CALIFORNIA COASTAL COMMISSION
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STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 4-02-131

APPLICANT: Malibu Valley Farms, Inc.

AGENT: Stanley Lamport and Beth Palmer

PROJECT LOCATION: Northeast corner of Mulholland Highway and Stokes Canyon Road, Santa Monica Mountains (Los Angeles County)

APN NO.: 4455-028-044

PROJECT DESCRIPTION: Request for after-the-fact approval for an equestrian facility, including a 45,000 sq. ft. arena with five-foot high surrounding wooden wall with posts, 200 sq. ft. portable rollaway bin/container, 200 sq. ft. portable tack room with four-foot porch (to be relocated approximately 20 feet west), 576 sq. ft. pipe corral, 576 sq. ft. covered shelter, 25,200 sq. ft. riding arena, approximately 2,000 sq. ft. parking area, 2,660 sq. ft. back to back mare motel, 150 sq. ft. cross tie area, 1,440 sq. ft. one-story barn, 160 sq. ft. storage container, three-foot railroad tie walls, approximately 20,000 sq. ft. fenced paddock, fencing, dirt access road with at-grade crossing through Stokes Creek, and a second at-grade dirt crossing of Stokes Creek. The proposed project also includes removal of twenty-eight 576 sq. ft. portable pipe corrals, a 288 sq. ft. storage shelter, 200 sq. ft. portable storage trailer, four 400 sq. ft. portable pipe corrals, 101 sq. ft. tack room with no porch, four 101 sq. ft. portable tack rooms with four-foot porches, 250 sq. ft. cross tie area, 360 sq. ft. cross tie shelter, two 2,025 sq. ft. covered corrals, and one 1,080 sq. ft. covered corral. The proposed project also includes construction of four 2,660 sq. ft. covered pipe barns, two 576 sq. ft. shelters, three 96 sq. ft. tack rooms, and a 2,400 sq. ft. hay/storage barn.

Lot Area	31.02 acres
Lot Area within Coastal Zone (CZ)	~28 acres
Proposed development area (in CZ)	~6 acres

LOCAL APPROVALS RECEIVED: County of Los Angeles Department of Regional Planning, Approval in Concept, February 2, 2004; County of Los Angeles Environmental Review Board Evaluation, Consistent after Modifications, January 27, 2003; County of Los Angeles Fire Prevention Engineering Approval in Concept, June 5, 2002; County of Los Angeles Preliminary Fuel Modification Plan, December 18, 2002; State Water Resources Control Board Receipt of Notice of Intent to Comply with the Terms of the General Permit to Discharge Storm Water Associated with Construction Activity, WDID No. 419C330921, June 27, 2005; Letter re: Lake or Streambed Alteration Notification No. 1600-2004-0539-R5, California Department of Fish and Game, March 15, 2005.

SUBSTANTIVE FILE DOCUMENTS: "Biological Resource Analysis of Proposed ESHA Setback for Malibu Valley Farms Equestrian Center Improvements," Frank Hovore & Associates, January 2002, updated October 2004; "Biological Assessment in Support of Malibu Valley Farms, Inc., Coastal Development Permit Application No. 4-02-131," Sapphos Environmental Inc., October 25, 2005; "Evaluation of Surface Water and Groundwater Quality Impacts Resulting from the Proposed Equestrian Facility at 2200 Stokes Canyon Road, Calabasas, California," by Jones & Stokes, July 3, 2002; Claim of Vested Rights File No. 4-00-279-VRC (Malibu Valley); Violation File No. V-4-MAL-00-001; Exemption Letter No. 4-98-125-X (Boudreau); Letter from Commission to Brian Boudreau regarding revocation of Exemption Letter No. 4-98-125-X, dated January 22, 1999.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends ***DENIAL*** of the proposed project, which would allow extensive development to remain and to occur on an approximately 31 acre site containing riparian, oak woodland, and chaparral environmentally sensitive habitat areas and would not minimize impacts to environmentally sensitive habitat areas (ESHA) and water quality as required by Sections 30230, 30231, and 30240 of the Coastal Act. The standard of review for the proposed project is the Chapter Three policies of the Coastal Act. In addition, the policies of the certified Malibu-Santa Monica Mountains Land Use Plan (LUP) serve as guidance.

The subject property is an approximately 31.02-acre parcel at the northeast corner of Mulholland Highway and Stokes Canyon Road in the Santa Monica Mountains area of unincorporated Los Angeles County (**Exhibit 3**). The southern approximately 28 acres of the parcel is located within the Coastal Zone (CZ). Stokes Canyon Creek, an intermittent blue-line stream recognized by the United States Geological Survey (USGS), runs in a southwesterly direction through the western half of the parcel. The parcel area east of the creek consists of mountainous terrain containing chaparral, oak woodland, and annual grassland habitats; the parcel area west and south of the creek is level and contains the approximately six-acre unpermitted equestrian facility that is the subject of this application **(Exhibit 13)**.

Stokes Canyon Creek and its associated riparian canopy are designated as inland ESHA in the Malibu-Santa Monica Mountains Land Use Plan (LUP) **(Exhibit 4)**. The LUP, which the Commission uses as guidance, requires a minimum setback of 100 feet from all designated ESHAs, prohibits alteration of streambeds in ESHA, requires road crossings to be minimized, and requires any such crossings that are unavoidable to

consist of bridging. Staff biologist John Dixon visited the site on August 22, 2005, and has confirmed that the stream and surrounding riparian habitat are ESHA. Therefore all of the ESHA protections, including the 100-foot setback, required by the LUP and the Coastal Act apply to this site and the proposed project.

The proposed equestrian facility, including the as-built components, is located in and adjacent to Stokes Creek **(Exhibits 5-11)**. The proposed pipe barns and associated development in the northern portion of the property extend to within 20 to 50 feet of the edge of the riparian canopy, approximately 25 to 50 feet west of the existing unpermitted development in that area. The existing unpermitted arena in the central portion of the property (for which the applicant proposes after-the-fact approval) is located approximately 20 to 40 feet west of the riparian dripline, and the proposed hay barn in the same area extends to just inside the riparian canopy. In the southern portion of the site, the existing unpermitted storage container and cross tie area, for which the applicant seeks after-the-fact approval, are located within the riparian canopy, while the remainder of the proposed as-built and new development extends from approximately 0 to 20 feet away from the edge of the riparian canopy. In addition, the proposed project includes a request for after-the-fact approval for two at-grade dirt crossings of Stokes Creek, which have reduced the existing streambed to compacted bare soil, inconsistent with the ESHA protection standards of the Malibu-Santa Monica Mountains LUP. Lastly, the proposed project includes livestock fencing enclosing an approximately 23-acre hillside area of the property east of Stokes Creek, which contains oak woodland and chaparral ESHA.

In summary, the applicant's proposal would allow intensive equestrian-related development and livestock use within and adjacent to a riparian, oak woodland, and chaparral ESHA and is thus inconsistent with Coastal Act policies for the protection of environmentally sensitive habitat and water quality; furthermore, alternatives exist that would be consistent with Coastal Act policies. Therefore, staff recommends denial of the subject application.

I. STAFF RECOMMENDATION:

MOTION: ***I move that the Commission approve Coastal Development Permit No. 4-02-131 for the development proposed by the applicant.***

Staff Recommendation of Denial:

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution to Deny the Permit:

The Commission hereby denies a coastal development permit for the proposed development on the grounds that the development will not conform with the policies of Chapter Three of the Coastal Act and will prejudice the ability of the local government

having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter Three. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

II. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. PROJECT DESCRIPTION AND BACKGROUND

The applicant requests after-the fact approval for an equestrian facility, including a 45,000 sq. ft. arena with five-foot high surrounding wooden wall with posts, 200 sq. ft. portable rollaway bin/container, 200 sq. ft. portable tack room with four-foot porch (to be relocated approximately 20 feet west), 576 sq. ft. pipe corral, 576 sq. ft. covered shelter, 25,200 sq. ft. riding arena, approximately 2,000 sq. ft. parking area, 2,660 sq. ft. back to back mare motel, 150 sq. ft. cross tie area, 1,440 sq. ft. one-story barn, 160 sq. ft. storage container, three-foot railroad tie walls, approximately 20,000 sq. ft. fenced paddock, fencing, dirt access road with at-grade crossing through Stokes Creek, and a second at-grade dirt crossing of Stokes Creek. The proposed project also includes removal of twenty-eight 576 sq. ft. portable pipe corrals, a 288 sq. ft. storage shelter, 200 sq. ft. portable storage trailer, four 400 sq. ft. portable pipe corrals, 101 sq. ft. tack room with no porch, four 101 sq. ft. portable tack rooms with four-foot porches, 250 sq. ft. cross tie area, 360 sq. ft. cross tie shelter, two 2,025 sq. ft. covered corrals, and one 1,080 sq. ft. covered corral; and construction of four 2,660 sq. ft. covered pipe barns, two 576 sq. ft. shelters, three 96 sq. ft. tack rooms, and a 2,400 sq. ft. hay/storage barn (**Exhibits 5-11**).

The subject property is an approximately 31.02-acre parcel at the northeast corner of Mulholland Highway and Stokes Canyon Road in the Santa Monica Mountains area of unincorporated Los Angeles County (**Exhibit 3**). The southern approximately 28 acres of the parcel is located within the Coastal Zone (CZ). Stokes Canyon Creek, an intermittent blue-line stream recognized by the United States Geological Survey (USGS), runs in a southwesterly direction through the western half of the parcel. The parcel area east of the creek consists of mountainous terrain containing chaparral, oak woodland, and annual grassland habitats; the parcel area west and south of the creek is level and contains the approximately six-acre unpermitted equestrian facility that is the subject of this application **(Exhibit 13)**.

The site is located immediately north of the former campus of Soka University, which has been recently purchased by the National Park Service. Scattered rural and residential development is located west and south of the project site, and undeveloped hillside containing primarily chaparral habitat is located to the east of the property. The site is visible from Mulholland Highway, a designated scenic highway in the Malibu-Santa Monica Mountains Land Use Plan (LUP), as well as from various public viewing points, including along the Backbone Trail and the Las Virgenes View trail, that afford scenic vistas of the relatively undisturbed natural area. Stokes Canyon Creek and its associated riparian canopy are designated as inland ESHA in the Malibu-Santa Monica Mountains Land Use Plan (LUP) **(Exhibit 4)**. Commission staff biologist John Dixon has

visited the site, most recently on August 22, 2005, and has confirmed that the stream and surrounding riparian habitat, as well as the hillside oak woodland and chaparral habitat, on the site constitutes ESHA. In addition, some of the existing unpermitted development that the applicant proposes to retain is within the protected zones of individual oak trees outside of the hillside oak woodland.

Previous Commission Action

On November 20, 1998, Brian Boudreau, president of Malibu Valley Farms, Inc., submitted an exemption request for replacement of pipe corrals and related improvements that had been destroyed by wildfire in 1996. On December 7, 1998, the Commission issued Exemption Letter No. 4-98-125-X for replacement of 14 pipe corrals (totaling 2,500 sq. ft). However, the Commission rescinded this exemption letter shortly thereafter, in January 1999, because it was discovered that the equestrian facility on the site was constructed after the January 1, 1977 effectiveness date of the Coastal Act, without benefit of a coastal development permit. Exemptions from the Coastal Act's permit requirements for replacement of structures destroyed by disaster (Section 30610(g)) only apply to structures that were either legally constructed prior to the Coastal Act, or were constructed after the Coastal Act with the appropriate authorization under the Act **(Exhibit 2)**.

Commission staff contacted Mr. Boudreau on January 14, 1999 and sent him a letter dated January 22, 1999 informing him that the exemption was revoked. The letter also stated that a Coastal Development Permit (CDP) is required for the horse riding area, polo field, numerous horse corrals, barn, and accessory buildings at the site and directed the applicant to submit an CDP application requesting after-the-fact approval of the unpermitted development.

Commission staff visited the site in November 1999 and March 2000. In March 2000, Commission staff notified Mr. Boudreau that it intended to initiate cease and desist order proceedings regarding the development at the site. Mr. Boudreau, Malibu Valley Farms, Inc., and Robert Levin, the owner of the property at the time, submitted a Statement of Defense dated April 10, 2000. On June 13, 2000, Malibu Valley, Inc. (a separate corporation also owned by Mr. Boudreau) submitted a Claim of Vested Rights application (Vested Rights Claim Application No. 4-00-279-VRC) **(Exhibit 2)**. The application contended that a vested right exists to conduct agricultural and livestock activities and erect and maintain structures in connection with those activities on the site.

A public hearing on Vested Rights Claim Application No. 4-00-279-VRC was scheduled for the February 2001 Commission meeting, with a staff recommendation of denial. On February 15, 2001, at the applicant's request, the hearing on the application was continued pending processing of a coastal development permit application for the unpermitted development. During this time the application was amended to change the applicant from Malibu Valley, Inc. to Malibu Valley Farms, Inc. with Robert Levin as co-applicant. In March 2002, Mr. Levin transferred the property to Malibu Valley Farms, Inc.

Malibu Valley Farms, Inc. submitted the current application on May 31, 2002. The application was not deemed complete until March 6, 2006, however, due in part to delays in securing approval-in-concept for the proposed project from the Los Angeles County Department of Regional Planning.

B. STANDARD OF REVIEW

The standard of review for the proposed project is the Chapter Three policies of the Coastal Act. In addition, the policies of the certified Malibu-Santa Monica Mountains Land Use Plan (LUP) serve as guidance. As noted above, the applicant's proposal includes a request for after-the-fact approval for equestrian facilities that were constructed after the January 1, 1977 effectiveness date of the Coastal Act without benefit of a coastal development permit. In evaluating such proposals, the Commission considers all development, including existing unpermitted development, as if it were not already constructed, and considers the condition of the site prior to any unpermitted development.

C. ENVIRONMENTALLY SENSITIVE HABITAT AREAS

Section 30230 of the Coastal Act states that:

> ***Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.***

Section 30231 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 water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.***

Section 30240 states:

> ***(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.***
>
> ***(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.***

Section 30107.5 of the Coastal Act, defines an environmentally sensitive area as:

> ***"Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.***

Section 30250 of the Coastal Act states, in relevant part:

> ***New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.***

Section 30231 of the Coastal Act require that the biological productivity and the quality of coastal waters and streams be maintained and, where feasible, restored through among other means, minimizing adverse effects of waste water discharge and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flows, maintaining natural buffer areas that protect riparian habitats, and minimizing alteration of natural streams. In addition, Sections 30107.5 and 30240 of the Coastal Act state that environmentally sensitive habitat areas must be protected against disruption of habitat values. Therefore, when considering any area, such as the Santa Monica Mountains, with regard to an ESHA determination one must focus on three main questions:

1) Is a habitat or species rare or especially valuable?
2) Does the habitat or species have a special nature or role in the ecosystem?
3) Is the habitat or species easily disturbed or degraded by human activities and developments?

The Coastal Commission has found that the Mediterranean Ecosystem in the Santa Mountains is itself rare, and valuable because of its relatively pristine character, physical complexity, and resultant biological diversity. Therefore, habitat areas that provide important roles in that ecosystem are especially valuable and meet the second criterion for the ESHA designation.

Woodlands that are native to the Santa Monica Mountains, such as oak woodlands and riparian woodlands, have many important roles in the ecosystem. Native trees prevent the erosion of hillsides and stream banks, moderate water temperatures in streams through shading, provide food and habitat, including nesting, roosting, and burrowing to a wide variety of wildlife species, contribute nutrients to watersheds, and are important scenic elements in the landscape.

In the Santa Monica Mountains, riparian woodland contains the greatest overall diversity of all the plant communities in the area, partly because of its multi-layered vegetation.[1] At least four types of riparian communities are discernable in the Santa Monica Mountains: walnut riparian areas, mulefat-dominated riparian areas, willow riparian areas and sycamore riparian woodlands. Of these, the sycamore riparian woodland is the most diverse riparian community in the area. In these habitats, the dominant plant

[1] National Park Service. 2000. Draft: General Management Plan & Environmental Impact Statement, Santa Monica Mountains National Recreation Area, US Dept. of Interior, National Park Service, December 2000.

species include arroyo willow, California black walnut, sycamore, coast live oak, Mexican elderberry, California bay laurel, and mule fat. Wildlife species that have been observed in this community include least Bell's vireo (a State and federally listed species), American goldfinches, black phoebes, warbling vireos, bank swallows (State listed threatened species), song sparrows, belted kingfishers, raccoons, and California and Pacific tree frogs.

Riparian communities are the most species-rich to be found in the Santa Monica Mountains. Because of their multi-layered vegetation, available water supply, vegetative cover and adjacency to shrubland habitats, they are attractive to many native wildlife species, and provide essential functions in their lifecycles[2]. During the long dry summers in this Mediterranean climate, these communities are an essential refuge and oasis for much of the areas' wildlife.

Riparian habitats and their associated streams form important connecting links in the Santa Monica Mountains. These habitats connect all of the biological communities from the highest elevation chaparral to the sea with a unidirectional flowing water system, one function of which is to carry nutrients through the ecosystem to the benefit of many different species along the way.

The streams themselves provide refuge for sensitive species including: the coast range newt, the Pacific pond turtle, and the steelhead trout. The coast range newt and the Pacific pond turtle are California Species of Special Concern and are proposed for federal listing[3], and the steelhead trout is federally endangered. The health of the streams is dependent on the ecological functions provided by the associated riparian woodlands. These functions include the provision of large woody debris for habitat, shading that controls water temperature, and input of leaves that provide the foundation of the stream-based trophic structure.

The importance of the connectivity between riparian areas and adjacent habitats is illustrated by the Pacific pond turtle and the coast range newt, both of which are sensitive and both of which require this connectivity for their survival. The life history of the Pacific pond turtle demonstrates the importance of riparian areas and their associated watersheds for this species. These turtles require the stream habitat during the wet season. However, recent radio tracking work[4] has found that although the Pacific pond turtle spends the wet season in streams, it also requires upland habitat for refuge during the dry season. Thus, in coastal southern California, the Pacific pond turtle requires both streams and intact adjacent upland habitats such as coastal sage scrub, woodlands or chaparral as part of their normal life cycle. The turtles spend about four months of the year in upland refuge sites located an average distance of 50 m (but up to 280 m) from the edge of the creek bed. Similarly, nesting sites where the females lay eggs are also located in upland habitats an average of 30 m (but up to 170 m) from

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[2] Walter, Hartmut. Bird use of Mediterranean habitats in the Santa Monica Mountains, Coastal Commission Workshop on the Significance of Native Habitats in the Santa Monica Mountains. CCC Hearing, June 13, 2002, Queen Mary Hotel.

[3] USFWS. 1989. Endangered and threatened wildlife and plants; animal notice of review. Fed. Reg. 54:554-579. USFWS. 1993. Endangered and threatened wildlife and plants; notice of 1-year petition finding on the western pond turtle. Fed. Reg. 58:42717-42718.

[4] Rathbun, G.B., N.J. Scott and T.G. Murphy. 2002. Terrestrial habitat use by Pacific pond turtle in a Mediterranean climate. Southwestern Naturalist. (*in Press*).

the creek. Occasionally, these turtles move up to 2 miles across upland habitat[5]. Like many species, the pond turtle requires both stream habitats and the upland habitats of the watershed to complete its normal annual cycle of behavior. Similarly, the coast range newt has been observed to travel hundreds of meters into upland habitat and spend about ten months of the year far from the riparian streambed[6]. They return to the stream to breed in the wet season, and they are therefore another species that requires both riparian habitat and adjacent uplands for their survival.

Riparian habitats in California have suffered serious losses and such habitats in southern California are currently very rare and seriously threatened. In 1989, Faber estimated that 95-97% of riparian habitat in southern California was already lost[7]. Writing at the same time as Faber, Bowler asserted that, *"[t]here is no question that riparian habitat in southern California is endangered."*[8] In the intervening 13 years, there have been continuing losses of the small amount of riparian woodlands that remain. Today these habitats are, along with native grasslands and wetlands, among the most threatened in California.

In addition to direct habitat loss, streams and riparian areas have been degraded by the effects of development. For example, the coast range newt, a California Species of Special Concern has suffered a variety of impacts from human-related disturbances[9]. Human-caused increased fire frequency has resulted in increased sedimentation rates, which exacerbates the cannibalistic predation of adult newts on the larval stages.[10] In addition, impacts from non-native species of crayfish and mosquito fish have also been documented. When these non-native predators are introduced, native prey organisms are exposed to new mortality pressures for which they are not adapted. Coast range newts that breed in the Santa Monica Mountain streams do not appear to have adaptations that permit co-occurrence with introduced mosquito fish and crayfish[11]. These introduced predators have eliminated the newts from streams where they previously occurred by both direct predation and suppression of breeding.

More recently, surveys conducted in Spring 2006 found the invasive New Zealand mud snail (*Potamopyrgus atipodarum)* in the Malibu Creek watershed. The tiny snails reproduce rapidly and can achieve densities of up to 500,000 organisms per square meter. Because of their massive density and quantity, the New Zealand mud snail can out-compete and reduce the number of native aquatic invertebrates that the watershed's fish and amphibians rely on for food. This reduction in aquatic invertebrate food supply can disrupt the entire food web with dramatic consequences.

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[5] Testimony by R. Dagit, Resource Conservation District of the Santa Monica Mountains at the CCC Habitat Workshop on June 13, 2002.
[6] Dr, Lee Kats, Pepperdine University, personal communication to Dr J. Allen, CCC.
[7] Faber, P.A., E, Keller, A. Sands and B.M. Massey. 1989. The ecology of riparian habitats of the southern California coastal region: a community profile. U.S. Fish and Wildlife Service Biological Report 85(7.27) 152pp.
[8] Bowler, P.A. 1989. Riparian woodland: An endangered habitat in southern California. Pp 80-97 *in* Schoenherr, A.A. (ed.) Endangered plant communities of southern California. Botanists Special Publication No. 3.
[9] Gamradt, S.C., L.B. Kats and C.B. Anzalone. 1997. Aggression by non-native crayfish deters breeding in California newts. Conservation Biology 11(3):793-796.
[10] Kerby, L.J., and L.B. Kats. 1998. Modified interactions between salamander life stages caused by wildfire-induced sedimentation. Ecology 79(2):740-745.
[11] Gamradt, S.C. and L.B. Kats. 1996. Effect of introduced crayfish and mosquitofish on California newts. Conservation Biology 10(4):1155-1162.

Therefore, because of the essential role that riparian plant communities play in maintaining the biodiversity of the Santa Monica Mountains, because of the historical losses and current rarity of these habitats in southern California, and because of their extreme sensitivity to disturbance, the native riparian habitats in the Santa Monica Mountains meet the definition of ESHA under the Coastal Act, as detailed in **Exhibit 1**.

The subject parcel contains varied terrain and habitats. Stokes Canyon Creek, an intermittent blue-line stream recognized by the United States Geological Survey (USGS), runs in a southwesterly direction through the western half of the parcel. The parcel area east of the creek consists of mountainous terrain containing chaparral habitat, Coast live oak woodland, and annual grassland; the parcel area west and south of the creek is level and is the location of the approximately six-acre proposed equestrian facility that is the subject of this application.

The applicant has submitted two biological reports that discuss the habitats on site ("Biological Resource Analysis of Proposed ESHA Setback for Malibu Valley Farms Equestrian Center Improvements," Frank Hovore & Associates, January 2002, updated October 2004; "Biological Assessment in Support of Malibu Valley Farms, Inc., Coastal Development Permit Application No. 4-02-131," Sapphos Environmental Inc., October 25, 2005). The report by Sapphos Environmental provides a map that shows the location of the varied habitats on the subject parcel **(Exhibit 13)**.

