

CALIFORNIA COASTAL COMMISSION

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F8.1 - 8.4

June 11, 2024

TO: Coastal Commissioners and Interested Parties

FROM: Lisa Haage, Director of Enforcement
Rob Moddelmog, Headquarters Enforcement Counsel
Justin Buhr, Headquarters Enforcement Supervisor Counsel

SUBJECT: ADDENDUM TO ITEM NOS. F8.1, 8.2, 8.3, & 8.4: CONSENT CEASE AND DESIST ORDER NO. CCC-24-CD-02, CONSENT RESTORATION ORDER CCC-24-RO-02, AND CONSENT ADMINISTRATIVE PENALTY NOS. CCC-24-AP-02 & CCC-24-AP3-02 (ROCKY POINT RESTAURANT) FOR THE COMMISSION MEETING OF JUNE 14, 2024.

The purposes of this addendum are to: (1) provide an update on additional public amenities to be provided under the proposed Consent Orders, (2) update the record by supplementing it with correspondence that Coastal Commission ("Commission") staff received after the staff report for this matter was issued on May 30, 2024; and (3) provide responses to some of that correspondence, for incorporation into the Commission's findings.

1. Respondent has indicated that it agrees that the Public Amenities Plan to be submitted pursuant to section 13.1 of the Consent Orders will include a proposal to install at least two water bottle refill stations, at least one of which will be placed near the public restrooms, as well as trash bins that include recycling and trash compartments and that do not allow animals to break into them.
2. Documents Received after the Staff Report was issued:
 - A. Letter from Penny Elia dated June 7, 2024, expressing support for the proposed enforcement action, asking questions, and providing comments requesting that additional items be added to the proposed enforcement action.
 - B. Letter from the Surfrider Foundation and California Coastal Protection Network dated June 7, 2024, expressing support for the proposed enforcement action.
3. Responses to Comments Received.

Commission staff recommends that the Commission incorporate the following responses into its findings. Commission staff hereby revises its recommended findings to incorporate these responses, so that Commission adoption of the staff recommendation will include adoption of these findings and responses.

Responses to requests and to questions from Penny Elia:

1. On pages 2 and 3 of her June 7, 2024 letter, Penny Elia requests that the plastic reduction plan be applied not just to the business, but also to the contractors undertaking removal and restoration. Penny Elia also requests that the Consent Orders be modified to require that water refill stations and trash cans, for use by the contractors as well as the general public, be added to the list of amenities Respondent is required to provide.
 - a. Commission staff will ensure that the plans Respondent submits include provisions regarding control of litter by all contractors, and they have already agreed to do so. In addition, Respondent has confirmed that their proposed plans will include trash bins and water refill stations, as discussed in Section 1, above.
2. On page 3 of her June 7, 2024 letter, Penny Elia asks whether the permanent public restrooms are required to have 2 Americans with Disabilities Act (“ADA”) stalls.
 - a. The Consent Orders require in section 13.2 that both the 4-stall permanent public restrooms and the 4-stall temporary restrooms have two stalls that meet ADA standards.
3. On page 3, Penny Elia requests that there be interpretive signs and other signs near the trails that discuss the importance of staying on the trails to protect the habitat.
 - a. We agree that habitat protection here is critical, and it is one of the major goals of the Consent Orders. The proposed Consent Orders at Section 13.7.3 require interpretive signs that discuss the importance of the habitat on the Properties, and Section 13.5.3 requires that Respondent post signs along the historic trails that exhort the public to remain on those trails to protect the environment.
4. On page 3, Penny Elia requests that Respondent’s new employees sign a statement stating that they have received the employee training required by the Consent Orders.
 - a. Section 13.8 of the proposed Consent Orders requires Respondent to train new employees as to the requirements of the Consent Orders, to give biannual trainings to all current employees, and to send annual

reports to Commission staff listing all of the trainings completed, in order to verify compliance.

5. On page 3, Penny Elia requests that Respondent remove all three water tanks on the County Property in order to comply with Proposition 70.

Of the three water tanks on site that are referenced by Penny Elia, one is unpermitted and located near the restaurant on the County Property and will be removed from the County Property. With regard to the two tanks located on the hillside on the County Property, both have received a CDP from the County of Monterey and are located within a water tank easement that the County recorded in 2009 (Document No. 2009-036330, recorded on June 11, 2009). Historically, one water tank has existed there since prior to both Prop 20 and Prop 70. More recently, that one water tank was removed, and a prior owner of the Rocky Point Property installed two water tanks in its place, and both were authorized by a 2008 local CDP (CDP No. PLN050296, County Resolution No. 07039). While Respondent will be removing the second water tank in the water tank easement pursuant to section 13.14 of the proposed Consent Orders, the proposed Consent Orders also authorize Respondent to elect to remove the remaining water tank via the Consent Orders if Respondent chooses to do so.

