

CALIFORNIA COASTAL COMMISSION

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**VIA ELECTRONIC, REGULAR, AND CERTIFIED MAIL**

October 9, 2020

Mr. Steven Westbrook
Reservation Ranch
P.O. Box 75
Smith River, CA 95567

Allison G. Jackson
The Harland Law Firm, LLP
622 H Street
Eureka, CA. 95501

Subject: Amended Notice of Intent to Commence Cease and Desist Order and Restoration Order Proceedings, and Notice of Intent to Commence Administrative Penalty Proceedings

Violation No.: V-1-16-0164

Location: Reservation Ranch ("the Property"), Smith River, Del Norte County, including, but not necessarily limited to, Del Norte County Assessor's Parcel Numbers 103-010-01, 103-010-02, 103-010-12, 102-010-049, 102-010-050, 103-020-74, in addition to adjacent areas, including, but not necessarily limited to, Del Norte County Assessor's Parcel Number 103-010-10, as well as public trust tidelands.

Violation Description: Unpermitted development¹ including, but not limited to: 1) grading, including construction of roads; 2) placement of fill, including manure, soil, straw, construction waste, trash, cow carcasses, and other debris in and/or adjacent to wetlands, tidal sloughs, and streams; 3) placement of levees and other fill directly within and across tidal sloughs and wetlands, as well as placement of levees on the banks of tidal sloughs, in wetlands, and on land; 4) damming tidal sloughs and wetlands for use as a freshwater irrigation pond, including

¹ Note that the list of unpermitted development includes the development listed in the Notice of Intent to Issue a Cease and Desist Order and Restoration Order dated September 1, 2017, as well as newly discovered items of development. Note also that the term "unpermitted development" includes those instances where development was placed prior to February 1, 1973 that required authorization and the necessary authorization was not acquired.

placement of a system of canals, pipes, and at least six pumps within or adjacent to tidal sloughs, streams, and the Smith River; 5) dredging and channelizing of tidal sloughs and streams; 6) blocking of public access to the sea,² tidal sloughs, and public trust tidelands; 7) removal of major vegetation including wetlands, riparian vegetation, and downed trees on river banks; 8) placement of farm related structures.

Dear Mr. Westbrook and Ms. Jackson:

I am directing this notice to Steven Westbrook as the co-owner and manager of Reservation Ranch, and to Allison Jackson as the counsel for this matter. California Coastal Commission ("Commission") staff appreciates your efforts thus far to resolve the violations on the Property, including allowing my staff to visit the site, and corresponding with my staff in an effort to resolve these violations. We would like to continue to work with you to resolve these issues amicably and remain willing and ready to discuss options that would involve agreeing to a consensual resolution of the Coastal Act violations on the Property, such as entering into Consent Cease and Desist Order, Consent Restoration Order, and a Consent Administrative Penalty (collectively, a "Consent Agreement").

As you know and as stated in the original Notice of Intent letter ("the Original NOI") dated September 1, 2017, prior to bringing an order to the Commission (be it a Consent Agreement or contested order), the Commission's regulations provide for notification of the initiation of formal proceedings. In addition, on October 28, 2017, a Notice of Violation was recorded against your property. After further review of the Property, I have determined that additional unpermitted development beyond that which was described in the Original NOI has occurred. Also, I have determined that some of the unpermitted development violated the public access policies of the Coastal Act, triggering the applicability of Section 30821 of the Coastal Act, which provides that the Commission may impose penalties administratively for such access violations. This NOI amends the Original NOI by also including the additional items of unpermitted development, and by adding a Notice of Intent to Issue an Administrative Penalty. While this does add elements to the Original NOI, it should in no way detract from our prior discussions to address this matter via the Consent Order process, and we hope that resolving all the issues on the Property in one action is in our collective interests. In addition, this letter serves to explain more specifically the unpermitted development and public access violations at issue, as you have requested in your correspondence.

