of the restoration that has not been completed shall be carried out at an off-site location, subject to the approval of the Executive Director, at a ratio of 3:1, and under a plan submitted by Respondents conforming substantively with the contents of the plan required under these Consent Orders, and subject to the approval of the Executive Director, within one year from the date Respondents were denied permission to access or perform restoration on the Lagoon Property.
- 15.2 Respondents shall provide access to the Respondents' Property at all reasonable times to Commission staff and any other agency having jurisdiction over the work being performed under these Consent Orders. Nothing in these Consent Orders is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Commission staff may enter and move freely about the portions of the site on which the violations are located, and on adjacent areas of the Properties for purposes, including, but not limited to: viewing the areas where development is 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 Respondents' implementation of the Restoration Plan and compliance with these Consent Orders.
- 16.0 **Government Liabilities.** Neither the State of California, the Commission, nor its employees shall be liable for injuries or damages to persons or property resulting from acts or omissions by Respondents in carrying out activities pursuant to these Consent Orders, nor shall the State of California, the Commission or its employees be held as a party to any contract entered into by Respondents or their agents in carrying out activities pursuant to these Consent Orders.

- 17.0 **Settlement via Consent Orders.** In light of the desire to settle this matter via these Consent Orders and avoid litigation, pursuant to the agreement of the parties as set forth in these Consent Orders, Respondents hereby agree not to seek a stay pursuant to PRC Section 30803(b) or to challenge the issuance and enforceability of these Consent Orders in a court of law or equity.
- 18.0 **Settlement of Claims.** The Commission and Respondents agree that these Consent Orders settle the Commission's monetary claims for relief from Respondents for the violations 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 Respondents fail 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 Properties beyond those that are the subject of the NOI.
- 19.0 **Successors and Assigns.** These Consent Orders shall run with the land, binding Respondents, including successors in interest, heirs, assigns, and future owners of the Respondents' Property. Respondents agree that they will provide notice to all successors in interest, heirs, assigns, and potential purchasers of the Respondents' Property of any remaining obligations under these Consent Orders. These Consent Orders are also a personal legal obligation and, Respondents are responsible for the work required by these Consent Orders without regard to the ownership of the Respondents' Property.
- 20.0 **Modifications and Amendments.** Except as provided in Section 7.0, and for other minor, non-substantive modifications, subject to agreement between the Executive Director and Respondents, these Consent Orders may be amended or modified only in accordance with the standards and procedures set forth in Section 13188(b) and Section 13197 of Title 14 of the California Code of Regulations.
- 21.0 **Government Jurisdiction.** These Consent Orders shall be interpreted, construed, governed, and enforced under and pursuant to the laws of the State of California.
- 22.0 **Integration.** These Consent Orders constitute the entire agreement between the parties and may not be amended, supplemented, or modified except as provided in these Consent Orders.
- 23.0 **Stipulation.** Respondents attest that they have reviewed the terms of these Consent Orders with counsel of their choosing and understand that their consent is final and stipulate to its issuance by the Commission

- 24.0 **Dismissal of Requests.** Immediately upon issuance of these Consent Orders, Respondents hereby withdraw any outstanding requests that they may have made under the Public Records Act, Cal. Govt. Code sections 6250 *et seq.*, for records from the California Coastal Commission.

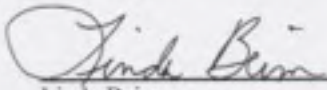
IT IS SO STIPULATED AND AGREED:
On behalf of Respondents:



Steven Beim

11-23-14

Date



Linda Beim

11-23-14

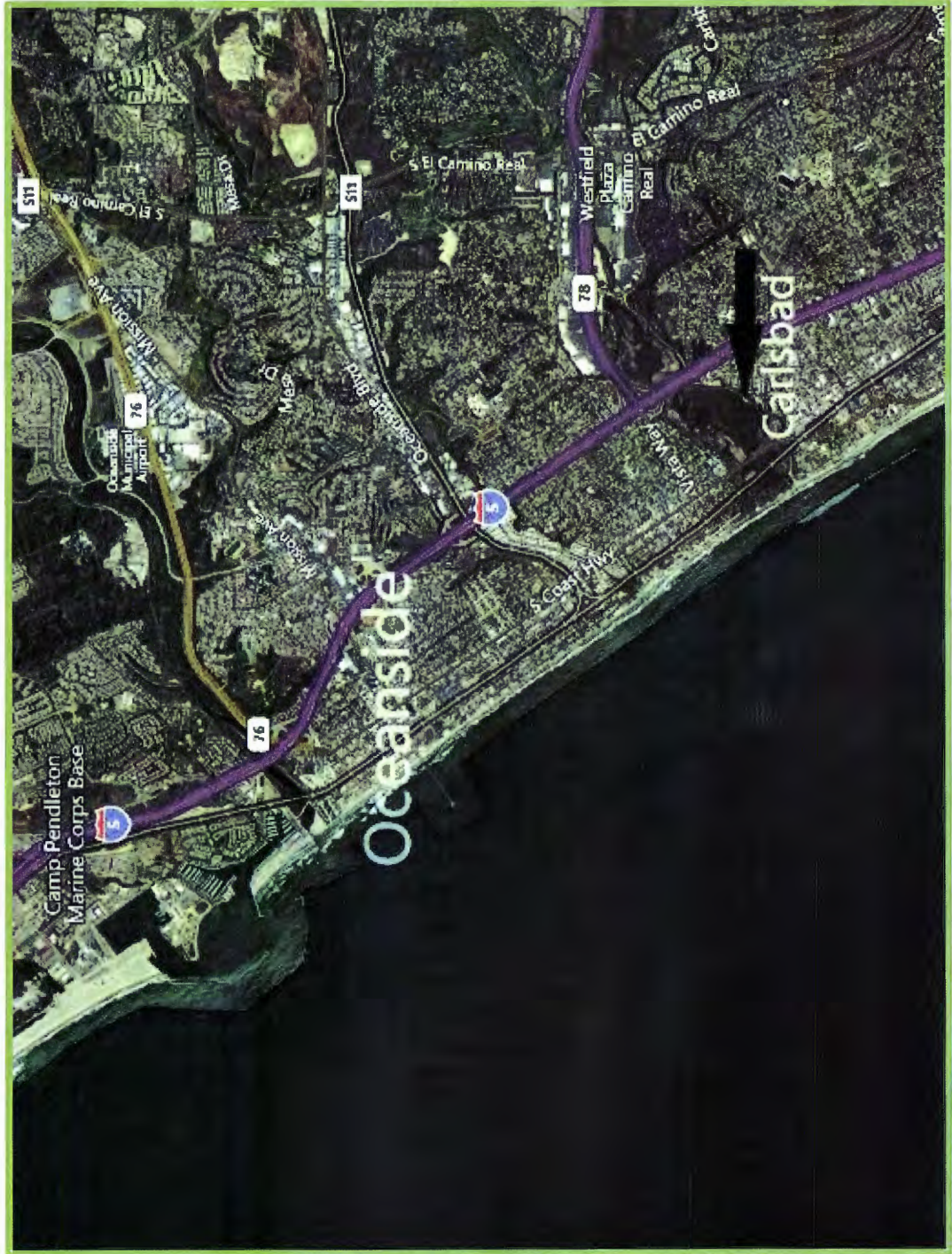
Date

Executed in _____ on behalf of the California Coastal Commission:

Charles Lester, Executive Director

Date

2381 Buena Vista Circle Carlsbad, San Diego County



CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST DISTRICT
1333 CAMINO DEL RIO SOUTH, SUITE 125
SAN DIEGO, CA 92108-3520
(619) 297-9740

COASTAL DEVELOPMENT PERMIT NO. 6-89-190
Page 1 of 4



On August 10, 1989, the California Coastal Commission granted to
John Levy
this permit for the development described below, subject to the attached
Standard and Special Conditions.

Description: Construction of a 4,305 square foot, four bedroom, two story
single family residence on a vacant site.

Lot Area	21,780 sq. ft.
Building Coverage	3,180 sq. ft. (16%)
Pavement Coverage	990 sq. ft. (5%)
Landscape Coverage	6,090 sq. ft. (28%)
Unimproved Area	11,520 sq. ft. (51%)
Parking Spaces	3
Zoning	R-1-7500
Plan Designation	RLM
Project Density	2 dua
Ht abv fin grade	27 feet

RECEIVED

NOV 13 1989

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Site: 2381 Buena Vista Circle, Carlsbad, San Diego County.
APN 155-221-07.

Issued on behalf of the California Coastal Commission by

PETER DOUGLAS
Executive Director
and

IMPORTANT: THIS PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT
WITH THE SIGNED ACKNOWLEDGEMENT HAS BEEN RETURNED TO THE COMMISSION OFFICE.

ACKNOWLEDGEMENT

The undersigned permittee acknowledges
receipt of this permit and agrees to
abide by all terms and conditions
thereof.

11/13/89
Date

Signature of Permittee

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgement. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

SPECIAL CONDITIONS:

The permit is subject to the following conditions:

1. Transfer of Title of the Wetlands/Floodplain Area. Prior to the issuance of the coastal development permit, the applicant shall record an irrevocable offer to dedicate in fee to the Wildlife Conservation Board, Coastal Conservancy, or to a private association acceptable to the Executive Director, an open space easement over the area shown on the attached Exhibit "2" and generally described as the wetland/floodplain portion of the applicant's property. The document shall include legal descriptions of both the applicant's entire parcel(s) and the easement area.

The offer shall be irrevocable for a period of 21 years, shall run in favor of the People of the State of California, binding successors and assigns of the applicant and/or landowners, and shall be recorded prior to all other liens and encumbrances, except tax liens. The offer to dedicate shall be in a form and content acceptable to the Executive Director.

SPECIAL CONDITIONS, continued:

2. Open Space Deed Restriction. Prior to the issuance of the coastal development permit, the applicant shall record a restriction against the subject property, free of all prior liens and encumbrances, except for tax liens, and binding on the permittee's successors in interest and any subsequent purchasers of any portion of the real property. The restriction shall prohibit any alteration of landforms, removal of vegetation or the erection of structures of any type, except as herein permitted, in the area shown on the attached Exhibit "3" and generally described as the area between the proposed residence and the wetlands boundary or southern limit of the area proposed to be dedicated to a public agency, and the two foot wide vertical access easement located parallel and adjacent to the western property line. The recording document shall include legal descriptions of both the applicant's entire parcel(s) and the restricted area, and shall be in a form and content acceptable to the Executive Director. Evidence of recordation of such restriction shall be subject to the review and written approval of the Executive Director.

3. Grading and Erosion Control. The applicant shall comply with the following conditions related to grading and erosion control:

A. Prior to the issuance of the coastal development permit, the applicant shall submit final grading plans to the Executive Director for review and written approval. Said plans shall indicate that all grading activities shall be prohibited within the period from October 1 to March 31st of each year.

B. Prior to commencement of any grading activity, the permittee shall submit a grading schedule which indicates that grading will be completed within the permitted time frame designated in this condition and that any variation from the schedule shall be promptly reported to the Executive Director.

C. All permanent runoff and erosion control devices shall be developed and installed prior to or concurrent with any on-site grading activities.

D. All areas disturbed, but not completed, during the construction season, including graded pads, shall be stabilized in advance of the rainy season. The use of temporary erosion control measures, such as berms, interceptor ditches, sandbagging, filtered inlets, debris basins, and silt traps shall be utilized in conjunction with plantings to minimize soil loss from the construction site.

SPECIAL CONDITIONS, continued:

4. Drainage Plan. Prior to the issuance of the coastal development permit, the applicant shall submit for the review and written approval of the Executive Director, a drainage and runoff control plan. This plan shall document that runoff from the roof, driveway and other impervious surfaces will be collected and appropriately discharged. Runoff shall be directed away from the hillside(s) where possible, and any runoff directed over the hillside(s) shall be retained and discharged at a non-erosive velocity (less than 6 cfs) and at lagoon level elevation (elevation +6) in order to protect the scenic resources and habitat values of the hillside(s) from degradation by scouring or concentrated runoff.

5. Assumption of Risk. Prior to the issuance of the coastal development permit, the applicant [and landowner] shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide: (a) that the applicant understands that the site may be subject to extraordinary hazard from flooding and from slope failure, and the (b) applicant hereby waives any future claims of liability against the Commission or its successors in interest for damage from such hazards. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens and any other encumbrances which the Executive Director determines may affect the interest being conveyed.

6. Exterior Treatment. Prior to the issuance of the coastal development permit, the applicant shall submit building plans for the review and approval in writing of the Executive Director, indicating the exterior materials and color scheme to be utilized in the construction of the proposed residence. Earth tones designed to minimize the project's contrast with the surrounding area shall be utilized.

7. Public Rights. By acceptance of this permit, the applicant acknowledges, on behalf of him/herself and his/her successors in interest, that issuance of the permit shall not constitute a waiver of any public rights which may exist on the property. The applicant shall also acknowledge that issuance of the permit and construction of the permitted development shall not be used or construed to interfere with any public prescriptive or public trust rights that may exist on the property.

(9190P)

DOC # 2010-0571933



RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

OCT 25, 2010 10:27 AM

CALIFORNIA COASTAL COMMISSION
725 Front Street, Suite 300
Santa Cruz, CA 95060
ATTN: Legal Division

OFFICIAL RECORDS
SAN DIEGO COUNTY RECORDER'S OFFICE
DAVID L. BUTLER, COUNTY RECORDER
FEES: 0.00

7478

PAGES: 2

STATE OF CALIFORNIA OFFICIAL BUSINESS
Document entitled to free recordation
Pursuant to Government Code §27383



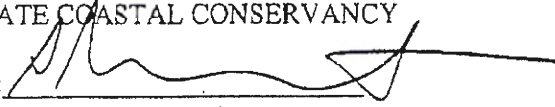
CDP: 6-89-190, Levy

CERTIFICATE OF ACCEPTANCE
OFFER TO DEDICATE FEE TITLE
AND DECLARATION OF RESTRICTIONS

This is to certify that, pursuant to authority conferred by resolution of the State Coastal Conservancy adopted on December 4, 2002, the State Coastal Conservancy hereby accepts the Offer to Dedicate Fee Title and Declaration of Restrictions executed by John C. Levy, Jr. on October 26, 1989 and recorded on October 26, 1989 as Instrument Number 89-583306, in the Official Records in the Office of the Recorder of San Diego County.

Dated: 10/18/10

STATE COASTAL CONSERVANCY

By: 
Samuel Schuchat, Executive Officer

STATE OF CALIFORNIA

COUNTY OF Alameda

On Oct. 18th, 2010, before me, HONG LE TRUONG, a Notary Public, personally appeared SAMUEL SCHUCHAT, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature Hong Le Truong (Seal)



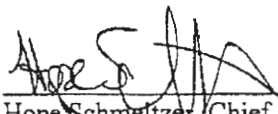
ACKNOWLEDGMENT BY THE CALIFORNIA COASTAL COMMISSION
OF ACCEPTANCE OF OFFER TO DEDICATE

7479

This is to certify that the State Coastal Conservancy is a public agency acceptable to the Executive Director of the California Coastal Commission to be Grantee under the Offer to Dedicate Fee Title and Declaration of Restrictions executed by John C. Levy, Jr. on October 26, 1989 and recorded on October 26, 1989 as Instrument Number 89-583306, in the Official Records in the Office of the Recorder of San Diego County.

Dated: 9/28/2010

CALIFORNIA COASTAL COMMISSION

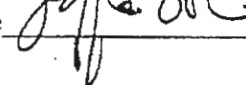

Hope Schmeltzer, Chief Counsel

STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

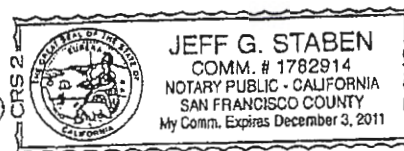
On September 28, 2010, before me, Jeff G. Staben, a Notary Public, personally appeared HOPE SCHMELTZER, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature 

(Seal)



10-26-89

RECORDED BY 103666

RECORDING REQUESTED BY AND RETURN TO:
CALIFORNIA COASTAL COMMISSION
631 HOWARD STREET, FOURTH FLOOR
SAN FRANCISCO, CA 94105

1283 88 583806

This document is being recorded by
First American Title Insurance Co. as
an accommodation only. It has not
been examined as to execution or
contents on file.

RECORDED

89 OCT 26 PM 3:50

FILED

IRREVOCABLE OFFER TO DEDICATE FEE TITLE

NO FEE

THIS IRREVOCABLE OFFER AND DEDICATION OF FEE TITLE (hereinafter
"Offer") is made this (1) 1/26, 19 89, by

(2) John C. Levy, Jr. (hereinafter referred to as "Grantor").

I. WHEREAS, Grantor is the legal owner of a fee interest of certain
real properties located in the County of (3) San Diego
State of California and described in the attached Exhibit A (4)
(hereinafter referred to as the "Property") and

II. WHEREAS, all of the Property is located within the coastal zone
as defined in Section 30103 of the California Public Resources Code (which
code is hereinafter referred to as the "Public Resources Code"); and

III. WHEREAS, the California Coastal Act of 1976, (hereinafter referred
to as the "Act") creates the California Coastal Commission (hereinafter
referred to as the "Commission") and requires that any development approved
by the Commission must be consistent with the policies of the Act set forth
in Chapter 3 of Division 20 of the Public Resources Code; and

IV. WHEREAS, Pursuant to the Act, Grantor applied to the Commission
for a permit to undertake development as defined in the Act within the
coastal zone of (5) San Diego County (hereinafter the
"Permit"); and

WHEREAS, a coastal development permit, No. (6) 6-40-198
was granted on (7) August 10, 19 89, by the Commission
in accordance with the provisions of the Staff Recommendations and Findings
(8) (Exhibit B) attached hereto and hereby incorporated by reference.

COUNTY CLERK
STATE OF CALIFORNIA
\$70.15 (NOTARY FEE)

10-26-89

-3-

1295

1 Chapter 3 of the Act and that in the absence of the protections provided by
2 the Condition, said finding could not be made; and
3 VIII. WHEREAS, Grantor has elected to comply with the Condition and
4 execute this Offer so as to enable Grantor to undertake the development
5 authorized by the Permit; and

6 IX. WHEREAS, it is intended that this offer is irrevocable and shall
7 constitute enforceable restrictions within the meaning of Article XIII,
8 Section 8 of the California Constitution and that said Offer when accepted
9 shall thereby qualify as an enforceable restriction under the provision of
10 the California Revenue and Taxation Code, Section 402.1;

11 NOW, THEREFORE, in consideration of the above and the mutual
12 benefit and conditions set forth herein, the substantial public benefits
13 for the protection of coastal resources to be derived, and the issuance of
14 the Permit to the owner by the Commission, Grantor hereby irrevocably
15 offers to dedicate to the Wildlife Conservation Board, Coastal Conservancy
16 or a private association acceptable to the Executive Director of
17 the Commission (hereinafter, the "Grantee"), fee title to the Property
18 specifically described in Exhibit C.

19 (1) BENEFIT AND BURDEN. This offer shall run with and burden the
20 Property, and all obligations, terms, conditions, and restrictions hereby
21 imposed shall be deemed to be covenants and restrictions running with the
22 land and shall be effective limitations on the use of the Property from the
23 date of recordation of this document and shall bind the Grantor and all
24 successors and assigns for a period of twenty-one (21) years.

25 (2) CONSTRUCTION OF VALIDITY. If any provision of this
26 instrument is held to be invalid or for any reason becomes unenforceable,
27 no other provision shall be thereby affected or impaired.

COURT FILER
STATE OF CALIFORNIA
CIV. 115 NOV 03 '89

10-26-89

-5-

1297

1 Executed on this 24 day of November at
 2 San Diego, California
 3 Dated: 24 Nov 89 Signed: [Signature]

4 [Signature]
 5 PRINT OR TYPE NAME ABOVE
 6
 7
 8
 9 PRINT OR TYPE NAME ABOVE

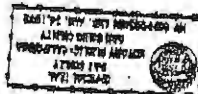
10
 11 NOTE TO NOTARY PUBLIC:

12 If you are notarizing the signatures of anyone signing on behalf of a
 13 trust, corporation, partnership, etc., please use the correct notary jurat
 14 (acknowledgment) as explained in your Notary Law Book.

15 STATE OF CALIFORNIA)

16
 17 COUNTY OF San Diego

18 On this 24 day of November, in the year 1989
 19 before me [Signature], a Notary Public, personally
 20 appeared John E. Leary, Jr.
 21 personally known to me (or proved to me on the basis of satisfactory
 22 evidence) to be the person(s) whose name is subscribed to this instrument,
 23 and acknowledged that he/she/they executed it.



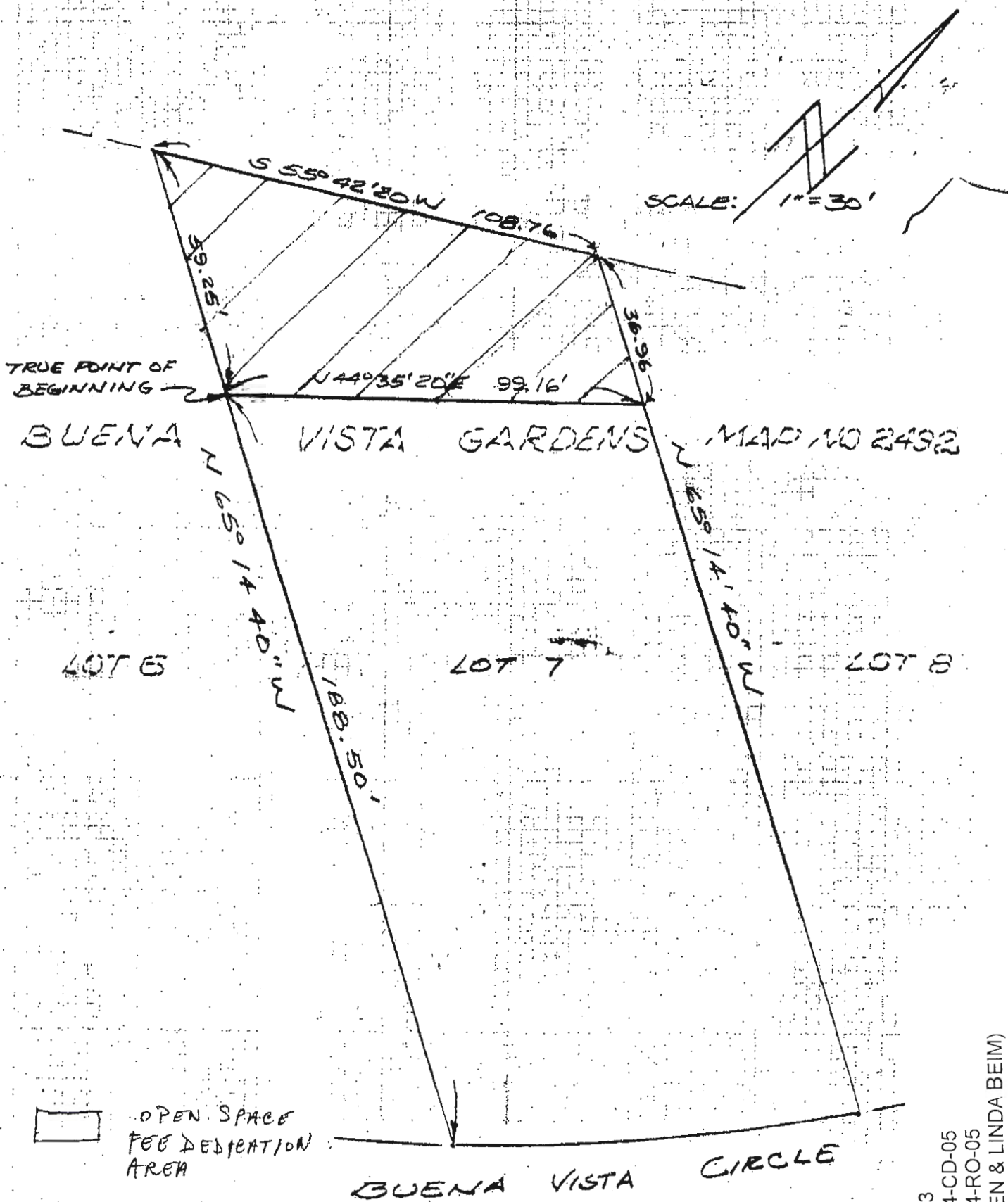
[Signature]
 NOTARY PUBLIC IN AND FOR SAID COUNTY AND
 STATE



COUNTY FINDER
 STATE OF CALIFORNIA
 1979, 1981, 1983, 1985, 1987, 1989, 1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009, 2011, 2013, 2015, 2017, 2019, 2021, 2023, 2025, 2027, 2029, 2031, 2033, 2035, 2037, 2039, 2041, 2043, 2045, 2047, 2049, 2051, 2053, 2055, 2057, 2059, 2061, 2063, 2065, 2067, 2069, 2071, 2073, 2075, 2077, 2079, 2081, 2083, 2085, 2087, 2089, 2091, 2093, 2095, 2097, 2099, 2101, 2103, 2105, 2107, 2109, 2111, 2113, 2115, 2117, 2119, 2121, 2123, 2125, 2127, 2129, 2131, 2133, 2135, 2137, 2139, 2141, 2143, 2145, 2147, 2149, 2151, 2153, 2155, 2157, 2159, 2161, 2163, 2165, 2167, 2169, 2171, 2173, 2175, 2177, 2179, 2181, 2183, 2185, 2187, 2189, 2191, 2193, 2195, 2197, 2199, 2201, 2203, 2205, 2207, 2209, 2211, 2213, 2215, 2217, 2219, 2221, 2223, 2225, 2227, 2229, 2231, 2233, 2235, 2237, 2239, 2241, 2243, 2245, 2247, 2249, 2251, 2253, 2255, 2257, 2259, 2261, 2263, 2265, 2267, 2269, 2271, 2273, 2275, 2277, 2279, 2281, 2283, 2285, 2287, 2289, 2291, 2293, 2295, 2297, 2299, 2301, 2303, 2305, 2307, 2309, 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2975, 2977, 2979, 2981, 2983, 2985, 2987, 2989, 2991, 2993, 2995, 2997, 2999, 3001, 3003, 3005, 3007, 3009, 3011, 3013, 3015, 3017, 3019, 3021, 3023, 3025, 3027, 3029, 3031, 3033, 3035, 3037, 3039, 3041, 3043, 3045, 3047, 3049, 3051, 3053, 3055, 3057, 3059, 3061, 3063, 3065, 3067, 3069, 3071, 3073, 3075, 3077, 3079, 3081, 3083, 3085, 3087, 3089, 3091, 3093, 3095, 3097, 3099, 3101, 3103, 3105, 3107, 3109, 3111, 3113, 3115, 3117, 3119, 3121, 3123, 3125, 3127, 3129, 3131, 3133, 3135, 3137, 3139, 3141, 3143, 3145, 3147, 3149, 3151, 3153, 3155, 3157, 3159, 3161, 3163, 3165, 3167, 3169, 3171, 3173, 3175, 3177, 3179, 3181, 3183, 3185, 3187, 3189, 3191, 3193, 3195, 3197, 3199, 3201, 3203, 3205, 3207, 3209, 3211, 3213, 3215, 3217, 3219, 3221, 3223, 3225, 3227, 3229, 3231, 3233, 3235, 3237, 3239, 3241, 3243, 3245, 3247, 3249, 3251, 3253, 3255, 3257, 3259, 3261, 3263, 3265, 3267, 3269, 3271, 3273, 3275, 3277, 3279, 3281, 3283, 3285, 3287, 3289, 3291, 3293, 3295, 3297, 3299, 3301, 3303, 3305, 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EXHIBIT

Beginning at the Southeast corner of said Lot 7; thence along the Southerly boundary thereof North $65^{\circ}14'40''$ West 188.50 feet to the TRUE POINT OF BEGINNING; thence leaving said Southerly boundary, North $44^{\circ}35'20''$ East 99.16 feet to a point in the Northerly boundary of said Lot 7; thence along the boundary of Lot 7 as follows: North $65^{\circ}14'40''$ West 36.96 feet to the Northwest corner; thence South $55^{\circ}42'20''$ West 108.76 feet to the Southwest corner; thence South $65^{\circ}14'40''$ East 59.25 feet to the TRUE POINT OF BEGINNING.



1270

RECORDING REQUESTED BY AND RETURN TO:
STATE OF CALIFORNIA
CALIFORNIA COASTAL COMMISSION
SAN DIEGO AREA OFFICE
1333 CAMINO DEL RIO SOUTH, SUITE 125
SAN DIEGO, CA 92108-3520

89 583305

RECORDED IN
OFFICIAL RECORDS
OF SAN DIEGO COUNTY, CA.

89 OCT 26 PM 3:50

DEED RESTRICTION

VERA L. LYLE
COUNTY RECORDER

I. WHEREAS,

John C. Levy Jr.

RF	25
AR	23
MG	1

hereinafter referred to as Owner(s), is the record owner of the following real property:

Lot 7 of Buena Vista Gardens, in the city of carlsbad, county of

San Diego, State of California, according to the map hereof no 2492

filed in the office of the county recorder of San Diego county August 4th, 1948

hereinafter referred to as the subject property; and

II. WHEREAS, the California Coastal Commission is acting on behalf of the People of the State of California; and

III. WHEREAS, the subject property is located within the coastal zone as defined in Section 30103 of the California Public Resources Code (hereinafter referred to as the California Coastal Act); and

IV. WHEREAS, pursuant to the California Coastal Act of 1976, the Owner applied to the California Coastal Commission for a coastal development permit for the development on the subject property described above; and

V. WHEREAS, coastal development permit No. 64-89-190 was granted on 8/10/89 by the California Coastal Commission in accordance with the provision of the Staff Recommendation and Findings, attached hereto as Exhibit "A" and herein incorporated by reference; and

Exhibit 4

CCC-14-CD-05

CCC-14-RO-05

(STEVEN & LINDA BEIM)

Page 1 of 6

This document is being recorded by First American Title Insurance Co. as an accommodation only. It has not been examined as to execution or impact on title.

1 VI. WHEREAS, coastal development permit No. 6-89-190
2 was subject to the terms and conditions including but not limited
3 to the following conditions:

4 Prior to the issuance of the coastal development permit, the applicant
5 [and landowner] shall execute and record a deed restriction, in a form and
6 content acceptable to the Executive Director, which shall provide: (a) that
7 the applicant understands that the site may be subject to extraordinary
8 hazard from flooding and from slope failure, and the (b) applicant hereby
9 waives any future claims of liability against the Commission or its successors
in interest for damage from such hazards. The document shall run with the
land, binding all successors and assigns, and shall be recorded free of
prior liens and any other encumbrances which the Executive Director determines
may affect the interest being conveyed.

10 Prior to the issuance of the coastal development permit, the applicant shall
11 record a restriction against the subject property, free of all prior liens
12 and encumbrances, except for tax liens, and binding on the permittee's
13 successors in interest and any subsequent purchasers of any portion of the
14 real property. The restriction shall prohibit any alteration of landforms,
15 removal of vegetation or the erection of structures of any type, ~~except as~~
16 herein permitted, in the area shown on the attached Exhibit "3" and generally
17 described as the area between the proposed residence and the wetlands boundary
or southern limit of the area proposed to be dedicated to a public agency,
and the two foot wide vertical access easement located parallel and adjacent
to the western property line. The recording document shall include legal
descriptions of both the applicant's entire parcel(s) and the restricted
area, and shall be in a form and content acceptable to the Executive
Director. Evidence of recordation of such restriction shall be subject to
the review and written approval of the Executive Director.

