

**CALIFORNIA COASTAL COMMISSION**

SOUTH CENTRAL COAST AREA DISTRICT  
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Hearing Date: 11/15/06  
Commission Action:

**W 15a**

## **CLAIM OF VESTED RIGHTS STAFF REPORT AND RECOMMENDATION**

**CLAIM NO:** 4-00-279-VRC

**CLAIMANT:** MALIBU VALLEY FARMS, INC.

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

**ASSESSOR'S PARCEL NO.:** 4455-028-044

**DEVELOPMENT RIGHT CLAIMED:** Right to "conduct agricultural and livestock activities on the property that were commenced prior to 1930," right to build new structures in connection with that use, and right to construct, operate and maintain the equestrian facility that currently exists on the property. Structures at site include enclosed 1,440 sq. ft. horse barn, 36 metal pipe corrals, 2,660 sq. ft. mare motel, six tack rooms, three cross-tie areas, two riding arenas, ten parking stalls, fencing, hot walker, and three storage structures.

**SUBSTANTIVE FILE DOCUMENTS:** Photographs of site taken November 19, 1999 and March 2, 2000; Coastal Development Permit Application File No. 4-02-231 (Malibu Valley Farms, Inc.); Violation File No. V-4-MAL-00-001; Exemption Letter No. 4-98-125-X (Boudreau); Letter from Commission to Brian Boudreau regarding revocation of Exemption Letter No. 4-98-125-X, dated January 22, 1999; Commission letters to Cox, Castle & Nicholson dated August 18, 2000, October 6, 2000, February 23, 2001, and March 19, 2001; L.A. County Code, Title 22, Section 22.56.1540 and Title 26, Sections 101-106; aerial photographs taken January 24, 1977 and November 3, 1952.

**ACTION:** Commission Hearing and Vote

Exhibit 17  
4-06-163  
4-00-279-VRC  
Staff Report

### SUMMARY OF STAFF RECOMMENDATION

Staff recommends **denial** of the claim of vested rights. Malibu Valley Farms, Inc. ("Malibu Valley Farms") claims a vested right to construct operate and maintain an equestrian facility, i.e., a facility for boarding, training and breeding horses, that includes numerous structures based on claims that agricultural and livestock activities were conducted on the site since the 1930s.

The Coastal Act requires a coastal development permit prior to undertaking development. The vested rights exemption allows the completion or continuance of development that was commenced prior to the Coastal Act without a coastal development permit if all other required permits were obtained and, in reliance on those permits, the owner incurred substantial liabilities and commenced construction. Malibu Valley Farms does not provide any evidence that it obtained permits and, in reliance on those permits, began construction of the equestrian facility prior to the effective date of the Coastal Act (January 1, 1977). Nor does Malibu Valley Farms provide any evidence that the structures on the site existed (or are replacements of what existed) on the site just prior to the effective date of the Coastal Act. Aerial photographs of the property taken in 1977 show that there were no structures on the property at that time.

Instead, Malibu Valley Farms has provided a number of declarations that assert that oat hay was grown on the property from 1947 through 1978, that sheep and cattle were grazed on the site at various times between 1952 and 1978, that there were fencing and feeding structures for livestock between 1974 and 1978 and that these structures were repeatedly placed and removed, and that there may have been a barn somewhere on or near the property up to 1975. There is no evidence that the fencing and feeding structures and barn were present on the site when the Coastal Act became effective. Nor is Malibu Valley Farms claiming a vested right to graze sheep or cattle or to grow oat hay or other crops. Rather, Malibu Valley Farms claims that because the property was used for growing hay and sheep and cattle grazing prior to passage of the Coastal Act, Malibu Valley Farms has a vested right to use the property as an equestrian facility after passage of the Coastal Act and to build any structures that support an equestrian facility without coastal development permits. A vested right exemption from coastal development permits applies only to development that was permitted and commenced prior to the Coastal Act. There is no vested right to undertake new development without a permit on grounds that the development facilitates a pre-Coastal Act use of the property. Malibu Valley Farms' claim is in effect, a claim to a right to (1) build new structures after enactment of the Coastal Act without coastal permits and to (2) use its property in a manner that is consistent with only the most general description of the alleged pre-Coastal use. This is clearly unsupported by the Coastal Act. For these reasons, staff concludes that there is no basis to find a vested right to the existing structures on the property.

## I. STAFF RECOMMENDATION FOR DENIAL OF CLAIM

The Executive Director has made an initial determination that Claim of Vested Rights 4-00-279-VRC has not been substantiated. Staff recommends that Claim of Vested Rights 4-00-279-VRC be rejected.

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

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

### Resolution for Denial of Claim:

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

## II. FINDINGS AND DECLARATIONS

### A. Legal Authority and Standard of Review

The Coastal Act requires that a coastal development permit be obtained before development is undertaken in the coastal zone. Coastal Act section 30600(a)<sup>1</sup> states:

*... in addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency, any person . . . wishing to perform or undertake any development in the coastal zone, . . . shall obtain a coastal development permit.*

Coastal Act section 30106 defines the term "development" as:

*... the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including but not limited to, subdivision pursuant to the Subdivision Map Act ... change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, ....*

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<sup>1</sup> The Coastal Act is at Public Resources Code sections 30,000 to 30,9000.

One exception to the general requirement that one obtain a coastal development permit before undertaking development within the coastal zone is that if one has obtained a vested right in the development prior to enactment of the Coastal Act, a permit is not required. Section 30608 of the Coastal Act states:

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

The effective date of the division, i.e., the Coastal Act, for the site at issue is January 1, 1977. The subject property was not subject to the Coastal Zone Conservation Act of 1972 (aka Proposition 20, "the Coastal Initiative") and therefore was not required to obtain a coastal development permit from the California Coastal Zone Conservation Commission. Pursuant to Section 30608, if a person obtained a vested right in a development on the subject site prior to January 1, 1977, no Coastal Development Permit (CDP) is required for that development. However, no substantial change in any such development may be made until obtaining either a CDP, or approval pursuant to another provision of the Coastal Act.

The procedural framework for Commission consideration of a claim of vested rights is found in Sections 13200 through 13208 of Title 14 of the California Code of Regulations. These regulations require that the staff prepare a written recommendation for the Commission and that the Commission determine, after a public hearing, whether to acknowledge the claim. If the Commission finds that the claimant has a vested right for a specific development, the claimant is exempt from Coastal Development Permit requirements for that specific development only. Any substantial changes to the exempt development after January 1, 1977 will require a CDP. If the Commission finds that the claimant does not have a vested right for the particular development, then the development is not exempt from CDP requirements.

Section 30608 provides an exemption from the permit requirements of the Coastal Act if one has obtained a vested right in a development. Neither the Coastal Act nor the Commission's regulations articulate any standard for determining whether a person has obtained such a right. Thus, to determine whether the Coastal Act's vested rights exemption applies, the Commission relies on the criteria for acquisition of vested rights as developed in the case law applying the Coastal Act's vested right provision, as well as in common law vested rights jurisprudence. That case law is discussed below.

“The vested rights theory is predicated upon estoppel of the governing body.” *Raley v. California Tahoe Regional Planning Agency* (1977), 68 Cal.App.3d 965, 977.<sup>2</sup> Equitable estoppel may be applied against the government only where the injustice that would result from a failure to estop the government “is of sufficient dimension to justify any effect upon public interest or policy” that would result from the estoppel. *Raley*, 68 Cal.App.3d at 975.<sup>3</sup> Thus, the standard for determining the validity of a claim of vested rights requires a weighing of the injury to the regulated party from the regulation against the environmental impacts of the project. *Raley*, 68 Cal.App.3d at 976.

The seminal decision regarding vested rights under the Coastal Act is *Avco Community Developers, Inc. v. South Coast Regional Commission* (1976) 17 Cal.3d 785. In *Avco*, the California Supreme Court recognized the long-standing rule in California that if a property owner has performed substantial work and incurred substantial liabilities in good faith reliance upon a permit issued by the government, he acquires a vested right to complete a construction in accordance with the terms of the permit. The court contrasted the affirmative approval of the proposed project by the granting of a permit with the existence of a zoning classification that would allow the type of land use involved in the proposed project. The court stated it is beyond question that a landowner has no vested right in existing or anticipated zoning. *Avco, supra*, at 796; *accord, Oceanic Calif., Inc. v. North Central Coast Regional Com.* (1976) 63 Cal.App.3d 357.

The acquisition of a vested right to continue an activity without complying with a change in the law thus depends on good faith reliance by the claimant on a governmental representation that the project is fully approved and legal. The scope of a vested right is limited by the scope of the governmental representation on which the claimant relied, and which constitutes the basis of the estoppel. One cannot rely on an approval that has not been given, nor can one estop the government from applying a change in the law to a project it has not in fact approved. Therefore, the extent of the vested right is determined by the terms and conditions of the permit or approval on which the owner relied before the law that governs the project was changed. *Avco Community Developers, Inc. v. South Coast Regional Commission, supra*, 17 Cal.3d 785.

There are many vested rights cases involving the Commission (or its predecessor agency). The courts consistently focused on whether the developers had acquired all of the necessary government approvals for the work in which they claimed a vested right, satisfied all of the conditions of those permits, and had begun their development before the Coastal Act (or its predecessor) took effect.<sup>4</sup> The frequently cited standard for

<sup>2</sup> Quoting *Spindler Realty Corp. v. Monning*, 243 Cal. App.2d 255, 269, quoting *Anderson v. City Council*, 229 Cal. App.2d 79, 89.

<sup>3</sup> Quoting *City of Long Beach v. Mansell*, 3 Cal. 3d 462, 496-97.

<sup>4</sup> See, e.g., *Patterson v. Central Coast Regional Commission* (1976), 58 Cal. App. 3d. 833; *Avco Community Developers, Inc. v. South Coast Regional Commission*, 17 Cal.3d 785; *Tosh v. California Coastal Commission* (1979) 99 Cal.App.3d 388; *Billings v. California Coastal Commission* (1980) 103 Cal.App.3d 729. *Halaco Engineering Co. v. South Central Coast Regional Commission* (1986), 42 Cal. 3d 52 (metal recycling); *Monterey Sand Co., Inc. v. California Coastal Commission* (1987), 191 Cal. App. 3d 169 (sand dredging).

establishing a vested right is that the claimant had to have "performed substantial work and incurred substantial liabilities in good faith reliance upon a permit issued by the government" in order to acquire a vested right to complete such construction. *Avco Community Developers, Inc. v. South Coast Regional Commission* (1976), 17 Cal.3d 785, 791.

Based on these cases, the standard of review for determining the validity of a claim of vested rights is summarized as follows:

1. The claimed development must have received all applicable governmental approvals needed to undertake the development prior to January 1, 1977. Typically this would be a building permit or other legal authorization, and
2. The claimant must have performed substantial work and/or incurred substantial liabilities in good faith reliance on the governmental approvals. The Commission must weigh the injury to the regulated party from the regulation against the environmental impacts of the project and ask whether such injustice would result from denial of the vested rights claim as to justify the impacts of the activity upon Coastal Act policies. (*Raley, supra*, 68 Cal.App.3d at 975-76).

There is also legal authority that suggests that only the person who obtained the original permits or other governmental authorization and performed substantial work in reliance thereon has standing to make a vested right claim. (*Urban Renewal Agency v. California Coastal Zone Conservation Commission* (1975) 15 Cal.3d 577).

The burden of proof is on the claimant to substantiate the claim of vested right. (14 CCR § 13200). If there are any doubts regarding the meaning or extent of the vested rights exemption, they should be resolved against the person seeking the exemption. (*Urban Renewal Agency v. California Coastal Zone Conservation Commission* (1975) 15 Cal.3d 577, 588). A narrow, as opposed to expansive, view of vested rights should be adopted to avoid seriously impairing the government's right to control land use policy. (*Charles A. Pratt Construction Co. v. California Coastal Commission* (1982) 128 Cal.App.3d 830, 844, citing, *Avco v. South Coast Regional Commission* (1976) 17 Cal.3d 785, 797). In evaluating a claimed vested right to maintain a nonconforming use (i.e., a use that fails to conform to current zoning), courts have stated that it is appropriate to "follow a strict policy against extension or expansion of those uses." *Hansen Bros. Enterprises v. Board of Supervisors* (1996) 12 Cal.4th 533, 568; *County of San Diego v. McClurken* (1957) 37 Cal.2d 683, 687).

## **B. Background Regarding Property**

### **1. The Property**

The subject property is an approximately 31.02-acre parcel at the northeast corner of Mulholland Highway and Stokes Canyon Road in the Santa Monica Mountains area of unincorporated Los Angeles County (**Exhibit 1**). The parcel is bisected by the coastal zone boundary. The location of the parcel is shown on the "boundary determination" for the property that the Coastal Commission prepared in April 2000 (**Exhibit 3**). Approximately 80% of the parcel is located in the coastal zone and is subject to the Coastal Commission's jurisdiction. This staff report only addresses development on the part of the property (or "site") at 2200 Stokes Canyon Road that is located in the coastal zone.

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

The facility is used for breeding, training, and boarding horses, and contains two large riding arenas, fencing, a dirt access road and two at-grade crossings through Stokes Creek, an approximately 2,000 sq. ft. parking area, an approximately 20,000 sq. ft. fenced paddock, 36 pipe corrals, six tack rooms, a 1,440 sq. ft. barn, 2,660 sq. ft. mare motel, two cross tie areas and a cross tie shelter, a hot walker, and three storage units. 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 existing site facilities could accommodate a larger numbers of horses.

The equestrian facility is located in and adjacent to Stokes Creek. The central and southern portions of the facility are linked by two dirt access roads with at-grade crossings through Stokes Creek. Several pipe corrals are located immediately adjacent to the creek, as are the paddock, barn, a storage container, tack room, and cross-tie areas. The rest of the structures are located between approximately 20 and 50 feet from creek and/or riparian canopy.

The subject property is currently owned by Malibu Valley Farms, Inc. and is identified as APN Number 4455-028-044. Malibu Valley Farms, Inc., whose president is Brian Boudreau, acquired the property in February 2002 from Robert K. Levin (via an unrecorded grant deed). Levin apparently acquired the property from Charles Boudreau, or a member of the Boudreau family, around 1996. Charles Boudreau, or a member of the Boudreau family, apparently acquired the property from the Claretian Mission around 1978.

## 2. Previous Commission Action

On November 20, 1998, Brian Boudreau, president of Malibu Valley Farms, Inc., submitted an exemption request for replacement of pipe corrals and related improvements that had been destroyed by wildfire in 1996. In the letter, Boudreau stated that the proposed replacement structures did not expand "the horse farming activities which have been conducted on the land for the past 23 years" (**Exhibit 4**). 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) at the site (**Exhibit 5**). However, on December 15, 1998, Commission staff received a copy of a notice of violation letter, issued by the Los Angeles County Department of Regional Planning to Malibu Valley Farms, Inc. on September 29, 1998, for operation of a horse boarding facility without the required permits and inconsistent with required setbacks (**Exhibit 6**). In addition, Commission staff reviewed an aerial photograph of the site from January 24, 1977 and determined that the equestrian facility on the site was constructed after the January 1, 1977 effectiveness date of the Coastal Act, without benefit of a coastal development permit (**Exhibit 10**). Exemptions from the Coastal Act's permit requirements for replacement of structures destroyed by disaster (Section 30610(g)) only apply to structures that were either legally constructed prior to the Coastal Act, or were constructed after the Coastal Act with the appropriate authorization under the Act

Commission staff contacted Mr. Boudreau on January 14, 1999 and sent him a letter dated January 22, 1999 informing him that the exemption was revoked. The letter also stated that a Coastal Development Permit (CDP) is required for the horse riding area, polo field, numerous horse corrals, barn, and accessory buildings at the site and directed the applicant to submit an CDP application requesting after-the-fact approval of the unpermitted development (**Exhibit 7**).

In November 1999, several Coastal Commission staff members conducted an inspection at the site and took photographs of the site. On March 2, 2000, Coastal Commission staff members conducted another inspection of the site from Stokes Canyon Road and Mulholland Highway, and took photographs of the site. During this inspection, a Commission staff member observed that construction was going on at the property. She observed stacks of irrigation sprinklers and 20 foot long pipes that workers were carrying onto the property. In March 2000, Commission staff notified Mr. Boudreau that it intended to initiate cease and desist order proceedings regarding the development at the site. Mr. Boudreau, Malibu Valley Farms, Inc., and Robert Levin, the owner of the property at the time, submitted a Statement of Defense dated April 10, 2000. The Statement of Defense states that "horses have been raised and trained on the property since the mid 1970s." (*Id.* Para. 5).

On June 13, 2000, Malibu Valley, Inc. (a separate corporation also owned by Mr. Boudreau) submitted the current Claim of Vested Rights application (**Exhibit 2**). A public hearing on the application was scheduled for the February 2001 Commission meeting, with a staff recommendation of denial. On February 15, 2001, at the applicant's request, the hearing on the application was continued pending processing of

a coastal development permit application for the unpermitted development on the site (**Exhibit 8**). During this time the application was amended to change the applicant from Malibu Valley, Inc. to Malibu Valley Farms, Inc. with Robert Levin as co-applicant. In March 2002, Mr. Levin transferred the property to Malibu Valley Farms, Inc. by an unrecorded grant deed.

Malibu Valley Farms, Inc. submitted a permit application on May 31, 2002. The application requested after-the-fact approval for the existing development, with the exception of twenty-eight 576 sq. ft. portable pipe corrals, a 288 sq. ft. storage shelter, 200 sq. ft. portable storage trailer, four 400 sq. ft. portable pipe corrals, 101 sq. ft. tack room with no porch, four 101 sq. ft. portable tack rooms with four-foot porches, 250 sq. ft. cross tie area, 360 sq. ft. cross tie shelter, two 2,025 sq. ft. covered corrals, and one 1,080 sq. ft. covered corral, all of which the applicant proposed to remove. The application also proposed construction of four 2,660 sq. ft. covered pipe barns, two 576 sq. ft. shelters, three 96 sq. ft. tack rooms, and a 2,400 sq. ft. hay/storage barn.

Although the application was submitted in 2002, it was not deemed complete until March 6, 2006, due in part to delays in securing approval-in-concept for the proposed project from the Los Angeles County Department of Regional Planning (DRP). A hearing on the application was scheduled for the May 2006 Commission meeting, but was postponed at the applicant's request. A hearing was subsequently scheduled for the August 2006 Commission meeting, with a staff recommendation of denial (**Exhibit 9**). On July 27, 2006, the applicant submitted a letter withdrawing the permit application.

### **C. Development Claimed As Exempt From Coastal Act Requirements**

Malibu Valley Farms contends that it has a vested right to conduct agricultural and livestock activities and to erect and maintain structures in connection with those activities at the property at 2200 Stokes Canyon Road, Calabasas. (**Exhibit 5**, Application for Claim of Vested Rights) and.

Malibu Valley Farms claims this vested right for all development shown on the large-scale map submitted with its application form. The map is attached as an exhibit in reduced form (**Exhibit 2**). It identifies the following structures located in the coastal zone: equestrian riding arena (240'x105'); arena with wooden wall (150'x 300'); one story barn (24'x60'); proposed covered shelter (24'x24'x10'); two 45'x45' corrals with proposed roof to be added; storage container (8'x20'); back to back mare motel (2,600 square feet); cross tie area (10'x15'); nine 17'x10' parking stalls and one 17'x15' parking stall; four 20'x20' portable pipe corrals; equipment storage shelter (16'x18'); portable storage trailer (8'x25'); two 10'x15' cross tie areas; twenty-nine 24'x24' portable pipe corrals; tack room with no porch (101 sq. ft.); cross tie shelter (15'x24'); and four 101 sq. ft. tack rooms with porches. The map indicates that all of these structures are currently present at the site except the proposed 24'x24'x10' covered shelter and the roof of the two existing 45'x45' corrals.

Malibu Valley Farms contends that its agricultural and ranching activities at the site constitute development that was "vested" in the 1930s; therefore, they were vested prior to January 1, 1977, the effective date of the Coastal Act. The claimant asserts that no governmental authorization was necessary at the time that the agricultural and livestock activities on the site began. Additionally, Malibu Valley Farms asserts that the scope of its vested rights to conduct agricultural and livestock activities encompasses the right to replace structures, "modernize and update" the operations and to erect and maintain "any other structures incidental to the vested uses of the property." (**Exhibit 2**).

#### **D. Evidence Presented by Claimant**

In support of its application, Malibu Valley Farms has provided declarations concerning use of the property prior to enactment of the Coastal Act. The declarations are found in Exhibit B of the Application for Claim of Vested Rights. A summary of the declarations is set forth below.

**Declaration of Warren Larry Cress** – Mr. Cress executed a declaration stating that he lived near the property from 1967 to 1995 and that when the property was owned by the Claretian Missionaries, it was "used for agriculture, growing oat hay, and raising livestock" and that sheep were grazed and herded on the property by a man named Luigi. Mr. Cress also states that "[t]he Missionaries had horses on the property." He states that during a wildfire in 1969 or 1970, that people brought over 100 horses from all over the area to the property and they were kept in fenced areas that had been used for the sheep by Luigi. Other than fences for the sheep, the Cress declaration does not indicate that any other structures were located at the property.

**Declaration of Luigi Viso** – Mr. Viso executed a declaration stating that he raised sheep (approximately 2000 ewes and a large number of rams) on the property from 1969 through 1975. He suggests that there were holding pens and a stocking area on the flat area of the property. He also states that there was a horse barn nearby although he does not state whether it was on the property. Mr. Viso also states that there was a large fire in 1969 and people brought more than 100 horses to put in the corralled area that he used for his sheep.

**Declaration of Virgil Cure** – Mr. Cure executed a declaration stating that he worked as a farm hand on the property between 1947 and 1993. He asserts that the property was used for growing oat hay from 1947 until the late 1960s or early 1970s, that cattle were raised on the property from 1952 until 1978, and that sheep were raised on the property at some time prior to 1978. The Cure declaration does not indicate that horses were raised or boarded on the property or that any structures were located at the property during that time.

**Declaration of Dominic Ferrante** – Mr. Ferrante executed a declaration stating that he was general manager for the Claretian Missionaries from 1974 to 1988. (The 1988 date appears to be a typographical error because the property was transferred from the

Claretian Missionaries to the Boudreau family in 1978, as acknowledged in the declaration.) He states that the property was used for growing oat hay and grazing livestock, including cattle and sheep during this time. He also states that structures were placed at various locations and repeatedly removed during planting seasons and then replaced in the same or different location to accommodate the needs of the livestock. Mr. Ferrante does not state when the structures existed on the property. Ferrante states that he was involved in sale of the property to the Boudreau family in 1978 and subsequent to that time he visited the property about twice a year. The Ferrante declaration does not indicate that horses were boarded at the property.

#### **E. Analysis of Claim of Vested Rights**

##### **1. There is No Evidence That Any of the Structures For Which a Vested Right is Sought Were Present on the Site as of January 1, 1977**

The Commission has reviewed aerial photographs of the site taken in 1952 and January 24, 1977. These photographs do not show any of the structures for which Malibu Valley Farms claims a vested right. Malibu Valley Farms has not submitted any photographs that show the structures on the site as of January 1, 1977. The 1952 aerial photograph does appear to show some fences and similar structures on property that is located south of the Malibu Valley Farms property and that was owned by the Claretian Missionaries at that time.

Malibu Valley Farms provided declarations from four individuals as to what existed on the site prior to passage of the Coastal Act. The declaration from Mr. Warren Cress states that there were fences on the property. Mr. Cress does not state when the fences were present, whether they were present as of January 1, 1977, where they were located, what they were made of, or any other information that would support a finding that the fences present today are the same as the fences that Mr. Cress observed.

The declaration from Mr. Virgil Cure does not state that any structures were present on the site.

The declaration from Mr. Dominic Ferrante states that fences, corralling facilities and feeding facilities existed on the site, and that these were placed, removed, and replaced to coincide with the shifting locations of planting and grazing activities. There is no evidence that the fences currently existing on the site to support the equestrian facility are the same type and in the same location as the fences used for grazing of sheep and cattle. Nor is there an explanation as to why these structures do not appear on the 1977 aerial photographs. Therefore, this declaration does not demonstrate that the structures for which a vested right are sought are the same as those described by Mr. Ferrante.

The declaration from Mr. Luigi Viso describes holding pens, a stocking area and a barn. However, Mr. Viso's declaration is limited to a description of the property in 1975. There is no evidence that these structures remained on the site and were present when the Coastal Act was enacted.

In 1998, Brian Boudreau, President of Malibu Valley Farms, asserted that structures and improvements used for horse farming operations at the site were destroyed by a combination of wildfire in 1996 and heavy rains and flooding in 1997/1998. (Exhibit 2). Commission staff has observed the structures at the site and determined that they are made of newer materials and were constructed more recently than 1977. Whether the current structures were built following the destruction of prior existing structures by wildfire and floods does not affect the vested rights analysis. If structures existed at the time the Coastal Act was enacted and those structures were subsequently destroyed by wildfire or flood, new structures could potentially be built without coastal development permits pursuant to the disaster exemption at section 30610 (g) of the Coastal Act. (Use of this exemption requires that a replacement structure conform to existing zoning, be the same use as the destroyed structure, not exceed the floor area, height or bulk of the destroyed structure by more than 10 percent, and be in the same location as the destroyed structure.) Malibu Valley Farms has not submitted any evidence that demonstrates that any of the particular structures currently located at the site are replacements of structures that existed on the site on January 1, 1977, i.e. that they are in the same location, and of the same height and bulk as structures that existed on the site as of January 1, 1977.

Rather, the evidence suggests that Malibu Valley Farms built all of the structures and improvements associated with its equestrian facility after 1978. First, none of the declarations assert that Malibu Valley Farms began operations on the property prior to the time that the Claretian Missionaries transferred the property to the Boudreau family or that the Claretian Missionaries built structures that would be needed for a horse boarding, training and breeding operation. Instead, the declarations indicate that the Claretian Missionaries used the property for sheep and cattle grazing up until the time the property was sold, which was in 1978. Second, Malibu Valley Farms does not claim that it built particular structures before the property was acquired by the Boudreau family in 1978. Based upon the declarations that the Claretian Missionaries used the property for sheep and cattle grazing until sale to the Boudreau family in 1978, it seems that all of the structures for the horse boarding, training and breeding operation must have been constructed after acquisition of the property by Malibu Valley Farms in 1978.

**2. There is No Evidence that Substantial Work Commenced or that Substantial Liabilities Were Incurred In Reliance on Government Approvals**

As discussed above, there is no evidence that the existing structures and improvements on the site were present as of January 1, 1977. Furthermore, there is no evidence that

necessary permits for these structures and improvements had been obtained and substantial work commenced in reliance on such approvals prior to January 1, 1977. First, based on the aerial photographs, there is no evidence that construction of the improvements had commenced, e.g., there is no evidence of grading or partial construction of the equestrian related structures as of January 24, 1977. No other evidence has been provided to show commencement of construction, and instead, it appears that all construction commenced after Malibu Valley Farms took ownership of the property, which was in 1978. Second, if work had commenced to construct these structures and improvements, it was not based on government approvals given that required County approvals had not been obtained. At a minimum, the covered horse stalls (i.e., the mare motel) and the barn required building permits pursuant to County ordinances. The permit requirement for these structures is currently found at Los Angeles Code, Title 26, Sections 101-106. This ordinance was originally enacted in 1927 as Ordinance No. 1494 and has been in effect ever since then. Malibu Valley Farms has not provided evidence that it ever obtained a building permit for such structures prior to the Coastal Act.

