

CALIFORNIA COASTAL COMMISSION

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W 11 & 12

ADDENDUM

August 12, 2009

TO: Coastal Commissioners and Interested Parties

FROM: Enforcement Staff

SUBJECT: **ADDENDUM TO ITEMS W11 & 12 (DaSilva): COASTAL COMMISSION CONSENT ORDER NO. CCC-09-CD-04 AND CONSENT ORDER NO. CCC-09-RO-03 – FOR THE COMMISSION MEETING OF AUGUST 12, 2009**

Documents included in this addendum:

1. Commission staff's recommended changes to the staff report for items W11 and 12, made to reflect the fact that the matter has settled, and to correct several minor typographical errors.
2. Consent Orders and Settlement Agreement (CCC-09-CD-04 AND CCC-09-RO-03) as executed by the DaSilvas.

2. Commission staff hereby revises its recommendation by making the following revisions to the staff report. Language to be added is shown in **bold italic and underlined** and language to be deleted is in ~~strike-out~~, as shown below:

- Page 1, The Title is changed to read as follows:

~~STAFF RECOMMENDATIONS AND FINDINGS FOR CEASE AND DESIST AND RESTORATION ORDERS~~ **CONSENT ORDER NO. CCC-09-CD-04 AND CONSENT ORDER NO. CCC-09-RO-03 AND SETTLEMENT AGREEMENT**

- Page 1: Remove the "NOTICE OF VIOLATION" line from the caption.
- Page 1; Page 2, Paragraph 2; Page 7, Section IV.A, Paragraph 1; Page 14, Section IV.D.1, Paragraph 1; and Page 46, Section H.2. In these listed places, the enumeration of the elements of unpermitted development at issue in this matter is changed to read as follows:

1) construction of a horse corral **with wooden fencing**; 2) construction of an unpermitted pathway; 3) ~~construction of a rock retaining wall~~; 4) 3) construction of a four stall stable and tackroom; 5) 4) construction of a cement drainage culvert with a metal grate; 6) ~~placement of wooden fencing~~; 7) 5) removal of major vegetation; 8) ~~related grading~~; 9) 6) a change in the intensity of use of the lower portion of the subject property; 10) 7) a change in the intensity of use of Cold Creek as a result of the runoff of horse effluent and erosion of fill into the creek; ~~and 11) the discharge of wastewater via the drainage culvert and runoff from the corral into Cold Creek.~~

- Page 1, Substantive File Documents List, Item #4 is changed to read as follows:

4. Exhibits ~~#x1~~ through ~~#y30~~ of this Staff Report

- Page 2, Add a footnote to I. Summary of Staff Recommendations and Findings to read as follows:

This matter was settled just days prior to the Commission's hearing on this matter and after the Staff Report was mailed out, and so the Staff Report could not be fully edited to reflect this change. Although the Staff Report discusses recordation of a Notice of Violation, due to the terms of the settlement, a finding requiring recordation of a NOVA is not included in the final recommendations by staff this is not included in the final recommendations by Staff, as revised in the Addendum, which contains this and other related necessary changes intended to conform this to the terms of the Consent Orders and Settlement.

- Page 4, The Action to be Taken Section is modified to read as follows:

Staff recommends that the Commission approve ~~Cease and Desist~~ Consent Order CCC-09-CD-04 and ~~Restoration~~ Consent Order CCC-09-RO-03 (“Orders”) and Settlement to require and authorize Respondents to 1) remove all unpermitted development from the subject property, with the exception of specified wooden fencing to be maintained for the duration of the restoration, 2) restore native vegetation endemic to this section of the Santa Monica Mountains, and 3) cease and desist from conducting any further unpermitted development on the subject property. ~~In so doing, Staff recommends that the Commission formally recognize the fact that violations of the Coastal Act have occurred on the subject property, thus authorizing the Executive Director to record Notice of Violation CCC-09-NOV-04 on the subject property.~~

- Page 6, Section III. Staff Recommendations is changed to read as follows:

III. STAFF RECOMMENDATIONS

Staff recommends that the Commission adopt the following ~~three~~ two motions:

1. Motion

~~I move that the Commission find that a violation has occurred as described in the staff recommendation for CCC-09-NOV-04.~~

Staff Recommendation of Approval

~~Staff recommends a YES vote. Passage of this motion will result in the Executive Director recording Notice of Violation No. CCC-09-NOV-04 in the Los Angeles County Recorder’s Office. The motion passes only by an affirmative vote of a majority of Commissioners present.~~

~~Resolution That a Violation of the Coastal Act Has Occurred~~

~~The Commission hereby finds that the unpermitted development on the subject property, addressed below in the staff recommendation for CCC-09-NOV-04, is a violation of the Coastal Act, and adopts the findings set forth below on grounds that development has occurred without a coastal development permit and in violation of a special condition of an existing coastal development permit.~~

2. 1. Motion

I move that the Commission issue Consent Cease and Desist Order No. CCC-09-CD-04 under Section 30810 of the Coastal Act, pursuant to the staff recommendation.

Staff Recommendation of Approval

Staff recommends a YES vote. Passage of this motion will result in issuance of the Consent Cease and Desist Order. The motion passes only by an affirmative vote of a majority of Commissioners present.

Resolution to Issue Consent Cease and Desist Order No. CCC-09-CD-04

The Commission hereby issues Consent Cease and Desist Order No. CCC-09-CD-04, as set forth below, and adopts the findings set forth below on grounds that development conducted by Respondents has occurred without a coastal development permit and in violation of a special condition of an existing coastal development permit, in violation of the Coastal Act.

3. 2. Motion

I move that the Commission issue Consent Restoration Order No. CCC-09-RO-03 under Section 30811 of the Coastal Act, pursuant to the staff recommendation.

Staff Recommendation of Approval

Staff recommends a YES vote. Passage of this motion will result in issuance of the Consent Restoration Order. The motion passes only by an affirmative vote of a majority of Commissioners present.

Resolution to Issue Consent Restoration Order No. CCC-09-RO-03

The Commission hereby issues Consent Restoration Order No. CCC-09-RO-03, as set forth below, and adopts the findings set forth below on the grounds that 1) development has occurred on the subject property without the required coastal development permit, 2) the development is inconsistent with the Coastal Act, and 3) the development is causing continuing resource damage.

- Page 7, the title for Section IV is changed to read as follows:

PROPOSED FINDINGS FOR NOTICE OF VIOLATION NO. CC-09-NOV-04 AND CEASE AND DESISTCONSENT ORDER NO. CCC-09-CD-04 AND RESTORATIONCONSENT ORDER NO. CCC-09-RO-03

- Page 11, the fifth sentence in the first full paragraph is changed to read as follows:

In the ensuing year and a half Respondents failed to submit any of the required items to complete the permit, and therefore, on June ~~416~~, 2009, the South Central Coast District office finally returned this second CDP Application (No. 4-07-137) to the Respondents for reason of incompleteness.

- Page 12, add the following sentence at the end of the first paragraph:

Respondents have never objected in writing to the NOVA recordation, but Staff did not record a Notice of Violation on the property because of the ongoing settlement negotiations and since Respondents never formally objected, the August 2009 hearing does not constitute a Section 30812(c) hearing, and the Commission is not making a finding requiring recordation of a Notice of Violation pursuant to Section 30812(d).

- Page 12-13, Section IV.C Basis for Recordation of Notice of Violation of the Coastal Act is deleted.

- Page 13, Section IV.D Basis for Issuance of Orders is renumbered to be Section IV.C Basis for Issuance of Orders

- Page 31, the last sentence of the second paragraph is changed to read as follows:

The relevant provisions are cited above, in Sections ~~C~~ and D of this Staff Report.

- Page 33, the first sentence of the third paragraph is changed to read as follows:

As described above in section ~~IV.CD~~.2.a, the northern and part of the western portion of the subject property is oak woodlands/savannah ESHA, the riparian canopy of Cold Creek on the western portion of the subject property is ESHA, and Cold Creek itself, a perennial blue-line stream is ESHA.

- Page 34, the second sentence of the first full paragraph is changed to read as follows:

As discussed above in Section ~~IV.CD~~.2.a, Dr. John Dixon has assessed the designation of ESHA within the Santa Monica Mountains, and developed a site-specific analysis to be used to apply Section 30107.5 when determining if a habitat in the Santa Monica Mountains constitutes ESHA.

- Page 38, the last sentence of the first paragraph is changed to read as follows:

Most importantly, as described above in section ~~IV.CD~~.2.a, the northern and part of the western portion of the subject property is oak woodlands/savannah ESHA, the

riparian canopy of Cold Creek on the western portion of the subject property is ESHA, and Cold Creek itself, a perennial blue-line stream is ESHA.

- Pages 49-66, The text for CEASE AND DESIST ORDER NO. CCC-09-CD-04 AND RESTORATION ORDER NO. CCC-09-RO-03 is replaced with the text for the CONSENT ORDERS AND SETTLEMENT AGREEMENT (CCC-09-CD-04 AND CCC-09-RO-03), which is included and referenced above as Document 2 of this Addendum.

REVISED AUGUST 3, 2009

~~PROPOSED CONSENT ORDERS AND SETTLEMENT AGREEMENT (CCC-09-CD-04 AND CCC-09-RO-03)~~

1.0 ~~PROPOSED~~ CONSENT ORDER PURSUANT TO PRC SECTION 30810 (CCC-09-CD-04)

1.1 Pursuant to its authority under California Public Resources Code ("PRC") section 30810, the California Coastal Commission ("Commission") hereby authorizes and orders Bob and Sherry DaSilva, individually and as Trustees of the Bob and Sherry L. DaSilva Family Trust, all their successors, assigns, employees, agents, and contractors, and any persons acting in concert with any of the foregoing (hereinafter collectively referred to as "Respondents") to: 1) cease and desist from engaging in any further development, as that term is defined in PRC section 30106, on the property identified in Section 6.0 below ("subject property"), unless authorized pursuant to the Coastal Act, PRC sections 30000-30900; and 2) remove, in accordance with the procedures set forth in Section 3, below, the following material and structures that exist on the subject property as a result of the unpermitted development already performed: a horse corral with a stable and tackroom and associated wooden fencing¹, an unpermitted pathway², and a cement drainage culvert with a metal grate placed within and adjacent to environmentally-sensitive riparian and oak woodlands/savannah habitats. Through the execution of Consent Order CCC-09-CD-04, Respondents agree to comply with its terms and conditions.

2.0 ~~PROPOSED~~ CONSENT ORDER PURSUANT TO PRC SECTION 30811 (CCC-09-RO-03)

2.1 Pursuant to its authority under PRC section 30811, the Commission hereby orders and authorizes the Respondents to restore the subject property as described in Section 3.0, below. Through the execution of Consent Order CCC-09-RO-03, Respondents agree that they shall comply with its terms and conditions.

3.0 TERMS AND CONDITIONS

3.1 Within 30 days of issuance of these Consent Orders, Respondents shall submit, for the review and approval of the Commission's Executive Director ("Executive Director"), a Removal, Restoration, Revegetation, and Monitoring Plan ("Restoration Plan"). The Executive Director may require revisions to this and any other deliverables required

¹ Pursuant to Section 3.1.A of these Orders, the wooden fencing along the western property line may be maintained to protect the restoration program, under the Restoration Plan required under Section 3.1 below.

² Such unpermitted pathway does not pertain to that certain public easement "Riding and Hiking Trail" depicted on the approved plans for the subject property under CDP 4-96-047.

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under the Consent Restoration Order, and the Respondents shall revise and resubmit any such deliverables by the deadline(s) established in the Executive Director's letter returning the deliverable. The Restoration Plan will contain a removal plan, a revegetation plan, and a monitoring plan, which will outline the removal of the cited unpermitted development, the restoration of the pre-violation topography, and the restoration and revegetation of a natural riparian and oak woodlands/savannah ecosystem on the subject property where the unpermitted activity occurred. The Restoration Plan shall include the following requirements and include and discuss the following elements:

A. General Terms and Conditions

1. The Restoration Plan shall outline all proposed removal activities, in accordance with Section 3.1B below, and all proposed restoration of the riparian and oak woodlands/savannah habitats, including all proposed revegetation activities, in accordance with Section 3.1.C below, on the subject property that was impacted by the unpermitted activities that are the subject of these Consent Orders.
2. The Restoration Plan shall be prepared by a qualified restoration ecologist(s) or resource specialist(s) ("Specialist"), and shall include a description of the education, training, and experience of said Specialist. A qualified Specialist for this project shall have experience successfully completing restoration or revegetation (using California native plant species) of riparian and oak woodlands/savannah habitats, preferably in the Santa Monica Mountains region of Los Angeles County.
3. The Restoration Plan shall include a schedule/timeline of activities covered in the plan, the procedures to be used, and identification of the parties who will be conducting the restoration activities. The schedule/timeline of activities covered by the Restoration Plan shall be in accordance with the deadlines included in Section 3.1 for the Removal Plan, and the Revegetation Plan.
4. The Restoration Plan shall include a detailed description of all equipment to be used. All tools utilized shall be hand tools unless the Specialist demonstrates to the satisfaction of the Executive Director that mechanized equipment is needed and will not significantly impact resources protected under the Coastal Act, including, but not limited to: geological stability, integrity of landforms, freedom from erosion, and the existing native vegetation and Cold Creek. The Restoration Plan shall designate areas for staging of any construction equipment and materials, including receptacles and temporary stockpiles of graded materials, all of which shall be covered on a daily basis. The Restoration Plan shall include limitations on the hours of operation for all equipment and a contingency plan that addresses: 1) impacts from equipment use, including disruption of areas where revegetation will occur, and responses thereto; 2) potential spills of fuel or other hazardous releases that may result from the use of mechanized equipment and responses thereto; and 3) any water quality concerns.

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5. The Restoration Plan shall identify the location of the disposal site(s) for the disposal of all materials removed from the site and all waste generated during restoration activities pursuant to the Consent Orders. If a disposal site is located in the Coastal Zone and is not an existing sanitary landfill, a Coastal Development Permit is required for such disposal. All hazardous waste must be disposed of at a suitable licensed disposal facility.

6. The Restoration Plan shall specify the methods to be used during and after restoration to stabilize the soil and make it capable of supporting native vegetation. Such methods shall not include the placement of retaining walls or other permanent structures, grout, geogrid or similar materials. Any soil stabilizers identified for erosion control shall be compatible with native plant recruitment and establishment. The Revegetation Plan shall specify the type and location of erosion control measures that will be installed on the subject property and maintained until the impacted areas have been revegetated to minimize erosion and transport of sediment. Such measures shall be provided at all times of the year for at least three years or until the plantings have been established, whichever occurs first, and then shall be removed or eliminated by Respondents.

7. The Restoration Plan shall specify that Respondents shall maintain the existing wooden fencing along the western property line, dividing the public equestrian trail from the subject property, in order to ensure the protection of the restored area from adverse impacts for the duration of the monitoring period, or for as long as the Executive Director determines the fence is needed to ensure that the restoration area is protected from human and equestrian activity, whichever time period is longer.

8. The Restoration Plan shall specify the area where the restoration is to take place and where the restoration plan is to be implemented, that consists of all areas impacted by the unpermitted development: the construction of a horse corral with wooden fencing, construction of an unpermitted pathway, construction of a four stall stable and tackroom, and construction of a cement drainage culvert with a metal grate ("Restoration Area").

B. Removal Plan

1. Respondents shall submit a Removal Plan prepared by a Specialist to remove the following material and structures that exist on the subject property as a result of the unpermitted development already performed: a horse corral with a stable and tackroom and associated wooden fencing excluding the wooden fence along the western property line that is necessary for the protection of the restoration area (see Section A.7, above), an unpermitted pathway, and a cement drainage culvert with a metal grate placed within and adjacent to environmentally-sensitive riparian and oak woodlands/savannah habitats, as described in section 1.1 and in the document entitled "Findings for Consent Order No. CCC-09-CD-04 and Consent Order No. CCC-09-RO-03."

2. The Removal Plan shall include a site plan showing the location and identity of all unpermitted structures and material to be removed.

3. Removal activities shall not disturb areas outside the area of the unpermitted development to be removed. Measures for the restoration of any area disturbed by the removal activities shall be included within the Revegetation Plan, these measures shall include the restoration of the area where the unpermitted development was removed from, and any areas disturbed by those removal activities.

4. Respondents shall commence removal of the unpermitted development by implementing the Removal Plan no more than 15 days after approval of the Restoration Plan. Respondents shall complete removal of the unpermitted development within 15 days of commencing removal of the unpermitted development.

C. Revegetation Plan

1. Respondents shall submit a Revegetation Plan. The Revegetation Plan shall include detailed descriptions, including graphic representations, narrative reports, and photographic evidence as necessary, of the vegetation in the Restoration Area prior to any unpermitted activities undertaken on the subject property, and the current state of the subject property. The Revegetation Plan shall demonstrate that the areas impacted by the unpermitted development on the subject property will be restored using planting of species endemic to and appropriate for the subject site, including riparian and oak woodlands/savannah species where appropriate.

2. The Revegetation Plan shall show all existing vegetation in the Restoration Area. The vegetation planted in the Restoration Area shall consist only of native, non-invasive plants endemic to riparian and oak woodlands/savannah habitats of the Santa Monica Mountains. All plantings used shall consist of native plants that were propagated from plants as close as possible to the subject property, in order to preserve the genetic integrity of the flora in and adjacent to the planting area.

3. The Revegetation Plan shall identify the natural habitat type that is the model for the restoration and describe the desired relative abundance of particular species in each vegetation layer. Based on these goals, the plan shall identify the species that are to be planted (plant "palette"), and provide a rationale for and describe the size and number of container plants and the rate and method of seed application. The Revegetation Plan shall indicate that plant propagules must come from local native stock. If plants, cuttings, or seed are obtained from a nursery, the nursery must certify that they are of local origin and are not cultivars and the Revegetation Plan shall provide specifications for preparation of nursery stock (e.g., container size & shape to develop proper root form, hardening techniques, watering regime, etc.). Technical details of planting methods (e.g., spacing, micorrhizal inoculation, etc.) shall also be included.

4. The Revegetation Plan shall address all areas on the subject property impacted by the unpermitted development listed in Section 7.0 (hereinafter "Restoration Area"). The Revegetation Plan shall include a detailed description of the methods that shall be utilized to restore the habitats on the subject property to that which existed prior to the

unpermitted development and demonstrate that these methods will result in riparian and oak woodlands/savannah vegetation on the subject property with a similar plant density, total cover and species composition to that typical of undisturbed riparian and oak woodlands/savannah areas in the surrounding area, within five years from the initiation of revegetation activities. The Revegetation Plan shall include the methods used to aerate the compacted soil caused by the unpermitted development. This section shall include a detailed description of reference site(s) including rationale for selection, location, and species composition. The reference sites shall be located as close as possible to the restoration areas, shall be similar in all relevant respects, and shall provide the standard for measuring success of the restoration under these Consent Orders.

5. The Revegetation Plan shall include a map showing the type, size, and location of all plant materials that will be planted in the Planting Area; the location of all invasive and non-native plants to be removed from the Planting Area; the topography of all other landscape features on the site; the location of reference sites; and the location of photograph sites, which will provide reliable photographic evidence for monitoring reports.

6. The Revegetation Plan shall include a schedule for installation of plants and removal of invasive and/or non-native plants and a detailed explanation of the performance standards that will be utilized to determine the success of the restoration. The performance standards shall identify that "x" native species appropriate to the habitat should be present, each with at least "y" percent cover or with a density of at least "z" individuals/ square meter. The description of restoration success analysis shall be described in sufficient detail to enable an independent specialist to duplicate it. If the planting schedule requires planting to occur at a certain time of year beyond the deadlines set forth herein, the Executive Director may, at the written request of Respondents, extend the deadlines as set forth in Section 13.0 of the Consent Orders in order to achieve optimal growth of the vegetation.

7. Respondents shall not employ invasive plant species, which could supplant native plant species in the Restoration Area. The Revegetation Plan shall demonstrate that all non-native vegetation within the areas subject to revegetation and those areas that are identified as being subject to disturbance as a result of the restoration and revegetation activities will be eradicated. The removal of non-native species in these areas shall be completed as part of the Revegetation Plan, and the Revegetation Plan shall indicate that all non-native plant species will be removed from the Planting Area prior to any revegetation activities on the subject property.

8. The Revegetation Plan shall describe the proposed use of artificial inputs, such as watering or fertilization, including the full range of amounts of the inputs that may be utilized. The minimum amount necessary to support the establishment of the plantings for successful restoration shall be utilized. No permanent irrigation system is allowed in the Restoration Area. Temporary above ground irrigation to provide for the establishment of the plantings is allowed for a maximum of three years or until the

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revegetation has become established, whichever occurs first. If, after the three-year time limit, the revegetation has not established itself, the Executive Director may allow for the continued use of the temporary irrigation system until such time as the revegetation is established.

9. Revegetation of the Planting Area shall be undertaken using accepted planting procedures required by the restoration ecologist or resource specialist. Such planting procedures may suggest that planting would best occur during a certain time of the year. If so, and if this necessitates a change in the planting schedule, the deadline to implement the Revegetation Plan may be extended by the Executive Director as provided for under the provisions of Section 13.0, herein.

10. Respondents shall commence revegetation by implementing the Revegetation Plan no more than 10 days after completion of removal of the unpermitted development of the subject property. Respondents shall complete revegetation no more than 15 days after commencing revegetation.

D. Monitoring Plan

1. Respondents shall submit a Monitoring Plan that describes the monitoring and maintenance methodology and shall include the following provisions:

a. The Monitoring Plan shall include maintenance and monitoring methodology, including sampling procedures, sampling frequency, and contingency plans to address potential problems with restoration activities or unsuccessful restoration of the area. Monitoring and maintenance activities shall be conducted in a way that does not impact the sensitive resources on the subject property or on adjacent properties. Any impacts shall be remedied by the Respondents to ensure successful restoration.

b. Respondents shall submit, according to the procedure set forth under Section 3.5, on an annual basis for a period of five years (no later than December 31st of each year), a written report, for the review and approval of the Executive Director, prepared by a qualified Specialist, evaluating compliance with the approved Restoration Plan. The annual reports shall include further recommendations and requirements for additional restoration activities, as necessary, in order for the project to meet the objectives of the Restoration Plan. These reports shall also include photographs taken annually from the same pre-designated locations (as identified on the map submitted pursuant to Section 3.C.5) indicating the progress of recovery in the Planting Area.

c. At the end of the five-year period, Respondents shall submit, according to the procedure set forth under Section 3.5, a final detailed report prepared by a qualified Specialist for the review and approval of the Executive Director. If this report indicates that the restoration project has in part, or in whole, been unsuccessful, based on the approved Restoration Plan, Respondents shall submit, to the Executive Director, a revised or supplemental plan to compensate for those portions of the original program that were

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not successful. The Executive Director shall determine if the revised or supplemental restoration plan must be processed as a CDP, a new Restoration Order, or a modification of these Consent Orders. After the revised or supplemental restoration plan has been processed by the Commission, Respondents shall implement the approved plan.

