Attachment 1: Exhibits To The Save Open Space (SOS) Revocation Request

Exhibits 1 – 9

Click This Link For Exhibits 10-36

NOTE: Due to the large file size, the exhibits submitted by Save Open Space are provided as a separate attachment to the report. Attachments 1 is not included as part of the printed document but is available as part of the digital version of this staff report on the California Coastal Commission's website at www.coastal.ca.gov under the Commission's April 2011 Agenda, Item 16a.

RECEIVED
DEC 0 8 2008
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

DEPARTMENT OF REGIONAL PLANNING

CASE NUMBER: 48295

This plot plan is APPROVED subject to the requirements of Los Angeles County Code and to the conditions noted herein. It is applicable only as specifically noted and must be used prior to any change in ordinance requirements or within two years. Such approval shall not be construed to permit the violation of any provision of any County Ordinance or State law.

Signature: [signature]

Date: 2/3/04

APPROVAL IN CONCEPT

SIG. [signature]

DATE 2-3-04

PLAN CHECK NO. 48295

Per sec. 3000 et seq of the Public Resources Code and Title 14 of the Administrative Code, State of California

THIS IS NOT A PERMIT

and

is subject to any conditions listed below

PP48295 (Approval in Concept)

- Plot plan 48295 is approved for modifications to an existing equestrian facility as shown.
- The Department of Public Works shall address the hydrological issues on the site and correct the problems contributing to erosion and undercutting of structures.
- Exterior night lighting shall be directed downward, of low intensity, at low height and shielded to prevent illumination of surrounding properties and undeveloped areas; security lighting, if any is used, shall be on a motion detector.
- For private equestrian use, not commercial use. Not approved for boarding of horses.

RECEIVED
OCT 2 6 2004

DIAMOND WEST
ENGINEERING • LAND PL
4764 PARK GR
CALABASAS, C
Phone : (818) 222-34

CHECKED:	A.S.I.	DATE:
SUPERVISED:	I.S.A.	
PROJ. ENGINEER:	I.S.A.	
DATE:	2-9-99	
DRAWING SCALE:	1"=100'	
DWEI JOB NUMBER:	6000-034	

SHEET NO

DIAMOND WES

PROJ. ENGINEER:	I.S.A.
DATE	I.S.A.

NO

T-858 P.002/004 F-244

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES
821 KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET / LOS ANGELES, CALIFORNIA 90012
PHONE (213) 974-3333 / FAX (213) 625-7360
zev@bos.lacounty.gov / http://zev.lacounty.gov

ZEV YAROSLAVSKY
SUPERVISOR, THIRD DISTRICT

June 9, 2008

California Coastal Commission
South Central Coast Area Office
89 South California St., Suite 200
Ventura, CA 93001
Via FAX (805) 641-1732

Re: Agenda Item W 18a: Findings for Coastal Commission Permit 4-06-163 (Malibu Valley Farms) – originally approved July 9, 2007.

Dear Coastal Commissioners:

On July 9, 2007, your staff presented clear and convincing evidence that illustrated precisely why the Malibu Valley Farms Coastal Development Permit should be denied by your honorable body. While I understand that the Commission has already indicated its intent to approve this permit, as the local elected official representing the community in which the facility is located, I want to make clear my absolute opposition to the Commission's approval of this Permit. Additionally, I strenuously object to the fact that the Commission decided to schedule this action at a location that makes it next to impossible for those most harmed by the Commission's action to testify in person at the time you will make your final decision on this matter.

Beyond these larger objections, the revised findings utterly fail to justify the Commission's action to approve the Malibu Valley Farms Coastal Development Permit given the facility's obvious environmental flaws. As a result of this failure, the Commission's action threatens to set a dangerous precedent that this Commission will randomly set aside critical environmental and water quality protection measures. Such an action would not only damage irreplaceable natural resources, but it would also inevitably lead to frustration on the part of well-meaning applicants and responsible equestrians who are simply trying to comply with the Coastal Commission's regulations. This Commission must not set such a precedent. You should therefore, at minimum, clarify the findings to explain whether Malibu Valley Farms represents a unique case that does not set a precedent for how the Commission plans to protect the rest of the Coastal Zone's environmental resources in the future or whether this is a new policy direction that the public needs to be aware of.

Second, the Revised Findings incorrectly cite the County Environmental Review Board's (ERB) decision of January 27, 2003 as justification for the Commission's violation of the Coastal Act and the policies contained within the certified Malibu-Santa Monica Mountains Land Use Plan (LUP) Specifically, as described on Page 21 of the Revised Findings, the ERB reviewed an application "to relocate and remove various structures associated with an ***existing (emphasis added)*** equestrian facility." Because the ERB was asked to consider only a much smaller

subset of the overall project that is under consideration today, the ERB's 2003 approval does not constitute the legal justification necessary to waive the standards contained in Table 1 of the LUP. The Revised Findings' claims to the contrary cannot therefore be justified. Moreover, the ERB's action occurred more than three years before the Commission determined that Malibu Valley Farms does not have vested rights under the Coastal Act, as the applicant implied in his application to the ERB. In light of these two factual errors, the Commission cannot justify approving this Coastal Development Permit. You should therefore reject the Revised Findings and instead direct the applicant to re-apply to the ERB with a more accurate and complete project description.

Third, in direct violation of CEQA, the Revised Findings fail to provide adequate justification as to why the draft permit conditions do not require the applicant to utilize environmentally preferable alternatives and additional mitigation measures that the Commission's original staff report identified as feasible. To be clear, the Revised Findings' mere implication that some of the following mitigation measures could inconvenience the applicant does not constitute a CEQA-mandated finding of infeasibility, and does not justify the Commission's failure to impose these mitigation measures. Moreover, the Revised Finding's unsupported assertion that some of the alternative mitigation measures currently proposed by the applicant are equivalent to the mitigation measures originally proposed by staff is directly contradicted by the vast amount of evidence contained in the original staff report.

In particular:

- The original staff report noted that bridge crossings could be used instead of the at-grade in-stream crossings that are currently being proposed. This feasible mitigation measure is not being required by the current set of draft conditions and constitutes another violation of the certified LUP (Policy 78).
- The original staff report noted that many of the facilities could be relocated further from Stokes Creek in order to minimize the water quality and riparian habitat damage that this facility currently causes. This feasible mitigation measure is not being required by the current set of draft conditions.
- The original staff report noted as a general matter that the impacts of equestrian facilities can be mitigated through reduced intensity of use. Not only does the current set of draft conditions fail to require such a mitigation measure, this permit fails to set any limit on the number of horses allowed on this facility. In fact, it only offers a rough estimate of the number of horses that might be kept at the site based on a Draft Environmental Impact Report for a different project (Malibu Valley Inn) that was never certified and not subjected to public scrutiny.
- The original staff report noted that bioengineering could be used as an environmentally preferable alternative to rip-rap where it is necessary to stabilize a streambank. This feasible mitigation measure is also not being required by the current set of draft conditions.

In closing, the Revised Findings and conditions as currently drafted could lead many people to the false conclusion that equestrian facilities, recreational uses, and protecting the

environmental are mutually exclusive goals. On the contrary, the Commission should reject the Revised Findings and conditions and instead insist that Malibu Valley Farms be redesigned so that it demonstrates that public recreation and protecting the environment can and should be mutually achievable priorities in the Santa Monica Mountains National Recreation Area. Importantly, the factual errors and policy goals listed above provide ample reason for the Commission to reopen the hearing on this Coastal Development Permit and take a second, closer look at the facts surrounding this important decision.

