CALIFORNIA COASTAL COMMISSION
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105- 2219
VOICE (415) 904- 5200
FAX (415) 904- 5400
TDD (415) 597-5885

Th 8 - 14

ADDENDUM

August 10, 2010

TO: Coastal Commissioners and Interested Parties

FROM: Lisa Haage, Chief of Enforcement

SUBJECT: Addendum to **Item Nos. 8-14** – Cease and Desist Orders CCC-10-CD-07, CCC-10-CD-08, Restoration Orders CCC-10-RO-06, CCC-10-RO-07 & Notice of Violation Nos. CCC-10-NOV-02, CCC-10-NOV-03, CCC-10-NOV-04 (Stefan, Kathryn & Rahel Hagopian) for the Commission meeting of **August 12, 2010**.

Documents Received:

Documents included in this addendum:

1. Superior Court Statement of Decision Denying Plaintiff's Ex Parte Application for Temporary Restraining Order and Order to Show Cause Re: Preliminary Injunction in Stefan Hagopian v. California Coastal Commission, Los Angeles County Superior Court Case No. SC109007 (Aug. 5, 2010). (pg 3)

2. Correspondence in support of staff recommendation from Diane Hichwa (pg 11)

3. Correspondence in support of staff recommendation from Debbie Koken (pg 12)

4. Correspondence in support of staff recommendation from Penny Elia (pg 13)

Errata to staff report for CCC-10-CD-07, CCC-10-CD-08, CCC-10-RO-06, CCC-10-RO-07, CCC-10-NOV-02, CCC-10-NOV-03 and CCC-10-NOV-04:

Commission staff recommends revisions to the staff report. Language to be added is shown in **bold underline** and language to be deleted is in ~~strike out~~, as shown below.

- Page 40. Text in the third paragraph is changed to read as follows:

For a number of reasons, some of which are noted in the response to Defense #1, above, **and which is incorporated by reference herein,** the subject properties are not in a Calvo exclusion area, or in an area identified on a Calvo map in association with lot criteria, and therefore the issue of lot criteria is not relevant here.

- Page 42. The exhibit number in the first paragraph is changed to read as follows:

The County concurs that the Commission acted within its authority and accepts the Calvo exclusion maps as legitimate (See letter from LA County Counsel, Exhibit ~~32~~ **33**).

- Page 51. Text in the fourth paragraph is changed to read as follows:

The County of Los Angeles is not a state agency and therefore Section 30401 does not apply on its face, for this reason alone~~,~~**.** In addition, Coastal Act Section ~~30601~~ **30600**(a) explicitly states that non-exempt development requires a coastal development permit, "in addition to any other permit required by law from any local government."

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 08/05/10			**DEPT.** WEJ
HONORABLE CESAR C. SARMIENTO	JUDGE	MANNY MABUNGA	DEPUTY CLERK
HONORABLE	JUDGE PRO TEM		ELECTRONIC RECORDING MONITOR
NONE	Deputy Sheriff	NONE	Reporter

3:30 pm	SC109007	Plaintiff Counsel	
	STEFAN HAGOPIAN		NO APPEARANCES
	VS	Defendant	
	CALIFORNIA COASTAL COMMISSION E AL.	Counsel	

NATURE OF PROCEEDINGS:

PLAINTIFF'S EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE RE PRELIMINARY INJUNCTION:

No appearances.

In the above-matter heretofore submitted, the court rules as follows:

RULING:

Plaintiffs' application for a temporary restraining order and issuance of a preliminary injunction is DENIED. Plaintiffs have not exhausted their administrative remedies and therefore do not have a probability of prevailing on the underlying claims for declaratory and injunctive relief. Additionally, Plaintiffs do not offer any evidence that they will suffer irreparable harm if the injunction is not issued. Accordingly, the court declines to grant a temporary restraining order or preliminary injunction.

ANALYSIS:

Preliminary Injunction

The general objective in issuing a preliminary injunction is to preserve the status quo. CCP

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 08/05/10			**DEPT.** WEJ
HONORABLE CESAR C. SARMIENTO	JUDGE	MANNY MABUNGA	DEPUTY CLERK
HONORABLE	JUDGE PRO TEM		ELECTRONIC RECORDING MONITOR
NONE	Deputy Sheriff	NONE	Reporter

3:30 pm	SC109007	Plaintiff Counsel	
	STEFAN HAGOPIAN VS CALIFORNIA COASTAL COMMISSION E AL.		NO APPEARANCES
		Defendant Counsel	

NATURE OF PROCEEDINGS:

§526(a)(3); Continental Baking Co. v. Katz (1968) 68 Cal.2d 512, 528. In deciding whether to issue a preliminary injunction, a court must weigh two interrelated factors: (1) the likelihood that the moving party will ultimately prevail on the merits and (2) the relative interim harm to the parties from issuance or nonissuance of the injunction. Butt v. State of California (1992) 4 Cal.4th 668, 677-678. "The trial court's determination must be guided by a 'mix' of the potential-merit and interim-harm factors; the greater the plaintiff's showing on one, the less must be shown on the other to support an injunction. [Citation.]" Ibid.

(1) Likelihood of Success on the Merits
A preliminary injunction must not issue unless it is "reasonably probable" that the moving party will prevail on the merits. San Francisco Newspaper Printing Co., Inc. v. Superior Court (1985) 170 Cal.App.3d 438, 442 (no reasonable probability of success where plaintiff lacks standing to sue); Voorhies v. Greene (1983) 139 Cal.App.3d 989, 995-998 (courts cannot grant an injunction to preserve the status quo where no right to equitable relief is shown if the case goes to trial).

Plaintiffs argue that they are likely to succeed on the merits because the government cannot take property without due process of law and due process requires notice and an impartial hearing. In opposition, Defendants argue that Plaintiffs are not likely to succeed on the merits because they

MINUTES ENTERED
08/05/10
COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 08/05/10			DEPT. WEJ
HONORABLE CESAR C. SARMIENTO	JUDGE	MANNY MABUNGA	DEPUTY CLERK
HONORABLE	JUDGE PRO TEM		ELECTRONIC RECORDING MONITOR
NONE	Deputy Sheriff	NONE	Reporter

3:30 pm	SC109007	Plaintiff Counsel	
	STEFAN HAGOPIAN		NO APPEARANCES
	VS	Defendant	
	CALIFORNIA COASTAL COMMISSION E AL.	Counsel	

NATURE OF PROCEEDINGS:

have not exhausted their administrative remedies, cannot demonstrate that the CCC is biased, and because an injunction may not issue to stop an agency from exercising its discretion to prevent violations of statutes intended to protect the public.

Preliminarily, the court notes that Plaintiffs' general statements of the law are correct. Plaintiffs, however, fail to connect how allowing the Commission to proceed with the hearing will result in a violation of due process. As discussed below, the court finds that Plaintiffs are not likely to succeed on their claims for declaratory or injunctive relief.

Preliminarily, the court notes that Plaintiffs' claims are not likely to prevail because Plaintiffs have not exhausted their administrative remedies. "Where an administrative remedy is provided by statute, relief must be sought from the administrative body and the remedy exhausted before the courts will act; a court violating the rule acts in excess of jurisdiction." Bd. of Police Comm'r v. Super. Ct. (1985) 168 Cal. App. 3d 420, 431-432 (citations omitted).

Exhaustion of administrative remedies is a jurisdictional prerequisite to judicial review of actions of an administrative agency. [Citation.] A party cannot circumvent the exhaustion doctrine by bringing actions other than administrative mandamus such as actions for declaratory relief. [Citation.] The doctrine has been specifically applied to review

MINUTES ENTERED
08/05/10
COUNTY CLERK

NATURE OF PROCEEDINGS:

of coastal commission actions. [Citation.]

Walter H. Leimert Co. v. Cal. Coastal Comm'n (1983) 149 Cal. App. 3d 222, 232.
Cal. Pub. Res. Code § 30812(a) states that if the executive director of the commission determines that real property has been developed in violation of the California Coastal Act, he may "cause a notification of intention to record a notice of violation to be mailed to the owner of the real property at issue " The owner may then object to the proposed filing of the notice of violation and "a public hearing shall be held at which the owner may present evidence to the commission why the notice of violation should not be recorded." Pub. Res. § 30812(c). If the commission then finds that a violation has occurred, then a notice of violation is recorded. Pub. Res. § 30812(d).
Here, Plaintiffs allege that they have received a notice of intent to record a notice of violation. No such notice, however, has been recorded. Thus, Plaintiffs have not exhausted their administrative remedy of presenting evidence to the commission of why the notice of violation should not be recorded. Plaintiffs argument that a hearing by the commission would violate due process does not change the court's analysis. The exhaustion doctrine is excused only in select circumstances. A constitutional challenge does not excuse the exhaustion of administrative remedies. Bd. of Police Comm'r, supra, 168, Cal. App. 3d at 432. In

MINUTES ENTERED
08/05/10
COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 08/05/10			DEPT. WEJ
HONORABLE CESAR C. SARMIENTO	JUDGE	MANNY MABUNGA	DEPUTY CLERK
HONORABLE	JUDGE PRO TEM		ELECTRONIC RECORDING MONITOR
NONE	Deputy Sheriff	NONE	Reporter

3:30 pm	SC109007	Plaintiff Counsel	
	STEFAN HAGOPIAN		NO APPEARANCES
	VS	Defendant	
	CALIFORNIA COASTAL COMMISSION E AL.	Counsel	

NATURE OF PROCEEDINGS:

some instances, exhaustion is excused if irreparable harm is established. Id. at 433. Neither the mere setting of a matter for hearing, nor the type of injury that may result to a person from the fact of a hearing, however, are sufficient injuries to invoke this exception. Id. at 434 (citation omitted). Since the hearing has not yet occurred, Plaintiffs cannot show an irreparable injury such that exhaustion of the administrative remedy is excused. Plaintiffs' claim for declaratory and injunctive relief is therefore not likely to prevail because Plaintiffs have not exhausted their administrative remedies and have not shown that exhaustion is excused.

Second, the merits of Plaintiffs' claims are not well-founded. Plaintiffs argue that the "major issue regarding the Notice of Violation is the jurisdiction of the California Coastal Commission" (Complaint ¶ 17), and that the Commission cannot decide the issue of its own jurisdiction because it is biased. The court finds that this argument is not likely to prevail. As Defendants correctly note, Plaintiffs provide no evidence that the Commission is biased or that an administrative agency cannot decide the issue of its own jurisdiction. Additionally, an administrative agency initially has jurisdiction to determine whether it has jurisdiction to act, even where the statute sought to be applied and enforced by the administrative agency is challenged upon constitutional grounds. U.S. v. Superior Court

MINUTES ENTERED
08/05/10
COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 08/05/10			DEPT. WEJ
HONORABLE CESAR C. SARMIENTO	JUDGE	MANNY MABUNGA	DEPUTY CLERK
HONORABLE	JUDGE PRO TEM		ELECTRONIC RECORDING MONITOR
NONE	Deputy Sheriff	NONE	Reporter

3:30 pm	SC109007	Plaintiff Counsel	
	STEFAN HAGOPIAN		NO APPEARANCES
	VS	Defendant	
	CALIFORNIA COASTAL COMMISSION E AL.	Counsel	

NATURE OF PROCEEDINGS:

(1941) 19 Cal. 2d 189, 195. "An administrative agency has the power to determine in the first instance, and before any judicial relief may be obtained, whether a given controversy falls within its statutory grant of jurisdiction. [Citations.]" Bd. of Police Comm'r, supra, 168, Cal. App. 3d at 431 (emphasis in original).

Accordingly, the court finds that Plaintiffs' claims are not likely to prevail on the merits.

(2) Relative Interim Harm to Parties

Injunctions are considered an extraordinary equitable remedy. Therefore, an injunction will not be granted unless the legal remedy will not compensate the injured plaintiff. 6 Witkin, Cal. Procedure, Provisional Remedies, § 294, p. 234. The plaintiff must demonstrate a real threat of immediate and irreparable injury due to the inadequacy of legal remedies. That is, a plaintiff must show that if the preliminary injunction is not granted, he will suffer irreparable injury.

Plaintiffs argue that if the injunction does not issue they will suffer irreparable injury because the legal remedy of damages is generally inadequate in real property disputes. The court finds that this is not a sufficient showing of irreparable harm. Plaintiffs merely show that there is a possibility that they will suffer a diminution in property value if the injunction is not granted

MINUTES ENTERED
08/05/10
COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 08/05/10			DEPT. WEJ
HONORABLE CESAR C. SARMIENTO	JUDGE	MANNY MABUNGA	DEPUTY CLERK
HONORABLE	JUDGE PRO TEM		ELECTRONIC RECORDING MONITOR
NONE	Deputy Sheriff	NONE	Reporter

3:30 pm	SC109007	Plaintiff Counsel	
	STEFAN HAGOPIAN VS CALIFORNIA COASTAL COMMISSION E AL.	Defendant Counsel	NO APPEARANCES

NATURE OF PROCEEDINGS:

since it is unknown whether or not the Commission will find a violation of the California Coastal Act. Notably, however, any diminution in value that results from the Commission's decision would not be compensable by money damages since it is it is settled law that land use controls do not constitute compensable takings when they merely decrease the market value of the property. William H. Leimert Co. v. California Coastal Comm'n (1983) 149 Cal. App. 3d 222, 234

Nonetheless, the court finds that injunctive relief is not merited since Plaintiffs have not exhausted their administrative remedies and therefore do not have a probability of prevailing on the underlying claims.

CLERK'S CERTIFICATE OF MAILING/
NOTICE OF ENTRY OF ORDER

I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that this date I served Notice of Entry of the above minute order of 8/5/2010 upon each party or counsel named below by depositing in the United States mail at the courthouse in Santa Monica, California, one copy of the original entered herein in a separate sealed envelope for each, addressed as shown below with the postage thereon fully prepaid.

MINUTES ENTERED
08/05/10
COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 08/05/10			**DEPT.** WEJ
HONORABLE CESAR C. SARMIENTO	JUDGE	MANNY MABUNGA	DEPUTY CLERK
HONORABLE	JUDGE PRO TEM		ELECTRONIC RECORDING MONITOR
NONE	Deputy Sheriff	NONE	Reporter

3:30 pm	SC109007	Plaintiff Counsel	
	STEFAN HAGOPIAN VS CALIFORNIA COASTAL COMMISSION E AL.	Defendant Counsel	NO APPEARANCES

NATURE OF PROCEEDINGS:

Date: 8/5/2010

John A. Clarke, Executive Officer/Clerk

By: _____
Manny Mabunga

RONALD A.ZUMBRUN,ESQ.
Law Offices of
47 Robert CT.E.
Arcata, Ca 95521

CHRISTINA B.ARNDT,DAG.
Office of the Attorney General
300 South Spring Street,Suite 1702
Los Angeles, Ca 90013

MINUTES ENTERED
08/05/10
COUNTY CLERK

Elijah Davidian

From: Diane Hichwa [redacted]
Sent: Monday, August 09, 2010 1:47 PM
To: Elijah Davidian
Subject: Re: item 8. Commission Cease and Desist Order No. CCC-10-CD-07

To: Eli Davidian, CCC staff

Re: 8. Commission Cease and Desist Order No. CCC-10-CD-07 (Stefan Hagopian & Kathryn Hagopian Topanga, Los Angeles Co.)

As a coastal resident, I would like to be on record that I support the CCC staff recommendation for Cease and Desist Orders and recommend that the Commission seek penalties for the alteration and destruction of the landscape's drainage, hydrology, vistas and environmentally sensitive habitat (ESHA) of these properties. Such changes can impact the overall integrity of the habitat communities, their plants and wildlife. The site analysis by California Coastal Commission Senior Ecologist, Dr. John Dixon, clearly stated the sensitive nature of this chapparal.

Respectfully submitted
Diane Hichwa

Email: [redacted]

Telephone: [redacted]

Elijah Davidian

From: Koken, Debby [HMA] [redacted]

Sent: Monday, August 09, 2010 1:20 PM

To: Elijah Davidian

Subject: Commission Cease and Desist Order No. CCC-10-CD-07 (Stefan Hagopian & Kathryn Hagopian - Topanga, Los Angeles Co.)

I strongly support Coastal Commission staff recommendation that the Hagopians must cease and desist from their unpermitted development of incredibly rare ESHA, and I believe the Commission should seek strong penalties for the destruction of ESHA.

Debby Koken
Day: [redacted]
Eve: [redacted]
E-mail: [redacted] (work hours only)

Elijah Davidian

From: Penny Elia [redacted]
Sent: Monday, August 09, 2010 2:17 PM
To: Elijah Davidian
Subject: Commission Cease and Desist Order No. CCC-10-CD-07 (Stefan Hagopian & Kathryn Hagopian – Topanga, Los Angeles Co.)

Please allow this email to serve as strong support of staff recommendations for the above-referenced agenda item(s) to be heard Thursday, August 12, 2010. In addition to staff's recommendations for cease and desist as well as restoration, we also request that penalties be sought for the egregious environmental destruction that has taken place year after year without any thought to our finite natural resources. Now is the time for the respondent to cease wringing a buck out of our precious resources.

Thank you to staff for their hard work and tenacity.

Penny Elia
Sierra Club Task Force Chair, Save Hobo Aliso Ridge Laguna Beach

CALIFORNIA COASTAL COMMISSION
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105- 2219
VOICE (415) 904- 5200
FAX (415) 904- 5400
TDD (415) 597-5885

Staff: Elijah Davidian-SF
Staff Report: July 29, 2010
Hearing Date: August 12, 2010

STAFF REPORT AND FINDINGS FOR ISSUANCE OF CEASE AND DESIST AND RESTORATION ORDERS AND HEARING FOR NOTICE OF VIOLATION ACTION

CEASE AND DESIST ORDER TO STEFAN & KATHRYN HAGOPIAN:	**CCC-10-CD-07**
RESTORATION ORDER TO STEFAN & KATHRYN HAGOPIAN:	**CCC-10-RO-06**
CEASE AND DESIST ORDER TO STEFAN & KATHRYN HAGOPIAN AND RAHEL HAGOPIAN:	**CCC-10-CD-08**
RESTORATION ORDER TO STEFAN & KATHRYN HAGOPIAN AND RAHEL HAGOPIAN:	**CCC-10-RO-07**
NOTICES OF VIOLATION	**1. CCC-10-NOV-02** **2. CCC-10-NOV-03** **3. CCC-10-NOV-04**
RELATED VIOLATION FILE:	**V-04-09-014**
LOCATION OF PROPERTIES:	**Three adjacent parcels, described as 1732 (APN 4438-016-024), 1728 (APN 4438-016-007); and 1726 (APN 4438-036-006) Topanga Skyline Drive, Topanga, Los Angeles County**
DESCRIPTION OF PROPERTIES:	**Three adjacent parcels, totaling approximately 26 acres, located entirely within the Coastal Zone, in the Santa Monica Mountains area of unincorporated Los Angeles County**
OWNERS OF THE PROPERTIES:	**1) Stefan & Kathryn Hagopian: APNs 4438-016-024 & 4438-016-007**

	2) Stefan & Kathryn Hagopian and Rahel Hagopian: APN 4438-036-006
VIOLATION DESCRIPTION:	**Erection of seven structures, unpermitted grading, removal of major vegetation in ESHA, creation of commercial vineyards, placement of debris piles, and installation of a ground-mounted photovoltaic solar array and a tennis court.**
PERSONS SUBJECT TO THESE ORDERS:	**1. Stefan Hagopian 2. Kathryn Hagopian 3. Rahel Hagopian**
SUBSTANTIVE FILE DOCUMENTS:	**1. Coastal Development Permit No. 5-87-488 2. Public documents in violation file V-4-09-014 3. Exhibits 1 – 37 of this staff report**
CEQA STATUS:	**Exempt (CEQA Guidelines (CG) §§ 15060(c)(2) and (3)) and Categorically Exempt (CG §§ 15061(b)(2), 15307, 15308 and 15321)**

I. SUMMARY OF STAFF RECOMMENDATION AND FINDINGS

A. Introduction

The properties that are the subject of these proceedings consist of three adjacent parcels, totaling approximately 26 acres, located at 1732 (4.91 acres), 1728 (9.55 acres) and 1726 (11.57 acres) Topanga Skyline Drive, in the Santa Monica Mountains area of unincorporated Los Angeles County (Exhibit 1). The parcels are identified by the Los Angeles County Assessor's Office as 4438-016-024, 4438-016-007 and 4438-036-006, respectively (hereinafter referred to collectively as the "subject properties"). Owners of the subject properties include Stefan Hagopian, Kathryn Hagopian and Rahel Hagopian (hereinafter sometimes referred to collectively as "Respondents"), the persons subject to these proceedings. Stefan and Kathryn Hagopian have ownership interest in all three parcels. However, Rahel Hagopian has ownership interest in only one of the three parcels (4438-036-006). The proposed actions to resolve the violations address the ownership issues accordingly.

In 1987, the Commission issued to a previous owner Coastal Development Permit (CDP) No. 5-87-488 for a single family residence on parcel 4438-016-024 (Exhibit 2). The residence, which has since been constructed, is the only development that has received Commission approval on any of the three properties. However, as described at length in this staff report, Respondents have performed a great deal of unpermitted development on the subject properties, including but not limited to: the erection of at least seven structures; removal of major vegetation in an environmentally sensitive habitat area (ESHA); creation and expansion of commercial vineyards; grading, including cut and fill, disking, terracing and road making; placement of debris piles; and installation of a ground-mounted photovoltaic solar array and a tennis court, all in violation of the Coastal Act. The unpermitted development has occurred across an area spanning

approximately 400,000 square feet (~9.18 acres), and has resulted in widespread impacts and potential impacts to the habitats, hydrology and soil stability in this area of the Santa Monica Mountains, as well as to the scenic character of the region.

In light of the number of parcels and extent of unpermitted development in this case, Table 1 was prepared to provide an overview of the major items of unpermitted development and responsible parties associated with each of the three parcels that comprise the subject properties, as well as the proposed actions to resolve the violations. An aerial photograph of the subject properties, taken in 1986, is included as Exhibit 3. A diagram of the location and extent of some of the unpermitted development that has occurred on the subject properties is included as Exhibit 4.

Table 1. Unpermitted Development by Parcel and Owner

Parcel Number (and address[1])	Unpermitted Development[2]	Owners	Proposed Action
4438-016-007 (1728)	-Grading -Removal of ESHA -Creation of vineyards -Installation of a solar array -Installation of a tennis court -Erection of at least six structures -Placement of debris piles	Stefan Hagopian Kathryn Hagopian	CCC-10-CD-07 CCC-10-RO-06 CCC-10-NOV-02
4438-016-024 (1732)	-Grading of an access road and building pad for a second residence	Stefan Hagopian Kathryn Hagopian	CCC-10-CD-07 CCC-10-RO-06 CCC-10-NOV-03
4438-036-006 (1726)	-Grading -Removal of ESHA -Creation of vineyards -Erection of at least one structure	Stefan Hagopian Kathryn Hagopian Rahel Hagopian	CCC-10-CD-08 CCC-10-RO-07 CCC-10-NOV-04

[1] Situs address on Topanga Skyline Drive, Topanga, Los Angeles County.

[2] The unpermitted development on the subject properties may not be limited to the items listed herein. Respondents allege that a swimming pool on parcel 4438-016-024 is exempt from the CDP requirements of the Coastal Act. However, Respondents have not provided the information necessary for staff to be able to make a recommendation regarding whether the pool can be found exempt. As a result, the pool is not subject to these proceedings at this time. However, nothing precludes further enforcement action on the pool, should new information become available.

B. Coastal Resources Impacted

The subject properties are located on the top of a ridge in the Santa Monica Mountains. The landscape in the vicinity of the site is characterized by large tracts of mostly undeveloped, densely vegetated and rugged terrain, traversing dramatically steep ridges and deep canyons, many of which contain ephemeral creeks. The vegetative communities within and surrounding the subject properties are part of the Mediterranean shrub ecosystem that is characteristic of the Santa Monica Mountains. The Mediterranean shrub ecosystem type is found in only five distinct coastal regions around the world (the west coasts of California, Chile, South Africa, the Mediterranean, and south and southwest Australia), and encompasses a mere two percent of the earth's total land area.[3] Worldwide, only 18 percent of the Mediterranean community type remains undisturbed.[4] In the context of the Malibu Local Coastal Program, the Commission found that the Mediterranean shrub ecosystem in the Santa Mountains is rare and especially valuable because of its relatively pristine character, physical complexity, and biological diversity; and that areas of undeveloped native habitat may meet the definition of ESHA by virtue of their important roles in that ecosystem.