- 3.2 Upon approval of the Restoration Plan (including the Removal, Revegetation, and Monitoring Plans) by the Executive Director, Respondents shall fully implement each plan consistent with all of its terms. Respondents shall complete implementation of each plan within the schedule provided for by each plan, and by the deadlines included in Section 3.1 of these orders. At a minimum, Respondents shall complete all work described in the Revegetation Plan no later than 50 days after removal of the unpermitted development is completed. The Executive Director may extend this deadline or modify the approved schedule for good cause pursuant to Section 13.0 of the Consent Orders.
- 3.3 Within 30 days of the completion of the work described in the Removal Plan (Section 3.1B), Respondents shall submit to the Executive Director, according to the procedure set forth under Section 3.5, a report documenting the removal work on the subject property. This report shall include a summary of dates when work was performed and photographs that show implementation of the Removal Plan, as well as photographs of the subject property before and after the Removal Plan was completed.
- 3.4 Within 30 days of the completion of the work required by the Restoration Plan (Section 3.1), Respondents shall submit to the Executive Director, according to the procedure set forth under Section 3.5, a report describing and documenting the restoration work on the subject property. This report shall include a summary of dates when work was performed and photographs that show full implementation of the Restoration Plan.
- 3.5 All plans, reports, photographs and any other materials required by these Consent Orders shall be sent to:
California Coastal Commission
Attn: Aaron McLendon
200 Oceangate, 10th Floor
Long Beach, CA 90802

With a copy sent to:
California Coastal Commission
Attn: Pat Veasart
89 South California, Suite 200
Ventura CA 93001
- 3.6 All work to be performed under these Consent Orders shall be done in compliance with all applicable laws.

4.0 REVISIONS OF DELIVERABLES

The Executive Director may require revisions to deliverables required under these Consent Orders, and the Respondents shall revise any such deliverables consistent with the Executive Director's specifications, and resubmit them for further review and approval by the Executive Director, by the deadline established by the modification request from the Executive Director. The Executive Director may extend time for submittals upon a written request and a showing of good cause, pursuant to Section 13.0 of these Consent Orders.

5.0 PERSONS SUBJECT TO THE ORDERS

- 5.1 Bob and Sherry DaSilva, individually and as Trustees of the Bob and Sherry L. DaSilva Family Trust, all their successors, assigns, employees, agents, and contractors, and any persons acting in concert with any of the foregoing are jointly and severally subject to all the requirements of these Consent Orders, and agree to undertake the work required herein.

6.0 IDENTIFICATION OF THE PROPERTY

- 6.1 The property that is the subject of these Consent Orders is described as follows:
975 Cold Canyon Road, Calabasas, Los Angeles County, Assessor's Parcel Number 4456-039-007.

7.0 DESCRIPTION OF ALLEGED COASTAL ACT VIOLATION

- 7.1 The development that is the subject matter of these Consent Orders includes:
1) construction of a horse corral with wooden fencing; 2) construction of an unpermitted pathway; 3) construction of a four stall stable and tackroom; 4) construction of a cement drainage culvert with a metal grate; 5) removal of major vegetation; 6) a change in the intensity of use of the lower portion of the subject property; and 7) a change in the intensity of use of Cold Creek as a result of the runoff of horse effluent and erosion of fill into the creek.

8.0 COMMISSION JURISDICTION

- 8.1 The Commission has jurisdiction over resolution of this alleged Coastal Act violation pursuant to Public Resources Code Sections 30810 and 30811. Respondents agree to not contest the Commission's jurisdiction to issue or enforce these Consent Orders.

9.0 SETTLEMENT OF MATTER PRIOR TO HEARING

- 9.1 In light of the intent of the parties to resolve these matters in settlement, Respondents have agreed not to contest the legal and factual bases for, and the terms and issuance of, these Consent Orders, including any allegations of Coastal Act violations contained in the

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Notice of Intent to Commence Cease and Desist Order and Restoration Order Proceedings dated June 19, 2003, and Notice of Intent to Record a Notice of Violation of the California Coastal Act dated June 18, 2009, that are also referenced in Section 7.1, above, and are thus being addressed by these Consent Orders. Specifically, Respondents have agreed not to contest the issuance or enforcement of the Consent Order at a public hearing or any other proceeding.

10.0 EFFECTIVE DATE AND TERMS OF THE ORDERS

10.1 The effective date of these orders is the date they are approved and issued by the Commission. These orders shall remain in effect permanently unless and until rescinded by the Commission.

11.0 FINDINGS

11.1 These Consent Orders are issued on the basis of the findings adopted by the Commission, as set forth in the document entitled "Findings for Consent Order Pursuant No. CCC-09-CD-04 and Consent Order No. CCC-09-RO-03." The activities authorized and required in these Orders are consistent with the resource protection policies set forth in Chapter 3 of the Coastal Act. The Commission has authorized the activities required in these Consent Orders as being consistent with the resource protection policies set forth in Chapter 3 of the Coastal Act.

12.0 SETTLEMENT/COMPLIANCE OBLIGATION

12.1 In light of the intent of the parties to resolve these matters in settlement, respondents have agreed to pay a monetary settlement in the amount of \$37,500. Respondents agree to make an initial payment of \$7,500 within 90 days of the issuance of these Orders. Thereafter, Respondents agree to make 2 additional payments as follows: \$20,000 due on August 31, 2010 and \$10,000 due on March 1, 2011. The settlement monies shall be deposited in the Violation Remediation Account of the California Coastal Conservancy Fund (see Public Resources Code section 30823) or into such other public account as authorized by applicable California law at the time of the payment, and as designated by the Executive Director. Respondents shall submit the settlement payment amount by the dates indicated above to the attention of Aaron McLendon of the Commission, payable to the California Coastal Commission at the designated account.

12.2 Strict compliance with these Consent Orders by all parties subject thereto is required. Failure to comply with any term or condition of these Consent Orders, including any deadline contained in these Consent Orders, unless the Executive Director grants an extension under Section 13.0, will constitute a violation of these Consent Orders and shall result in Respondents being liable for stipulated penalties in the amount of \$750 per day per violation. Respondents shall pay stipulated penalties within 15 days of receipt of written demand by the Commission for such penalties, regardless of whether Respondents have subsequently complied. If Respondents do not comply with the agreed-

upon terms of these Consent Orders, nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of the Commission to seek any other remedies available, including the imposition of civil penalties and other remedies pursuant to Public Resources Code Sections 30821.6, 30822 and 30820 as a result of the lack of compliance with the Consent Orders and for the underlying Coastal Act violations as described herein.

13.0 DEADLINES

13.1 Prior to the expiration of the deadlines established by these Consent Orders, Respondents may request from the Executive Director an extension of the deadlines. Such a request shall be made in writing 10 days in advance of the deadline and directed to the Executive Director in the San Francisco office of the Commission. The Executive Director may grant an extension of deadlines upon a showing of good cause, either if the Executive Director determines that Respondents have diligently worked to comply with their obligations under these Consent Orders, but cannot meet deadlines due to unforeseen circumstances beyond their control, or if the Executive Director determines that the Restoration Plan schedule should be extended to ensure an effective restoration.

14.0 SITE ACCESS

14.1 Respondents shall provide access to the subject property at all reasonable times to Commission staff and any agency having jurisdiction over the work being performed under these Consent Orders. Nothing in these Consent Orders is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Commission staff may enter and move freely about the portions of the subject property on which the violations are located, and on adjacent areas of the property to view the areas where development is being performed pursuant to the requirements of the Consent Orders for purposes including, but not limited to, ensuring compliance with the terms of these Consent Orders.

15.0 GOVERNMENT LIABILITIES

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

16.0 SETTLEMENT OF CLAIMS

16.1 Persons against whom the Commission issues a Cease and Desist and/or Restoration Order have the right pursuant to PRC Section 30803(b) to seek a stay of the order. However, in light of the desire to settle this matter and avoid litigation, pursuant to the

agreement of the parties as set forth in these Consent Orders, Respondents hereby waive whatever right they may have to seek a stay or to challenge the issuance and enforceability of these Consent Orders in a court of law or equity.

- 16.2 The Commission and Respondents agree that these Consent Orders settle the Commission's monetary claims for relief for those violations of the Coastal Act alleged in the Notice of Intent to Commence Cease and Desist Order and Restoration Order Proceedings letter dated June 19, 2003 ("NOI") occurring prior to the date of these Consent Orders, (specifically including claims for civil penalties, fines, or damages under the Coastal Act, including under Public Resources Code Sections 30805, 30820, and 30822), with the exception that, if Respondents fail to comply with any term or condition of these Consent Orders, the Commission may seek monetary or other claims for both the underlying violations of the Coastal Act and for the violation of these Consent Orders. In addition, these Consent Orders do not prevent the Commission from taking enforcement action due to Coastal Act violations at the subject property other than those that are the subject of the NOI.

17.0 SUCCESSORS AND ASSIGNS

- 17.1 These Consent Orders shall run with the land binding Respondent and all successors in interest, heirs, assigns, and future owners of the property. Respondents shall provide notice to all successors, assigns, and potential purchasers of the property of any remaining obligations under these Consent Orders.

18.0 MODIFICATIONS AND AMENDMENTS

- 18.1 Except as provided in Section 13.0, and for minor, immaterial matters upon mutual written agreement of the Executive Director and Respondents, these Consent Orders may be amended or modified only in accordance with the standards and procedures set forth in Section 13188(b) of the Commission's administrative regulations.

19.0 GOVERNMENTAL JURISDICTION

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

20.0 LIMITATION OF AUTHORITY

- 20.1 Except as expressly provided herein, nothing in these Consent Orders shall limit or restrict the exercise of the Commission's enforcement authority pursuant to Chapter 9 of the Coastal Act, including the authority to require and enforce compliance with these Consent Orders.
- 20.2 Correspondingly, Respondents have entered into these Consent Orders and waived their right to contest the factual and legal bases for issuance of these Consent Orders, and the

enforcement thereof according to its terms. Respondents have agreed not to contest the Commission's jurisdiction to issue and enforce these Consent Orders.

21.0 INTEGRATION


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

22.0 STIPULATION

22.1 Respondents and their representatives attest that they have reviewed the terms of these Consent Orders and understand that their consent is final and stipulate to its issuance by the Commission.

IT IS SO STIPULATED AND AGREED:

On behalf of Respondents:



Bob DaSilva

8-4-09
Date



Sherry DaSilva

8/4/09
Date

Executed in San Francisco on behalf of the California Coastal Commission:

Peter Douglas, Executive Director

Date

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
 SAN FRANCISCO, CA 94105-2219
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**W11, 12,
&13**

Staff: MTS/AM
Staff Report: July 30, 2009
Hearing Date: August 12, 2009

STAFF RECOMMENDATIONS AND FINDINGS FOR CEASE AND DESIST AND RESTORATION ORDERS

NOTICE OF VIOLATION	CCC-09-NOV-04
CEASE AND DESIST ORDER:	CCC-09-CD-04
RESTORATION ORDER:	CCC-09-RO-03
RELATED VIOLATION FILE:	V-4-01-045
PROPERTY LOCATION:	975 Cold Canyon Road, Calabasas, CA, 91302 Los Angeles County Assessor's Parcel No. 4456-039-007
PROPERTY OWNER:	Bob and Sherry L. DaSilva Family Trust Bob and Sherry DaSilva, Trustees
VIOLATION DESCRIPTION:	Unpermitted development, all of which also constitutes violations of both a condition of a permit the owners secured for development on the property and a deed restriction they recorded pursuant to that same permit condition, including: construction of a horse corral, an unpermitted pathway, a rock retaining wall, a four stall stable and tackroom, <i>and a cement drainage culvert with a metal grate</i> ; placement of wooden fencing; boarding of horses; clearance of vegetation; and related grading.
PERSONS SUBJECT TO THESE ORDERS:	1. Bob and Sherry L. DaSilva Family Trust 2. Bob and Sherry DaSilva, Trustees
SUBSTANTIVE FILE DOCUMENTS:	1. Coastal Development Permits P-81-7701/5-83-290 2. Coastal Development Permit 4-96-047 3. Malibu/Santa Monica Mountains Land Use Plan 4. Exhibits #x through #y of this Staff Report

CEQA STATUS: Exempt (CEQA Guidelines (CG) §§ 15060(c)(2) and (3)) and Categorically Exempt (CG §§ 15061(b)(2), 15307, 15308 and 15321).

I. SUMMARY OF STAFF RECOMMENDATION AND FINDINGS

Background

This case involves the construction of a horse corral and related facilities on the lower portion of an approximately 2.33 acre property, adjacent to Cold Creek. The property is located at 975 Cold Canyon Road, Calabasas (hereinafter “subject property”). At the time the facilities at issue in this order were constructed, the owners of the property, the DaSilvas (“Respondents”), already had a single-family home and associated amenities (garage, swimming pool, driveway, etc.) on the upper portion of the subject property, having received a permit from the Commission in 1996. However, Respondents sought no permit for the development at issue in the present matter. Moreover, the 1996 permit expressly prohibited Respondents from conducting additional development on the subject property without first seeking Coastal Act authorization. Thus, the subject development is both unpermitted and a direct violation of a condition of an existing permit.¹

The development at issue in this case includes: construction of the corral, an unpermitted pathway, a rock retaining wall, a four stall stable and tackroom, and a cement drainage culvert with a metal grate; placement of wooden fencing; clearance of vegetation; and related grading. The unpermitted development occurred on the lower portion of the subject property, adjacent to Cold Creek, a perennial blueline stream, within the Malibu/Cold Creek Management Area, an Environmentally Sensitive Habitat Area (“ESHA”), and has facilitated the ongoing housing of horses in this sensitive location without any significant waste management system in place. The north-west portion of the affected area is also within and adjacent to oak woodlands/savannah and riparian habitat areas, which are also ESHAs. These areas are designated as ESHA in the Malibu/Santa Monica Mountains Land Use Plan certified by the Commission. Additionally, in CDP No. 5-83-290, which authorized the creation of the subdivision of which the subject property is a part, the Commission intentionally clustered development onto the 23 acres of graded pads above the descending slopes, canyons, and riparian areas to protect the ESHAs located in and adjacent to Cold Creek and its tributaries within the side canyons. This clustering was defeated by the placement of the unpermitted development in the previously pristine lower portion of the subject property.

The unpermitted development on the subject property had, and continues to have, adverse impacts on water quality, habitat values, marine resources and biological productivity of the subject property and of Cold Creek. The grading and vegetation removal performed for the construction of the corral and stalls/tackroom and the existence of horses within the corral, contributed to erosion of the lower portion of the subject property and the fill and alteration of

¹ For simplicity, this report refers to that development simply as “unpermitted development.”

the creek. Further, the horses' effluent, particularly including liquid wastes, is not captured and treated, and thus runs from the corral to the creek, where it degrades the water quality of the creek. Heal the Bay, after a water quality survey within the Malibu Creek Watershed, found that there is a significant difference in water quality between their reference sites on upper Cold Creek above the subject property and the lower monitoring site, at the outlet of Cold Creek just before it flows into Malibu Creek. Heal the Bay found that "[s]pecifically, the nutrient and bacteria concentrations are elevated at the bottom of Cold Creek" and that "biological surveys have revealed a serious degradation in the diversity and numbers of sensitive species between the upstream reference site and the bottom of Cold Creek."² The subject property sits between these two water quality monitoring sites where the unpermitted development contributes to erosion and horse wastes, both liquid and solid, run-off.

In addition, the unpermitted development impacts the oak woodlands/savannah and riparian habitat areas located on the subject property. The affected oak woodlands/savannah area is ESHA, and supports a variety of native vegetation and animal species in the rare Mediterranean climate of the Santa Monica Mountains. Further, the heavily compacted soil in the corral, which is a result of the continuous presence of horses, severely stresses the mature oak trees in and adjacent to the corral by reducing the ability of the roots to acquire needed air, water, and nutrients from the soil.

Elements for Issuance of Orders and Recordation of a Notice of Violation

These violations are longstanding. In the nearly eight years, from the first Notice of Violation sent by the Commission staff in October 2001, this violation has remained in place and unresolved. As described in more detail in Section IV of this staff report, the activity that has occurred on the subject property meets the definition of "development" set forth in Coastal Act Section 30106. Under Section 30600,³ anyone undertaking nonexempt development in the Coastal Zone must obtain a CDP, in addition to any other permit required by law. This development is not exempt from permitting requirements. In fact, based on the sensitive resources at the site, a prior permit obtained by the same property owners expressly limited even otherwise-applicable exemptions by requiring that the owners obtain a permit prior to conducting any future development on the property (with the exception of limited types of fuel modification). Nonetheless, Respondents failed to obtain a CDP for the subject development. While Respondents submitted several incomplete CDP applications to retain the unpermitted development after-the-fact, these permits were never completed, and so a complete CDP application for this development has never been filed. In short, the activities at issue meet the definition of development as that term is defined in the Coastal Act, and therefore required a CDP, but no permit was obtained. In addition to the lack of a CDP authorizing the subject unpermitted development, the unpermitted development at issue was also in violation of the conditions of the previously issued CDP No. 4-96-047.

² Heal the Bay, Mark Gold and Mark Abramson, Letter to California Coastal Commission, February 4, 2002. [Exhibit 28]

³ All further section references are to the California Public Resources Code ("PRC"), and thus, to the Coastal Act, PRC §§ 30000-30900, unless otherwise indicated.

The Commission may issue a Cease and Desist Order under Section 30810 if it finds that the activity that is the subject of the order has occurred either without a required CDP or in violation of a previously granted CDP. In order to issue a Restoration Order under Section 30811, the Commission must find that development 1) has occurred without a CDP, 2) is inconsistent with the Coastal Act, and 3) is causing continuing resource damage. If the Commission finds that property has been developed in violation of the Coastal Act, Section 30812 requires the Executive Director to record, with the County Recorder's Office, a Notice of Violation against the subject parcel. These criteria are all met in this case.

The activities at issue meet the definition of development as that term is defined in the Coastal Act, and therefore require Coastal Act approval via a CDP, but no permit was obtained. In addition, the unpermitted development is also inconsistent with the Chapter 3 policies of the Coastal Act. As discussed more fully herein, the unpermitted development and the ongoing use and maintenance of the unpermitted facilities are inconsistent with several policies in Chapter 3 of the Coastal Act, including Section 30230 (marine resources), Section 30231 (biological productivity), Section 30240 (ESHA), Section 30251 (scenic resources and alteration of landforms), and Section 30253 (minimization of adverse impacts). These inconsistencies stem from the fact that the unpermitted development has adversely impacted the water quality, oak woodlands/savannah and riparian habitat values, marine resources and biological productivity of the subject property and its resources. Such impacts meet the definition of damage provided in Section 13190(b) of Title 14 of the California Code of Regulations ("14 CCR"), which defines "damage" as "any degradation or other reduction in quality, abundance, or other quantitative or qualitative characteristic of the resource as compared to the condition the resource was in before it was disturbed by unpermitted development." If the unpermitted development, remains unmitigated, its effects will lead to further adverse impacts, including the continuation of the existing impacts to water quality, marine resources, sensitive habitat values, and the biological productivity of the subject property

The impacts from the unpermitted development continue at the subject property. In addition, resource impacts are ongoing as a result of the continued presence of the unpermitted development, including increased erosion, continuing soil compaction, and continuing contamination of Cold Creek from runoff of horse effluent. The continued presence of the unpermitted development, as described below, will exacerbate and/or prolong the adverse impacts to water quality, marine resources, sensitive habitat values, and the biological productivity of the subject property. Therefore, the unpermitted development is causing "continuing resource damage", as defined in 14 CCR Section 13190.

Action to be Taken

Staff recommends that the Commission approve Cease and Desist Order CCC-09-CD-04 and Restoration Order CCC-09-RO-03 ("Orders") to require and authorize Respondents to 1) remove all unpermitted development from the subject property, 2) restore native vegetation endemic to this section of the Santa Monica Mountains, and 3) cease and desist from conducting any further unpermitted development on the subject property. In so doing, Staff recommends that the Commission formally recognize the fact that violations of the Coastal Act have occurred on the

subject property, thus authorizing the Executive Director to record Notice of Violation CCC-09-NOV-04 on the subject property.

II. HEARING PROCEDURES

A. Notice of Violation

The procedures for a hearing on whether or not a violation has occurred are set forth in Section 30812 of the Coastal Act. Section 30812(c) and (d) provide the following direction:

(c) If the owner submits a timely objection to the proposed filing of the notice of violation, a public hearing shall be held at the next regularly scheduled commission meeting for which adequate public notice can be provided, at which the owner may present evidence to the commission why the notice of violation should not be recorded. The hearing may be postponed for cause for not more than 90 days after the date of the receipt of the objection to recordation of the notice of violation.

(d) If, after the commission has completed its hearing and the owner has been given the opportunity to present evidence, the commission finds that, based on substantial evidence, a violation has occurred, the executive director shall record the notice of violation in the office of each county recorder where all or part of the real property is located. If the commission finds that no violation has occurred, the executive director shall mail a clearance letter to the owner of the real property.

The Commission shall determine, by a majority vote of those present and voting, whether a violation has occurred. A Commission finding that a violation has occurred will result in the Executive Director's recordation of a Notice of Violation in the County Recorder's Office in Los Angeles County.

B. Cease and Desist Order and Restoration Order

The procedures for a hearing on a Cease and Desist Order and Restoration Order are outlined in 14 CCR Section 13185 and 14 CCR Section 13195.

For a Cease and Desist Order and Restoration Order hearing, the Chair shall announce the matter and request that all parties or their representatives present at the hearing identify themselves for the record, indicate what matters are already part of the record, and announce the rules of the proceeding including time limits for presentations. The Chair shall also announce the right of any speaker to propose to the Commission, before the close of the hearing, any question(s) for any Commissioner, at his or her discretion, to ask of any other party. Staff shall then present the report and recommendation to the Commission, after which the alleged violator(s) or their representative(s) may present their position(s) with particular attention to those areas where an actual controversy exists. The Chair may then recognize other interested persons after which time Staff typically responds to the testimony and to any new evidence introduced.

The Commission will receive, consider, and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceedings, as specified in 14 CCR Section 13186,

incorporating by reference Section 13065. The Chair will close the public hearing after the presentations are completed. The Commissioners may ask questions to any speaker at any time during the hearing or deliberations, including, if any Commissioner chooses, any questions proposed by any speaker in the manner noted above. Finally, the Commission shall determine, by a majority vote of those present and voting, whether to issue the Cease and Desist Order and Restoration Order, either in the form recommended by the Executive Director, or as amended by the Commission. Passage of the motion below, per the Staff recommendation or as amended by the Commission, will result in issuance of the Cease and Desist Order and Restoration Order.