I strongly urge you to reject these Revised Findings and take that second look.

Sincerely,

ZEV YAROSLAVSKY
Supervisor, Third District

ZY: bsl

STATE OF CALIFORNIA

COASTAL COMMISSION

ORIGINAL

MALIBU VALLEY FARMS, INC. SANTA MONICA MOUNTAINS COUNTY OF LOS ANGELES	Application No. 4-06-163

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Monday, July 9, 2007
Agenda Item No. 13.e.

Embassy Suites Hotel
333 Madonna Road
San Luis Opbispo, California

RECEIVED
FEB 27 2008
CALIFORNIA
SOU

Exhibit 35
4-06-163
Transcript from 7/9/07
Commission Hearing

39672 WHISPERING WAY
OAKHURST, CA 93644

PRISCILLA PIKE
Court Reporting Services
mtnpris@sti.net

APPEARANCES

COMMISSIONERS

Patrick Kruer, Chair
Bonnie Neely, Vice Chair
Khatchik Achadjian
Steve Blank
William A. Burke
Lorena Gonzalez, Alternate
Steve Kinsey, Alternate
Suja Lowenthal, Alternate
Dave Potter
Dan B. Secord, Alternate
Mary Shallenberger
Sara Wan

Brian Baird, Resources Agency

STAFF

Peter Douglas, Executive Director
Chris Pederson, Staff Counsel
Jack Ainsworth, District Director
Jamee Jordan Patterson, Deputy Attorney General

-o0o-

INDEX TO SPEAKERS

STAFF **Page Nos.**

District Director Ainsworth....6,94,101,105, 108,110,113,122,124,128,131
Executive Director Douglas....22,96,99,110, 115,124,128,130,134

PUBLIC COMMENTS

Don Schmitz, Applicant.....28,92,105,109,111,122,133
Joe Decrenerus, Applicant..... 39
Mary Hubbard, SOS, Preserve Calabassas et al..... 41
Sean Doherty, Thoroughbred Owners of CA..... 53
Laura Blank, Los Angeles County Farm Bureau..... 55
Mayish Akhvar, Compton Jr. Posse..... 56
Kathy Clark..... 57
Deborah Collins, Arabian Horse Association..... 58
Ruth Gerson, Recreation & Equestrian Coalition... 58
Jeanne Wallace, Equestrian Trails, Inc..... 59
Ralph Holman..... 61
Elizabeth Schumann..... 62
Michael Resnick, CA Thoroughbred Breeders Assn... 62
Richard Stevens, CA Veterinarian Medical Assn.... 64
Don Wallace, Local Resident..... 65
Christine Baumgartner, Local Resident..... 66
Trina Lemus, Applicant..... 67
Juana Cardiel, Applicant..... 67
Mark Cardiel, Appliant..... 68
Angelica Cardiel, Applicant..... 69
Rochelle Dick, Equestrian Trails, Inc..... 70
Stephanie Green, Horse Emergency Evacuation Team, Nipomo..... 71
Karen Boudreau, Calabassas..... 72
Adriana Gonzalez, Local Resident..... 75
Laura Fisher, Local Resident..... 75
Mike Harrison, Applicant's Engineer..... 76
Michael Lyndon, Local Resident..... 77
Kathi McEwen, Paso Robles..... 78
Lisa Newkirk, Lake Pablo..... 78
Patty Nottoli, Local Resident..... 78
Peggy Portaniva, Local Resident..... 79
Chris Rothaupt, Local Resident..... 79

[Contined]

INDEX TO SPEAKERS

PUBLIC COMMENTS (Continued)	Page Nos.
Robin Schneider, Local Resident	79
Isabel Supteran, Local Resident	80
Karyne Ventris, Local Resident	80
Tom Webb, Local Resident	81
Wanda Weir, Southern CA American Saddle Bred Horse, Assn.	81
Donita West, Local Resident	82
Lee Renger, Stokes Canyon Resident	82
Tarren Collins, Heal the Bay	83
James Wrigley, Stokes Canyon Road Resident	85
Mark Massara, Sierra Club	86
Marcia Hanscon, CLEAN	88
Fred Gaines, Applicant	89

COMMISSIONERS

Achadjian	24
Baird	127
Blank	26,97,119
Burke	28,100,103,119,132
Gonzalez	28,122
Kinsey	24,107
Kruer	25,134
Lowenthal	25,109
Neely	118
Potter	23,98,119
Secord	25
Shallenberger	130
Wan	105,129

ACTION

Motion by Burke	97
Vote	136

CONCLUSION 137

-o0o-

California Coastal Commission
July 9, 2007
Malibu Valley Farms, Inc. -- Application No. 4-06-163

* * * * *

4:35 p.m.

CHAIR KRUER: We are going to go ahead and start again, on 13.e. and before we get going, I just would like to make an announcement. We have just been handed a lot of speaker slips, on this particular item, and so we will go over the time periods, but the people from the general public, and the people here in favor or opposition, we are going to have an organized presentation by the applicant, an organized presentation by the opposition, and then all other speakers will be given 2 minutes.

I would ask some of the people, there are a lot of people here, and we do appreciate you coming, on Malibu Farms, but there are a lot of people here with many, many speaker slips, so you don't have to use your 2 minutes, and if you can do it less, it is very helpful to the Commission, so we can get to our deliberation.

So, with that in mind, I'll go to staff, and we will start the hearing.

DISTRICT DIRECTOR AINSWORTH: If I could have the Power Point for Item 13.e. up and running, please.

I will need a few minutes to walk through the

staff presentation. This is, obviously, a very controversial item, and I'll be taking a little extra time.

This is Item 13.e. and the applicant is Malibu Valley Farms, Inc. and they are requesting an after-the-fact approval for an equestrian facility that is used for both the breeding, raising, training, stabling, exercising, rehabilitation and boarding horses.

The subject property is an, approximately, 31-acre parcel, located at the northeast corner of Mulholland Highway and Stokes Canyon Road in the Santa Monica Mountains.

And, this thing is not working, video support folks, the wireless mouse doesn't seem to be working.

[Pause in proceedings.]

Okay, here we go, we are back on.

Like I said, it is a 31-acre parcel located at the northeast corner of Mulholland Highway and Stokes Canyon Road in the Santa Monica Mountains, an unincorporated area of Los Angeles County. The site is immediately north of the former campus of Soka University, which is now a public park land, scattered rural and residential development are located west and south of the project site, and an undeveloped hillside containing primary chaparral habitat is located to the east of the property.

The southern, approximately, 28 acres of the parcel is located within the coastal zone. Stokes Canyon

Creek, a stream designated by United States geological survey as an intermittent blue line stream runs in a southwesterly direction through the western half of the parcel. Stokes Canyon Creek, and its associated riparian canopy, are designated as inland ESHA in the certified Malibu Santa Mountains Land Use Plan.

In addition, the Commission staff biologist Dr. John Dixon visited the site on August 22, 2005, and has confirmed that Stokes Creek, and its associated riparian woodland habitat, on site, meet the definition of ESHA pursuant to the *Coastal Act*.