There is additional development on the site that is not mentioned specifically by Malibu Valley Farms in its claim of vested rights, including irrigation structures, drainage structures discharging into Stokes Canyon Creek, as well as a dirt road and two at-grade crossings of Stokes Canyon Creek. Malibu Valley Farms has not submitted any evidence indicating that this development was undertaken prior to enactment of the Coastal Act or after enactment in reliance on governmental approvals. However, this development would be included under Malibu Valley Farms' claim that all development present at the site or occurring in the future is covered by vested rights, if it is "connected" to agricultural or livestock activities that are allegedly vested.

The Commission finds that Malibu Valley Farms has not establish a vested right to erect or maintain any of the development shown in its plans or any of the development that exists on the site that is not shown on the plans and that is not proposed to be removed. Malibu Valley Farms has not provided any evidence that it obtained permits and commenced construction in reliance on these permits prior to enactment of the Coastal Act. Therefore, it has not met its burden of establishing a vested right in this development.

### **3. Use of the Site for Sheep and Cattle Grazing and Growing Hay Does Not Give Rise to a Vested Right to Construct Numerous Structures to Support an Equestrian Facility**

Malibu Valley Farms claims that because the site was used for sheep and cattle grazing along with agriculture prior to enactment of the Coastal Act, Malibu Valley Farms has an unlimited vested right to construct structures on the site without coastal permits, as long as those structures are connected to any type of agricultural or livestock activities on the site. As explained below, the Commission rejects Malibu Valley Farms' position.

The Coastal Act requires that a coastal development permit be obtained before new development is performed or undertaken [Coastal Act section 30600(a)]. The construction and/or placement of each of the structures on the site, including the barn, the covered shelter, the corrals, the mare motel, the parking stalls, and numerous other structures, is development as defined by the Coastal Act. Therefore, construction and placement of each of these structures required a coastal development permit. Section 30608 of the Coastal Act recognizes vested rights "in a development." A vested right is acquired if the development was completed prior to the Coastal Act pursuant to required government approvals or, at the time of enactment of the Coastal Act substantial work had commenced and substantial liabilities had been incurred in reliance on government approvals. Neither of these criteria has been met, as discussed above. If these criteria are not met, vested rights cannot be established for new development that is undertaken after the effective date of the Coastal Act. Because the evidence shows that all of the structures on the site were constructed after enactment of the Coastal Act, the construction and/or placement of these structures required a coastal development permit.

Vested rights claims are narrowly construed against the person making the claim. (*Urban Renewal Agency v. California Coastal Commission* (1975) 15 Cal.3d 577). Accordingly, vested rights to conduct an activity at the site are limited to specific identified activities that meet the requirements for establishing a vested right. Other related development undertaken at a later time to modify or update the manner in which the vested activity is conducted, or to facilitate the vested activity, is not vested or exempt from current permit requirements. (See, *Halaco Engineering Co. v. So. Central Coast Regional Commission* (1986) 42 Cal.3d 52, 76 (court acknowledged vested right to operate a foundry that had obtained necessary local approvals prior to the effective date of the Coastal Act, but denied a vested right for a propane storage tank that was installed later). In *Halaco*, the court found that the propane tank at issue was not part of what had been approved by the local government prior to enactment of the Coastal Act and therefore the tank constituted new development for which a permit was required, even though it was not disputed that the tank would contribute to the operation of the foundry. 42 Cal.3d at 76. Similarly, new development conducted by Malibu Valley Farms after January 1, 1977, is subject to the requirements of the Coastal Act.

Thus, even if the site was used for sheep and cattle grazing prior to the Coastal Act, there is no vested right to construct new structures to support that use or any other use. Furthermore, if a particular structure or use at the property is vested, by the very terms of the Coastal Act exemption (Section 30608), any substantial expansion of the structure or use also is "new development" and is not part of the vested right. Therefore, even if fences and feeding structures existed to support sheep and cattle grazing, substantial changes to such structures, such as placement of a new, different type of fence, would require a coastal development permit.

Even if Malibu Valley Farms had established a vested right to board a certain number of horses (which it has not), the scope of the vested right is limited to only what existed at the time of vesting. Any substantial change, such as a substantial increase in the

number of horses boarded at the site, or construction of new structures used for exercising, sheltering, or caring for the horses, are not vested and are subject to the requirements of the Coastal Act. Further, no evidence was submitted that establishes that horses were boarded, trained and bred at the site prior to enactment of the Coastal Act. The declarations provided by Malibu Valley Farms assert that after a wildfire in 1969, approximately 100 horses were brought to the site temporarily. (Exhibit 5, Application for Claim of Vested Rights, Exhibit B - Declarations of Warren Larry Cress and Luigi Viso). The evidence of a one-time temporary use of the site to keep horses after a wildfire does not establish vested right to continuously maintain that number of horses at the site. The use was merely a temporary, short-term use in response to a natural disaster. There is one declaration that states that the Claretian Missionaries "had horses on the property," but it does not state when or whether horses were boarded on the property. Therefore, this one statement is insufficient to establish that horses were boarded, trained and bred on the property prior to the Coastal Act. Even if there were evidence of use of the property for boarding horses prior to the Coastal Act, the erection of structures for purposes of boarding, training and breeding horses requires a coastal development permit if it occurs after January 1, 1977 unless the criteria for establishing a vested right have been met.

Malibu Valley Farms' claim of vested rights is so broad that it would cover any structure built on the site in the future as long as it is "connected" to agricultural or livestock activities that were allegedly vested prior to the Coastal Act. Under this theory, an unrestricted amount of development could occur at the site and neither the Coastal Act nor any local ordinances would ever apply, because the development would be within the scope of Malibu Valley Farms' vested rights. This theory is not supported by the Coastal Act and the case law on vested rights.

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

#### **4. The Site is Not Currently Used For Agriculture or Grazing Sheep and or Cattle and There Is No Vested Right to Resume Such Activities**

Although Malibu Valley Farms claims that it is seeking a vested right to continue the agricultural and livestock activities that occurred on the site prior to enactment of the Coastal Act, it also states that it is seeking a vested right to maintain all of the existing development on the site. The evidence of prior agricultural and livestock use relates to use of the site for growing oat hay and raising and grazing sheep and cattle. All of the existing development is related to an equestrian facility, i.e., a facility for the boarding, training and breeding of horses. Thus, it does not appear that Malibu Valley Farms is seeking a vested right to carry out the actual agricultural and livestock activities that occurred on the site prior to enactment of the Coastal Act – oat hay farming and cattle and sheep raising and grazing. Commission staff inspected the site in November 1999. Commission staff had the opportunity to observe the entire site, and did not observe any use of the site for growing crops or grazing sheep or cattle. Commission staff again observed the site from Stokes Canyon Road and Mulholland Road in March 2000 and did not observe any use of the site for growing crops or grazing sheep or cattle. Commission staff returned to the site in August 2005 and again did not observe any use of the site for growing crops or raising goats, sheep, or cattle. Commission staff has, however, observed that areas of the site are irrigated pastures where horses are permitted to graze.

Malibu Valley Farms has not provided any documentation of expenditures for growing crops or grazing sheep or cattle at the site nor has it provided any documentation of income generated by the sale of crops, or from raising sheep, goats or cattle. Accordingly, Malibu Valley Farms has not provided evidence indicating that whatever growing of crops and/or raising of sheep, goats, or cattle occurred at the site prior to January 1, 1977, is a continuing activity at the site.

The evidence indicates that, at most, the Claretian Missionaries had a legal nonforming use of the site consisting of growing of crops and grazing sheep and cattle as of January 1, 1977. This nonconforming use was subsequently discontinued, abandoned and/or removed by Malibu Valley Farms when it constructed a horse boarding, training and breeding facility. The legal nonconforming use of the site does not give rise to a vested right to construct an equestrian facility and in any event was abandoned and cannot be resurrected by Malibu Valley Farms at this point. As is a common practice, Los Angeles County ordinances contain provisions for termination of the right to maintain a prior nonconforming use of property, if the use is abandoned or discontinued. (L.A. County Code, Title 22, Section 22.56.1540).

#### **F. Conclusion**

For all the reasons set forth above, the Commission finds that Malibu Valley Farms has not met the burden of proving its claim of vested rights for any of the development the currently exists at 2200 Stokes Valley Road.



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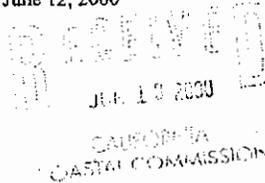
\*A Professional Corporation

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June 12, 2000



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32051

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#### VIA FACSIMILE & HAND-DELIVERY

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

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

Dear Mr. Ainsworth:

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

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

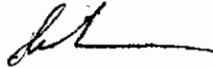
We understand that your office may ask for additional information and we will attempt to respond to these requests in a timely manner.

Exhibit 2  
4-00-279-VRC  
Claim of Vested Rights Application

Mr. Jack Ainsworth  
June 12, 2000  
Page 2

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

Sincerely,



Stephen E. Abraham

SEA  
SEABRA11A/32051/644267v1  
Enclosures (Faxed w/out Exhibits)  
Cc: California Coastal Commission, North Coast Area

STATE OF CALIFORNIA—THE RESOURCES AGENCY

PETE WILSON, Governor

## CALIFORNIA COASTAL COMMISSION

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



## CLAIM OF VESTED RIGHTS

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

1. Name of claimant, address, telephone number:

Malibu Valley, Inc., 26885 Mulholland Highway  
Calabasas, California 91302 (818) 880-5139  
(zip code) (area code) (telephone number)

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

Stanley W. Lamport, Esq.; Stephen E. Abraham, Esq. Cox, Castle & Nicholson LLP  
2049 Century Park East, 28th Floor, Los Angeles, CA 90067 (310) 277-4222  
(zip code) (area code) (telephone number)

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

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

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

Check one of the following:

- a. Categorically exempt \_\_\_\_\_. Class: \_\_\_\_\_. Item: \_\_\_\_\_.

Describe exempted status and date granted: \_\_\_\_\_.

- b. Date Negative Declaration Status Granted: \_\_\_\_\_.

- c. Date Environmental Impact Report Approved: \_\_\_\_\_.

Attach environmental impact report or negative declaration.

FOR COASTAL COMMISSION USE:

Application Number \_\_\_\_\_

Date Submitted \_\_\_\_\_  
Date Filed \_\_\_\_\_

J1: 2/89

-2-

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

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

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

None.

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

None.

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

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

None.

-3-

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

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

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

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

No.

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

Work is completed.

14. Authorization of Agent.

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

Siara Andrear PRESIDENT  
Signature of Chairmant

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

Siara Andrear  
Signature of Chairmant(s) or Agent

CLAIM OF VESTED RIGHTS

Application of Malibu Valley  
June 9, 2000  
page 4

Question 8:

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

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



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DECLARATION OF VIRGIL CURE

I, Virgil Cure, declare as follows:

1. Between 1947 and 1993, I worked as a farm hand on the property currently operated by Malibu Valley Farms, Inc. When I started working on the property in 1947, Clarence Brown owned the farm. It encompassed both sides of what is today Stokes Canyon Road from Mulholland Highway northward.

2. In 1947, Stokes Canyon Road did not exist. The road was created in the 1950s. Mulholland Highway was a dirt road. In 1947 Stokes Canyon Creek ran along the west side of the canyon along the base of the hillside, in approximately the location of the Malibu Valley Farm stables. The course of the creek was altered in the 1950s when Stokes Canyon Road was constructed. The current location of the creek on the Malibu Valley Farm property is a ditch that was created using a backhoe.

3. In 1947, all of the property on the east side of Stokes Canyon Road, including the largely flat area along Mulholland Highway, was used to grow oat hay. Most of the natural vegetation was removed and the ground was disked annually in order to grow the oat hay. Disking and seeding would occur in December. We would cut and bale the last cutting of the oat hay in June.

4. After Stokes Canyon Road went in and the creek bed was altered in the 1950s, we continued to raise oat hay on the east side of the road. The farming of oat hay included the area along Stokes Canyon Road and Mulholland Highway currently depicted on maps as being located in the Coastal Zone. The farming of oat hay in this area continued until the late 1960s or early 1970s. Prior to 1978, we also raised sheep on the east side of Stokes Canyon Road. For at least part of the year, the sheep would graze on the land located along Stokes Canyon Road and Mulholland Highway,

1 including the area depicted on maps as located in the Coastal Zone. The sheep were watered in Stokes  
2 Creek.

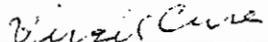
3 5. The Claretian Missionaries bought the portion of the farm located on the west side of  
4 Stokes Canyon Road in 1952. The land they acquired includes the land presently owned by Malibu  
5 Valley Farms, Inc. From approximately 1952 until they sold the land in 1978, the Claretians raised  
6 cattle on the property, including on that portion of the property shown on maps to be located in the  
7 Coastal Zone.

8  
9 6. The Boudreau family purchased the land on both sides of Stokes Canyon Road in 1978.  
10 I continued to work on the property as a ranch hand until I retired in 1993.

11  
12 7. All of the land currently used by Malibu Valley Farms, Inc. on the east side of Stokes  
13 Canyon Road and along Mulholland Highway has been continuously used for farming throughout the  
14 time I worked on the property. None of that property is in a native, undisturbed condition. It has not  
15 been in such a condition at any time since I began working on the property in 1947.

16  
17 8. The facts set forth in this declaration are personally known to me and I have first hand  
18 knowledge of the same. If called as a witness, I could and would competently testify to the facts set  
19 forth in this declaration.

20  
21 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
22 true and correct. Executed on June \_\_, 2000, at Calabasas, California.

23  
24   
25 Virgil Cure  
26  
27  
28

DECLARATION OF DOMINIC FERRANTE

1  
2  
3 I, Dominic Ferrante, declare as follows:  
4

5 1. From early-1974 to 1988, I served as General Manager for the Claretian Missionaries  
6 who owned property located on the east side of Las Virgenes and the north side of Mulholland  
7 Highway ("Property") that is own owned or operated by Malibu Valley Farms, Inc. ("MVFF").  
8

9 2. As General Manager, I was responsible for running all of the business operations of the  
10 Claretians' not-for-profit corporation, including real estate, securities, investments, administration, and  
11 operations. I was responsible for managing all activities on the Property, including those relating to  
12 the agricultural uses of the land.  
13

14 3. During the entire time that I was General Manager, the Property was dedicated to the  
15 growing of oat hay and grazing of livestock, including cattle and sheep. These activities were ongoing  
16 throughout the Property. Oat hay was planted during the growing seasons, after which cattle and then  
17 sheep would graze throughout the crop areas. This was a continuous cycle of farming.  
18

19 4. Almost all of the Property was used for the farming operations. The area between Las  
20 Virgenes Road to the west and Mulholland Highway to the south, and on both sides of Stokes Canyon  
21 Road was an area of significant use because of its naturally flat terrain, sparse vegetation, and close  
22 proximity to improved roads.  
23

24 5. Structures would be located and constructed at various places on the Property to  
25 support the livestock operations, including fences, corralling facilities, and feeding facilities. Those  
26 structures would be moved to make way during the planting seasons but would then be returned, either  
27 to the same location or to another location in response to shifting and particular needs of the livestock.  
28 Agricultural activities on the land were constant and continuous.

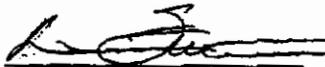
1           6.     While I was General Manager, there was no period of time when this cycle of crops  
2 and livestock was discontinued. The planting of crops, re-introduction of livestock, and replanting  
3 was part of a continuous agricultural management cycle.

4  
5           7.     In 1978, I was involved in the sale of the Property to the Boudreau family, owners of  
6 MVFL. After the Property was sold, I visited the Property approximately twice a year. I last visited  
7 the Property in May of 2000. I have had the opportunity to observe the farming activities during my  
8 visits.

9  
10          8.     The farm operates in much the same manner today as it did when I was the General  
11 Manager. The same areas are used to raise and maintain livestock. The farm today has the same types  
12 of livestock facilities as when I managed the Property.

13  
14          9.     The facts set forth in this declaration are personally known to me and I have first hand  
15 knowledge of the same. If called as a witness, I could and would competently testify to the facts set  
16 forth in this declaration.

17  
18           I declare under penalty of perjury under the laws of the State of California that the foregoing is  
19 true and correct. Executed on June 9, 2000, at Montebello Park, California.

20  
21 

22           Dominic Ferrante  
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DECLARATION OF LUIGI VISO

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3 I, Luigi Viso, declare as follows:  
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5 1. Between 1969 and 1975, I raised sheep on the property now run by Malibu Valley  
6 Farms, Inc. Each year, I would sign a contract to use the land for my sheep herding business. I would  
7 raise the sheep and sell their wool to buyers from San Francisco.  
8

9 2. I had about 2000 ewes. I also had a large number of rams. Each of the ewes had lambs  
10 each season.  
11

12 3. In 1969, there was a large fire. People brought their horses from all over the area to put  
13 in the corralled area that I used for my sheep. There were more than 100 horses. I lost two hundred  
14 sheep in the fire.  
15

16 4. In 1983 or 1984, I allowed my sheep to be used to save the community from the risks  
17 of fire in the area during a dry period. The television stations covered this. The news stories are on  
18 the video tape entitled, "sheep."  
19

20 5. The property included hilly areas and a naturally flat area just north of Mulholland and  
21 east of Stokes Canyon Road. It was always flat as long as I had used it and had very little vegetation.  
22 It was mostly the remains after oat hay was cut and bailed.  
23

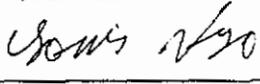
24 6. Each day, I turned the sheep out over the hills on the property. The sheep would graze  
25 in the areas where crops had been growing. They were watered in the creek running through the  
26 property. Each evening, the sheep would return to the flat area of the property. This was the best  
27 place to keep the sheep at night. Because the land was naturally flatter than the surrounding hilly  
28 areas, it was easier to control the sheep and protect them from coyotes.

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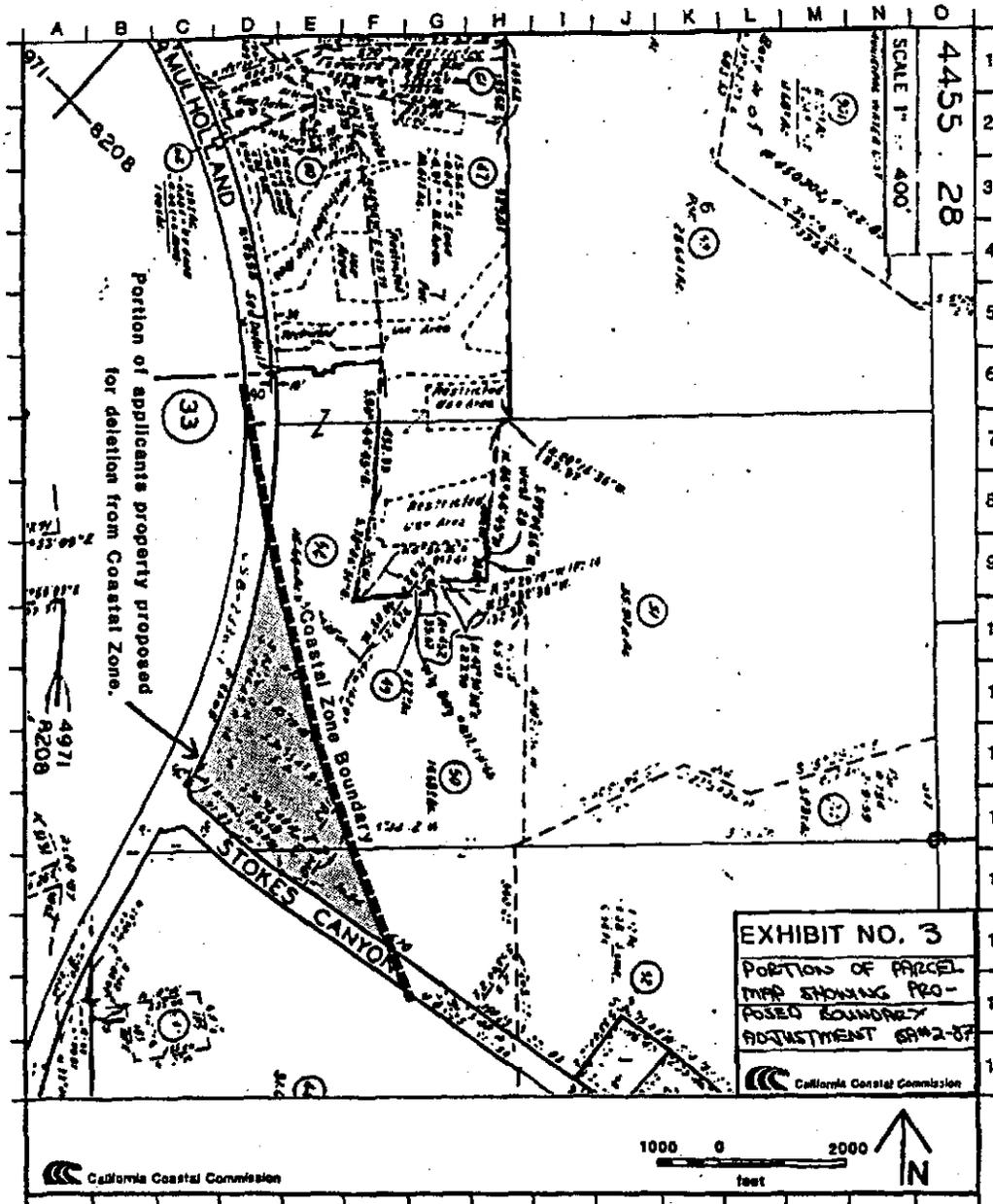
7. I also used this flat area to hold and shear the sheep. It was a perfect location for my holding pens and a stocking area. There was a horse barn nearby.

8. The facts set forth in this declaration are personally known to me and I have first hand knowledge of the same. If called as a witness, I could and would competently testify to the facts set forth in this declaration.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on June 9, 2000, at Calabasas, California.