III. STAFF RECOMMENDATIONS

Staff recommends that the Commission adopt the following three motions:

1. Motion

I move that the Commission find that a violation has occurred as described in the staff recommendation for CCC-09-NOV-04.

Staff Recommendation of Approval

Staff recommends a **YES** vote. Passage of this motion will result in the Executive Director recording Notice of Violation No. CCC-09-NOV-04 in the Los Angeles County Recorder's Office. The motion passes only by an affirmative vote of a majority of Commissioners present.

Resolution That a Violation of the Coastal Act Has Occurred

The Commission hereby finds that the unpermitted development on the subject property, addressed below in the staff recommendation for CCC-09-NOV-04, is a violation of the Coastal Act, and adopts the findings set forth below on grounds that development has occurred without a coastal development permit and in violation of a special condition of an existing coastal development permit.

2. Motion

I move that the Commission issue Cease and Desist Order No. CCC-09-CD-04 pursuant to the staff recommendation.

Staff Recommendation of Approval

Staff recommends a **YES** vote. Passage of this motion will result in issuance of the Cease and Desist Order. The motion passes only by an affirmative vote of a majority of Commissioners present.

Resolution to Issue Cease and Desist Order

The Commission hereby issues Cease and Desist Order No. CCC-09-CD-04, as set forth below, and adopts the findings set forth below on grounds that development conducted by Respondents

has occurred without a coastal development permit and in violation of a special condition of an existing coastal development permit, in violation of the Coastal Act.

3. Motion

I move that the Commission issue Restoration Order No. CCC-09-RO-03 pursuant to the staff recommendation.

Staff Recommendation of Approval

Staff recommends a **YES** vote. Passage of this motion will result in issuance of the Restoration Order. The motion passes only by an affirmative vote of a majority of Commissioners present.

Resolution to Issue Restoration Order

The Commission hereby issues Restoration Order No. CCC-09-RO-03, as set forth below, and adopts the findings set forth below on the grounds that 1) development has occurred on the subject property without the required coastal development permit, 2) the development is inconsistent with the Coastal Act, and 3) the development is causing continuing resource damage.

IV. PROPOSED FINDINGS FOR NOTICE OF VIOLATION NO. CC-09-NOV-04 AND CEASE AND DESIST ORDER NO. CCC-09-CD-04 AND RESTORATION ORDER NO. CCC-09-RO-03⁴

A. Description of Violations

The development that is the subject matter of these Orders includes: 1) construction of a horse corral; 2) construction of an unpermitted pathway; 3) construction of a rock retaining wall; 4) construction of a four stall stable and tackroom; 5) construction of a cement drainage culvert with a metal grate; 6) placement of wooden fencing; 7) removal of major vegetation; 8) related grading; 9) a change in the intensity of use of the lower portion of the subject property through, among other things, the boarding of horses; 10) a change in the intensity of use of Cold Creek as a result of the runoff of horse effluent and erosion of fill into the creek; and 11) the discharge of wastewater via the drainage culvert and runoff from the corral into Cold Creek. This development occurred in and adjacent to ESHAs (oak woodlands/savannah and riparian habitats). In addition, the unpermitted horse corral and associated fencing was constructed approximately 20 feet from Cold Creek, a perennial blue line stream, and approximately 10 feet from the banks from the of Cold Creek. Moreover, the development was constructed in violation of a condition of an existing CDP.

The vegetation removal occurred within the area now enclosed by the horse corral, the area impacted by the stable and tackroom, and the area where the unpermitted pathway is located; and the impacts of the activities are ongoing as a result of the continued presence of horses within the corral. This area contains oak woodland and riparian habitats, which are ESHAs by the definition of ESHA in Section 30107.5, and additionally were designated as ESHA by the 1986

⁴ These findings include and incorporate by reference the Summary of Staff Recommendation and Findings, supra.

Santa Monica Mountains Land Use Plan (“LUP”), as detailed below. This area is also adjacent to Cold Creek, which is an ESHA as well, for the same reasons, as described above. Although the LUP designation provides important guidance, the Commission’s designation of these habitats as ESHA is fundamentally based under Section 30107.5, as that is the controlling definition in the absence of a certified Local Coastal Program. A pathway with rock retaining walls was constructed from the permitted equestrian trail coming down from the upper, permitted (per CDP 4-96-047) and graded portion of the lot to the lower, previously undisturbed, portion of the lot which contains the unpermitted corral. The corral and related facilities have been used to keep horses continually since they were constructed in 1999, the pathway is used for horses to walk from the main portion of the lot to the lower portion, the rock retaining wall is used to hold up the pathway, the concrete and metal drainage culvert drains the corral area, and the wooden fencing and stable/tackroom form the main elements of the corral.

B. History of Violations

Site History

On August 28, 1978, the Commission denied an application by Ben Johnson’s Estates (P-78-3468) to divide an 85 acre parcel located along and adjacent to Cold Canyon Road (including the subject property) into 17, approximately 5-acre lots and to grade the lots for building pads. The Commission found that the proposed project was inconsistent with water quality and habitat policies of the Coastal Act and found that the proposed project was inconsistent with the surrounding development and could not be accommodated by existing utility services. The findings also stated that “creation of additional lots . . . would be inconsistent with the habitat protection requirements of Section 30240 of the Coastal Act.”

Subsequent to the Commission’s denial of P-78-3468, the applicant revised the project description to include a dedication of 56 acres for open space and public recreation and to reduce the number of lots from 17 to 10. On June 11, 1981, the Commission approved that revised application (P-81-7701), with a condition requiring the applicant to dedicate a public access trail within a 60-foot-wide public access easement for a public access trail and requiring either 9 Transfer Development Credits (TDCs) adjacent to Cold Creek or participation in a Coastal Conservancy lot retirement program. In this CDP the Commission intentionally clustered development onto the 23 acres of graded pads above the descending slopes, canyons, and riparian areas to protect the ESHAs located in and adjacent to Cold Creek and its tributaries within the side canyons. Further, the Commission ensured that development would not impact the ESHAs located in the subdivision as it “. . . restricted development in Environmentally Sensitive Habitat areas and found that residential land use is not dependent on the resource and not to be permitted,” and as the Commission “. . . required a 50 to 100 foot setback from all streams” for any development. The findings are clear that the Commission, in approving the subdivision, intended for development to be allowed only on the upper graded pads of the canyon lots in order to protect the habitat areas. As stated in the Staff Report: “The Commission finds, therefore, that the project, as conditioned, with the recreational use and trail easement provides protection to habitat areas and is consistent with Section 30240(a) and (b) of the Coastal Act of 1976”.

In the ensuing 7 years, the applicant for the subdivision submitted 6 extension requests (5-83-290-E1 through -E6⁵). On June 11, 1988, the Commission approved then-permittee Cold Creek Associates' request for extension 5-83-290-E6 for the permit authorizing division of 85 acres into 10 residential lots and one 56-acre open space lot, grading for building pads and roads, and the installation of utilities. The coastal development permit was issued on November 22, 1988, enabling the creation of Tract 33873.

On June 14, 1996, the Commission granted CDP No. 4-96-047 to Respondents Bob and Sherry DaSilva. The permit authorized construction of a 4,100 square foot single-family home, attached three-car garage, swimming pool and spa, driveway, retaining wall, swale, and an underground drainage system on Lot 6 of Tract 33873 (975 Cold Canyon Road). The permitted development was to be located on the previously approved graded building pad (CDP No. 5-83-290), in keeping with the intended clustering of the subdivision, and included authorization for an additional 330 cubic yards of grading. No development was authorized on the descending slopes below the upper graded pad, except for the drainage swale, and no development at all was authorized on the flat lower portion of the property adjacent to Cold Creek. Development was only permitted to occur on the previously graded building pad on the upper portion of the property, furthest from Cold Creek and not located within a designated ESHA. The DaSilvas commenced development on July 18, 1996.

Coastal Development Permit 4-96-047 was approved with four Special Conditions. Special Condition No. 4 required the DaSilvas to record a "Future Development" Deed Restriction. The deed restriction on the subject property (recorded June 17, 1996, as Instrument No. 96-951583 in the County of Los Angeles Recorder's Office) states:

Covenant, Condition, and Restriction The undersigned Owner, for himself/herself and for his/her heirs, assigns, and successors in interest, covenants and agrees that:

The subject permit is only for the development described in Coastal Development Permit No 4-96-047; and that any future additional (sic) or improvements to the property, including clearing of vegetation (except for the removal of vegetation consistent with the approved Landscape and Fuel Modification Plan attached hereto as Exhibit C and incorporated herein by reference), and grading, will require an amendment to Permit No. 4-96-047 or will require an additional coastal development permit from the California Coastal Commission or from its successor agency.

Early Attempts at Informal Resolution

Commission staff first learned of the alleged violation on the subject property on May 11, 2001, in a visit to a neighboring site. Since that time, staff has attempted to resolve this matter with

⁵ A new system of numbering permits was established approximately halfway through 1981 when the regional Commissions were disbanded. When "older" permits (prior to the new system in 1981) are amended or extended they are typically given a new permit number with the appropriate suffix. In this case 5-83-290 was the permit number assigned to Coastal Development Permit No. P-81-7701 when the applicants for the subdivision requested permit extensions; and therefore CDP No. 5-83-290 is identical to CDP No. P-81-7701.

Respondents administratively, as an alternative to commencement of formal enforcement proceedings. Staff confirmed the presence of the unpermitted development on the subject property in a second site visit on September 4, 2001. In a “Notice of Violation” letter dated October 24, 2001, Commission staff informed Respondents that undertaking development without a coastal development permit is a violation of the Coastal Act and requested that they submit a complete permit application by November 26, 2001, for either removal of the unpermitted development and restoration of the site or for “after-the-fact” retention of the unpermitted development. In the letter, Commission staff recommended submission of an application for removal of the unpermitted development and restoration of the site because the unpermitted development did not appear to be consistent with the Chapter 3 policies of the Coastal Act.

In a phone conversation with Commission staff on November 6, 2001, Respondents stated their intention to file a permit application to retain all of the unpermitted development and requested an extension of the November 26, 2001 filing deadline. Staff granted the extension request, moving the deadline to January 21, 2002. Staff discussed the matter with Respondents on January 28, 2002, and granted a second extension for filing an application to February 15, 2002. Respondents outlined “pending and completed items” for the application in a letter dated February 26, 2002, but none of the cited items was ever submitted to the Commission within the next year.

Notice of Intent to Commence Cease and Desist Order and Restoration Order Proceedings

In response to Respondents’ failure to submit a completed CDP application in response to the letters from Commission staff that noted the lack of a CDP and the fact there was an outstanding violation on the site, and in response to the ongoing resource damage due to the continued presence of the unpermitted development on the subject property at that time, on June 19, 2003, the Commission’s Executive Director sent a *Notice of Intent to Commence Cease and Desist Order and Restoration Order Proceedings*. After the Notice of Intent was sent, Commission staff tried to resolve this matter with Respondents in a series of phone calls and letters from July 2003 through December 2003, including extensions of the time to submit the Statement of Defense. Respondents did not file a Statement of Defense by the final deadline of August 8, 2003 as they indicated that they desired to work towards settlement of the matter instead. Commission staff confirmed that the deadline to file a Statement of Defense had expired without one being received in a letter dated August 8, 2003. After that deadline expired, settlement discussions continued, but were ultimately unsuccessful. In the course of these discussions, Respondents proposed relocation of the corral and related facilities but to an area that was still within the required setback areas for riparian and oak woodlands habitat ESHAs, and that was thus inconsistent with the Coastal Act. Commission Staff informed Respondents of this in a letter dated September 2, 2004, which gave a further opportunity to submit a complete CDP application to either remove the unpermitted development and restore the site or gain after-the-fact approval of the unpermitted development no later than October 29, 2004. In response, Respondents submitted an incomplete CDP application (No. 4-04-108) on October 28, 2004. On November 24, 2004, South Central Coast District Commission permit staff sent Respondents a letter detailing the items that were missing from the application and were necessary for submittal of a complete CDP application. Despite this, over the next three years, permit staff did not

receive any of the missing items required to complete the application identified by Commission staff in its letter to Respondents. Therefore, due to Respondents' failure to complete CDP App. No. 4-04-108, the South Central Coast District office finally returned Respondents' incomplete application on October 25, 2007.

Commission staff conducted a new site visit on September 21, 2007, and observed that the unpermitted development on the subject property was still present and in use, with horses still confined within the corral. Despite having three years to gather the necessary items and produce a complete CDP application, Respondents submitted another CDP application on November 1, 2007 (No. 4-07-137) which was substantially similar to the incomplete 2004 CDP application. Commission Staff reviewed the permit application, and found that it was lacking the same items as has been lacking in the 2004 permit application. Staff informed Respondents of the exact items missing, and requested that those items be submitted to complete the permit application in a letter dated November 30, 2007. In the ensuing year and a half Respondents failed to submit any of the required items to complete the permit, and therefore, on June 4, 2009, the South Central Coast District office finally returned this second CDP Application (No. 4-07-137) to the Respondents for reason of incompleteness. In the nearly eight years, from the first Notice of Violation sent in October 2001, this violation has remained in place and unresolved. In the nearly five years after submitting their first "after-the-fact" application to the present, Respondents failed to submit a complete CDP application to either retain the unpermitted development or remove it and restore the site, as required by the Coastal Act.

In a letter dated June 10, 2009, Commission Staff again reminded Respondents that their development remained unpermitted, that they had failed to submit a complete CDP application to remove or retain the development, and that the development was causing continuing resource damage. This letter also reminded Respondents of the potential for formal enforcement proceedings, including Cease and Desist and Restoration Order Proceedings and the recordation of a Notice of Violation. In the letter, Commission Staff provided a final opportunity to resolve this matter with a consent order, if Respondents indicated their desire to agree to a consent order by June 30, 2009; or if Respondents did not desire settlement, the letter also granted, as a courtesy, twenty additional days to file a supplemental Statement of Defense to the Notice of Intent to Commence Cease and Desist and Restoration Order Proceedings, as the original deadline to file a Statement of Defense had expired without one being filed on August 8, 2003. In this letter, Commission staff stated "We note that the Commission is not obligated to grant you this additional opportunity to respond but does so as a courtesy, and that this is your final opportunity to resolve the matter before it goes to a formal Commission enforcement hearing for the issuance of Cease and Desist and Restoration Orders." This supplemental Statement of Defense was due by June 30, 2009. On June 18, 2009 the Executive Director of the Commission also sent Respondents a Notice of Intent to Record a Notice of Violation of the California Coastal Act, informing Respondents of his intent to record a Notice of Violation to put potential purchasers of the subject property on Notice that a violation of the Coastal Act has occurred.

Respondents contacted Commission staff on June 22, 2009, in response to the two most recent letters, and expressed a desire to avoid formal enforcement proceedings. The initially proposed retention of the unpermitted development, then adjusted their proposal to relocate the corral and related facilities to another location on the subject property. However, Respondents were not

willing to agree to relocate the development in locations that would be consistent with the Coastal Act, and thus Commission staff informed Respondents that the proposal could not be accepted. On June 30, 2009, Respondents' representative contacted Commission staff and stated that Respondents did not intend to file a Statement of Defense. Commission staff acknowledged that the deadline to file a supplemental Statement of Defense was expiring without the submission of one, in a letter dated July 1, 2009, which stated, in reference to the telephone conversations on June 30, 2009 between Respondents' representative and Commission staff "[y]ou stated that your clients, the DaSilvas, do not intend to file a SOD as they wish to bring the matter to an amicable resolution with a consent order and agreement." Commission staff have thus never received a Statement of Defense from Respondents, as Respondents chose to let the deadline expire in favor of seeking a settlement.

Since the expiration of the Statement of Defense deadline, Commission staff has had extensive further discussions with Respondents to try to resolve the matter with a consent agreement consistent with the Coastal Act. These discussions have not proven successful.

In the eight years that this matter has been active, the Commission has tried numerous times to work with the Respondents to come to a successful resolution of the matter but was ultimately unsuccessful in this effort. As a result, Commission staff was finally, after many years, required to pursue these Cease and Desist and Restoration Order proceedings in order to accomplish restoration of the site and avoid yet more damage to coastal resources.

C. **Basis for Recordation of Notice of Violation of the Coastal Act**

The statutory authority for recordation of a Notice of Violation is provided in Section 30812 of the Coastal Act, which states, in relevant part:

(a) Whenever the executive director of the commission has determined, based on substantial evidence, that real property has been developed in violation of this division, the executive director may cause a notification of intention to record a notice of violation to be mailed by regular and certified mail to the owner of the real property at issue, describing the real property, identifying the nature of the violation, naming the owners thereof, and stating that if the owner objects to the filing of a notice of violation, an opportunity will be given to the owner to present evidence on the issue of whether a violation has occurred.

...

(d) If, after the Commission has completed its hearing and the owner has been given the opportunity to present evidence, the Commission finds that, based on substantial evidence, a violation has occurred, the Executive Director shall record the notice of violation in the office of each county recorder where all or part of the real property is located. If the Commission finds that no violation has occurred, the Executive Director shall mail a clearance letter to the owner of the property.

Section 30812(g) of the Coastal Act provides that, prior to invoking Section 30812, the Executive Director must attempt to use administrative methods for resolving the violation and must make the property owner(s) aware of the potential for the recordation of a Notice of

Violation. The Executive Director has done both here. The Respondents have failed to agree to an administrative resolution of this matter for the past eight years, and have failed to submit a complete CDP application to address the unpermitted development by restoring the site or otherwise to resolve this matter. As noted above, the Commission has informed Respondents of the potential for recordation of a Notice of Violation in letters dated June 10, 2009 and June 18, 2009. The Commission finds that all existing administrative methods for resolving the violation have been utilized and the Respondents have been made aware of the potential for the recordation of a Notice of Violation.

The development activity that has occurred on the subject property meets the definition of “development” set forth in Section 30106 of the Coastal Act. The development was undertaken without a coastal development permit and is inconsistent with the permit issued for this property, in violation of Public Resources Code 30600. Therefore, the Commission may find that a violation of the Coastal Act has occurred on the subject property and the Executive Director may record a Notice of Violation of the Coastal Act against the subject property.

The findings and the facts contained in this Staff Report and exhibits set forth the basis for the Commission to find that substantial evidence exists that a violation of the Coastal Act has occurred, and for the Executive Director to record a Notice of Violation in Los Angeles County.

D. Basis for Issuance of Orders

Cease and Desist Order

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

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

(b) The cease and desist order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with this division, including immediate removal of any development or material . . .

Restoration Order

The statutory authority for issuance of this Restoration Order is provided in Section 30811 of the Coastal Act, which states, in relevant part:

In addition to any other authority to order restoration, the commission . . . may, after a public hearing, order restoration of a site if it finds that [1] the development has occurred without a coastal development permit from the

commission . . . [2] the development is inconsistent with this division, and [3] the development is causing continuing resource damage.

The following paragraphs set forth the basis for the issuance of the Cease and Desist and Restoration Orders by providing substantial evidence that the development meets all of the required grounds listed in Sections 30810 and 30811 for the Commission to issue a Cease and Desist and Restoration Order.

1. Development has occurred without a Coastal Development Permit, and is inconsistent with a previously issued Coastal Development Permit

The unpermitted development that is the subject matter of these Orders was not authorized by a Coastal Development Permit and is inconsistent with a previous CDP No. 4-96-047. The unpermitted development includes: 1) construction of a horse corral; 2) construction of an unpermitted pathway; 3) construction of a rock retaining wall; 4) construction of a four stall stable and tackroom; 5) construction of a cement drainage culvert with a metal grate; 6) placement of wooden fencing; 7) removal of major vegetation; 8) related grading; 9) a change in the intensity of use of the lower portion of the subject property through, among other things, the boarding of horses; 10) a change in the intensity of use of Cold Creek as a result of the runoff of horse effluent and erosion of fill into the creek; and 11) the discharge of wastewater via the drainage culvert and runoff from the corral into Cold Creek.

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 defined by Section 30106 of the Coastal Act as follows:

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

The activity in this case on the subject property satisfies the definition of "development" in Section 30106 of the Coastal Act. The unpermitted activity involves, among other things, placement or erection of solid material, discharge of solid and liquid waste, grading, a change in the intensity of use of land, and the removal of major vegetation. The unpermitted development is and was therefore subject to the permit requirements of Section 30600(a) of the Coastal Act and the prohibition in Special Condition 4 of Coastal Development Permit 4-96-047. A CDP was never issued to authorize the subject unpermitted development.

In addition, the unpermitted development at issue here is not exempt from the Coastal Act's permitting requirements. The subject unpermitted development does not qualify for any exemption from permit requirements under Section 30610 of the Coastal Act because the

development is not an improvement to an existing single family home or other structure, is not a repair and maintenance activity, and even if it was, it would have a potential for significant adverse effects on coastal resources in one or more of the respects identified in Section 13250 and 13252 of the Commission's regulations. Specifically, the subject unpermitted development is not normally associated with a single family home, so Section 13250(a)(2) does not apply, nor is the unpermitted development directly attached to the single family home nor is the unpermitted development landscaping, so Section 13250(a) does not apply either. Further, even if the unpermitted development could be found to qualify under Section 13250(a), a CDP is still required under Section 13250(b)(1) because sections of the unpermitted development are within ESHA and also under Section 13250(b)(2) because the unpermitted development involved significant alterations of landforms, including removal of vegetation, in the ESHAs. Finally, even if the foregoing were not true, it would require a permit under Section 13250(b)(6) because of the future development deed restriction condition in the 1996 permit. These exceptions to the exemptions confirm that the subject unpermitted development is not exempt from CDP requirements.

Further, Special Condition No. 4 of Coastal Development Permit 4-96-047 required the Respondents to record a "Future Development" Deed Restriction, which was recorded by Respondents, as described above in Section B. The deed restriction on the subject property (recorded June 17, 1996 as instrument No. 96-951583 in the County of Los Angeles' Recorders Office) states:

Covenant, Condition, and Restriction The undersigned Owner, for himself/herself and for his/her heirs, assigns, and successors in interest, covenants and agrees that:

The subject permit is only for the development described in Coastal Development Permit No 4-96-047; and that any future additional (sic) or improvements to the property, including clearing of vegetation (except for the removal of vegetation consistent with the approved Landscape and Fuel Modification Plan attached hereto as Exhibit C and incorporated herein by reference), and grading, will require an amendment to Permit No. 4-96-047 or will require an additional coastal development permit from the California Coastal Commission or from its successor agency.

Respondents signed this restriction on the deed for the subject property on June 14, 1996, and the deed restriction was recorded in Los Angeles County on June 17, 1996. The project description and approved final plans for Coastal Development Permit 4-96-047 do not describe or include any of the subject unpermitted development or even any development at all on the lower portion of the property adjacent to Cold Creek. Therefore, even if the unpermitted development qualified for an exemption under Section 30610 of the Coastal Act, which it does not, under Section 13250(b)(6) of the Commission's Regulations the subject development would still require a Coastal Development Permit because of the "future development" deed restriction recorded on the property and agreed to by the Respondents. Thus the unpermitted development is inconsistent with CDP No .4-96-047 and constitutes a separate ground for issuance of the Cease and Desist Order and is a separate violation of the Coastal Act.

