

CALIFORNIA COASTAL COMMISSION

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Item Th 14

Staff: N. Patrick Veearst
Staff Report: February 2, 2007
Hearing Date: February 15, 2007

STAFF REPORT AND FINDINGS FOR NOTICE OF VIOLATION

RELATED VIOLATION FILE: V-4-05-063

PROPERTY LOCATION: 600 block of Old Topanga Canyon Road; Los Angeles County Assessor's Parcel Number 4438-018-005.

DESCRIPTION OF PROPERTY: A 39.67-acre undeveloped parcel located off of Old Topanga Canyon Road, containing environmentally sensitive chaparral and oak woodlands.

PROPERTY OWNER: Wildcrew's Playground LLC: Peggy Gilder, Daniel Norris, et al.

VIOLATION DESCRIPTION: Unpermitted development including, but not limited to, grading, excavation and dumping of soil materials, removal of major vegetation, and placement of rock walls and culverts, in an environmentally sensitive habitat area.

SUBSTANTIVE FILE DOCUMENTS:

1. Notice of Violation file No. CCC-07-NOV-01 and;
2. Exhibits 1 through 53

CEQA STATUS: Exempt (CEQA Guidelines (CG) §§ 15060(c)(2)), and Categorically Exempt (CG §§ 15061(b)(2), 15037, 15038, and 15321).

I. SUMMARY OF STAFF RECOMMENDATION

This violation involves unpermitted development including, but not limited to, grading, excavation and dumping of soil materials, removal of major vegetation, and placement of rock walls and culverts, in an environmentally sensitive habitat area, on a 39.67-acre undeveloped parcel owned by Wildcrew's Playground LLC ("Wildcrew's"), located off of Old Topanga Canyon Road in the County of Los Angeles ("subject property"). Wildcrew's has admitted that it undertook unpermitted development.

The matter before the Commission in this hearing is whether development has been performed in violation of the Coastal Act on the subject property and, therefore, whether a Notice of Violation should be recorded pursuant to Section 30812 of the Coastal Act. It should be noted that Notices of Violation are for informational purposes, and are intended to provide potential innocent purchasers with notice that violations have occurred, and remain, on a particular property.

Wildcrew's violated the Coastal Act by undertaking development on the subject property without obtaining the required CDP. Accordingly, Commission staff ("staff") recommends that the Commission find that a violation of the Coastal Act has occurred on the subject property. If the Commission finds that a violation has occurred, the Executive Director shall record a Notice of Violation at the Los Angeles County Recorder's Office. The Notice of Violation will become part of the chain of title of the subject property, will be subject to review by potential buyers, will notify them of the existence of Coastal Act violations on the subject property, and will protect any potential innocent purchasers. The Coastal Commission has jurisdiction to take enforcement action to address these violations by recording a Notice of Violation because the violation occurred in an area without a certified Local Coastal Program, and involves development in the Coastal Zone that is not exempt and requires a coastal development permit ("CDP").

On June 6, 2005, staff received a report (**Exhibit 29**) from a neighboring property owner that mechanized equipment was being used to grade and remove vegetation from property located predominately north and east of Old Topanga Canyon Road in the area of the 600 block.

On June 21, 2005, staff received another report (**Exhibit 28**) from the same neighbor of grading (both cut and fill) under oak trees. The report stated that the activities had been occurring for 3 to 4 weeks.

On June 22, 2005, staff received an additional report (**Exhibit 27**) containing two dated photographs (**Exhibit 47**). The photographs provided evidence that mechanized equipment was used, native vegetation had been removed, at least one oak tree had been cut, and excavation of soil and grading had taken place.

On July 12, 2005, staff opened a violation file and sent a Notice of Violation letter (**Exhibit 26**) to Ms. Peggy Gilder, in her capacity as the contact person for Wildcrew's, indicating that violations of the Coastal Act had been confirmed on the subject property including grading, grading within the dripline of oak trees, cutting of oak trees, and vegetation removal.

On July 19, 2005, staff received a phone call from Ms. Donna Shen, of Schmitz and Associates, representing Ms. Gilder and Wildcrew's, confirming that work had been taking place on the subject property. She asserted that the owners were "grading an old existing trail" in order to get access. She asked for an extension of the August 15, 2005 deadline set in the NOV letter for submittal of an after-the-fact CDP application for the development. Ms. Shen assured staff that a CDP application would be forthcoming, that all work had ceased, and she agreed to allow staff to conduct a site visit to assess the full extent and nature of the work performed. Based on these assurances, staff agreed to extend the deadline for submittal of a CDP application to September 19, 2005.

On August 17, 2005, staff independently verified and photographed development on the subject property (**Exhibit 48**) that is not exempt from the permit requirements of the Coastal Act. Staff made the photographs from private property (with permission) and public property located on the opposite side of the canyon from the subject property.

On September 19, 2005, Schmitz and Associates, on behalf of Wildcrew's Playground LLC, submitted to permitting staff a request for "...an *After the Fact* Exemption for Brush Clearance, Repair, and Maintenance of an existing, driveway [sic]," and a Claim of Vested Rights application "...for the historically existing driveway and flat, cleared pad on the above property." It should be noted that Wildcrew's has admitted that some of the unpermitted development at issue is not exempt or permitted (**Exhibit 21**). Furthermore, it cannot be pre-coastal development, and therefore potentially "vested," as it occurred in 2005.

Some or all of the unpermitted development has taken place in an area designated as an environmentally sensitive habitat area ("ESHA") in Los Angeles County's Malibu/Santa Monica Mountains Land Use Plan certified by the Commission in 1986 (**Exhibit 46**). In addition, the Commission's staff ecologist, Dr. John Dixon, in a memo dated March 25, 2003 (**Exhibit 52**) indicates that chaparral and oak woodlands in the Santa Monica Mountains are ESHA if the habitat is largely undeveloped and pristine and part of a contiguous block of relatively pristine native vegetation. Moreover, Commission staff, by direct observation and by reviewing aerial photographs (**Exhibit 51**) of this site, has observed this to be the case on Wildcrew's property. Coastal Act regulations require a CDP for development in ESHA.

After repeated failed attempts to negotiate a site inspection with Wildcrew's, staff contacted the Attorney General's office and sought an inspection warrant. On October 14, 2005, Judge Charles W. McCoy issued an inspection warrant (**Exhibit 42**) that "commanded" agents of the California Coastal Commission "to conduct an inspection" of the subject property.

On October 19, 2005, after giving Wildcrew's Playground LLC notice twenty-four (24) hours prior to the inspection (as provided for in the warrant), staff entered the subject property under the authority of the inspection warrant. Since the property owners refused to comply with the terms of the inspection warrant, staff was only on a small portion of the property for a short while. However, staff was able to see and photograph (**Exhibit 50**) development that had taken place in an environmentally sensitive habitat area.

On July 13, 2006, staff notified Schmitz and Associates that they were denying Wildcrew's after-the-fact exemption request because the repair and maintenance activities described in the application occurred in ESHA, and therefore required a CDP pursuant to the Commission's regulations at California Code of Regulations, title 14, section 13252(a)(3).

Also on July 13, 2006, staff sent Schmitz and Associates a separate letter indicating that in order for staff to complete an analysis of Wildcrew's Vested Rights Claim, further information was needed. Staff had previously sent Schmitz and Associates a letter, on February 22, 2006 (**Exhibit 35**), requesting some of the same information, which had not been provided at that time. To date, the requested information has still not been received. Staff notes that if the application is ever completed, and if the Commission finds that the unpermitted development on the subject property is vested, the Executive Director would accordingly record a notice of rescission pursuant to Coastal Act Section 30812(f).

