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# W15.1 & 15.2

**Staff:** J. Del Arroz-SF  
**Staff Report:** March 29, 2019  
**Hearing Date:** April 10, 2019

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

**Consent Cease and Desist Order No.:** CCC-19-CD-02

**Consent Restoration Order No.:** CCC-19-RO-01

**Related Violation File:** V-2-14-0091

**Person Subject to these Consent Orders:** John A. Mattos

**Property Location:** 5501 Middle Road, Unincorporated Marin County, Marin County Assessor's Parcel Number 100-050-32 and adjacent public property.

**Violation Description:** Placement of fill in wetlands; grading of wetlands; installation of culverts; placement of non-native seed in wetlands; and other development within wetlands that had the effect of displacing native vegetation and adversely affecting wetland habitat; all without permits.

**Substantive File Documents:** 1. Public documents in Cease and Desist and Restoration Order file Nos. CCC-19-CD-02 and CCC-19-RO-01.  
2. Exhibits 1 through 11 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 AND FINDINGS**

This matter pertains to unpermitted development, including grading and filling of just over 13 acres of wetlands, that occurred on a 269.45 acre parcel located at 5501 Middle Road, in unincorporated Marin County, Marin County Assessor's Parcel Number 100-050-32 ("the Property") (Exhibit 1). As described in further detail in Section C of this staff report, the Property contains significant areas of wetland habitat. The wetlands on the Property are adjacent to, and interconnected with, the Estero de San Antonio. The Estero de San Antonio is an important coastal water body and is composed of a narrow, fjord-like estuary that provides a relatively unique and special habitat in California. Not only are wetlands in general given protection under the Coastal Act, this area is one of the 19 wetland areas specifically called out for heightened protection in the Coastal Act.<sup>1</sup>

As described in more detail in Section B, below, the unpermitted development that is the subject of these proceedings includes, but is not necessarily limited to: placement of fill in wetlands; grading of wetlands; installation of culverts; placement of non-native seed in wetlands; and other development within wetlands that had the effect of displacing native vegetation and impacting wetland habitat ("Unpermitted Development").

The Property is used as an organic dairy farm, and agricultural uses have long been and continue to be an important part of Marin County. The Coastal Act and the certified Local Coastal Program ("LCP") for Marin County contain policies that protect agriculture and they each consider agriculture as an important coastal resource. Under both the Coastal Act and the Marin County LCP, agriculture is a priority land use that is protected from disruption, such as through Coastal Act Section 30241, which requires protection of prime agricultural land, and Coastal Act Section 30242, which limits conversion of agricultural land to other uses. Over the years, these provisions have led to the protection of countless acres of agricultural land throughout the California Coastal Zone and have ensured that agriculture continues in areas that would otherwise be subject to intense development pressure, such as in coastal Marin County.

Although agriculture in the form of dairy farming, does occur on the Property, this Coastal Act enforcement matter involves impacts to wetlands, wetland buffers and related habitat that also exist on the Property. While the Coastal Act and the Marin County LCP protect and encourage agricultural activities, they do not authorize the expansion of such development into wetlands. Rather, pursuant to the Coastal Act and LCP, wetland habitat is required to be protected, and only a very small subset of activities are allowed there, none of which include agricultural

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<sup>1</sup> The Estero is among 19 wetlands set aside in the Coastal Act for an even more limited set of allowable activities based on their identification by the California Department of Fish and Wildlife, ("CDFW"), as priorities for acquisition. These select coastal wetlands are protected under Section 30233(c) of the Public Resources Code, which states: "Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be limited to very minor incidental public facilities, restorative measures, nature study, commercial fishing facilities in Bodega Bay, and development in already developed parts of south San Diego Bay, if otherwise in accordance with this division."

activities. The proposed resolution of this Coastal Act violation is consistent with and supportive of the continued agricultural use of the Property. As described below, the proposed Consent Orders include provisions to protect and maintain the agricultural use of the Property, while also requiring recordation of an easement to ensure that wetland and riparian areas of the Property are protected from disturbance, among other restoration and mitigation requirements.

California has lost over 90% of its historic coastal wetlands,<sup>2</sup> and many of the remaining wetlands that have not been filled and/or destroyed are impaired and are no longer functioning in a way that maximizes their environmental utility. Therefore, the wetlands that remain, and the benefits that they provide, are critically important. Wetlands provide many important benefits for both people and wildlife, and as a result they are afforded some of the highest protections under the Coastal Act and the LCP. Some of the benefits of wetlands include: sequestering carbon; slowing runoff to reduce erosion; recharging aquifers with groundwater; filtering of pollutants from storm runoff; contributing to biodiversity; providing habitat for migratory birds along the Pacific Flyway; and providing recreational opportunities such as bird watching. Slowing the flow of water both reduces erosion and promotes the slow percolation of water into porous soils, recharging groundwater aquifers. The recent drought has offered a stark reminder of how important ground water recharge is to California's water supply, and wetlands are a key part of this process. This function may be especially important in light of current and future climate change, and as is discussed further below, wetlands are also important locations for carbon sequestration. These various benefits vary according to the dynamics and location of individual wetlands and their interactions with the surrounding landscape and climate, and include the extent and duration of wetland flooding, the plants and animals that reside in the area, and the biotic and physical processes that occur in the soil and the water column.

The Unpermitted Development, including the placement of fill and grading which removed wetland vegetation and introduced non-native seed to the wetlands, resulted in significant impacts to the ability of the wetlands to provide their important habitat and ecosystem functions. The Unpermitted Development occurred over a large area, adversely affecting or entirely eliminating 13.12 acres of wetlands on the Property, and resulted in significant impacts to the critical functions that the wetlands and wetland buffers on the Property provide.

