

CONSENT ORDERS

This combined Consent Cease and Desist Order, Consent Restoration Order, and Consent Administrative Civil Penalty action collectively, the “Consent Orders” is entered into by and among: (1) the California Coastal Commission (the “Commission”), (2) the City of Newport Beach (the “City”), and (3) the private parties listed in Appendix A, which is attached hereto (“Private Parties”). The City and the Private Parties are hereinafter collectively referred to as the “Parties”, except where explicitly referred to individually. The Commission and the Parties have agreed to work collaboratively to facilitate a resolution of the matters described in the “Notification of Intent to Commence Cease and Desist Order, Restoration Order, and Administrative Civil Penalties Proceedings” issued to the City on January 28, 2020, and revised on January 30, 2020 (collectively “NOI”).

To that end, the Commission and the Parties have had discussions over the past several months for the purpose of resolving this matter amicably and through these Consent Orders. Through the execution of these Consent Orders, the Commission and the Parties have mutually agreed to resolve, with respect to the Parties, all claims asserted in the NOI, as described herein.

1 CONSENT CEASE AND DESIST ORDER CCC-20-CD-02

Pursuant to its authority under California Public Resources Code (“PRC”) Section 30810, the Commission hereby authorizes and orders the City; and all its successors, assigns, employees, agents, contractors, and any persons or entities acting in concert with any of the foregoing to; and the City agrees to:

1.1 Refrain from engaging in development, as defined in PRC Section 30106, that requires a coastal development permit (“CDP”), on any of the property identified in Section 4.2 below (“Properties”), unless authorized pursuant to the Coastal Act (PRC Sections 30000 – 30900), including as authorized by these Consent Orders.

1.2 Remove or cause the removal from the Properties, subject to the terms and conditions of these Consent Orders, and as set forth in Section 5, below, all Encroachments, as that term is defined below in Section 4.3.

1.3 Remove or cause the removal, subject to the terms and conditions of these Consent Orders, and as set forth in Section 5, below, any physical materials or structures placed on the Properties after the effective date of these Consent Orders.

1.4 Fully and completely comply with the terms and conditions of Consent Restoration Order CCC-20-RO-01, as provided in Section 2, below.

2 CONSENT RESTORATION ORDER CCC-20-RO-01

Pursuant to its authority under PRC Section 30811, the Commission hereby orders and authorizes the City to restore the Properties by complying with Consent Order CCC-20-RO-01 described herein, and taking all other restorative actions described in Section 5, below.

3 CONSENT ADMINISTRATIVE PENALTY CCC-20-AP-02

Pursuant to its authority under PRC Section 30821 and its authority to authorize development, the Commission hereby orders the parties listed in Appendix A to pay an administrative civil penalty in the amounts that they are obligated to pay, as listed in Appendix A, , and orders and authorizes the City to take other actions in lieu of paying a monetary penalty, by complying with the terms and conditions listed herein, including taking all actions described in Section 5. The aggregate amount of the administrative civil penalty to be paid by the parties listed in Appendix A is \$1,706,834.63.

PROVISIONS COMMON TO ORDERS AND CONSENT ADMINISTRATIVE PENALTY

4 DEFINITIONS

4.1 Consent Orders. Consent Cease and Desist Order No. CCC-20-CD-02, Consent Restoration Order No. CCC-20-RO-01, and Consent Administrative Penalty action No. CCC-20-AP-02 are referred to collectively in this document alternatively as “the Consent Orders” or “these Consent Orders.”

4.2 Properties. The area subject to these Consent Order, which is located in Newport Beach, Orange County, identified by Assessor’s Parcel Nos. 048-310-01, 048-170-24, 048-170-38, and 048-320-03, and which area is generally depicted in the rendering attached hereto in Exhibit A, is referred to in this document collectively as the “Properties.”