On November 9, 2006, after attempting to address the violations on the property for nearly a year and a half, and because Wildcrew's had not submitted a CDP application as promised, the Executive Director issued a Notice of Intent to Record a Notice of Violation of the Coastal Act (NOI) to Wildcrew's Playground LLC to put any potential purchasers of the subject property on notice that Coastal Act violations had occurred and remained on the property and to protect any potential innocent purchasers. Pursuant to Coastal Act Section 30812(b), the NOI provided a 20-day time period for Wildcrew's to submit a written objection to the recordation of a Notice of Violation.

On November 29, 2006, Ronald Zumbrun (Zumbrun Law Firm), representing Wildcrew's, contacted staff by letter and stated his client's objection to recordation of the Notice of Violation and this matter was scheduled for hearing in February, 2007.

The only issue before the Commission is, based on substantial evidence, whether development has been performed in violation of the Coastal Act on the subject property. Despite not being able to conduct a complete site inspection, staff has been able to confirm that unpermitted development, not exempt from CDP requirements, has occurred on the subject property in violation of the Coastal Act. Staff has reached that conclusion based (in part) on the following evidence:

1. Photographs submitted by a neighboring property owner (**Exhibits 47 and 49**);
2. Photographs and direct observation made by staff from across the canyon (**Exhibit 48**);
3. Photographs and direct observation made onsite during a brief and incomplete site inspection (**Exhibit 50**);
4. Conversations with, and correspondence (**Exhibit 21**) from, Donna Shen, representing Wildcrew's, in which she admits to non-exempt, unpermitted development and to grading and vegetation removal on the subject property;
5. Wildcrew's request for an "After the Fact Exemption for Brush Clearance, Repair, and Maintenance of an existing, driveway," dated September 19, 2005 (**Exhibit 32**);
6. Los Angeles County's Malibu/Santa Monica Mountains Land Use Plan ESHA map (**Exhibit 46**); and

7. Dr. Dixon's *Designation of ESHA in the Santa Monica Mountains* memorandum dated March 25, 2003 (**Exhibit 52**).

Therefore, staff recommends that the Commission find that Coastal Act violations have occurred on the subject property. Until the violations are fully resolved, a Notice of Violation is necessary in this matter to inform potential purchasers that the violations exist.

II. HEARING PROCEDURES

Notice of Violation

The procedures for a hearing on the Executive Director's proposed recordation of a notice of violation are set forth in Coastal Act **Section 30812 (c) and (d)** as follows:

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

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

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

III. STAFF RECOMMENDATION

1.A. Motion re: Notice of Violation:

I move that the Commission find that a violation of the Coastal Act has occurred, as described in the staff recommendation for CCC-07-NOV-01.

1.B. Recommendation of Approval:

Staff recommends a **YES** vote. Passage of this motion will result in the Executive Director recording Notice of Violation No. CCC-07-NOV-01. The motion passes only by an affirmative vote of the majority of Commissioners present.

1.C. Resolution That a Violation of the Coastal Act Has Occurred:

The Commission hereby finds that a violation of the Coastal Act has occurred, as described below, and adopts the findings set forth below on the grounds that development has occurred without a coastal development permit in violation of the Coastal Act.

IV. FINDINGS FOR NOTICE OF VIOLATION CCC-07-NOV-01

A. Description of Subject Property

The subject property is a 39.67-acre undeveloped parcel extending mostly north and east of Old Topanga Canyon Road in the County of Los Angeles. Old Topanga Canyon Road bisects the extreme southwest corner of the property. The property has steep topography covered with chaparral, with oak woodlands in the canyons. Part of the parcel where development has occurred is in an area mapped specifically as ESHA in Los Angeles County's Malibu/Santa Monica Mountains Land Use Plan (**Exhibit 46**), certified by the Commission on December 11, 1986. The chaparral onsite adjoins other parcels with large contiguous areas of relatively pristine chaparral and oak woodlands including State parklands. Primary access appears to be from Old Topanga Canyon Road via a partially paved driveway of unknown length.

B. History of Violations

1. Initial Violation Report

On June 6, 2005, enforcement staff at the Commission's South Central Coast District office received an email report (**Exhibit 29**) from a neighboring property owner that mechanized equipment was being used to grade under oak trees and that oak trees and other vegetation were being cut and removed on a parcel located in the 600 block of Old Topanga Canyon Road.

On June 8, 2006, enforcement staff investigated the report and located the subject property. However, staff could not see much from the road. On June 21, 2005, staff received another report (**Exhibit 28**) of illegal grading taking place under oak trees, vegetation removal, and cutting of oaks on the subject property. This report indicated that the work had been going on for "3 to 4 weeks."

On June 22, 2005, a member of the public sent staff an email (**Exhibit 27**) with two photographs (**Exhibit 47**) attached which were taken from property across the canyon (opposite the subject property) that showed heavy equipment in use, excavation in

progress, and vegetation that had been cut, including at least one oak tree. Enforcement staff researched Commission records and verified that no CDP had been issued for any of this work.

On July 6, 2005, staff spoke with a different neighboring property owner who confirmed that equipment had been operating, for multiple days, on the subject property.

2. Staff Attempts to Resolve the Violations

On July 12, 2005, based on the photographs received and accounts from neighbors, staff sent a Notice of Violation letter (**Exhibit 26**) to Wildcrew's after determining that the reported violations had taken place on Los Angeles County APN 4438-018-005.

On July 19, 2005, staff spoke with Donna Shen, Wildcrew's agent, who confirmed that development had taken place on the subject property consisting of "grading an old existing trail," but had stopped. She also informed staff of her client's intention to seek an "after-the-fact" coastal development permit for the work and she agreed to a site visit so that staff could ascertain the full extent and nature of the development that had taken place.

On July 20, 2005, staff received a letter from Ms. Shen, dated July 19, 2005 (**Exhibit 25**), memorializing the phone conversation of the 19th. In the letter she confirmed that all activity had ceased and no future activity constituting development would take place without the benefit of a CDP. She also reiterated that her clients would be submitting an after-the-fact CDP application by September 19, 2005.

On July 20, 2005, Ms. Shen called and scheduled a site visit for August 2, 2005. Ms. Shen indicated that she, Peggy Gilder, and Bruce Malinowski would be in attendance.

On July 27, 2005, staff was again contacted by Ms. Shen and told that a "filmmaker" friend or acquaintance of her clients wished to film a documentary about land development in California and, specifically, "how difficult it is to develop in the Santa Monica Mountains." Staff was informed that this "filmmaker" would be onsite, with a professional film crew, filming during the site visit scheduled for August 2, 2005. Having never encountered the unusual situation of being required, as a condition of conducting a site inspection, to appear in a documentary being filmed by a third party professional filmmaker before, staff expressed reservations about being filmed and not knowing how this film would be used or distributed.

On July 28, 2005 staff informed Ms. Shen that staff did not consent to being filmed for a documentary during the site visit. Staff made it clear that they needed access to the site to assess the extent of the unpermitted development so as to inform the process in anticipation of her clients' promised CDP application. Staff explained that the purpose of a site visit is to observe and record site conditions, not to engage in some sort of performance and that site visits are a standard component of the CDP application process, designed to assist in the permitting process her clients indicated they wanted to pursue.

Ms. Shen replied that her clients were aware of staff's concerns, but insisted that they had a legal right to film if they so chose. Staff conceded that they may have a legal right to document site conditions before or after a site visit, but that they did not want to be filmed for a documentary during the site inspection since it would not further the goal of resolving the violation and it would both distract from and impede staff's work. Staff again expressed reservations about how such a film might be used and the possibility of any part of the site visit being taken out of context, edited or otherwise being misconstrued. Staff suggested that a modest solution would be for staff to also film the site visit so that they would have their own record to avoid there being any confusion or miscommunication later. This option was offered in the interest of quickly settling the matter in a way that might be acceptable to Ms. Shen's clients, even though staff did not agree with her client's position, and even though it had the potential to cause inconvenience and additional expense. In addition, since all site visits include photographic records, this option would be generally in keeping with the usual site inspection procedures. Ms. Shen replied that she would discuss that possibility with her clients and get back to staff. She also gave staff the name and phone number of the filmmaker (Richard Oshen) and suggested that they call him. She informed staff that Mr. Oshen was "independent" and not retained or employed by her client.