The Property is owned by John A. Mattos, the person who is subject to these proceedings, along with his agents and successors (hereinafter collectively referred to as "Respondent"). Commission staff has worked closely with the Respondent to reach an amicable resolution to these matters and to resolve the Coastal Act violations described above. Through the execution of these Consent Orders, Respondent has agreed to take actions to remove and restore the areas affected by the violation, and resolve the violations by, among other things: 1) remove the physical items and materials that were placed or allowed to come to rest on the Property as a result of the Unpermitted Development, 2) install temporary erosion control measures, 3) conduct restorative grading, 4) revegetate impacted areas with native plants appropriate for the habitat on the Property, 5) mitigate the habitat losses that have occurred since the Unpermitted Development occurred and until the impacted habitat fully restores: a) record a wetland and stream conservation easement; b) construct and maintain in perpetuity wildlife friendly fencing

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<sup>2</sup> U.S. EPA, "Threats to Wetlands," *available at*: <https://www.epa.gov/wetlands/wetlands-factsheet-series>.

and cattle crossings to exclude cattle from areas covered by the conservation easement, c) plant 2,448 willows along the banks of the Estero de San Antonio; and 6) resolve civil liabilities under the Coastal Act by a) paying a monetary settlement in the amount of \$225,000, b) paying either an additional \$125,000 upon sale of an agricultural easement or \$225,000 upon sale of the Property, and c) recording an offer to dedicate fee title for a 1.08 acre and a 2,500 sq. ft. portion of the Property for the purposes of habitat protection, conservation, open space, and passive recreation. Therefore, staff recommends that the Commission **issue** these Consent Orders, which would establish a process for Respondent to resolve the violations described above. Motions and resolutions may be found on page 5 of this staff report.

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### APPENDICES

Appendix A Proposed Consent Cease and Desist and Restoration Orders

### EXHIBITS

Exhibit 1	Vicinity Map of the Property.
Exhibit 2	Aerial Photographs dated March 1, 2012, May 23, 2012 and June 9, 2014.
Exhibit 3	Photographs from Site Visits on June 25, 2014, August 4, 2014, and May 19, 2016.
Exhibit 4	Notice of Violation letter, dated June 20, 2014.
Exhibit 5	Notice of Intent to Commence Cease and Desist and Restoration Order Proceedings, dated February 12, 2015.
Exhibit 6	Letter from CCC Enforcement staff to Marin County Community Development Agency, dated November 5, 2014.
Exhibit 7	Wetland Delineation by Ted P. Winfield, Ph.D. and Lee Erickson, PE, Ph.D., dated July 27, 2015 and April 12, 2016.
Exhibit 8	Addendum to Wetland Delineation by Ted P. Winfield, Ph.D., dated April 12, 2016.
Exhibit 9	Coastal Zone Boundary Determination No. 06-2014, APN 100-050-32, Marin County, dated November 14, 2014.
Exhibit 10	Army Corps of Engineers Notice of Alleged Violation, dated July 8, 2014.
Exhibit 11	Memorandum from Commission staff ecologist Dr. Laurie Koteen, dated March 11, 2019.
Exhibit 12	Mattos Wetland Restoration, prepared by Paul Kephart, Principal Ecologist, Rana Creek Habitat Restoration, March 27, 2019.

## **I. MOTION AND RESOLUTION**

### **Motion 1: Consent Cease and Desist Order**

*I move that the Commission **issue** Consent Cease and Desist Order No. CCC-19-CD-02 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 Cease and Desist Order. The motion passes only by an affirmative vote of a majority of Commissioners present.

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

*The Commission hereby issues Consent Cease and Desist Order No. CCC-19-CD-02, as set forth below, and adopts the findings set forth below on grounds that development has occurred on the Property without the requisite coastal development permit, in violation of the Coastal Act, and that the requirements of the Order are necessary to ensure compliance with the Coastal Act.*

### **Motion 2: Consent Restoration Order**

*I move that the Commission issue Consent Restoration Order No. CCC-19-RO-01 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. 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-19-RO-01, as set forth below, and adopts the findings set forth below on the grounds that 1) development has occurred on the Property without a coastal development permit, 2) the development is inconsistent with the Coastal Act, and 3) the development is causing continuing resource damage.*

## **II. HEARING PROCEDURES**

The procedures for a hearing on a Cease and Desist Order and Restoration Order are outlined in Section 13185 and Section 13195, respectively, in Title 14 of the California Code of Regulations (“14 CCR”).

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. The Chair shall then have staff indicate what matters are already part of the record

and the Chair shall announce the rules of the proceeding, including time limits for presentations. The Chair shall also announce the right of any speaker, before the close of the hearing, to propose to the Commission question(s) for any Commissioner, at his or her discretion, to ask of any other party. Staff shall then present the report and recommendation to the Commission, after which the alleged violator(s), or their representative(s), may present their position(s) with particular attention to those areas where an actual controversy exists. The Chair may then recognize other interested persons, after which time staff typically responds to the testimony and to any new evidence introduced.

The Commission will receive, consider, and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceedings, as specified in 14 CCR Sections 13186 and 13195, incorporating by reference Section 13065. The Chair will close the public hearing after the presentations are completed. The Commissioners may ask questions to any speaker at any time during the hearing or deliberations, including, if any Commissioner so chooses, any questions proposed by any speaker in the manner noted above. Finally, the Commission shall determine, by a majority vote of those present and voting, whether to issue the Cease and Desist Order and the Restoration Order, either in the form recommended by the Executive Director, or as amended by the Commission. Passage of the motions above, per the staff recommendation or as amended by the Commission, will result in issuance of the Cease and Desist Order and the Restoration Order.

### **III. FINDINGS FOR CONSENT ORDERS<sup>3</sup>**

#### **A. LOCATION OF ENFORCEMENT CASE**

The violations that are the subject of this proceeding occurred on a 269.45 acre parcel located at 5501 Middle Road in northern Marin County, about 2.5 miles inland of Dillon Beach and the ocean. Like many of the other properties in the vicinity, the Property is largely used as pasture for cattle and is mostly undeveloped. A few structures are located on the northwest portion of the Property, near Middle Road, including a single family residence, barn, garage, and sheds. The Property also includes a significant area of wetlands, a portion of which are on or adjacent to, and interconnected with, the Estero de San Antonio. The Estero de San Antonio is an important coastal water body, and is composed of a narrow, fjord-like estuary that provides a relatively unique and special habitat in California.