4.3 Encroachments. These Consent Orders address activities that have occurred, and structures and materials that are present, on the Properties as of the effective date of these Consent Orders that constitute, or are present as a result of, development (as defined by the Coastal Act at PRC section 30106) for which authorization under the Coastal Act was not received. The unpermitted development activities, which development was not undertaken by the City, includes the placement of structures, and materials that are the subject of and encompassed by these Consent Orders including the placement of objects and materials on public sandy beach, including, but not necessarily limited to landscaping such as lawns, hedges, iceplant, trees, and shrubs; irrigation systems; walkways; stepping stones; fences; and patios, and the structures and materials themselves, on the Properties, all of which interferes with public coastal access. The objects and materials that are present on the Properties on the effective date of these Consent Orders as a result of the unpermitted development activities are referred to herein as the “Encroachments”.

5 RESTORATION PLAN

5.1 These Consent Orders authorize and require the City to, at its sole cost, except as provided for in Section 5.3, below, implement the Encroachment Removal and Restoration Plan prepared by Glenn Lukos Associates, Inc., for the City dated January 21, 2020, which is attached as Exhibit B to these Consent Orders, as revised as necessary to be consistent with the terms in this section below (hereinafter referred to as the “Restoration Plan”). Within 30 days of issuance of these Consent Orders, the City shall submit a proposal for such revised Restoration Plan for the review and approval of the Executive Director of the Commission (“Executive Director”). Except as provided in Section 5.9, once the Restoration Plan is approved, the City shall have discretion, upon the approval of the Executive Director, to determine who performs the work required by and in compliance with the terms and conditions of the Restoration Plan including, but not limited to, the use of the City’s own employees. The Commission recognizes that substantial cost savings can be achieved through the utilization of the City’s own forces and one of the goals of these Consent Orders is to ensure the full implementation of the Restoration Plan in an efficient manner without the City having to incur unnecessary costs. The City shall ensure all work undertaken pursuant to the Restoration Plan shall, at a minimum, be monitored by a qualified specialist, as described in Section 5.9, below.

5.2 The Restoration Plan shall set forth the measures that the City proposes to use to remove all of the Encroachments in the area depicted in the rendering attached hereto as Exhibit C, which includes all areas other than those Encroachments set forth in the next sub-section, and to restore said area to appropriate natural habitat consisting of beach strand and southern foredune habitat. The discussion of Existing Native Plant Communities shall take into account the presence of southern foredune habitat in the area and all aspects of the Restoration Plan shall be drafted with consideration of dune habitat in the project area.

5.3 In addition to the portions of the Encroachments that the City proposes to remove or cause the removal of through implementation of the Restoration Plan, the Restoration Plan shall describe the measures the City proposes to use to cause the removal of the Encroachments located adjacent to the private properties with postal addresses 1320, 1322, 1324, 1400, 1412, 1504, 1510, 1514, 1516, 1520, 1526, and 2042 East Oceanfront, Newport Beach, which area is depicted in the rendering attached hereto as Exhibit D, that are proposed in the Restoration Plan to be removed by the corresponding homeowners. The Parties expressly agree that if the homeowners fail to remove the Encroachments adjacent to their properties in the area depicted in the rendering attached hereto as Exhibit D, the City is authorized by the Commission to take any and all actions necessary to complete this work and the applicable homeowners shall be liable to the City for all reasonable costs associated in any way with performing said work.

5.4 The City shall, subject to the terms of these Consent Orders, and consistent with the Restoration Plan, remove or cause the removal of any physical materials or structures placed on the Properties after the effective date of these Consent Orders and restore the impacted area to appropriate natural habitat consisting of beach strand and southern foredune habitat. Nothing in this agreement precludes the City from seeking compensation from the responsible party(ies) for

costs the City incurs in the removal of any future encroachments from the Properties, with the “responsible party(ies)” being the parties that caused such encroachments to exist and “future encroachments” being encroachments placed on the Properties without a Coastal Development Permit after the effective date of these Consent Orders. Nor is the Commission precluded from addressing future encroachments as violations of the Coastal Act.

5.5 The Restoration Plan shall include a map of proposed staging areas and access and haul routes for encroachment removal work. These activities must avoid existing habitat areas, other than areas covered by the Restoration Plan.

5.6 The Restoration Plan shall indicate that removal of the Encroachments will be undertaken in a manner that does not block, impede, or disrupt use of the public beach and other public areas, except that any disruption of public use of the beach will be limited to the installation of temporary habitat fencing during habitat restoration, and minimal, temporary disruption of access as a result of equipment staging. The Restoration Plan shall propose placement of temporary symbolic fencing, consisting of stakes and rope, around native plant container planting zones, as generally depicted on Exhibit 6 of the Restoration Plan, during the plant establishment period.

