

CALIFORNIA COASTAL COMMISSION

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Item W 21 & W 22

Staff: Aaron McLendon-SF
Staff Report: Nov. 3, 2006
Hearing Date: Nov. 15, 2006

STAFF RECOMMENDATIONS AND FINDINGS FOR CEASE AND DESIST AND RESTORATION ORDERS

CEASE AND DESIST ORDER: CCC-06-CD-14

RESTORATION ORDER: CCC-06-RO-07

RELATED VIOLATION FILE: V-4-01-001

PROPERTY LOCATION: Northeast corner of Mulholland Highway and Stokes Canyon Road, Santa Monica Mountains, Los Angeles County, Assessor's Parcel Number 4455-028-044

DESCRIPTION OF PROPERTY: An approximately 31.02-acre parcel (approximately 28 acres are within the Coastal Zone and approximately 3 acres are located outside of the Coastal Zone) in the Santa Monica Mountains area of unincorporated Los Angeles County.

PROPERTY OWNER: Malibu Valley Farms, Inc.

VIOLATION DESCRIPTION: Unpermitted construction of an approximately six-acre equestrian facility including, but not limited to, 1) a 45,000 sq. ft. arena with a five-foot high surrounding wooden wall with posts, 2) a 25,200 sq. ft. riding arena, 3) numerous storage containers, 4) portable tack rooms, 5) numerous pipe corrals and covered shelters, 6) an approximately 2,000 sq. ft. parking area, 7) a 2,660 sq. ft. breeding facility, 8) a 1,440 sq. ft. one-story barn, 9) railroad tie walls, 10) an approximately 20,000 sq. ft. fenced paddock, 11) various fencing throughout the property, 12) a graded dirt access road and two at-grade graded roads crossing through Stokes Creek,

13) two 2,025 sq. ft. covered corrals and one 1,080 sq. ft. covered corral, 14) grading, and 15) removal of major vegetation.

PERSONS SUBJECT TO THESE ORDERS:

Malibu Valley Farms, Inc.

SUBSTANTIVE FILE DOCUMENTS:

1. Certified Malibu/Santa Monica Mountains Land Use Plan
2. Notice of Intent to Commence Cease and Desist Order Proceedings, 9/25/06
3. Coastal Development Permit application No. 4-02-131
4. Claim of Vested Rights application No. 4-00-279-VRC
5. Cease and Desist Order file No. CCC-06-CD-14
6. Restoration Order file No. CCC-06-RO-07
7. Exhibits #1 through #62 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

This case involves an approximately 28 acre equestrian facility located in the Santa Monica Mountains, partly within and adjacent to Stokes Creek and within and adjacent to riparian environmentally sensitive habitat as well as oak woodland/chaparral habitat vegetative communities, which was developed without any Coastal Development Permits. Staff recommends that the Commission approve Cease and Desist Order CCC-06-CD-14 and Restoration Order CCC-06-RO-07 (hereinafter "Orders") to require and authorize Malibu Valley Farms, Inc. (hereinafter "MVF") to 1) remove all unpermitted development from a portion of a 31.02-acre parcel which is in the Coastal Zone (approximately 28 acres of the 31.02 acre parcel) at the northeast corner of Mulholland Highway and Stokes Canyon Road in the Santa Monica Mountains area of unincorporated Los Angeles County, Assessor's Parcel Number 4455-028-044 (hereinafter, "Subject Property") (Exhibit #1-#3), 2) restore all areas within the Coastal Zone on the Subject Property using restorative grading and planting of 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.

a. Violation History and Attempts to Resolve

Since Commission staff first became aware of the violations that are the subject to these proceedings in January 1999, staff has attempted to work with MVF to resolve the violations administratively. The Executive Director had originally scheduled a Cease and Desist Order hearing at the Commission's June 2000 meeting. However, just prior to the June 2000 hearing, MVF expressed their desire to cooperate and take necessary steps to resolve the violation and on June 12, 2000 submitted a Claim of Vested Rights application for all of the unpermitted development (Exhibit #27). Unfortunately, the Claim of Vested Rights application was lacking several essential items and MVF did not submit the information that was needed until six months later (Exhibit #31). During this time, MVF continued to maintain unpermitted development that was causing continuing resource damage to sensitive resources on the Subject Property.

The Claim of Vested Rights application was then scheduled for the Commission's February 2001 hearing, with a staff recommendation of denial. The day of the hearing, MVF requested a continuance of the Claim of Vested Rights application because they decided, instead, to submit a CDP application to authorize the unpermitted development (Exhibit #37). More than a year later, MVF finally submitted a CDP application. Unfortunately, the CDP application that MVF submitted did not contain enough information to deem the application "complete" under the applicable regulations. Over the next four years numerous contacts were made by Commission staff to MVF attempting to obtain the necessary information from MVF. Finally, four years later, during which the unpermitted development continued to cause damage to sensitive resources located on the Subject Property, the CDP application was finally completed and Commission staff scheduled the hearing for the Commission's August 2006 hearing.¹

Unfortunately, after years of Commission staff time and effort to obtain the information necessary to complete the CDP application and after preparation of a staff recommendation for the Commission's consideration, just before the Commission hearing was to be held, in a July 27, 2006 letter MVF withdrew the application and stated that it now wished to proceed with their Claim of Vested Rights application (Exhibit #59). This was the Vested Rights application which was previously scheduled for Commission action at the February 2001 hearing and postponed at the request of MVF so it could submit the very CDP application that they withdrew in July 2006.

The Commission is scheduled to hear MVF's Claim of Vested Right 4-00-279-VRC.² If the Commission adopts staff's recommendation on that matter, when this order comes

¹ Commission staff originally scheduled the hearing for the May 2006 hearing but at the request of MVF, Commission agreed to postpone the hearing until the Commission's August 2006 meeting.

² The matter is scheduled as hearing item 15A on Wednesday, November 15, 2006 (see Exhibit #62 for the staff report, as incorporated by reference herein).

before the Commission, the Commission will have already determined that MVF's claim of vested right was not substantiated and the development that is the subject of this Cease and Desist Order and Restoration Order requires a Coastal Development Permit.³

b. Unpermitted Development at the Subject Property

The unpermitted development includes grading and vegetation removal and the construction of an extensive, approximately six-acre equestrian facility without any Coastal Development Permits (hereinafter, "CDP). The facility includes, but is not limited to, 1) a 45,000 sq. ft. arena with a five-foot high surrounding wooden wall with posts, 2) a 25,200 sq. ft. riding arena, 3) numerous storage containers, 4) portable tack rooms, 5) numerous pipe corrals and covered shelters, 6) an approximately 2,000 sq. ft. cleared and paved parking area, 7) a 2,660 sq. ft. breeding facility, 8) a 1,440 sq. ft. one-story barn, 9) railroad tie walls, 10) an approximately 20,000 sq. ft. fenced paddock, 11) various fencing throughout the property, 12) graded dirt access road with at-grade crossing through Stokes Creek and a second at-grade dirt crossing of Stokes Creek, 13) two 2,025 sq. ft. covered corrals and one 1,080 sq. ft. covered corral, 14) grading, and 15) removal of major vegetation and ESHA throughout the Subject Property.

The Subject Property is an approximately 31.02-acre parcel (approximately 28 acres are within the Coastal Zone and approximately 3 acres are located outside of the Coastal Zone) at the northeast corner of Mulholland Highway and Stokes Canyon Road in the Santa Monica Mountains area of unincorporated Los Angeles County (Exhibit #1-#3).⁴ Stokes Canyon Creek, an intermittent blue-line stream as designated by the USGS, runs in a southwesterly direction through the western half of the Subject Property and supports riparian habitat within its boundaries and along its banks (Exhibit #1). The Subject Property east of the creek consists of mountainous terrain containing chaparral, oak woodland, and annual grassland habitats. This portion of the property has been fenced by MVF without a CDP, and is used as a grazing area. The Subject Property west and south of the creek is level and contains the approximately six-acre unpermitted equestrian facility.

Oak woodland and chaparral habitats are vanishing vegetative communities in Southern California, and their rare presence provides critical habitat for several plant and animal species and is critical to the scenic and visual character of this area. This habitat supports exceedingly rare ecosystems (see Exhibit #6 of this staff report, March 25, 2003 Memorandum from John Dixon, PhD, "Designation of ESHA in the Santa Monica Mountains", incorporated by reference, herein). The Coastal Act protects the oak

³ Staff notes that the hearing on the Claim of Vested Rights application is to be heard preceding the hearing on this Cease and Desist Order and Restoration Order hearing. If this hearing results in an affirmation of a Vested Right, these Orders will not be heard. The staff report for Claim of Vested Rights Application No. 4-00-279-VRC is attached as Exhibit #62 thereto, and is incorporated by reference, herein.

⁴ The Cease and Desist Order and Restoration Order only address the unpermitted development within the Coastal Zone.

woodland/chaparral and riparian habitats that were affected by the activity described above because they are rare and valuable and because of their susceptibility to disturbance and their relatively pristine character, physical complexity, and resultant biological diversity.

A large expanse of riparian, environmentally sensitive habitat areas (hereinafter, "ESHA") is located on the Subject Property. Staff biologist Dr. John Dixon visited the site on August 22, 2005, and has confirmed that the stream and surrounding riparian habitat is ESHA (see Exhibit #61, Memorandum from John Dixon, PhD, Regarding ESHA on the Subject Property, 11/2/06). In addition, Stokes Canyon Creek and its associated riparian canopy are designated as inland ESHA in the Malibu-Santa Monica Mountains Land Use Plan (hereinafter, "LUP"), for the Santa Monica Mountains area of unincorporated Los Angeles County.⁵ Furthermore, the upland, sloped area on the Subject Property east of Stokes Creek contains oak woodlands/chaparral, consisting of approximately 100 mature oak trees. Upon further review of a biologist, this area may, in fact, be ESHA, as well.

c. Development inconsistent with the Coastal Act

Numerous policies within the Coastal Act protect this exceedingly rare habitat (Sections 30231, 30236, 30240, and 30251 of the Coastal Act). The Coastal Act requires that ESHA be protected against any significant disruption of habitat values, and requires that proposed development adjacent to ESHA must be sited and designed to prevent impacts which would significantly degrade such areas and must be compatible with the continuation of such areas. The Coastal Act also requires the protection of marine resources, and the biological productivity and quality of coastal waters, streams, and wetlands. In addition, the LUP requires that non-exempt development be set back a minimum of 100 feet from all designated ESHAs, prohibits alteration of streambeds in ESHA, requires road crossings to be minimized, and requires any such unavoidable crossings to use a bridge to avoid impacts to the river. All of these ESHA protections, including the 100-foot setback, required by the LUP and the Coastal Act apply to the Subject Property.⁶

Despite this, the unpermitted equestrian facility at issue here is located in and adjacent to Stokes Creek and also within and adjacent to oak woodland/chaparral and riparian ESHA and is inconsistent with the LUP and the Coastal Act. The unpermitted arena in the central portion of the property is located approximately 20 to 40 feet west of the dripline of the riparian canopy. In the southern portion of the site, the unpermitted storage container and cross tie area are also located within the riparian canopy, while the remainder of the unpermitted development varies from being immediately adjacent

⁵ The Malibu-Santa Monica Mountains Land Use Plan, for the Santa Monica Mountains area of unincorporated Los Angeles County is used in this case as guidance. Los Angeles County does not have a certified Local Coastal Program for this area of the Santa Monica Mountains. Therefore, the Commission has jurisdiction over both permit and enforcement matters in this location.

⁶ A description of the Chapter 3 policies of the Coastal Act that apply to the Subject Property is provided in Section C of this staff report.

to, to 20 feet away from the edge of the riparian canopy. In addition, the unpermitted development includes two at-grade dirt crossings of Stokes Creek, constructed directly within ESHA. These crossings have reduced the existing streambed to compacted bare soil, which increased erosion and sedimentation and contributed to landform alteration, inconsistent with the ESHA and water quality protection standards of the Coastal Act as well as standards which protect natural stream courses and the scenic and visual qualities of coastal areas under the Coastal Act (California Public Resources Code ("PRC") Sections 30231, 30236, 30240, and 30251). Lastly, the unpermitted development includes livestock fencing enclosing an approximately 23-acre steeply sloping area of the property east of Stokes Creek, which contains oak woodland and chaparral vegetative communities. Livestock are placed within this area to graze. As discussed in Section C of this staff report, the enclosure and grazing activity has extensive adverse impacts on ESHA, marine resources, the water quality and biological productivity of Stokes Creek as well as the natural stream course of the stream. As discussed in more detail below, not only does the unpermitted activity clearly meet the definition of development as that term is defined in the Coastal Act (PRC § 30106) and in the Malibu-Santa Monica Mountains LUP, and therefore requires but lacks a CDP, but the unpermitted development is also clearly inconsistent with the Chapter 3 policies of the Coastal Act.

d. Relevant Coastal Act Enforcement Provisions

The Commission can issue a Cease and Desist Order under Section 30810 of the Coastal Act in cases where 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. The Commission can issue a Restoration Order under section 30811 of the Coastal Act if it finds that development 1) has occurred without a coastal development permit, 2) is inconsistent with Chapter 3 of the Coastal Act, and 3) is causing continuing resource damage. These criteria are all met in this case, as summarized briefly, below.

The unpermitted activity that has occurred on the Subject Property, including the construction of an approximately 6-acre equestrian facility with associated corrals, barns, storage containers, grading, paving, roads, arenas, and fencing, clearly meets the definition of "development" set forth in Section 30106 of the Coastal Act. All non-exempt development in the Coastal Zone requires a CDP. The development was undertaken without a coastal development permit, in violation of Coastal Act Section 30600.⁷

⁷ Staff notes that the Commission, at its November 15, 2006 hearing, is scheduled to hear (as item Wednesday 15a) MVF's Claim of Vested Right 4-00-279-VRC. If the Commission adopts staff's recommendation on that matter, when this order comes before the Commission, the Commission will have already determined that MVF's claim of vested rights was not substantiated and that the development that is the subject of this Cease and Desist Order and Restoration Order required a Coastal Development Permit. If the Commission finds that MVF does have a vested right to all of the development, then this matter will not be heard.

Furthermore, the unpermitted development and the ongoing maintenance of the unpermitted development are inconsistent with the policies in Chapter 3 of the Coastal Act, including Section 30231 (protection of biological productivity of coastal waters), Section 30236 (alteration of rivers and streams), Section 30240 (protection of ESHA), and 30251 (protection of scenic and visual qualities of Coastal Areas) of the Coastal Act (as fully discussed below).

The unpermitted development has adversely impacted the resources associated with the dynamic habitats of the Santa Monica Mountains including the sensitive habitats and water quality and biological productivity of coastal waters (Stokes Creek) associated with this area. Such impacts meet the definition of damage provided in Section 13190(b) of Title 14 of the California Code of Regulations (hereinafter, "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 is allowed to remain, its presence will lead to further impacts (including the temporal continuation of the existing impacts) to ESHA, water quality, and the biological productivity and habitat values of Stokes Creek and its associated habitat.

The unpermitted development remains at the Subject Property. The continued presence of the unpermitted equestrian facility, as described below, will exacerbate adverse impacts to sensitive habitat and the scenic qualities of this area. Thus, the continued presence of the unpermitted development on the Subject Property is causing continuing resource damage, as defined in 14 CCR Section 13190. Again, staff recommends approval of the Cease and Desist and Restoration Order in order to achieve full restoration of the site and removal of unpermitted development.