Thus, since development has occurred without a Coastal Development Permit, and is inconsistent with a previously issued Coastal Development Permit, the elements necessary for issuance of a Cease and Desist Order to be issued are met in this case. The grounds for issuance of a Restoration Order are met as well, as specified in this section, and in the following two sections of this Staff Report.

2. Unpermitted Development is Inconsistent with the Resource Protection Policies of the Coastal Act

The unpermitted development meets the definition of development, as described above, and thus requires a CDP. As detailed below, the unpermitted development is inconsistent with the resource protection sections of Chapter 3 of the Coastal Act, including: Section 30230 (protection of marine resources), Section 30231 (protection of biological productivity of coastal waters and quality of coastal waters), Section 30240 (ESHA protection), Section 30251 (scenic resource protections and landform alteration protections), and Section 30253 (limitation of adverse impacts).

a. Environmentally Sensitive Habitat Areas

The Coastal Act defines Environmentally Sensitive Habitat Areas under Section 30107.5 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 30240 of the Coastal Act states:

(a) 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.

(b) Development in areas adjacent to environmentally sensitive habitat areas and park and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Environmentally sensitive habitat areas serve an important ecological role, as the maintenance and extension of connectivity between habitat areas promotes species preservation and diversity, protects habitat stability, and ultimately enhances ecological function.⁶ The preservation and restoration of ESHAs is critical in the Santa Monica Mountains because of the need to protect and promote habitat connectivity, and due to the fact that the Santa Monica Mountains are a large and pristine area of Mediterranean-type ecosystem in coastal Southern California. The

⁶ The March 25, 2003 Memorandum Regarding the Designation of ESHA in the Santa Monica Mountains, prepared by John Dixon, Ph. D, is available on the California Coastal Commission website at <http://www.coastal.ca.gov/ventura/smm-eha-memo.pdf> (Exhibit 6)

mountain ecosystem supports a diverse variety of birds, mammals, insects, and flora, which rely on the highly complex ecosystem of the mountains and its interconnected habitat areas. Maintaining and restoring habitat connectivity enables mammals, birds, and other groups of wildlife to travel freely between different habitat areas and habitat types, which is particularly important for large mammals who require a wide range to move within. Further, preserving ESHAs is critical to maintain the fragile connections between the coastal ecosystem in the Santa Monica Mountains and the adjacent inland ecosystems. Ensuring that these connections are not lost to development allows wildlife to move freely between these areas, and thus to respond to changes in any particular area, and prevents wildlife from becoming trapped within isolated habitat islands. Moreover, preserving ESHAs promotes species diversity, as a broad physical diversity of habitats ensures that a wide variety of species can be supported by the wider ecosystem, as demonstrated by the fact that the Santa Monica Mountains ecosystem supports 17 different native vegetation habitats, including over 400 species of birds, 35 species of reptiles and amphibians, and over 40 species of mammals.⁷

The subject property consists of an upper graded pad with a single family home, driveway, pool, and landscaping, all approved under CDP No. 5-83-290-E6 and No. 4-96-047. The lower portion of the property, where the bulk of the unpermitted development is located, is about 30 feet below the finished grade of the upper building pad. No development was authorized in this lower portion of the site, with the exception of the drainage swale approved under CDP No. 4-96-047. Cold Creek, a USGS designated perennial blue-line stream, is located on the western portion of the subject property. Cold Creek benefits from a rich variety of species in its lush riparian zone. The riparian zone is lined with oak woodland species adjacent to and on the subject property. Respondents constructed the unpermitted horse corral and its related facilities on the lower portion of the lot within and adjacent to oak woodland/savannah habitat and riparian habitat areas, and adjacent to Cold Creek.

The determination of which areas of the subject property constitute ESHA must be made in reference foremost to Section 30107.5, and is supported by reference to the California Coastal Commission-certified 1986 Malibu/Santa Monica Mountains Land Use Plan ("LUP"). As will be shown below, the oak woodlands/savannah habitat, Cold Creek itself, and its riparian canopy habitat are all ESHA according to the definition of Section 30107.5. Moreover, The LUP specifically designates the subject property as ESHA. The subject property is also within the Malibu/Cold Creek Resource Management Area. The northern and part of the western portion of the subject property is designated as oak woodlands/savannah habitat, and therefore as ESHA, by the LUP. The riparian area surrounding Cold Creek on the western portion of the subject property is designated as ESHA by the LUP. Further, Cold Creek itself, a perennial blue-line stream, is designated as ESHA by the LUP.

The designation of these habitat areas of the Santa Monica Mountains as ESHA under Section 30107.5 and even under the LUP has been reviewed by Dr. John Dixon, a Commission staff ecologist, and his assessment of these habitat areas is that they are ESHA. Moreover, Dr. Dixon's Memorandum on Designation of ESHA in the Santa Monica Mountains includes a site-specific analysis to be used to apply Section 30107.5 when determining if a habitat in the Santa

⁷ Memorandum from Dr. Dixon, *supra* Note 2.

Monica Mountains constitutes ESHA.⁸ First, the affected habitats on the subject property have been identified as oak woodlands/savannah, riparian, and a blue-line stream through site visits on May 11, 2001, September 4, 2001, May 9, 2002, June 15, 2004, and September 21, 2007 and photographs. Second, prior to the unpermitted development, the habitat was largely undeveloped and relatively pristine, as is visible in aerial photographs of the site from 1996, see Exhibit 24, and in photographs of the subject property from 1994 see Exhibits 30 a, b, c. Third, these habitat areas are part of a large, continuous block of relatively pristine native vegetation, although the unpermitted development has reduced the pristine nature of the corral area. This fact is evident from aerial photographs of the site from 1996 and 2001, see Exhibits 24 and 25. which show the riparian canopy and oak woodlands/savannah habitats in the area as continuous upstream and downstream from the subject property, and leading to the numerous side canyons, and connecting to the pristine 59 acre area set aside as a condition of the original subdivision CDP, No. 5-83-290. Thus, Cold Creek, its riparian canopy, and the oak woodlands/savannah habitats on the subject property are all ESHA, as discussed more fully in the following paragraphs.

Riparian Habitats

Riparian habitats along perennial streams are also an important part of the broader Santa Monica Mountains ecosystem. The high level of biodiversity found in riparian habitats is a result of the multi-layered vegetation they support, the constant availability of water in an otherwise dry climate, and the canopy cover which attracts wildlife during the long dry summers. Further, riparian habitats serve as important ecological links between varied habitat areas as a result of their location connecting several different habitat types “with a unidirectional flowing water system.”⁹ The same is true for Cold Creek, a perennial blue-line stream, which connects areas of oak woodlands and savannah habitat to the wider Malibu Creek watershed.

As stated above, the subject property is located within designated ESHA and portions of the property were specifically designated by the Malibu/Santa Monica Mountains LUP as “oak woodlands/savannah”, “Cold Creek Management Area”, and “perennial blue-line stream” areas. In addition, section 30107.5 of the Coastal Act defines ESHAs 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.” Riparian habitats along perennial streams are rare and valuable as a result of their ecological functions related to maintaining habitat connectivity and providing habitat for wildlife. Further, as detailed in Dr. Dixon’s memorandum, riparian habitats are increasingly rare in Southern California as a result of development and its effects.¹⁰ Included among these effects are severe threats to the health of streams and the riparian habitats they support as a result of changes in water quality from runoff from increased impervious surface areas, and from increased sedimentation and stream course alteration as a result of erosion. Therefore the biological significance, rarity, and vulnerability to degradation of riparian habitats indicate that riparian habitat areas in the Santa Monica Mountains, including the riparian canopy around Cold Creek, meet the definition of ESHA under Section 30107.5.

⁸ Memorandum from Dr. Dixon, *supra* Note 2 at 1.

⁹ *Id.* at 7.

¹⁰ *Id.*

Oak Woodlands/Savannah Habitat

The western and northern portions of the subject property are designated as oak woodlands and savannah habitat ESHA by the Malibu/Santa Monica Mountains LUP. Oak woodlands are a unique habitat area which provides shelter and food for wildlife, and supports a variety of species. The acorns dropped by Coast Live Oaks are a significant food source for squirrels and other small mammals, deer, and many bird species. In addition to providing foodstuffs for wildlife, the overlapping canopies of a mature oak stand provide a path for animals to travel from tree to tree, allowing increased protection from predators on the ground. Further, riparian corridors of coast live oak, such as the oak woodlands found on the subject property, serve as an important refuge for birds and bats, and other species. “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.”¹¹

In addition to serving as habitat for myriad wildlife species, oak woodlands and savannah habitat areas serve critical ecological functions in support of the ecosystem. These include supporting slopes, preventing erosion, increasing water percolation to promote groundwater recharge, promoting healthy soil chemistry and soil stabilization, increasing biological diversity, and providing habitat sites. Further, oaks shade streams, lowering water temperatures and thus promoting healthy streams and protecting fish and other aquatic species.¹² Oak trees and oak woodlands also provide shade, minimize noise, deflect wind, filter dust and pollutants, and provide carbon dioxide reduction and oxygen production benefits. Additionally, over 300 species of birds, amphibians, reptiles, and mammals utilize oak woodland habitat areas.¹³ Oak woodlands are a critical habitat resource and provide a number of significant ecosystem functions.

Oak woodlands are not only rare and especially valuable due to their role in the ecosystem, but they are also easily disturbed or degraded by human activities and development. Oak trees and oak woodlands are becoming increasingly rare in the Santa Monica Mountains, particularly along the coast where much of the land has been or is at risk of development.¹⁴ In Los Angeles County, nearly all of the oak woodlands areas outside the inland national parks are already developed.¹⁵ It is critical to protect the remaining oak trees in pristine areas, and to restore those which have been adversely affected by unpermitted development.

Development degrades oak trees in several ways as a result of direct damage to the tree, or roots, or to the soil around the tree under the dripline. Oak tree root systems are harmed by the addition of soil on top of the area around a tree as a result of grading because the roots cannot receive adequate air and water from the soil. Root systems are also directly harmed as a result of development, if the development places footings or otherwise cuts into the root structure, or if

¹¹ Memorandum from John Dixon, *supra* Note 2, at 18.

¹² *Id.* at 7.

¹³ California Oak Foundation, Species Dependent upon Oak Woodlands for Food and Shelter (1996), <http://www.californiaoaks.org/ExtAssets/300SpeciesList.pdf>.

¹⁴ Tom Gaman & Jeffrey Firman, California Oaks Foundation, Oaks 2040: The Status and Future of Oaks in California (2006), available at <http://www.californiaoaks.org/ExtAssets/Oaks%202040%20Main%20Text1108.pdf>.

¹⁵ *Id.*

any digging or grading for development cuts into the root system. Further, development around an oak tree which compacts the soil has similar effects to adding more soil- namely that the root system cannot get adequate nutrients, air, and water, thus harming, and potentially killing the tree. Damage of this sort can take years to become apparent. Development, particularly grading, on or around an oak tree's dripline area negatively impacts the oak tree because it interferes with the maintenance of the proper level of soil above the root system.

In recognition of the sensitive nature of oak trees, and to protect these important resources further, Los County passed an Oak Tree Ordinance, which defines a protected zone around each 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.

Development within the area supporting root systems of oak trees eliminates the exchange of air, water, and other nutrients, causing harm to and potentially killing those oak trees. In addition, development which can cause erosion, such as on the subject site, adversely impacts the oak trees and the oak woodlands habitat further by exacerbating the harm to the root systems.

Equestrian activities can cause significant soil compaction, and thus impacts to oak tree root systems. This is principally problematic in confined animal facilities, where the horses are limiting to continually roaming a small area, which becomes completely denuded of vegetation. The negative impacts to oak woodlands habitat areas from confined horses are also a result of gridling, where the horses chew the bark off the trunk of the oak trees from any area the horses can reach. This causes severe stress to the trees, and when coupled with the soil compaction caused by the large weight and presence of the horses, results in the severe degradation of oak woodlands habitat areas. This damage develops slowly, but becomes apparent after a number of years. Photos of the site taken in 2001, 2004 and 2007, see Exhibits 26-30, show that the area is completely barren of vegetation save the few oak trees and small willows.

Oak woodlands are properly designated as environmentally sensitive habitat areas, as a result of their rarity, ecological importance, and vulnerability to degradation from development and other human activities, under Section 30107.5 of the Coastal Act. The oak tree habitat on the subject property is particularly important, as a result of the presence of Cold Creek, where the oak woodlands habitat forms a lush riparian area around the creek, which is also an ESHA.

Overall, the northern and part of the western portion of the subject property is oak woodlands/savannah ESHA, the riparian canopy of Cold Creek on the western portion of the subject property is ESHA, and Cold Creek itself, a perennial blue-line stream is ESHA under Section 30107.5.

Impacts to ESHAs

Respondents have constructed a horse corral with stable and tackroom, access path, rock retaining wall, drainage culvert, and placed wooden fencing. In the course of this unpermitted

development, Respondents performed some grading on the subject property, and removed major vegetation. Commission staff conducted several site visits, and observed the continuing unpermitted development. Staff visited the site on May 11, 2001, September 4, 2001, May 9, 2002, June 15, 2004, and September 21, 2007, and each time observed that the unpermitted development was in place. Photos from the September 4, 2001 site visit, see Exhibits 26 a and b, show horses within the corral and stalls, the fencing, and the cement drainage culvert with a metal grate. The area enclosed within the fencing is completely barren of vegetation, aside from mature oak trees which are unprotected and a few small willows. Photos from May 9, 2002 show the same unpermitted development as before, and additionally reveal the rock retaining wall on the north side of the fencing, which supports the unpermitted, graded pathway from the corral area up to the permitted, main graded pad and residence. A subsequent site visit on June 15, 2004 showed that the unpermitted development facilities were all still present, see Exhibit 27. Photos from that visit also show that the corral area continued to be barren of vegetation aside from the mature oaks and the small willows, which were unprotected from compaction of their root zones by the horses which were still kept in the corral and stable facility. Photos from the September 21, 2007 site visit showed that the unpermitted development was still in place six years after it was reported, see Exhibits 29. These photos showed that the horses were still kept in the corral and that the soil within the corral was still barren and compacted. Also visible from the photos is the close proximity between the corral and the creek, as close as 10-20 feet.

Respondents constructed the unpermitted corral and related facilities without authorization via a CDP within and adjacent to designated ESHA. The corral was constructed under the dripline of nine mature oak trees, and adjacent to Cold Creek, which the USGS designate a perennial blue-line stream. As stated above, oak woodlands/savannah habitat and riparian habitat are sensitive and important ecosystems which are susceptible to adverse impacts from development. The unpermitted development on the subject site was constructed within these sensitive habitat areas and has disrupted their resource values. The Commission finds that the horse corral has impacted mature oak trees by allowing horses to compact the soil under the oak trees' driplines, allowing the horses to girdle the trees, and by allowing the unpermitted development to cause the removal of nearly all of the major vegetation within the corral area contributing to increased erosion and destroying the visual and ecological resources of the lower portion of the subject property.

Therefore, the habitat values of the subject property and the ESHAs within it were disrupted and the unpermitted development was not sited and designed to prevent impacts which would significantly degrade the ESHA. In addition, the unpermitted development is not found compatible with the continuance of such habitat areas. Therefore, the unpermitted development is found to be inconsistent with Section 30240 of the Coastal Act.

b. Soil Erosion/Protective Devices

Section 30253 of the Coastal Act states, in part:

New development shall:

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

The subject property consists of a permitted, graded flat upper pad with a single family residence, a steep slope descending down to a relatively flat lower area which slopes slightly down to Cold Creek. Drainage across the lower portion of the property, where the unpermitted development is located, is via sheet flow runoff and also through a drainage culvert in the southern end of the corral area. As a result of the use and construction of the corral, including the keeping of horses there, the area within the unpermitted corral is void of vegetation, except for seven mature oak trees and several small willows. In addition, the unpermitted pathway from the equestrian trail to the corral area and its unpermitted retaining wall will likely accelerate water runoff, thereby increasing erosion of the subject property.

During heavy rainfall or storm-flow runoff, severe erosion is likely, because the area of the unpermitted development is barren, and there are no facilities in place to retain eroded soil before it leaves the site and exits to the creek, which is 10 feet away at the closest point. As discussed below, the discharge of pollutants, including sediment, can have negative impacts on streams, including Cold Creek.

Section 30253 requires that new development neither create nor contribute significantly to erosion or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. The unpermitted development that is the subject of these orders has contributed significantly to erosion, as the sediment-containing run-off from the barren corral area is not captured or treated to remove that sediment before the run-off discharges to Cold Creek. Further, the unpermitted development has substantially altered the natural landform of the slope up to the upper, graded pad by the addition of a rock retaining wall placed to support the unpermitted pathway from the equestrian trail to the unpermitted corral. In addition, the unpermitted development has resulted in the removal of all vegetation in the corral area, except for the mature oaks and small willows, which led to uncontrolled erosion of this area across the subject site and into Cold Creek. Therefore, the unpermitted development is inconsistent with Section 30253 of the Coastal Act.

c. Scenic Resources

Section 30251 of the Coastal Act states, in part:

The scenic and visual qualities of the coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be

sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

Before the unpermitted development was put in place, the lower portion of the subject property was a lush area of riparian vegetation and rich understory below the mature oak canopy, as shown in Exhibits 26-30. The subject unpermitted development has removed all of this vegetation, except for the mature oak trees and several small willows, and replaced the previous riparian and oak woodlands habitat with a barren horse corral. CDP No. 5-83-290, which authorized the creation of the subdivision, intentionally clustered development onto the 23 acres of graded pads above the descending slopes, canyons, and riparian areas to protect the ESHAs located in and adjacent to Cold Creek and its tributaries within the side canyons. Section 30251 of the Coastal Act was designed to protect the views to and of scenic coastal locations, including the riparian areas within the canyons of the Santa Monica Mountains. Currently, the subject site is fenced, barren of vegetation, and a pathway with a rock retaining wall has been placed leading from the permitted public equestrian trail to the unpermitted stable, tackroom and the fenced corral.

The Commission previously considered the visual resources of the subject property in the findings for CDP No. 4-6-047, and found that “the residence is designed to be visually compatible and subordinate to the topography of the building site by locating the residence on the portion of the building pad opposite these public trails,”¹⁶ in reference to the equestrian trails to the north and west of the subject property. The Commission further found that the minimization of potential future visual impacts to the trails required the “Future Development Deed Restriction” discussed above, in order to ensure that any future development would be visually compatible with the site and thus consistent with Section 30251. As noted above, that permit requirement was not followed, and the visual impacts which concerned the Commission have occurred as a result of the unpermitted development. Previously the visual impact of any development from the trail was limited due to the screening effect of the oaks and other vegetation, and because development was limited to the upper graded pad. However, at present, the unpermitted development is highly visible from the trail as the development is in the area where no development was permitted, immediately adjacent to the trail. The unpermitted development has replaced the previous view from the trail of a mature oak grove, with native grasses below, with a view of a denuded horse corral where there is only barren soil.

Section 30251 of the Coastal Act also requires that the alteration of natural landforms shall be minimized as it impacts the scenic resources of the coast. The unpermitted development includes the corral, associated fencing, grading and drainage, the stable and tackroom, the retaining wall, and associated removal of vegetation and grading. The unpermitted development does not minimize the alteration of natural landforms, as each of these elements altered natural landforms by removing vegetation, changing the contour of the slope, and causing erosion of the lower floodplain into Cold Creek.

¹⁶ California Coastal Commission, Staff Report for CDP No. 4-96-047 (Approved with Conditions on June 14, 1996), Page 9

Thus the unpermitted development is inconsistent with Section 30251 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 waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Non-point source pollution is the pollution of coastal waters, particularly streams and aquifers, by numerous sources which are difficult to separately identify, and thus control. Non-point source pollutants include coliform bacteria, nutrients, and suspended solids. These pollutants originate from a wide variety of sources, including run-off from roads, horse facilities, and impervious surfaces in residential areas, such as driveways and roofs.

Confined animal facilities are widely recognized as a significant source of non-point source pollution because the facilities are generally cleared of vegetation and concentrate animals which produce significant quantities of waste in concentrated areas. The subject property contains horses which generate wastes, including manure, urine, waste feed, and straw, shavings, or dirt bedding which can be significant contributors to pollution. In addition, horse wastes contain nutrients, such as phosphorous and nitrogen, as well as coliform bacteria which can cause eutrophication and a decrease in oxygen levels resulting in clouding, algae blooms and impacts affecting the biological productivity of coastal waters.

The horse wastes from the subject site flow directly into Cold Creek, via both sheet flow runoff west to the creek and through a drainage culvert on the extreme southern end of the corral. Neither of these drainage methods includes any treatment of the runoff, exacerbating the problems caused by horse wastes, and leading to the following potential problems, all of which harm the biological productivity of coastal waters.

The pollutants released by animal wastes, including horse wastes, when released into coastal waters, cause cumulative impacts including such things as: eutrophication as a result of excess nutrients and anoxic conditions which causes fish kills and diseases and the alteration of aquatic habitat, including adverse changes to species composition and size; excess nutrients which cause algae blooms and increased turbidity as a result of sedimentation which reduce the penetration of the sunlight needed by aquatic vegetation species which serve as food and cover for other aquatic species; disruptions to the reproductive cycle of aquatic species; and acute and sublethal toxicity in marine organisms leading to adverse changes in reproduction and feeding behavior. 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 impacts are particularly significant to the subject site because the runoff flows into a tributary to Malibu Creek, which is listed on the state's list of impaired water bodies (Clean Water Act 303(d) list). Malibu Creek is listed as having excess levels of several pollutants, including fecal coliform bacteria, nutrients, and sediment; all which are released by the subject site. Malibu Creek outlets into Malibu Lagoon and Surfrider Beach, which is consistently one of the most polluted regions within the Santa Monica Bay. The United States Environmental Protection Agency and the Los Angeles Regional Water Quality Control Board (LARWQCB) developed the Total Maximum Daily Loads (TDML) for Bacteria in the Malibu Creek Watershed document, for the Malibu Creek watershed, which includes Cold Creek, and describes the sources and extent of bacterial pollution in the watershed, including confined animal facilities, particularly horse facilities in the area of the subject property as a non-point source of bacterial pollution.¹⁷ The same holds true for nutrients, as stated in the TMDL for Nutrients in the Malibu Creek Watershed, which identifies horse wastes as a non-point source of nutrients, which can cause eutrophication and other harms as described above.¹⁸ The discharge of additional pollutants from the subject site into Cold Creek, and ultimately into Malibu Creek exacerbates the nutrient and fecal coliform bacteria pollution problems of the watershed.