On August 1, 2005, staff called Ms. Shen and was informed by her that she had discussed staff's reluctance to be filmed and staff's compromise proposal that they also concurrently film the site visit with her clients. She said it was not acceptable to her clients for the Commission staff to film the site visit, even if staff agreed to have her clients' film crew present at the same time. She said that while a final decision about filming the site visit was still pending, as far as she knew, the film crew was still planning on being there. Staff reiterated their wish not to be filmed in the absence of their ability to also record events and that they would not agree to be filmed under those conditions. Ms. Shen said that she would let staff know about her client's decision regarding filming.

On August 2, 2005, staff again spoke with Ms. Shen and was told that Richard Oshen and his crew would definitely be on site and that her clients had made a decision to film the site visit (scheduled for that morning) and, in addition, had refused to allow staff to also film the inspection. Consistent with previous conversations, staff declined to be unilaterally filmed, without being given permission to similarly record events, and informed Ms. Shen that, given the circumstances, they would not be at the site as scheduled. Staff also informed Ms. Shen that they would explore other options for getting on site, including the possibility of an inspection warrant. Staff again offered that it might be feasible for Ms. Shen's clients to film as long as staff was also able to record events. Ms. Shen reiterated her clients' refusal to allow staff to videotape the site visit. However, Ms. Shen said that she would again discuss the matter with her clients. Staff informed Ms. Shen that they would need to hear from her by 9:30 am if they were to make an 11:00 am site visit. She said that she might call back, but staff did not hear from her until they received a letter (**Exhibit 24**) faxed later that afternoon in which she attempted to memorialize recent telephone conversations with Commission staff and reiterated her client's position that "...any and all inspections will be filmed by film crews authorized

by them.” She also stated that: “We continue to work to prepare the above-referenced CDP application and intend to submit this in the near future.” Yet, as of the date of this staff report, one year and six months later, staff has still not received the promised CDP application.

On August 4, 2005, wishing to clarify representations in Ms. Shen's August 2, 2005 letter, staff sent Ms. Shen a letter (**Exhibit 23**) clarifying staff's memory of phone conversations. In that letter, staff also reiterated their position that “It is not appropriate for the owners of property to demand that Coastal Commission staff agree to appear in a documentary film in order to carry out their job of inspecting a site where violations of the Coastal Act are alleged to exist.” Staff also updated their position about mutual filming of the proposed site visit, retracting their previous offer to allow themselves to be filmed if they could also film. In this letter, staff stated: “We will not authorize your clients to film or photograph the Commission staff during a site visit for a documentary.” Staff stated their hope that Ms. Shen's clients would reconsider and allow a site visit, but if not, they would be forced to pursue other means of assessing the conditions onsite including the possibility of an inspection warrant or other law enforcement or administrative remedies.

On August 10, 2005, staff received a letter from Ms. Shen (**Exhibit 22**), dated August 8, 2005, in which she claims to have misunderstood her clients and to have misspoken when she stated “...that they were not amenable to the CCC assembling and bringing their own film crew to concurrently film any CCC site inspections.” She goes on to say that her clients “...never prohibited this option.” In this letter she also reiterates her client's intention to submit a CDP application by explaining: “Not only have they retained Schmitz and Associates to assist them in preparing and processing the CDP application, but they have already proactively retained arborist/landscape architect Bruce Malinowski to prepare the requisite oak tree plan and report for submittal to Los Angeles County and to prepare and erosion control plan which they are ready to implement once approved by the appropriate agencies.”

On August 17, 2005, staff independently verified and photographed development on the subject site that would not be exempt from the permit requirements of the Coastal Act and for which no CDP was obtained nor applied for. Staff made the photographs (**Exhibit 48**) from private property (with permission) and public property located on the opposite side of the canyon from the subject property. Staff also received a compact disk with additional dated photographs (**Exhibit 49**) made by a neighboring property owner as evidence of development taking place on the subject property. Staff's photographs show that work, including grading and vegetation removal, had taken place. The neighbor's photographs clearly show grading, excavation, and vegetation removal in progress.

On September 19, 2005, Schmitz and Associates, on behalf of Wildcrew's Playground LLC, submitted, to permitting staff, a request for “...an *After the Fact* Exemption for Brush Clearance, Repair, and Maintenance of an existing, driveway [sic]” (**Exhibit 32**). This application demonstrates that Wildcrew's cleared vegetation and graded land to create a road in June of 2005.

On September 19, 2005 Schmitz and Associates also submitted an application for a Claim of Vested Rights "...for the historically existing driveway and flat, cleared pad on the above property" (**Exhibit 37**). While there is some evidence that a historical driveway or road may have existed at one time, staff's review of more recent aerial photographs indicates that vegetation had re-grown and covered the roadbed in some of the areas that were cleared by Wildcrew's. In any event, work has taken place outside the footprint of the above-referenced "driveway and pad" and this work cannot be vested as it occurred in 2005.

Additionally, all or part of the work has taken place in a densely vegetated area designated as ESHA in L.A. County's Malibu/Santa Monica Mountains Land Use Plan, certified by the Commission on December 11, 1986. Also, the Commission's staff ecologist, Dr. John Dixon, in a memo dated March 25, 2003 (**Exhibit 52**) indicates that chaparral and oak woodlands in the Santa Monica Mountains are ESHA if the habitat is largely undeveloped and pristine and part of a contiguous block of relatively pristine native vegetation. Commission staff, by direct observation and by reviewing aerial photographs (**Exhibit 51**), has observed this to be the case on Wildcrew's property.

On September 19, 2005, Schmitz and Associates also hand delivered and faxed a letter (**Exhibit 21**) to enforcement staff, from Donna Shen, that stated (in relevant part): "For the minor amount of repair and maintenance work that does not qualify as exempt activity, please be advised that we will be submitting shortly a CDP application for the same."

On October 14, 2005, Judge Charles W. McCoy issued an inspection warrant (**Exhibit 42**) that "commanded" agents of the California Coastal Commission "to conduct an inspection" of the subject property. The warrant went on to state: "The inspection of the above-described property for Coastal Act violations cannot be conditioned or otherwise contingent upon the filming, videotaping, or otherwise recording of agents authorized hereby before, during or after the inspection, unless the agents give their written consent."

On October 19, 2005, after giving Wildcrew's Playground LLC notice twenty-four (24) hours prior to the inspection, staff entered the subject property under the authority of Judge McCoy's inspection warrant, accompanied by three Los Angeles County Sheriff's Deputies and a Deputy Attorney General. Staff was confronted by Daniel Norris, Donna Shen, filmmaker Richard Oshen, and soundman Richard Locke. Mr. Oshen and Mr. Locke were filming and audio-taping the site visit in violation of the Judge's order. After repeated requests that the camera be turned off were refused, staff retreated from the property (**Exhibit 44**). Staff was only on the property for a short while and could only see a very small portion of the property, but was able to see and photograph unpermitted development that had taken place in an environmentally sensitive habitat area.

On December 2, 2005, staff received a letter (**Exhibit 15**) from Kevin D. Koons of the Zumbrun Law Firm indicating that Daniel Norris and Wildcrew's had retained the services of the Zumbrun Law Firm to represent them in this matter.

On July 13, 2006, permitting staff notified Schmitz and Associates that they were denying Wildcrew's after-the-fact exemption request (**Exhibit 30**) because the repair and maintenance activities described in the application occurred in ESHA and therefore require a CDP pursuant to California Code of Regulations title 14, section 13252(a)(3)..