II. HEARING PROCEDURES

The procedures for a hearing on a Cease and Desist Order and Restoration Order are outlined in 14 CCR Section 13185. See also 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 a motion, per 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 two motions:

1. Motion

I move that the Commission issue Cease and Desist Order No. CCC-06-CD-14 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-06-CD-14, as set forth below, and adopts the findings set forth below on grounds that development, conducted by Malibu Valley Farms, Inc., has occurred without a coastal development permit.

2. Motion

I move that the Commission issue Restoration Order No. CCC-06-RO-07 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-06-RO-07, as set forth below, and adopts the findings set forth below on the grounds that 1) Malibu Valley Farms, Inc. has conducted development without a coastal development permit, 2) the development is inconsistent with the Coastal Act, and 3) the development is causing continuing resource damage.

IV. FINDINGS FOR CEASE AND DESIST ORDER NO. CCC-06-CD-14 AND RESTORATION ORDER CCC-06-RO-07⁸**A. Description of Unpermitted Development**

The unpermitted development, which is the subject matter of the Cease and Desist Order and Restoration Order (hereinafter, "Orders"), consists of unpermitted construction of an approximately six-acre equestrian facility including, but not limited to, 1) a 45,000 sq. ft. arena with a five-foot high surrounding wooden wall with posts, 2) a 25,200 sq. ft. riding arena, 3) numerous storage containers, 4) portable tack rooms, 5) numerous pipe corrals and covered shelters, 6) an approximately 2,000 sq. ft. parking area, 7) a 2,660 sq. ft. breeding facility, 8) a 1,440 sq. ft. one-story barn, 9) railroad tie walls, 10) an approximately 20,000 sq. ft. fenced paddock, 11) various fencing throughout the property, 12) graded dirt access road with at-grade crossing through Stokes Creek and a second at-grade dirt crossing of Stokes Creek, 13) two 2,025 sq. ft. covered corrals and one 1,080 sq. ft. covered corral, 14) grading, and 15) removal of major vegetation.

The Subject Property consists of mountainous terrain containing chaparral, oak woodland, and annual grassland habitats, as well as a level alluvial plain where the approximately six-acre unpermitted equestrian facility is located (Exhibit #3). Stokes Canyon Creek, an intermittent blue-line stream as designated by the United States Geological Survey (hereinafter, "USGS"), runs in a southwesterly direction through the entire western half of the Subject Property and supports riparian habitat within it and along its banks (Exhibit #1-#3).

The resource policies within the Coastal Act protect chaparral and oak woodland habitats, as well as the riparian area and riparian habitat that were affected by the unpermitted activity described above, because they are natural landforms and visual resources that provide a scenic backdrop within the Santa Monica Mountains, because they are Environmentally Sensitive Habitat Areas under the Coastal Act, and because of the role they play in protecting the water quality and water-based resources of nearby waters. The Mediterranean Ecosystem in the Santa Mountains is itself rare, and valuable because of its relatively pristine character, physical complexity, and resultant biological diversity. Habitat areas such as those at issue here, which serve an important

⁸ These also incorporate by reference Section I, above.

role in an ecosystem, and which are particularly susceptible to disturbance by human activity, meet the criterion for the ESHA designation.

B. History of Violations and Commission Actions on the Subject Property

On November 20, 1998, MVF submitted an exemption request for replacement of pipe corrals and related improvements that had been destroyed by wildfire in 1996 (Exhibit #14). The request stated that the improvements had been placed on the property prior to the passage of the Coastal Act and that the structural plans and the location of the proposed “replacement structure” had been approved by the Los Angeles County.⁹ On December 7, 1998, Commission staff issued Exemption Letter No. 4-98-125-X for replacement of 14 pipe corrals (totaling 2,500 sq. ft) based on the information that MVF had submitted to Commission staff. However, it was discovered that the equestrian facility on the Subject Property that MVF sought to replace pursuant to a Coastal Act exemption was actually constructed after January 1, 1977 (the effective date of the Coastal Act) without benefit of a coastal development permit, and it was discovered the MVF misrepresented its proposal. Commission staff therefore rescinded this exemption letter shortly thereafter, in January 1999 (Exhibit #16). The exemption from the Coastal Act’s permit requirements for replacement of structures destroyed by disaster (PRC Section 30610(g)) cannot be used to authorize the replacement of structures that were themselves built in violation of the Coastal Act – it only applies to structures that were either legally constructed prior to the Coastal Act, or were constructed after the Coastal Act took effect with the appropriate authorization under the Coastal Act.

Commission staff contacted MVF on January 14, 1999 and subsequently sent MVF a letter dated January 22, 1999 informing MVF that the exemption was revoked and notifying MVF of the Coastal Act violations on the Subject Property (Exhibit #16). The letter also noted that a CDP was required for the horse riding area, polo field, numerous horse corrals, barn, and accessory buildings at the site and directed MVF to submit a complete CDP application to address the unpermitted development by no later than February 26, 1999. Commission staff also contacted Los Angeles County Department of Public Works notifying the County of the revocation of the exemption letter.

Based upon the Commission staff’s initial exemption letter (prior to it being revoked), Los Angeles County Department of Public Works had granted building permits to MVF for a horse shelter and barn. As noted above, MVF had stated in their request for an exemption letter from the Commission that the County had approved the proposed “replacement structures”, but that information relied on by Commission staff was not accurate. After being informed by Commission staff that the exemption letter was revoked, the County, too, revoked the building permits it had issued for a horse shelter and barn.

⁹ As evidenced by numerous violation letters sent to MVF by Los Angeles County Code Enforcement between 1989 and 1998 (Exhibits #8-#12), the County did not, in fact, approve the proposed replacement structures on the Subject Property.

MVF did not submit a CDP application and did not resolve the violations as requested by Commission staff. Therefore, to address the outstanding violations on the property, on March 7, 2000, the Executive Director notified MVF by letter of his intent (hereinafter, "NOI") to initiate cease and desist order proceedings regarding the unpermitted development on the Subject Property (Exhibit #20). As authorized by the regulations regarding Cease and Desist Orders, MVF was required to submit a Statement of Defense (hereinafter, "SOD") by March 29, 2000.

Prior to submitting the required SOD, MVF discussed the violation case with Commission staff and questioned where the Coastal Zone boundary was located in relation to the Subject Property.¹⁰ At this time, Commission staff agreed to conduct a Coastal Zone boundary determination (see Exhibit #25 regarding this boundary determination). In an April 4, 2000 conversation with Stanley Lampert, counsel to MVF, Commission staff notified him that a boundary determination had been made showing that the Subject Property is bisected by the Coastal Zone Boundary, with a majority of the property being within the Coastal Zone, advised him that Commission staff would be proceeding with a Cease and Desist Order hearing, and granted MVF an extension of the deadline to submit an SOD until April 11, 2000 (Exhibit #21). MVF submitted a Statement of Defense on April 10, 2000 (Exhibit #24).

In an April 28, 2000 letter to Mr. Lampert, Commission staff informed him that staff was scheduling a hearing for a Cease and Desist Order at the Commission's June 2000 meeting (Exhibit #27).

Just prior to the Cease and Desist Order hearing that was scheduled for the Commission's June 2000 meeting, on June 12, 2000, Malibu Valley, Inc. (a separate corporation also owned by Mr. Boudreau) submitted a Claim of Vested Rights application (Vested Rights Claim Application No. 4-00-279-VRC). The Claim of Vested Rights application contended that MVF had a vested right to conduct agricultural and livestock activities and to erect and maintain structures in connection with those activities on the site.

In an attempt to work cooperatively with MVF, Commission enforcement staff agreed to postpone the scheduled Cease and Desist Order hearing to allow MVF (the party who actually was pursuing the Claim of Vested Rights) to proceed with its vested rights claim and to allow time 1) to review the completeness of the Vested Rights Claim application and 2) for Commission action on the claim.

¹⁰ In October 1987, through a previous and separate request by MVF, Commission staff had determined that the Coastal Zone boundary bisected two properties owned by MVF (these properties are located across Stokes Canyon Road from the property that is the subject of these proceedings, and are not a part of this particular enforcement case). After obtaining the boundary determination from Commission staff, on October 27, 1987, MVF submitted a request to adjust the boundary so as to delete these two properties from the Coastal Zone. On January 14, 1998, the Commission unanimously denied Minor Coastal Zone Boundary Adjustment BA-2-87.

In a June 22, 2000 letter (Exhibit #29) from Commission staff to Mr. Lamport, Commission staff stated:

"[I]t is our understanding that this claim may take up to six months to process due to the possible need for additional information in support of your claim. In light of this delay, the Commission staff must preserve the Commission's right to pursue in relation to this alleged Coastal Act violation the full panoply of enforcement remedies provided in Chapter 9 of the Coastal Act. Your clients have indicated they wish to seek administrative resolution of the violation in preference to judicial enforcement action. In order to accomplish this goal, it is necessary for your clients to sign and return the enclosed Waiver of Legal Argument (WOLA) form."

In an August 18, 2000 letter, Commission staff notified MVF that the Claim of Vested Rights application was lacking several required items and requested that MVF submit additional information (Exhibit #31).

On August 24, after several requested revisions from MVF were incorporated into the WOLA by Commission staff, Mr. Lamport signed the WOLA on behalf of MVF (Exhibit #32). The WOLA states, in part:

"Malibu Valley [Farms, Inc.] has stated that it does not want the Commission to institute an enforcement action to resolve this alleged Coastal Act violation while it applies for and awaits the outcome of a vested rights determination. Accordingly, Malibu Valley hereby agrees to not rely on the period of time from June 12, 2000... to the Termination Date of this agreement, as set forth below ('Tolled Period') as a legal defense in any litigation concerning violation case number V-4-00-001. The Tolled period shall not be considered in any determinations of the timeliness of commencement of any court action with respect to violation case no. V-4-00-001, including but not limited to, the following defenses: (1) any applicable statute of limitations; (2) laches; and/or (3) estoppel."

No response was provided to Commission staff's August 18, 2000 letter regarding items needed for the Vested Rights application and therefore, on October 6, 2000, Commission staff sent yet another letter requesting the information that was asked for in the August 18 letter, and establishing a deadline of November 6, 2000 to submit such information (Exhibit #33). On November 3, 2000, Mr. Lamport submitted additional information to complete the Vested Rights application (Exhibit #34).

In a January 24, 2001 letter from Commission staff to Mr. Lamport, Commission staff informed MVF that a public hearing on Vested Rights Claim Application No. 4-00-279-VRC was scheduled for the February 2001 Commission meeting (Exhibit #35). The staff recommendation prepared for the hearing recommended denial of the vested right claim, based on the analysis of the relevant criteria for establishing a vested right. After MVF received the staff report analyzing MVF's claims and recommending that the Commission find the claim to be unsubstantiated, but before the Commission could act, MVF requested that the Commission forestall action on the delayed enforcement action and the Vested Rights application yet again, this time while MVF submitted a CDP application, even though Commission staff repeatedly informed MVF that staff would recommend denial of any CDP application seeking after-the-fact authorization for the

existing development because that development was inconsistent with numerous Chapter 3 policies of the Coastal Act (Exhibit #37). On February 15, 2001, at the applicant's request, the Commission continued the hearing on the vested rights application pending the submittal of a complete coastal development permit application for the unpermitted development.

On May 31, 2002, after numerous attempts were made by Commission staff to get MVF to submit a CDP application (Examples included in Exhibits #38-#40), and more than a year from the date of the scheduled and postponed hearing on Vested Rights Claim Application No. 4-00-279-VRC, MVF submitted CDP application No. 4-02-131 to the Commission's South Central Coast District office.¹¹

Unfortunately, the CDP application that MVF submitted did not contain enough information to deem the application "complete", and therefore, on June 28, 2002, Commission staff sent MVF an "incomplete letter" requesting the information necessary in order to be able to adequately review the proposed project, and thus, to be able to complete the CDP application process (Exhibit #41). In a February 7, 2003 letter from MVF to Commission staff, MVF responded to some of the items listed in staff's June 28, 2000 letter, and stated that they were still working on providing the remaining outstanding items requested (Exhibit #42). The information provided in MVF's February 7, 2003 letter did not provide nearly enough information for staff to file the CDP application.

By October 2003, Commission staff still had not received the additional information that MVF stated they would provide. Therefore, on October 3, 2003, Commission staff contacted Schmitz and Associates, one of MVF's representatives, and inquired about the status of MVF's CDP application and informed them that Commission staff might return the application since it had remained incomplete for 15 months (Exhibit #43). Schmitz and Associates responded on October 6, 2003 to this inquiry and stated that MVF was meeting with the Los Angeles County Planning staff within the week. Once again, however, MVF did not respond further nor provide the missing application elements. Therefore, on December 16, 2003, Commission staff contacted Schmitz and Associates and stated that it had been two more months and staff had not received any of the requested information to complete the CDP application (Exhibit #43). At this time, Commission staff set a February 2, 2004 deadline for MVF to submit all required information requested in the original June 28, 2002 "incomplete letter". On February 3, 2004, MVF submitted stamped, approved project plans from the Los Angeles County Planning Department (one of the many documents requested by Commission staff in order to deem the application "complete") but still did not submit a substantial amount of the other pieces of information that had been requested in the June 28, 2002 letter and that were required to file the CDP application (Exhibit #45).

¹¹ The Commission notes that the continuance of the Claim of Vested Rights hearing from the Commission's February 2001 meeting was based solely on MVF's assurances that they were going to submit a complete CDP application, and were not anticipating the lengthy delays by MVF.

Over the next several months, Commission staff again attempted to obtain the needed information from MVF so staff could begin reviewing the application and present staff's recommendation to the Commission. In October 25, 2004, and November 2, 2004 letters from Beth Palmer, representative of MVF, to Commission staff, Ms. Palmer stated that MVF would submit all the required information by November 15, 2004 (Exhibit #44 & #47). On November 29, 2004 some information was submitted to Commission staff, but there were still a substantial number of items that MVF failed to submit (Exhibit #48).

In a November 30, 2004 letter, Commission staff requested MVF submit 1) biological resource photographs and maps and 2) a vegetation survey with fuel modification requirements (Exhibit #49). The letter noted that these items were requested in a June 28, 2002 letter but such items were never submitted by MVF. Commission staff sent a subsequent letter to MVF on December 23, 2004 again requesting the submittal of information that was requested in several previous letters (Exhibit #50).

On June 24, 2005 and July 11, 2005, MVF submitted permits from CA Department of Fish and Game and the State Water Resources Control Board, respectively, but did not submit the majority of the remaining documents (Exhibit #51). In a September 13, 2005 letter from Ms. Palmer to Commission staff, Ms. Palmer confirmed that MVF still needed to provide Commission staff with 1) biological resources photographs and maps and 2) a vegetation survey with fuel modification requirements (Exhibit #52). She stated that the estimated time for MVF to complete these items would be October 28, 2005. Once again, this information was not submitted to Commission staff by the estimated date.

After multiple unsuccessful attempts to reach Ms. Palmer by telephone and receiving no response, Commission staff wrote to Ms. Palmer on February 22, 2006, stating that the information that was to be completed by October 28, 2005 was never submitted and that voicemail messages left for Ms. Palmer on November 28, 2005, December 28, 2005, and February 3, 2006 inquiring as to the status of the remaining items were not returned (Exhibit #53). At this time Commission staff required that all documents be submitted by March 15, 2006.

Finally, nearly four years after the application was submitted and over five years after the original claim of vested rights hearing was scheduled (and continued at the request of MVF so they could submit a complete CDP application), the application was deemed complete on March 6, 2006.