18 VII. WHEREAS, the Commission found that but for the
19 imposition of the above conditions the proposed development could
20 not be found consistent with the provisions of the California
21 Coastal Act of 1976 and that a permit could therefore not have
22 been granted; and

23 VIII. WHEREAS, it is intended that this Deed Restriction
24 is irrevocable and shall constitute enforceable restrictions; and

25 IX. WHEREAS, Owner has elected to comply with the
26 conditions imposed by Permit No. 6-89-190 so as to enable
27 Owner to undertake the development authorized by the permit.

1 NOW, THEREFORE, in consideration of the granting of Permit
2 No. 6-89-190 to the Owner by the California Coastal Commission,
3 the Owner hereby irrevocably covenants with the California Coastal
4 Commission that there be and hereby is created the following
5 restrictions on the use and enjoyment of said subject property, to
6 be attached to and become a part of the deed to the property. The
7 undersigned Owner, for himself/herself and for his/her heirs,
8 assigns, and successors in interest, covenants and agrees that:

- 9 (a) The site may be subject to extraordinary hazard from flooding and from
10 slope failure;
11 (b) The applicant waives any future claims of liability against the Commission
12 or its successors in interest for damage from such hazards;
13 (c) Any alteration of landforms, removal of vegetation or the erection of
14 structures of any type in the areas generally described as the wetlands/
15 floodplain, the area between the proposed structure and the wetlands
16 boundary, and the two foot wide vertical access easement located parallel
17 and adjacent to the western property line and as shown on Exhibit B
18 attached hereto and incorporated herein by reference, is prohibited.
19
20
21
22
23

24 If any provision of these restrictions is held to be invalid
25 or for any reason becomes unenforceable, no other provision shall
26 be thereby affected or impaired.
27

1 Said deed restriction shall remain in full force and effect
2 during the period that said permit, or any modification or
3 amendment thereof, remains effective, and during the period that
4 the development authorized by said permit or any modification of
5 said development, remains in existence in or upon any part of, and
6 thereby confers benefit upon, the subject property described
7 herein, and to that extent, said deed restriction is hereby deemed
8 and agreed by Owner to be a covenant running with the land, and
9 shall bind Owner and all his/her assigns or successors in interest.

10
11 Owner agrees to record this Deed Restriction in the
12 Recorder's office for the County of San Diego, as
13 soon as possible after the date of execution.

14
15 DATED: August 30th, 19 1989

16
17 SIGNED: 

18
19 John C. Levy Jr.

20 PRINT OR TYPE NAME OF ABOVE

21
22
23 SIGNED: _____

24
25
26 PRINT OR TYPE NAME OF ABOVE

27 (NOTARY ACKNOWLEDGMENT ON NEXT PAGE)

Exhibit 4
CCC-14-CD-05
CCC-14-RO-05
(STEVEN & LINDA BEIM)
Page 4 of 6

1 NOTE TO NOTARY PUBLIC: If you are notarizing the signatures of
 2 persons signing on behalf of a corporation, partnership, trust,
 3 etc., please use the correct notary jurat (acknowledgment) as
 4 explained in your Notary Public Law Book.

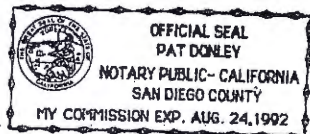
5
 6 State of California, County of San Diego, ss

7 On this 29 day of August, in the

8 year 1989, before me Pat Donley, a

9 Notary Public, personally appeared John C. Cary Jr.,

10 personally known to me (or proved to me on the basis of
 11 satisfactory evidence) to be the person whose name is subscribed
 12 to this instrument, and acknowledged that he/she executed it.



15
 16 NOTARY PUBLIC IN AND FOR SAID
 17 COUNTY AND STATE

18 State of California, County of _____, ss

19 On this _____ day of _____, in the

20 year _____, before me _____, a

21 Notary Public, personally appeared _____,

22 personally known to me (or proved to me on the basis of
 23 satisfactory evidence) to be the person whose name is subscribed
 24 to this instrument, and acknowledged that he/she executed it.

25
 26 NOTARY PUBLIC IN AND FOR SAID
 27 COUNTY AND STATE

Exhibit 4
 CCC-14-CD-05
 CCC-14-RO-05
 (STEVEN & LINDA BEIM)
 Page 5 of 6

This is to certify that the deed restriction set forth above is hereby acknowledged by the undersigned officer on behalf of the California Coastal Commission pursuant to authority conferred by the California Coastal Commission when it granted Coastal Development Permit No. 6-89-190 on August 10, 1989 and the California Coastal Commission consents to recordation thereof by its duly authorized officer.

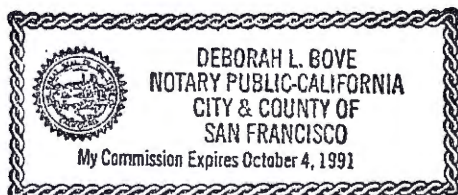
Dated: October 23, 1989

John Bowers
John Bowers, Staff Counsel
California Coastal Commission

STATE OF California)
COUNTY OF San Diego) ss

On 10/23/89, before me DEBORAH L. BOVE
Notary Public, personally appeared JOHN BOWERS.

personally known to me to be (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument as the STAFF COUNSEL and authorized representative of the California Coastal Commission and acknowledged to me that the California Coastal Commission executed it.



Deborah L. Bove
NOTARY PUBLIC IN AND FOR
SAID STATE AND COUNTY

DOC # 2013-0679296



NOV 18, 2013 10:31 AM

OFFICIAL RECORDS
SAN DIEGO COUNTY RECORDER'S OFFICE
Ernest J. Dronenburg, Jr., COUNTY RECORDER
FEES: 0.00

PAGES: 4



RECORDING REQUESTED BY:

California Coastal Commission

WHEN RECORDED MAIL TO:

California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219
Attention: Maggie Weber

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

DOCUMENT TITLE:

NOTICE OF VIOLATION OF THE COASTAL ACT

Re: Assessor's Parcel No. 155-221-18

Property Owners:

Steven and Linda Beim

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

CALIFORNIA COASTAL COMMISSION
Attention: Maggie Weber
45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219

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

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

On behalf of Charles Lester, I, Lisa Haage declare:

1. Charles Lester is the Executive Director of the California Coastal Commission (hereinafter referred to as the "Commission"). The Commission was created by the California Coastal Act of 1976 (hereinafter, "Coastal Act"), which is codified in the California Public Resources Code (hereinafter, "PRC") at sections 30000 to 30900. PRC section 30812 provides for the Executive Director of the Commission ("Executive Director") to record Notices of Violation of the Coastal Act in the County Recorder's office for the county in which all or part of a property on which a violation of the Coastal Act has occurred is located. Charles Lester, as Executive Director of the Commission, has specifically delegated this authority to me to act on his behalf.
2. A violation of the Coastal Act has occurred on a certain parcel situated in San Diego County, California, more particularly described as follows:

LOT 7 OF BUENA VISTA GARDENS, IN THE CITY OF CARLSBAD, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 2492, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, AUGUST 4, 1948.

EXCEPTING THEREFROM:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 7; THENCE ALONG THE SOUTHERLY BOUNDARY THEREOF NORTH 65°14'40" WEST 188.50 FEET TO THE TRUE POINT OF BEGINNING; THENCE LEAVING SAID SOUTHERLY BOUNDARY, NORTH 44°35'20" EAST 99.16 FEET TO A POINT IN THE NORTHERLY BOUNDARY OF SAID LOT 7; THENCE ALONG THE BOUNDARY OF LOT 7 AS FOLLOWS: NORTH 65°14'40" WEST 36.96 FEET TO THE NORTHWEST CORNER; THENCE SOUTH 55°42'20" WEST 108.76

FEET TO THE SOUTHWEST CORNER; THENCE SOUTH 65°14'40" EAST
59.25 FEET TO THE TRUE POINT OF BEGINNING.

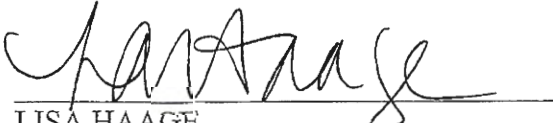
Owners of Record: Steven and Linda Beim

The Violation consists of the undertaking of development activity without the authorization required by the Coastal Act and in violation of the terms of an existing coastal development permit (number 6-89-190).

3. This property is located within the Coastal Zone as that phrase is defined in the Coastal Act (PRC Section 30103).
4. The record owners of said real property are: Steven and Linda Beim.
5. The violation of the Coastal Act consists of the performance of the following development: Grading, removal of wetland vegetation and construction of concrete retaining walls, a wooden stairway, and a lagoon overlook deck within an area deed restricted for open space. The Commission retains a file on this matter under Violation File No. V-6-10-005.
6. The requirements set forth in PRC Section 30812 for notice and recordation of this Notice of Violation have been satisfied. Recording of this notice is authorized under PRC Section 30812.
7. The California Coastal Commission notified the record owners, Steven and Linda Beim, of its intent to record a Notice of Violation in this matter in a letter, dated October 15, 2013.
8. No objection was received by November 4, 2013, the legal deadline for such an objection to be submitted. Therefore, the Commission has not received a timely written objection to the recordation of the Notice of Violation. Therefore the Executive Director of the Commission is recording the Notice of Violation as provided for in the Coastal Act, under PRC Section 30812.

Executed in San Francisco, California, on 7 November 2013.

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


LISA HAAGE

Chief of Enforcement, California Coastal Commission

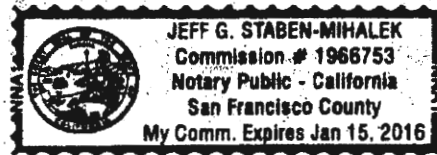
NOTARY ACKNOWLEDGMENT ON NEXT PAGE

STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

On November 7, 2013, before me, Jeff G. Staben-Mihalek, a Notary Public, personally appeared Lisa Haage, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

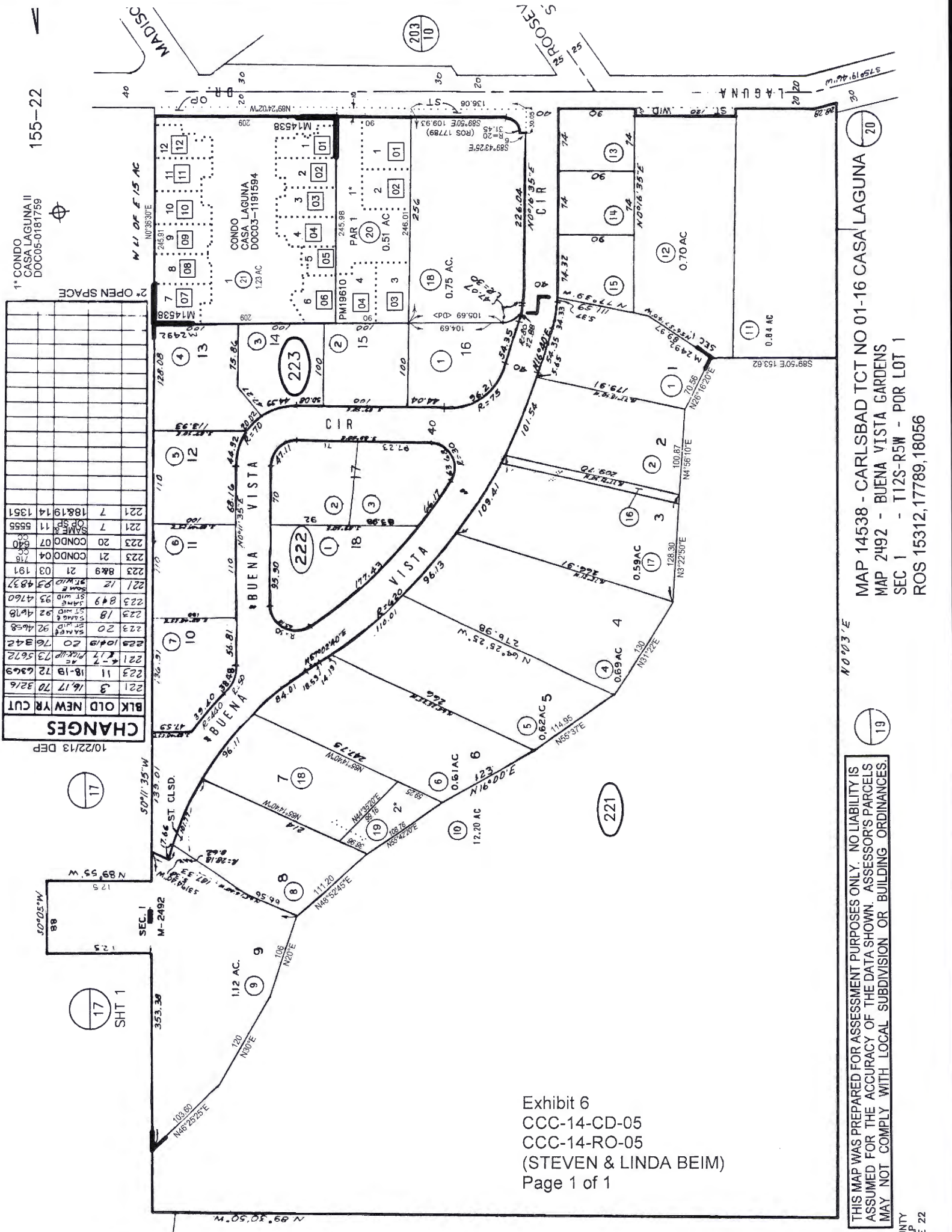
WITNESS my hand and official seal.



Signature

A handwritten signature in dark ink, appearing to read "Jeff Staben-Mihalek", written over a horizontal line.

(Seal)



155-22

1* CONDO
CASA LAGUNA II
DOC05-0181759

CHANGES		10/22/13 DEP	
BLK	OLD NEW YR CUT		
221	3	16.17	70 32/6
223	11	18.19	72 63/69
223	20	20	76 34/2
223	21	21	78 46/58
223	22	22	80 47/18
223	23	23	82 48/37
223	24	24	84 49/37
223	25	25	86 50/37
223	26	26	88 51/37
223	27	27	90 52/37
223	28	28	92 53/37
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223	300	300	636 325/37
223	301	301	638 326/37
223	302	302	640 327/37
223	303	303	642 328/37
223	304	304	644 329/37

Aerial of 2381 Buena Vista Circle Carlsbad, San Diego County





Exhibit 8
CCC-14-CD-05
CCC-14-RO-05
(STEVEN & LINDA BEIM)
Page 1 of 1



Exhibit 9
CCC-14-CD-05
CCC-14-RO-05
(STEVEN & LINDA BEIM)
Page 1 of 1



Exhibit 10
CCC-14-CD-05
CCC-14-RO-05
(STEVEN & LINDA BEIM)
Page 1 of 1



Exhibit 11
CCC-14-CD-05
CCC-14-RO-05
(STEVEN & LINDA BEIM)
Page 1 of 1



Exhibit 12
CCC-14-CD-05
CCC-14-RO-05
(STEVEN & LINDA BEIM)
Page 1 of 1

CALIFORNIA COASTAL COMMISSION

San Diego Coast District Office
7575 Metropolitan Dr., Suite 103
San Diego, CA 92108-4402
(619) 767-2370

**NOTICE OF VIOLATION OF THE CALIFORNIA COASTAL ACT
REGULAR AND CERTIFIED MAIL (Z 0002 4470 4582)**

June 15, 2011

Steven & Linda Beim
2381 Buena Vista Circle
Carlsbad, CA 92008-1604

Violation File Number: V-6-10-005

Property Location: 2381 Buena Vista Circle, Carlsbad; San Diego County
Assessor's Parcel No. 155-221-07

Unpermitted Development¹: Construction of a stairway and wooden dock in an open space deed restricted area in a wetland; non-compliance with the terms and conditions of a previously issued coastal development permit

Dear Mr. & Mrs. Beim:

The California Coastal Act² was enacted by the State Legislature in 1976 to provide long-term protection of California's 1,100-mile coastline through implementation of a comprehensive planning and regulatory program designed to manage conservation and development of coastal resources. The California Coastal Commission ("Commission") is the state agency created by, and charged with administering, the Coastal Act of 1976. In making its permit and land use planning decisions, the Commission carries out Coastal Act policies, which, amongst other goals, seek to protect and restore sensitive habitats (such as wetlands); protect natural landforms; protect scenic landscapes and views of the sea; protect against loss of life and property from coastal hazards; and provide maximum public access to the sea.

Our staff has confirmed that development including, but not limited to, the placement of a wooden stairway and dock, has occurred on your property within an open space deed restricted area. The subject property is located within the Coastal Zone and is directly adjacent to an Ecological Reserve - the Buena Vista Lagoon. Construction of the stairway and dock also resulted in the removal of sensitive native vegetation.

"Development" is broadly defined by Section 30106 of the Coastal Act as:

¹ Please note that the description herein of the violation at issue is not necessarily a complete list of all development on the subject property that is in violation of the Coastal Act and/or that may be of concern to the Commission. Accordingly, you should not treat the Commission's silence regarding (or failure to address) other development on the subject property as indicative of Commission acceptance of, or acquiescence in, any such development.

² The Coastal Act is codified in sections 30,000 to 30,900 of the California Public Resources Code. All further section references are to that code, and thus, to the Coastal Act, unless otherwise indicated.

"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....

Pursuant to Section 30600(a) of the Coastal Act, any person wishing to perform or undertake development in the coastal zone must obtain a coastal development permit ("CDP"), in addition to any other permit required by law. The construction of a stairway and dock and removal of native wetlands vegetation constitute development under the Coastal Act, and, therefore, require a coastal development permit. Commission staff researched our permit files and concluded that no coastal development permits were issued for any of the development described above. Any non-exempt development activity (which is the case here) conducted in the Coastal Zone without a valid coastal development permit constitutes a violation of the Coastal Act.

Background

On August 10, 1989, the Commission granted Coastal Development Permit No. 06-89-190 (enclosed for your reference) to a prior owner of the subject property. The permit authorized construction of a single-family residence on the property and restricted any development on the slope leading down to the lagoon. Special Condition 1 of the permit required recordation of an irrevocable offer to dedicate ("OTD") in fee to the Wildlife Conservation Board, Coastal Conservancy, or to a private association acceptable to the Commission Executive Director, an open space easement over the area generally described as the wetland or floodplain portion of the property. In its deliberations, the Commission found that development of a residence directly adjacent to the Buena Vista Lagoon would likely affect the continued productivity of the wetlands by degrading habitat quality and displacing wetland species. In order to mitigate these impacts, the Commission required recordation of the OTD, pursuant to Special Condition 1, prior to issuing CDP No. 06-89-190.

Special Condition 2 of the above permit required recordation of an open space deed restriction prohibiting any alternation of landforms, removal of vegetation, or the erection of structures of any type in the slope area between the residence and the wetlands boundary. The effect of development near the Buena Vista Lagoon was carefully considered during the processing of a permit for your residence. Consequently, approval of the permit was predicated in part upon the open space deed restriction prohibiting development on the slope that could negatively affect the lagoon.

In accordance with Special Condition 1, the prior owner of the subject property recorded an irrevocable offer to dedicate in fee, to a conservation organization, an open space easement with the County of San Diego on October 26, 1989 (enclosed for your reference). The Coastal Conservancy recorded an acceptance of the OTD with the County of San Diego on October 25,

2010. Additionally, in accordance with Special Condition 2, the prior owner recorded an open space deed restriction with the County of San Diego on October 26, 1989 (enclosed for your reference). Since the stairway and dock were constructed within the open space easement and deed restricted area, the stairway and dock are development that is non-compliant with the terms and conditions of CDP No. 06-89-190. Non-compliance with the terms and conditions of an approved permit also constitutes a violation of the Coastal Act.

Resolution

In some cases, violations involving unpermitted development and non-compliance with a CDP may be resolved administratively through removal of the unpermitted development and restoration of any damaged resources. However, removal of the development and restoration of the site also requires a coastal development permit. Therefore, in order to resolve this matter administratively, you must submit a complete coastal development permit application to remove the unpermitted development and restore the site to its pre-violation condition.

Although development review authority in the Coastal Zone of Carlsbad was delegated to the City of Carlsbad in 1996 after final certification of the Carlsbad Local Coastal Program (LCP), the Commission retains original jurisdiction to enforce violations of coastal development permits issued by the Commission prior to certification of the LCP. The coastal development permit authorizing construction on your property, subject to deed restrictions, was granted by the Commission in 1989 and thus subject to enforcement by the Commission.

Therefore, in order to resolve this matter in a timely manner and reduce the possibility of a monetary penalty or fine, we are requesting that you submit a complete coastal development permit application by **July 15, 2011** for removal of the unpermitted development and restoration of the site. For your convenience, you may download a coastal development permit application at www.coastal.ca.gov. If you don't have access to the internet, we will be happy to mail you a coastal development permit application upon request. Please note that due to the location of the development on a bluff face in an area of high erosion risk, a site-specific erosion plan must be submitted with your application, in addition to two sets of project plans, local approval of the project, and the other filing requirements listed on the checklist on the permit application cover page. A restoration plan prepared by a qualified biologist must be included in your application. The type and area of native vegetation to be replanted in areas disturbed by the walkway must be specifically identified in the restoration plan. Proposed vegetation must be appropriate to the coastal bluff plant community. Our permit analysts are here to talk with you if you have any questions about the application process. Please contact me by no later than **July 1, 2011** regarding how you intend to resolve this violation.

While we are hopeful that we can resolve this matter amicably, please be advised that the Coastal Act has a number of potential remedies to address violations of the Coastal Act including the following:

Section 30809 states that if the Executive Director of the Commission determines that any person has undertaken, or is threatening to undertake, any activity that may require a permit from the Coastal Commission without first securing a permit, the Executive Director may issue an order directing that person to cease and desist. Section 30810 states that the Coastal Commission may

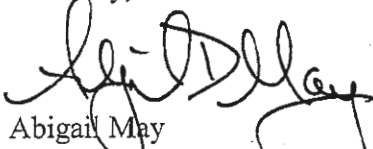
also issue a cease and desist order. A cease and desist order may be subject to terms and conditions that are necessary to avoid irreparable injury to the area or to ensure compliance with the Coastal Act. Section 30811 also provides the Coastal Commission the authority to issue a restoration order to address violations at a site. A violation of a cease and desist order or restoration order can result in civil fines of up to \$6,000 for each day in which the violation persists.

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

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

Thank you for your attention to this matter. I look forward to receiving your application for a coastal development permit and resolving this violation quickly and amicably. If you have any questions regarding this letter or the pending enforcement case, please feel free to contact me at (619) 767-2379.

Sincerely,



Abigail May
San Diego District Enforcement

cc: Deborah Lee, San Diego District Manager, CCC
Marsha Venegas, San Diego District Enforcement Officer, CCC
Patrick Veesart, Southern California Enforcement Supervisor, CCC
Lee McEachern, District Regulatory Supervisor, CCC
Alex Helperin, Staff Counsel, CCC

Enc: Coastal Development Permit No. 06-89-190
Instrument No. 89 583305, Deed Restriction Recorded October 26, 1989
Instrument No. 89 583306, Irrevocable Offer to Dedicate Fee Title Recorded October 26, 1989

CALIFORNIA COASTAL COMMISSION

San Diego Coast District Office
7575 Metropolitan Dr., Suite 103
San Diego, CA 92108-4402
(619) 767-2370

**NOTICE OF VIOLATION OF THE COASTAL ACT
SENT BY CERTIFIED AND REGULAR MAIL
(Z 7002 0460 0003 8134 3234)**

September 19, 2011

Steven & Linda Beim
2381 Buena Vista Circle
Carlsbad, CA 92008-1604

Violation File Number: V-6-10-005

Property Location: 2381 Buena Vista Circle, Carlsbad; San Diego County
Assessor's Parcel No. 155-221-07

Unpermitted Development¹: Removal of native wetland vegetation and construction of a dock in an open space easement area; construction of a stairway, retaining walls and wooden boat in a deed restricted wetland slope area; non-compliance with the terms and conditions of CDP No. 6-89-190.

Dear Mr. & Mrs. Beim:

On a site visit to your property on July 27, 2011, Commission staff confirmed that development has occurred on your property including, but not limited to, removal of native wetland vegetation and placement of a dock within an open space easement area; and the construction of a wooden stairway, cement retaining walls, and the placement of a wooden boat for viewing purposes within an open space deed restricted area. You reported to Commission staff at the site visit that the retaining walls were constructed due to an emergency slope failure that threatened your residence in October of 2008. Construction of the stairway, retaining walls, and dock and placement of the boat also resulted in the removal of native vegetation on the slope.

As you have been previously informed, Pursuant to Section 30600 (a) of the Coastal Act, any person wishing to perform or undertake development in the Coastal Zone must obtain a coastal development permit, in addition to any other permit required by law. "Development" is defined by Section 30106 of the Coastal Act as:

"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,

¹ Please note that the description herein of the violation at issue is not necessarily a complete list of all development on the subject property that is in violation of the Coastal Act and/or that may be of concern to the Commission. Accordingly, you should not treat the Commission's silence regarding (or failure to address) other development on the subject property as indicative of Commission acceptance of, or acquiescence in, any such development.

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....

The above-mentioned removal of native wetland vegetation and placement of a dock within an open space easement area; and the construction of a wooden stairway, cement retaining walls, and the placement of a wooden boat for viewing purposes within an open space deed restricted area constitutes development under the Coastal Act and, therefore, requires a coastal development permit ("CDP").

Any non-exempt development activity (which is the case here) conducted in the Coastal Zone without a valid coastal development permit, or which does not substantially conform to a previously issued permit, constitutes a violation of the Coastal Act. In addition, the subject development is not in compliance with the terms and conditions of CDP No. 6-89-190. Please be advised that non-compliance with the terms and conditions of an approved permit also constitutes a violation of the Coastal Act.

Resolution

In some cases, violations involving unpermitted development may be resolved administratively by removal of the unpermitted development and restoration of any damaged resources. Removal of the development and restoration of the site generally will require formal approval under the Coastal Act.

In order to resolve this matter in a timely manner and reduce the possibility of a monetary penalty or fine, we are requesting that you do the following:

1. Immediately stop all unpermitted development activity on the subject property, including removing native vegetation from the wetlands;
2. Submit a complete coastal development permit application by **October 21, 2011** to remove the unpermitted development and restore the site to its pre-violation condition;
3. Contact me by **October 3, 2011** to discuss resolution of this violation.

A removal plan must be included in your CDP application that details the materials to be moved, mechanized equipment to be used and disposal plans. Please note that due to the location of the development on a slope face in an area of high erosion risk, a site-specific erosion plan must be submitted with your application, in addition to two sets of project plans, local approval of the project, and the other filing requirements listed on the checklist on the permit application cover page. A restoration plan prepared by a qualified biologist must be included in your application. The type and area of native vegetation to be replanted in areas disturbed by the stairway must be specifically

identified in the restoration plan. Proposed vegetation must be appropriate to the Buena Vista Lagoon bluff plant community. Additionally, a geotechnical report of the portion of your property to be affected by the removal plans will be required. If you claim that the retaining walls are necessary to adequately protect your residence you may apply for an after-the-fact amendment to CDP No. 6-89-190 to retain the walls. The application will require a description of the geotechnical hazard and risk to your residence arising from the alleged slope failure emergency in 2008 and document the minimum development necessary to protect against slope failure. Documentation of the emergency in 2008, such as photos and surveyor reports, will be required as will documentation of the construction of the walls, such as grading plans, engineering plans or any other pertinent reports.

For your convenience, you may download a coastal development permit application at www.coastal.ca.gov. Our permit analysts are here to talk with you if you have any questions about the application process.

While we are hopeful that we can resolve this matter amicably, please again be advised that there are potential remedies under the Coastal Act to address violations of the Coastal Act (as detailed in our letter to you dated June 15, 2011), including, but not limited to, recording notices of violation on the title to your property, cease and desist orders, fines, and litigation to seek injunctive relief.

Thank you for your attention to this matter. I look forward to receiving your application for a coastal development permit and resolving this violation quickly and amicably. If you have any questions regarding this letter or the pending enforcement case, please feel free to contact me at (619) 767-2370.

Sincerely,



Abigail May
San Diego District Enforcement

cc: Deborah Lee, San Diego District Manager, CCC
Marsha Venegas, San Diego District Enforcement Officer, CCC
Patrick Veesart, Southern California Enforcement Supervisor, CCC
Lee McEachern, District Regulatory Supervisor, CCC
Andrew Willis, Enforcement, CCC
Alex Helperin, Staff Counsel, CCC
Lisa Haage, Chief of Enforcement, CCC

CALIFORNIA COASTAL COMMISSION

San Diego Coast District Office
7575 Metropolitan Dr., Suite 103
San Diego, CA 92108-4402
(619) 767-2370

**NOTICE OF VIOLATION OF THE COASTAL ACT
SENT BY CERTIFIED AND REGULAR MAIL
(Z 7002 0460 0003 8134 3296)**

November 14, 2011

Steven & Linda Beim
2381 Buena Vista Circle
Carlsbad, CA 92008-1604

Violation File Number: V-6-10-005

Property Location: 2381 Buena Vista Circle, Carlsbad; San Diego County
Assessor's Parcel No. 155-221-07

Unpermitted Development¹: Removal of native wetland vegetation and
construction of a dock in an open space easement
area; construction of a stairway, retaining walls, and
wooden boat in a deed restricted wetland slope area;
non-compliance with the terms and conditions of CDP
No. 6-89-190.

Dear Mr. & Mrs. Beim:

Please be advised that, as of the date of this letter, our office has not yet received a coastal development permit ("CDP") application seeking to resolve violations on your property or information regarding the alleged emergency slope failure that occurred around October of 2008.

In a telephone conversation on October 3, 2011, Commission staff spoke with Mr. Beim and again reiterated the requirement for you to bring your property into compliance with the Coastal Act by immediately ceasing to remove vegetation from the wetlands portion of your property subject to an open space easement and by submitting a CDP application for removal of the unpermitted development on your property, including, but not limited to, the stairway, retaining walls, wooden boat, and wood dock constructed in a deed restricted wetland slope area and open space easement area.

On October 3, 2011, Mr. Beim stated that you prefer to keep the unpermitted retaining walls as they support the foundation of your house. As you have been previously informed, if there is sufficient evidence of slope instability threatening your residence, Commission staff may be able to recommend approval of an after-the-fact coastal

¹ Please note that the description herein of the violation at issue is not necessarily a complete list of all development on the subject property that is in violation of the Coastal Act and/or that may be of concern to the Commission. Accordingly, you should not treat the Commission's silence regarding (or failure to address) other development on the subject property as indicative of Commission acceptance of, or acquiescence in, any such development.

development permit authorizing the retaining walls. The authorization will need to be though an amendment to the original permit authorizing the residence, CDP No. 6-89-190, which prohibits any development on the slope portion of your property. Mr. Beim stated, during the October 3, 2011 telephone call, that he would send Commission staff information regarding the emergency slope failure and apply for a CDP seeking authorization to remove the above described unpermitted development and keep the retaining walls. However, no such application has been received and the violations remain on the subject property.