The Marin County certified LCP Land Use Plan (“LUP”) designation for the Property is Agricultural, and the zoning designation in the Marin County certified LCP Implementation Plan (“IP”) is Coastal Agricultural Production Zone-60, which means that the Property is designated for agricultural production and has a maximum density of one residential unit per 60 acres. The Property is currently used as an organic dairy farm, which is consistent with the Property’s land

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<sup>3</sup> These findings also hereby incorporate by reference the section “Summary of Staff Recommendation and Findings” at the beginning of this March 29, 2019 staff report (“STAFF REPORT: Recommendations and Findings for Consent Cease and Desist and Consent Restoration Orders”) in which these findings appear.

use and zoning designations. The most common land use in this portion of coastal Marin County is agricultural use, with much of the area occupied by dairy farm and livestock grazing operations.

The Property is also located near popular visitor destinations, including the town of Tomales, located approximately 1.5 miles to the southeast, and Dillon Beach, located approximately 2.5 miles to the west, where the nearest public beach access to the beach is located. Bicycling is also a popular recreational activity that occurs on roads in the area.

### Estero de San Antonio

The Estero de San Antonio (the “Estero”) is located adjacent to and on the Property. The Estero is a long, narrow estuary located in a former river valley, which eventually empties into the Pacific Ocean between Bodega Bay proper to the north and the mouth of Tomales Bay at the Point Reyes National Seashore to the south. The Estero was created sometime in the last 10,000 years, when the Stemple Creek river valley was gradually inundated by the sea due to a combination of historic sea level rise and geologic elevation of the land associated with the San Andreas rift zone.<sup>4</sup> Public access to this part of the Estero is currently limited and is only available by hiking or kayaking north from Dillon Beach, where the Estero meets the ocean.

The Estero is an estuary, which is an area where fresh water from inland streams mixes with salt water from the ocean. The Estero contains a variety of habitat types including more than 200 acres of wetland habitats<sup>5</sup> such as freshwater ponds, mudflats, eelgrass and salt grass areas, and wooded ravines.<sup>6</sup> The watershed of the Estero also includes a variety of habitats including California annual grassland, coastal prairie, and coastal scrub.<sup>7</sup> A 1977 report by the California Department of Fish and Game states that the Estero de San Antonio, the Estero Americano located to the north, and the surrounding areas and hillsides are habitat to a total of 71 species of water and marsh-associated birds, 66 species of upland birds, 31 marine and freshwater fish species, at least 21 species of aquatic and terrestrial mammals, a number of reptiles and amphibians, and a variety of mollusks and crustaceans. The report also states that the Estero serves as a nursery ground for juvenile Dungeness crabs, an important commercial food crop.

The importance of the Estero is further demonstrated by the designation of the portion of the Estero near the Pacific Ocean as a part of the Gulf of the Farallones National Marine Sanctuary and as a State Marine Recreational Management Area. The Marin County LCP designates the “northern county area including... the Estero de San Antonio” as a coastal wetland area of statewide significance.

Despite its known resource values, the Estero (and other esteros in the area) have also been degraded over time by a variety of activities. In fact, the Estero is currently listed by the North

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<sup>4</sup> “California Coastal Resource Guide.” 1987, California Coastal Commission.

<sup>5</sup> “The Natural Resources of Estero Americano and Estero de San Antonio,” 1977, California Dept. of Fish and Game.

<sup>6</sup> “Stemple Creek/Estero de San Antonio Watershed Enhancement Plan,” 1994, Prunuske Chatham, Inc.

<sup>7</sup> “The Natural Resources of Estero Americano and Estero de San Antonio.” 1977, California Dept. of Fish and Game.



Coast Regional Water Quality Control Board as an impaired waterbody due to sediment and nutrient pollution.<sup>8</sup> Sediment pollution occurs due to erosion of land within the watershed, and results in the narrowing of the Estero and contributes to the creation of a sand bar at the mouth of the Estero that blocks tidal action. The closing of the sand bar impacts the habitat in the Estero (raising salinities within the Estero as water evaporates) and also causes more frequent flooding throughout the Estero's watershed, impacting adjacent agricultural lands.<sup>6</sup> Nutrient pollution in the Estero occurs due to polluted runoff that originates primarily from agricultural operations in the Estero's watershed.<sup>9</sup> Once the polluted runoff reaches the Estero, the excess nutrients can result in increased algal blooms (eutrophication) and can reduce the level of dissolved oxygen in the water, which harms fish and other organisms living in the Estero. Ensuring that erosion is prevented and that polluted runoff is controlled at the Property and throughout the watershed is critical to ensuring that the water quality and habitat of the Estero and the Pacific Ocean is protected.

On the Property and in its vicinity, the banks of the Estero currently are mostly unvegetated. Planting vegetation on the banks of the Estero in this area would offer significant habitat benefits, including establishing root systems that help to reduce erosion, providing cover and foraging habitat for resident wildlife, and reducing stream temperatures for fish and other wildlife through shading.

#### Wetlands on the Property

All wetlands are subject to protections under the Coastal Act, but as noted above, this wetland area is also included in the 19 wetland areas called out for particular protection in Section 30233 of the Coastal Act. Both esteros are among 19 wetlands set aside in the Coastal Act for an even more limited set of allowable activities based on their identification by the California Department of Fish and Wildlife, (CDFW), as priorities for acquisition. These select coastal wetlands are protected under Section 30233(c) of the Public Resources Code, which states:

*Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be limited to very minor incidental public facilities, restorative measures, nature study, commercial fishing facilities in Bodega Bay, and development in already developed parts of south San Diego Bay, if otherwise in accordance with this division.*<sup>10</sup>

The Estero runs along the northern property boundary, and wetlands on the Property are depicted on the U.S. Fish and Wildlife Service's National Wetlands Inventory maps.<sup>11</sup> As shown by aerial photography (Exhibit 2) and by a wetland delineation prepared by Respondent (Exhibit 8), prior to the Unpermitted Development, the area adjacent to the Estero consisted of relatively level topography interrupted by numerous ponds and streams that contained wetland habitat.