The Commission's Senior Ecologist, Dr. John Dixon, conducted a site-specific analysis to determine whether the vegetative communities upon and adjacent to the subject properties meet the definition of ESHA. The results of Dr. Dixon's assessment are included in a memo to staff, dated July 9, 2010 (Exhibit 5). According to the memo, the vegetative communities immediately adjacent to the impacted areas of the subject properties consist of mixed chaparral and coast live oak habitats, both of which the Commission has consistently treated as ESHA in the Santa Monica Mountains. Utilizing vegetative surveys conducted by the National Park Service, U.S. Geological Survey, and the California Department of Fish and Game, in addition to historic aerial and present-day ground-level photographs, Dr. Dixon determined that the area in question, prior to the unpermitted activities, was comprised of mixed chaparral. A substantial area of this chaparral, spanning approximately 400,000 square feet (~9.18 acres), has been destroyed due to the continuing violations on the subject properties. Based upon the significant role chaparral plays in the rare Mediterranean shrub ecosystem, its vulnerability to development pressures, and the large tracts of relatively undisturbed native plant communities on and adjacent to subject properties, Dr. Dixon has concluded, "…prior to development, those areas that have been cleared of native vegetation met the definition of ESHA under the Coastal Act."[5]

While the impacts of Respondents' actions on ESHA are severe, they are not limited to ESHA. As is evident from the photographs in Exhibit 4, the unpermitted development has also degraded the scenic and visual quality of the region. As the subject properties straddle a ridge-top, the impacts are visible from several public vantage points throughout the region – there are several public parks with ridge-top hiking trails in the vicinity of the subject properties from which the unpermitted development can be viewed. Respondents' actions have also significantly changed

[3] National Parks Conservation Association. 2008. State of the Parks: Southern California's Mediterranean Biome Parks. Accessed on July 7, 2010 at: *www.npca.org/stateoftheparks/mediterranean_biome/biome-intro.pdf*
[4] National Park Service. 2000. Draft general management plan & environmental impact statement. Santa Monica Mountains National Recreation Area – California.
[5] Dixon, John. (CCC). July 9, 2010. Memo to Elijah Davidian, re: Hagopian Property. (Exhibit 5)

the site's topography through extensive grading, including but not limited to: cutting into ridge-top knobs for building pads; importing dozens of truckloads of fill to level out the properties' otherwise sloping and variable terrain; cutting, widening and expanding roads; and terracing and disking of the denuded hillsides in preparation for the commercial vineyard operation. Such grading has, in turn, fundamentally altered the site's drainage patterns and surface hydrology. Moreover, the hundreds of thousands of gallons of irrigation water used for the commercial vineyard operation may be affecting the stability of the steep slopes that flank the subject properties, which are prone to failure; a landslide already exists on the property immediately adjacent to parcel 4438-16-024. With exposed soils on steep slopes and nothing to capture sediment-laden surface runoff, nearby coastal streams and creeks may be experiencing increased sedimentation. Until the Respondents' activities cease and the subject properties are restored, coastal resources remain at risk of further degradation.

C. Attempts to Resolve Violations

Commission staff has exhausted all administrative avenues for resolving these violations. As described more fully on pages 13 - 19 of this staff report, over the past fifteen months, staff has made every effort to work with Respondents and their representatives to resolve these violations in an amiable fashion. Since the violations were first reported, in March of 2009, staff has written at least nine letters, granted at least six deadline extensions, spent numerous hours on the telephone and in person, all for the purpose of helping Respondents and their representatives understand the requirements of the Coastal Act, and in hopes of resolving this matter without the need for a contested hearing. Unfortunately, despite these efforts, Respondents have clearly demonstrated that they are unwilling to take any of the steps necessary to comply with the Coastal Act. Despite having been informed by Commission staff of the requirements of the Coastal Act on numerous occasions, having been denied a request for exemption from the CDP requirements for a second residence on parcel 4438-016-024, and having been issued a Stop Work Order by the LA County Department of Building and Safety for grading without a CDP, Respondents have continued to undertake unpermitted development on the subject properties. Consequently, given the potential for further resource damage and the lack of progress resolving the situation informally, staff has no other alternative but to move forward with formal order proceedings to resolve the violations at issue herein.

D. Staff Recommendation

Staff recommends that the Commission issue Cease and Desist Orders (CDOs) and Restoration Orders (ROs) numbers CCC-10-CD-07, CCC-10-CD-08, CCC-10-RO-06 and CCC-10-RO-07 (collectively, the "Orders") to address the violations described above. As noted previously, one of the parcels at issue has a unique ownership arrangement. The issuance of multiple CDOs and ROs is therefore necessary to ensure that each party is held responsible for only those violations occurring on properties in which they have an ownership interest. Accordingly, the proposed Orders would require Stefan Hagopian, Kathryn Hagopian and Rahel Hagopian (as applicable) to: 1) cease and desist from maintaining any development on the subject properties not

authorized (as relevant to each parcel) pursuant to the Coastal Act; 2) cease and desist from engaging in any further development on the subject properties unless authorized pursuant to the Coastal Act; 3) either remove the solar array or submit a CDP application for a solar array, and remove it if such application is denied (in the Orders for properties owned solely by Stefan Hagopian and Kathryn Hagopian only)[6]; 4) remove all development that required a permit from the Commission, but for which no permit was obtained[7]; 5) restore and revegetate the impacted areas of the subject properties, pursuant to an approved restoration plan; and 6) take all steps necessary to ensure compliance with the Coastal Act.

Staff also recommends that the Commission find that Coastal Act violations, consisting of unpermitted development, have occurred on the subject properties. If the Commission finds that violations of the Coastal Act have occurred, the Executive Director will record Notices of Violation (CCC-10-NOV-02, CCC-10-NOV-03 and CCC-10-NOV-04) in the Los Angeles County Recorder's Office in accordance with Coastal Act Section 30812. This will help to ensure that potential future buyers are made aware of the existence of the violations on the subject properties, while limiting the possibility of confusion regarding liability in the future.

E. Requirements for Issuance of Cease and Desist and Restoration Orders

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 Coastal Development Permit (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 the Coastal Act; and 3) is causing continuing resource damage. These criteria have all been met in this case, as summarized briefly here, and discussed in more detail on pages 19 - 30 below.

The unpermitted activities undertaken by Respondents on the subject properties clearly meet the definition of "development" set forth in Section 30106 of the Coastal Act. Development is defined broadly under the Coastal Act and includes, among many other actions:

> *…the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land…change in the intensity of use of water, or of access thereto… construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes.*

[6] Given the Commission's interest in promoting alternative energy, the Orders provide Stefan Hagopian and Kathryn Hagopian with the option to apply for after-the-fact approval of a solar array, or to remove it in accordance with the removal provisions of the Orders.

[7] With the possible exception of the ground mounted solar array, if it is approved by the Commission.

Pursuant to Coastal Act section 30600, all non-exempt development in the Coastal Zone requires a CDP. No exemption from the permit requirement applies here. Coastal development permit number 5-87-488 was issued in 1987 for the development of a single family residence on parcel 4438-016-024. However, none of the development described herein was authorized by that CDP. Therefore, development has occurred on the subject properties without a CDP, in violation of Coastal Act Section 30600. In addition, as discussed further herein, the unpermitted development is: 1) inconsistent with the policies in Chapter 3 of the Coastal Act, including Section 30231 (water quality), Section 30240 (ESHA), Section 30251 (scenic qualities and landform alteration) and Section 30253 (minimization of adverse impacts), which require protection of coastal resources within the Coastal Zone; and 2) causing continuing resource damage, as discussed more fully below.

The unpermitted erection of at least seven structures; removal of major vegetation in ESHA; creation and expansion of commercial vineyards; grading, including cut and fill, disking, terracing and road making; placement of debris piles; and installation of a ground-mounted photovoltaic solar array and a tennis court, has adversely impacted, individually and cumulatively, resources associated with the rare and sensitive habitats of this area of the Santa Monica Mountains. Such impacts meet the definition of damage provided in Section 13190(b) of Title 14 of the California Code of Regulations (14 CCR), which defines "damage" as, "any degradation or other reduction in quality, abundance, or other quantitative or qualitative characteristic of the resource as compared to the condition the resource was in before it was disturbed by unpermitted development."

Not only does the unpermitted development presently exist at the subject properties, but Respondents have continued to undertake additional unpermitted development even after being notified by the County and Commission staff that development in this area requires a coastal development permit from the Coastal Commission. The landscape alteration that has resulted from these unpermitted activities has not only degraded scenic coastal mountain vistas, altered drainage patterns and surface hydrology, caused erosion and probable water quality impacts; it has also undermined the overall integrity of the habitat communities within and surrounding the subject properties by causing temporal losses and a decrease in the overall abundance and health of the plants comprising the ESHA. The continued presence of the unpermitted vineyards, structures, and other unpermitted development – including any ongoing or future unpermitted development – will exacerbate adverse impacts to the sensitive habitats, soil stability, water quality and the scenic vistas that characterize the this area of the Santa Monica Mountains. Thus, without remediation, the violations are causing continuing resource damage, as defined in 14 CCR Section 13190. Therefore, the Commission has the authority to issue Cease and Desist and Restoration Orders in this matter.

II. HEARING PROCEDURES

A. <u>Cease and Desist Order and Restoration Order</u>

The procedures for a hearing on a Cease and Desist Order and Restoration Order are outlined in Title 14, Division 5.5, Sections 13185 of the California Code of Regulations.

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 shall receive, consider, and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceedings, as specified in Title 14, California Code of Regulations 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 Orders and Restoration Orders, either in the form recommended by the Executive Director, or as amended by the Commission. Passage of the first four motions below, per staff recommendation or as amended by the Commission, will result in issuance of the Cease and Desist Orders and Restoration Orders.

B. <u>Notice of Violation</u>

The procedures for a hearing on whether a violation has occurred are set forth in Coastal Act Section 30812 (c) and (d) as follows:

> *(c) If the owner submits a timely objection to the proposed filing of the notice of violation, a public hearing shall be held at the next regularly scheduled commission meeting for which adequate public notice can be provided, at which the owner may present evidence to the commission why the notice of violation should not be recorded. The hearing may be postponed for cause for not more than 90 days after the date of the receipt of the objection to recordation of the notice of violation.*
>
> *(d) If, after the commission has completed its hearing and the owner has been given the opportunity to present evidence, the commission finds that, based on substantial evidence, a violation has occurred, the executive director shall record the notice of violation in the office of each county recorder where all or part of the real property is located. If the commission finds that no violation has occurred, the executive director shall mail a clearance letter to the owner of the real property.*

The Commission shall determine, by a majority vote of those present and voting, whether violations have occurred. Passage of the last two motions below will result in the Executive Director's recordation of Notices of Violation in the Los Angeles County Recorder's Office.

III. STAFF RECOMMENDATION

Staff recommends that the Commission adopt the following six motions:

Motion 1 - Cease and Desist Order:

I move that the Commission issue Cease and Desist Order No. CCC-10-CD-07 pursuant to the staff recommendation.

Staff Recommendation of Approval:

Staff recommends a **YES** vote. Passage of this motion will result in the issuance of the Cease and Desist Order for real property at 1732 and 1728 Topanga Skyline Drive, in Los Angeles County. 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-10-CD-07, as set forth below, and adopts the findings set forth below on grounds that development has occurred at 1732 and 1728 Topanga Skyline Drive, in Los Angeles County, without a coastal development permit, in violation of the Coastal Act, and that the requirements of the Order are necessary to ensure compliance with the Coastal Act.

Motion No. 2 – Restoration Order:

I move that the Commission issue Restoration Order No. CCC-10-RO-06 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 for real property at 1732 and 1728 Topanga Skyline Drive, in Los Angeles County. 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-10-RO-06, for real property at 1732 and 1728 Topanga Skyline Drive, in Los Angeles County, as set forth below, and adopts the findings set forth below on the grounds that: 1) development has been conducted without a

coastal development permit; 2) the development is inconsistent with the Coastal Act; and 3) the development is causing continuing resource damage.

Motion No. 3 - Cease and Desist Order:

I move that the Commission issue Cease and Desist Order No. CCC-10-CD-08 pursuant to the staff recommendation.

Staff Recommendation of Approval:

Staff recommends a **YES** vote. Passage of this motion will result in the issuance of the Cease and Desist Order for real property at 1726 Topanga Skyline Drive, in Los Angeles County. 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-10-CD-08, as set forth below, and adopts the findings set forth below on grounds that development has occurred at 1726 Topanga Skyline Drive, in Los Angeles County, without a coastal development permit, in violation of the Coastal Act, and that the requirements of the Order are necessary to ensure compliance with the Coastal Act.

Motion No. 4 – Restoration Order:

I move that the Commission issue Restoration Order No. CCC-10-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 for real property at 1726 Topanga Skyline Drive, in Los Angeles County. 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-10-RO-07, for real property at 1726 Topanga Skyline Drive, in Los Angeles County, as set forth below, and adopts the findings set forth below on the grounds that: 1) development has been conducted without a coastal development permit; 2) the development is inconsistent with the Coastal Act; and 3) the development is causing continuing resource damage.

Motion No. 5 - Notice of Violation:

I move that the Commission find that the real property at 1732 and 1728 Topanga Skyline Drive, in Los Angeles County, has been developed in violation of the Coastal Act, as described in the staff recommendation for CCC-10-NOV-02 and CCC-10-NOV-03.

Staff Recommendation of Approval:

Staff recommends a **YES** vote. Passage of this motion will result in the Executive Director recording Notices of Violation Nos. CCC-10-NOV-02 and CCC-10-NOV-03 against the above-referenced properties in the Los Angeles County Recorder's Office. The motion passes only by an affirmative vote of the majority of Commissioners present.

Resolution to Find that a Violation of the Coastal Act Has Occurred:

The Commission hereby finds that the real property at 1732 and 1728 Topanga Skyline Drive, in Los Angeles County, has been developed in violation of the Coastal Act, as described in the findings below, and adopts the findings set forth below on the grounds that development has occurred without a coastal development permit.

Motion No. 6 - Notice of Violation:

I move that the Commission find that the real property at 1726 Topanga Skyline Drive, in Los Angeles County, has been developed in violation of the Coastal Act, as described in the staff recommendation for CCC-10-NOV-04.

Staff Recommendation of Approval:

Staff recommends a **YES** vote. Passage of this motion will result in the Executive Director recording Notice of Violation No. CCC-10-NOV-04 against the above-referenced property in the Los Angeles County Recorder's Office. The motion passes only by an affirmative vote of the majority of Commissioners present.

Resolution to Find that a Violation of the Coastal Act Has Occurred:

The Commission hereby finds that the real property at 1726 Topanga Skyline Drive, in Los Angeles County, has been developed in violation of the Coastal Act, as described in the findings below, and adopts the findings set forth below on the grounds that development has occurred without a coastal development permit.

IV. FINDINGS FOR ISSUANCE OF CEASE AND DESIST ORDERS NOS. CCC-10-CD-07 & CCC-10-CD-08; RESTORATION ORDERS NOS. CCC-10-RO-06 & CCC-10-RO-07; AND NOTICE OF VIOLATION NOS. CCC-10-NOV-02, CCC-10-NOV-03 & CCC-10-NOV-04[8]

A. Description of Subject Properties

The subject properties are located in the Topanga area of the Santa Monica Mountains, in unincorporated Los Angeles County. The subject properties are situated at the southwestern extent of and atop a mostly undeveloped ridge, with the exception of the development that is the subject of these proceedings. The surrounding area is mostly undeveloped; however, some low-density residential development occurs in some of the nearby canyons and valleys between ridgelines. The ridgelines in the vicinity of the subject properties are predominantly undeveloped. Several regional and State parks (i.e., Calabasas Peak State Park, Red Rock Canyon State Park, Stunt Ranch State Park, and Topanga State Park) lie in close proximity to the subject properties – many of which contain ridge-top hiking trails from which the subject properties and the unpermitted development can be viewed. Prior to the development at issue herein, the subject properties consisted mainly of contiguous stands of coast live oak woodlands and mixed chaparral. In the Santa Monica Mountains, these plant communities provide habitat for several rare and sensitive plant and animal species. Sensitive plant species known to occur in Santa Monica Mountains chaparral include: Santa Susana tarplant, Lyon's pentachaeta, marcescent dudleya, Santa Monica Mountains dudleya, Braunton's milk vetch and salt spring checkerbloom. Sensitive animal species known to occur or potentially occur in the Santa Monica Mountains chaparral include: Santa Monica shieldback katydid, western spadefoot toad, silvery legless lizard, San Bernardino ring-neck snake, San Diego mountain kingsnake, coast patch-nosed snake, sharp-shinned hawk, southern California rufous-crowned sparrow, Bell's sparrow, yellow warbler, pallid bat, long-legged myotis bat, western mastiff bat, and San Diego desert woodrat.[9] The unpermitted development that is the subject of these proceedings occurred on and continues to affect an approximately 400,000 square foot area of ridge top and flank, located approximately one-half mile northeast of Old Topanga Canyon Road, on the subject properties. A map showing the general location of the subject properties is included as Exhibit 1.

B. Description of Unpermitted Development

[8] These findings also hereby incorporate by reference Section I of the June 29, 2010 staff report in which these findings appear, which section is entitled "Summary of Staff Recommendation and Findings."
[9] Dixon, John. (CCC). March 25, 2003. Memo to Ventura Staff, re: Designation of ESHA in the Santa Monica Mountains.

The unpermitted development that has occurred on the subject properties includes, but may not be limited to: the erection of at least seven structures; removal of major vegetation in ESHA; establishment and expansion of commercial vineyards; grading, including cut and fill, disking, terracing and road making; placement of debris piles; and installation of a ground-mounted photovoltaic solar array and a tennis court, all in violation of the Coastal Act. A parcel-specific list of the unpermitted development is included in Table 1, above. A diagram of the location and extent of some of the unpermitted development on the subject properties is included as Exhibit 4.

C. Property and Permit History

On August 27, 1987, the Commission approved CDP No. 5-87-488, which authorized the construction of: (1) a 3,375 square foot, 28 foot tall, single family residence; (2) 1,092 cubic yards of grading (853 cut, 239 fill); (3) a septic system; (4) pavement of an existing access road; and (5) the legalization of the parcel through approval of a conditional certificate of compliance, at 1732 Topanga Skyline Drive, Topanga (APN 4438-016-024). The permit, which is included as Exhibit 2, was subject to three special conditions of approval, including requirements to: (1) participate in a cumulative impact mitigation program to offset the cumulative impacts associated with an illegally subdivided parcel; (2) provide an assumption of risk/waiver of liability, because the property was deemed to be subject to potential hazards from erosion, slope failure and fire; and (3) submit plans conforming to consulting engineering geologist's recommendations. On February 24, 1988, after satisfying all prior-to-issuance conditions, including the recordation of a deed restriction containing the permit and all of its conditions, then-owner and permit applicant, Mr. Everett Rollins, was issued CDP No. 5-87-488. The CDP included a standard condition stating that "any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval."

In 1991, Mr. Stefan and Mrs. Kathryn Hagopian purchased the parcel described as APN 4438-016-024 (hereinafter referred to as "Parcel 24") from Mr. Rollins. Three years later, in 1994, Mr. Stefan and Mrs. Kathryn Hagopian purchased the property described as APN 4438-016-007 (hereinafter referred to as "Parcel 7"), which is located immediately to the south of and adjacent to Parcel 24. Six years later, in 2000, Mr. Stefan and Mrs. Kathryn Hagopian, along with Ms. Rahel Hagopian, purchased the property described as APN 4438-036-006 (hereinafter referred to as "Parcel 6"), which is located immediately to the south of and adjacent to Parcel 7. As discussed below, Commission staff's review of historic aerial photographs confirms that a substantial amount of unpermitted development has occurred on the subject properties since they have come under Respondents' ownership. However, a review of the Commission's records indicates that no coastal development permits have been issued for any of the development that is the subject of these proceedings.

On February 16, 2007, Mr. Stefan and Mrs. Kathryn Hagopian submitted an application to the Commission's South Central Coast District Office in Ventura, requesting a permit exemption for construction of a second residence on Parcel 24. The exemption request was for an approximately 1,196 square foot, two-bedroom guest house, to be constructed above a detached

garage. After reviewing the exemption request, in a letter dated April 17, 2007, Commission staff notified Mr. Stefan and Mrs. Kathryn Hagopian that the proposed project met the definition of "development" under the Coastal Act and that it could not be found exempt from the permit requirements under Coastal Act Section 30610 and California Code of Regulations Title 14, Section 13250 (Exhibit 6). Along with that letter, Commission staff returned to Mr. Stefan and Mrs. Kathryn Hagopian's agent at the time, Mr. Sean Nyguen of EZ Permits, their permit exemption materials and provided a blank CDP application for their convenience. Commission staff has never received a completed CDP application for the proposed development.

D. Violation History

On March 11, 2009, staff received a complaint regarding unpermitted development at the subject properties. The complaint contained a description of alleged activities, accompanied by photographs. The photographs documented the existence of a large commercial vineyard operation, accessory structures, the presence of heavy machinery (a bulldozer, dump truck, and backhoe), a substantial amount of earthwork, debris piles, and the existence of a tennis court. Some of the photographs submitted by the reporting party are included as Exhibit 7.

On March 23, 2009, staff independently confirmed the presence of the unpermitted development described in the original violation report. Through comparative analysis of historic aerial photographs, and subsequent investigation, staff confirmed the presence of unpermitted development, including but not limited to: the erection of at least seven structures; removal of major vegetation in ESHA; creation and expansion of commercial vineyards; grading, including cut and fill, disking, terracing and road making; placement of debris piles; and installation of a ground-mounted photovoltaic solar array and a tennis court, across an area spanning approximately 400,000 square feet, in violation of the Coastal Act. A photograph depicting a panoramic view of the subject properties and some of the unpermitted development, taken by Commission staff from an adjacent property, is included as Exhibit 8.

On March 24, 2009, the Commission staff sent to Respondents a Notice of Violation letter (Exhibit 9), informing them that the above mentioned activities constitute "development" as defined in Section 30106 of the Coastal Act, and therefore require a coastal development permit (CDP).[10] The letter states further that because no permit has been obtained, the actions constitute unpermitted development, and that for that reason, the subject properties have been developed in violation of the Coastal Act. While the letter provided the option of applying for a CDP to resolve the violations informally, it also noted the potential penalties associated with failure to take proactive measures to resolve the violations, including the recordation of Notices of Violation against the properties' titles. Despite having already provided Mr. Stefan and Mrs. Kathryn Hagopian's then-representative with a CDP application form in 2007, staff included in

[10] The Notice of Violation was initially sent to the Post Office Box for the property owners on file with the Los Angeles County Assessor's office for all three parcels. At their request, subsequent correspondence was addressed to Mr. Burt & Ms. Nicole Johnson, representatives for Respondents.

the letter the Commission's website address, where a CDP application can be accessed. The letter established a deadline of April 24, 2009 for submittal of a complete CDP application.

On April 24, 2009, Respondents' agent, Mr. Burt Johnson, contacted enforcement staff and requested an extension of time for submittal of the CDP application, indicating that Respondents planned to submit two separate CDP applications. Staff granted the request and extended the deadline to May 30, 2009. Commission staff received no application from Respondents or their representatives by the May deadline. Instead, another of Respondents' agents, Ms. Nicole Johnson, sent to Commission staff a letter, dated June 12, 2009, explaining why she believes that none of the activities in the Notice of Violation letter constitute Coastal Act violations (Exhibit 10). Among the arguments raised in the letter were: (1) the development is exempt from Coastal Act permitting requirements pursuant to Section 30610.2 of the Coastal Act; and (2) the Commission is without jurisdiction as the County has sole permitting authority.

Commission staff, in a letter to Ms. Johnson dated July 7, 2009, provided a detailed response to the issues raised in her June letter (Exhibit 11). Staff's letter outlines the reasons why the development activities on the subject properties do require a coastal development permit; explains that the subject properties and the development activities thereupon are not exempt or excluded from the Coastal Act's permitting requirements; and again reiterates staff's willingness to work with Respondents to resolve the violations in an amicable fashion. In another attempt to achieve resolution, staff again extended the deadline to August 30, 2009 for Respondents' submittal of a complete CDP application. Staff's letter also notes the potential for penalties associated with failure to proactively address the violations.

During a telephone conversation with staff on July 22, 2009, Mr. Johnson raised new arguments for why he believes the development on the subject properties does not require a CDP, including: (1) Parcels 6 and 7 have been consistently used for agricultural purposes since a time prior to the effective date of the Coastal Act, and (2) none of the areas from which vegetation was removed constitutes ESHA.[11] Staff responded to these claims in another letter to Respondents' agents, this time addressed to Mr. Johnson, dated July 28, 2009 (Exhibit 12). In that letter, staff requested that either Respondents or their agents submit any documentation (i.e., photographs, receipts, declarations, etc.) demonstrating historic agricultural use; staff's review of historic aerial photographs, dating back to the 1970s, revealed neither agricultural, nor any other use of the scale and intensity present today. In that letter, staff explains that Respondents' claims of historic agricultural use will be reviewed in light of any documentation submitted. In the letter, staff also notes the option of filing a formal request for the Commission's hearing of a vested rights claim. Regarding Mr. Johnson's assertion concerning ESHA, despite a well established precedent of the

[11] Mr. Johnson's ESHA assertions are based on a misunderstanding of the Los Angeles County Certified Land Use Plan (LUP), which was adopted in 1986. The County's LUP contains a map of sensitive resources that was intended to provide some guidance for making ESHA determinations. However, the LUP's ESHA Map is not intended to be, and is not, a comprehensive depiction of ESHA in the area covered, as is specified in LUP Section 4.2.1.1, Policy 57(b). In addition, because the County has not obtained certification of its LCP, the standard of review in this matter is the Coastal Act. Thus, nothing in the County's LUP precludes the Commission from finding ESHAs in areas not depicted as such in the LUP. This issue is addressed more fully in Section G, below.