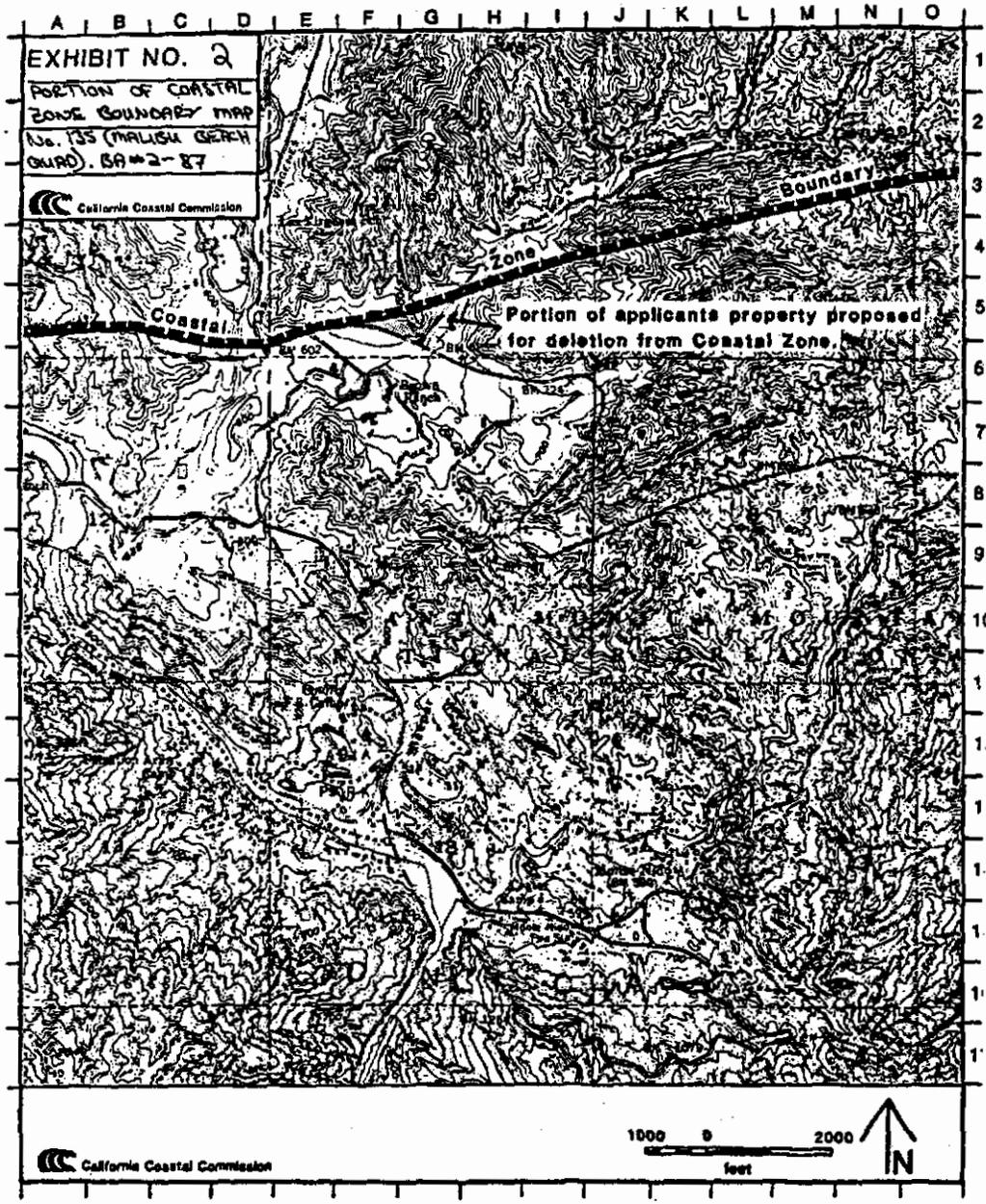


Luigi Viso

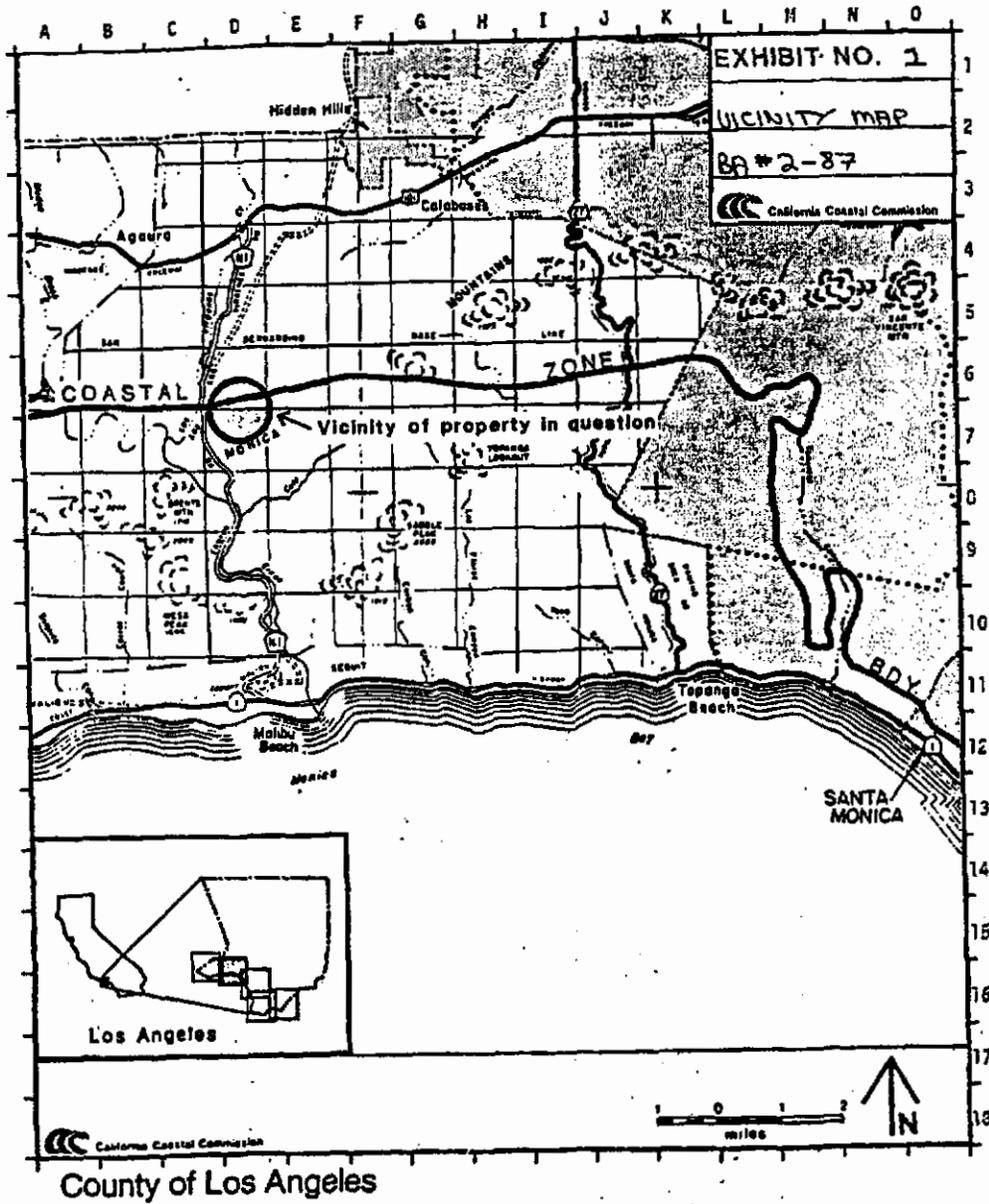


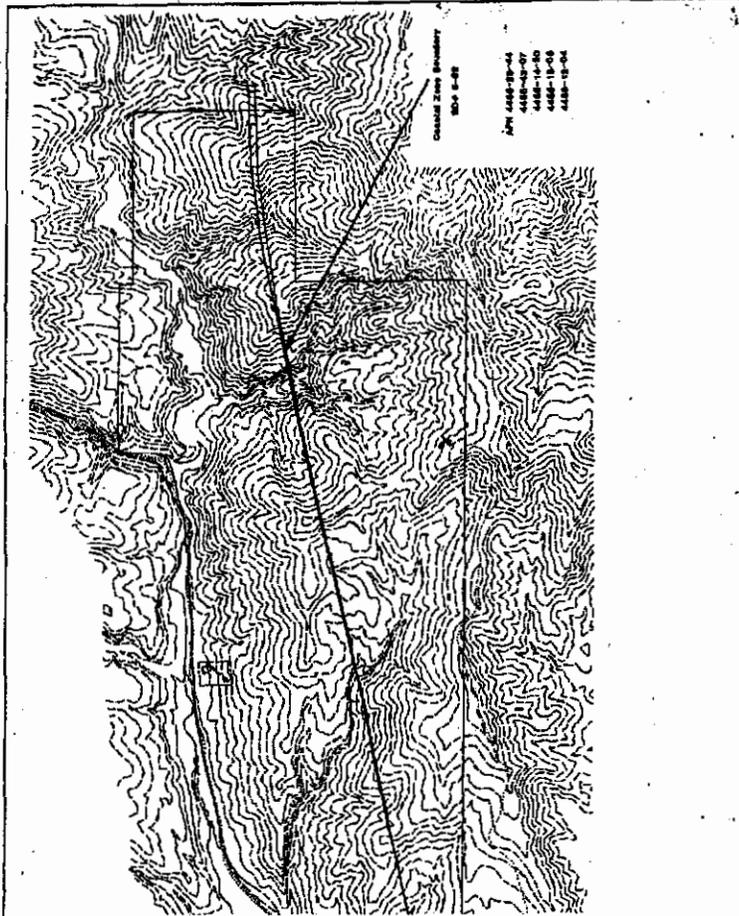
County of Los Angeles

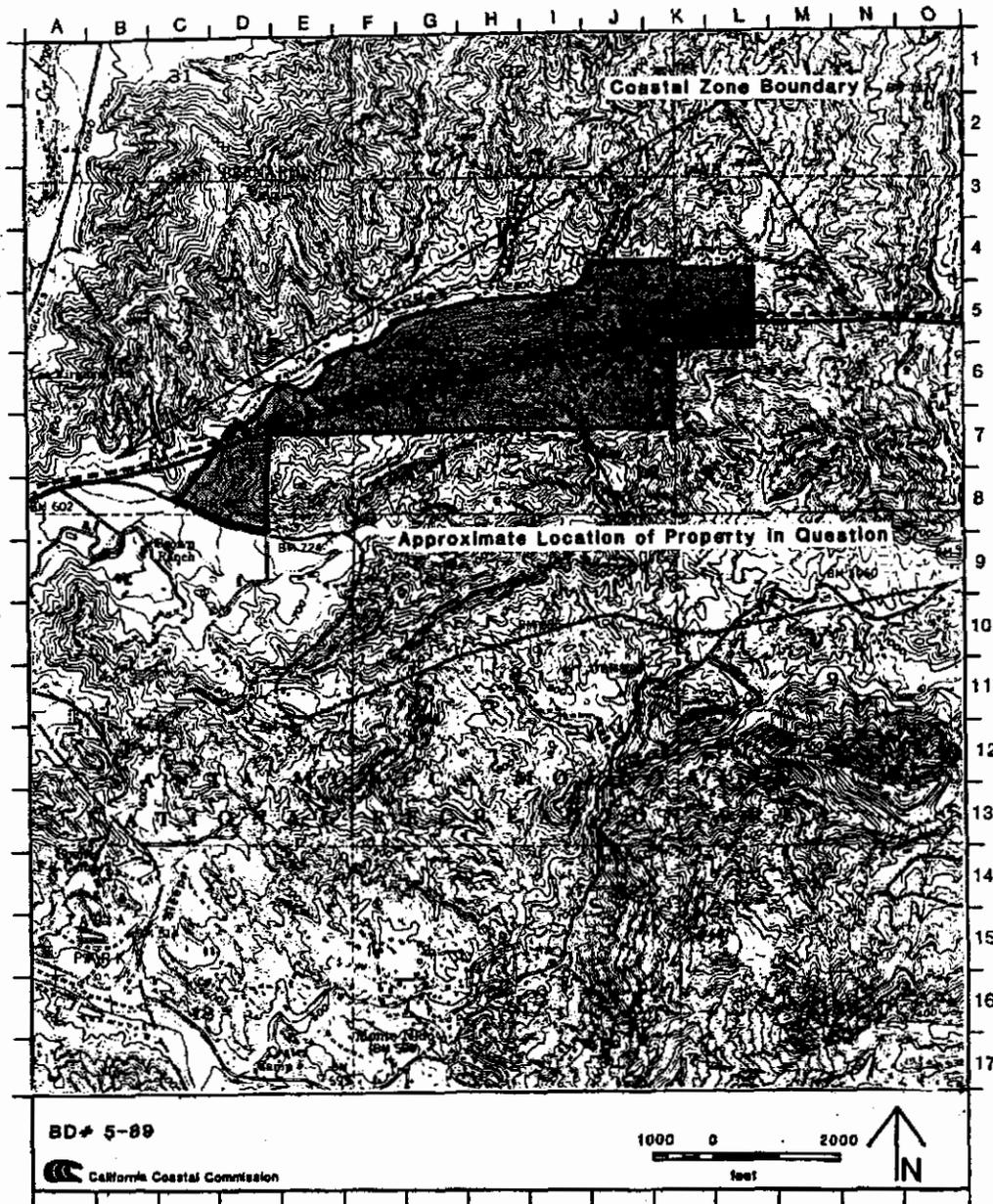
Exhibit 1  
4-00-279-VRC  
Vicinity Map



County of Los Angeles







County of Los Angeles

STATE OF CALIFORNIA—THE RESOURCES AGENCY

GEORGE DEUKMEJIAN, Governor

CALIFORNIA COASTAL COMMISSION

831 HOWARD STREET, 4TH FLOOR  
SAN FRANCISCO, CA 94105  
(415) 543-8555  
Hearing Impaired/TDD (415) 896-1825



February 21, 1989

Mr. Frank King  
Vice President / Planning  
Malibu Valley Farms  
2200 Strokes Canyon Road  
Calabasas, CA 91302

Re: Boundary Determination #5-89

Dear Mr. King,

Enclosed is a copy of Coastal Zone Boundary Map No. 135 (Malibu Beach Quad), with the approximate location of Los Angeles County APN's 4455-28-44, 4455-43-07, 4455-14-20, 4455-15-05, 4455-12-04 shown thereon. Also included is a copy of the large scale site plan map you provided with the Coastal Zone Boundary added.

As I mentioned in our phone conversation last week, the Coastal Zone Boundary you submitted was accurately plotted on the western half of the proposed site. On the eastern half of the site, however, the Coastal Zone Boundary was plotted slightly seaward (south) of the actual Coastal Zone Boundary. The property is bisected by the Coastal Zone Boundary, with approximately 110 acres located in the Coastal Zone. This section of the property would be subject to the requirements of the Coastal Act of 1976.

Please contact me should you have any questions regarding this determination.

Sincerely,

A handwritten signature in cursive script that reads "Jonathan Van Coops".

JONATHAN VAN COOPS  
Mapping Program Manager

JVC:ns

cc: C. Damm, CCC-LA

Enclosures

2242N

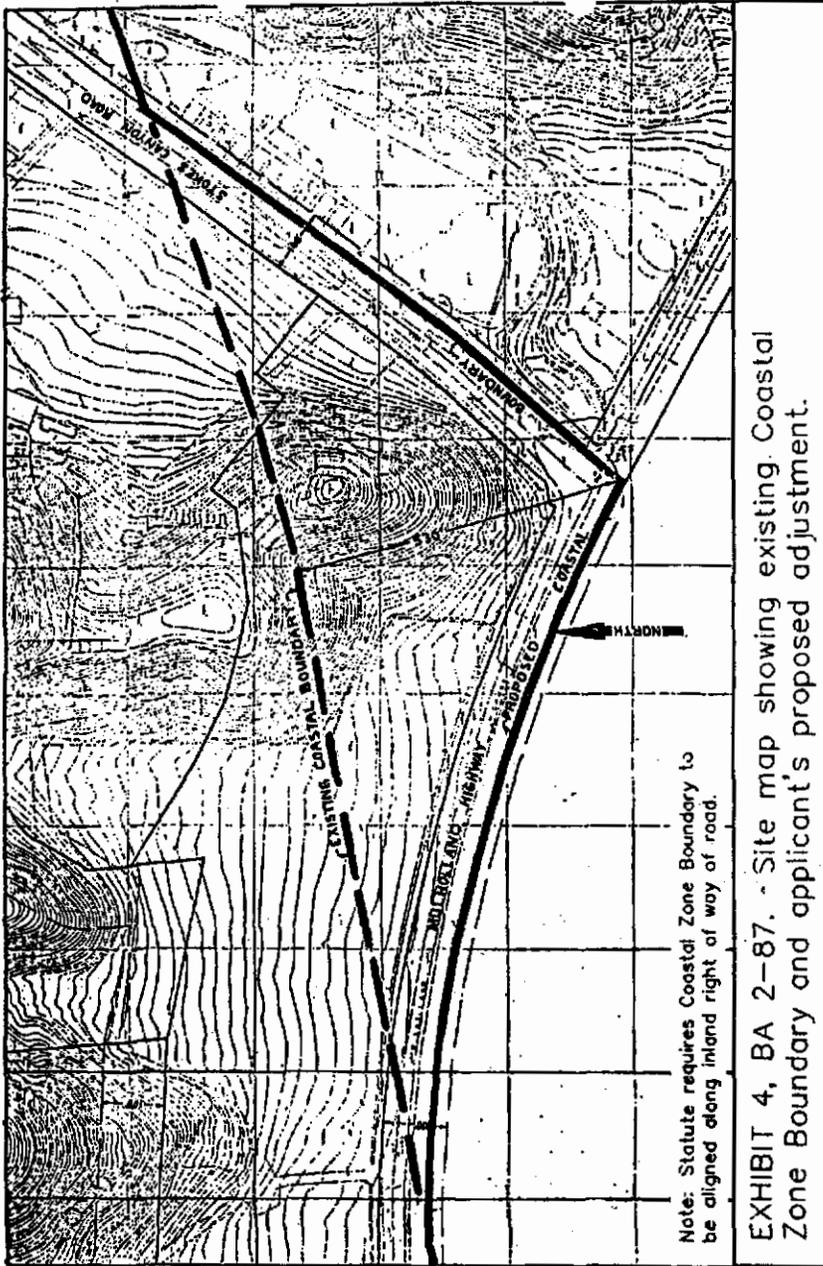
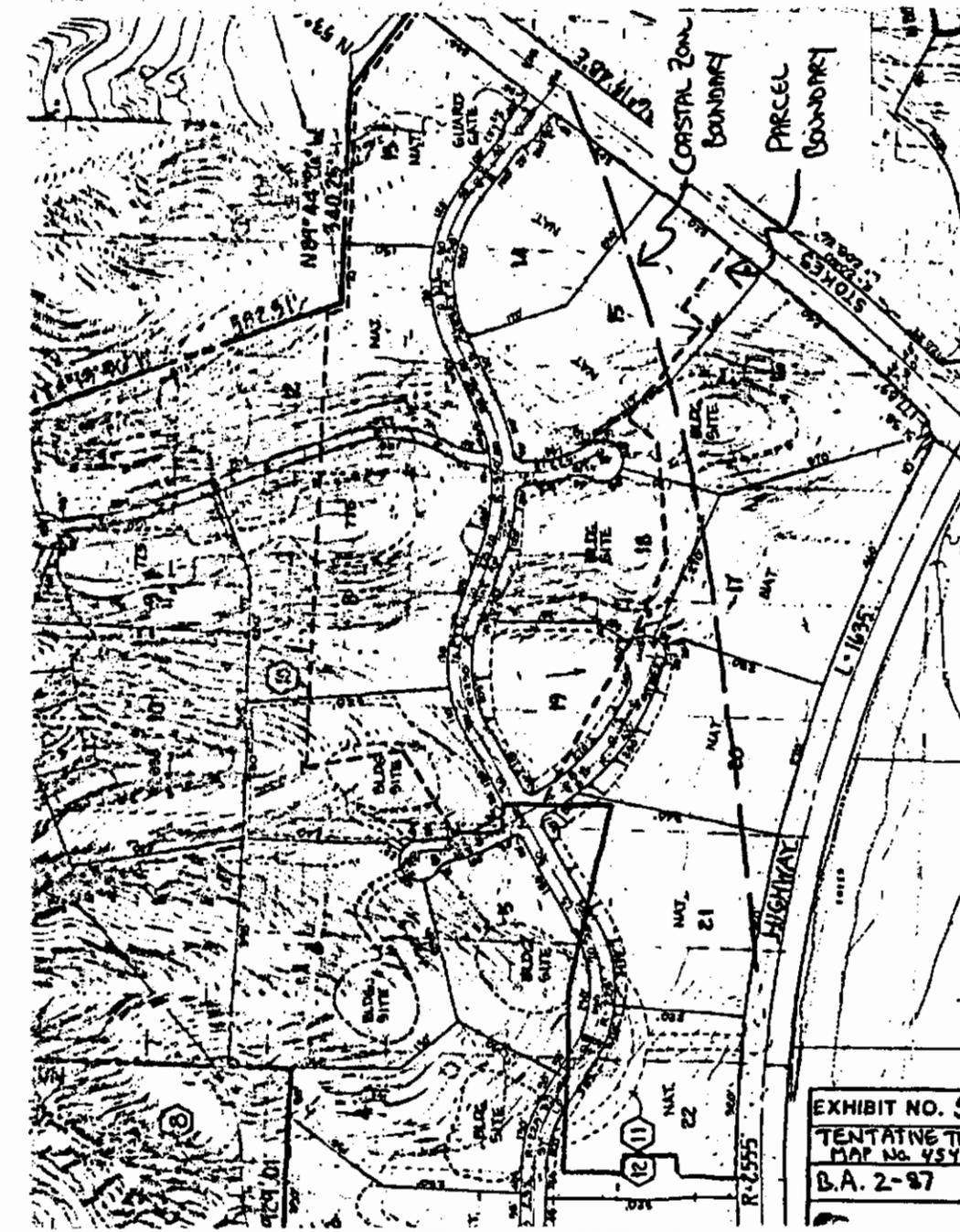


EXHIBIT 4, BA 2-87. - Site map showing existing Coastal Zone Boundary and applicant's proposed adjustment.



1/06/99 11:49 FAX

002

**Robert K. Levin**

Sorrel River Ranch  
P.O. Box K  
Mosh, Utah 84532  
(435) 259-4642

January 6, 1999

Building and Safety  
L.A. County Department of Public Works  
5661 Las Virgenes Road  
Calabasas, California 91302

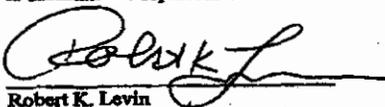
Re: Construction of Pipe Barn Located on the Northeast Intersection of  
Stokes Canyon Road and Mulholland Highway

To Whom It May Concern:

I, Robert K. Levin, owner of the real property located on the northeast intersection of Stokes Canyon Road and Mulholland Highway, County of Los Angeles (APN No. 4455-028-044), give Brian Boudreau, President of Malibu Valley Farms, Inc., full authority to sign on my behalf on any and all permits or other documents necessary to facilitate the replacement of the pipe barn burned by the 1996 wild fire.

DATED: 1-6-99

By:



Robert K. Levin

By:



Brian Boudreau, President  
Malibu Valley Farms, Inc.

2005-027.6  
MVP02179.doc

01/06/99 11:50 FAX

003

ACKNOWLEDGMENTS

State of Utah }  
County of Grand } SS.

On 1-6, 1999, before me, Jennie Ross, Notary Public,  
personally appeared Robert K. Levin, personally known to me (or proved to me on the basis of  
satisfactory evidence) to be the person whose name is subscribed to the within instrument and  
acknowledged to me that he executed the same in his authorized capacity, and that by his signature on  
the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature Jennie Ross

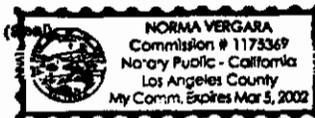


State of California }  
County of Los Angeles } SS.

On 1/8, 1999, before me, Norma Vergara, Notary Public,  
personally appeared Brian Bourgeois, personally known to me (or proved to me on the basis of  
satisfactory evidence) to be the person whose name is subscribed to the within instrument and  
acknowledged to me that he executed the same in his authorized capacity, and that by his signature on  
the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature Norma Vergara



LOS ANGELES COUNTY DEPARTMENT OF PUBLIC WORKS  
DEVELOPMENT AND PERMITS TRACKING SYSTEM

DATE: 12/18/98  
TIME: 09:12:53  
ROUTE TO: BS0910

DPR4051  
PAGE 1  
REQUESTED BY: XXXXXXX

FEE RECEIPT

RECEIPT NUMBER: BS09100012620

THIS IS A RECEIPT FOR THE AMOUNT OF FEES COLLECTED AS LISTED BELOW. THE RECEIPT NUMBER, DATE AND AMOUNT VALIDATED HEREON HAS ALSO BEEN VALIDATED ON YOUR APPLICATION OR OTHER DOCUMENT AND HAS BECOME A PART OF THE RECORD OF THE COUNTY OF LOS ANGELES, FROM WHICH THIS RECEIPT MAY BE IDENTIFIED. PLEASE RETAIN THIS RECEIPT AS PROOF OF PAYMENT. ANY REQUEST FOR REFUND MUST REFERENCE THIS RECEIPT NUMBER.

PAYMENT RECEIVED: 12/18/98 09:12:03  
PROJ/APPL/IMPRV NBR: BL 9812170013  
PROPERTY ADDRESS: 2200 STOKES RD N CLBS  
RELATED PROJECT:  
PAYOR NAME: DIAMOND WEST ENGINEERING, INC.  
ADDRESS: 26885 MULHOLLAND HWY

CALABASAS CA 91302  
PHONE: (818) 878-0300 EXTN:

WORK DESCRIPTION: BARN-2464 SQ FT

FEE ITEM	DESCRIPTION	STATISTICAL CODE	CALCULATION FACTOR	UNIT OF MEASURE	EXTENDED AMOUNT
AA	BLDG PERMIT ISSUANCE	A018303			\$18.90
AE	STRONG MOTION OTHER	A018303	34780.00	VALUATN	\$7.30
D1	PLANCHHECK W/O EN-HC	A019224	34780.00	VALUATN	\$347.99
D2	PERMIT W/O EN-HC	A018303	34780.00	VALUATN	\$409.40

TOTAL FEES PAID: \$783.59

PAYMENT TYPE	REFERENCE	AMT TENDERED	CHANGE GIVEN	AMOUNT APPLIED
CHECK	005175	\$783.59	\$0.00	\$783.59

OFFICE: BS 0910 DRAWER: SH  
CASHIER: SH

ITEMS WITH AN ASTERISK (\*) WILL REQUIRE FURTHER DEPOSITS  
WHENEVER ACTUAL COSTS EXCEED THE DEPOSIT AMOUNT

\*\*\*\*\* END OF REPORT \*\*\*\*\*

LOS ANGELES COUNTY DEPARTMENT OF PUBLIC WORKS  
DEVELOPMENT AND PERMITS TRACKING SYSTEM

DATE: 12/17/98  
TIME: 08:27:43  
ROUTE TO: BS0910

DPR4051  
PAGE 1  
REQUESTED BY: XXXXXXXX

MISCELLANEOUS FEE RECEIPT

RECEIPT NUMBER: BS09100012616

THIS IS A RECEIPT FOR THE AMOUNT OF FEES COLLECTED AS LISTED BELOW. THE RECEIPT NUMBER, DATE AND AMOUNT VALIDATED HEREON HAS ALSO BEEN VALIDATED ON YOUR APPLICATION OR OTHER DOCUMENT AND HAS BECOME A PART OF THE RECORD OF THE COUNTY OF LOS ANGELES, FROM WHICH THIS RECEIPT MAY BE IDENTIFIED. PLEASE RETAIN THIS RECEIPT AS PROOF OF PAYMENT. ANY REQUEST FOR REFUND MUST REFERENCE THIS RECEIPT NUMBER.

PAYMENT ACCEPTED FOR: 2200 STOKS CANYON

DATE PAYMENT RECEIVED: 12/17/98 08:27:28  
PAYOR NAME: DIAMOND WEST ENGINEERING  
ADDRESS: 26885 MULHOLLAND HWY CALABASAS CA 91302  
PHONE: (818) 878-0300

FEE ITEM	FEE DESCRIPTION	STATISTICAL CODE	CALCULATION FACTOR	UNIT OF MEASURE	EXTENDED AMOUNT
06	INSPECTIONS O.T.	A018303	1.00	HOURS	\$66.90
18	ADDITIONAL REVIEW	A019236	2.00	HOURS	\$149.00

TOTAL FEES PAID: \$215.90

PAYMENT TYPE	REFERENCE	AMT TENDERED	CHANGE GIVEN	AMOUNT APPLIED
CHECK	005167	\$215.90	\$0.00	\$215.90

OFFICE: BS 0910 DRAWER: 03  
CASHIER: LA

ITEMS WITH AN ASTERISK (\*) WILL REQUIRE FURTHER DEPOSITS  
WHENEVER ACTUAL COSTS EXCEED THE DEPOSIT AMOUNT

\*\*\*\*\* END OF REPORT \*\*\*\*\*



STATE OF CALIFORNIA--THE RESOURCE AGENCY

GRAY DAVIS, GOVERNOR

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94108-2337  
VOICE AND TDD (415) 904-5200  
FAX (415) 904-5400



April 19, 2000

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

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

Dear Ms. Perez:

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

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

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

Sincerely,

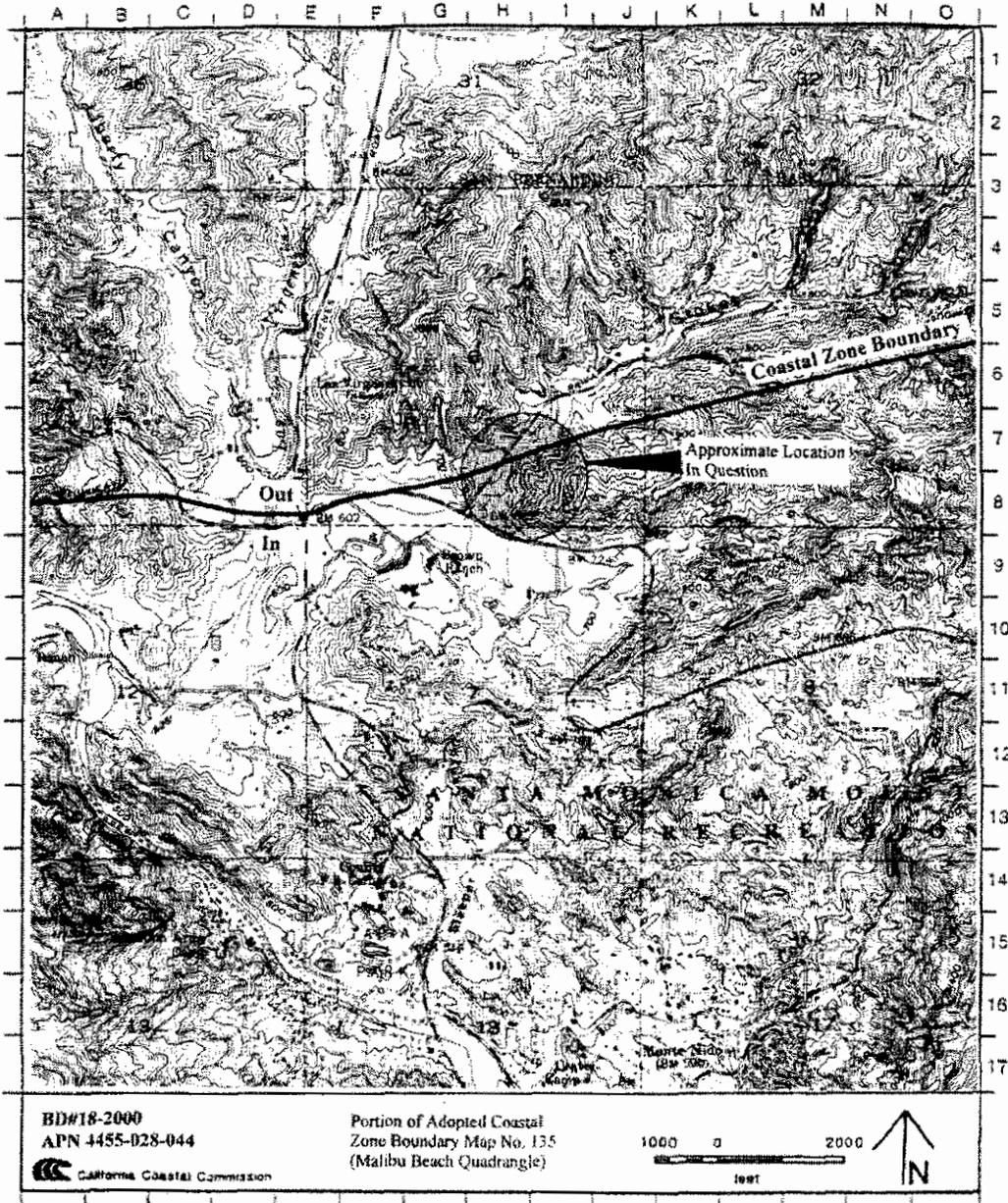
A handwritten signature in dark ink, appearing to read "Darryl Rance".