6. On Page 3, Penny Elia requests that extra care, above and beyond the Best Management Practices (“BMP’s”) required by the Consent Orders, be used to ensure the bluff is not destabilized.
 - a. It is the Commission’s understanding that the bluffs in this area are rocky and fairly stable. Section 7.7.6.2 of the proposed Consent Orders requires that Respondent propose which trees may be too close to the bluff to remove safely, and if Respondent feels that other measures are necessary to limit bluff destabilization, Respondent may propose them after studying the issue.
 - b. All work to be done under the Consent Orders will be proposed first in a plan to be reviewed and approved by Commission staff, including technical staff, who will evaluate the proposed protective measures for sufficiency.
7. On page 4, Penny Elia requests that a reference site be established for the restoration.
 - a. Section 7.6.3 of the Consent Orders requires that Respondent find and propose a reference site to base their proposed revegetation work on.

F8.1 – 8.4

June 7, 2024

California Coastal Commission
455 Market Street Suite 300
San Francisco, CA 94105

**Re: Consent Cease & Decease Order No. CCC 24-CD-02, RO-02, AP-02, AP3-02
Esperanza Carmel Commercial, LLC (Big Sur, Monterey County)**

Dear Chair Hart and Commissioners:

Thank you for the opportunity to comment on this enforcement action which will restore, protect, preserve, and enhance our finite natural resources in the Big Sur area. It often requires decades of hard work on the part of the California Coastal Commission's (CCC) enforcement staff to bring about an amicable solution to these issues. And after that, it then requires years of ongoing follow up and monitoring of condition compliance. It's always a heavy lift for this agency and its staff, and one that is much appreciated on many levels.

I support the recommendations of staff, and I'm sure I join many in applauding their efforts given the decades of violations that have been brought against this land and its natural resources.

My comments are provided to not only support staff's efforts, but perhaps help to strengthen and augment a few of the conditions. As with most enforcement cases, Commissioners, you play an important role in objectively analyzing the staff recommendations. This enables you to often times improve upon the final resolution. It's definitely a team effort with staff and we always appreciate your careful scrutiny of the conditions and how they will be most effectively implemented and monitored.

These comments are primarily focused on **13.0 SETTLEMENT/COMPLIANCE OBLIGATION.**

13.1 Public Amenities Plan

8) Plastics Reduction Element

This element should be implemented immediately, once the first contractors, subcontractors, and all related labor commences any type of work on site. Often, during any type of project of this scope, the management and crews that are brought on to the site are not required to properly dispose of their waste. This can consist of, but not be

limited to, disposable plastic water bottles, canned beverages, food wrappers, plastic food bags, plastic ware, napkins, straws, plastic that their tools or other work-related elements are wrapped in, and all other types of disposable items that they will bring on site each day. If it's brought onto the site, please condition your approval on proper disposal or recycling. To help accomplish this, please require multiple bear proof trash and recycling bins. These bins could become permanent fixtures once the area is open to the public.



Additionally, please require the use of refillable water bottles on site by the above-mentioned crews (cases of water in disposable plastic bottles wrapped in plastic don't work) and the installation of water bottle refill stations in at least two areas of the property. These will ultimately be used by the public, so perhaps more than two are needed.

Along with all the other monitoring, the bins need to be monitored to insure that the site is kept clean and that the bins are properly emptied when full and not allowed to overflow. Given the site's close proximity to the ocean, we cannot allow any waste to enter the receiving waters of the Pacific Ocean.

Also in conjunction with plastics reduction, please require any flagging that's used to be biodegradable. The thin wire stakes that are often used for flagging seem to stay on site and last forever if not removed and disposed of properly, and of course the plastic flags never go away.

13.2 Restroom Element

13.2.2 I am assuming that the permanent restroom facility will include at least two ADA stalls, but I am unable to find a specific mention of this condition. It's mentioned in for the temporary trailer, but not the permanent building.