Therefore, in accordance with the Commission's regulations, this letter notifies you of my intent, as the Executive Director of the Commission, to commence formal

² Section 30115 of the Coastal Act states that the "'Sea" means the Pacific Ocean and all harbors, bays, channels, estuaries, salt marshes, sloughs, and other areas subject to tidal action through any connection with the Pacific Ocean..."

enforcement proceedings to address the Coastal Act violations noted above by bringing a proposal to the Commission for the issuance of a Cease and Desist Order, Restoration Order, and the assessment of an Administrative Penalty. Again, the intent of this letter is not to discourage or supersede productive settlement discussions; rather it is to provide formal notice of our intent to resolve these issues through the order process, which in no way precludes a consensual resolution. My staff remains ready and willing to continue working with you towards a mutually acceptable outcome. However, please note that should we be unable to reach an amicable resolution in a timely manner, this letter also lays the foundation for Commission staff to initiate a hearing before the Commission unilaterally, during which proposed Orders, including an assessment of an Administrative Penalty against Reservation Ranch, would be presented for the Commission's consideration and possible adoption.

This letter also supplements the September 1, 2017 Notice of Intent by the inclusion of new Assessors' Parcel Numbers to the proceeding, new allegations of unpermitted development and public access violations, and a new Notice of Intent to issue an Administrative Penalty. This notice communicates the intent to address, through formal enforcement actions, violations of the Coastal Act and the Del Norte County Local Coastal Plan ("LCP"), at Assessor's Parcel Numbers including, but not necessarily limited to, Assessor's Parcel Numbers 103-010-01, 103-010-02, 103-010-12, 102-010-049, 102-010-050, 103-020-74, in addition to adjacent areas, including, but not necessarily limited to, Del Norte County Assessor's Parcel Number 103-010-10, as well as public trust tidelands.

Unpermitted Development

As you have previously been notified, Commission staff has confirmed that unpermitted development has occurred on property owned by Reservation Ranch and on public trust tidelands. In addition, Commission staff has now confirmed that additional unpermitted development has occurred on these parcels, and that this unpermitted development now collectively, includes, but is not limited to: 1) grading, including construction of roads; 2) placement of fill, including manure, soil, straw, construction waste, trash, cow carcasses, and other debris in and/or adjacent to wetlands, tidal sloughs, and streams; 3) placement of levees and other fill directly within and across tidal sloughs and wetlands, as well as placement of levees on the banks of tidal sloughs, in wetlands, and on land; 4) damming tidal sloughs and wetlands for use as a freshwater irrigation pond, including placement of a system of canals, pipes, and at least six pumps within or adjacent to tidal sloughs, streams, and the Smith River; 5) dredging and channelizing of tidal sloughs and streams; 6) blocking of public access to the sea, tidal sloughs, and public trust tidelands; 7) removal of major vegetation including wetlands, riparian vegetation, and downed trees on river banks; 8) placement of farm related structures.

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 set forth below, and is incorporated into the Del Norte LCP at Title 21, Chapter 4, Section 195 of the Del Norte County Code.

"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, including, but not limited to, subdivision...and any other division of land, including lot splits...change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure...and the removal or harvesting of major vegetation other than for agricultural purposes...

In addition, development existing before Proposition 20 ("the Coastal Initiative")'s permit requirements came into effect on February 1, 1973 that would otherwise require a permit under the Coastal Act generally will not be exempt from such a permit requirement based on the fact it was existing prior to passage of Proposition 20 or the Coastal Act, if the development required other legal authorizations and permits under other laws, but lacked such permits.³

As you know, the Commission's jurisdiction over Coastal Act violations is separate and distinct from the jurisdiction of other agencies to enforce their respective laws. We do want to once again thank you for your continuing cooperation with the North Coast Regional Water Quality Control Board, and we will continue to coordinate with other agencies regarding their respective enforcement actions. Ultimately, the Commission will still require resolution of any Coastal Act violations it identifies on the Property through a Cease and Desist Order, Restoration Order, and Administrative Penalty, as described further below.

The purpose of these enforcement proceedings is to address development on the Property that is not authorized pursuant to the Coastal Act. The proceedings will propose to address these matters through the issuance of Cease and Desist and Restoration Orders, as well as an Administrative Penalty, that will direct the owner of the Property to, among other things: 1) cease from performing any additional unpermitted development activity (development not authorized pursuant to, or exempt from, the Coastal Act), 2) remove physical items of unpermitted development according to an approved removal plan, 3) restore the impacted area pursuant to an approved restoration plan, 4) mitigate for the temporal losses of habitat caused by the unpermitted development, and 5) pay an administrative penalty for the loss of public access.