The areas west and south of the creek are level, and contain, approximately, 6 acres of unpermitted -- currently unpermitted equestrian facility, which is the subject of this application.

The area located to the east of the creek, consists of mountainous terrain, containing chaparral, oak woodland, and annual grassland habitat, and is also confirmed by Dr. Dixon to meet the definition of environmentally sensitive habitat. This area, of the parcel, is, approximately, 23 acres in size, and is enclosed by unpermitted perimeter livestock fencing -- 3 acres, in size, I am sorry.

This is a biological resources map of the site, and this is Stokes Creek, shown here. This is riparian

corridor. This area up here is a portion of the chaparral ESHA, and this polygon here is the oak woodland habitat, and the rest are annual grasses.

Stokes Creek has been placed on the State of California's list of impaired water bodies, in both 2002 and 2006 due to its high chloroform bacteria count. Stokes Creek enters Las Virgenes Creek, just above the stream's confluence with Malibu Creek in Malibu Creek State Park.

Las Virgenes Creek and Malibu Creek are also listed as impaired water bodies by the Los Angeles Regional Water Quality Control Board. Malibu Creek outlets into Malibu Lagoon, and Surfrider Beach, which is consistently one of the most polluted beaches within the Santa Monica Bay.

The applicant requests after-the-fact approval for the construction and operation of, approximately, 6-acre equestrian facility on the subject parcel.

The proposed equestrian facility can be divided into two areas. The northern area, located here, on which the applicant proposes an as-built riding arena, removal of various as-built pipe corrals, storage shelters, cross-tie areas, tack rooms, and construction of some new covered pipes, barns, two shelters, a manure storage area, three tack rooms, and they are also proposing to provide a 50-foot setback from the top of the stream bank, and a vegetated swale system, and riparian restoration are also proposed in

this area.

To the south of Stokes Creek, between the stream and Mulholland Highway, the applicant proposes an as-built mare motel shelter, manure storage area, parking lot, riding arena, fenced paddock, and a barn. The fenced paddock is proposed to be reduced in size. In addition, the applicant has proposed a vegetated swale and velocity reduced in this area, as well as a bio-retention facility, located right adjacent to the creek.

The applicant has recently proposed to remove -- it is my understanding -- these two structures, and maybe more, that they will clarify in their presentation, I imagine.

The northern and southern portions of the facility will be linked by two at-grade stream crossings through Stokes Creek, which are shown here on this slide. The applicant is proposing to retain these crossings through this permit. And, the proposed project also includes livestock fencing, again, enclosing the area to the east of Stokes Creek, which contains the oak woodland chaparral ESHA.

The applicant has not provided any information regarding the actual number of horses they are intending to be maintained on the project site; however, a March 2005 draft Environmentally Impact Report prepared for the proposed Malibu Valley Inn and Spa, which was to be developed by the

applicant on a site nearby here, estimated that an average of 50 horses were stabled on the subject site at that time. Based on the existing proposed site facility, staff is estimating, approximately, 70 horses could be accommodated on this site.

The applicant has also submitted a site management plan, and storm water runoff plan, as part of the application. The plan includes design details, and implementation guidance for the proposed best management practices to be utilized by the facility regarding erosion control, water quality runoff mitigation, general housekeeping management, and an emergency preparedness and fire safety plan.

The polluted runoff erosion control measures include two vegetated swales, totaling 1400-linear feet, and they are situated between the creek and the developed portions of the site, in order to convey and treat runoff from the site prior to discharge into the creek. And, they are also proposing a bio-retention basin, located in the south side of the site. These structures are located less than 20 feet from the stream's riparian canopy, and in addition, the applicant is proposing to restore and increase the riparian buffer in certain areas adjacent to the creek, totally about a half acre.

The Commission has not previously approved any

Coastal Development Permits for any development on this site; however, the Commission has taken several other actions that relate to the project site, including denial of the applicant's claim of vested rights, and approval of a Cease and Desist and Restoration Orders, approved in November of last year.

In the denial of the vested rights claim, the Commission found that the evidence provided by the applicant did not substantiate the claim of vested rights for any of the development on the site.

In approving the Cease and Desist Order, and Restoration Order, the Commission found that development on the site meets the definition of development that is subject to the permit requirements of the *Coastal Act*, and that no permit had been approved for this development.

The Commission further found that the unpermitted development is inconsistent with the applicable Chapter 3 policies of the *Act*. It was found that Stokes Creek, and its associated riparian woodland on the project site, meet the definition of ESHA under the *Coastal Act*.

The Commission also found that the unpermitted development on the site is located within and adjacent to riparian ESHA, does not protect the ESHA from significant disruption of habitat values, and has not been sited or designed to prevent impacts that would significantly damage

the ESHA -- that would significantly damage the ESHA, I am sorry -- inconsistent with Section 30240 of the *Coastal Act*.

The Commission further found that the existing confined animal facility does not provide an adequate setback from Stokes Creek, resulting in the degradation of water quality, inconsistent with the requirements of the LUP and Section 30231 of the *Coastal Act*.

Additionally, the at-grade dirt crossings through Stokes Creek on the project site requires alteration of the stream, but is not one of the three permittable uses detailed under Section 30236 of the *Coastal Act*. The Commission also found that the development is not consistent with Section 30251 of the *Coastal Act*, does not minimize alterations of land forms, is not sited or designed to protect the scenic and visual characteristics of the surrounding area, and that it contributes to a cumulative adverse impact of increased development along Stokes Creek and adjacent upland areas.

Finally, the Commission found that the unpermitted development is causing continuing resource damage. The order did provide that the applicant could submit a Coastal Development Permit to retain some or all of the unpermitted development on the site, and that is what the applicant is proposing under this permit.

The applicant is now proposing to retain the majority of the development on the site, and construct some

new facilities, and provide a 50-foot setback as measured from the top of the stream bank. The applicant is proposing some new development within the 50-foot setback area, which includes the removal of 32 pipe corrals, and several covered corrals across the area, and several storage containers, and tack rooms, as you can see here, in this slide.

However, the actual riparian corridor extends beyond the top of the stream bank at several locations on the property. On the northern portion of the site, a development will be situated, approximately, 30 feet from the edge of the riparian corridor, at its closest point, and, approximately, 10 feet from the riparian corridor in the southern portion of the property. Portions of the dirt access road network that circles the proposed structures and arenas, on the site, are situated immediately adjacent to the edge of the riparian corridor.

And, on this plan, you can see here, the riparian corridor is outlined in red, here, 50-foot setback in this blue or purply color, and then 100-foot setback from the riparian corridor is in this green. And, as you can see here, where as measured from the riparian corridor, the 50-foot setback is catching some of this development, and also is catching the roads that are surrounding this development. So, we do consider the road part of the development, and is not set back 50 feet, even from the edge

of the stream bank.

The proposed vegetated swales in the northern portion of the site extend within 20 feet, or less, of the edge of the riparian canopy, as can be seen on this slide. This is the creek, and this is the vegetated swale here.

On the southern portion of the site, this is the vegetated swale, and it is hard up against the edge of the creek in this location, and the bio-retention facility is also right up against the creek. There is no setback here, whatsoever.