Darryl Rance  
Mapping/GIS Unit

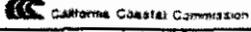
Enclosures

cc: Jack Ainsworth, CCC-SCC

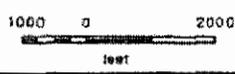
Exhibit 3  
4-00-279-VRC  
Boundary Determination No. 18-2000



BD#18-2000  
APN 4455-028-044

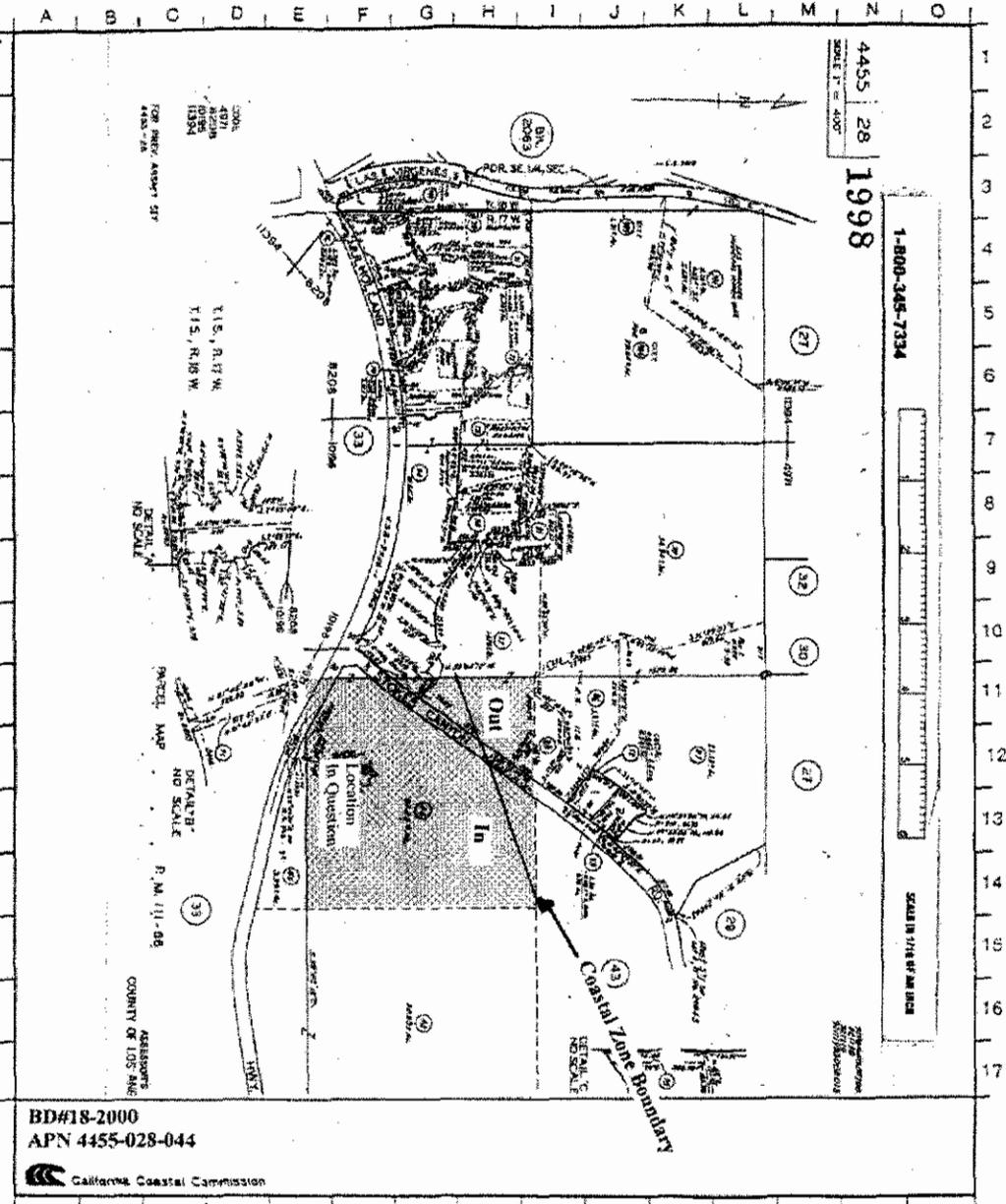


Portion of Adopted Coastal  
Zone Boundary Map No. 135  
(Malibu Beach Quadrangle)



County of Los Angeles

Exhibit 1



County of Los Angeles

Exhibit 2

4-98-125-7

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**MALIBU VALLEY FARMS, INC.**

---

November 19, 1998

RECEIVED

NOV 20 1998

**VIA FEDERAL EXPRESS**

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

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

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

Dear Mr. Ainsworth:

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

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

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

---

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

---

Exhibit 4  
4-00-279-VRC  
Exemption Request Letter, Nov. 19, 1998

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

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

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

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

Thank you for your assistance and courtesy.

Sincerely,

  
Brian Boudreau, President  
Malibu Valley Farms, Inc.

Enclosures  
MVPD164.doc  
2003-019/012

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



EXEMPTION LETTER

4-98-125-X

**DATE:** December 7, 1998

**NAME:** Brian Boudreau

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

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

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

- The site is not located within the coastal zone as established by the California Coastal Act of 1976, as amended.
- The proposed development is included in Categorical Exclusion No. \_\_\_\_ adopted by the California Coastal Commission.
- The proposed development is judged to be repair or maintenance activity not resulting in an addition to or enlargement or expansion of the object of such activities (Section 30610(d) of Coastal Act).
- The proposed development is an improvement to an existing single family residence (Section 30610(a) of the Coastal Act) and not located in the area between the sea and the first public road or within 300 feet of the inland extent of any beach (whichever is greater) (Section 13250(b)(4) of 14 Cal. Admin. Code).
- The proposed development is an improvement to an existing single family residence and is located in the area between the sea and the first public road or within 300 feet of the inland extent of any beach (whichever is greater) but is not a) an increase of 10% or more of internal floor area, b) an increase in height over 10%, or c) a significant non-attached structure (Sections 30610(a) of Coastal Act and Section 13250(b)(4) of Administrative Regulations).
- The proposed development is an interior modification to an existing use with no change in the density or intensity of use (Section 30106 of Coastal Act).

(OVER)

Exhibit 5  
4-00-279-VRC  
Exemption Letter 4-98-125-X

Page 2

- The proposed development involves the installation, testing and placement in service of a necessary utility connection between an existing service facility and development approved in accordance with coastal development permit requirements, pursuant to Coastal Act Section 30610(f).
- The proposed development is an improvement to a structure other than a single family residence or public works facility and is not subject to a permit requirement (Section 13253 of Administrative Regulations).
- The proposed development is the rebuilding of a structure, other than a public works facility, destroyed by a disaster. The replacement conforms to all of the requirements of Coastal Act Section 30610(g).
- Other:

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

Truly yours,



Melanie Hale  
Coastal Program Analyst



September 29, 1998

Los Angeles County  
Department of Regional Planning  
Director of Planning James E. Hartl

TO:  
Sue Brooks



**NOTICE OF VIOLATION**

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

Inspection File No. EF89865

Dear Sir/Madam:

It has been reported that you are boarding horses, maintaining inoperable vehicles and junk and salvage at the above address. In addition, there are numerous trailers occupied as dwelling units on the same address.

These are not permitted uses in the A-1-1 zone classification and are in violation of the provisions of the Los Angeles County Zoning Ordinance, Sections 22.24.030, 22.24.070, 22.24.035(B) and 22.24.100.

Please consider this an order to comply with the provisions of the Zoning Ordinance within ten (10) days after receipt of this letter.

Per Section Code 22.24.100, any property in the A-1 zone may be used for riding academies and stables with the boarding of horses, on a lot or parcel of land having as a condition of use, an area of not less than 5 acres, by filing for a Conditional Use Permit (CUP), you may keep or maintain horses as pets or for personal use only, provided that your property or parcel meets a minimum required area of 15,000 square feet, not to exceed one horse per 5,000 square feet. If you do not meet the minimum required area, you may be eligible for an "Animal Permit" for horses exceeding the number permitted, or on lots having less than the required area. Also, all buildings or structures used in conjunction therewith shall be located not less than 50' from any street, highway, or any building used for human habitation and corrals shall be 35' distance.

Failure to comply as requested will cause this matter to be referred to the District Attorney with the request that a criminal complaint be filed. Conviction can result in a penalty of up to six months in jail and/or a one thousand dollar fine, each day in violation constituting a separate offense.

Any inquiry regarding this matter may be addressed to the Department of Regional Planning, 320 W. Temple Street, Los Angeles, CA 90012; Attention: Zoning Enforcement, telephone (213) 974-6483. To speak directly with the investigator, Carmen Salas, please call before 10:00 a.m., Monday through Thursday. Our offices are closed on Fridays.

Very truly yours,

DEPARTMENT OF REGIONAL PLANNING  
James E. Hartl, AICP  
Director of Planning  
*Morris J. Litwack*  
Morris J. Litwack, Acting Section Head  
Zoning Enforcement

Reported via

Exhibit 6  
4-00-279-VRC  
9/28/1998 Letter from Los Angeles County

**CALIFORNIA COASTAL COMMISSION**

SOUTH CENTRAL COAST AREA  
88 SOUTH CALIFORNIA ST., SUITE 200  
VENTURA, CA 93001  
(805) 641-9142



**CERTIFIED & REGULAR MAIL**

January 22, 1999

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

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

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

Dear Mr. Boudreau:

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

Please be advised that Section 30600(a) of the Coastal Act states that in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the coastal zone must obtain a coastal development permit. "Development" is broadly defined by Section 30106 of the Coastal Act to include:

*"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of the use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvest of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations...*

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

Exhibit 7  
4-00-279-VRC  
Revocation of Exemption 4-98-125-X

• Page 2

November 30, 1999  
4-98-125-X (Malibu Valley Farms)

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

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

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

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

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

Your anticipated cooperation is appreciated.

Sincerely,

Sue Brooker  
Coastal Program Analyst

Encl.: CDP application

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

Feb-15-01 11:55am From: COX, CASTLE & NICHOLSON

310-277-7889

T-479 P.062/003 F-931

Philip R. Nicholas\*  
Lawrence Regier  
Ronald J. Silverman\*  
Marie Camar  
George D. Calkins, II  
John W. Kahl  
Arthur O. Spaulding, Jr.  
Jeffrey Lagers  
John S. Miller, Jr.  
Kenneth B. Bley  
Lisa J. Westman  
John P. Nicholson  
Charles E. Nemes  
Markus D. Goodfriend  
Jeffrey D. Myers  
Robert D. Infante  
Thomas C. Rich  
Douglas P. Snyder  
Gary A. Glis  
Lewis C. Feldman  
Mark P. McCluskey  
John A. Kevanich  
Stanley W. Lampert  
Randall W. Smith  
Perry D. Mazzanti  
Jack R. Smith  
Gregory J. Karp  
D. Scott Turner  
Sandra C. Brown  
Mathew A. Weyman  
Randy P. Orth  
Kathleen Williams  
Laurel R. Buford  
Anty H. Wells  
Scott D. Brown  
Cory F. Demers  
Valerie L. Flores  
Frederic W. Brooks  
PJ.J. Tetter  
Robert J. Egan  
Alfred F. DeLore  
Frank C. Montepinos

Concetta Mae Schuk  
Charles J. Moore  
Robert J. Day  
Stuart I. Block  
Seth L. Goodfield  
Robert M. Hoshin, Jr.  
James M. A. Mapp  
Vinodh M. Trub  
Adam W. Wadsworth  
Jonathan Seay  
Harvey J. Klein  
Barclay M. Brant  
Jeffrey A. England  
Richard J. Kiser  
Alex-Marie Rander  
Perry S. Hughes  
Judy Ming-Ling Lum  
Bernard F. Douglas III  
David J. Winkler  
Christopher R. Chiodini  
Kevin J. Calabrese  
Peter Y. Lee  
Seth I. Maccorm  
Loren Dore Arlow  
James A. Holton  
Steven M. Muldowney  
Mikayla P. Prokop  
Stephen E. Abraham  
James R. McCarty II  
Tara N. Morris  
Tara A. Plam  
John At. Tron  
JENNIFER C. MULLING  
Helen L. Lumbard  
Michael Peale  
Candace Yukari Becker  
Kimberly Kester Chapman  
Curt L. Leonard  
Stephen N. Murphy  
Elizabeth C. Tyndale  
Julie E. Macdon  
Sally Tia

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February 15, 2001

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OUR FILE NO:  
32051

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\* A Professional Corporation

VIA FACSIMILE

Sandra Goldberg, Esq.  
California Coastal Commission  
San Luis Obispo, CA

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

Dear Ms. Goldberg:

This letter confirms that Malibu Valley Farms, Inc. and Robert K. Levin are requesting a continuance of the hearing before the Coastal Commission on the vested rights determination referenced above. The applicants have determined that they are not prepared to respond to the staff recommendations at the meeting today for which a vote on the application is scheduled. We first learned about the staff's recommendation when we received a copy of the staff report approximately two weeks ago. I have had to be out of town for most of the time since the report was sent to us. There are number of issues raised in the staff report for which the applicants believe there is important additional information that needs to be before the Commission in order for the applicants to receive a fair hearing on their application. Some of that information is in the possession of third parties who have not been available in the short time we have had to respond. While we been diligently working to assemble the additional declarations and documentation we believe will respond to the recommendations in the staff report, there just has not been enough time to complete that task.

This request is on behalf of all of the applicants, including Malibu Valley, Inc., to the extent it is still recognized as an applicant. Mr. Donald Schmitz is authorized to convey this request to the Commission on behalf of the applicants.

Exhibit 8  
4-00-279-VRC  
2/15/2001 Letter from Applicant's Representatives

4-00-279-VRC (MALIBU VALLEY FARMS, INC.)  
Page 55

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Feb-15-01 11:55am From: COX, CASTLE & NICHOLSON

310-277-7889

T-479 P. 003/003 F-031

Sandra Goldberg, Esq.  
February 15, 2001  
Page 2

We very much appreciate the Commission's favorable consideration of this request.

Sincerely,



Stanley W. ...

SWL:rsf  
32051/882921.v1

---

STATE OF CALIFORNIA - THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, Governor

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA  
89 SOUTH CALIFORNIA ST., SUITE 200  
VENTURA, CA 93001  
(805) 585-1800

Filed: 3/06/06  
49th Day: 4/24/06  
180th Day: 12/01/06  
Staff: LF-V  
Staff Report: 7/20/06  
Hearing Date: 8/09/06  
Commission Action:



W 8a

STAFF REPORT: REGULAR CALENDAR

**APPLICATION NO.:** 4-02-131  
**APPLICANT:** Malibu Valley Farms, Inc.  
**AGENT:** Stanley Lampert and Beth Palmer  
**PROJECT LOCATION:** Northeast corner of Mulholland Highway and Stokes Canyon Road, Santa Monica Mountains (Los Angeles County)  
**APN NO.:** 4455-028-044

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

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

Exhibit 9  
4-00-279-VRC  
Staff Report for CDP No. 4-02-131 with  
selected exhibits

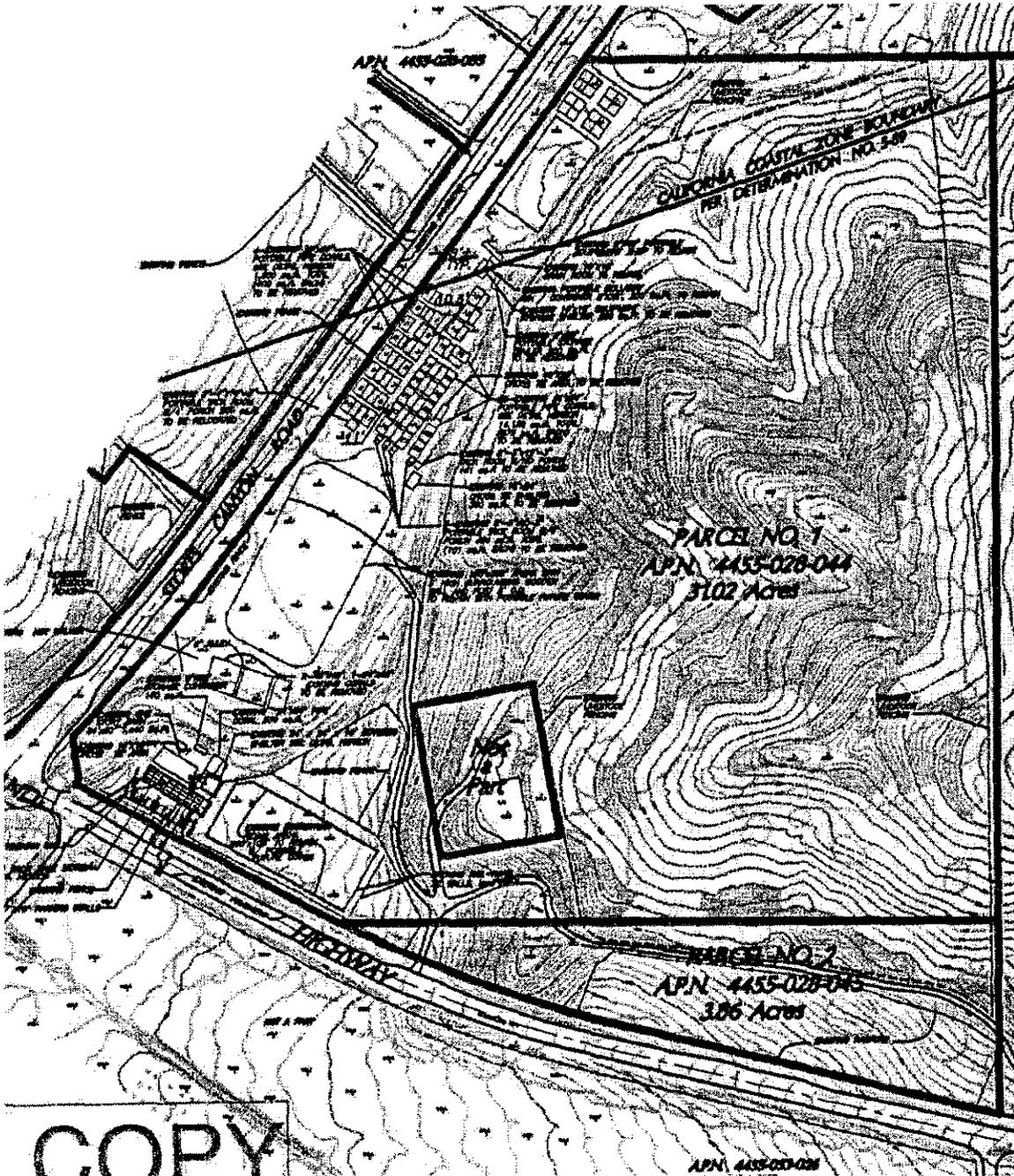


Exhibit 5  
CDPA No. 4-02-131  
Site Plan (Existing)

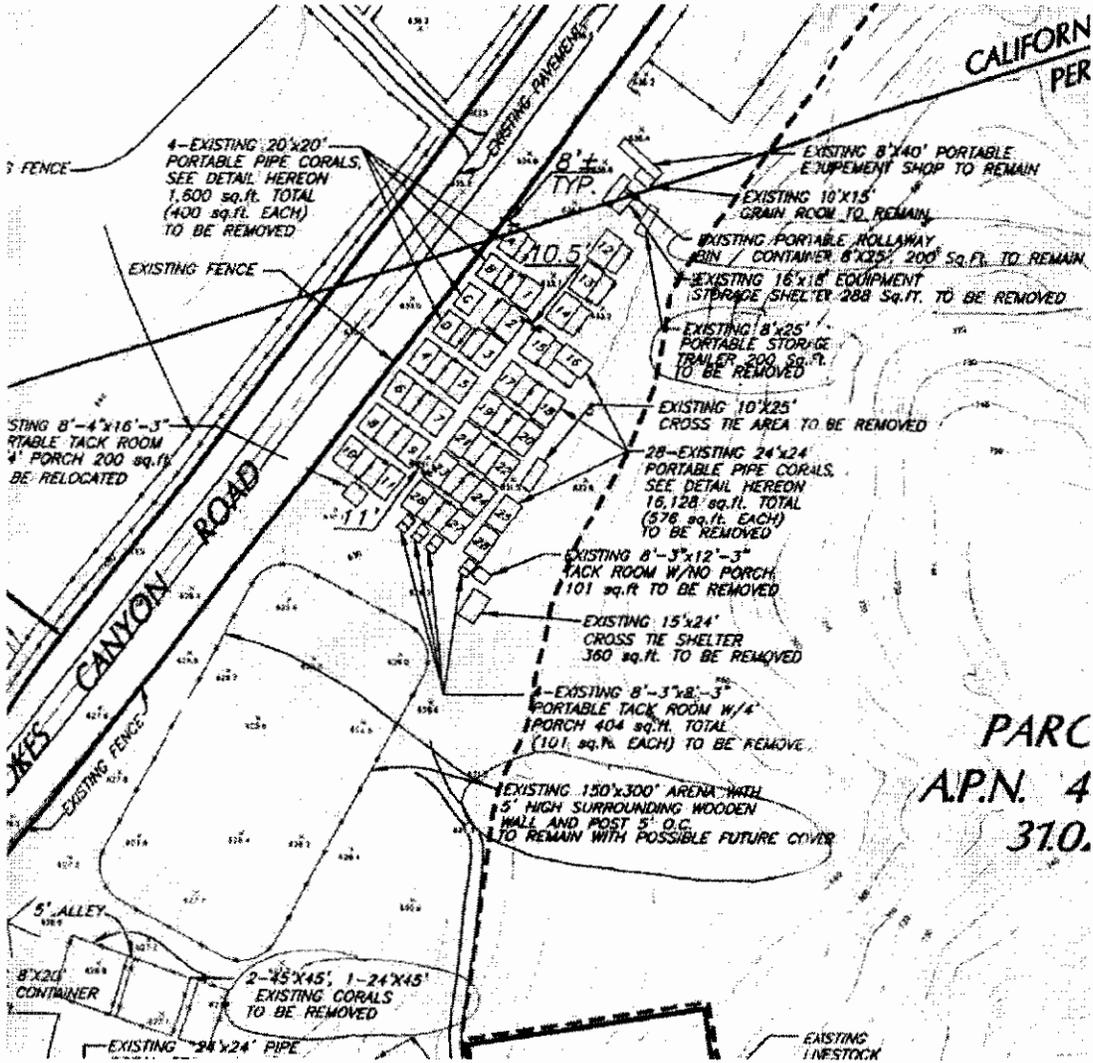


Exhibit 6  
CDPA No. 4-02-131  
Site Detail - North (Existing)

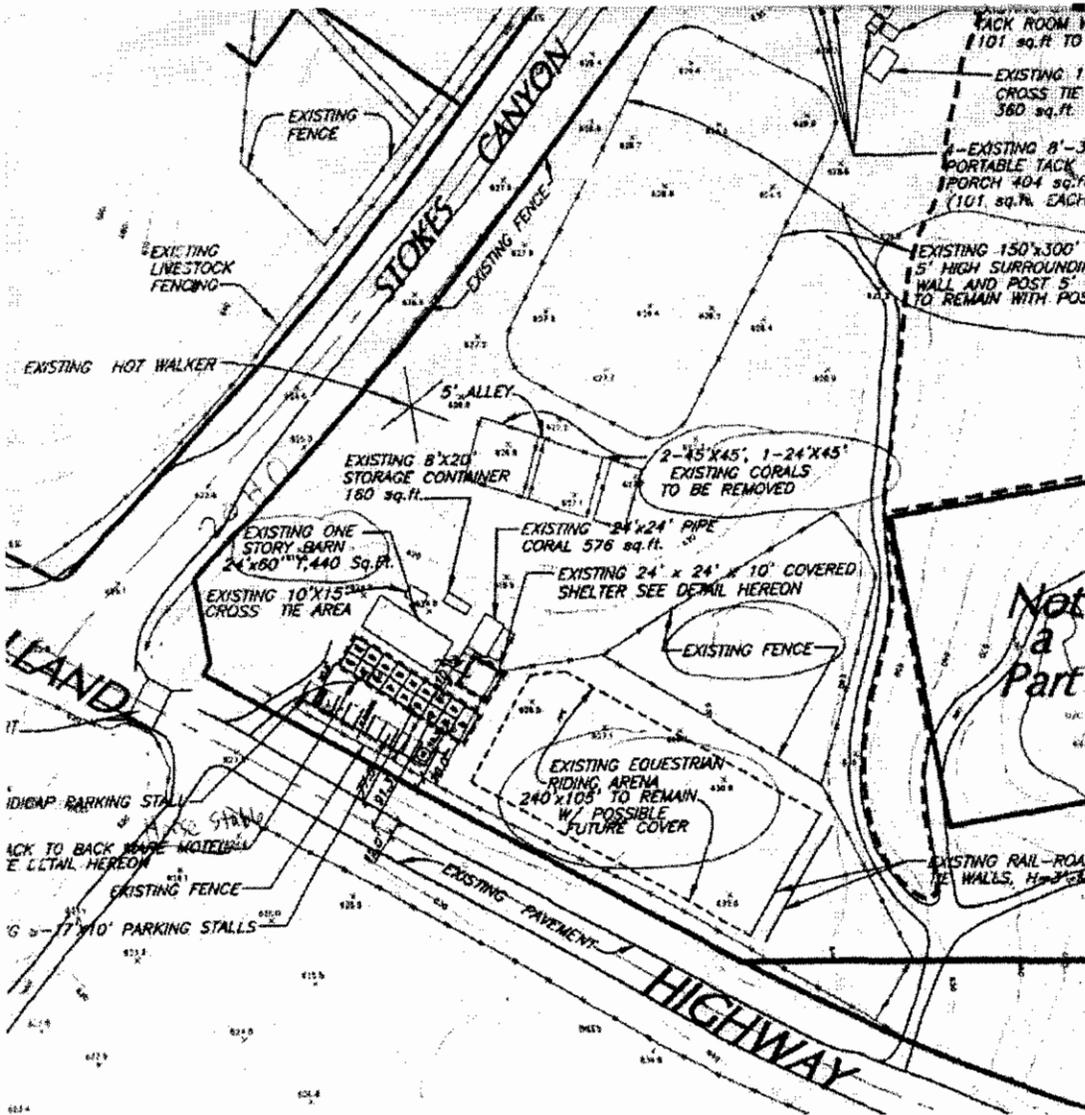
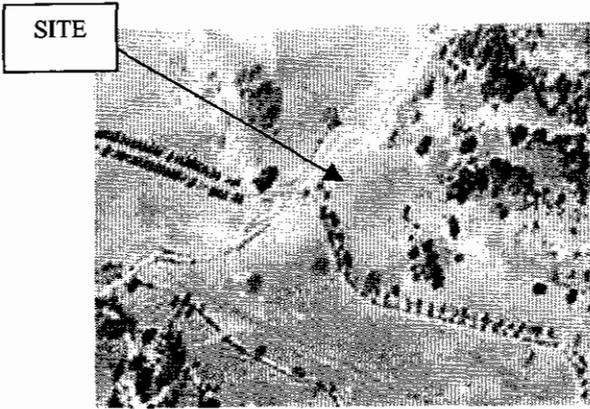
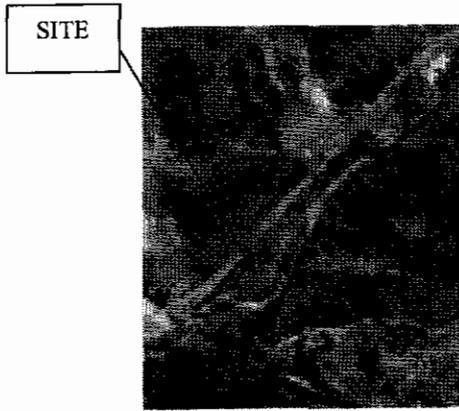


Exhibit 7  
CDPA No. 4-02-131  
Site Detail - South (Existing)



1952



January 24, 1977



2004

Exhibit 10  
4-00-279-VRC  
Aerial Photographs

## CALIFORNIA COASTAL COMMISSION

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

**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 Cr

Exhibit 18  
4-06-163  
CCC-06-CD-14  
CCC-06-RO-07  
Staff Report

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

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**CEQA STATUS:**

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

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**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.<sup>1</sup>

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.<sup>2</sup> If the Commission adopts staff's recommendation on that matter, when this order comes

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<sup>1</sup> 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.