³ Pursuant to Section 30331 of the Coastal Act, which went into effect January 1, 1977, the Coastal Commission "is designated the successor in interest to all remaining obligations, powers, duties, responsibilities, benefits, and interests of any sort of the California Coastal Zone Conservation Commission and of the six regional coastal zone conservation commissions established by the California Coastal Zone Conservation Act of 1972 (commencing with Section 27000)."

Violation History

As you know, since the Original NOI was sent, Commission staff have been working with you in an attempt to reach an amicable resolution of this matter. I appreciate that you spent time with my staff on a site visit at the property on October 30, 2018, and am hopeful that we can address this matter collaboratively. Commission staff last spoke with you in early 2019 in order to set up an in-person meeting. Since then, my staff has continued to work on this case and has conducted further research related to the additional items of unpermitted development on the Property, as described herein, and on October 1, 2020, sent you a letter updating you on Commission staff's work on this matter.

Public Access Violations

As you may know, the Commission has a statutory mission to maximize public access and recreational opportunities to and along the coast. Section 30210 of the Coastal Act, which is also incorporated in Del Norte County's LCP at General Policy III.A.1, states:

...maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

In addition, Section 30211 of the Coastal Act, which is also incorporated in Del Norte County's LCP at General Policy III.A.2, states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Further, the Del Norte LCP also includes General Policy III.A, which states:

The California constitution guarantees the public's right of access to navigable waters in the State. The Coastal Act of 1976 establishes a set of policies designed to reflect this constitutional mandate along California's coastal waters.

The Del Norte LCP General Policy III.A. also cites Article XV, Section 2 of the California Constitution, and states:

No individual, partnership, or corporation, claiming or possessing the frontage or tidal lands of a harbor, bay inlet, estuary, or other navigable water in this State, shall be permitted to exclude the right-of-way to such water whenever it is required for any public purpose, nor to destroy or obstruct the free navigation of such water; and the Legislature shall enact such law as will give the most liberal

construction to this provision, so that access to the navigable waters of this State shall be always attainable for the people.

Many of the unpermitted levees and areas of fill directly block access to tidal sloughs, including Tillas Slough and Islas Slough, in violation of the Coastal Act's protections on public access to the sea, navigable waterways, estuaries, and tidal sloughs and the related LCP provisions quoted above. Before the unpermitted development, both Tillas Slough and Islas Slough were accessible to the public from multiple points on the Smith River, and the two sloughs were connected to each other. This meant that the public could access both Tillas and Islas Slough from either the Smith River, or from either slough, via boat or other watercraft, or by wading or swimming. However, today, multiple unpermitted levees cross Tillas Slough, completely blocking public access via the Smith River. In addition, several smaller sloughs that could have been used by the public to access Tillas Slough from the adjacent Islas Slough were also blocked off by unpermitted levees and fill, and remain inaccessible today.

Further, the south end of Islas Slough has also been blocked off by an unpermitted levee, and Reservation Ranch continued to place fill adjacent to the levee until recently ordered to stop. In addition to blocking access to Islas Slough from the south, this unpermitted levee has also stopped the Smith River from naturally washing through the area, which has caused sediment to build up within Islas Slough. This sediment buildup has resulted in a dramatic narrowing of Islas Slough, which has also blocked public access to acres of slough area that were once underwater and navigable. Even if the unpermitted fill in front of the levee is removed, without removal of this unpermitted levee, Islas Slough could eventually be filled in entirely by this artificial sediment buildup.

The unpermitted development placed here continues to block public access, and Reservation Ranch continues to use and maintain the unpermitted development. This unpermitted development adversely affects public access and recreation and is a violation of the Coastal Act and the Del Norte County LCP's public access and recreation provisions more generally. Thus, these violations of the Coastal Act are impacting public access and remain inconsistent with Coastal Act provisions on public access, including Sections 30210 and 30211, as well as the County of Del Norte LCP's public access policies.

Cease and Desist Order

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:

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

person ... to cease and desist. The order may also be issued to enforce any requirements of a certified local coastal program...under any of the following circumstances.