The hearing for CDP No. 4-02-131, to review MVF's request for after-the-fact authorization of the unpermitted development in place and authorization of additional development, was scheduled for the May 2006 Commission meeting. On April 28, 2006, Ms. Palmer requested that the hearing be postponed and rescheduled to a later date because 1) MVF just discovered that its CDP application had been scheduled, 2) MVF wanted to meet with staff to discuss a solution to the project, and 3) both Ms. Palmer and MVF were unable to attend the May 2006 meeting (Exhibit #55). In an

attempt to continue to work cooperatively with MVF, Commission staff postponed the CDP application from the May 2006 hearing.

The hearing for CDP No. 4-02-131 was rescheduled for the August 2006 meeting with a staff recommendation of denial, based on the project's inconsistencies with the resource protection policies of the Coastal Act. Unfortunately, after years of Commission staff time and effort to obtain the information necessary to complete the CDP application and prepare a staff recommendation for the Commission's consideration, in a July 27, 2006 letter, MVF withdrew the application and stated that it now wished to proceed with its Claim of Vested Rights application (which had been previously scheduled for Commission action at the February 2001 hearing and postponed at the request of MVF so it could submit this very CDP application that it now withdrew) (Exhibit #59). Therefore there was no Commission action taken on the CDP application, delaying Commission action to address the unpermitted development, yet again.

To address the claim of vested rights application that MVF had submitted in 2000, Commission staff scheduled yet another hearing for Claim of Vested Rights Application No. 4-00-279-VRC at the September 2006 Commission hearing with a staff recommendation of denial. Once again, prior to the date of the hearing, MVF requested a postponement of the Vested Rights claim, and as a courtesy to its request, Commission staff granted the postponement.

Because of the ongoing resource damage at the Subject Property and the fact that the subject violations have remained in place and unaddressed since at least 1999, when Commission staff first informed MVF of the violations and the need to resolve them, and based upon planning and legal staff's continued recommendation that the Commission find the vested rights claim to be unsubstantiated, Commission staff initiated these proceedings to resolve the unpermitted development and restore the Subject Property as quickly as possible after resolution of MVF's claim of vested rights.¹²

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

On September 25, 2006, pursuant to 14 CCR Sections 13181 and 13191, the Executive Director of the Commission provided another Notice of Intent to commence order proceedings under the Coastal Act, this time a *Notice of Intent to Commence Cease and Desist Order and Restoration Order Proceedings* ("NOI") (Exhibit #4). The NOI sent to MVF included a thorough explanation of why the subject activity is development under the Coastal Act and how such activity meets the criteria of Section 30810 and 30811 of the Coastal Act to commence proceedings for issuance of a cease and desist order and restoration order.

¹² Staff again notes that the hearing on the Claim of Vested Rights application is to be heard preceding the hearing on this Cease and Desist Order and Restoration Order hearing. If this hearing results in an affirmation of a Vested Right, these Orders will not be heard. The staff report for Claim of Vested Rights Application No. 4-00-279-VRC is attached as Exhibit #62 thereto, and is incorporated by reference, herein.

In accordance with Sections 13181(a) and 13191(a) of the Commission's regulations, Respondents were provided the opportunity to respond to the Commission staff's allegations as set forth in the NOI by completing a Statement of Defense form (hereinafter "SOD"). Respondents were required to submit the SOD form by no later than October 15, 2006, under the applicable regulations.

On October 16, 2006, after the deadline established in the NOI, Commission staff received a SOD from MVF in response to the NOI (Exhibit #5). Although these defenses were not submitted in compliance with the regulatory deadline, as a courtesy to MVF, Commission staff has included those defenses and Commission responses, herein. The defenses listed in the SOD and Commission staff's response to those defenses are addressed in Section G of this Staff Report.

C. Basis for Issuance of Orders

Cease and Desist Order

The statutory authority for issuance of this Cease and Desist Order is provided in §30810 of the Coastal Act, 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... requires a permit from the commission without first securing the permit... 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 §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 [a] the development has occurred without a coastal development permit from the commission... [b] the development is inconsistent with this division, and [c] 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 Section 30810 and 30811 for the Commission to issue a Cease and Desist Order and Restoration Order.

i. Development has Occurred without a Coastal Development Permit (“CDP”)

The development at issue here has not been authorized by a CDP. Unpermitted development consisting of the construction of an approximately six-acre equestrian facility including, but not limited to, 1) a 45,000 sq. ft. arena with a five-foot high surrounding wooden wall with posts, 2) a 25,200 sq. ft. riding arena, 3) numerous storage containers, 4) portable tack rooms, 5) numerous pipe corrals and covered shelters, 6) an approximately 2,000 sq. ft. parking area, 7) a 2,660 sq. ft. breeding facility, 8) a 1,440 sq. ft. one-story barn, 9) railroad tie walls, 10) an approximately 20,000 sq. ft. fenced paddock, 11) various fencing throughout the property, 12) graded dirt access road with at-grade crossing through Stokes Creek and a second at-grade dirt crossing of Stokes Creek, 13) two 2,025 sq. ft. covered corrals and one 1,080 sq. ft. covered corral, 14) grading, and 15) removal of major vegetation has occurred on the subject property without a CDP.

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...and the removal or harvesting of major vegetation other than for agricultural purposes...

The unpermitted development described above clearly constitutes “development” within the meaning of the above-quoted definition. It involves, among other things, the placement or erection of solid material, the change in intensity of use of the land, and the removal of major vegetation for non-agricultural purposes. It is and was therefore subject to the permit requirements of section 30600(a). A coastal development permit was not issued to authorize the subject unpermitted development.

In fact, just prior to Commission staff proceeding with a Cease and Desist Order hearing at the Commission’s June 2000 meeting, MVF submitted a Claim of Vested Rights application alleging that the subject unpermitted development was constructed prior to the effective date of the Coastal Act and met the criteria for the establishment of a vested right to retain all the unpermitted development on the Subject Property. Just prior to the Commission’s February 2001 hearing on the Claim of Vested Rights, MVF requested that the Claim of Vested Rights application be continued so they could submit a CDP application to authorize all the unpermitted development after-the-fact. Once the CDP application was finally completed, facing a staff recommendation of denial, MVF withdrew the CDP application and requested that the Commission schedule a hearing

on their outstanding Claim of Vested Right.¹³ Therefore, no Coastal Development Permit has been issued for the development subject to these proceedings. Furthermore, prior to the hearings on the Cease and Desist and Restoration Orders, the Commission will have found at its November 2006 hearing, that there is no vested right to any of the development that is subject to these proceedings (This is more fully discussed in the staff report for Claim of Vested Rights application No. 4-00-279-VRC, attached as Exhibit #62 of this staff report and incorporated by reference, herein).¹⁴

ii. Unpermitted Development is Inconsistent with the Coastal Act

As described below, the unpermitted development is not consistent with Section 30231 (protection of biological productivity of coastal waters), Section 30236 (alteration of rivers and streams), or Section 30240 (protection of ESHA) of the Coastal Act.

a. Environmentally Sensitive Habitat Areas

Section 30240 states:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.

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

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

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

1. ESHA in the Santa Monica Mountains¹⁵

Based on the definition in Section 30107.5, in making an ESHA determination, one must focus on two main questions:

¹³ For a full summary of the history of postponed applications at this issue, see Section B, above.

¹⁴ Again, as noted above, if the Commission approves a Vested Rights claim, the hearing will not be held on these Orders.

¹⁵ For a full analysis of ESHA in the Santa Monica Mountains see Exhibit #6, of this staff report, Memorandum by John Dixon, PhD, "Designation of ESHA in the Santa Monica Mountains", 3/25/03, incorporated by reference, herein.

- 1) Is a habitat or species rare or especially valuable?
- 2) Is the habitat or species easily disturbed or degraded by human activities and developments?

In addition, in evaluating value in the context of the first question, one must ask whether the habitat or species in question has a special nature or role in the ecosystem.

As described in a March 25, 2003 Memorandum from John Dixon, PhD, "Designation of ESHA in the Santa Monica Mountains" (Exhibit #6) and as the Commission has found in previous actions, the Mediterranean Ecosystem in the Santa Mountains is itself rare, and it has also found that the ecosystem is valuable because of its relatively pristine character, physical complexity, and resultant biological diversity. Habitat areas that have special, important roles in that ecosystem are especially valuable and therefore meet the first criterion for the ESHA designation.

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

In the Santa Monica Mountains, riparian woodland contains the greatest overall diversity of all the plant communities in the area, partly because of its multi-layered vegetation.¹⁶ At least four types of riparian communities are discernable in the Santa Monica Mountains: walnut riparian areas, mulefat-dominated riparian areas, willow riparian areas and sycamore riparian woodlands. Of these, the sycamore riparian woodland is the most diverse riparian community in the area. In these habitats, the dominant plant species include arroyo willow, California black walnut, sycamore, coast live oak, Mexican elderberry, California bay laurel, and mule fat. Wildlife species that have been observed in this community include least Bell's vireo (a State and federally listed species), American goldfinches, black phoebes, warbling vireos, bank swallows (State listed threatened species), song sparrows, belted kingfishers, raccoons, and California and Pacific tree frogs.

Riparian communities are the most species-rich to be found in the Santa Monica Mountains. Because of their multi-layered vegetation, available water supply, vegetative cover and adjacency to shrubland habitats, they are attractive to many native

¹⁶ National Park Service. 2000. Draft: General Management Plan & Environmental Impact Statement, Santa Monica Mountains National Recreation Area, US Dept. of Interior, National Park Service, December 2000.

wildlife species, and provide essential functions in their lifecycles¹⁷. During the long dry summers in this Mediterranean climate, these communities are an essential refuge and oasis for much of the areas' wildlife.

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

The streams in the Santa Monica Mountains themselves provide refuge for sensitive species including: the coast range newt, the Pacific pond turtle, and the steelhead trout. The coast range newt and the Pacific pond turtle are California Species of Special Concern and are proposed for federal listing¹⁸, and the steelhead trout is federally endangered. The health of the streams in the Santa Monica Mountains is dependent on the ecological functions provided by the associated riparian woodlands. These functions include the provision of large woody debris for habitat, shading that controls water temperature, and input of leaves that provide the foundation of the stream-based trophic structure.

The importance of the connectivity between riparian areas and adjacent habitats is illustrated by the Pacific pond turtle and the coast range newt, both of which are sensitive and both of which require this connectivity for their survival. The life history of the Pacific pond turtle demonstrates the importance of riparian areas and their associated watersheds for this species. These turtles require the stream habitat during the wet season. However, recent radio tracking work¹⁹ has found that although the Pacific pond turtle spends the wet season in streams, it also requires upland habitat for refuge during the dry season. Thus, in coastal southern California, the Pacific pond turtle requires both streams and intact adjacent upland habitats such as coastal sage scrub, woodlands or chaparral as part of their normal life cycle. The turtles spend about four months of the year in upland refuge sites located an average distance of 50 m (but up to 280 m) from the edge of the creek bed. Similarly, nesting sites where the females lay eggs are also located in upland habitats an average of 30 m (but up to 170 m) from the creek. Occasionally, these turtles move up to 2 miles across upland habitat²⁰. Like many species, the pond turtle requires both stream habitats and the upland habitats of the watershed to complete its normal annual cycle of behavior. Similarly, the coast range newt has been observed to travel hundreds of meters into upland habitat and

¹⁷ Walter, Hartmut. "Bird use of Mediterranean habitats in the Santa Monica Mountains", oral testimony at the Coastal Commission Workshop on the Significance of Native Habitats in the Santa Monica Mountains. CCC Hearing, June 13, 2002, Long Beach, CA.

¹⁸ USFWS. 1989. Endangered and threatened wildlife and plants; animal notice of review. Fed. Reg. 54:554-579. USFWS. 1993. Endangered and threatened wildlife and plants; notice of 1-year petition finding on the western pond turtle. Fed. Reg. 58:42717-42718.

¹⁹ Rathbun, G.B., N.J. Scott and T.G. Murphy. 2002. Terrestrial habitat use by Pacific pond turtle in a Mediterranean climate. *Southwestern Naturalist*. (in Press).

²⁰ Testimony by R. Dagit, Resource Conservation District of the Santa Monica Mountains at the CCC Habitat Workshop on June 13, 2002.

spend about ten months of the year far from the riparian streambed²¹. They return to the stream to breed in the wet season, and they are therefore another species that requires both riparian habitat and adjacent uplands for their survival. These examples demonstrate the significance of habitat adjacent to riparian areas. As described below, the habitat adjacent to the riparian areas on the Subject Property (oak woodland, chaparral, and coastal sage scrub communities) are protected under the resource protection policies of the Coastal Act.

Riparian habitats in California have suffered serious losses and such habitats in southern California are currently very rare and seriously threatened. In 1989, Faber estimated that 95-97% of riparian habitat in southern California was already lost²². Writing at the same time as Faber, Bowler asserted that, "[t]here is no question that riparian habitat in southern California is endangered."²³ In the intervening 13 years, there have been continuing losses of the small amount of riparian woodlands that remain. Today these habitats are, along with native grasslands and wetlands, among the most threatened in California.

In addition to direct habitat loss, streams and riparian areas have been degraded by the effects of development. For example, the coast range newt, a California Species of Special Concern, has suffered a variety of impacts from human-related disturbances²⁴. Human-caused increased fire frequency has resulted in increased sedimentation rates, which exacerbates the cannibalistic predation of adult newts on the larval stages.²⁵ In addition, impacts from non-native species of crayfish and mosquito fish have also been documented. When these non-native predators are introduced, native prey organisms are exposed to new mortality pressures for which they are not adapted. Coast range newts that breed in the Santa Monica Mountain streams do not appear to have adaptations that permit co-occurrence with introduced mosquito fish and crayfish²⁶. These introduced predators have eliminated the newts from streams where they previously occurred by both direct predation and suppression of breeding.

Because of the essential role that riparian plant communities play in maintaining the biodiversity of the Santa Monica Mountains, because of the historical losses and current rarity of these habitats in southern California, and because of their extreme sensitivity to disturbance, Commission staff biologist, Dr. John Dixon has determined that the native

²¹ Dr. Lee Kats, Pepperdine University, personal communication to Dr J. Allen, CCC.

²² Faber, P.A., E. Keller, A. Sands and B.M. Massey. 1989. The ecology of riparian habitats of the southern California coastal region: a community profile. U.S. Fish and Wildlife Service Biological Report 85(7.27) 152pp.

²³ Bowler, P.A. 1989. Riparian woodland: An endangered habitat in southern California. Pp 80-97 in Schoenherr, A.A. (ed.) Endangered plant communities of southern California. Botanists Special Publication No. 3.

²⁴ Gamradt, S.C., L.B. Kats and C.B. Anzalone. 1997. Aggression by non-native crayfish deters breeding in California newts. *Conservation Biology* 11(3):793-796.

²⁵ Kerby, L.J., and L.B. Kats. 1998. Modified interactions between salamander life stages caused by wildfire-induced sedimentation. *Ecology* 79(2):740-745.

²⁶ Gamradt, S.C. and L.B. Kats. 1996. Effect of introduced crayfish and mosquitofish on California newts. *Conservation Biology* 10(4):1155-1162.

riparian habitats in the Santa Monica Mountains meet the definition of ESHA under the Coastal Act, as detailed in Exhibits #6 and #61.