And, finally, there are those two at-grade stream crossings that traverse right through the middle of Stokes Creek in this riparian ESHA. Through permit actions in the Santa Monica Mountains, the Commission has required a minimum 100-foot setback from the outer limit of riparian ESHA, in order to protect the biological integrity of ESHA, provide space for transitional vegetation -- or transitional vegetated buffers, to minimize human intrusion, including noise and lighting impacts, and to provide for infiltration and filtration of runoff from development sites.

In addition, the 1986 certified Malibu Santa Monica Land Use Plan, which is used as guidance by the Commission, clearly requires a minimum development setback of 100 feet from the ESHA, as measured from the outer limit of the riparian tree canopies.

Approvals of this permit would set an adverse precedent regarding buffers and setbacks from ESHA in the Santa Monica Mountains, and from staff perspective, would prejudice the county's ability to prepare an LCP consistent with the Chapter 3 policies of the *Coastal Act*.

The proposed project is a large scaled horse facility adjacent to an impaired water body, as designated by the Regional Water Quality Control Board. This type of confined animal facility will produce a large amount of organic and chemical waste, which will result in highly compacted soils, and no matter how well this property is maintained, horse wastes contain organic matter, nutrients such as phosphorus and nitrogen, as well a microbial pathogens such as chloroform bacteria, which can cause putrefaction and decreases in oxygen levels in streams, resulting in the clouding, algae blooms, and other impacts which adversely impact the biological productivity of coastal waters.

Therefore, the minimum required 100-foot setback from the stream is critical in this case, would allow for the infiltration and absorption of nutrients, sediments, and pollutants, within the buffer before they reach the stream.

Although, the applicant is proposing vegetated swales and bio-retention facilities, these are located within 20 to zero feet of the riparian corridor, and are hard up

against the edge of the creek.

The bio-retention basin is at the very edge of the stream bank, and will flow directly into the stream. Large storm events will overwhelm these bio-filtration facilities, and swales, and polluted runoff will be directed directly into the stream without any infiltration, or filtration buffer, between those facilities.

The Commission's water quality staff, and staff biologist, are of the opinion that given the intense development proposed here, and the potential for adverse impacts and water quality that will likely result from the development, a buffer of 100 feet is clearly the bare minimum that should be provided in this case, to insure protection of the riparian ESHA, and the water quality of the creek.

In staff's opinion, the proposed development will significantly degrade the riparian woodland ESHA by increasing human and equine activity and its intended impacts, including noise, light, irrigation, erosion and introduction of animal wastes and other pollutants into Stokes Creek.

Section 30231 and 30234 of the *Coastal Act* require a natural vegetation buffer area to protect riparian habitats. A 100-foot buffer from the riparian woodland ESHA, and the oak woodland ESHA is necessary to prevent impacts that would significantly degrade this ESHA.

Because the proposed development is set back less than 50 feet from the riparian ESHA, and will not provide an adequate and natural buffer, vegetated buffer, to protect this riparian habitat and the water quality here in the stream, the proposed development, in our view, is inconsistent with Section 30240 and Section 30231 of the *Coastal Act* and its associated standards that are provided in the Malibu Santa Monica Mountains Land Use Plan.

In addition, the proposed livestock fencing in the oak woodland area east of the stream, the proposed two stream crossings through the riparian ESHA, are also inconsistent, in our view, with Section 30240 of the *Coastal Act*.

The two at-grade stream crossings will significantly disrupt habitat values in Stokes Creek by reducing the stream bed to a compacted bare soil, which will result in the sedimentation of Stokes Creek, and vehicle and horse traffic through the creek will directly introduce pollutants into the creek. The sedimentation and pollution resulting from these stream crossings will adversely impact the biological productivity of Stokes Creek, and will result in significant disruption of habitat values, which is not consistent with the ESHA and water quality policies of the *Coastal Act*.

In addition, under Section 30236 of the *Coastal Act*, the substantial alteration of streams is limited to:

one, necessary water supply projects; two, flood control projects; and three development to improve fish and wildlife habitat. Clearly, the proposed at-grade road crossings to the stream are not an allowed use in a stream, pursuant to Section 30236 of the *Act*.

There are on-site siting and design alternatives to the proposed project that would be consistent with the Chapter 3 policies of the *Act*, and the applicable policies of the LUP. Although, application of the 100-foot setback would significantly reduce the amount of area available for development on the lower portion of the property -- the upper and lower portion of the property -- it does allow for two areas, an approximately 40,000 area adjacent to Stokes Canyon Road -- in this location -- and a 20,000-square foot area adjacent to Mulholland Highway, which could be utilized for development on the site. These two areas could accommodate some of the proposed structural development, including covered corrals, barns, tack rooms, mare motel, storage buildings, and some of the other buildings; although, these areas could not accommodate the large riding arenas and pastures that are proposed in this application.

However, there are already equestrian facilities on this site, which include two riding rings, in the far northern portion of the site, which is outside of the coastal zone, up here in this location.

Another feasible alternative would be the construction of a single family residence in the approximate -ly 40,000-square foot area adjacent to Stokes Canyon Road, which would also provide for reasonable economic use of this property, and also could be developed consistent with the Chapter 3 policies of the *Coastal Act* and the certified LUP.

This property is designated an LUP for residential use, however, an equestrian use would also be appropriate on this site, if they could meet the setback requirements.

There are also potential siting alternatives off site. Brian Boudreau, president of the Malibu Valley Farms, Incorporated, has at least an interest in several other properties in the project vicinity that appear to contain suitable areas for equestrian facilities that are not adjacent, located in or adjacent to stream courses, and these parcels contain gently sloping to level areas, that appear to be suitable for equestrian uses, and these are designated here on this aerial photos, by these stars.

Lastly, the as-built development, replaced riparian habitat, and oak woodland chaparral and coastal sage scrub, vegetated communities of many structures, fencing, access roads, including dirt road crossings through Stokes Creek, that are visible along the scenic highway, Mulholland Highway, and trails in the area, including Backbone Las Virgenes view trail above the subject property, as such the

proposed development is not consistent, in our view, with the visual resource policies of the *Coastal Act*, because it is not sited or designed to protect these important scenic and visual characteristics of the area.

In summary, the applicant's proposal would allow intensive equestrian related development and livestock use within and adjacent to a riparian oak woodland and chaparral ESHA, and is therefore inconsistent with the *Coastal Act* policies for the protection of environmentally sensitive habitat, water quality, and visual resource policies of the *Coastal Act*, and the certified LUP.

Furthermore, in our view, there are environmentally preferred development alternatives available for the applicant that would be consistent with the *Coastal Act* and ESHA policies; therefore, staff is recommending denial of this subject application.

And, really, the bottom line for us is that this is not an issue with regard to whether the Commission is pro-equine or pro-agriculture, or anti-agriculture, this is a setback issue, as far as we are concerned. We do believe equestrian facilities are appropriate uses on properties within the Santa Monica Mountains, because that is the tradition in the Santa Monica Mountains, is an equestrian tradition, and we have secured more trails in the Santa Monica Mountains for equestrian uses than any other agency in

this area. So, the notion that we are, somehow, anti-equestrian is just not true.

In your addendum packet there are letters from the Las Virgenes Homeowners Association, Heal the Bay, Save our Open Space, the Resource Conservation Districts, and others supporting the staff recommendation.