5.7 The Restoration Plan shall include installation of informational signage, to be displayed while the Restoration Plan is being implemented, including during the monitoring period, that identifies and describes habitat in the project area.

5.8 Planting and seeding shall occur between the months of September and February, inclusive, with seeding to occur following a rain event.

5.9 Any plans, reports, or revisions prepared pursuant to the terms of the Restoration Plan or these Consent Orders shall be prepared by a qualified restoration ecologist or resource specialist approved by the City and Executive Director, and shall identify that party and include a description of the education, training, and experience of said ecologist/specialist. A qualified ecologist/specialist for this project shall have experience successfully completing dune restoration.

5.10 The City shall endeavor to implement the final approved Restoration Plan pursuant to the approved schedule/timeline as set forth in Table 1 of the Restoration Plan, which contains a more accelerated schedule for implementation than the deadlines listed below, with all work to be completed as early as possible and consistent with recommendations by the consulting resource specialist, designed to both avoid negative impacts on wildlife and on public access. With specific regard to the following activities, at the latest, Round 1 of iceplant removal and planting and seeding shall be initiated by December 31st, 2021; removal of ornamental vegetation, excepting iceplant, and removal of all encroachments that can be removed by hand, shall occur by June 30, 2022, except that the encroachment removal described in Section 5.3 shall occur by June 30, 2023; and Round 1 of iceplant removal shall occur by December 31, 2022, and Round 1 of planting and seeding shall occur by December 31, 2022, and Round 2 iceplant removal and Round 2 planting and seeding shall occur by December 31, 2023, excepting that planting that abuts the areas where encroachments will be removed pursuant to Section 5.3 shall occur by June 23, 2023.

5.11 Each annual report, as described in the Restoration Plan, shall include first year photographs. All photographs and exhibits shall be provided as separate jpeg or pdf files.

5.12 The final monitoring report shall include an assessment of whether the project has satisfied the performance standards and, if standards are not met, the report shall propose measures for reaching those standards, including additional seeding/planting and monitoring. The City shall undertake those measures upon approval by the Executive Director.

6 REVISION OF DELIVERABLES

The Executive Director may require revisions to deliverables under these Consent Orders. The City shall revise any such deliverables consistent with the Executive Director's specifications, and resubmit them for further review and approval by the Executive Director by the deadline established by the Executive Director. The Executive Director may extend the deadline for submittals upon a written request from the City and a showing of good cause, pursuant to Section 15 of these Consent Orders.

7 RESPONSIBLE PARTIES

The Parties and all their successors, assigns, employees, agents, contractors, and any persons or entities acting in concert with any of the foregoing agree to undertake the specific and individual obligations assigned to them herein and to comply with all the applicable requirements of these Consent Orders and therefore shall be subject to the requirements herein. In addition, the Private Parties listed in Appendix A agree to pay the monetary penalties, as listed in Appendix A, provided for in Section 19.

8 SUBMITTAL OF DOCUMENTS

All documents submitted to the Commission pursuant to these Consent Orders must be sent to:

California Coastal Commission
Attn: Andrew Willis
301 E. Ocean Boulevard, Suite 300
Long Beach, CA 90802

WITH A COPY TO:

California Coastal Commission
Attn: Chief of Enforcement

45 Fremont Street Suite 2000
San Francisco, CA 94105¹

9 COMMISSION JURISDICTION

The Commission has jurisdiction over resolution of these Coastal Act violations pursuant to PRC Sections 30810, 30811, and 30821. The Parties agree not to, and shall not, contest the Commission's jurisdiction to issue or enforce these Consent Orders at a public hearing or any other proceeding by or before the Commission, any other governmental agency, any administrative tribunal, or a court of law.