Background

The first Notice of Violation ("NOV") letter was sent to you on June 15, 2011 asking you to apply for a CDP to remove the subject unpermitted development by July 15, 2011. After you received the NOV, on July 27, 2011, you allowed Commission staff to conduct a site inspection of the subject property. Commission staff granted an informal extension of time to apply for a CDP in order to conduct the site inspection first.

After the site inspection a second NOV letter was sent to you, on September 19, 2011, which required you to apply for a CDP to remove the unpermitted development by October 21, 2011. As of today, Commission staff has not yet received an application for a CDP to remove the unpermitted development or approve unpermitted development after-the-fact, or received documents regarding the emergency slope failure on the subject property. Commission staff would still like to work with you to come into compliance, but may need to seek other enforcement remedies if you fail to submit requested materials in a timely manner. Please refer to our letter to you dated September 29, 2011 for the specific requirements of your CDP application. If you have any questions as to what documents are necessary to initiate an application, please contact me at (619) 767-2370 or contact planning staff at the same number.

While we remain hopeful that we can resolve this matter amicably, please be advised, that if the subject violations are not resolved through the coastal development permitting process in a timely manner, the Coastal Act provides alternative means for resolution including the following:

Section 30809 states that if the Executive Director of the California Coastal Commission ("Commission") determines that any person has undertaken, or is threatening to undertake, any activity that may require a permit from the Commission without first securing a permit, the Executive Director may issue an order directing that person to cease and desist. Section 30810 states that the Coastal Commission may also issue a 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 also provides the Coastal Commission the authority to issue a restoration order to address violations at a site. A violation of a cease and desist order or restoration order can result in civil fines of up to \$6,000 for each day in which the violation persists.

Additionally, Sections 30803 and 30805 authorize the Commission to initiate litigation to seek injunctive relief and an award of civil fines in response to any violation of the

Coastal Act. Section 30820(a)(1) provides that any person who violates any provision of the Coastal Act may be subject to a penalty amount that shall not exceed \$30,000 and shall not be less than \$500 per violation. Section 30820(b) states that, in addition to any other penalties, any person who "knowingly and intentionally" performs or undertakes any development in violation of the Coastal Act can be subject to a civil penalty of not less than \$1,000 nor more than \$15,000 per violation for each day in which the violation persists.

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

For your convenience, you may download a coastal development permit application at www.coastal.ca.gov. Our permit analysts are here to talk with you if you have any questions about the application process. If you wish to apply for a coastal development permit to authorize the retaining walls by amending the CDP authorizing your residence, CDP No. 6-89-190, you may pick up an application at our offices or we can mail one to you. We are located at 7575 Metropolitan Drive, Ste. 103, San Diego, CA, 92108.

Thank you for your attention to this matter. I look forward to receiving your application for a coastal development permit and resolving this violation quickly and amicably. If you have any questions regarding this letter or the pending enforcement case, please feel free to contact me at (619) 767-2370.

Sincerely,



Abigail May
San Diego District Enforcement

cc: Deborah Lee, San Diego District Manager, CCC
Marsha Venegas, San Diego District Enforcement Officer, CCC
Patrick Veesart, Southern California Enforcement Supervisor, CCC
Lee McEachern, District Regulatory Supervisor, CCC
Andrew Willis, Enforcement, CCC
Alex Helperin, Staff Counsel, CCC
Lisa Haage, Chief of Enforcement, CCC

CALIFORNIA COASTAL COMMISSION

San Diego Coast District Office
7575 Metropolitan Dr., Suite 103
San Diego, CA 92108-4402
(619) 767-2370

**NOTICE OF VIOLATION OF THE COASTAL ACT
SENT BY CERTIFIED AND REGULAR MAIL
(Z 7011 2000 0000 8563 8463)**

May 1, 2012

Steven & Linda Beim
2381 Buena Vista Circle
Carlsbad, CA 92008-1604

Violation File Number: V-6-10-005

Property Location: 2381 Buena Vista Circle, Carlsbad; San Diego County
Assessor's Parcel No. 155-221-07

Unpermitted Development¹: Removal of native wetland vegetation and
construction of a dock within a public open space
easement area; construction of a stairway, retaining
walls, and wooden boat within a deed restricted open
space buffer area located on the slope of the subject
site; non-compliance with the terms and conditions of
CDP No. 6-89-190.

Dear Mr. & Mrs. Beim:

I am writing to advise you that, as of the date of this letter, our office has not yet received a coastal development permit ("CDP") application seeking to resolve violations on your property (described above) or information regarding the alleged emergency slope failure that occurred around October of 2008; both of which you have previously agreed to provide. Please be further advised that violations of the Coastal Act still exist on your property and damage to coastal resources is ongoing.

Background

The Coastal Commission first sent you a Notice of Violation ("NOV") letter regarding violations on the subject property on June 15, 2011. Said letter asked you to apply for a CDP to remove the subject unpermitted development by July 15, 2011. After receiving the NOV letter, and after staff granted an informal extension of time, you allowed Commission staff to conduct a site inspection of the subject property on July 27, 2011. After the site inspection, a second NOV letter was sent to you, on September 19, 2011, which required you to apply for a CDP to remove the unpermitted development by

¹ Please note that the description herein of the violation at issue is not necessarily a complete list of all development on the subject property that is in violation of the Coastal Act and/or that may be of concern to the Commission. Accordingly, you should not treat the Commission's silence regarding (or failure to address) other development on the subject property as indicative of Commission acceptance of, or acquiescence in, any such development.

October 21, 2011. All of the steps necessary to resolve the violations on your property were clearly outlined in that letter. The same letter required that you contact enforcement staff by October 3, 2011 to discuss the resolution of this violation in order to address any of your questions or concerns.

On October 3, 2011, during a telephone conversation with Commission enforcement staff, Abigail May, you agreed to submit an after-the-fact CDP application and all materials necessary for staff to review the development that took place on your property. On the same date, you also stated that you preferred to keep the unpermitted retaining walls as they support the foundation of the house. You were informed that, if there is sufficient evidence of slope instability threatening your residence that can only be addressed by the existing retaining walls, Commission staff may be able to recommend approval of an after-the-fact CDP authorizing the retaining walls. The authorization would need to be reviewed as an amendment to the original permit authorizing the residence (CDP No. 6-89-190) which prohibits any development on the slope portion of your property. Consequently, you agreed to provide Commission staff with all the information regarding the alleged emergency slope failure that allegedly occurred around October of 2008. However, you failed to submit the complete CDP application and supporting materials by the submittal deadline of October 21, 2011.

On October 28, 2011, Commission staff again contacted you and spoke to Mrs. Beim by telephone to inquire as to the status of the agreed upon submittal of a CDP application and the information regarding the alleged emergency slope failure. Mrs. Beim was not feeling well that day and stated that Mr. Beim would be addressing the matter. It was our understanding from this conversation and previous communications that the application materials and all necessary information would be forthcoming in a timely manner.

On November 14, 2011, we sent you a third NOV letter restating the need to apply for a CDP to address all of the unpermitted development existing on your property. The USPS return receipt confirms you received this letter on November 15, 2011. Several months have now passed since you received that letter and, as of the date of this letter, we have had no further communication with you, nor have we received a complete CDP application or any of the materials regarding the emergency slope failure on the subject property.

Resolution

Commission staff would still like to work with you to resolve this matter amicably, but please be advised that, in the absence of your cooperation, we are prepared to seek other enforcement remedies (detailed below) if you fail to submit the requested materials in a timely manner. In order to resolve this matter in a timely manner and reduce the possibility of a monetary penalty or fine, you must do the following:

1. Immediately stop all unpermitted development activity on the subject property, including removing native vegetation from the wetlands;

2. Submit a complete coastal development permit amendment application by **June 1, 2012**, to remove the unpermitted development and restore the site to its pre-violation condition;

A removal plan must be included in your CDP amendment application that details the materials to be moved, mechanized equipment to be used and disposal plans. Please note that due to the location of the development on a slope face in an area of high erosion risk, a site-specific erosion plan must be submitted with your application, in addition to two sets of project plans, a geotechnical report of the portion of your property to be affected by the removal plans, local approval of the project, and the other filing requirements listed on the checklist on the permit application cover page. A restoration plan prepared by a qualified biologist must be included in your application as well. The restoration plan must specifically identify the type and area of native vegetation to be replanted in the areas disturbed by the stairway. All proposed vegetation must be appropriate to the Buena Vista Lagoon bluff plant community.

Additionally, if your claim that the unpermitted retaining walls are necessary to adequately protect your residence is in fact true and substantiated by a geotechnical report that can be analyzed by staff, you may be able to apply for an after-the-fact amendment to CDP No. 6-89-190 to retain the walls. The application will require a description of the geotechnical hazard and risk to your residence arising from the alleged slope failure emergency in 2008 and document the minimum development necessary to protect against slope failure. Documentation of the emergency in 2008, such as photos and surveyor reports, will be required as will documentation of the construction of the walls, such as grading plans, engineering plans or any other pertinent reports. It is advisable that you bring these materials to our San Diego District office (after calling to make an appointment) and discuss this with staff prior to submitting an amendment application to retain the walls.

For your convenience, you may download a coastal development permit application at www.coastal.ca.gov. Our permit analysts are here to talk with you if you have any questions about the application process. If you have any questions as to what documents are necessary to initiate an application, please contact me at (619) 767-2370 or contact planning staff at the same number.

As noted above, while we are hopeful that we can resolve this matter amicably, you should be aware that the Coastal Act has a number of potential remedies to address violations of the Coastal Act including the following:

Section 30809 states that if the Executive Director of the Commission determines that any person has undertaken, or is threatening to undertake, any activity that may require a permit from the Coastal Commission without first securing a permit, the Executive Director may issue an order directing that person to cease and desist. Section 30810 states that the Coastal Commission may also issue a 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 also provides the Coastal Commission the authority to issue a restoration order

to address violations at a site. A violation of a cease and desist order or restoration order can result in civil fines of up to \$6,000 for each day in which the violation persists.

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

Finally, Section 30812 authorizes the Executive Director to record a Notice of Violation against any property determined to have been developed in violation of the Coastal Act. If the Executive Director chooses to pursue that course, you will first be given notice of the Executive Director's intent to record such a notice, and you will have the opportunity to object and to provide evidence to the Commission at a public hearing as to why such a notice of violation should not be recorded. If a notice of violation is ultimately recorded against your property, it will serve as notice of the violation to all successors in interest in that property².

Thank you for your immediate attention to this matter. I look forward to receiving your application for a coastal development permit by the above deadline and resolving this violation quickly and amicably. If you have any questions regarding this letter or the pending enforcement case, please feel free to contact me at (619) 767-2370.

Sincerely,



Marsha Venegas
San Diego District Enforcement

cc: **Deborah Lee, San Diego District Manager, CCC**
N. Patrick Veesart, Southern California Enforcement Supervisor, CCC
Lee McEachern, San Diego District Regulatory Supervisor, CCC
Alex Helperin, Senior Staff Counsel, CCC
Lisa Haage, Chief of Enforcement, CCC

² Even without such notice, by law, while liability for Coastal Act violations attaches to the person or persons originally responsible for said violations (and continues to do so even if they no longer own the property), liability additionally attaches to whomsoever owns the property upon which a Coastal Act violation persists (see *Leslie Salt Co. v. San Francisco Bay Conservation and Development Com.* [1984], 153 Cal. App.3d 605, 622). Therefore, any new owner(s) of the subject property will assume liability for, and the duty to correct, any remaining violations. Under California Real Estate law, if you plan to sell the subject property, it is incumbent upon you to inform any potential new owner(s) of same.

CALIFORNIA COASTAL COMMISSION

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



**SENT BY CERTIFIED AND REGULAR MAIL
(7006 2760 0005 5883 4821)**

June 6, 2013

Steven & Linda Beim
2381 Buena Vista Circle
Carlsbad, CA 92008-1604

Subject: Coastal Act Violation No. V-6-10-005

Property Location: 2381 Buena Vista Circle, Carlsbad; San Diego County
Assessor's Parcel No. 155-221-07

Unpermitted Development: Construction of a boat dock within a public open space easement area; grading of a steep slope and construction of concrete retaining walls, a wooden stairway, and a lagoon overlook deck within a deed restricted open space buffer area; removal of wetland vegetation; and planting of non-native vegetation, in violation of the terms and conditions of Coastal Development Permit (CDP) No. 6-89-190.

Dear Mr. & Mrs. Beim:

I would first like to take the opportunity to introduce myself as the Coastal Commission staff person assigned to Coastal Act violation file No. V-4-01-099, regarding unpermitted development on your property. The Coastal Commission has sent you four Notice of Violation letters ("NOVs") dated June 15, 2011, September 19, 2011, November 14, 2011, and May 1, 2012, respectively, regarding the above-listed violations on the property. While we are hopeful that we can resolve these issues amicably, we have not received a response to the last two NOVs and are concerned that that violations remain in place and continuing resource damage is occurring.¹

Our last correspondence was an October 3, 2011 telephone conversation with Mr. Beim, in response to the September 19, 2011 letter, which requested that you apply for a Coastal Development Permit ("CDP") to remove all of the unpermitted development on the property by October 21, 2011. During the October 3, 2011 conversation, you agreed to take certain actions that would attempt to address some of the violations. Unfortunately, Commission staff did not receive the requested CDP application by the the October 21, 2011 deadline and, since the October 3, 2011 telephone call, has not heard from you or received responses from our NOVs.

¹ The November 14, 2011 and May 1, 2012 NOVs were sent to you via Regular U.S. and Certified Mail (with return receipt). Commission staff received signed return receipt cards from the U.S. Postal Service confirming that you received these letters.

The Coastal Act violations still exist on your property and the damages to coastal resources is ongoing. While we hope to resolve this matter amicably, as you may know, the Coastal Act provides a number of remedies to address unresolved Coastal Act violations, and in this case, since we have not heard from you in over 1 ½ years, we will be commencing proceedings through a more formal process.

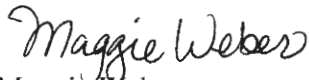
Section 30809 states that if the Executive Director of the Commission determines that any person has undertaken, or is threatening to undertake, any activity that may require a permit from the Coastal Commission without first securing a permit, the Executive Director may issue an order directing that person to cease and desist. Section 30810 states that the Coastal Commission may also issue a 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 also provides the Coastal Commission the authority to issue a restoration order to address violations at the site. A violation of a cease and desist order or restoration order can result in civil fines of up to \$6,000 for each day in which the violation persists.

Additionally, Section 30803 and 30805 authorize the Commission to initiate litigation to seek injunctive relief and an award of civil fines in response to any violation of the Coastal Act. Section 30820(a)(1) provides that any person who undertakes development in violation of the Coastal Act may be subject to a penalty amount that shall not exceed \$30,000 and shall not be less than \$500 per violation. Section 30820(b) states that, in addition to any other penalties, any person who “knowingly and intentionally” performs or undertakes any development in violation of the Coastal Act may be subject to a civil penalty of not less than \$1,000 and not more than \$15,000 per violation for each day in which each of the violations persists.

Finally, Section 30812 authorizes the Executive Director to record a Notice of Violation against any property determined to have been developed in violation of the Coastal Act. If the Executive Director chooses to pursue that course, you will first be given notice of the Executive Director’s intent to record such a notice, and you will have the opportunity to object and to provide evidence to the Commission at a public hearing as to why such a notice of violation should not be recorded. If a notice of violation is ultimately recorded against your property, it will serve as notice of the violation to all successors in interest in the property.

Again, our preference is to work with you cooperatively and in a way that avoids time-consuming and costly litigation. To restart our discussions on resolving this matter amicably, please contact me by June 17, 2013 at (415) 904-5264. If we do not hear from you by this date, we will be forced to commence more formal enforcement proceedings to address the Coastal Act violations on your property.

Sincerely,



Maggie Weber

Statewide Enforcement Analyst

CC: Marsha Venegas, San Diego Enforcement Officer, CCC
N. Patrick Veesart, Southern California Enforcement Supervisor, CCC
Aaron McLendon, Statewide Enforcement Supervisor, CCC
Lisa Haage, Chief of Enforcement, CCC

Exhibit 17
CCC-14-CD-05
CCC-14-RO-05
(STEVEN & LINDA BEIM)
Page 2 of 2

CALIFORNIA COASTAL COMMISSION

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

**Via Regular Mail**

July 19, 2013

Steven & Linda Beim
2381 Buena Vista Circle
Carlsbad, CA 92008-1604

Subject: Coastal Act Violation No. V-6-10-005

Property Location: 2381 Buena Vista Circle, Carlsbad; San Diego County
Assessor's Parcel No. 155-221-07 ("Property")

Unpermitted Development: Unpermitted development and/or development inconsistent with Coastal Development Permit No. 6-89-190 including, but not limited to: construction of a boat dock within a recorded public open space easement area and an area deed restricted for open space and habitat buffer; grading and construction of concrete retaining walls, a wooden stairway, and a lagoon overlook deck within an area deed restricted for open space and habitat buffer; removal of wetland vegetation; and planting of non-native vegetation.

Dear Mr. & Mrs. Beim:

The purpose of this letter is to request the submittal of the engineering documents that you stated, during our June 24, 2013 telephone conversation, would provide us with supporting documentation to your claim that some of the unpermitted development within the open space, deed restricted area is necessary to protect existing structures. During the June 24 conversation, Mr. Beim claimed that a licensed engineer recommended the construction of some of the unpermitted development to stabilize the slope and protect your residence. As I stated in our conversation, regardless of whether or not an engineer made a recommendation for the construction of retaining walls and grading, development within the Coastal Zone requires a coastal development permit ("CDP"), and in this case, an amendment to the underlying CDP No. 6-89-190. However, based upon your statements that an engineering report found that the house was in danger from sinking and sliding, we requested that you submit those engineering reports for our review. This will give us the opportunity to evaluate the issues in determining the best approach to fully resolving the Coastal Act violations.

In a subsequent June 26, 2013 telephone conversation, I explained to you that Commission staff would not accept a CDP amendment application to retain the unpermitted development. The development is directly inconsistent with conditions of the CDP; and therefore, "would lessen or avoid the intended effect of an approved or conditionally approved permit..." (see Section

Exhibit 18
CCC-14-CD-05
CCC-14-RO-05
(STEVEN & LINDA BEIM)
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13166, Title 14 of the California Code of Regulations). Although a CDP amendment application is not appropriate under these circumstances, I did inform you that if you submit your engineer's slope stability analysis, Commission staff geologist would review the report and determine whether the unpermitted development was the proper and least environmentally damaging solution to address the asserted issues. Further, if the engineer's analysis demonstrates to the satisfaction of the Commission's Executive Director that circumstances have changed since the issuance of CDP 6-89-190, Commission staff may be able to accept an application to amend the CDP. Mr. Beim informed me that the engineering reports were located in a storage unit and that upon locating them, the reports would be sent to me at the Commission's San Francisco office.

In a June 27, 2013 email, Mrs. Beim informed me that Mr. Beim had located the engineering reports and she was presently locating photographs to send to Commission staff that would provide staff with evidence of the slope failure. Mrs. Beim further stated that she would try to organize all of the documentation the following day and asked for my mailing address, which I provided. Three weeks have now passed since our last correspondence and I have not received any documents from you. Again, it is our continued goal to resolve the Coastal Act violations on the Property amicably through a consensual agreement and I look forward to receiving the engineering documents and photos as soon as possible.

As I have explained in our July 24 and 26 conversations, our goal is to resolve this enforcement case through "Consent" cease and desist and restoration orders. These Consent Orders are very similar to settlement agreements where the parties agree to resolve all liabilities under the Coastal Act through negotiated terms. While taking this approach is our goal, as we discussed, we do have to follow formal noticing procedures as required by our regulations. The first step in this formal process, prior to taking an order to the Commission or recording a Notice of Violation, is for Commission staff to initiate the formal notification procedures. Such notification will come in the form of a letter from the Executive Director expressing his intent to commence proceedings for issuance of Cease and Desist and Restoration Orders to address unpermitted development and/or development inconsistent with Coastal Development Permit ("CDP") No. 6-89-190 on the Property and to record a Notice of Violation. The Executive Director is in the process of drafting this formal notification and you will receive it soon. Please note that this formal notice in no one precludes us from continuing to work together cooperatively in our joint efforts to resolve this matter.

Thank you for your continued cooperation and we look forward to working with you to address these issues. If you have any questions, please do not hesitate to call me at (415) 904-5264.

Sincerely,


Maggie Weber
Statewide Enforcement Analyst

CC: Marsha Venegas, San Diego Enforcement Officer, CCC
N. Patrick Veesart, Southern California Enforcement Supervisor, CCC
Aaron McLendon, Statewide Enforcement Supervisor, CCC
Lisa Haage, Chief of Enforcement, CCC

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**GEOTECHNICAL EVALUATION OF
RECENT REAR YARD SLOPE MOVEMENT, 2381 BUENA VISTA CIRCLE
CARLSBAD, SAN DIEGO COUNTY, CALIFORNIA**

FOR

**MR. STEVE BEIM
2381 BUENA VISTA CIRCLE
CARLSBAD, CALIFORNIA 92009**

W.O. 5837-A-SC MARCH 16, 2009



Geotechnical • Geologic • Coastal • Environmental

5741 Palmer Way • Carlsbad, California 92010 • (760) 438-3155 • FAX (760) 931-0915

March 16, 2009

W.O. 5837-A-SC

Mr. Steve Beim
2381 Buena Vista Circle
Carlsbad, California 92009

Subject: Geotechnical Evaluation of Recent Rear Yard Slope Movement, 2381 Buena Vista Circle, Carlsbad, San Diego County, California

Dear Mr. Beim:

In accordance with your request, GeoSoils, Inc. (GSI) has performed an evaluation of potential causative phenomena resulting in the recent slope movement at the subject site. The purpose of our evaluation was to identify the conditions resulting in the observed distress to the slope, evaluate the overall stability of the slope and potential adverse conditions affecting the existing residential structure, and to provide recommendations to mitigate the affected slope.

EXECUTIVE SUMMARY

Based on our experience in the site vicinity, field exploration, and geologic and geotechnical engineering analysis, the recommended mitigation appears feasible from a geotechnical and geologic viewpoint, provided that the recommendations presented herein are properly incorporated into the design and construction of such. The most significant elements of our study are summarized below:

- The site appears to be primarily underlain by discontinuous surficial layers of undifferentiated fill/colluvium and alluvium, overlying sedimentary deposits consisting of Quaternary-age terrace deposits, and the Eocene-age Santiago Formation. The observed slope movement appears surficial in nature, occurring within the undifferentiated fill/colluvium layer. The alluvium exists near the lower elevations of the site and is not directly involved in the observed distress.
- The existing retaining walls, and other improvements on the slope face appear to be founded within the surficial layer of fill/colluvium. As such, these improvements were inherently subject to the observed slope movement, and deformed accordingly.
- Regional groundwater was encountered at an approximate depth of 30 feet below the building pad elevation, near the surface water elevation of the adjacent lagoon.

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Perched water tables were either observed, or inferred along permeability contrasts between differing sediments or soils. Regional groundwater is not anticipated to adversely affect the performance of the slope, provided that the recommendations contained in this report are properly incorporated into final design and construction. The regional groundwater table will likely be encountered during pier construction near the existing lagoon water surface elevations and should be anticipated.

- The observed slope movement appears to be generally surficial in nature, and is the result of saturation, over time, of the surficial mantle of undifferentiated fill/colluvium. The saturation and failure of this material appears to have been facilitated by: inadequate wall construction, site geology/soil types, irrigation and drainage.
- Significant landslides, or other active "mass wasting" types of deposits (other than the observed slope movement) were not noted onsite. An analysis of gross stability of the north westerly descending slope a calculated factor of safety against failure (i.e., > 1.5 static, and > 1.1 seismic), that is satisfactory per the standard of practice. Based on the analysis, and the location of the existing residential structure, the potential for distress to the structure resulting from gross slope instability may be considered low.
- Recommendations for the repair of the observed slope movement include: the removal and recompaction of the failed soil material, wall reconstruction using deepened foundations (pier and grade beam) bearing in the underlying formational soil/bedrock, and the general improvement of site drainage.
- Other adverse geologic features, to the depths explored, were not encountered. Our evaluation indicates there are no known active faults crossing the site.
- Budgetary provisions for appropriate mitigation of the above conditions as well as all ramifications, should be included in project planning.
- The recommendations presented herein should be included in project planning, design and construction. Review of project plans by a structural consultant is also recommended.

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We appreciate the opportunity to be of service. If you have any questions pertaining to this report, please contact us at (760) 438-3155.

Respectfully submitted,

GeoSoils, Inc.



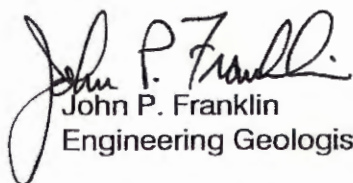
Robert G. Crisman
Engineering Geologist, CEG 1934



David W. Skelly
Civil Engineer, RCE 47857



Reviewed by:



John P. Franklin
Engineering Geologist, CEG 1340

RGC/DWS/JPF/jh

Distribution: (2) Addressee

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**GEOTECHNICAL EVALUATION OF RECENT
REAR YARD SLOPE MOVEMENT, 2381 BUENA VISTA CIRCLE
CARLSBAD, SAN DIEGO COUNTY, CALIFORNIA**

SCOPE OF SERVICES

The scope of our services has included the following:

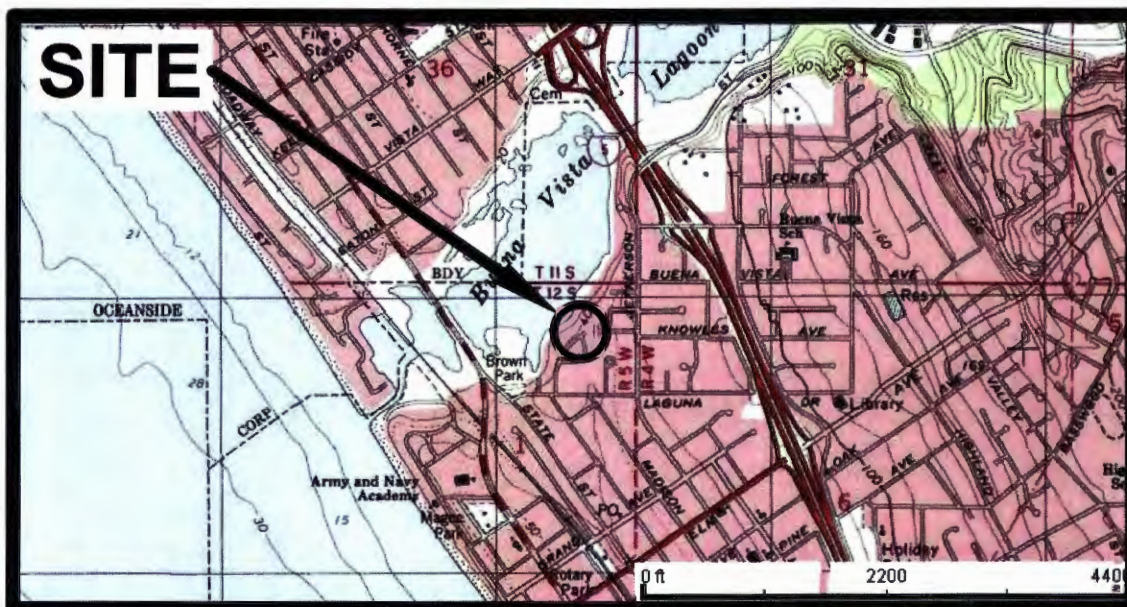
1. Review of readily available soils and geologic data, including construction plans for the existing residential structure (see Appendix A).
2. Subsurface exploration consisting of the excavation of five (5) hand dug test pits, and one (1) large diameter bucket auger boring for geotechnical logging and sampling (Appendix B).
3. Field mapping of the observed slope failure and geologic conditions.
4. Laboratory testing of representative soil samples collected during our subsurface exploration program (Appendix C).
5. Evaluation of slope stability (text and Appendix D).
6. Appropriate engineering and geologic analysis of data collected and preparation of this report, including conclusions and recommendations regarding the nature of the observed distress and mitigation.

SITE CONDITIONS

General

The site is located at 2381 Buena Vista Circle, in the City of Carlsbad, California (Figure 1), and consists of residential building pad located atop a 20- to 30-foot high, west to northwest facing slope overlooking Buena Vista Lagoon. Existing residential properties are located to the north and south of the site, with Buena Vista Circle fronting the property to the south. Existing improvements to the property consist of a single-family residential structure with typical exterior landscape improvements, including a manmade water feature near the top of slope. The rear yard area is generally landscaped with planters for shrubs, etc., and a grass lawn. It is also our understanding that the homeowner placed a portable, inflatable water feature/play structure within the lawn portion of the rear yard area.

Where the property descends down the rear yard slope toward the lagoon, a series of 3- to 4-foot high masonry block retaining walls have been constructed into the slope to create a terraced slope, with grass lawn planted on the terraces between each wall. The overall gradient of the slope area descending from the building pad to the lagoon is on the order of 1.5:1 (horizontal to vertical). The general layout of rear yard improvements is shown schematically on Plate 1. Plate 1 was created from field measurements and observations, and is not a surveyed map.




Base Map: TOPOI® ©2003 National Geographic, U.S.G.S San Luis Rey Quadrangle, California -- San Diego Co., 7.5 Minute, dated 1997, current, 1999.



Base Map: The Thomas Guide, San Diego Co., Street Guide and Directory, 2005 Edition, by Thomas Bros. Maps, page 1106.

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<h2 style="text-align: center;">SITE LOCATION MAP</h2> <p style="text-align: right;">Figure 1</p>	



Observed Slope Movement

Settlement within a portion of the rear yard area, and the terraced areas between the existing retaining walls was observed. An un-terraced slope area immediately southwest of the terraces was also noted to be covered with plastic. A conversation with an onsite tenant indicated that some surficial slumping may be present in that area. It is our understanding that the site had recently experienced a water leak within the irrigation system. Further investigation indicated that the water leak was located downslope and does not appear to have significantly contributed to the observed slope movement.

Depressions of the ground surface were observed locally above, and at the base of the uppermost retaining wall (see Plate 1). Within the terraced areas between Wall #1 and Wall #3, the soil failed as a series of blocks along high angle shear surfaces, displaying a stepped, down to the northwest (i.e., down slope) relative movement, indicating a generally extensional stress regime. Between Wall #3 and Wall #4, shearing was not observed, however, upturning of the surficial layer of sod at the back of Wall #4 and at the base of Wall #3 indicate that the soil mass between these two walls has been locally compressed. Movement of Wall #4, nor the slope below Wall #4 was not observed. However, observation of Wall #6, at the base of the slope, indicates that the top of wall has rotated out toward the northwest (i.e., away from slope), and may be independent of the slope movement within the upper portion of the slope. The observed slope movement appears to be surficial in nature and does not appear to have significantly affected the existing residential structure.

SUBSURFACE EXPLORATION

The subsurface exploration, for the purpose of this investigation, was conducted in January, 2009, and consisted of the excavation of five (5) shallow test pit excavations, and one (1) large diameter bucket auger boring. The boring and test pits were logged by an engineering geologist from this office. Samples of site material were also collected for appropriate laboratory testing. The approximate locations of the exploratory boring/test pits are indicated on the Schematic Geotechnical Map (Plate 1). Plate 1 was prepared from field observations and measurements. Deposits of alluvium, associated with the lagoon, are not considered to be of a significant enough nature, with respect to slope stability, to discuss herein, and are only shown in cross section on Plate 2 for context.