The unpermitted horse corral is located approximately 20 feet from Cold Creek, and 10 feet from the banks of Cold Creek. In addition, as described above, the water and horse wastes from the corral, including storm runoff, drain directly into Cold Creek via both sheet-flow runoff west to Cold Creek and through a drainage culvert on the southern end of the corral. Neither of these drainage methods includes any treatment facilities, thus the horse wastes run directly into the stream.

The unpermitted 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 the biological productivity and water quality of coastal waters, including Cold Creek and Malibu Creek by controlling polluted runoff, such that the unpermitted development is inconsistent with Section 30230 and Section 30231 of the Coastal Act.

¹⁷ U.S. Env'tl. Prot. Agency, Region 9, Total Maximum Daily Loads for Bacteria in the Malibu Creek Watershed, March 21, 2003, Page 18, *available at* http://www.epa.gov/region09/water/tmdl/malibu/final_bacteria.pdf.

¹⁸ U.S. Env'tl. Prot. Agency, Region 9, Total Maximum Daily Loads for Nutrients in the Malibu Creek Watershed, March 21, 2003, Page 31, *available at* http://www.epa.gov/region09/water/tmdl/malibu/final_nutrients.pdf.

3. Unpermitted Development is Causing Continuing Resource Damage

The unpermitted development is causing “continuing resource damage”, as those terms are defined by Section 13190 of the Commission’s regulations.

a. Definition of Continuing Resource Damage

Section 13190(a) of the Commission’s regulations defines the term “resource” as it is used in Section 30811 of the Coastal Act as follows:

“‘Resource’ means any resource that is afforded protection under the policies of Chapter 3 of the Coastal Act, including but not limited to public access, marine and other aquatic resources, environmentally sensitive wildlife habitat, and the visual quality of coastal areas.”

The term “damage” in the context of Cease and Desist and Restoration Order proceedings is provided in Section 13190(b) as follows:

“‘Damage’ means any degradation or other reduction in quality, abundance, or other quantitative or qualitative characteristic of the resource as compared to the condition the resource was in before it was disturbed by unpermitted development.”

In this case, the resources are the riparian and oak woodlands ESHAs and Cold Creek, the perennial blue-line stream, and the habitat these areas provide and the water quality functions and marine resources provided by the riparian areas and Cold Creek. The damage in this case is the continuing degradation of the ESHAs and the stream caused by the continuing presence of horses in the unpermitted stable/tackroom and unpermitted corral and related facilities on the subject property.

The term “continuing” is defined by Section 13190(c) of the Commission’s regulations as follows:

“‘Continuing’, when used to describe ‘resource damage’, means such damage, which continues to occur as of the date of issuance of the Restoration Order.”

As of this time, all of the unpermitted development that is the subject of these proceedings remains at the subject property. The unpermitted corral and related facilities are located within and adjacent to riparian habitat and oak woodland ESHAs, and within and adjacent to Cold Creek, a perennial USGS designated blue line stream. As described above, this results in impacts to ESHAs and the water quality and biological productivity of Cold Creek. Horse activity continues to compact soil below the dripline of several mature oak trees, manure and urine from horses continues to drain into Cold Creek, and the unpermitted grading and vegetation removal continue to increase the amount of erosion into the creek. In addition, the

unpermitted stable/tackroom, fencing, and retaining remain within 100 feet of ESHAs and continue to impact the functioning of these ESHAs.

As described above, the unpermitted development is causing adverse impacts to resources protected by the Coastal Act that continue to occur as of the date of this proceeding and damage to resources is “continuing” for purposes of Section 30811 of the Coastal Act. The damage caused by the unpermitted development, which is described in the above paragraphs, satisfies the regulatory definition of “continuing resource damage.” The third and final criterion for issuance of a Restoration Order is therefore satisfied; and thus all three criteria for the issuance of a Restoration Order are met.

E. Orders are Consistent with Chapter 3 of the Coastal Act

The Cease and Desist Order and Restoration Orders attached to this staff report are consistent with the resource protection policies found in Chapter 3 of the Coastal Act. The Orders require Respondents to remove all unpermitted development from the subject property, restore the subject property using restorative grading and planting of native vegetation, and cease and desist from conducting any further unpermitted development on the subject property. The Orders require Respondents to plant native plant species to be compatible with the surrounding oak woodlands and riparian habitat areas and to ensure that non-native, invasive plant species do not colonize the newly restored site and spread from there to supplant the surrounding native habitat. Failure to revegetate the site would lead to potential invasion of non-native plant species, thus decreasing the biological productivity of the oak woodland and riparian habitat, inconsistent with the resource protection policies of the Coastal Act.

Therefore, the Cease and Desist Order and Restoration Order are consistent with the Chapter 3 policies of the Coastal Act and the City LCP.

F. California Environmental Quality Act (CEQA)

The Commission finds that issuance of these Orders to compel the restoration of the subject property is exempt from any applicable requirements of the California Environmental Quality Act of 1970 (CEQA), Cal. Pub. Res. Code §§ 21000 et seq., and will not have significant adverse effects on the environment, within the meaning of CEQA. The Orders are exempt from the requirement for the preparation of an Environmental Impact Report, based on Sections 15060(c)(2) and (3), 15061(b)(2), 15307, 15308 and 15321 of CEQA Guidelines, also in 14 CCR.

G. Statement of Defense

In accordance with Sections 13181(a) and 13191(a) of the Commission’s regulations, Respondents were provided the opportunity to respond to the Commission’s staff’s allegations as set forth in the NOI dated June 19, 2003, by completing a Statement of Defense (“SOD”) form. Respondents were originally required to return the SOD by July 9, 2003, but this was extended in the course of settlement negotiations to August 8, 2003. Respondents did not file a Statement of Defense by the final deadline of August 8, 2003. Commission staff confirmed that the deadline

to file a Statement of Defense had expired without one being received in a letter dated August 8, 2003

After this time, settlement negotiations continued, but were ultimately unsuccessful. However, after the settlement proposals failed, and the five years of incomplete CDP applications ensued, Staff offered another opportunity, as a courtesy, of twenty additional days for the Respondents to file a Statement of Defense to the Notice of Intent to Commence Cease and Desist and Restoration Order Proceedings., as the original deadline to file a Statement of Defense expired without one being filed, on August 8, 2003. In this letter, Commission staff stated “We note that the Commission is not obligated to grant you this additional opportunity to respond but does so as a courtesy, and that this is your final opportunity to resolve the matter before it goes to a formal Commission enforcement hearing for the issuance of Cease and Desist and Restoration Orders.” On June 30, 2009, Respondents’ representative contacted Commission staff and stated that Respondents did not intend to file a Statement of Defense in response to this offer by staff. Commission staff noted that the deadline to file a supplemental Statement of Defense was expiring without the submission of one in a letter dated July 1, 2009, which stated, in reference to the telephone conversations on June 30, 2009 between Respondents’ representative and Commission staff “[y]ou stated that your clients, the DaSilvas, do not intend to file a SOD as they wish to bring the matter to an amicable resolution with a consent order and agreement.” Commission staff have thus never received a formal Statement of Defense from Respondents, as Respondents chose to let the deadline expire in favor of seeking a settlement. However, in an attempt to address issues raised by Respondents, staff has summarized and responded to issues raised in correspondence from Respondents, or raised by them or their representatives in telephone conversations with Commission staff. The following paragraphs present statements made by Respondents in prior letters and communications, and the Commission’s responses to those statements:

1. Respondents’ Defense

Respondents allege that the fencing was permitted under a previous CDP (No. 5-83-290), particularly, that the wooden fence on the subject site along the western edge of the corral, nearest to Cold Creek, was permitted and constructed as a part of the original subdivision. Respondents submitted slides from their original CDP application file showing fencing existent along the southern and western edges of the corral.

(Letter of July 21, 2003 from Sherry DaSilva to Staff and site plan submitted in conjunction therewith, annotated to indicate items the DaSilvas alleged to have been permitted [is that what we mean?]; and in Captions to Photos included with the Letter of July 21, 2003, stated as coming from slides in the CDP No. 4-96-047 file; and in Phone Calls from Sherry DaSilva to Staff on November 6, 2001 and on June 22, 2009.)

Commission’s Response

The project description for Coastal Development Permit 5-83-290 describes the project as: “Subdivision of an 85 acre parcel into 10 residential lots totaling 26 acres and one additional lot to be set aside as a recreational use and trail easement totaling 59 acres, more specifically

described in the application file” The project description in the application file included by reference in the permit itself adds “Graded building sites; dedicated, paved access roads; utilities services for each lot. No existing structures on the site.” CDP No. 5-83-290 authorized the 11-lot subdivision, grading for the residential pads, roads, and utilities. The project description did not include any fencing or structures as part of the project, indicating that there was no fencing included as part of the permit application, and thus, that no fencing was authorized by the permit. Further, CDP No. 5-83-290 required the dedication of a recreational use and trail easement over the property for public hiking and equestrian access, and made no mention of fencing between the trail and the lots. As for any claim that the fencing was exempt from CDP requirements, this is not true for the following reasons. First, the fencing could not have been exempt in 1981, or at any point from 1981 to 1996 because the exemption for structures normally associated with a single family residence under Section 30610(a) requires that there be a single family residence existent on the property, and the exemption under Section 30610(b) requires that there be some structure on the property, however there were no structures on the property until the single family residence was built in 1996, and so the fencing built sometime before that could not have been exempt. The addition of fencing after 1996 would normally have been exempt as an addition to the existing single family residence, however, as described above, a CDP is still required under Section 13250(b)(1) because sections of the unpermitted development are within ESHA and also under Section 13250(b)(2) because the unpermitted development involved significant alterations of landforms, including removal of vegetation, in the ESHAs. Finally, even if the foregoing were not true, it would require a permit under Section 13250(b)(6) because of the future development deed restriction condition in the 1996 permit. These exceptions to the exemptions confirm that the wooden fencing was not exempt from CDP requirements.

The presence of fencing in photos from 1996 indicates only that the fencing existed in 1996, and was placed there sometime between 1981, when it was not there, and when CDP Application No. P-81-7701 indicated “[n]o existing structures on the site,”¹⁹ and 1996, when the Staff Report for CDP No. 4-96-047 stated “[t]he property includes a building pad, driveway, drainage swale, and wood fencing approved in Coastal Permit P-81-7701.”²⁰ When the fencing was built between 1981 and 1996 is immaterial, as any construction of fencing on the subject property anywhere in that timeframe required a coastal development permit from the Commission under Section 30600 of the Coastal Act, as fencing constitutes development under Section 30106. However, the fencing was never approved by a CDP. Further, regardless of who built the fencing, its continued existence remains a violation of the Coastal Act and the current property owners are responsible for correcting all Coastal Act violations on the site.

Also note that Respondents’ CDP (No. 4-96-047) for their single family residence and related development does not authorize the fencing on the lower portion of the property, or any other part of the unpermitted development subject to these proceedings. Under CDP 4-96-047, no development at all was authorized on the flat lower portion of the property adjacent to Cold

¹⁹ Ben Johnson’s Western Estates, Attachment to CDP Application No P-81-7701, Part A, Section III, No. 1, at 1 of Attachment, February 25, 1981.

²⁰ CDP No. 4-96-047 Staff Report, *supra* Note 10 at 4. Note that the staff report for CDP No. 4-96-047 appears to be incorrect, as it states that the wood fencing was approved in CDP P-81-7701/5-83-290 when in fact that permit does not include any mention of wood fencing, or any other structure to be built. At the time the staff report referred to the fence it had already been built without a permit, so it was already a violation and the erroneous statement in the staff report cannot negate the violation.

Creek, and only the drainage swale and public trail were authorized on the descending slopes below the upper graded pad. The Commission imposed the future development deed restriction described above to minimize impacts to the designated ESHA on the lower floodplain area adjacent to Cold Creek by requiring a CDP for any future development, thus ensuring that any future development would be consistent with the Coastal Act.

2. Respondents' Defense

Respondents allege that the pathway, and the unpermitted rock retaining wall holding the pathway up, from the permitted equestrian trail easement to their unpermitted corral facility was permitted by CDP No. 4-96-047. (Photo Captions in July 21, 2003 Letter, stated as coming from slides in CDP No. 4-96-047 file.)

Commission's Response

As stated above, CDP No. 4-96-047 did not authorize a rock retaining wall leading from the equestrian trail to the lower area adjacent to Cold Creek in the approved site plans, as in fact the only authorized development was "a 4,100 sq. ft. two-story single family residence, attached three car garage, swimming pool and spa, driveway, retaining wall²¹, swale and underground drainage system." as stated in CDP No. 4-96-047. The site plan included by reference in the permit also shows the structures and other solid material (i.e. development under Section 30106) that was being approved, and it only includes such material on the upper graded building pad, with the exception of the drainage swale, which is on the slope between the upper pad and the lower floodplain. It is clear that CDP No. 4-96-047 did not authorize any development on the lower floodplain of the subject property, including the rock retaining wall along an unpermitted pathway connecting the unpermitted corral and the permitted public equestrian trail.

Further, CDP No. 5-83-290 required the dedication of a recreational use and trail easement over the property for public hiking and equestrian access, and made no mention of any retaining walls for that trail, nor did it include a permit for any private trail in the interior part of the subject site on the northern side of the lower pad area, which is where the Respondents' unpermitted pathway to their unpermitted corral is located. Further, CDP 5-83-290 did not approve equestrian areas or trails on the lower portion of the newly created lots, such on the lower portion of the subject property, where the Respondents' placed their path and associated rock retaining wall.

In short, both the rock retaining wall and the unpermitted pathway it holds up are development and were not approved in either of the two previous coastal development permits for the subject property.

²¹ The retaining wall approved in CDP No. 4-96-047 is shown on the approved plans as the retaining wall on the upper portion of the property, supporting the landscaping and pool. This retaining wall is different from the rock retaining wall placed on the lower portion of the subject property without a permit and which is a part of the subject of these orders.

3. Respondents' Defense

Respondents question the jurisdiction of the California Coastal Commission over their project.

(Phone Calls from Sherry DaSilva to Staff on June 25, 2003 and June 30, 2003.)

Staff explained to Respondents during the cited phone calls that the Commission has permitting jurisdiction over their project because the project constitutes development under Section 30106 of the Coastal Act, and therefore requires a Coastal Development Permit under Section 30600, which must be obtained from the Commission, because neither Los Angeles County nor the City of Calabasas have a certified Local Coastal Program and therefore neither has the authority to issue CDPs. Moreover, both the permit authorizing the overall subdivision and the permit for construction of the home on this property were issued by the Coastal Commission, so jurisdiction had already been made clear with regard to this precise property.

Further, Respondents were aware of both the requirement to obtain Coastal Development Permits for development at this site, and that it was the CCC who issued such permits in this area. In fact, they were the applicant for and obtained the CDP for their residence, CDP 4-96-047 from the Coastal Commission. In addition, they were also notified of the requirement to obtain a CDP for the unpermitted development at issue here because the previous CDP authorizing their residence, No. 4-96-047, included a special condition that the Respondents record a "Future Development Deed Restriction" as described above. Respondents did record this restriction, by which they agreed, for themselves and their successors in interest to the property, that CDP No. 4-96-047 was only for the development described in its project description, and that any future development or improvements to the property will require either an Amendment to CDP No. 4-96-047 or an additional CDP. This restriction was signed by the Respondents on June 14, 1996, notarized on June 14, 1996, and recorded on June 17, 1996 as Instrument No. 96-951583 in the County of Los Angeles. Lastly, the Commission's jurisdiction to resolve these Coastal Act violations and to issue the Orders which are the subject of these proceedings is clear from Sections 30810, 30811, and 30812 of the Coastal Act. The relevant provisions are cited above, in Sections C and D of this Staff Report.

4. Respondents' Defense

Respondents argue that the proper standard of review for their project should be the 1986 Malibu/Santa Monica Mountains Land Use Plan, not Chapter 3 of the Coastal Act. Phone Call from Sherry DaSilva to Staff on June 25, 2003.

Commission's Response

The 1986 Commission-certified Malibu/Santa Monica Mountains Land Use Plan is not a certified Local Coastal Program ("LCP"). There is no certified LCP for this area. The Coastal Act is clear about the standard of review in this context. "Prior to certification of the local coastal program, a coastal development permit shall be issued if . . . the proposed development is in conformity with Chapter 3 (commencing with Section 30200) and . . . the permitted development will not prejudice the ability of the local government to prepare [an LCP] that is in

conformity with Chapter 3 . . .” Cal. Pub. Res. Code § 30604(a).. Under the Coastal Act, the policies the Commission must use to guide its decisions in this area are the policies of Chapter 3. The Respondents’ allegation that the proper review policy for permitting decisions is the LUP and not Chapter 3 of the Coastal Act is incorrect as the review standard the Commission must apply is both Chapter 3 and the policies of the LUP. Additionally, the standard of review the Commission must apply in enforcement proceedings is solely the Coastal Act. The only criterion under Section 30810 for issuance of a Cease and Desist Order is that an activity requiring a CDP was undertaken without a CDP or that activity inconsistent with a previous permit was undertaken. For the issuance of a Restoration Order under Section 30811, the Commission considers only whether development occurred without a CDP, whether it is inconsistent with the Coastal Act, and whether it is causing continuing resource damage.

5. Respondents’ Defense

The following is a series of allegations Respondents made regarding the ESHAs on the subject site, particularly questioning the presence of ESHA beyond the channel of Cold Creek, and asserting that their unpermitted uses comply with the Malibu/Santa Monica Mountains Land Use Plan. They are grouped here because the same general answer applies to all of these allegations.

a. Respondents disputed the identification of their property as located within and adjacent to ESHA. (Phone Calls from Sherry DaSilva to Staff on June 25, 2003, June 30, 2003, and June 22, 2009).

b. Respondents also cite a letter of July 14, 2003 from Daryl Koutnik, Senior Biologist, at the Los Angeles County Department of Regional Planning, stating that the Cold Creek ESHA on the property “extends only the width of the active drainage channel and does not include the full extent of the riparian vegetation associated with the Cold Creek water course.” (Letter from Sherry DaSilva to Staff on July 21, 2003).

c. Respondents question the designation of ESHA on the property outside of the channel of Cold Creek, seeming to argue that the definition of ESHA includes only those areas defined as such by the maps included in the LUP or as defined by the state Department of Fish and Game (DFG), and stating that DFG approved of their project, and therefore alleging that the only ESHA present is the channel of Cold Creek. Respondents include a letter from Morgan Wehtje of the Department of Fish and Game stating that Respondents “do not need a Streambed Alteration Agreement” for their unpermitted development. (Letter from Sherry DaSilva to Staff on July 21, 2003, and Phone Call from Sherry DaSilva to Staff on June 22, 2009).

d. Respondents also cite a hand-colored map of the “sensitive environmental resource areas” in the 1986 Malibu/Santa Monica Mountains Land Use Plan, on which the only ESHA identified on the subject property is the Cold Creek ESHA. (Letter from Sherry DaSilva to Staff on July 21, 2003). Respondents further alleged that when they built the structures, the only ESHA on the subject property was the channel of Cold Creek, as identified in the 1986 LUP. (Phone Call to Staff from Sherry DaSilva on June 22, 2009).

e. Respondents also cite *Table 1- Permitted Uses and Development Standards in Environmentally Sensitive Habitat Areas, Disturbed Sensitive Resources Areas, Significant Watershed, Resources Management Areas, Wildlife Corridors and Significant Woodlands* from the 1986 Malibu/Santa Monica Mountains Land Use Plan, highlighting particular development standards. Respondents allege that their project meets these development standards, particularly the various subsets they highlight, and discussed below. The classification of separate ESHAs for Cold Creek Management Area, riparian areas, oak woodlands/savannah areas, and Cold Creek itself is questioned, as Respondents point to their highlighted areas of Table 1, arguing that “[i]f everything is an ESHA [then] why does Table 1 give each habitat type its own set of rules.” (Letter from Sherry DaSilva to Staff on July 21, 2003).

Commission’s Response

Definition of ESHA

The determination of which habitats constitute ESHA is based on the definition of ESHA in Section 30107.5; it is not limited to what is mapped as ESHA in the 1986 Malibu/Santa Monica Mountains LUP, both because that LUP is not part of a certified LCP and because the LUP itself indicates that areas not mapped within it may well qualify as ESHA. In considering the scope of ESHA in the area covered by this LUP, the California Court of Appeals has held that “under the controlling LUP, the fact the subject property was not mapped as ESHA does not preclude it from being designated as an ESHA, provided it meets the appropriate criteria for such designation.” *LT-WR v. California Coastal Commission* (2007) 152 Cal.App.4th 770, 793. Thus if a habitat area meets the definition of ESHA, under the LTWR case, then the Commission shall designate it as ESHA and fulfill its “. . . ongoing duty to protect ESHAs.” *Id.* at 792-793.

As described above in section D.2.a, the northern and part of the western portion of the subject property is oak woodlands/savannah ESHA, the riparian canopy of Cold Creek on the western portion of the subject property is ESHA, and Cold Creek itself, a perennial blue-line stream is ESHA. Section 30107.5 of the Coastal Act defines ESHAs 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.” For the oak woodlands/savannah habitats on the subject property the ESHA definition is fulfilled because oak woodlands are rare and valuable as they provide habitat functions for myriad wildlife species and as they provide critical ecosystem support functions. For the oak woodlands, the second prong of the ESHA definition is met as oak woodlands/savannah habitats are easily disturbed or degraded by human activities, and are particularly vulnerable to impacts from development. That Cold Creek itself is ESHA is not in dispute, but to reiterate, Cold Creek is ESHA because it is especially valuable to the Santa Monica Mountains as a relatively unimpaired perennial stream, which is recognized for a lack of development and having good water quality in its upper reaches, and because it is particularly vulnerable to harm caused by increased erosion and nutrient and sediment loads from development. The riparian canopy of Cold Creek is ESHA because the riparian habitat is rare and especially valuable due to the ecological functions related to maintaining habitat

connectivity and providing habitat for wildlife that it provides, and because riparian habitat is imminently vulnerable to degradation from development, as a result of changes in water quality due to increased runoff from impervious surface areas, and from increased sedimentation and stream course alteration as a result of erosion. Therefore, applying the definition of Section 30107.5 to the subject site, it is clear that Cold Creek, its riparian canopy, and the oak woodlands/savannah habitats are all ESHA.