Also, in the addendum, includes sample of letters of approximately 250 letters we have received supporting the applicant's proposal, and supporting approval of the permit in this case.

The applicant's attorney has also handed out a late handout, which you should have in front of you, and that concludes staff's presentation.

CHAIR KRUER: Thank you, Mr. Ainsworth.

Director Douglas.

EXECUTIVE DIRECTOR DOUGLAS: Yes, I just want to make some concluding comments.

As Mr. Ainsworth pointed out, this Commission has historically been very supportive of equestrian uses, and supportive of equestrian use facilities. The issue here is that much of the development that is at issue is illegal. It was never permitted, and it is not consistent with the law, and the Commission has so found in the past, both by denying the vested right, and approving the Cease and Desist and Restoration Order.

So, the question here is, now after the fact, they are coming in and asking you to approve development that was not permitted, and in our view is not consistent with the law, even though there are alternatives here.

So, that is the simple essence of what it is that is before you. It isn't whether you are for or against horses. It is whether or not the development is legal under the law.

CHAIR KRUER: Thank you, Director Douglas.

And, with that, I will turn to the Commission, my colleagues, for deliberation, but first we will take the ex partes -- not deliberations, but ex partes. Starting on my left.

Commissioner Potter.

COMMISSIONER POTTER: Thank you, Mr. Chair.

I had a discussion on Saturday with Don Schmitz regarding his concerns for the fact that he felt that the comprehensive management plan, and the emergency preparedness plan, and a variety of environmental remediations that were being done, were going under-recognized, and also that the environmental review board had the authority to, on a case-by-case, to make individual ESHA setback determinations.

I had a short conversation with him earlier this afternoon, where he stated that he would, obviously, prefer to see this project approved, and mentioned some appropriate

conditions, and special conditions. The standard conditions dealt with notice of receipt and acknowledgement, expiration and interpretation of assignment, in terms of conditions that would run with the land, all standard conditions.

And, special conditions were conformance to an attached site plan he presented me; an agricultural easement; mitigation monitoring program; standard assumption of risk; waiver and liability, indemnifications, and a deed restriction that would run with the property.

Thank you.

CHAIR KRUER: Thank you, Commissioner Potter.

Commissioner Achadjian.

COMMISSIONER ACHADJIAN: Thank you, Mr. Chair.

On July 6, 11:30 a.m. in my office I met with Dustin Wormer, Bret Palmer, Brian Boudreau from Malibu Valley Farms. Also, in the meeting was Don Schmitz, developing consultant, and Sean Doherty, Sr. and it was similar information that Mr. Potter just spoke of.

CHAIR KRUER: Thank you.

Commissioner Kinsey.

COMMISSIONER KINSEY: Yes, on July 2, I met with Brian Boudreau, Sean Doherty, Bret Palmer and Don Schmitz, to discuss the project.

They briefly explained the history of the permit application, reinforced their belief that the equestrian use

was an historic agricultural use, and they presented the modifications that they would be recommending at today's hearing.

CHAIR KRUER: Thank you, Commissioner Kinsey.

Commissioner Lowenthal.

COMMISSIONER LOWENTHAL: Thank you.

I had a meeting scheduled earlier today with Mr. Boudreau, but was not able to make it, and just had a brief conversation regarding the logistics on not being able to keep the appointment, but it will be on my staff calendar, so I just wanted to report that.

CHAIR KRUER: Thank you, Commissioner Lowenthal.

Vice Chair Neely.

VICE CHAIR NEELY: Thank you, Mr. Chairman, my ex partes are on file.

CHAIR KRUER: I had an ex parte today as I walked in to check in at the hotel at 11:45, and I met with Don Schmitz and Mr. Wolmer and Brian Boudreau, and they discussed the history of the farm, and the dimension of the existing development, how it works, and discussed the landscaping that created the riparian habitat, and the proposed drainage mitigation. That was about it.

Yes, Commissioner Secord.

COMMISSIONER SECORD: Thank you, Mr. Chair, on the 6th of July, 2007, I met with Brian Boudreau, Justin Wolmer,

Mike Stoker, Beth Palmer, and Sean Doherty. They reviewed the history of the farm, the purchase, the time of purchase being about 1978. We talked about the vested right issue.

The talked about the way the creek had been moved when the government moved Stokes Road back in the '50s. They talked about their environmental management program, their best management practice, what they were doing now, essentially, was the grazing and raising of thoroughbred race horses.

They talked about the borings, going down into the soil and seeking -- getting cultures, trying to understand whether their operations was polluting the creek.

My question -- which they answered, I think -- was if you crafted a project that would avoid all of these touchy spots, what was left? And, there are pictures in the staff report that answer that question. Let's see, there was discussion about the offsite alternatives on other property, and project alternatives in general.

Thanks, very much.

CHAIR KRUER: Thank you, Commissioner Secord.

Commissioner Blank.

COMMISSIONER BLANK: On Sunday, July 8, at 10:13 I got an email from Mark Massara of the Sierra Club, giving me his opinion on Malibu Farms. He stated this should be an enforcement item, but, it is being considered as a

development matter.

He agreed with staff, and said the development offsite was in direct violation of ESHA, riparian, and stream protection policies.

He said, most importantly to the Sierra Club, this is the headwaters of Malibu Creek, and numerous other park and public lands running all the way to the Malibu Lagoon and State Beach, and believes it is an important environmental key spot. He also enclosed a letter from Sierra Cluber Dave Brown, which is also in the packet.

And, then, 3:00 o'clock the same day, Sunday, July 8th, I met with Don Schmitz, Brian Boudreau, Beth Palmer, and Jean Sinineau, and Sharon Doherty arrived just as the meeting ended. Our discussion topics were the same as other ex partes. They presented a detailed history of the farm, from 1944 through today. They talked about the LCP policies for riparian corridors, and stream protection, and stated that the Commission has discretion to approve project at less than 100 feet.

We talked about whether equestrian activities were agriculture, and we talked about the mitigation measures that Malibu Farms is proposing in conjunction with their proposed reduce setback.

That's it.

CHAIR KRUER: Thank you, Commissioner Blank.

Commissioner Burke.

COMMISSIONER BURKE: Today, during one of our breaks I approached Don Schmitz, and asked him where Los Angeles County was on this project, and he indicated to me that Supervisor from the third district was in full support, and his staff had been out and reviewed the project.

Also, I stopped one of the proponents in the hallway, and asked them a question, as it related to the development of the project, and obviously, they were very much in favor and indicated that it was a community project.

So, those were my only ex partes.

CHAIR KRUER: Commissioner Gonzalez.

COMMISSIONER GONZALEZ: Yes, I spoke briefly this afternoon with Marcia Hanscom, who just reflected to me that she was in complete support of the staff's recommendation.

CHAIR KRUER: Thank you, Commissioner.

With that, I will open the public hearing and call up first, Don Schmitz. Mr. Schmitz, how much time are you requesting, sir?

MR. SCHMITZ: Fifteen minutes, Chair Kruer.

CHAIR KRUER: Okay, and you are going to save five minutes for rebuttal, and some of that you are going to give to Fred Gaines, correct?

MR. SCHMITZ: Yes, sir, 15 minutes, and then after that 5 minutes for the rebuttal.

CHAIR KRUER: Okay.