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

As you know, after Commission staff began pursuing enforcement of Coastal Act violations on the Property, subsequent investigation revealed additional development activities that had been undertaken without the requisite authorization. The Commission continues to have the independent authority to enforce the Coastal Act within the areas of its retained permit jurisdiction, and almost the entirety of this matter involves violations located within the Commission's retained permit jurisdiction. However, for matters that are no longer within the Commission's permitting jurisdiction because of the county's certified LCP, the language quoted immediately above explains the circumstances in which the Commission may enforce the requirements of the LCP. Here, Commission staff and the County of Del Norte have coordinated regarding this case, and in a phone call and emails dated August 21, 2020, the County has requested that the Commission assume responsibility for enforcement in this matter, including in issuing a Cease and Desist Order, conferring jurisdiction to do so on the Commission as per Section 30810(a). Section 30810(b) of the Coastal Act states that the cease and desist order may be subject to terms and conditions that the Commission determines are necessary to ensure compliance with the Coastal Act, including removal of any unpermitted development or material.

Section 30600(a) of the Coastal Act states that, in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the coastal zone must obtain a CDP. As stated above, for the areas within the county's permitting jurisdiction, the LCP states the same. "Development" is defined by Section 30106 of the Coastal Act and in Section 195 of the Del Norte County Code. The various instances of unpermitted development at issue here clearly constitute "development" within the meaning of the above-quoted definition and therefore are subject to the permit requirement of Section 30600(a) and the LCP. A CDP was not issued to authorize the unpermitted development. Therefore, both of the independent criteria for issuance of a cease and desist order under Section 30810(a) of the Coastal Act are thus satisfied.

Restoration Order

The Commission's authority to issue Restoration Orders is set forth in Section 30811 of the Coastal Act, which states, in 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..., the development is inconsistent with this division, and the development is causing continuing resource damage.

Pursuant to Section 13191 of the Commission's regulations, I have determined that the activities specified in this letter meet the criteria of Section 30811 of the Coastal Act, based on the following:

- 1) "Development," as that term is defined by section 30106 of the Coastal Act, has occurred on the Property without a CDP from the Commission or the County of Del Norte.
- 2) This unpermitted development is inconsistent with the resource protection policies of the Coastal Act and the Del Norte County LCP, including, but not necessarily limited to the following:
 - a.) Coastal Act Section 30230 and LCP General Policy V.A. (protecting marine resources);
 - b.) Coastal Act Section 30231 and LCP General Policy VI.A. (protecting biological productivity and water quality);
 - c.) Coastal Act Section 30233 and LCP General Policy VI.A. (limiting fill of wetlands);
 - d.) Section 30236 and LCP General Policy VI.A. (limiting channelizations, dams, and flood control projects);
 - e.) Coastal Act Section 30240 and LCP General Policy VI.A. (protecting environmentally sensitive terrestrial habitat areas);
 - f.) LCP General Policy VI.B. (designating tidal area of the Smith River as excellent habitat area, and protecting natural functions, wildlife, and limiting development there);
 - g.) LCP General Policy VI.C (protecting water quality and biological productivity);
 - h.) LCP Specific Area Policy and Recommendation VII.C.4 (protecting estuaries);
 - i.) LCP Specific Area Policy and Recommendation VII.D (protecting wetlands);
 - j.) LCP Specific Area Policy and Recommendation VII.E (protecting riparian vegetation);
 - k.) LCP Policies and Implementation Section D.3. (limiting development in flood hazard areas)
- 3) The unpermitted development remains in place and therefore continues to cause resource damage, which is defined by Section 13190 of the Commission's regulations as: "any degradation or other reduction in quality, abundance, or other quantitative or qualitative characteristic of the resource as compared to the condition the resource was in before it was disturbed by unpermitted development." The Original NOI discussed the impact of the unpermitted development on the ecology of the Smith River in even greater detail. The

unpermitted development continues to exist, and therefore, it continues to cause damage to resources and prevent the Coastal Act resources that were displaced from re-establishing, and it also continues to cause degradation and reduction in quality of surrounding resources as compared to their condition before the unpermitted development occurred.