13.5 Trail Consolidation Element

No one is a fan of too much signage, but please consider helping the public understand that trail areas are undergoing restoration and that their cooperation in staying on the designated trail area is critical to the ultimate success of restoring the natural beauty and native habitat. Some type of interpretive educational signage that perhaps includes renderings of what the final restored landscape goals consist of. Most of this is included in 13.7.3. but to reiterate, helping the public understand they must stay on the designated trails is always important. While public access is a priority, the restoration of the natural resources is the top priority.

13.8 Employee Training Element

New employees should be required to sign a statement stating that they have received the training as described by staff. This is a very common practice within the hospitality industry. These signed statements should be included in the report for each corresponding reporting period.

13.9 Plastics Reduction Element

Please see previous comments on page 1. Again, requesting that the deadline set forth for this element begin as soon as possible to cover removal and restoration activities.

13.14 Prop 70 Compliance Plan

Require that respondent remove all three water tanks to comply with Prop 70 conditions that were set forward decades ago. These tanks should be relocated to areas owned by the respondent that do not impact ESHA or create visual impacts.

Additional Concerns

- Slope Destabilization

Based on a review of the Coastal Records Act Project photos over the years, it would appear that when the impervious surface areas are removed that runoff could be exacerbated during a rain event and cause greater slope destabilization than what is pictured in the online photos. While BMPs are required in the conditions, extra care needs to be taken during the removal and replacement of the many impervious surfaces. This will also help protect the restoration planting efforts.

- Establishing Reference Site

This is usually a given for CCC, but wanted to inquire if a reference site will be established by the staff ecologist. This is always important when establishing restoration guidelines, but I don't see it in the conditions.

- Needless to say, there is a lot of work that needs to be done on this property in order to restore the natural resources. Please require full and complete restoration of this entire area prior to even the slightest consideration of a Coastal Development Permit for redevelopment.

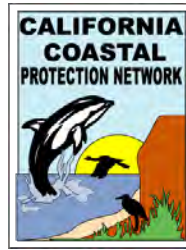
In closing, I want to extend special thanks to Robert Moddelmog. He has shown time and time again over the years that he has the ability to work with a myriad respondents in order to achieve positive results for our coastal resources. For Commissioners that are not familiar with Mr. Moddelmog's work as a CCC staffer, his fine work first began when he was an intern in the Long Beach office years ago. Orders such as the one before you today require excruciating attention to detail, so once again, my thanks go out to Mr. Moddelmog and the entire enforcement staff.

Thank you again for the opportunity to comment on this important enforcement case.

Respectfully submitted,

A handwritten signature in cursive script that reads "Penny Elia". The signature is written in a light grey or blue ink.

Penny Elia



June 7, 2024

To: Caryl Hart, Chair, California Coastal Commission
Cc: Stephanie Rexing, Dan Carl, Staff, California Coastal Commission

Re: Consent Cease and Desist Order No. CCC-24-CD-02 and related orders and penalties on the June Coastal Commission Meeting Agenda (Esperanza Carmel Commercial, LLC; Big Sur, Monterey County)

Dear Director Huckelbridge,

The Surfrider Foundation and California Coastal Protection Network strongly support your Enforcement staff in taking action to ensure that the trails adjacent to Rocky Point Restaurant and along Highway One in Big Sur remain open to the public.

The long-standing violations at this property, which began under the prior owner, have severely impacted public access to a historically significant and environmentally sensitive area. The prior installation of a locked gate and private property signs, along with hiring security to obstruct public access, directly contravenes the Coastal Act and the Monterey County Local Coastal Program, both of which prioritize public access and the protection of natural coastal views.

Furthermore, over time the unpermitted development has damaged an environmentally sensitive habitat that supports rare native plants unique to this region. The removal of these habitats and the introduction of invasive species through unauthorized landscaping and irrigation efforts compounded the ecological harm. This degradation threatens the local flora like black sage, and also the broader coastal ecosystem, which includes sea otters and other special marine species.

We support staff's proposed resolution with the current owner to remove the unpermitted development and restore the site. The condition requiring the property owner to provide significant public access amenities, such as ADA-compatible restrooms, EV chargers, and picnic areas, addresses the need for such facilities in this special and popular coastal region. The agreement to formalize public access and record conservation easements over 80% of the property ensures the long-term protection and accessibility of the trails running along this unique coastline. This \$4 million package sets a precedent for responsible coastal management and development in the future.

Thank you and we support your staff recommendation.

Sincerely,

Laura Walsh
California Policy Manager
Surfrider Foundation

Susan Jordan
Executive Director
California Coastal Protection Network