Commission's treating as ESHA large areas of chaparral and coastal sage scrub in the Santa Monica Mountains, staff's letter provides two options. Under the first option, Respondents were invited to prepare and submit for staff's review a biological survey of the subject properties. Under the second option, staff offered to conduct its own assessment of the vegetative communities on and around the subject properties.

Rather than submitting a completed CDP application by the extended, August 30, 2009 deadline, Ms. Johnson, in a letter dated August 31, 2009, merely restates arguments that had been raised in previous letters and thoroughly addressed by staff through written and verbal correspondence (Exhibit 13). No documentation of historic agricultural activity on Parcels 6 or 7 was ever submitted to staff. Ms. Johnson neither responded to the proposals offered by staff to resolve Respondents' questions regarding ESHA, nor did she indicate which of the two ESHA determination options were acceptable. Instead, Ms. Johnson submitted to staff another letter, dated September 16, 2009, in which she again claims that the agricultural activities on the subject properties are in conformance with all applicable regulations (Exhibit 14), which was not determinative of the Coastal Act issues at hand.

In a letter to Ms. Johnson, dated October 19, 2009, staff reiterates again its willingness to work with Respondents and their representatives to resolve the violations in an amicable fashion (Exhibit 15). The letter provides a third deadline extension of November 16, 2009, for submittal of a complete CDP application. However, staff's letter also notes that failure to meet that deadline will result in formal enforcement action. During an October 27, 2009 telephone call, Mr. Johnson indicated that he wished instead to submit a vested rights claim (VRC). Staff subsequently provided to Mr. Johnson a blank VRC application form and gave him until November 16, 2009, to return the form completed.

On November 16, 2009, Mr. Johnson contacted staff requesting yet another deadline extension, this time for submittal of the VRC form, and requested a meeting with staff to review the violations. Despite Mr. & Ms. Johnson's repeated failure to meet any deadline established, staff granted a deadline extension of December 7, 2009, the same date of the meeting Mr. Johnson had requested. However, Mr. Johnson failed to appear for the meeting and also failed to submit a completed VRC application by the December 7, 2009 deadline. On December 9, 2010, Mr. Johnson contacted staff, requesting yet another extension and meeting date. Staff explained that it could grant no further extensions. However, it noted that a completed VRC application would be accepted.

On December 10, 2009, Mr. Johnson submitted an incomplete VRC application for a second single family residence on Parcel 24. This application did not address the other unpermitted developments that are the subject of these proceedings. On December 16, 2009, staff mailed to Mr. Stefan and Mrs. Kathryn Hagopian a letter indicating that VRC Application No. 4-09-093-VRC was incomplete (Exhibit 16). In that letter, staff explains that, based on the information submitted, there is no basis for a claim of vested rights. More specifically, staff's letter explains that in order to qualify for a claim, one must have obtained a vested right in development prior to the effective date of the Coastal Act or have obtained a permit from the California Coastal Zone

Conservation Commission. Staff concludes the letter by recommending that Respondents withdraw their application and seek to otherwise resolve the violations.

On January 28, 2010, Commission staff met with Mr. & Ms. Johnson to discuss the outstanding violations. The Johnsons also submitted a letter to staff, of the same date, restating many of the same arguments from previous letters, each of which staff had addressed in prior correspondence (Exhibit 17). Nonetheless, for the benefit of Respondents and their agents, staff again addressed these issues during the January 2010 meeting. During the meeting, staff again explained why a CDP from the Commission is required for the development on the subject properties, regardless of and in addition to any permits required by the County. By the end of the meeting, Mr. and Ms. Johnson indicated that they would 1) withdraw the vested rights claim; 2) apply for an after-the-fact CDP to authorize the unpermitted solar array within "several weeks"; and 3) submit information about the swimming pool's construction and resource impacts. Staff concluded the meeting by informing Mr. and Ms. Johnson of potential cease and desist and restoration order proceedings to resolve violations on Parcels 6 and 7, and that the same might be required for Parcel 24 if a CDP application was not submitted. At that time, and in subsequent correspondence, Mr. and Ms. Johnson said they disagreed with staff's position, as did their clients. On February 2, 2010, Ms. Johnson sent to staff an email conveying her recollection of the January meeting (Exhibit 18). In that letter, Ms. Johnson mistakenly states that Commission staff agreed that the pool and solar panels were not violations and therefore no further action was required. Staff sent a response letter on February 17, 2010, conveying staff's recollection of the meeting and reiterating its position with regard to the unpermitted development on each of the three parcels, as described above (Exhibit 19).

On April 16, 2010, Ms. Johnson submitted a letter formally requesting that the VRC application be withdrawn (Exhibit 20). Beyond that, in the more than two months that had passed since the January 2010 meeting, staff had received none of the submittals promised by Mr. and Ms. Johnson at that meeting. In the mean time, Respondents apparently decided to move forward with additional unpermitted development on Parcel 24. On April 7, 2010, Commission staff received an inquiry from the LA County Department of Building and Safety staff regarding the permit status of the proposed second single family residence. Commission staff indicated then, as it had to Respondents' agents numerous times during the previous year, that the proposed development and associated grading requires a CDP and that no such permit has been issued. Shortly thereafter, Commission staff learned from County staff that Respondents had proceeded with grading associated with second single family residence (despite having been notified by the Commission staff of the CDP requirement and even having received a denial of their request for a CDP exemption, based on Coastal Act provisions). Commission staff further found out from LA County staff that Respondents continued grading for at least three days after the County posted a Stop Work Notice at the entrance to the subject properties, ordering Respondents to stop work until they obtained Coastal Commission approval. A photograph of the Stop Work Notice at the entrance to Respondents' properties, taken by County staff at the time of posting, is included as Exhibit 21.

Having utilized all available administrative methods for resolving these violations, the Executive Director, on May 18, 2010, mailed to Respondents and their agents a letter notifying them of his

intent to (1) record Notices of Violation on the subject property; and (2) commence Cease and Desist and Restoration Order proceedings (Exhibit 22). In accordance with Section 13181 of the Commission's Regulations, the letter was accompanied by a statement of defense (SOD) form, and established a deadline of June 7, 2010 for its return. The letter noted that the matter was tentatively scheduled for the Commission's July 2010 meeting, but again reiterated the staff's desire to work with Respondents and their agents to resolve the matter consensually.

On Thursday, June 3, 2010, staff received a telephone call from Mr. Stanley Lamport, an attorney, who stated that Respondents were considering hiring him to assist with resolution of this case. Mr. Lamport requested an extension to the June 7, 2010 deadline, explaining that the additional time would allow him to finalize the terms of engagement with Respondents and afford him sufficient time to review the case. Mr. and Ms. Johnson submitted a formal request for this extension, dated June 7, 2010 (Exhibit 23). Staff explained to Mr. Lamport that an extension of two-weeks (Jun 21, 2010) could be granted only if that time would be used to advance discussions regarding resolution of the case. Mr. Lamport assured staff that he was committed to working with staff to resolve the case amicably and promised to contact staff once he knew whether he would be retained by Respondents. Granting the extension impeded staff's ability to bring the case before the Commission at its July meeting. Staff did not hear from Mr. Lamport, Respondents, or their representatives until June 21, 2010.

On Friday, June 18, 2010, Mr. Johnson issued a subsequent deadline extension request letter (Exhibit 24). However, because the letter was transmitted on a State furlough day – during which all Commission offices are closed – staff did not receive the letter until Monday, June 21, 2010, the revised deadline for submittal of the SOD. The letter explained that Mr. Lamport would not be representing Respondents and therefore an additional three weeks time was needed to engage another attorney. Staff responded via letter and voicemail on June 21, 2010, and explained that a one-week extension (June 28, 2010) would be granted only for the purposes of negotiating a resolution to the case (Exhibit 25). The letter noted that by the end of the week, if it appeared that Respondents were committed to resolving the violations, additional time could be granted.

On June 22, 2010, Mr. Johnson submitted yet another deadline extension request letter, which stated that a one-week extension was insufficient time to discuss a resolution with staff and engage an attorney (Exhibit 26). The letter also alleged that staff had yet to provide an "on point response" to issues raised in Respondents' prior letters. On June 23, 2010, staff spent one and a half (1.5) additional hours discussing the case with Mr. and Ms. Johnson via telephone. During that conversation, staff again responded to all of the points raised by Respondents over the past year. In doing so, staff explained the reasoning why the development at issue is subject to the Commission's development review authority. Unfortunately, despite staff's efforts to explain the legal reasoning behind its position, Mr. and Ms. Johnson refused to acknowledge the Commission's jurisdiction over the development in this matter and additionally continued to refute all allegations of unpermitted development. Having already granted two extensions to the SOD submittal deadline (totaling six in 15 months), and with no apparent willingness on behalf of Respondents to comply with the Coastal Act, on June 24, 2010, staff notified Mr. and Ms. Johnson that it appeared that further extensions would not assist in resolving the violations (Exhibit 27).

Mr. Johnson, in a letter dated June 28, 2010, conveyed his displeasure with staff's denial of yet another deadline extension (Exhibit 28). In that letter, Mr. Johnson alleged that staff was not committed to resolving the case amicably, had failed to provide an "on point response" to the arguments raised in previous correspondence, and that it had withheld information regarding the existence of ESHA on the properties.[12] Staff responded in writing on June 30, 2010 (Exhibit 29). In its letter, staff explained that it remained willing to work with Respondents, but could offer no further extensions of the deadline to submit a Statement of Defense (SOD), as the previous six extensions granted by staff had not advanced the case towards resolution. Staff reminded Mr. Johnson of the substantial amount of time it had spent responding in writing, via telephone, and in person, to arguments raised by Mr. & Ms. Johnson over the past 15 months. Staff concluded the letter with an assurance that it remained willing to provide information, as available, to help Mr. Johnson understand staff's position with regard to the alleged violations. Staff contacted Mr. Johnson via telephone on July 2, 2010 to provide additional information regarding ESHA in the Santa Monica Mountains. However, at that time, Mr. Johnson explained that he was not interested in discussing the matter with staff any further.

For more than fifteen months, Commission staff made attempts to work with Respondents and their agents towards an amicable resolution to the violations described herein. Despite the numerous letters, emails, telephone conversations, and a face-to-face meeting with Respondents' agents, explaining why said development is subject to the Coastal Commission's jurisdiction, constitutes development, and therefore requires Commission approval, Respondents have continued to both maintain and undertake additional development that not only requires a CDP, but is also inconsistent with the Coastal Act and is also causing continuing resource damage. For these reasons, this case is ripe for formal enforcement action. Therefore, in hopes of putting an end to this dispute, staff recommends the Commission approve the proposed cease and desist and restoration orders and find that Coastal Act violations have occurred on the subject properties.

E. Bases for Issuance of Cease and Desist and Restoration Orders, and Recordation of Notices of Violation

The following sections provide the bases for the proposed enforcement actions. Staff notes that the standard of review in this matter is the Coastal Act. However, because the County of Los Angeles has obtained certification of the Land Use Plan (LUP) portion of its Local Coastal Program (LCP), that document is also considered for the purposes of guidance, and relevant portions of the LUP are discussed herein as appropriate.

1. Basis for Issuance of a Cease and Desist Order

[12] In previous correspondence, staff noted that the Commission's Senior Ecologist, Dr. John Dixon would be preparing a memorandum explaining why the site's conditions met the definition of ESHA. Mr. Johnson requested a copy of the memorandum. Staff explained that a copy would be made available once the document was finalized.

The Commission may issue a Cease and Desist Order to address violations of the Coastal Act. Those Orders may be subject to terms and conditions as necessary to ensure compliance with the Coastal Act. The statutory authority for issuance of the proposed Cease and Desist Orders is provided in Coastal Act Section 30810, which states, in relevant part:

> *(a) If the commission, after public hearing, determines that any person…has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit … 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 or the setting of a schedule within which steps shall be taken to obtain a permit pursuant to this division.*

As is explained below, the activities that have occurred on the subject properties were undertaken without first obtaining the requisite Commission approvals.

a. Development that Required a Permit from the Commission has Occurred on the Subject Properties Without a Permit

Coastal Act Section 30810(a) authorizes the Commission to issue a cease and desist order if it finds that anyone has undertaken development that requires a permit from the Commission without securing the permit. "Development" is defined by Section 30106 of the Coastal Act as follows, in relevant part:

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

The activities conducted on the subject properties, including but not limited to: the erection of at least seven structures; removal of major vegetation in ESHA; creation and expansion of commercial vineyards; grading, including cut and fill, disking, terracing and road making; placement of debris piles; and installation of a ground-mounted photovoltaic solar array and tennis court; clearly constitute, individually and collectively, development as defined in Coastal Act.

As such, these actions are subject to the following permit requirements provided in Coastal Act Section 30600(a):

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

Coastal development permits were not issued for any of the development at issue in this matter. Moreover, as discussed below, some of the development at issue here is also arguably inconsistent with the requirements of CDP No. 5-87-488, on the parcel described as APN 4438-016-024.[13] Any person wishing to undertake non-exempt development within the Coastal Zone is required to first obtain a coastal development permit, in addition to any other permits required by law.

While not a required finding for issuance of a Cease and Desist Order, staff notes that Respondents have been aware of the coastal development permit requirements for several years. On February 16, 2007, Stefan & Kathryn Hagopian submitted to Commission staff a CDP exemption request for construction of a second residence. After reviewing the exemption request, in a letter dated April 17, 2007 (Exhibit 6), Commission staff notified Mr. Stefan and Mrs. Kathryn Hagopian that the proposed project could not be found exempt from the permit requirements of Coastal Act and provided them with a blank CDP application. Commission staff never received a completed application. Instead, according to Los Angeles County Department of Building and Safety staff, Respondents represented to the County staff that no CDP was needed. Acting on that information, County staff issued building permits, and Respondents moved forward with site preparations for the new residence, including but not limited to 228 cubic yards of grading for a new access road and retaining walls. It appears, from aerial photographs, that additional grading for the pad of the proposed second residence has also occurred on the property (see Exhibit 4, Item A). On April 7, 2010, after discovering that the development was not exempt from the Coastal Act's CDP requirements, and that no CDP has been issued, County staff posted a Stop Work Notice at the entrance to the subject properties. A photograph of the posting is included as Exhibit 21. However, according to County Building and Safety Department staff, Respondents apparently continued the grading for three more days until its completion on April 10, 2010. The County subsequently rescinded the grading and building permits (Exhibit 30).

None of the development that is the subject of these proceedings is exempt.[14] However, Respondents undertook the actions described herein without first obtaining a CDP, in violation

---

[13] Coastal Act Section 30810(a) also authorizes the Commission to issue a cease and desist order if anyone undertakes development that is inconsistent with a previously-issued CDP. The unpermitted development on Parcel 24 is arguably inconsistent with Standard Condition No. 3 of CDP No. 5-87-488 states, in relevant part, " …any deviation from the approved plans must be reviewed and approved by the staff and may require commission approval." Neither the Commission nor staff has approved any development, other than that which was authorized pursuant to CDP No. 5-87-488, on Parcel 24, or any of the other parcels at issue herein.

[14] Respondents' agents have argued that, under Sections 30610(a) and 30610.2, some of the development on the subject properties addressed in this report is exempt from the Coastal Act's permitting requirements. These arguments are addressed at length in Section G of this staff report.

of Coastal Act Section 30600. Therefore, the standard has been met under Section 30810(a) for the Commission's issuance of CCC-10-CD-07 and CCC-10-CD-08.

2. Basis for Issuance of a Restoration Order

The Commission may issue a Restoration Order to address resource impacts associated with violations of the Coastal Act. 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 proposed Restoration Orders by providing substantial evidence that the development meets all of the required grounds listed in Section 30811 for the Commission to issue the proposed Orders.

a. Development has Occurred without a CDP from the Commission

As discussed in Sections IV.E.1 of this staff report, the findings of which are hereby incorporated by reference into this section, the unpermitted activities at issue in this matter constitute development, as that term is defined under Section 30106 of the Coastal Act. All non-exempt development requires a coastal development permit. No permit was obtained for the development at issue herein. Therefore, the first element has been met for the Commission's issuance of the proposed Restoration Orders.

b. Unpermitted Development is Inconsistent with the Coastal Act

As described below, the unpermitted development described herein is inconsistent with multiple resource protection policies of the Coastal Act, including: Section 30231 (water quality); Section 30240 (environmentally sensitive habitat areas); Section 30251 (scenic and visual resources); and Section 30253 (minimization of adverse impacts).

i. Biological Productivity & Water Quality

The unpermitted development is inconsistent with Coastal Act Section 30231, which requires protection of water quality in the Coastal Zone and subject to regulation under the Coastal Act. Section 30231 states:

> *The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

The unpermitted development performed here involves extensive grading, including but not limited to: cut and fill, disking, terracing on steep slopes, and the cutting and widening of roads. In addition, according to the persons who reported the violation, Respondents imported and laid more than 100 dump truck loads of fill material on the subject properties during the rainy season. The photographs included in Exhibit 7 depict extensive earthwork operations, including the use of heavy equipment for stockpiling fill materials, without any evident best management practices for containing fuel leaks or other hazardous material spills or controlling runoff and sediment. This type of work has occurred throughout the subject properties, including across a ridge-top and down steep slopes. Moreover, it does not appear that Respondents have implemented any of the drainage and sediment management practices that are necessary to protect water quality.

The native chaparral that existed on the subject properties prior to the unpermitted development helped to stabilize the soil, limit runoff and erosion and facilitated infiltration. The removal of that native vegetation, especially in the absence of best management practices, has exposed the site and surrounding properties and water bodies to the effects of unregulated runoff. In addition to altering the hydrology of the site and potentially undermining the stability of slopes, unmanaged runoff can increase the turbidity and dissolved chemical loads in creeks and streams, which reduces the penetration of sunlight needed by aquatic vegetation that provides food and cover for aquatic species; disrupts the reproductive cycle of aquatic species, leading to adverse changes in reproduction and feeding behavior. These impacts reduce the biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes and reduce optimum populations of marine organisms. Similarly, sediment-laden storwater runoff can increase sedimentation in coastal waterways. Sedimentation of coastal waterways destroys fisheries by covering the cobbly substrate necessary for spawning, disrupts the nutrient balance, covers submerged aquatic vegetation, and disrupts macroinvertebrate production within the channel. In addition, large accumulations of sediment within the channel can alter the hydrology of the waterway, causing changes in flow patterns, flooding, and associated bank erosion and failure.[15] For these reasons, Respondents' unpermitted actions are inconsistent with Coastal Act Section 30231.

ii. Environmentally Sensitive Habitat Areas

[15] Wetzel, Robert G. 2001. Limnology: Lake and River Ecosystems, Third. Ed. Pp. 825-841.

The unpermitted development occurring in ESHA is also inconsistent with Coastal Act Section 30240, which requires protection of all environmentally sensitive habitat areas within the Coastal Zone and subject to regulation under the Coastal Act. Environmentally sensitive habitat areas are defined in Coastal Act Section 30107.5, as follows:

> *"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.*

The Commission's Senior Ecologist, Dr. John Dixon, conducted a site-specific analysis to determine whether the vegetative communities upon and adjacent to the subject properties meet the definition of ESHA. In conducting his assessment, Dr. Dixon reviewed historic aerial photographs depicting landscape change across the properties over time, current photographs of the subject properties taken by Commission staff, and vegetative surveys conducted by the U.S. Geological Survey, U.S. Fish and Wildlife Service, and California Department of Fish and Game. The results of Dr. Dixon's analysis are included in a memo to staff, dated July 9, 2010 (Exhibit 5).

In his memo, Dr. Dixon explains that the subject properties are located within a large, mostly undisturbed, Mediterranean shrub ecosystem. This ecosystem type is extremely rare, found on only five distinct regions around the world, and encompasses a mere two percent of the earth's total land area. Located in mild coastal areas between 30° and 40° latitude, Mediterranean shrub ecosystems have for thousands of years been attractive locations for human development and recreation. As a result, this ecosystem is among the most altered globally. [16] In the context of the Malibu LCP, the Commission found that the Mediterranean ecosystem in the Santa Mountains is rare, and especially valuable because of its relatively pristine character, physical complexity, and biological diversity, and that areas of undeveloped native habitat may meet the definition of ESHA by virtue of their important roles in that ecosystem.

The vegetative communities immediately adjacent to the impacted areas of the subject properties consist of mixed chaparral and coast live oak habitats, both of which the Commission has consistently treated as ESHA in the Santa Monica Mountains. Based on the composition of the adjacent vegetation, in addition to his analysis of historic aerial photographs, Dr. Dixon has determined that the area in question, prior to the unpermitted activities, was comprised of mixed chaparral.[17] A substantial area of this chaparral, spanning approximately 400,000 square feet, has been destroyed due to the continuing violations on the subject properties. Based upon the significant role chaparral plays in the rare Mediterranean shrub ecosystem, its vulnerability to development pressures, and the plant communities on and adjacent to subject properties, Dr. Dixon has concluded, "…prior to development, those areas that have been cleared of native vegetation met the definition of ESHA under the Coastal Act."

---

[16] National Parks Conservation Association. 2008. State of the Parks: Southern California's Mediterranean Biome Parks. Accessed on July 7, 2010 at: *www.npca.org/stateoftheparks/mediterranean_biome/biome-intro.pdf*

[17] This approach was upheld in LT-WR, L.L.C. v. California Coastal Comm'n (2007) 151 Cal.App.4th 427.

Coastal Act Section 30240 states the following:

> *(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.*

The unpermitted development at issue here includes, but may not be limited to: the erection of seven structures, the clearing of major vegetation, grading, deposition of fill, creation of commercial vineyards, placement of debris piles, and installation of a ground mounted photovoltaic solar array and a tennis court, across an approximately 400,000 square foot area of the subject properties. These actions caused the complete destruction of a rare mixed chaparral plant community, including but not limited to bigpod and greenbark ceanothus, laurel sumac, black sage, and chamise. The unpermitted activities do not constitute a resource dependent use and caused significant disruption to a unique and fragile habitat upon which numerous rare and sensitive species rely, in violation of Section 30240(a).

Moreover, the maintenance of the unpermitted development, including through the substantial soil disturbance that has occurred in connection with the hillside terraces, roads, graded building pads and structures has prevented the recovery of the chaparral plant communities that comprise the ESHA on the subject properties. The persistence of the disturbance on the site has degraded the habitat and created an environment favorable for the introduction of non-native and invasive species in the fringes of the impacted area, which may affect adjacent mixed chaparral and coast live oak woodlands, also ESHAs, in a way that is not compatible with the continuance of these habitat communities, in violation of Section 30240(b). Therefore, the unpermitted development is inconsistent with Section 30240 of the Coastal Act.

iii. Minimization of Adverse Impacts/Avoiding Alteration of Natural Land Forms

The unpermitted development is inconsistent with Section 30253(b) of the Coastal Act, which requires new development to minimize erosion and associated impacts to the site. Section 30253(b) states:

> *New development shall… (b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or*

surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

The unpermitted development extends across several knobs on the top of a ridge in the Santa Monica Mountains. The ridgeline generally trends towards the south, with a high degree of topographic relief. The properties are bounded on all sides by steeply sloping to near vertical ridge flanks that descend down into canyons and intermittent drainages. A 1987 soil survey of the northern-most parcel, conducted by GEOPLAN, Inc., revealed moderately cohesive dark brown silty sand containing angular fragments of deeply weathered bedrock. Soil depth ranged from one foot thick on the ridge and south-facing flanks, to as much as three feet thick on sheltered, north-facing slopes.[18] The surveyor noted mature oak trees on the north-facing slopes and chaparral on the south-facing slopes.