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<sup>8</sup> "Final California 2012 Integrated Report (303(d) List/305(b) Report) Supporting Information." North Coast Regional Water Quality Control Water Board, *available at*: [https://www.waterboards.ca.gov/water\\_issues/programs/tmdl/2012state\\_ir\\_reports/00650.shtml](https://www.waterboards.ca.gov/water_issues/programs/tmdl/2012state_ir_reports/00650.shtml).

<sup>9</sup> Stemple Creek/Estero de San Antonio Watershed Enhancement Plan. 1994, Prunuske Chatham, Inc.

<sup>10</sup> For a fuller discussion of this issue, see Exhibit 10, Memorandum from Commission staff ecologist Dr. Laurie Koteen, dated March 11, 2019.

<sup>11</sup> "Wetlands Mapper." National Wetlands Inventory, *available at*: <https://www.fws.gov/wetlands/data/Mapper.html>. Accessed March 28, 2019.

The wetland delineation states that determination of the exact vegetative communities that were previously present on the Property is difficult, due to the unpermitted grading, but that the wetlands were composed of native wetland species such as semaphore grass, and by non-native species such as ryegrass which was previously planted on the Property.

The topography of the Property becomes steeper farther from the Estero, and the area towards the southern and center portions of the Property is composed primarily of hills covered with introduced grasses used for cattle forage. A number of vegetated riparian corridors are present on the Property and these corridors generally run from the hilly topography at the center of the Property towards the Estero and the wetlands adjacent to the Estero on the northern boundaries of the Property.

A review of aerial imagery shows that the wetlands on the Property existed in approximately the same location since at least 1952, the earliest year for which Commission staff found aerial imagery. Aerial imagery dated from before the Unpermitted Development occurred shows that these wetlands remained inundated throughout much of the year, including during the summer months. However, these wetlands were filled and significantly impacted when the Unpermitted Development occurred.

When the mouth of the Estero is closed, the Estero is subject to extensive flooding, including flooding of much of the flood plain located adjacent to the Estero. On the Property, this results in the inundation of most of the low-lying areas near the Estero, in approximately the same areas where the wetlands are historically located and where the wetland delineation has determined that wetlands exist (Exhibit 2 p. 1).

## **B. DESCRIPTION OF UNPERMITTED DEVELOPMENT**

The Unpermitted Development includes, but may not necessarily be limited to: placement of fill in wetlands; grading of wetlands; installation of culverts; placement of non-native seed in wetlands; and other development within wetlands that had the effect of displacing native vegetation and adversely affecting wetland habitat; all without a Coastal Development Permit (“CDP”). Details of the Unpermitted Development are further explained in the paragraphs below.

Respondent performed the Unpermitted Development between May and June of 2014, which resulted in impacts to approximately 13.12 acres of wetlands. No CDP was issued, or would have been issued, by the Commission for any of the Unpermitted Development, and no local approvals or local CDPs for the Unpermitted Development were issued by Marin County. As described further below, the Unpermitted Development resulted in the elimination of, and significant impacts to, wetlands on the Property; in addition to significant impacts to the biological productivity of the wetlands as well as their relation to the productivity of the Estero.

### a) Placement of Fill in Wetlands

According to Respondent, they placed fill within the wetlands on the Property by first excavating soil from an upland portion of the property using mechanized equipment,<sup>12</sup> and then transporting the fill by truck to two deep wetlands on the Property. Respondent states that approximately 1,250 cubic yards of fill was transported this way, which works out to approximately 125 large dump truck loads. According to the wetland delineation prepared by the Respondent, the fill extended up to a depth of 34 inches above the natural grade at one of the wetland ponds that previously covered an area of 1.4 acres, and a depth of 48 inches above natural grade at a second wetland pond with an area of 0.3 acres. Respondent then graded the fill and soil adjacent to the wetlands and across additional wetlands on the Property by using heavy equipment to rip up the soil (sometimes referred to in agricultural terms as ‘discing’ – See Exhibit 3) and to level the soil and spread fill from higher areas into lower areas (known in agricultural terms as ‘landplaining’ – See Exhibit 3). The unpermitted grading had the effect of creating a more uniform, flat area where water would be less likely to collect, to increase the area suitable and available to for cattle grazing. The unpermitted grading and placement of fill resulted in the burial and elimination of wetland and wetland habitat (Exhibit 2, p. 3), and eliminated vegetation from acres of the Property, creating bare soils that were subject to erosion by wind and rain (Exhibit 3). As discussed in the Wetlands / Water Quality section, below, the filling and grading has caused erosion and significant impacts to habitat, including to wetland habitat on the Property, and had the potential to contribute to nutrient and sediment pollution in the Estero.

#### b) Placement of Non-Native Seed in Wetlands

The Unpermitted Development includes the use of mechanized equipment to spread and plant non-native grass seed in the filled wetlands, with the intent of replacing the wetlands vegetation with additional grass area for cattle grazing. The planting of non-native seed had the effect of displacing native wetland vegetation, and inhibited the growth of native wetland species.

#### c) Installation of Culverts

The Unpermitted Development also includes the placement of four culverts along the edge of the Estero at locations where previously riparian or wetland areas were connected to the Estero (Exhibit 3). Installation of the culverts and placement of fill above the culverts resulted in the removal of wetland and riparian habitat and conversion of wetland and riparian habitats to upland habitat.

### **C. ENFORCEMENT HISTORY**

Commission enforcement staff was notified on June 9, 2014, of ongoing unpermitted development occurring on the Property. That day, Commission enforcement staff called Respondent and verified that development was occurring without a CDP, and informed Respondent that the work required a CDP and that such work should be stopped immediately.

On June 20, 2014, Commission staff sent a Notice of Violation letter to Respondent, describing the violations and providing information about the enforcement remedies available to resolve the

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<sup>12</sup> This upland fill source area can be seen at Exhibit 3, page 4.

matter. On June 25, 2014, Commission enforcement staff visited the Property with Respondent and with representatives from other agencies, including the U.S. Environmental Protection Agency, the California Regional Water Quality Control Board, the California Department of Fish and Wildlife, and the U.S. Army Corps of Engineers, and observed the Unpermitted Development that had occurred.