MR. SCHMITZ: And, before you start the clock, the room was loud. I want to clarify my ex parte with Commissioner Burke. It was an impromptu, and actually what I discussed with him was that the supervisor's office had provided us the Moon Over Management Plan Award, and that the Department of Regional Planning had approved the project.

CHAIR KRUER: Okay, so ready to go then?

MR. SCHMITZ: Yes, sir.

CHAIR KRUER: Fifteen minutes.

MR. SCHMITZ: Commissioners, good afternoon, my name is Don Schmitz. I am proud to be before you today to represent Malibu Valley Farms.

Suffice it to say, that we disagree vehemently with many of the assertions in the staff presentation, and in the staff report. There is a lengthy history with the Malibu Valley Farms, and as you can see, it is a very well established equestrian center. It has been recognized as the 32nd best thoroughbred breeding ranch in the United States of America, and it is No. 1 in the State of California. This is not an inconsequential little operation. The deliberations today will have implications for a $7 billion equestrian industry in the State of California.

The site history befor Malibu Valley Farms is lengthy. It has been a farm for at least over 70 years, as

documented through receipts and invoices. My client's father, actually, bought the property in the early 1970s, but well before then it was a property that was used extensively for agriculture.

You can see Stokes Creek, located thus. These are the property boundaries. This is Mulholland Highway. Stokes Canyon Road, the original alignment, you can see that there was crop production on the photos that have been passed out to you. You can see the actual furrowing of the land.

And, then there was open grazing of livestock to the property to the east, which goes on today, which your staff is calling an oak woodland ESHA, although it is not mapped thus in the Land Use Plan. In 1952, the County of Los Angeles came in and they graded not only Stokes Canyon Road, but all of the area where the subject farm is located right now.

And, I want to bring to your attention that the precedence that the staff cites in their staff report, for where you have require 100-foot setback from drainages, have been from natural drainages. The county came out here is 1952 graded the entire area, and then asked the farmers to go out with a backhoe and grade and realign the Stokes Canyon drainage, which is an intermittent stream, Commissioners, as cited on pages 5 and 15 of the staff report. There is rarely water within this creek.

This is 1962, a decade after that grading job. You can see the furrows from the disking and from the oak production. You can see the access roads going across the creek, and that it was heavily and extensively grades.

In 1972, again, you can see the drainage, and I point out to you, where do you see the riparian canopy that staff suggests should be utilized to push our development back even further -- it doesn't exist. And, the reason it doesn't exist is because it was created by the farmers. They are the ones that went out and planted the trees along that drainage.

So, Malibu Valley Farms, I think, has been a very good steward of the property for at least 30 years. This is a 1979 photograph. You can see the farm here, and this is the drainage that is Stokes Creek, no trees, no riparian vegetation whatsoever.

This is a picture of the trees now. This is what staff is calling the environmentally sensitive habitat area, and suggesting that you should utilize to, essentially, close this farm down.

Here is an aerial photograph. We think it looks much better than when it was taken over by the present owners.

We host the annual recreational equestrian coalition rides. We host the Compton Junior Posse, including

sleepovers. The kids come out from Compton, they ride the horses, they stay there. We host the Princess Riding Club, they are in Montevido Valley. We are host to the Corral 36 Pony Club. We are the local evacuation center and certified staff with the California Department of Forestry. This is a critical equestrian facility in an equestrian area.

This is a thriving business, as you can see from all of the pictures in front of you. We produce, approximately, 20 beautiful fouls per annum, and we have won many, many, many awards. This is not grandstanding. This is one of the best premier equestrian centers in the State of California.

Now, in 1996, a fire destroyed the farm, why? because the personnel on the farm took all of the dozens and dozens of horses that the neighbors brought over when the fire storm came through, and they managed the horses, and they saved the horses' lives, and allowed their facility to burn to the ground. An exemption request -- and it is still utilized. It is the designated evacuation center for the area.

So, in 1998, the Coastal Commission staff issued a exemption under 30610 for the replacement of structures which were destroyed by the fire. But, shortly thereafter, when a neighbor complained, the Coastal Commission staff revoked the exemption.

So, a vesting application was submitted, and yes, in November that application for the vesting was before this Commission, and it was denied -- we will agree to disagree on that. But, the reason we are before here today is because the Commission unanimously, and in a very atypical fashion, put the Cease and Desist and Restoration Order on hold, and directed us to come back with the application before you today.

Now, this application is very comprehensive. It has been thoroughly reviewed and approved by multiple agencies. It has a comprehensive management plan, including the bio-swale. We received a number of different agency approvals for this: the Fire Department, the Environmental Review Board, which is critically important, because what staff doesn't have in their staff report is that in Table 1, which they cite requiring a 100-foot setback, they don't give you the whole story, Commissioners. Table 1 in the Land Use Plan, specifies that the county Environmental Review Board can, on a case-by-case basis, recommend a reduced setback, and the county Environmental Review Board did just that. They found this project consistent after suggested modifications, of which was our bio-swale incorporation, and that we would direct all lights on the property downward, and we are in total agreement with that.

Then, Regional Planning approval, and the

Department of Fish and Game approval, including retention of the two dirt trails which go through the drainage, which you can see on the old photographs have been there since time immemorial. And, we have State Water Resources Control Board approval.

We have a comprehensive management plan that has, basically, four layers: the manure management plan, the open pipe corrals to be converted to enclosed structures, the bio-swale retention pond, and an increased riparian buffer. We created the riparian habitat in the first place. We planted thousands of trees there, over 1000 trees, and we are going to expand that further.

We have won the manure management award from the County of Los Angeles, out of 700 equestrian facilities in the County of Los Angeles, we were deemed the very best. And, the county is using our manure management plan as a template to incorporate in their Local Coastal Program which they hope to be bringing before you in the next couple of months.

We will include dust control. We will maintain all ditches, crossings and culverts, and the bio-swale free of all debris, and we will reduce the amount of chemicals and pesticide, et cetera, to an inconsequential level.

And, I have to take an issue with staff's presentation. They keep asserting that it will not be

enough, that it will not be adequate -- where is the contravening evidence? I have brought scientists here that designed it, the engineers, the biologists, Joe Decrenerus is here. He was the county biologist at the time this was heard before the Environmental Review Board, and they have all stated conclusively that the analysis substantiates that with the bio-swale, and with the increased riparian habitat buffer, there will not be deleterious impacts to this creek.

Staff says otherwise, but they provide absolutely no supplemental expertise in testimony, or reports to contradict our experts.

Now, the existing conditions, coastal zone boundary bisects the property, you have got the pipe corrals, the arenas, and existing structures -- and very little time, so I am going to move very fast here, Commissioners, I am sorry. Dr. Decrenerus is here and --

CHAIR KRUER: Mr. Schmitz, speaking of that for Mr. Decrenerus, if you are going to save some time, then we need to stop --

MR. SCHMITZ: -- well, I --

CHAIR KRUER: -- as part of the organized presentation?

MR. SCHMITZ: I am sorry, Mr. Chair, I didn't mean to speak over you. I am, obviously, moving fast here. I will bring Joe to the podium if I have time, otherwise, he

will just have to be available to answer questions.

CHAIR KRUER: That's fine, continue.