2. ESHA on the Subject Property

The Subject Property contains varied terrain and habitats. Stokes Canyon Creek, an intermittent blue-line stream as designated by the USGS, runs in a southwesterly direction through the entire western half of the Subject Property. The area of the Subject Property east of the creek consists of mountainous terrain containing chaparral habitat, Coast live oak woodland, and annual grassland and the area of the Subject Property west and south of the creek is level alluvial plain and is the location of the approximately six-acre unpermitted equestrian facility that is the subject of these proceedings.

MVF submitted two biological reports with its CDP application (which was withdrawn by MVF prior to the Commission taking action on the application as scheduled at its August 2006 hearing), which discuss the habitats on site (“Biological Resource Analysis of Proposed ESHA Setback for Malibu Valley Farms Equestrian Center Improvements,” Frank Hovore & Associates, January 2002, updated October 2004; “Biological Assessment in Support of Malibu Valley Farms, Inc., Coastal Development Permit Application No. 4-02-131,” Sapphos Environmental Inc., October 25, 2005). The report by Sapphos Environmental provides a map that shows the location of the varied habitats on the Subject Property (Exhibit #7)

Stokes Canyon Creek and its associated riparian canopy is a designated inland ESHA in the certified Malibu-Santa Monica Mountains LUP. The riparian canopy contains native riparian woodland species including arroyo willow, mulefat and elderberry. Although the October 2004 report by Frank Hovore & Associates suggests that the riparian habitat is not typical of southern riparian scrub habitat, Commission staff, including staff biologist John Dixon, have observed in this area native vegetation of the sort of riparian woodlands that occur in many places within the Santa Monica Mountains. Commission staff biologist John Dixon visited the site on August 22, 2005, and has confirmed that Stokes Creek and its associated riparian woodland habitat on the site is ESHA pursuant to Section 30107.5 of the Coastal Act (Exhibit #61).

In addition, the hillside east of the creek contains extensive oak woodland, covering approximately 10 acres and containing hundreds of trees. Upon further review by a biologist, this area may, in fact, be ESHA, as well.

The important ecosystem functions of oak woodlands and savanna are widely recognized²⁷. These habitats support a high diversity of birds²⁸, and provide refuge for

²⁷ Block, W.M., M.L. Morrison, and J. Verner. 1990. Wildlife and oak-woodland interdependency. *Fremontia* 18(3):72–76. Pavlik, B.M., P.C. Muick, S. Johnson, and M. Popper. 1991. *Oaks of California*. Cachuma Press and California Oak Foundation, Los Olivos, California. 184 pp.

²⁸ Cody, M.L. 1977. Birds. Pp. 223–231 in Thrower, N.J.W., and D.E. Bradbury (eds.). *Chile-California Mediterranean scrub atlas*. US/IBP Synthesis Series 2. Dowden, Hutchinson & Ross, Stroudsburg,

many species of sensitive bats²⁹. Typical wildlife in this habitat includes acorn woodpeckers, scrub jays, plain titmice, northern flickers, cooper's hawks, western screech owls, mule deer, gray foxes, ground squirrels, jackrabbits and several species of sensitive bats. Oak woodlands adjacent to grasslands, such as on the Subject Property, provide valuable perching opportunities for birds of prey who forage in the grasslands. Therefore, because of their important ecosystem functions and vulnerability to development, the Commission finds that oak woodlands and savanna within the Santa Monica Mountains meet the definition of ESHA under the Coastal Act.

In addition, the hillside in the northeast portion of the property contains chaparral habitat that is contiguous with a larger area of chaparral and coastal sage scrub habitat that extends several miles east of the site. In the Santa Monica Mountains, coastal sage scrub and chaparral have many important roles in the ecosystem, including the provision of critical linkages between riparian corridors, the provision of essential habitat for species that require several habitat types during the course of their life histories, the provision of essential habitat for local endemics, the support of rare species, and the reduction of erosion, thereby protecting the water quality of coastal streams. For these and other reasons discussed in Exhibit #6, which is incorporated by reference herein, the Commission finds that large contiguous, relatively pristine stands of coastal sage scrub and chaparral in the Santa Monica Mountains meet the definition of ESHA. This is consistent with the Commission's past findings in the context of its consideration of the Malibu LCP³⁰.

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

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

3. ESHA and the Unpermitted Development

The unpermitted development on the Subject Property consists of the construction of an approximately six-acre equestrian facility including, but not limited to, 1) a 45,000 sq. ft. arena with a five-foot high surrounding wooden wall with posts, 2) a 25,200 sq. ft. riding arena, 3) numerous storage containers, 4) portable tack rooms, 5) numerous pipe

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

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

³⁰ Revised Findings for the City of Malibu Local Coastal Program (as adopted on September 13, 2002) adopted on February 6, 2003.

corrals and covered shelters, 6) an approximately 2,000 sq. ft. parking area, 7) a 2,660 sq. ft. breeding facility, 8) a 1,440 sq. ft. one-story barn, 9) railroad tie walls, 10) an approximately 20,000 sq. ft. fenced paddock, 11) various fencing throughout the property (livestock fencing enclosing the approximately 23-acre hillside area of the property east of Stokes Creek), 12) graded dirt access road with at-grade crossing through Stokes Creek and a second at-grade dirt crossing of Stokes Creek, 13) two 2,025 sq. ft. covered corrals and one 1,080 sq. ft. covered corral, 14) grading, and 15) removal of major vegetation. The number of horses boarded at the site is unknown. A March 2005 Draft Environmental Impact Report (EIR) prepared for the proposed Malibu Valley Inn and Spa, which was to be located nearby, estimated that an average of 50 horses were stabled on the project site at that time; however, the unpermitted facilities could accommodate a larger numbers of horses.

In the southern portion of the site, the storage container and cross tie area are located directly within the riparian canopy, while the remainder of the unpermitted development in this portion of the Subject Property extends from approximately immediately adjacent to 20 feet away from the riparian habitat. The pipe corrals and associated development in the northern portion of the property extend to within 20 to 50 feet of the edge of the riparian habitat. The riding arena in the central portion of the property is located approximately 20 to 40 feet west of the riparian habitat, and the hay barn in the same area extends to just inside the riparian canopy.

In addition, some of the unpermitted development is located within the “protected zones”³¹ of individual oak trees in the equestrian area. Specifically, fencing, as well as a cleared area surrounding the arena is within the protected zone of a mature oak tree adjacent to Stokes Canyon Road in the central portion of the Subject Property. In addition, the access road, fencing, and paddock are within the protected zones of three oak trees in the southern portion of the property, southeast of Stokes Creek.

The Commission finds that native oak trees are an important coastal resource. Native trees prevent the erosion of hillsides and stream banks, moderate water temperatures in streams through shading, and provide food and habitat, including nesting, roosting, and burrowing to a wide variety of wildlife. The individual oak trees on the Subject Property (i.e., those that are not part of the oak woodland that is located to the east of Stokes Canyon Creek) provide habitat for wildlife and are an important part of the character and scenic quality of the area. Therefore, the oak trees on the Subject Property are an important coastal resource that is protected by Section 30240 of the Coastal Act.

Oak trees are a part of the California native plant community and need special attention to maintain and protect their health. Oak trees in residentially landscaped areas often suffer decline and early death due to conditions that are preventable. Damage can often take years to become evident and by the time the tree shows obvious signs of disease it is usually too late to restore the health of the tree. Oak trees provide important habitat and shading for other animal species, such as deer and bees. Oak

³¹ See page 25, below, for definition of “protected zones” of oak trees.

trees are very long lived, some up to 250 years old, relatively slow growing becoming large trees between 30 to 70 feet high, and are sensitive to surrounding land uses, grading, compaction of earth around, or excavation at or near the roots and irrigation of the root area particularly during the summer dormancy. Improper watering, especially during the hot summer months when the tree is dormant and disturbance to root areas are the most common causes of tree loss.

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

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

That publication goes on to state:

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

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

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

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

"...my observations are that horses are the worst in causing compaction in a confined situation. Six horses over 2 acres seems like an extremely

high density to me (here at the SFREC we have about one cow per 20 acres) and I would guess that after a year, there would be little or no ground vegetation left in the pasture and there would be a risk of heavy compaction during wet periods."

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

As noted above, the approximately six-acre unpermitted equestrian facility that is the subject of these proceedings is located within and adjacent to a riparian woodland ESHA, with livestock fencing enclosing the approximately 23-acre hillside area east of Stokes Creek, which contains chaparral and oak woodland. The unpermitted development located within ESHA is inconsistent with Section 30240 of the Coastal Act. Equestrian facilities and livestock enclosures do not have to be located within ESHAs to function. Therefore, the Commission finds that the unpermitted development is not a use dependent on ESHA resources. Thus, the unpermitted development that is located directly in ESHA is inconsistent with Section 30240 of the Coastal Act.

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

The portions of the unpermitted equestrian facility that are located outside of the ESHA on the Subject Property are also inconsistent with section 30240. These portions of the unpermitted development are located between 0 and 50 feet from the riparian canopy. The unpermitted development is an intensive equestrian use and equestrian-related development within and immediately adjacent to the boundaries of the riparian woodland ESHA. In addition, as described above, oak trees and chaparral are an important coastal resource. Native trees prevent the erosion of hillsides and stream banks, moderate water temperatures in streams through shading, and provide food and habitat, including nesting, roosting, and burrowing to a wide variety of wildlife. The equestrian facilities and the activities that occur from these facilities has compacted soil below and around oak tree canopies, which can have detrimental impacts to these oaks. Furthermore, the unpermitted activities have decreased the amount of chaparral on the Subject Property and therefore degraded this sensitive habitat.

For the reasons listed above, such development inevitably will significantly degraded the riparian woodland ESHA by increasing human and equine activity and its attendant impacts, including noise, lighting, irrigation, increased introduction of pollutants and, potentially, invasive plant and animal species into the ESHA. The unpermitted development, if it is not removed through these Orders, would also require fuel modification, which would extend into the riparian ESHA. The fuel modification plan

submitted by MVF in its CDP application (which was withdrawn prior to Commission action) indicates that removal of riparian vegetation would be required.

Section 30240(b) requires development in areas adjacent to ESHA to be sited and designed to prevent impacts that would significantly degrade such areas, and to be compatible with the continuance of such habitat areas. The certified Malibu-Santa Monica Mountains LUP, which the Commission uses as guidance, limits uses adjacent to ESHA to residential uses that are set back a minimum of 100 feet, and that are consistent with appropriate erosion control and stream protection policies, as well as any other LUP Policy. The LUP provides that the 100-foot setback from the ESHA is measured from the outer edge of the riparian canopy. Further, in past Commission 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. Because the unpermitted development is not set back at least 100 feet from the riparian woodland ESHA on the site, the development subject to these proceedings has impact on the ESHA that make it inconsistent with Section 30240(b) of the Coastal Act, and the associated standards provided in the certified LUP for the area.

Furthermore, 30240(b) requires maintenance of natural vegetation buffer areas that protect riparian habitats. As Section 30231 indicates, these buffers are also critical to the protection of adjacent water quality, which affects biological productivity and thus the water-based ESHA. The unpermitted development would result in placement of structures and confinement of horses adjacent to the riparian habitat on site, with no protective buffer, resulting in impacts to the riparian habitat as well as to the stream itself. The unpermitted development would not maintain a natural vegetation buffer area to protect the riparian habitat. Therefore, the unpermitted development is inconsistent with 30240(b) of the Coastal Act (and, as will be seen below, with Section 30231 of the Coastal Act).

For the reasons discussed above, the Commission finds that the unpermitted equestrian facility and its associated structures, grading, and fencing impermissibly invades the ESHA on the Subject Property, does not protect the Stokes Canyon Creek ESHA or the riparian woodland from significant disruption of habitat values, and has not been sited and designed in a manner that would prevent impacts that would significantly degrade those areas on the site. It is, therefore, not consistent with the Chapter 3 policies of the Coastal Act.

b. Water Quality and Biological Productivity of Coastal Waters, Streams, and Wetlands

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health

shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Non-point source pollution is the pollution of coastal waters (including streams and underground water systems), by numerous sources that do not discharge directly into the water bodies through discrete points such as sewage pipes or stormdrain channel outfalls. Non-point source pollutants likely to be generated by the subject unpermitted activity include suspended solids, coliform bacteria and nutrients. These pollutants can originate from many different sources such as overflow septic systems, storm drains, runoff from roadways, driveways, rooftops and horse facilities.

Confined animal facilities are one of the most recognized sources of non-point source pollutants since these types of developments are often near water bodies with no collection system for runoff, are often cleared of vegetation, and have concentrated sources of animal wastes. Use of horse corrals generates horse wastes, which includes manure, urine, waste feed, straw, and shavings and/or dirt bedding, which can be significant contributors to pollution. In addition, horse wastes contain nutrients such as phosphorous and nitrogen as well as microorganisms such as coliform bacteria which can cause eutrophication and a decrease in oxygen levels resulting in clouding, algae blooms, and other impacts adversely affecting the biological productivity of coastal waters.

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

These types of pollutants are particularly significant here since Stokes Creek has been placed on the state's list of impaired water bodies (Clean Water Act Section 303(d) list) due to its high coliform count. As noted above, the unpermitted development is located on Stokes Creek, approximately one mile from its outlet into Las Virgenes Creek. Stokes Creek enters Las Virgenes Creek just above the latter stream's confluence with Malibu Creek, in Malibu Creek State Park. Las Virgenes Creek and Malibu Creek are also listed as impaired water bodies (Clean Water Act Section 303(d) list) by the Los

Angeles Regional Water Quality Control Board (hereinafter, "LARWQCB"). Malibu Creek outlets into Malibu Lagoon and Surfrider Beach, which is consistently one of the most polluted regions within the Santa Monica Bay³². The LARWQCB is developing a Total Maximum Daily Load (hereinafter, "TMDL") for bacteria at Santa Monica Bay Beaches, including the Malibu beach area, which will indicate the maximum amount of bacteria these areas can assimilate and still achieve the designed water quality standards, and which will assign loadings to the various authorized discharges into this watershed. Therefore, the discharge of additional pollutants into Stokes Creek detracts from the efforts being made by LARWQCB to restore this water body and further degrades an already impaired stream.

The unpermitted equestrian facility is located in and adjacent to Stokes Creek. In addition, the unpermitted development includes two graded dirt access roads with at-grade crossing through Stokes Creek. The number of horses boarded at the site is unknown. A March 2005 Draft Environmental Impact Report (EIR) prepared for the proposed Malibu Valley Inn and Spa, which was to be located nearby, estimated that an average of 50 horses were stabled on the project site at that time; however, the unpermitted facilities could accommodate a larger numbers of horses. Ground cover consists of primarily bare soil, with the exception of the paddock in the southern portion of the property, and lawn areas surrounding the riding arenas.

As discussed above, the discharge of pollutants, including sediment, can cause significant negative impacts to streams. In past Commission actions, the Commission has consistently required horse facilities to be located a minimum distance of 100 feet from streams, in addition to employing best management practices to minimize runoff of pollutants in order to protect water quality. The 100-foot setback is measured from the outer edge of the riparian canopy. This setback is necessary to provide sufficient area for infiltration of runoff, minimize erosion and sedimentation, minimize the spread of invasive exotic plant and animal species, and allow an adequate natural vegetation buffer consistent with Section 30231.

The unpermitted development at issue here is currently located within Stokes Creek itself and between 0 and 50 feet from the edge of the riparian ESHA, inconsistent with the setback necessary to protect water quality and biological diversity pursuant to Section 30231 of the Coastal Act. Maintaining the unpermitted development would thus allow the continued degradation of water quality through the continued placement of structures and confinement of horses within and adjacent to the riparian habitat on the Subject Property and would not maintain a natural vegetation buffer area to protect the riparian habitat, as required by Section 30231.