Stokes Canyon Creek and its associated riparian canopy is a designated inland environmentally sensitive habitat area (ESHA) in the certified Malibu-Santa Monica Mountains LUP. The riparian canopy contains native riparian woodland species including arroyo willow, mulefat and elderberry. Although the October 2004 report by Frank Hovore & Associates suggests that the riparian habitat is not typical of southern riparian scrub habitat, Commission staff, including staff biologist John Dixon, have observed native vegetation typical of riparian woodlands in the Santa Monica Mountains. Commission staff biologist John Dixon visited the site on August 22, 2005, and has confirmed that Stokes Creek and its associated the riparian woodland habitat on the site is ESHA pursuant to Section 30107.5 of the Coastal Act.

In addition, the hillside east of the creek contains an extensive oak woodland, covering approximately 10 acres and containing hundreds of trees, that was also confirmed by staff biologist John Dixon to be an environmentally sensitive habitat area (ESHA) pursuant to Section 30107.5 of the Coastal Act and the provisions for ESHA designation under Policy 57 of the Malibu-Santa Monica Mountains LUP.

The important ecosystem functions of oak woodlands and savanna are widely recognized[12]. These habitats support a high diversity of birds[13], and provide refuge for

[12] Block, W.M., M.L. Morrison, and J. Verner. 1990. Wildlife and oak-woodland interdependency. *Fremontia* 18(3):72–76. Pavlik, B.M., P.C. Muick, S. Johnson, and M. Popper. 1991. *Oaks of California*. Cachuma Press and California Oak Foundation, Los Olivos, California. 184 pp.

[13] Cody, M.L. 1977. Birds. Pp. 223–231 *in* Thrower, N.J.W., and D.E. Bradbury (eds.). *Chile-California Mediterranean scrub atlas*. US/IBP Synthesis Series 2. Dowden, Hutchinson & Ross, Stroudsburg, Pennsylvania. National Park Service. 1993. A checklist of the birds of the Santa Monica Mountains National Recreation Area. Southwest Parks and Monuments Assoc., 221 N. Court, Tucson, AZ. 85701

many species of sensitive bats[14]. Typical wildlife in this habitat includes acorn woodpeckers, scrub jays, plain titmice, northern flickers, cooper's hawks, western screech owls, mule deer, gray foxes, ground squirrels, jackrabbits and several species of sensitive bats. Oak woodlands adjacent to grasslands, such as on the subject site, provide valuable perching opportunities for birds of prey who forage in the grasslands. Therefore, because of their important ecosystem functions and vulnerability to development, the Commission finds that oak woodlands and savanna within the Santa Monica Mountains meet the definition of ESHA under the Coastal Act.

In addition, the hillside in the northeast portion of the property contains chaparral habitat that is contiguous with a larger area of chaparral and coastal sage scrub habitat that extends several miles east of the site. In the Santa Monica Mountains, coastal sage scrub and chaparral have many important roles in the ecosystem, including the provision of critical linkages between riparian corridors, the provision of essential habitat for species that require several habitat types during the course of their life histories, the provision of essential habitat for local endemics, the support of rare species, and the reduction of erosion, thereby protecting the water quality of coastal streams. For these and other reasons discussed in **Exhibit 1**, which is incorporated herein, the Commission finds that large contiguous, relatively pristine stands of coastal sage scrub and chaparral in the Santa Monica Mountains meet the definition of ESHA. This is consistent with the Commission's past findings on the Malibu LCP[15]. Thus the chaparral on the subject site also is considered an environmentally sensitive habitat area (ESHA) pursuant to Section 30107.5 of the Coastal Act and the provisions for ESHA designation under Policy 57 of the Malibu-Santa Monica Mountains LUP.

For all of the reasons discussed above, the Commission finds that Stokes Canyon Creek and its associated riparian woodland on the subject site, as well as the chaparral and oak woodland habitats on the subject site, meet the definition of ESHA under the Coastal Act.

Section 30240 requires that "environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas." Section 30240(b) requires development adjacent to ESHA to be sited and designed to prevent impacts that would significantly degrade ESHA, and to be compatible with the continuance of adjacent ESHA.

The applicant requests after-the-fact approval for construction of an approximately six-acre equestrian facility, including two riding arenas, fencing, a dirt access road with at-grade crossing through Stokes Creek, corrals, shelters, tack rooms, barns, and similar structures, as described fully in Section A. above. The proposed project also includes removal of 32 pipe corrals and several accessory structures in the northern portion of the project area, and construction of four covered pipe barns, shelters and tack rooms in the same area, as also detailed in Section A. above. The proposed new and as-built development provides stalls for 76 horses. The March 2005 Draft Environmental Impact Report (EIR) for the proposed Malibu Valley Inn and Spa estimates that an average of 50 horses are currently stabled on the project site.

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[14] Miner, K.L., and D.C. Stokes. 2000. Status, conservation issues, and research needs for bats in the south coast bioregion. Paper presented at *Planning for biodiversity: bringing research and management together*, February 29, California State University, Pomona, California.

[15] Revised Findings for the City of Malibu Local Coastal Program (as adopted on September 13, 2002) adopted on February 6, 2003.

The proposed equestrian facility can be divided into three areas: the northern area, on which the applicant proposes four 2,660 sq. ft. covered pipe barns, two 576 sq. ft. shelters, and three 96 sq. ft. tack rooms; the central area, on which the applicant proposes an approximately 45,000 sq. ft. riding arena, hot walker, and 2,400 sq. ft. hay/storage barn; and a southern area, located south of Stokes Creek, on which the applicant proposes a 576 sq. ft. shelter, 576 sq. ft. pipe corral, 1,440 sq. ft. barn, 160 sq. ft. storage container, 150 sq. ft. cross tie area, 2,660 sq. ft. mare motel, an approximately 2,000 sq. ft. parking lot, approximately 24,000 sq. ft. riding arena, and approximately 20,000 sq. ft. fenced paddock. In addition, the central and southern portions of the facility are proposed to be linked by a dirt access road with at-grade crossing through Stokes Creek; the road is proposed to cross the creek at the central riding arena, and then run parallel to the paddock and smaller arena in the southern portion of the property. A second at-grade dirt creek crossing is proposed to run from the southwest corner of the central arena to the stable area in the southern portion of the property. Lastly, the proposed project includes livestock fencing enclosing the approximately 23-acre hillside area of the property east of Stokes Creek.

The proposed pipe barns and associated development in the northern portion of the property extend to within 20 to 50 feet of the edge of the riparian canopy. The proposed arena in the central portion of the property is located approximately 20 to 40 feet west of the riparian dripline, and the proposed hay barn in the same area extends to just inside the riparian canopy. In the southern portion of the site, the proposed storage container and cross tie area are located within the riparian canopy, while the remainder of the proposed development extends from approximately 0 to 20 feet away from the edge of the riparian canopy.

In addition, some of the proposed development is within the protected zones of individual oak trees in the equestrian area. Specifically, fencing, as well as a cleared area surrounding the arena is within the protected zone of a mature oak tree adjacent to Stokes Canyon Road in the central portion of the property. In addition, the access road, fencing, and paddock is within the protected zones of three oak trees in the southern portion of the property, southeast of Stokes Creek.

The Commission finds that native oak trees are an important coastal resource. Native trees prevent the erosion of hillsides and stream banks, moderate water temperatures in streams through shading, provide food and habitat, including nesting, roosting, and burrowing to a wide variety of wildlife. The individual oak trees on the subject site (i.e., those that are not part of the oak woodland that is located to the east of Stokes Canyon Creek) provide habitat for wildlife and are an important part of the character and scenic quality of the area. Therefore, the oak trees on the subject site are an important coastal resource that are protected by Coastal Act Ssection 30250.

Oak trees are a part of the California native plant community and need special attention to maintain and protect their health. Oak trees in residentially landscaped areas often suffer decline and early death due to conditions that are preventable. Damage can often take years to become evident and by the time the tree shows obvious signs of disease it is usually too late to restore the health of the tree. Oak trees provide important habitat and shading for other animal species, such as deer and bees. Oak trees are very long lived, some up to 250 years old, relatively slow growing becoming large trees between 30 to 70 feet high, and are sensitive to surrounding land uses,

grading or excavation at or near the roots and irrigation of the root area particularly during the summer dormancy. Improper watering, especially during the hot summer months when the tree is dormant and disturbance to root areas are the most common causes of tree loss.

The publication entitled "Oak Trees: Care and Maintenance," prepared by the Los Angeles County Department of Forester and Fire Warden, states:

> *Oak trees in the residential landscape often suffer decline and early death due to conditions that are easily preventable. Damage can often take years to become evident, and by the time the tree shows obvious signs of disease it is usually too late to help. Improper watering…and disturbance to root areas are most often the causes.*

That publication goes on to state:

> *Oaks are easily damaged and very sensitive to disturbances that occur to the tree or in the surrounding environment. The root system is extensive but surprisingly shallow, radiating out as much as 50 feet beyond the spread of the tree leaves, or canopy. The ground area at the outside edge of the canopy, referred to as the dripline, is especially important: the tree obtains most of its surface water and nutrients here, as well as conducts an important exchange of air and other gases….The roots depend on an important exchange of both water and air through the soil within the protected zone. Any kind of activity which compacts the soil in this area blocks this exchange and can have serious long term negative effects on the trees….*

In recognition of the sensitive nature of oak trees to human disturbance and to increase protection of these sensitive resources, the Los Angeles County Oak Tree Ordinance defines the "protected zone" around an oak tree as follows:

> *The Protected Zone shall mean that area within the dripline of an oak tree and extending therefrom to a point at least 5 feet outside the dripline or 15 feet from the trunk, whichever distance is greater.*

Equestrian traffic has been found to compact soils and can have detrimental impacts on those oak trees whose driplines are located in or adjacent to equestrian facilities. In regards to a horse facility in the Santa Monica Mountains, Doug McCreary, Program Manager for the University of California Cooperative Extension Integrated Hardwood Range Management Program states:

> *"…my observations are that horses are the worst in causing compaction in a confined situation. Six horses over 2 acres seems like an extremely high density to me (here at the SFREC we have about one cow per 20 acres) and I would guess that after a year, there would be little or no ground vegetation left in the pasture and there would be a risk of heavy compaction during wet periods."*

In addition, the Commission finds that, in the case of soil compaction, it can frequently take many years before damage to oak trees becomes apparent.

As noted above, the applicant requests approval for construction of an approximately six-acre equestrian facility within and adjacent to a riparian woodland ESHA, and

livestock fencing enclosing the approximately 23-acre hillside area east of Stokes Creek, which contains chaparral and oak woodland ESHA. The portions of the proposed development that are within ESHA are inconsistent with Section 30240 of the Coastal Act. Equestrian facilities and livestock enclosures do not have to be located within ESHAs to function. Therefore, the Commission finds that the proposed development within ESHA is not a use dependent on ESHA resources. Thus, the livestock fencing, the two proposed stream crossings, and the proposed structures that extend into the riparian canopy (including the proposed hay barn in the central portion of the property, and the proposed storage container and cross tie area in the southern portion of the property) which involve development directly in ESHA are inconsistent with Section 30240.

Furthermore, the two stream crossings would significantly disrupt habitat values of Stokes Creek Canyon by reducing the streambed to compacted bare soil and increasing the transport of pollutants into the stream inconsistent not only with Section 30240, but with Section 30231 of the Coastal Act and stream protection standards of the Malibu-Santa Monica Mountains LUP. The LUP also prohibits alteration of streambeds in ESHA, requires road crossings to be minimized, and requires any such crossings that are unavoidable to consist of bridging, as discussed further in Section D. below.

The portions of the equestrian facility that are located outside of the ESHA on the site are also inconsistent with section 30240. These portions of the proposed development are located between 0 and 50 feet from the edge of the riparian canopy. Approval of the proposed project would allow intensive equestrian use and equestrian-related development within and immediately adjacent to the boundaries of the riparian woodland ESHA. This development would significantly degrade the riparian woodland ESHA by increasing human and equine activity and its attendant impacts, including noise, lighting, irrigation, increased introduction of pollutants and, potentially, invasive plant and animal species into the ESHA. The proposed project would also require fuel modification, which would extend into the riparian ESHA. The fuel modification plan submitted by the applicant indicates that riparian vegetation in the southern portion of the property would remain, but does not note the same protection for riparian vegetation on the remainder of the property.

Section 30240(b) requires development in areas adjacent to ESHA to be sited and designed to prevent impacts that would significantly degrade such areas, and to be compatible with the continuance of such habitat areas. The certified Malibu-Santa Monica Mountains LUP, which the Commission uses as guidance, limits uses adjacent to ESHA to residential uses that are set back a minimum of 100 feet, and that are consistent with appropriate erosion control and stream protection policies, as well as any other LUP Policy. The LUP provides that the 100-foot setback from the ESHA is measured from the outer edge of the riparian canopy. Further, in past permit actions, the Commission has consistently required development to be located no closer than 100 feet from ESHA, in order to protect the biological integrity of the ESHA, provide space for transitional vegetated buffer areas, and minimize human intrusion. In this case, the Commission finds that a 100 foot buffer from the riparian woodland ESHA and the oak woodland ESHA is necessary to prevent impacts that would significantly degrade these ESHAs. Because the proposed development is not set back at least 100 feet from the riparian woodland ESHA on the site, the proposed development is inconsistent with Section 30240(b) of the Coastal Act, and the associated standards provided in the certified LUP for the area.

Furthermore, Section 30231 and 30240(b) require maintenance of natural vegetation buffer areas that protect riparian habitats. Approval of the proposed development would result in placement of structures and confinement of horses adjacent to the riparian habitat on site, and the construction of at-grade crossings within the stream itself. The proposed project thus would not maintain a natural vegetation buffer area to protect the riparian habitat. Therefore, as discussed further in Section D. below, the proposed project is also inconsistent with Section 30231 and 30240(b) of the Coastal Act.

In addition, in past permit decisions on proposed development in the Santa Monica Mountains, the Commission has found that native oak trees are an important coastal resource, and has required that encroachment into the protected zones of oak trees be avoided unless there is no feasible alternative for the siting of development.

There are potential siting and design alternatives to the proposed project that would minimize impacts to the on-site ESHA. Although application of the 100-foot setback does significantly reduce the amount of area available for development on the lower portion of the property, it does allow for two areas – an approximately 40,000 sq. ft area adjacent to Stokes Canyon Road in the central portion of the property, and an approximately 20,000 sq. ft. area in the southern portion of the property, adjacent to Mulholland Highway – to be used for development **(Exhibit 12)**. These areas could accommodate the majority of the proposed structural development, including the covered corrals, barns, tack rooms, mare motel, storage buildings, shelters and other buildings, although they could not accommodate the riding arenas as well. However, additional equestrian facilities, including two riding rings, are located in the far northern portion of the property, which is outside of the Coastal Zone. Alternately, the approximately 40,000 sq. ft. area adjacent to Stokes Canyon Road could accommodate a single-family residence and thus provide a reasonable economic use of the property. The certified Malibu-Santa Monica Mountains LUP designates the subject site as Rural Land III, a rural-residential designation that allows low-intensity commercial recreational uses and agricultural activities, but does not allow commercial horse breeding operations such as the proposed facility.

For the reasons discussed above, the Commission finds that the proposed project does not protect the Stokes Canyon Creek ESHA from significant disruption of habitat values and has not been sited and designed in a manner that would prevent impacts that would significantly degrade the riparian woodland ESHA on the site and is, therefore, not consistent with the Chapter 3 policies of the Coastal Act.

D. WATER QUALITY AND MARINE RESOURCES

Section 30230 of the Coastal Act states:

> *Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.*

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 water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

Section 30236 of the Coastal Act states:

> ***Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (l) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.***

Non-point source pollution is the pollution of coastal waters (including streams and underground water systems), by numerous sources that are difficult to identify on an individual basis. Non-point source pollutants include suspended solids, coliform bacteria and nutrients. These pollutants can originate from many different sources such as overflow septic systems, storm drains, runoff from roadways, driveways, rooftops and horse facilities.

Confined animal facilities are one of the most recognized sources of non-point source pollutants since these types of developments are cleared of vegetation and have concentrated sources of animal wastes. Use of horse corrals generates horse wastes, which includes manure, urine, waste feed, and straw, shavings and/or dirt bedding which can be significant contributors to pollution. In addition, horse wastes contain nutrients such as phosphorous and nitrogen as well as microorganisms such as coliform bacteria which can cause eutrophication and a decrease in oxygen levels resulting in clouding, algae blooms, and other impacts adversely affecting the biological productivity of coastal waters.

When the pollutants are swept into coastal waters by storm water or other means, they can cause adverse cumulative impacts such as: eutrophication and anoxic conditions resulting in fish kills and diseases and the alteration of aquatic habitat, including adverse changes to species composition and size; excess nutrients causing algae blooms and sedimentation increasing turbidity, which both reduce the penetration of sunlight needed by aquatic vegetation that provide food and cover for aquatic species; disruptions to the reproductive cycle of aquatic species; acute and sublethal toxicity in marine organisms leading to adverse changes in reproduction and feeding behavior; and human diseases such as hepatitis and dysentery. These impacts reduce the biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes and reduce optimum populations of marine organisms and have adverse impacts on human health.

These types of pollutants are particularly significant here since Stokes Creek has been placed on the state's list of impaired water bodies (Clean Water Act 303(d) list) due to its high coliform count. As noted above, the subject development is located on Stokes Creek, approximately one mile from its outlet into Las Virgenes Creek. Stokes Creek enters Las Virgenes Creek just above the latter stream's confluence with Malibu Creek, in Malibu Creek State Park. Las Virgenes Creek and Malibu Creek are also listed as an impaired water bodies (Clean Water Act 303(d) list) by the Los Angeles Regional Water Quality Control Board (LARWQCB). Malibu Creek outlets into Malibu Lagoon and Surfrider Beach, which is consistently one of the most polluted regions within the Santa Monica Bay[16]. The LARWQCB is developing a Total Maximum Daily Load (TMDL) for bacteria at Santa Monica Bay Beaches, including the Malibu beach area. Therefore, the discharge of additional pollutants into Stokes Creek detracts from the efforts being made by LARWQCB to restore this water body and further degrades an already impaired stream.

The proposed equestrian facility is located in and adjacent to Stokes Creek. The proposed pipe barns and associated development in the northern portion of the property extend to within 20 to 50 feet of the edge of the riparian canopy. The proposed arena in the central portion of the property is located approximately 20 to 40 feet west of the riparian dripline, and the proposed hay barn in the same area extends to just inside the riparian canopy. In the southern portion of the site, the proposed storage container and cross tie area are located within the riparian canopy, while the remainder of the proposed development extends from approximately 0 to 20 feet away from the edge of the riparian canopy. In addition, the central and southern portions of the facility are proposed to be linked by a dirt access road with at-grade crossing through Stokes Creek, which crosses the creek at the central riding arena, and then runs parallel to the paddock and smaller arena in the southern portion of the property. A second at-grade dirt creek crossing is proposed to run from the southwest corner of the central arena to the stable area in the southern portion of the property.

The proposed as-built and new development provides stalls for 76 horses. The March 2005 Draft Environmental Impact Report (EIR) for the proposed Malibu Valley Inn and Spa estimates that an average of 50 horses are currently stabled on the project site. Ground cover consists of primarily bare soil, with the exception of the paddock in the southern portion of the property, and lawn areas surrounding the riding arenas.

Drainage from the site is by sheet flow runoff, although the applicant has submitted a report ("Evaluation of Surface Water and Groundwater Quality Impacts Resulting from the Proposed Equestrian Facility at 2200 Stokes Canyon Road, Calabasas, California," by Jones & Stokes, July 3, 2002) indicating that roof runoff and runon water in the northern portion of the project site will be diverted to the area between the riding arena in the central portion of the site and Stokes Canyon Road, or between the riding arena and the stream, and allowed to infiltrate. The report also said that exposed areas between the stream would be stabilized with deer grass (*Muhlenbergia rigens*) in order to serve as filter strips for the overland flow that occurs between the pole corrals and the edge of the stream. The report also notes that the applicant will implement a manure management program that will involve the regular collection, storage, and treatment of manure generated in the pipe corral areas.

[16] Data taken from Heal the Bay's Beach Report Card, weekly water testing between 6/01/98 and 2/25/03

As discussed above, the discharge of pollutants, including sediment, can cause significant negative impacts to streams. The applicant proposes source control and site design measures to reduce the transport of pollutants into the stream. However, these are insufficient to ensure consistency with Section 30231 of the Coastal Act. In past permit actions, the Commission has consistently required horse facilities to be located a minimum distance of 100 feet from streams, in addition to employing best management practices to minimize runoff of pollutants (such as those proposed by the applicants), in order to protect water quality. The 100-foot setback is measured from the outer edge of the riparian canopy. This setback is necessary to provide sufficient area for infiltration of runoff, minimize erosion and sedimentation, minimize the spread of invasive exotic plant and animal species, and allow an adequate natural vegetation buffer consistent with Section 30231.

The proposed new and as-built development is located between 0 and 50 feet from the edge of the canopy of the riparian ESHA, inconsistent with the required setback, and, in the case of the as-built stream crossings, in the streambed itself. Approval of the proposed development would thus allow placement of structures and confinement of horses within and adjacent to the riparian habitat on site and would not maintain a natural vegetation buffer area to protect the riparian habitat, as required by Section 30231.

Section 30231 also requires minimal alteration of natural streams. Similarly, the Malibu-Santa Monica Mountains LUP also prohibits alteration of streambeds in ESHA, requires road crossings in ESHA to be minimized, and requires any such crossings that are unavoidable to consist of bridging. In addition, Policy P76 of the LUP limits significant alterations of blue line streams to 1) necessary water supply projects, 2) flood control projects that are necessary to protect public safety or existing structures, and 3) developments where the primary purpose is the improvement of fish and wildlife habitat, consistent with the requirements of Section 30236 of the Coastal Act. Furthermore, Policy P78 of the LUP requires any stream crossings to be undertaken by the least environmentally damaging feasible method, and requires any crossings to consist of bridging unless a less damaging method is recommended by the Los Angeles County Environmental Review Board (ERB).

The proposed project includes two at-grade dirt crossings of Stokes Creek. These creek crossings will reduce portions of the existing streambed to compacted bare soil, and increase the transport of pollutants into the stream inconsistent with Section 30231 of the Coastal Act and stream protection standards of the Malibu-Santa Monica Mountains LUP. The proposed crossings are furthermore inconsistent with the LUP policies regarding stream crossings and alteration of streams cited above, and with Section 30236 of the Coastal Act.

There are potential siting and design alternatives to the proposed project that would minimize impacts to the on-site stream and water quality. Potential siting and design alternatives to the proposed project exist that would minimize impacts to the on-site ESHA. Although application of the 100-foot setback does significantly reduce the amount of area available for development on the lower portion of the property, it does allow for two areas – an approximately 40,000 sq. ft area adjacent to Stokes Canyon Road in the central portion of the property, and an approximately 20,000 sq. ft. area in the southern portion of the property, adjacent to Mulholland Highway – to be used for development. These areas could accommodate the majority of the proposed structural development,

including the covered corrals, barns, tack rooms, mare motel, storage buildings, shelters and other buildings, although they could not accommodate the riding arenas as well. Staff notes, however, that additional equestrian facilities, including two riding rings, are located on the far northern portion of the property, which is outside of the Coastal Zone. Alternately, the approximately 40,000 sq. ft. area adjacent to Stokes Canyon Road could accommodate a single-family residence and thus provide a reasonable economic use of the property. Staff notes that the certified Malibu-Santa Monica Mountains LUP designates the subject site as Rural Land III, a rural-residential designation that allows low-intensity commercial recreational uses and agricultural activities, but does not allow commercial horse breeding operations such as the proposed facility.

In summary, the proposed development does not maintain, enhance, and restore marine resources in a manner that will sustain the biological productivity of all species of marine organisms in coastal waters, and does not maintain and restore biological productivity and water quality of coastal waters by controlling polluted runoff, maintaining natural vegetation buffer areas, and minimizing alteration of natural stream banks. Therefore, approval of the unpermitted development, as proposed, is inconsistent with Sections 30230 and 30231 of the Coastal Act.