The majority of the unpermitted development exists on the properties' south- and southwest-facing slopes. As noted in the GEOPLAN survey and in Dr. Dixon's site assessment, prior to the unpermitted development, these slopes supported mixed chaparral. The root systems of chaparral plants can extend deep beneath the surface and even penetrate the bedrock below. As such, chaparral is remarkably adept at soil stabilization, especially on steep slopes. Chaparral plants reduce soil erosion by intercepting water before it hits the ground, slowing the water's flow across the ground's surface, and reducing overall surface runoff by facilitating infiltration. With deep roots and waxy leaves, chaparral can persist on steep slopes through extended periods of adverse conditions, thereby helping to stabilize slopes when the rains return.[19]

Removal of chaparral plants, especially on Southern California hillsides, increases the risk of erosion and slope failure. Slope stability and erosion on the property were of concern to the Commission when it issued CDP 5-87-488. The GEOPLAN Report references steep slopes on the west side of the property and a landslide on adjacent property to the east. As a result, the Commission required the applicant to record a deed restriction acknowledging the assumption of risk and waiver of liability for, among other things, the hazards associated with erosion and slope failure (Exhibit 2). Southern California mudslides, which tend to occur on wildfire denuded hillsides, are a frequent reminder of the important role native vegetation plays in stabilizing slopes. Respondents' unpermitted clearing of an approximately 400,000 square foot area of chaparral from the ridge crest and flanks of the subject properties has eliminated an important natural slope stabilization mechanism, leaving steep slopes exposed and vulnerable to potential failure. Moreover, by clearing the impacted area to bare earth, disking the soil, terracing the hillsides, grading roads, and stockpiling fill materials, all without any erosion control measures, Respondents' actions have contributed to wind and water-related erosion across the subject properties. Through undertaking the unpermitted development, Respondents have significantly altered the site's natural landform, have failed to assure the stability and structural integrity of the properties and the risks to life and property associated therewith, and have created and

[18] Geoplan, Inc. 1987. Engineering Geologic Report Proposed Grading & Residential Development: Lots 1 & 2, Parcel Map Vicinity 1732 Topanga Skyline Drive, Topanga, California. Project 77378.
[19] Dixon, John. (CCC). March 25, 2003. Memo to Ventura Staff, re: Designation of ESHA in the Santa Monica Mountains.

contributed significantly to erosion. For these reasons, the unpermitted activities are inconsistent with Section 30253(b) of the Coastal Act.

iv. Scenic Public Views and Visual Qualities of Coastal Areas

The unpermitted development is inconsistent with Coastal Act Section 30251, which requires that the scenic and visual qualities of the coast be protected and any permitted development be visually compatible with the surrounding area. Section 30251 of the Coastal Act states:

> *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 resources that must be protected in this area include views to and across the few remaining unbroken tracts of chaparral and oak woodlands that make the Santa Monica Mountains so visually appealing. The unpermitted development at issue was neither sited nor designed to protect views of the scenic coastal hillsides and canyons of the Santa Monica Mountains. Instead, the unpermitted actions degraded a fundamental and defining component of their aesthetic character – the native vegetation. The majority of the unpermitted development has occurred on a prominent ridge-top and contrasts sharply with the surrounding native vegetation (see Exhibit 8). Moreover, the properties are visible from several nearby publicly accessible vantage points, including from ridge-top trails and roadways in the region.

Rather than seeking to ensure the unpermitted activities were visually compatible with the surrounding area, which consists largely of native chaparral and coastal scrub plant communities, Respondents cleared most of the impacted area to bare earth. The resulting barren patch of earth, the uniformly constructed vineyard rows and terraces, and numerous unpermitted structures contrast sharply with the scenic and visual character of the adjacent naturally vegetated hillsides and canyons. The unpermitted development failed to protect, enhance, or ensure compatibility with the visual quality of the area. Therefore, the unpermitted development is inconsistent with Section 30251 of the Coastal Act.

c. Unpermitted Development is Causing Continuing Resource Damage

The unpermitted development is causing continuing resource damage, as defined in Title 14, California Code of Regulations, Section 13190, which states:

> *'<u>Continuing</u>', when used to describe 'resource damage', means such damage which continues to occur as of the date of issuance of the Restoration Order.*

> *'Resource' means any resource which 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.*
>
> *'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.* (emphasis added)

The coast live oak and mixed chaparral plant communities that occur on the subject properties – in addition to the watershed they protect, the views they enhance and the soils they stabilize – are afforded protection under Coastal Act Sections 30231, 30240, 30351 and 30253(b), and are therefore a "resource" as defined in Title 14, California Code of Regulations, Section 13190(a). The unpermitted development on the subject properties has reduced the quality and abundance of rare and sensitive plant species, has contributed to site runoff and altered surface waterflow, degraded scenic views, and left the site susceptible to erosion and other geologic hazards, thereby causing "damage" to the resource, as defined in Title 14, California Code of Regulations, Section 13190(b). Without restoration, revegetation and careful monitoring, the foregoing impacts are continuing and will continue to occur, in addition to the temporal loss and loss of fitness due to removal of the plants and disruption of the soil; and the establishment of non-native and invasive species, which may delay or impede reestablishment of native plants within the impacted area. The persistence of these impacts constitutes "continuing" resource damage, as defined in Title 14, California Code of Regulations, Section 13190(c).

For the reasons state above, Respondents' unpermitted actions are causing continuing resource damage. As a result, the third element has been met for the Commission's issuance of the proposed Restoration Orders, pursuant to Coastal Act Section 30811. Therefore, the Commission has the authority under Coastal Act Section 30811 to issue Restoration Orders in this matter.

d. Unpermitted Development is Inconsistent with the Certified Land Use Plan

The unpermitted development at issue in this matter is also inconsistent with numerous policies of the certified Land Use Plan for Los Angeles County's Malibu/Santa Monica Mountains region. Until the County obtains certification of its Local Coastal Program, the Coastal Act remains the standard of review for permitting and enforcement matters in this area. However, because the County's LUP has been certified, it serves as a valuable guidance document in such matters. The LUP policies with which the unpermitted development at issue is inconsistent includes, but may not be limited to the following:

P68. Environmentally sensitive habitat areas (ESHAs) shall be protected against significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas. Residential use shall not be considered a resource dependent use.

P69. Development in areas adjacent to environmentally sensitive habitat areas (ESHAs) shall be subject to the review of the Environmental Review Board, 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.

P72. Open space or conservation easements or equivalent measures may be required in order to protect undisturbed watershed cover and riparian areas located on parcels proposed for development. Where new development is proposed adjacent to Environmentally Sensitive Habitat Areas, open space or conservation easements shall be required in order to protect resources within ESHA.

P82. Grading shall be minimized for all new development to ensure the potential negative effects of runoff and erosion on these resources are minimized.

P85. Earthmoving operations within Environmentally Sensitive Habitat Areas, Significant Watersheds, and other areas of high potential erosion hazard (including areas with a slope exceeding 2:1) shall be prohibited between November 1 and March 31 unless a delay in grading until after the rainy season is determined by the Planning Director to be more environmentally damaging. Where grading begins before the rainy season but extends into the rainy season for reasons beyond the applicant's control, measures to control erosion must be implemented at the end of each day's work.

P86. A drainage control system, including on-site retention or detention where appropriate, shall be incorporated into the site design of new developments to minimize the effects of runoff and erosion. Runoff control systems shall be designed to prevent any increase in site runoff over pre-existing peak flows. Impacts on downstream sensitive riparian habitats must be mitigated.

P88. In ESHAs and Significant Watersheds and in other areas of high potential erosion hazard, require site design to minimize grading activities and reduce vegetation removal…

P89. In ESHAs and Significant Watersheds and in other areas of high potential erosion hazard, require approval of final site development plans, including drainage and erosion control plans for new development prior to authorization of any grading activities.

P90. Grading plans in upland areas of the Santa Monica Mountains should minimize cut and fill operations in accordance with the requirements of the County Engineer.

P91. All new development shall be designed to minimize impacts and alteration of physical features, such as ravines and hillsides, and processes of the site (i.e., geological, soils, hydrological, water percolation and runoff) to the maximum extent feasible.

P94. Cut and fill slopes should be stabilized with planting at the completion of final grading. In Environmentally Sensitive Habitat Areas and Significant Watersheds, planting should be of native plant species…

P270. Agricultural uses should be reviewed for compatibility with resources in environmentally sensitive areas.

As described above, the unpermitted development at issue in this matter is clearly inconsistent with the Chapter 3 resource protection policies of the Coastal Act, as well as numerous resource protection policies of the LUP. Respondents have expressed their determination to retain all of the unpermitted development on the subject properties. However, they have consistently declined staff's request that they submit an after-the-fact coastal development permit application to retain the unpermitted development

3. Bases for Recordation of a Notice of Violation

Under the Coastal Act, a Notice of Violation may be recorded against property that has been developed in violation of the Coastal Act. The Notice is recorded in the office of the county recorder where the property is located and appears on the title to the property. The notice serves a protective function by notifying prospective purchasers that a Coastal Act violation exists on the property and that anyone who purchases the property may be responsible for the full resolution of the violation. The statutory authority for the recordation of a Notice of Violation is set forth in Coastal Act Section 30812, which states, in relevant part, the following:

> *(a) Whenever the executive director of the commission has determined, based on substantial evidence, that real property has been developed in violation of this division, the executive director may cause a notification of intention to record a notice of violation to be mailed by regular and certified mail to the owner of the real property at issue, describing the real property, identifying the nature of the violation, naming the owners thereof, and stating that if the owner objects to the filing of a notice of violation, an opportunity will be given to the owner to present evidence on the issue of whether a violation has occurred.*
>
> *(b) The notification specified in subdivision (a) shall indicate that the owner is required to respond in writing, within 20 days of the postmarked mailing of the notification, to object to recording the notice of violation. The notification shall also state that if, within 20 days of mailing of the notification, the owner of the real property at issue fails to inform the executive director of the owner's objection to recording the notice of violation, the executive director shall record the notice of violation in the office of each county recorder where all or part of the property is located.*
>
> *(c) If the owner submits a timely objection to the proposed filing of the notice of violation, a public hearing shall be held at the next regularly scheduled commission meeting for which adequate public notice can be provided, at which the owner may present evidence to the commission why the notice of violation should not be recorded. The hearing may be postponed for cause for not more than 90 days after the date of the receipt of the objection to recordation of the notice of violation.*

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

Respondents did not formally object to the recordation of Notices of Violation in this matter, despite two extension to the deadline provided for under Section 30812(b), until more than three weeks after the second deadline extension granted by Commission staff had passed (or more than five weeks from the original deadline established in the Executive Director's May 18, 2010 Notice of Intent letter). Respondents' objection letter is dated July 16, 2010, less than one week from the mailing deadline for the Commission's August meeting. Respondents' July 16, 2010 objection letter mainly incorporates by reference all of the arguments raised by Respondents in previous correspondence over the last 15 months, many of which have previously been responded to by staff through verbal and written correspondence (Exhibit 37). Nonetheless, staff again responds to these arguments in Section G of this staff report, below. Despite Respondents' failure to submit a formal written objection to the recordation of a Notice of Violation within the time provided under Section 30812(b) or within the two deadline extensions granted therefrom; as a courtesy, staff refrained from recording the Notices of Violation pending this Commission's action.[20] Instead, staff scheduled a hearing to determine whether a violation of the Coastal Act has occurred.

a. Unpermitted Development Has Occurred in Violation of the Coastal Act

Coastal Act Section 30812 authorizes the Executive Director to record a Notice of Violation if real property has been developed in violation of the Coastal Act. As is explained in Section IV.E.1, above, the findings from which are hereby incorporated herein by reference, the activities at issue constitute development under Coastal Act Section 30106. As also discussed above, any person wishing to undertake non-exempt development within the Coastal Zone is required to first obtain a coastal development permit, in addition to any other permits required by law. None of the development that is the subject of these proceedings is exempt.[21] However, Respondents undertook the actions described herein, including but not limited to: the erection of at least seven structures; removal of major vegetation in ESHA; creation and expansion of commercial vineyards; grading, including cut and fill, disking, terracing and road making; placement of debris piles; and installation of a ground-mounted photovoltaic solar array and a tennis court, without first obtaining a CDP. Non-exempt development undertaken in the Coastal Zone without a permit constitutes a violation of the Coastal Act. Therefore, development has occurred on each of the parcels that comprise the subject properties, in violation of the Coastal Act.

---

[20] It should be noted that Notices of Violation do not prevent sale the properties. In fact, Section 30812(e)(2) specifically states, "This notice is for informational purposes only and is not a defect, lien, or encumbrance on the property."

[21] Respondents' agents have argued that, under Sections 30610(a) and 30610.2, some of the development on the subject properties addressed in this report is exempt from the Coastal Act's permitting requirements. These arguments are addressed at length in Section G of this staff report.

b. Requirements for the Recordation of Notices of Violation Have Been Satisfied

The statutory provisions for NOVs require that the property owner be made aware of the potential for recordation. These provisions are set forth in Section 30812(g) of the Coastal Act, as follows:

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

Commission staff has repeatedly given Respondents and their representatives notice of this potential, and have attempted to resolve this matter informally on many occasions. As the record reflects, Commission staff has attempted to resolve this matter administratively with Respondents and their agents for more than a year. Unfortunately, despite these attempts, Respondents have not only failed to take action to remove the unpermitted development and restore the impacted areas of the subject properties, they have also continued to undertake unpermitted development in violation of the Coastal Act. Staff first mailed to Respondents a letter on March 24, 2009, notifying them of the Coastal Act requirements and offering to assist with measures necessary to resolve the violations informally (Exhibit 9). Staff sent similar letters responding to arguments raised by respondents on July 7, 2009 (Exhibit 11), July 28, 2009 (Exhibit 12), October 19, 2009 (Exhibit 15), December 16, 2009 (Exhibit 16), February 17, 2010 (Exhibit 19), and May 18, 2010 (Exhibit 22), in addition to discussing these matters with Respondents' agents over numerous telephone conversations and an in-person meeting. During this time, Respondents' agents requested and Commission staff granted six deadline extensions for submittal of materials that would help to resolve the violations at issue. Rather than using this time to resolve the violations, Respondents' agents repeatedly ignored the extension deadlines and then proceeded to submit additional arguments for why they believe Commission staff is in error. Clearly, all administrative methods for resolving the violations at issue in this matter have been exhausted, as required by Coastal Act Section 30812(g), before initiating these proceedings.

As noted above, Commission staff informed Respondents and their agents of the potential for recordation of Notices of Violation in letters dated March 24, 2009 (Exhibit 9), July 7, 2009 (Exhibit 11), October 19, 2009 (Exhibit 15), and May 18, 2010 (Exhibit 22).[22] Thus, Respondents have been made aware of the potential for the recordation of a Notices of Violation as required by Coastal Act Section 30812(g). For these reasons, the standard has been met for the Executive Director's recordation of Notices of Violation on the titles of the parcels upon

[22] Respondents' receipt of each of these letters is confirmed through written responses from Respondents' agents and through a certified mail receipt for the May 18, 2010 letter.

which the violations exist. If the Commission finds that violations exists, the Executive Director shall record Notices of Violation in the Los Angeles County Recorder's Office. The Notices of Violation will remain in effect until the violations at issue have been resolved. Within 30 days of the final resolution of the violations on each of the respective parcels, pursuant to Section 30812(f), the Executive Director will record a Notice of Rescission for the corresponding Notice of Violation, which will have the same effect of a withdrawal or expungement under Section 405.61 of the Code of Civil Procedure. The Executive Director will also send a letter to the property owner at that time, notifying the owner that the Notice of Violation has been rescinded.

4. Provisions of Recommended Actions

As described in Section D of these findings, for more than fifteen months, Commission staff has made numerous attempts to work with Respondents and their agents towards an amicable resolution to the violations described herein. Despite these efforts, Respondents have continued to maintain and undertake development that not only requires a CDP and is inconsistent with the Coastal Act, but is also causing continuing resource damage. As a result, staff has determined that the last remaining administrative option for resolving this matter is through formal enforcement proceedings. Therefore, in hopes of putting an end to this ongoing set of violations and to bring the subject properties into compliance with the Coastal Act, staff recommends the Commission approve the proposed cease and desist and restoration orders and find that Coastal Act violations have occurred on the subject properties. The provisions of the respective proposals are summarized below.

a. Provisions of CCC-10-CD-07 and CCC-10-RO-06

The proposed Orders for the properties described as APNs 4438-016-024 & 4438-016-007, would require Stefan Hagopian, Kathryn Hagopian to: 1) cease and desist from maintaining any development on the properties not authorized (as relevant to each parcel) pursuant to the Coastal Act; 2) cease and desist from engaging in any further development on the subject properties unless authorized pursuant to the Coastal Act; 3) either remove the solar array or submit a complete CDP application for a solar array and remove it if such application denied[23]; 4) remove all development that requires a permit from the Commission, but for which no permit was obtained[24]; 5) restore and revegetate the impacted areas of the subject properties, pursuant to an approved restoration plan; and 6) take all steps necessary to ensure compliance with the Coastal Act.

b. Provisions of CCC-10-CD-08 and CCC-10-RO-07

[23] Given the Commission's interest in promoting alternative energy, the Orders provide Stefan Hagopian and Kathryn Hagopian with the option to apply for after-the-fact approval of a solar array, or to remove it in accordance with the removal provisions of the Orders.

[24] With the possible exception of the ground mounted solar array, if it is approved by the Commission.

The proposed Orders for the property described as APNs 4438-036-016, would require Stefan Hagopian, Kathryn Hagopian and Rahel Hagopian to: 1) cease and desist from maintaining any development on the property not authorized pursuant to the Coastal Act; 2) cease and desist from engaging in any further development on the property unless authorized pursuant to the Coastal Act; 3) remove all development that requires a permit from the Commission, but for which no permit was obtained; 4) restore and revegetate the impacted areas of the property, pursuant to an approved restoration plan; and 5) take all steps necessary to ensure compliance with the Coastal Act.

c. Provisions of CCC-10-NOV-02, CCC-10-NOV-03 and CCC-10-NOV-04

Findings that Coastal Act violations have occurred will result in the recordation of Notices of Violation against the title of each of the parcels upon which the Commission determines a violation exists. Each Notice of Violation will include a description of the unpermitted development that exists on its corresponding parcel. The Notice of Intent will notify potential purchasers of the existence of the violations and will be rescinded when the violations are resolved.

E. California Environmental Quality Act (CEQA)

The Commission finds that the issuance of Commission Cease and Desist Orders and Restoration Orders Nos. CCC-10-CD-07, CCC-10-CD-08, CCC-10-RO-06 and CCC0-10-RO-07 to compel removal of the unpermitted development and restoration of the subject properties is exempt from any applicable requirements of the California Environmental Quality Act of 1970, Cal. Pub. Res. Code §§ 21000 *et seq.* (CEQA), and will not have significant adverse effects on the environment, within the meaning of CEQA. These Orders are exempt from the requirement of preparation of an Environmental Impact Report, based on Sections 15061(b)(2), 15307, 15308 and 15321 of the CEQA Guidelines (14 CCR).

F. Summary of Findings

1. Stefan Hagopian and Kathryn Hagopian own the 14.46-acre properties (collectively) located at 1732 and 1728 Topanga Skyline Drive, Los Angeles County, identified as APNs 4438-016-024 and 4438-016-007.

2. Stefan Hagopian, Kathryn Hagopian and Rahel Hagopian own the 11.57-acre property located at 1726 Topanga Skyline Drive, Los Angeles County, identified as APN 4438-036-006.

3. The deed restriction required by CDP 5-87-488 was recorded on December 30, 1987, included a copy of the permit and all of its conditions of approval, and has been in the chain of title for the property since that time.

4. Stefan Hagopian and Kathryn Hagopian have undertaken development, as defined in Coastal Act Section 30106, on the parcel described as APN 4438-016-024, including but not limited to: grading associated with a second residence and an access road. This development requires a CDP, was undertaken without a CDP, and therefore is in violation of the Coastal Act.

5. Stefan Hagopian and Kathryn Hagopian have undertaken development, as defined in Coastal Act Section 30106, on the parcel described as APN 4438-016-007, including but not limited to: removal of major vegetation in an environmentally sensitive habitat area; grading, including cut and fill, terracing, disking and road making; creation of vineyards and associated infrastructure; and installation of a ground-mounted solar array and a tennis court; the erection of at least six structures; and the placement of debris piles. This development requires a CDP, was undertaken without a CDP, and therefore and is in violation of the Coastal Act.

6. Stefan Hagopian, Kathryn Hagopian and Rahel Hagopian have undertaken development, as defined in Coastal Act Section 30106, on the parcel described as APN 4438-036-006, including: removal of major vegetation in an environmentally sensitive habitat area; grading, including cut and fill, terracing, disking and road making; creation of vineyards and associated infrastructure; and the erection of at least one structure. This development requires a CDP, was undertaken without a CDP, and therefore is in violation of the Coastal Act.

7. The development at issue herein does not qualify for an exemption under the Coastal Act, including specifically under Sections 30610, 30610.1 or 30610.2, and therefore requires a coastal development permit.

8. The unpermitted development is inconsistent with various policies in Chapter 3 of the Coastal Act (including those in Public Resources Code sections 30231, 30240, 30251, and 30253) and the certified Land Use Plan ("LUP") for the Malibu/Santa Monica Mountains area of unincorporated Los Angeles County.

9. The southern mixed chaparral and coast live oak woodlands on the subject properties meet the definition of environmentally sensitive habitat areas, as defined in the Coastal Act.

10. Substantial evidence, as that term is used in the Coastal Act (Cal. Pub. Res. Code § 30812), exists that a Coastal Act violations have occurred in the development of each of the properties described as APNs 4438-016-024, 4438-016-007, and 4438-036-006.

11. The unpermitted development described in Findings No. 4, 5 and 6 has failed to minimize runoff and protect surface waterflow, and therefore is inconsistent with Coastal Act Section 30231.

12. The unpermitted development described in findings No. 5 and 6 had a severe negative impact on a large, in-tact community of rare and easily disturbed mixed chaparral community, and therefore is inconsistent with Coastal Act Section 30240.

13. The unpermitted development described in findings Nos. 4, 5 and 6 impacted scenic views of coastal hillsides and therefore is inconsistent with Coastal Act Section 30251.

14. The unpermitted development described in findings Nos. 4, 5 and 6 contributed to increased erosion and therefore is inconsistent with Coastal Act Section 30253(b).

15. The impacts resulting from the unpermitted development, in addition to the temporal loss and loss of fitness incurred by the chaparral species, will continue until restoration and revegetation activities resolve the violations.

16. The unpermitted development is causing "continuing resource damage" within the meaning of Coastal Act Section 30811 and Title 14, California Code of Regulations, Section 13190.

17. All existing administrative methods for resolving the violations at issue have been utilized.

18. Coastal Act Section 30810 authorizes the Commission to issue cease and desist orders. Coastal Act Section 30811 authorizes the Commission to issue restoration orders.

19. The work to be performed under these Orders, if completed in compliance with the Orders and the plans required therein, will be consistent with Chapter 3 of the Coastal Act.

20. On May 18, 2010, the Executive Director made Stefan Hagopian, Kathryn Hagopian and Rahel Hagopian ("the Hagopians") aware of his intent to record Notices of Violation pursuant to Coastal Act Section 30812. Respondents did not formally object to the recordation of Notices of Violation within the timeframe provided under the statute. Instead, Respondents' agents submitted letters containing general objections to the allegations of violations, which the Executive Director treated as objections to said recordation.

21. Commission staff sent letters to the Hagopians and/or their representatives on the following dates: March 24, 2009, July 7, 2009, July 28, 2009, September 19, 2009, December 16, 2009, February 17, 2010, May 18, 2010, June 21, 2010, June 24, 2010, and June 30, 2010, met with the Hagopians' representatives Mr. & Ms. Johnson on January 28, 2010, and spent several hours on the telephone with Mr. & Ms. Johnson over the past 15 months, all in hopes of resolving the violations.

22. Mr. & Ms. Johnson sent letters to staff regarding the proposed enforcement action. Many of the letters contained defenses to the alleged violations and requests for the Commission to delay taking formal action to resolve the violations. The letters are dated: June 12, 2009, August 31, 2009, September 16, 2009, December 10, 2009, January 28, 2010, June 7, 2010, June 18, 2010, June 22, 2010, and June 28, 2010. At no time did the Hagopians or their representatives take any of the steps requested by staff to comply with the conditions of the CDP and/or the Coastal Act, including the submittal of a CDP application for removal or retention of the unpermitted development.

23. The Executive Director issued a Notice of Intent to Record Notices of Violation of the Coastal Act and to Commence Cease and Desist and Restoration Order Proceedings (NOI) on May 18, 2010, addressing the unpermitted development.

24. At the Hagopians' request, Commission staff granted two extensions to the deadline for responding to the allegations set forth in the NOI. The granting of these extensions necessitated postponement of this matter until the Commission's August 2010 meeting.

25. The subject properties lie within the Coastal Zone and the Coastal Commission has jurisdiction regulate development on those properties, pursuant to the permitting and enforcement authorities provided under the Coastal Act.

26. Respondents did not apply for or obtain any coastal development permit for the development at issue herein.

27. Respondents have not claimed and the Commission has received no evidence that would suggest that any of the unpermitted development listed in the Executive Director's Notice of Intent letter, dated May 18, 2010, has been removed or ceased.