Section 30231 also requires minimal alteration of natural streams. Similarly, the Malibu-Santa Monica Mountains LUP also prohibits alteration of streambeds in ESHA, requires road crossings in ESHA to be minimized, and requires any such crossings that are unavoidable to consist of bridging. In addition, Policy P76 of the LUP limits significant

³² Data taken from Heal the Bay's Beach Report Card, weekly water testing between 6/01/98 and 10/24/06

alterations of blue line streams to 1) necessary water supply projects, 2) flood control projects that are necessary to protect public safety or existing structures, and 3) developments where the primary purpose is the improvement of fish and wildlife habitat. Furthermore, Policy P78 of the LUP requires any stream crossings to be undertaken by the least environmentally damaging feasible method, and requires any crossings to consist of bridging unless a less damaging method is recommended by the Los Angeles County Environmental Review Board.

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

In summary, the unpermitted development does not maintain, much less restore, water quality and biological productivity in coastal waters, coastal waters by controlling polluted runoff, maintaining natural vegetation buffer areas, or minimizing alteration of natural stream banks. Therefore, the unpermitted development is inconsistent with Sections 30231 of the Coastal Act.

c. *Alteration of Rivers and Streams*

Section 30236 of the Coastal Act states:

Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.

Section 30236 of the Coastal Act requires that substantial alterations of streams be limited to: “1) necessary water supply projects, 2) flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development, or 3) developments where the primary function is the improvement of fish and wildlife habitat.” In reviewing such limited types of alterations, a proposed project under Section 30236 must also incorporate the best mitigation measures feasible. Such measures could include, for example, bridging or less damaging alternatives as provided for in Policy P78 of the Santa Monica Mountains LUP.

The unpermitted development includes two at-grade dirt road crossings (often times referred to as Arizona crossings) of Stokes Creek. These creek crossings required the grading of the stream bank on both sides of Stokes Creek, significantly altering the

stream course. In addition, the crossings are used by both vehicles and horses, further altering the stream course. Furthermore, the unpermitted crossings reduced, and will continue to reduce, portions of the existing streambed to compacted bare soil, and increase the transport of sediment into the stream, also inconsistent with Section 30236 of the Coastal Act.

In fact, the California Department of Fish and Game (hereinafter, "DFG") confirmed that the two crossings of Stokes Creek would alter the stream by requiring a Stream Bed Alteration Agreement pursuant to Section 1602 of the California Fish and Game Code.³³ As stated above, Section 30236 of the Coastal Act provides that only a very limited type of stream alteration is allowable under the Coastal Act, and even if such stream alteration falls within one of the three categories acceptable under Section 30236, it must incorporate the best mitigation measures feasible. Clearly, the two unpermitted, at-grade crossings of Stokes Creek are not for: 1) necessary water supply projects, 2) flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development, or 3) developments where the primary function is the improvement of fish and wildlife habitat. Even if the crossings were somehow associated with the three categories listed above, the unpermitted crossings certainly do not provide any mitigation measures since the unpermitted crossings were simply constructed by grading out either side of the bank and within, and through, the stream itself. Therefore, the Commission finds that the unpermitted development is inconsistent with Section 30236 of the Coastal Act.

d. Scenic Coastal Areas/Landform Alteration.

Section 30251 of the Coastal Act states, in part:

The scenic and visual qualities of 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.

The Coastal Act protects public views and the visual qualities of scenic coastal areas and limits landform alteration that would detract from such resources. The Subject Property is located immediately north of the former campus of Soka University, which has been recently purchased by the National Park Service. Scattered rural and residential development is located west and south of the Subject Property, and an undeveloped hillside containing primarily chaparral and oak woodland habitat is located to the east of the Subject Property. The Subject Property is highly visible from

³³ On March 15, 2005, DFG sent MVF a letter stating that it failed to meet the deadline to respond to MVF application for a Stream Bed Alteration Agreement, pursuant to Section 1602(a)(4)(D), and by operation of law, MVF did not need a Stream Bed Alteration Agreement. However, the Commission notes that DFG did not find the two crossings consistent with applicable policies that protect fish and wildlife resources.

Mulholland Highway, a designated scenic highway in the Malibu-Santa Monica LUP as well as from numerous public viewing points, including along the Backbone Trail, one of the most popular public hiking trails in the Santa Monica Mountains, and the Las Virgenes View trail, that afford scenic vistas of the relatively undisturbed natural area.

The natural landscape of the Santa Monica Mountains consists of lush riparian environments, oak woodlands, and chaparral and coastal sage scrub communities. The landscape ranges from steeply sloping canyons, to high rocky mountain peaks, to relatively flat alluvial flood plains. In addition to the varied landscape and vegetative communities, the Santa Monica Mountains provides habitat for such species as cooper's hawk, western screech owl, mule deer, gray foxes, and steelhead trout. This unique natural experience is one that you would find walking, hiking, or driving through the Santa Monica Mountains.

Unfortunately, the unpermitted development was not sited and designed to protect these views to and across this scenic area and did not minimize the alteration of natural land forms. The subject unpermitted development replaced riparian habitat and oak woodland, chaparral, and coastal sage scrub vegetative communities with an extensive unpermitted equestrian facility. In addition, the unpermitted development included the grading of a dirt access road with the crossings of Stokes Creek, altering the stream bed and carving out a portion of the stream bank on either side of Stokes Creek.

With the unpermitted development in place, as one drives along Mulholland Highway (designated as a scenic highway in the Malibu-Santa Monica LUP) or as one hikes along one of the many public trails above the Subject Property, the views one comes across is a massive equestrian facility with numerous structures and fences instead of views of a natural mountain setting that is typical of the Santa Monica Mountains.

Therefore, the Commission finds that the unpermitted development is not consistent with Section 30251 of the Coastal Act because it did not minimize the alteration of natural landforms, it was not sited and designed to protect the scenic and visual characteristics of the surrounding area, and it contributes to a cumulative adverse impact of increased development along Stokes Creek and the adjacent upland areas. As such, the unpermitted development is inconsistent with Section 30251.

iii. 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 damage is the continuing degradation of an ESHA, aquatic resources and water quality caused by the unpermitted development across 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 equestrian facility is located within and adjacent to riparian habitat, within and adjacent to Stokes Creek, an intermittent USGS designated blue line stream, and within and adjacent to coastal sage scrub and chaparral habitat. As described above, this results in impacts to ESHA and the water quality and biological productivity of Stokes Creek. Horse activity continues to compact soil below the dripline of several oak trees, manure and urine from horses continues to drain into Stokes Creek, and the unpermitted graded dirt roads that cross Stokes Creek continue to compact soil within the creek and increase the amount of erosion through the creek. In addition, the numerous unpermitted structures remain within 0 to 50 feet of ESHA and continue to impact the functioning of this ESHA. As described below, 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.”

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

The Cease and Desist Order and Restoration Order attached to this staff report are consistent with the resource protection policies found in Chapter 3 of the Coastal Act. The Orders require MVF to cease and desist from maintaining unpermitted development and from conducting further unpermitted development on the subject property. In addition, the Orders require and authorize MVF to remove all unpermitted development

and restore the areas on the Subject Property impacted by the unpermitted activity by conducting restorative grading and by planting the area with native plant species endemic to this portion of the Santa Monica Mountains. The Orders require MVF to plant native plant species to lessen the potential for erosion across the site, to be compatible with the surrounding ESHA, 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. The Commission finds that allowing the planting of non-native plant species (which is not authorized or required by these Orders) would lead to the further degradation of the ESHA and cause continued erosion throughout the site. Similarly, failure to revegetate the site would lead to increased erosion across the Subject Property, which would lead to sedimentation of Stokes Creek, altering the natural stream, increasing water quality and decreasing the biological productivity in this aquatic ESHA, 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.

E. California Environmental Quality Act (CEQA)

The Commission finds that issuance of these Consent Orders to compel the restoration of the subject property is exempt from any applicable requirements of the California Environmental Quality Act (CEQA) of 1970 and will not have significant adverse effects on the environment, within the meaning of CEQA. The Consent 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.

F. Summary of Findings

1. Malibu Valley Farms, Inc. ("MVF") is the owner of property located at the northeast corner of Mulholland Highway and Stokes Canyon Road, Santa Monica Mountains, Los Angeles County, Assessor's Parcel Number 4455-028-04 ("Subject Property").
2. MVF has undertaken development, as defined by Coastal Act Section 30106, at the Subject Property, consisting of the unpermitted construction of an approximately six-acre equestrian facility including, but not limited to, 1) a 45,000 sq. ft. arena with a five-foot high surrounding wooden wall with posts, 2) a 25,200 sq. ft. riding arena, 3) numerous storage containers, 4) portable tack rooms, 5) numerous pipe corrals and covered shelters, 6) an approximately 2,000 sq. ft. parking area, 7) a 2,660 sq. ft. breeding facility, 8) a 1,440 sq. ft. one-story barn, 9) railroad tie walls, 10) an approximately 20,000 sq. ft. fenced paddock, 11) various fencing throughout the property, 12) graded dirt access road with at-grade crossing through Stokes Creek and a second at-grade dirt crossing of Stokes Creek, 13) two 2,025 sq. ft. covered corrals and one 1,080 sq. ft. covered corral, 14) grading, and 15) removal of major vegetation in violation of the Coastal Act.
3. MVF conducted the above-described development without a Coastal Development Permit or any other Coastal Act authorization, which is a violation of the Coastal Act.

4. No exemption from the permit requirements of the Coastal Act applies to the unpermitted development on the subject property.
5. On September 25, 2006, Commission staff informed MVF that pursuant to Title 14, California Code of Regulations, Sections 13181(a) and 13191(a), the Commission intended to initiate cease and desist and restoration order proceedings against them, and outlined steps in the cease and desist and restoration order process.
6. The Mediterranean Ecosystem in the Santa Monica Mountains is rare and valuable because of its relatively pristine character, physical complexity, and resultant biological diversity.
7. The Subject Property is located in the Santa Monica Mountains and contains the Mediterranean Ecosystem as described in item No. 7 above, including oak woodlands and riparian woodlands.
8. Stokes Canyon Creek, located within the Subject Property, and its associated riparian woodland, meet the definition of environmentally sensitive habitat area under the Coastal Act (Section 30107.5).
9. The unpermitted development described in item No. 2 is inconsistent with the policies set forth in Sections 30231, 30236, 30240, and 30251 of the Coastal Act.
10. The unpermitted development described in item No. 2 is causing "ongoing resource damage" within the meaning of Section 30811 of the Coastal Act and Section 13190, Title 14, California Code of Regulations.

G. Violators' Defenses and Commission's Response

Beth Palmer, on behalf of MVF, submitted a Statement of Defense ("SOD"), which was received by the Commission staff on October 16, 2006 (one day after the deadline established in the NOI), and which is included as Exhibit #5 of this Staff Report. The SOD submitted by MVF contains general denials and objections as well as brief defenses. MVF's main defense is that the equestrian facility that is the subject of these proceedings has been in place since prior to the Coastal Act. The Commission, at its November 15, 2006 hearing heard MVF's separate Claim of Vested Right 4-00-279-VRC. The Commission has determined that MVF's claim of vested right was not substantiated and the development that is the subject of this Cease and Desist Order and Restoration Order requires a Coastal Development Permit. The Commission's responses to MVF's allegations that it has a vested right to the unpermitted development is included herein as background information and supports the Commission's findings made on Claim of Vested Right 4-00-279-VRC. The staff report and its related attachments are attached as Exhibit #62 hereto, and incorporated by reference herein.

All but one issue that MVF raises are irrelevant to the dispositive questions: whether the evidence before the Commission shows that a violation of the Coastal Act has occurred,

that the unpermitted development is inconsistent with the Coastal Act, and that the unpermitted development is causing continuing resource damage, and thus, to whether the Commission is authorized to issue this Cease and Desist and Restoration Order. We respond to these issues nonetheless, for the information of all parties. However, we emphasize that the only relevant issues to these proceedings are whether there was either unpermitted development or violations of CDP requirements (that is, a violation of the Coastal Act), whether any unpermitted development is inconsistent with the Coastal Act, and whether it is causing continuing resource damage, establishing the grounds to issue a Cease and Desist and Restoration Order under Section 30810 and 30811 of the Coastal Act. The following paragraphs describe the defenses contained in the SOD and set forth the Commission's response to each defense.

1. The Respondents' Defense:

Throughout the SOD, MVF repeatedly states, "The notice of intent is vague and does not contain sufficient detail to permit Mr. Levin and Malibu Valley Farms, Inc.... to provide a complete response. The notice of intent does not contain numbered paragraphs."

Commission's Response:

The above assertion does not provide any evidence to support a claim that the findings for a Cease and Desist Order and Restoration Order have not been met. It does not address the issue of whether the development required a permit or the fact that none was obtained by MVF, whether the unpermitted development is inconsistent with the Coastal Act, or whether it is causing continuing resource damage, which are the issues relevant to issuance of a Cease and Desist and Restoration Order under Section 30810 and 30811 of the Coastal Act.

In addition to the relevance issue, the substance of this assertion is simply false. The NOI issued by the Executive Director contains a detailed description of the unpermitted development at issue, a description of the history of this Coastal Act violation and the Commission's previous actions taken on the Subject Property, the reasons Commission staff initiated these enforcement proceedings, a thorough explanation of why the unpermitted development is inconsistent with the Coastal Act and why the Executive Director believed that the other prerequisites to the issuance of these Orders had been satisfied, and a description of what the Cease and Desist and Restoration Orders would require (see Exhibit #4, the NOI dated 9/25/06). These detailed descriptions and explanations were not vague and should not have been difficult for MVF or counsel to understand. Moreover, MVF did not seek any clarification or otherwise contact Commission staff regarding this alleged concern, other than to list it in this SOD.

Because the unpermitted development clearly constitutes "development" within the meaning of Section 30106 of the Coastal Act, it requires a CDP pursuant to Section 30600(a) of the Coastal Act. No CDP was issued for the activity at issue. As described in Section C, above, the unpermitted activity is clearly inconsistent with the Coastal Act

and is causing continuing resource damage. Thus, the requirements to issue a cease and desist and restoration order have been met.

2. The Respondents' Defense:

"[MVF] specifically den[ies] that development has been undertaken in a manner that is inconsistent with the Coastal Act, that unpermitted construction took place between 1997 and 1999, that staff first became aware of unpermitted development in October 1998, and that they have failed to resolve this matter as required at the district level."

Commission's Response:

The only possibly relevant portion of this defense is MVF's assertion that development had not been undertaken in a manner that is inconsistent with the Coastal Act. However, MVF did not provide any evidence whatsoever to support this claim.

As discussed in Section C, above, the approximately six-acre equestrian facility, the fenced grazing area, graded roads, and numerous associated structures throughout the property are clearly "development" as that term is defined in Section 30106 of the Coastal Act. No CDP was issued for the subject unpermitted development. In fact, MVF submitted a CDP application requesting after-the-fact approval of the equestrian facility (including additional development) but withdrew its application prior to the Commission taking any action. As thoroughly detailed in Section C of this staff report, the unpermitted development is inconsistent with Sections 30231, 30236, 30240, and 30251 of the Coastal Act. The equestrian facility includes numerous barns, stables, corrals, riding arenas, and storage containers within and adjacent to oak woodland and riparian habitat as well as Stokes Creek, a designated intermittent blue line stream. The equestrian facility also includes a graded access road with two at-grade crossings through Stokes Creek.