MR. SCHMITZ: So, the existing conditions will be modified. We have a representative cross-section here. This is Stokes Creek. You have the existing pipe corral open facilities. Rainwater falls on the property and does, in fact, have the potential to flow into the creek.

We are going to replace the pipe corrals. We are going to remove those that are closest to the creek. These will be contained structures. The bio-swale will be located thus. We will increase the riparian buffer. There will be an access road that will be covered with a special sand that does not generate dust, and in fact provides additional filtration abilities. And, what this means is that the rainfall will fall down and go into the bio-swale and off of the property, and not into the creek.

These are the replacement structures, and this is what we will be removing.

That is a picture of the bio-swale, a cross-section, and this is the riparian area, and how we will expand it.

On the south side we will remove the pasture which is close to the creek. There are a number of very old structures that we will remove. We will have erosion control devices, again, the bio-swale. And we are, in addition, now

proposing to eliminate the oldest barn on the ranch, which is located thus, to further increase the setbacks from the creek.

In conclusion, the project is consistent with the *Coastal Act*. It has been designed to be an environmental standard for these types of projects. There are, in fact, unique qualities and aspects to this, which are atypical.

Staff's recommendation of a 100-foot setback will, in fact, eliminate Malibu Valley Farms. I have a great deal of respect for your staff, but they are not equestrian experts, and for them to assert that the remaining areas, which they would allow available to us, would allow us to operate the farm is just not founded on true equestrian business practices.

There is a lot that is not in the *Coastal Act*, by the way -- excuse me, it is in the *Coastal Act*, but not in the staff report. Section 30241 specifies that the maximum amount of prime agricultural land shall be maintained in agricultural production to assure the protection of the agricultural economy.

It specifies under 30242 that all land suitable for agricultural uses shall not be converted to non-agricultural uses. Policy 12 of the Land Use Plan, specifies that you shall create an incentive program that would encourage landowners to make lands available for public

recreational uses, perhaps like the rec ride, or the Compton Posse.

And, the Table 1 does, in fact, allow variations from the 100-foot setback, even though that is not in the staff report. There are other *Coastal Act* policies which are not part of our Power Point presentation, that pertain to recreation, that pertain to access.

This Coastal Commission has required, for instance, single family homes to have adequate off-street parking, because that is an access issue. If people are parking on the street, then people will not be able to park on the street, the general public, to access coastal zone resources. How, then, can we say that the destruction of this farm will not degrade the ability of the public to access the coastal zone. Very clearly, it will.

Section 30322 of the *Coastal Act* specifies that recreational opportunities shall be enhanced. These are all coastal resources. Sometimes in these hearings, we fall into a little bit of a trap. We just talk about a water quality issue, or ESHA, important, critically important, but as defined by the *Coastal Act*, Commissioners, access, recreational opportunities, agriculture, those are all critically important *Coastal Act* resources, as well, which is illustrated by Section 30001.5 of the *Coastal Act* which pulls it all together and specifies that maximum public access to

and along the coast, and maximum public recreational opportunities in the coastal zone, consistent with sound resource conservation principles and Constitutionally protected rights of property owners, will be the goal and objective of this Commission.

What that specifies is that there must be a balanced approach. The staff report, and the staff presentation is not balanced. All it says is 100-foot setback, it has all got to go, 100-foot setback. It does not take into account the science as applied in the design, and it has absolutely no findings as it pertains to the agricultural aspects, the recreational aspects, and the access, all important resources under the *Coastal Act*.

So, if you will stop the clock, in just a second, I have a little bit of time, and I would ask Mr. Decrenerus to come on up to the podium.

CHAIR KRUER: That's fine.

Yes, sir, and would you state your name for the record, and there are 2 minutes left.

MR. DECRENERUS: My name is Joe Decrenerus, consultant biologist with Impact Science, Pasadena.

And, to reiterate what Don just said, yes, I was the county biologist at the time that this project went to the ERB in 2003, and the minutes of that meeting, summarized, basically, ERB's only concerns were with an erosion problem

along the stream, which the applicant has gone to some length to address in their design. And, the exterior night lighting, that that be minimized and down cast. And, the county's staff recommendation was that they provide us their our manure management plan.

Otherwise, in terms of being within the 100-foot setback area, ERB and county staff, both found the project to be consistent with the coastal plan, they had no issue with that.

CHAIR KRUER: Okay.

MR. DECRENERUS: And, that is all that I have, thank you.

CHAIR KRUER: Thank you, sir.

Mr. Schmitz.

MR. SCHMITZ: Thank you, Chair Kruer.

In conclusion of my presentation, I would also like to draw the Commission's attention to Section 30004 of the *Coastal Act*, that specifies reliance on the local government.

> "Legislature finds and declares, (a), to achieve the maximum responsiveness to local conditions, accountability, and public accessibility, it is necessary to rely heavily on local government, and local land use planning procedures and enforcement."

The county convened the Environmental Review Board, which has biologists from the National Park Service, and State Parks. They are historically extremely aggressive in regards to environmental protection. They found our project consistent with the Land Use Plan, and we would ask you, also, to do so.

And, with that, I will save the remainder of my comments for rebuttal, unless you have any questions.

CHAIR KRUER: No, sir, that is fine. Thank you, very much.

With that, we will ask Mary Hubbard for her organized presentation -- Mary Hubbard? And, we talked, Ms. Hubbard, and you requested 15 minutes, and you represent several groups.

MS. HUBBARD: Yes.

CHAIR KRUER: Is that correct?

MS. HUBBARD: Yes, it is.

My name is Mary Hubbard. I live 5411 Ruth Wood in Calabassas. I am -- I don't know who I am representing, SOS, Preserve Calabassas, Westside Coalition, Las Virgenes Homeowners Federation -- who else did I say on there?

CHAIR KRUER: I think you got most of them in.

MS. HUBBARD: Okay.

[Pause]

CHAIR KRUER: Malibu Canyon Community Association.

MS. HUBBARD: Community Association, yes.

The issue, really is very simple. It is not an equestrian issue, it is about clean water, about respect for the existing environmental zoning laws that protect the public and the private land investments in the area. The problem is not the horses, the problem is horses that are housed within just a few feet of the stream.

We don't need to debate whether or not horses affect water quality in streams, we don't need to work out a best practices manure management plan for Mr. Boudreau. Those are not the issues this Commission needs to address today. The agenda item is very simple.

There are three questions to answer: is Mr. Boudreau's CDP application complete? if it is not, it defaults to the cease and desist order already approved, and the Commission should spend its efforts making sure that enforcement of that order proceeds with all possible haste.

No. 2, are there any compelling findings to justify deviating from Coastal staff's recommendation for denial? if not, there is no reason to grant approval or a variance.

And, No. 3, does Mr. Boudreau have viable alternatives? if so CEQA dictates that they be utilized.

Regarding his application, we don't believe that it is complete. While he thought he was outsmarting the

system by taking four years to complete his CDP application, submitting an average of one required document per year, his L.A. County approvals have now expired. Those approvals, which are required components of the CDP application, and which they were just bragging about, expired in February of 2006, and January 2005. Before the March 2006 deadline that he finally -- March 2006 date, when he finally submitted the last document, that finally allowed the Coastal Commission to proceed with agendizing this item, an item for a public hearing.

[Pause]

I am just waiting to see if anybody is with me here.