On August 4, 2014, Commission enforcement staff and the Commission's Senior Staff Ecologist at that time, Dr. John Dixon, conducted a second site visit with Respondent and Respondent's consultants to discuss methods to delineate where wetlands were located, where impacts occurred, and what measures would be included in cease and desist and restoration order proceedings to remedy the situation.

On August 6, 2014, in a conversation between Commission North Central Coast District enforcement Officer Jo Ginsberg and Marin Community Development Agency staff, the County requested that the Commission assume the primary responsibility for addressing the violations. This request was confirmed in a November 5, 2014 letter from Ms. Ginsberg to Brian Crawford, Director of the Community Development Agency (Exhibit 6).

On August 28, 2014, Respondent's consultants submitted a proposal for procedures by which a wetland delineation would be conducted and temporary erosion control measures installed to control erosion on the site while discussions with Commission Enforcement staff continued to fully resolve the Unpermitted Development through the issuance of Cease and Desist and Restoration Orders. To help minimize additional impacts caused by the unpermitted grading to the Estero during winter rains, and to address concerns raised by the North Coast Regional Water Quality Control Water Board, on September 19, 2014, Commission staff approved an interim erosion control plan.

On February 12, 2015, the Executive Director of the Commission sent a letter notifying Respondent of the Executive Director's intent to commence Cease and Desist and Restoration Order Proceedings ("NOI") (Exhibit 5).

In July 2015, Respondent submitted a wetland delineation, identifying the areas impacted by the Unpermitted Development. In response to concerns raised by Commission staff, in April 2016, Respondent submitted a correction to the wetland delineation (Exhibit 8).

On May 19, 2016, Commission Enforcement staff and Dr. Laurie Koteen and Dr. John Dixon of the Commission's Ecological staff conducted a third site visit to the Property.

Over the next several months, negotiations over the proposed Consent Cease and Desist and Restoration Orders occurred. During this time Respondent changed legal counsel, which caused some delay in the negotiations. In July 2017, Respondent hired new counsel, and since then negotiations have continued regarding how Respondent would restore wetland habitat and fully resolve the Coastal Act violations on the Property. Commission staff and Respondent have worked cooperatively to reach an amicable resolution of the matter, and on March 29, 2019, Respondent agreed to and signed the Consent Orders, which are hereby being presented to the Commission for its review.

## **D. BASIS FOR ISSUANCE OF ORDERS**

### 1) STATUTORY PROVISIONS

#### (a) Consent Cease and Desist Orders

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

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

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

*(2) The commission requests and the local government or port governing body declines to act, or does not take action in a timely manner, regarding an alleged violation which could cause significant damage to coastal resources....*

*(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 Orders

The statutory authority for issuance of the Consent 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 the development has occurred without a coastal development permit from the commission, local government, or port governing body, the development is inconsistent with this division, and the development is causing continuing resource damage.*

### 2) FACTUAL SUPPORT FOR STATUTORY ELEMENTS

The following pages set forth the basis for the issuance of these Consent Orders by providing substantial evidence that the Unpermitted Development meets all of the required grounds listed in Coastal Act Sections 30810 and 30811 for the Commission to issue these Consent Orders.

(a) Development has occurred without a Coastal Development Permit

The Property is located in unincorporated Marin County, within the Coastal Zone. The areas adjacent to the Estero where the majority of the Unpermitted Development occurred are within the area of the Commission's retained permit jurisdiction, and the upland area where fill was taken from is within the permit jurisdiction of the County (See Exhibit 9). Section 30600(a) of the Coastal Act states that, in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the Coastal Zone must obtain a coastal development permit. "Development" is broadly defined by Section 30106 of the Coastal Act in relevant part as follows:

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

Development, as described above in Section B, has occurred on the Property without a CDP (the Unpermitted Development). The actions performed by Respondent clearly constitute "development" within the meaning of the above-quoted definition and therefore those actions are subject to the permit requirements of Section 30600(a) of the Coastal Act.

The Unpermitted Development is not exempt from permitting requirements. These activities, including grading, placement of fill, placement of solid structures (e.g. culverts), placement of solid materials (including non-native grass seed), removal of major vegetation, and changes in intensity of the use of land meet the definition of development under Section 30106 of the Coastal Act, which is the same definition that applies in the LCP. Expansion or intensification of agricultural uses within wetlands constitutes a "change in the intensity of the use of land," and is therefore considered development under the Coastal Act. In addition, grading within wetlands also constitutes development requiring a Coastal Development Permit, as there is no exclusion for agricultural grading within the Coastal Act definition of development, and additionally because the grading resulted in the removal of major vegetation. Therefore, the Unpermitted Development, including the placement of fill, grading, placement of culverts, and placement of non-native seed in wetlands constitutes Development under the Coastal Act.

The Unpermitted Development required a CDP from the Commission. The activities listed herein occurred adjacent to the Estero and within the area of the Commission's retained permit jurisdiction. Therefore, a CDP for any approvable development was required "from the commission," as stated in Section 30810. Commission staff has researched Commission records and determined that no CDP was issued for these activities.

In addition, for those areas in which the violations occurred within the County's LCP permit jurisdiction, pursuant to Section 30810(a)(1), Marin County requested that the Commission assume primary enforcement authority to address the Coastal Act and LCP violations on the Property. The County made this request in an August 6, 2014 phone call to Commission staff, which request was subsequently confirmed by a letter from Commission staff to the County, dated November 5, 2014 (Exhibit 6). The Commission therefore has jurisdiction to issue this

cease and desist order to address these violations pursuant to Section 30810(a) of the Coastal Act. In addition, and as enumerated immediately below, various elements of Unpermitted Development are inconsistent with resource protection policies of Chapter 3 of the Coastal Act and similar policies of the LCP, and are causing continuing impacts to resources such that the requirements for issuance of a restoration order pursuant to Section 30811 have also been met.

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

As described below, the Unpermitted Development is inconsistent with Section 30231 (biological productivity and water quality) and Section 30233 (wetland fill) of the Coastal Act and Policy 4 of the LCP Policy on Natural Resources, and Policy 2 of the LCP Policies on Diking, Filling, and Dredging.