These facilities continue to damage these sensitive resources by discharging waste water into Stokes Creek, by not protecting the aquatic resources associated with the riparian habitat on the Subject Property, by affecting the biological productivity of a blue line stream, by affecting the visual qualities of the area, and by disrupting the habitat values of the ESHA throughout the Subject Property.

Neither of the other assertions raised in this defense provides a valid defense to the issuance of a Cease and Desist Order pursuant to Section 30810 of the Coastal Act or a Restoration Order pursuant to Section 30811 of the Coastal Act. However, to clarify the issue of how long the Commission staff has known of and been trying to restore this violation, the Commission notes that on November 20, 1998, MVF submitted an exemption request for the proposed replacement of pipe corrals and related improvements that had been destroyed by wildfire in 1996.³⁴ The request represented that the improvements had been placed on the property prior to the passage of the

³⁴ For a full discussion on the history of Commission staff's efforts to resolve this violation, see Section B, above.

Coastal Act and that the structural plans and the location of the “replacement structure” had been approved by the Los Angeles County. On December 7, 1998, the Commission issued Exemption Letter No. 4-98-125-X for replacement of 14 pipe corrals (totaling 2,500 sq. ft) based on the information that MVF submitted to Commission staff. However, the Commission rescinded this exemption letter shortly thereafter, in January 1999, because it was discovered that, in fact, the equestrian facility on the site was constructed after January 1, 1977 (the effective date of the Coastal Act) without benefit of a coastal development permit. It was at this time (January 1999) that Commission first discovered the violations.

Commission staff contacted MVF on January 14, 1999 and subsequently sent MVF a letter dated January 22, 1999 informing MVF that the exemption was revoked and notifying MVF of the Coastal Act violations on the Subject Property. The letter also stated that a CDP is required for the horse riding area, polo field, numerous horse corrals, barn, and accessory buildings at the site and directed MVF to submit a complete CDP application to address the unpermitted development by no later than February 26, 1999.

Unfortunately, MVF did not submit a CDP application and did not resolve the violations as requested by Commission staff. Therefore, to address the outstanding violations on the property, on March 7, 2000, the Executive Director notified MVF of his intent (hereinafter, “NOI”) to initiate cease and desist order proceedings regarding the unpermitted development on the Subject Property. Since this time, Commission staff has made innumerable attempts to resolve the violation (see Section B, above), without success.

Again, however, we note that to issue a Cease and Desist Order pursuant to Section 30810 of the Coastal Act, the Commission must only find that the activity was conducted without a required CDP. In order to issue a Restoration Order under Section 30811 of the Coastal Act, the Commission only need find that the activity was conducted without a CDP, and that the unpermitted development is inconsistent with the Coastal Act and is causing continuing resource damage. In this case, as discussed above, the illegal placement of the equestrian facility was non-exempt development. No CDP was issued to authorize this activity, and therefore the requirements to issue a Cease and Desist Order have been met. Furthermore the six-acre equestrian facility and associated grading, fencing, and removal of ESHA throughout the Subject Property are clearly inconsistent with the Coastal Act (as discussed above in great detail) and are causing continuing resource damage. Therefore the requirements to issue a Restoration Order have also been met.

3. The Respondents’ Defense:

“Mr. Levin and MVFI have no personal knowledge regarding the reasons why this matter has been referred to Statewide Enforcement staff. MVFI leases the land in question.... Mr. Levin has had no involvement in those activities or the communications between MVFI and the Commission.”

Commission's Response:

This assertion does not respond at all to the substance of this proceeding. In fact, not only does it not respond to the substance of this proceeding, but it seems to presume facts about this proceeding that are, in fact, incorrect. For example, it seems to presume that these particular Orders are to be issued against Mr. Levin. Mr. Levin, at this time, is not a party to these enforcement proceedings, as he does not own the Subject Property. Malibu Valley Farms, Inc., whose president is Brian Boudreau, acquired the property in February 2002 from Robert K. Levin (via an unrecorded grant deed). The Commission has been proceeding against MVF for these violations as the owner of record and party that conducted the unpermitted development. If Mr. Levin is involved and should be subject to these Orders, we would appreciate him providing information to this effect.

While it is irrelevant to these proceedings that Statewide Enforcement staff is involved in these enforcement proceedings, the Commission notes that MVF received a letter from the Executive Director of the Commission dated March 7, 2000 notifying MVF of his intent to initiate Cease and Desist Order proceedings. It is clear through the numerous correspondences between Commission staff and MVF over the past six-and-one-half years that MVF was aware of Commission staff's position regarding the unpermitted development and that such development violates the Coastal Act.

4. The Respondents' Defense:

"The Commission has been aware of these facilities since at least 1987. In 1987 the Coastal Commission made a boundary line determination. The Commission also considered at least two boundary adjustment applications affecting the property in 1987 and 1989. On those occasions, the property was inspected by Commission staff, which never noted any violations. The facilities that appear to be in question appear on maps that were before the Commission at the time."

Commission's Response:

As indicated in Section B, above, in October 1987, at the request of MVF, Commission staff determined that the Coastal Zone boundary bisected two other properties owned by MVF. These properties are not a part of the property being addressed by these Orders. In fact, they are located across Stokes Canyon Road from the property that is the subject of these proceedings, and they are not a part of this particular enforcement case. After obtaining the boundary determination from Commission staff, on October 27, 1987, MVF submitted a request to adjust the boundary so as to remove these two properties from the Coastal Zone. Again, these properties are completely separate from the Subject Property that is being addressed by these enforcement proceedings. On January 14, 1988, the Commission denied Minor Coastal Zone Boundary Adjustment BA-2-87.

Even though this assertion is irrelevant to these proceedings and, in fact, focuses on property that is not even involved in this proceeding, the follow response is intended to clarify the record. In 1987, in response to MVF's request, Commission staff assessed the location of the Coastal Zone boundary relative to properties across the street from the Subject Property and assessed a Boundary Adjustment application. There is no evidence that staff visited the properties that were subject to the Boundary Adjustment application. Even if they had conducted a site visit, which it appears they did not, the properties that were the subject of the Boundary Adjustment application were completely separate from the Subject Property.

Moreover, even assuming that Commission staff both visited the property at issue in 1987 and noticed the development at issue in these proceedings when assessing the location of the Coastal Zone boundary line relative to the properties across the street or when reviewing the Boundary Adjustment application mentioned in this assertion, neither of which Commission staff has any reason to believe it did, Commission staff would have had no way of knowing at the time that the development at issue here was undertaken after 1977 without the requisite Coastal Act authorization. Quite to the contrary, as previously indicated, even years later, Commission staff believed, based on MVF's mis-representations, the development was "pre-Coastal".

In addition, the review and findings that are made to determine whether or not the Commission can approve or deny a Minor Coastal Zone Boundary Adjustment are completely separate from the analysis of Coastal Act violations. Even if the property involved in the Minor Coastal Zone Boundary Adjustment applications that MVF cited in its SOD involved the Subject Property, which it does not, Boundary Adjustment applications are reviewed based on whether the proposed boundary adjustment 1) conforms to the requirements of Section 30103(b) of the Coastal Act and 2) "will not interfere with the achievement of the policies of Chapter 3 of the Coastal Act and will not prejudice the preparation of a local coastal program conforming to Chapter 3 of the Coastal Act." 14 CCR Section 13256.2. These inquiries do not address whether any existing development is pre-Coastal or permitted or whether it is consistent with the Coastal Act; the review is based entirely on whether adjusting a line in space to include more or less land within the Coastal Zone is appropriate. Thus, analysis of these issues would not have required the Commission or Commission staff to investigate the status or legality of the existing development. In sum, Commission staff clearly neither knew nor had reason to know of these violations in 1987.

Furthermore, even if Commission staff was aware of the violations, which it was not, the length of time that unpermitted development has existed has no bearing on enforcement of the permit requirements of the Coastal Act. Nothing in the Coastal Act limits the Commission's ability to issue Cease and Desist and Restoration Orders based on the length of time that a violation has existed. The Commission's enforcement program has limited staff and a limited budget, and it prioritizes and responds to violations as they are brought to its attention. Violators do not receive amnesty because other urgent violations occupy the Enforcement staff's limited resources for some designated time period.

Moreover, Commission staff did act promptly in this case. The Commission first learned of this violation in January 1999 and promptly sent a formal notice to MVF on January 22, 1999 and again on March 7, 2000. Since that time, over the last six years, staff repeatedly attempted to resolve this violation administratively. All delays were due to Commission staff attempting to work cooperatively with MVF based on MVF's repeated representations that they would address the violations either through a Vested Rights application or a CDP application, both of which have repeatedly been withdrawn. Commission staff allowed MVF to submit a Claim of Vested Rights application, to continue that application so MVF could submit a CDP application, and spend years completing the CDP application, only to continue the delay by withdrawing that CDP application and reactivating the Claim of Vested Rights application.

The assertion of unreasonable delay could be read as implying a defense based on the doctrine of laches. The doctrine of laches does not apply in this case. It is well settled that the equitable defense of laches "will not ordinarily be invoked to defeat policy adopted for the public protection" (*City of San Francisco v. Pacello* (1978) 85 Cal.App.3d 637, 646.³⁵). In this case, the cease and desist order and restoration order proceedings were initiated to bring the subject violations into compliance with the Coastal Act, which was adopted to protect coastal resources for the benefit of the public.

Even if the doctrine were applicable to this proceeding, it is well established that "laches is an equitable defense that requires *both* unreasonable delay *and* prejudice resulting from the delay. The party asserting and seeking to benefit from the laches bar bears the burden of proof on these factors." (*Mt. San Antonio Comm. Coll. Dist. v. Pub. Emp. Rel. Bd.* (1989) 210 Cal.App.3d 178.) MVF has clearly caused the delay in this proceeding, as noted above and in Section B of this staff report. MVF cannot show any prejudice from the Commission's failure to bring this action at any earlier date; in fact, MVF has actually benefited from the many years of use of the unpermitted structures.

5. The Respondents' Defense:

"More than three years passed since the Commission knew or should have known about the alleged violations. That statute of limitations under Public Resources Code Section 30805.5 applies.

Commission's Response:

Section 30805.5 states:

Any action pursuant to Sections 30805 or 30822 to recover civil fines or penalties under this chapter shall be commenced not later than three years from the date

³⁵ Accord: *Morrison v. California Horse Racing Board* (1988) 205 Cal.App.3d 211, 219 ("Where there is no showing of manifest injustice to the party asserting laches, and where application of the doctrine would nullify a policy adopted for the public protection, laches may not be raised against a governmental agency.")

on which the cause of action for the recovery is known or should have been known.

The three year statute of limitations established by Section 30805.5 only applies to the recovery of civil fines or penalties (Section 30805 of the Coastal Act) and exemplary damages (Section 30822 of the Coastal Act) under Chapter 9 of the Coastal Act and has no relevance to enforcing the policies of the Coastal Act or to the issuance or enforceability of Cease and Desist Orders (Section 30810 of the Coastal Act) and Restoration Orders (Section 30811 of the Coastal Act). Moreover, in this particular case, MVF actually waived its ability to raise the statute of limitations even in penalty cases by signing a Waiver of Legal Argument on August 24, 2000, tolling the running of that statutory period. Prior to signing the WOLA Commission staff sent MVF a letter describing the WOLA, stating:

"[I]t is our understanding that this claim may take up to six months to process due to the possible need for additional information in support of your claim. In light of this delay, the Commission staff must preserve the Commission's right to pursue in relation to this alleged Coastal Act violation the full panoply of enforcement remedies provided in Chapter 9 of the Coastal Act. Your clients have indicated they wish to seek administrative resolution of the violation in preference to judicial enforcement action. In order to accomplish this goal, it is necessary for your clients to sign and return the enclosed Waiver of Legal Argument (WOLA) form."

The WOLA states, in part:

"Malibu Valley [Farms, Inc.] has stated that it does not want the Commission to institute an enforcement action to resolve this alleged Coastal Act violation while it applies for and awaits the outcome of a vested rights determination. Accordingly, Malibu Valley hereby agrees to not rely on the period of time from June 12, 2000... to the Termination Date of this agreement, as set forth below ('Tolled Period') as a legal defense in any litigation concerning violation case number V-4-00-001. The Tolled period shall not be considered in any determinations of the timeliness of commencement of any court action with respect to violation case no. V-4-00-001, including but not limited to, the following defenses: (1) any applicable statute of limitations; (2) laches; and/or (3) estoppel."

Therefore, and setting aside other legal issues pertaining to the application of Section 30805.5 of the Coastal Act, which also do not support MVF's assertion, by MVF's own actions, Section 30805.5 is not even applicable in the limited sphere in which it might normally apply to this case if litigation were to ensue. Again, however, we note that to issue a Cease and Desist Order and Restoration Order pursuant to Section 30810 and 30811 of the Coastal Act the Commission must find that the activity was conducted without a required CDP and that such development is inconsistent with the Coastal Act and is causing continuing resource damage. In this case, as discussed above, the construction of a six acre equestrian facility is non-exempt development. No CDP was issued to authorize this activity and therefore the requirements to issue a Cease and Desist Order have been met. Furthermore, the unpermitted development is inconsistent with numerous resource protection policies of the Coastal Act and by it remaining on the Subject Property will cause continuing resource damage to ESHA, and water quality

and biological productivity of Stokes Creek; and therefore the requirements to issue a Restoration Order have also been met.

6. The Respondents' Defense:

"The water course on the site was created in the 1950's when Stokes Canyon Road was created. None of the property is in a native undisturbed condition. It has been in such a condition since at least the 1940's.

Commission's Response:

Stokes Creek is a designated intermittent blue line stream as delineated by the USGS. The unpermitted development is located within and adjacent to Stokes Creek, approximately one mile from its outlet into Las Virgenes Creek. Stokes Creek enters Las Virgenes Creek just above the latter stream's confluence with Malibu Creek, in Malibu Creek State Park.

Whether or not Stokes Creek was at one time diverted for the construction of Stokes Canyon Road is irrelevant to these proceedings. The definition of environmentally sensitive area in Section 30107.5 of the Coastal Act does not require that the area be unaltered from its natural state in order to qualify as ESHA. Commission staff biologist, Dr. John Dixon, has visited the site and specifically confirmed the presence of riparian ESHA on the Subject Property. The courts have also supported the ESHA designation of anthropogenic (caused by human activity) habitat, and even of habitat formed by non-native trees. (see, e.g. *Bolsa Chica Land Trust v. Superior Court* (1999), 71 Cal. App. 4th 493.) As discussed at length in Section C, above, the area is clearly ESHA.

The construction of the equestrian facility within and adjacent to this ESHA was conducted without benefit of a CDP in violation of the Coastal Act. As stated throughout this staff report, the unpermitted development is inconsistent with the resource protection policies of the Coastal Act and its ongoing presence on the Subject Property is causing continuing resource damage. Thus, the requirements to issue a Cease and Desist and Restoration Order have been met.

7. The Respondents' Defense:

"The facilities that appear to be in question have been in place since before the Coastal Act was adopted.... The property in question has been actively farmed since at least the late 1940's. The property was used for years to grow oat hay. Starting in the 1950's, cattle and sheep were raised on the site. Horses have been raised and trained on the property since the mid 1970's.... All of the activities on the property are a continuation of farming activities that pre-date the Coast (sic) Act."