<sup>2</sup> 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.<sup>3</sup>

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).<sup>4</sup> 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

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<sup>3</sup> 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.

<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

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

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<sup>5</sup> 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.

<sup>6</sup> 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.<sup>7</sup>

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<sup>7</sup> 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-07<sup>8</sup>**

#### **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

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<sup>8</sup> 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.<sup>9</sup> 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.

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<sup>9</sup> 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.<sup>10</sup> 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 Lamport, 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. Lamport, 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.

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<sup>10</sup> 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.<sup>11</sup>

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).

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<sup>11</sup> 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.<sup>12</sup>

#### 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.

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<sup>12</sup> 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.<sup>13</sup> 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).<sup>14</sup>

## **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 Mountains<sup>15</sup>**

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

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

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

<sup>15</sup> 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.<sup>16</sup> 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

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<sup>16</sup> 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 lifecycles<sup>17</sup>. 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 listing<sup>18</sup>, 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 work<sup>19</sup> has found that although the Pacific pond turtle spends the wet season in streams, it also requires upland habitat for refuge during the dry season. Thus, in coastal southern California, the Pacific pond turtle requires both streams and intact adjacent upland habitats such as coastal sage scrub, woodlands or chaparral as part of their normal life cycle. The turtles spend about four months of the year in upland refuge sites located an average distance of 50 m (but up to 280 m) from the edge of the creek bed. Similarly, nesting sites where the females lay eggs are also located in upland habitats an average of 30 m (but up to 170 m) from the creek. Occasionally, these turtles move up to 2 miles across upland habitat<sup>20</sup>. 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

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<sup>17</sup> 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.

<sup>18</sup> 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.

<sup>19</sup> 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).

<sup>20</sup> 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 streambed<sup>21</sup>. 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 lost<sup>22</sup>. Writing at the same time as Faber, Bowler asserted that, "[t]here is no question that riparian habitat in southern California is endangered."<sup>23</sup> In the intervening 13 years, there have been continuing losses of the small amount of riparian woodlands that remain. Today these habitats are, along with native grasslands and wetlands, among the most threatened in California.

In addition to direct habitat loss, streams and riparian areas have been degraded by the effects of development. For example, the coast range newt, a California Species of Special Concern, has suffered a variety of impacts from human-related disturbances<sup>24</sup>. Human-caused increased fire frequency has resulted in increased sedimentation rates, which exacerbates the cannibalistic predation of adult newts on the larval stages.<sup>25</sup> In addition, impacts from non-native species of crayfish and mosquito fish have also been documented. When these non-native predators are introduced, native prey organisms are exposed to new mortality pressures for which they are not adapted. Coast range newts that breed in the Santa Monica Mountain streams do not appear to have adaptations that permit co-occurrence with introduced mosquito fish and crayfish<sup>26</sup>. 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

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<sup>21</sup> Dr. Lee Kats, Pepperdine University, personal communication to Dr J. Allen, CCC.

<sup>22</sup> 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.

<sup>23</sup> 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.

<sup>24</sup> 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.

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

<sup>26</sup> 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 recognized<sup>27</sup>. These habitats support a high diversity of birds<sup>28</sup>, and provide refuge for

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<sup>27</sup> 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.

<sup>28</sup> 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 bats<sup>29</sup>. 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 LCP<sup>30</sup>.

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

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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

<sup>29</sup> 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.

<sup>30</sup> 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"<sup>31</sup> 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

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<sup>31</sup> 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 Bay<sup>32</sup>. 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

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<sup>32</sup> 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.<sup>33</sup> 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

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<sup>33</sup> 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.<sup>34</sup> The request represented that the improvements had been placed on the property prior to the passage of the

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<sup>34</sup> 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.<sup>35</sup>). 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*

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<sup>35</sup> 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. 4<sup>th</sup> 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 Lamport, 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 Lamport, 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 do the following, provided however, not more than 60 days from issuance of these Orders (unless the Executive Director makes the determination that additional water quality studies cannot be completed within this timeframe) Respondent shall submit a complete CDP application to the South Central Coast District office requesting: a) retention of the existing development, b) removal of the existing development and proposing new development, or c) some combination thereof:

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.

- 1.1 If a complete CDP application is not received within 60 days from issuance of these Orders (unless the Executive Director makes the determination that additional water quality studies cannot be completed within this timeframe) or if Respondent either withdraws the application or otherwise prevents it from coming to a hearing as per the Commission staff planned hearing schedule, Respondent shall remove all unpermitted development and restore these areas consistent with these Orders, set forth herein. Moreover, in the event that the Commission denies all or any part of such application, Respondent shall remove all unpermitted development, and restore these areas in the same manner and timeframes consistent with these Orders set forth 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, provided however, no more than 60 days

from issuance of these Orders (unless the Executive Director makes the determination that additional water quality studies cannot be completed within this timeframe) Respondent shall submit a complete CDP application to the South Central Coast District office requesting: a) retention of the existing development, b) removal of the existing development and proposing new development, or c) some combination thereof. If a complete CDP application is not received within 60 days from issuance of these Orders (unless the Executive Director makes the determination that additional water quality studies cannot be completed within this timeframe) or if Respondent either withdraws the application or otherwise prevents it from coming to a hearing as per the Commission staff planned hearing schedule, Respondent shall remove all unpermitted development and restore these areas consistent with these Orders, set forth herein. Moreover, in the event that the Commission denies all or any part of such application, Respondent shall remove all unpermitted development, and restore these areas in the same manner and timeframes consistent with these Orders set forth below.

## 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 31<sup>st</sup> 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 on the 15<sup>th</sup> day of November, 2006 in Huntington Beach, California

\_\_\_\_\_  
Peter M. Douglas, Executive Director  
California Coastal Commission

\_\_\_\_\_  
Date

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**POLICIES IN LOCAL COASTAL PROGRAMS  
REGARDING DEVELOPMENT SETBACKS  
AND MITIGATION RATIOS FOR WETLANDS  
AND OTHER ENVIRONMENTALLY SENSITIVE  
HABITAT AREAS**

**Performed Under Section 309  
(Coastal Zone Enhancement Grants Program)  
of the Coastal Zone Management Act**

**January 2007**

**Exhibit 19  
4-06-163  
CCC Setback  
Report**

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## Introduction

Local Coastal Programs (LCPs) are prepared by local governments and reflect the unique local characteristics of both natural resources and individual coastal communities. Each LCP includes a land use plan and measures to implement the plan, such as zoning ordinances. Following adoption by a city council or county board of supervisors, an LCP is submitted to the Coastal Commission for review for consistency with Coastal Act requirements. After an LCP has been approved, the Commission's coastal permitting authority over most new development is transferred to the local government, which applies the requirements of the LCP in reviewing proposed new developments. (Cal.Pub.Res. Code §§ 30500, et seq.)

LCPs contain the ground rules for development and protection of coastal resources in the 74 coastal cities and counties. Therefore, LCPs need to provide strong policies for the protection of marine and freshwater wetlands and terrestrial Environmentally Sensitive Habitat Areas (ESHA)<sup>1</sup>. Many LCPs identify particular habitat types as ESHA and some LCPs include generalized maps of ESHA. However, LCPs should always provide for site-specific assessments of ESHA, regardless of other LCP provisions that identify or map particular habitats as ESHA. Ultimately, ESHA must always be determined by assessing the existing conditions on a site, based on current knowledge of the functions and rarity of species and habitats. Strong policies relating to development setbacks (spatial buffers) around sensitive terrestrial habitats and marine and fresh water wetlands are essential. Policies that require mitigation for projects that impact wetlands and other sensitive habitats are also needed.

The purpose of this report is to document and assess the resource protection policies in the Local Coastal Programs that currently exist in the state of California. To this end, Coastal Commission staff reviewed every Local Coastal Program in California and collected the policies that relate to spatial buffers around protected habitats and to mitigation for impacts to such habitats. This information was organized by district and Local Coastal Program and is contained in Table 1. A summary presentation is contained in Table 2. The purpose of this report is to enable district offices to review the status of their policies in relation to those in other districts and to identify city and county Local Coastal Plans that need revision and updating in order to adequately protect wetlands and terrestrial environmentally sensitive habitats.

<sup>1</sup> "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. (Cal.Pub.Res. Code § 30107.5)

## Buffer Policies

The general trend for commission buffer standards is that older LCPs have more general and less restrictive requirements (smaller buffer dimensions), whereas more recent LCPs have stricter (larger buffer dimensions) and more detailed policies. Even the stricter, recent LCP buffer policies still fall short of buffer distances recommended in the scientific literature (see Appendix C). The majority of city and county LCPs contain buffer policies that include a minimum required distance between a particular type of ESHA and development. A subset of the LCP's with buffer policies for ESHA have additional policies that allow for case-by-case alterations of the buffer dimensions, including an increased buffer width when the ESHA in question is particularly sensitive (Tables 1 and 2).

The most consistent buffer dimension required across city and county LCPs is 100 feet for wetlands. The majority of LCPs state that a 100-foot buffer is the minimum standard and that especially sensitive wetland habitats may require a larger buffer. A number of the LCP wetland buffer policies include the caveat that a smaller buffer may be allowed in cases where the "applicant can demonstrate that a smaller buffer will protect the resources of the habitat area." "Wetland" is a catchall term that includes both saltwater and freshwater habitats. Wetlands include sloughs, estuaries, lagoons, salt marshes, eelgrass beds, fresh water marshes, ponds, lakes, seasonal marshes, and vernal pools. The consistent 100-foot buffer requirement for wetlands comes from LCPs incorporating the recommendation put forth in the commission's 1981 "Statewide Interpretive Guidelines for Wetlands and other Wet, Environmentally Sensitive Habitats". Section VIIB (Standards for siting development adjacent to environmentally sensitive habitat areas - Criteria for establishing buffer areas) of the guidelines states that:

The width of a buffer area will vary depending upon the analysis. The buffer area should be a minimum of 100 feet for small projects on existing lots (such as one single family home or one commercial building) unless the applicant can demonstrate that 100 feet is unnecessary to protect the resources of the habitat area. If the project involves substantial improvements or increased human impacts, such as a subdivision, a much wider buffer area should be required. For this reason the guideline does not recommend a uniform width. The appropriate width will vary with the analysis based upon the standards.

The LCP exceptions to the 100-foot wetland buffer policy are found in Crescent City and Fort Bragg which require 50 feet, San Luis Obispo County Bay Area Plan and Long Beach (Los Cerritos Wetlands) which both require 25 feet, and San Clemente which includes a wetland ESHA category but does not provide a numeric buffer. The most protective buffer policies for wetlands occur in the Humboldt County, Big Sur Coast, and Morro Bay LCP's. Humboldt County's wetland buffer policies state that "Outside an urban limit line, the setback shall be between 100 feet and 200 feet depending upon the size and sensitivity of the wetland, drainage boundaries, vegetation, adjacent uses, and the potential impacts of the project on the wet habitat values. The precise width of the setback shall be sufficient to prevent significant effects to the wetland." And "Within an urban limit line, the setback shall be either 100' or the average setback of existing

development immediately adjacent as determined by the "string line method". Big Sur Coast's LCP requires a 150-foot wetland buffer. The Morro Bay LCP requires a 250-foot wetland buffer for the review area. The smallest wetland buffer requirement, 25 feet, occurs in the San Luis Obispo County LCP Bay Area Plan and the Long Beach (Los Cerritos Wetlands) LCP.

The Sonoma County LCP creates confusion by having conflicting wetland buffer policies;

- LUP Policy III-25: Prohibit construction of agricultural, commercial, industrial, and residential structures within 100' of wetlands.
- LUP Policy III-26: Prohibit construction of agricultural, commercial, industrial, and residential structures within 300' of wetlands unless wetlands would not be affected by such construction.

Local Coastal Programs also commonly contain buffer provisions for riparian habitats. Many terms are used for riparian habitats in the various city and county LCPs: riparian areas, riparian vegetation systems, riparian corridors, riparian vegetation, creeks and streams, creeks, and stream habitats. In most of the LCPs riparian habitats are a stand-alone category, but in several of the LCPs this habitat type is lumped in with other ESHA types. Several LCPs distinguish between perennial and intermittent creeks and streams and require larger buffers for perennial waterways. Other LCPs distinguish between rural and urban riparian habitats and require wider buffers for the rural, presumably more pristine habitats. The range of riparian habitat buffer dimensions is from 20 feet in the San Luis Obispo Estero Area Plan to 150 feet in the North Coast and Carmel Area sub-areas of Monterey County, Carmel City, and the Big Sur Coast LCPs. One hundred feet and 50 feet are common riparian buffer dimension policies, however 35 feet is required in the Capitola LCP and the Oceanside LCP requires a 75-foot buffer for the San Luis Rey River.

General ESHA is a term used by many LCPs. "General ESHA" is similar to the term "wetlands" in that it is a catchall category for a whole suite of environmentally sensitive terrestrial habitats and species. The LCP trend is that the more recent LCPs identify a greater number of specific types of ESHA whereas older LCPs lump environmentally sensitive habitats into the general ESHA category while singling out only a few ESHA types for specific buffer policies. In the various LCPs, general ESHA includes a variety of special vegetation types (e.g., native grasslands, oak woodlands, Monterey Pine Forest, maritime chaparral, and Torrey Pine Forest), and habitat for individual rare or important species (e.g., oak trees, Santa Cruz Long-toed salamander, monarch butterflies, and burrowing owls) (see Appendix A).

A number of LCPs have buffer standards for "General ESHA", "Other ESHA", or "Other". This is very important because it enables local governments to protect species and habitats that may be discovered or listed after an LCP has been certified. A small number of LCPs have an ESHA category for rare, threatened and endangered habitats, plants, and animals. While "General ESHA" categories capture rare, threatened and endangered habitats, plants, and animals, an ESHA

category specific to rare, threatened and endangered habitats, plants and animals, does not necessarily capture "General ESHA". The most restrictive "General ESHA" policies are in the Mendocino County, Sonoma County, Morro Bay, San Buenaventura (Sensitive Habitat Overlay Zone), and Malibu City LCP's which require 100-foot buffers. An example is the Sonoma County LCP general ESHA policy which states: "Generally requires minimum 100' buffer for ESHA, streams, and wetlands, but also provides policy basis for requiring greater buffers on a case-by-case basis when necessary to protect habitat".

A large number of LCPs identify specific ESHA types but do not have a general ESHA category. The LCP's that fall into this category are:

Crescent City, Humboldt County, Trinidad City, Arcata, Half Moon Bay, San Mateo County, Santa Cruz County, Capitola, Watsonville (sub-area A, C, R), Monterey County (sub areas Big Sur Coast, Carmel Area, Del Monte Forest, North County – these all have an "other terrestrial habitats" category but not "General ESHA"), Pacific Grove, Pismo Beach, Grover Beach, Ventura County, Oxnard City, Los Angeles County, Newport Beach, Laguna Niguel, Dana Point, San Diego County/San Dieguito, Del Mar, National City, Chula Vista, and Imperial Beach.

This is worrisome because if additional ESHA is discovered, the LCP does not provide for its protection. Even more alarming are those LCPs that do not have ESHA policies at all. The LCPs that fall into this category include:

San Francisco, Seaside, Guadalupe City, El Segundo, Manhattan Beach ("No ESHA in coastal zone"), Redondo Beach Coastal Zone 1 ("No ESHA in coastal zone"), Marina del Rey ("No ESHA identified"), Palos Verdes Estates, Rancho Palos Verdes, Long Beach (sub areas: Alamitos Bay, Marine Stadium, Colorado Lagoon, Sims Pond), Irvine City, Aliso Viejo, and Coronado.

While it may be the case that ESHA does not presently exist in these jurisdictions, these LCPs do not provide for its future discovery (future ESHA identification is highly plausible).

Many LCPs require buffers for particular types of ESHA but do not cite a specific buffer dimension. In some instances all that the policy states is "numeric buffer not available". In other instances the policy will state that a numeric buffer is not available and go on to provide general requirements. The appropriate buffer dimension for the respective ESHA and development in question is left to the discretion of the local government planners and contract biologists or CDFG biologists.

Buffer dimensions that stand out occur in Sonoma County which requires a 600-foot buffer for heron rookeries and in Carpinteria which requires a 300-foot buffer for trees supporting nesting raptors. The City of San Diego requires 300 feet from any nesting site of Cooper's hawks, 1,500 feet from known locations of the southern pond turtle, 900

feet from any nesting sites of northern harriers, 4,000 feet from any nesting sites of golden eagles, and 300 feet from any occupied burrow of burrowing owls.

## Mitigation Ratio Policies

A mitigation ratio is the ratio of the area of habitat provided for mitigation to the area of habitat that is impacted by development. Mitigation generally takes the form of habitat restoration and protection in perpetuity. Mitigation ratios commonly vary from 1:1 to 4:1, depending on the circumstances.

Most city and county LCPs lack formal mitigation ratio policies; only 25% of the certified LCPs have mitigation ratio policies. In those that do, the prevailing mitigation ratio standards are as follows:

- 4:1 for wetlands including salt marshes and vernal pools;
- 3:1 for riparian habitats, rare habitat types, or habitats that support rare species;
- 2:1 and
- 1:1 for other ESHA and coastal resources, including coastal sage scrub and southern mixed chaparral.

For example, the Malibu LCP requires that adverse impacts in wetlands be mitigated at a 4:1 ratio for vernal pools and salt marshes and at a 3:1 ratio in seasonal wetlands, freshwater marshes and riparian areas. Long Beach requires 4:1 replacement for salt marshes and 3:1 replacement for riparian habitats. And Carlsbad policies are 4:1 for vernal pools and 3:1 for riparian areas.

Where LCP mitigation ratio policies exist, they are determined by taking into account the necessary habitat and vital processes required by the respective ESHA residing in that area. For example, in the Newport Beach LCP policy, coastal sage scrub occupied by the endangered California gnatcatchers and ["AND" OR "OR"]significant populations of other rare species are mitigated at a ratio of 3:1 whereas coastal sage scrub not hosting rare species is mitigated for on a 2:1 ratio.

Mitigation ratios are intended to replace lost habitat, account for temporal losses of habitat, and compensate for the loss of ecological functions that result when restoration efforts are only partially successful. The fact that most LCPs do not have mitigation ratio policies may reflect thinking along the lines of "development in ESHA is not permitted and therefore mitigation ratios for such development is unnecessary". However, this is not the case. Currently, there are permitted uses and takings overrides that occur in ESHA that need to be mitigated. This is something that should be amended as soon as possible in city and county LCPs where development impacts ESHA.

## Conclusions

The primary objective of this report is to collate and review state-wide buffer and mitigation ratio policies contained in Local Coastal Programs. This should help to identify outdated LCPs and aid in establishing state-wide consistency for resource protection. The information in Appendix C provides some scientific background that should assist in developing protective and defensible buffer practices. Through the process of preparing this report, several important issues regarding LCP buffer and mitigation ratio policies have become apparent.

First, it is extremely important that all Environmentally Sensitive Habitat Areas be identified and protected. Listing particular rare species and vegetation types is not sufficient. There must also be policies that insure that a site-specific ESHA analysis takes place at the time of proposed development. This is necessary because both the actual abundance and condition and our scientific understanding of species is constantly changing, growing, and improving. Without an accurate delineation of ESHA, policies regarding buffers and mitigation cannot be effective.

Given the commission's mandate to protect, preserve, and enhance the natural resources found along the California coastline, appropriate buffer and mitigation ratio policies are of utmost importance. This report demonstrates that across the state LCP buffer policies fall short of the buffer dimensions recommended in the scientific literature. Although it is often not feasible to establish buffers as wide as is recommended in the scientific literature (e.g., 450-foot wetland buffers, 900 feet between human disturbance and nesting herons), the Commission can work toward updating LCP policies that are clearly inadequate by increasing the width of protective buffers. Updates in the right direction would be LCP policies requiring 100-foot buffers for all wetland and riparian habitat types with caveats to allow for larger buffers for especially sensitive areas and smaller buffers for especially low impact development. Regarding other terrestrial ESHA buffers, policies requiring buffer widths less than 50 feet should be reviewed and in most cases increased to a minimum of 50 feet. In some cases, 100 feet or wider will be warranted.

Finally, LCPs are conspicuously lacking mitigation ratio policies to direct mitigation and restoration when ESHA is impacted. Unfortunately, there is little scientific literature that could form the basis for specific ratios. However, there have been a number of studies in recent years that have evaluated the success of restoration projects that were undertaken to mitigate for development impacts. In general, these projects have not accomplished their goals, suggesting that mitigation ratios greater than 1:1 are necessary.

## **APPENDIX A**

### **HABITATS IDENTIFIED AS ESHA IN LOCAL COASTAL PROGRAM BY DISTRICT**

#### **North Coast: (Del Norte, Humboldt, Mendocino Counties)**

Habitats: Wetlands (including estuaries, sloughs, gulches), riparian systems, creeks, offshore rocks, intertidal areas, and sea cliffs/coastal bluffs, and CNND listed habitats

Individual species: Rare, threatened, endangered plants and animals, and waterbird rookeries

#### **North Central Coast: (Sonoma, Marin, San Francisco, San Mateo Counties)**

Habitats: Wetlands, riparian systems (rivers, creeks, streams), coastal bluffs, dune and sandy bluffs, and CNND listed habitats

Individual species: Rare, threatened, and endangered plants and animals, heron rookeries

#### **Central Coast: (Santa Cruz, Monterey, San Luis Obispo Counties)**

Habitats: Wetlands (including lagoons, estuaries, vernal pools), riparian systems, rivers, streams, creeks, Santa Cruz cypress groves, oak woodlands, marine mammal rookery and haul-out zones, rocky points, intertidal and subtidal zones, marine habitats, dune habitats, coastal bluff, coastal sage scrub, chaparral, native grasslands, butterfly habitat, wildlife corridors, "other terrestrial habitats", and CNND listed habitats.

Individual species: Rare, threatened, and endangered plants and animals including Ohlone tiger beetle, tidewater goby, burrowing owl, California brown pelican, monarch butterfly, pigeon guillemot, black swift, Santa Cruz tarplant, peregrine falcon, white-tailed kite, snowy plover, Santa Cruz long-toed salamander, black legless lizard, raptor nesting trees, individual oak trees, nesting shorebirds, seabird nesting and roosting areas, waterbird rookeries

**South Central Coast: (Santa Barbara, Ventura, Los Angeles (Malibu/Santa Monica Mtns Segment) Counties)**

Habitats: "General ESHA", wetlands (including lagoons, estuaries, vernal pools), riparian systems, riparian scrub, lakes, streams, creeks, oak woodlands, woodlands, coastal sage scrub, chaparral, native grasslands, butterfly habitat, wildlife corridors, "other terrestrial habitats", dune habitats, coastal bluffs, beaches, marine mammal rookery and haul-out zones, rocky points, intertidal and subtidal zones, tidepools, habitat used by sensitive, rare, threatened or endangered species, and CNND listed habitats.

Individual species: Rare, threatened, and endangered plants and animals, harbor seal rookery and haul out zones, native trees,

**South Coast: (Los Angeles and Orange Counties)**

Habitats: "General ESHA", wetlands (seasonal wetlands, vernal pools, freshwater marshes, salt marshes, eelgrass beds), riparian areas, coastal sage scrub, southern maritime chaparral, southern mixed chaparral, maritime succulent scrub, native grasslands, marine and tidal areas of special biological, beaches, and CNND listed habitats.

Individual species: Rare, threatened, and endangered plants and animals, California gnatcatcher

**San Diego: (San Diego County)**

Habitats: "Other ESHA", sensitive biological resources, wetlands (vernal pools, other seasonal wetlands, lagoons, salt marshes), riparian areas, beaches, sensitive coastal bluffs, coastal sage scrub, southern maritime chaparral, southern coastal bluff scrub, maritime succulent scrub, native grassland, oak woodlands, steep hillsides, other rare native vegetation, and CNND listed habitats.

Individual species: Rare, threatened, endangered plants and animals

## APPENDIX B

### DEVELOPMENT BUFFERS FOR THE PROTECTION OF WETLANDS AND TERRESTRIAL ENVIRONMENTALLY SENSITIVE HABITAT AREAS

The American Heritage Dictionary definition of buffer is "one that lessens, absorbs, or protects against the shock of an impact; to deaden the shock of". A buffer<sup>2</sup>, in the context of the California Coastal Commission (CCC), is a barrier, "safe zone", or bordering strip of natural habitat or land between ESHA and development or human disturbance.