SITE GEOLOGY/SEISMICITY

The geologic units, encountered during our subsurface investigation, consist of surficial, discontinuous, un-differentiated artificial fill/colluvium, alluvium, underlain by Quaternary-age terrace deposits, and Eocene-age sedimentary bedrock belonging to the Santiago Formation. The general distribution of mapped units is shown on Plate 1, and

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in cross-section on Plate 2. The general characteristics of the encountered units are described below, from youngest to oldest.

Undifferentiated Artificial Fill and Colluvium (Map Symbol - af/Qc)

Undifferentiated fill and colluvium was observed to consist of dark brown silty sands. Within the rear yard area, and within the upper slope terraces, a thin, surficial layer of grass sod caps the fill/colluvium. Undifferentiated fill/colluvium is moist to wet, and loose.

This material is generally on the order of 1 to 2 feet thick, but may locally be upwards of 4 feet thick behind the taller walls. The observed distress/slope movement generally appears to be confined to the limits of these materials.

Terrace Deposits (Map Symbol - Qt)

Underlying surficial undifferentiated fill and colluvium are Quaternary-age terrace deposits consisting of sand to silty sand. Where observed, these soils are brown, moist to wet, and loose, becoming more dense with depth. Moisture throughout the soil column was observed to vary from wet near the surface (due to recent rainstorms), then moist with depth, becoming wet again near the underlying contact with the older Santiago Formation. The thickness of terrace deposits appears to be on the order of 10 feet, as observed in Boring B-1.

Santiago Formation (Map Symbol - Tsa)

Eocene-age sedimentary bedrock, referred to as the Santiago Formation, was observed to underlie terrace deposits. Where encountered, these formational materials consist of yellow gray to gray, and gray brown, moist, and dense/very stiff clayey sandstone with a 3 to 4 foot thick claystone to sandy claystone interbed noted at a depth of approximately 20 feet below the building pad grade.

Structure

General

Undifferentiated fill/colluvium generally occurs as a thin surficial mantle, or "capping" layer of soil within yard areas and on the slope. Terrace deposits underlying these surficial soils are thickly bedded with no visible internal bedding, and lie unconformably along a relatively flat lying, wavy contact with the underlying, older sedimentary bedrock of the Santiago Formation. Internal structure within the Santiago Formation appears to be relatively sub-horizontal, to dipping 2 to 3 degrees to the northeast.

Slope Deformation and Structure

As indicated above, the observed slope failure appears to be confined within the surficial layer of undifferentiated fill and colluvium, located on the slope near the terrace/Santiago Formation contact, as shown on Plates 1 and 2. Depressions of the ground surface were observed locally above, and at the base of the uppermost retaining wall (see Wall #1 on Plate 1). Within the terraced areas between Wall #1 and Wall #3, the soil failed as a series of blocks along high angle shear surfaces, displaying a stepped, down to the northwest (i.e., down slope) relative movement, indicating a generally extensional stress regime. At depth, these high angle shear surfaces appear to merge into a basal shear located along the contact of undifferentiated fill/colluvium and the underlying terrace deposits (see Plate 2). Between Wall #3 and Wall #4, shearing was not observed within the fill/colluvium, however, upturning of the surficial layer of sod at the back of Wall #4 and at the base of Wall #3 indicate that the soil mass between these two walls has been locally compressed. Movement of Wall #4, nor movement of the slope below Wall #4 was observed. However, observation of Wall #6, at the base of the slope, indicates that the top of wall has rotated out toward the northwest (i.e., away from slope).

Faulting/Seismicity

Our evaluation indicates that there are no known active faults crossing this site, and the site is not within an Earthquake Fault Zone (Bryant and Hart, 2007, Jennings, 1994). However, the site is situated in an area of active, as well as potentially active, faulting. These include, but are not limited to: the San Andreas fault; the San Jacinto fault; the Elsinore fault; the Coronado Bank fault zone; and the Newport-Inglewood - Rose Canyon fault zone.

The possibility of ground acceleration or shaking at the site may be considered as approximately similar to the southern California region as a whole. Based on our evaluation, and the acceleration-attenuation relations of Bozorgnia, Campbell, and Niazi (1999) and Campbell and Bozorgnia (1993 and 1997), a probabilistic seismic hazards analyses was performed using FRISKSP (Blake, 2000), which models earthquake sources as 3-dimensional planes and evaluates the site specific probabilities of exceedance for given peak acceleration levels or pseudo-relative velocity levels. Based on a review of this data, and considering the relative seismic activity of the southern California region, a peak horizontal ground acceleration of 0.28 g was calculated. This value was chosen as it corresponds to a 10 percent probability of exceedance in 50 years (or a 475-year return period).

GROUNDWATER

Regional groundwater was encountered at an approximate depth of 30 feet below the building pad elevation, or approximately 3 feet below the toe of slope, and generally corresponds to the elevation of the water surface within the adjacent Buena Vista Lagoon.

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A perched water table was also observed near the base of the slope, and appears to be the result of surface waters from either irrigation, or rainfall infiltrating through the subsoil and perching along a permeability contrast between surficial deposits of alluvium, and undifferentiated fill/colluvium. A second potential permeability contrast was also noted as the contact between terrace deposits and the underlying Santiago Formation. While site exploration did not encounter water seepage along this contact, field observations, contrasting soil types, and laboratory testing indicating an a relatively higher degree of saturation for soils near this contact do not preclude the potential for perched conditions to have developed along this contact in the past, nor preclude them from occurring in the future.

Regional groundwater is not anticipated to adversely affect the performance of the slope, provided that the recommendations contained in this report are properly incorporated into final design and construction. These observations reflect site conditions at the time of our investigation and do not preclude future changes in local groundwater conditions from excessive irrigation, precipitation, or that were not obvious at the time of our investigation. However, based on the permeability contrasts between fill and the site sediments, perched groundwater conditions may exist or develop in the future due to excessive irrigation, precipitation poor drainage or damaged utilities, and should be anticipated. Should manifestations of this perched condition (i.e., seepage) develop in the future, this office could assess the conditions and provide mitigative recommendations, as necessary. The potential for perched water to occur after development should be disclosed to all owners, and any interested parties.

MASS WASTING AND SLOPE STABILITY

A review of available documents (Tan and Giffen, 1995; Tan and Kennedy, 1996) did not indicate the presence of any geomorphic features possibly indicative of a regional landslide, or other significant active "mass wasting" types of deposits underlying the site, other than the observed slope movement. Bedrock structure generally appears to be relatively flat-lying, and is not considered adverse with respect to the existing slope, based on the available data, and to the depths explored.

Since the slope has experienced surficial instability, the gross stability was evaluated in order to assess the potential impact on the stability of the existing residential structure, located approximately 40 feet from the top of slope. Using the modified Bishop's Method, the soil parameters presented herein, and the computer program GSTABL7 (Gregory, 2003), our stability analysis indicates that the slope possesses a factor of safety against failure of at least 1.5 (static) and 1.1 (seismic), and is therefore considered stable with respect to gross stability, assuming proper construction, maintenance, and normal rainfall (i.e., semi-arid conditions). Our slope stability analysis is presented in Appendix D.

PRELIMINARY CONCLUSIONS AND RECOMMENDATIONS

Based upon observations during our site reconnaissance and subsurface explorations, laboratory testing, and geologic and engineering analysis, it appears that the recent slope movement is generally surficial in nature, affecting undifferentiated fill/colluvium within the outer ± 3 to ± 4 feet of the slope. The recommended improvement of the slope, as presented in later sections of this report, should adequately mitigate the potential for future surficial slope instability, assuming proper construction, maintenance, and normal rainfall (i.e., semi-arid conditions). An evaluation of overall slope stability indicates that the slope is generally stable from a gross stability viewpoint and should not adversely impact the performance of the existing residential structure provided that the recommendations presented in this report are properly implemented.

Surficial slope failures are usually a result of the saturation of soils within the outer ± 5 feet of a slope. When soils become saturated, the frictional resistance between individual soil grains becomes reduced. The strength of the soil in this zone then is primarily dependent upon the soil's cohesion, which is low (less than 110 psf, as tested). Saturation also increases the soil's unit weight. The failure occurs when a soil column's frictional resistance is reduced to a point where the soil cannot support the increased water weight. Gravitational forces applied to the soil column cause it to move down slope.

Several factors may act to exacerbate this surficial instability. Based upon our evaluation, the following lot characteristics/site conditions appear to have contributed to the failure:

- **Landscaping/Irrigation/Drainage** - Lot drainage for the portions of the rear yard, located above the slope failure, appears to be directed toward the top of the slope. Based on a conversation with Mr. Love, the temporary water feature/play structure has been located in the general vicinity of the depression, and may have contributed to the relative settlement of soil in this area owing to the infiltration of water. Terraced areas between walls do not appear to be provided with adequate surface drainage, as such, excess water would readily pond and infiltrate into the subsoil. Irrigation necessary to sustain a grass lawn may be considered to be an equivalent rainfall of 1 to 2 inches per week. Improvement of site drainage and applying only the amount of water necessary to sustain plant life should reduce impacts from these conditions. The existing water feature may have also contributed to the observed distress and should be removed, or checked for leaks and repaired as necessary.
- **Existing Retaining Walls (Drainage)** - The existing retaining walls creating the slope terraces do not appear to be provided with adequate drainage (i.e., rock and gravel back drains), thus increasing hydrostatic pressures behind the walls and locally saturating soils and increasing surficial instability of the slope. Improvement of wall drainage is recommended.

- **Existing Retaining Walls (Foundations)** - The foundation systems observed do not appear to be setback a sufficient distance from the slope face, nor are they founded into a suitable bearing soil. As observed, the slope movement occurred within undifferentiated fill/colluvium, and along the contact with these materials and underlying formational soil. Foundations were observed to be generally founded in the fill/colluvium, and therefore became distressed when the slope moved. New walls should be founded into the underlying formational soils and minimally setback per the industry standard and applicable codes.
- **Site Geology** - Undifferentiated fill/colluvium, and the underlying terrace deposits are relatively permeable, sandy soils, as such, rainfall, irrigation, and related runoff, will readily infiltrate into these soils. The older formational clayey sandstone and claystone of the Santiago Formation occurring at depth is significantly more indurated, denser, and therefore, less permeable. This permeability contrast creates an increased potential to develop saturated soil conditions within the fill/colluvium and sandy terrace deposits above the contact. As can be seen from Plate 2, the slope movement generally occurred near, and slightly above this contact. Future improvement of the slope should include drainage of this contact.

In order to repair the slope failure, a development plan including surface drainage improvement, landscape/irrigation management, subdrainage of wall backfills and contrasting soil/bedrock conditions, and deepened wall foundations is recommended as presented in the following sections. It is our understanding that it is desired to generally restore the slope area to its pre-movement condition.

Our evaluation indicates that the deformation of Wall #6 appears to be un-related to the observed movement within the upper slope, but is likely due to similar conditions such as inadequate foundation embedment and drainage.

EARTHWORK CONSTRUCTION RECOMMENDATIONS

General

All grading should conform to the guidelines presented in the CBC (CBSC, 2007), the requirements of the City, and as recommended in the text of this report. Prior to grading, if any, a GSI representative should be present at the preconstruction meeting to provide additional grading guidelines, if needed, and review the earthwork schedule.

During earthwork construction all site preparation and the general grading procedures of the contractor should be observed and the fill selectively tested by a representative(s) of GSI. If unusual or unexpected conditions are exposed in the field, they should be reviewed by this office and if warranted, modified and/or additional recommendations will be offered. All applicable requirements of local and national construction and general industry safety

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orders, the Occupational Safety and Health Act (OSHA), and the Construction Safety Act should be met.

Site Preparation

Debris, vegetation, asphaltic concrete, construction debris, and other deleterious material should be removed from the building area prior to the start of construction. Sloping areas to receive fill should be properly benched in accordance with current industry standards of practice and guidelines specified in the 2007 CBC.

Removals (Unsuitable Surficial Materials)

It should be noted that using a pier/grade beam foundation does not require remedial grading for the support of the proposed new walls; however, the removal and recompaction of undifferentiated fill/colluvium is recommended behind these walls. Other settlement-sensitive improvements may also require deep foundations. Areas to receive compacted fill (if any) should be scarified, moisture conditioned and compacted to at least 90 percent relative compaction per ASTM D 1557. It is possible existing fills may be too wet to recompact, and may require some drying-back, or mixing with drier soils, in order to achieve compaction. This may increase the grading duration, and will need to be considered during planning.

Fill Placement

Subsequent to ground preparation, onsite soils may be placed in thin (± 6 -inch) lifts, cleaned of vegetation and debris, brought to a least optimum moisture content, and compacted to achieve a minimum relative compaction of 90 percent. If soil importation is planned, a sample of the soil import should be evaluated by this office prior to importing, in order to assure compatibility with the onsite site soils and the recommendations presented in this report. Import soils should be low expansive (Expansion Index [E.I.] less than 50).

Temporary Construction Slopes

Temporary cuts for wall construction should be constructed at a gradient of 1:1, or flatter, for slopes exposing formational soil to a maximum height of 20 feet, per Cal-OSHA for Type B soils, assuming no groundwater. If groundwater is encountered, construction should be stopped until the geotechnical consultant has analyzed this condition and amends these recommendations, in writing. Construction materials and/or stockpiled soil should not be stored within 5 feet of the top of any temporary slope. Temporary/permanent provisions should be made to direct any potential runoff away from the top of temporary slopes. Temporary slopes should be evaluated during construction by the geotechnical engineer for any comments, or revisions to this recommendation. Removals and/or temporary cuts should be made with sufficient space to allow for subdrains and/or wall back drains as recommended.

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PRELIMINARY DRILLED PIER FOUNDATION RECOMMENDATIONS

Foundations Design Criteria - Drilled Piers

The proposed retaining walls may be supported in whole by drilled, cast-in-place, concrete piers which penetrate existing fill and colluvium, and are embedded into the underlying bedrock material. The drilled pier foundation for the walls should gain vertical support from friction and end bearing in the native dense formational soils underlying the site. Drilled piers for foundations are intended to resist vertical and lateral loads due to imposed structural loads and not provide lateral stability/stabilization of slopes. The drilled piers should be at least 12 inches in diameter and should extend at least 10 feet into formational soil/bedrock. Drilled piers should be spaced a minimum of 3 pier diameters apart (center to center). The effects of pier groups should be evaluated when the preliminary foundation drawings are made available. Soil parameters to be used in pier and grade beam design are provided below. All the parameters provided are computed based on soil strength only, structural strength of the piers should be checked by the structural engineer or civil engineer specializing in structural analysis.

Creep Zone: 5-foot vertical zone below a given point on the slope face, and projected upward, parallel to the slope face.

Creep Load: The creep load projected on the area of the grade beam should be taken as an equivalent fluid approach, having a density of 60 pcf. For the caisson, it should be taken as a uniform 900 pounds per linear foot of drilled pier's depth, located above the creep zone.

Point of Fixity: Located a distance of 1.5 times the caisson's diameter, below grade, or the creep zone, whichever controls.

Passive Resistance: Passive earth pressure of 250 psf per foot of depth, to a maximum value of 2,500 psf may be used to determine drilled pier depth and spacing, provided that they meet or exceed the minimum requirements stated above. To determine the total lateral resistance, the contribution of the creep prone zone above the point of fixity, to passive resistance, should be disregarded. No contribution from soil/concrete friction on the bottom of slabs should be included in passive calculations.

The upper 12 inches of passive resistance for the drilled piers should be neglected unless confined by slabs or pavement. Additional lateral resistance may be obtained from lateral pile deflection. For a ¼ inch lateral pile deflection, a lateral load of 10 percent of vertical capacity can be utilized. A more refined lateral load capacity may be provided when the pier head

conditions (fixed, free), layout and elevations are provided by the structural consultant and/or architect on this project.

Allowable Axial Capacity:

Shaft capacity : 450 psf applied over the surface area of the shaft within bedrock only. Note that some down drag of 230 psf may be realized for settlement of fill soils up to 1 inch. For fill settlements of less than 1 inch, use the full cohesion value of the fill soil and consult with the geotechnical consultant.

Tip capacity: 3,500 psf. Assumes clean dense tip condition.

Pier Construction

Pier holes should be drilled straight and plumb. Locations (both plan and elevation) and plumbness should be the contractors responsibility. All loose materials should be removed from the bottom of each pier hole. Concrete and steel reinforcement should be placed in each pier hole on the same day that the hole is drilled. If a caving sand condition occurs, during or after drilling, the pier hole should be cased. The bottom of the casing should be at least 4 feet below the top of the concrete as the concrete is poured and the casing is withdrawn. Dewatering would be required for concrete placement if seepage or groundwater is encountered during construction. Alternately, tremie concrete placement should be considered.

The tops of the drilled piers should be interconnected with grade beams which will aid in resisting differential foundation movement and lateral drift. In general the minimum grade beam size should be 18 inches in width and 12 inches below the finished soil subgrade. The actual design of the grade beams and reinforcement should be performed by the Structural Engineer or civil engineer specializing in structural analysis.

Based on the allowable foundation pressures recommended above, and assuming uniformity of the bedrock surface slope and consistent composition of the bedrock, we estimate that the total foundation settlement will be less than 1/2 inch and the differential settlement will be less than 1/4 inch between adjacent piers.

Prior to construction, we should review the construction procedure proposed by the contractor. Pier excavations should be observed and approved by us prior to concrete and steel placement. Observations during pier excavations will allow us to correlate the subsurface conditions exposed during construction with that obtained from our borings and make necessary changes in the foundation support and other geotechnical design criteria, if necessary.

Drilled pier steel reinforcement cages should have spacers to allow for a minimum spacing of steel from the side of the pier excavation. During pier placement, concrete should not

be allowed to free fall more than 5 feet. Concrete used in the foundation should be tested by a qualified materials testing consultant for proper slump strength and mix design.

All footing trench excavations and/or pier excavations should be observed by a representative of this office prior to placing reinforcement. Footing trench or pier soil and any excess soils generated from utility trench excavations should be compacted to a minimum relative compaction of 90 percent if not removed from the site.

WALL DESIGN PARAMETERS

Conventional Retaining Walls

The design parameters provided below assume that either non expansive soils (typically Class 2 permeable filter material or Class 3 aggregate base) or native onsite materials (up to and including an E.I. of 50) are used to backfill any retaining walls. The type of backfill (i.e., select or native), should be specified by the wall designer, and clearly shown on the plans. Building walls, below grade, should be water-proofed. The foundation system for the proposed retaining walls should be designed in accordance with the recommendations presented in this and preceding sections of this report, as appropriate (i.e., pier-supported). Footings/grade beams should be embedded a minimum of 18 inches below adjacent grade (excluding landscape layer, 6 inches) and should be 24 inches in width. There should be no increase in bearing for footing width. Recommendations for specialty walls (i.e., crib, earthstone, geogrid, etc.) can be provided upon request, and would be based on site specific conditions.

Restrained Walls

Any retaining walls that will be restrained prior to placing and compacting backfill material or that have re-entrant or male corners, should be designed for an at-rest equivalent fluid pressure (EFP) of 65 pcf, plus any applicable surcharge loading. For areas of male or re-entrant corners, the restrained wall design should extend a minimum distance of twice the height of the wall (2H) laterally from the corner.

Cantilevered Walls

The recommendations presented below are for cantilevered retaining walls up to 10 feet high. Design parameters for walls less than 3 feet in height may be superceded by City standard design. Active earth pressure may be used for retaining wall design, provided the top of the wall is not restrained from minor deflections. An equivalent fluid pressure approach may be used to compute the horizontal pressure against the wall. Appropriate fluid unit weights are given below for specific slope gradients of the retained material. These do not include other superimposed loading conditions due to traffic, structures, seismic events or adverse geologic conditions. When wall configurations are finalized, the appropriate loading conditions for superimposed loads can be provided upon request.

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SURFACE SLOPE OF RETAINED MATERIAL (HORIZONTAL:VERTICAL)	EQUIVALENT FLUID WEIGHT P.C.F. (SELECT BACKFILL**)	EQUIVALENT FLUID WEIGHT P.C.F. (NATIVE BACKFILL***)
Level*	35	45
2 to 1	50	60
<p>* Level backfill behind a retaining wall is defined as compacted earth materials, properly drained, without a slope for a distance of 2H behind the wall.</p> <p>** As evaluated by testing, P.I. <15, E.I. <21, S.E. \geq30, and \leq10% passing No. 200 sieve.</p> <p>*** As evaluated by testing, E.I. <50, S.E. >25.</p>		

Retaining Wall Backfill and Drainage

Wall Backfill

Backfill behind walls shall consist of very low to low expansive soils compacted to at least 90 percent relative compaction.

Wall Drainage

Positive drainage must be provided behind all retaining walls in the form of gravel wrapped in geofabric and outlets. A backdrain system is considered necessary for retaining walls that are 2 feet or greater in height. Details 1, 2, and 3, present the back drainage options discussed below. Backdrains should consist of a 4-inch diameter perforated PVC or ABS pipe encased in either Class 2 permeable filter material or 3/4-inch to 1 1/2-inch gravel wrapped in approved filter fabric (Mirafi 140 or equivalent). For low expansive backfill, the filter material should extend a minimum of 1 horizontal foot behind the base of the walls and upward at least 1 foot. For native backfill that has up to an E.I. of 50, continuous Class 2 permeable drain materials should be used behind the wall. This material should be continuous (i.e., full height) behind the wall, and it should be constructed in accordance with the enclosed Detail 1 (Typical Retaining Wall Backfill and Drainage Detail). For limited access and confined areas, (panel) drainage behind the wall may be constructed in accordance with Detail 2 (Retaining Wall Backfill and Subdrain Detail Geotextile Drain). Materials with an E.I. potential of greater than 50 should not be used as backfill for retaining walls. For more onerous expansive situations, backfill and drainage behind the retaining wall should conform with Detail 3 (Retaining Wall And Subdrain Detail Clean Sand Backfill).

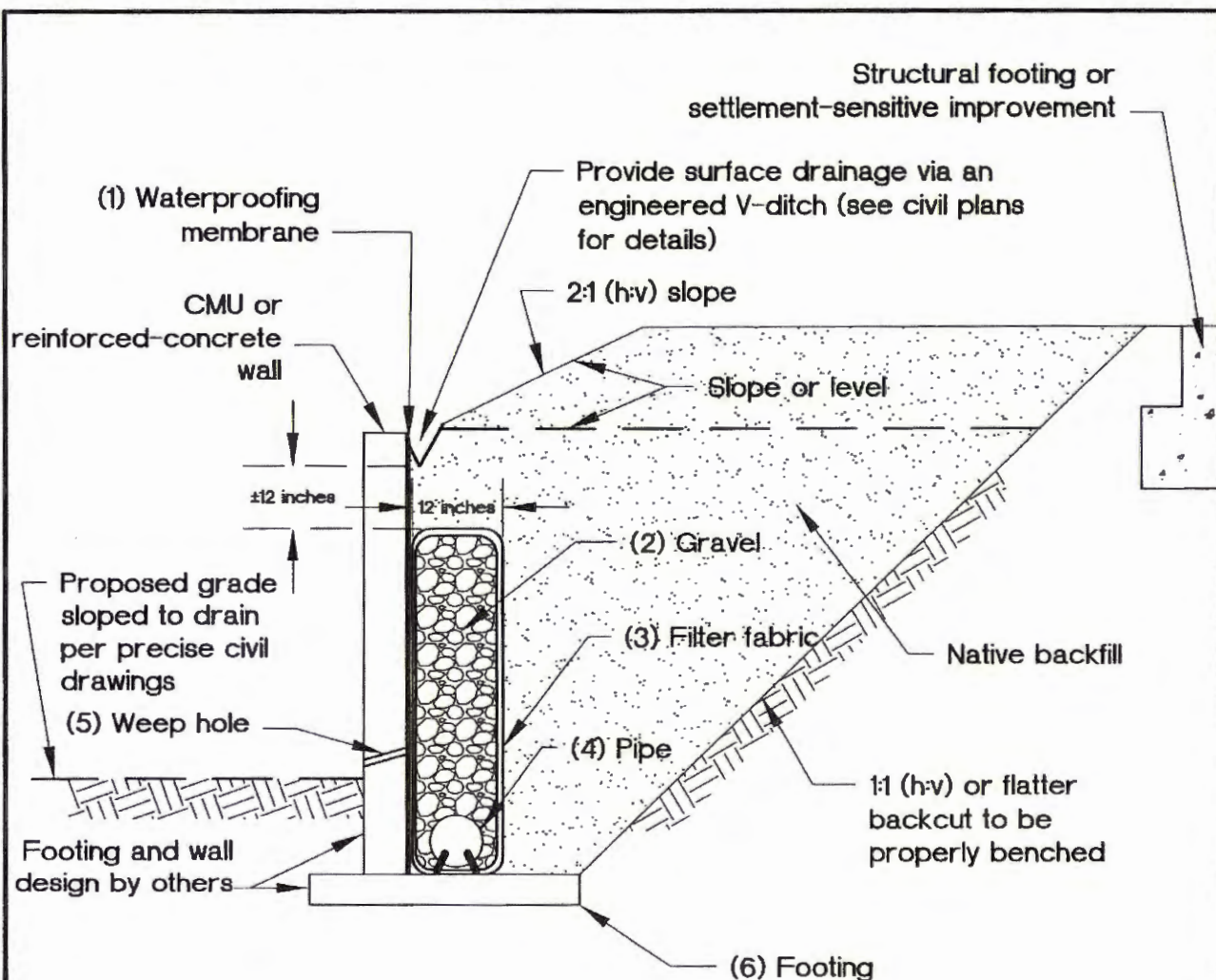
Outlets should consist of a 4-inch diameter solid PVC or ABS pipe spaced no greater than \pm 100 feet apart, with a minimum of two outlets, one on each end. The use of weep holes, only, in walls higher than 2 feet, is not recommended. The surface of the backfill should be sealed by pavement or the top 18 inches compacted with native soil (E.I. \leq 50). Proper surface drainage should also be provided. For additional mitigation, consideration should be given to applying a water-proof membrane to the back of all retaining structures. The use of a waterstop should be considered for all concrete and masonry joints.

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(1) Waterproofing membrane.

(2) Gravel: Clean, crushed, $\frac{3}{4}$ to $1\frac{1}{2}$ inch.

(3) Filter fabric: Mirafi 140N or approved equivalent.

(4) Pipe: 4-inch-diameter perforated PVC, Schedule 40, or approved alternative with minimum of 1 percent gradient sloped to suitable, approved outlet point (perforations down).

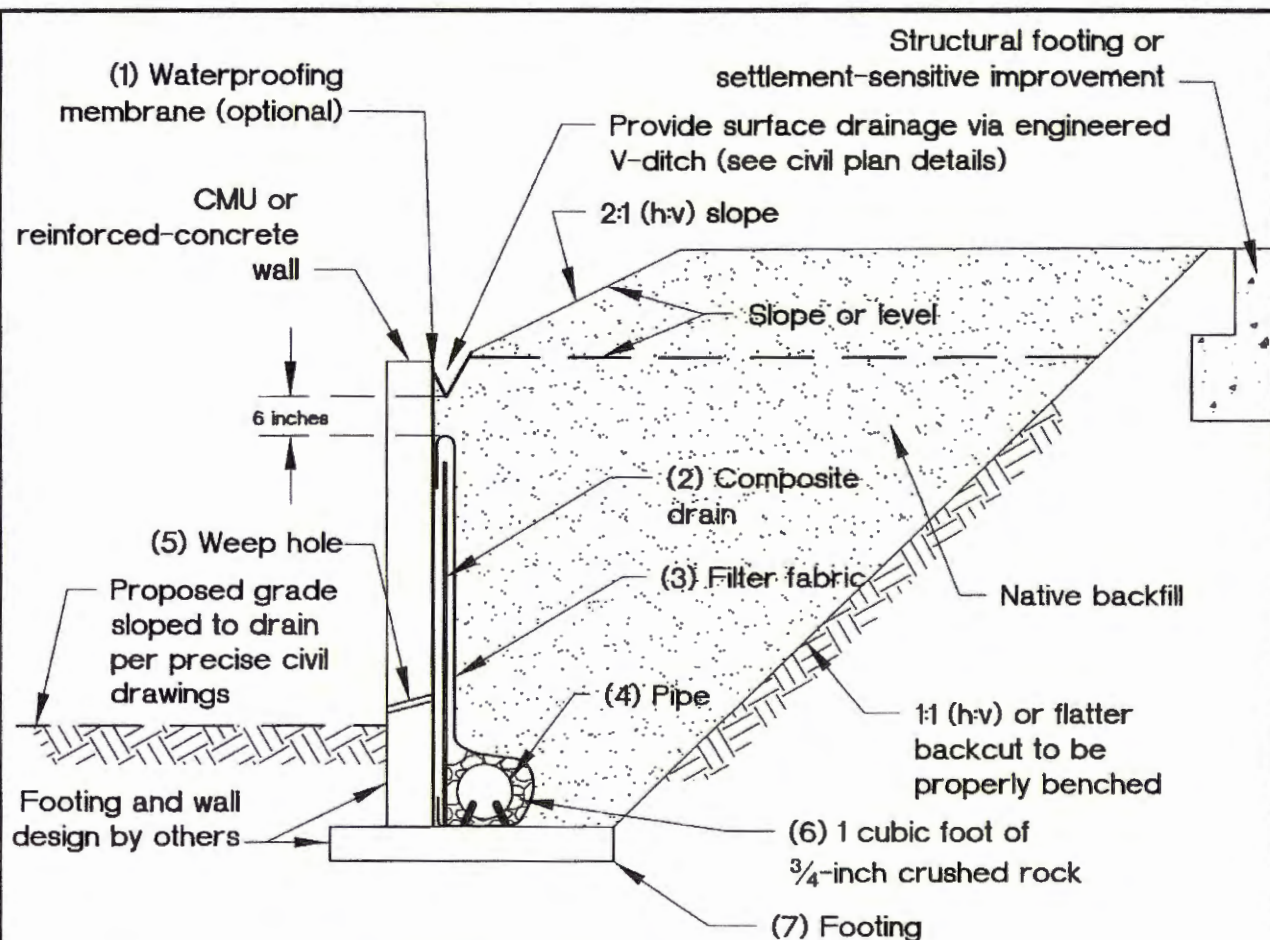
(5) Weep hole: Minimum 2-inch diameter placed at 20-foot centers along the wall and placed 3 inches above finished surface. Design civil engineer to provide drainage at toe of wall. No weep holes for below-grade walls.

(6) Footing: If bench is created behind the footing greater than the footing width, use level fill or cut natural earth materials. An additional "heel" drain will likely be required by geotechnical consultant.