E. VIOLATION

Development has occurred on the subject site without the required coastal development permit, including, but not limited to, an equestrian facility containing a 45,000 sq. ft. arena with five-foot high surrounding wooden wall with posts, 200 sq. ft. portable rollaway bin/container, 200 sq. ft. portable tack room with four-foot porch (to be relocated approximately 20 feet west), 576 sq. ft. pipe corral, 576 sq. ft. covered shelter, 25,200 sq. ft. riding arena, approximately 2,000 sq. ft. parking area, 2,660 sq. ft. back to back mare motel, 150 sq. ft. cross tie area, 1,440 sq. ft. one-story barn, 160 sq. ft. storage container, three-foot railroad tie walls, twenty-eight 576 sq. ft. portable pipe corrals, a 288 sq. ft. storage shelter, 200 sq. ft. portable storage trailer, four 400 sq. ft. portable pipe corrals, 101 sq. ft. tack room with no porch, four 101 sq. ft. portable tack rooms with four-foot porches, 250 sq. ft. cross tie area, 360 sq. ft. cross tie shelter, two 2,025 sq. ft. covered corrals, a 1,080 sq. ft. covered corral, an approximately 20,000 sq. ft. fenced paddock, fencing, dirt access road with at-grade crossing through Stokes Creek, and a second at-grade dirt crossing of Stokes Creek. The unpermitted development occurred prior to submission of this permit application.

The applicant is requesting after-the-fact approval for the unpermitted development, with the exception of twenty-eight 576 sq. ft. portable pipe corrals, a 288 sq. ft. storage shelter, a 200 sq. ft. portable storage trailer, four 400 sq. ft. portable pipe corrals, a 101 sq. ft. tack room with no porch, four 101 sq. ft. portable tack rooms with four-foot porches, a 250 sq. ft. cross tie area, a 360 sq. ft. cross tie shelter, two 2,025 sq. ft. covered corrals, and a 1,080 sq. ft. covered corral, which the applicant proposes to remove. As discussed above, the proposed project is not consistent with the environmentally sensitive habitat areas (ESHA) and water quality policies of the Coastal Act and is denied. The Commission's enforcement division will evaluate further actions to address these matters.

Although development has taken place prior to submission of this permit application, consideration of this application by the Commission has been based solely upon the

Chapter Three policies of the Coastal Act. Review of this permit application does not constitute a waiver of any legal action with regard to the alleged violations nor does it constitute an admission as to the legality of any development undertaken on the subject sites without a coastal development permit.

F. LOCAL COASTAL PROGRAM

Section 30604(a) of the Coastal Act states:

> *Prior to certification of the local coastal program, a coastal development permit shall be issued if the issuing agency, or the Commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a local program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200).*

Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program that conforms with the Chapter Three policies of the Coastal Act. The preceding sections provide findings that the proposed project will not be in conformity with the provisions of Chapter Three or with the certified LUP. As discussed, there are alternatives to the project that would conform with the hazards, cumulative impacts, ESHA, water quality, and visual resources of the Coastal Act. Therefore, the Commission finds that approval of the proposed development would prejudice the County's ability to prepare a Local Coastal Program for the Santa Monica Mountains area that is also consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

G. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096(a) of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect that the activity may have on the environment.

The Commission finds that the proposed project will have significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970. There are feasible alternatives available that would lessen the adverse effects of the development. Therefore, the proposed project is determined to be inconsistent with CEQA and the policies of the Coastal Act.

M E M O R A N D U M

FROM: John Dixon, Ph.D.
Ecologist / Wetland Coordinator

TO: Ventura Staff

SUBJECT: Designation of ESHA in the Santa Monica Mountains

DATE: March 25, 2003

In the context of the Malibu LCP, the Commission found that the Mediterranean Ecosystem in the Santa Mountains is rare, and especially valuable because of its relatively pristine character, physical complexity, and resultant biological diversity. Therefore, areas of undeveloped native habitat in the Santa Monica Mountains that are large and relatively unfragmented may meet the definition of ESHA by virtue of their valuable roles in that ecosystem, regardless of their relative rarity throughout the state. This is the only place in the coastal zone where the Commission has recognized chaparral as meeting the definition of ESHA. The scientific background presented herein for ESHA analysis in the Santa Monica Mountains is adapted from the Revised Findings for the Malibu LCP that the Commission adopted on February 6, 2003.

For habitats in the Santa Monica Mountains, particularly coastal sage scrub and chaparral, there are three site-specific tests to determine whether an area is ESHA because of its especially valuable role in the ecosystem. First, is the habitat properly identified, for example as coastal sage scrub or chaparral? The requisite information for this test generally should be provided by a site-specific biological assessment. Second, is the habitat largely undeveloped and otherwise relatively pristine? Third, is the habitat part of a large, contiguous block of relatively pristine native vegetation? This should be documented with an aerial photograph from our mapping unit (with the site delineated) and should be attached as an exhibit to the staff report. For those habitats that are absolutely rare or that support individual rare species, it is not necessary to find that they are relatively pristine, and are neither isolated nor fragmented.

Designation of Environmentally Sensitive Habitat in the Santa Monica Mountains

The Coastal Act provides a definition of “environmentally sensitive area” as: “Any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments” (Section 30107.5).

Exhibit 1
CDPA No. 4-02-131
ESHA Findings

There are three important elements to the definition of ESHA. First, a geographic area can be designated ESHA either because of the presence of individual species of plants or animals or because of the presence of a particular habitat. Second, in order for an area to be designated as ESHA, the species or habitat must be either rare or it must be especially valuable. Finally, the area must be easily disturbed or degraded by human activities.

The first test of ESHA is whether a habitat or species is rare. Rarity can take several forms, each of which is important. Within the Santa Monica Mountains, rare species and habitats often fall within one of two common categories. Many rare species or habitats are globally rare, but locally abundant. They have suffered severe historical declines in overall abundance and currently are reduced to a small fraction of their original range, but where present may occur in relatively large numbers or cover large local areas. This is probably the most common form of rarity for both species and habitats in California and is characteristic of coastal sage scrub, for example. Some other habitats are geographically widespread, but occur everywhere in low abundance. California's native perennial grasslands fall within this category.

A second test for ESHA is whether a habitat or species is especially valuable. Areas may be valuable because of their "special nature," such as being an unusually pristine example of a habitat type, containing an unusual mix of species, supporting species at the edge of their range, or containing species with extreme variation. For example, reproducing populations of valley oaks are not only increasingly rare, but their southernmost occurrence is in the Santa Monica Mountains. Generally, however, habitats or species are considered valuable because of their special "role in the ecosystem." For example, many areas within the Santa Monica Mountains may meet this test because they provide habitat for endangered species, protect water quality, provide essential corridors linking one sensitive habitat to another, or provide critical ecological linkages such as the provision of pollinators or crucial trophic connections. Of course, all species play a role in their ecosystem that is arguably "special." However, the Coastal Act requires that this role be "especially valuable." This test is met for relatively pristine areas that are integral parts of the Santa Monica Mountains Mediterranean ecosystem because of the demonstrably rare and extraordinarily special nature of that ecosystem as detailed below.

Finally, ESHAs are those areas that could be easily disturbed or degraded by human activities and developments. Within the Santa Monica Mountains, as in most areas of southern California affected by urbanization, all natural habitats are in grave danger of direct loss or significant degradation as a result of many factors related to anthropogenic changes.

Ecosystem Context of the Habitats of the Santa Monica Mountains

The Santa Monica Mountains comprise the largest, most pristine, and ecologically complex example of a Mediterranean ecosystem in coastal southern California. California's coastal sage scrub, chaparral, oak woodlands, and associated riparian areas have analogues in just a few areas of the world with similar climate. Mediterranean ecosystems with their wet winters and warm dry summers are only found in five localities (the Mediterranean coast, California, Chile, South Africa, and south and southwest Australia). Throughout the world, this ecosystem with its specially adapted vegetation and wildlife has suffered severe loss and degradation from human development. Worldwide, only 18 percent of the Mediterranean community type remains undisturbed[17]. However, within the Santa Monica Mountains, this ecosystem is remarkably intact despite the fact that it is closely surrounded by some 17 million people. For example, the 150,000 acres of the Santa Monica Mountains National Recreation Area, which encompasses most of the Santa Monica Mountains, was estimated to be 90 percent free of development in 2000[18]. Therefore, this relatively pristine area is both large and mostly unfragmented, which fulfills a fundamental tenet of conservation biology[19]. The need for large contiguous areas of natural habitat in order to maintain critical ecological processes has been emphasized by many conservation biologists[20].

In addition to being a large single expanse of land, the Santa Monica Mountains ecosystem is still connected, albeit somewhat tenuously, to adjacent, more inland ecosystems[21]. Connectivity among habitats within an ecosystem and

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[17] National Park Service. 2000. Draft general management plan & environmental impact statement. Santa Monica Mountains National Recreation Area – California.

[18] Ibid.

[19] Harris, L. D. 1988. Edge effects and conservation of biotic diversity. Conserv. Biol. 330-332. Soule, M. E, D. T. Bolger, A. C. Alberts, J. Wright, M. Sorice and S. Hill. 1988. Reconstructed dynamics of rapid extinctions of chaparral-requiring birds in urban habitat islands. Conserv. Biol. 2: 75-92. Yahner, R. H. 1988. Changes in wildlife communities near edges. Conserv. Biol. 2:333-339. Murphy, D. D. 1989. Conservation and confusion: Wrong species, wrong scale, wrong conclusions. Conservation Biol. 3:82-84.

[20] Crooks, K. 2000. Mammalian carnivores as target species for conservation in Southern California. p. 105-112 *in*: Keeley, J. E., M. Baer-Keeley and C. J. Fotheringham (eds), 2nd Interface Between Ecology and Land Development in California, U.S. Geological Survey Open-File Report 00-62. Sauvajot, R. M., E. C. York, T. K. Fuller, H. Sharon Kim, D. A. Kamradt and R. K. Wayne. 2000. Distribution and status of carnivores in the Santa Monica Mountains, California: Preliminary results from radio telemetry and remote camera surveys. p 113-123 *in*: Keeley, J. E., M. Baer-Keeley and C. J. Fotheringham (eds), 2nd Interface Between Ecology and Land Development in California, U.S. Geological Survey Open-File Report 00-62. Beier, P. and R. F. Noss. 1998. Do habitat corridors provide connectivity? Conserv. Biol. 12:1241-1252. Beier, P. 1996. Metapopulation models, tenacious tracking and cougar conservation. *In*: Metapopulations and Wildlife Conservation, ed. D. R. McCullough. Island Press, Covelo, California, 429p.

[21] The SMM area is linked to larger natural inland areas to the north through two narrow corridors: 1) the Conejo Grade connection at the west end of the

connectivity among ecosystems is very important for the preservation of species and ecosystem integrity. In a recent statewide report, the California Resources Agency[22] identified wildlife corridors and habitat connectivity as the top conservation priority. In a letter to governor Gray Davis, sixty leading environmental scientists have endorsed the conclusions of that report[23]. The chief of natural resources at the California Department of Parks and Recreation has identified the Santa Monica Mountains as an area where maintaining connectivity is particularly important[24].

The species most directly affected by large scale connectivity are those that require large areas or a variety of habitats, e.g., gray fox, cougar, bobcat, badger, steelhead trout, and mule deer[25]. Large terrestrial predators are particularly good indicators of habitat connectivity and of the general health of the ecosystem[26]. Recent studies show that the mountain lion, or cougar, is the most sensitive indicator species of habitat fragmentation, followed by the spotted skunk and the bobcat[27]. Sightings of cougars in both inland and coastal areas of the Santa Monica Mountains[28] demonstrate their continued presence. Like the "canary in the mineshaft," an indicator species like this is good evidence that habitat connectivity and large scale ecological function remains in the Santa Monica Mountains ecosystem.

Mountains and 2) the Simi Hills connection in the central region of the SMM (from Malibu Creek State Park to the Santa Susanna Mountains).

[22] California Resources Agency. 2001. Missing Linkages: Restoring Connectivity to the California Landscape. California Wilderness Coalition, Calif. Dept of Parks & Recreation, USGS, San Diego Zoo and The Nature Conservancy. Available at: http://www.calwild.org/pubs/reports/linkages/index.htm

[23] Letters received and included in the September 2002 staff report for the Malibu LCP.

[24] Schoch, D. 2001. Survey lists 300 pathways as vital to state wildlife. Los Angeles Times. August 7, 2001.

[25] Martin, G. 2001. Linking habitat areas called vital for survival of state's wildlife Scientists map main migration corridors. San Francisco Chronicle, August 7, 2001.

[26] Noss, R. F., H. B. Quigley, M. G. Hornocker, T. Merrill and P. C. Paquet. 1996. Conservation biology and carnivore conservation in the Rocky Mountains. Conerv. Biol. 10: 949-963. Noss, R. F. 1995. Maintaining ecological integrity in representative reserve networks. World Wildlife Fund Canada.

[27] Sauvajot, R. M., E. C. York, T. K. Fuller, H. Sharon Kim, D. A. Kamradt and R. K. Wayne. 2000. Distribution and status of carnivores in the Santa Monica Mountains, California: Preliminary results from radio telemetry and remote camera surveys. p 113-123 in: Keeley, J. E., M. Baer-Keeley and C. J. Fotheringham (eds), 2nd Interface Between Ecology and Land Development in California, U.S. Geological Survey Open-File Report 00-62. Beier, P. 1996. Metapopulation models, tenacious tracking and cougar conservation. In: Metapopulations and Wildlife Conservation, ed. D. R. McCullough. Island Press, Covelo, California, 429p.

[28] Recent sightings of mountain lions include: Temescal Canyon (pers. com., Peter Brown, Facilities Manager, Calvary Church), Topanga Canyon (pers. com., Marti Witter, NPS), Encinal and Trancas Canyons (pers. com., Pat Healy), Stump Ranch Research Center (pers. com., Dr. Robert Wayne, Dept. of Biology, UCLA). In May of 2002, the NPS *photographed* a mountain lion at a trip camera on the Back Bone Trail near Castro Crest – Seth Riley, Eric York and Dr. Ray Sauvajot, National Park Service, SMMNRA.

The habitat integrity and connectivity that is still evident within the Santa Monica Mountains is extremely important to maintain, because both theory and experiments over 75 years in ecology confirm that large spatially connected habitats tend to be more stable and have less frequent extinctions than habitats without extended spatial structure[29]. Beyond simply destabilizing the ecosystem, fragmentation and disturbance can even cause unexpected and irreversible changes to new and completely different kinds of ecosystems (habitat conversion)[30].

As a result of the pristine nature of large areas of the Santa Monica Mountains and the existence of large, unfragmented and interconnected blocks of habitat, this ecosystem continues to support an extremely diverse flora and fauna. The observed diversity is probably a function of the diversity of physical habitats. The Santa Monica Mountains have the greatest geological diversity of all major mountain ranges within the transverse range province. According to the National Park Service, the Santa Monica Mountains contain 40 separate watersheds and over 170 major streams with 49 coastal outlets[31]. These streams are somewhat unique along the California coast because of their topographic setting. As a "transverse" range, the Santa Monica Mountains are oriented in an east-west direction. As a result, the south-facing riparian habitats have more variable sun exposure than the east-west riparian corridors of other sections of the coast. This creates a more diverse moisture environment and contributes to the higher biodiversity of the region. The many different physical habitats of the Santa Monica Mountains support at least 17 native vegetation types[32] including the following habitats considered sensitive by the California Department of Fish and Game: native perennial grassland, coastal sage scrub, red-shank chaparral, valley oak woodland, walnut woodland, southern willow scrub, southern cottonwood-willow riparian forest, sycamore-alder woodland, oak riparian forest, coastal salt marsh, and freshwater marsh. Over 400 species of birds, 35 species of reptiles and amphibians, and more than 40 species of mammals have been documented in this diverse ecosystem. More than 80 sensitive species of plants and animals (listed, proposed for listing, or species of concern) are known to

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[29] Gause, G. F. 1934. The struggle for existence. Balitmore, William and Wilkins 163 p. (also reprinted by Hafner, N.Y. 1964). Gause, G. F., N. P. Smaragdova and A. A. Witt. 1936. Further studies of interaction between predators and their prey. J. Anim. Ecol. 5:1-18. Huffaker, C. B. 1958. Experimental studies on predation: dispersion factors and predator-prey oscillations. Hilgardia 27:343-383. Luckinbill, L. S. 1973. Coexistence in laboratory populations of *Paramecium aurelia* and its predator *Didinium nasutum*. Ecology 54:1320-1327. Allen, J. C., C. C. Brewster and D. H. Slone. 2001. Spatially explicit ecological models: A spatial convolution approach. Chaos, Solitons and Fractals. 12:333-347.

[30] Scheffer, M., S. Carpenter, J. A. Foley, C. Folke and B. Walker. 2001. Catastrophic shifts in ecosystems. Nature 413:591-596.

[31] NPS. 2000. op.cit.

[32] From the NPS report (2000 op. cit.) that is based on the older Holland system of subjective classification. The data-driven system of Sawyer and Keeler-Wolf results in a much larger number of distinct "alliances" or vegetation types.

occur or have the potential to occur within the Santa Monica Mountains Mediterranean ecosystem.

The Santa Monica Mountains are also important in a larger regional context. Several recent studies have concluded that the area of southern California that includes the Santa Monica Mountains is among the most sensitive in the world in terms of the number of rare endemic species, endangered species and habitat loss. These studies have designated the area to be a local hot-spot of endangerment in need of special protection[33].

Therefore, the Commission finds that the Santa Monica Mountains ecosystem is itself rare and especially valuable because of its special nature as the largest, most pristine, physically complex, and biologically diverse example of a Mediterranean ecosystem in coastal southern California. The Commission further finds that because of the rare and special nature of the Santa Monica Mountains ecosystem, the ecosystem roles of substantially intact areas of the constituent plant communities discussed below are "especially valuable" under the Coastal Act.

Major Habitats within the Santa Monica Mountains

The most recent vegetation map that is available for the Santa Monica Mountains is the map that was produced for the National Park Service in the mid-1990s using 1993 satellite imagery supplemented with color and color infrared aerial imagery from 1984, 1988, and 1994 and field review[34]. The minimum mapping unit was 5 acres. For that map, the vegetation was mapped in very broad categories, generally following a vegetation classification scheme developed by Holland[35]. Because of the mapping methods used the degree of plant community complexity in the landscape is not represented. For example, the various types of "ceanothus chaparral" that have been documented were lumped under one vegetation type referred to as "northern mixed chaparral." Dr. Todd Keeler-Wolf of the California Department of Fish and Game is currently conducting a more detailed, quantitative vegetation survey of the Santa Monica Mountains.

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[33] Myers, N. 1990. The biodiversity challenge: Expanded hot-spots analysis. Environmentalist 10:243-256. Myers, N., R. A. Mittermeier, C. G. Mittermeier, G. A. B. da Fonseca and J. A. Kent. 2000. Biodiversity hot-spots for conservation priorities. Nature 403:853-858. Dobson, A. P., J. P. Rodriguez, W. M. Roberts and D. S. Wilcove. 1997. Geographic distribution of endangered species in the United States. Science 275:550-553.

[34] Franklin, J. 1997. Forest Service Southern California Mapping Project, Santa Monica Mountains National Recreation Area, Task 11 Description and Results, Final Report. June 13, 1997, Dept. of Geography, San Diego State University, USFS Contract No. 53-91S8-3-TM45.

[35] Holland R. F. 1986. Preliminary Descriptions of the Terrestrial Natural Communities of California. State of California, The Resources Agency, Dept. of Fish and Game, Natural Heritage Division, Sacramento, CA. 95814.

The National Park Service map can be used to characterize broadly the types of plant communities present. The main generic plant communities present in the Santa Monica Mountains[36] are: coastal sage scrub, chaparral, riparian woodland, coast live oak woodland, and grasslands.

Riparian Woodland

Some 49 streams connect inland areas with the coast, and there are many smaller drainages as well, many of which are "blue line." Riparian woodlands occur along both perennial and intermittent streams in nutrient-rich soils. Partly because of its multi-layered vegetation, the riparian community contains the greatest overall biodiversity of all the plant communities in the area[37]. At least four types of riparian communities are discernable in the Santa Monica Mountains: walnut riparian areas, mulefat-dominated riparian areas, willow riparian areas and sycamore riparian woodlands. Of these, the sycamore riparian woodland is the most diverse riparian community in the area. In these habitats, the dominant plant species include arroyo willow, California black walnut, sycamore, coast live oak, Mexican elderberry, California bay laurel, and mule fat. Wildlife species that have been observed in this community include least Bell's vireo (a State and federally listed species), American goldfinches, black phoebes, warbling vireos, bank swallows (State listed threatened species), song sparrows, belted kingfishers, raccoons, and California and Pacific tree frogs.

Riparian communities are the most species-rich to be found in the Santa Monica Mountains. Because of their multi-layered vegetation, available water supply, vegetative cover and adjacency to shrubland habitats, they are attractive to many native wildlife species, and provide essential functions in their lifecycles[38]. During the long dry summers in this Mediterranean climate, these communities are an essential refuge and oasis for much of the areas' wildlife.

Riparian habitats and their associated streams form important connecting links in the Santa Monica Mountains. These habitats connect all of the biological communities from the highest elevation chaparral to the sea with a unidirectional

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[36] National Park Service. 2000. Draft: General Management Plan & Environmental Impact Statement, Santa Monica Mountains National Recreation Area, US Dept. of Interior, National Park Service, December 2000. (Fig. 11 in this document.)
[37] Ibid.
[38] Walter, Hartmut. Bird use of Mediterranean habitats in the Santa Monica Mountains, Coastal Commission Workshop on the Significance of Native Habitats in the Santa Monica Mountains. CCC Hearing, June 13, 2002, Queen Mary Hotel.

flowing water system, one function of which is to carry nutrients through the ecosystem to the benefit of many different species along the way.

The streams themselves provide refuge for sensitive species including: the coast range newt, the Pacific pond turtle, and the steelhead trout. The coast range newt and the Pacific pond turtle are California Species of Special Concern and are proposed for federal listing[39], and the steelhead trout is federally endangered. The health of the streams is dependent on the ecological functions provided by the associated riparian woodlands. These functions include the provision of large woody debris for habitat, shading that controls water temperature, and input of leaves that provide the foundation of the stream-based trophic structure.

The importance of the connectivity between riparian areas and adjacent habitats is illustrated by the Pacific pond turtle and the coast range newt, both of which are sensitive and both of which require this connectivity for their survival. The life history of the Pacific pond turtle demonstrates the importance of riparian areas and their associated watersheds for this species. These turtles require the stream habitat during the wet season. However, recent radio tracking work[40] has found that although the Pacific pond turtle spends the wet season in streams, it also requires upland habitat for refuge during the dry season. Thus, in coastal southern California, the Pacific pond turtle requires both streams and intact adjacent upland habitats such as coastal sage scrub, woodlands or chaparral as part of their normal life cycle. The turtles spend about four months of the year in upland refuge sites located an average distance of 50 m (but up to 280 m) from the edge of the creek bed. Similarly, nesting sites where the females lay eggs are also located in upland habitats an average of 30 m (but up to 170 m) from the creek. Occasionally, these turtles move up to 2 miles across upland habitat[41]. Like many species, the pond turtle requires both stream habitats and the upland habitats of the watershed to complete its normal annual cycle of behavior. Similarly, the coast range newt has been observed to travel hundreds of meters into upland habitat and spend about ten months of the year far from the riparian streambed[42]. They return to the stream to breed in the wet season, and they are therefore another species that requires both riparian habitat and adjacent uplands for their survival.

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[39] USFWS. 1989. Endangered and threatened wildlife and plants; animal notice of review. Fed. Reg. 54:554-579. USFWS. 1993. Endangered and threatened wildlife and plants; notice of 1-year petition finding on the western pond turtle. Fed. Reg. 58:42717-42718.