10 RESOLUTION OF MATTER VIA SETTLEMENT

In light of the intent of the Parties to resolve these matters through these Consent Orders, the Parties have not submitted a "Statement of Defense" form as provided for in Sections 13181 and 13191 of Title 14 of the California Code of Regulations and have agreed not to contest the legal and factual bases for, the terms of, or the issuance of these Consent Orders, including the allegations of Coastal Act violations contained in the NOI. Specifically, the Parties have agreed not to, and shall not, contest the issuance or enforcement of these Consent Orders at a public hearing or any other proceeding. In addition, the Private Parties listed in Appendix A have agreed not to contest the validity of these Consent Orders by contesting the commencement of proceedings to issue these Consent Orders without their having first received written notice of commencement of cease and desist order and restoration order proceedings pursuant to sections 13181 and 13191, respectively, of the Commission's administrative regulations.

11 SETTLEMENT VIA CONSENT AGREEMENT

In light of the desire to settle this matter via the Consent Orders and avoid litigation, pursuant to the agreement of the parties as set forth in these Consent Orders, the Parties hereby agree not to seek a stay pursuant to PRC Section 30803(b) or to challenge the issuance and enforceability of these Consent Orders in a court of law or equity.

12 EFFECTIVE DATE AND TERMS OF THE SETTLEMENT AGREEMENT

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

¹ The San Francisco office will be moving soon, please contact Andrew Willis at (562) 590-5071 to obtain the new address if necessary.

13 FINDINGS

These Consent Orders are issued on the basis of the findings adopted by the Commission, as set forth in the document entitled “Staff Report: Recommendations and Findings for Issuance of Consent Cease and Desist Order and Consent Restoration Order and Consent Administrative Civil Penalty.” The activities authorized and required in these Consent Orders are consistent with the resource protection policies set forth in Chapter 3 of the Coastal Act. The Parties agree that the activities required in these Consent Orders are, and the Commission has authorized the activities as being, consistent with the resource protection policies set forth in Chapter 3 of the Coastal Act.

14 COMPLIANCE OBLIGATION

14.1 Each of the Parties is required to perform work, make payments or take action as required of them by these Consent Orders in strict conformance with the terms and conditions of these Consent Orders. Failure to comply with any term of these Consent Orders required of such party, including any deadline contained in these Consent Orders, unless the Executive Director grants an extension under Section 15, will constitute a violation of these Consent Orders and shall result in the responsible part(ies) being liable for stipulated penalties in the amount of \$500 per day per violation. The non-compliant party or parties shall pay stipulated penalties within 15 days of the date of the written demand by the Commission for such penalties, regardless of whether the non-compliant party or parties have subsequently complied.

14.2 If the non-compliant Party or Parties do not comply with the agreed-upon terms of these Consent Orders, nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of the Commission to seek any other remedies available, in addition those remedies set forth in the prior paragraph, including the imposition of civil penalties and other remedies pursuant to Public Resources Code Sections 30803, 30805, 30820, 30821, 30821.6, and 30822, as a result of the lack of compliance with these Consent Orders and for the underlying Coastal Act violations as described herein.

15 DEADLINES

Prior to the expiration of any of the deadlines established by these Consent Orders, the City may request from the Executive Director an extension of that deadline. Such a request shall be made no fewer than 10 days in advance of the deadline and directed to the Executive Director, in care of Andrew Willis at the address identified in Section 8, above.

The Executive Director may grant an extension of deadlines upon a showing of good cause, either if the Executive Director determines that the City has diligently worked to comply with its obligations under these Consent Orders but cannot meet deadlines due to unforeseen circumstances beyond its control, or if the Executive Director determines that any deadlines should be extended if additional time would benefit the success of the obligations under these Consent Orders.

16 SEVERABILITY

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

17 SITE ACCESS

The Properties consist of public beach, thus there are no limitations on Commission staff access to the site and the Parties agree not to preclude access to the public beach areas, except in the limited and specific instances provided herein. Nothing in these Consent Orders is intended to limit in any way the right of entry or inspection that Commission staff or any agency may otherwise have by operation of any law.

18 GOVERNMENT LIABILITIES

Neither the State of California, the Commission, nor its employees shall be liable for injuries or damages to persons or property resulting from acts or omissions by the City in carrying out activities pursuant to these Consent Orders, nor shall the State of California, the Commission or its employees be held as a party to any contract entered into by City or its agents in carrying out activities pursuant to these Consent Orders.