Further, the subject property meets all three elements identified in the 2003 Memorandum from Dr. Dixon on designation of ESHA in the area.²² As discussed above in Section D.2.a, Dr. John Dixon has assessed the designation of ESHA within the Santa Monica Mountains, and developed a site-specific analysis to be used to apply Section 30107.5 when determining if a habitat in the Santa Monica Mountains constitutes ESHA. First, the affected habitats on the subject property have been identified as oak woodlands/savannah, riparian, and a blue-line stream through site visits on May 11, 2001, September 4, 2001, May 9, 2002, June 15, 2004, and September 21, 2007, photographs, and by reference to previous Commission actions on the same habitats, discussed more fully below. Second, prior to the unpermitted development, the habitat was largely undeveloped and relatively pristine, as is visible in an aerial photograph of the site from 1996, Exhibit 24, and in site photographs from 1994, see Exhibits 30 a, b, and c. Third, these habitats are part of a large, continuous block of relatively pristine native vegetation, although the unpermitted development has reduced the pristine nature of the corral area. This fact is evident from aerial photographs of the site from 1996 and 2001, see Exhibits 24 and 25, which show the riparian canopy and oak woodlands/savannah habitats in the area as continuous upstream and downstream from the subject property, and leading to the numerous side canyons, and connecting to the pristine 59 acre area set aside as a condition of the original subdivision CDP, No. 5-83-290. Thus, Cold Creek, its riparian canopy, and the oak woodlands/savannah habitats on the subject property are all ESHA, based on the analysis set out in Dr. Dixon's memorandum.

Previous Commission Actions Designating ESHA on Respondents' Property:

Following is a summary of previous Commission actions concerning the designation of ESHA on Respondents' property:

In the previous permit action by the Commission approving CDP No. 4-96-047, for Respondents' single family residence and specified associated development, the Commission noted the resource protection implications of development on the subject property, stating that "*[t]he subject parcel is located within the Cold Creek Resource Management Area. The site is considered valuable as it is located in the upper Cold Creek watershed area. This area encompasses sensitive riparian woodlands, and is an inherent component of the Malibu Creek/Lagoon ecosystem*". The Commission further noted that that "*[t]he project site, the building pad, is located north of the Monte Nido area, west of Cold Canyon Road, drains to a blue line stream, Cold creek, is within the Malibu/Cold Creek Resource Management Area, and is within 200 feet of the Cold Creek Environmentally Sensitive Resource Area, which includes a significant oak woodland and savannah*". While the Commission did not define the extent of ESHA on the lower portion of the subject property in detail in these statements, it noted that the

²² Memorandum from Dr. Dixon, *supra* Note 2. [I copied your cite for the memo, Alex, to the first time I cite it above, and include the *supra* reference here.]

development of a single-family residence on the property was acceptable only as the building site and proposed project did not impact the ESHA on the subject property. This indicates that the Commission found that the then-proposed single family residence was consistent with Section 30240 only as it did not impact the ESHAs on the western and northern portions of the subject property, and as the conditions provided that the ESHAs would be protected.

In approving the final subdivision application for the original subdivision project which created Respondents' parcel, CDP No. 5-83-290, the Commission ensured that development would not impact the ESHAs located in the subdivision as it "... restricted development in Environmentally Sensitive Habitat areas and found that residential land use is not dependent on the resource and not to be permitted." Further, the Commission "... required a 50 to 100 foot setback from all streams" for any development, and found that:

"The applicant's project sets all residential pads back 100 feet from cold Creek, a perennial stream. The stream course is part of the recreation easement over the property. This prevents any future development impacting this habitat area. In addition, the project is clustered over 26 acres of the parcel and avoids any significant alteration of the site canyons which contain seasonal flows. Other significant canyon flows are located on the portion of property set aside for recreational use and will be permanently protected."

On the basis of those conditions and facts, the Commission stated that "The Commission finds, therefore, that the project, as conditioned, with the recreational use and trail easement provides protection to habitat areas and is consistent with Section 30240(a) and (b) of the Coastal Act of 1976." The Commission thus ensured that the residential development of the subdivision would protect the ESHAs in the area by ensuring that all development was located at least 100' from Cold Creek and its riparian areas, and by requiring that development be limited to the 26 acres of upper graded pads. These permit conditions for the original subdivision permit were followed [consider affirmed] in the approval by the Commission of CDP No. 4-96-047, as described above, when it approved the development of the single-family residence and associated improvements on the upper graded pad, noting that project's location on the upper graded pad ensures that it is consistent with the Coastal Act.

Previous Commission Actions Designating ESHA in Cold Canyon Road subdivision:

The Commission has also considered the issue of ESHA designation on several nearby properties within the very same Cold Canyon Road subdivision, all of which concerned impacts from unpermitted horse corrals to the same Cold Creek which Respondents' have impacted.

In issuing Cease and Desist and Restoration Orders to the owners of the property immediately to the south of the Respondents' property, where a similar corral was built within the same oak woodland and within the same riparian canopy as on Respondents' property; the Commission noted that "... Cold Creek, [is] designated as a perennial blue line stream by the USGS. Cold Creek is located adjacent to and on the western portion of the property. Cold Creek is lined with a lush variety of riparian plant species. In addition, thick assemblages of riparian/coastal sage/savannah plant species are growing in and adjacent to the seasonal stream. Finally, oak woodland species line Cold Creek throughout this area." The Commission also found that "Cold Creek, a designated blue line stream, and oak woodlands/savannah and riparian habitat are all

designated as ESHA” (page 14) and noted that “Commission staff biologist, John Dixon, has reviewed the subject area and has determined that the riparian and oak woodland habitat is an ESHA.” Further, the Commission found that “the environmental significance, increasing rarity, and susceptibility to disturbance from human activities, as detailed above, is the reason why oak woodlands are designated as environmentally sensitive habitat area, as defined by Section 30107.5 of the Coastal Act. The oak tree habitat on the subject site is particularly significant, in part, due to the fact that Cold Creek traverses the site and provides for a rich riparian habitat. As stated previously, Cold Creek, including the channel and riparian vegetation on site, is designated as an ESHA by the certified LUP. In addition, the United States Geologic Service has designated Cold Creek as a perennial blueline stream.” The Commission found that the riparian canopy of Cold Creek, Cold Creek itself, and the oak woodlands/savannah on the property immediately to the south are ESHA, on the strength of the significance, rarity, and susceptibility to harm of those habitat types, and in keeping with the 1986 Malibu/Santa Monica Mountains LUP designation. By issuing the order to cease and desist from maintaining unpermitted development and remove the unpermitted development, and restore the subject property, the Commission held that the habitat types there, which are immediately adjacent to, and ecologically the same as, the habitat types on Respondents’ property, are ESHA, and required to be granted the protections afforded by Section 30240.

And lastly, in denying the after-the-fact CDP application to retain an already built corral on a property downstream on Cold Creek from the Respondents property, the Commission found that “[t]he areas surrounding Cold Creek and its tributaries, including the on-site stream, contain oak woodlands that are designated Significant Oak Woodland and Savannah in the Malibu/Santa Monica Mountains LUP, and that are considered environmentally sensitive habitat areas (EHSAs) 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.” Moreover, the Commission denied the permit because it found that

“Approval of the unpermitted development would allow an accessory equestrian use immediately adjacent to the boundaries of the oak woodland ESHA, and within the protected zones of two oak trees that are located within the ESHA, thus increasing the potential for soil compaction and other damage to the oak trees, and increasing human intrusion into this important resource area for wildlife. 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. 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 each of these actions, the Commission affirmed that Cold Creek, its riparian canopy, and the surrounding oak woodlands are ESHA

Specific Responses to Respondents' Allegations

Respondent Defenses:

Respondents allege that the area of the subject property outside of the channel of Cold Creek is not ESHA. Respondents rely in part on the above-referenced letter from a Senior Biologist at the Los Angeles County Department of Regional Planning, and on an enlarged section of Figure 6 of the LUP, the Sensitive Environmental Resources Area Map, color-coded by them, which purports to show that their property includes no ESHAs other than the Malibu/Cold Creek Management Area and the channel of Cold Creek itself. Respondents also contend that DFG approved of their project, and that therefore DFG made a determination that the project does not impact ESHA. In short, Respondents argue that both an LA County biologist and DFG approved of their project, and thus that the area of the unpermitted development is not ESHA, outside of the channel of Cold Creek.

CCC Response:

Respondents' argument fails because whatever action DFG or any other separate permitting agency might take regarding this development, it still requires a CDP from the Commission, which must be based on the Commission's assessment of the consistency of the development with Coastal Act policies. Section 4.5 D.1(a)(6) of the LUP specifically states that "Development of the underlying land use classification must adhere to the performance standards established in Section 4.2.1 Policies 57-75, including Table 1, of this Plan **and will be subject to review by the County of Los Angeles Environmental Review Board (ERB), as well as approval by the coastal-permit issuing agency of the County of Los Angeles.**" (emphasis added). The Commission is the coastal permit issuing agency for Los Angeles County, and so this states that Respondents must secure a CDP from the Commission. This section of the LUP also states that all development of each resource protection overlay must adhere to Policies 57-75. Policy 57 states:

"Designate the following areas as Environmentally Sensitive Habitat Areas (ESHAs): (a) those shown on the Sensitive Environmental Resources Map (Figure 6), and (b) any undesignated areas which meet the criteria and which are identified through the biotic review process or other means, including those oak woodlands and other areas identified by the Department of Fish and Game as being appropriate for ESHA designation."

Respondents contend incorrectly that only DFG or LA County can designate ESHA. This is false, as Policy 57 requires the designation of areas as ESHA if those areas meet the criteria. Respondents also contend that only the channel of Cold Creek is ESHA. This broader contention fails because Cold Creek, its riparian canopy and the adjacent oak woodlands/savannah habitats are ESHA according to the definition of Section 30107.5, as discussed above, and thus the LUP requires their designation as ESHA, because these areas "meet the criteria" and were identified as ESHA. Further, these areas were designated as ESHA within the LUP's SERA Map, see Exhibit 5, and therefore the impacted areas of the subject property are ESHA, both by the statutory definition and through the designation process of the LUP.

Moreover, Respondents' reliance upon the letter from DFG as somehow relevant to an identification of ESHA here is wholly misplaced. The cited letter from DG is a letter informing Respondents that they do not require an agreement with DFG to alter the streambed, as their project does not meet the requirements for needing a Streambed Alteration Agreement. The cited letter did not mention ESHA at all, so there is no indication that DFG made any determination as to whether or not the site is ESHA. Respondents' cited letter from Daryl Koutnik, a biologist at Los Angeles County, states that "the County of Los Angeles designated SERA as depicted on the published maps of the Malibu Land Use Plan (see enclosed map) includes only the Cold Creek ESHA." The letter goes on to state that "this ESHA extends only the width of the active drainage channel and does not include the full extent of the riparian vegetation associated with the Cold Creek water course." Moreover, this letter is not binding on the Commission, as the Commission is bound to consider Chapter 3 policies, particularly Section 30240 and the associated definition of ESHA in Section 30107.5 when considering whether a site constitutes ESHA; and as the Commission is free "choose which expert to rely on. . . " *LT-WR v. California Coastal Commission* (2007) 152 Cal.App.4th at 791. As discussed in detail in this report, the unpermitted development is inconsistent with Section 30240 of the Coastal Act.

Respondents rely on a hand-colored map they added color-coding to, which was apparently sent to them by Daryl Koutnik. This purports to delineate the sensitive environmental resource areas, and according to Respondents, is taken from the 1986 Malibu/Santa Monica Mountains Land Use Plan, which identified the only ESHA on the subject property as the Cold Creek ESHA. However, as discussed above, ESHA is defined by the Coastal Act, and the subject property includes ESHA under that definition additional to the 1986 LUP maps, which are not all inclusive as to the location of ESHA, according to Policy 57 of the LUP. Further, Staff's map of the ESHAs identified in the 1986 LUP denotes three different defined Resource Protection Overlays for the property, all defined under the LUP: Cold Creek, which is ESHA and a perennial blueline stream, and its riparian canopy which is ESHA; the Malibu/Cold Creek Resource Management Area; and oak woodlands/savannah habitat, which is ESHA. These designations under the LUP are supplemental to the fundamental fact that the three habitats on the subject property are ESHA according to the definition of Section 30107.5.

As an initial matter, note that the following discussion responds to Respondents' various arguments that their project is consistent with the LUP and that the LUP did not define their property as ESHA, outside of the channel of Cold Creek, however the standard of review for issuing Cease and Desist and Restoration Orders is not the applicable LUP but instead is Chapter 3 of the Coastal Act. As described above in Section IV.D the relevant issues before the Commission in an Order proceeding are whether the unpermitted development at issue here was completed without a CDP, is inconsistent with the Coastal Act, and is causing continuing resource damage. All of these elements have been met. However, the following responses to Respondents' arguments are provided for background information. It should be noted that even if the unpermitted development were consistent with the LUP, it would not prevent the issuance of orders here since the legal criteria under the Coastal Act have been met. Moreover, as shown below, Respondents' arguments are false, as the unpermitted development is in fact inconsistent with the LUP as well as inconsistent with the Coastal Act.

Respondents' allege that their development is consistent with the LUP. As noted elsewhere, activities which constitute development under Section 30106 of the Coastal Act require a Coastal Development Permit under Section 30600 from the Commission and a permit was never granted by the Commission for the unpermitted development subject to these orders. The requirement to get a CDP from the Commission is not satisfied by ensuring that unpermitted development is consistent with the LUP policies, since both the Coastal Act (Section 30604(a)) and Section 4.5.D.1(a)(6) of the LUP require that a CDP be secured to ensure consistency with the LUP Policies and with the Coastal Act.

As noted above, the Coastal Act is the legally relevant standard here to apply in issuing cease and desist and restoration orders. However, even if the LUP were the legally relevant standard, this unpermitted development is also inconsistent with the LUP. Respondents' assertion that their unpermitted development is consistent with the Policies of the LUP is incorrect. Respondents' cite various sections of Table 1, (which lists Permitted Uses and Development Standards in ESHAs, and other resource overlay areas), and also Section 4.5.D.1(a)(6), (which lists the permitted uses in resource overlay areas, and includes Table 1 by reference).

Respondents' contention that their project is consistent with the LUP Policies is false, because the unpermitted development did not comply with the clustering and development placement policies in Table 1, and Policies 74 and 71. The subject property is entirely within the Malibu/Cold Creek Resource Management Area, which allows only "resource-dependent uses and residential at the prescribed underlying land classification." Further, Policies 71 and 74 require development to be clustered and to be placed near already existing development, which was followed by the Commission in approving development only on the upper graded pad in CDP No. 4-96-047. The unpermitted development in the lower floodplain is not consistent with the goal of clustering development onto the upper pads to protect ESHA. Moreover, environmentally sensitive habitat areas have the greatest level of restrictions on development under the LUP and Coastal Act. Only "resource-dependent uses, as defined in [P]olicy 57" are allowable within ESHA, and only residential uses setback 100' from the ESHA are allowed adjacent to ESHA, under Table 1. The unpermitted horse corral and other permanent development at issue here is located within and/or adjacent to ESHA, and is not a resource dependent use, which is defined in Table 1 as including such transient activities as "nature observation, research/education, passive recreation including hiking and horseback riding." Further, even if the uses at issue here were covered and allowable by Policy 57, which they are not, Table 1 additionally requires that a "minimum setback of 100' from the outer-limit of the pre-existing riparian tree canopy shall be required for any structure associated with a permitted use," a setback requirement which is not met by the unpermitted development here. Further, Table 1 prohibits vegetation removal within ESHA, which occurred at the subject site as the horses compacted the corral down, removing all vegetation except for the mature oak trees and several small willows. The unpermitted development here fails to meet both of these criteria. The subject unpermitted development, located both within and/or adjacent to ESHAs, is inconsistent with these LUP Policies, and is also inconsistent with Section 30240 of the Coastal Act as described above. Thus the unpermitted development is not in conformance with the LUP or the Coastal Act.

Overall, the Respondents' allegation that their unpermitted development does not impact ESHA is false. Fundamentally, ESHA is defined by Section 30107.5, and the three habitats at issue here, Cold Creek, riparian canopy, and oak woodlands/savannah, all are rare and/or especially valuable, and could be easily disturbed or degraded by human activities and development. These facts alone are determinative of the issue, and additionally, the determination of these habitats as ESHA is confirmed by Section 30107.5, and by Policy 57 of the LUP. Moreover, the unpermitted development at issue here both requires a CDP and is inconsistent with Chapter 3 of the Coastal Act, and even with Table 1 and Policies 57, 71, and 74 of the LUP because it significantly disrupts habitat values in designated and identified ESHAs. Most importantly, as described above in section D.2.a, the northern and part of the western portion of the subject property is oak woodlands/savannah ESHA, the riparian canopy of Cold Creek on the western portion of the subject property is ESHA, and Cold Creek itself, a perennial blue-line stream is ESHA.

6. Respondents' Defense

**Respondents allege that other nearby permits allowed similar equestrian facilities and therefore that their unpermitted development should be granted a permit, citing CDP No. 5-91-44 and CDP No. 5-90-625.
(Phone Call from Sherry DaSilva to Staff, July 21, 2003.)**

Commission's Response

Each potential development site is unique, and the specific facts of the site and the proposed development determine whether the proposed development on that site is consistent with the Coastal Act, and thus whether a Coastal Development Permit will be issued for that proposed development on that site. Assessing the cited CDPs, CDP No. 5-90-625 was a permit issued for an equestrian facility, but it is in a different area of the Santa Monica Mountains, at the top of a canyon site. Further, this equestrian facility was not adjacent to a creek, and therefore has significantly different resource implications. The facts of the site of CDP No. 5-90-625 are quite different from the facts of the unpermitted development subject to these orders. As for the other cited permit, Staff was unable to find a record for CDP No. 5-91-44, and believes that Respondents may have made an error in citing the permit number.

A better comparison would be the neighboring properties in the very same Cold Creek Road subdivision, in the very immediate vicinity of this property. Several of the neighbors built equestrian facilities similar to that the Respondents constructed on the lower portion of their property. Of these, for one, the Commission denied an after-the-fact coastal development permit application to retain the development, on the grounds that the development was inconsistent with the Coastal Act, and on another, the Commission issued Cease and Desist and Restoration orders to remove the development and restore the site. The relevant language from the Commission's action denying the permit for a similar corral in similar habitat areas is quote above in the Commission's response to the Respondents' Defense #5, relating to ESHA on the subject property. The latter orders were issued for the property immediately to the south of the Respondents' property, which has similar resources and was similarly impacted as this site has been by the unpermitted development.

7. Respondents' Defense

Respondents allege that no trees had been harmed by the unpermitted development as of May 1, 2002. Respondents' arborist states, in reference to the trees east of the stable/tackroom that: "The trees have no signs of adverse impact from the 3 year old structure and I observed no die back on the trees. There is no concrete or asphalt under the drip line of the trees. The owners assured me the facility was erected with extreme care and no roots were exposed or damaged during construction. If damage had occurred, the trees would show signs of stress or die back. The roots are deep into the water table with no surface roots. The facility is kept clean and all fecal matter is removed daily and hauled away." Similarly, the arborist states in reference to the trees west of the stable/tackroom that: "The dripline of all of these trees is a minimum of 30 feet from the structure. There is no dieback on any of these trees. There are no surface roots present. The roots are deep into the water table. There is no evidence of compaction under or around the trees as soil is very sandy and sedimentary. . . . All fecal matter is removed daily and the area is kept very clean." Lastly, the arborist notes in his letter that "two trees have been identified that will be encroached within their preservation zones" and that "[o]ne fence post was placed within the protected area of one tree. The post was hand dug and has no cement footings. The owner states that no roots were disturbed and the tree shows no signs of distress."

(Letter from MCA Tree Services to Sherry DaSilva of May 1, 2002, enclosed in Letter of July 21, 2003 from Sherry DaSilva to Staff.)

Respondents reiterate the allegation that the oak trees have not been harmed by the presence of the horses in the corral, with reference to the above-quoted arborist's report, noting that they remove the horse waste daily as the arborist states.

(Phone Call from Sherry DaSilva to Staff, June 22, 2009.)

Commission's Response

As described above, harm to mature oak trees, such as the mature oak trees in and adjacent to the corral and impacted by the unpermitted development, can take time to become apparent. Thus, an investigation only one year after the violation was discovered, and by Respondents' admission, three years after it was constructed, would not be expected to reveal the full extent of the damage caused by this unpermitted development. Further, an investigation and restoration in 2004 of the property immediately to the south of the respondents' property, where a similar corral was built within the same oak woodland habitat around 2001 and subsequently removed in 2004, revealed that the mature oak there was severely impacted due to soil compaction. The restoration specialist found that the soil in that corral was so heavily compacted that over three feet of topsoil was dry, even after heavy winter rains. This soil compaction and resulting "dead" soil had severely stressed the mature oak tree within the corral, which showed signs of stress from damage to its roots. The restoration specialist required that the soil be aerated with a four-inch diameter auger, and the soil within those holes replaced with a 50/50 mix of new topsoil and

mulch, in order to ensure that water and nutrients percolated down through the soil to the roots of the oak tree.

The restoration biologist reported that after six years of horse activity in the corral the top three feet of soil was “dead” and needed to be removed and replaced with new soil to allow for the oaks to receive necessary nutrients. The arborist’s finding cited by Respondents was only after three years of horse activity, here the mature oaks on the subject site have had eight more years of negative impacts from soil compaction. This indicates that the resource impacts on the subject property are significant, as there has been eight years of soil compaction, over twice as long a period as was sufficient to cause serious harm to the neighboring oak.

Further, the encroachment into the dripline of three oak trees by the unpermitted development (as admitted by Respondents in the arborist’s description of the site), is inconsistent with Section 30240 of the Coastal Act, which requires that “environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those uses shall be allowed.” The admitted encroachment into the oak woodlands environmentally sensitive habitat area by the unpermitted development is inconsistent with Chapter 3, regardless of any procedures allegedly followed regarding animal waste, and regardless of assurances that roots were not exposed during unpermitted construction activities.

8. Respondents’ Defense

Respondents allege that a Coastal Development Permit to retain the unpermitted development is not required because they received an Approval-in-Concept from the Los Angeles County Environmental Review Board on April 15, 2002, and final plot plan approval on July 7, 2003 from Los Angeles County Regional Planning. Respondents also allege that a Notice of Intent to Commence Cease and Desist and Restoration Order Proceedings should not have been sent while they were in the process of getting an Approval in Concept from Los Angeles County Regional Planning.

(Phone Calls from Sherry DaSilva to Staff on June 25, 2003, June 30, 2003, July 7, 2003 and Letter from Sherry DaSilva to Staff on July 21, 2003.)

Commission’s Response

Neither a Los Angeles County Approval-in-Concept nor a Plot Plan Approval does anything to satisfy the independent requirements of the Coastal Act, which include a requirement that all development in the Coastal Zone be approved through the issuance of a Coastal Development Permit under the Coastal Act. In fact, Section 30600 of the Coastal Act specifically provides that: “in addition to obtaining any other permit required by law from any local government, or from any state, regional or local agency, any person . . . wishing to perform or undertake any development in the coastal zone . . . shall obtain a coastal development permit.” Because there is no certified LCP for this area, and the County has not exercised the option of issuing its own coastal permits under Section 30600(b), that coastal development permit must come from the Commission. Cal. Pub. Res. Code § 30600(c). Thus, the fact that Respondents secured local government approval in concept for their development is irrelevant. As described above, a CDP

was never obtained for the development activities on the subject site, and therefore the basis exists for the issuance of Cease and Desist and Restoration Orders, in concert with the other facts as described above.