Buffers are important for preserving the integrity and natural function of individual species and habitats. The purpose of a buffer is to create a zone where there will be little or no human activity. The purpose of a buffer is to "cushion" species and habitats from disturbance and allow native species to go about their "business as usual". The CCC document; "Statewide Interpretive Guidelines for Wetlands and other Wet, Environmentally Sensitive Habitats" (1981) states that a buffer area is essential open space between development and ESHA. The guidelines go on to say that the existence of this open space ensures that the type and scale of development proposed will not significantly degrade the habitat area. *The fact that a buffer area is not itself a part of the ESHA, but a "buffer" or "screen" that protects the habitat area from adverse environmental impacts caused by development is clarified by the guidelines.*

A primary function of buffers is to protect against human and domestic animal disturbance, that is, to keep disturbance at a distance. Human activity immediately adjacent to sensitive species and habitats can produce disturbance in the form of noise pollution (machinery, voices, music, construction, etc.), light pollution (artificial lighting, shading, and canopy removal) and foot traffic. Just the presence of humans is disturbing and disruptive to the normal functioning of many wild animals. Domestic animals are often associated with development, and cats and dogs may hunt and otherwise disturb native organisms including pollinators, other insects, amphibians, reptiles, birds, and mammals. Additionally, landscaping irrigation around development can negatively impact the natural community and application of herbicides or pesticides for landscaping or building maintenance may be extremely harmful to native habitats. Buffers act as a barrier to both excessive water and anthropogenic chemicals. Buffers also protect against invasive plant and animal species that are often associated with humans and development. Such invasive species arrive on car tires (both during and after construction), fill soils, construction materials, and in myriad other ways throughout

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<sup>2</sup> "Buffer," "buffer zone," and "setback" are used interchangeably by the Commission and all three equivalent terms are found in LCPs.

the life of the development. Buffers may enable invasive species detection and eradication before they invade sensitive habitats.

Protection from disturbance allows organisms to engage in the business of making a living and utilizing the ecosystem services that an intact, natural habitat provides. Pair bonding, mating, nesting or denning, foraging and feeding, rearing and feeding young, predator/prey interactions, and traveling are some of the behavioral aspects that may be negatively influenced by the stress of human and animal disturbance inherent in many types of development. A primary objective of buffers is to provide conditions where organism's normal behavior patterns are disturbed as little as possible. Buffers may also expand corridors for plant and animal dispersal and movement and reduce habitat fragmentation

A buffer is a zone that can provide ecosystem services including soil stabilization, interception of eroded materials, absorption of runoff and pollutants (pesticides, herbicides, etc.), treatment of runoff (filter mechanism), fixation of nitrogen, and storage of nutrients. Buffers can serve to slow the rate of storm water flow and encourage infiltration. In addition buffers serve to accommodate human errors in the practice of habitat delineation. Buffers also provide complementary habitat, such a source of upland pollinators for some wetland species and important foraging habitat for many birds that occupy ESHA.

## APPENDIX C

### PEER REVIEWED BUFFER RESEARCH

The width of a buffer needed to protect adjacent environmentally sensitive resources is a difficult number to determine. To date, most research concerned with buffers and movement corridors has taken place in wetland and riparian habitats. In addition, there have been a number of studies that have focused on the requirements of individual species, particularly rare plants, amphibians, and birds. While research in this area continues to grow, there is still much work to be done, especially for non-wetland habitats and individual plant and animal species, rare or otherwise.

The determination of appropriate buffer widths is particularly difficult because of the complexity of biological systems and the fact that individual species each have specific habitat requirements. Buffer determinations require the study of the natural history of the species and the natural processes important in maintaining the system in which that species occurs. Much research has focused on the use of buffers to reduce impacts of specific land uses such as silviculture, agriculture, and recreation. Buffer effectiveness is often measured using biological, chemical, and physical components to assess habitat and species impacts (Wong and McCuen 1982; Phillips 1989). Methodologies include monitoring water quality and quantity, examining plant and animal species distribution and abundance, monitoring habitat quality, quantity and compositions, and measuring levels of human use (Shisler et al. 1987, Shisler 1990, Zeigler 1988).

In 1988, the Habitat Management Division of the Washington State Department of Wildlife produced a report that examined buffer dimensions essential for fish and wildlife. The recommendations that came out of the report included minimum buffers of 61m (200 feet) for forested wetlands and 91m (300 feet) for non-forested wetlands such as salt marshes. The report noted that buffers associated with sensitive soils and wildlife species may need to be larger (Zeigler 1988). Palfrey and Bradley (1988), in their buffer area study, and Porter (1980), recommend a minimum buffer width of 100' from the edge of tidal and non-tidal wetlands.

Semlitsch (1998) surveyed the literature for distances from shorelines that are biologically important for wetland fauna because this information is critical for delineation of wetland buffer zones, and thus for the conservation of semi-aquatic organisms. He found that the mean distance salamanders were found from the edge of aquatic habitats was 125.3m (407 feet for adults of six species and 69.6m (226 feet) for juveniles of two of these species. Semlitsch assumed that the mean distance encompasses 50% of the population so a buffer zone encompassing 95% of the population would extend 164.3m (534 feet) from a wetland's edge into the terrestrial habitat. Data from other amphibians suggest that this buffer zone is applicable to a range of species, but caution should be taken for taxa suspected to move about more.

Semlitsch emphasizes that wetland managers and policymakers must recognize the special needs of semi-aquatic organisms during their entire life cycle, not just during the breeding season. To maintain viable populations and communities of salamanders, attention must be directed to the terrestrial areas peripheral to all wetlands.

Continuing with this research, Semlitsch and Brodie (2003) looked at the use of terrestrial habitat by 65 species of wetland associated amphibians and reptiles. They found that core habitat from the edge of the wetland or riparian site ranged from 159m (517 feet) to 290m (942 feet) for amphibians and from 127m to 289m (413 ft. – 939 ft.) or reptiles. They recommend that the minimum and maximum core habitat values, depending on the level of protection needed, be used in establishing "biologically meaningful buffers for wetland and riparian habitats." In establishing a buffer zone, they apply a 50-m (162 feet) "terrestrial buffer" in addition to the core habitat buffer. So that an actual buffer zone would be the core habitat plus the 50-m (163 feet) terrestrial buffer. Semlitsch and Brodie conclude that large areas of terrestrial habitat surrounding wetlands are critical for maintaining biological diversity.

A number of studies have been undertaken that examine the effectiveness of riparian buffers. It is generally accepted that 30-60m (97.5-195 feet) wide riparian buffer strips will effectively protect water resources through physical and chemical filtration processes (Lee & Samuel 1976; Phillips 1989; Davies & Nelson 1994; Brosofske et al. 1997). For the purposes of filtering nitrogen compounds Wenger and Fowler (2000) determined that "the most effective buffers are at least 30m (97.5 feet) or 100 feet wide composed of native forest, and are applied to all streams, including small ones." The buffer requirements for riparian systems are not as well studied or understood. Spackman and Hughes (1995) studied the distribution of plant and bird species in relation to variable riparian buffer dimensions within several riparian systems. They found that to include 90% of streamside plants, the minimum buffer ranged from 10m (32.5 feet) to 30m (97.5 feet), depending on the stream, whereas minimum buffers of 75m (250 feet) to 175m (570 feet) were needed to include 90% of the bird species. Interestingly, virtually all non-native and ruderal plant species were restricted to the immediate streamside suggesting that annually flooded zones may serve as refugia and dispersal corridors for these groups. From their work they concluded that the distribution of species along streams varies by taxon, stream, and location of the high water mark and that "the use of a standard corridor width to conserve species is a very poor substitute for individual, stream-specific assessments of species distributions".

Haegen and DeGraaf (1996) studied predation on artificial nests located in a forested riparian buffer strip. From their work they concluded that "managers should leave more than or equal to 150m (490-foot) buffer strips along riparian zones to reduce edge-related nest predation, especially in landscapes where buffer strips are an important component of the existing mature forest".

In areas managed for timber, riparian areas are often protected with unharvested forested buffers. However, it is unclear whether these buffers contribute to the floral and faunal diversity of riparian areas. Perkins and Hunter (2006) studied the effects of riparian timber management on several species of amphibians native to riparian habitats in western Maine. They found that wood frogs (*Rana sylvatica*), eastern red-

backed salamanders (*Plethodon cinereus*), and spotted salamanders (*Ambystoma maculatum*) were sensitive to timber harvesting while American toads (*Bufo americanus*) were either unaffected or increased in abundance post harvest. They concluded that buffers ranging in width from 11 to 35m (40-110 feet) were important to preserving amphibian species sensitive to harvesting impacts.

Peak and Thompson (2006) compared species richness and densities of breeding songbirds among narrow (55-95m) and wide (400-530m) forested-riparian areas with adjacent grassland-shrub buffer strips and narrow and wide forested-riparian areas without adjacent grassland-shrub buffer strips, in northeastern Missouri, USA. More bird species occurred in wide than in narrow forested-riparian areas. Wide forested-riparian areas provided breeding habitat for more bird species than narrow forested-riparian areas, especially forest area-sensitive species. The addition of grassland-shrub buffer strips adjacent to forested-riparian areas increased species richness in those areas.

The effects on breeding birds of three stream zone widths (narrow 15-25m, medium 30-40m, and wide 50-95m) were studied in young pine (*Pinus spp.*) plantations in eastern Texas by Dickson et al. in 1995. Bird abundance was generally positively related to stream zone width. Narrow stream zones were inhabited mainly by species associated with young brush stands and habitat edge. Bird species frequenting the wide zones were mostly those associated with mature pine-hardwood and bottomland hardwood stands in the South. Species found in the medium zones were a mix of species associated with narrow and wide zones. Dickson et al. found that medium and wide stream zones maintain a greater number of species of birds in local communities and benefits species associated with mature forest.

Odonata dragonfly species are major predators in terrestrial and aquatic ecosystems that are particularly sensitive to human disturbance. Samways and Steytler (1996) studied a number of dragonfly species' distribution patterns and concluded that buffer dimensions of at least 20m to 30m (65 to 97.5 feet) would provide protection from disturbance for dragonflies along rivers in riparian habitats in South Africa.

Human disturbance has been shown to negatively impact the reproductive success of colonial nesting waterbirds through egg and nestling mortality, nest evacuation, lowered nestling body mass and slower growth, premature fledging, and modified adult behavior. Rodgers and Smith (1995) studied 15 species of colonial waterbirds at 17 colonies in north and central Florida to determine appropriate set-backs for colony protection. They examined several types of human disturbance, including walking and recreational boating. Walking elicited greater flushing distances than boating. Rodgers and Smith's results led them to conclude that wading birds required 100m (330-foot) set-backs while mixed tern/skimmer colonies required 180m (590-foot) set-backs.

Richardson and Miller (1997) reviewed buffer zone widths necessary for protecting nesting raptors from human distances. They present recommendations for 11 species of raptors (osprey, Cooper's hawk, northern goshawk, sharp-shinned hawk, golden eagle, red-tailed hawk, ferruginous hawk, bald eagle, prairie falcon, peregrine falcon, and American kestrel). The suggested buffer zones range from 50 to 1600m (164 to 5250 feet). The minimum buffer zone listed for prevention of human disturbance is

200m (656 feet). Craig (1998) presents recommendations for nest and perch buffer zones for six species of raptors found in Colorado (bald eagle, golden eagle, osprey, ferruginous hawk, red-tailed hawk, Swainson's hawk, peregrine falcon, prairie falcon, goshawk, American kestrel, merlin, rough-legged hawk, and burrowing owl). For the majority of nesting hawks Craig recommends a 1/4mile (400m (1310 feet)) buffer between nests and "surface occupancy" or human occupation. Only the burrowing owl has a lower buffer recommendation: 1/16mile. Perch buffer distances range from 75 to 300m (250 to 980 feet).

## APPENDIX D

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## Heal the Bay®

August 4, 2006

California Coastal Commission  
South Central Coast Area Office  
89 South California St., Suite 200  
Ventura, CA 93001  
Via FAX: 805.

**RE: Agenda item W8a; Application Number: 4-02-131**

Dear Coastal Commissioners:

On behalf of Heal the Bay, a non-profit environmental group with over 10,000 members dedicated to making Santa Monica Bay and Southern California coastal waters safe and healthy for people and marine life we have reviewed the staff report regarding Malibu Valley Farm's request for after-the-fact approval of its unpermitted development. We **support the staff recommendation to deny this application** as the extent of the unpermitted development at this site is widespread and detrimental to water quality and natural resources. We further **urge the Commission to invoke appropriate penalties and require restoration** for the natural resource damages caused by these unpermitted structures. Our comments are further detailed below.

### **1. The unpermitted development at this site has contributed significantly to the degradation of Stokes Canyon Creek**

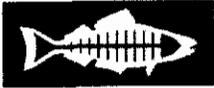
Heal the Bay's Stream Team has conducted extensive water quality monitoring and habitat mapping throughout the Santa Monica Mountains and has documented many of the violations at the Malibu Valley Farm site (see attached map). The riding arena, corrals, and other unpermitted equestrian facilities are built within sensitive riparian environmentally sensitive habitat area ("ESHA") and severely encroach on Stokes Canyon Creek, an intermittent blue-line stream – in places these structures are less than 10 feet away from the waterbody. Furthermore, unpermitted structures exist within the stream itself. These violations have damaged sensitive riparian ESHA and are likely to have caused the stream bank collapses at this site, which impair water quality by increasing sediment loading to the Creek.

The unpermitted equestrian facilities at this site are also likely to contribute nutrients and bacteria to the Creek. The Stream Team has documented both hay and horse manure floating in Stokes Canyon Creek at the discharge points in the southwest corner of the property. Furthermore, Stokes Canyon Creek has periodically exceeded state freshwater bacterial standards for *E. coli* and has commonly had high amounts of algae at the Stream Team sampling site downstream from this property. This raises reasonable concern that waste and other impacts from the equestrian facilities at this site are having downstream effects. Thus, Malibu Valley Farms should not be issued an after-the-fact permit for these unpermitted developments, and instead should be assigned the appropriate penalties for the violations and restoration requirements for the natural resource damages.

### **2. The Coastal Commission should invoke appropriate penalties for deterrence and restoration requirements for natural resources damages caused by the unpermitted development**

Destroying and/or impacting riparian and in-stream habitat, especially in Southern California, is a significant matter given the importance of riparian habitat to water quality and wildlife. Yet, the staff report does not discuss fines for the unpermitted development or restoration requirements. It does,

Exhibit 20  
4-06-163  
Heal the Bay  
8/4/06 Letter



## Heal the Bay

however, state that the Commission's enforcement division will evaluate further actions to address the unpermitted development at this site, but there is no assurance that these enforcement actions or restoration requirements will be issued. Heal the Bay encourages the Commission to follow through with these actions to ensure that penalties are issued for the violations at this site and Malibu Valley Farms is required to restore the stream bank and adjacent riparian ESHA to natural conditions, including replanting with native riparian species.

The unpermitted development at this site has gone unenforced since the Commission has become aware of the violations (since 1998, and possibly before). This, in essence, has spared the applicant from penalties that deter future violations. Unpermitted development is widespread in the Santa Monica Mountains, and without penalties, there is no mechanism to avert these activities. Fines or fiscal penalties ensure that this type of action, by the applicant and other parties, never happens again. In moving forward with an unpermitted development, Malibu Valley Farms has derived excess benefits (extensive equestrian facilities) without paying the true cost of conducting this business (destroying riparian and in-stream habitat, and the downstream effects from these actions). As such, without any fines levied, the economic benefit enjoyed by the Malibu Valley Farms was at the cost to the general public through the lost of natural resources. Ignorance of the law is no excuse for breaking it, and apologizing for breaking the law is simply not sufficient as adequate admonishment. Therefore, we urge the Commission to require a fine to be paid by the Malibu Valley Farms and issue restoration requirements for this unpermitted development.

### **3. The Coastal Commission should work to increase enforcement actions and restoration requirements for unpermitted activities**

Heal the Bay is very concerned that numerous activities are being conducted within the Coastal Zone without the benefit of permits and that these violations frequently go unenforced. These unpermitted and environmentally damaging projects are being done knowingly and without fear of enforcement. We have seen several unpermitted developments throughout the Santa Monica Mountains that either are currently, or could potentially, degrade water quality and in-stream habitat. In addition, many of these structures are preventing the migration of wildlife, which is highly dependent on riparian corridors for food and movement. We therefore urge the Commission to take action on unpermitted activities in the watershed so that these losses do not continue to occur. Perhaps a public enforcement enhancement workshop, or some other mechanism, should be convened by the Commission to improve enforcement efforts.

*We support the Coastal Commission staff recommendation to deny this after-the-fact permit, but encourage the Commission to assign the appropriate penalties and require Malibu Valley Farms to conduct the restorative actions necessary for damaging riparian and in-stream habitat.*

Thank you for the opportunity to comment; please contact us if you have any questions at 310.453.0395.

Sincerely,

Sarah Abramson, MESM  
Staff Scientist

Mark Gold, D.Env  
Executive Director

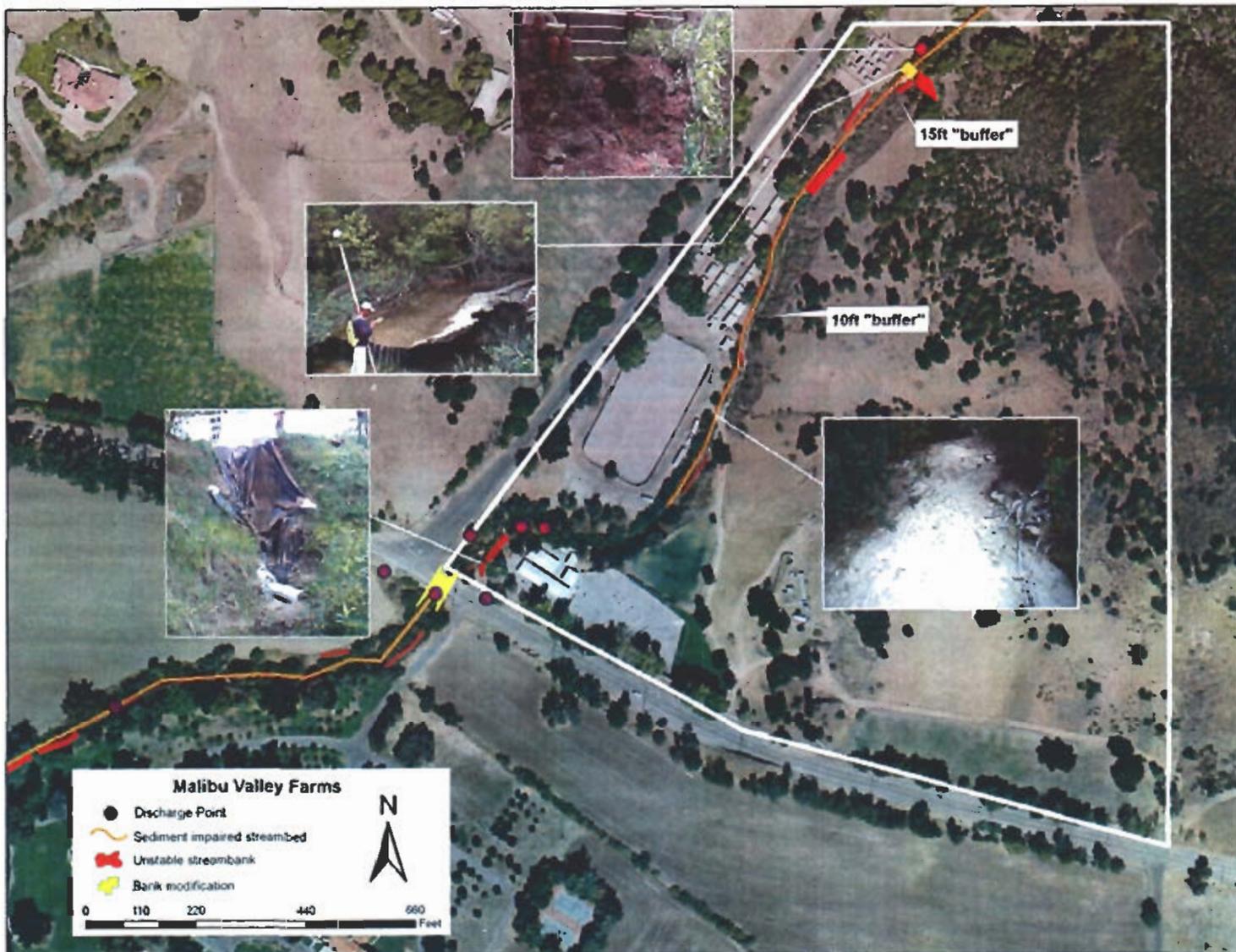


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# Heal the Bay





April 4, 2007

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John (Jack) Ainsworth, Deputy Director  
South Central Coast District Office  
California Coastal Commission  
89 South California Street, Suite 200  
Ventura, CA 93001-2801

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RE: Malibu Valley Farms Equestrian Center  
File Number: V-4-06-163

Dear Mr. Ainsworth:

Oh behalf of the Thoroughbred Owners of California (TOC), an association with over 8000 members in California, I am writing this letter to show our support for Malibu Valley Farms and request that the Coastal Commission approve their Coastal Development Application.

Malibu Valley Farms is one of California's premier thoroughbred breeding operations. They have been a part of the community for over 25 years and in addition to breeding quality horses, the Boudreau Family has also opened its farm up to groups for community events, to local equestrian groups as a staging area for rides along public trails, and as an evacuation site for horses during fires and floods. They have proven time and again to be an operation that cares for their facilities, horses, the community and the environment. It would be a tragedy for the area and the agricultural community if they were to be shut down.

As an organization of thoroughbred owners, TOC strongly disagrees with the notion that horses are not agriculture and should therefore not be included in the agriculture exemption of the California Coastal Act. Horses are a vital part of the agricultural community in California, contributing over \$5 billion dollars to the California economy. To remove the protections they currently have by virtue of being consider an agricultural product, would cause a significant drop in the number of horses used and bred. This would further hinder efforts to stabilize California's horse racing industry; it would also have a dramatic impact on 50,000 jobs and related revenue the industry contributes to the State's economy.

We also disagree with the position that crop and livestock rotation voids a farmer, or rancher's vested rights as defined by the California Coastal Act of 1977. The practice of rotating crops and livestock has been recognized world wide as sound agricultural policy. It reduces the stripping of a land's minerals, allows ranchers and farmers to produce and raise crops and livestock that fit the needs of the community and market place, and avoids over grazing. It is not only sound economic and agricultural policy, it is also sound environmental policy as well.

We urge you, on behalf of the 8,000 members of TOC and 50,000 workers in our industry, to approve the compromise Malibu Valley Farms is proposing in their CDP, reject the concept that horses are not agriculture, and reject the idea that crop and livestock rotation voids vested rights.

Sincerely,

Drew J. Couto  
President

cc: Malibu Valley Farms (via fax: (818) 880-5414)  
The Donegal Group (via fax: (916) 444-0051)

Exhibit 21  
4-06-163  
Correspondence



**RECEIVED**  
APR 17 2007  
CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

April 11, 2007

**VIA FAX: (805) 641-1732**

California Coastal Commission  
89 S. California St., Suite 200  
Ventura, CA 93001-2801

**RE: Malibu Valley Farms Equestrian Center  
File Number: V-4-06-163**

To Whom It May Concern:

As Executive Vice President of the Arabian Horse Association, an organization with over 5,000 members in California, I am writing this letter to show our support for Malibu Valley Farms and request that the Coastal Commission approve their Coastal Development Application. The 50 foot set back and water run-off mitigation plan they have offered is more than reasonable and addresses any concerns the Commission may have with run-off or exposure as evidenced by water quality studies that have been conducted at the farm.

Malibu Valley Farms has been a part of the community for over 25 years, and they have proven time and again to be an operation that cares for their facilities, horses, community and the environment by going above and beyond what is required to ensure that there are no issues with waste. They even won the award from Los Angeles County for their Best Management Practices with regards to waste management. It would be a tragedy for the area and the agricultural community if they were shut down over erroneous information and policy.

I strongly disagree with the notion that horses are not agriculture and should therefore not be included in the agriculture exemption of the California Coastal Act. Horses are a vital part of the agricultural community in California contributing over \$7 billion dollars to the California economy. To remove them from the protections they currently have would cause a significant drop in the number of horses used and bred in California having a dramatic impact on the State's economy.

California Coastal Commission

April 11, 2007

Page 2

Finally, I also disagree with the position that crop and livestock rotation voids a farmer, or rancher's vested rights as defined by the California Coastal Act of 1977. The practice of rotating crops and livestock has been recognized, world-wide, as sound agricultural policy. It reduces the stripping of a land's minerals, allows ranchers and farmers to produce and raise crops and livestock that fit the needs of the community and market place, and avoids over grazing. It is not only sound economic and agricultural policy; it is also sound environmental policy as well. If the Commission takes the position that rotating crops and/or livestock voids a farmer/ranchers' vested rights, the result will be a wholesale abandonment of those practices. This will result not in the saving or restoration of the coast, but in the degradation of it.

In closing, I urge you to approve the compromise Malibu Valley Farms is proposing, reject the concept that horses are not agriculture, and reject the idea that crop and livestock rotation voids vested rights. It is not only the right thing to do, but it is also sound policy.

Thank you for your consideration.

Sincerely,



Gary Zimmerman  
Executive Vice President

GZ/jw

cc: Malibu Valley Farms (via fax: 818-880-5414)  
The Donegal Group (via fax: 916-444-0051)



**CALIFORNIA THOROUGHBRED BREEDERS ASSOCIATION**  
*A Non-Profit Organization of Breeders of Thoroughbred Horses*

April 2, 2007

**VIA FAX: (805) 641-1732**

California Coastal Commission  
89 South California Street, Suite 200  
Ventura, CA 93001-2801

**RE: Malibu Valley Farms Equestrian Center**  
**File Number: V-4-06-163**

To Whom It May Concern:

Oh behalf of The California Thoroughbred Breeders Association, an association with over 1600 members in California, I am writing this letter to show our support for Malibu Valley Farms and request that the Coastal Commission approve their Coastal Development Application. The 50 foot set back and water run-off mitigation plan they have offered is more than reasonable and addresses any concerns the Commission may have with run off or exposure as evidenced by water quality studies that have been conducted at the farm.

Malibu Valley Farms has been a part of the community for over 25 years, and they have proven time and again to be an operation that cares for their facilities, horses, community and the environment by going above and beyond what is required to ensure that there are no issues with waste. They even won the award from Los Angeles County for their Best Management Practices with regards to waste management. It would be a tragedy for the area and the agricultural community if they were shut down over erroneous information and policy.

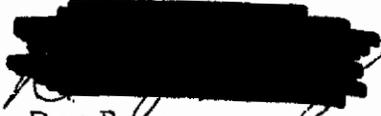
We strongly disagree with the notion that horses are not agriculture and should therefore not be included in the agriculture exemption of the California Coastal Act. Horses are a vital part of the agricultural community in California contributing over \$7 billion dollars to the California economy. To remove them from the protections they currently have, by virtue of being consider an agricultural product, would cause a significant drop in the number of horses used and bred in California having a dramatic impact on the State's economy.

Finally, we also disagree with the position that crop and livestock rotation voids a farmer, or rancher's vested rights as defined by the California Coastal Act of 1977. The practice of rotating crops and livestock has been recognized, world wide, as sound agricultural policy. It reduces the stripping of a land's minerals, allows ranchers and farmers to produce and raise crops and livestock that fit the needs of the community and market place, and avoids over grazing. It is not only sound economic and agricultural policy it is also sound environmental policy as well. If the Commission takes the position that rotating crops and/or livestock voids a farmer/ranchers' vested rights, the result will be a wholesale abandonment of those practices. This will result not in the saving or restoration of the coast but in the degradation of it.

In closing, we urge you, on behalf of the 1600 California members of The California to approved the compromise Malibu Valley Farms is proposing in their CDP, reject the concept that horses are not agriculture, and reject the idea that crop and livestock rotation voids vested rights. It is not only the right thing to do, but it is also a sound policy.