19 SETTLEMENT OF CLAIMS

19.1 In light of the intent of the Parties to resolve these matters in settlement, the Private Parties listed in Appendix A have agreed to pay a monetary settlement in the amount that they are obligated to pay, as listed in Appendix A, and in lieu of payment of a monetary penalty, the City has agreed to be responsible for, at its sole cost, except as provided for in Section 5.3, above, ensuring implementation of the Restoration Plan. The Private Parties listed in Appendix A shall submit the amount that they are obligated to pay, as listed in Appendix A, in 1 payment per party, within 1 year of the effective date of these Consent Orders. The settlement monies shall be deposited in the Violation Remediation Account of the California Coastal Conservancy Fund (see PRC§ 30823), for the purpose of providing public access improvements or undertaking or maintaining habitat restoration in coastal Orange County, preferably in the City of Newport Beach, and preferably, including, but not limited to, such projects as undertaking dune habitat restoration, providing additional public access and supporting efforts to protect the Western Snowy Plover, including through protecting the plover and its habitat from disturbance. The settlement monies shall be submitted to the Commission's Long Beach office, at the address provided in Section 8, above, to the attention of Andrew Willis, payable to the Violation Remediation Account of the California State Coastal Conservancy Fund, and shall include a reference to these Consent Orders by number.

19.2 The Parties and the Commission agree that these Consent Orders settle any monetary claims for relief the Commission may have against the Parties with respect to the violations of the Coastal Act specifically enumerated in Section 4.3, above, occurring prior to the date of these

Consent Orders, (specifically including claims for civil penalties, fines, or damages under the Coastal Act, including under PRC Sections 30805, 30820, 30821, and 30822), with the exception that, if the Parties fail to comply with any term or condition of these Consent Orders, the Commission may seek monetary or other claims for both the underlying violations of the Coastal Act and for the violations of these Consent Orders against the non-compliant party. In addition, the Consent Agreement does not limit the Commission from taking enforcement action due to Coastal Act violations at the Properties or elsewhere, other than those specified herein, or which occur after the date of these Consent Orders.

20 SUCCESSORS AND ASSIGNS

These Consent Orders constitute a contractual obligation between the Parties and the Commission, and therefore shall remain in effect until all terms are fulfilled.

21 MODIFICATIONS AND AMENDMENTS

Minor, non-substantive modifications to these Consent Orders may be made subject to agreement between the Executive Director and the City. Otherwise, except as provided in Section 15, above, these Consent Orders may be amended or modified only in accordance with the standards and procedures set forth in Section 13188(b) of Title 14 of the California Code of Regulations.

22 GOVERNMENTAL JURISDICTION

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

23 NO LIMITATION OF AUTHORITY

Except as expressly provided herein, nothing in these Consent Orders shall limit or restrict the exercise of the Commission's enforcement authority pursuant to Chapter 9 of the Coastal Act, (PRC Sections 30800 to 30824), including the authority to require and enforce compliance with these Consent Orders and the authority to take enforcement action regarding Coastal Act violations beyond those that are specified in Section 4.3, above.

24 INTEGRATION

These Consent Orders constitute the entire agreement between the Parties and may not be amended, supplemented, or modified except as provided in these Consent Orders.

25 STIPULATION

The Parties attest that they have reviewed the terms of these Consent Orders and understand that their consent is final and stipulate to their approval by the Commission.

26 REPRESENTATIVE AUTHORITY

The signatories below attest that they have the authority to represent and bind in this agreement the Parties.

IT IS SO STIPULATED AND AGREED:

On behalf of the City of Newport Beach:



Grace Leung, City Manager 5/19/20
Date

Executed in _____ on behalf of the California Coastal Commission:

DocuSigned by:

Jo John Ainsworth _____ 6/22/2020
020ACF9D159C473... :utive Director Date

Appendix A List of Private Parties and Administrative Civil Penalties

- Exhibit A Depiction of Area Subject to Consent Orders
- Exhibit B Glenn Lukos Associates, Inc., Restoration Plan dated January 21, 2020
- Exhibit C Depiction of Area to be restored to Natural Habitat
- Exhibit D Depiction of Area Located Adjacent to the Private Properties