G. Violators' Defenses and the Commission's Responses

On May 18, 2010, the Executive Director mailed a Notice of Intent letter, indicating his intent to commence proceedings for, *inter alia*, issuance of cease and desist and restoration orders. The Notice of Intent letter included a copy of the Commission's Statement of Defense form, in accordance with Section 13181(a) of the Commission's Regulations, for Respondents to complete. Thus, Respondents were provided the opportunity to respond to the allegations contained within the Notice of Intent letter, to raise any affirmative defenses that they believe may exonerate them of legal liability for the violations or to raise other facts that might mitigate their responsibility. Respondents requested and were granted two extensions to the deadlines for submitting a completed Statement of Defense form. However, Respondents never returned any Statement of Defense form. Instead, Respondents' agents submitted letters, dated June 7, 2010, June 18, 2010, June 22, 2010, and July 16, 2010, each of which includes a deadline extension request and/or raises general objections to staff's allegations of violations on the subject properties. Despite the fact that no Statement of Defense form was submitted, as a courtesy and by way of explanation, we include, below, responses to the general objections raised by Respondents through written and verbal correspondence over the past 15 months. The following paragraphs present quotations where possible, and synopses where necessary, of the arguments raised by Respondents, followed by the Commission's responses to those arguments.

1. Respondents' Defense:

"A CDP for a single family residence on parcel 4438-016-024 was granted by the Commission in 1987, although no such CDP was necessary because the parcel qualified for a single-family residential exclusion in accordance with Public Resources Code § 30610.1." (Letter from Nicole Johnson, dated January 28, 2010).

Commission's Response

As an initial matter, the Respondents' assertion does not provide any evidence to support a claim that the findings for the issuance of Cease and Desist Order and Restoration Orders have not been met. It does not address the issue of whether the development subject to these orders required a permit or the fact that none was obtained by Respondents, 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. Even if the Commission were to interpret the above statement as a claim that the development of the single family residence is not a violation because it was both permitted and exempt, the statement remains essentially a *non-sequitar*, as the Commission's orders do not involve the single family residence. Nevertheless, the background regarding both the permitting history and the exemption provided in Section 30610.1[25] are provided below.

On August 27, 1987, the Commission granted to Everett Rollins CDP No. 5-87-488, for construction of a 3,375 square foot, 28-foot high single family residence and septic system, the paving of an existing access road, and the approval of a Conditional Certificate of Compliance for a previously unpermitted lot division creating the parcel described as APN No. 4438-016-024 ("Parcel 24"). None of that development is subject to these orders. In addition, Respondents' assertion that the CDP was not necessary pursuant to Section 30610.1 is without merit. The cited parcel is not within a designated exclusion area, and therefore the development does not qualify for such an exemption from the Coastal Act's permitting requirement, as explained more fully in the following paragraphs.

Coastal Act Sections 30610.1 and 30610.2 (sometimes referred to as the "Calvo Exemptions" after the Assemblymember who sponsored the legislation creating those sections) provide that within 60 days of the effective date of the statutes, meaning by February 29, 1980, the Commission was to designate areas within the Coastal Zone where, prior to the certification of the LCP, construction of a single family home on a vacant lot would not require a permit under certain specified conditions. The statutes specify a two-step process before a project may be deemed exempt. The first step was to be made by the Commission in designating areas where the exemption might apply (hereinafter "exclusion areas"). In making that determination, the Commission was to designate specific areas in the Coastal Zone "where the construction of a single-family residence on a vacant lot meeting the criteria set forth in subdivision (c) shall not require a coastal development permit." (Section 30610.1(b).) Subdivision (b) goes on to list the so-called "area criteria" (criteria the Commission was to use to designate the exclusion areas),

[25] All section references in this response are to the California Public Resources Code, and thus, to the Coastal Act, unless otherwise noted.

which are that single-family residential construction in the area would not have a potential, either individually or cumulatively, for significant adverse impacts on highly scenic resources of public importance, on environmentally sensitive areas, on prime agricultural lands or agricultural lands currently in production, or on public access to or along the coast. (see Section 30610.1(b).)

The "subdivision (c)" referenced in subdivision (b) sets forth the so-called "lot criteria" that must also be satisfied for the exemption to apply (i.e., the individual lot within an exclusion area on which construction of a single family residence is proposed must also meet these "lot criteria" in order for such construction to be exempt from the Coastal Act's permit requirement). The lot criteria specify that, for a lot to qualify for the exemption, it must not only be in a designated exclusion area, but also may not be between the first public road and the sea; must be a legal lot as of the effective date of the section and conform to applicable general plan and zoning ordinances; must not be located in a hazardous area or, if so, be a safe site; must be no more than 250 feet from an existing, improved road; and must be served by an adequate water supply.

Finally, there is also a local government requirement. A single family residence within a designated exclusion area is not automatically exempt from Coastal Act permit requirements even if the lot empirically satisfies the lot criteria, in that the law imposes a second procedural step. Under Section 30610.2, a person wishing to construct a single-family residence on a vacant lot within a Commission designated exclusion area is required to secure from the local government a certificate that the lot meets all of those lot criteria. That certificate is to be sent to the Commission within five working days after issuance. (Section 30610.2.)

Based on the criteria set forth in Section 30610.1, on January 24, 1980, the Commission designated exclusion areas on the official Calvo exclusion areas maps for the entire Coastal Zone, from the Oregon border to the Mexico border. Thus, single-family residential development on lots in these areas that met the lot criteria was eligible to be exempted from the Coastal Act permit requirements through the process described above. In addition to designating areas for exclusion, the Commission also mapped many areas in which either the area criteria or lot criteria could not be met. Such locations were designated on the maps with an "A" or "L" followed by a number corresponding to the site condition that rendered it inconsistent with the designation criteria. For example, an A-1 designation signified an area of highly scenic resources of public importance, while an L-1 designation indicated the lot was between the first public road and the sea, and therefore failed to meet the lot criteria under Section 30610.1(c). The map on which the properties that are the subject of this matter appear is Calvo Map No. 102 (Exhibit 31). On Map No. 102, the Commission identified Area 8 – the Old Post Office Tract – as the only single family residential exclusion area within that map's boundaries. The "Calvo exemption" does not apply here, and does not somehow make legal these violations for a number of reasons.

First, none of the subject properties is within an exclusion area. According to Calvo Map No. 102, the subject properties lie more than 1.5 miles northwest of the exclusion area. Second, pursuant to Section 30610.1(c)(2), to qualify for exclusion the lot must have been legal as of the effective date of the statute. However, Parcel 24 did not become a legal lot until the Commission's approval of a Conditional Certificate of Compliance in 1987 (see CDP No. 5-87-488), more than seven years after the effective date of the section (Exhibit 2). Third, the map

depicts the subject properties as lying between two areas designated on the map as A-1 or "Highly Scenic Resources of Public Importance." Therefore, the subject properties could not have qualified for an exemption under Section 30610.1, because Section 30610.1(b) precludes the designation of areas as exempt if the construction of a single family residence in those areas would, among other things, have the potential for significant adverse impacts to highly scenic resources of public importance. Fourth, even if the subject properties were within a Calvo exclusion area, which they are not, the development at issue would still not be exempt. This is because, under Section 30610.2, the local government with jurisdiction over the area, in this case Los Angeles County, would have had to issue a written certification or determination that the lot meets the criteria set forth in Section 30610.1(c), and to send this to the Commission within five working days of issuance. The County has issued no such written certification or determination of exemption for the subject properties. For these reasons, Respondents' assertion that Parcel 24 qualifies for a Calvo exemption is without merit. Finally, it should be noted that, in addition to all the reasons listed above regarding the inapplicability of a Calvo "defense," the section cited by Respondents refers only to development of a single family residence, and therefore, even if this defense were valid, which the Commission concludes it is not, that still is not relevant to the vast majority of the violations existent on the subject properties.

2. Respondents' Defense:

In California Coastal Commission v. City of Los Angeles (Gilchrist), when ruling in favor of the City, the Los Angeles County Superior Court also ruled that all of the Commission's designations pursuant to Section 30610.1 (Calvo exclusion areas) were void and of no legal consequence; and therefore, the County can permit single-family residential development, pursuant to Section 30610.2, without the Commission requiring a coastal development permit. (Telephone conversation with Burt and Nicole Johnson, June 24, 2010).

Commission's Response

Again, Respondents' assertion is not a defense. Even if the Commission were to interpret the above statement as accurate, it would not be relevant to this case, as it would only mean that the County could exempt residential development. In fact, the County issued no such exemption. Nonetheless, for the benefit of all parties, the Commission has considered Respondents' argument and responds below.

Gilchrist addressed the issue of whether the Commission exceeded its authority in purporting to designate lot criteria for a specific area (the Vista Del Mar bluffs), in addition to area criteria,. This is not relevant to the matter before the Commission at all. For a number of reasons, some of which are noted in the response to Defense #1, above, the subject properties are not in a Calvo exclusion area, or in an area identified on a Calvo map in association with lot criteria, and therefore the issue of lot criteria is not relevant here. Moreover, the County has not made a determination that these properties meet the lot criteria.

Contrary to Respondents' assertion, the Gilchrist judgment did not purport to invalidate the Commission's action designating the exclusion areas. The only relief the Commission sought from the court was a writ directing the City to deny Mr. Gilchrist's application for certifications of exemptions from the coastal development permit requirements. Instead, the court's judgment denied the Commission's petition for writ of mandate and ordered the City of Los Angeles to proceed in granting an exemption to Gilchrist, based upon its conclusion that the Commission had addressed lot criteria as well as area criteria. However, nothing in that judgment invalidated or otherwise set aside the Commission's designation of the exclusion areas. On the contrary, in Gilchrist, the Court explicitly stated, "I am not going to decide anything other than Mr. Gilchrist's case."[26] In fact, absent such an order, the Commission's designations of exclusion areas remain in effect. Moreover, even if the judgment were to have affected the Commission's decision designating the exclusion areas in that case, it is only an unpublished trial court ruling that is not binding on anyone other than the City of Los Angeles, Gilchrist and similarly situated owners of other property in the Vista Del Mar bluffs; the Commission, in declining to appeal, agreed to accept the ruling with regard to that specific area (Exhibit 32). Therefore, the Calvo maps, including Map 102, are valid.

In Gilchrist, the Commission sought to prevent the City of Los Angeles from issuing an exemption from the coastal development permit requirements for the construction of a single-family residence in a location not designated for exclusion from the permit requirements because the lots in that area could not meet the lot criteria. The property at issue in that case had been labeled L-3 (within a geologic or flood hazard area) on Calvo Map 107. The trial court ruled that the Commission was not entitled to prevent the City from issuing the exemption and the City was ordered to grant the exemption. The Court reasoned that the Commission exceeded its jurisdiction set forth in the Coastal Act by purporting to designate the lot criteria as well as area criteria, and therefore held that those designations were therefore void. Judgment was entered on July 7, 1983,[27] and no appeal was taken.

The trial court's ruling in Gilchrist is limited to those parties cited above, and therefore is without application elsewhere in the Coastal Zone. The properties and parties subject to these proceedings are different from those involved in Gilchrist. Even if the Gilchrist ruling had effectuated some broader precedent, which it did not, it would not be relevant to this matter. The Gilchrist decision was based upon the argument that the Commission lacked the authority to designate locations on the Calvo map that were ineligible for exemption from the coastal development permit requirements for single family residences because those locations could not meet one or more of the "lot" criteria. The property at issue in that lawsuit was in a location designated as ineligible for a Calvo exemption solely on the basis of lot criteria. The facts here are simply different and clearly distinguishable from those in Gilchrist: the properties that are the subject of these proceedings are on a different map, and that map does not purport to characterize the lot one way or the other in terms of whether it satisfies any of the lot criteria, the very basis

[26] Reporter's Transcript of Proceedings, Hearing re: Amended Petition for Writ of Mandate and Complaint for Injunctive Relief, June 16, 1983 at 6 (Superior Ct. for State of CA, County of Los Angeles, No. C430783.

[27] California Coastal Commission v. City of Los Angeles (Gilchrist), Los Angeles Superior Court case no. C 430788.

of the holding in Gilchrist. If anything, as evidenced by the A-1 markings on Map 102, it was not eligible for a Calvo exemption because it lies within or adjacent to areas of highly scenic resources of public importance. As noted above, no challenge was made to the Commission's consideration of the area criteria, which is explicitly provided for under Section 30610.1(b).

However, even if the Court's ruling had established a broader precedent, and had determined that the Commission had no authority to adopt either "area" or "lot" criteria, which is not the case, the subject properties would still not be exempt from the CDP requirements for a single-family residence. First, pursuant to Section 30610.2(a), any person wishing to build a single-family home must first secure from the local government with jurisdiction over that area certification that the property in question meets the "lot" criteria, this was not done here. Second, the following subsection, 30610.2(b), provides discretion to the local governments for issuance of such certifications, without regard for the "area" criteria, if the Commission fails to designate exclusion areas pursuant to Section 30610.1(b). In fact, the Commission did not fail to designate exclusion areas. Through the adoption of Calvo maps in January of 1980, the Commission carried out its duties in accordance with Section 30610.1. Indeed, Map No. 102 delineates Calvo exemption areas: Area 8, the Old Post Office, is identified as a Calvo exemption area. Third, the subject properties are simply not within the exclusion area so identified. The County concurs that the Commission acted within its authority and accepts the Calvo exclusion maps as legitimate (See letter from LA County Counsel, Exhibit 32). Moreover, the County has not adopted the position that it has the authority to issue exemptions under Section 30610.2(b), or asserted, as do Respondents, that the Commission failed to designate exclusions areas here (Exhibit 32). The County of Los Angeles has not issued any certification that any of the subject properties meets the lot criteria set forth in Section 30610.1(c). Finally, it should be noted that, in addition to all of the reasons listed above the Calvo exemptions pertain only to single family residential development and, therefore, even if Respondents' argument were accurate, it still is irrelevant to the vast majority of the violations before the Commission today. For these reasons, the Gilchrist case did not void the Calvo maps and the County does not have authorization to designate as exempt single-family residences from the coastal development permit requirements.

3. Respondents' Defense:

"Parcel 7 and Parcel 6 are vacant legal parcels created prior to January 1, 1980 and were vacant legal lots prior to January 24, 1980. Therefore, any development on said parcels is exempt from the coastal development permit requirements of the California Coastal Act as well as the Commission's jurisdiction and regulatory control." (Letter from Nicole Johnson, June 12, 2009)

Commission's Response

This appears to be yet another formulation of Respondents' argument that the development at issue on these parcels is somehow exempt under Calvo. Their argument seems to rely on Coastal Act Section 30610.1(b), which includes 'vacancy' among the criteria for establishing areas in which the development of a single family home may be exempt from the CDP requirement.

While vacancy is a precondition of a lot's eligibility for the exemption, it is not the sole criterion. There are many parcels that were vacant at the time Section 30610.1 was enacted. Clearly, that fact alone does not qualify all such parcels for an exemption. In fact, Respondents' unusual reading of this provision would appear an attempt to exempt from all Coastal Act requirements a great number of properties, which is not supported by the legislative intent expressed in the Coastal Act, nor does it comport with the clear requirements of this provision itself. In fact, subsection (b) and (c) outline the additional criteria to be considered in the designation of an exemption. As discussed in response to Defenses #1 and #2, which are hereby incorporated by reference herein, the subject properties are not located within an area designated pursuant to 30610.1 as an exclusion area. However, even if the properties were within a Calvo exclusion area, which it is not, and vacant at the time the statute was enacted, the exemption would apply only if the County certified the properties as meeting the lot criteria and only to the CDP requirements for a single-family residence. It would not, as Respondents assert, exempt any development on the properties entirely from "the Commission's jurisdiction and regulatory control." And it certainly would not exempt the extensive amount of unpermitted development associated with the commercial vineyard operation. Once again, it should be noted that, in addition to all the reasons listed above the Calvo exclusion is limited only to single family residential development. As a result, even if Respondents' argument were accurate, it would not absolve them of their responsibility under the Coastal Act to resolve the substantial number of other violations existent on the subject properties.

4. Respondents' Defense:

"The ground installed solar array/panels located on Parcel 7 were approved and installation was authorized by a County building permit." (Letter from Nicole Johnson, June 12, 2009)

The property owners were granted a building permit by Los Angeles County in 1990, for a swimming pool on parcel 4438-006-024, and therefore no CDP is required. (Letter from Nicole Johnson, June 12, 2009)

Commission's Response

The Commission does not dispute Respondents' assertion that the County of Los Angeles issued a building permit for the solar array or the swimming pool. However, the acquisition of a building permit does not obviate the need for a coastal development permit. While the County may have found these items consistent with its building standards, for reasons set forth below, the County did not and could not have issued a CDP for this development.

Section 30600(a) of the Coastal Act specifies that, "in addition to 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 within the Coastal Zone … shall obtain a coastal development permit" (emphasis added). The County of Los Angeles has not obtained certification of its local coastal program, and it has not exercised the option listed in Section

30600.5 or 30600(b). Thus, according to Section 30600(c), any coastal development permit must be obtained from the Commission. Therefore, whether the County issued permits for the construction of the pool and the solar array, Respondents needed a separate permit from the Commission is, and without one, the development is in violation of the Coastal Act. The Commission encourages solar projects in general and staff remains very willing to work with Respondents to ensure solar elements here comply with the Coastal Act requirements.

Although the solar array does not qualify for an exemption under the Coastal Act, the Commission encourages solar projects in general and staff remains very willing to work with Respondents to ensure solar elements here comply with the Coastal Act requirements. Accordingly, as the Commission has informed Respondents, and as discussed more fully in response to Defense # 7, below; respondents may apply for a permit to retain the solar array.

Respondents have raised a separate argument with respect to a potential exemption for the pool, listed in Defense # 7, below, and that will be addressed in that item. As a result of the current lack of information, as is explained below, the Commission staff is not presently recommending removal of the pool.

5. Respondents' Defense:

"Since the Commission's mapping has not identified an ESHA designation on Parcels 6 and 7 and there has been no grading per se on either of said parcels, there is no violation of the County Planning and Zoning Code or California Coastal Act regarding the agricultural farming on Parcels 6 and 7." (Letter from Nicole Johnson, September 13, 2009)

Commission's Response

It is unclear what Respondents mean in claiming that there has been no grading "per se" on Parcels 6 or 7. As evidenced by the photographs in Exhibits 3, 4, 7 & 8, Respondents have undertaken an extensive amount of grading, as well as other violations, on the cited parcels. Grading, among other activities, is explicitly listed as development under Coastal Act Section 30106, and therefore requires a CDP. Respondents performed the grading without a CDP, in violation of the Coastal Act. Respondents' reference to a lack of identified ESHA on the parcels is similarly misplaced. The lack of mapping is not dispositive, and moreover, even if there were no ESHA, unpermitted grading is still a violation of the Coastal Act. Finally, even if there were no ESHA and no grading, it still would not mean that Respondents weren't responsible for other violations on the subject properties, as it is illegal to perform any non-exempt development without a permit, whether or not the development occurs in ESHA. Nonetheless, in the interest of clarity, we respond fully to Respondents' assertion, below.

Respondents obtained from Commission staff a map depicting ESHA delineations that were prepared by the County of Los Angeles, based upon the County's 1986 LUP (Exhibit 34). Neither the map nor the delineations have been adopted by the Commission, but are sometimes used by staff for informational purposes. The only part of the subject properties where the map

depicts ESHA is on a small portion of Parcel 24 – an area that Respondents claim is unaffected by the unpermitted development. However, as the Commission has explained to Respondents, the map is not, and was never intended to be, an exhaustive representation of ESHA in the Santa Monica Mountains, and the absence of ESHA on the map is certainly not proof that no ESHA exists on the ground.

For the reasons set forth in response to Defense # 4, which is hereby incorporated by reference herein, the standard of review in this matter is the Coastal Act, rather than the County's LUP. Similarly, the presence of ESHA is determined based on PRC section 30107.5, not the LUP. Nonetheless, the LUP does serve as an important guidance document and therefore should be consulted in such matters. The LUP policies that relate to ESHA determinations are instructive here. In fact, Policies P57 and P61 specifically acknowledge that both the areas that were known to be ESHAs at the time the LUP was adopted in 1986 and the maps depicting those ESHAs are incomplete and should be updated as new information becomes available. The LUP states in relevant part:

> *P57. Designate the following areas as Environmentally Sensitive Habitat Areas (ESHAs): (a) those shown on the Sensitive Environmental Resources Map (Figure 6), and (b) any undesignated areas which meet the criteria and which are identified through the biotic review process or other means, including those oak woodlands and other areas identified by the Department of Fish and Game as being appropriate for ESHA designation.*
>
> *P61. Maps depicting ESHAs, DSRs, Significant Watersheds, and Significant Oak Woodlands and Wildlife Corridors (Figure 6) shall be reviewed and periodically updated to reflect current information. Revisions to the maps depicting ESHAs and other designated environmental resource areas shall be treated as LCP amendments and shall be subject to the approval of the Coastal Commission.*

As evidenced by the cited LUP policies, both the designations and depictions of ESHA were expected to evolve over time as new information became available, and there certainly was no intent that the delineations in the 1986 LUP would somehow limit what could be treated as ESHA in the future, nor could they. These principles were recently reaffirmed by two different rulings from the Court of Appeals specifically with respect to this LUP. See LT-WR, L.L.C. v. California Coastal Comm'n (2007) 151 Cal.App.4th 427; Douda v. California Coastal Comm'n (2008) 159 Cal.App.4th 1181.

Moreover, the map at issue was not even part of the LUP. It was created in 1993 by the County's GIS Department staff and has never been approved by the Commission. Therefore, not only is the map out of date and not representative of the Commission's position with regard to ESHA, it also was never intended to constitute an exhaustive representation of ESHA throughout the LUP planning area, nor would it under either the Coastal Act or LUP policies. Moreover, the absence of an updated map depicting all ESHAs in the vicinity of the subject properties is not even probative of whether there are other ESHAs in the area, much less proof that no other such ESHAs, other than those represented on the map, exist in the area.

As discussed in Response to Defense #4, above, until the County obtains development review authority under the Coastal Act, the Commission retains permitting jurisdiction over the area in question, and the standard of review remains the Coastal Act, not the LUP. For that reason, the responsibility for determining whether ESHA exists on the subject properties legally rests with the Commission. The statutory basis for determining whether an area constitutes ESHA is provided in Coastal Act Section 30107.5. In considering whether a particular area meets the definition of ESHA, the Commission must consider whether the species or habitat present in the subject area is rare; whether an especially valuable species or habitat exists within the area; and whether any such species or habitat is easily disturbed or degraded by human activities and developments. Naturally, this is a site-specific endeavor, subject to the best information available at the time of the assessment. Again, the LT-WR and Douda cases, cited above, affirmed the validity of this approach.

In response to Respondents' assertion that, as an empirical matter, ESHA is, in fact, limited to the areas shown on the LUP map, in a July 28, 2009 letter, staff offered two options for resolving the dispute. Under the first option, Respondents could hire a resource specialist to conduct an assessment of their properties and submit the final report for staff review. For the second option, staff offered to conduct its own site assessment to determine the types of vegetation existent on the subject properties. Respondents failed to accept or even respond to either proposal or take any further steps to resolve the dispute. Instead, during a June 24, 2010 telephone conversation with staff, Respondents' representatives explicitly denied staff's request to access the subject properties for purposes of such an assessment.

In light of the lack of an assessment prepared by Respondents' consultant, the Commission's Senior Ecologist, Dr. John Dixon, conducted a site-specific analysis to determine whether the vegetative communities upon and adjacent to the subject properties meet the definition of ESHA. In conducting his assessment, Dr. Dixon reviewed historic aerial photographs depicting landscape change across the properties over time, current photographs of the subject properties taken by Commission staff from an adjacent property, and vegetative surveys conducted by the U.S. Geological Survey, U.S. Fish and Wildlife Service, and California Department of Fish and Game. The results of Dr. Dixon's analysis are included in a memo to staff, dated July 9, 2010 (Exhibit 5). The Commission concurs in, and hereby adopts, those findings and conclusions.

In his memo, Dr. Dixon explains that the subject properties are located within a large, mostly undisturbed, Mediterranean shrub ecosystem. This ecosystem type is extremely rare, found on only five distinct regions around the world, and encompasses a mere two percent of the earth's total land area. Located in temperate coastal areas between 30° and 40° latitude, Mediterranean shrub ecosystems have for thousands of years been attractive locations for human development and recreation. As a result, this ecosystem is among the most altered globally. [28] In the context of the Malibu LCP, the Commission found that the Mediterranean ecosystem in the Santa Mountains is rare and especially valuable because of its relatively pristine character, physical

[28] National Parks Conservation Association. 2008. State of the Parks: Southern California's Mediterranean Biome Parks. Accessed on July 7, 2010 at: *www.npca.org/stateoftheparks/mediterranean_biome/biome-intro.pdf*

complexity, and biological diversity, and that areas of undeveloped native habitat may meet the definition of ESHA by virtue of their important roles in that ecosystem.

The vegetative communities immediately adjacent to the impacted areas of the subject properties consist of mixed chaparral and coast live oak habitats, both of which the Commission has consistently treated as ESHA in the Santa Monica Mountains. Based on the composition of the adjacent vegetation, in addition to his analysis of historic and current photographs, Dr. Dixon has determined that the area in question, prior to the unpermitted activities, was comprised of mixed chaparral. A substantial area of this chaparral, spanning approximately 400,000 square feet, has been destroyed due to the continuing violations on the subject properties. Because of the significant role chaparral plays in the rare Mediterranean Shrub ecosystem, its vulnerability to development pressures, and the plant communities on and adjacent to subject properties, Dr. Dixon's memo explains, "…prior to development, those areas that have been cleared of native vegetation met the definition of ESHA under the Coastal Act" (Exhibit 5).