**Wetlands / Water Quality**

The Unpermitted Development has impacted and eliminated areas of wetland on the Property, and has resulted in potential adverse impacts to the water quality of wetlands and the Estero de San Antonio. As described below, wetlands are critically important and provide an abundance of benefits for people and wildlife and these benefits are lost or substantially reduced when wetlands are impacted or destroyed. Moreover, as noted, both esteros at issue here are among 19 wetlands set aside in the Coastal Act for an even more limited set of allowable activities based on their identification by the California Department of Fish and Wildlife, (CDFW), as priorities for acquisition. These select coastal wetlands are protected under Section 30233(c) of the Public Resources Code, which states:

*Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be limited to very minor incidental public facilities, restorative measures, nature study, commercial fishing facilities in Bodega Bay, and development in already developed parts of south San Diego Bay, if otherwise in accordance with this division.*

In addition, Section 30231 of the Coastal Act states:

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

Section 30233 of the Coastal Act states, in relevant part:

*(a) (a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and*

*where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:*

- (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
- (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
- (3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*
- (4) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
- (5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
- (6) Restoration purposes.*
- (7) Nature study, aquaculture, or similar resource dependent activities...*

*(c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary...*

Policy 4 of the LCP Policies on Natural Resources states, in relevant part:

*Wetlands. Wetlands in the Unit II coastal zone shall be preserved and maintained, consistent with the policies in this section, as productive wildlife habitats, recreational open space, and water filtering and storage areas. Land uses in and adjacent to wetlands shall be evaluated as follows:*

- a. Diking, filling, and dredging of wetlands shall be permitted only in conformance with the policies contained in the LCP on this subject, presented on page 136. In conformance with these policies, filling of wetlands for the purposes of single-family residential development shall not be permitted.*
- b. Allowable resource-dependent activities in wetlands shall include fishing, recreational clamming, hiking, hunting, nature study, birdwatching and boating.*
- c. No grazing or other agricultural uses shall be permitted in wetlands except in those-reclaimed areas presently used for such activities.*
- d. A buffer strip 100 feet in width, minimum, as measured landward from the edge of the wetland, shall be established along the periphery of all wetlands. Where appropriate, the required buffer strip may be wider based upon the findings of the supplemental report required in (e). Development activities and uses in the wetland buffer shall be limited to those specified in (a) and (b) above....*



Policy 2 of the LCP Policies on Diking, Filling, and Dredging states:

*Acceptable purposes. The diking, filling, and dredging of open coastal waters, wetlands, and estuaries shall be limited to the following purposes:*

- a. New or expanded commercial fishing facilities.*
- b. Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
- c. Incidental public service purposes, including, but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
- d. Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
- e. Restoration purposes.*
- f. Nature study, aquaculture, or similar resource-dependent activities.*
- g. Excluding wetlands, new or expanded boating facilities may be permitted. Only entrance channels or connecting walkways for new or expanded boating facilities shall be permitted in wetlands.*
- h. In the Esteros Americano and de San Antonio, any alterations shall be limited to those for the purposes of nature study, restoration, or very minor incidental public facilities.*

### Wetlands

Wetlands, such as those in and adjacent to the Estero, provide a variety of functions that benefit both people and wildlife, and are important resources that require protection. This Unpermitted Development involved the filling of wetlands for a purpose that is not among the seven allowable uses listed in 30233(a)(1)-(7). In addition, as noted above, this area is subject to even more significant protection under Section 30233(c) of the Public Resources Code, which states:

*Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be limited to very minor incidental public facilities, restorative measures, nature study, commercial fishing facilities in Bodega Bay, and development in already developed parts of south San Diego Bay, if otherwise in accordance with this division.*

Clearly the Unpermitted Development here did not comply with this Section.

In general, wetlands support high biodiversity and provide habitat for many different species. As described in Section A, the wetlands within the watershed of the Estero provide habitat to many different plant and animal species, and the wetlands associated with the Estero support coastal food webs by providing foraging habitat for many animal species, and refugia for others. Wetlands more generally also provide essential habitat to a variety of bird species, including migratory birds.

In addition to their extensive benefits to wildlife, wetlands also provide a number of benefits that are of importance to people. Wetlands serve as treatment areas for polluted runoff from upland areas, and through physical and biological processes wetlands can help to filter nutrients, chemicals, and sediment from runoff before it enters waterways. Therefore, wetlands help to protect the habitat in the Estero, the water quality of coastal waters, and human health (including through protecting aquifers that provide drinking water and protecting people recreating in Bodega Bay). As described in Section A, the Estero is listed by the North Coast Regional Water Quality Control Board as an impaired water body. Maintaining the health of wetlands on the Property and in the watershed is important to ensure that those wetlands are able to filter pollutants before they reach the Estero and to further efforts to improve the water quality of the Estero.

While they treat stormwater runoff, wetlands can also slow the velocity of runoff, reducing peak flows and the velocity of rushing storm water. Slowing the flow of water both reduces erosion and promotes the slow percolation of water into porous soils, recharging groundwater aquifers. The recent drought has offered a key reminder of how important ground water recharge is to California's water supply, and wetlands are a key part of this process. This function may be especially important in light of current and future climate change. With more frequent and larger intensity storms expected in the future, erosion associated with stormwater runoff can be expected to increase, and wetlands can help to reduce these effects. Wetlands also help to absorb the impacts of coastal flooding and storm surges, reducing damage to adjacent development, infrastructure, and to upland habitats.

Wetlands are also important locations for carbon sequestration. The frequent presence of water in wetland soil leads to anoxic soil conditions (soils with low soil oxygen content) which help retain organic matter in the soil rather than releasing it as carbon dioxide, a key greenhouse gas. Breaking up the soil and reducing the amount of water present in wetlands, as occurred as a result of the Unpermitted Development, can increase the availability of oxygen and release carbon that was previously stored in the soil, contributing to global climate change.