On July 13, 2006, permitting staff also sent Schmitz and Associates a letter (**Exhibit 33**) indicating that in order for Commission staff to complete an analysis of Wildcrew's Vested Rights Claim, further information was still needed. Staff had previously requested some of the same information in a letter dated February 22, 2006 (**Exhibit 35**), but the requested information had not been forthcoming. To date, staff has still not received the requested information and has therefore still been unable to file and process the application.

On November 9, 2006, after attempting to address the violations on the property for nearly a year and a half, and because Wildcrew's had not submitted a CDP application as promised, the Executive Director issued a Notice of Intent to Record a Notice of Violation of the Coastal Act ("NOI") (**Exhibit 7**) to Wildcrew's Playground LLC to put any potential purchasers of the property on notice that Coastal Act violations had occurred and remained on the property and to protect potential innocent purchasers of the property. Pursuant to Coastal Act Section 30812, the NOI provided a 20-day time period for Wildcrew's to submit a written objection to the recordation of the Notice of Violation.

On November 29, 2006, Ronald Zumbrun, representing Wildcrew's Playground LLC contacted staff by letter (**Exhibit 4**) and stated his client's objection to recordation of the Notice of Violation and this matter was scheduled for hearing in February, 2007

3. Notice of Intent to Record a Notice of Violation of the Coastal Act

Nearly a year and a half had passed without resolution of the unpermitted development, and Wildcrew's Playground LLC had also not submitted a CDP application, as promised. Repeated attempts were made to resolve this matter administratively. Unfortunately, these efforts were unsuccessful. Therefore, in order to notify any potential purchasers of the subject property that violations of the Coastal Act have occurred and remain on the property, consistent with Section 30812 of the Coastal Act, on November 9, 2006, the Executive Director issued a Notice of Intent to Record a Notice of Violation of the Coastal Act to Wildcrew's Playground LLC (**Exhibit 7**).

4. Objection to Recordation of Notice of Violation

The NOI stated:

If you object to the recordation of the Notice of Violation in this matter and wish to present evidence on the issue of whether a violation has occurred, you must respond in writing... no later than November 29, 2006.

On November 29, 2006, staff received a letter from Mr. Zumbrun objecting to the recordation of a Notice of Violation, on behalf of Wildcrew's Playground LLC (**Exhibit 4**). Staff scheduled a Notice of Violation hearing, in accordance with Coastal Act Section 30812(c), for the February 2007 Commission meeting. In a letter dated December 5, 2006 (**Exhibit 2**) to Wildcrew's, staff notified Wildcrew's that the hearing would be scheduled for the February 2007 Commission hearing in San Diego.

C. Description of Unpermitted Development

Unpermitted development has occurred in an environmentally sensitive habitat area of chaparral and oak woodlands on the subject property and includes, but is not limited to, grading, excavation and dumping of soil materials, removal of major vegetation, and placement of rock walls and culverts. Review of aerial photographs from 2001 show that the unpermitted development was not present at that time and that instead, much of the area that has now been cleared was covered with dense vegetation.

All or part of the work has taken place in an area designated as ESHA in L.A. County's Malibu/Santa Monica Mountains Land Use Plan, certified by the Commission on December 11, 1986. Also, the Commission's staff ecologist, Dr. John Dixon, in a memo dated March 25, 2003 (**Exhibit 52**) indicates that chaparral and oak woodlands in the Santa Monica Mountains are ESHA if the habitat is largely undeveloped and pristine and part of a contiguous block of relatively pristine native vegetation. Commission staff, by direct observation and by reviewing aerial photographs (**Exhibit 51**), has observed this to be the case on Wildcrew's property.

D. Basis for Recordation of the Notice of Violation

The statutory authority for recordation of a Notice of Violation is provided in Coastal Act Section 30812.

As discussed below, the Executive Director is authorized to record CCC-07-NOV-01 pursuant to Section 30812 because the work conducted on the subject property constitutes development as defined in Coastal Act Section 30106, and therefore requires a CDP under Coastal Act Section 30600. No CDP has been issued for the development. In addition, Commission staff has exhausted all administrative remedies for resolution of the violation and Wildcrew's has been made aware of the potential for the recordation of a Notice of Violation in this matter. The Executive Director made a determination, based on substantial evidence, that there was a violation of the CA and sent a NOI (**Exhibit 7**) compliant with all applicable sub-sections of Section 30812 of the Coastal Act including, but not limited to, Sections 30812(a), (b), and (e).

Section 30812(b) allows the property owner to object to recording the Notice of Violation. If the property owner submits a timely written objection, Section 30812(c) requires the Commission to give the property owner an opportunity to present evidence at a public hearing as to why the Notice of Violation should not be recorded. Section 30812(d) gives the Commission authority to determine, based on substantial evidence, whether a Coastal Act violation has occurred. If the Commission finds that a violation has occurred, the Executive Director shall record the Notice of Violation. If the Commission finds that no violation has occurred, the Executive Director shall mail a clearance letter to the owner of the property. Commission staff provided a 20-day time period for Wildcrew's to object to the recordation of a Notice of Violation in this matter. Wildcrew's submitted a timely, written objection and, therefore, a hearing pursuant to Section 30812(c) was scheduled.

1. A Violation of the Coastal Act Has Occurred

Development is defined in Coastal Act Section 30106 as:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973. (emphasis added)

The grading, excavation and dumping of soil materials, removal of major vegetation, and placement of rock walls and culverts, in environmentally sensitive areas on the subject property clearly constitute development under Section 30160. There is substantial evidence that such development took place. Such evidence includes:

1. Photographs submitted by a neighboring property owner (**Exhibits 47 and 49**);
2. Photographs and direct observation made by staff from across the canyon (**Exhibit 48**);
3. Photographs and direct observation made onsite during a brief and incomplete site inspection (**Exhibit 50**);
4. Conversations with, and correspondence (**Exhibit 21**) from, Donna Shen, representing Wildcrew's, in which she admits to non-exempt, unpermitted development and to grading and vegetation removal on the subject property;

5. Wildcrew's request for an "After the Fact Exemption for Brush Clearance, Repair, and Maintenance of an existing, driveway," dated September 19, 2005 (**Exhibit 37**)

Coastal Act Section 30600(a) states:

(a) Except as provided in subdivision (e), and in addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency, any person, as defined in Section 21066, wishing to perform or undertake any development in the coastal zone... shall obtain a coastal development permit.

Wildcrew's initially claimed that they had bought the property in April or May of 2005 and that they were "grading an old existing trail to get access to check things out" (Phone conversation with Donna Shen on July 19, 2005). However, in their Exemption Request (**Exhibit 32**), they subsequently claimed that they had cleared brush from an existing "paved driveway" and that the work was exempt from the permit requirements of the Coastal Act. However, it appears that the area was cleared to create a road and had been covered with dense vegetation prior to being cleared by Wildcrew's. Therefore, the unpermitted development appears to be new development, i.e., a new road, not repair and maintenance of an existing road. Furthermore, even if the unpermitted development did constitute repair and maintenance of a road, such development is not exempt from permit requirements because of its location in ESHA. Section 30610(d) of the Coastal Act states:

(d) Repair or maintenance activities that do not result in an addition to, or enlargement or expansion of, the object of those repair or maintenance activities; provided, however, that if the commission determines that certain extraordinary methods of repair and maintenance involve a risk of substantial adverse environmental impact, it shall, by regulation, require that a permit be obtained pursuant to this chapter.

The Commission's regulations at California Code of Regulations, Title 14, Section 13252(a) state:

(a) For purposes of Public Resources Code Section 30610(d), the following extraordinary methods of repair and maintenance shall require a coastal development permit because they involve a risk of substantial adverse environmental impact:

The Regulations go on to list the extraordinary methods of repair and maintenance and Coastal Commission Regulations Section 13252(a) (3) states:

(3) Any repair or maintenance to facilities or structures or work located in an environmentally sensitive habitat area, any sand area, within 50 feet of the edge of a coastal bluff or environmentally sensitive habitat area, or

within 20 feet of coastal waters or streams that include: (A) The placement or removal, whether temporary or permanent, of rip-rap, rocks, sand or other beach materials or any other forms of solid materials; (B) The presence, whether temporary or permanent, of mechanized equipment or construction materials.