Contrary to Respondents' assertions, a review of historic and present-day photographs reveals a substantial amount of grading and vegetation removal across the properties, in association with development, including but not limited to roads, commercial vineyards and structures. The development has progressed incrementally towards the south for more than 10 years. All of the development on Parcels 6 and 7 has occurred in the area described by Dr. Dixon and meeting the definition of ESHA. For these reasons, despite the fact that one map, which has not been approved or even included in the LUP, does not identify the areas in question as ESHA, the development at issue appears to have occurred within and destroyed a substantial area of ESHA. The standard of review in this matter is the Coastal Act and the agency with jurisdiction over implementation of the Coastal Act in this area is the Commission. No permits have been issued by the Commission authorizing any development on either of the cited parcels. As such, the development is unpermitted, in violation of the Coastal Act.

It is also worth noting that the map referenced by Respondents was provided by Commission staff in 2009, after the vast majority of the grading and vegetation removal had already been completed. Therefore, Respondents could not have relied upon said map – or upon any associated mistaken conclusions regarding the extent of ESHA on the properties – in making their decision to undertake the development.

6. Respondents' Defense:

"The California Coastal Commission (CCC) in 1987 approved a Coastal Development Permit (CDP) for the residential development of Parcel 24 (4.91 acres) located in County designated R-1 Residential Zone. Since the CCC approved Parcel 24 at 1732 Topanga Skyline Drive for single family residential development and did not raise the environmentally sensitive habitat area (ESHA) issue in 1987, thus CCC is without basis to raise an environmental issue in 2009." [*sic*] (Letter from Nicole Johnson, August 31, 2009).

Commission's Response

Respondents seem to be arguing that a prior CDP for specific development binds the Commission with regard to all future development proposals at that site. This is not the case, as discussed below. Moreover, it should be noted that they did not apply for a CDP for the development at issue at all.

The staff report for the 1987 permit (CDP No. 5-87-488) did not turn on the question of whether the proposed development affected ESHA. In fact, the staff report contains no affirmative statement regarding the presence or absence of ESHA. It does not purport to bind future analyses of ESHA on Parcel 24 or any other property in the area, nor could it. The staff report does not include an assessment of ESHA or impacts thereupon. However, even if it did, such an analysis would not bind future assessments of ESHA. The statute governing ESHA determinations is Coastal Act Section 30107.5, not a past permit action. The Commission reviews each development proposal on a case by case basis, taking into consideration the conditions on the ground and bases its decisions upon the best information available at that time. Moreover, in a situation where development has occurred in violation of the Coastal Act, the Commission is legally bound to assess the ESHA status of the area as if the development had not occurred. See, e.g., LT-WR, supra, 151 Cal.App.4th at 437.

In addition, the specific development under review in 1987 was of a different nature and in a different location than the development at issue in this matter. The unpermitted development that is the subject of these proceedings was not before the Commission in 1987; therefore, the Commission would not have been in a position to raise resource impacts associated with the current unpermitted development at that time. In addition, over the twenty-three years that have passed since the Commission acted on the permit, site conditions have changed and the Commission's understanding of ecosystem function and habitat dynamics has improved greatly. For all of these reasons, the Commission is justified in and required to evaluate the area in accordance with Section 30107.5 and current ecological understandings, and in considering the impacts of the development on the resources in existence prior to and at the time of the development in question, using the best information available.

7. Respondents' Defense:

The solar array on parcel 4438-016-007 and the swimming pool on parcel 4438-016-024 are part of the residence approved under CDP No. 5-87-488, and therefore are exempt from the CDP requirements in accordance with PRC §30610 and CCR §13250. (Letter from Burt Johnson, June 28, 2010)

Commission's Response

In general, the Commission encourages the use of solar, and further encourages uses of solar in a way that is most protective of coastal resources and complies with the Coastal Act. However, it does not promote those policies by creating exemptions that are not supported by the law. The Commission disagrees with Respondents' assertion that the ground mounted solar array here is

exempt. The statute and regulations cited by Respondents establish the types and locations of improvements to single family residences that do not require a coastal development permit. In order for the improvement to be considered exempt under Section 13250(a) of the Commission's Regulations it must be part of the single family residence, meaning for structures, that it is either:

(1) Directly attached to the residence;

OR

(2) "Structures on the property normally associated with a single-family residence, such as garages, swimming pools, fences, and storage sheds… "(emphasis added)

The ground mounted solar array is located approximately 45 feet south of the residence and is only attached at all by a cable. It therefore does not meet the criteria under Section 13250(a)(1). In addition, the structure is located on a separate parcel from the one on which the single-family residence was approved and constructed under CDP No. 5-87-488. Therefore, even if it were deemed "normally associated" with a single-family residence, it would does not meet the criteria of 13250(a)(2). The exemption provisions of the Coastal Act and Commission's Regulations are not intended to serve as alternatives to the CDP application process where new development on vacant lots is concerned. The properties at issue were not a unified property at the time the CDP for the single family residence was granted. Nor was the solar array included among the development proposed or authorized under the CDP. The Commission must review new development proposals to ensure, among other things, that the proposed development is sited in the area of that lot will have the least environmental impact. Failure to review the location and potential impacts associated with the solar array could prejudice the way in which Parcel 7 is developed in the future. As discussed more fully in response to Defense #14, the State of California and the California Coastal Commission recognize the importance of promoting alternative sources of energy and seek to remove barriers to their implementation. For these reasons, the proposed Orders allow Respondents to apply for a CDP to retain the solar array, as opposed to the other unpermitted development, which must be removed.

Pools are specifically listed in Section 13250(a)(2) of the Commission's regulations as being normally associated with single-family residences, and the pool is on the same parcel as the home. However, if significant grading or other types of development that would not be exempt were conducted in association with the installation of the pool, the overall pool project would not qualify for the exemption. Based on currently available information submitted by Respondents, the pool is not subject to these proceedings and therefore is not addressed herein.

8. Respondents' Defense:

"The County has approved a Conditional Use Permit (CUP) No. 01-200(3) approving the construction of a second family residential dwelling on Parcel 24…the County is authorized by California Government Code (GC) §65901 the authority to approve CUPs…" (Letter from Nicole Johnson, June 12, 2009)

The County approved building and grading permits for work associated with the second unit on parcel 4438-016-024, therefore the Commission is without jurisdiction to cite as violation any development activity on that parcel. (Letter from Burt Johnson, June 24, 2010)

Commission's Response

Such actions by the County as the issuance of building and grading permits do not obviate the need for Coastal Act authorization for development as a matter of law, and moreover, the specific facts here do not support this assertion, as set forth below. The Commission does not dispute the County's authority to issue a CUP or building permits. Nor does it contest the claim that the County issued a CUP or building permits for work associated with a second family dwelling on the parcel described as APN No. 4438-016-024. However, the Commission does note that the CUP has expired and the building permits were issued in error (see Exhibit 30). More importantly, neither permit, even if valid, is relevant to whether a violation of the Coastal Act has occurred or whether the Commission has the authority to issue a cease and desist or restoration order to resolve this matter. The County's issuance of planning and building permits does not replace the need for a coastal development permit. For reasons discussed below, the County did not and could not have issued a CDP for these developments; until the County satisfies specific statutory requirements, the authority to issue coastal development permits remains with the Commission. Any development undertaken without the necessary CDPs is a violation regardless of the existence of County permits.

The County of Los Angeles has not obtained certification of its local coastal program. Section 30600(a) of the Coastal Act specifies that, prior to the certification of a local coastal program, "in addition to 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 within the Coastal Zone … shall obtain a coastal development permit" (emphasis added). Therefore, whether the County issued grading or building permits for development at the site is not relevant to whether a coastal development permit was needed, or whether, without one, the developments exist in violation of the Coastal Act.

On February 16, 2007, Mr. Stefan and Mrs. Kathryn Hagopian submitted an application to the Commission's South Central Coast District Office in Ventura, requesting an exemption from the CDP requirements for construction of a second residence on Parcel 24. After reviewing the exemption request, in a letter dated April 17, 2007, Commission staff notified the then-applicants that the proposed project could not be found exempt from the permit requirements of the Coastal Act (Exhibit 6). Nevertheless, Respondents proceeded with site preparations for the non-exempt second residence. It was not until they sought additional permits from the County that this work was discovered by Commission staff. In the process of seeking permits from the County, Respondents were asked by the County about the status of their Coastal Act approvals. Despite having been notified of the Coastal Act's permitting requirements by Commission staff, according to Los Angeles County Building and Safety staff, Respondents represented to the County that no CDP was required for a second residence on the property. Based upon that information, the County issued a conditional grading permit and two building permits for work

associated with the residence. Respondents proceeded with additional earthwork associated with the non-exempt residence.

After learning that the Commission had not, in fact, exempted Respondents' proposed development from the CDP requirement and that the CUP had expired, the Department of Building and Safety staff ordered all work to cease until Respondents obtained a valid CDP from the Commission and CUP from the County. A photograph of the Stop Work Notice posted at the entrance to Respondents' properties, taken by County staff on the day of posting (April 7, 2010), is included as Exhibit 21. After completing the grading on April 10, 2010, in violation of the Coastal Act and local ordinances; Respondents claimed that they had not found the Stop Work Notice until April 11, 2010. Even if that were true, the Notice clearly demonstrates that this asserted defense is not valid and that the County agrees with the Commission on this point.

For the reasons set forth above, a CUP from the County does not negate the Coastal Act's CDP requirements. Nor do grading and building permits from the County (and, as indicated above, the County itself acknowledges this). The Commission notified Respondents that the proposed development was not exempt from the CDP requirements in 2007. Nonetheless, Respondents proceeded with earthwork associated with the non-exempt single-family residence, even after having been ordered by the County to stop work until a CDP was obtained. Therefore, the Commission has jurisdiction to cite the development as a violation of the Coastal Act.

9. Respondents' Defense:

The Commission cannot require a CDP for development of the proposed second unit on Parcel 24, because the County has already granted a CUP. "PRC 30401 prohibits the Commission from setting standards or adopting regulations that duplicate the sections of CGC 65852.2 and CGC 65901." (Letter from Nicole Johnson, June 12, 2009)

Commission's Response

Respondents' argument appears to be that the Commission is without authority to require a CDP for the development of a second residence on Parcel 24 because doing so would be inconsistent with Coastal Act Section 30401, which addresses duplication of regulatory control among State agencies. The County of Los Angeles is not a state agency and therefore Section 30401 does not apply on its face, for this reason alone, In addition, Coastal Act Section 30601(a) explicitly states that non-exempt development requires a coastal development permit, "in addition to any other permit required by law from any local government." For these reasons, Respondents' statement is without relevance to these proceedings. As a courtesy to Respondents, the Commission provides a response, below.

Respondents base their argument upon (1) a State statute authorizing local governments to adopt ordinances designating areas within the local jurisdictions where second units may be permitted (CGC 65852.2); and (2) a State statute requiring zoning boards or administrators to consider

proposals for development provided for under established zoning ordinances (CGC 65901). The relevant provisions of each statute referenced are provided below.

Coastal Act Section 30401 states in relevant part:

> *Except as otherwise specifically provided in this division, enactment of this division does not increase, decrease, duplicate or supersede the authority of any existing state agency.*
>
> *This chapter shall not be construed to limit in any way the regulatory controls over development pursuant to Chapter 7 (commencing with Section 30600) and 8 (commencing with Section 30700), except that the commission shall not set standards or adopt regulations that duplicate regulatory controls established by an existing state agency pursuant to specific statutory requirements or authorization.*

Government Code Section 65852.2 states in relevant part:

> *(a) Any local agency may, by ordinance, provide for the creation of second units in single-family and multifamily residential zones. The ordinance: (1) May designate areas within the jurisdiction of the local agency where second units may be permitted. The designation of areas may be based on criteria, which may include, but are not limited to, the adequacy of water and sewer services and the impact of second units on traffic flow…*

Government Code Section 65901 states in relevant part:

> *(a)The board of zoning adjustment or zoning administrator shall hear and decide applications for conditional uses or other permits when the zoning ordinance provides therefore and establishes criteria for determining those matters, and applications for variances from the terms of the zoning ordinance. The board of zoning adjustment or the zoning administrator may also exercise any other powers granted by local ordinance, and may adopt all rules and procedures necessary or convenient for the conduct of the board's or administrator's business.*

As is evident from the language of Section 30401, its intent is to prevent the Commission from performing certain functions that would duplicate "regulatory controls established by an existing state agency." No other State agency is involved here and the section is inapplicable on its face. The Government Code sections referenced by Respondents (Sections 65852.2 and 65902) pertain to the regulatory requirements and authorities of local governments. Specifically, the local government entities to which these Sections apply in this case are the LA County Department of Regional Planning and the County's Zoning Permits Hearing Officer; neither is a state agency. Therefore, in this case the Commission is within its authority pursuant to Coastal Act Section 30401 to require a CDP, regardless of and in addition to any other permit required by law, for development of a second residence on the subject property.

10. Respondents' Defense:

"The tennis court located on parcel 7 is a temporary court and does not require a permit. The County has inspected the tennis court and determined a building permit was not required for it's installation as a temporary facility. There was neither grading nor wall permits required by the County for the on surface installation of the temporary tennis court." [*sic*] (Nicole Johnson, June 12, 2009)

Commission's Response

The construction or placement of a tennis court constitutes development, as that term is defined under Section 30106 of the Coastal Act. The statute states in relevant part, "'Development' means, on land, in or under water, the placement or erection of any solid material or structure…" Pursuant to Chapter 7 of the Coastal Act, commencing with Section 30600, non-exempt development in the Coastal Zone requires a coastal development permit. Section 30610 specifies several types of exempt development (i.e., development that may be conducted without first securing a permit). Subsection (i) includes "temporary events" among the types of development that may be exempt, provided that those events meet specific guidelines adopted by the Commission.

In 1993, the Commission adopted exemption guidelines for temporary events. Under those guidelines, a 'temporary event' is defined as, among other things, an event of "limited duration." As a threshold matter, construction or placement of a tennis court is not an "event" at all. Moreover, the guidelines define the phrase "limited duration" to mean a period of time that does not exceed two weeks on a continuous basis or four months on an intermittent basis. A review of historical aerial photographs reveals that the tennis court has been on the property continuously for more than 10 years. However, even if the tennis court did qualify as a temporary event as that term is defined in the Commission's guidelines, which it does not, it still would be subject to coastal development permit review because of its potential for significant adverse impacts on coastal resources. The guidelines state that a temporary event may be subject to review if, among other things, "the event and its associated activities or access requirements will either directly or indirectly impact environmentally sensitive habitat areas…" As discussed in the response to Defense #5, the area in which the tennis court was placed meets the definition of ESHA. For these reasons the tennis court does not meet the definition of a temporary event, and even if it did, it would not be exempt from the Coastal Act's coastal development permit requirements.

11. Respondents' Defense:

"The grading on Parcel 6 is for geologic exploration for a pre-residential development building permit application. Since the County has jurisdiction there is no violation of the California Coastal Act regarding the grading on Parcel 6." (Letter from Nicole Johnson, June 12, 2009)

Commission's Response

Contrary to Respondents' assertions, aerial photographs reveal a substantial amount of grading has occurred across all of the subject properties, including Parcel 6. The grading on Parcel 6 includes, but may not be limited to: the creation and expansion of roads across the parcel, including a ridge-top road extending out to a knob towards to the south of the property; the grading of a pad on the knob at the terminus of the ridge-top road; the disking and/or terracing of the property for the planting of commercial vineyards, including down the steep slope to the east of the ridge-top road; and the grading of a road along the base of the graded slope. Grading is explicitly listed among the activities that constitute development pursuant to Section 30106 of the Coastal Act. Pursuant to Chapter 7 of the Coastal Act, commencing with Section 30600, non-exempt development in the Coastal Zone is subject to the coastal development review process. The grading is not exempt.

As discussed in response to Defense #4, which is hereby incorporated by reference herein, the County does not have development review authority under the Coastal Act. The County has neither obtained certification of its LCP, nor established procedures for the issuance of a coastal development permit as provided for under Section 30600(b)(1). For these reasons, the standard of review in this matter is the Coastal Act, and the agency with jurisdiction over implementation of the Coastal Act in this area is the Commission.

12. Respondents' Defense:

"There are vineyards planted on Parcels [4438-016-007 and 4438-036-006] as authorized by the County as a "permitted use" in accordance with Title 22 Planning and Zoning Code Section 22.24.70." (Letter from Nicole Johnson, June 12, 2009)

"Parcels 7 and 6 have also been utilized for raising sheep and poultry in accordance with the long standing 1951 A-1 Zoning designation for said parcels. The several structures are utilized in conjunction with the agricultural crops, farmed, raising of sheep and poultry and thus do not require permitting as they are part of the "intended use" of the A-1 Zoning in accordance with the County Zoning Ordinance § A-1 LIGHT AGRICULTURAL ZONE, SECTION 22.24.070 A & B…" [sic] (Letter from Nicole Johnson, June 12, 2009)

"There is no Coastal Development/Use Permit required for the maintenance of agricultural use of A-1 zoned parcels of land in the unincorporated area of the County in accordance with the California PRC Sections 30241 and 30242." (Letter from Nicole Johnson, September 12, 2009)

Commission's Response

The Commission does not dispute Respondents' assertion that the County's zoning designation for the subject properties provides for agricultural uses, including the raising of sheep, poultry and vineyards. Nor does it question the authority of the County to adopt and implement such an ordinance or whether Respondents' actions are in conformance with such local ordinances. These matters are subject to local regulation and not relevant to whether Respondents' activities are authorized under the Coastal Act. However, many of the activities associated with those types of agricultural uses, including but not limited to: grading, placement of structures, changing the intensity of use of the land and changing the intensity of use of the water constitute development as that term is defined under Section 30106 of the Coastal Act. Pursuant to Chapter 7 of the Coastal Act, commencing with Section 30600, non-exempt development in the Coastal Zone is subject to the coastal development review process nothwithstanding its approvability and/or even having gone through the process of having secured the necessary approvals under other regulatory regimes. Respondents' actions are not exempt. As discussed in response to Defense #4, which is hereby incorporated by reference herein, the County does not have development review under the Coastal Act. The County has neither obtained certification of its LCP, nor established procedures for the issuance of a coastal development permit as provided for under Section 30600(b)(1). For these reasons, regardless of whether Respondents' actions are authorized under the local ordinances, the Coastal Act remains the standard of review for evaluating impacts to coastal resources, and the agency with jurisdiction over implementation of the Coastal Act in this area is the Commission.

The purported enactment of a 1951 County zoning ordinance bears no relevance to whether the development is subject to the Commission's jurisdiction. The development at issue was undertaken by Respondents after the enactment of the Coastal Act in 1977. Any development occurring within the coastal zone after the effective date of the Coastal Act must be in conformance therewith. Respondents claim that the parcels have been utilized for raising sheep and poultry; however, despite multiple requests from the Commission, Respondents have provided no information that would substantiate a claim of historic grazing, animal husbandry or any other agricultural use on the properties. In response to Respondents' assertions that the properties had been used historically for agricultural purposes, the Commission offered to review a Vested Rights Claim (VRC) application. On December 10, 2009, Respondents submitted an incomplete VRC application for a second single family residence on Parcel 24 (Exhibit 35). The application included no reference to agricultural activities on any of the subject properties. On December 16, 2009, staff mailed to Respondents a letter explaining that VRC application was incomplete (Exhibit 16). On April 16, 2010, Ms. Johnson submitted a letter formally requesting that the VRC application be withdrawn (Exhibit 20). More important, even if there were historic agricultural activities on the subject properties, a point that the Commission cannot (on the current record) and does not accept, a review of historic aerial photographs reveals no development of the character or intensity of that which exists today, and certainly no vineyards or structures (see Exhibit 3 & 36). Some disturbance is evident on the properties in 1977 (Exhibit 36); however, the cause of that disturbance remains unknown. By 1986, the activities that caused the disturbance in 1977 appear to have ceased as the impacted areas are more densely vegetated, suggesting natural restoration was well underway (Exhibit 3).

Respondents' claim that the Commission's actions are inconsistent with Coastal Act Sections 30241 and 30242 is misguided; both are parameters for consideration of permit applications in cases where land conversions are proposed. Section 30241 pertains to prime agricultural land. The statute states in relevant part, "The maximum amount of prime agricultural land shall be maintained in agricultural production…" However, Respondents have submitted no evidence that would indicate that the subject properties constitute prime agricultural land. Moreover, even if the properties did qualify as prime agricultural land, Section 30241 would still not apply because the agricultural activities at issue herein have been undertaken without a coastal development permit, in violation of the Coastal Act. There is an inherent presumption in Section 30241 that the activities the statute is designed to preserve are legal and consistent with other provisions of the Coastal Act. Neither is the case here. As a result, Section 30241 is not relevant to the facts in this case. Section 30242 concerns the conversion of agricultural lands for non-agricultural purposes. The Statue states in relevant part, "All other lands suitable for agricultural use shall not be converted to nonagricultural uses…" These proceedings are intended to resolve violations of the Coastal Act. They are not intended to, nor will they have the effect of, converting lands suitable for agricultural use to non-agricultural uses. As described in Section IV.E.3, above, the existing unpermitted agricultural development is inconsistent with the Coastal Act's resource protection policies because of its impacts to water quality, environmentally sensitive habitat areas, views of coastal resources, and its impacts to soil and slope stability on the subject properties. When considered in the context of its impacts to coastal resources, the current agricultural use is not "suitable" as is required by the statue, nor is it relevant to the issue as to whether this development is unpermitted under the Coastal Act. Nonetheless, the Commission's issuance of cease and desist orders and restoration orders to resolve the violations would not necessarily preclude agricultural use on the subject properties. However, any future development proposal, for an agricultural purpose or otherwise, would have to conform to the policies of the Coastal Act.

13. Respondents' Defense

"You should also acquaint yourselves with the solar energy law and regulations including civil code § 714, government § 65850.5 and health and safety code § 17959.1." [*sic*] (Letter from Burt and Nicole Johnson, July 16, 2010)

Commission's Response

Respondents do not elaborate on the relationship between the cited code sections and any potential defenses. Again, we note that, in general, the Commission encourages the use of solar, and further encourages uses of solar in a way that is most protective of coastal resources and complies with the Coastal Act. Nonetheless, as a courtesy, the Commission has reviewed the cited sections for any possible relevance to this case. As discussed below, these sections are

entirely without relevance to whether a violation of the Coastal Act has occurred or whether the Commission has jurisdiction to act in this matter.

Civil Code Section 714 conveys the State's interest in encouraging renewable energy, and sets forth provisions for removing unreasonable barriers to its expansion. Subdivision (a) of the statute renders void and unenforceable any "covenant, restriction, deed condition, contract, security instrument or other instrument affecting the transfer or sale of, or any interest in, real property that effectively prohibits or restricts the installation or use of a solar energy system." Subdivision (b) explains further that "This section does not apply to provisions that impose reasonable restrictions on solar energy systems…that do not significantly increase the cost of the system…" The term "significantly" is defined for photovoltaic systems that comply with state and federal law as an amount not to exceed $2,000 over the system cost as originally specified and proposed.

The State laws and regulations affecting land use and development must be read and interpreted collectively. As discussed in response to Defense #4, which is hereby incorporated by reference herein, non-exempt development within the Coastal Zone requires a coastal development permit. The solar array at issue here is not exempt for the reasons set forth in response to Defense # 7, constitutes development, and therefore requires a permit. Because the solar array was placed without a permit, it constitutes a violation of the Coastal Act, and therefore does not comply with State law. The cited code section does not supersede the requirements of the Coastal Act. As a result, any protections afforded by the statute would not apply because the development was undertaken illegally. However, even if the statue did apply here, it still would not limit the Commission's ability to proceed with the proposed actions, as discussed below.

The proposed actions, as they pertain to the ground-mounted solar array, involve: (1) a finding that unpermitted development has occurred on the subject properties, in violation of the Coastal Act; and (2) the issuance of a Cease and Desist Order that, among other things, requires Respondents to apply for a permit to retain the solar array or to remove it in accordance with the terms of the Orders pertaining to all other unpermitted development on the subject properties.

A finding that unpermitted development has occurred will result in the recordation of a Notice of Violation (NOVA) on the properties' chains of title. The Notice of Violation constitutes none of the documents listed in Subdivision (a) of Section 714. Rather, a NOVA would place future purchasers on notice that the property is not in conformity with applicable laws. As specified in Coastal Act Section 30812(e)(2), the NOVA "is for informational purposes only and is not a defect, lien, or encumbrance on the property." It would not legally affect sale or effectively prohibit any future use, including the installation or use of a solar energy system. However, any future use, unless exempt, would still require a coastal development permit.