Also essential to consider in this discussion is that the vast majority of coastal wetlands that were historically present in California have been lost; by many estimates the extent of coastal wetlands has been reduced by 90%. Further, many remaining coastal wetlands that have not been filled in or destroyed have been impaired including due to vegetation removal or water quality impacts from adjacent development and are no longer functioning in a way that maximizes their environmental utility. Therefore, protecting the few remaining wetland areas and the benefits that they provide is even more critical.

#### Unpermitted Development is Inconsistent with the Coastal Act

The Unpermitted Development includes the removal of soil from upland portions of the Property and the deposition of that soil on wetlands, and the placement of four culverts within coastal streams. As discussed in Section B, this development had the effect of eliminating wetlands and wetland habitat on the Property. Coastal Act Section 30233, Policy 4 of the LCP Policies on Natural Resources, and Policy 2 of the LCP Policies on Diking, Filling, and Dredging identify a

specific list of purposes for which fill may occur, such as for allowing nature study or for restoration of wetlands, if there are no feasible alternatives to the development and if mitigation is provided. The fill of wetlands to expand areas for cattle grazing is not one of the purposes identified in Section 30233, Policy 4 of the LCP Policies on Natural Resources, and Policy 2 of the LCP Policies on Diking, Filling, and Dredging, and therefore the Unpermitted Development is inconsistent with Section 30233 of the Coastal Act. As discussed above, the Unpermitted Development is also inconsistent with Section 30233(c).

The wetland delineation indicates that some ponded areas of the site were composed of clay-rich soils, which slow the infiltration of water and extend the length of time that water is retained within the wetland. The Unpermitted Development, which placed fill from upland areas within wetlands and transported rich upland soils and sandy stream bank soils into wetlands may have altered the characteristics of the soil present in wetlands, perhaps altering the soil textural and physicochemical characteristics of the soil, and thus wetland hydrology and thereby altering the plant species that can live in the wetlands.

The unpermitted fill and grading of wetlands removed vegetation from the Property and temporarily created acres of unvegetated, bare soil on the Property (Exhibit 3), increasing the potential for erosion and for the deposition of sediment in the Estero. Increased sediment loads in coastal waters can increase turbidity and scour, reducing the growth of aquatic plants in the Estero and harming benthic organisms by changing the composition of the streambed habitat and burying invertebrates. Sediment pollution within the Estero has also been linked to the reduction in depth and width of the Estero and the more frequent closure of tidal circulation at the mouth of the Estero, as well as reducing water quality.<sup>13</sup> These impacts have the potential to reduce the biological productivity and the quality of coastal waters, inconsistent with Section 30231 of the Coastal Act.

In areas where wetlands were filled and leveled, Respondent planted non-native seed for cattle forage and displaced the native wetland vegetation that was eliminated by the unpermitted grading. The non-native grasses grew quickly and, by occupying the area, inhibited the regrowth of native wetland vegetation. The non-native grasses do not provide habitat for native wetland species, are already ubiquitous in California, and their installation has caused significant impacts to the abundance and productivity of wetland plant species on the Property, inconsistent with Section 30231.

The Unpermitted Development has also resulted in significant alteration to the topography of the Property. The Unpermitted Development, including placement of fill and grading, have leveled wetlands, reduced the depth of ponded areas, and eliminated small topographic depressions that hold water. These changes reduce the amount of water that can be retained within wetlands on the Property, and reduce the length of time that wetlands are flooded and the area of wetland habitat subject to flooding. This occurred in areas where large volumes of fill were placed and also in areas that were 'landplained' and subject to smaller thicknesses of fill. Even small depths of fill can have a significant impact on the amount of water that is retained in a wetland when that fill occurs over a large area. The presence and duration of ponded soils is critical for

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<sup>13</sup> "Stemple Creek/Estero de San Antonio Watershed Enhancement Plan." 1994. Prunuske Chatham, Inc.

supporting wetland habitat, and the grading and filling of wetlands have significant impacts on wetland habitat, such as making the area less suitable for wetland plants. Therefore, the Unpermitted Development has impacted wetland habitat and reduced the biological productivity of wetlands, inconsistent with Coastal Act Section 30231.

Coastal Act Section 30233 also requires that filling of wetlands shall maintain or enhance the functional capacity of the wetland. By eliminating wetlands, removing wetland vegetation, and reducing the depth, extent, and duration of ponding of wetlands, the Unpermitted Development has reduced the quality and extent of wetland habitat on the Property. These changes also impact the functional capacity of wetlands on the Property, reducing the ability of the wetland to provide water quality treatment, erosion control, carbon sequestration, and other important benefits. Therefore, the Unpermitted Development is inconsistent with Coastal Act Section 30233, satisfying the second criterion for issuance of a Restoration Order.

(c) Unpermitted Development is Causing Continuing Resource Damage

The Unpermitted Development is causing “continuing resource damage,” as defined in 14 CCR Section 13190. 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 wetland and riparian habitats, water quality, and biological productivity of wetlands and streams are afforded protection under Coastal Act Sections 30231 and 30233, and are therefore “resources” as defined in Section 13190 (a) of the Commission’s regulations.

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.*

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 Restoration Order.*

In this case, the resource damages caused by the Unpermitted Development include elimination of wetlands, reduction in quality and abundance of wetland habitat, and potential adverse impacts to water quality of the Estero. As of this time, that Unpermitted Development and the results thereof remain on the Property. The removal of native vegetation and the placement of fill, non-native plants, and culverts continues to impact coastal resources by displacing the native ecosystem and preventing it from functioning, thereby disrupting the biological productivity of

that ecosystem. Without removing unpermitted development and restoring the impacted areas, the foregoing impacts are continuing. In fact, such impacts will continue in some form until the area is fully restored and again fully functioning as wetlands, meaning that such impacts will continue even through initial restoration activities, when they will start to lessen, but such impacts will continue at some level until the restoration has been 100% successful, which could take 5 - 10 years, or more, based on the Commission's experience with wetlands restoration in other locations. The persistence of these impacts constitutes "continuing" resource damage, as defined in Section 13190(c) of the Commission's regulations. As a result, the third and final criterion for the Commission's issuance of the proposed Restoration Order pursuant to Coastal Act Section 30811 is therefore satisfied.