[40] Rathbun, G.B., N.J. Scott and T.G. Murphy. 2002. Terrestrial habitat use by Pacific pond turtle in a Mediterranean climate. Southwestern Naturalist. (*in Press*).

[41] Testimony by R. Dagit, Resource Conservation District of the Santa Monica Mountains at the CCC Habitat Workshop on June 13, 2002.

[42] Dr, Lee Kats, Pepperdine University, personal communication to Dr J. Allen, CCC.

Riparian habitats in California have suffered serious losses and such habitats in southern California are currently very rare and seriously threatened. In 1989, Faber estimated that 95-97% of riparian habitat in southern California was already lost[43]. Writing at the same time as Faber, Bowler asserted that, *"[t]here is no question that riparian habitat in southern California is endangered."*[44] In the intervening 13 years, there have been continuing losses of the small amount of riparian woodlands that remain. Today these habitats are, along with native grasslands and wetlands, among the most threatened in California.

In addition to direct habitat loss, streams and riparian areas have been degraded by the effects of development. For example, the coast range newt, a California Species of Special Concern has suffered a variety of impacts from human-related disturbances[45]. Human-caused increased fire frequency has resulted in increased sedimentation rates, which exacerbates the cannibalistic predation of adult newts on the larval stages.[46] In addition impacts from non-native species of crayfish and mosquito fish have also been documented. When these non-native predators are introduced, native prey organisms are exposed to new mortality pressures for which they are not adapted. Coast range newts that breed in the Santa Monica Mountain streams do not appear to have adaptations that permit co-occurrence with introduced mosquito fish and crayfish[47]. These introduced predators have eliminated the newts from streams where they previously occurred by both direct predation and suppression of breeding.

Therefore, because of the essential role that riparian plant communities play in maintaining the biodiversity of the Santa Monica Mountains, because of the historical losses and current rarity of these habitats in southern California, and because of their extreme sensitivity to disturbance, the native riparian habitats in the Santa Monica Mountains meet the definition of ESHA under the Coastal Act.

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[43] Faber, P.A., E, Keller, A. Sands and B.M. Massey. 1989. The ecology of riparian habitats of the southern California coastal region: a community profile. U.S. Fish and Wildlife Service Biological Report 85(7.27) 152pp.
[44] Bowler, P.A. 1989. Riparian woodland: An endangered habitat in southern California. Pp 80-97 *in* Schoenherr, A.A. (ed.) Endangered plant communities of southern California. Botanists Special Publication No. 3.
[45] Gamradt, S.C., L.B. Kats and C.B. Anzalone. 1997. Aggression by non-native crayfish deters breeding in California newts. Conservation Biology 11(3):793-796.
[46] Kerby, L.J., and L.B. Kats. 1998. Modified interactions between salamander life stages caused by wildfire-induced sedimentation. Ecology 79(2):740-745.
[47] Gamradt, S.C. and L.B. Kats. 1996. Effect of introduced crayfish and mosquitofish on California newts. Conservation Biology 10(4):1155-1162.

Coastal Sage Scrub and Chaparral

Coastal sage scrub and chaparral are often lumped together as "shrublands" because of their roughly similar appearance and occurrence in similar and often adjacent physical habitats. In earlier literature, these vegetation associations were often called soft chaparral and hard chaparral, respectively. "Soft" and "hard" refers to differences in their foliage associated with different adaptations to summer drought. Coastal sage scrub is dominated by soft-leaved, generally low-growing aromatic shrubs that die back and drop their leaves in response to drought. Chaparral is dominated by taller, deeper-rooted evergreen shrubs with hard, waxy leaves that minimize water loss during drought.

The two vegetation types are often found interspersed with each other. Under some circumstances, coastal sage scrub may even be successional to chaparral, meaning that after disturbance, a site may first be covered by coastal sage scrub, which is then replaced with chaparral over long periods of time.[48] The existing mosaic of coastal sage scrub and chaparral is the result of a dynamic process that is a function of fire history, recent climatic conditions, soil differences, slope, aspect and moisture regime, and the two habitats should not be thought of as completely separate and unrelated entities but as different phases of the same process[49]. The spatial pattern of these vegetation stands at any given time thus depends on both local site conditions and on history (e.g., fire), and is influenced by both natural and human factors.

In lower elevation areas with high fire frequency, chaparral and coastal sage scrub may be in a state of flux, leading one researcher to describe the mix as a "coastal sage-chaparral subclimax."[50] Several other researchers have noted the replacement of chaparral by coastal sage scrub, or coastal sage scrub by chaparral depending on fire history.[51] In transitional and other settings, the mosaic of chaparral and coastal sage scrub enriches the seasonal plant resource base and provides additional habitat variability and seasonality for the many species that inhabit the area.

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[48] Cooper, W.S. 1922. The broad-sclerophyll vegetation of California. Carnegie Institution of Washington Publication 319. 124 pp.

[49] Longcore, T and C. Rich. 2002. Protection of environmentally sensitive habitat areas in proposed local coastal plan for the Santa Monica Mountains. The Urban Wildlands Group, Inc., P.O. Box 24020 Los Angeles, CA 90024. (See attached comment document in Appendix).

[50] Hanes, T.L. 1965. Ecological studies on two closely related chaparral shrubs in southern California. Ecological Monographs 41:27-52.

[51] Gray, K.L. 1983. Competition for light and dynamic boundary between chaparral and coastal sage scrub. Madrono 30(1):43-49. Zedler, P.H., C.R. Gautier and G.S. McMaster. 1983. Vegetation change in response to extreme events: The effect of a short interval between fires in California chaparral and coastal sage scrub. Ecology 64(4): 809-818.

Relationships Among Coastal Sage Scrub, Chaparral and Riparian Communities

Although the constituent communities of the Santa Monica Mountains Mediterranean ecosystem can be defined and distinguished based on species composition, growth habits, and the physical habitats they characteristically occupy, they are not independent entities ecologically. Many species of plants, such as black sage, and laurel sumac, occur in more than one plant community and many animals rely on the predictable mix of communities found in undisturbed Mediterranean ecosystems to sustain them through the seasons and during different portions of their life histories.

Strong evidence for the interconnectedness between chaparral, coastal scrub and other habitats is provided by "opportunistic foragers" (animals that follow the growth and flowering cycles across these habitats). Coastal scrub and chaparral flowering and growth cycles differ in a complimentary and sequential way that many animals have evolved to exploit. Whereas coastal sage scrub is shallow-rooted and responds quickly to seasonal rains, chaparral plants are typically deep-rooted having most of their flowering and growth later in the rainy season after the deeper soil layers have been saturated[52]. New growth of chaparral evergreen shrubs takes place about four months later than coastal sage scrub plants and it continues later into the summer[53]. For example, in coastal sage scrub, California sagebrush flowers and grows from August to February and coyote bush flowers from August to November[54]. In contrast, chamise chaparral and bigpod ceanothus flower from April to June, buck brush ceanothus flowers from February to April, and hoaryleaf ceanothus flowers from March to April.

Many groups of animals exploit these seasonal differences in growth and blooming period. The opportunistic foraging insect community (e.g., honeybees, butterflies and moths) tends to follow these cycles of flowering and new growth, moving from coastal sage scrub in the early rainy season to chaparral in the spring[55]. The insects in turn are followed by insectivorous birds such as the blue-gray gnatcatcher[56], bushtit, cactus wren, Bewick's wren and California towhee.

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[52] DeSimone, S. 2000. California's coastal sage scrub. Fremontia 23(4):3-8. Mooney, H.A. 1988. Southern coastal scrub. Chap. 13 *in* Barbour, M.G. and J. Majors; Eds. 1988. Terrestrial vegetation of California, 2nd Edition. Calif. Native Plant Soc. Spec. Publ. #9.

[53] Schoenherr, A. A. 1992. A natural history of California. University of California Press, Berkeley. 772p.

[54] Dale, N. 2000. Flowering plants of the Santa Monica Mountains. California Native Plant Society, 1722 J Street, Suite 17, Sacramento, CA 95814.

[55] Ballmer, G. R. 1995. What's bugging coastal sage scrub. Fremontia 23(4):17-26.

[56] Root, R. B. 1967. The niche exploitation pattern of the blue-gray gnatcatcher. Ecol. Monog.37:317-350.

At night bats take over the role of daytime insectivores. At least 12 species of bats (all of which are considered sensitive) occur in the Santa Monica Mountains[57]. Five species of hummingbirds also follow the flowering cycle[58].

Many species of 'opportunistic foragers', which utilize several different community types, perform important ecological roles during their seasonal movements. The scrub jay is a good example of such a species. The scrub jay is an omnivore and forages in coastal sage scrub, chaparral, and oak woodlands for insects, berries and notably acorns. Its foraging behavior includes the habit of burying acorns, usually at sites away from the parent tree canopy. Buried acorns have a much better chance of successful germination (about two-fold) than exposed acorns because they are protected from desiccation and predators. One scrub jay will bury approximately 5000 acorns in a year. The scrub jay therefore performs the function of greatly increasing recruitment and regeneration of oak woodland, a valuable and sensitive habitat type[59].

Like the scrub jay, most of the species of birds that inhabit the Mediterranean ecosystem in the Santa Monica Mountains require more than one community type in order to flourish. Many species include several community types in their daily activities. Other species tend to move from one community to another seasonally. The importance of maintaining the integrity of the multi-community ecosystem is clear in the following observations of Dr. Hartmut Walter of the University of California at Los Angeles:

> **"Bird diversity is directly related to the habitat mosaic and topographic diversity of the Santa Monicas. Most bird species in this bio-landscape require more than one habitat for survival and reproduction." "A significant proportion of the avifauna breeds in the wooded canyons of the Santa Monicas. Most of the canyon breeders forage every day in the brush- and grass-covered slopes, ridges and mesas. They would not breed in the canyons in the absence of the surrounding shrublands. Hawks, owls, falcons, orioles, flycatchers, woodpeckers, warblers, hummingbirds, etc. belong to this group. Conversely, some of the characteristic chaparral birds such as thrashers, quails, and wrentits need the canyons for access to shelter, protection from fire, and water. The regular and massive movement of birds between**

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[57] Letter from Dr. Marti Witter, NPS, dated Sept. 13, 2001, in letters received and included in the September 2002 staff report for the Malibu LCP.

[58] National Park Service. 1993. A checklist of the birds of the Santa Monica Mountains National Recreation Area. Southwest Parks and Monuments Assoc., 221 N. Court, Tucson, AZ. 85701

[59] Borchert, M. I., F. W. Davis, J. Michaelsen and L. D. Oyler. 1989. Interactions of factors affecting seedling recruitment of blue oak (*Quercus douglasii*) in California. Ecology 70:389-404. Bossema, I. 1979. Jays and oaks: An eco-ethological study of a symbiosis. Behavior 70:1-118. Schoenherr, A. A. 1992. A natural history of California. University of California Press, Berkeley. 772p.

riparian corridors and adjacent shrublands has been demonstrated by qualitative and quantitative observations by several UCLA students[60]."

Thus, the Mediterranean ecosystem of the Santa Monica Mountains is a mosaic of vegetation types linked together ecologically. The high biodiversity of the area results from both the diversity and the interconnected nature of this mosaic. Most raptor species, for example, require large areas and will often require different habitats for perching, nesting and foraging. Fourteen species of raptors (13 of which are considered sensitive) are reported from the Santa Monica Mountains. These species utilize a variety of habitats including rock outcrops, oak woodlands, riparian areas, grasslands, chaparral, coastal sage scrub, estuaries and freshwater lakes[61].

When the community mosaic is disrupted and fragmented by development, many chaparral-associated native bird species are impacted. In a study of landscape-level fragmentation in the Santa Monica Mountains, Stralberg[62] found that the ash-throated flycatcher, Bewick's wren, wrentit, blue-gray gnatcatcher, California thrasher, orange-crowned warbler, rufous-crowned sparrow, spotted towhee, and California towhee all decreased in numbers as a result of urbanization. Soule[63] observed similar effects of fragmentation on chaparral and coastal sage scrub birds in the San Diego area.

In summary, all of the vegetation types in this ecosystem are strongly linked by animal movement and foraging. Whereas classification and mapping of vegetation types may suggest a snapshot view of the system, the seasonal movements and foraging of animals across these habitats illustrates the dynamic nature and vital connections that are crucial to the survival of this ecosystem.

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[60] Walter, Hartmut. Bird use of Mediterranean habitats in the Santa Monica Mountains, Coastal Commission Workshop on the Significance of Native Habitats in the Santa Monica Mountains. CCC Hearing, June 13, 2002, Queen Mary Hotel.

[61] National Park Service. 1993. A checklist of the birds of the Santa Monica Mountains National Recreation Area. Southwest Parks and Monuments Assoc., 221 N. Court, Tucson, AZ. 85701. *and* Letter from Dr. Marti Witter, NPS, Dated Sept. 13, 2001, in letters received and included in the September 2002 staff report for the Malibu LCP.

[62] Stralberg, D. 2000. Landscape-level urbanization effects on chaparral birds: A Santa Monica Mountains case study. p 125-136 *in*: Keeley, J. E., M. Baer-Keeley and C. J. Fotheringham (eds), 2nd Interface Between Ecology and Land Development in California, U.S. Geological Survey Open-File Report 00-62.

[63] Soule, M. E, D. T. Bolger, A. C. Alberts, J. Wright, M. Sorice and S. Hill. 1988. Reconstructed dynamics of rapid extinctions of chaparral-requiring birds in urban habitat islands. Conserv. Biol. 2: 75-92.

Coastal Sage Scrub

"Coastal sage scrub" is a generic vegetation type that is inclusive of several subtypes[64]. In the Santa Monica Mountains, coastal sage scrub is mostly of the type termed "Venturan Coastal Sage Scrub." In general, coastal sage scrub is comprised of dominant species that are semi-woody and low-growing, with shallow, dense roots that enable them to respond quickly to rainfall. Under the moist conditions of winter and spring, they grow quickly, flower, and produce light, wind-dispersed seeds, making them good colonizers following disturbance. These species cope with summer drought by dying back, dropping their leaves or producing a smaller summer leaf in order to reduce water loss. Stands of coastal sage scrub are much more open than chaparral and contain a greater admixture of herbaceous species. Coastal sage scrub is generally restricted to drier sites, such as low foothills, south-facing slopes, and shallow soils at higher elevations.

The species composition and structure of individual stands of coastal sage scrub depend on moisture conditions that derive from slope, aspect, elevation and soil type. Drier sites are dominated by more drought-resistant species (e.g., California sagebrush, coast buckwheat, and *Opuntia* cactus). Where more moisture is available (e.g., north-facing slopes), larger evergreen species such as toyon, laurel sumac, lemonade berry, and sugar bush are common. As a result, there is more cover for wildlife, and movement of large animals from chaparral into coastal sage scrub is facilitated in these areas. Characteristic wildlife in this community includes Anna's hummingbirds, rufous-sided towhees, California quail, greater roadrunners, Bewick's wrens, coyotes, and coast horned lizards[65], but most of these species move between coastal sage scrub and chaparral during their daily activities or on a seasonal basis.

Of the many important ecosystem roles performed by the coastal sage scrub community, five are particularly important in the Santa Monica Mountains. Coastal sage scrub provides critical linkages between riparian corridors, provides essential habitat for species that require several habitat types during the course of their life histories, provides essential habitat for local endemics, supports rare species that are in danger of extinction, and reduces erosion, thereby protecting the water quality of coastal streams.

Riparian woodlands are primary contributors to the high biodiversity of the Santa Monica Mountains. The ecological integrity of those riparian habitats not only requires wildlife dispersal along the streams, but also depends on the ability of

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[64] Kirkpatrick, J.B. and C.F. Hutchinson. 1977. The community composition of Californian coastal sage scrub. Vegetatio 35:21-33; Holland, 1986. op.cit.; Sawyer and Keeler-Wolf, 1995, op.cit.

[65] National Park Service. 2000. Draft: General Management Plan & Environmental Impact Statement, Santa Monica Mountains National Recreation Area, US Dept. of Interior, National Park Service, December 2000.

animals to move from one riparian area to another. Such movement requires that the riparian corridors be connected by suitable habitat. In the Santa Monica Mountains, coastal sage scrub and chaparral provide that function. Significant development in coastal sage scrub would reduce the riparian corridors to linear islands of habitat with severe edge effects[66], reduced diversity, and lower productivity.

Most wildlife species and many species of plants utilize several types of habitat. Many species of animals endemic to Mediterranean habitats move among several plant communities during their daily activities and many are reliant on different communities either seasonally or during different stages of the their life cycle. Without an intact mosaic of coastal sage scrub, chaparral, and riparian community types, many species will not thrive. Specific examples of the importance of interconnected communities, or habitats, were provided in the discussion above. This is an essential ecosystem role of coastal sage scrub.

A characteristic of the coastal sage scrub vegetation type is a high degree of endemism. This is consonant with Westman's observation that 44 percent of the species he sampled in coastal sage scrub occurred at only one of his 67 sites, which were distributed from the San Francisco Bay area to Mexico[67]. Species with restricted distributions are by nature more susceptible to loss or degradation of their habitat. Westman said of this unique and local aspect of coastal sage scrub species in California:

> "While there are about 50 widespread sage scrub species, more than half of the 375 species encountered in the present study of the sage scrub flora are rare in occurrence within the habitat range. In view of the reduction of the area of coastal sage scrub in California to 10-15% of its former extent and the limited extent of preserves, measures to conserve the diversity of the flora are needed."[68]

Coastal sage scrub in southern California provides habitat for about 100 rare species[69], many of which are also endemic to limited geographic regions[70]. In

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[66] Environmental impacts are particularly severe at the interface between development and natural habitats. The greater the amount of this "edge" relative to the area of natural habitat, the worse the impact.

[67] Westman, W.E. 1981. Diversity relations and succession in Californian coastal sage scrub. Ecology 62:170-184.

[68] Ibid.

[69] Atwood, J. L. 1993. California gnatcatchers and coastal sage scrub: The biological basis for endangered species listing. pp.149-166 *In*: Interface Between Ecology and Land Development in California. Ed. J. E. Keeley, So. Calif. Acad. of Sci., Los Angeles. California Department of Fish and Game (CDFG). 1993. The Southern California Coastal Sage Scrub (CSS) Natural Communities

the Santa Monica Mountains, rare animals that inhabit coastal sage scrub[71] include the Santa Monica shieldback katydid, silvery legless lizard, coastal cactus wren, Bell's sparrow, San Diego desert woodrat, southern California rufous-crowned sparrow, coastal western whiptail, and San Diego horned lizard. Some of these species are also found in chaparral[72]. Rare plants found in coastal sage scrub in the Santa Monica Mountains include Santa Susana tarplant, Coulter's saltbush, Blockman's dudleya, Braunton's milkvetch, Parry's spineflower, and Plummer's mariposa lily[73]. A total of 32 sensitive species of reptiles, birds and mammals have been identified in this community by the National Park Service.[74]

One of the most important ecological functions of coastal sage scrub in the Santa Monica Mountains is to protect water quality in coastal streams by reducing erosion in the watershed. Although shallow rooted, the shrubs that define coastal sage scrub have dense root masses that hold the surface soils much more effectively than the exotic annual grasses and forbs that tend to dominate in disturbed areas. The native shrubs of this community are resistant not only to drought, as discussed above, but well adapted to fire. Most of the semi-woody shrubs have some ability to crown sprout after fire. Several CSS species (e.g., *Eriogonum cinereum*) in the Santa Monica Mountains and adjacent areas resprout vigorously and other species growing near the coast demonstrate this characteristic more strongly than do individuals of the same species growing at inland sites in Riverside County.[75] These shrub species also tend to recolonize rapidly from seed following fire. As a result they provide persistent cover that reduces erosion.

In addition to performing extremely important roles in the Mediterranean ecosystem, the coastal sage scrub community type has been drastically reduced in area by habitat loss to development. In the early 1980's it was estimated that 85 to 90 percent of the original extent of coastal sage scrub in California had

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Conservation Plan (NCCP). CDFG and Calif. Resources Agency, 1416 9th St., Sacramento, CA 95814.

[70] Westman, W.E. 1981. op. cit.

[71] Biological Resources Assessment of the Proposed Santa Monica Mountains Significant Ecological Area. Nov. 2000. Los Angeles Co., Dept. of Regional Planning, 320 West Temple St., Rm. 1383, Los Angeles, CA 90012.

[72] O'Leary J.F., S.A. DeSimone, D.D. Murphy, P.F. Brussard, M.S. Gilpin, and R.F. Noss. 1994. Bibliographies on coastal sage scrub and related malacophyllous shrublands of other Mediterranean-type climates. *California Wildlife Conservation Bulletin* 10:1–51.

[73] Biological Resources Assessment of the Proposed Santa Monica Mountains Significant Ecological Area. Nov. 2000. Los Angeles Co., Dept. of Regional Planning, 320 West Temple St., Rm. 1383, Los Angeles, CA 90012.

[74] NPS, 2000, op cit.

[75] Dr. John O'Leary, SDSU, personal communication to Dr. John Dixon, CCC, July 2, 2002

already been destroyed.[76] Losses since that time have been significant and particularly severe in the coastal zone.

Therefore, because of its increasing rarity, its important role in the functioning of the Santa Monica Mountains Mediterranean ecosystem, and its extreme vulnerability to development, coastal sage scrub within the Santa Monica Mountains meets the definition of ESHA under the Coastal Act.

Chaparral

Another shrub community in the Santa Monica Mountain Mediterranean ecosystem is chaparral. Like "coastal sage scrub," this is a generic category of vegetation. Chaparral species have deep roots (10s of ft) and hard waxy leaves, adaptations to drought that increase water supply and decrease water loss at the leaf surface. Some chaparral species cope more effectively with drought conditions than do desert plants[77]. Chaparral plants vary from about one to four meters tall and form dense, intertwining stands with nearly 100 percent ground cover. As a result, there are few herbaceous species present in mature stands. Chaparral is well adapted to fire. Many species regenerate mainly by crown sprouting; others rely on seeds which are stimulated to germinate by the heat and ash from fires. Over 100 evergreen shrubs may be found in chaparral[78]. On average, chaparral is found in wetter habitats than coastal sage scrub, being more common at higher elevations and on north facing slopes.

The broad category "northern mixed chaparral" is the major type of chaparral shown in the National Park Service map of the Santa Monica Mountains. However, northern mixed chaparral can be variously dominated by chamise, scrub oak or one of several species of manzanita or by ceanothus. In addition, it commonly contains woody vines and large shrubs such as mountain mahogany, toyon, hollyleaf redberry, and sugarbush[79]. The rare red shank chaparral plant community also occurs in the Santa Monica Mountains. Although included within the category "northern mixed chaparral" in the vegetation map, several types of ceanothus chaparral are reported in the Santa Monica Mountains. Ceanothus chaparral occurs on stable slopes and ridges, and may be dominated by bigpod ceanothus, buck brush ceanothus, hoaryleaf ceanothus, or greenbark ceanothus. In addition to ceanothus, other species that are usually present in varying

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[76] Westman, W.E. 1981. op. cit.
[77] Dr. Stephen Davis, Pepperdine University. Presentation at the CCC workshop on the significance of native habitats in the Santa Monica Mountains. June 13, 2002.
[78] Keely, J.E. and S.C. Keeley. Chaparral. Pages 166-207 in M.G. Barbour and W.D. Billings, eds. North American Terrestrial Vegetation. New York, Cambridge University Press.
[79] Ibid.

amounts are chamise, black sage, holly-leaf redberry, sugarbush, and coast golden bush[80].