Nor would the requirement for a coastal development permit constitute an unreasonable or significant restriction on the solar system. As noted previously, a CDP for such development is required under the Coastal Act. The authors of Section 714 clearly anticipated that discretionary approvals might be required for such developments – Subdivision (e) states, "whenever approval is required for the installation or use of a solar energy system…" Furthermore, the proposed

Orders would not significantly increase the cost of the system as no modifications to the system are being required under the Orders. However, even if the Orders did increase the overall cost of the system, the provision of the statute limiting the amount of the increase still would not apply. Subdivision (d) specifies that the $2,000 limit applies only to "photovoltaic systems that comply with state and federal law." As noted previously, the ground-mounted solar array was constructed without a CDP, in violation of the Coastal Act. Therefore, it is not in compliance with State law. For these reasons, Civil Code Section 714 is not applicable to this case.

Respondents provide equally little explanation of how they see Government Code Section 65850.5 and Health and Safety Code Section 17959.1 relating to this case. As a courtesy to Respondents, the Commission did review both code sections and could draw no connection between codes sections and the violations at issue in this matter. Government Code Section 65850.5 reiterates the State's interest in promoting and encouraging solar energy systems and directs local governments to act accordingly. Subdivision (a) states in relevant part, "It is the intent of the Legislature that local agencies not adopt ordinances that create unreasonable barriers to the installation of solar energy systems." Section 17959.1 of the Health and Safety Code provides similar direction to local governments, and includes much of the same language included in Government Code Section 65850.5. Subdivision (a) of Section 17959.1 states in relevant part, "A city or county shall administratively approve applications to install solar energy systems through the issuance of a building permit or similar non-discretionary permit." The cited sections concern the actions of local governments and in no way limit the Commission's development review or enforcement order authority under the Coastal Act.

The Commission acknowledges and shares the State's interest in advancing the implementation of alternative energy technologies. Indeed, the Commission has approved many applications and issued many application waivers and immaterial amendments for solar arrays in the Coastal Zone. However, the State's interest in promoting solar energy must be considered in conjunction with other State priorities, and cannot be viewed in a vacuum. As evidenced by the existence of the Coastal Act, the protection of coastal resources is also a State priority. The code sections referenced by Respondents are the Legislature's attempt to remove local barriers to implementation of solar systems, but each one also recognizes and does not purport to supersede other State and Federal laws, regulations and standards that may apply. The proposed actions in this matter are not inconsistent with the State's interest in promoting solar systems. Rather they reflect the balancing of multiple State interests. To not require a permit application for a solar system that could have coastal resource impacts might advance the State's interest in implementing solar systems, but would neglect and be inconsistent with the State's interest in protecting coastal resources in the Coastal Zone. Moreover, the proposed actions would not prevent or prohibit the use of solar systems on the property, provided that those systems complied with applicable State law. For these reasons, the proposed actions are not inconsistent with the cited statutes or the State's general interest in advancing the implementation of solar systems. Commission staff has repeatedly urged Respondents to work with them to bring the solar array, as well as the other unpermitted development, in to compliance with the Coastal Act, but Respondents have declined to do so.

14. Respondents' Defense

The California Coastal Commission cannot decide on the issue of jurisdiction as "the issue is the jurisdiction of the Coastal Commission, [so] the Commission could not serve as an impartial body to preside over this issue." Thus, the Hagopians "request that the state of California, Office of Administrative Hearings, be asked to serve as the impartial hearing officer." (Letter from Nicole Johnson, July 16, 2010)

Commission's Response

The Coastal Commission has the right and obligation to determine in the first instance its scope of jurisdiction, subject to judicial review. Drawing on U.S. Supreme Court precedent, the Supreme Court of California has found that "it lies within the power of the administrative agency to determine in the first instance, and before judicial relief may be obtained, whether a given controversy falls within the statutory grant of jurisdiction."[29] Thus, even when there are questions concerning jurisdiction, the Coastal Commission may determine whether a matter falls into its jurisdiction without the assistance of impartial hearing officer. This right of first determination is justified by the public policy concern of "judicial efficiency, which cannot be served if the issue of statutory jurisdiction must be fully plumbed in order to determine whether it should be left to the agency in the first instance."[30]

While the courts have qualified this right of first determination as inapplicable when the agency has no jurisdiction to make a judicial determination of the issue, the Coastal Act extends the Coastal Commission's jurisdiction to "any permit action, . . . appeal, . . . or any other quasi-judicial matter requiring commission action, for which an application has been submitted to the commission."[31] As there is no certified Local Coastal Program for the area at issue, the Coastal Commission retains this permitting power[32] and thus has the right to make a judicial determination on permit requirements in this case.

Furthermore, the Government Code provision that requires the Office of Administrative Hearings to conduct hearings for a state agency does not apply to the Coastal Commission. Instead, it applies only "to an adjudicative proceeding of an agency created on or after July 1, 1997, unless the statutes relating to the proceeding provide otherwise."[33] First, the California Coastal Act of 1976, which created the Coastal Commission, was passed over twenty years prior to 1997. Second, the Coastal act makes no mention of the Office of Administrative Hearings or sections pertaining to the Office of Administrative Hearings. Therefore, the Coastal Commission is not required to have a hearing on this matter or any other case overseen by the Office of Administrative Hearings.

---

[29] 19 Cal. 2d 189, 195 (Cal. 1941).
[30] McAllister v. County of Monterey, 147 Cal. App. 4th 253, 276 (Cal. Ct. App. 2007) (citing Public Employment Relations Bd. v. Superior Court, 13 Cal. App. 4th 1816, 1831-32 (Cal. Ct. App. 1993)).
[31] CAL. PUB. RESOURCES CODE § 30321 (Deering 2010).
[32] *See* CAL. PUB. RESOURCES CODE §§ 30519, 30603 (Deering 2010).
[33] CAL. GOV'T CODE § 11501(b) (Deering 2010).

List of Exhibits

Exhibit Number	Description
1.	Map showing the location of the subject property
2.	Staff Report and Coastal Development Permit No. 5-87-488, approved by the Commission on August 27, 1987
3.	Aerial photograph of the subject properties, ca. 1986
4.	Diagram, based upon a 2008 aerial photograph, of the location and extent of the unpermitted development on the subject properties
5.	Memo from Dr. John Dixon (CCC) to Eli Davidian, re: Hagopian Property, dated July 9, 2010
6.	Letter from Commission staff to Stefan & Kathryn Hagopian, dated April 17, 2007
7.	Photographs of the unpermitted development submitted with violation report
8.	Panoramic photograph that includes the subject properties, taken by staff in June of 2010
9.	Notice of Violation letter from Commission staff to Stefan & Kathryn Hagopian, dated March 24, 2009
10.	Letter from Nicole Johnson to Commission staff, dated June 12, 2009
11.	Letter from Commission staff to Nicole Johnson, dated July 7, 2009
12.	Letter from Commission staff to Burt Johnson, dated July 28, 2009
13.	Letter from Nicole Johnson to Commission staff, dated August 31, 2009
14.	Letter from Nicole Johnson to Commission staff, dated September 16, 2009
15.	Letter from Commission staff to Nicole Johnson, dated October 19, 2009
16.	Letter from Commission staff to Nicole Johnson, dated December 16, 2009
17.	Letter from Nicole Johnson to Commission staff, dated January 28, 2010
18.	Email from Nicole Johnson to staff, dated February 2, 2010
19.	Letter from staff to Burt and Nicole Johnson, dated February 17, 2010
20.	Letter from Nicole Johnson to Commission staff, dated April 16, 2010
21.	Photograph of Stop Work Order posted at entrance to 1732 Topanga Skyline Drive, taken by Los Angeles County staff on April 7, 2010
22.	Notice of Intent letter from the Executive Director to Stefan, Kathryn and Rahel Hagopian, dated May 18, 2010 (includes correction letter, dated May 24, 2010)
23.	Letter from Nicole Johnson to Commission staff, dated June 7, 2010
24.	Letter from Burt Johnson to Commission staff, dated June 18, 2010
25.	Letter from Commission staff to Nicole and Burt Johnson, dated June 21, 2010
26.	Letter from Burt Johnson to Commission staff, dated June 22, 2010
27.	Letter from Commission staff to Burt and Nicole Johnson, dated June 24, 2010
28.	Letter from Burt Johnson to Commissions staff, dated June 28, 2010
29.	Letter from Commission staff to Burt and Nicole Johnson, dated June 30, 2010
30.	Letter from Los Angeles County staff to Stefan and Kathryn Hagopian, dated July 6, 2010
31.	Assembly Bill 643 Single Family Residential Area Designations Map #102
32.	Letter from Deputy Attorney General Steven H. Kaufmann to Anthony S. Alperin, et al., dated June 29, 1983
33.	Letter from Los Angeles County Counsel De Witt W. Clinton to Los Angeles County Planning Director James E. Hartl, dated June 9, 1992
34.	Map derived from LA County LUP, depicting environmentally sensitive habitat areas, ca. 1993
35.	Incomplete Claim of Vested Rights form, submitted on December 10, 2010
36.	Aerial photograph of the subject properties, ca. 1977
37.	Letter from Burt and Nicole Johnson to Commission staff, dated July 16, 2010

CEASE AND DESIST AND RESTORATION ORDERS (CCC-10-CD-07 AND CCC-10-RO-06)

1.0 CEASE AND DESIST ORDER PURSUANT TO PRC SECTION 30810 (CCC-10-CD-07)

1.1 Pursuant to its authority under California Public Resources Code ("PRC") section 30810, the California Coastal Commission ("Commission") hereby authorizes and orders Stefan Hagopian and Kathryn Hagopian, all their successors, assigns, employees, agents, and contractors, and any persons acting in concert with any of the foregoing (hereinafter collectively referred to as "Respondents") to:

A. Cease and desist from maintaining or engaging in any development, as that term is defined in PRC section 30106, on the properties identified in Section 6 below ("subject properties"), unless authorized pursuant to the Coastal Act (PRC sections 30000-30900), which includes through these orders;

B. Remove, in accordance with the procedures set forth in Section 3, below, all development on the subject properties that required a permit but for which no permit was obtained, including but not limited to: the vineyards, the fill materials, the debris piles and the unpermitted structures except that the ground mounted solar array shall also be subject to Section 1.1.C.;

C. Submit, in accordance with the procedures set forth in Section 3.4 of these Orders, and within 15 days of the issuance of these Orders, written notice indicating whether Respondents wish to retain or remove the solar arrays. If Respondents indicate that they wish to retain the solar arrays, then they shall: (1) submit to the Commission's South Central Coast District Office, within 30 days of the issuance of these Orders, a completed coastal development permit application for after-the-fact approval of a solar array; (2) cooperate in providing all information necessary for the Commission to process the permit application; (3) not withdraw the application or otherwise delay timely review of the application; and (4) comply with any requirements of the permit if issued. If any of the foregoing four conditions is not met, or if the Commission denies any such after-the-fact CDP application submitted pursuant to this section, or if Respondents do not submit written notice of their wish to retain the solar arrays within 15 days of the issuance of these Orders in the first place, the solar array shall be treated as is the other unpermitted development subject to these Orders and, if necessary, all submittals under these Orders shall also address the solar array; and

D. Take all steps necessary to comply with the Coastal Act.

2.0 RESTORATION ORDER PURSUANT TO PRC SECTION 30811 (CCC-10-RO-06)

2.1 Pursuant to its authority under PRC section 30811, the Commission hereby orders and authorizes the Respondents to restore the subject properties as described in Section 3, below.

PROVISIONS COMMON TO BOTH ORDERS

3.0 TERMS AND CONDITIONS

3.1 Within 30 days of issuance of these Orders, Respondents shall submit, for the review and approval of the Commission's Executive Director ("Executive Director"), a Removal, Restoration, Revegetation, and Monitoring Plan ("Restoration Plan"). The Executive Director may require revisions to this and any other deliverables required under these Orders, and the Respondents shall revise and resubmit any such deliverables by the deadline(s) established in the Executive Director's letter responding to the deliverable. The Restoration Plan will set forth the measures Respondents propose to use to remove the unpermitted items subject to these orders, restore the pre-violation topography, restore and revegetate the natural chaparral ecosystem on the subject properties where the unpermitted activity occurred, and to ensure that such work has been successful. The Restoration Plan shall therefore contain the following components: (1) a Removal Plan; (2) a Remedial Grading Plan; (3) a Revegetation Plan; and (4) a Monitoring Plan. The Restoration Plan shall address all development specifically described in Section 7 (hereinafter referred to as the "unpermitted development"), with the possible exception of the solar array pursuant to Section 1.1.C, and include the following elements and requirements:

A. General Terms and Conditions

1. The Restoration Plan shall outline all proposed removal activities, in accordance with Section 3.1.B, below; all proposed remedial grading, in accordance with Section 3.1.C, below; and all proposed restoration of the chaparral habitat, including all proposed revegetation activities, in accordance with Section 3.1.D below, on the subject properties.

2. The Restoration Plan shall be prepared by a qualified restoration ecologist(s) or resource specialist(s) ("Specialist"). Prior to the preparation of the Restoration Plan, Respondents shall submit for the Executive Directors review and approval the qualifications of the proposed Specialist, including a description of the proposed Specialist's educational background, training and experience. To meet the requirements to be a qualified Specialist for this project, one must have experience successfully completing restoration or revegetation (using California native plant species) of chaparral habitats, preferably in the Santa Monica Mountains region of Los Angeles County.

3. The Restoration Plan shall include a schedule/timeline of activities covered in the Plan, the procedures to be used, and identification of the parties who will be conducting the restoration activities. The schedule/timeline of activities covered by the Restoration Plan shall be in accordance with the deadlines included in Sections 3.1.B.4, 3.1.C.3 and 3.1.D.8, for the Removal Plan, Remedial Grading Plan, the Revegetation Plan and the Monitoring Plan, respectively.

4. The Restoration Plan shall include a detailed description of all equipment to be used. All tools utilized shall be hand tools unless the Specialist demonstrates to the satisfaction of the Executive Director that mechanized equipment is needed and will not significantly impact resources protected under the Coastal Act, including, but not limited to: geological stability, integrity of landforms, freedom from erosion, and the existing native vegetation. If the use of mechanized equipment is proposed, the Restoration Plan shall include limitations on the hours of operation for all equipment and a contingency plan that addresses: 1) impacts from equipment use, including disruption of areas where revegetation will occur, and responses thereto; 2) potential spills of fuel or other hazardous releases that may result from the use of mechanized equipment and responses thereto; and 3) any water quality concerns. The Restoration Plan shall designate areas for staging of any construction equipment and materials, including receptacles and temporary stockpiles of graded materials, all of which shall be covered on a daily basis.

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

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

7. The Restoration Plan shall identify all areas on which the Restoration Plan is to be implemented, and upon which the restoration will occur ("Restoration Area"). The Restoration Area shall include all areas of the subject properties impacted by the unpermitted development, including but not limited to the areas upon which the grading, the vineyards, the structures, the debris piles, and all major vegetation removal has

occurred on the subject properties, with the possible exception of the solar array pursuant to Section 1.1.C, as well as any areas on which the staging of restoration-related equipment is proposed. The Restoration Plan shall also state that prior to the initiation of any restoration or removal activities, the boundaries of the Restoration Area shall be physically delineated in the field, using temporary measures such as fencing, stakes, colored flags, or colored tape. The Plan shall state further that all delineation materials shall be removed when no longer needed and verification of such removal shall be provided in the annual monitoring report that corresponds to the reporting period during which the removal occurred.

B. Removal Plan

1. Respondents shall submit a Removal Plan, prepared by a qualified Specialist, to remove all development that requires a coastal development permit but for which no permit was obtained, including but not limited to: the structures; the fill materials; the debris piles, and the vineyards constructed or placed on the subject properties, with the possible exception of the solar array, which shall be governed as set forth in Section 1.1.C.

2. The Removal Plan shall include a site plan showing the location and identity of all unpermitted development to be removed from the subject properties.

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

4. Respondents shall commence removal of the unpermitted development by commencing implementation of the Removal Plan no more than 15 days after approval of the Restoration Plan. Respondents shall complete removal of the unpermitted development within 30 days of commencing removal of the unpermitted development.

C. Remedial Grading Plan

1. The Remedial Grading Plan shall include sections showing original and finished grades, and quantitative breakdown of grading amounts (cut/fill), drawn to scale with contours that clearly illustrate, as accurately as possible, the original topography of the subject properties before and after the grading disturbance. The Remedial Grading Plan shall identify the source and date of the data that produced the pre- and post-disturbance topography. The Remedial Grading Plan shall also demonstrate how the proposed remedial grading will restore the subject properties to their original, pre-violation

topography. If the Specialist determines that alterations to the original topography are necessary to ensure a successful restoration of the chaparral habitat, the Remedial Grading Plan shall also include this proposed topography. The Remedial Grading Plan shall include a narrative report that explains the justification for needing to alter the topography from the original contours.

2. The Remedial Grading Plan will have as its goal to restore the properties to their original topography, while minimizing the size of the area and the intensity of the impacts associated with any proposed remedial grading. Other than those areas subject to revegetation activities, the areas of the site and surrounding areas currently undisturbed shall not be disturbed by activities related to this restoration project, unless such activities include the removal of non-native or invasive plant species, and/or the planting of native plant species within the subject properties.

3. Respondents shall commence restoration of the properties' topography by implementing the Remedial Grading Plan no more than 45 days after approval of the Restoration Plan. Respondents shall complete topographic restoration of the properties within 15 days of commencing remedial grading.

D. Revegetation Plan

1. Respondents shall submit a Revegetation Plan, prepared by a qualified Specialist, outlining the measures necessary to revegetate all areas of the subject properties from which native vegetation was disturbed or removed as a result of the unpermitted activities. The Revegetation Plan shall include detailed descriptions, including graphic representations, narrative reports, and photographic evidence as necessary, of the vegetation in the Restoration Area prior to any unpermitted activities undertaken on the subject properties, and the current state of the subject properties. The Revegetation Plan shall demonstrate that the areas impacted by the unpermitted development on the subject properties will be restored using plant species endemic to and appropriate for the subject site, including chaparral species.

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

3. The Revegetation Plan shall address all areas on the subject properties impacted by the unpermitted development listed in Section 7, with the possible exception of the solar array, pursuant to Section 1.1.C. The Revegetation Plan shall include a detailed description of the methods that shall be utilized to restore the habitats on the subject properties to the condition in which they existed prior to the unpermitted development. The Plan shall explain how the proposed approach will result in chaparral vegetation on the subject properties with a similar plant density, total cover and species composition to that typical of undisturbed chaparral communities in the surrounding area, within five years from the initiation of revegetation activities. The Revegetation Plan shall include the methods that will be used to aerate the soil compacted by the unpermitted development. This section shall include a detailed description of reference site(s) including rationale for selection, location, and species composition. The reference sites shall be located as close as possible to the restoration areas, shall be similar in all relevant respects, and shall provide the standard for measuring success of the restoration under these Orders.

4. The Revegetation Plan shall include a map showing the type, size, and location of all plant materials that will be planted in the restoration area; the location of all invasive and non-native plants to be removed from the restoration area; the topography of all other landscape features on the site; the location of reference sites; and the location of photograph sites that will provide reliable photographic evidence for annual monitoring reports, as described in Section 3.1.E.2.

5. The Revegetation Plan shall include a detailed explanation of the performance standards that will be utilized to determine the success of the restoration. The performance standards shall identify that "x" native species appropriate to the habitat should be present, each with at least "y" percent cover or with a density of at least "z" individuals per square meter. The description of restoration success analysis shall be described in sufficient detail to enable an independent specialist to duplicate it.

6. The Revegetation Plan shall include a schedule for installation of plants and removal of invasive and/or non-native plants. Respondents shall not employ invasive plant species, which could supplant native plant species in the Restoration Area. If the planting schedule requires planting to occur at a certain time of year beyond the deadlines set forth herein, the Executive Director may, at the written request of Respondents, extend the deadlines as set forth in Section 12 of these Orders in order to achieve optimal growth of the vegetation. The Revegetation Plan shall demonstrate that all non-native vegetation within the areas subject to revegetation, in addition to those areas that are identified as being subject to disturbance as a result of the unpermitted development removal, remedial grading and revegetation activities, will be eradicated prior to any remedial grading and revegetation activities on the subject properties. In addition, the Plan shall specify that non-native and invasive species removal shall occur on a monthly basis during the rainy season (i.e., January through April) for the duration of the restoration project, pursuant to Section 3.1.E.

7. The Revegetation Plan shall describe the proposed use of artificial inputs, such as irrigation, fertilizer or herbicides, including the full range of amounts of the inputs that may be utilized. The minimum amount necessary to support the establishment of the plantings for successful restoration shall be utilized. No permanent irrigation system is allowed in the Restoration Area. Temporary above ground irrigation to provide for the establishment of the plantings is allowed for a maximum of three years or until the revegetation has become established, whichever occurs first. If, after the three-year time limit, the vegetation planted pursuant to the Revegetation Plan has not become established, the Executive Director may, upon receipt of a written request from Respondents, allow for the continued use of the temporary irrigation system. The written request shall outline the need for and the duration of the proposed extension.

8. Respondents shall commence revegetation by implementing the Revegetation Plan no more than 30 days after approval of the Restoration Plan. Respondents shall complete revegetation of the properties within 30 days of implementation of the Revegetation Plan.

E. Monitoring Plan

1. Respondents shall submit a Monitoring Plan that describes the monitoring and maintenance methodology, including sampling procedures, sampling frequency, and contingency plans to address potential problems with restoration activities or unsuccessful restoration of the area. The Monitoring Plan shall specify that the restoration Specialist shall conduct at least four site visits annually for the duration of the monitoring period set forth in Section 3.1.E.2, at intervals specified in the Restoration Plan, for the purposes of inspecting and maintaining, at a minimum, the following: all erosion control measures; non-native and invasive species eradication; trash and debris removal; original and/or replacement plantings. Monitoring and maintenance activities shall be conducted in a way that does not impact the sensitive resources on the subject properties or on adjacent properties. Any such impacts shall be addressed in the appropriate annual report required pursuant to Section 3.1.E.2, and shall be remedied by the Respondents to ensure successful remediation.

2. Respondents shall submit, on an annual basis and during the same one-month period each year (no later than December 31st of the first year), for five years from the approval date of the Restoration Plan, according to the procedure set forth under Section 3.4, a written report, for the review and approval of the Executive Director, prepared by a qualified Specialist, evaluating compliance with the approved Restoration Plan. The annual reports shall include notes from the Specialist's periodic inspections and recommendations and requirements for additional restoration activities, as necessary, in order for the project to meet the objectives of the Restoration Plan. These reports shall also include photographs taken annually, at the same time of year, from the same pre-designated locations (as identified on the map submitted pursuant to Section 3.1.D.4) indicating the progress of recovery in the Restoration Area. The locations from which the

photographs are taken shall not change over the course of the monitoring period unless recommended changes are approved by the Executive Director, pursuant to Section 17 of these Orders.

3. If periodic inspections or the monitoring reports indicate that the restoration project or a portion thereof is not in conformance with the Restoration Plan or has failed to meet the goals and/or performance standards specified in the Plan, Respondents shall submit a revised or supplemental Restoration Plan for review and approval by the Executive Director. The revised Restoration Plan shall be prepared by a qualified Specialist, and shall specify measures to correct those portions of the remediation that have failed or are not in conformance with the original approved Plan. The Executive Director will then determine whether the revised or supplemental restoration plan must be processed as a CDP, a new Restoration Order, or a modification of these Orders. After the revised or supplemental restoration plan has been approved, these measures, and any subsequent measures necessary to carry out the original approved Plan, shall be undertaken by Respondents in coordination with the Executive Director until the goals of the original approved Restoration Plan have been met. Following completion of the revised Restoration Plan's implementation, the duration of the monitoring period, as set forth in Section 3.1.E.2, shall be extended for at least a period of time equal to that during which the project remained out of compliance, but in no case less than two reporting periods.

4. At the end of the five-year monitoring period (or other duration, if the monitoring period is extended pursuant to Section 3.1.E.3), Respondents shall submit, according to the procedure set forth under Section 3.4, a final detailed report prepared by a qualified Specialist for the review and approval of the Executive Director. If this report indicates that the restoration project has in part, or in whole, been unsuccessful, based on the requirements of the approved Restoration Plan, Respondents shall submit a revised or supplemental Restoration Plan, in accordance with the requirements of Section 3.1.E. of these Orders, and the monitoring program shall be revised accordingly.

3.2 Upon approval of the Restoration Plan (including the Removal, Remedial Grading, Revegetation, and Monitoring Plans) by the Executive Director, Respondents shall fully implement each phase of the Restoration Plan consistent with all of its terms, and the terms set forth herein. Respondents shall complete implementation of each phase of the Restoration Plan within the schedule specified therein, and by the deadlines included in Sections 3.1.B.4, 3.1.C.3 and 3.1.D.8 of these orders. At a minimum, Respondents shall complete all work described in the Restoration Plan no later than 75 days after the Restoration Plan is approved. The Executive Director may extend this deadline or modify the approved schedule for good cause pursuant to Section 12 of these Orders.