Further, both the Approval-in-Concept and the Plot Plan Approval themselves (enclosed in Respondents' letter) state that other approvals and permits are required, among other conditions. The Plot Plan Approval of July 7, 2003 also states "THIS IS NOT A PERMIT and is subject to any conditions listed below . . . SEE ATTACHED CONDITIONS" and states that "This plot plan is approved subject to . . . the conditions noted herein. . . . Such approval shall not be construed to permit the violation of any provision of any County Ordinance or State law." The Approval-in-Concept and Plot Plan Approval are preliminary statements by the County that the project appears to be consistent with local laws. The Plot Plan approval explicitly states that is not a building permit nor any other type of permit and that it does not permit the violation of state law. Further, as stated above, Section 30600 of the Coastal Act requires that a CDP be secured for development, and the Plot does not satisfy that requirement. Respondents' allegation that Los Angeles County Plot Plan Approval somehow replaces the need for a permit under the Coastal Act is thus incorrect.

Section 13181 and Section 13191 of the Commission's Regulations allow the Executive Director to send a Notice of Intent to Commence Cease and Desist and Restoration Order Proceedings (NOI) whenever he believes that someone is engaging or has engaged in development activity as described in Section 30810(a) and Section 30811 of the Coastal Act and that the activity meets the criteria for issuance of the orders under Section 30810(a) and Section 30811. As detailed in the June 19, 2003 NOI, these requirements were met when the NOI was sent, and thus it was lawfully sent. There is no requirement that formal enforcement actions be stayed pending local approval(s) of the project, as local approval is independent of and in addition to the requirement to secure a CDP for any development in the Coastal Zone. Further, Staff sent the NOI after the Respondents had failed to apply for a CDP, and had missed deadlines given them to do so. The deadline to submit a CDP application was February 15, 2003 and the NOI was not sent until June 19, 2003. Given the amount of time that had passed, Staff felt an NOI was the appropriate response to spur resolution of the violation. In fact, as more fully described above, even in the additional 6 years, no complete CDP application has been filed for this matter.

9. Respondents' Defense

Respondents also allege that "[m]y project has met these policies and has been approved by the ERB w/conditions" (in reference to the Malibu/Santa Monica Mountains Land Use Plan and the policy requiring approval for projects by the Los Angeles County Environmental Review Board.) Respondents allege that since they secured ERB approval they do not need Commission approval for their project. ("Copy from '86 LCP- Malibu" included in Letter from Sherry DaSilva to Staff on July 21, 2003.)

Commission's Response

Section 4.5.D.1(a)(6), on page 61, of the Malibu/Santa Monica Mountains Land Use Plan, certified in 1986, requires that “[d]evelopment of the underlying land use classification must adhere to the performance standards established in Section 4.2.1 Policies 57-75, including Table 1, of this Plan and will be subject to review by the County of Los Angeles Environmental Review Board (ERB), as well as approval by the coastal-permit issuing agency of the County of Los Angeles.” Since there is not a Commission-certified Local Coastal Program in Los Angeles County, nor in the city of Calabasas, and the County has not opted to issue coastal development permits prior to certification of the LCP pursuant to Section 30600(b), the “coastal-permit issuing agency of the County of Los Angeles” is the California Coastal Commission, and therefore the section of the LUP cited by the Respondents states that Commission approval, through issuance of a coastal development permit, is required for development in environmentally sensitive habitat areas, in addition to approval from the ERB.

Further, as discussed above, the reference to Policies 57-75 and Table 1 incorporates protections for ESHAs that limit development into the requirement the Respondents cite, indicating that the subject unpermitted development is inconsistent with the LUP, as described above, in addition to being inconsistent with the Coastal Act.

Again, as discussed above, Section 30600 of the Coastal Act specifically notes that: “in addition to obtaining any other permit required by law from any local government, or from any state, regional or local agency, any person . . . wishing to perform or undertake any development in the coastal zone . . . shall obtain a coastal development permit.” Thus, the fact that Respondents may have worked with ERB regarding their development does not satisfy the requirement for a CDP.

10. Respondents' Defense

**Respondents note that they secured Retroactive Oak Tree Permit #02-154, which granted after-the-fact approval for impacts to three mature oaks on the subject property from the Forestry Division of the Los Angeles County Fire Department, as a part of their Approval-in-Concept from the Environmental Review Board.
(Letter from Sherry DaSilva to Staff on July 21, 2003)**

Commission's Response

As discussed above, approval from local government agencies does not satisfy the requirement to secure a Coastal Development Permit under Section 30600 of the Coastal Act for any activity in the Coastal Zone which constitutes development under Section 30106. Further, the Retroactive Oak Tree Permit does not employ Chapter 3 of the Coastal Act in deciding what impacts to oak trees are acceptable levels of impacts, which the Commission is required to do when considering development in a designated oak woodlands/savannah ESHA. As noted above in the discussion of the conclusions of Respondents' arborist, which were cited in the Retroactive Oak Tree Permit, the encroachment into the dripline of three oak trees by the unpermitted development is

inconsistent with Section 30240 of the Coastal Act, as a corral is not a resource dependent use and constitutes significant disruption of the habitat values of the ESHAs.

11. Respondents' Defense

Respondents allege that they received "Department of Fish and Game Approval" for their equestrian facilities as a part of their Approval-in-Concept from Los Angeles County. Respondents include a letter from Morgan Wehtje of the Department of Fish and Game stating that Respondents "do not need a Streambed Alteration Agreement" for their unpermitted development.

(Letter from Sherry DaSilva to Staff on July 21, 2003, enclosing a copy of the Letter from Morgan Wehtje of DFG to Sherry DaSilva).

Commission's Response

As discussed above, approvals secured from other agencies do not satisfy the requirement under Section 30600 of the Coastal Act to secure a CDP for any activities which constitute development under Section 30106. Further, the letter cited by Respondents is not a actually a statement of approval from the Department of Fish and Game ("DFG"), as alleged by Respondents, much less an approval on the merits after a review of the environmental impacts, but is instead a letter informing them that they do not require an agreement with DFG to alter the streambed, as their project does not meet the requirements for needing a Streambed Alteration Agreement. The fact that their project does not require a DFG Streambed Alteration Agreement is not at all relevant to the fact that they need a CDP nor does it supplant the need for a CDP to have been secured for the Respondents' unpermitted development.

12. Respondents' Defense

Respondents allege that their vegetation removal on the lower portion of the subject property was in compliance with their Los Angeles County Fuel Modification Plan, and that therefore the vegetation removal does not require a CDP.

(Letter of July 21, 2003 from Sherry DaSilva to Staff, enclosing a copy of the Los Angeles County Fuel Modification Plan.)

Commission's Response

The Final Fuel Modification Plan approved on May 18, 2002 states: "[t]h stamping of the plan and specification SHALL NOT be held to permit or to be an approval of the violation of any provisions of any County/City or State law." Therefore the Fuel Modification Plan itself is clear on the point that it does not excuse the Respondents from compliance with the Coastal Act, which requires a CDP for removal of major vegetation, as that constitutes development under Section 30106. Further, the cause of the continuing resource damage on the subject site is not the Respondents' compliance with the Fuel Modification Plan, but is instead the continuing presence of an unpermitted equestrian facility on the lower portion of the subject site.

Moreover, as noted several times above in response to other similar arguments raised by Respondents, Section 30600 of the Coastal Act specifically provides that: “in addition to obtaining any other permit required by law from any local government, or from any state, regional or local agency, any person . . . wishing to perform or undertake any development in the coastal zone . . . shall obtain a coastal development permit.” Thus, the fact that Respondents may have been in compliance with their LA County Fuel Modification Plan does not satisfy the requirement for a CDP.

H. Summary of Findings

1. Bob and Sherry DaSilva, as Trustees of the Bob and Sherry L. DaSilva Family Trust, own real property located at 975 Cold Canyon Road, in Calabasas, Los Angeles County. The property is identified by the Los Angeles County Assessor’s Office as APN No. 4456-039-007 (“subject property”). The property is located within the Coastal Zone.
2. Bob and Sherry DaSilva, and the Bob and Sherry L. DaSilva Family Trust, collectively, “Respondents” have undertaken development, as defined by Coastal Act Section 30106, at the subject property, including: 1) construction of a horse corral; 2) construction of an unpermitted pathway; 3) construction of a rock retaining wall; 4) construction of a four stall stable and tackroom; 5) construction of a cement drainage culvert with a metal grate; 6) placement of wooden fencing; 7) removal of major vegetation; 8) related grading; 9) a change in the intensity of use of the lower portion of the subject property; 10) a change in the intensity of use of Cold Creek as a result of the runoff of horse effluent and erosion of fill into the creek; and 11) the discharge of wastewater via the drainage culvert and runoff from the corral into Cold Creek.
3. Respondents conducted the above-described development without a Coastal Development Permit or any other Coastal Act authorization, in violation of Coastal Act Section 30600.
4. No exemption from the permit requirements of the Coastal Act applies to the unpermitted development on the subject property.
5. Respondents conducted the above-described development which is, as more fully described above, inconsistent with a previously issued permit (CDP No. 4-96-047) from the Commission.
6. The unpermitted development was, as more fully described above, inconsistent with the Coastal Act, including the policies set forth in Chapter 3 of the Coastal Act including: Section 30230 (marine resources), Section 30231 (biological productivity), Section 30240 (ESHA), Section 30251 (scenic resources and alteration of landforms), and Section 30253 (minimization of adverse impacts).
8. The unpermitted development is causing “continuing resource damage” within the meaning of Section 30811 of the Coastal Act and Section 13190, Title 14, California Code of Regulations.

9. There has been a violation of the Coastal Act.
10. In a letter dated October 24, 2001, Commission Staff informed Respondents that unpermitted development, including construction of a horse corral, a stable/tackroom, a concrete culvert, and a retaining wall, on the subject property required a CDP, and that failure to obtain a CDP prior to such activities constituted a violation of the Coastal Act; and that the unpermitted development appeared to be inconsistent with Chapter 3 of the Coastal Act.
11. In a letter dated June 19, 2003, Commission Staff informed Respondents that pursuant to Title 14, California Code of Regulations, Sections 13181(a) and 13191(a), the Executive Director intended to initiate Cease and Desist and Restoration Order Proceedings against them, and outlined steps in the cease and desist and restoration order process. The letter also informed respondents that the unpermitted development was inconsistent with the resource protection policies of the Coastal Act, including, but not limited to: Sections 30210 and 30213 (public access), Section 30223 (recreation), Sections 30230 and 30231 (marine resources, biological productivity and water quality), Section 30233 (diking, filling, or dredging), Section 30236 (substantial alterations of rivers), Section 30240 (ESHA), Section 30251 (scenic and visual resources/landform alteration), and Section 30253 (geologic and flood hazards, erosion and natural landform alteration).
12. In a letter dated June 10, 2009, Commission Staff informed Respondents of the possibility that they may be subject to Recordation of a Notice of Violation under Section 30812.
13. All existing administrative methods for resolving the violation have been exhausted.
14. On June 18, 2009, the Executive Director sent Respondents a Notification of Intent to Record a Notice of Violation of the California Coastal Act pursuant to Section 30812 of the Coastal Act.
15. Respondents did not submit a written objection to the Executive's Director stated intention to record a Notice of Violation on the subject property.
16. Respondents have not submitted a completed Statement of Defense form.

Exhibit List

Exhibit

Number:

Description:

1. Site Map of Location of Subject Property
2. Los Angeles County Assessor's Parcel Map
3. Santa Monica Bay Watershed Map
4. Site Development Plan from CDP No. 4-96-047
5. Map Depicting Environmentally Sensitive Resources in Subject Area from 1986 Malibu/Santa Monica Mountains Land Use Plan

6. Memorandum from John Dixon on Designation of Environmentally Sensitive Habitat in the Santa Monica Mountains
7. Coastal Development Permit No. 5-83-290
8. Coastal Development Permit No. 4-96-047
9. Staff Report for CDP No. 4-96-047, April 26, 1996
10. Future Development Deed Restriction on Subject Property, June 17, 1996
11. Notice of Violation, October 24, 2001
12. Notice of Intent to Commence Cease and Desist Order and Restoration Proceedings, June 19, 2003
13. Letter from Commission Staff to Respondents, July 3, 2003
14. Letter from Commission Staff to Respondents, August 8, 2003
15. Letter from Klaus Radtke (On Behalf of Respondents) to Commission, August 20, 2003
16. Letter from Commission Staff to Respondents, September 12, 2003
17. Letter from Respondents to Commission Staff, October 16, 2003
18. Letter from Commission Staff to Respondents, October 27, 2003
19. Letter from Commission Staff to Respondents, November 21, 2003
20. Letter from Commission Staff to Respondents, September 2, 2004
21. Resending of Notice of Intent to Proceed to Hearing, June 10, 2009
22. Letter from Commission Staff to Respondents, June 18, 2009
23. Letter from Commission Staff to Respondents, July 1, 2009
24. 1996 Pre-Development Aerial Photograph of Subject and Neighboring Properties
25. 2001 Post-Development Aerial Photograph of Subject and Neighboring Properties
26. a. Photograph of Horse Corral, Oak Trees, and Horse Stalls, 2001
b. Photograph of Horse Corral and Adjacent Cold Creek, 2001
27. a. Photograph of Horse Corral Fence and Adjacent Cold Creek, 2001
b. Photograph of Rock Revetment, 2004
28. Letter from Heal the Bay to Commission, February 4, 2002
29. a. Photograph of Horse Corral and Horse Stalls, 2007
b. Photograph of Horse Corral and Fencing, 2007
30. a. Photograph of Area from 1994
b. Photograph of Area from 1994
c. Photograph of Area from 1994

**CEASE AND DESIST ORDER NO. CCC-09-CD-04 AND
RESTORATION ORDER NO. CCC-09-RO-03**

1.0 CEASE AND DESIST ORDER NO. CCC-09-CD-04

Pursuant to its authority under Public Resource Code section 30810, the California Coastal Commission (“Commission”) hereby orders and authorizes Bob and Sherry DaSilva, individually and as Trustees of the Bob and Sherry L. DaSilva Family Trust, their agents, contractors and employees, and any person acting in concert with any of the foregoing (hereinafter collectively referred to as “Respondents”) to 1) cease and desist from engaging in any further development on the property identified in Section 5.0, below (“subject property”), unless authorized pursuant to the Coastal Act, including through the terms and conditions of these Orders, 2) cease and desist from maintaining any unpermitted development (as described in Section 6.2, below) on the subject property; 3) remove all unpermitted development on the subject property, as listed in paragraphs A, B, C, D, and E as follows:

- A. Remove the stable and tackroom on the subject property,
- B. Remove all fencing on the lower portion of the subject property, including the fencing enclosing the horse corral,
- C. Remove the pathway/road leading from the permitted equestrian trail easement to the unpermitted horse corral and all retaining walls and backfilled soil behind the retaining walls that support the pathway,
- D. Remove all other elements associated with the horse corral facility including, but not limited to, feeder/water troughs, bedding material, or waste disposal features,
- E. Remove the cement drainage culvert and metal grate and any associated facilities from the subject property, and;

4) take all steps necessary to ensure compliance with the Coastal Act and to restore the subject property by complying with the requirements of the Orders as described herein.

2.0 RESTORATION ORDER NO. CCC-09-RO-03

Pursuant to its authority under Public Resource Code section 30811, the Commission hereby orders and authorizes Respondents to restore the subject property to the condition it was in prior to the undertaking of the unpermitted development described in Section 6.2 of these orders, as provided below. The restoration and mitigation required under these orders is necessary to resolve a Coastal Act violation. Accordingly, the Coastal Commission hereby authorizes and orders the following:

2.1 TERMS AND CONDITIONS

Within 30 days of issuance of this Restoration Order, Respondents must submit for the review and approval of the Commission's Executive Director ("Executive Director") a Restoration, Removal, Interim Erosion Control, Restorative Grading, Revegetation and Monitoring Plan ("Restoration Plan"). The Executive Director may extend this time upon a showing of good cause. The Restoration Plan must contain a removal plan, an interim erosion control plan, a restorative grading plan, a revegetation plan, and a monitoring plan, which will provide for the safe removal of the cited unpermitted development, the restoration of the pre-violation topography, and the restoration and revegetation of a natural riparian and oak woodlands/savannah ecosystem on the subject property where the unpermitted activity occurred. The Restoration Plan shall include the following components and satisfy the following criteria:

A. General Terms and Conditions

1. The Restoration Plan shall outline the removal of all unpermitted development described in Section 1.0, including all removal activities in accordance with Section 2.1.B below; the implementation of erosion control measures, in accordance with Section 2.1.C below; the restoration of native riparian and oak woodlands/savannah habitats, including all proposed restorative grading activities, in accordance with Section 2.1.D below, and all proposed revegetation activities, in accordance with Section 2.1.E below; in the areas of the subject property impacted by the unpermitted development that is the subject of the Orders.
2. The Restoration Plan shall be prepared by a qualified restoration ecologist, a qualified geologist, and possibly a qualified soils scientist (hereinafter referred to as "Specialists"), and shall include a description of the education, training, and experience of each Specialist. The Restoration Plan shall include a description of the education, training and experience of the qualified geologist, restoration ecologist and soil scientist, if relevant, who shall prepare the Restoration Plan. A qualified restoration ecologist for this project shall be an ecologist, arborist, biologist or botanist who has experience successfully completing restoration and revegetation of oak woodlands/savannah and riparian habitats in the Santa Monica Mountains region of Los Angeles County. If this qualified restoration ecologist does not have experience in creating the soil conditions necessary for successful revegetation of oak woodlands/savannah and riparian vegetation, a qualified soil scientist shall be consulted to assist in the development of the conditions related to soils as needed. A qualified soil scientist for this project shall be a soil scientist who has experience in assessing, designing and implementing measures necessary to create soil conditions to support revegetation and prevent instability or erosion. A qualified geologist for this project shall be a geologist who has experience evaluating and designing soil stabilization projects in the Santa Monica Mountains area.

3. The Restoration Plan shall include a schedule/timeline of activities required as part of the plan, the procedures to be used, and identification of the parties who will be conducting the restoration activities. The schedule/timeline of activities required by the Restoration Plan shall be in accordance with the deadlines included in Section 2.1 for the Removal Plan, Erosion Control Plan, Restorative Grading Plan and the Revegetation Plan.
4. The Restoration Plan shall include a detailed description of all equipment to be used. All tools utilized shall be hand tools unless the Specialists demonstrate to the satisfaction of the Executive Director that mechanized equipment is needed and will not significantly impact resources protected under the Coastal Act, including, but not limited to: geological stability, integrity of landforms, freedom from erosion, and the existing native vegetation and Cold Creek. The Restoration Plan shall designate areas for staging of any construction equipment and materials, including receptacles and temporary stockpiles of graded materials, all of which shall be covered on a daily basis. The Restoration Plan shall include limitations on the hours of operation for all equipment and a contingency plan that addresses: 1) impacts from equipment use, including disruption of areas where revegetation will occur, and responses thereto; 2) potential spills of fuel or other hazardous releases that may result from the use of mechanized equipment and responses thereto; and 3) any water quality concerns.
5. The Restoration Plan shall identify the location of the disposal site(s) for the disposal of all materials removed from the site and all waste generated during restoration activities pursuant to the Orders. If a disposal site is located in the Coastal Zone and is not an existing sanitary landfill, a Coastal Development Permit is required for such disposal. All hazardous waste must be disposed of at a suitable licensed disposal facility.
6. The Restoration Plan shall specify the measures that will be taken to identify and avoid impacts to sensitive species. Sensitive species are defined as: (a) species which are listed by state or federal agencies as threatened or endangered or which are designated as candidates for such listing; (b) California species of special concern; (c) fully protected or "special animal" species in California; and (d) plants considered rare, endangered, or of limited distribution by the California Native Plant Society.
7. The Restoration Plan shall specify the methods to be used after restoration to stabilize the soil and make it capable of supporting native vegetation. Such permanent methods shall not include the placement of retaining walls or other permanent structures, grout, geogrid or similar materials. Any soil stabilizers identified for erosion control shall be compatible with native plant recruitment and establishment. The Interim Erosion Control Plan shall specify the type and location of erosion control measures that will be installed on the subject property and maintained until the impacted areas have been revegetated to minimize erosion and transport of sediment. Such measures shall be provided at all times of

the year for at least three years or until the plantings have been established, whichever occurs first, and then shall be removed or eliminated by Respondents.

8. The Restoration Plan shall also include specific ecological and erosion control performance standards that relate logically to the restoration and revegetation goals. Where there is sufficient information to provide a strong scientific rationale, the performance standards shall be absolute (e.g., specified average height within a specified time for a plant species).
 - a. Where absolute performance standards cannot reasonably be formulated, clear relative performance standards will be specified. Relative standards are those that require a comparison of the restoration site with reference sites. The performance standards for the plant density, total cover and species composition shall be relative. In the case of relative performance standards, the rationale for the selection of reference sites, the comparison procedure, and the basis for judging differences to be significant will be specified. Reference sites shall be located on adjacent areas vegetated with oak woodland/savannah and riparian species undisturbed by development or vegetation removal, within 2000 feet of the subject property with similar slope, aspect and soil moisture. If the comparison between the revegetation area and the reference sites requires a statistical test, the test will be described, including the desired magnitude of difference to be detected, the desired statistical power of the test, and the alpha level at which the test will be conducted. The design of the sampling program shall relate logically to the performance standards and chosen methods of comparison. The sampling program shall be described in sufficient detail to enable an independent scientist to duplicate it. Frequency of monitoring and sampling shall be specified for each parameter to be monitored. Sample sizes shall be specified and their rationale explained. Using the desired statistical power and an estimate of the appropriate sampling variability, the necessary sample size will be estimated for various alpha levels, including 0.05 and 0.10.
9. The Restoration Plan shall specify that prior to initiation of any activities resulting in physical alteration of the subject property, the disturbance boundary shall be physically delineated in the field using temporary measures such as stakes or colored tape.

B. Removal Plan

1. Respondents must submit a Removal Plan prepared by the Specialists to remove the following material and structures that exist on the subject property as a result of the unpermitted development already performed: a horse corral with a stable and tackroom; all fencing on the lower portion of the subject property, including the fencing enclosing the horse corral; the pathway/road leading from the permitted equestrian trail easement to the unpermitted horse corral and all retaining walls and backfilled soil behind the retaining walls that support the

pathway; all other elements associated with the horse corral facility including, but not limited to, feeder/water troughs, bedding material, and any waste disposal features; the cement drainage culvert and metal grate; as described in Section 1.0 and in the document entitled "Recommended Findings for Cease and Desist Order No. CCC-09-CD-04 and Restoration Order No. CCC-09-RO-03 and Notice of Violation No. CCC-09-CD-04."