Several sensitive plant species that occur in the chaparral of the Santa Monica Mountains area are: Santa Susana tarplant, Lyon's pentachaeta, marcescent dudleya, Santa Monica Mountains dudleya, Braunton's milk vetch and salt spring checkerbloom[81]. Several occurring or potentially occurring sensitive animal species in chaparral from the area are: Santa Monica shieldback katydid, western spadefoot toad, silvery legless lizard, San Bernardino ring-neck snake, San Diego mountain kingsnake, coast patch-nosed snake, sharp-shinned hawk, southern California rufous-crowned sparrow, Bell's sparrow, yellow warbler, pallid bat, long-legged myotis bat, western mastiff bat, and San Diego desert woodrat.[82]

Coastal sage scrub and chaparral are the predominant generic community types of the Santa Monica Mountains and provide the living matrix within which rarer habitats like riparian woodlands exist. These two shrub communities share many important ecosystem roles. Like coastal sage scrub, chaparral within the Santa Monica Mountains provides critical linkages among riparian corridors, provides essential habitat for species that require several habitat types during the course of their life histories, provides essential habitat for sensitive species, and stabilizes steep slopes and reduces erosion, thereby protecting the water quality of coastal streams.

Many species of animals in Mediterranean habitats characteristically move among several plant communities during their daily activities, and many are reliant on different communities either seasonally or during different stages of their life cycle. The importance of an intact mosaic of coastal sage scrub, chaparral, and riparian community types is perhaps most critical for birds. However, the same principles apply to other taxonomic groups. For example, whereas coastal sage scrub supports a higher diversity of native ant species than chaparral, chaparral habitat is necessary for the coast horned lizard, an ant specialist[83]. Additional examples of the importance of an interconnected communities, or habitats, were provided in the discussion of coastal sage scrub above. This is an extremely important ecosystem role of chaparral in the Santa Monica Mountains.

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[80] Ibid.
[81] Biological Resources Assessment of the Proposed Santa Monica Mountains Significant Ecological Area. Nov. 2000. Los Angeles Co., Dept. of Regional Planning, 320 West Temple St., Rm. 1383, Los Angeles, CA 90012.
[82] Ibid.
[83] A.V. Suarez. Ants and lizards in coastal sage scrub and chaparral. A presentation at the CCC workshop on the significance of native habitats in the Santa Monica Mountains. June 13, 2002.

Chaparral is also remarkably adapted to control erosion, especially on steep slopes. The root systems of chaparral plants are very deep, extending far below the surface and penetrating the bedrock below[84], so chaparral literally holds the hillsides together and prevents slippage.[85] In addition, the direct soil erosion from precipitation is also greatly reduced by 1) water interception on the leaves and above ground foliage and plant structures, and 2) slowing the runoff of water across the soil surface and providing greater soil infiltration. Chaparral plants are extremely resistant to drought, which enables them to persist on steep slopes even during long periods of adverse conditions. Many other species die under such conditions, leaving the slopes unprotected when rains return. Since chaparral plants recover rapidly from fire, they quickly re-exert their ground stabilizing influence following burns. The effectiveness of chaparral for erosion control after fire increases rapidly with time[86]. Thus, the erosion from a 2-inch rain-day event drops from 5 yd^3/acre of soil one year after a fire to 1 yd^3/acre after 4 years.[87] The following table illustrates the strong protective effect of chaparral in preventing erosion.

Soil erosion as a function of 24-hour precipitation and chaparral age.

Years Since Fire	Erosion (yd^3/acre) at Maximum 24-hr Precipitation of:		
	2 inches	5 inches	11 inches
1	5	20	180
4	1	12	140
17	0	1	28
50+	0	0	3

Therefore, because of its important roles in the functioning of the Santa Monica Mountains Mediterranean ecosystem, and its extreme vulnerability to development, chaparral within the Santa Monica Mountains meets the definition of ESHA under the Coastal Act.

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[84] Helmers, H., J.S. Horton, G. Juhren and J. O'Keefe. 1955. Root systems of some chaparral plants in southern California. Ecology 36(4):667-678. Kummerow, J. and W. Jow. 1977. Root systems of chaparral shrubs. Oecologia 29:163-177.

[85] Radtke, K. 1983. *Living more safely in the chaparral-urban interface*. General Technical Report PSW-67. U.S. Department of Agriculture, Forest Service, Pacific Southwest Research Station, Berkeley, California. 51 pp.

[86] Kittredge, J. 1973. Forest influences — the effects of woody vegetation on climate, water, and soil. Dover Publications, New York. 394 pp. Longcore, T and C. Rich. 2002. Protection of environmentally sensitive habitat areas in proposed local coastal plan for the Santa Monica Mountains. (Table 1). The Urban Wildlands Group, Inc., P.O. Box 24020 Los Angeles, CA 90024. Vicars, M. (ed.) 1999. FireSmart: protecting your community from wildfire. Partners in Protection, Edmonton, Alberta.

[87] Ibid.

Oak Woodland and Savanna

Coast live oak woodland occurs mostly on north slopes, shaded ravines and canyon bottoms. Besides the coast live oak, this plant community includes hollyleaf cherry, California bay laurel, coffeeberry, and poison oak. Coast live oak woodland is more tolerant of salt-laden fog than other oaks and is generally found nearer the coast[88]. Coast live oak also occurs as a riparian corridor species within the Santa Monica Mountains.

Valley oaks are endemic to California and reach their southern most extent in the Santa Monica Mountains. Valley oaks were once widely distributed throughout California's perennial grasslands in central and coastal valleys. Individuals of this species may survive 400-600 years. Over the past 150 years, valley oak savanna habitat has been drastically reduced and altered due to agricultural and residential development. The understory is now dominated by annual grasses and recruitment of seedlings is generally poor. This is a very threatened habitat.

The important ecosystem functions of oak woodlands and savanna are widely recognized[89]. These habitats support a high diversity of birds[90], and provide refuge for many species of sensitive bats[91]. Typical wildlife in this habitat includes acorn woodpeckers, scrub jays, plain titmice, northern flickers, cooper's hawks, western screech owls, mule deer, gray foxes, ground squirrels, jackrabbits and several species of sensitive bats.

Therefore, because of their important ecosystem functions and vulnerability to development, oak woodlands and savanna within the Santa Monica Mountains met the definition of ESHA under the Coastal Act.

Grasslands

Grasslands consist of low herbaceous vegetation that is dominated by grass species but may also harbor native or non-native forbs.

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[88] NPS 2000. op. cit.

[89] Block, W.M., M.L. Morrison, and J. Verner. 1990. Wildlife and oak-woodland interdependency. *Fremontia* 18(3):72–76. Pavlik, B.M., P.C. Muick, S. Johnson, and M. Popper. 1991. *Oaks of California*. Cachuma Press and California Oak Foundation, Los Olivos, California. 184 pp.

[90] Cody, M.L. 1977. Birds. Pp. 223–231 *in* Thrower, N.J.W., and D.E. Bradbury (eds.). *Chile-California Mediterranean scrub atlas*. US/IBP Synthesis Series 2. Dowden, Hutchinson & Ross, Stroudsburg, Pennsylvania. National Park Service. 1993. A checklist of the birds of the Santa Monica Mountains National Recreation Area. Southwest Parks and Monuments Assoc., 221 N. Court, Tucson, AZ. 85701

[91] Miner, K.L., and D.C. Stokes. 2000. Status, conservation issues, and research needs for bats in the south coast bioregion. Paper presented at *Planning for biodiversity: bringing research and management together*, February 29, California State University, Pomona, California.

A. California Perennial Grassland

Native grassland within the Santa Monica Mountains consists of perennial native needlegrasses: purple needlegrass, (Nassella pulchra), foothills needlegrass, (Nassella lepida) and nodding needlegrass (Nassella cernua). These grasses may occur in the same general area but they do not typically mix, tending to segregate based on slope and substrate factors[92]. Mixed with these native needlegrasses are many non-native annual species that are characteristic of California annual grassland[93]. Native perennial grasslands are now exceedingly rare[94]. In California, native grasslands once covered nearly 20 percent of the land area, but today are reduced to less than 0.1 percent[95]. The California Natural Diversity Database (CNDDB) lists purple needlegrass habitat as a community needing priority monitoring and restoration. The CNDDB considers grasslands with 10 percent or more cover by purple needlegrass to be significant, and recommends that these be protected as remnants of original California prairie. Patches of this sensitive habitat occur throughout the Santa Monica Mountains where they are intermingled with coastal sage scrub, chaparral and oak woodlands.

Many of the raptors that inhabit the Santa Monica Mountains make use of grasslands for foraging because they provide essential habitat for small mammals and other prey. Grasslands adjacent to woodlands are particularly attractive to these birds of prey since they simultaneously offer perching and foraging habitat. Particularly noteworthy in this regard are the white-tailed kite, northern harrier, sharp-shinned hawk, Cooper's hawk, red-shouldered hawk, red-tailed hawk, golden eagle, American kestrel, merlin, and prairie falcon[96].

Therefore, because of their extreme rarity, important ecosystem functions, and vulnerability to development, California native perennial grasslands within the Santa Monica Mountains meet the definition of ESHA under the Coastal Act.

B. California Annual Grassland

The term "California annual grassland" has been proposed to recognize the fact that non-native annual grasses should now be considered naturalized and a

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[92] Sawyer, J. O. and T. Keeler-Wolf. 1995. A manual of California vegetation. California Native Plant Society, 1722 J St., Suite 17, Sacramento, CA 95814.
[93] Biological Resources Assessment of the Proposed Santa Monica Mountains Significant Ecological Area. Nov. 2000. Los Angeles Co., Dept. of Regional Planning, 320 West Temple St., Rm. 1383, Los Angeles, CA 90012.
[94] Noss, R.F., E.T. LaRoe III and J.M. Scott. 1995. Endangered ecosystems of the United States: a preliminary assessment of loss and degradation. Biological Report 28. National Biological Service, U.S. Dept. of Interior.
[95] NPS 2000. op. cit.
[96] NPS 2000. op. cit.

permanent feature of the California landscape and should be acknowledged as providing important ecological functions. These habitats support large populations of small mammals and provide essential foraging habitat for many species of birds of prey. California annual grassland generally consists of dominant invasive annual grasses that are primarily of Mediterranean origin. The dominant species in this community include common wild oats (Avena fatua), slender oat (Avena barbata), red brome (Bromus madritensis ssp. Rubens), ripgut brome, (Bromus diandrus), and herbs such as black mustard (Brassica nigra), wild radish (Raphanus sativus) and sweet fennel (Foeniculum vulgare). Annual grasslands are located in patches throughout the Santa Monica Mountains in previously disturbed areas, cattle pastures, valley bottoms and along roadsides. While many of these patches are dominated by invasive non-native species, it would be premature to say that they are never sensitive or do not harbor valuable annual native species. A large number of native forbs also may be present in these habitats[97], and many native wildflowers occur primarily in annual grasslands. In addition, annual grasslands are primary foraging areas for many sensitive raptor species in the area.

Inspection of California annual grasslands should be done prior to any impacts to determine if any rare native species are present or if any rare wildlife rely on the habitat and to determine if the site meets the Coastal Act ESHA criteria.

Effects of Human Activities and Development on Habitats within the Santa Monica Mountains

The natural habitats of the Santa Monica Mountains are highly threatened by current development pressure, fragmentation and impacts from the surrounding megalopolis. The developed portions of the Santa Monica Mountains represents the extension of this urbanization into natural areas. About 54% of the undeveloped Santa Monica Mountains are in private ownership[98], and computer simulation studies of the development patterns over the next 25 years predict a serious increase in habitat fragmentation[99]. Development and associated human activities have many well-documented deleterious effects on natural communities. These environmental impacts may be both direct and indirect and include the effects of increased fire frequency, of fire clearance, of introduction of exotic species, and of night lighting.

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[97] Holstein, G. 2001. Pre-agricultural grassland in Central California. Madrono 48(4):253-264. Stromberg, M.R., P. Kephart and V. Yadon. 2001. Composition, invasibility and diversity of coastal California grasslands. Madrono 48(4):236-252.

[98] National Park Service. 2000. Draft: General Management Plan & Environmental Impact Statement, Santa Monica Mountains National Recreation Area, US Dept. of Interior, National Park Service, December 2000.

[99] Swenson, J. J., and J. Franklin. 2000. The effects of future urban development on habitat fragmentation in the Santa Monica Mountains. Landscape Ecol. 15:713-730.

Increased Fire Frequency

Since 1925, all the major fires in the Santa Monica Mountains have been caused by human activities[100]. Increased fire frequency alters plant communities by creating conditions that select for some species over others. Strong resprouting plant species such as laurel sumac, are favored while non-sprouters like bigpod ceanothus, are at a disadvantage. Frequent fire recurrence before the non-sprouters can develop and reestablish a seed bank is detrimental, so that with each fire their chances for propagation are further reduced. Resprouters can be sending up new shoots quickly, and so they are favored in an increased fire frequency regime. Also favored are weedy and invasive species. Dr. Steven Davis in his abstract for a Coastal Commission Workshop stated[101] "*We have evidence that recent increases in fire frequency has eliminated drought-hardy non-sprouters from chaparral communities near Malibu, facilitating the invasion of exotic grasses and forbs that further exacerbate fire frequency*." Thus, simply increasing fire frequency from about once every 22 years (the historical frequency) to about once every 12 years (the current frequency) can completely change the vegetation community. This has cascading effects throughout the ecosystem.

Fuel Clearance

The removal of vegetation for fire protection in the Santa Monica Mountains is required by law in "Very High Fire Hazard Severity Zones"[102]. Fuel removal is reinforced by insurance carriers[103]. Generally, the Santa Monica Mountains are considered to be a high fire hazard severity zone. In such high fire hazard areas, homeowners must often resort to the California FAIR Plan to obtain insurance. Because of the high risk, all homes in "brush areas" are assessed an insurance surcharge if they have less than the recommended 200-foot fuel modification zone[104] around the home. The combination of insurance incentives and regulation assures that the 200-foot clearance zone will be applied universally[105]. While it is not required that all of this zone be cleared of vegetation, the common practice is simply to disk this zone, essentially removing or highly modifying all

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[100] NPS, 2000, op. cit.
[101] Davis, Steven. Effects of fire and other factors on patterns of chaparral in the Santa Monica Mountains, Coastal Commission Workshop on the Significance of Native Habitats in the Santa Monica Mountains. CCC Hearing, June 13, 2002, Queen Mary Hotel.
[102] 1996 Los Angeles County Fire Code Section 1117.2.1
[103] Longcore, T and C. Rich. 2002. Protection of environmentally sensitive habitat areas in proposed local coastal plan for the Santa Monica Mountains. The Urban Wildlands Group, Inc., P.O. Box 24020 Los Angeles, CA 90024. Vicars, M. (ed.) 1999. FireSmart: protecting your community from wildfire. Partners in Protection, Edmonton, Alberta.
[104] Fuel Modification Plan Guidelines. Co. of Los Angeles Fire Department, Fuel Modification Unit, Prevention Bureau, Forestry Division, Brush Clearance Section, January 1998.
[105] Longcore, T and C. Rich. 2002. Protection of environmentally sensitive habitat areas in proposed local coastal plan for the Santa Monica Mountains. The Urban Wildlands Group, Inc., P.O. Box 24020 Los Angeles, CA 90024.

native vegetation. For a new structure not adjacent to existing structures, this results in the removal or modification of a minimum of three acres of vegetation[106]. While the directly impacted area is large, the effects of fuel modification extend beyond the 200-foot clearance area.

Effects of Fuel Clearance on Bird Communities

The impacts of fuel clearance on bird communities was studied by Stralberg who identified three ecological categories of birds in the Santa Monica Mountains: 1) local and long distance migrators (ash-throated flycatcher, Pacific-slope flycatcher, phainopepla, black-headed grosbeak), 2) chaparral-associated species (Bewick's wren, wrentit, blue-gray gnatcatcher, California thrasher, orange-crowned warbler, rufous-crowned sparrow, spotted towhee, California towhee) and 3) urban-associated species (mourning dove, American crow, Western scrub-jay, Northern mockingbird)[107]. It was found in this study that the number of migrators and chaparral-associated species decreased due to habitat fragmentation while the abundance of urban-associated species increased. The impact of fuel clearance is to greatly increase this edge-effect of fragmentation by expanding the amount of cleared area and "edge" many-fold. Similar results of decreases in fragmentation-sensitive bird species are reported from the work of Bolger et al. in southern California chaparral[108].

Effects of Fuel Clearance on Arthropod Communities

Fuel clearance and habitat modification may also disrupt native arthropod communities, and this can have surprising effects far beyond the cleared area on species seemingly unrelated to the direct impacts. A particularly interesting and well-documented example with ants and lizards illustrates this point. When non-native landscaping with intensive irrigation is introduced, the area becomes favorable for the invasive and non-native Argentine ant. This ant forms "super colonies" that can forage more than 650 feet out into the surrounding native chaparral or coastal sage scrub around the landscaped area[109]. The Argentine ant competes with native harvester ants and carpenter ants displacing them from

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[106] Ibid.
[107] Stralberg, D. 2000. Landscape-level urbanization effects on chaparral birds: a Santa Monica Mountains case study. Pp. 125–136 *in* Keeley, J.E., M. Baer-Keeley, and C.J. Fotheringham (eds.). *2nd interface between ecology and land development in California*. U.S. Geological Survey, Sacramento, California.
[108] Bolger, D. T., T. A. Scott and J. T. Rotenberry. 1997. Breeding bird abundance in an urbanizing landscape in coastal Southern California. Conserv. Biol. 11:406-421.
[109] Suarez, A.V., D.T. Bolger and T.J. Case. 1998. Effects of fragmentation and invasion on native ant communities in coastal southern California. Ecology 79(6):2041-2056.

the habitat[110]. These native ants are the primary food resource for the native coast horned lizard, a California "Species of Special Concern." As a result of Argentine ant invasion, the coast horned lizard and its native ant food resources are diminished in areas near landscaped and irrigated developments[111]. In addition to specific effects on the coast horned lizard, there are other Mediterranean habitat ecosystem processes that are impacted by Argentine ant invasion through impacts on long-evolved native ant-plant mutualisms[112]. The composition of the whole arthropod community changes and biodiversity decreases when habitats are subjected to fuel modification. In coastal sage scrub disturbed by fuel modification, fewer arthropod predator species are seen and more exotic arthropod species are present than in undisturbed habitats[113].

Studies in the Mediterranean vegetation of South Africa (equivalent to California shrubland with similar plant species) have shown how the invasive Argentine ant can disrupt the whole ecosystem.[114] In South Africa the Argentine ant displaces native ants as they do in California. Because the native ants are no longer present to collect and bury seeds, the seeds of the native plants are exposed to predation, and consumed by seed eating insects, birds and mammals. When this habitat burns after Argentine ant invasion the large-seeded plants that were protected by the native ants all but disappear. So the invasion of a non-native ant species drives out native ants, and this can cause a dramatic change in the species composition of the plant community by disrupting long-established seed

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[110] Holway, D.A. 1995. The distribution of the Argentine ant (*Linepithema humile*) in central California: a twenty-year record of invasion. Conservation Biology 9:1634-1637. Human, K.G. and D.M. Gordon. 1996. Exploitation and interference competition between the invasive Argentine ant, (*Linepithema humile*), and native ant species. Oecologia 105:405-412.

[111] Fisher, R.N., A.V. Suarez and T.J. Case. 2002. Spatial patterns in the abundance of the coastal horned lizard. Conservation Biology 16(1):205-215. Suarez, A.V. J.Q. Richmond and T.J. Case. 2000. Prey selection in horned lizards following the invasion of Argentine ants in southern California. Ecological Applications 10(3):711-725.

[112] Suarez, A.V., D.T. Bolger and T.J. Case. 1998. Effects of fragmentation and invasion on native ant communities in coastal southern California. Ecology 79(6):2041-2056. Bond, W. and P. Slingsby. Collapse of an Ant-Plant Mutualism: The Argentine Ant (*Iridomyrmex humilis*) and Myrmecochorous Proteaceae. Ecology 65(4):1031-1037.

[113] Longcore, T.R. 1999. Terrestrial arthropods as indicators of restoration success in coastal sage scrub. Ph.D. Dissertation, University of California, Los Angeles.

[114] Christian, C. 2001. Consequences of a biological invasion reveal the importance of mutualism for plant communities. Nature 413:635-639.

dispersal mutualisms. In California, some insect eggs are adapted to being buried by native ants in a manner similar to plant seeds[115].

Artificial Night Lighting

One of the more recently recognized human impacts on ecosystem function is that of artificial night lighting as it effects the behavior and function of many different types of organisms[116]. For literally billions of years the only nighttime sources of light were the moon and stars, and living things have adapted to this previously immutable standard and often depend upon it for their survival. A review of lighting impacts suggests that whereas some species are unaffected by artificial night lighting, many others are severely impacted. Overall, most impacts are negative ones or ones whose outcome is unknown. Research to date has found negative impacts to plants, aquatic and terrestrial invertebrates, amphibians, fish, birds and mammals, and a detailed literature review can be found in the report by Longcore and Rich[117].

Summary

In a past action, the Coastal Commission found[118] that the Santa Monica Mountains Mediterranean Ecosystem, which includes the undeveloped native habitats of the Santa Monica Mountains, is rare and especially valuable because of its relatively pristine character, physical complexity, and resultant biological diversity. The undeveloped native habitats within the Santa Monica Mountains that are discussed above are ESHA because of their valuable roles in that ecosystem, including providing a critical mosaic of habitats required by many species of birds, mammals and other groups of wildlife, providing the opportunity for unrestricted wildlife movement among habitats, supporting populations of rare species, and preventing the erosion of steep slopes and thereby protecting riparian corridors, streams and, ultimately, shallow marine waters.

The importance the native habitats in the Santa Monica Mountains was emphasized nearly 20 years ago by the California Department of Fish and

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[115] Hughes, L. and M. Westoby. 1992. Capitula on stick insect eggs and elaiosomes on seeds: convergent adaptations for burial by ants. Functional Ecology 6:642-648.

[116] . Longcore, T and C. Rich. 2002. Protection of environmentally sensitive habitat areas in proposed local coastal plan for the Santa Monica Mountains. The Urban Wildlands Group, Inc., P.O. Box 24020 Los Angeles, CA 90024.

[117] Ibid, and Ecological Consequences of Artificial Night Lighting, Conference, February 23-24, 2002, UCLA Los Angeles, California.

[118] Revised Findings for the City of Malibu Local Coastal Program (as adopted on September 13, 2002) adopted on February 6, 2003.

Game[119]. Commenting on a Draft Land Use Plan for the City of Malibu, the Regional Manager wrote that, "It is essential that large areas of land be reclassified to reflect their true status as ESHAs. One of the major needs of the Malibu LUP is that it should provide protection for entire drainages and not just stream bottoms." These conclusions were supported by the following observations:

> ***"It is a fact that many of the wildlife species of the Santa Monica Mountains, such as mountain lion, deer, and raccoon, have established access routes through the mountains. They often travel to and from riparian zones and development such as high density residential may adversely affect a wildlife corridor.***
>
> Most animal species that exist in riparian areas will, as part of their life histories, also be found in other habitat types, including chapparal (sic) or grassland. For example, hawks nest and roost in riparian areas, but are dependent on large open areas for foraging. For the survival of many species, particularly those high on the food chain, survival will depend upon the presence of such areas. Such areas in the Santa Monica Mountains include grassland and coastal sage scrub communities, which have been documented in the SEA studies as supporting a wide diversity of plant and animal life."

This analysis by the Department of Fish and Game is consonant with the findings of the Commission in the case of the Malibu LCP, and with the conclusion that large contiguous areas of relatively pristine native habitat in the Santa Monica Mountains meet the definition of ESHA under the Coastal Act.

[119] Letter from F. A. Worthley, Jr. (CDFG) to N. Lucast (CCC) re Land Use Plan for Malibu dated March 22, 1983.

STATE OF CALIFORNIA – THE RESOURCES AGENCY
GRAY DAVIS, *Governor*

CALIFORNIA COASTAL COMMISSION
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Hearing Date: 02/13-16/01
Commission Action:

CLAIM OF VESTED RIGHTS

STAFF REPORT AND RECOMMENDATION

CLAIM NO: 4-00-279-VRC

CLAIMANT: MALIBU VALLEY, INC.