Some or all of the unpermitted development has taken place in, or within 50 feet of, an area designated as an environmentally sensitive habitat area (“ESHA”) in Los Angeles County’s Malibu/Santa Monica Mountains Land Use Plan, certified by the Commission on December 11, 1986 (**Exhibit 46**). In addition, the Commission’s staff ecologist, Dr. John Dixon, in a memo dated March 25, 2003 (**Exhibit 52**), indicates that chaparral and oak woodlands in the Santa Monica Mountains are ESHA if the habitat is largely undeveloped and pristine and part of a contiguous block of relatively pristine native vegetation. Commission staff, by direct observation and by reviewing aerial photographs (**Exhibit 51**), has observed this to be the case on Wildcrew’s property. The unpermitted development involved the presence of mechanized equipment and the removal solid materials. Therefore, even if the unpermitted development that resulted in creation of a road constitutes repair and maintenance, it requires a CDP pursuant to Coastal Commission Regulations Section 13252(a) (3).

Wildcrew’s asserts that it is entitled to a vested right to undertake the development that occurred on its property. Section 30608 of the Coastal Act provides that no person who has obtained a vested right in a development prior to the effective date of the Coastal Act is required to obtain a coastal development permit for the development. The Commission’s regulations establish a process for determining whether a person has acquired a vested right to a development (See California Code of Regulations, Title 14, sections 13200-13208). Although Wildcrew’s has submitted an application for a vested rights determination, it has failed to provide the information requested by staff to file the application. The majority of the information requested, that has not been provided, concerns the extent of the development on the site. The Commission finds that unless and until Wildcrew’s completes the vested rights process, Wildcrew’s cannot use a claim of vested right to avoid enforcement of the unpermitted development on its property. Moreover, as noted above, at least part of the unpermitted development was performed after passage of the Coastal Act, and therefore cannot qualify for a vested right determination.

The development at the subject property required a CDP under Section 30600(a). Wildcrew’s did not apply for or obtain a CDP from the Commission. Additionally, no exemption to the permit requirement applies to the development. Therefore, the Commission finds that there is substantial evidence that the cited development on the subject property constitutes unpermitted development, which violates Coastal Act Section 30600. Accordingly, Section 30812(a) authorizes the Executive Director record the proposed Notice of Violation to address this Coastal Act violation.

2. All Existing Administrative Methods of Resolving the Violation Have Been Exhausted and Wildcrew's Playground LLC Has Been Made Aware of the Potential for Recordation

Coastal Act Section 30812(g) provides:

(g) The executive director may not invoke the procedures of this section until all existing administrative methods for resolving the violation have been utilized and the property owner has been made aware of the potential for the recordation of a notice of violation. For purposes of this subdivision, existing methods for resolving the violation do not include the commencement of an administrative or judicial proceeding.

In a July 12, 2005 Notice of Violation letter, the Executive Director notified Wildcrew's Playground LLC of the potential for recordation of a Notice of Violation in this matter (**Exhibit 26**), as required under Section 30812(g). In the November 9, 2005 NOI (**Exhibit 7**), the Executive Director notified Wildcrew's of his intention to record a Notice of Violation and provided Wildcrew's with an opportunity to submit a written objection to such recordation. Wildcrew's submitted a written objection to the recordation of a Notice of Violation on November 29, 2005. In a December 5, 2006 letter (**Exhibit 2**), Commission staff notified Wildcrew's Playground LLC that the hearing on this matter would be held at the February, 2007 Coastal Commission hearing in San Diego.

As discussed above, and as evidenced by the record, staff made repeated attempts to resolve this matter administratively. Unfortunately, these attempts proved unsuccessful. Staff concludes that all existing administrative methods for resolving the violation have been utilized, as required under Section 30812(g).

3. Rescission of the Notice of Violation

After recordation of the Notice of Violation, if Wildcrew's Playground LLC resolves the violation by obtaining after-the-fact authorization through a CDP for retention of the development or removal of the development and restoration of the impacted areas of the property, and by complying with all the conditions of any CDP issued, the Executive Director shall record a notice of rescission of the Notice of Violation, pursuant to Section 30812(f). The notice of rescission shall have the same effect of a withdrawal or expungement under Section 405.61 of the Code of Civil Procedure.

F. California Environmental Quality Act (CEQA)

The Commission finds that the recordation of CCC-07-NOV-01 to compel compliance with the Coastal Act is exempt from any applicable requirements of the California Environmental Quality Act of 1970 (CEQA) and will not have any significant adverse effects on the environment, within the meaning of CEQA. Recordation of the Notice of

Violation is exempt from the requirements for the preparation of an Environmental Impact Report, based on Sections 15060(c)(2), 15061(b)(2), 15037, 15038, and 15321 of the CEQA Guidelines.

G. Findings of Fact

1. Wildcrew's Playground LLC is the owner of a 39.67-acre undeveloped property located primarily north and east of the 600 block of Old Topanga Canyon Road and identified by the Los Angeles County Assessor as Parcel Number 4438-018-005 (**Exhibit 53**). Peggy Gilder and Daniel Norris have both, at times, represented Wildcrew's Playground.
2. Wildcrew's Playground LLC undertook activities on the subject property that constitute development as defined in Coastal Act Section 30106.
3. Wildcrew's Playground LLC undertook this development without obtaining a coastal development permit.
4. No exemption from Coastal Act permitting requirements applies to the development at issue.
5. On June 6, 2005, staff received the initial report of grading with mechanized equipment under oak trees on the subject property (**Exhibit 29**).
6. On June 21, 2005, staff received another report of illegal grading taking place under oak trees, vegetation removal (including cutting of oaks) on the subject property. This report indicated that the work had been going on for "3 to 4 weeks" (**Exhibit 28**).
7. On June 22, 2005, a member of the public sent an email (**Exhibit 27**) with two photographs taken from a neighboring property that showed mechanized equipment in use, vegetation removed (including at least one oak tree cut), and grading and excavation (**Exhibit 47**).
8. On July 6, 2005, staff spoke with a neighboring property owner who confirmed that equipment had been operating, for multiple days, on the subject property.
9. On July 12, 2005, based on the photographs received and accounts from neighbors, the Coastal Commission sent a Notice of Violation letter to Wildcrew's Playground LLC (**Exhibit 26**).
10. On July 19, 2005, staff spoke with Donna Shen of Schmittz and Associates, in her capacity as representative for Wildcrew's, who confirmed that development had taken place on the subject property consisting of "grading an old existing trail." She also informed staff of her client's intention to seek an after-the-fact coastal development permit (CDP) for the work.

11. On August 17, 2005, staff independently verified and photographed development on the subject site (**Exhibit 48**) that would not be exempt from the permit requirements of the Coastal Act.

12. On September 19, 2005, Schmitz and Associates, on behalf of Wildcrew's Playground LLC, submitted, to permitting staff, a request for "...an *After the Fact* Exemption for Brush Clearance, Repair, and Maintenance of an existing, driveway [sic]" (**Exhibit 32**), and a vested rights determination request "...for the historically existing driveway and flat, cleared pad on the above property" (**Exhibit 37**).

13. Staff made repeated requests of Wildcrew's and their representatives to be allowed to conduct site inspections without being filmed for inclusion in a documentary film.

14. On October 14, 2005, Judge Charles W. McCoy issued an Inspection Warrant that "commanded" agents of the California Coastal Commission "to conduct an inspection" of the subject property. The warrant went on to state: "The inspection of the above-described property for Coastal Act violations cannot be conditioned or otherwise contingent upon the filming, videotaping, or otherwise recording of agents authorized hereby before, during or after the inspection, unless the agents give their written consent" (**Exhibit 42**).