For the reasons stated above, I am therefore issuing this "Notice of Intent" letter to commence proceedings for a Restoration Order before the Commission in order to compel the restoration of the Property. The procedures for the issuance of Restoration Orders are described in Sections 13190 through 13197 of the Commission's regulations, which are codified in Title 14 of the California Code of Regulations.

Administrative Civil Penalties, Civil Liability, and Exemplary Damages

As you know, under Section 30821 of the Coastal Act, in cases involving violations of the public access provisions of the Coastal Act, the Commission is authorized to impose administrative civil penalties by a majority vote of the Commissioners present at a public hearing. In this case, as described above, there are multiple violations of the public access provisions of the Coastal Act; and therefore, the criteria of Section 30821 have been satisfied. The penalties imposed may be in an amount up to \$11,250, for each violation, for each day each violation has persisted or is persisting, for up to five (5) years. In addition, the 30 day time period to correct a violation that is allowed under the statute does not apply to violations of a CDP. If a person fails to pay an administrative penalty imposed by the Commission, under 30821(e) the Commission may record a lien on that person's property in the amount of the assessed penalty. This lien shall be equal in force, effect, and priority to a judgment lien.

The Coastal Act also includes a number of other penalty provisions that may still be applicable as well. 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. Civil liability under Section 30820(b) shall be imposed in an amount not less than \$1,000 per day and not more than \$15,000 per day, for each violation and for each day in which each violation persists. Section 30821.6 also provides that a violation of a Cease and Desist Order of the Commission can result in civil liabilities of up to \$6,000 for each day in which each violation persists. Lastly, Section 30822 provides for additional exemplary damages for intentional and knowing violations of the Coastal Act or a Commission Cease and Desist Order.

Response Procedure

In accordance with Sections 13181(a) and 13191 of the Commission's regulations, you have the opportunity to respond to the Commission staff's allegations as set forth in this notice of intent to commence Cease and Desist and Restoration Order and Administrative Penalty proceedings by completing the enclosed statement of defense ("SOD") form. The SOD form would be directed to the attention of Rob Moddelmog, at the address listed on the letterhead, not later than **November 9, 2020**. However, as we indicated in the Original NOI, should this matter be resolved via a Consent Agreement, 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 and staff can extend deadlines for submittal of the SOD form to specifically allow additional time to discuss terms of consent orders and to resolve this matter amicably. Commission staff currently intends to schedule the hearings for the Cease and Desist Order, Restoration Order, and Administrative Penalty action for the Commission's January or February 2021 hearing.

Resolution

As my staff has discussed with you, we would like to continue to work with you to resolve these issues amicably through the consent order process. Such a process provides an opportunity to resolve these issues through mutual agreement. While requiring compliance with the Coastal Act, a Consent Agreement would give you additional input into the process and could potentially allow you to negotiate a penalty amount with Commission staff to resolve your civil liabilities. A Consent Agreement would provide for a permanent resolution of this matter and thereby resolve the complete violation without any further formal legal action. We are hopeful that we can find a mutually agreeable resolution to resolve this matter.

Another benefit of a Consent Agreement that you should consider is that in a Consent Agreement proceeding, Commission staff will be presenting and recommending approval of an agreement between you and staff rather than addressing the violations through a contested hearing. Alternatively, if we are not able to reach a consensual resolution, we will need to proceed with a unilateral order at the next available hearing. 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 in this letter. If you have any questions regarding this letter or the enforcement case, please email Rob Moddelmog at Robert.Moddelmog@coastal.ca.gov.

Sincerely,



John Ainsworth
Executive Director

cc:

Lisa Haage, Chief of Enforcement
Aaron McLendon, Deputy Chief of Enforcement
Justin Buhr, Statewide Enforcement Supervisor
Rob Moddelmog, Statewide Enforcement Analyst
Joshua Levine, North Coast Enforcement Officer
Alex Helperin, Assistant Chief Counsel

Enclosures:

Statement of Defense Form for Cease and Desist Order, Restoration Order, and
Administrative Penalty

Notice of Intent to Commence Cease and Desist Order and Restoration Order
Proceedings and Notification of Intent to Record a Notice of Violation of the
Coastal Act dated September 1, 2017