2. The Removal Plan shall include a site plan showing the location and identity of all unpermitted structures and material removed according to the terms of the Cease and Desist Order No. CCC-09-CD-04
3. Removal activities shall not unnecessarily disturb areas surrounding the planting area or unnecessarily disturb native vegetation within the planting area. Measures for the restoration of any area disturbed by the removal activities shall be included within the Restorative Grading and Revegetation Plans.
4. Respondents must complete removal of all unpermitted development described above in Section 1.0, Cease and Desist Order No. CCC-09-CD-04, by implementing the Removal Plan no more than 10 days after approval of the Restoration Plan by the Executive Director.

C. Interim Erosion Control Plan

1. Respondents must submit an Interim Erosion Control Plan which shall specify the type and location of erosion control measures that will be installed on the subject property, maintained until the impacted areas have been revegetated to minimize erosion and transport of sediment, then removed and/or adjusted as necessary to ensure that no permanent erosion control structures remain on the impacted portion of the subject property.
2. The Interim Erosion Control Plan shall demonstrate that erosion on the site shall be controlled to avoid adverse impacts on adjacent properties and the oak woodlands/savannah and riparian habitats.
3. The Interim Erosion Control Plan shall include, at a minimum, the following components:
 - a. A narrative report describing all temporary runoff and erosion control measures that shall be installed on the project site prior to or concurrent with the initial grading operations and maintained until the impacted areas have been revegetated to minimize erosion and transport of sediment outside of the disturbed areas.
 - b. A detailed site plan showing the location of all temporary erosion control measures.

- c. A schedule for installation and removal of temporary erosion control measures, in coordination with the Restoration Plan and the schedule provided for therein.
 - d. Interim erosion control measures shall be provided at all times of the year for at least three years or until the plantings have been established, whichever occurs first, and then shall be removed or eliminated by Respondents.
 - e. The following temporary erosion control measures may be used during construction including, but not limited to: installation of temporary sediment basins (including debris basins, desilting basins or silt traps), installation of temporary drains and swales, sand bag barriers, hay bales, and silt fencing, stabilize any stockpiled fill with geofabric covers or other appropriate cover, and installation of geotextiles or jute matting on all cut or fill slopes.
 - f. Measures to be taken to prevent erosion and dispersion of sediments across the subject property via rain, nuisance flow runoff, or wind.
4. Respondents must complete the installation of the interim erosion control measures, provided for in Section 2.1.C and the restorative grading measures provided for in Section 2.1.D, by implementing the approved Interim Erosion Control and Restorative Grading Plans no later than 10 days after the completion of the removal of the unpermitted development.

D. Restorative Grading Plan

1. Respondents must submit a Restorative Grading Plan. The Restorative Grading Plan shall require restoration of the topography of the property to the condition that existed prior to the unpermitted development through restorative grading in the areas impacted by the unpermitted development.
2. The Restorative Grading Plan shall include sections showing original and finished grades, drawn to scale with contours that clearly illustrate the original topography of the subject site prior to any grading disturbance, the current contours of the subject site prior to restoration, and the finished contours of the subject site which will exist after restorative grading is complete. It shall also include a quantitative breakdown of grading amounts (cut/fill). The location for any excavated material to be removed from the site as a result of the restoration of the impacted areas shall be identified. If the dump site is located in the Coastal Zone and is not an existing sanitary landfill, a Coastal Development Permit shall be required.
3. The Restorative Grading Plan shall include measures to be taken to aerate the soil in the lower portions of the subject property impacted by the unpermitted development.

4. The Restorative Grading Plan shall include permanent measures to be taken to prevent erosion and dispersion of sediments across the subject property via rain, nuisance flow runoff, or wind. The Restorative Grading Plan shall require the stabilization of soils so that soil is not exported off the subject property or into the oak woodland/savannah or riparian habitat and so that slumping, gullying, or other surficial instability does not occur. Any permanent erosion control methods shall not include the placement of retaining walls or other permanent structures, grout, geogrid or similar materials. Any soil stabilizers identified for erosion control shall be compatible with native plant recruitment and establishment.
5. Respondents must complete the installation of the interim erosion control measures, provided for in Section 2.1.C and the restorative grading measures provided for in Section 2.1.D, by implementing the approved Interim Erosion Control and Restorative Grading Plans no later than 10 days after the completion of the removal of the unpermitted development.

E. Revegetation Plan

1. Respondents must submit a Revegetation Plan. The Revegetation Plan shall include detailed descriptions, including graphic representations, narrative reports, and photographic evidence as necessary, of the vegetation on the subject property prior to any unpermitted activities undertaken on the subject property, and the current state of the subject property. The Revegetation Plan shall demonstrate that the areas impacted by the unpermitted development on the subject property will be revegetated using planting of species endemic to and appropriate for the subject site.
2. The vegetation planted on the subject property shall consist only of native, non-invasive plants endemic to riparian and oak woodlands/savannah habitats of the Santa Monica Mountains. All plantings used shall consist of native plants that were propagated from plants as close as possible to the subject property, in order to preserve the genetic integrity of the flora in and adjacent to the planting area.
3. The Revegetation Plan shall address all areas on the subject property impacted by the unpermitted development listed in Section 7.0 (hereinafter "Planting Area"). The Revegetation Plan shall include a detailed description of the methods that shall be utilized to restore the habitats on the subject property to that which existed prior to the unpermitted development and demonstrate that these methods will result in riparian and oak woodlands/savannah vegetation on the subject property with a similar plant density, total cover and species composition to that typical of undisturbed riparian and oak woodlands/savannah areas in the surrounding area, within five years from the initiation of revegetation activities.
4. The Revegetation Plan shall identify the natural habitat type that is the model for the restoration and describe the desired relative abundance of particular species in each vegetation layer. This section shall include a detailed description of

reference site(s) including rationale for selection, location, and species composition. The reference sites shall be located as close as possible to the restoration areas, shall be similar in all relevant respects, and shall provide the standard for measuring success of the restoration under the Orders.

5. The Revegetation Plan must describe the methods for revegetation of the site. Based on the goals from Section 2.1.D.4, the plan shall identify the species that are to be planted (plant “palette”), and provide a rationale for and describe the size and number of container plants and the rate and method of seed application. The Revegetation Plan shall indicate that plant propagules must come from local native stock. If plants, cuttings, or seed are obtained from a nursery, the nursery must certify that they are of local origin and are not cultivars and the Revegetation Plan shall provide specifications for preparation of nursery stock (e.g., container size & shape to develop proper root form, hardening techniques, watering regime, etc.). Revegetation of the Planting Area shall be undertaken using accepted planting procedures required by the restoration ecologist or resource specialist, and the technical details of those planting methods (e.g.; spacing, mycorrhizal inoculation) shall also be included. All plantings shall be the same species, or sub-species, if relevant, as those documented as being located in the reference sites. The planting density shall be at least 10% greater than that documented in the reference sites, in order to account for plant mortality.
6. The Revegetation Plan shall describe the methods for detection and eradication of nonnative plant species on the site. Herbicides shall only be used if physical and biological control methods are documented in peer-reviewed literature as not being effective at controlling the specific nonnative species that become established in the revegetation area. If herbicides are to be used in the revegetation area, specify the precautions that shall be taken to protect native plants and workers, consistent with all applicable laws and regulations. The soil treatments shall include the use of mycorrhizal inoculations of the soil, unless it can be demonstrated to the satisfaction of the Executive Director that such treatment will not likely increase the survival of the plants to be used for revegetation.
7. The Revegetation Plan shall include a map showing the type, size, and location of all plant materials that will be planted in the Planting Area; the location of all invasive and non-native plants to be removed from the Planting Area; the topography of all other landscape features on the site; the location of reference sites; and the location of photograph sites, which will provide reliable photographic evidence for monitoring reports.
8. The Revegetation Plan shall include a schedule for installation of plants and removal of invasive and/or non-native plants and a detailed explanation of the performance standards that will be utilized to determine the success of the restoration. The performance standards shall be in accordance with the general

performance standard procedures included in Section 2.1.A.8 above. The description of restoration success analysis shall be described in sufficient detail to enable an independent specialist to duplicate it.

9. Respondents shall not employ invasive plant species, which could supplant native plant species, on the subject property. The Revegetation Plan shall demonstrate that all non-native vegetation within the areas subject to revegetation and those areas that are identified as being subject to disturbance as a result of the restoration and revegetation activities will be eradicated. The removal of non-native species in these areas shall be completed as part of the Revegetation Plan, and the Revegetation Plan shall indicate that all non-native plant species will be removed from the Planting Area prior to any revegetation activities on the subject property.
10. The Revegetation Plan shall describe the proposed use of artificial inputs, such as watering or fertilization, including the full range of amounts of the inputs that may be utilized. The plan must specify that the minimum amount necessary to support the establishment of the plantings for successful restoration shall be utilized. No permanent irrigation system is allowed on the subject property. Temporary above ground irrigation to provide for the establishment of the plantings is allowed for a maximum of three years or until the revegetation has become established, whichever occurs first. If, after the three-year time limit, the revegetation has not established itself, the Executive Director may allow for the continued use of the temporary irrigation system until such time as the revegetation is established. The Revegetation Plan will not be successful until the revegetated areas meet the performance standards for at least three years without maintenance or remedial activities other than nonnative species removal.
11. Respondents shall complete revegetation by implementing the Revegetation Plan no later than 15 days of the completion of the implementation of the approved Interim Erosion Control and Restorative Grading Plans. If the planting schedule indicates that planting should occur at a certain time of year beyond the deadlines set forth herein, the Executive Director may, at the written request of Respondents, extend the deadlines as set forth in Section 10.0 of the Orders in order to achieve optimal growth of the vegetation.

F. Monitoring Plan

1. Respondents must submit a Monitoring Plan that describes the monitoring and maintenance methodology and shall include the following provisions:
 - a. The Monitoring Plan shall include maintenance and monitoring methodology, including sampling procedures, sampling frequency, and contingency plans to address potential problems with restoration activities or unsuccessful restoration of the area. Monitoring and maintenance activities shall be conducted in a way that does not impact the sensitive resources on the subject

property or on adjacent properties. Any impacts shall be remedied by the Respondents to ensure successful restoration.

- b. Respondents shall submit, according to the procedure set forth under Section 2.4, on an annual basis for a period of five years (no later than December 31st of each year), a written report, for the review and approval of the Executive Director, prepared by a qualified restoration ecologist and qualified geologist, evaluating compliance with the approved Restoration Plan. The annual reports shall include further recommendations and requirements for additional restoration activities in order for the project to meet the goals and performance standards specified in the Restoration Plan. These reports shall also include photographs taken annually from the same pre-designated locations (as identified on the map submitted pursuant to Section 3.D.5) indicating the progress of recovery in the Planting Area.
 - c. After approval of the monitoring reports by the Executive Director, Respondents shall implement within such timeframe as the Executive Director may specify all measures specified by the Executive Director to ensure the health and stability of the restored areas, as required by the Restoration Plan.
 - d. During the monitoring period, all artificial inputs shall be removed except for the purposes of providing mid-course corrections or maintenance to ensure the long-term survival of the restoration of the project site. If any such inputs are required beyond the first three years, then the monitoring program shall be extended by an amount of time equal to that time during which inputs were required after the first three years, so that the success and sustainability of the restoration of the project site are ensured.
2. At the end of the five-year period, Respondents shall submit, according to the procedure set forth under Section 2.4, a final detailed report prepared by a qualified restoration ecologist and qualified geologist for the review and approval of the Executive Director. If this report indicates that the restoration project has in part, or in whole, been unsuccessful, based on the approved Restoration Plan, Respondents shall submit, to the Executive Director, a revised or supplemental plan to compensate for those portions of the original program that were not successful. The Executive Director shall determine if the revised or supplemental restoration plan must be processed a CDP, a new Restoration Order, or modification of Restoration Order CCC-09-RO-03. After the revised or supplemental restoration plan has been processed by the Commission, Respondents shall implement the approved plan.
 3. For the duration of the restoration project, including the monitoring period, all persons subject to this order shall allow the Executive Director of the Commission, and/or his/her designees to inspect the subject property to assess compliance with the Restoration Order, subject to twenty-four hours advance notice.

- 2.2 Upon approval of the Restoration Plan (including the Removal, Interim Erosion Control, Restorative Grading, and Revegetation Portions) by the Executive Director, Respondents must fully implement the entire plan consistent with all of its terms. Respondents must complete implementation of each plan within the schedule provided for by each plan, and by the deadlines include in Section 2.1 of the Orders. Respondents must complete all work described in the Removal, Interim Erosion Control, Restorative Grading, and Revegetation Plans no later than 35 days after the Executive Director approves the Restoration Plan. The Executive Director may extend this deadline or modify the approved schedule for good cause pursuant to Section 10.0 of the Orders.
- 2.3 Within 30 days of the completion of the work described in the Restoration Plan (Section 2.1), Respondents must submit to the Executive Director of the Commission a report documenting the restoration work on the subject property. This report shall include a summary of dates when work was performed and photographs that show full implementation of the Restoration Plan (including removal, interim erosion control, and revegetation work), as well as photographs of the subject property before and after the removal, grading and plantings required by the Restoration Plan have been completed. This report shall include photographs that show the restored site. This report shall include a topographic plan that is prepared by a licensed surveyor, shows two-foot contours, and represents the topographic contours after removal of the development and grading to achieve restoration of the topography, per the terms of the Restorative Grading Plan.
- 2.4 All plans, reports, photographs and any other materials required by the Orders shall be sent to:
California Coastal Commission
Attn: Aaron McLendon
200 Oceangate, 10th Floor
Long Beach, CA 90802
- With a copy sent to:
California Coastal Commission
Attn: Pat Veasart
89 South California, Suite 200
Ventura CA 93001
- 2.5 All work to be performed under the Orders shall be done in compliance with all applicable laws.

3.0 REVISIONS OF DELIVERABLES

The Executive Director may require revisions to deliverables required under the Orders, and the Respondents shall revise any such deliverables consistent with the Executive Director's specifications, and resubmit them for further review and approval by the Executive Director, by the deadline(s) established in the Executive Director's letter returning the deliverable. The Executive Director may extend the time for submittals

upon a written request and a showing of good cause, pursuant to Section 10.0 of the Orders.

4.0 PERSONS SUBJECT TO THE ORDERS

4.1 Bob and Sherry DaSilva, individually and as Trustees of the Bob and Sherry L. DaSilva Family Trust, and their successors, assigns, employees, agents, contractors, and any persons acting in concert with any of the foregoing.

5.0 IDENTIFICATION OF THE PROPERTY

5.1 The property that is the subject of the Cease and Desist and Restoration Orders is described as follows:

An approximately 2.33 acre lot, west of Cold Canyon Road, located at 975 Cold Canyon Road, Calabasas, Los Angeles County, Assessor's Parcel Number 4456-039-007.

6.0 DESCRIPTION OF ALLEGED COASTAL ACT VIOLATION

6.1 As used in these Orders, the phrase "unpermitted development" refers to any development, as that term is defined in California Public Resources Code section 30106, that was performed after 1976 on the subject property and required authorization under the Coastal Act, but which authorization was not obtained, including any materials and structures existing on the subject property as a result of such development.

6.2 The unpermitted development that is the subject matter of the Cease and Desist and Restoration Orders consists of: 1) construction of a horse corral; 2) construction of a road; 3) construction of a rock retaining wall; 4) construction of a four stall stable and tackroom; 5) construction of a cement drainage culvert with a metal grate; 6) placement of wooden fencing; 7) removal of major vegetation; 8) related grading; 9) a change in the intensity of use of the lower portion of the subject property; 10) a change in the intensity of use of Cold Creek as a result of the runoff of horse effluent and erosion of fill into the creek; and 11) the discharge of wastewater via the drainage culvert and runoff from the corral into Cold Creek.

7.0 EFFECTIVE DATE AND TERMS OF THE ORDERS

7.1 The effective date of the orders is the date the orders are signed by the Executive Director after approval by the Commission. This order shall remain in effect permanently unless and until modified or rescinded by the Commission.

8.0 FINDINGS

8.1 The orders are issued on the basis of the findings adopted by the Commission at the August 12-14, 2009 hearing, as set forth in the attached document entitled "Recommended Findings for Cease and Desist Order No. CCC-09-CD-04 and Restoration Order No. CCC-09-RO-03 and Notice of Violation No. CCC-09-CD-04."

9.0 COMPLIANCE OBLIGATION

9.1 Strict compliance with the orders by all parties subject thereto is required. Failure to comply strictly with any term or condition of the orders including any deadline contained in the orders will constitute a violation of this order and may result in the imposition of civil penalties of up to SIX THOUSAND DOLLARS (\$6,000) per day for each day in which such compliance failure persists, in addition to any other penalties authorized under Public Resources Code Section 30820.

10.0 DEADLINES

10.1 Deadlines may be extended by the Executive Director for good cause, including as necessary to achieve optimal success of the revegetation plan. Any extension request must be made in writing to the Executive Director and received by Commission staff at least 10 days prior to expiration of the subject deadline.

11.0 SITE ACCESS

11.1 Respondents shall provide Commission staff and staff of any agency having jurisdiction over the work being performed under these Orders with access to the subject property at all reasonable times. Nothing in these Orders are intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Commission and other relevant agency staff may enter and move freely about the following areas: (1) the portions of the subject property on which the violations are located, (2) any areas where work is to be performed pursuant to these Orders or pursuant to any plans adopted pursuant to these Orders, (3) adjacent areas of the property, and (4) any other area where evidence of compliance with these Orders may lie, as necessary or convenient to view the areas where work is being performed pursuant to the requirements of these Orders or evidence of such work is held, for purposes including but not limited to inspecting records, operating logs, and contracts relating to the subject property and overseeing, inspecting, documenting, and reviewing the progress of Respondents in carrying out the terms of these Orders.

12.0 APPEAL

12.1 Pursuant to Public Resources Code Section 30803(b), the Respondents, against whom these Orders are issued, may file a petition with the Superior Court for a stay of this Cease and Desist Order. Under 30803(b), a court may only impose or continue such a stay if it is not against the public interest.

13.0 GOVERNMENT LIABILITY

13.1 The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by the Respondents in carrying out activities authorized

under these Orders, nor shall the State of California be held as a party to any contract entered into by the Respondents or their agents in carrying out activities pursuant to these Orders.

14.0 GOVERNING LAW

14.1 These Orders shall be interpreted, construed, governed and enforced under and pursuant to the laws of the State of California, which apply in all respects.

15.0 NO LIMITATION OF AUTHORITY

15.1 Except as expressly provided herein, nothing herein shall limit or restrict the exercise of the Commission's enforcement authority pursuant to Chapter 9 of the Coastal Act, including the authority to require and enforce compliance with this Order.

Executed in _____ on _____, on behalf of the California Coastal Commission.

Peter Douglas, Executive Director

By: _____

RECORDING REQUESTED BY:

California Coastal Commission

WHEN RECORDED MAIL TO:

California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219
Attention: Enforcement Unit

[Exempt from recording fee pursuant to Cal. Gov. Code § 27383]

DOCUMENT TITLE:

NOTICE OF VIOLATION OF THE COASTAL ACT

Re: Assessor's Parcel No. 4456-039-007

Property Owner: Bob and Sherry L. DaSilva Family Trust

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219
Attention: Enforcement Unit

STATE OF CALIFORNIA OFFICIAL BUSINESS
Document entitled to free recordation pursuant to:
California Government Code section 27383

NOTICE OF VIOLATION OF THE COASTAL ACT
(California Public Resources Code Section 30812)

I, Peter Douglas, declare:

1. I am the Executive Director of the California Coastal Commission (hereinafter referred to as the "Commission"). The Commission was created by the California Coastal Act of 1976 (hereinafter, "Coastal Act"), which act is codified in the California Public Resources Code (hereinafter, "PRC") at sections 30000 to 30900. PRC section 30812 provides for the Executive Director of the Commission to record Notices of Violation of the Coastal Act in the County Recorder's office for the county in which all or part of a property on which a violation of the Coastal Act has occurred is located.
2. A violation of the Coastal Act has occurred on a certain parcel situated in Los Angeles County, California, more particularly described as follows:

A PARCEL OF LAND LOCATED IN THE STATE OF CALIFORNIA, COUNTY OF LOS ANGELES, WITH A SITUS ADDRESS OF 975 COLD CANYON RD, CALABASAS CA 91302-2256 CURRENTLY OWNED BY DA SILVA BOB & SHERRY L/DA SILVA BOB & SHERRY/ TR HAVING A TAX ASSESSOR NUMBER OF 4456-039-007 AND BEING THE SAME PROPERTY MORE FULLY DESCRIBED AS TR=33873 EX OF HIKING AND RIDING TRAIL AND DESCRIBED IN DOCUMENT NUMBER 3035461 DATED 10/27/2005 AND RECORDED 12/12/2005.

Owner of Record: DA SILVA BOB & SHERRY L/ DA SILVA BOB & SHERRY/TR

The violation consists of the undertaking of development activity without the authorization required by the Coastal Act.

3. This property is located within the Coastal Zone as that phrase is defined in the Coastal Act (PRC Section 30103).
4. The record owner of said real property is: DA SILVA BOB & SHERRY L/ DA SILVA BOB & SHERRY/TR.
5. The violation of the Coastal Act consisted of the performance of the following unpermitted development: 1) construction of a horse corral; 2) construction of a road; 3) construction of a rock retaining wall; 4) construction of a four stall stable and tackroom; 5) construction of a cement drainage culvert with a metal grate; 6) placement of wooden fencing; 7) removal of major vegetation; 8) related grading; 9) a change in the intensity of use of the lower portion of the subject property; 10) a change in the intensity of use of Cold Creek as a result of the runoff of horse effluent and erosion of fill into the creek; and 11) the discharge of wastewater via the drainage culvert and runoff from the corral into Cold Creek. The Commission violation file for this matter is Violation File No. V-4-01-045.
6. The requirements set forth in PRC Section 30812 (attached hereto as Exhibit B) for notice and recordation of this Notice of Violation have been satisfied. Recording of this notice is authorized under Section 30812 of the California Public Resources Code.
7. The California Coastal Commission notified the record owner, DA SILVA BOB & SHERRY L/ DA SILVA BOB & SHERRY/TR, of its intent to record a Notice of Violation in this matter in a letter dated June 18, 2009.
8. No objection was received by July 8, 2009, the legal deadline for such an objection to be submitted. Therefore, the Commission has not received a timely written objection to the recordation of the Notice of Violation. Therefore the Executive Director of the Commission is recording the Notice of Violation as provided for in the Coastal Act, under PRC Section 30812.

Executed in _____, California, on _____.

I declare under penalty of perjury that the foregoing is true and correct.

PETER DOUGLAS
Executive Director, California Coastal Commission

SEE NOTARY ACKNOWLEDGMENT ON NEXT PAGE

State of California
County of San Francisco

On _____ before me, _____, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)