Thank you for your consideration.

Sincerely,

A large black rectangular redaction box covers the signature of Doug Burge.

Doug Burge  
Executive Vice President &  
General Manager

cc: Malibu Valley Farms (via fax: (818) 880-5414)  
The Donegal Group (via fax: (916) 444-0051)



*Los Angeles County Farm Bureau*

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April 27, 2007

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California Coastal Commission  
89 South California Street, Suite 200  
Ventura, CA 93001-2801

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

RE: Malibu Valley Farms Equestrian Center  
File Number: V-4-06-163

To Whom It May Concern:

On behalf of the Los Angeles County Farm Bureau, I am writing this letter to show our support for Malibu Valley Farms and request that the Coastal Commission approve their Coastal Development Application. The 50 foot set back and swales compromise they have offered is more than reasonable. Any concerns that the Commission may have with run off or exposure is monitored by the water quality standards issued by the Southern California Water Quality Control Board.

Malibu Valley Farms has been a part of the community for over 25 years, and the last 10 years the Boudreau Family has opened its farm to local corrals and children to host events, to local equestrian groups as a staging area for rides along public trails, and as an evacuation site for horses during fires and floods. They have proven time and time again to be an operation that cares for their facilities, horses, the community, and the environment.

We strongly disagree with the notion that horses are not agriculture and should therefore not be included in the agriculture exemption of the California Coastal Act. LACFB believes that horses are agricultural as outlined in the Food and Agricultural Code Section 55701. "As used in this article, the following definitions shall apply: (a) "Livestock" means any cattle, sheep, swine, goat, or any horse, mule, or other equine, whether living or dead." In addition, the State Right to Farm Law Civil Code Section 3482.5 states:

"(e) For purposes of this section, the term 'agricultural activity, operation, or facility, or appurtenances

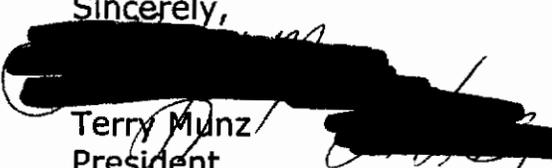
thereof' shall include, but not be limited to, the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural commodity including timber, viticulture, apiculture, or horticulture, the raising of livestock, fur bearing animals, fish, or poultry, and any practices performed by a farmer or on a farm as incident to or in conjunction with those farming operations, including preparation for market, delivery to storage or to market, or delivery to carriers for transportation to market." (Emphasis Added)

Finally, we also disagree with the position that crop and livestock rotation voids a farmer, or rancher's vested rights as defined by the California Coastal Act of 1977. The practice of rotating crops and livestock has been recognized, world wide, as sound agricultural policy. The United States Department of Agriculture, University California Davis, and the Natural Resources Conservation Service have stated that *rotating crops helps with crop health and the reduction of pesticide use*. It is also a sound conservation practice for most farms and ranches throughout the country.

In closing we urge you, on behalf of the Los Angeles County Farm Bureau to approve the compromise Malibu Valley Farms is proposing in their CDP. According to LACFB, horses are considered agricultural; and crop and livestock rotation are common and acceptable farming practices. It is what the Los Angeles County Farm Bureau considers sound policy.

Thank you for your consideration.

Sincerely,

  
Terry Munz  
President  
Los Angeles County Farm Bureau

cc: Malibu Valley Farms (via fax: (818) 880-5414)  
The Donegal Group (via fax: (916) 444-0051)  
**VIA FAX: (805) 641-1732**

5/2/2007

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CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

California Coastal Commission  
89 So. California Street, Suite 200  
Ventura, CA 93001

RE: file V-4-06-163

Madam/Sir:

I am extremely concerned about the position the CCC has taken with regards to Malibu Valley Farms. Cease and Desist and Restoration Orders have been issued to remove all of the facilities on the farm if they are not issued a Coastal Development Permit.

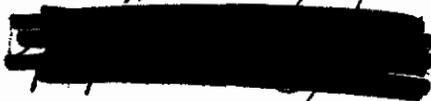
Malibu Valley Farms is an extremely important part of our community. The facility has been in place for years, and is extremely well maintained to the extent of being immaculate. In addition, they offer use of their facility by allowing local equine functions, such as programs for intercity groups (Jr. Posse) and many other events, truly giving back to the community.

For years we have been delighted to view various animals grazing, adding to the scope of beauty in our area and enhancing the scenic corridor. Many times I've seen 'visitors' to our area actually stop and take pictures of the horses, deer and other animals grazing.

Denial of the permit and immediate closure of Malibu Valley Farms, is a HUGE mistake on the part of CCC, and will reflect poorly on what CCC's true intent is. Our unique lifestyle here in the Santa Monica Mountain's should be supported by the Commission, and not dismantled by systematic closure of such historical properties.

I encourage you to provide Malibu Valley Farms the Permits necessary to keep Malibu Valley Farms in tack.

Sincerely,



Melissa Austin  
2600 Ladybird Dr.  
Calabasas, CA 91302  
818-225-0466

May 18, 2007

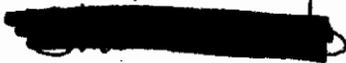
California Coastal Commission  
89 South California Street, Suite 200  
Ventura, CA 93001-2801

Re: File number 4-06-163

I'm writing this letter to support the Malibu Valley Farm continued operation and to urge the Commission to renew its permits. Equestrian centers provide many benefits to the community such as places for children, families and to be with animals and nature.

Not all decisions can or should be based on the bottom-line and we need to preserve open spaces for riding and recreation and to promote quality of life.

Sincerely,



Christine Woods  
10515 Clota St.  
Whittier, CA 90601

**Sandra Waller**  
17692 Calgary Avenue  
Yorba Linda, CA 92886

June 1, 2007

California Coastal Commission  
89 South California Street, Suite 200  
Ventura, CA 93001-2801

RE: Malibu Valley Farms - File #4-06-163

Dear Sir or Madam:

My family are residents of the City of Yorba Linda and I normally do not get involved in other cities problems. However, because the City of Yorba Linda is a horse community that is trying to eradicate horses from our bedroom community, I felt compelled to write a letter of support for Malibu Valley Farms.

I have lived in Yorba Linda for more than twenty years and have watched our City zone and rezone property to eliminate horses from our city. My husband and I moved to Yorba Linda because it was a rural community that encouraged horse ownership. I currently own four horses and had to move them to Norco (Horse Town USA) because all the stables in my area are closed or closing. I find it very sad to see government agencies ignoring the horse community in favor of the land developers.

Each person chooses to spend their free time in different ways (i.e., camping, boating, riding horses, etc.) California is the best state in the USA and I do not understand why there cannot be room for all of us? However, Big Business seems to prevail each time the smaller group tries to enjoy their quality of life.

If this farm was okay in the mid-1970, what would make it wrong in 2007? If you do not issue the permit needed, where do you propose the children's play days be held, where do horses go in case of a disaster?

My daughter has been riding horses since she was six years old. She graduated from high school with a 3.5 GPA and is now attending college to be a Teacher. If she had not been riding and showing horses she could have gotten into all sorts of trouble. I attribute her success in life to the clean living around the horse community.

I encourage you to really think about your decision and issue the necessary permits to Malibu Valley Farms because it is the right thing to do.

Sincerely,

Sandra Waller

**RECEIVED**  
JUN 07 20074008 Dyer Rd.  
Livermore, CA 94551  
June 6, 2007CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICTCalifornia Coastal Commission  
89 South California Street, Suite 200  
Ventura, CA 93001-2801  
FAX: (805) 641-1732**RE: Malibu Valley Farms Equestrian Center, File Number: 4-06-163**

Sir and/or Madam:

I am writing in support of Malibu Valley Farms (hereinafter referred to as the Farm) and urge that the Coastal Commission approve their Coastal Development Application No. 4-06-163.

It is my understanding that the issue of concern to the Commission is water runoff into the nearby creek. The required setback of 100 feet is not possible, but the Farm has created a plan that clearly prevents any adverse effects resulting from reduction of the setback to 50 feet.

From my information, it is clear that the Farm has made good-faith efforts to comply with regulations and address the concerns expressed by the Commission. In addition, it has demonstrated a commitment to the community, and a history of providing valuable services. The Farm is not seeking an expansion of its operation, but simply rebuilding of structures destroyed by fire in 1996.

Apparently, the objections arise in part from the question of whether or not horses are considered livestock. Per California Civil Code, cited below, horses are indeed considered livestock in California:

Section 3080: "Livestock means any cattle, sheep, swine, goat, or horse, mule or other equines".

Section 12731. (b) "The term "livestock" includes cattle, sheep, swine, horses, mules, and goats."

It seems unfair that the Farm should be doubly penalized – first by the fire, and again by regulations applied without consideration of individual circumstances. I urge you to approve their application.

Thank you for your consideration.

Sincerely,

  
Virginia W. Miner, Ph.D.  
Northern California (Carriage) Driving Club

cc: Malibu Valley Farms

June 10, 2007

California Coastal Commission  
89 S California St Suite 200  
Ventura, Ca 93001-2801

RE File # 4-06-163 Malibu Valley Farms

As a 35 year resident of the Santa Monica Mountains I am very concerned that your commission would spend time and money trying to remove and change the use of a private property which existed long before you did. This property is far from the coast and effects the ridgeline and coastal area you are supposed to be protecting NOT AT ALL. This appears to be an abuse of power and a waste of TAXPAYERS MONEY.

At the hearing I attended I observed that after listening to numerous prominent people in the community tell you the facts of the history of the property one of your deputies made an innane statement about driving by for years and not seeing grazing animals. That was not challenged by your committee but certainly was contrary to what a huge preponderance of the testimony relayed. I

This does not seem a reasonable issure for the commission but if you are going to continue with this do the right thing for the farm and the community at large... allow the continued use of properties in the mountains consistent with its history and sound animal keeping practices. Malibu Valley Farms is an excellent example of both.

Katyne Ventris  
Lake Vista Dr.  
Agoura, Ca. 91301

June 15, 2007  
File Number  
4-06-163

Gentlemen:

Please save Malibu  
Valley Farms!

We are very much  
against it being shut  
down!

It offers so many  
equestrian facilities to  
so many people.

Please let it continue  
in the way it has for  
so many years.

Sincerely,  
Mr. + Mrs.

Russell E. Long  
1115 E. Norwood Pl.  
Alhambra, Ca. 91801-  
5318

P. S. We belong to  
Equestrian Trails, Corral 2.

RECEIVED  
JUN 18 2007

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

File # 4-06-163

To Whom it may concern,

I am a horse owner of 8 horse's,  
I know that any or all horse owners  
need help at some point or another  
if the Malibu Valley Farms close's  
person's in need of help, it may not  
be there for their horse's in the event  
of an emergency which may arise.

I have also worked with disabled  
children & Therapeutic Riding w/ Horse's  
and the end result is a smiling face,  
even though this farm only works with  
children as well as adults ("maybe  
they do have a few disabled children &  
adults") in any case people need  
the horse this wonderful animal which  
love's people, we learn to respect the  
horse and its needs and build a trust  
that just is not known with other animals.  
I believe that if every person owned  
a horse this world would be a better  
place!

Please do not close The Malibu Valley Farms  
"Maybe you and your staff should spend a day  
with their horse's" and you would understand.

APB  
6/11/01  
April Lynn Peterson  
of Temecula Calif.  
702-204-3188

The following letter was  
submitted along with identical  
letters from 205 other parties

**RECEIVED**  
JUN 18 2007

June, 2007

**VIA FAX: (805) 641-1732**CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICTCalifornia Coastal Commission  
89 South California Street, Suite 200  
Ventura, CA 93001-2801**RE: Malibu Valley Farms Equestrian Center**  
**File Number: 4-06-163**

To Whom It May Concern:

I am writing this letter to show my support for Malibu Valley Farms and urge that the Coastal Commission approve their Coastal Development Application No. 4-06-163. This farm has a part of the community for over 25 years. In the last 10 years the Boudreau Family has opened its farm to local ETI Corrals and children to host events, to local equestrian groups as a staging area for rides along public trails, and as an evacuation site for horses during fires and floods. They do all of these things at no charge to the community or groups. They have never turned away a horse in a time of need. There is no other facility in the area that provides so much to the community and it would be a huge loss if this farm no longer exists.

Malibu Valley Farms has proven time and again to be an operation that cares for their facilities, horses, community and the environment by going above and beyond what is required to ensure that there are no issues with waste. They even won the award from Los Angeles County for their Best Management Practices with regards to waste management. In its application for a Coastal Development Permit, Malibu Valley Farms is proposing a 50-foot set back from the creek and a water run-off mitigation plan which addresses any concerns the Commission may have with run off.

Malibu Valley Farms is a very important asset to its community. This farm cares about the environment and is proposing a very environmentally friendly plan as a solution to keeping both the farm and environment in the best condition possible. Please do not take this farm away from our community. Show the residents that you support equestrian uses and activities by allowing this farm to remain because without it, the equestrian community will lose a valuable asset and suffer for it.

Thank you for your consideration.

Sincerely,

  
6/18/07  
Ellen A. Andrews, Secretary  
California State Horseman's Association, Region V  
5296 Diane Lane  
Livermore, CA 94550  
cc: Malibu Valley Farms (via fax: (818) 880-5414)

Received at Commission Meeting

# FORM FOR DISCLOSURE OF EX PARTE COMMUNICATIONS

MAY 09 2007

Name or description of project, LPC, etc.:

Matbu Valley Farms Equestrian Ctr.

Date and time of receipt of communication:

April 6, 2007

Location of communication:

202 C St. SD 92101

Type of communication (letter, facsimile, etc.):

letter

Person(s) initiating communication:

Drew J Costo

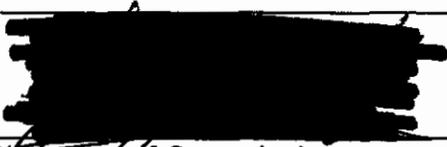
Detailed substantive description of content of communication:  
(Attach a copy of the complete text of any written material received.)

letter attached

Date

April 30, 2007

Signature of Commissioner



If the communication was provided at the same time to staff as it was provided to a Commissioner, the communication is not ex parte and this form does not need to be filled out.

If communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director within seven days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven days of the hearing, complete this form for the information orally on the record of the proceeding and provide the Director with a copy of any written material that was part of the communication

Exhibit 22  
4-06-163  
Ex Parte  
Communications



April 4, 2007

*Need to disclose on disc.*

Ben Hueso  
City Administration Building  
202 C Street 10-A  
San Diego, CA 92101

RE: Malibu Valley Farms Equestrian Center  
File Number: V-4-06-163

**BOARD CHAIR**  
ALAN LANDSBURG

**PRESIDENT**  
DREW J. COUTO

**OFFICERS**  
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VICE CHAIR, NORTHERN CALIF.  
MARSHA NAIFY  
VICE CHAIR, SOUTHERN CALIF.  
MACE SIEGEL  
VICE PRESIDENT  
MARTIN BACH  
TREASURER  
MADELINE AUERBACH  
SECRETARY

**CHAIRS EMERITUS**  
ED FRIENDLY (1996-97)  
ROBERT B. LEWIS (1997-2001)  
GARY BURKE (2001)  
JACK B. OWENS (2001-03)  
RON CHARLES (2003-04)  
JACK B. OWENS (2004-05)

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MADELINE AUERBACH  
MARTIN BACH  
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B. WAYNE HUGHES  
JESS S. JACKSON  
BILLY KOCH  
ALAN LANDSBURG  
MARSHA NAIFY  
PHILIP OVIEDO  
HARRY PELLMAN  
MACE SIEGEL  
DONALD VALPREDO

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GUY LAMOTHE  
EXECUTIVE DIRECTOR  
KELLEE BREEN  
CHIEF FINANCIAL OFFICER  
MARY FORNEY  
DIRECTOR OF OPERATIONS  
LUCINDA MANDELLA  
DIRECTOR OF OWNER SERVICES  
RICHARD SCHEIDT  
NO. CA. DIRECTOR OF OPERATIONS  
WAYNE ATWELL  
ASST. NO. CA. DIR. OF OPERATIONS

**CORPORATE OFFICE**  
285 W. HUNTINGTON DRIVE  
ARCADIA, CA 91007  
(626) 574-6620 Phone  
(800) 994-9909 Toll Free  
(626) 821-1515 Fax  
www.toconline.com

Dear Mr. Hueso:

Oh behalf of the Thoroughbred Owners of California (TOC), an association with over 8000 members in California, I am writing this letter to show our support for Malibu Valley Farms and request that the Coastal Commission approve their Coastal Development Application.

Malibu Valley Farms is one of California's premier thoroughbred breeding operations. They have been a part of the community for over 25 years and in addition to breeding quality horses, the Boudreau Family has also opened its farm up to groups for community events, to local equestrian groups as a staging area for rides along public trails, and as an evacuation site for horses during fires and floods. They have proven time and again to be an operation that cares for their facilities, horses, the community and the environment. It would be a tragedy for the area and the agricultural community if they were to be shut down.

As an organization of thoroughbred owners, TOC strongly disagrees with the notion that horses are not agriculture and should therefore not be included in the agriculture exemption of the California Coastal Act. Horses are a vital part of the agricultural community in California, contributing over \$5 billion dollars to the California economy. To remove the protections they currently have by virtue of being consider an agricultural product, would cause a significant drop in the number of horses used and bred. This would further hinder efforts to stabilize California's horse racing industry; it would also have a dramatic impact on 50,000 jobs and related revenue the industry contributes to the State's economy.

We also disagree with the position that crop and livestock rotation voids a farmer, or rancher's vested rights as defined by the California Coastal Act of 1977. The practice of rotating crops and livestock has been recognized world wide as sound agricultural policy. It reduces the stripping of a land's minerals, allows ranchers and farmers to produce and raise crops and livestock that fit the needs of the community and market place, and avoids over grazing. It is not only sound economic and agricultural policy, it is also sound environmental policy as well.

We urge you, on behalf of the 8,000 members of TOC and 50,000 workers in our industry, to approve the compromise Malibu Valley Farms is proposing in their CDP, reject the concept that horses are not agriculture, and reject the idea that crop and livestock rotation voids vested rights.

Sincerely,

Drew J. Couto  
President

cc: Malibu Valley Farms (via fax: (818) 880-5414)  
The Donegal Group (via fax: (916) 444-0051)

**Deanna Christensen**

---

**From:** Gary Timm  
**Sent:** Thursday, June 14, 2007 1:51 PM  
**To:** Deanna Christensen; Barbara Carey  
**Subject:** FW: CDP #4-06-163 Malibu Valley Farms

Deanna - For the Malibu Valley Farms file. ~ Gary

-----Original Message-----

**From:** Jeff Staben  
**Sent:** Monday, June 04, 2007 8:54 AM  
**To:** Lisa Haage; Pat Veesart; Amy Roach; John Ainsworth; Gary Timm  
**Subject:** FW: CDP #4-06-163 Malibu Valley Farms

Ex parte communication for your records.

-----Original Message-----

**From:** Steve Blank [mailto:sblank@kandsranch.com]  
**Sent:** Saturday, June 02, 2007 7:39 PM  
**To:** Jeff Staben  
**Subject:** FW: CDP #4-06-163 Malibu Valley Farms

fyi

---

**From:** Don Schmitz [mailto:DonS@schmitzandassociates.net]  
**Sent:** Wednesday, May 30, 2007 6:37 PM  
**To:** Steve Blank  
**Subject:** RE: CDP #4-06-163 Malibu Valley Farms

Good afternoon Steve;

I have been very busy and have not had the opportunity to respond to your previous email on ex parte meetings, which was succinct and very helpful for us. Thank you for the clarity.

I am contacting you regarding the abovementioned item, which will be heard by the Commission at the SLO July 11-13 hearing. This CDP application is for a Horse Ranch located on Stokes Canyon Road and Mulholland Highway in the Santa Monica Mountains. We were before the Commission on a Vesting request last year which was denied, and this is the follow up permit which the applicant, staff and the Commission agreed to process at that hearing as a possible resolution to that matter.

There is a somewhat complicated history involved with the application, so I think that it is important that we meet and go over some of the intricacies.

I understand that your standing policy is not to have any ex parte meetings that involve litigation with the Commission. Please be advised that the Commission's denial of the Vesting application, and the issuance of a Cease and Desist Order at the same hearing, is in fact being litigated.

However, this litigation has been stayed by stipulated written agreement by both the Commission's deputy attorney general and the property owner subject to the processing of the subject CDP, which both sides see as a possible solution to the present disagreement. Said stipulation is attached to this correspondence as a PDF for your review.

6/14/2007

The subject CDP has not been reviewed by the Commission, and of course is not subject to any litigation. Accordingly, the proposed CDP for the ranch is in fact our best chance to avoid litigation and I believe falls outside of your category which would preclude an ex parte meeting.

The history of this ranch is documented into the 1800's, and the nuances involved with the permit process are significant. The previous hearings ran for several hours and over 50 members of the public showed up in support of Malibu Valley Farms. *Unfortunately you were not sitting on the Commission at that time and do not have the benefit of the hearing deliberations.* Therefore, it is essential that we spend a little extra time on this one to bring you up to speed, and lay out all the cogent facts.

It would be our pleasure to provide you with a tour of the ranch before the July hearing, as it is an award winning facility with state of the art manure management, raises state champion horses, and is the pride of the entire Malibu Valley Community.

Thank you for your time and attention to this matter. Please call me at (818) 338-3636, (310) 589-0773, or my cell at (310) 617-0773 so that we can discuss this matter further.

Thanks Steve.

Don

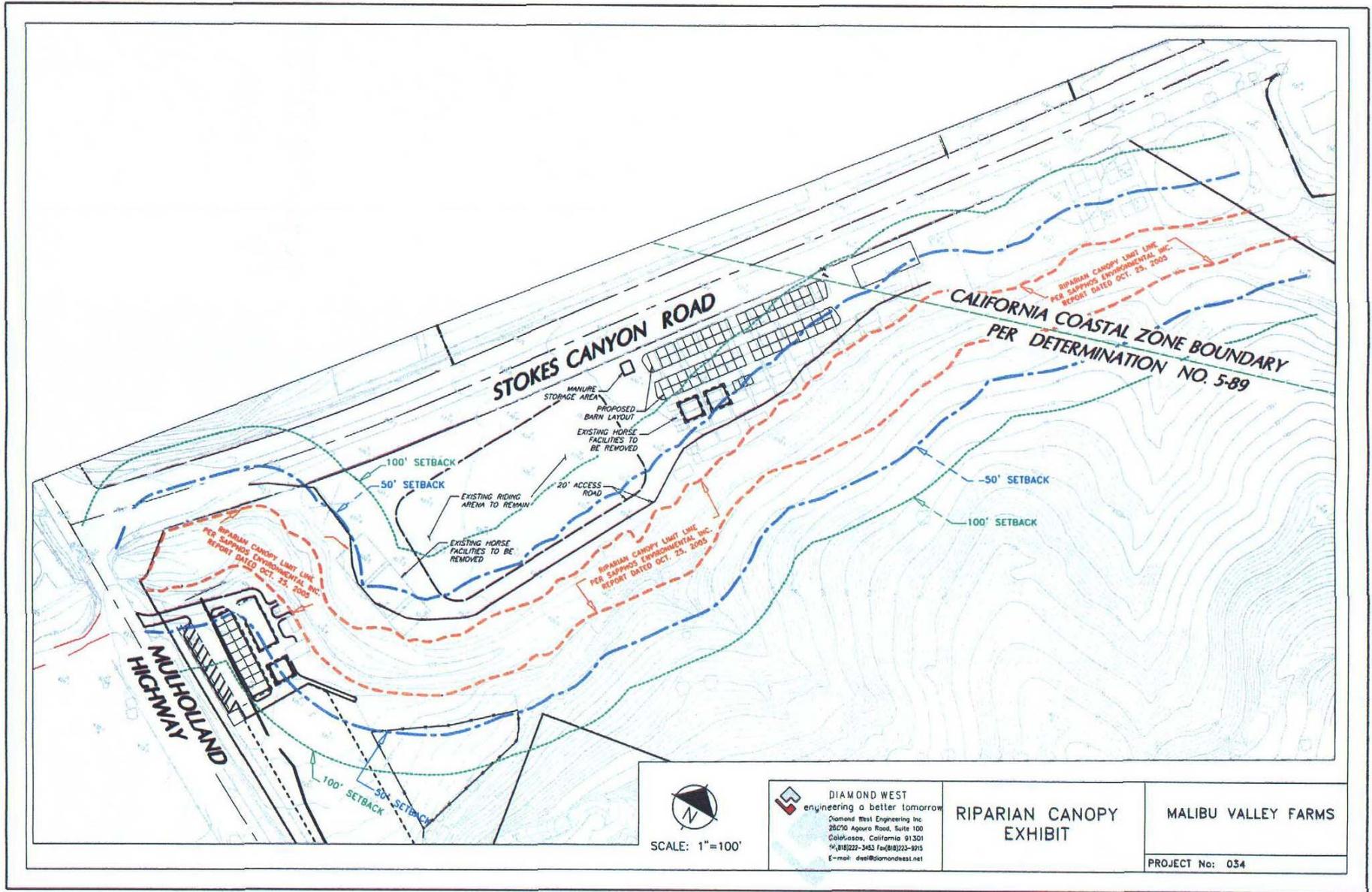
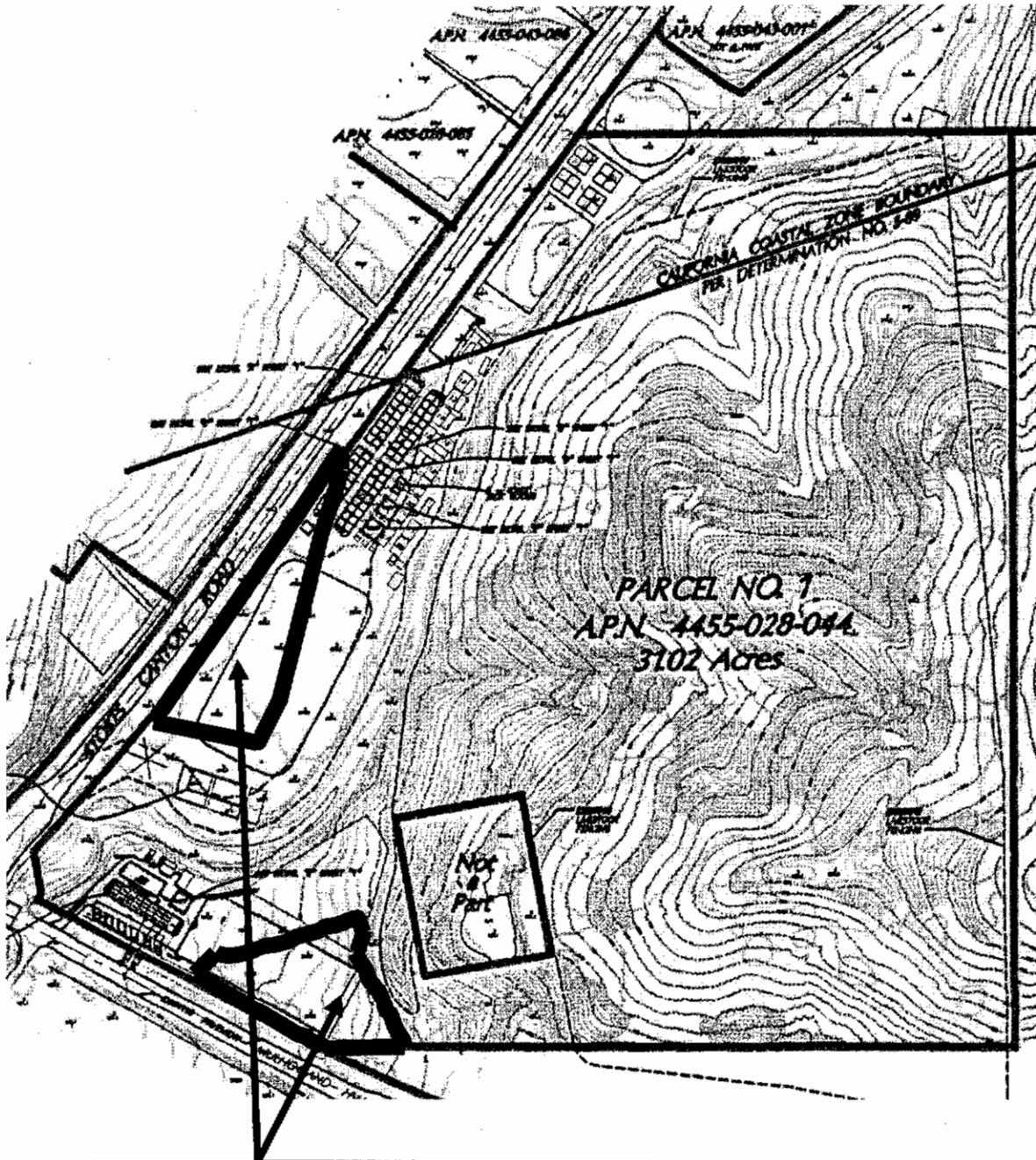


Exhibit 23  
 4-06-163  
 Riparian Canopy  
 with Setbacks



Alternative Development Areas  
located 100 feet from riparian canopy

Exhibit 24  
4-06-163  
On-site Alternatives  
Site Plan



Exhibit 25  
4-06-163  
Off-site Alternatives  
Aerial Photo



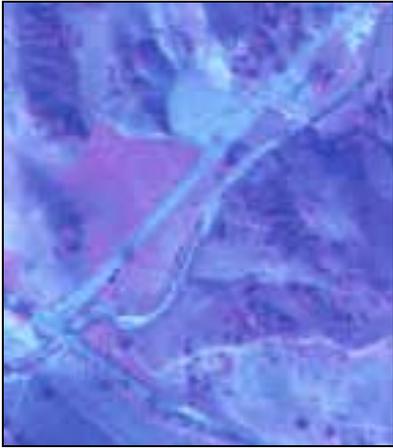
-  Stream
-  Boundary of California Coastal Zone Jurisdiction

**Vegetation Type**

-  Equestrian Facilities
-  Riparian
-  Coast Live Oak Woodland
-  Annual Grassland
-  Chamise Chaparral
-  Parcel Boundary

Excerpt from applicant's Biological Assessment (Attachment 10) prepared by Sapphos Environmental, Inc., dated October 25, 2005.