3.3 Within 15 days of the completion of the work described in the Removal Plan (Section 3.1.B), Remedial Grading Plan (Section 3.1.C), and Revegetation Plan (Section 3.1.D), Respondents shall submit, according to the procedure set forth under Section 3.4, a

written report, prepared by a qualified Specialist, for the review and approval of the Executive Director, documenting all restoration work performed on the subject properties. This report shall include a summary of dates when work was performed and photographs taken from the pre-designated locations (as identified on the map submitted pursuant to Section 3.1.D.4) documenting implementation of the respective components of the Restoration Plan, as well as photographs of the subject properties before the work commenced and after it was completed.

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

California Coastal Commission
Attn: Elijah Davidian
45 Fremont Street, Suite 2000
San Francisco, CA 94105

With a copy sent to:
California Coastal Commission
Attn: Pat Veesart
89 South California Street, Suite 200
Ventura, CA 93001

3.5 All work to be performed under these Orders shall be done in compliance with all applicable laws.

REVISIONS OF DELIVERABLES

4.1 The Executive Director may require revisions to deliverables required under these Orders, and the Respondents shall revise any such deliverables consistent with the Executive Director's specifications, and resubmit them for further review and approval by the Executive Director, by the deadline established by the modification request from the Executive Director. The Executive Director may extend the deadline for submittals upon a written request and a showing of good cause, pursuant to Section 12 of these Orders.

5.0 PERSONS SUBJECT TO THE ORDERS

5.1 Stefan Hagopian and Kathryn Hagopian, all their successors, assigns, employees, agents, and contractors, and any persons acting in concert with any of the foregoing are jointly and severally subject to all the requirements of these Orders.

6.0 IDENTIFICATION OF THE PROPERTIES

6.1 The properties that are the subject of these Orders are described as follows:
1732 and 1728 Topanga Skyline Drive, Topanga, Los Angeles County; Assessor Parcel Numbers 4438-016-024 and 4438-016-007.

7.0 DESCRIPTION OF ALLEGED COASTAL ACT VIOLATION

7.1 The development that is the subject matter of these Orders includes all development on the subject properties that required a coastal development permit but for which no coastal development permit was obtained, including but not limited to the following: the unpermitted grading performed, the vineyards established, the unpermitted structures placed or constructed on the subject properties, the debris piles, the tennis court, the removal of major vegetation from environmentally sensitive habitat areas (ESHA); and the ground mounted photovoltaic solar array.

8.0 COMMISSION JURISDICTION

8.1 The Commission has jurisdiction over resolution of this alleged Coastal Act violation pursuant to Public Resources Code Sections 30810 and 30811.

9.0 EFFECTIVE DATE AND TERMS OF THE ORDERS

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

10.0 FINDINGS

10.1 These Orders are issued on the basis of the findings adopted by the Commission, as set forth in the document entitled STAFF REPORT AND FINDINGS FOR ISSUANCE OF CEASE AND DESIST ORDERS AND HEARING ON NOTICE OF VIOLATION ACTION. The activities authorized and required in these Orders are consistent with the resource protection policies set forth in Chapter 3 of the Coastal Act. The Commission has authorized the activities required in these Orders as being consistent with the resource protection policies set forth in Chapter 3 of the Coastal Act.

11.0 COMPLIANCE OBLIGATION

11.1 Strict compliance with these Orders by all parties subject hereto is required. Failure to comply with any term or condition of these Orders, including any deadline contained herein (including as amended by the Executive Director under Section 12), 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. If Respondents do not comply with the terms of these Orders, nothing in these Orders shall be construed as prohibiting, altering, or in any way limiting the ability of the Commission to seek any other remedies available, including the imposition of civil penalties and other remedies pursuant to Public Resources Code Sections 30805, 30820, 30821.6, and 30822 as a result of the lack of compliance with the Orders and for the underlying Coastal Act violations as described herein.

12.0 DEADLINES

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

13.0 SITE ACCESS

13.1 Respondents shall provide access to the subject properties at all reasonable times to Commission staff and any agency having jurisdiction over the work being performed under these Orders. Commission staff shall provide 24-hour notice before entering the properties. Nothing in these Orders is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Commission staff may enter and move freely about the portions of the subject properties on which the violations are located, and on adjacent areas of the properties to view the areas where development is being performed pursuant to the requirements of the Orders for purposes including, but not limited to, ensuring compliance with the terms of these Orders.

14.0 GOVERNMENT LIABILITIES

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

15.0 APPEALS AND STAY RESOLUTION

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

16.0 SUCCESSORS AND ASSIGNS

16.1 These Orders shall run with the land binding Respondents and all successors in interest, heirs, assigns, and future owners of the subject properties. Respondents shall provide notice to all successors, assigns, and potential purchasers of the properties of any remaining obligations under these Orders.

17.0 MODIFICATIONS AND AMENDMENTS

17.1 Except as provided in Section 12, and for minor, immaterial matters, these Orders may be amended or modified only in accordance with the standards and procedures set forth in Section 13188(b) of the Commission's administrative regulations.

18.0 GOVERNMENTAL JURISDICTION

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

19.0 LIMITATION OF AUTHORITY

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

Executed in _____ on behalf of the California Coastal Commission:

_____ _____
Peter Douglas, Executive Director Date

CEASE AND DESIST AND RESTORATION ORDERS (CCC-10-CD-08 AND CCC-10-RO-07)

1.0 CEASE AND DESIST ORDER PURSUANT TO PRC SECTION 30810 (CCC-10-CD-08)

1.1 Pursuant to its authority under California Public Resources Code ("PRC") section 30810, the California Coastal Commission ("Commission") hereby authorizes and orders Stefan Hagopian, Kathryn Hagopian and Rahel Hagopian, all their successors, assigns, employees, agents, and contractors, and any persons acting in concert with any of the foregoing (hereinafter collectively referred to as "Respondents") to: (A) cease and desist from maintaining or engaging in any development, as that term is defined in PRC section 30106, on the property identified in Section 6 below ("subject property"), unless authorized pursuant to the Coastal Act (PRC sections 30000-30900), which includes through these orders; (B) remove, in accordance with the procedures set forth in Section 3, below, all development on the subject property that required a coastal development permit but for which no permit was obtained, including but not limited to all of the vineyards, all fill materials, and all of the structures; and (C) take all steps necessary to comply with the Coastal Act.

2.0 RESTORATION ORDER PURSUANT TO PRC SECTION 30811 (CCC-10-RO-07)

2.1 Pursuant to its authority under PRC section 30811, the Commission hereby orders and authorizes the Respondents to restore the subject property as described in Section 3, below.

PROVISIONS COMMON TO BOTH ORDERS

3.0 TERMS AND CONDITIONS

3.1 Within 30 days of issuance of these Orders, Respondents shall submit, for the review and approval of the Commission's Executive Director ("Executive Director"), a Removal, Restoration, Revegetation, and Monitoring Plan ("Restoration Plan"). The Executive Director may require revisions to this and any other deliverables required under these Orders, and the Respondents shall revise and resubmit any such deliverables by the deadline(s) established in the Executive Director's letter responding to the deliverable. The Restoration Plan will set forth the measures Respondents propose to use to remove the unpermitted items subject to these orders, restore the pre-violation topography, restore and revegetate the natural chaparral ecosystem on the subject property where the unpermitted activity occurred, and to ensure that such work has been successful. The

Restoration Plan shall therefore contain the following components: (1) a Removal Plan; (2) a Remedial Grading Plan; (3) a Revegetation Plan; and (4) a Monitoring Plan. The Restoration Plan shall address all development specifically described in Section 7 (hereinafter referred to as the "unpermitted development"), and include the following elements and requirements:

A. General Terms and Conditions

1. The Restoration Plan shall outline all proposed removal activities, in accordance with Section 3.1.B, below; all proposed remedial grading, in accordance with Section 3.1.C, below; and all proposed restoration of the chaparral habitat, including all proposed revegetation activities, in accordance with Section 3.1.D below, on the subject property.

2. The Restoration Plan shall be prepared by a qualified restoration ecologist(s) or resource specialist(s) ("Specialist"). Prior to the preparation of the Restoration Plan, Respondents shall submit for the Executive Directors review and approval the qualifications of the proposed Specialist, including a description of the proposed Specialist's educational background, training and experience. To meet the requirements to be a qualified Specialist for this project, one must have experience successfully completing restoration or revegetation (using California native plant species) of chaparral habitats, preferably in the Santa Monica Mountains region of Los Angeles County.

3. The Restoration Plan shall include a schedule/timeline of activities covered in the Plan, the procedures to be used, and identification of the parties who will be conducting the restoration activities. The schedule/timeline of activities covered by the Restoration Plan shall be in accordance with the deadlines included in Sections 3.1.B.4, 3.1.C.3 and 3.1.D.8, for the Removal Plan, Remedial Grading Plan, the Revegetation Plan and the Monitoring Plan, respectively.

4. The Restoration Plan shall include a detailed description of all equipment to be used. All tools utilized shall be hand tools unless the Specialist demonstrates to the satisfaction of the Executive Director that mechanized equipment is needed and will not significantly impact resources protected under the Coastal Act, including, but not limited to: geological stability, integrity of landforms, freedom from erosion, and the existing native vegetation. If the use of mechanized equipment is proposed, the Restoration Plan shall include limitations on the hours of operation for all equipment and a contingency plan that addresses: 1) impacts from equipment use, including disruption of areas where revegetation will occur, and responses thereto; 2) potential spills of fuel or other hazardous releases that may result from the use of mechanized equipment and responses thereto; and 3) any water quality concerns. The Restoration Plan shall designate areas for staging of any construction equipment and materials, including receptacles and temporary stockpiles of graded materials, all of which shall be covered on a daily basis.

5. The Restoration Plan shall identify the location of the disposal site(s) for the disposal of all materials removed from the site and all waste generated during restoration activities

pursuant to these Orders. If a disposal site is located in the Coastal Zone and is not an existing sanitary landfill, a coastal development permit is required for such disposal. All hazardous waste must be disposed of at a suitable licensed disposal facility.

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

7. The Restoration Plan shall identify all areas on which the Restoration Plan is to be implemented, and upon which the restoration will occur ("Restoration Area"). The Restoration Area shall include all areas of the subject property impacted by the unpermitted development, including the areas upon which all grading, all vineyards, all structures, and all major vegetation removal has occurred, as well as any areas on which the staging of restoration-related equipment is proposed. The Restoration Plan shall also state that prior to the initiation of any restoration or removal activities, the boundaries of the Restoration Area shall be physically delineated in the field, using temporary measures such as fencing, stakes, colored flags, or colored tape. The Plan shall state further that all delineation materials shall be removed when no longer needed and verification of such removal shall be provided in the annual monitoring report that corresponds to the reporting period during which the removal occurred.

B. Removal Plan

1. Respondents shall submit a Removal Plan, prepared by a qualified Specialist, to remove all development that requires a coastal development permit but for which no permit was obtained, including but not limited to: all structures; all fill materials; and all vineyards constructed or placed on the subject property.

2. The Removal Plan shall include a site plan showing the location and identity of all unpermitted development to be removed from the subject property.

3. Removal activities shall not disturb areas outside the Restoration Area. Measures for the restoration of any area disturbed by the removal activities shall be included within the Revegetation Plan. These measures shall include the restoration of the areas from which

the unpermitted development was removed, and any areas disturbed by those removal activities.

4. Respondents shall commence removal of the unpermitted development by commencing implementation of the Removal Plan no more than 15 days after approval of the Restoration Plan. Respondents shall complete removal of the unpermitted development within 30 days of commencing removal of the unpermitted development.

C. Remedial Grading Plan

1. The Remedial Grading Plan shall include sections showing original and finished grades, and quantitative breakdown of grading amounts (cut/fill), drawn to scale with contours that clearly illustrate, as accurately as possible, the original topography of the subject property before and after the grading disturbance. The Remedial Grading Plan shall identify the source and date of the data that produced the pre- and post-disturbance topography. The Remedial Grading Plan shall also demonstrate how the proposed remedial grading will restore the subject property to its original, pre-violation topography. If the Specialist determines that alterations to the original topography are necessary to ensure a successful restoration of the chaparral habitat, the Remedial Grading Plan shall also include this proposed topography. The Remedial Grading Plan shall include a narrative report that explains the justification for needing to alter the topography from the original contours.

2. The Remedial Grading Plan will have as its goal to restore the property to its original topography, while minimizing the size of the area and the intensity of the impacts associated with any proposed remedial grading. Other than those areas subject to revegetation activities, the areas of the site and surrounding areas currently undisturbed shall not be disturbed by activities related to this restoration project, unless such activities include the removal of non-native or invasive plant species, and/or the planting of native plant species within the subject property.

3. Respondents shall commence restoration of the property's topography by implementing the Remedial Grading Plan no more than 45 days after approval of the Restoration Plan. Respondents shall complete topographic restoration of the property within 15 days of commencing remedial grading.

D. Revegetation Plan

1. Respondents shall submit a Revegetation Plan, prepared by a qualified Specialist, outlining the measures necessary to revegetate all areas of the subject property from which native vegetation was disturbed or removed as a result of the unpermitted activities. The Revegetation Plan shall include detailed descriptions, including graphic representations, narrative reports, and photographic evidence as necessary, of the

vegetation in the Restoration Area prior to any unpermitted activities undertaken on the subject property, and the current state of the subject property. The Revegetation Plan shall demonstrate that the areas impacted by the unpermitted development on the subject property will be restored using plant species endemic to and appropriate for the subject site, including chaparral species.

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

3. The Revegetation Plan shall address all areas on the subject property impacted by the unpermitted development listed in Section 7. The Revegetation Plan shall include a detailed description of the methods that shall be utilized to restore the habitats on the subject property to the condition in which they existed prior to the unpermitted development. The Plan shall explain how the proposed approach will result in chaparral vegetation on the subject property with a similar plant density, total cover and species composition to that typical of undisturbed chaparral communities in the surrounding area, within five years from the initiation of revegetation activities. The Revegetation Plan shall include the methods that will be used to aerate the soil compacted by the unpermitted development. This section shall include a detailed description of reference site(s) including rationale for selection, location, and species composition. The reference sites shall be located as close as possible to the restoration areas, shall be similar in all relevant respects, and shall provide the standard for measuring success of the restoration under these Orders.

4. The Revegetation Plan shall include a map showing the type, size, and location of all plant materials that will be planted in the restoration area; the location of all invasive and non-native plants to be removed from the restoration area; the topography of all other landscape features on the site; the location of reference sites; and the location of photograph sites that will provide reliable photographic evidence for annual monitoring reports, as described in Section 3.1.E.2.

5. The Revegetation Plan shall include a detailed explanation of the performance standards that will be utilized to determine the success of the restoration. The performance standards shall identify that "x" native species appropriate to the habitat should be present, each with at least "y" percent cover or with a density of at least "z"

individuals per square meter. The description of restoration success analysis shall be described in sufficient detail to enable an independent specialist to duplicate it.

6. The Revegetation Plan shall include a schedule for installation of plants and removal of invasive and/or non-native plants. Respondents shall not employ invasive plant species, which could supplant native plant species in the Restoration Area. If the planting schedule requires planting to occur at a certain time of year beyond the deadlines set forth herein, the Executive Director may, at the written request of Respondents, extend the deadlines as set forth in Section 12 of these Orders in order to achieve optimal growth of the vegetation. The Revegetation Plan shall demonstrate that all non-native vegetation within the areas subject to revegetation, in addition to those areas that are identified as being subject to disturbance as a result of the unpermitted development removal, remedial grading and revegetation activities, will be eradicated prior to any remedial grading and revegetation activities on the subject property. In addition, the Plan shall specify that non-native and invasive species removal shall occur on a monthly basis during the rainy season (i.e., January through April) for the duration of the restoration project, pursuant to Section 3.1.E.

7. The Revegetation Plan shall describe the proposed use of artificial inputs, such as irrigation, fertilizer or herbicides, including the full range of amounts of the inputs that may be utilized. The minimum amount necessary to support the establishment of the plantings for successful restoration shall be utilized. No permanent irrigation system is allowed in the Restoration Area. Temporary above ground irrigation to provide for the establishment of the plantings is allowed for a maximum of three years or until the revegetation has become established, whichever occurs first. If, after the three-year time limit, the vegetation planted pursuant to the Revegetation Plan has not become established, the Executive Director may, upon receipt of a written request from Respondents, allow for the continued use of the temporary irrigation system. The written request shall outline the need for and the duration of the proposed extension.

8. Respondents shall commence revegetation by implementing the Revegetation Plan no more than 30 days after approval of the Restoration Plan. Respondents shall complete revegetation of the property within 30 days of implementation of the Revegetation Plan.

E. Monitoring Plan

1. Respondents shall submit a Monitoring Plan that describes the monitoring and maintenance methodology, including sampling procedures, sampling frequency, and contingency plans to address potential problems with restoration activities or unsuccessful restoration of the area. The Monitoring Plan shall specify that the restoration Specialist shall conduct at least four site visits annually for the duration of the monitoring period set forth in Section 3.1.E.2, at intervals specified in the Restoration Plan, for the purposes of inspecting and maintaining, at a minimum, the following: all erosion control measures; non-native and invasive species eradication; trash and debris

removal; original and/or replacement plantings. Monitoring and maintenance activities shall be conducted in a way that does not impact the sensitive resources on the subject property or on adjacent properties. Any such impacts shall be addressed in the appropriate annual report required pursuant to Section 3.1.E.2, and shall be remedied by the Respondents to ensure successful remediation.

2. Respondents shall submit, on an annual basis and during the same one-month period each year (no later than December 31st of the first year), for five years from the approval date of the Restoration Plan, according to the procedure set forth under Section 3.4, a written report, for the review and approval of the Executive Director, prepared by a qualified Specialist, evaluating compliance with the approved Restoration Plan. The annual reports shall include notes from the Specialist's periodic inspections and recommendations and requirements for additional restoration activities, as necessary, in order for the project to meet the objectives of the Restoration Plan. These reports shall also include photographs taken annually, at the same time of year, from the same pre-designated locations (as identified on the map submitted pursuant to Section 3.1.D.4) indicating the progress of recovery in the Restoration Area. The locations from which the photographs are taken shall not change over the course of the monitoring period unless recommended changes are approved by the Executive Director, pursuant to Section 17 of these Orders.

3. If periodic inspections or the monitoring reports indicate that the restoration project or a portion thereof is not in conformance with the Restoration Plan or has failed to meet the goals and/or performance standards specified in the Plan, Respondents shall submit a revised or supplemental Restoration Plan for review and approval by the Executive Director. The revised Restoration Plan shall be prepared by a qualified Specialist, and shall specify measures to correct those portions of the remediation that have failed or are not in conformance with the original approved Plan. The Executive Director will then determine whether the revised or supplemental restoration plan must be processed as a CDP, a new Restoration Order, or a modification of these Orders. After the revised or supplemental restoration plan has been approved, these measures, and any subsequent measures necessary to carry out the original approved Plan, shall be undertaken by Respondents in coordination with the Executive Director until the goals of the original approved Restoration Plan have been met. Following completion of the revised Restoration Plan's implementation, the duration of the monitoring period, as set forth in Section 3.1.E.2, shall be extended for at least a period of time equal to that during which the project remained out of compliance, but in no case less than two reporting periods.

4. At the end of the five-year monitoring period (or other duration, if the monitoring period is extended pursuant to Section 3.1.E.3), Respondents shall submit, according to the procedure set forth under Section 3.4, a final detailed report prepared by a qualified Specialist for the review and approval of the Executive Director. If this report indicates that the restoration project has in part, or in whole, been unsuccessful, based on the requirements of the approved Restoration Plan, Respondents shall submit a revised or

supplemental Restoration Plan, in accordance with the requirements of Section 3.1.E. of these Orders, and the monitoring program shall be revised accordingly.

3.2 Upon approval of the Restoration Plan (including the Removal, Remedial Grading, Revegetation, and Monitoring Plans) by the Executive Director, Respondents shall fully implement each phase of the Restoration Plan consistent with all of its terms, and the terms set forth herein. Respondents shall complete implementation of each phase of the Restoration Plan within the schedule specified therein, and by the deadlines included in Sections 3.1.B.4, 3.1.C.3 and 3.1.D.8 of these orders. At a minimum, Respondents shall complete all work described in the Restoration Plan no later than 75 days after the Restoration Plan is approved. The Executive Director may extend this deadline or modify the approved schedule for good cause pursuant to Section 12 of these Orders.

3.3 Within 15 days of the completion of the work described in the Removal Plan (Section 3.1.B), Remedial Grading Plan (Section 3.1.C), and Revegetation Plan (Section 3.1.D), Respondents shall submit, according to the procedure set forth under Section 3.4, a written report, prepared by a qualified Specialist, for the review and approval of the Executive Director, documenting all restoration work performed on the subject property. This report shall include a summary of dates when work was performed and photographs taken from the pre-designated locations (as identified on the map submitted pursuant to Section 3.1.D.4) documenting implementation of the respective components of the Restoration Plan, as well as photographs of the subject property before the work commenced and after it was completed.

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

California Coastal Commission
Attn: Elijah Davidian
45 Fremont Street, Suite 2000
San Francisco, CA 94105

With a copy sent to:
California Coastal Commission
Attn: Pat Veesart
89 South California Street, Suite 200
Ventura, CA 93001

3.5 All work to be performed under these Orders shall be done in compliance with all applicable laws.

4.0 REVISIONS OF DELIVERABLES

4.1 The Executive Director may require revisions to deliverables required under these Orders, and the Respondents shall revise any such deliverables consistent with the Executive Director's specifications, and resubmit them for further review and

approval by the Executive Director, by the deadline established by the modification request from the Executive Director. The Executive Director may extend the deadline for submittals upon a written request and a showing of good cause, pursuant to Section 12 of these Orders.

5.0 PERSONS SUBJECT TO THE ORDERS

5.1 Stefan Hagopian, Kathryn Hagopian and Rahel Hagopian, all their successors, assigns, employees, agents, and contractors, and any persons acting in concert with any of the foregoing are jointly and severally subject to all the requirements of these Orders.

6.0 IDENTIFICATION OF THE PROPERTY

6.1 The property that is the subject of these Orders is described as follows:
1726 Topanga Skyline Drive, Topanga, Los Angeles County; Assessor Parcel Number 4438-036-006.

7.0 DESCRIPTION OF ALLEGED COASTAL ACT VIOLATION

7.1 The development that is the subject matter of these Orders includes all development on the subject properties that required a coastal development permit but for which no coastal development permit was obtained, including but not limited to the following: all of the grading performed, the vineyards, the structures placed or constructed on the subject property, and the removal of major vegetation in environmentally sensitive habitat areas (ESHA).

8.0 COMMISSION JURISDICTION

8.1 The Commission has jurisdiction over resolution of this alleged Coastal Act violation pursuant to Public Resources Code Sections 30810 and 30811.

9.0 EFFECTIVE DATE AND TERMS OF THE ORDERS

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

10.0 FINDINGS

10.1 These Orders are issued on the basis of the findings adopted by the Commission, as set forth in the document entitled FINDINGS FOR ISSUANCE OF CEASE AND DESIST ORDERS AND HEARING ON NOTICE OF VIOLATION ACTION. The activities authorized and required in these Orders are consistent with the resource protection policies set forth in Chapter 3 of the Coastal Act. The Commission has authorized the activities required in these Orders as being consistent with the resource protection policies set forth in Chapter 3 of the Coastal Act.

11.0 COMPLIANCE OBLIGATION

11.1 Strict compliance with these Orders by all parties subject hereto is required. Failure to comply with any term or condition of these Orders, including any deadline contained herein (including as amended by the Executive Director under Section 12), 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. If Respondents do not comply with the terms of these Orders, nothing in these Orders shall be construed as prohibiting, altering, or in any way limiting the ability of the Commission to seek any other remedies available, including the imposition of civil penalties and other remedies pursuant to Public Resources Code Sections 30805, 30820, 30821.6, and 30822 as a result of the lack of compliance with the Orders and for the underlying Coastal Act violations as described herein.

12.0 DEADLINES

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

13.0 SITE ACCESS

13.1 Respondents shall provide access to the subject property at all reasonable times to Commission staff and any agency having jurisdiction over the work being performed under these Orders. Commission staff shall provide 24-hour notice before entering the property. Nothing in these Orders is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The

Commission staff may enter and move freely about the portions of the subject property on which the violations are located, and on adjacent areas of the property to view the areas where development is being performed pursuant to the requirements of the Orders for purposes including, but not limited to, ensuring compliance with the terms of these Orders.

14.0 GOVERNMENT LIABILITIES

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

15.0 APPEALS AND STAY RESOLUTION

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

16.0 SUCCESSORS AND ASSIGNS

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

17.0 MODIFICATIONS AND AMENDMENTS

17.1 Except as provided in Section 12, and for minor, immaterial matters, these Orders may be amended or modified only in accordance with the standards and procedures set forth in Section 13188(b) of the Commission's administrative regulations.

18.0 GOVERNMENTAL JURISDICTION

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

19.0 LIMITATION OF AUTHORITY

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

Executed in _____ on behalf of the California Coastal Commission:

_____ _____

Peter Douglas, Executive Director Date