PROJECT LOCATION: 2200 Stokes Canyon Road, Calabasas, Los Angeles County, CA 91302. APN 4455-028-044

DEVELOPMENT CLAIMED: Right to conduct agricultural and livestock activities and right to continue to erect and maintain structures in connection with that use. Structures at site include enclosed horse barn, approximately 34 metal pipe corrals, covered horse stalls, mare motel, horse-washing facilities, two riding arenas and storage structures.

FILE DOCUMENTS: Photographs of site taken November 19, 1999 and March 2, 2000; Coastal Commission letters to Cox, Castle & Nicholson dated August 18, 2000 and October 6, 2000; L.A. County Code, Title 22, Section 22.56.1540 and Title 26, Sections 101–106; aerial photographs taken January 24, 1977 and November 3, 1952.

Exhibit 2
CDPA No. 4-02-131
Staff Report 4-00-279-VRC

SUMMARY OF STAFF RECOMMENDATION

Staff recommends **denial** of the claim of vested rights. Malibu Valley claims a vested right for agricultural and livestock activities that allegedly were conducted since the 1930s and all structures associated with those activities. Malibu Valley has not demonstrated that it has any legal right, title or interest in the development at the site that would allow it to claim vested rights for development at the site. Even if Malibu Valley did demonstrate such a right, the claim should be denied because all of the structures at the site were destroyed by a combination of wildfire in 1996 and storms and floods in 1997/1998. There is no vested right to build new structures to replace a vested structure that has been destroyed. Aerial photographs of the site in 1952 and 1977 indicate that no buildings were present on those dates. With respect to structures that Malibu Valley asserts that it constructed at the site in the 1970s, the required building permits for construction of a barn or enclosed horse stalls were not obtained. Therefore, Malibu Valley did not obtain all required local government approvals for that development, which is required to establish a vested right. Furthermore, Malibu Valley's assertions are too vague and general to prove its claim of vested rights. It has not provided evidence of the specific location of any structures at the site or of any specific number of horses that were kept at the site prior to the effective date of the Coastal Act. In addition, growing of crops, and raising sheep, cattle and goats are activities that have been discontinued and there is no vested right to resume such activities. These activities are also different in nature and extent from the horse boarding activities and structures for which a vested right is claimed. For all these reasons, staff recommends that the Commission find that Malibu Valley has not met its burden of proving its claim of vested rights.

ACTION: Commission Hearing and Vote

STAFF RECOMMENDATION FOR DENIAL OF CLAIM: The Executive Director has made initial determination that Claim of Vested Rights 4-00-279-VRC has not been substantiated. Staff recommends that Claim of Vested Rights 4-00-279-VRC be rejected.

Motion: *"I move that the Commission determine that Claim of Vested Rights 4-00-279-VRC is substantiated and the development described in the claim does not require a Coastal Development Permit."*

Staff recommends a **NO** vote. Failure of the motion will result in a determination by the Commission that the development described in the claim requires a Coastal Development Permit and in the adoption of the resolution and findings set forth below. The motion passes only by an affirmative vote of a majority of the Commissioners present.

Resolution for Denial of Claim:

The Commission hereby determines that Claim of Vested Rights 4-00-279-VRC is not substantiated and adopts the Findings set forth below.

Findings and Declarations

1. Legal Authority and Standard of Review

Section 30608 of the Coastal Act, in relevant part, provides that:

"No person who has obtained a vested right in a development prior to the effective date of this division or who has obtained a permit from the California Coastal Zone Conservation Commission pursuant to the California Coastal Act of 1972 (commenting with Section 27000) shall be required to secure approval for the development pursuant to this division; provided, however, that no substantial change may be made in any such development without prior approval having been obtained under this division."

The effective date of the division, i.e., the Coastal Act, for the site at issue is January 1, 1977. Malibu Valley has not obtained a permit from the California Coastal Zone Conservation Commission. Pursuant to Section 30608, if a person obtained a vested right in a development on the subject site prior to January 1, 1977, no Coastal Development Permit (CDP) is required for that development. However, no substantial change in any such development may be made until obtaining either approval in a CDP, or approval pursuant to another provision of the Coastal Act.

The Coastal Act defines "development" as:

"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 pursuant to the Subdivision Map Act ... change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, ...

As used in this section, "structure" includes but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line." (Coastal Act Section 30106).

The procedural framework for Commission consideration of a claim of vested rights is found in Sections 13200 through 13208 of the Commission's administrative regulations. (Title 14, California Code of Regulations). These regulations require that the staff prepare a written recommendation for the Commission and that the Commission determine, after a public hearing, whether to acknowledge the claim. If the Commission finds that the claimant has a vested right for a specific development or development activity, then the claimant is exempt from Coastal Development Permit requirements for that specific

development only. Any changes to the exempt development after January 1, 1977 will require a CDP. If the Commission finds that the claimant does not have a vested right for the particular development, then a CDP must be obtained to authorize the development or, if a CDP is not obtained, then the development is not authorized under Coastal Act.

The Commission must apply certain legal criteria to determine whether a claimant has a vested right for a specific development. These criteria are based on the terms of the Coastal Act and case law interpreting the Coastal Act's vested right provision, as well as common law vested rights claims. The standard of review for determining the validity of a claim of vested rights is summarized as follows:

1. The claimed development must have received all applicable governmental approvals needed to complete the development prior to January 1, 1977. Typically this would be a building permit, grading permit, Final Map, Health Department approval for a well or septic system, etc. or evidence that no permit was required for the claimed development. (*Billings v. California Coastal Commission* (1988) 103 Cal.App.3d at 729).

2. If work was not completed by January 1, 1977, the claimant must have performed substantial work and/or incurred substantial liabilities in good faith reliance on the governmental authorization received prior to January 1, 1977. (*Tosh v. California Coastal Commission* (1979) 99 Cal.App. 3d 388, 393; *Avco Community Developers, Inc. v. South Coast Regional Commission* (1976) 17 Cal.3d 785).

In order to acknowledge a claim of vested right for a specific development, the Commission must find that the claimant met all applicable permit requirements for the project and, at a minimum, performed substantial work and/or incurred substantial liabilities in good faith reliance on the permits or approvals that were granted prior to January 1, 1977. Similarly, a claim of vested right will be acknowledged if the claimant performed substantial work and/or incurred substantial liabilities in good faith reliance on the ability to conduct the development without any permits or specific governmental approvals prior to January 1, 1977.

The burden of proof is on the claimant to substantiate the claim of vested right. (Title 14, California Code of Regulation, Section 13200). If there are any doubts regarding the meaning or extent of the vested rights exemption, they should be resolved against the person seeking the exemption. *(Urban Renewal Agency v. California Coastal Zone Conservation Commission* (1975) 15 Cal.3d 577, 588).

A narrow, as opposed to expansive, view of vested rights should be adopted to avoid seriously impairing the government's right to control land use policy. *(Charles A. Pratt Construction Co. v. California Coastal Commission* (1982) 128 Cal.App.3d 830, 844, *citing, Avco v. South Coast Regional Commission* (1976) 17 Cal.3d 785, 797). In evaluating a claimed vested right to maintain a nonconforming use (i.e., a use that fails to conform to current zoning), courts have stated that it is appropriate to "follow a strict policy against extension or expansion of those uses." *Hansen Bros. Enterprises v. Board of*

Supervisors (1996)12 Cal.4th 533, 568; *County of San Diego v. McClurken* (1957) 37 Cal.2d 683, 687).

The following vested rights analysis is based on information submitted by the claimant and supplemental Commission staff research or official Commission and County records.

2. Background Regarding Property

The subject property is currently owned by Robert K. Levin and is identified as APN Number 4455-028-044. Levin apparently acquired the property from Charles Boudreau, or a member of the Boudreau family, around 1996. Charles Boudreau, or a member of the Boudreau family, apparently acquired the property from the Claretian Mission around 1978. The property is approximately 31 acres in size. The parcel is bisected by the coastal zone boundary. The location of the parcel is shown on the "boundary determination" for the property that the Coastal Commission prepared in April 2000. (Exhibit 1). Approximately 80% of the parcel is located in the coastal zone and is subject to the Coastal Commission's jurisdiction. This staff report only addresses the part of the property (or "site") at 2200 Stokes Canyon Road that is located in the coastal zone.

The facility currently has approximately 50 covered, indoor horse stalls. It could accommodate twice this number of horses if they are kept two in a stall or kept in the outdoor corrals. Stokes Canyon Creek crosses the property. Pipe corrals are located approximately 30 feet from the bank of the creek. Horse washing facilities are also located near the creek and drainage from the horse washing facilities is discharged into Stokes Canyon Creek. A dirt road leads across Stokes Canyon Creek and is used for horses to walk across the creek.

In November, 1998, Malibu Valley Farms, Inc. sought an "exemption" from the Coastal Act permit requirements for replacement of pipe corrals and other structures at the site that were destroyed by a wildfire in 1996. (Exhibit 2). The 1998 letter requesting the exemption was from Brian Boudreau, President of Malibu Valley Farms, Inc. After receiving a notice of intent to initiate enforcement proceedings from the Coastal Commission, Malibu Valley Farms, Inc. (along with Boudreau and Levin) also submitted a "Statement of Defense" dated April 10, 2000 to the Coastal Commission staff. (Exhibit 3). The Commission notes that from 1998 until at least May 2000, a different corporation, Malibu Valley Farms, Inc., represented to the Commission staff that it operated the horse boarding facility at the site.

The current claim of vested rights was submitted in June 2000 by a different corporation, Malibu Valley, Inc. Malibu Valley, Inc. states that it is the current operator of the horse boarding facilities at the site. Boudreau is also the President of Malibu Valley, Inc.

In his November 1998 letter requesting an exemption, Boudreau stated that the proposed replacement structures did not expand "the horse farming activities which have been conducted on the land for the past 23 years." (Exhibit 2). On December 7, 1998, the Coastal Commission granted Brian Boudreau an exemption from the Coastal Development Permit requirements for replacement of 14 pipe corrals (totaling 2,500

square feet) at the site. However, the Commission rescinded this exemption shortly thereafter, in January 1999, because it was discovered that the horse corrals and barn at the site were constructed without building permits from Los Angeles County and were therefore not considered vested development under the Coastal Act. The exemption from the Coastal Act's permit requirements for replacement of structures destroyed by a fire (Section 30610(g)), only applies for structures that were either legally constructed prior to the Coastal Act, or were constructed after the Coastal Act with the appropriate authorization under the Act.

The Commission staff contacted Boudreau on January 14, 1999 and sent him a letter dated January 22, 1999, informing him that the exemption was revoked. (Exhibit 4). The letter also stated that a Coastal Development Permit is required for the horse riding area, polo field, numerous horse corrals, barn, and accessory buildings at the site and directed Boudreau to submit an after-the-fact application for such a permit.

No application for a Coastal Development Permit has been submitted for the development at the site. In November 1999, several Coastal Commission staff members conducted an inspection at the site and took photographs of the site. On March 2, 2000, Coastal Commission staff members conducted another inspection of the site from Stokes Canyon Road and Mulholland Highway, and took photographs of the site. During this inspection, a Commission staff member observed that construction was going on at the property. She observed stacks of irrigation sprinklers and 20 foot long pipes that workers were carrying onto the property. In March 2000, Commission staff notified Levin and Boudreau that it intended to initiate cease and desist proceedings regarding the development at the site. Levin, Boudreau and Malibu Valley Farms, Inc. submitted a Statement of Defense dated April 10, 2000. (Exhibit 3). The Statement of Defense states that "horses have been raised and trained on the property since the mid 1970s." (*Id.* Para. 5).

3. Development Claimed As Exempt From Coastal Act Requirements

Malibu Valley has applied for an exemption from the CDP requirements of the Coastal Act, contending that it has a vested right to conduct agricultural and livestock activities and erect and maintain structures in connection with those activities at the property at 2200 Stokes Canyon Road, Calabasas. (Exhibit 5, Application for Claim of Vested Rights) and (Exhibit 6, letter dated November 3, 2000 supporting Claim of Vested Rights).

Malibu Valley claims this vested right for all development show on the large-scale map submitted with its application form. The map is attached as an exhibit in reduced form. (See, Exhibit 5, Claim of Vested Rights, Exhibit C - Sheet #2). It identifies the following structures located in the coastal zone: equestrian riding arena (240'x 05'); arena with wooden wall (150'x 300'); one story barn (24'x60'); proposed 24'x24'x10' covered shelter; existing corrals proposed roof to be added (2 – 45'x45'); storage container (8"x20"); back to back mare motel (2,600 square feet); 9 parking stalls; 4 existing 20'x20' portable pipe corrals; equipment storage shelter (16'x18'); portable storage trailer; cross tie area; 28 existing 24'x24' portable pipe corrals; tack room w/o porch; cross tie shelter; tack room with porch. The map indicates that all of these structures are currently present at the site

except the proposed 24'x24'x10' covered shelter and the roof of the two existing 45'x45' corrals.

Malibu Valley contends that its agricultural and ranching activities at the site constitute development that was "vested" in the 1930s; therefore, they were vested prior to January 1, 1977, the effective date of the Coastal Act. The claimant asserts that no governmental authorization was necessary at the time that the agricultural and livestock activities on the site began. Additionally, Malibu Valley asserts that the scope of its vested rights to conduct agricultural and livestock activities encompasses the right to make changes, repairs, and/or additions to structures at the site and to agricultural and livestock uses at the site, and to construct new structures connected to those uses, after the effective date of the Coastal Act and at any time in the future, without complying with the Act's requirements.

4. Evidence Presented by Claimant

Malibu Valley submitted a vested rights application form with numerous exhibits (Exhibit 5), including large-scale maps showing the development at the site. It also submitted a letter from Malibu Valley's attorney dated November 3, 2000 (Exhibit 6) further explaining the claim of vested rights. One of the maps provided with the application (Exhibit 5, Application for Claim Of Vested Rights, Exhibit C - "Sheet No. 2") shows the size, location, and name of all currently existing and proposed structures at the site. In support of it application, Malibu Valley has also provided declarations setting forth the evidence summarized below. The declarations are found in Exhibit B of the Application for Claim of Vested Rights.

Declaration of Warren Larry Cress – Mr. Cress executed a declaration stating that in1967, when it was owned by Claretian Missionaries, the property was used for agriculture, growing oat hay, raising livestock, grazing and raising sheep. Mr. Cress also states that the Missionaries had horses on the property. He states that during a wildfire in 1969 or 1970, that people brought over 100 horses from all over the area to the property and they were kept in fenced areas that had been used for the sheep. Other than fences for the sheep, the Cress declaration does not indicate that any particular structures were located at the property at that time.

Declaration of Virgil Cure – Mr. Cure executed a declaration stating that cattle were raised on the property from 1952 until 1978; that it was used for farming oat hay until the late 1969s or early 1970s; and that sheep were raised on the east side of Stokes Canyon Road until 1978. The Cure declaration does not indicate that horses were raised or boarded on the property or that any particular structures were located at the property during that time.

Declaration of Dominic Ferrante – Mr. Ferrante executed a declaration stating that he was general manager for the Claretian Missionaries from 1974 to 1988. He states that the property was used for growing oat hay and grazing livestock, including cattle and sheep during this time. Ferrante states that he was involved in sale of the property to the Boudreau family in 1978 and subsequent to that time he visited the property about twice a

year. The structures located at the site that Mr. Ferrante identifies are fences, corralling facilities and feeding facilities. He states that these facilities were moved during planting seasons and then returned either to the same location or another location on the property. The Ferrante declaration does not indicate that horses were boarded at the property.

Declaration of Luigi Viso – Mr. Viso executed a declaration stating that he raised sheep (approximately 2000 ewes and a large number of rams) on the property from 1969 through 1975. He states that there were holding pens and a stocking area on the flat area of the property, and there was a horse barn nearby. Mr. Viso also states that there was a large fire in 1969 and people brought more than 100 horses to put in the corralled area that he used for his sheep. Mr. Viso also provided a videotape of his sheep being used in 1983 or 1984 to save the community from the risks of fire in the area.

5. Analysis of Claim of Vested Rights

A. Malibu Valley, Inc. Has Not Demonstrated Any Right, Title or Interest That Authorizes it to Claim Vested Rights to Development at the Site

Malibu Valley, Inc. has not demonstrated that it has any right, title or interest to use, occupy or construct any structures at the site or to conduct activities at the site. Malibu Valley has represented that it operates a horse boarding facility at the site; however, it has not provided any lease or other agreement documenting its rights with respect to the site. In addition, the Commission notes that from 1998 until at least May 2000, a different corporation, Malibu Valley Farms, Inc., represented to the Commission that it was the operator of the horse boarding facility at the site.

In January 1999, Robert Levin, the property owner, signed a grant of authority to Brian Boudreau, President of Malibu Valley Farms, Inc., to sign "all permits or other documents necessary to facilitate the replacement of the pipe barn burned by the 1996 wild fire." (Exhibit 8). However, this grant does not extend to the claimant in this matter, Malibu Valley, Inc., and even if it did, it does not demonstrate a sufficient right, title or interest in development at the site to enable Malibu Valley, Inc. to establish a vested right to any of that development.

Since Malibu Valley, Inc. has not demonstrated that it has any legal right, title or interest in development at the site, the Commission finds that Malibu Valley, Inc. cannot establish that it has a vested right for any development at the site.

B. The Development Currently Located at the Site Was Constructed After the Effective Date of the Coastal Act and is Not Exempt From Coastal Act Requirements

The Commission has reviewed aerial photographs of the site taken in 1952 and 1977. These photographs do not show any of the structures for which Malibu Valley claims a vested right. At the time these photographs were taken, any structures that were

previously constructed on the site had been removed. Correspondence to the Commission from Brian Boudreau, President of Malibu Valley, states that all of the structures/improvements used for horse farming operations at the site were destroyed by a combination of wildfire in 1996 and heavy rains and flooding in 1997/1998. (Exhibit 2). Mr. Boudreau confirmed in conversations with Commission staff that the structures at the site had all been destroyed by 1998. Commission staff has also observed the structures at the site and determined that they are made of newer materials and were constructed more recently than 1977. Malibu Valley has not submitted any evidence purporting to establish that any of the particular structures currently located at the site were constructed prior to January 1, 1977.

Rather, Malibu Valley contends that the existing structures were built to repair and/or replace prior structures that were "vested" or to facilitate uses of the property that were "vested" prior to the Coastal Act, and that Malibu Valley has a vested right to build these replacement structures. Malibu Valley further appears to claim that it has an unlimited vested right to construct structures on the site in the future, as long as those structures are connected to agricultural or livestock activities on the site. As explained below, the Coastal Commission rejects Malibu Valley's position.

The Coastal Act recognizes vested rights "in a development." (Section 30608). Under the Coastal Act, vested rights cannot be established for new development that is constructed after the effective date of the Coastal Act. The Coastal Act specifies that when a vested right to a development is established "no substantial change may be made in any such development without prior approval having been obtained under this division." (Section 30608). No vested right exists to build an entirely new structure to replace a vested structure. "Development" under the Coastal Act includes "construction, reconstruction, demolition, or alteration of the size of any structure, ..." (Section 30106). "Structure" includes but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power ...." (Coastal Act Section 30106).

The vested right is limited to the particular development completed prior to the Coastal Act, or the particular development for which there was good faith reliance to the claimant's detriment on authorization for the development that existed prior to the Coastal Act. Building the new structure is new development subject to the requirements of the Coastal Act and also is a substantial change in the vested development present at the site, which requires compliance with the Act.

Thus, even assuming that the claimant had established a vested right to maintain certain structures at the site (which it has not), there is no vested right to replace a vested structure with a new structure, without complying with the requirements of the Coastal Act. This simply means that when the useful life of the vested structure has ended, a permit under the Coastal Act is required prior to replacing it with a new structure. Furthermore, if a particular structure or use at the property is vested, any substantial expansion of the structure or use also is "new development" and is not part of the vested right.

This position is consistent with the rule that vested rights claims are narrowly construed against the person making the claim. *(Urban Renewal Agency v. California Coastal Commission* (1975) 15 Cal.3d 577). Accordingly, vested rights to conduct an activity at the site are limited to specific identified activities that meet the requirements for establishing a vested right. Other related development undertaken at a later time to modify or update the manner in which the vested activity is conducted, or to facilitate the vested activity, is not vested or exempt from current permit requirements. *(See, Halaco Engineering Co. v. So. Central Coast Regional Commission* (1986) 42 Cal.3d 52, 76 (court acknowledged vested right to operate a foundry that had obtained all necessary local approvals prior to the effective date of the Coastal Act, but denied a vested right for a propane storage tank that was installed later, although it was characterized as "incidental" to the foundry operation and an "integral" part of that operation). In *Halaco*, the court found that the propane tank at issue "was not, however, an integral part of the process prior to 1973 when it was placed on the property. It is, therefore, a change or new development for which a permit was required if it meets the statutory definition of development." 42 Cal.3d at 76. Similarly, new development conducted by Malibu Valley after January 1, 1977, is subject to the requirements of the Coastal Act.

As explained above, vested rights do not extend to new development that occurs after the effective date of the Coastal Act. In addition, the Coastal Act does not allow substantial changes to vested development without complying with the Act. Thus, even if Malibu Valley had established a vested right to board a certain number of horses (which it has not), the scope of the vested right is limited to only what existed at the time of vesting. Any substantial change, such as a substantial increase in the number of horses boarded at the site, or construction of new structures used for exercising, sheltering, or caring for the horses, are not vested and are subject to the requirements of the Coastal Act.

Thus, a Coastal Development Permit is required for a substantial repair or addition to a vested structure, for demolition of such structure, or for building a new structure to replace the vested structure. Since Malibu Valley has indicated that all structures at the site were destroyed by a combination of wildfire in 1996 and storms and flooding in 1997/1998, any vested structures at the site were destroyed and have been replaced with entirely new structures. Therefore, this is not a case involving only an insubstantial repair or addition to a vested structure.

Malibu Valley's claim of vested rights is so broad that it would cover any structure built on the site in the future as long as it is "connected" to agricultural or livestock activities that were allegedly vested prior to the Coastal Act. Under this theory, an unrestricted amount of development could occur at the site and neither the Coastal Act nor any local ordinances would ever apply, because the development would be within the scope of Malibu Valley's vested rights. The Coastal Commission rejects this expansive view of vested rights.

Malibu Valley's theory is contrary to numerous legal decisions regarding local government regulation of nonconforming development. With respect to nonconforming uses, "courts should follow a strict policy against extension or enlargement of those uses." *(Hansen*

Brothers Enterprises v. Board of Supervisors (1996) 12 Cal.4th 533, 568; *County of San Diego v. McClurken* (1951) 37 Cal.2d 683, 687; *Sabek , Inc. v. County of Sonoma* (1987) 190 Cal.App.3d 163, 166). It is also "well settled that a nonconforming use does not entitle the owner of the property to increase the size of his permanent buildings." *(Francis Edmonds v. County of Los Angeles* (1953) 40 Cal.2d 642, 652 (denying right to bring additional trailers onto property where nonconforming trailer park is located), citing, *Rehfeld v. City and County of San Francisco* (1933) 218 Cal.83, 85). "Intensification or expansion of the existing nonconforming use, or moving the operation to another location on the property is not permitted." *Hansen*, 12 Cal.4th at 552. Pursuant to these principles, municipal zoning ordinances generally provide that nonconforming uses may be continued, but there is no right to enlarge or rebuild a nonconforming use after destruction. (*Sabek, Inc. v. County of Sonoma* (1987) 190 Cal.App.3d 163, 166). An ordinance granting a vested right to maintain a nonconforming use is not open ended: "The object of such provision is the gradual elimination of the nonconforming use by obsolescence or destruction by fire or the elements, and it has been frequently upheld by the courts." (*Id.*, *citing*, *Rehfeld v. San Francisco* (1933) 218 Cal.83, 84-85).