Commission's Response:

The assertions raised above relate to the claim of a "vested right" for certain development. The Coastal Act and implementing regulations set forth the steps which must be followed to establish a vested right (see 14 CCR Section 13200 et seq.) via a Vested Right application and hearing. This is the exclusive means for establishing a vested right. MVF has separately submitted a claim of vested rights, which the Commission processed earlier today. In the context of its decision on that matter, the Commission determined that MVF's claim of vested rights was not substantiated. However, as background, the Commission hereby incorporates by reference its conclusions on this subject and the reasons therefore, including the supporting evidence and analysis presented in the context of that matter, as set forth in the staff report dated November 3, 2006 (Exhibit #62).

As thoroughly discussed in the staff report on the Claim of Vested Rights No. 4-00-279-VRC, and the Commission's findings in response to that claim, incorporated by reference herein, it is clear that MVF does not have vested rights under the Coastal Act for an expansive six-acre equestrian facility including but not limited to 1) a 45,000 sq. ft. arena with a five-foot high surrounding wooden wall with posts, 2) a 25,200 sq. ft. riding arena, 3) numerous storage containers, 4) portable tack rooms, 5) numerous pipe corrals and covered shelters, 6) an approximately 2,000 sq. ft. parking area, 7) a 2,660 sq. ft. breeding facility, 8) a 1,440 sq. ft. one-story barn, 9) railroad tie walls, 10) an approximately 20,000 sq. ft. fenced paddock, 11) various fencing throughout the property, 12) a graded dirt access road and two at-grade graded roads crossing through Stokes Creek, 13) two 2,025 sq. ft. covered corrals and one 1,080 sq. ft. covered corral, 14) grading, and 15) removal of major vegetation.

There is no evidence that the development that is the subject of these proceedings on the Subject Property were present as of January 1, 1977 nor that it met the requirements of Section 30608 of the Coastal Act, nor of 14 CCR Section 13200 et seq. Furthermore, there is no evidence that necessary permits for these unpermitted structures and improvements had been obtained and substantial work commenced in reliance on such approvals prior to January 1, 1977. Even if the original unpermitted development had been vested, there was a substantial change in the development (from allegedly growing oat hay with open pasture land for sheep and cattle on some portion of the property to an expansive equestrian facility for boarding, breeding, raising, and training horses, including numerous barns, corrals, riding arenas, storage structures, fencing, grading, roads, and removal of vegetation).

Therefore, the Commission has found that a vested right to the unpermitted development is not substantiated.

Exhibit List

Click on the link at left to go to the Exhibits

Exhibit Number

Description

1. Site Map and Location
2. Aerial Photograph of Site Location, submitted by Sapphos Environmental, Inc.
3. Aerial Photograph of Subject Property, April 2006
4. Letter from Peter Douglas, Executive Director, California Coastal Commission to Brian Boudreau, Malibu Valley Farms, Inc., Re: Notification of Intent to Commence Cease and Desist Order & Restoration Order Proceedings, September 25, 2006
5. Letter from Beth Palmer to Aaron McLendon, Re: Statement of Defense, October 16, 2006
6. Memorandum from John Dixon, CCC Ecologist, to Ventura Staff, Re: Designation of ESHA in the Santa Monica Mountains, March 25, 2003
7. Aerial Photograph of biological assessment by Sapphos Environmental, Inc. dated October 25, 2005
8. Letter from John Calas, Zoning Enforcement, Los Angeles County, Dept. of Regional Planning to Malibu Valley Farms, Inc., Re: Inspection made at 2200 North Stokes Canyon Road, June 9, 1989
9. Letter from John Calas, Zoning Enforcement, Los Angeles County, Dept. of Regional Planning to Malibu Valley Farms, Inc., Re: Routine inspection made at 2200 North Stokes Canyon Road, March 31, 1992
10. Letter from John Calas, Zoning Enforcement, Los Angeles County, Dept. of Regional Planning to Malibu Valley Farms, Inc., Re: Routine inspection made at 2200 North Stokes Canyon Road, December 16, 1993
11. Letter from John Calas, Zoning Enforcement, Los Angeles County, Dept. of Regional Planning to Brian Boudreau, Malibu Valley Farms, Inc., Re: Final Notice for failure to comply with the violation, August 22, 1996
12. Letter from Morris Litwack, Zoning Enforcement, Los Angeles County, Dept. of Regional Planning to Malibu Valley Farms, Inc., Re: Notice of Violation, September 29, 1998
13. Staff Report Re: Minor Boundary Adjustment BA-2-87 for Commission Hearing on January 12-15, 1988 Meeting, December 22, 1987
14. Letter from Brian Boudreau, Malibu Valley Farms, Inc. to Jack Ainsworth, California Coastal Commission Re: Replacement of horse farming structures destroyed by disaster, November 19, 1998
15. Memorandum from Donald Culbertson, L.A. County, Dept. of Regional Planning to Mark Pestrella, Building & Safety, Re: Approval of a plot plan & review by ERB required for construction of the proposed stable, January 12, 1999
16. Letter from Commission staff to Brian Boudreau, Re: Coastal development exemption request 4-98-125-X, January 22, 1999
17. Letter from Mark Pestrella, Engineer, Dept. of Public Works to Brian Boudreau, Re: Revocation of building permits BL 9812170013 and BL 9812170014, January 12, 1999
18. Letter from Morris Litwack to Malibu Valley Inc., Re: Second notice of violation, February 17, 1999

19. Letter from James Hartl to Stanley Lampert, Re: Request for a "Clean Hands" waiver, April 6, 1999
20. Letter from Commission Executive Director to Robert Levin, Re: Notice of Intent to Commence Cease & Order proceedings, Violation No. V-4-00-001, March 7, 2000
21. Letter from Peter Douglas, California Coastal Commission to Robert Levin & Brian Boudreau, Re: Coastal Act Violation File No. V-4-00-001, April 4, 2000
22. Letter from Cox, Castle & Nicholson Law Office to Commission staff, Re: Request to review File No. V-4-00-001, April 7, 2000
23. Letter from Cox, Castle & Nicholson Law Office to Commission staff, Re: Revised statement of Defense, April 10, 2000
24. Letter from Commission staff to Robert Levin & Brian Boudreau, Re: Response to PRA request received on April 7, 2000, April 13, 2000
25. Letter from Commission Mapping staff to Commission Enforcement staff, Re: Boundary Determination No. 18-2000, APN 4455-028-44, Los Angeles County, April 19, 2000
26. Letter from Commission staff to Malibu Valley Farms, Inc., Re: Response to April 10, 2000 letter & Statement of Defense, April 28, 2000
27. Letter from Cox, Castle & Nicholson Law Office to Commission staff, Re: Request for vested rights determination, May 25, 2000
28. Letter from Cox, Castle & Nicholson Law Office to Commission staff, Re: Application supporting Claim of vested rights, June 12, 2000
29. Letter from Commission staff to Malibu Valley Farms, Re: Waiver of Legal Argument form from Brian Boudreau, Robert Levin & Malibu Valley Farms, Inc., June 22, 2000
30. Letter from Commission staff to Malibu Valley Farms, Re: Revised Waiver of Legal Argument form from Brian Boudreau, Robert Levin & Malibu Valley Farms, Inc., August 1, 2000
31. Letter from Commission staff to Cox, Castle & Nicholson Law Office, Re: Request of information to complete the claim of vested rights application, August 18, 2000
32. Signed copy of Waiver of Legal Argument form
33. Letter from Commission staff to Cox, Castle & Nicholson Law Office, Re: follow-up letter to complete Claim of vested rights application, October 6, 2000
34. Letter from Cox, Castle & Nicholson Law Office to Commission staff, Re: Response to the August 18, 2000 letter, November 3, 2000
35. Letter from Commission staff to Stanley Lampert, Re: Schedule of 4-00-279-VRC hearing on Feb. 13-16, 2001 hearing, January 24, 2001
36. Letter from Cox, Castle & Nicholson Law Office to Commission staff, Re: Receipt of staff report, February 6, 2001
37. Letter from Cox, Castle & Nicholson Law Office to Commission staff, Re: Request for a continuance of the vested rights determination hearing, February 15, 2001
38. Electronic mail message between Commission staff & Don Schmitz, Re: scheduling the claim of vested rights application hearing, November 15, 2001
39. Electronic mail message from Don Schmitz to Commission staff, Re: application packet for the equestrian center, March 13, 2002
40. Electronic mail message between Commission staff & Don Schmitz, Re: Malibu Valley Farms permit application, April 29, 2002
41. Letter from Commission staff to Malibu Valley Farms, Inc., Re: Incomplete Application No. 4-02-131, June 28, 2002
42. Letter from Schmitz & Associates to Commission staff, Re: Information necessary for Application No. 4-02-131, February 7, 2003
43. Electronic mail message between Commission staff & Don Schmitz, Re: Application No. 4-02-131

44. Letter from Cox, Castle & Nicholson Law Office to Commission staff, Re: Additional information to complete Application NO. 4-02-131, October 25, 2004
45. Letter from Schmitz & Associates to Commission staff, Re: CDP Application No. 4-02-131; LA County Approval in Concept, 2/2/04; February 3, 2004
46. Letter from Cox, Castle & Nicholson Law Office to Commission staff, Re: Additional information to complete Application NO. 4-02-131, November 2, 2004
47. Letter from Commission staff to Malibu Valley Farms, Inc., Re: Submittal of the preliminary fire access & fuel modification plans, November 3, 2004
48. Letter from Cox, Castle & Nicholson Law Office to Commission staff, Re: Additional information to complete Application NO. 4-02-131, November 29, 2004
49. Letter from Commission staff to Malibu Valley Farms, Inc., Re: Submittal of additional materials for CDP No. 4-02-131, November 30, 2004
50. Letter from Commission staff to Malibu Valley Farms, Inc., Re: Submittal of additional materials for CDP No. 4-02-131, December 23, 2004
51. Letter from Malibu Valley Farms, Inc. to Commission staff, Re: Permit issued by the Dept. of Fish & Game, June 24, 2005
52. Letter from Malibu Valley Farms, Inc. to Commission staff, Re: Biological Resource Photographs & Maps and Vegetation Survey with Fuel Modification requirements needed to complete CDP No. 4-02-131, September 13, 2005
53. Letter from Commission staff to Malibu Valley Farms, Inc., Re: Remaining items needed to complete CDP No. 4-02-131 & response to 9/13/05 letter, February 22, 2006
54. Letter from Malibu Valley Farms, Inc. to Commission staff, Re: copy of the report prepared by Sapphos Environmental, Inc., February 26, 2006
55. Letter from Malibu Valley Farms, Inc. to Commission staff, Re: Request for continuance of the 5/11/06 hearing, April 28, 2006
56. Letter from Malibu Valley Farms, Inc. to Commission staff, Re: Removal of CDP No. 4-02-131 from the May 11, 2006 agenda, May 2, 2006
57. Letter from Commission staff to Malibu Valley Farms, Inc., Re: Schedule of the CDP No. 4-02-131 for the July 2006 hearing, June 16, 2006
58. Letter from Malibu Valley Farms, Inc. to Commission staff, Re: Signed copy of Agreement for Extension of Time for Decision on CDP NO. 4-02-131, July 7, 2006
59. Letter from Malibu Valley Farms, Inc. to Commission staff, Re: Request to withdraw CDP NO. 4-02-131 from the August 9, 2006 hearing, July 27, 2006
60. Various letters from the public in support for Malibu Farms Equestrian Center
61. Memorandum from John Dixon, PhD regarding ESHA on the Subject Property, 11/2/06
62. Staff Report for Claim of Vested Rights application No. 4-00-279-VRC (Malibu Valley, Los Angeles County), November 3, 2006 (Item Wednesday 15a).

CEASE AND DESIST ORDER NO. CCC-06-CD-14 AND
RESTORATION ORDER NO. CCC-06-RO-07

1.0 CEASE AND DESIST ORDER CCC-06-CD-14

Pursuant to its authority under Public Resources Code (hereinafter, "PRC") Section 30810, the California Coastal Commission (hereinafter, "Commission") hereby authorizes and orders Malibu Valley Farms, Inc., all its employees, agents, and contractors, and any persons acting in concert with any of the foregoing (hereinafter, "Respondent") to:

- A. Cease and desist from maintaining unpermitted development (as described in Section 5.0, below) on the portions of a 31.02-acre parcel identified in Section 4.0 below that are in the Coastal Zone (hereinafter, "subject property" - approximately 28 acres of the 31.02 acre parcel),
- B. Cease and desist from conducting any further unpermitted development on the subject property,
- C. Remove all unpermitted development from the subject property, and
- D. Restore the subject property by complying with the requirements of these Cease and Desist and Restoration Orders (hereinafter, "Orders") as described herein.

2.0 RESTORATION ORDER CCC-06-RO-07

Pursuant to its authority under PRC Section 30811, the Commission hereby orders and authorizes the following:

2.1 REMOVAL PLAN

- A. Within 15 days of the issuance of these Orders, submit a Removal Plan, for the review and approval of the Executive Director, for removal of all unpermitted development on the property, including but not limited to: the equestrian facility on the subject property which, in turn, includes, but is not limited to: 1) a 45,000 sq. ft. arena with a five-foot high surrounding wooden wall with posts, 2) a 25,200 sq. ft. riding arena, 3) numerous storage containers, 4) numerous portable tack rooms, 5) numerous pipe corrals and covered shelters, 6) an approximately 2,000 sq. ft. parking area, 7) a 2,660 sq. ft. breeding facility, 8) a 1,440 sq. ft. one-story barn, 9) railroad tie walls, 10) an approximately 20,000 sq. ft. fenced paddock, 11) all fencing throughout the subject property, 12) graded dirt access roads 13) two at-grade crossings through Stokes Creek, 14) two 2,025 sq. ft. covered corrals and one 1,080 sq. ft. covered corral, 15) and all other unpermitted structures and imported soil/sand on the subject property. Removal of non-native landscaping shall be addressed in the Restoration Plan, Section 2.4, below.

B. The Removal Plan must be prepared by a certified civil engineer or other equivalently qualified professional, licensed by the State of California and must contain the following provisions:

- a. A detailed description of proposed removal activities.
- b. A timetable for removal.
- c. The location of a disposal site for removed material. The site must be a licensed disposal facility authorized to accept such material. If the disposal site is located in the Coastal Zone and is not an existing sanitary landfill, a Coastal Development Permit shall be required. Any hazardous materials must be transported to a licensed hazardous waste disposal facility in compliance with all applicable laws.

C. If mechanized equipment is used, the Removal Plan must contain the following provisions:

- a. Type of mechanized equipment required for removal activities;
- b. Length of time equipment must be used;
- c. Routes utilized to bring equipment to and from the property;
- d. Storage location for equipment when not in use during removal process;
- e. Hours of operation of mechanized equipment;
- f. Contingency plan in case of a spill of fuel or other hazardous release from use of mechanized equipment that addresses clean-up and disposal of the hazardous materials and water quality concerns;
- g. Measures to be taken to protect water quality of Stokes Creek and areas that drain into it.

D. The Removal Plan shall indicate that removal shall commence no later than 10 days after the approval of the Removal Plan by the Executive Director. The Removal Plan shall be fully implemented and all work shall be consistent with the terms of the final approved plan, including that removal shall be completed according to the time schedule provided in the approved plan. Thereafter, Respondent shall restore the Subject Property in accordance with Sections 2.2 and 2.4, below

E. Within 10 days of completion of the removal (such date being established by the time schedule provided in the approved Removal Plan), Respondent shall submit, for the review and approval of the Executive Director, a report

documenting the complete removal of the unpermitted development specified in Section 5.0. The report shall include plans showing the location of all removed development from the Subject Property and photographs that clearly show all portions of the Subject Property, the locations of which are annotated to a copy of the plans required by Section 2.4.