Exhibit 26  
4-06-163  
Biological  
Resources Map



1977



1986



2004

Exhibit 27  
4-06-163  
Aerial Views  
1 of 2



Exhibit 27  
4-06-163  
Aerial Views  
2 of 2

**California Coastal Commission  
July 9, 2007 - Item M13E  
Application No: 4-06-163  
Applicant: Malibu Valley Farms, Inc.**

**SUMMARY OF RECOMMENDATION:**

I recommend APPROVAL of the proposed project with the following special conditions: (1) the development is limited to that shown on the attached site plan, including set backs and fencing; (2) an agricultural easement is to be recorded affecting the portion of the site as designated on the attached site plan; (3) the applicant must provide an independent mitigation monitoring report to the Executive Director one year after the implementation of the approved Malibu Valley Farms Comprehensive Management Plan, and again five years after the implementation of such plan; (4) the applicant shall assume the risk of the proposed development; and (5) recordation of a deed restriction against the property, referencing all of the Special Conditions set forth below. As conditioned, the project can be found consistent with the Coastal Act. The applicant agrees with the recommendation.

**I. Approval with Conditions**

It is recommended that the Commission adopt the following resolution:

**MOTION: I move that the Commission approve Coastal Development Permit No. 4-06-163 for the development proposed by the applicant, with the following conditions of approval.**

**RECOMMENDATION OF APPROVAL:**

I recommend a YES vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

**RESOLUTION: APPROVAL WITH CONDITIONS:**

The Commission hereby **APPROVES** a coastal development permit for the proposed development and finds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation

measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

**II. Standard Conditions**

**1. Notice of Receipt and Acknowledgment.**

The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.

**2. Expiration.**

If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

**3. Interpretation.**

Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.

**4. Assignment.**

The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

**5. Terms and Conditions Run with the Land.**

These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

**III. Special Conditions**

**1. Conformance to Attached Site Plan.**

The development approved is limited to that shown on the attached site plan, including set backs and fencing.

2. **Agricultural Easement.**

An agricultural easement is to be recorded affecting the portion of the site as designated on the attached site plan.

3. **Mitigation Monitoring Program.**

The applicant must provide an independent mitigation monitoring report to the Executive Director one year after the implementation of the approved Malibu Valley Farms Comprehensive Management Plan, and again five years after the implementation of such plan.

4. **Assumption of Risk, Waiver of Liability and Indemnity.**

By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from wildfire; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

5. **Deed Restriction.**

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by the permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

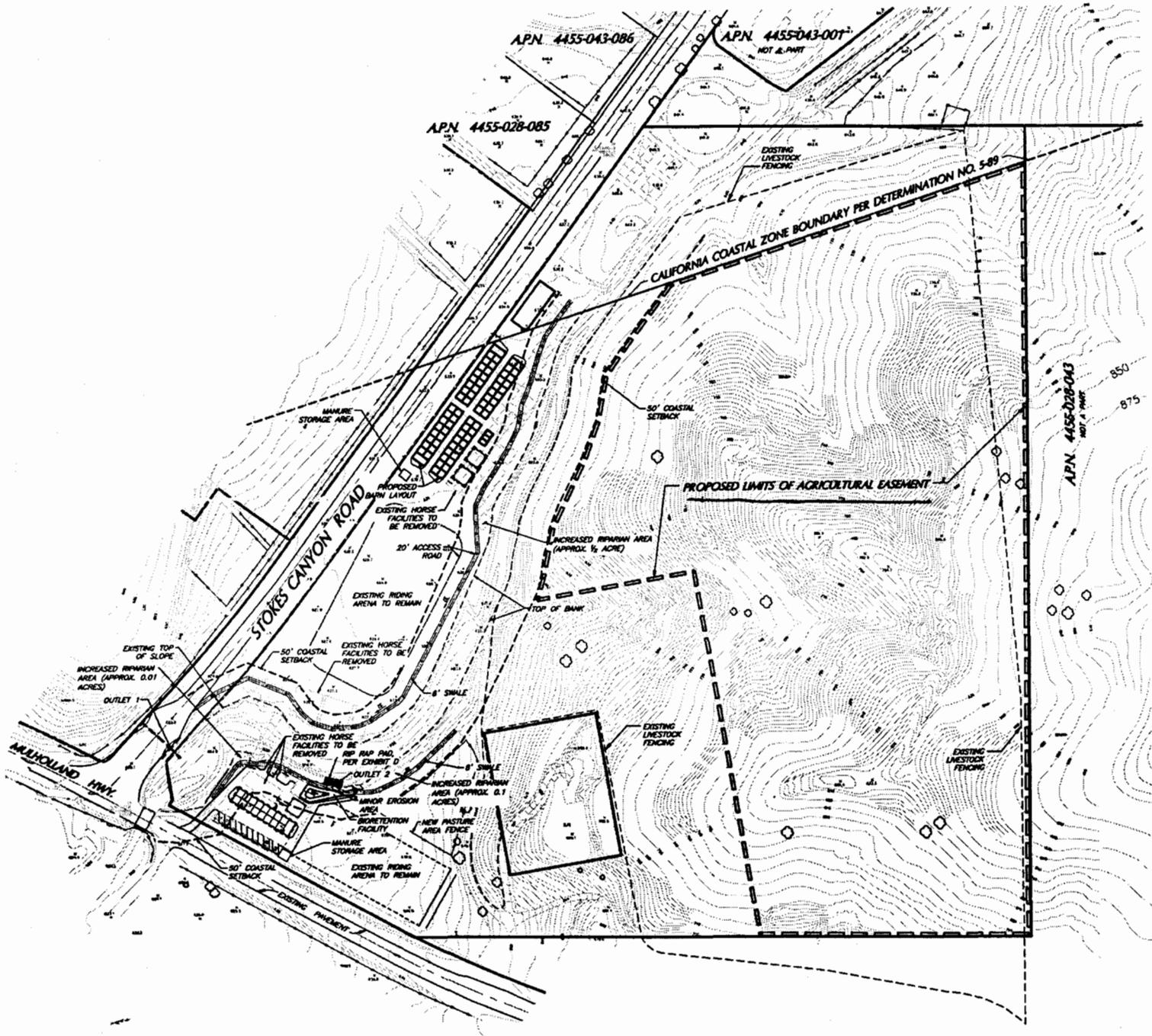


Exhibit 29  
 4-06-163  
 Applicant's Proposed Agricultural  
 Easement Area, presented at  
 7/9/07 Commission Hearing

RECEIVED  
DEC 12 2006

ERB ATTACHMENT 4  
JANUARY 27, 2003

CALIFORNIA  
ENVIRONMENTAL REVIEW BOARD  
SOUTH CENTRAL COAST DISTRICT

**Case No.** Plot Plan 48295  
**Location** 2200 Stokes Canyon Road, Calabasas, CA 91302  
**Applicant** Brian Boudreau  
**Request** Retain facilities on an existing equestrian operation: relocate portable tack shelter; remove storage shelter, portable storage trailer, cross tie area, twenty-eight 24' X 24' portable pipe corrals, tack room, cross tie shelter, 101 sq. ft. portable tack room with 4' porch, and four 20' X 20' portable pipe corrals

**Resource Category** Stokes Canyon ESHA

---

**ERB Meeting Date:** January 27, 2003

**ERB Evaluation:**  Consistent  Consistent after Modifications  
 Inconsistent

**ERB Recommendations:** - The Department of Public Works shall address the hydrological issues on the site and correct the problems contributing to erosion and undercutting of structures.  
- Exterior night lighting shall be directed downward, of low intensity, at low height and shielded to prevent illumination of surrounding properties and undeveloped areas; security lighting, if any is used, shall be on a motion detector.

**Staff Recommendation:**  Consistent  Consistent after Modifications  
 Inconsistent

**Suggested Modifications:** - Provide a copy of the waste management program currently in use at the facility for distribution to other ERB applicants with equestrian facilities.

Exhibit 30  
4-06-163  
County Environmental  
Review Board Approval



DEPARTMENT OF FISH AND GAME  
1508 North Harding Avenue  
Pasadena, CA 91104  
(626) 797-3170

RECEIVED  
MAR 10 2005



BY:.....

March 15, 2005

RECEIVED  
DEC 12 2008  
Flex  
SOUTH DISTRICT  
POWER

Ms. Beth Palmer  
Diamond West Engineering  
26800 Agoura Road, Suite 100  
Carlsbad, CA 91301

Re: Lake or Streambed Alteration Notification  
Notification No: 1600-2004-0539-R5  
Project: Arizona Crossing  
Water: Stokes Canyon Drainage  
County: Los Angeles

Dear Ms. Palmer:

The Department of Fish and Game (Department) received your Notification and deemed it complete on 1/14/05.

The purpose of this letter is to inform you that the Department failed to meet our deadline for the project you described in the above-referenced notification. As a result, and as explained in greater detail below, you do not need a Lake or Streambed Alteration Agreement from the Department of Fish and Game to complete the project you described in your notification.

Under the Fish and Game Code section 1602, (a) (4) (D) the Department had a total of 60 days to act on your notification by submitting to you project conditions the Department believes are necessary to protect existing fish and wildlife resources. This means that from the date of this letter, by law you may go forward with your project without an Agreement from the Department.

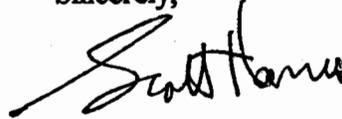
If you decide to complete the project as described in your notification, please keep a copy of this letter and the Notification available at the project site. The project described in the Notification includes not only the project impacts, but also includes all of your proposed minimization and mitigation measures.

Exhibit 31  
4-06-163  
CA Dept. Fish &  
Game 3/15/05 Letter

**Your project must terminate no later than 5 years from the date of this letter. Your project is described as the installment of Turf Reinforcement Mats to facilitate equestrian crossings across an existing unvegetated, soft bottomed Arizona crossing of Stokes Canyon Creek. The project is located at Malibu Valley Farms, Inc., 2200 Stokes Canyon Road in Calabasas, Los Angeles County. If the project changes so that it differs from the one described in the original notification, you will need to submit a new notification to the Department for that project.**

If you have any questions regarding this matter, please contact Scott Harris, Associate Wildlife Biologist at the above address or telephone number.

Sincerely,

A handwritten signature in black ink that reads "Scott Harris". The signature is written in a cursive style with a long, sweeping underline that extends to the left.

Scott Harris  
Associate Wildlife Biologist



# State Water Resources Control Board



Alan C. Lloyd Ph D  
Secretary for  
Environmental  
Protection

**Division of Water Quality**  
1001 I Street • Sacramento, California 95814 • (916) 341-5536  
Mailing Address: P.O. Box 1977 • Sacramento, California • 95812-1977  
FAX (916) 341-5543 • Internet Address: <http://www.waterboards.ca.gov>  
Email Address: [stormwater@waterboards.ca.gov](mailto:stormwater@waterboards.ca.gov)

Arnold Schwarzenegger  
Governor

June 27, 2005

Date Processed: November 12, 2004

Brian Boudreau  
Malibu Valley Farm Inc  
2200 Stokes Canyon Rd  
Calabasas, CA 91302-2984

RECEIVED  
DEC 12 2006  
CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

RECEIVED

JUL 13 2005

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

## RECEIPT OF YOUR NOTICE OF INTENT

The State Water Resources Control Board (State Water Board) has received and processed your NOTICE OF INTENT TO COMPLY WITH THE TERMS OF THE GENERAL PERMIT TO DISCHARGE STORM WATER ASSOCIATED WITH CONSTRUCTION ACTIVITY. Accordingly, you are required to comply with the permit requirements.

The WDID identification number is: **419C330921**

Please use this number in any future communications regarding this permit.

## SITE DESCRIPTION

**OWNER:** Malibu Valley Farm Inc  
**DEVELOPER:** Malibu Valley Farm Inc  
**COUNTY:** Los Angeles  
**SITE ADDRESS:** 2200 Stokes Canyon Rd  
Calabasas, CA 91302-2984  
**COMMENCEMENT DATE:** 1/1/05  
**EST. COMPLETION DATE:**

When construction is complete or ownership has been transferred, dischargers are required to notify the Regional Water Board by submitting a Notice of Termination (NOT). All State and local requirements must be met in accordance with Special Provision No. 7 of the General Permit. If you do not notify the State Water Board that construction activity has been completed you will continue to be invoiced for the annual fee each October. Please visit the storm water web page at [www.waterboards.ca.gov/stormwtr/index.html](http://www.waterboards.ca.gov/stormwtr/index.html) to obtain an NOT and other storm water related information and forms.

If you have any questions regarding permit requirements, please contact your Regional Water Board at (213) 576-6600.

Sincerely,

Storm Water Section  
Division of Water Quality

California Environmental Protection Agency

8

Recycled Paper

Exhibit 32  
4-06-163  
State Water Resources  
Control Board 6/27/05 Letter



State Water Resources Control Board  
**NOTICE OF INTENT**  
 TO COMPLY WITH THE TERMS OF THE  
 GENERAL PERMIT TO DISCHARGE STORM WATER  
 ASSOCIATED WITH CONSTRUCTION ACTIVITY (WQ ORDER No. 99-08-DWQ)

**I. NOI STATUS (SEE INSTRUCTIONS)**

MARK ONLY ONE ITEM    1.  New Construction    2.  Change of Information for WQID#

**II. PROPERTY OWNER**

Name <b>Malibu Valley Farm, Inc.</b>		Contact Person <b>Brian Boudreau</b>	
Mailing Address <b>2200 Stokes Cyn.</b>		Title <b>Owner</b>	
City <b>Calabasas</b>	State <b>CA</b>	Zip <b>91302</b>	Phone <b>818-880-5139</b>

**III. DEVELOPER/CONTRACTOR INFORMATION**

Developer/Contractor <b>Malibu Valley Farm, Inc.</b>		Contact Person <b>Brian Boudreau</b>	
Mailing Address <b>26855 Mulholland Hwy.</b>		Title <b>Owner</b>	
City <b>Calabasas</b>	State <b>CA</b>	Zip <b>91302</b>	Phone <b>818-880-5139</b>

**IV. CONSTRUCTION PROJECT INFORMATION**

Site/Project Name <b>Malibu Valley Farm, Inc.</b>		Site Contact Person <b>Mark Cardiel</b>	
Physical Address/Location <b>2600 Stokes Cyn. Road, Calabasas 91302</b>		Latitude _____°	Longitude _____°
City (or nearest City) <b>Calabasas</b>		County <b>Los Angeles</b>	
Zip <b>91302</b>		Site Phone Number <b>(818) 880 - 5139</b>	Emergency Phone Number <b>(818) 652-2974 -</b>
A. Total size of construction site area: 9354 sq.ft (0.21) Acres	C. Percent of site imperviousness (including rooftops): Before Construction: <u>0</u> % After Construction: <u>0</u> %		D. Tract Number(s): _____ E. Mile Post Marker: _____
B. Total area to be disturbed: 9354 sq.ft (0.21) Acres (% of total 100)	F. Is the construction site part of a larger common plan of development or sale? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		G. Name of plan or development: <b>Equestrian Facilities</b>
H. Construction commencement date: <u>01</u> / <u>01</u> / <u>05</u>		J. Projected construction dates: Complete grading: <u>N/A</u> / _____ / _____    Complete project: _____ / _____ / _____	
I. % of site to be mass graded: <u>NO Grading</u>		K. Type of Construction (Check all that apply): 1. <input type="checkbox"/> Residential    2. <input type="checkbox"/> Commercial    3. <input type="checkbox"/> Industrial    4. <input checked="" type="checkbox"/> Reconstruction    5. <input type="checkbox"/> Transportation 6. <input type="checkbox"/> Utility    Description: _____    7. <input checked="" type="checkbox"/> Other (Please List): <u>Retention of a portable equipment shop, grain room, portable rollaway bin/container, arena with 5-foot high surrounding wooden wall and post 5 feet o.c. with possible future cover, 200 sq. ft. portable tack room with 4-foot porch, three roofed corrals, 576 sq. ft pipe corral, covered shelter, riding arena with possible future cover, parking stalls, back to back mare motel, cross tie area, one-story barn, 160 sq. ft. storage container, 3 ft. rail road tie walls, and fencing as depicted in site plan sheet 3 of 3, and removal of storage shelter, portable storage trailer, cross tie area, twenty eight 24X24 foot portable pipe corrals, tack room with no porch, cross tie shelter, 101 sq. ft. portable tack room with 4 foot porch and four 20X20 foot portable pipe corrals as depicted.</u>	

**V. BILLING INFORMATION**

SEND BILL TO: <input type="checkbox"/> OWNER (as in II. above)	Name	Contact Person
<input checked="" type="checkbox"/> DEVELOPER (as in III. above)	Mailing Address	Phone/Fax
<input type="checkbox"/> OTHER (enter information at right)	City	State    Zip

**LATORY STATUS**

Is a local agency approved a required erosion/sediment control plan?  YES  NO  
Does the erosion/sediment control plan address construction activities such as infrastructure and structures?  YES  NO  
Name of local agency: County of Los Angeles - Bldg. & Safety Phone: ( 818 ) 880-4150

B. Is this project or any part thereof, subject to conditions imposed under a CWA Section 404 permit of 401 Water Quality Certification?  YES  NO  
If yes, provide details: \_\_\_\_\_

**VII. RECEIVING WATER INFORMATION**

A. Does the storm water runoff from the construction site discharge to (Check all that apply):  
1.  Indirectly to waters of the U.S.  
2.  Storm drain system - Enter owner's name: \_\_\_\_\_  
3.  Directly to waters of U.S. (e.g. , river, lake, creek, stream, bay, ocean, etc.)  
B. Name of receiving water: (river, lake, creek, stream, bay, ocean): Stokes Creek

**VIII. IMPLEMENTATION OF NPDES PERMIT REQUIREMENTS**

A. STORM WATER POLLUTION PREVENTION PLAN (SWPPP) (check one)  
 A SWPPP has been prepared for this facility and is available for review: Date Prepared: \_\_\_/\_\_\_/\_\_\_ Date Amended: \_\_\_/\_\_\_/\_\_\_  
 A SWPPP will be prepared and ready for review by (enter date): \_\_\_/\_\_\_/\_\_\_  
 A tentative schedule has been included in the SWPPP for activities such as grading, street construction, home construction, etc.  
B. MONITORING PROGRAM  
 A monitoring and maintenance schedule has been developed that includes inspection of the construction BMPs before anticipated storm events and after actual storm events and is available for review.  
If checked above: A qualified person has been assigned responsibility for pre-storm and post-storm BMP inspections to identify effectiveness and necessary repairs or design changes. YES  NO   
Name: \_\_\_\_\_ Phone: ( ) - \_\_\_\_\_  
C. PERMIT COMPLIANCE RESPONSIBILITY  
A qualified person has been assigned responsibility to ensure full compliance with the Permit, and to implement all elements of the Storm Water Pollution Prevention Plan including:  
1. Preparing an annual compliance evaluation.  YES  NO  
Name: Mark Cardiel Phone: ( 818- 652-2974 )  
2. Eliminating all unauthorized discharges.  YES  NO

**IX. VICINITY MAP AND FEE (must show site location in relation to nearest named streets, intersections, etc.)**

Have you included a vicinity map with this submittal?  YES  NO  
Have you included payment of the annual fee with this submittal?  YES  NO

**X. CERTIFICATIONS**

"I certify under penalty of law that this document and all attachments were prepared under my direction and supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment. In addition, I certify that the provisions of the permit, including the development and implementation of a Storm Water Pollution Prevention Plan and a Monitoring Program Plan will be complied with."  
Printed Name: Brian Boudreau  
Signature: *Brian Boudreau* Date: \_\_\_\_\_  
Title: President

# Coastal Law Enforcement Action Network CLEAN

*enforcing laws protecting the California Coast*

*a project of the International Humanities Center*

May 16, 2008

Jack Ainsworth, Deputy Director  
South Central Coast District Office  
California Coastal Commission

Sent via email and hard copy via mail

89 South California Street, Suite 200 □ Ventura, CA 93001-2801 □ ~ (805) 585-1800 □ FAX (805) 641-1732

**Re: CDP 4-06-163 Unrecorded Deed ~ Malibu Valley Farms**

Dear Mr. Ainsworth:

CLEAN (Coastal Law Enforcement Action Network) remains concerned about the reported unrecorded deed on the Malibu Valley Farms property, which received approval for after-the-fact permits from the Coastal Commission last year based on representations that the subject property would be transferred to ownership of the applicant. However, this transferring of ownership has apparently not occurred, which causes us to object to the Commission releasing any findings for final approval unless and until such ownership is confirmed.

Please see letter from Save Open Space, attached, which details the legal concerns which we share and which we trust the Commission staff and the Attorney General's office shares.

We look forward to hearing from you on this matter at your earliest convenience.

Thank you for your consideration of this very important matter.

With best regards,

Marcia Hanscom  
Managing Director

Cc: David Weinsoff, Esq.  
Tim Nardell, Esq.  
Dan Olivas, California Attorney General, Los Angeles

*322 Culver Blvd., Suite 317 ~ Playa del Rey, California  
Phone: (310) 821-9045, Facsimile: (310) 448-121*

Exhibit 33 4-06-163 CLEAN 5/16/08 Correspondence
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**Mary Hubbard**  
**Save Open Space**  
5411 Ruthwood Drive  
Calabasas CA 91302  
Cell 818-251-0055, Home 818-880-6445  
Email: maryahubbard@hotmail.com

September 14, 2007

Chris Peterson, Attorney-at-law  
California Coastal Commission  
45 Fremont Street, Suite 2000  
San Francisco CA 94105

fax 415 904-5400

RE: CDP 4-06-163 Unrecorded Deed

Dear Mr. Peterson:

RE: Unrecorded Deed from Robert Levin to Malibu Valley Farms, Inc.

On July 9 the California Coastal Commission voted to approve CDP 4-06-163. However, according to public records, the commission did not have the authority to hold the public hearing because the applicant, Malibu Valley Farms, Inc., as listed in the December 12, 2006 Coastal Development Permit application 4-06-163, was not the owner of record as of the date of the hearing and therefore the hearing should not have taken place. In fact, as of the date of this letter, the owner of record of Assessors Parcel 4455-028-044 remains

Mr. Robert K. Levin  
Moab Utah

According to BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS s 13053.5. Application Form and Information Requirements. The permit application form shall require at least the following items:

(b) A description and documentation of the applicant's legal interest in all the property upon which work would be performed, if the application were approved, e.g., ownership, leasehold, enforceable option, authority to acquire the specific property by eminent domain.

Thus, without documentation from the Los Angeles County Recorders office, the permit the commission voted on July 9, 2007, to issue to Malibu Valley Farms Inc. is **null and void** because Malibu Valley Farms, Inc. was not the owner of record on that date and Mr. Levin, the actual owner of record, was not the applicant or the co-applicant for Coastal Development permit CDP 4-06-163.

Exhibit 34  
4-06-163  
Save Open Space (SOS)  
9/14/07 Correspondence

Background

In a letter to the applicant's attorney, dated February 16, 2007, the Coastal Commission Supervisor of Planning and Regulation, Ms. Barbara Carey, stated that the applicant could elect to record the deed prior to issuance of the permit,

"In our January 11, 2007, letter we asked for clarification on the ownership of the project site. The application includes an unrecorded deed granting the property to Malibu Valley Farms, Inc. Your response does not clarify the issue. Staff is going to proceed with the assumption that Malibu Valley Farms, Inc. is the owner of the project site."

Mr. Gaines responded in a letter dated February 27, 2007, in which he specifically referenced the February 16<sup>th</sup> correspondence from Ms. Carey, but failed to address the unrecorded deed issue. Therefore, Mr. Gaines accepted Ms. Casey's determination that Malibu Valley Farms, Inc. would record the deed prior to the July 9, 2007 hearing.

Further Commission consideration of the Coastal application 4-06-163 is not proper.

Prior to the issuing of the findings that will conclude the process, the commission must require certified documentation that the deed has been recorded in the name of Malibu Valley Farms, Inc. Acceptable proof would be an original certified copy of the recorded deed with the title sheet showing the instrument number and recorders official seal with the date and time of the recording.

Yours truly,

Mary Hubbard  
Save Open Space

Attachments  
cc: Mr. Jack Ainsworth