15. On October 19, 2005, after giving Wildcrew's Playground LLC notice twenty-four (24) hours prior to the inspection, staff entered the subject property under authority of Judge McCoy's Inspection Warrant, and attempted to inspect the property. However, Wildcrew's film crew was present and was filming the site visit in violation of the Judge's order (**Exhibit 44**). Staff subsequently withdrew, but not before observing and photographing violations of the Coastal Act in an environmentally sensitive habitat area (**Exhibit 50**).

16. On July 13, 2006, staff notified Schmitz and Associates that they were denying Wildcrew's after-the-fact exemption request because the repair and maintenance activities described in the application occurred in ESHA, and therefore required a CDP pursuant to the Commission's regulations at California Code of Regulations, title 14, section 13252(a)(3). (**Exhibit 30**).

17. Also on July 13, 2006, permitting staff sent Schmitz and Associates a letter (**Exhibit 33**) indicating that in order for Commission staff to complete an analysis of Wildcrew's Playground LLC's Vested Rights Claim, the following information was still needed:

1. *Evidence that the claimed development received all applicable governmental approvals (including all required grading and building permits) needed to complete the development prior to January 1, 1977, or evidence from the applicable agencies that no permit was required for the claimed development.*
2. *A 2001 aerial photograph was submitted in support of the vested rights claim. However, site improvements have occurred since this time, as per Exemption*

Request No. 4-05-108-X submitted September 19, 2005. Please provide a post-site improvement aerial photograph that encompasses the subject site.

3. *Two (2) sets of detailed site plans, using a base map prepared by a licensed surveyor, indicating the entire extent of the claimed development, as well as a detailed delineation of all new site work which has occurred on-site per exemption request no. 4-05-108-X. All oak trees (trunks and canopy driplines) must be identified on the site plan. In addition, please delineate all paved portions of the subject driveway. Plans must be to scale with dimensions shown.*
4. *Site Visit. Commission staff will need to visit the site and verify the measurements of the road width/length and the pad area to determine if the current configuration is as depicted in historical photographs and as claimed by the declarants.*

To date, the requested information has not been received.

18. As of the date of this staff report, Wildcrew's Playground LLC has not applied for or obtained a Coastal Development permit for grading, excavating, vegetation removal, or to construct any structures on the subject property.

19. On November 9, 2006, the Executive Director determined, based on substantial evidence, that real property located in the Coastal Zone had been developed in violation of the Coastal Act and sent a Notice of Intent to Record a Notice of Violation to Wildcrew's Playground LLC (**Exhibit 7**), compliant with all applicable sub-sections of Section 30812 of the Coastal Act including, but not limited to, Sections 30812(a), (b), and (e).

20. On November 29, 2006, in a letter to Commission staff, Ronald Zumbrun, attorney for Wildcrew's, objected, on behalf of his client, to the recordation of the Notice of Violation (**Exhibit 4**).

21. On December 5, 2006, staff sent Mr. Zumbrun a letter advising him and his clients that the matter of recordation of a Notice of Violation on the subject property would be scheduled for a hearing by the California Coastal Commission at their February hearing in San Diego (**Exhibit 2**).

22. Substantial evidence exists that violations of the Coastal Act have occurred on the subject property.

23. As evidenced by the record, staff made repeated attempts to resolve the violation administratively, but was unsuccessful.

24. Coastal Act Section 30812 authorizes the Executive Director to record a Notice of Violation after holding a public hearing.

H. Respondents' Defenses and Commission Staff's Response

On November 29, 2006, Mr. Zumbrun, on behalf of Wildcrew's Playground LLC, sent staff a letter objecting to recordation of a Notice of Violation on the subject property. In that letter, Mr. Zumbrun also detailed his client's reasons for objecting. The following paragraphs present Wildcrew's Playground LLC's defenses and staff's response to those statements.

1. Wildcrew's Defense:

Failure to Inspect: The Commission has no documented violations despite its alleged assertions. It cannot make a valid determination beyond a reasonable doubt without a valid inspection. It is my client's position that, because of the substantial evidence rule supporting the Commission in writ of mandate proceedings, it is in their best interest to videotape the inspection. The videotape would be the best evidence overcoming the substantial evidence rule. As to the Commission's concern with what other use might be made of the videotape, that was covered in Kevin Koons' letter of December 28, 2005, to Rosanna Miramontes of the California Department of Justice (Exhibit 13) which provides you with adequate protection. It is my client's position that a public official conducting an official inspection of private property is subject to the property owner's videotaping of the inspection. My client requests that you proceed with this inspection, pursuant to my client's previously stated conditions, before enforcing the notice of violation and before holding a hearing on my client's objections.

Response:

As described in these findings, there is substantial evidence that development, as defined in the Coastal Act, has taken place on the Wildcrew's property. The evidence includes photographs taken by concerned citizens in the neighborhood and by staff on August 17, 2005 and on October 19, 2005, as well as staff's direct observations made during the October 19, 2005 site visit. Some of the photographs are attached to this staff report as **Exhibits 47, 48, 49 and 50**. More importantly, Wildcrew's admits that it has undertaken the alleged development. For example in a letter dated September 19, 2005 (**Exhibit 21**), Donna Shen of Schmitz and Associates, representing Wildcrew's, states: "For the minor amount of repair and maintenance work that does not qualify as exempt activity, please be advised that we will be submitting shortly a CDP application for the same." Wildcrew's applications for a claim of exemption also admits that it undertook the development. Although Commission staff initially attempted to conduct a site visit, in light of the substantial evidence that development occurred on the site, a site visit by Commission staff is unnecessary.

The reasonable doubt standard mentioned in this defense does not apply in this matter. The substantial evidence standard does apply. Coastal Act Section 30812 states that a

Notice of Violation can be recorded if the Executive Director or Commission finds, based on substantial evidence, that a Coastal Act violation has occurred. As described in these findings, there is substantial evidence that development occurred on the subject property without a coastal development permit and that such development is not exempt from permit requirements. Therefore, there is substantial evidence that Coastal Act violations occurred on Wildcrew's property. If Wildcrew's believes that a videotaped site visit would provide relevant evidence regarding this matter, it is free to videotape the site and submit the videotape to the Commission.

2. **Wildcrew's's Defense:**

Agricultural Exemption: It is correct that at one time my client was considering seeking an "after-the-fact" coastal development permit (CDP). However, once my client was fully aware that its agricultural uses and plans for the future were exempt under the Coastal Act, Wildcrew saw no reason to proceed with seeking an unnecessary permit, especially considering the costs and conservation easement dedication requirements that would be required by the Commission, the same requirements frowned upon by the United States Supreme Court in its ruling in Nollan v. California Coastal Commission (1987) 483 U.S. 825, 837. In Nollan, the high court addressed the Commission's policy of requiring unrelated dedications of property interests as a condition of receiving a coastal permit. The court stated:

Similarly here, the lack of nexus between the condition and the original purpose of the building restriction converts that purpose to something other than what it was. The purpose then becomes, quite simply, the obtaining of an easement to serve some valid governmental purpose, but without payment of compensation. Whatever may be the outer limits of "legitimate state interests" in the takings and land-use context, this is not one of them. In short, unless the permit condition serves the same governmental purpose as the development ban, the building restriction is not a valid regulation of land use but 'an out-and-out plan of extortion.'

As the attorney responsible for litigating the Nollan case, I can assure you that the Coastal Commission's requirement of dedicating conservation easements in the Santa Monica Mountains is similarly "an out-and-out plan of extortion."