In summary, the Coastal Commission finds that Malibu Valley has not provided evidence establishing that any of the existing structures at the site were constructed prior the effective date of the Coastal Act. The Commission finds that the construction of the existing structures at the site was new development that occurred after the effective date of the Coastal Act and, even if it was for the purpose of replacing vested structures, the new development is not exempt from the requirements of the Coastal Act. The Commission also finds that the construction of the existing structures at the site, even if it was for the purpose of facilitating, updating, or modifying a vested use of the site, was a substantial change to any prior vested development and was not exempt from the requirements of the Coastal Act. Accordingly, the Commission finds that Malibu Valley did not have a vested right to construct, and does not have a vested right to maintain, the existing structures at the site, without complying with the Coastal Act. Similarly, the Commission finds that Malibu Valley does not have a vested right to build new structures at the site in the future, without complying with the Coastal Act.

C. The Site is Not Currently Used For Agriculture or Raising Sheep, Goats or Cattle and There Is No Vested Right to Resume Such Activities

Coastal Commission staff inspected the site in November 1999. Commission staff had the opportunity to observe all of the site, and did not observe any use of the site for growing crops or raising sheep, goats or cattle. Coastal Commission staff again observed the site from Stokes Canyon Road and Mulholland Road in March 2000 and did not observe any use of the site for growing crops or raising sheep, goats or cattle. Coastal Commission staff have, however, observed that areas of the site are irrigated pastures where horses are permitted to graze. In his November 18, 1998, Brian Boudreau, asserted that the site was used by Malibu Valley Farms for horse farming activities for 23 years; however, he never asserted that a use of the site at that time was growing crops or raising sheep, goats or cattle.

Malibu Valley has not provided any documentation of expenditures for growing crops or raising sheep, goats or cattle at the site nor has it provided any documentation of income generated by the sale of crops, or from raising sheep, goats or cattle. Accordingly, Malibu Valley has not provided evidence indicating that whatever growing of crops and/or raising of sheep, goats, or cattle occurred at the site in the 1930s, or prior to January 1, 1977, is a continuing activity at the site. Mr. Cure, who stated in his declaration that the property was continuously used for farming until he retired in 1993, appears to have included "horse farming" activities when he said the site was "used for farming." (Exhibit 5, Application for Claim of Vested Rights, Exhibit B – Declaration of Virgil Cure). When he more specifically discussed using the site for growing crops, however, he stated that growing oat hay was only conducted until the late 1960s or early 1970s. (*Id.*) Similarly, he stated specifically that the site was used for raising cattle until 1978 and that sheep were raised on the property prior to 1978. (*Id.*)

The evidence indicates that whatever growing of crops and raising sheep, goats and cattle was previously conducted at the site are uses of the site (and "development") that were voluntarily discontinued, abandoned and/or removed. Thus, Malibu Valley cannot demonstrate any "investment" or "reliance" on a prior ability to conduct these activities at the site without a Coastal Development Permit. This is consistent with the case law directing that vested rights should be narrowly construed to avoid seriously impairing the government's right to control land use policy. *(Urban Renewal Agency v. California Coastal Zone Conservation Commission* (1975) 15 Cal.3d 577, 588*; Charles A. Pratt Construction Co. v. California Coastal Commission* (1982) 128 Cal.App.3d 830, 844). Similarly, as is a common practice, Los Angeles County ordinances contain provisions for termination of the right to maintain a prior nonconforming use of property, if the use is abandoned or discontinued. (L.A. County Code, Title 22, Section 22.56.1540).

Because these uses of the site were discontinued, abandoned and/or removed, the Commission finds that Malibu Valley has no vested right to resume growing of crops or raising sheep, goats or cattle, or conduct such activities at the site in the future, without complying with the Coastal Act.

In addition, the Commission finds that the prior use of the site for growing crops and raising sheep and cattle was a different nature and extent of use than the current horse boarding facility at the site. These prior activities did not involve the type of extensive structures that are currently part of the horse boarding facility at the site. Therefore, those prior activities did not create a vested right for the horse boarding facility at the site.

D. Evidence Was Not Provided to Establish that Specific Structures Were Present or Specific Horse Boarding Activities Were Conducted Either in the 1930s, or Prior to January 1, 1977

The evidence provided in support of Malibu Valley's claim of vested rights to continue development that began in the 1930s is too general and vague to enable the Commission to acknowledge a vested right for a particular structure, or for operating a horse boarding

facility at the site. Malibu Valley asserts that livestock and agricultural activities began at the site in the 1930s and existed over the entire site. However, Malibu Valley has not identified a particular structure (i.e., "development" under the Coastal Act) that existed at a particular location in the 1930s. Therefore, the Commission cannot find that Malibu Valley has a vested right to maintain any structures at the site based on the claim that they were legally constructed in the 1930s.

Malibu Valley also asserts that agricultural and livestock activities were conducted over the entire site since the 1930s. The evidence Malibu Valley provides to document this claim includes several declarations. As explained above, Malibu Valley has not provided any evidence that growing crops, raising sheep, goats or cattle is continuing at the site and therefore, there is no vested right to resume these activities. In addition, the raising sheep and cattle that is described in the declarations submitted by Malibu Valley is a different nature and extent of use than the horse boarding facilities currently located at the site. Those earlier activities did not require the extensive structures currently present at the site. Therefore, those prior activities did not create a vested right for the horse boarding facility currently located at the site.

No evidence was submitted that establishes that horses were boarded or raised at the site in the 1930s. Malibu Valley did provide declarations asserting that the Claretian Missionaries had horses on the property when they owned it and that after a wildfire in 1969, approximately 100 horses were brought to the site temporarily. (Exhibit 5, Application for Claim of Vested Rights, Exhibit B - Declarations of Warren Larry Cress and Luigi Viso). The evidence of a one-time temporary use of the site to keep horses after a wildfire does not establish vested right to continuously maintain that number of horses at the site. The use was merely a temporary, short-term use in response to a natural disaster. Malibu Valley has also not provided sufficient evidence to establish the nature and extent of horse raising or boarding activities that it states began prior to the effective date of the Coastal Act. A vested right is limited to the actual extent or scope of the activity that was being lawfully conducted prior to the Coastal Act. A vested right to raise and board horses cannot be open-ended, allowing an unlimited number of horses at the site. In this case, the Commission was provided no evidence that enables it to determine the scope of the alleged vested right to raise and board horses. Whether such a right exists for five horses or fifty horses makes a very significant difference to the extent of impacts occurring to resources protected by the Coastal Act, for which there is a vested right. Malibu Valley's claim of vested right is too general and vague for the Commission to acknowledge. The Coastal Commission finds that because Malibu Valley has not met its burden of establishing that it has a vested right to raise or board any particular number of horses at the site, the claim of vested rights for this use must be denied.

The evidence regarding structures at the site is too general and vague to establish a vested right to a particular structure. Mr. Viso says in his declaration that "[t]here was a horse barn nearby" however, he does not identify the specific location of the barn or even say if it was located on the parcel that is the subject of this claim. (Exhibit 5, Application for Claim of Vested Rights, Exhibit B - Declaration of Luigi Viso). Mr. Ferrante's declaration indicates that he was the General Manager for the Claretian Missionaries from 1974

through 1988 and structures including fences, corralling facilities and feeding facilities were constructed at various places on the Property. (Exhibit 5, Application for Claim of Vested Rights, Exhibit B - Declaration of Dominic Ferrante). He states these structures would be moved during planting season and then returned either to the same location or to another location. (*Id.*) Therefore, these were movable structures, and no specific location where they were located was identified.

With respect to structures that were allegedly constructed at the site by Malibu Valley beginning in the mid-1970s, this information is also too general and vague to establish a vested right. Boudreau stated in his letter requesting an exemption that Malibu Valley had been conducting horse farming activities at the site for 23 years, i.e., since 1975. (Exhibit 2). Therefore, any pre-coastal structures erected by Malibu Valley at the site must have been constructed between 1975 and January 1, 1977. However, Malibu Valley has not identified the specific location of any structures that it constructed between 1975 and 1977. Nor has it provided building permits for such structures. We are informed that a Los Angeles County ordinance in effect in 1975 would require a building permit for covered horse stalls and a barn. (Los Angeles Code, Title 26, Sections 101-106). Since Malibu Valley has not provided evidence that it acquired a building permit for covered horse stalls or a barn built prior to the Coastal Act, there is no vested right to erect or maintain such structures on the site. Furthermore, since Malibu Valley has not identified the specific location of any structures that it erected at the site prior to January 1, 1977, it has not provided evidence that would enable the Commission to acknowledge a vested right to a particular structure.

The Commission also notes that there is additional development on the site that is not mentioned specifically by Malibu Valley in its claim of vested rights, including irrigation structures, drainage structures discharging into Stokes Canyon Creek and a dirt road crossing Stokes Canyon Creek. Malibu Valley has not submitted any evidence indicating that this development occurred in the 1930s or that it existed at any time prior to January 1, 1977. However, this development would be included under Malibu Valley's claim that all development present at the site or occurring in the future is covered by vested rights, if it is "connected" to agricultural or livestock activities that are allegedly vested. The Commission specifically finds that Malibu Valley has not establish a vested right to erect or maintain any of the development mentioned in the first sentence of this paragraph, even if it is for the purpose of furthering or facilitating horse farming activities at the site, because Malibu Valley has not provided any evidence of when the development occurred. Therefore, it has not met its burden of establishing that the development was legally constructed prior to January 1, 1977.

E. County Position Regarding Status of Site

The site is zoned by the County as A-1 (Light Agriculture). The County of Los Angeles has determined that Malibu Valley was required to obtain building permits prior to construction of the covered horse stalls and barn that are currently located at the site and that were constructed after 1977. (Exhibit 7, County letter revoking building permits). A building permit is required for these structures pursuant to Los Angeles Code, Title 26, Sections

101–106). The building permit requirement was enacted by the County in Ordinance No. 1494, Adopted in 1927, and has been in effect since that time for any structure not expressly exempt from the permit requirement. The County required a building permit for any covered horse stalls and barns that Malibu Valley may have constructed in 1975-1977. Malibu Valley has not provided evidence that it ever obtained a building permit for such structures prior to the Coastal Act.

The Commission finds that all applicable local approvals for construction of the covered horse stalls and barn currently located at the site have not been obtained. In addition, the Commission finds that all applicable local approvals were not obtained for construction of any fixed structures located at the site prior to the effective date of the Coastal Act that were subsequently destroyed. Therefore, Malibu Valley has not established that it has a vested right to maintain the existing structures at the site, without complying with the Coastal Act.

Conclusion

For all the reasons set forth above, the Commission finds that Malibu Valley has not met the burden of proving its claim of vested rights for development at 2200 Stokes Valley Road. This is not a determination of whether, ultimately, the current development at the site can be allowed. Rather, the decision to deny the claim of vested rights means only that no development is authorized until the claimant goes through the permitting process under the Coastal Act.

The Commission also finds, for the reasons discussed above, that the evidence does not establish that Malibu Valley Farms, Inc., which from at least 1998 until May 2000 represented to the Commission that it was operating the horse boarding facilities at the site, has a vested right to any development at the site.

SG/sg

File: G:\Sgoldberg\ventura\4-00-279

STATE OF CALIFORNIA—THE RESOURCES AGENCY GRAY DAVIS, GOVERNOR

CALIFORNIA COASTAL COMMISSION
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105- 2219
VOICE AND TDD (415) 904- 5200
FAX (415) 904- 5400

April 19, 2000

Jan Perez, Statewide Enforcement Program
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

SUBJECT: **Boundary Determination No. 18-2000**
APN 4455-028-044, Los Angeles County

Dear Ms. Perez:

Enclosed is a copy of a portion of the adopted Coastal Zone Boundary Map No. 135 (Malibu Beach Quadrangle) with the approximate location of Los Angeles County APN 4455-028-044 indicated. Also included is an assessor parcel map exhibit that includes the subject property, to which the coastal zone boundary has been added.

Based on the information provided and that available in our office, the APN 4455-028-044 appears to be bisected by the coastal zone boundary in the manner indicated on Exhibit 2. Any development activity proposed within the coastal zone would require coastal development permit authorization from the Coastal Commission.

Please contact me at (415) 904-5335 if you have any questions regarding this determination.

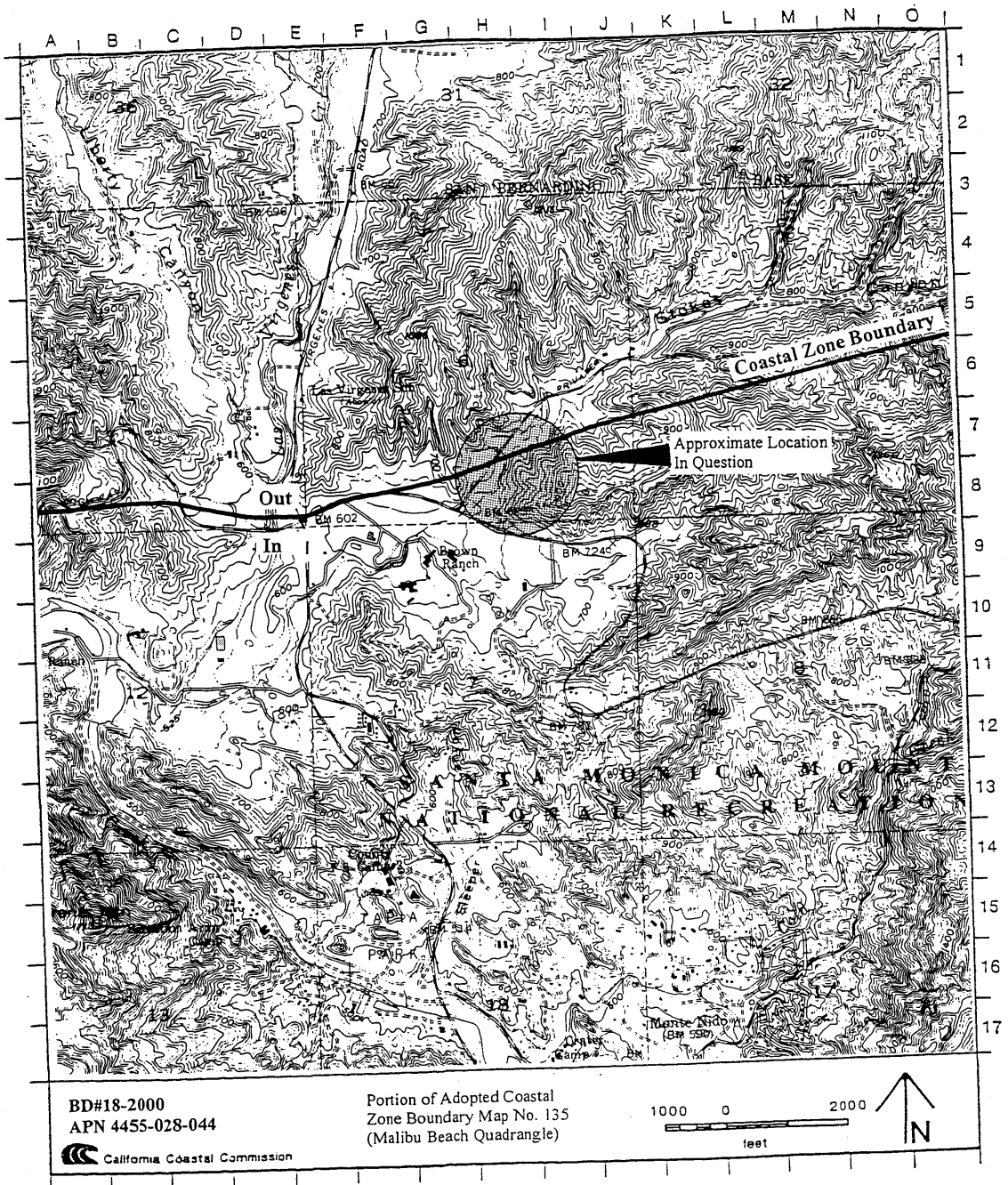
Sincerely,

Darryl Rance
Mapping/GIS Unit

Enclosures

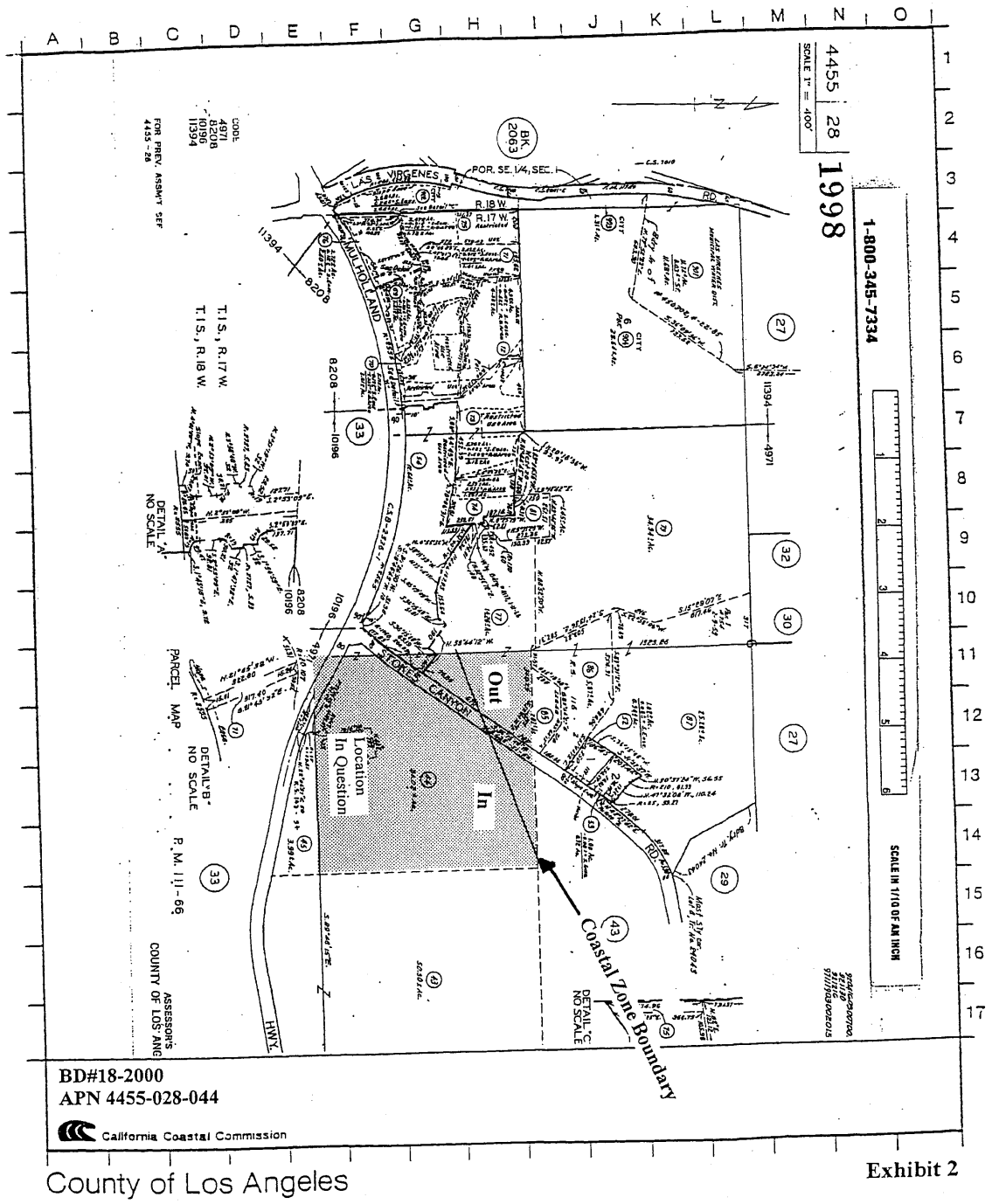
cc: Jack Ainsworth, CCC-SCC

EXHIBIT NO. 1
APPLICATION NO.
4-00-279-VRC
Boundary Determination
18-2000 (4/19/2000)
California Coastal Commission



County of Los Angeles

Exhibit 1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SCALE 1" = 400'
1998
1-800-345-7334
SCALE IN 1/10 OF AN INCH
BK. 2063
MULHOLLAND
STOKES CANYON
Out
In
Location In Question
Coastal Zone Boundary
DETAIL 'A' NO SCALE
DETAIL 'B' NO SCALE
DETAIL 'C' NO SCALE
PARCEL MAP
P.M. 111-66
COUNTY OF LOS ANG
ASSESSOR'S
HWY.
T.1S., R.17 W.
T.1S., R.18 W.
R.17 W.
R.18 W.
POR. SE. 1/4, SEC.
LAS VIRGENES
RD.
BD#18-2000
APN 4455-028-044
California Coastal Commission
County of Los Angeles
Exhibit 2

4-98-125-4

MALIBU VALLEY FARMS, INC.

November 19, 1998

VIA FEDERAL EXPRESS

Mr. Jack Ainsworth
California Coastal Commission
South Central Coast Area
89 South California Street, Suite 200
Ventura, California 93001

Re: Malibu Valley Farms, Inc.
Replacement of Horse Farming Structures Destroyed by Disaster

Dear Mr. Ainsworth:

This letter is a follow-up to my telephone conversation on November 18, 1998, with Sue Brooker regarding the replacement by Malibu Valley Farms, Inc. of pipe corrals and other structures that were damaged or destroyed by disaster.

Malibu Valley Farms operates a horse farm on land east of Stokes Canyon Road and north of Mulholland Highway in the unincorporated area of Los Angeles County. For your convenience, I have enclosed with this letter a site plan showing the location of the land on which Malibu Valley Farms intends to replace the destroyed structures. This area is within the Coastal Zone. In connection with its horse farming activities, Malibu Valley Farms installed and erected several large covered pipe corrals, a separate storage room for tack, and a large covered bin used to protect stall shavings from the elements. These improvements were erected prior to the passage of the Coastal Act and were located just north of Mulholland Highway.

In 1996, the pipe corrals and the related improvements were destroyed by the intense fires that swept through the Santa Monica Mountains. Copies of several newspaper photographs showing the effects of the fires on the land used by Malibu Valley Farms for its horse farming operation are enclosed. What little that remained of the improvements was destroyed this past winter by the severe flooding that caused severe erosion due to unusually heavy rains.

2200 STOKES CANYON ROAD ◆ CALABASAS 91302
TELEPHONE (818) 880-5139 ◆ FACSIMILE (818) 880-5414 ◆ E-MAIL MVFI@IX.N

Malibu Valley Farms is now in the process of replacing the structures destroyed by the disasters with a new covered pipe barn structure. A copy of the structural elevations for the replacement structures is enclosed. The structural plans and the location of the replacement structure have been approved by the County. Although the replacement structure meets County setback requirements and is permitted under the A-1-10 zoning, because it will be erected on land within the Coastal Zone, the County has requested that we furnish a Coastal Commission exemption letter.

The new structure is replacing the covered pipe corrals, storage barn, tack room, and other improvements that were destroyed by the fires and floods. The new pipe barn is sited in the same location on the affected property as the improvements that were destroyed and does not exceed the floor area, height, or bulk of the destroyed structures by more than 10 percent. To meet the new County setback requirements, we intend to replace the destroyed structures with pipe corrals connected by a contiguous roof and thereby concentrate the improvements in a smaller area. The replacement of the destroyed structures does not involve any expansion of the horse farming activities which have been conducted on the land for the past 23 years.

As we have discussed, Malibu Valley Farms would like to complete this work as soon as possible in order to prepare for the impending winter rains. Therefore, I ask that you forward a letter confirming that no coastal development permit is needed for this work to my office at your earliest convenience. If you require any additional information, please do not hesitate to call.

Thank you for your assistance and courtesy.

Sincerely,

Brian Boudreau, President
Malibu Valley Farms, Inc.