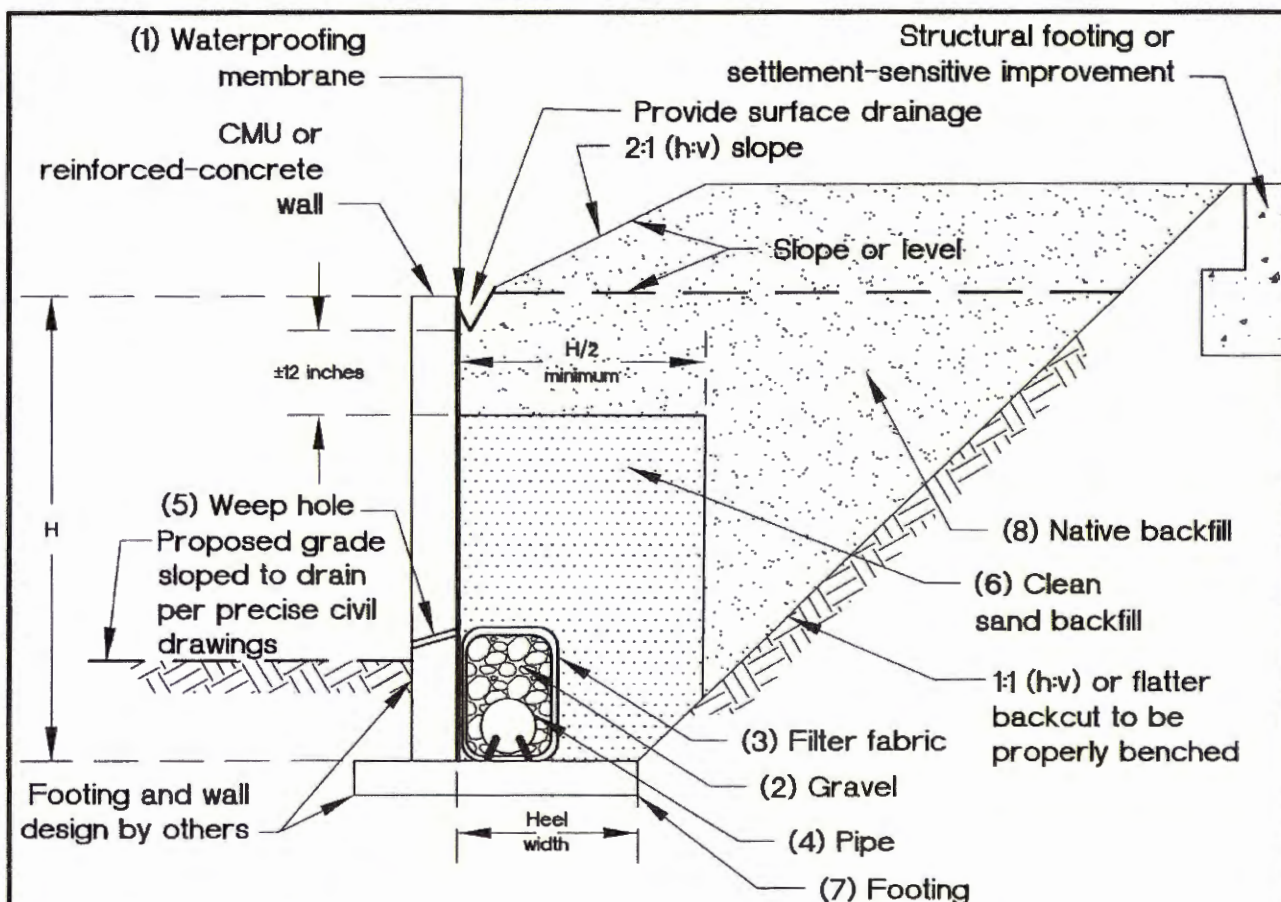
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RETAINING WALL DETAIL — ALTERNATIVE A

Detail 1



- (1) Waterproofing membrane (optional): Liquid boot or approved mastic equivalent.
- (2) Drain: Miradrain 6000 or J-drain 200 or equivalent for non-waterproofed walls; Miradrain 6200 or J-drain 200 or equivalent for waterproofed walls (all perforations down).
- (3) Filter fabric: Mirafi 140N or approved equivalent; place fabric flap behind core.
- (4) Pipe: 4-inch-diameter perforated PVC, Schedule 40, or approved alternative with minimum of 1 percent gradient to proper outlet point (perforations down).
- (5) Weep hole: Minimum 2-inch diameter placed at 20-foot centers along the wall and placed 3 inches above finished surface. Design civil engineer to provide drainage at toe of wall. No weep holes for below-grade walls.
- (6) Gravel: Clean, crushed, $\frac{3}{4}$ to $1\frac{1}{2}$ inch.
- (7) Footing: If bench is created behind the footing greater than the footing width, use level fill or cut natural earth materials. An additional "heel" drain will likely be required by geotechnical consultant.



(1) Waterproofing membrane: Liquid boot or approved mastic equivalent.

(2) Gravel: Clean, crushed, $\frac{3}{4}$ to $1\frac{1}{2}$ inch.

(3) Filter fabric: Mirafi 140N or approved equivalent.

(4) Pipe: 4-inch-diameter perforated PVC, Schedule 40, or approved alternative with minimum of 1 percent gradient to proper outlet point (perforations down).

(5) Weep hole: Minimum 2-inch diameter placed at 20-foot centers along the wall and placed 3 inches above finished surface. Design civil engineer to provide drainage at toe of wall. No weep holes for below-grade walls.

(6) Clean sand backfill: Must have sand equivalent value (S.E.) of 35 or greater; can be densified by water jetting upon approval by geotechnical engineer.

(7) Footing: If bench is created behind the footing greater than the footing width, use level fill or cut natural earth materials. An additional "heel" drain will likely be required by geotechnical consultant.

(8) Native backfill: If E.I. < 21 and S.E. > 35 then all sand requirements also may not be required and will be reviewed by the geotechnical consultant.

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RETAINING WALL DETAIL – ALTERNATIVE C

Detail 3

Other Subdrainage

Perched groundwater conditions should also be anticipated along the contact between terrace deposits and the underlying Santiago formation. As such, this contact should be provided with a separate drainage system. This system may generally consist of a "burrito" type drain, minimally consisting of 3 to 4 inch perforated PVC pipe (SDR 35, or equivalent), embedded in a minimum 1 cubic foot per linear foot of 3/4 10 1 1/2 inch crushed rock, with the rock encapsulated in filter fabric (Mirafi 140N, or equivalent). The water should be conveyed downslope via a non-erosive device, in accordance with the recommendations of the design civil engineer. When the contact is exposed in the anticipated backcuts for wall construction, this office shall observe the exposure and provide additional drainage recommendations, as necessary, based on the soil conditions exposed.

ALTERNATIVE MITIGATION CONSIDERATIONS

As an additional alternative to the options provided above, the slope could be repaired by constructing a segmental retaining wall, or series of segmental walls with reinforced soil backfill along the entire length of the slope. Depending upon the inclination at which the wall is constructed, the level building space at the subject site could be enlarged. However, permission to construct the wall would most likely be required by the adjacent property owners and the City due to the height of the wall, the total yardage of earth materials to be moved, and the need to perform work outside property boundaries. Additionally, it is likely that this method would be more costly than the repair work outlined above. It should also be noted that additional geotechnical engineering analyses would be required for this alternative scenario. The design of the wall should be provided by a civil engineer. This alternative construction could substantially increase the size of the backyard, and since the slope above the wall would be at a 2:1 (h:v) gradient, the slope should perform consistent with current standards of practice, provided it is constructed properly. This may require the import of significant quantities of select soils.

DEVELOPMENT CRITERIA

Slope Deformation

Compacted fill slopes designed using customary factors of safety for gross or surficial stability and constructed in general accordance with the design specifications should be expected to undergo some differential vertical heave or settlement in combination with differential lateral movement in the out-of-slope direction, after grading. This post-construction movement occurs in two forms: slope creep, and lateral fill extension (LFE). Slope creep is caused by alternate wetting and drying of the fill soils which results in slow downslope movement. This type of movement is expected to occur throughout the life of the slope, and is anticipated to potentially affect improvements or structures (e.g., separations and/or cracking), placed near the top-of-slope, up to a maximum distance of

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approximately 15 feet from the top-of-slope, depending on the slope height. This movement generally results in rotation and differential settlement of improvements located within the creep zone. LFE occurs due to deep wetting from irrigation and rainfall on slopes comprised of expansive materials. Although some movement should be expected, long-term movement from this source may be minimized, but not eliminated, by placing the fill throughout the slope region, wet of the fill's optimum moisture content.

It is generally not practical to attempt to eliminate the effects of either slope creep or LFE. Suitable mitigative measures to reduce the potential of lateral deformation typically include: setback of improvements from the slope faces (per the CBC [CBSC, 2007]), positive structural separations (i.e., joints) between improvements, and stiffening and deepening of foundations. Expansion joints in walls should be placed no greater than 20 feet on-center, and in accordance with the structural engineer's recommendations. All of these measures are recommended for design of structures and improvements. The ramifications of the above conditions, and recommendations for mitigation, should be provided to the owner and/or any other interested/affected parties.

Slope Maintenance and Planting

Water has been shown to weaken the inherent strength of all earth materials. Slope stability is significantly reduced by overly wet conditions. Positive surface drainage away from slopes should be maintained and only the amount of irrigation necessary to sustain plant life should be provided for planted slopes. Over-watering should be avoided as it adversely affects site improvements, and causes perched groundwater conditions. Graded slopes constructed utilizing onsite materials would be erosive. Eroded debris may be minimized and surficial slope stability enhanced by establishing and maintaining a suitable vegetation cover soon after construction. Compaction to the face of fill slopes would tend to minimize short-term erosion until vegetation is established. Plants selected for landscaping should be light weight, deep rooted types that require little water and are capable of surviving the prevailing climate. Jute-type matting or other fibrous covers may aid in allowing the establishment of a sparse plant cover. Utilizing plants other than those recommended above will increase the potential for perched water, staining, mold, etc., to develop. A rodent control program to mitigate burrowing should be implemented. Irrigation of natural (ungraded) slope areas is generally not recommended. These recommendations regarding plant type, irrigation practices, and rodent control should be provided to the owner and/or other interested/affected parties. Over-steepening of slopes should be avoided during building construction activities and landscaping.

Drainage

Adequate lot surface drainage is a very important factor in reducing the likelihood of adverse performance of foundations, hardscape, and slopes. Surface drainage should be sufficient to mitigate ponding of water anywhere on a lot, and especially near structures and tops of slopes. Lot surface drainage should be carefully taken into consideration during fine grading, landscaping, and building construction. Therefore, care should be

taken that future landscaping or construction activities do not create adverse drainage conditions. Positive site drainage within lots and common areas should be provided and maintained at all times. Drainage should not flow uncontrolled down any descending slope. Water should be directed away from foundations and not allowed to pond and/or seep into the ground. In general, the area within 5 feet around a structure should slope away from the structure. We recommend that unpaved lawn and landscape areas have a minimum gradient of 1 percent sloping away from structures, and whenever possible, should be above adjacent paved areas. Consideration should be given to avoiding construction of planters adjacent to structures (buildings, pools, spas, etc.). Pad drainage should be directed toward the street or other approved area(s). Although not a geotechnical requirement, roof gutters, down spouts, or other appropriate means may be utilized to control roof drainage. Down spouts, or drainage devices should outlet a minimum of 5 feet from structures or into a subsurface drainage system. Areas of seepage may develop due to irrigation or heavy rainfall, and should be anticipated. Minimizing irrigation will lessen this potential. If areas of seepage develop, recommendations for minimizing this effect could be provided upon request.

Erosion Control

Cut and fill slopes will be subject to surficial erosion during and after grading. Onsite earth materials have a moderate to high erosion potential. Consideration should be given to providing hay bales and silt fences for the temporary control of surface water, from a geotechnical viewpoint.

Landscape Maintenance

Only the amount of irrigation necessary to sustain plant life should be provided. Over-watering the landscape areas will adversely affect proposed site improvements. We would recommend that any proposed open-bottom planters adjacent to proposed structures be eliminated for a minimum distance of 10 feet. As an alternative, closed-bottom type planters could be utilized. An outlet placed in the bottom of the planter, could be installed to direct drainage away from structures or any exterior concrete flatwork. If planters are constructed adjacent to structures, the sides and bottom of the planter should be provided with a moisture retarder to mitigate penetration of irrigation water into the subgrade. Provisions should be made to drain the excess irrigation water from the planters without saturating the subgrade below or adjacent to the planters. Graded slope areas should be planted with drought resistant vegetation. Consideration should be given to the type of vegetation chosen and their potential effect upon surface improvements (i.e., some trees will have an effect on concrete flatwork with their extensive root systems). From a geotechnical standpoint leaching is not recommended for establishing landscaping. If the surface soils are processed for the purpose of adding amendments, they should be recompacted to 90 percent minimum relative compaction.

Gutters and Downspouts

As previously discussed in the drainage section, the installation of gutters and downspouts should be considered to collect roof water that may otherwise infiltrate the soils within the rear yard area. If utilized, the downspouts should be drained into PVC collector pipes or other non-erosive devices (e.g., paved swales or ditches; below grade, solid tight-lined PVC pipes; etc.), that will carry the water away from the house, to an appropriate outlet, in accordance with the recommendations of the design civil engineer. Downspouts and gutters are not a requirement; however, from a geotechnical viewpoint, provided that positive drainage is incorporated into project design (as discussed previously).

Subsurface and Surface Water

Subsurface and surface water are not anticipated to affect site development, provided that the recommendations contained in this report are incorporated into final design and construction and that prudent surface and subsurface drainage practices are incorporated into the construction plans. Perched groundwater conditions along zones of contrasting permeabilities may not be precluded from occurring in the future due to site irrigation, poor drainage conditions, or damaged utilities, and should be anticipated along the contact between terrace deposits and the underlying Santiago Formation. Should perched groundwater conditions develop, this office could assess the affected area(s) and provide the appropriate recommendations to mitigate the observed groundwater conditions. Groundwater conditions may change with the introduction of irrigation, rainfall, or other factors.

Site Improvements

If in the future, any additional improvements (e.g., pools, spas, etc.) are planned for the site, recommendations concerning the geological or geotechnical aspects of design and construction of said improvements could be provided upon request. Pools and/or spas should not be constructed without specific design and construction recommendations from GSI, and this construction recommendation should be provided to the homeowners and/or other interested/affected parties. This office should be notified in advance of any fill placement, grading of the site, or trench backfilling after rough grading has been completed. This includes any grading, utility trench and retaining wall backfills, flatwork, etc.

Footing Trench/Pier Excavation

All footing excavations should be observed by a representative of this firm subsequent to trenching and prior to concrete form and reinforcement placement. The purpose of the observations is to evaluate that the excavations have been made into the recommended bearing material and to the minimum widths and depths recommended for construction. If loose or compressible materials are exposed within the footing excavation, a deeper footing or removal and recompaction of the subgrade materials would be recommended.

at that time. Footing trench spoil and any excess soils generated from utility trench excavations should be compacted to a minimum relative compaction of 90 percent, if not removed from the site.

SUMMARY OF RECOMMENDATIONS REGARDING GEOTECHNICAL OBSERVATION AND TESTING

We recommend that observation and/or testing be performed by GSI at each of the following construction stages:

- During grading/recertification.
- During excavation.
- During placement of subdrains, toe drains, or other subdrainage devices, prior to placing fill and/or backfill.
- After excavation of building footings, retaining wall footings, and free standing walls footings, prior to the placement of reinforcing steel or concrete.
- Prior to pouring any slabs or flatwork, after presoaking/presaturation of building pads and other flatwork subgrade, before the placement of concrete, reinforcing steel, capillary break (i.e., sand, pea-gravel, etc.), or vapor retarders (i.e., visqueen, etc.).
- During retaining wall subdrain installation, prior to backfill placement.
- During placement of backfill for area drain, interior plumbing, utility line trenches, and retaining wall backfill.
- During slope construction/repair.
- When any unusual soil conditions are encountered during any construction operations, subsequent to the issuance of this report.
- When any homeowner improvements, such as flatwork, spas, pools, walls, etc., are constructed, prior to construction. GSI should review such plans prior to construction.
- A report of geotechnical observation and testing should be provided at the conclusion of each of the above stages, in order to provide concise and clear documentation of site work, and/or to comply with code requirements.

OTHER DESIGN PROFESSIONALS/CONSULTANTS

The design civil engineer, structural engineer, architect, landscape architect, wall designer, etc., should review the recommendations provided herein, incorporate those recommendations into all their respective plans, and by explicit reference, make this report part of their project plans. This report presents minimum design criteria for the design of slabs, foundations and other elements possibly applicable to the project. These criteria should not be considered as substitutes for actual designs by the structural engineer/designer.

The structural engineer/designer should analyze actual soil-structure interaction and consider, as needed, bearing, expansive soil influence, and strength, stiffness and deflections in the various slab, foundation, and other elements in order to develop appropriate, design-specific details. As conditions dictate, it is possible that other influences will also have to be considered. The structural engineer/designer should consider all applicable codes and authoritative sources where needed. If analyses by the structural engineer/designer result in less critical details than are provided herein as minimums, the minimums presented herein should be adopted. It is considered likely that some, more restrictive details will be required.

If the structural engineer/designer has any questions or requires further assistance, they should not hesitate to call or otherwise transmit their requests to GSI. In order to mitigate potential distress, the foundation and/or improvement's designer should confirm to GSI and the governing agency, in writing, that the proposed foundations and/or improvements can tolerate the amount of differential settlement and/or expansion characteristics and other design criteria specified herein.

PLAN REVIEW

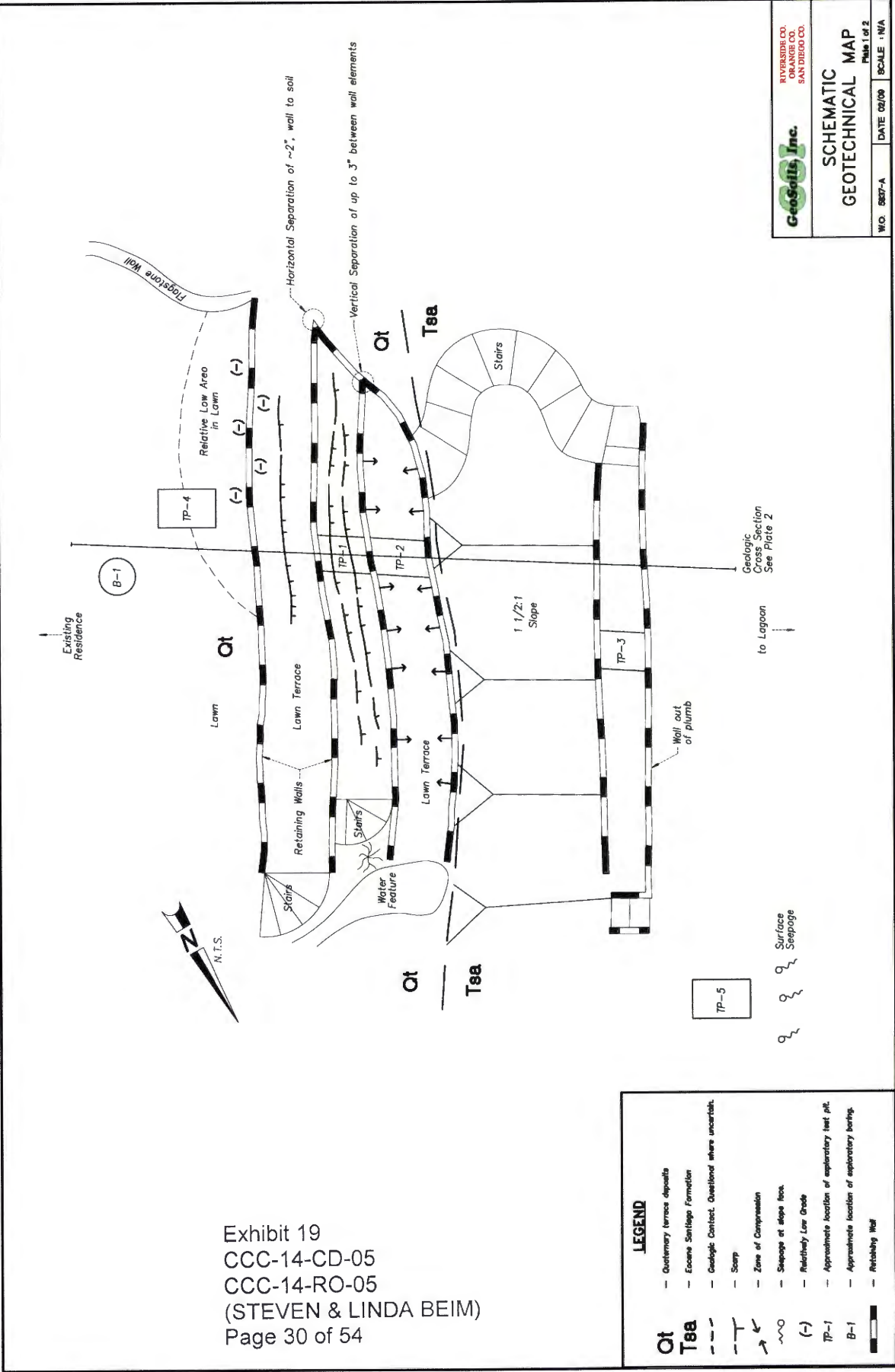
Final project plans (grading, precise grading, foundation, retaining wall, landscaping, etc.), should be reviewed by this office prior to construction, so that construction is in accordance with the conclusions and recommendations of this report. Based on our review, supplemental recommendations and/or further geotechnical studies may be warranted.

LIMITATIONS

The materials encountered on the project site and utilized for our analysis are believed representative of the area; however, soil and bedrock materials vary in character between excavations and natural outcrops or conditions exposed during mass grading. Site conditions may vary due to seasonal changes or other factors.

Inasmuch as our study is based upon our review and engineering analyses and laboratory data, the conclusions and recommendations are professional opinions. These opinions have been derived in accordance with current standards of practice, and no warranty, either express or implied, is given. Standards of practice are subject to change with time. GSI assumes no responsibility or liability for work or testing performed by others, or their inaction; or work performed when GSI is not requested to be onsite, to evaluate if our recommendations have been properly implemented. Use of this report constitutes an agreement and consent by the user to all the limitations outlined above, notwithstanding any other agreements that may be in place. In addition, this report may be subject to review by the controlling authorities. Thus, this report brings to completion our scope of services for this portion of the project. All samples will be disposed of after 30 days, unless specifically requested by the Client, in writing.

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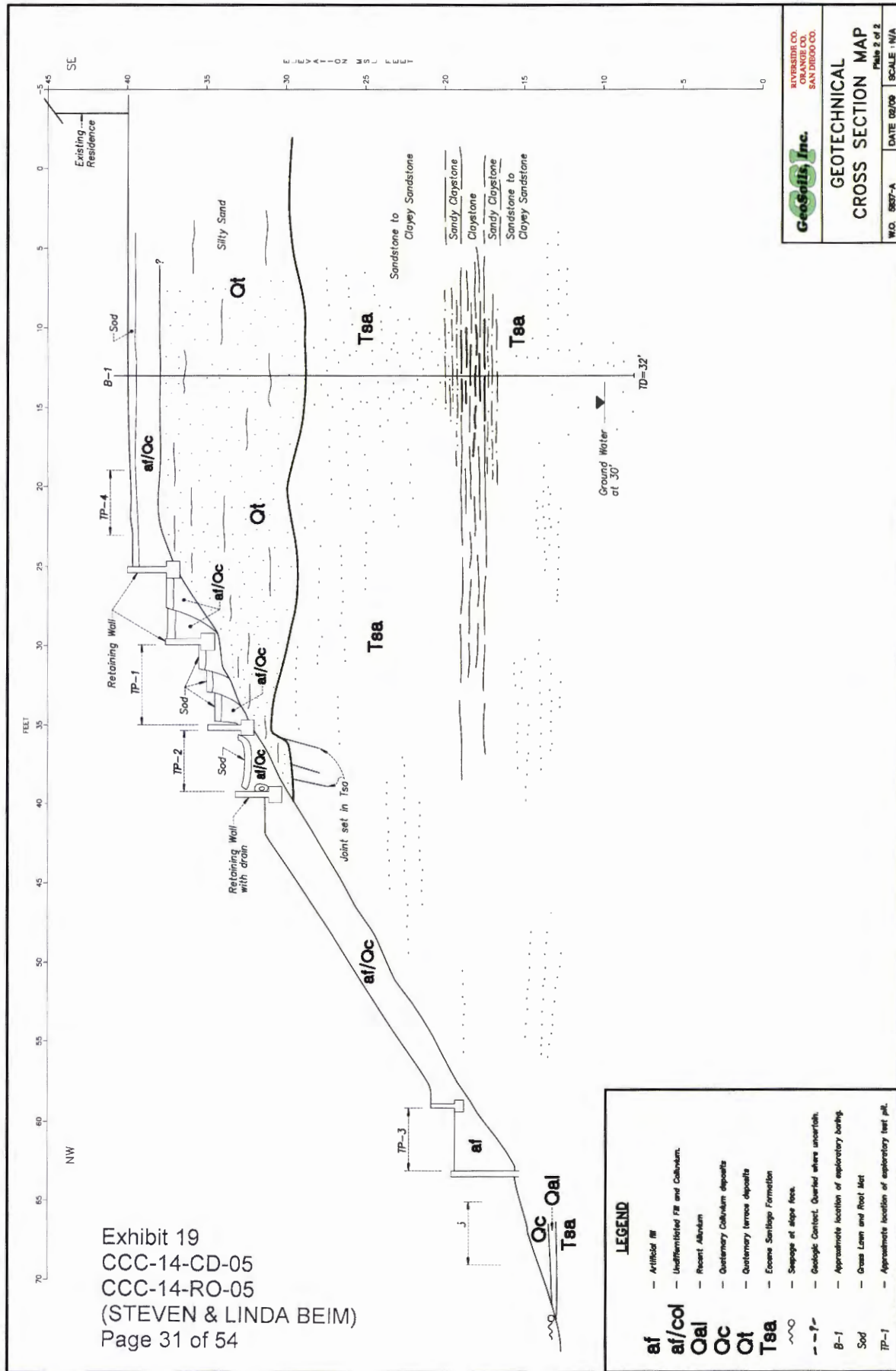
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**SCHEMATIC
 GEOTECHNICAL MAP**
 Plate 1 of 2

W.O. 5807-A DATE 02/09 SCALE 1/4"

LEGEND	
Ot	Quaternary terrace deposits
Tsa	Eocene Santiago Formation
- - -	Geologic Contact. Questioned where uncertain.
- - -	Scarp
- - -	Zone of Compression
- - -	Seepage at slope face.
- - -	Relatively Low Grade
TP-1	Approximate location of exploratory test pit.
B-1	Approximate location of exploratory boring.
- - -	Retaining Wall

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APPENDIX A

REFERENCES

APPENDIX A

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APPENDIX B

TEST PIT AND BORING LOGS

UNIFIED SOIL CLASSIFICATION SYSTEM					CONSISTENCY OR RELATIVE DENSITY			
Major Divisions			Group Symbols	Typical Names	CRITERIA			
Coarse-Grained Soils More than 50% retained on No. 200 sieve	Gravels 50% or more of coarse fraction retained on No. 4 sieve	Clean Gravels	GW	Well-graded gravels and gravel-sand mixtures, little or no fines	<u>Standard Penetration Test</u> Penetration Resistance N (blows/ft) 0 - 4 4 - 10 10 - 30 30 - 50 > 50 Relative Density Very loose Loose Medium Dense Very dense			
			GP	Poorly graded gravels and gravel-sand mixtures, little or no fines				
		Gravel with	GM	Silty gravels gravel-sand-silt mixtures				
			GC	Clayey gravels, gravel-sand-clay mixtures				
	Sands more than 50% of coarse fraction passes No. 4 sieve	Clean Sands	SW	Well-graded sands and gravelly sands, little or no fines				
			SP	Poorly graded sands and gravelly sands, little or no fines				
		Sands with Fines	SM	Silty sands, sand-silt mixtures				
			SC	Clayey sands, sand-clay mixtures				
Fine-Grained Soils 50% or more passes No. 200 sieve	Sils and Clays Liquid limit 50% or less	ML	Inorganic silts, very fine sands, rock flour, silty or clayey fine sands	<u>Standard Penetration Test</u> Penetration Resistance N (blows/ft) <2 2 - 4 4 - 8 8 - 15 15 - 30 >30 Consistency Very Soft Soft Medium Stiff Very Stiff Hard Unconfined Compressive Strength (tons/ft²) <0.25 0.25 - .050 0.50 - 1.00 1.00 - 2.00 2.00 - 4.00 >4.00				
		CL	Inorganic clays of low to medium plasticity, gravelly clays, sandy clays, silty clays, lean clays					
		OL	Organic silts and organic silty clays of low plasticity					
	Sils and Clays Liquid limit greater than 50%	MH	Inorganic silts, micaceous or diatomaceous fine sands or silts, elastic silts					
		CH	Inorganic clays of high plasticity, fat clays					
		OH	Organic clays of medium to high plasticity					
		Highly Organic Soils					PT	Peat, muck, and other highly organic soils
	3" 3/4" #4 #10 #40 #200 U.S. Standard Sieve							
Unified Soil Classification	Cobbles	Gravel		Sand			Silt or Clay	
		coarse	fine	coarse	medium	fine		
<u>MOISTURE CONDITIONS</u>					<u>MATERIAL QUANTITY</u>		<u>OTHER SYMBOLS</u>	
Dry	Absence of moisture: dusty, dry to the touch			trace	0 - 5 %	C	Core Sample	
Slightly Moist	Below optimum moisture content for compaction			few	5 - 10 %	S	SPT Sample	
Moist	Near optimum moisture content			little	10 - 25 %	B	Bulk Sample	
Very Moist	Above optimum moisture content			some	25 - 45 %	▼	Groundwater	
Wet	Visible free water; below water table					Qp	Pocket Penetrometer	
BASIC LOG FORMAT: Group name, Group symbol, (grain size), color, moisture, consistency or relative density. Additional comments: odor, presence of roots, mica, gypsum, coarse grained particles, etc.								
EXAMPLE: Sand (SP), fine to medium grained, brown, moist, loose, trace silt, little fine gravel, few cobbles up to 4" in size, some hair roots and rootlets.								

GeoSoils, Inc.**BORING LOG**

W.O. 5837-A-SC-SC

PROJECT: STEVE BEIM
2381 Buena Vista Circle

BORING B-1 SHEET 1 OF 1

DATE EXCAVATED 1-23-09 LOGGED BY: RGC

Depth (ft.)	Sample			USCS Symbol	Dry Unit Wt. (pcf)	Moisture (%)	Saturation (%)	Description of Material
	Bulk	Undisturbed	Blows/ft.					
				SM				UNDIFFERENTIATED FILL/COLLUVIUM: @ 0-2' SILTY SAND, dark brown, moist, loose.
				SM				TERRACE DEPOSITS (Qt): @ 2' SILTY SAND, orange brown, moist, loose; Lamella B horizon.
5			10		98.7	6.3	25	@ 5' SILTY SAND, orange brown, moist, loose; friable, fine to medium coarse grains.
10			39		121.6	11.6	86	
				SC				SANTIAGO FORMATION (Tsa): @ 11' CLAYEY SANDSTONE, olive gray, moist, dense.
15			37		115.8	11.5	71	@ 15' CLAYEY SANDSTONE, olive gray to light brown, moist, dense.
20			75	CL	119.1	10.0	68	@ 20' CLAYSTONE and SANDY CLAYSTONE, olive green, moist, very hard.
				SC				@ 22½' SANDSTONE to CLAYEY SANDSTONE, light brown, moist, dense; thickly bedded.
25			71		122.7	11.8	90	@ 25' CLAYEY SANDSTONE, light brown, moist, dense.
30			50		122.7	12.0	95	@ 30' CLAYEY SANDSTONE, light brown, saturated, dense. @ 30' Groundwater encountered.
								Total Depth = 32' Groundwater Encountered @ 30' No Caving Encountered Backfilled 1-23-2009

2381 Buena Vista Circle

GeoSoils, Inc.