In addition, it is pertinent that recreation is an authorized use. My client's sole purpose in buying their property was to expose their children to gardening and outdoor recreation. They bought agriculturally zoned property because it was their actual intent to utilize it as agricultural. They have not developed any other uses and have no intention to develop the property or build any structures. All of the evidence will support these statements. Even the existing road that they were clearing off is consistent with getting to these agricultural sites. Further, the Coastal Act states that the removal of major vegetation for agricultural purposes is exempt.

Response:

Wildcrew's has undertaken development on the property that is not exempt from the requirement to obtain a coastal development permit. The assertion that the development and any future development is, or might be, planned for agricultural uses does not exempt it from Coastal Act permitting requirements. Coastal Act Section 30610 lists the types of development that are exempt from CDP requirements. The cited development in this matter is not exempt under Section 30610 and therefore requires a CDP.

There is no "agricultural exemption" from the Coastal Act. The definition of the term "development" in the Coastal Act includes "the removal or harvesting of major vegetation other than for agricultural purposes." Thus, the removal or harvesting of major vegetation for agricultural purposes is not development for purposes of the Coastal Act. Wildcrew's has not demonstrated that the only development on its property is the removal of major vegetation for agricultural purposes. In fact, a number of facts rebut this. First, Wildcrew's has not provided any detailed information on its development or submitted evidence that the only work done was removal of vegetation for agricultural purposes. This defense was first mentioned in a September 26, 2006 letter from Mr. Zumbrun to staff (**Exhibit 10**), but with no supporting evidence. Now, Mr. Zumbrun again asserts that the development undertaken on the subject property is for agricultural purposes, and yet even in this defense he also states that the development is for recreational purposes, not just agriculture. Second, the removal of major vegetation for purposes of clearing a road is not the removal of vegetation for agricultural purposes. Third, the grading of a road in an area that has not previously been developed changes the intensity of use of land and changing the intensity of use of land falls within the definition of development. Therefore, even if Wildcrew's removed major vegetation for agricultural purposes, which it has not demonstrated, such removal would constitute a change in intensity of use, which requires a coastal development permit. In this case, Wildcrew's has undertaken grading and excavation along with removal of major vegetation to create a road for an unspecified purpose and has changed the intensity of use of the site. Therefore, Wildcrew's has undertaken development as defined in the Coastal Act and such development is not exempt.

Wildcrew's concerns that the Commission will impose permit conditions that are costly, or that it does not agree with, does not exempt it from permitting requirements. If Wildcrew's applies for a coastal development permit (which it has not done), and then objects to conditions of the permit, Wildcrew's has the right to judicial review of the Commission's action pursuant to section 30801 of the Coastal Act. The legal remedy for concerns about permit conditions is judicial review of a Commission action on a permit application, not unpermitted development in violation of the Coastal Act.

The Nollan opinion, which concerns a challenge to a coastal development permit condition has no bearing on the Commission's action in this matter, which concerns Wildcrew's failure to obtain a coastal development permit prior to undertaking development in the coastal zone.

3. Wildcrew's Defense:

Vested Rights: In my clients request for a vested rights determination, Wildcrew was required to provide certain additional information when it became available. While awaiting the additional information, its request for vested rights determination was abruptly denied. Now that my client realizes its use of the subject property is exempt, this moots the vested rights determination issue.

Response:

Neither the Commission nor staff has denied Wildcrew's vested rights application. Staff reviewed the application and determined that the application lacks the information necessary to review the claim, as provided for in the Commission's regulations at Cal Code Regs. title 14, section 13202. To date, Wildcrew's has not submitted the information necessary to file the application, and staff last notified Wildcrew's of the status of the application on July 13, 2006 (**Exhibit 33**). Further, the Commission finds that the unpermitted development does not qualify for any exemption from permit requirements under section 30610 of the Coastal Act.

4. Wildcrew's Defense:

Retaliation: My client believes that the Commission and staff are retaliating because of Wildcrew's insistence on videotaping the subject inspection. This action by the Coastal Commission would be inappropriate and a denial of equal protection and due process. For example, at the first meeting with Commission staff, it was pointed out that there was an agricultural purpose to buying and using the subject property. My client's interest was repeated time and again. However, this seems to have been lost or perhaps the Commission and staff do not believe my clients intention to expose their children to gardening and permitted uses such as recreation and clearing an existing road. Another example of what appears to be an inappropriate requirement is the February 2006 vested rights letter by the Coastal Commission (Exhibit 35) stating that Wildcrew needed additional information, including new aerial photographs and other expensive items. They even required my client to provide the names and addresses of all past owners which information they do not have. Also, early on, my client was told by staff that the Coastal Commission would never go for the agricultural exemption claim and not to even bother.

Response:

The Commission is taking this action based upon the facts, which demonstrate substantial evidence that a Coastal Act violation has occurred. The criteria set forth in section 30812 of the Coastal Act for recording a notice of violation have been met. Neither the Commission nor staff is bringing this action to retaliate against Wildcrew's. Staff has followed the procedures required by the Coastal Act and the Commission's regulations

pertaining to enforcement actions, which are used in all enforcement cases. As explained in detail in response # 2 above, the unpermitted development activities that have occurred on the property are not exempt from CDP requirements, and therefore, the development requires a CDP regardless of the uses proposed.

Mr. Zumbrun asserts that there have been meetings with Wildcrew's and that they have repeatedly asserted that "...there was an agricultural purpose to buying and using the subject property." As was previously mentioned, the first time staff was aware of Wildcrew's claim that the development undertaken on the subject property was exempt because it was an agricultural activity was in a letter from Mr. Zumbrun dated September 26, 2006 (**Exhibit 10**). Staff has had no meetings with Wildcrew's or their agents other than a brief and casual encounter with Ms. Shen at the front counter of the Commission's Ventura office, and again during the site visit on October 19, 2005.

Further, Wildcrew's has not responded to staff's request for additional information to file the vested rights application. The majority of the information requested by staff concerns the extent of the development undertaken by Wildcrew's which should not be difficult to provide.

Finally, Wildcrew's has not submitted any evidence that the only work it has undertaken on its property is the removal of vegetation for agricultural purposes. As stated above in these findings, the unpermitted development does qualify as development under the Coastal Act and is not exempt based upon a potential agricultural use.

5. Wildcrew's Defense:

Mechanical Equipment: It should be noted that neighboring properties were involved with heavy equipment and could be seen moving gravel and other activities during the time that reports were apparently made to the CCC regarding my client's activities.

Response:

Wildcrew's is the subject of this enforcement action due to the fact that it conducted development activities on its property without a CDP. After receiving initial violation reports, staff independently confirmed that the violations had occurred. Although Wildcrew's has not submitted specific information regarding potential violations on surrounding properties, staff will investigate any reports from Wildcrew's of violations of the Coastal Act on properties in the vicinity of the subject property. Regardless of the results of any investigation into neighboring properties, the Commission has the statutory right to take action in this matter because unpermitted development activities constituting Coastal Act violations have taken place on the subject properties.

6. Wildcrew's's Defense:

The October 19, 2005 Meeting: A site inspection was scheduled for the subject property on October 19, 2005. After arriving at the site, the Coastal Commission staff and attorney chose not to proceed with an inspection because a film crew was present to videotape the inspection. However, without my client's knowledge and consent, one of the Coastal Commission staff proceeded to leave the group and apparently inspected and photographed part of the property. He was noticed to return to the group. The search warrant that had been obtained stated: "No Forced Entry." It is my client's position that this action was an illegal search and cannot be utilized for any purpose in these proceedings.

Response:

Staff scheduled the site visit and was allowed to enter the property for the purpose of conducting a site inspection under the authority of an Inspection Warrant (**Exhibit 42**) signed by Judge Charles W. McCoy. Additionally, staff was accompanied by three Los Angeles County Sheriff's Deputies and a Deputy Attorney General. Therefore, no forced entry occurred. Furthermore, no illegal search was undertaken. It is a routine practice for staff to take photographs during a site visit. Once a site visit has been consented to by the property owner or, in this case, ordered by the court, no further consent from the property owner is required to take photographs.