Enclosures
MVFI2164.doc
2005-019/012

Phillip R. Nicholson*
Lawrence Teplin
Ronald I. Silverman*
Mario Camara
George D. Calkins, II
John H. Kuhl
Arthur O. Spaulding, Jr.
Jeffrey Lapota
John S. Miller, Jr.
Kenneth B. Bley
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Lora Lee Moore
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Jeffrey A. Gagliardi
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Perri S. Victor
Tuan A. Pham
Paddi Sharifian
Sean W. Southard
John M. Trott
Lawrence Venick
Hans Lauterbach
Mitchell Poole
Carolyn Yashari Becher
Ceide Zapparoni
Kimberly Kesler Chytraus
Joel L. Rietz

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April 10, 2000

OUR FILE NO.
32051
WRITER'S DIRECT DIAL NUMBER
(310) 284-2275
WRITER'S E-MAIL ADDRESS
slamport@ccnlaw.com

VIA FACSIMILE AND U.S. MAIL

Ms. Jan E. Perez
Statewide Enforcement Program
California Coastal Commission
45 Fremont, Suite 2000
San Francisco, California 94105-2219

Re: Coastal Act Violation File No. V-4-00-001

Dear Ms. Perez:

I enclose a revised statement of defense of behalf of Robert Levin, Brian Boudreau and Malibu Valley Farms, Inc. ("MVFI"). MVFI leases and operates the farm and horse facilities located on the property in question. Mr. Boudreau is the president of MVFI. Accordingly, I have revised the statement of defense to properly reference the proper parties and their relationship to the property in question. There are no other changes to the statement. The enclosed statement of defenses supercedes the statement I sent you earlier today. My apologies for any inconvenience this may cause.

It is not clear from your most recent correspondence whether the notice of intent is being directed to Mr. Boudreau individually or to MVFI, which is the entity that actually has the property interest in the facilities that appear to be in question. Accordingly, until that is clarified, we continue to appear on Mr. Boudreau's behalf in this matter as well as on behalf of MVFI, which we believe is the proper party in this matter.

EXHIBIT NO. 3
APPLICATION NO.
4-00-279-VRC
Cox, Castle, et al.
Ltr (4/10/2000)
California Coastal Commission

If you have any questions, please call me

Very truly yours,

Stanley W. Lamport

SWL
32051 834244x1
cc: Mr. Brian Boudreau
Mr. Robert K. Levin

1. **Facts or allegations contained in the cease and desist order or the notice of intent that you admit (with specific reference to the paragraph number in such document):**

The notice of intent is vague and does not contain sufficient detail to permit Mr. Levin and Malibu Valley Farms, Inc. ("MVFI") to provide a complete response. The notice of intent does not contain numbered paragraphs. It appears that the factual allegations are limited to the three paragraphs on the first page of the March 7, 2000 letter. This response is directed to those paragraphs. Mr. Levin and MVFI admit that Sue Brooker of the Commission sent Mr. Boudreau at MVFI a letter dated January 22, 1999, requesting, among other things, that MVFI submit an after-the-fact coastal development permit by February 26, 1999. Mr. Boudreau was informed that an ERB review through the County of Los Angeles would be necessary as part of the application and that the County would not process an ERB as a result of a dispute over an alleged code violation concerning the boarding of horses which Mr. Boudreau has spent the last year working with the County to resolve. Mr. Boudreau discussed the matter with Ms. Brooker, who told Mr. Boudreau to submit an application after issues with the County had been resolved. Mr. Boudreau and counsel discussed the matter with Mr. Ainsworth last November. Mr. Ainsworth informed Mr. Boudreau that he would get back to him to work out a process to resolve the permitting issue.

2. **Facts or allegations contained in the cease and desist order or the notice of intent that you deny (with specific reference to the paragraph number in such document):**

The notice of intent is vague and does not contain sufficient detail to permit Mr. Levin and MVFI to provide a complete response. For the reasons stated above, this response is directed to the first three paragraphs in the March 7, 2000 letter. Based on what Mr. Levin and MVFI can reasonably ascertain from the general statements in the notice of intent and the information presently available to Mr. Levin and MVFI, they deny the remaining allegations in the first three paragraphs. They specifically deny that development has been undertaken in a manner that is inconsistent with the Coastal Act, that unpermitted construction took place between 1997 and 1999, that staff first became aware of unpermitted development in October 1998, and that they have failed to resolve this matter as required at the district office level.

3. **Facts or allegations contained in the cease and desist order or notice of intent of which you have no personal knowledge (with specific reference to paragraph number in such document):**

The Notice of Intent is vague and does not contain sufficient detail to permit a complete response. For the reasons stated above, this response is directed to the first three paragraphs in the March 7, 2000 letter. Mr. Levin and MVFI have no personal knowledge regarding the reasons why this matter has been referred to Statewide Enforcement staff. Mr. Levin has no personal knowledge of any of the matters set forth in the March 7, 2000 letter. MVFI leases the land in question and has been continuing activities that have been occurring on the site since at least the 1940s. Mr. Levin has had no involvement in those activities or the communications between MVFI and the Commission.

4. **Other facts which may exonerate or mitigate your possible responsibility or otherwise explain your relationship to the possible violation (be as specific as you can; if you have or know of any document(s), photograph(s), map(s), letter(s), or other evidence that you believe is/are relevant, please identify it/them by name, date, type, and any other identifying information and provide the original(s) or (a) copy(ies) if you can:**

The facilities that appear to be in question have been in place since before the Coastal Act was adopted. The Commission has been aware of these facilities since at least 1987. In 1987 the Coastal Commission made a boundary line determination. The Commission also considered at least two boundary adjustment applications affecting the property in 1987 and 1989. On those occasions, the property was inspected by Commission staff, which never noted any violation. The facilities that appear to be in question appear on maps that were before the Commission at the time. Mr. Levin and MVFI are currently obtaining more details. More than three years have passed since the Commission knew or should have known about alleged violations. The statute of limitations under Public Resources Code Section 30805.5 applies.

MVFI and Mr. Levin have been prevented from applying for an after-the-fact permit because the County will not accept an application for ERB review. In January 1999, the County adopted a new interpretation of its planning and zoning code to require a conditional use permit for horse boarding facilities. MVFI vigorously disputes the validity of this determination, but agreed to comply with County procedures to obtain a CUP. The County Code prevents the County from considering an application while a planning code violation exists unless the applicant obtains an approval from the planning director to proceed. Mr. Boudreau was informed that the prohibition would include ERB review. Mr. Boudreau discussed this problem with Sue Brooker, who informed him that he should resolve the violation issue with the County and submit an application thereafter.

After Mr. Boudreau left the Commission, Mr. Boudreau made numerous attempts to meet with Mr. Ainsworth to discuss the situation and decide how to proceed. Through no fault of MVFI or Mr. Levin, it took months before Mr. Boudreau could discuss the property with Mr. Ainsworth. More than one meeting was scheduled and then canceled at Mr. Ainsworth's request. A meeting finally occurred in November 1999, at which time Mr. Ainsworth acknowledged that he had been unable to meet with Mr. Boudreau to address the issues on the property earlier.

In the meantime, in consultation with County planning staff, MVFI submitted a request to the County Planning Director to allow an application to proceed while horse boarding continued. The first request was submitted on March 17, 1999. MVFI was later informed that the request would be rejected because it was not limited to the property in question. A second request was submitted on September 14, 1999. The director decided to turn down the request in December 1999. At that time MVFI began taking measures to remove the boarders, which is almost complete.

Mr. Boudreau met with Mr. Ainsworth in November 1999 as part of the County process to review the request to allow an application to proceed. Mr. Ainsworth, Mr. Boudreau and Mr. Lamport, MVFI's counsel, discussed the barriers to submitting an application that MVFI faced and that MVFI needed a definitive list of violations in order to figure out what to include in an after-the-fact permit. Mr. Boudreau and Mr. Lamport told Mr. Ainsworth that they wanted to work with the Commission to resolve any problems. Mr. Ainsworth stated that he would review matters back at his office and would be contacting Mr. Boudreau.

Mr. Boudreau has not heard from Mr. Ainsworth since that time. In the meantime, he has been working to remove the remaining boarders so that he would be in a position to start the ERB process.

MVFI is anxious to cooperate with the Commission to resolve any violations. MVFI was surprised to learn that the matter was referred to Statewise Enforcement, in light of where matters stood in his last meeting with Mr. Ainsworth.

5. Any other information, statement, etc. that you want to offer or make:

The property in question has been actively farmed since at least the late 1940's. The property was used for years to grow oat hay. Starting in the 1950's, cattle and sheep were raised on the site. Horses have been raised and trained on the property since the mid 1970's. The water course on the site was created in the 1950's when Stokes Canyon Road was created. None of the property is in a native undisturbed condition. It has not been in such a condition since at least the 1940's. All of the activities on the property are a continuation of farming activities that pre-date the Coastal Act.

6. **Documents, exhibits, declarations under penalty of perjury or other materials that you have attached to this form to support your answers or that you want to be made part of the administrative record for this enforcement proceeding (Please list in chronological order by date, author, and title, and enclose a copy with this completed form):**

MVFI and Mr. Levin are still assembling this information. They reserve the right to update and supplement this statement.

STATE OF CALIFORNIA – THE RESOURCES AGENCY

GRAY DAVIS, *Governor*

CALIFORNIA COASTAL COMMISSION
SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 641 - 0142

CERTIFIED & REGULAR MAIL

EXHIBIT NO. 4
APPLICATION NO. 4-00-279-VRC
CCC's CDP Exemption Request 4-98-125-X
(1/22/1999)
California Coastal Commission

January 22, 1999

Brian Boudreau
Malibu Valley Farms, Inc.
2200 Stokes Canyon Road
Calabasas, CA 91302

Re: Coastal Development Exemption Request 4-98-125-X

Location: 2200 Stokes Canyon Road, Calabasas, Los Angeles County

Dear Mr. Boudreau:

On December 7, 1998, Commission staff issued coastal development permit exemption 4-98-125-X for 14 pipe horse corrals (totaling 2,500 sq. ft.) to replace the previous corrals totaling 3,500 sq. ft. burned by the 1996 wild fire. Upon further investigation,staff has determined that the horse corrals and additional existing development, including a horse riding area, horse pastures, and a barn, that has been constructed after the implementation of the Coastal Act, January 1, 1977, without the benefit of the required coastal development permit. This exemption was issued in error an unfortunately must be revoked. This letter confirms this conclusion which was communicated to you on January 14, 1998.

Please be advised that 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 to include:

> *"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 the use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvest of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations....*

The horse corrals, riding facilities, and a barn that were constructed on your property between 1977 and 1986 constitute "development" as defined in Section 30106 of the

Coastal Act and, therefore, a coastal development permit was required from the Commission prior to construction.

Because this development was unpermitted, the exemption for reconstruction of structures destroyed by natural disasters under Section 30610(g)(1) of the Coastal Act is inapplicable. Therefore, coastal development permit exemption 4-98-125-X (Malibu Valley Farms) is revoked on the basis that the unpermitted development destroyed in the fire does not qualify for an exemption pursuant to Section 30610 (g)(1) of the Coastal Act. Construction of the horse corrals will require a coastal development permit.

In addition, the following unpermitted development remains on site: a horse riding area, a polo field, two horse corrals, a barn, numerous horse corrals, and accessory buildings.

Please note that any development activity performed without a coastal development permit constitutes a violation of the California Coastal Act's permitting requirements. Resolution this matter can occur through the issuance of an after-the-fact permit for the remaining unpermitted development, restoration of the site or a combination of the two actions. Please know that our office would prefer to resolve this matter administratively through the issuance of an after-the-fact coastal development permit to either retain the development or restore the site.

Enclosed is a coastal development permit application for your convenience. Please include all existing and purposed construction on your property that lies within the Coastal Zone within your coastal development permit application. Please submit a completed coastal development permit application to our office by February 26, 1999. If you have any further questions, please do not hesitate to contact me at (805) 641-0142.

Your anticipated cooperation is appreciated.

Sincerely,

Sue Brooker

Sue Brooker
Coastal Program Analyst

Encl.: CDP application

Cc: Mark Pestrella; LA County Dept of Building and Safety

Smb: h:letters/1999/malibu valley farms.doc

COX, CASTLE & NICHOLSON LLP
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LAWYERS
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June 12, 2000

OUR FILE NO:
32051
WRITER'S DIRECT DIAL NUMBER
(310) 284-2252
WRITER'S E-MAIL ADDRESS
sabraham@ccnlaw.com

VIA FACSIMILE & HAND-DELIVERY

Mr. Jack Ainsworth
Permits and Enforcement Supervisor
California Coastal Commission
89 South California Street, Suite 200
Ventura, CA 93001

Re: Coastal File No. V-4-00-001 / Request for Vested Rights Determination

Dear Mr. Ainsworth:

As we previously discussed on May 12, 2000, and agreed in subsequent communications, including our letter of May 25, 2000 and your response thereto, enclosed is the application of Malibu Valley, Inc. supporting its Claim of Vested Rights. Exhibits accompany the application that is hand-delivered with the original of this letter. A copy of the completed package is being delivered to the Coastal Commission's San Francisco Office and should be received tomorrow.

As we agreed, having submitted this application for a vested rights determination, you will have the enforcement proceeding that is currently on the Commission's June agenda taken off calendar. **Please confirm that the proceeding is dropped from the calendar.**

We understand that your office may ask for additional information and we will attempt to respond to these requests in a timely manner.

Thank you again for your assistance and cooperation in this matter. We look forward to working with you.

Sincerely,

Stephen E. Abraham

SEA
SEABRAHA/32051/844267v1
Enclosures (Faxed w/out Exhibits)
Cc: California Coastal Commission, North Coast Area

PETE WILSON, Governor

STATE OF CALIFORNIA—THE RESOURCES AGENCY

CALIFORNIA COASTAL COMMISSION
NORTH COAST AREA
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
(415) 904-5260

CLAIM OF VESTED RIGHTS

NOTE: Documentation of the information requested, such as permits, receipts, building department inspection reports, and photographs, must be attached.

1. Name of claimant, address, telephone number:

Malibu Valley, Inc., 26885 Mulholland Highway

Calabasas, California 91302 (818) 880-5139
(zip code) (area code) (telephone number)

2. Name, address and telephone number of claimant's representative, if any:

Stanley W. Lamport, Esq.; Stephen E. Abraham, Esq. Cox, Castle & Nicholson LLP

2049 Century Park East, 28th Floor, Los Angeles, CA 90067 (310) 277-4222
(zip code) (area code) (telephone number)

3. Describe the development claimed to be exempt and its location. Include all incidental improvements such as utilities, road, etc. Attach a site plan, development plan, grading plan, and construction or architectural plans.

Agriculture and livestock activities on the property located at 2200 Stokes Canyon Road. Malibu Valley is seeking a vesting determination with respect to both the nature and intensity of use on the property in question.

4. California Environmental Quality Act/Project Status. Not Applicable.

Check one of the following:

a. Categorically exempt _____. Class: _____. Item: _____.

Describe exempted status and date granted: _____.

b. Date Negative Declaration Status Granted: _____.

c. Date Environmental Impact Report Approved: _____.

Attach environmental impact report or negative declaration.

FOR COASTAL COMMISSION USE:

Application Number _____ Date Submitted _____
Date Filed _____

J1: 2/89

5. List all governmental approvals which have been obtained (including those from federal agencies) and list the date of each final approval. Attach copies of all approvals.

Permits for certain improvements are included in this application at Tab A. Remaining facilities and grading on the site pre-dated the Coastal Act and did not otherwise require permits at the time the work occurred.

6. List any governmental approvals which have not yet been obtained and anticipated dates of approval.

None.

7. List any conditions to which the approvals are subject and date on which the conditions were satisfied or are expected to be satisfied.

None.

8. Specify, on additional pages, nature and extent of work in progress or completed, including (a) date of each portion commenced (e.g., grading, foundation work, structural work, etc.); (b) governmental approval pursuant to which portion was commenced; (c) portions completed and date on which completed; (d) status of each portion on January 1, 1977; (e) status of each portion on date of claim; (f) amounts of money expended on portions of work completed or in progress (itemize dates and amounts of expenditures; do not include expenses incurred in securing any necessary governmental approvals). See continuation page 4 following this application.

9. Describe those portions of development remaining to be constructed.

None.

10. List the amount and nature of any liabilities incurred that are not covered above and dates incurred. List any remaining liabilities to be incurred and dates when these are anticipated to be incurred.

Malibu Valley is a multi-million dollar ranching business that continues to operate a farm -- including growing of crops and raising of livestock -- that has existed continuously on the Property for over 70 years.

11. State the expected total cost of the development, excluding expenses incurred in securing any necessary governmental expenses.

12. Is the development planned as a series of phases or segments? If so, explain.

No.

13. When is it anticipated that the total development would be completed?

Work is completed.

14. Authorization of Agent.

I hereby authorize Cox, Castle & NIcholson LLP to act as my representative and bind me in all matters concerning this application.
attorneys

Signature of Claimant

15. I hereby certify that to the best of my knowledge the information in this application and all attached exhibits is full, complete, and correct, and I understand that any misstatement or omission of the requested information or of any information subsequently requested, shall be grounds for denying the exemption or suspending or revoking any exemption allowed on the basis of these or subsequent representations, or for the seeking of such other and further relief as may seem proper to the Commission.

Signature of Claimant(s) or Agent

CLAIM OF VESTED RIGHTS

Application of Malibu Valley
June 9, 2000
page 4

Question 8:

Specify, on additional pages, nature and extent of work in progress or completed, including (a) date of each portion commenced (e.g., grading, foundation work, structural work, etc.); (b) governmental approval pursuant to which portion was commenced; (c) portions completed and date on which completed; (d) status of each portion on January 1, 1977; (e) status of each portion on date of claim; (f) amounts of money expended on portions of work completed or in progress (itemize dates and amounts of expenditures; do not include expenses incurred in securing any necessary approvals).

Malibu Valley operates an ongoing farming enterprise. Malibu Valley is engaging in agricultural and ranching activities that have been conducted on the land for more than 70 years. Declarations regarding the nature and intensity of use of the land are included in this application at Tab B. Maps and other graphic representations of the land are included at Tab C. Other documents demonstrating the extent to which the land was used for farming operations are included at Tab D.

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TATE OF CALIFORNIA—THE RESOURCES AGENCY PETE WILSON, Governor

CALIFORNIA COASTAL COMMISSION
OUTH CENTRAL COAST AREA
SOUTH CALIFORNIA ST., SUITE 200
ENTURA, CA 93001
05) 641-0142

EXEMPTION LETTER

4-98-125-X

DATE: December 7, 1998

NAME: **Brian Boudreau**

LOCATION: **2200 Stokes Canyon Road, Calabasas, Los Angeles County**

PROJECT: **Replace 14 pipe corrals (totaling 2,500 sq. ft.) burned by 1996 wild fire (to replace previous corrals totaling approximately 3,500 sq. ft.) in same location, to be similarly used for commercial horse boarding on pre-existing horse farm.**

This is to certify that this location and/or proposed project has been reviewed by the staff of the Coastal Commission. A coastal development permit is not necessary for the reasons checked below.

___ The site is not located within the coastal zone as established by the California Coastal Act of 1976, as amended.

___ The proposed development is included in Categorical Exclusion No.____ adopted by the California Coastal Commission.

___ The proposed development is judged to be repair or maintenance activity not resulting in an addition to or enlargement or expansion of the object of such activities (Section 30610(d) of Coastal Act).

___ The proposed development is an improvement to an existing single family residence (Section 30610(a) of the Coastal Act) and not located in the area between the sea and the first public road or within 300 feet of the inland extent of any beach (whichever is greater) (Section 13250(b)(4) of 14 Cal. Admin. Code.

___ The proposed development is an improvement to an existing single family residence and is located in the area between the sea and the first public road or within 300 feet of the inland extent of any beach (whichever is greater) but is not a) an increase of 10% or more of internal floor area, b) an increase in height over 10%, or c) a significant non-attached structure (Sections 30610(a) of Coastal Act and Section 13250(b)(4) of Administrative Regulations).

___ The proposed development is an interior modification to an existing use with no change in the density or intensity of use (Section 30106 of Coastal Act).

(OVER)

___ The proposed development involves the installation, testing and placement in service of a necessary utility connection between an existing service facility and development approved in accordance with coastal development permit requirements, pursuant to Coastal Act Section 30610(f).

___ The proposed development is an improvement to a structure other than a single family residence or public works facility and is not subject to a permit requirement (Section 13253 of Administrative Regulations).

XX The proposed development is the rebuilding of a structure, other than a public works facility, destroyed by a disaster. The replacement conforms to all of the requirements of Coastal Act Section 30610(g).

___ Other:

Please be advised that only the project described above is exempt from the permit requirements of the Coastal Act. Any change in the project may cause it to lose its exempt status. This certification is based on information provided by the recipient of this letter. If, at a later date, this information is found to be incorrect or incomplete, this letter will become invalid, and any development occurring at that time must cease until a coastal development permit is obtained.

Truly yours,

Melanie Hale

Melanie Hale
Coastal Program Analyst

MALIBU VALLEY FARMS, INC.

November 19, 1998

VIA FEDERAL EXPRESS

Mr. Jack Ainsworth
California Coastal Commission
South Central Coast Area
89 South California Street, Suite 200
Ventura, California 93001

Re: **Malibu Valley Farms, Inc.**
Replacement of Horse Farming Structures Destroyed by Disaster

Dear Mr. Ainsworth:

This letter is a follow-up to my telephone conversation on November 18, 1998, with Sue Brooker regarding the replacement by Malibu Valley Farms, Inc. of pipe corrals and other structures that were damaged or destroyed by disaster.

Malibu Valley Farms operates a horse farm on land east of Stokes Canyon Road and north of Mulholland Highway in the unincorporated area of Los Angeles County. For your convenience, I have enclosed with this letter a site plan showing the location of the land on which Malibu Valley Farms intends to replace the destroyed structures. This area is within the Coastal Zone. In connection with its horse farming activities, Malibu Valley Farms installed and erected several large covered pipe corrals, a separate storage room for tack, and a large covered bin used to protect stall shavings from the elements. These improvements were erected prior to the passage of the Coastal Act and were located just north of Mulholland Highway.

In 1996, the pipe corrals and the related improvements were destroyed by the intense fires that swept through the Santa Monica Mountains. Copies of several newspaper photographs showing the effects of the fires on the land used by Malibu Valley Farms for its horse farming operation are enclosed. What little that remained of the improvements was destroyed this past winter by the severe flooding that caused severe erosion due to unusually heavy rains.

2200 STOKES CANYON ROAD ◆ CALABASAS 91302
TELEPHONE (818) 880-5139 ◆ FACSIMILE (818) 880-5414 ◆ E-MAIL MVFI@IX.NETCOM.COM

Mr. Jack Ainsworth
California Coastal Commission
November 19, 1998
Page 2

Malibu Valley Farms is now in the process of replacing the structures destroyed by the disasters with a new covered pipe barn structure. A copy of the structural elevations for the replacement structures is enclosed. The structural plans and the location of the replacement structure have been approved by the County. Although the replacement structure meets County setback requirements and is permitted under the A-1-10 zoning, because it will be erected on land within the Coastal Zone, the County has requested that we furnish a Coastal Commission exemption letter.

The new structure is replacing the covered pipe corrals, storage barn, tack room, and other improvements that were destroyed by the fires and floods. The new pipe barn is sited in the same location on the affected property as the improvements that were destroyed and does not exceed the floor area, height, or bulk of the destroyed structures by more than 10 percent. To meet the new County setback requirements, we intend to replace the destroyed structures with pipe corrals connected by a contiguous roof and thereby concentrate the improvements in a smaller area. The replacement of the destroyed structures does not involve any expansion of the horse farming activities which have been conducted on the land for the past 23 years.

As we have discussed, Malibu Valley Farms would like to complete this work as soon as possible in order to prepare for the impending winter rains. Therefore, I ask that you forward a letter confirming that no coastal development permit is needed for this work to my office at your earliest convenience. If you require any additional information, please do not hesitate to call.

Thank you for your assistance and courtesy.

Sincerely,

Brian Boudreau, President
Malibu Valley Farms, Inc.

Enclosures
MVFl2164.doc
2005-019/012

CLICK HERE FOR EXHIBITS PART II