Plate B-2

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ELEVATION 34' WORK ORDER 5837-A-SC
LOGGED BY RG DATE 01-16-2009

FORM 88/1

[illegible]

SCALE H: 1"=2' FT. V: 1"=2' FT. PIT ORIENT. SE->NW NATURAL SLOPE: ANGLE <5.1 T.D. 4'

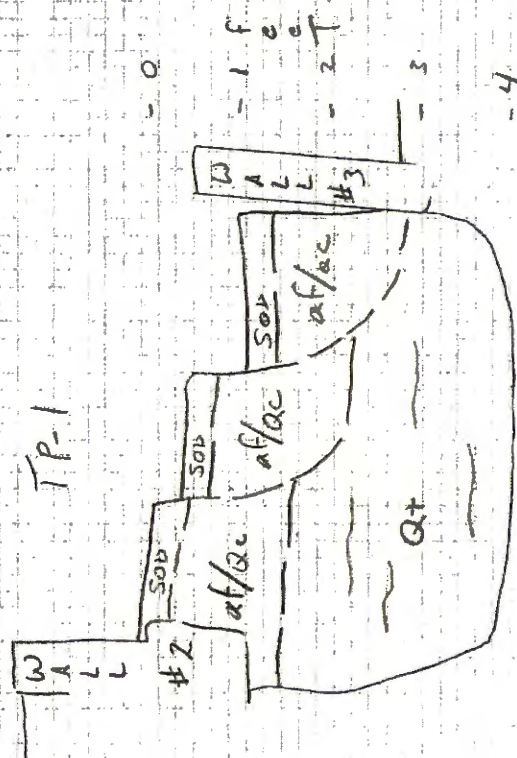


PLATE B-3

TEST PIT LOG TP-2

DEPTH (ft)	MATERIALS DESCRIPTION	ATTITUDES			COMMENTS
		BEDDING	JOINTS	FAULT/ SHEAR	
0-0.4	Sod				Subhorizontal Lamelle B Soil Profile in Qt No visible bedding, thickly bedded. Gravel and perforated pipe drain behind wall, no filter fabric, fines in gravel.
0.4-1.4	UNDIFFERENTIATED FILL/COLLUVIUM (af/Qc): SILTY SAND (SM), dark brown, moist to wet, loose, few roots.				
1.4-3	TERRACE DEPOSITS (qt): SAND (SP) to SILTY SAND (SM), brown, wet, loose.				
3+	SANTIAGO FORMATION (Tsa): SANDSTONE (SC), grav, moist, dense, massive, slope parallel - high angle fractures.		N35E, 85SE		
	Total Depth = 4'				
	No Groundwater Encountered				
	Backfilled 1-16-2009				
SCALE H: 1"=2' FT, V: 1"=2' FT, PIT ORIENT. SE-->NW NATURAL SLOPE: ANGLE <5.1 T.D. ~4'					

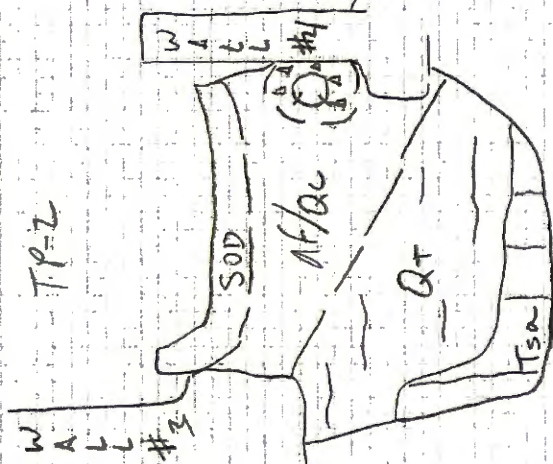


PLATE B-4

GEOSOILS INC. CLIENT Steve Beim
2381 Buena Vista Creek

ELEVATION 18' WORK ORDER 5837-A-SC
LOGGED BY RGC DATE 01-16-2009

TEST PIT LOG TP-3

FORM 88/1

DEPTH (ft)	MATERIALS DESCRIPTION	ATTITUDES			COMMENTS
		BEDDING	JOINTS	FAULT/ SHEAR	
0-4	ARTIFICIAL FILL (af): SILTY SAND (SM), brown, moist to wet, loose.	Subhorizontal	--	--	No wall backdrains, void at back of wall, likely associated with area drain system.
Variable	SANTIAGO FORMATION (Tsa): SANDSTONE (SC), light grayish brown, moist, dense.				
	Total Depth = 4'				
	No Groundwater Encountered				
	Backfilled 1-16-2009				

SCALE H: 1"=2' FT. V: 1"=2' FT. PIT ORIENT. SE->NW NATURAL SLOPE: ANGLE <5:1 T.D. ~4'

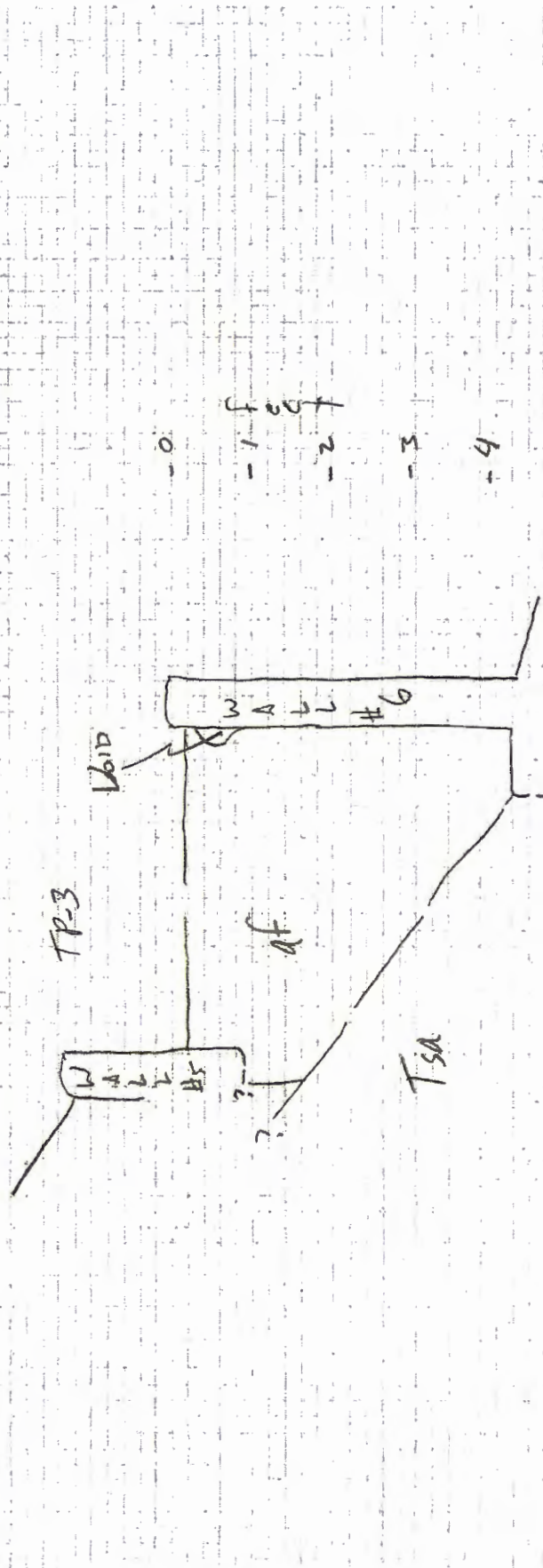
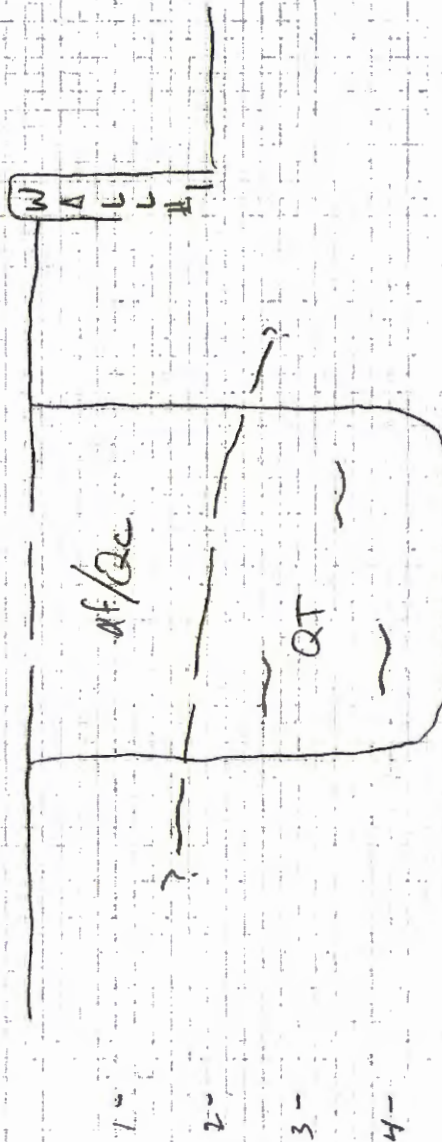


PLATE B-5

TEST PIT LOG TP-4

DEPTH (ft)	MATERIALS DESCRIPTION	ATTITUDES			COMMENTS
		BEDDING	JOINTS	FAULT/ SHEAR	
0-2	UNDIFFERENTIATED FILL/COLLUVIUM (af/Qc); SILTY SAND (SM), brown, moist, loose.				"Lamalle B" soil profile in Qt
2-4	TERRACE DEPOSITS (Qt): SILTY SAND (SM) to SAND (SP), brown, moist, loose to medium dense; "Lamalle B" soil profile developed in Qt.	Subhorizontal	None	None	
	Total Depth = 4'				
	No Groundwater Encountered				
	Backfilled 1-16-2009				

SCALE H: $1''=2'$ FT. V: $1''=2'$ FT. PIT ORIENT. SE->NW NATURAL SLOPE: ANGLE $<5:1$ T.D. $\sim 4\frac{1}{2}'$



CLIENT Steve Beim

Steve Beim
2381 Buena Vista Creek

ELEVATION ~14' WORK ORDER 5837-A-SC
LOGGED BY RGC DATE 01-16-2009

TEST PIT LOG TP-5

DEPTH (ft)	MATERIALS DESCRIPTION	ATTITUDES			COMMENTS
		BEDDING	JOINTS	FAULT/ SHEAR	
0-2	UNDIFFERENTIATED FILL/COLLUVIUM (af/Qc): SILTY SAND (SM), brown and yellowish brown, moist, loose.				few roots, many roots, Alluvium is gleyed
2-3	ALLUVIUM (Ga1): SAND w/CLAY/SILT (SC), dark gray (gleyed), saturated, loose.				
3-3½	SANTIAGO FORMATION (Tsa1): SANDSTONE (SC), light gray, wet, dense.				
	Total Depth = 3½"				
	No Groundwater Encountered				
	Backfilled 1-16-2009				

FORM 88/1

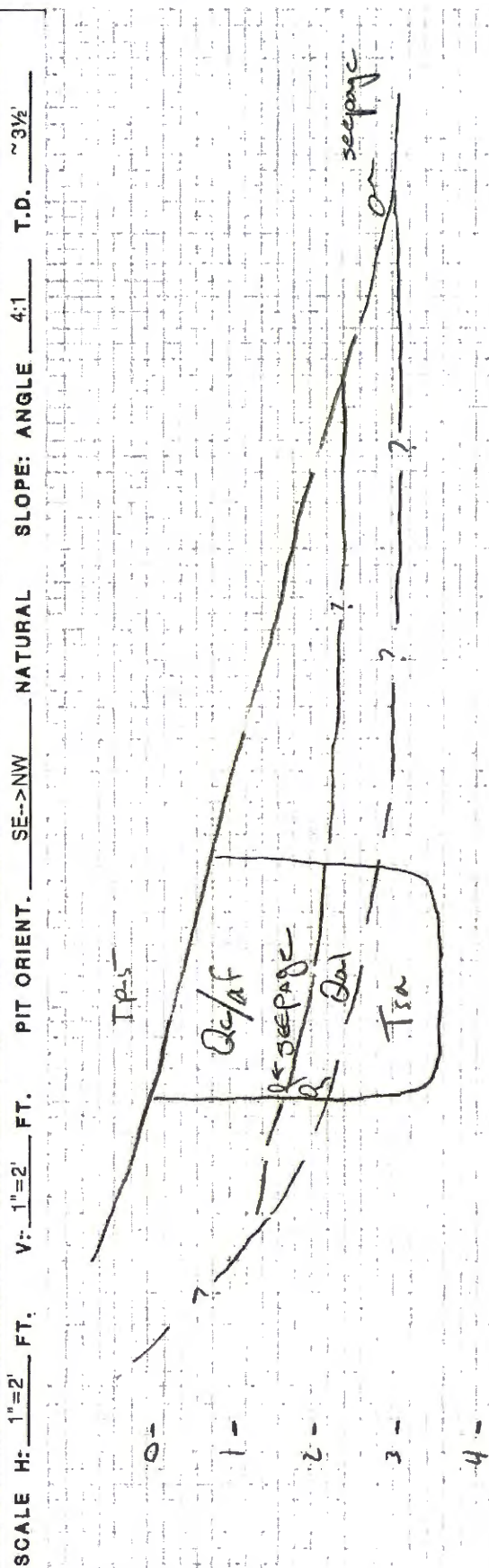


PLATE B-7

APPENDIX C
LABORATORY DATA

APPENDIX C

LABORATORY TESTING

General

Laboratory tests were performed on representative samples of the onsite earth materials, collected during our subsurface investigation, in order to evaluate their physical and engineering characteristics. The test procedures used and results obtained are presented below.

Classification

Soils were classified visually according to the Unified Soils Classification System (Sowers and Sowers, 1979). The soil classifications are shown on the Test Pit and Boring Logs in Appendix B.

Moisture-Density Relations

The field moisture contents and dry unit weights were determined for selected undisturbed samples in the laboratory. The dry unit weight was determined in pounds per cubic foot (pcf), and the field moisture content was determined as a percentage of the dry weight. The results of these tests are shown on the Test Pit and Boring Logs in Appendix B.

Expansion Index

Expansion Index (E.I.) tests were performed for the representative foundation soil types in general accordance with ASTM D 4829. The E.I. test results are presented in the following Table.

LOCATION/SOIL TYPE	EXPANSION INDEX	EXPANSION POTENTIAL
B-1 @ 5' - Brown, Silty SAND	5	Very Low
B-1 @ 15' - Yellowish Gray, Clayey SAND	35	Low
B-1 @ 20' - Gray Brown, CLAY	80	Medium

Atterberg Limits

Laboratory testing was performed to evaluate the Atterberg Limits (liquid limit, plastic limit, and plasticity index) in general accordance with ASTM D 4318 for a representative soil obtained from Boring B-1 @ 20 feet. The results of Atterberg Limit testing are presented on Plate C-1.

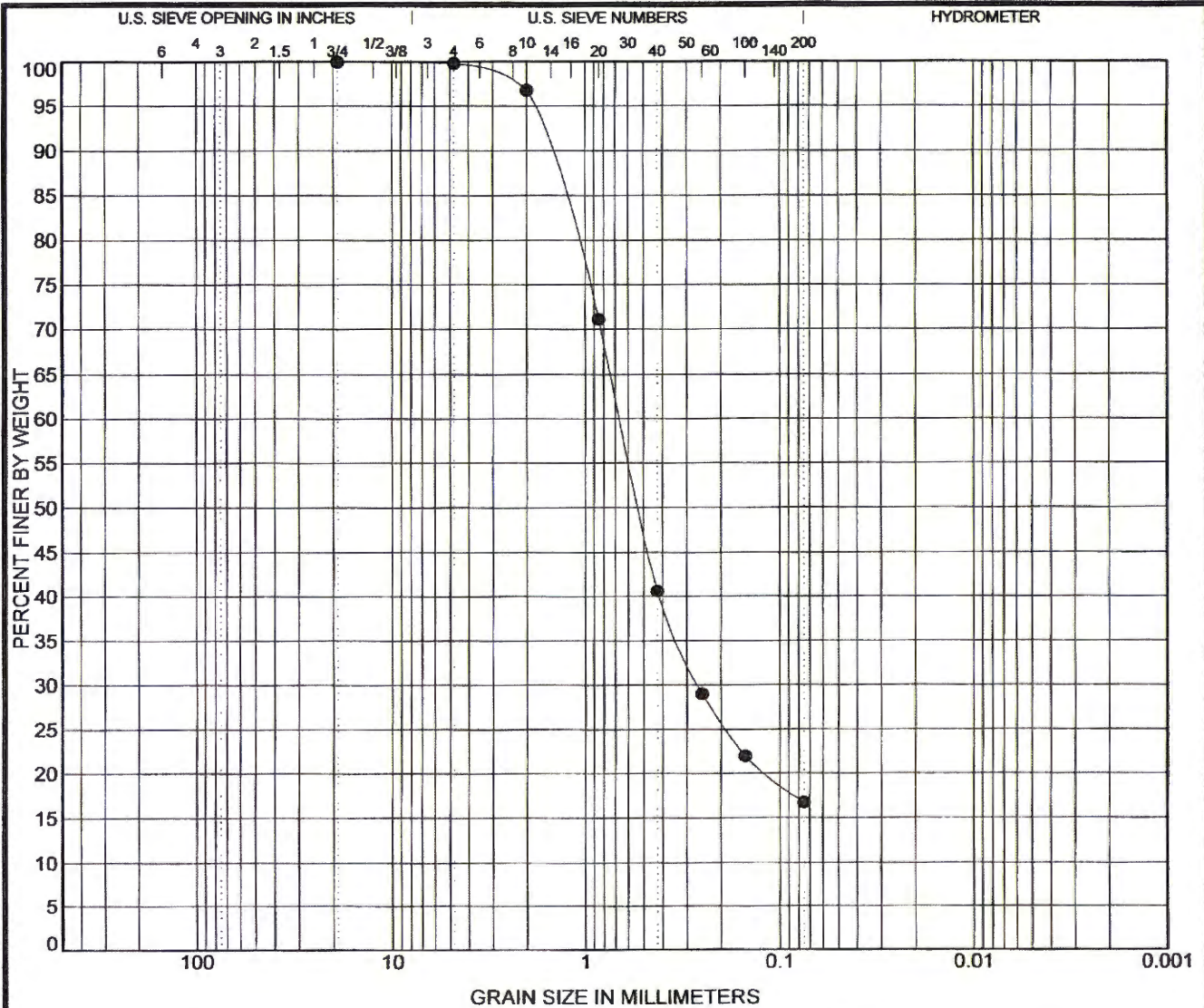
Gradation Analysis

A gradation analysis of a representative sample of formational soil obtained from Boring B-1 @ 11 feet, was performed in general accordance with ASTM D-422. The results of this analysis is presented as Plate C-2

Shear Testing

Shear testing was performed on representative, undisturbed samples of site soil in general accordance with ASTM Test Method D-3080 in a direct shear machine of the strain control type. The shear test results are presented on Plates C-3, C-4, and C-5.

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COBBLES	GRAVEL		SAND			SILT OR CLAY
	coarse	fine	coarse	medium	fine	

Sample	Depth	Range	Visual Classification/USCS CLASSIFICATION	LL	PL	PI	Cc	Cu
● B-1	11.0	11-13	Clayey Sand					

Sample	Depth	D100	D60	D30	D10	%Gravel	%Sand	%Silt	%Clay
● B-1	11.0	19	0.66	0.262		0.2	83.1		16.8


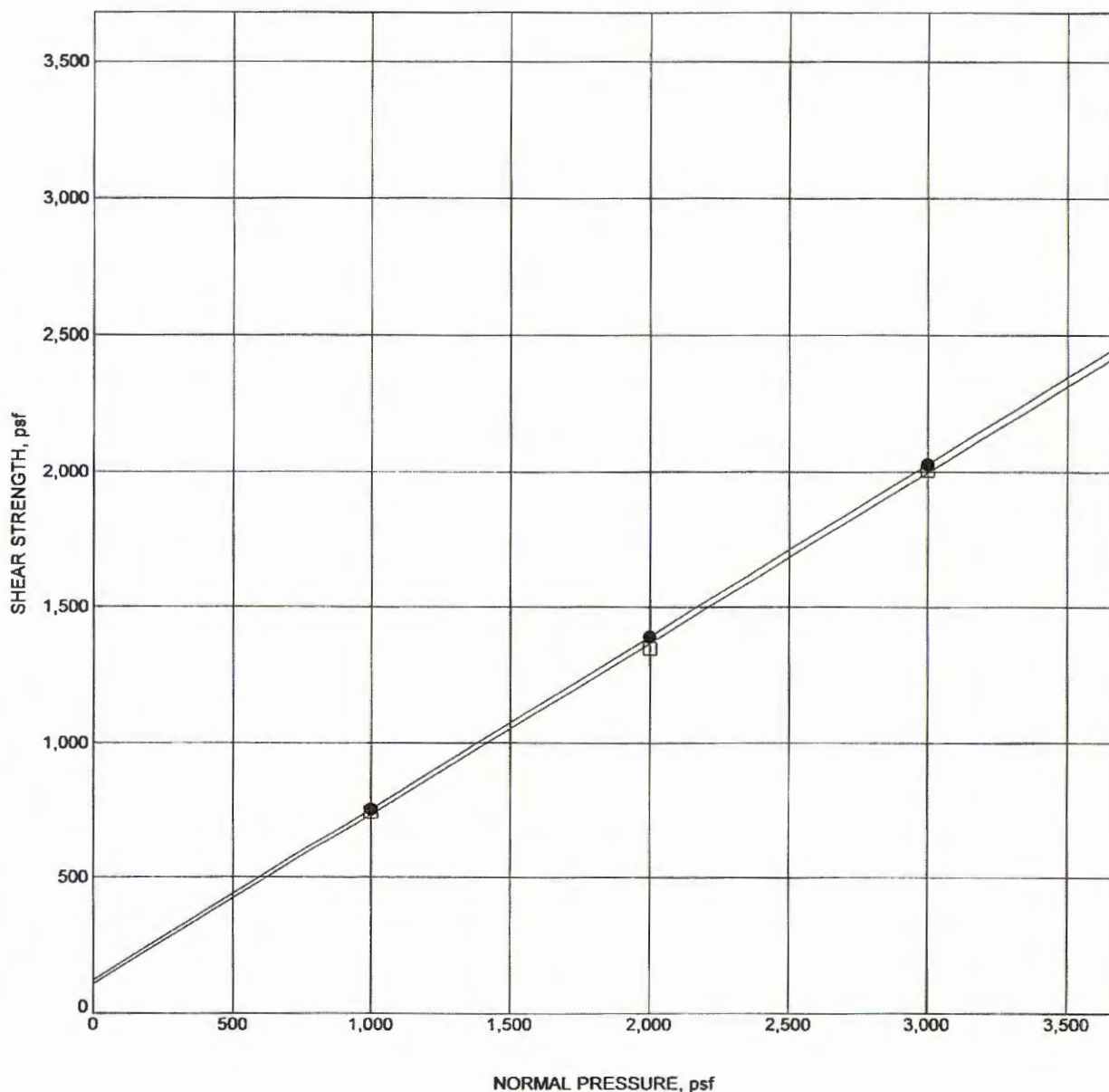
 <p>GeoSoils, Inc. 5741 Palmer Way Carlsbad, CA 92008 Telephone: (760) 438-3155 Fax: (760) 931-0915</p>	GRAIN SIZE DISTRIBUTION			
	<p>Project: BEIM Number: 5837-A-SC Date: March 2009</p>			

Plate: C - 2



Sample	Depth/EI.	Range	Classification	Primary/Residual	Sample Type	γ_d	MC%	c	ϕ
● B-1	5.0		Sand w/ Silt	Primary Shear	Undisturbed	100.4	6.3	123	32
□ B-1	5.0			Residual Shear	Undisturbed	100.4	6.3	109	32

Note: Sample Innundated prior to testing



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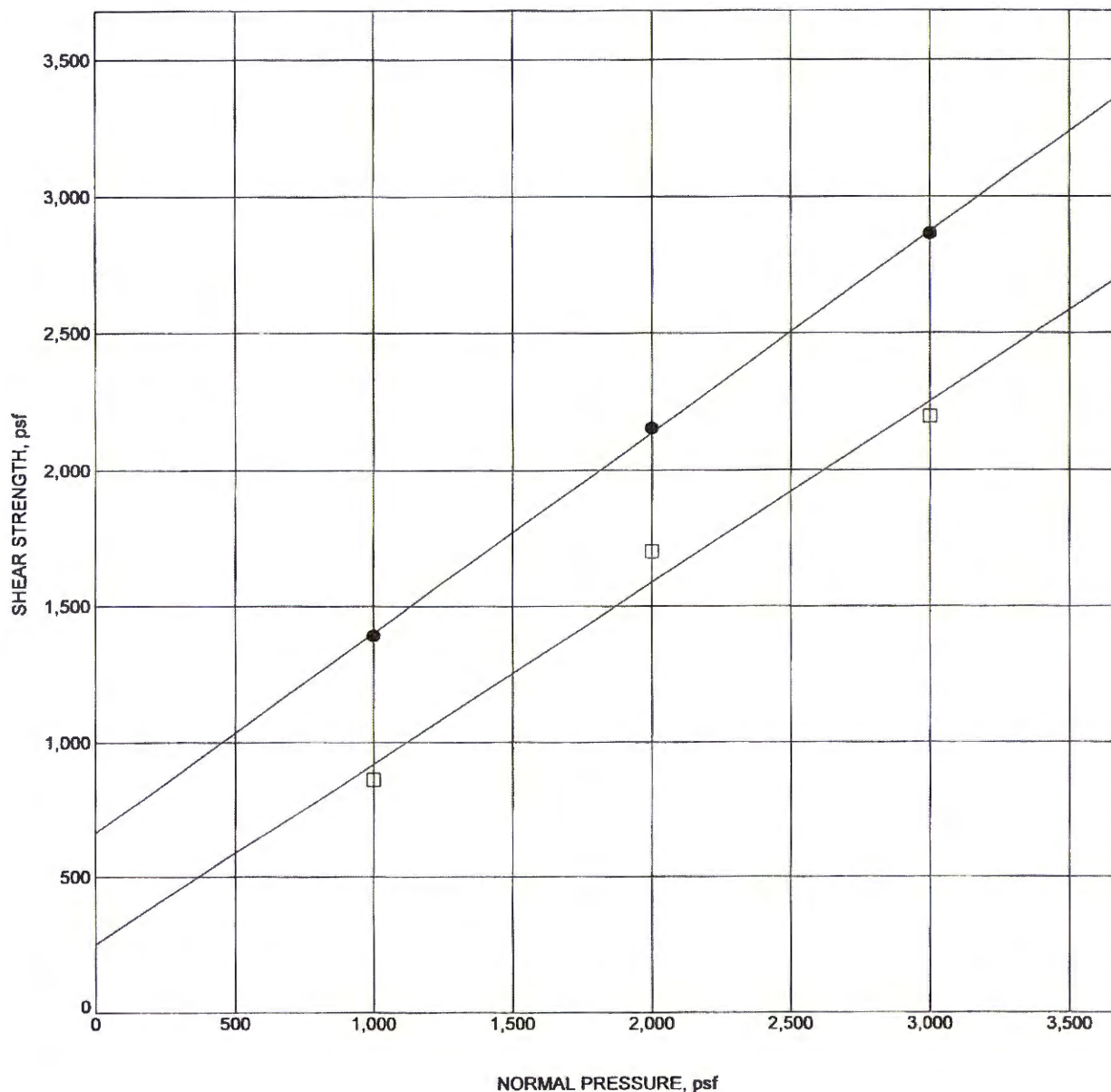
DIRECT SHEAR TEST

Project: BEIM

Number: 5837-A-SC

Date: March 2009

Plate: C - 3



Sample	Depth/EI.	Range	Classification	Primary/Residual	Sample Type	γ_d	MC%	c	ϕ
● B-1	15.0		Clayey Sand	Primary Shear	Undisturbed	120.7	11.5	666	36
□ B-1	15.0			Residual Shear	Undisturbed	120.7	11.5	254	34

Note: Sample Innundated prior to testing



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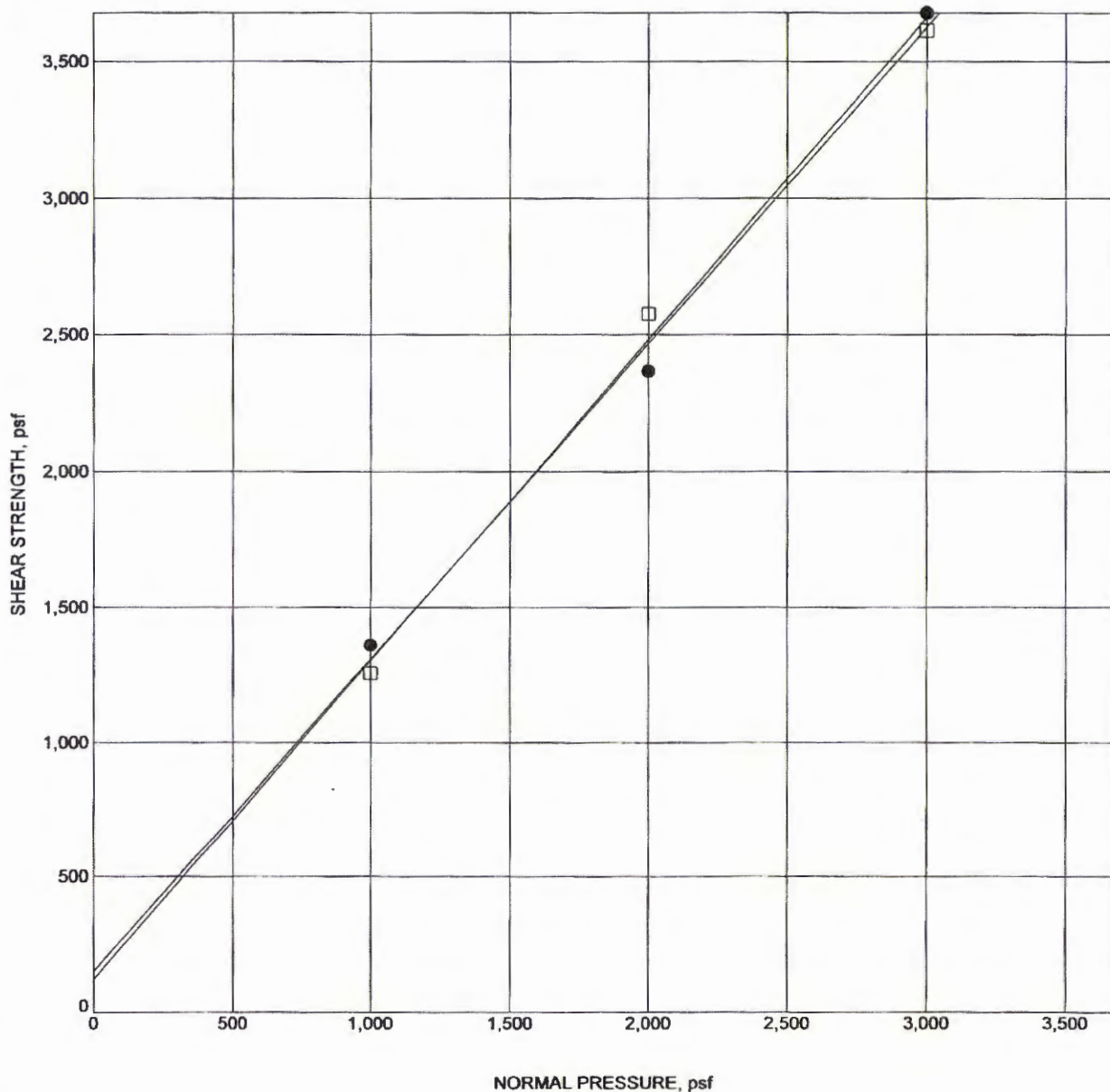
DIRECT SHEAR TEST