2.2 RESTORATIVE GRADING PLAN

A. Within 15 days of the issuance of these Orders, Respondent shall submit a Restorative Grading Plan, for the review and approval of the Executive Director. The Restorative Grading Plan shall demonstrate that the topography of the Subject Property in the location of the two at-grade, graded stream crossings will be restored to the condition that existed prior to the unpermitted development. The Restorative Grading Plan shall indicate that fill material shall be removed from the stream channel and the banks of the stream shall be restored to a natural contour, consistent with the stream bank on the upstream and downstream side. The Restorative Grading Plan shall include sections showing existing, unpermitted grades and finished grades, and quantitative breakdown of grading amounts (cut/fill), drawn to scale with contours that clearly illustrate 1) the existing topography of the subject property caused by the grading disturbance and fill in the location of the two crossings of Stokes Creek and 2) the restored contours. The Restorative Grading Plan shall also demonstrate that restoration of the subject property will create a successful riparian stream course similar to a natural, undisturbed stream that as closely as possible restores the original topography of the subject property to the condition that existed prior to the unpermitted activity.

B. The Restorative Grading Plan shall indicate that measures shall be taken to ensure that erosion from the area subject to re-grading activities does not enter into Stokes Creek, consistent with Section 2.3.

C. The Restorative Grading Plan shall indicate that the location for any excavated material to be removed from the site as a result of the restorative grading of the impacted areas shall be identified. If the disposal site is located in the Coastal Zone and is not an existing sanitary landfill, a Coastal Development Permit shall be required.

D. The Restorative Grading Plan shall indicate that restorative grading shall commence no later than 10 days after the approval of the Removal Plan by the Executive Director. Restorative grading shall be completed according to the time schedule and fully implemented in accordance with the terms of final, approved Restorative Grading Plan. Thereafter, Respondent shall restore the subject property in accordance with Sections 2.4, below.

E. Within 10 days of completion of the restorative grading (such date being established by the time schedule provided in the approved Restorative Grading

Plan), Respondent shall submit, for the review and approval of the Executive Director, a report documenting the completion of the Restorative Grading. The report shall include plans showing the location of all graded areas on the Subject Property and photographs that clearly show all portions of the Subject Property included in the Restorative Grading, the locations of which are annotated to a copy of the plans required by Section 2.4.

2.3 EROSION CONTROL PLAN

A. Within 15 days of the issuance of these Orders, Respondent shall submit, for the review and approval of the Executive Director, an Erosion Control Plan. The Erosion Control Plan shall be prepared by a qualified restoration ecologist or resource specialist and shall demonstrate that no erosion and dispersion of sediments across the Subject Property via rain, nuisance flow runoff, or wind will occur during the removal of unpermitted development, during restorative grading, or during implementation of the revegetation plans.

B. The Erosion Control Plan shall specify the erosion control measures that shall be installed on the Subject Property prior to or concurrent with the removal and grading actions required by Sections 2.1 and 2.2 and maintained until the impacted areas have been revegetated, consistent with Section 2.4, to minimize erosion and transport of sediment outside of the disturbed areas.

C. The Erosion Control Plan shall indicate that temporary erosion control measures, including but not limited to the following, shall be used: temporary hay bales, silt fences, swales, sand bag barriers, wind barriers, and biodegradable erosion control material. In addition, all stockpiled material shall be covered with geofabric covers or other appropriate cover and all graded areas shall be covered with geotextiles or mats.

D. The Erosion Control Plan shall include, at a minimum, 1) a narrative describing and identifying all erosion control measures to be used, 2) detailed site plan showing the location of all temporary erosion control measures, and 3) a schedule for installation and removal of temporary erosion control measures, in coordination with the long-term restoration of the subject property.

E. The Restorative Grading Plan shall indicate that erosion control measures shall be provided at all times of the year for at least three years or until the revegetation described in Section 2.4 has been established, whichever occurs first, and then shall be removed or eliminated by Respondent.

F. Upon approval of the Erosion Control Plan, Respondent shall implement the Erosion Control Plan subsequent to or concurrent with undertaking the Removal and Restorative Grading Plans.

G. Within 10 days of implementation of the Erosion Control Plan (such date being established by the time schedule provided in the approved Erosion Control Plan), Respondent shall submit, for the review and approval of the Executive Director, a report documenting the completion of the measures required in the Erosion Control Plan. The report shall include plans showing the location of all erosion control measures on the Subject Property and photographs that clearly show all portions of the Subject Property included in the restoration, the locations of which are annotated to a copy of the plans required by Section 2.4.

2.4 REVEGETATION PLAN

A. Within 15 days of the issuance of these Orders, Respondent shall submit, for the review and approval of the Executive Director, a Revegetation Plan that demonstrates that the areas impacted by the construction or removal of unpermitted development on the subject property will be restored using planting of species endemic to this portion of the Santa Monica Mountains. The Revegetation Plan shall include all graded areas and areas impacted by the unpermitted development (hereinafter "Planting Area") and demonstrate that the disturbed areas will have a similar plant density, total cover and species composition to that typical of an undisturbed riparian area in the Santa Monica Mountains within 5 years from the initiation of revegetation activities.

B. 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 should 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, micorrhyzal inoculation, etc.) shall also be included.

C. The Revegetation Plan shall be prepared by a qualified restoration ecologist or resource specialist and include a plan showing the type, size, and location of all plant materials that will be planted in the Planting Area, all invasive and non-native plants to be removed from the Planting Area, the topography of the site, all other landscape features, and a schedule for installation of plants and removal of invasive and/or non-native plants.

D. The Revegetation Plan shall include a plan for weed eradication, which shall include the following: 1) after restoration takes place, weeding should be monthly and shall impose a zero tolerance on non-native, invasive species; 2) weeding shall occur at this frequency and care until the native vegetation is sufficiently

well-established to resist continued colonization by exotics; and 3) weeding shall be done by hand and must be supervised by a restoration biologist to ensure that the native plants are not disturbed.

E. The Revegetation Plan shall show all existing vegetation on the subject property. The vegetation planted on the subject property shall consist only of native, non-invasive plants endemic to Santa Monica Mountains vegetative communities. 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 unpermitted development and restoration and revegetation activities, are eradicated. The Revegetation Plan shall identify that all non-native plant species are removed from the Planting Area prior to any restorative grading or revegetation activities on the subject property.

F. The Revegetation Plan shall 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., a specified percentage ground cover or relative diversity of species, or a specified average height for a species).

G. 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 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. The basis for the selection of each performance criterion shall also be explained.

H. The Revegetation Plan shall describe the use of artificial inputs, such as watering or fertilization that may be used to support the establishment of the plantings and specify that only the minimal necessary amount of such inputs are used. The Revegetation Plan shall not include permanent irrigation system 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. All irrigation infrastructures must be removed by the end of the monitoring period described in Section 2.4.K.

I. All planting in the approved Revegetation Plan shall be installed in accordance with the schedule and requirements of the approved Revegetation Plan and no later than 15 days after the completion of the components of the Restorative Grading Plan or Removal Plan. The Revegetation shall be planted 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 15 day deadline to implement the Revegetation Plan may be extended as provided for under the provisions of Section 10.0, herein.

J. Consistent with Section 2.3, the Revegetation Plan shall specify the methods to be used after planting has occurred 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.

K. The Revegetation Plan shall describe the monitoring and maintenance methodology and shall include the following provisions:

a. Respondent shall submit, on an annual basis for a period of five years from the date of implementation of the Revegetation Plan (no later than December 31st of each year) a written report, for the review and approval of the Executive Director, prepared by a qualified resource specialist, evaluating compliance with the approved Revegetation Plan. The annual reports shall include further recommendations and requirements for additional restoration activities in order for the project to meet the objectives of the Revegetation Plan. These reports shall also include photographs taken annually from the same pre-designated locations (annotated to a copy of the site plans) indicating the progress of recovery in the Planting Area.

b. At the end of the five-year period, Respondent shall submit a final detailed report prepared by a qualified resource 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 Revegetation Plan, Respondent shall submit a revised or supplemental plan to compensate for those portions of the original program that were not successful within 30 days of the Executive Director's determination that the restoration was unsuccessful. The Executive Director will determine if the revised or supplemental revegetation plan must be processed as a CDP, a new Restoration Order, or a modification of these Orders.

L. Immediately following the complete removal of all unpermitted development and recontouring of the disturbed banks of Stokes Creek to its pre-violation condition and no later than 10 days after implementation of the Restorative Grading Plans, Respondent shall implement the Revegetation Plan

M. Within 15 days of the implementation of the Revegetation Plan, Respondent shall submit to the Executive Director a report documenting the project's completion. The report shall include photographs that clearly show the entire revegetated area on the Subject Property. The report shall also include a statement by the professionally licensed restoration ecologist or resource specialist indicating that the Revegetation Plan has been implemented and describing the success of the plantings.

2.5 RESTORATION MANAGER

A qualified individual who will be personally responsible for all phases of the restoration shall be identified by name as the restoration manager. Different phases of the restoration shall not be assigned to different contractors without onsite supervision by the restoration manager. The restoration manager shall be a qualified restoration biologist.

2.6 GOALS AND PERFORMANCE STANDARDS

A. Restoration of the subject property shall consist of removal of all unpermitted development, re-grading of the banks of Stokes Creek that were damaged by the two at-grade stream crossings, and revegetation of all areas on the subject property impacted by the unpermitted development. Revegetation shall consist of native plant species endemic to this portion of the Santa Monica Mountains, and shall include riparian vegetative plant communities. The restoration shall also include eradication of non-native vegetation in areas impacted by the unpermitted development.

B. The revegetation required in the restoration shall include riparian plant species throughout all areas that are designated as riparian habitat by the restoration ecologist. Appropriate oak woodland, chaparral, and coastal sage scrub plant species shall be planted around the riparian area as a transitional zone between the riparian areas and the upland sloped areas east of Stokes Creek and the alluvial plain areas west of Stokes Creek.

C. The goal of the restoration shall include revegetation of all graded areas, areas impacted by the unpermitted development, and areas impacted by removal of major vegetation so that disturbed areas have a similar plant density, total cover and species composition as that typical of undisturbed chaparral vegetation in the surrounding area within 5 years from the initiation of revegetation activities.

D. Measures shall be taken to aerate the soil impacted by unpermitted activity prior to any revegetation pursuant to Section 2.4. Erosion control measures shall be implemented consistent with Section 2.3.

2.7 Appendix A of the Plans required in Section 2.0 shall include a description of the education, training and experience of the qualified restoration ecologist, civil engineer, and/or resource specialist who shall prepare the Plans required in 2.0. A qualified restoration ecologist for this project shall be an ecologist, biologist, or botanist who has experience successfully completing restoration or revegetation of riparian habitats and oak woodlands/chaparral. If this qualified restoration ecologist does not have experience in creating the soil conditions necessary for successful revegetation of riparian vegetation and oak woodlands/savannah, a qualified soil scientist shall be consulted to assist in the development of the conditions related to soils in the Revegetation and Monitoring Plan. 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 civil engineer for this project shall be an engineer who has experience in removal of large structures adjacent to riparian areas.

2.8 All plans, reports, photographs and any other materials required by these Orders shall be sent to:

California Coastal Commission
Headquarters Enforcement Program
Attn: Aaron McLendon
45 Fremont Street, Suits 2000
San Francisco, California 94105
Facsimile (415) 904-5235

With a copy sent to:
California Coastal Commission
South Central Coast District
Attn: Tom Sinclair
89 S. California Street, Suite 200
Ventura, CA 93001
Facsimile (805) 641-1732

2.9 If the Executive Director determines that any modifications or additions to the submitted Plans under 2.0 are necessary, he shall notify Respondent. Respondent shall complete the requested modifications and resubmit the Removal Plan for approval within 10 days of the notification.

3.0 PERSONS SUBJECT TO THESE ORDERS

The persons subject to these Orders are Malibu Valley Farms, Inc., its employees, agents, contractors, and anyone acting in concert with the foregoing.

4.0 IDENTIFICATION OF SUBJECT PROPERTIES

The property that is the subject of these Orders are located at all portions of a 31.02-acre parcel which are in the Coastal Zone (approximately 28 acres of the 31.02 acre parcel) at the northeast corner of Mulholland Highway and Stokes Canyon Road in the Santa Monica Mountains area of unincorporated Los Angeles County, Assessor's Parcel Number 4455-028-04.

5.0 DESCRIPTION OF COASTAL ACT VIOLATION

The unpermitted development consists of: grading and vegetation removal and the construction of an extensive, approximately six-acre equestrian facility without any Coastal Development Permits. The equestrian facility includes, but is not limited to, 1) a 45,000 sq. ft. arena with a five-foot high surrounding wooden wall with posts, 2) a 25,200 sq. ft. riding arena, 3) numerous storage containers, 4) portable tack rooms, 5) numerous pipe corrals and covered shelters, 6) an approximately 2,000 sq. ft. cleared and paved parking area, 7) a 2,660 sq. ft. breeding facility, 8) a 1,440 sq. ft. one-story barn, 9) railroad tie walls, 10) an approximately 20,000 sq. ft. fenced paddock, 11) various fencing throughout the property, 12) graded dirt access road with at-grade crossing through Stokes Creek and a second at-grade dirt crossing of Stokes Creek, 13) two 2,025 sq. ft. covered corrals and one 1,080 sq. ft. covered corral, 14) grading, and 15) removal of major vegetation and ESHA throughout the Subject Property.

6.0 COMMISSION AUTHORITY TO ACT

The Commission is issuing these Orders pursuant its authority under Sections 30810 and 30811 of the Public Resources Code.

7.0 FINDINGS

These Orders are being issued on the basis of the findings adopted by the Commission on November 15, 2006, as set forth in the foregoing document entitled: STAFF RECOMMENDATIONS AND FINDINGS FOR CEASE AND DESIST AND RESTORATION ORDERS, and Exhibits thereto.

8.0 EFFECTIVE DATE

These Orders shall become effective as of the date of issuance by the Commission and shall remain in effect permanently unless and until rescinded by the Commission.

9.0 COMPLIANCE OBLIGATION

Strict compliance with the terms and conditions of these Orders is required. If the Respondent fails to comply with the requirements of these Orders, including any deadline contained herein, it will constitute a violation of these Orders and may result in the imposition of civil penalties of up to six thousand dollars (\$6,000) per day for each day in which compliance failure persists, in addition to any other penalties authorized under Chapter 9 of the Coastal Act, including exemplary damages under Section 30822.

10.0 EXTENSIONS OF DEADLINES

If the Executive Director determines that the Respondent has made a showing of good cause, he/she shall grant extensions of the deadlines contained herein. Any extension requests must be made in writing to the Executive Director and received by the Commission staff at least 10 days prior to the expiration of the subject deadline.

11.0 SITE ACCESS

Respondent 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 Respondent in carrying out the terms of these Orders.

12.0 APPEALS AND STAY RESOLUTION

Pursuant to Public Resources Code Section 30803(b), the Respondent, against whom these Orders are issued, may file a petition with the Superior Court for a stay of these Orders.

13.0 GOVERNMENT LIABILITY

The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by the Respondent 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 Respondent or their agents in carrying out activities pursuant to these Orders.

14.0 GOVERNING LAW

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

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.

Issued this 15th day of November, 2006 in Huntington Beach, California

Peter M. Douglas, Executive Director
California Coastal Commission

Date