(d) Consent 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 the LCP and in Chapter 3 of the Coastal Act. These Consent Orders require and authorize Respondent to, among other things, cease and desist from conducting any further unpermitted development on the Property, remove the physical items that were placed or allowed to come to rest as a result of Unpermitted Development, and restore the areas impacted by the Unpermitted Development through, among other things, undertaking restorative grading, removing non-native vegetation, and planting native vegetation. Exhibit 12 shows the measures that Respondents have proposed to restore wetland habitat on the Property, pursuant to the Restoration Plan approved under the Consent Orders. Exhibit 12 specifies that the minimum amount of soil disturbance necessary to support plant establishment will occur. Further, the Consent Orders require Respondent to, as mitigation for temporal loss of habitat, record a wetland and stream conservation easement; construct and maintain in perpetuity wildlife friendly fencing to exclude cattle from areas covered by the conservation easement; plant 2,448 willows along the banks of the Estero de San Antonio. Through the Consent Orders, Respondent will resolve civil liabilities under the Coastal Act by paying a monetary settlement in the amount of \$225,000, paying either an additional \$125,000 upon sale of an agricultural easement or \$225,000 upon sale of the Property, and recording dedicating fee title for a 1.08 acre and a 2,500 sq. ft. portion of the Property for the purposes of habitat protection, conservation, open space, and passive recreation. Therefore, the Commission finds that these Consent Orders are consistent with the Chapter 3 policies of the Coastal Act.

## **E. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

The Commission finds that issuance of these Consent Orders, to compel the removal of the Unpermitted Development and restoration of the Property, and implementation of these Consent Orders are exempt from the requirements of the California Environmental Quality Act of 1970 (CEQA), Cal. Pub. Res. Code §§ 21000 *et seq.*, for the following reasons. First, the CEQA statute (section 21084) provides for the identification of "classes of projects that have been determined not to have a significant effect on the environment and that shall be exempt from [CEQA]." The CEQA Guidelines (which, like the Commission's regulations, are codified in 14 CCR) provide the list of such projects, which are known as "categorical exemptions," in Article 19 (14 CCR §§ 15300 *et seq.*). Because this is an enforcement action designed to protect,

restore, and enhance natural resources and the environment, and because the Commission's process, as demonstrated above, involves ensuring that the environment is protected throughout the process, three of those exemptions apply here: (1) the one covering actions to assure the restoration or enhancement of natural resources where the regulatory process involves procedures for protection of the environment (14 CCR § 15307); (2) the one covering actions to assure the restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment (14 CCR § 15308); and (3) the one covering enforcement actions by regulatory agencies (14 CCR § 15321).

Secondly, although the CEQA Guidelines provide for exceptions to the application of these categorical exemptions (14 CCR § 15300.2), the Commission finds that none of those exceptions applies here. Section 15300.2(c), in particular, states that:

*A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.*

CEQA defines the phrase "significant effect on the environment" (in Section 21068) to mean "a substantial, or potentially substantial, adverse change in the environment." These Consent Orders are designed to protect and enhance the environment, and they contain provisions to ensure, and to allow the Executive Director to ensure, that they are implemented in a manner that will protect the environment. Thus, this action will not have any significant effect on the environment, within the meaning of CEQA, and the exception to the categorical exemptions listed in 14 CCR section 15300.2(c) does not apply. An independent but equally sufficient reason why that exception in section 15300.2(c) does not apply is that this case does not involve any "unusual circumstances" within the meaning of that section, in that it has no significant feature that would distinguish it from other activities in the exempt classes listed above. This case is a typical Commission enforcement action to protect and restore the environment and natural resources.

In sum, given the nature of this matter as an enforcement action to protect and restore natural resources and the environment, and since there is no reasonable possibility that it will result in any significant adverse change in the environment, it is categorically exempt from CEQA.

## **F. SUMMARY OF FINDINGS OF FACT**

1. John Mattos is the owner of the Property identified by the Marin County Assessor's Office as APN 100-050-32. The Property is located within the Coastal Zone, within both the County's LCP/CDP jurisdiction and the Commission's area of retained CDP jurisdiction.
2. John Mattos undertook development, as defined by Coastal Act Section 30106 and the LCP, on the Property without a coastal development permit.
3. The Unpermitted Development includes, but may not necessarily be limited to: Placement of fill in wetlands; grading, including the discing of wetlands; installation of culverts; placement of non-native seed in wetlands; and other development within wetlands that had the effect of displacing native vegetation and impacting wetland habitat; all without permits.

4. The Unpermitted Development is inconsistent with Coastal Act Sections 30231 and 30233 (including section 30233(c)) and the Marin County LCP Policy 2 of the LCP Policies on Diking, Filling, and Dredging and Policy 4 of the LCP Policies on Natural Resources for unincorporated Marin County.
5. The Unpermitted Development described in #3, above, is causing “continuing resource damage” within the meaning of Coastal Act Section 30811 and Title 14, California Code of Regulations, Section 13190.
6. A Notice of Violation letter was sent to John Mattos on June 20, 2014.
7. On February 12, 2015, the Executive Director sent a Notice of Intent to Commence Cease and Desist and Restoration Order Proceedings.
8. Coastal Act Section 30810 authorizes the Commission to issue a cease and desist order under specified conditions, and, as is demonstrated by the prior findings, all elements of that section have been met herein.
9. Coastal Act Section 30811 authorizes the Commission to issue a restoration order under specified conditions, and, as is demonstrated by the prior findings, all elements of that section have been met herein.
10. The work to be performed under these Consent Orders, if completed in compliance with the Orders and the plans required therein, will be consistent with Chapter 3 of the Coastal Act.
11. Respondent agreed, through the execution of these Consent Orders, to not submit a Statement of Defense form as provided for in 14 CCR Section 13181 and 13191.
12. On March 29, 2019, John A. Mattos signed Consent Cease and Desist Order No. CCC-19-CD-02 and Consent Restoration Order No. CCC-19-RO-01, a copy of which is attached to this staff report as Appendix A.
13. Impacts to coastal resources resulting from the unpermitted development described in Finding #3, above, will continue until the requirements of these Consent Orders are completed.