Project: BEIM

Number: 5837-A-SC

Date: March 2009

Plate: C - 4



Sample	Depth/EI	Range	Classification	Primary/Residual	Sample Type	γ_d	MC%	c	ϕ
● B-1	20.0		Clay	Primary Shear	Undisturbed	121.3	9.8	151	49
□ B-1	20.0			Residual Shear	Undisturbed	121.3	9.8	123	50

Note: Sample Innundated prior to testing



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5741 Palmer Way
Carlsbad, CA 92008
Telephone: (760) 438-3155
Fax: (760) 931-0915

DIRECT SHEAR TEST

Project: BEIM

Number: 5837-A-SC

ite: March 2009

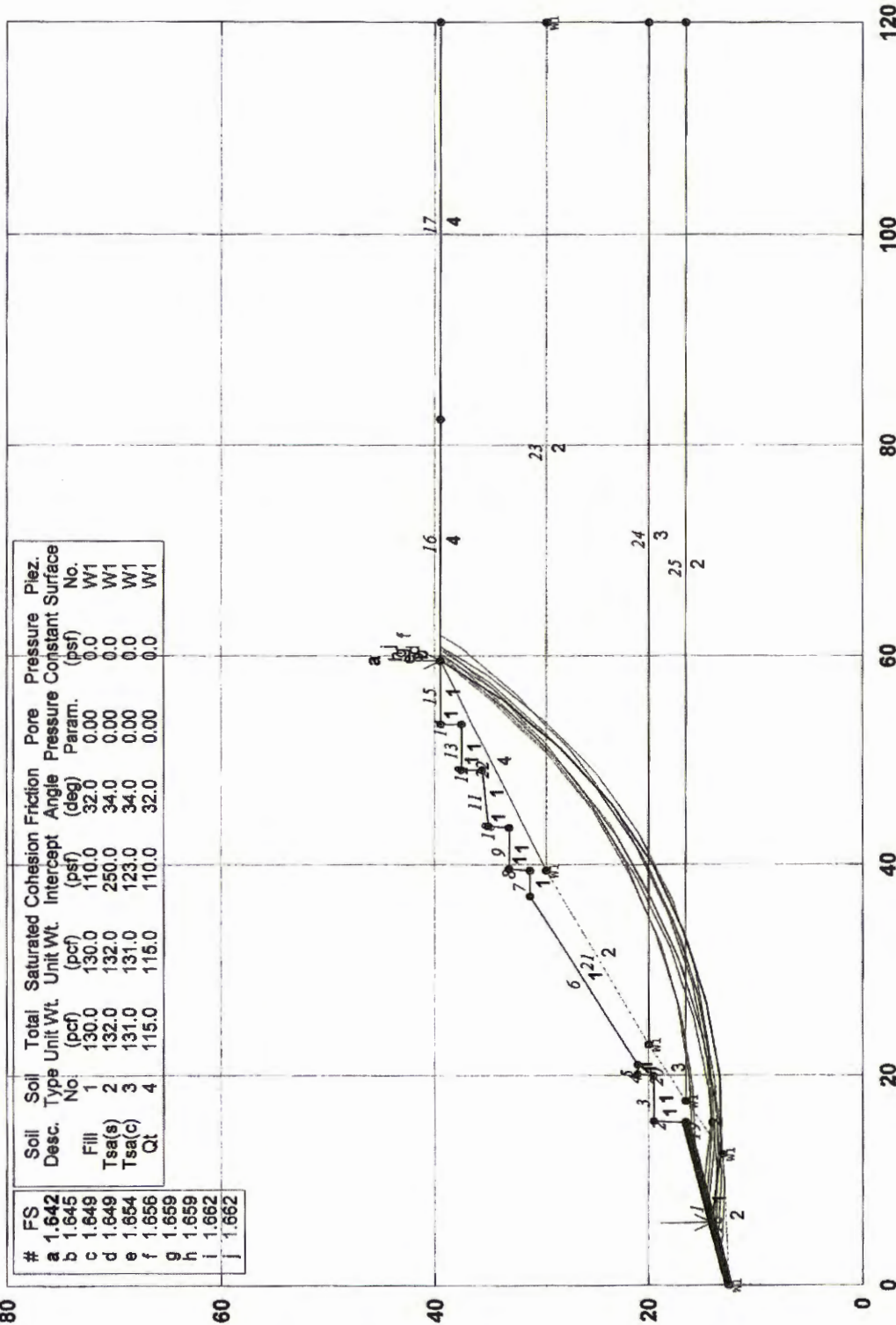
Plate: C - 5

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APPENDIX D
SLOPE STABILITY

Blem Residence GSI WO 5837 Static

c:\program files\g72swbiem1.pl2 Run By: GeoSoils Inc. 3/12/2009 01:29PM

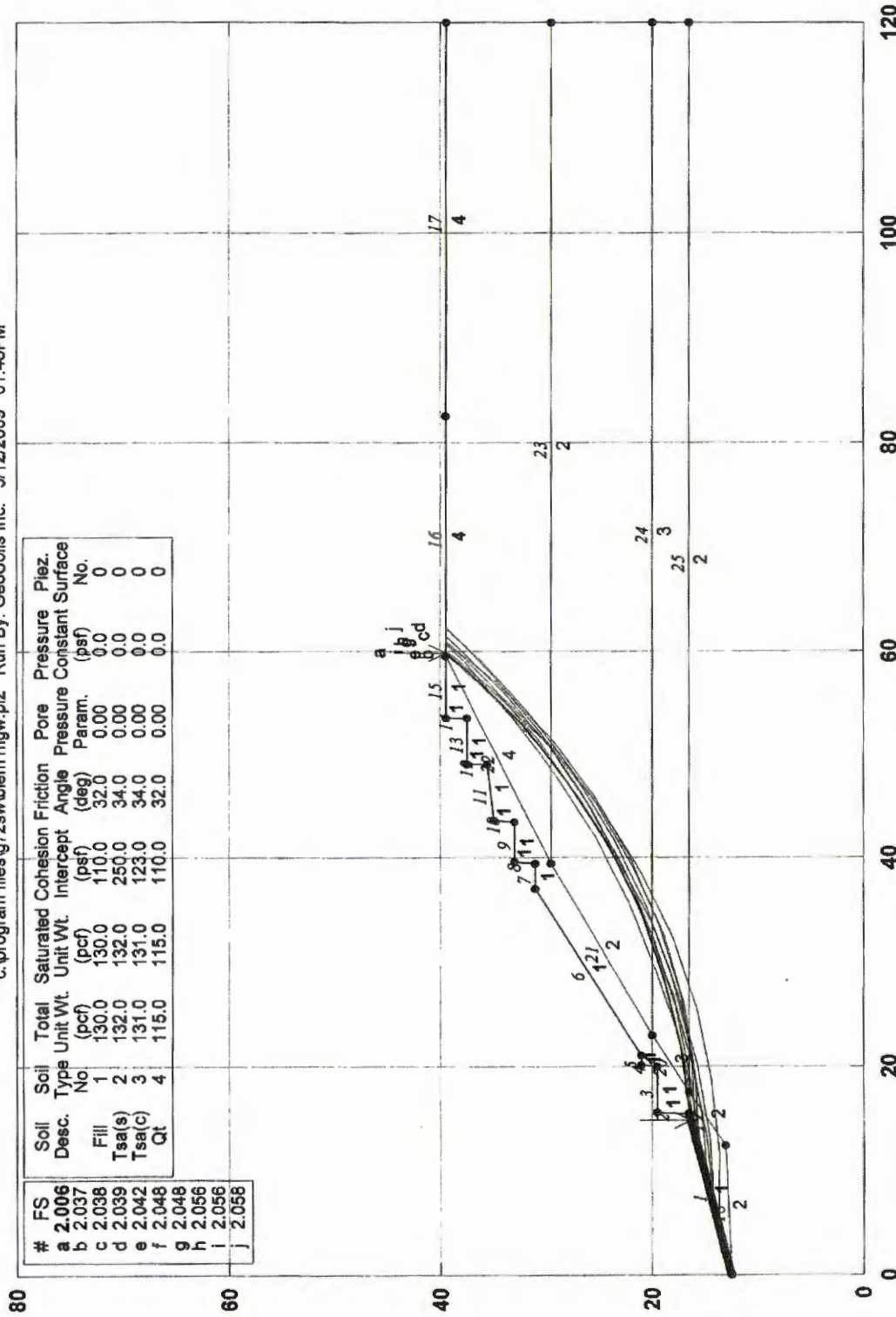


GSTABL7 v.2 FSmin=1.642
Safety Factors Are Calculated By The Modified Bishop Method



Biem Residence GSI WO 5837 Static - No Groundwater

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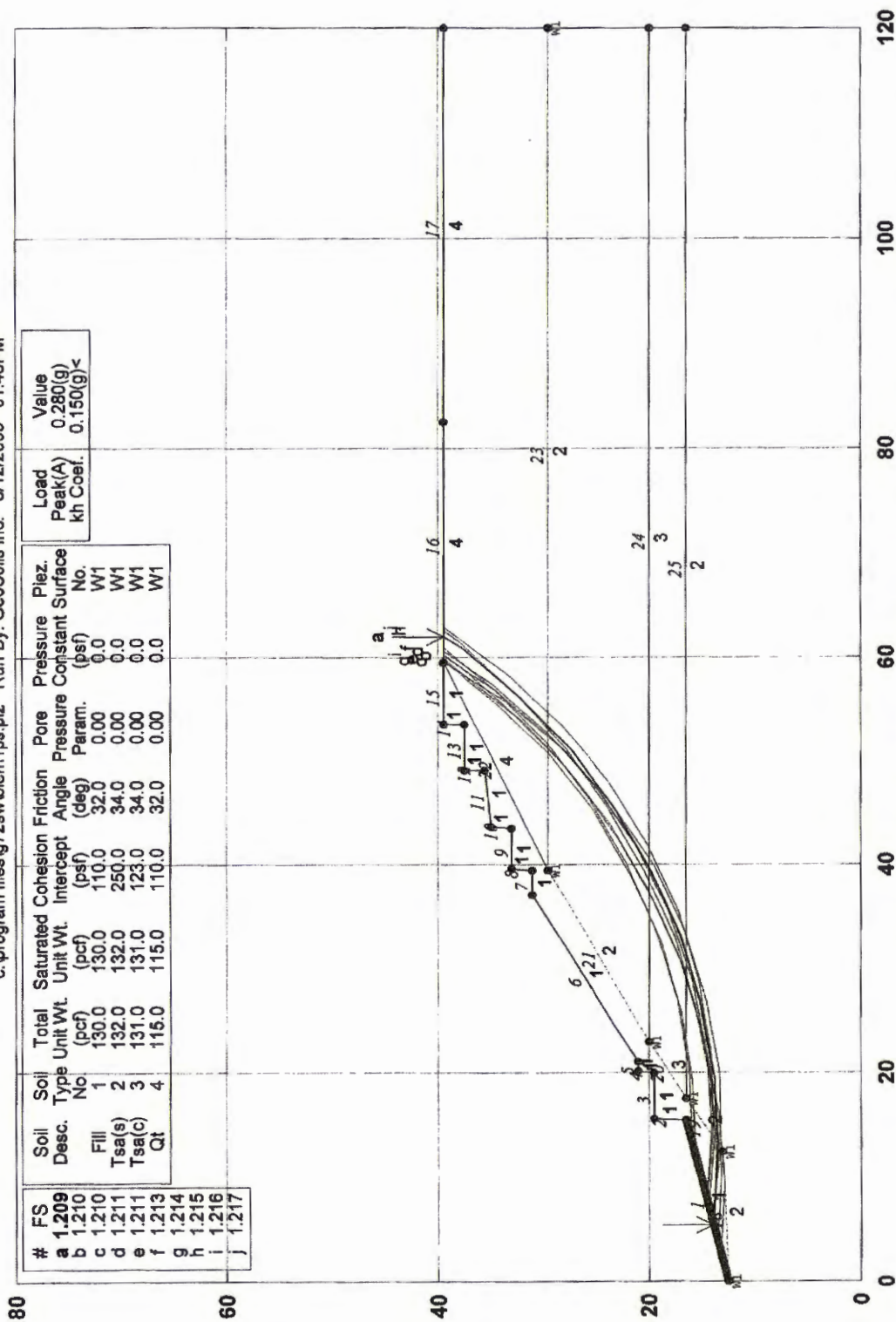
GSTABL7 v.2 FSmin=2.006
Safety Factors Are Calculated By The Modified Bishop Method



PLATE D-2

Biem Residence GSI WO 5837 Pseudo Static

c:\program files\g72sw\biem1ps.pl2 Run By: GeoSoils Inc. 3/12/2009 01:48PM



GSTABL7 v.2 FSmin=1.209
Safety Factors Are Calculated By The Modified Bishop Method



PLATE D-3

CALIFORNIA COASTAL COMMISSION

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

**Via Certified and Regular Mail**

October 15, 2013

Steven and Linda Beim
2381 Buena Vista Circle
Carlsbad, CA 92008-1604
Certified Mail No 7011 1570 0001 0916 3060

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

Location: 2381 Buena Vista Circle, Carlsbad; San Diego County
Assessor's Parcel Number 155-221-07

Violation File Number: V-6-10-005

Violation Description: Unpermitted development and/or development inconsistent with Coastal Development Permit No. 6-89-190 including, but not limited to: removal of wetland vegetation and construction of a boat dock within a wetland area held in fee by the State Coastal Conservancy; grading, removal of wetland vegetation and construction of concrete retaining walls, a wooden stairway, and a lagoon overlook deck within an area deed restricted for open space.

Dear Mr. and Mrs. Beim:

I am directing this notice to your attention as owners of property located at 2381 Buena Vista Circle, Carlsbad; San Diego County ("the Property"). As we have stated in previous correspondences and communications, we would like to work with you to resolve the issues regarding the violations on your property, as addressed in our letters of June 6, 2013, May 1, 2012, November 14, 2011, September 19, 2011, and June 15, 2011. We remain willing and ready to discuss options for addressing these issues, which could involve agreeing to a consensual resolution to the Coastal Act violations on the Property, memorialized and formally authorized through consent cease and desist and restoration orders.

As Commission staff discussed with you during our June 26, 2013 conversation, prior to taking an order to the Commission or recording a Notice of Violation, our regulations provide formal notification procedures, found in Title 14 of the California Code of Regulations ("14 CCR") Section 13181 and 13191 thereof, and by California Public Resources Code ("PRC") Section

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October 15, 2013

30812, respectively. Accordingly, the purpose of this letter is to notify you of my intent, as the Executive Director of the Commission ("Executive Director"), to commence proceedings for issuance of Cease and Desist and Restoration Orders to address unpermitted development and/or development inconsistent with Coastal Development Permit ("CDP") No. 6-89-190 ("the Permit") and to record a Notice of Violation on the Property. Again, this letter is not intended to preclude the productive discussions we have been having, but is a step to be taken to reach the resolution of this matter.

Commission staff has confirmed that unpermitted development and/or development inconsistent with the Permit has occurred on the Property including, but not limited to: removal of wetland vegetation and construction of a boat dock within a wetland area owned by the State Coastal Conservancy ("Fee Title area");¹ grading, removal of wetland vegetation, and construction of concrete retaining walls, a wooden stairway, and a lagoon overlook deck within an area deed restricted for open space ("Deed Restricted Area").²

Pursuant to Section 30600(a) of the Coastal Act, 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, as set forth below:

"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....

The Violations constitute "development," as that term is defined in the Coastal Act, and therefore required a CDP. No CDP was issued for any of the above-listed development. As noted above, development activity conducted in the Coastal Zone without a valid CDP or CDP amendment constitutes a violation of the Coastal Act. In addition, the development is inconsistent with the Special Conditions of the Permit and the intent thereof to protect wetland resources and mitigate the potential impacts the development may have on the sensitive habitat in and adjacent to Buena

¹ Special Condition 1 of CDP No. 6-89-190 states: Transfer of Title of the Wetlands/ Floodplain Area. Prior to issuance of the coastal development permit, the applicant shall record an irrevocable offer to dedicate in fee to the Wildlife Conservation Board, Coastal Conservancy, or to a private association acceptable to the Executive Director, an open space easement over the area shown on the attached Exhibit "2" and generally described as the wetland/floodplain portion of the applicant's property.

² Hereinafter, the cited unpermitted development and/or development inconsistent with the Permit will be referred to as "the Violations".

Vista Lagoon. Development that is inconsistent with a previously issued CDP is a violation of the Coastal Act, as well.

As a condition of approval for the construction of the home on the Property and in recognition of the fact that that proposed development would likely result in impacts to the sensitive wetlands and bluff habitat, the permit issued by Commission included, among other things, a provision that required the applicant to record an offer to convey a property interest in the portion of the subject parcel extending from the north-western property boundary to the approximate upland limit of the wetlands vegetation, generally described as the wetlands area. The State Coastal Conservancy accepted that offer in 2010 and now holds fee title to that area. The permit issued by the Commission also included the recordation of a deed restriction prohibiting any alteration of landforms, removal of vegetation, or the erection of structures of any type over the entire portion of the Property from the approximate upland limit of the on-site wetlands to the edge of the approved residence.

The purpose of these enforcement proceedings is to address unpermitted development and/or development inconsistent with the terms and conditions of the Permit through the issuance of Cease and Desist and Restoration Orders ("Orders") that will collectively direct and authorize you to: 1) cease and desist from undertaking any new development without CDP authorization from the Coastal Commission or City of Carlsbad, 2) remove unpermitted development, 3) restore the impacted areas by, among other things, conducting restorative grading and revegetation of the site with native vegetation and 4) provide mitigation for temporal losses of habitat.

CDP and Violation History

In 1989, the Commission issued CDP No. 6-89-190 to the previous owner, John Levy, for the construction of a 4,305 square foot, four bedroom, two story single-family residence on the Property. In order to ensure compliance with the requirements of the Coastal Act, including the protection of wetland resources, the Commission approved the Permit subject to several special conditions, including the requirement to record two documents designed to impose two distinct restrictions on the use of the Property, as described below.

Special Condition 1 of the Permit states, in part:

"Prior to issuance of the coastal development permit, the applicant shall record an irrevocable offer to dedicate in fee to the Wildlife Conservation Board, Coastal Conservancy, or to a private association acceptable to the Executive Director, an open space easement over the area shown on the attached Exhibit "2" and generally described as the wetland/floodplain portion of the applicant's property."

Special Condition 2 of the Permit states, in part:

"Prior to issuance of the coastal development permit, the applicant shall record a restriction against the subject property, free of all prior encumbrances, except for tax

liens, and binding on the permittee's successors in interest and any subsequent purchasers for any portion of real property. The restriction shall prohibit any alteration of landforms, removal of vegetation or the erection of structures of any type, except as herein permitted, in the area shown on Exhibit "3" and generally described as the area between the proposed residence and the wetlands boundary or southern limit of the area proposed to be dedicated to a public agency, and two foot wide vertical access easement located parallel and adjacent to the western property line.

Both the offer to dedicate ("OTD") and deed restriction were recorded by the permittee on October 26, 1989, providing subsequent purchasers of the Property with notice of the restrictions on the use on the Property. The 1989 recordings provided you notice about the restrictions of use on the Property prior to your acquisition of the Property from Levy on August 17, 1999.

In October 2010, Commission staff met with State Coastal Conservancy ("SCC") staff to arrange the Conservancy's acceptance of the OTD wetland area. During this time, Commission staff first became aware of the Coastal Act violations on the Property. SCC accepted the OTD on October 25, 2010, thereby accepting a fee title interest in the land generally described as the wetlands portion of the Property.

On June 15, 2011, Commission staff sent you a Notice of Violation ("June NOV") letter notifying you of the presence of Coastal Act violations on the Property and requesting the submittal of a complete CDP application for removal of unpermitted development and restoration of the site. In response to the June NOV, you contacted Commission staff on July 1, 2011 and followed up on July 20, 2011 to discuss the content of the letter and authorize a site visit. Following the July 20, 2011 conversation, on July 27, 2011, Commission staff met with you on the Property and confirmed that unpermitted development and/or development inconsistent with the Permit had occurred, including development within the Fee Title area and Deed Restricted Area.

On September 19, 2011, Commission staff sent you a second NOV ("September NOV") to address the additional unpermitted development discovered on the Property during the July 27 site visit and to reiterate that we would like to work with you to resolve the Coastal Act violations amicably. We requested in the September NOV that you immediately cease the undertaking of all unpermitted activities on the Property, including the removal of native vegetation from the wetlands. At that time, we again requested that you submit a complete CDP application for removal of the unpermitted development and restoration of the site to its pre-violation condition. No application was ever received in response to these letters.

In an attempt to resolve this matter informally, we sent subsequent NOV letters to you on November 14, 2011 and May 1, 2012, but we received no response.³ A fifth letter was sent to you on June 6, 2013, informing you that because Commission staff had not heard from you in over 1 ½ years, a more formal process would be undertaken to resolve the Violations. We

³ Both November 14, 2011 and May 1, 2012 NOV's were sent to you via Regular U.S. and Certified Mail (with return receipt). Commission staff received signed signature cards from the U.S. Postal Service confirming that you received these letters.

greatly appreciate Mrs. Beim's June 19, 2013 response to this letter and the subsequent telephone conversation Commission staff had with both of you on June 24, 2013, which were very productive and we are now hopeful that we can resolve these issues amicably.

As we discussed, the development that occurred on the Property is located within the Fee Title area held by SCC and/or the Deed Restricted Area, both of which areas have specific legal protection measures that limit or prohibit development from occurring in those areas. These restrictions were established pursuant to the Permit and thus, the development that occurred in the restricted areas is inconsistent with the Permit. Again, we appreciate your cooperation and we are hopeful that we can resolve these issues through the consent order process.

Cease and Desist and Restoration Orders

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.

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

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 City of Carlsbad ("the City") has a certified Local Coastal Program ("LCP"), the development at issue is within the Commission's jurisdiction because the Commission can enforce permits that it has issued and because, pursuant to Section 30810(a), the Commission may enforce requirements of a certified local coastal program under specified circumstances including when:

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

Commission staff first notified the City of this matter in a letter dated July 6, 2012, informing the City about the development on the property that was unpermitted under the LCP and Coastal Act

and the City responded by requesting the Commission assume primary responsibility for issuing a cease and desist order, and expressed support of this enforcement action. The request made by the City of Carlsbad to the Commission established that the Commission has enforcement jurisdiction to also enforce the City's LCP pursuant to Section 30810(a)(1) of the Coastal Act. Commission staff confirmed the City's request that the Commission assume primary responsibility for this action on September 24, 2013.

Cease and Desist Order

Section 30810(b) 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 removal of any unpermitted development or material.

The unpermitted development and/or development inconsistent with the Permit described herein clearly constitutes "development" within the meaning of the definition in the Coastal Act (PRC Section 30106), is not otherwise exempt from permitting requirements under the Coastal Act, and therefore is subject to the permit requirement of PRC Section 30600(a). Neither a CDP nor a CDP amendment was issued by the Commission or the City to authorize the subject unpermitted development. In addition, the activities undertaken at the Property were also inconsistent with a permit previously issued by the Commission, and, as such, are Coastal Act violations.

As the activities at issue required a CDP and none was obtained from either the Commission or the City, in addition to the activities violating the Permit, the criteria of Section 30810(a) have been satisfied. For these reasons, I am issuing this "Notice of Intent" to commence cease and desist order proceedings. The procedures for the issuance of cease and desist orders are described in 14 CCR Sections 13180 through 13188.

Restoration Order

Pursuant to 14 CCR Section 13191, I have determined that the specified activities meet the criteria of PRC Section 30811, based on the following:

1. Unpermitted development and/or development inconsistent with the Permit has occurred without a CDP from the Commission or the City of Carlsbad, including, but not limited to, removal of wetland vegetation and construction of a boat dock within a Fee Title area held by SCC; grading, removal of wetland vegetation and construction of concrete retaining walls, a wooden stairway, and a lagoon overlook deck within an area deed restricted for open space.
2. The unpermitted development and/or development inconsistent with the Permit is inconsistent with the resource protection policies of the Coastal Act and City of Carlsbad LCP, which incorporates by reference the resource protection policies of Chapter 3 of the Coastal Act, including, but not limited to the following:
 - a. Coastal Act Section 30231 and Carlsbad LCP Section II-2, Policy 4-5(d) (water quality);

October 15, 2013

- b. Coastal Act Section 30233 and Carlsbad LCP Section II-2, Policy 3-1.7 (diking/filling of open coastal waters, wetlands, estuaries);
 - c. Coastal Act Section 30240 and Carlsbad LCP Section II-2, Policy 3-1.2 (Environmentally Sensitive Habitat Areas);
 - d. Coastal Act Section 30253 and Carlsbad LCP Section II-2, Policy 4-1 (geologic stability/erosion);
3. The unpermitted development and/or development inconsistent with the Permit remains in place and is thereby causing continuing resource damage, as defined by 14 CCR Section 13190 of the Commission's regulations. The impacts from the unpermitted development and/or development inconsistent with the Permit continue to affect coastal resources; therefore, the damage to resources protected by the Coastal Act is continuing.

For the reasons stated above, I have decided to commence proceedings for the Commission's issuance of a Restoration Order that would require, among other things, restoration of the Property. The procedures for the issuance of Restoration Orders are described in 14 CCR Sections 13190 through 13197.

Response Procedure

In accordance with 14 CCR Sections 13181(a) and 13191(a), you have the opportunity to respond to the Commission staff's allegations as set forth in this Notice of Intent to Commence Cease and Desist Order and Restoration Order Proceedings by completing the enclosed Statement of Defense ("SOD") form. The SOD form must be returned to the Commission's San Francisco office, directed to the attention of Maggie Weber, no later than, November 4, 2013. However, as Commission Enforcement staff has discussed with you, should this matter be resolved via consent orders, an SOD 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 Order for the Commission's December 2013 hearing in San Francisco.

Notice of Violation of the Coastal Act

As you have been informed in prior letters, dated June 15, 2011, November 14, 2011, May 1, 2012, and June 6, 2013, the Coastal Act contains a provision for notifying potential, future purchasers of real property of the existence of a Coastal Act violation on a property. The Executive Director of the Commission may record a Notice of Violation against the title to the property pursuant to PRC Section 30812, after providing notice and the opportunity for a hearing. Section 30812 provides, 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...to the owner of the real property at issue...

(b) ... The notification shall state that if, within 20 days of mailing of the notification, the owner of the real property at issue fails to inform the executive director of the owner's objection to recording the notice of violation, the executive director shall record the notice of violation in the office of each county recorder where all or part of the property is located.

(d) If, after the commission has completed its hearing and the owner has been given the opportunity to present evidence, the commission finds that, based on substantial evidence, a violation has occurred, the executive director shall record the notice of violation...

Should you choose to object to the recording of a Notice of Violation and wish to present evidence to the Coastal Commission at a public hearing on the issue of whether a violation has occurred, you must specifically object, in writing, within 20 calendar days of the postmarked mailing of this notification. The objection should be sent to Maggie Weber at the Commission's headquarters office (the address is provided above in the letterhead), no later than **November 4, 2013**. Please include the evidence you wish to present to the Coastal Commission in your written response and identify any issues you would like us to consider. If recorded as provided for under PRC Section 30812(b), the Notice of Violation will become part of the chain of title of the Property and will be subject to review by potential buyers. This notice is intended to put other parties on notice of the status of the property and to avoid unnecessary confusion. The Notice of Violation will be rescinded once the violations are resolved. Should this matter be resolved via a settlement agreement, a NOVA would be part of any such settlement and therefore a formal objection would not be necessary.

Civil Liability/ Exemplary Damages

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

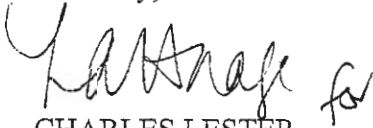
October 15, 2013

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. One option that you may want to consider is agreeing to consent orders. Consent cease and desist and restoration orders would provide you with an opportunity to have more input into the process and timing of restoration of the Property and mitigation of the damages caused by the unpermitted activity and could potentially allow you to negotiate a penalty amount with the Commission staff to resolve your civil liability, as well, and thereby resolve the complete violation without any further formal legal action. Consent cease and desist and restoration orders would provide for a permanent resolution of this matter and restoration of the Property. If you are interested in discussing the possibility of agreeing to consent orders, please contact or send correspondence to the attention of Maggie Weber in the Commission's San Francisco office by no later than October 25, 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. We look forward to hearing from you and resolving this matter.

Should you have any questions regarding any of the above items, please contact Maggie Weber at (415) 904-5264.

Sincerely,



CHARLES LESTER

Executive Director

California Coastal Commission

Enclosure: Statement of Defense Form

cc: Lisa Haage, Chief of Enforcement, CCC
N. Patrick Veasart, Enforcement Supervisor, CCC
Aaron McLendon, Enforcement Supervisor, CCC
Alex Helperin, Senior Staff Counsel, CCC
Maggie Weber, Statewide Enforcement Analyst, CCC

CALIFORNIA COASTAL COMMISSION

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



**Via Regular and Certified Mail
(7011 1570 0001 0916 3077)**

November 12, 2013

Steven and Linda Beim
2381 Buena Vista Circle
Carlsbad, CA 92008-1604

Subject: Coastal Act Violation No. V-6-10-005

Location: 2381 Buena Vista Circle, Carlsbad; San Diego County
Assessor's Parcel Number 155-221-18

Violation Description: Unpermitted development and/or development inconsistent with Coastal Development Permit No. 6-89-190 including, but not limited to: removal of wetland vegetation and construction of a boat dock within a wetland area held in fee by the State Coastal Conservancy; grading, removal of wetland vegetation and construction of concrete retaining walls, a wooden stairway, and a lagoon overlook deck within an area deed restricted for open space.

Dear Mr. and Mrs. Beim:

This correspondence serves as a follow up to the Notice of Intent ("NOI") letter that was mailed to you on October 15, 2013. The NOI established several deadlines in order to timely resolve the Coastal Act Violations noted above. Within the NOI, the Executive Director of the Commission requested you contact me by October 25, 2013 if you are interested in discussing the possibility of agreeing to consent orders. The Executive Director also explained that in the alternative, should you choose to object to the recording of a Notice of Violation and wish to present evidence to the Coastal Commission at a public hearing on the issue of whether a violation occurred, you must specifically object, in writing, by November 4, 2013. Commission staff is disappointed by your lack of communication or response to the Notice of Intent. We still hope to work with you to achieve an amicable resolution of this matter, but we need a response from you to do so.