7. Wildcrew's Defense:

Trespassing: The Commission claims that a neighbor made certain representations that would have required him to trespass onto my client's property in order to obtain this information. This again is an illegal trespass and cannot be relied upon in these proceedings. Furthermore, what verification has the Coastal Commission made regarding these alleged representations. [sic]

Response:

The photographs submitted by concerned citizens as part of violation reports do not appear to have been taken from the Wildcrew's property. Regardless, Commission staff has taken photographs on two separate occasions that show unpermitted development on the property in violation of the Coastal Act. Staff's photographs were taken from neighboring private property with the permission of the owner, from public property in the area, and from the Wildcrew's property during the October 19, 2005 site visit. Some of these photographs are attached to this report as **Exhibits 48 and 50**. Furthermore, Ms. Shen, Wildcrew's representative, in telephone conversations and letters, has verified that grading and vegetation removal has occurred on the property.

8. Wildcrew's Defense:

Authorization to Require Conservation Easements: My client requests being advised as to whether a conservation easement is required as a condition for

development in the Santa Monica Mountains and what authority the Commission has to impose such a condition. It is my client's understanding that persons who are permitted to build a home in this are first required to grant a conservation easement or deed restriction as to all remaining property and that the easement includes the right to construct public trails across the property.

Response:

This statement is not a defense to allegations that unpermitted development has occurred on the property. CDP applications are reviewed and acted upon on a case-by-case basis. Wildcrew's has not submitted a CDP application and has not provided detailed information about the development that it has undertaken, and therefore, the Commission cannot comment on what conditions may or may not be required.

RECORDING REQUESTED BY:

California Coastal Commission

WHEN RECORDED MAIL TO:

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

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

DOCUMENT TITLE:

NOTICE OF VIOLATION OF THE COASTAL ACT

Re: Assessor's Parcel No. 4438-018-005

Property Owners:

Wildcrew's Playground LLC

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

CALIFORNIA COASTAL COMMISSION
Attention: Christine Chestnut
45 FREMONT STRET, SUITE 2000
SAN FRANCISCO, CA 94105-2219

STATE OF CALIFORNIA OFFICIAL BUSINESS
Document entitled to free recordation
Pursuant to Government Code §27383

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

I, Peter Douglas, declare:

1. I am the Executive Director of the California Coastal Commission.
2. A violation of the California Coastal Act of 1976 (Public Resources Code §3000, et seq.) has occurred on a certain parcel situated in Los Angeles County, California, more particularly described as follows:

A 39.67-acre undeveloped parcel located off of Old Topanga Canyon Road in Los Angeles County (Assessor's Parcel Number 4438-018-005)

Owner of Record: Wildcrew's Playground LLC

The violation consists of the undertaking of development activity without the authorization required by the California Coastal Act of 1976.

3. This property is located within the Coastal Zone as that term is defined in Coastal Act Section 30103.
4. The record owner of said real property is: Wildcrew's Playground LLC.
5. The violation of the Coastal Act (Violation File No. V-4-05-063) consists of the following unpermitted development: Grading, excavation and dumping of soil materials, removal of major vegetation, and placement of rock walls and culverts in an environmentally sensitive habitat area. The requirements set forth in Section 30812 for notice and recordation of this Notice of Violation have been complied with. Recording this notice is authorized under Section 30812 of the California Public Resources Code.

7. The California Coastal Commission notified the record owner, Wildcrew's Playground LLC, of its intent to record a Notice of Violation in this matter in a letter dated November 9, 2006.
8. The Commission received a written objection to the recordation of the Notice of Violation on November 29, 2006 and conducted a public hearing on February 15, 2007. The Commission determined that the unpermitted development on Wildcrew's Playground LLC's property constituted a violation of the Coastal Act. Therefore, the Executive Director is recording the Notice of Violation as provided for under Section 30812 of the California Coastal Act.

Executed in _____, California, on _____.

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

PETER DOUGLAS, Executive Director

STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

On this _____ day of _____, in the year _____, before me the undersigned Notary Public, personally appeared Peter Douglas, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument as Executive Director of the California Coastal Commission and acknowledged to me that the California Coastal Commission executed it.

Notary Public in and for Said State and County

Use the link at left to go to the exhibits.

**CCC-07-NOV-01
Exhibit List**

Exhibits Relative to Violation File No. V-4-05-063

Exhibit Number	Description
1	January 2, 2007 - CCC to Zumbrun Law Firm
2	December 5, 2006 – CCC to Zumbrun Law Firm
3	December 1, 2006 – Zumbrun Law Firm to CCC
4	November 29, 2006 - Zumbrun Law Firm to CCC
5	November 27, 2006 – CCC to Zumbrun Law Firm
6	November 21, 2006 - Zumbrun Law Firm to CCC
7	November 9, 2006 – CCC to Wildcrew's NOVA NOI
8	October 30, 2006 – CCC to Zumbrun Law Firm
9	October 6, 2006 - CCC to Zumbrun Law Firm
10	September 26, 2006 - Zumbrun Law Firm to CCC
11	September 14, 2006 - Zumbrun Law Firm to CCC
12	September 7, 2006 – CCC to Schmitz and Assoc.
13	December 28, 2005 - Zumbrun Law Firm to DOJ
14	December 8, 2005 – CCC to Zumbrun Law Firm
15	December 2, 2005 - Zumbrun Law Firm to CCC
16	December 2, 2005 – Schmitz and Assoc. to CCC
17	November 23, 2005 – CCC to Schmitz and Assoc.
18	October 18, 2005 – Schmitz and Assoc. to CCC
19	October 18, 2005 – Schmitz and Assoc. to CCC
20	September 30, 2005 – Schmitz and Assoc. to CCC
21	September 19, 2005 - Schmitz and Assoc. to CCC
22	August 8, 2005 - Schmitz and Assoc. to CCC
23	August 4, 2005 - CCC to Schmitz and Assoc.
24	August 2, 2005 - Schmitz and Assoc. to CCC
25	July 19, 2005 - Schmitz and Assoc. to CCC
26	July 12, 2005 – CCC to Wildcrew's NOV letter
27	June 22, 2005 – Anonymous to CCC
28	June 21, 2005 – Anonymous to CCC
29	June 6, 2005 – Anonymous to CCC

Exhibits Relative to Exemption File No. 4-05-108-X

30	July 13, 2006 – CCC to Schmitz and Assoc.
31	June 2, 2006 – Schmitz and Assoc. to CCC
32	September 19, 2005 – Schmitz and Assoc. to CCC

Exhibits Relative to Vested Rights Determination File No. 4-05-159-VRC

33	July 13, 2006 – CCC to Schmitz and Assoc.
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34	March 14, 2006 – Schmitz and Assoc. to CCC
35	February 22, 2006 – CCC to Schmitz and Assoc.
36	September 30, 2005 – Schmitz and Assoc. to CCC
37	September 19, 2005 – Schmitz and Assoc. to CCC
38	Site Plan 1 Submitted with VRC application
39	Site Plan 2 Submitted with VRC Application

Exhibits Relative to the Inspection Warrant

40	Veesart Declaration – January 10, 2006
41	Veesart Declaration – November 4, 2005
42	Inspection Warrant – October 14, 2005
43	Veesart Declaration – September 30, 2005
44	LA Co. Sheriff Incident Report – October 19, 2005

Other Exhibits

45	Thomas Guide Map
46	ESHA Map from LA Co. LUP – 1986
47	Photographs received on June 22, 2005
48	Photographs made by staff on August 17, 2005
49	Photographs received on August 17, 2005
50	Photographs made by staff on October 19, 2005
51	Aerial photograph
52	Dixon memo re ESHA in the Santa Monica Mtns.
53	Property detail report