Notwithstanding your failure to respond to the NOI, Commission staff would like to reiterate our desire to work with you to reach an amicable resolution. During telephone conversations on June 24, 2013, June 26, 2013, and July 24, 2013, you stated that you were interested in working with us to resolve the Violations and we hope you are still interested in this. We remain optimistic that we can agree on Consent Orders, and resolve the matter.

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(STEVEN & LINDA BEIM)
Page 1 of 2

November 12, 2013

We have had, however, difficulty communicating with you. As you know, during our October 15, 2013 telephone conversation, you requested that I no longer contact you by telephone and informed me that I would hear from your attorney. As of the date of this letter, however, no attorney representing you has contacted me; please either call me back, or have your representative touch base with me as soon as possible or, in the alternative, if you prefer, you can provide Commission staff with the contact information so we can contact your attorney directly. The sooner we are able to discuss this matter with you or your attorney, the easier it will be for us to consider and resolve this via Consent Orders. Again, Commission staff is happy to continue discussing the terms of resolution, and would hope to resolve this matter expeditiously, which could save you both time and expense of contested proceedings. Please feel free to contact me at 415-904-5264 or by letter at the above-listed address regarding your attorney's contact information or should you have any questions regarding the pending enforcement case. I look forward to hearing from you.

Sincerely,



Maggie Weber
Statewide Enforcement Analyst
California Coastal Commission

cc: Lisa Haage, Chief of Enforcement, CCC
Aaron McLendon, Statewide Enforcement Supervisor, CCC
Pat Veasart, Southern California Enforcement Supervisor, CCC

CALIFORNIA COASTAL COMMISSION

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TDD (415) 597-5885



Via Regular and Certified Mail
(7011 1570 0001 0916 3107)

December 17, 2013

Steven and Linda Beim
2381 Buena Vista Circle
Carlsbad, CA 92008-1604

Subject: Coastal Act Violation No. V-6-10-005

Dear Mr. and Mrs. Beim:

Commission staff greatly appreciates the time Mrs. Beim spent discussing the matter involving Coastal Act violations on property located at 2381 Buena Vista Circle in Carlsbad and adjacent property owned by State Coastal Conservancy ("the Properties") with Commission staff on December 4, 2013. To reiterate the December 4 conversation, Commission staff continues our stated goal of working with you to reach an amicable resolution to this matter and we appreciate that you have expressed similar sentiment. To reach that goal I would like to provide you with an overview of general terms that would be included in Consent Orders.

Consent Cease and Desist and Restoration Orders would provide you with an opportunity to have more input into the process and timing of restoration of the Properties and mitigation of the damages caused by the unpermitted development and could potentially allow you to negotiate a penalty amount with the Commission staff to resolve your civil liability, as well, and thereby resolve the complete violation without any further formal legal action. Consent Cease and Desist and Restoration Orders would provide for a permanent resolution of this matter and restoration of the Properties. Collectively, the Consent Orders would authorize you to: 1) remove unpermitted development, 2) restore the impacted areas on the Properties by, among other things, conducting restorative grading and revegetation of the site with native vegetation and 3) provide mitigation for temporal losses of habitat.

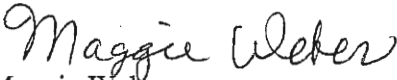
As you know, during an October 15, 2013 telephone conversation, Mr. Beim requested that we no longer discuss this matter with you directly and that your attorney would be contacting us to handle this matter from that point on. After not receiving a call from your attorney for over a month, I called you on November 22, 2013, to obtain contact information for the attorney so we could continue to work on resolving the matter as efficiently as possible. During this call with Mrs. Beim, the contact information was not provided to us. On December 4, 2013, Pat Veasart and Aaron McLendon, of the Commission's Enforcement Unit, returned a voicemail message from Mrs. Beim to Mr. Veasart, and during that conversation you stated that you have not obtained an attorney and, contrary to your earlier request, would now like Commission staff to

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(STEVEN & LINDA BEIM)
Page 1 of 2

work with you directly. Therefore, while this delay is unfortunate, we will continue to work directly with you in the hopes of resolving this matter through agreed-upon Consent Orders.

Please call me with dates and times the week of January 6 when you and your engineer and/or your attorney, if you so choose to retain such professionals, are available to discuss resolution through Consent Orders. Please feel free to respond either by phone at 415-904-5264, or by letter at the above-listed address. I look forward to hearing from you and appreciate your continued cooperation.

Sincerely,


Maggie Weber
Statewide Enforcement Analyst
California Coastal Commission

cc: Lisa Haage, Chief of Enforcement, CCC
Aaron McLendon, Statewide Enforcement Supervisor, CCC
Pat Veesart, Southern California Enforcement Supervisor, CCC

RAUCH DETISCH & STEINKE
A PROFESSIONAL LAW CORPORATION

Donald W. Detisch, Attorney at Law
Andrew K. Rauch, Attorney at Law
Kristen S. Steinke, Attorney at Law

1010 Second Ave., Suite 1770
San Diego, California 92101
Tel: (619) 515-1140
Fax: (619) 235-9100
E-mail: firm@lawrds.com

March 10, 2014

VIA U.S. MAIL AND EMAIL

Ms. Margaret Weber
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219
margaret.weber@coastal.ca.gov

Re: 2381 Buena Vista Circle, Carlsbad, California

Dear Ms. Weber:

I am writing to confirm this firm's representation of Mr. and Mrs. Steven Beim, owners of the above-referenced property. As a result of our representation, please forward all communications, written and/or oral, to our office. Please understand that we will expect any communication, of any kind, to go through this office.

We further understand that your offices are in the process of preparing a proposal regarding this matter which is currently undergoing review. Once this is ready for our review, please forward it to our attention.

As you are aware, we have just started our review of this file, including the several letters previously forwarded by Commission staff. We are unclear as to staff's current position, because it appears as if the earlier correspondence advised our clients to submit a development application. Your assistance in this regard would be appreciated.

We look forward to working with staff on this mutually important matter.

Sincerely,

RAUCH, DETISCH & STEINKE, APLC

Donald W. Detisch, Esq.

DWD:mdb/kk
cc: Clients

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(STEVEN & LINDA BEIM)
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CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
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TDD (415) 597-5885

**Via Electronic and Regular Mail**

April 28, 2014

Don Detisch
Andrew Rauch
Rauch, Detisch and Steinke
A Professional Law Corporation
1010 2nd Avenue, Suite 1770
San Diego, CA 92101

Subject: Consensual resolution of Coastal Act violations at Beim property

Dear Messrs. Detisch and Rauch:

Thank you, Mr. Rauch, for taking time on April 23 to briefly discuss resolution of the unpermitted development undertaken on the Beim property. As we have stressed to the Beims in previous communications, we would like to work with the Beims to resolve these issues amicably and it is our preference to continue to do so.

This correspondence serves as a follow up to the message I left with your receptionist on April 21, 2014 and the conversation I had with Mr. Rauch on April 23, 2014 regarding setting up a time to formally discuss the draft Cease and Desist and Restoration Orders ("draft Orders"). After not receiving a response to my April 21 message, I called your office again on April 23 and the receptionist connected me to Mr. Rauch. During this April 23 conversation, I acknowledged that although Commission staff is aware you are presently seeking input from a technical consultant regarding how to best implement the requirements described in the draft Orders, and we appreciate that you'll want to have all relevant information in order to implement the requirements of the draft Orders, said inquiry is secondary to agreeing to a framework (i.e. Orders) for resolution of the unpermitted development at issue. That aside, there are many additional terms within the draft Orders unrelated to the slope issue that we need to discuss so that all parties can move forward. Mr. Rauch agreed with this statement and promised to reply to me later that day with a few dates and times during the week of April 28 that you are available to discuss the draft Orders. As of the date of this letter, I have not received a response with proposed dates for a discussion.

As we have expressed to you throughout our discussions, we would like to work with the Beims to resolve these issues amicably. One option that your client may want to consider is agreeing to consent orders. To that end, Commission staff sent you draft Orders on March 24, 2014. Consent orders would provide the Beims with an opportunity to have more input into the process and timing of removal of the unpermitted development at issue and mitigation of the damages caused by the unpermitted development, and could potentially allow you to negotiate a penalty amount with Commission staff in order to resolve the violation without any formal legal action. Further,

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April 28, 2014

in a consent order proceeding, Commission staff will be promoting the agreement between the parties and staff, rather than addressing the violations through a disputed hearing, which could only highlight the violations of the Coastal Act for which the parties are responsible.

Our goal is to resolve this situation amicably and as quickly as possible so that all parties can move forward, however, to do so we must be aware of your cooperation. If you are interested in working with staff to resolve this matter via consent orders, please contact me by no later than Friday May 2, 2014 with a few dates and times you are available during the week of May 5, 2014 to discuss the draft Orders.

Commission staff remains optimistic that we can agree on terms to the draft Orders and resolve this enforcement case; I look forward to hearing from you soon.

Sincerely,



Maggie Weber

Statewide Enforcement Analyst

California Coastal Commission

cc: Lisa Haage, Chief of Enforcement, CCC
Aaron McLendon, Statewide Enforcement Supervisor, CCC
Pat Veesart, Southern California Enforcement Supervisor, CCC

CALIFORNIA COASTAL COMMISSION

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TDD (415) 597-5885

**Via Electronic and Regular Mail**

June 11, 2014

Don Detisch
Andrew Rauch
Rauch, Detisch and Steinke
A Professional Law Corporation
1010 2nd Avenue, Suite 1770
San Diego, CA 92101

Subject: Consensual resolution of Beim Coastal Act violations

Dear Messrs. Detisch and Rauch:

The purpose of this letter is to memorialize our May 23, 2014 conversation and to find ways in which we can continue to work towards a consensual resolution of the Coastal Act violations located on property owned by your clients, Steven and Linda Beim. As staff has explained to you in our past conversations and letters, an amicable resolution of Coastal Act violation cases can be accomplished through a "consent order". Because you and your clients have indicated a willingness to settle these matters through the Consent Order process and because we have been encouraged by recent discussions towards amicable resolution, on March 24, 2014, Commission staff sent you proposed consent orders for your review, and requested that you provide comments to the terms so we could continue our productive conversations.

As we have discussed, consent orders would provide the Beims with an opportunity to, among other things, have more input into the process and timing of removal of the unpermitted development, and could potentially allow them to negotiate a penalty amount with Commission staff in order to resolve the violation without any formal legal action. Further, in a consent order proceeding, Commission staff will be supporting the agreement between the parties and staff, rather than addressing the violations through a disputed hearing.

Since providing you the proposed consent orders on March 24th, staff has attempted to work with you towards reaching a mutually agreed upon settlement. On April 9th, April 21st, and April 23rd, I contacted your office to schedule a time when we could discuss the terms of the proposed Consent Orders. After not receiving a response from you regarding a date and time that we could discuss the terms of the proposal, Commission staff sent you a letter on April 28th, again emphasizing the importance of meeting soon to discuss the terms of the Consent Orders so that Commission staff may address any concerns that you have and work through the issues to reach an amicable resolution. The letter requested a response by May 2, 2014, with your availability to discuss the proposed consent orders. Over a month after sending you the proposed Consent Orders, on April 30, 2014, Mr. Detisch called me and we scheduled a May 8th meeting to discuss the terms of the proposal. During our May 8th meeting, we were able to discuss some of the

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(STEVEN & LINDA BEIM)
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June 11, 2014

major issues regarding the enforcement case, and Commission staff made it very clear, and reaffirmed statements made in previous conversations and letters, that the goal of the Consent Orders would be to, among other things, remove unpermitted development from the portions of the property deed restricted for open space, and that under the Commission's regulations, the Executive Director would have to reject a coastal development permit ("CDP") amendment application that lessens or avoids the intended effect of a CDP. During this meeting, Commission staff also agreed to give you more time to review the proposed Consent Orders and stated that we would contact you the following week to check on the status of your review and answer any questions that you might have regarding the language of the Consent Orders. Commission staff left messages for you on May 16th and May 20th in furtherance of our May 8th meeting and received a call from Mr. Rauch on May 21st, during which time you agreed to provide "redlined" comments to the Consent Orders by no later than May 30, 2014.

In a May 23, 2014 telephone conversation you informed me that you are no longer going to provide comments to the proposed Consent Orders by May 30th because the construction group hired to install the unpermitted development located in the deed restricted area cancelled a site visit with you scheduled for earlier that day. While we appreciate that you want to have updated information and understand that meetings get cancelled, a cancelled meeting should not hinder review of a framework to resolve the unpermitted development at issue. Instead of simply requesting an extension to submit "redline" comments to the proposed Consent Orders, you provided a verbal proposal that had no resemblance to staff's March 24th Consent Orders, and included: 1) a request to retain all the unpermitted development in the deed restricted area, a request to remove (instead of restore and protect) all vegetation 100 feet from the perimeter of the house,¹ and a monetary element far below any level that would resolve the ongoing civil liabilities under Chapter 9 of the Coastal Act. While we appreciate that the Beims are interested in reaching a consensual resolution, your proposal is not only inconsistent with our prior conversations and letters, in which we explicitly stated that we could not accept a proposal that incorporates the retention of unpermitted development within the area deed restricted for open space, but also is directly inconsistent with the CDP and the Coastal Act, and is therefore, not acceptable.

Commission staff is happy to continue discussing the terms and conditions of the proposed Consent Orders with you and, as we have stated before, are more than willing to discuss options that may be acceptable to the Beim's to address their concerns; however you must first provide comments to our proposal in order for staff to know how best to proceed to answer the Beim's questions. Commission staff has informed you several times that we cannot accept an offer that includes retaining development in the deed restricted area and offering a proposal inconsistent with Coastal Act and the CDP is not productive in reaching our shared goal of attaining an amicable resolution.

¹ In a May 29, 2014 telephone conversation with Monty Kalin, Fire Prevention Specialist for the City of Carlsbad, Commission staff confirmed that the property is not located in an area where any fuel modification is required by the City of Carlsbad because there is a low risk of fire hazard in that region. If the Beims are interested in additional fire prevention beyond what the City of Carlsbad requires in Section 5 of the City's Landscape Manual, Commission staff would be happy to authorize, through the Consent Orders, the removal of flammable, non-native plant species, such as palm and eucalyptus trees, from the property.

June 11, 2014

Staff's continued goal is to resolve this matter amicably and as quickly as possible so that all parties can move forward, and we feel that the best approach to achieving that goal is to work through the Consent Orders that was sent to you in March. If you are still interested in settling amicably through the consent order process, please submit "redlined" comments to the Consent Orders no later than June 20, 2014 (almost 3 months since we originally sent them for your review) in order to continue our efforts to reach a mutually agreed upon resolution. While it is not our preference and we would like to do everything we can to avoid this outcome, if the Beim's do not wish to resolve the matter through Consent Orders, we will be left with no other choice but to move forward with a "unilateral" order before the Commission. Thank you in advance for your immediate attention, I look forward to hearing from you soon.

Sincerely,

Maggie Weber

Maggie Weber

Statewide Enforcement Analyst

California Coastal Commission

cc:

Lisa Haage, Chief of Enforcement, CCC

Aaron McLendon, Statewide Enforcement Supervisor, CCC

Pat Veesart, Southern California Enforcement Supervisor, CCC

Weber, Margaret@Coastal

From: Steve Beim <steve.beim@att.net>
Sent: Thursday, July 03, 2014 2:12 PM
To: Jon Corn
Cc: Weber, Margaret@Coastal; Linda Beim
Subject: Re: 2381 Buena Vista Circle - Beim Residence

Dear Ms. Weber,

This e-mail is to confirm that we have hired Jon Corn as our new counsel/attorney. Please provide him with all of the documents and cooperation that you can.

Thank you very much.

Steve Beim

On Jul 3, 2014, at 12:28 PM, Jon Corn <joncorn@axelsoncorn.com> wrote:

Dear Ms. Weber - I have been retained to assist the Beim Family with the resolution of the above referenced matter. Please direct all future correspondence, calls and inquiries directly to me. I would like to meet with you next week to discuss this further. Do you have availability Wednesday, Thursday or Friday?

Sincerely,

Jon

Jon Corn
Axelson & Corn, P.C.
760-944-9006 (office)
858-367-5192 (direct)
760-271-2600 (cell)
joncorn@axelsoncorn.com
www.axelsoncorn.com

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CALIFORNIA COASTAL COMMISSION

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

**Via Regular & Electronic Mail**

October 15, 2014

Jon Corn
Axelson & Corn, P.C.
160 Chesterfield Drive, Suite 201
Cardiff by the Sea, CA 92007

Subject: Memorialization of October 14, 2014 telephone conversation

Dear Mr. Corn:

This correspondence serves to confirm our telephone conversation that took place yesterday, October 14, 2014. During this call, Statewide Enforcement Supervisor Aaron McLendon and I informed you that staff was disappointed by your October 13, 2014 response to our offer to amicably resolve the Coastal Act violations located at 2381 Buena Vista Circle in Carlsbad ("Property"). As you know, we have been working with your clients, the Beims, and their now two sets of counsel since June 2011 in an effort to resolve this situation. We had originally believed that this matter, since it involves a clear violation of a legal condition of their Coastal Development Permit and includes unpermitted construction in a deed restricted area, could be resolved quickly and amicably. To this end, we had provided draft consent orders and made several sets of offers to resolve this matter.

Unfortunately, the October 13 response we received from you rather than moving towards us in settlement, instead takes several steps back from where staff thought we were in reaching a settlement agreement and includes several proposed revisions to the proposed Consent Orders that are similar, if not identical, to the proposals you had already presented to staff on July 14, 2014, and which have already been the topic of our discussions. During our July 14 meeting, staff explained to you why we could not accept a majority of those revisions, since they are inconsistent with the Coastal Act and Coastal Development Permit 6-89-190 ("the CDP") that was issued by the Commission, which authorized, among other things, the house on the Property. As you know, the issuance of the CDP required the recordation of a deed restriction on the Property and an offer to dedicate a portion of the Property to the Coastal Conservancy in fee. Commission staff cannot legally authorize any development to remain in these restricted areas because to do so would lessen the intended effect of the CDP as the restrictions on the Property were imposed to specifically prohibit development in these two locations.

Commission staff always prefers to resolve Coastal Act violations amicably through the Consent Order process, however we also have an obligation to resolve these matters efficiently and to resolve and halt ongoing violations. Unfortunately, after trying to do so for over two years, staff is left with no choice but to move forward and address this violation. In order to do that, yesterday Mr. McLendon provided you two options in moving forward with this enforcement


Exhibit 27
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(STEVEN & LINDA BEIM)
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matter. The first option is a final attempt at settlement which includes the Property owners, Steven and Linda Beim, agreeing to remove all unpermitted development, restore the impacted area of the Property, and pay a specified sum to resolve all civil liabilities and fund a local offsite mitigation project. This final settlement offer will expire at close of business, Tuesday, October 21, 2014.

The second option is for us to move forward unilaterally toward issuance of a Cease and Desist and Restoration Order. If your clients decline our settlement proposal, we will be forced to pursue this option. As you may be aware, the regulations provide for the timeline for submission of a Statement of Defense. Even though the deadline to submit a statement of defense was November 4, 2013, and a letter of defenses was submitted by previous counsel on June 30, 2014, as a courtesy, staff is willing to extend yet another opportunity to respond, and will accept a supplemental statement of defense until close of business, Tuesday, October 21, 2014. If the Property owners decline the offer of settlement, staff will still request the Commission to issue Orders that direct them to cease and desist from conducting Coastal Act violations and to remove the unpermitted development and restore the Property over a shorter time period than what is currently being offered. Unfortunately, the issue of civil liabilities would have to be addressed in litigation.

Commission staff is optimistic Mr. and Mrs. Beim will accept our final settlement offer, and are more than willing to further discuss this option. Should you have any questions, you may contact me at (415) 904-5264.

Sincerely,



Maggie Weber
Statewide Enforcement Analyst
California Coastal Commission

cc: Lisa Haage, Chief of Enforcement, CCC
Aaron McLendon, Statewide Enforcement Supervisor, CCC
Pat Veesart, Southern California Enforcement Supervisor, CCC
Steve and Linda Beim, Property owners

CALIFORNIA COASTAL COMMISSION

San Diego Coast District Office
7575 Metropolitan Dr., Suite 103
San Diego, CA 92108-4402
(619) 767-2370

July 6, 2012

Don Neu
City of Carlsbad- Planning Department
1635 Faraday Avenue
Carlsbad, CA 92008

Re: CCC Violation File No. V-6-10-005; 2381 Buena Vista Circle, Carlsbad; San Diego County Assessor's Parcel No. 155-221-07

Dear Mr. Neu:

It has come to the attention of the California Coastal Commission ("Commission") that the owners of the above described property (Steven and Linda Beim) have undertaken development activities on the subject property including, but not limited to, removal of native wetland vegetation, the construction of a dock and berthing, construction of a stairway, construction of retaining walls, and the long-term placement of a large, decorative wooden boat at the base of the slope. All of this development has occurred on the sloped area generally described as the area between the existing residence and into the wetland boundary of Buena Vista Lagoon, which is a deed restricted open space area, or within Buena Vista Lagoon itself. In addition, the development within the wetland/floodplain area on the subject property is on public property owned by the Coastal Conservancy as a public open space area.

Background

On August 10, 1989, the Commission granted Coastal Development Permit ("CDP") No. 6-89-190 (enclosed for your reference) to a prior owner of the subject property (a Mr. John Levy), authorizing construction of a single-family residence on the property. In light of the location of the development adjacent to wetlands and a lagoon, the permit restricted development on the slope leading down to the lagoon. CDP No. 6-89-190 was issued prior to effective certification of the City of Carlsbad's Local Coastal Program ("LCP") and thus prior to Carlsbad's CDP jurisdiction in this area. CDP No. 6-89-190 did not authorize the development activities described above, and our records indicate that no other CDPs have been issued by either the Commission or the City authorizing said development.

Special Condition No.1 of CDP No. 6-89-190 required recordation of an irrevocable offer to dedicate ("OTD") the area generally described as the wetland or floodplain portion of the property in fee to the Wildlife Conservation Board, the Coastal Conservancy, or a private association acceptable to the Commission's Executive Director. In its deliberations, the Commission found that development of a residence directly adjacent to the Buena Vista Lagoon would likely affect the continued productivity of the wetlands by degrading habitat quality and displacing wetland species. In order to mitigate these impacts and be able to approve the development as consistent with the Coastal Act

requirements, the Commission required recordation of the OTD, pursuant to Special Condition No.1, prior to issuing CDP No. 06-89-190.

In addition, Special Condition No. 2 of CDP No. 6-89-190 required recordation of an open space deed restriction prohibiting any alteration of landforms, removal of vegetation, or the erection of structures of any type on the sloped area generally described as the area between the existing residence and the above mentioned wetland boundary of Buena Vista Lagoon. The anticipated effects of the proposed development near the Buena Vista Lagoon were carefully considered during the processing of a permit for the residence. Consequently, approval of the permit was predicated in part upon the open space deed restriction prohibiting development on the slope that could negatively impact the lagoon.

On October 26, 1989, Mr. Levy (whose property then extended all the way down the slope through the area known as the wetland) recorded a deed restriction against the property that, among other things, prohibited landform alteration, vegetation removal, and the erection of "structures of any type" anywhere on the slope or within the lateral access way along the western edge of the property (enclosed for your reference). Immediately thereafter, Mr. Levy recorded an irrevocable offer to dedicate (OTD) fee title of the wetland portion of the property to a conservation organization (enclosed for your reference). Mr. Levy sold the property in August of 1999 to the Beims who assumed ownership of the property. It appears from a survey of aerial photography that all of the unpermitted development took place after the Beims purchased the subject property. The State Coastal Conservancy accepted the OTD and recorded the acceptance of the OTD with the County of San Diego on October 25, 2010, thereby reducing the size of the private lot. Since all of the aforementioned unpermitted development was constructed within the open space and deed restricted areas, this development is directly non-compliant with the terms and conditions of CDP No. 06-89-190.

Therefore, Part of the subject development is located within the retained jurisdiction of the Coastal Commission, and part of the subject development is within the City's jurisdiction. However, all of the subject development is in violation of the terms and conditions of CDP No. 6-89-190, which was issued by the Commission, and in violation of the deed restriction that was recorded against the property pursuant to that permit.

Section 30810 of the Coastal Act states (in relevant part):

Section 30810 Cease & desist orders...

(a) 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.

Additionally, Section 13172 of the Commission's regulations (Title 14, California Code of Regulations) states (in relevant part):

§ 13172. Violation of Permits.

Violation of a permit or any term, condition, or provision of a permit is grounds for enforcement under this Section and under Chapter 9 of the California Coastal Act of 1976.

Thus, while portions of this violation lie within the City's permitting jurisdiction for new development, and much of the development is therefore a violation of the City's LCP, the Commission has the authority to enforce the terms and conditions of its permits (and, in this case, intends to do so) consistent with the Coastal Act and our regulations. Only the Commission has the ability to amend any special conditions imposed by a Commission-issued CDP. Since the subject unpermitted development is in direct violation of, and non-compliant with the development restrictions imposed by, the Commission's permit, the Commission will address all of the unpermitted development on the subject property.

We are writing: 1) to alert the City of Carlsbad to violations of Carlsbad's LCP; 2) to inform the City that the Commission is asserting jurisdiction to enforce the terms and conditions of its permit; and 3) to advise the City of the Commission's intent to pursue cease and desist and restoration orders pursuant to Sections 30810 and 30811 of the Coastal Act to remove all of the unpermitted development on the subject site and restore the site to its pre-violation condition.

Ultimate resolution of this matter will likely take place through Commission approved cease and desist and restoration orders. However, if the Commission were to decide to allow the Beims to seek authorization to retain any development, the property owners would be directed to apply to the City of Carlsbad for a CDP. For your reference, copies of our correspondence with the current property owners, Steven & Linda Beim, are attached.

We look forward to working collaboratively with the City to resolve this matter. If you have any questions regarding this enforcement case, please feel free to contact me at (619) 767-2370.

Sincerely,



Marsha Venegas
San Diego District Enforcement

cc: Deborah Lee, San Diego District Manager, CCC
N. Patrick Veasart, Southern California Enforcement Supervisor, CCC
Lee McEachern, San Diego District Regulatory Supervisor, CCC
Alex Helperin, Senior Staff Counsel, CCC
Lisa Haage, Chief of Enforcement, CCC
Deborah Ruddock, California Coastal Conservancy

Exhibit 28
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CCC-14-RO-05
(STEVEN & LINDA BEIM)
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Enc: **CDP 6-89-190**
Irrevocable Offer to Dedicate Fee Title of Wetland
Deed Restriction of Open Space
Certificate of Acceptance of Wetlands by the California Coastal Conservancy

CALIFORNIA COASTAL COMMISSION

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

**Via Regular Mail**

September 25, 2013

Don Neu
City of Carlsbad- Planning Department
1635 Faraday Avenue
Carlsbad, CA 92008

**Re: CCC Violation File No. V-6-10-005; 2381 Buena Vista Circle, Carlsbad; San Diego
County Assessor's Parcel No. 155-221-07**

Dear Mr. Neu:

This letter is intended to confirm our September 24, 2013 telephone conversation regarding the jurisdictional issues relating to enforcement of the Coastal Act and the City of Carlsbad Local Coastal Program ("Carlsbad LCP") in regards to activities at 2381 Buena Vista Circle, Carlsbad ("the Property"). As you know, it has come to the attention of the California Coastal Commission ("Commission") that the owners of the Property have undertaken unpermitted development activities inconsistent with their Commission-issued Coastal Development Permit ("CDP") No. 6-89-190 (enclosed for your reference) and the Carlsbad LCP.

CDP No. 6-89-190 authorized the construction of a single-family residence on the level portion of the Property above the banks of Buena Vista Lagoon. In light of the proximity of the development to a steep bluff, wetlands, and the Lagoon, the Commission imposed conditions on the CDP that prohibit development a certain distance inland from the bluff edge and on the slope leading down to the lagoon. The unpermitted development is located on the bluff slope and in the lagoon, directly inconsistent with the CDP.

While the Property is located within the City's permitting jurisdiction, the Commission has the authority to enforce the terms and conditions of its permits.¹ In a July 6, 2012 letter addressed to you, Commission staff provided formal notice to the City, of the Commission's intent to assert jurisdiction to: (i) enforce the terms and conditions of its CDP; and (ii) pursue cease and desist and restoration orders ("Orders") pursuant to Sections 30810 and 30811 of the Coastal Act.

During our September 24 telephone conversation I explained to you that because the violations are also violations of the Carlsbad LCP, and therefore within the City's jurisdiction, we wanted to coordinate with the City in resolving this violation. In response, you requested that the Commission assume the primary responsibility for issuing the Orders pursuant to Sections 30810 and 30811 of the Coastal Act.

¹ CDP No. 6-89-190 was issued by the Commission prior to the certification of the City of Carlsbad's Local Coastal Program.

Thank you for taking the time to work with us and for your collaboration in this matter. Commission staff will continue to coordinate with the City and apprise you of actions taken regarding this case. Please call me if this does not accurately reflect your understanding of our discussion and the City's position. If you have any questions or concerns regarding this letter or the pending enforcement action, or if we can provide any assistance to the City, please do not hesitate to contact me at (415) 904-5264.

Sincerely,

Maggie Weber
Statewide Enforcement Analyst

CC: Marsha Venegas, San Diego Enforcement Officer, CCC
N. Patrick Veasart, Southern California Enforcement Supervisor, CCC
Aaron McLendon, Statewide Enforcement Supervisor, CCC
Lisa Haage, Chief of Enforcement, CCC



October 13, 2010

Steven D. and Linda M. Beim
2381 Buena Vista Circle
Carlsbad, CA 92008-1604

Re: Offer to Dedicate Fee Wetlands and Floodplain Property Located at 2381 Buena Vista Circle, Carlsbad, CA 92008; OTD recorded on October 26, 1989 as Instrument No. 89-583306, in the Official Records in the Office of the Recorder of San Diego County

Dear Mr. and Mrs. Beim:

This notice is to inform you that the State Coastal Conservancy ("Conservancy") intends to take action to accept the above-referenced Offer to Dedicate. Pursuant to Public Resources Code Sections 31402.1 and 31402.2, the Conservancy is required to accept any offer to dedicate made under the Coastal Act that has not been accepted by another public agency or nonprofit organization within 90 days of its expiration date.

The Conservancy has delegated the authority to its Executive Officer to prepare and to record all documents necessary to formalize the Conservancy's acceptance of the Offer to Dedicate. It is anticipated that the acceptance process will be completed approximately, but no earlier than, 10 days from the date of this letter.

Since the purpose of the fee dedication is to protect the wetlands and floodplain, it is not expected that the property will be developed or improved.

If you have any questions or comments about this matter, please contact Deborah Ruddock, Conservancy Project Specialist, by phone at (510) 286-4168, by mail at the letterhead address, or by email at druddock@scc.ca.gov.

Best regards,

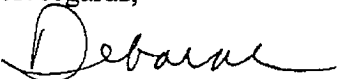

Deborah Ruddock
Conservancy Project Specialist

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(STEVEN & LINDA BEIM)
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1330 Broadway, 13th Floor
Oakland, California 94612-2512
510-286-1015 Fax: 510-286-0470