CHAIR KRUER: Yes, everybody is listening to you. Just keep going, we are trying to --

MS. HUBBARD: He has been on the Coastal Commission agenda twice last summer, but postponed his first hearing, and then withdrew it a second time. I have copies of those L.A. County approvals that they are bragging about, and the approval, in concept, says that this approval is for private equestrian use, not commercial use, not approved for boarding of horses. It states it right on this document, which I will get copies for you, because it doesn't appear that the specifics are a part of this report.

It also says that such approval shall not be

construed to permit the violation of any provision of any county ordinance or state law. Our local Land Use Plan says 100-foot setbacks.

It also says that it is only good for two years, and those two years have expired, so his application is no longer complete, through no fault of the Coastal Commission, but through his own delays and stalling tactics. That approval in concept also does not indicate the CEQA status for this, and it says that this is simply a site plan review, and it doesn't talk about any variances.

As this drags on and on, it starts to lose some of the institutional memory that is so critical in situations like these, that I think brings a little bit of perspective as to who this person is, and how he operates -- maybe that is what he is banking on. We have been through 3 coastal staff members since managing this now.

There is wider knowledge available, only by community members, who have been engaged in this struggle with him, such as his knowledge of the *Coastal Act*, since he filed for and was denied a coastal boundary line determination as far back as 1987, to try to move all of this development out of the coastal zone.

Two clean hands waivers that were denied from L.A. County, because of the numerous violations on the property, for not only illegally boarding, but for putting up buildings

without the benefit of permits, all the while, he continues his operation, including putting up a new illegal barn next to the old illegal barn in the coastal zone.

Horses are rotated in and out of the barn that was completed in the face of three stop-work orders by L.A. County Building and Safety, and finally completed on Martin Luther King's weekend, where he wouldn't be caught by anyone. He uses the buildings until they notice him for violations, and moves the horses out for a little while, and then he starts filling up the facilities again.

I guess we can count on this, with all of the promises that they are making about how wonderfully they will be running their facilities if you grant these approvals.

Regarding the findings that would be necessary for this board to approve this, the *Coastal Act*, as you are all infinitely aware, requires that proposed development maintains, enhances, or restores marine resources by controlling polluted runoff, maintaining natural vegetation buffer areas, and minimizing alterations of natural stream banks, and to do anything less would be a violation of the public trust.

The Santa Monica Mountains Land Use Plan limits use of adjacent to important waterways to residential uses, that have a minimum of 100-feet setback from the stream. LUP regulations need to be consistent with the *Coastal Act* and

the Coastal Commission cannot approve development that conflicts with the LUP.

In 1995, the Malibu Creek Watershed Council, made up of stakeholders including local cities, agencies, non-profits, and concerned citizens, approved the Malibu Creek Watershed Natural Resources Plan, one of 44 action items seen as critically important and subscribed to by all stake-holders is to, quote, unquote, develop and maintain specific buffer zones for sensitive areas.

You are going to hear a lot of testimony from people today. You heard it in November at the vested rights claim hearing, also. I want you to consider who these people are, many of them are relatives and employees -- what else would you expect them to say but that they have a vested interest in the outcome here? Many of them were bussed in at the applicant's expense, members of REC, the Recreation and Equestrian Coalition who may or may not be members of the community -- ask them -- and may know little about the property in question, or the applicant, but join ranks to expand horse operations anywhere, even if they are destructive to the environment and are illegal.

Other testimony comes from people who are themselves engaged in unpermitted activities on their own properties in the area, or who are using Boudreau's illegally operating facilities, as they bragged about what they were

doing to with community, the question is was it legal for them to be doing those things. For those people who are here too, with their unclean hands, and if they tell you they are using his facilities, please take down the details so that they can be used in the enforcement proceedings -- illegal. If the tell you they aren't using his facilities, ask them where they do board their horses, and you will find that there are other boarding facilities, and riding arenas in the area, for this property is not of critical importance in that way, either.

This is not an anti-equestrian issue. This is years of slick expensive tricks by the developer, however, flagrant violations of L.A. County building codes, and local and coastal zoning laws. This is degradation of our streams. This is a man who sues people if they speak out against his urban development plans in the Santa Monica Mountains -- I am one of those people. This is a man looking for profit, whether it from the 81-home tract of mansions that he is currently recording and building, or the 400,000-square foot convention center he proposed two years ago, and sued me personally for, for speaking out against. Or, the 8 estate lots at the end of the street that have been graded and openly eroding for years now -- this is some information that you need to know about the applicant today.

There is a reason that he has spent more money and

private citizens and public agencies.

We concur completely with the detailed and comprehensive staff report. What I did bring with me today are letters and comments from public agencies, and community organization who represent millions of people who use the Santa Monica Mountains recreation area, into which Stokes Creek drains.

I have a letter from Ron Shaffer, district superintendent for State of California Parks and Recreation, which I will read into the record, and provide you copies with, because you don't have this yet. It was just completed on July 7.

"Dear Honorable Commissioners, the California Department of Parks and Recreation, Angeles District, has reviewed the staff report for the above referenced permit application for an after-the-fact approval of extensive horse facilities at Malibu Valley Farms. We concur with the staff recommendation for denial. The facilities are not in compliance with the Malibu Santa Monica Mountains Land Use Plan, the principle plan governing the land use of this site. The unpermitted structures are located within the 100-foot setback of the Stokes Canyon Creek ESHA, approval of variance for a 50-foot setback

time in pursuing this then it would have taken to just comply with the law and move the facilities away from the stream. I don't know what that is yet, but I am sure we will find out soon enough if this gets approved, afterall, part of the reason his 400,000-square foot convention center was shot down, because we were able to show that the facility upon which it depended for its alleged equestrian component was operating illegally and would not likely ever be approved in its present location.

An approval or variance today, then, could be far more growth inducing then you might initially suspect from all of the emotional ladened testimony that will be presented to you. Allowing the builder to erect a large horse operation in an illegal location, without the necessary permits, allowing him to continue to operate, and then retroactively approving this development without any repercussions, would be a devastating precedent to set -- maybe that is how he plans on getting his convention center built, just put it up and wait for somebody to get you.

We didn't pay for hotel rooms. We didn't bus people in to testify in this. The people that I am representing today are trusting that they don't have to keep showing up for Mr. Boudreau's pony shows, for the laws to be upheld, and finally enforced after so many years of continued abuse, and so many years of our wasted time, and money from

would establish a precedent that would encourage a future unpermitted construction of facilities within ESHA buffer. Stokes Canyon Creek, at this location, drains directly into the wetlands, operated by the Santa Monica Mountains Conservancy, California State Parks, and National Park Service. These park agencies, and many members of the public worked diligently for many years to protect and acquire this site as the centerpiece of the Santa Monica Mountains National Recreation area. The Ranch, Stokes Creek flows into Malibu Creek State Park, Malibu Creek, and Malibu Lagoon State Beach, one of the very few runs of the endangered southern steelhead trout inhabits Malibu Creek.

"We urge you to follow your staff's recommendation to deny this application, in order to protect those substantial public expenditures that have been made to preserve these outstanding natural resources for the benefit of the public.

"Thank you for consideration of our comments."

I represent the more than 20 homeowners associations in the area continue to oppose any development that goes against the Malibu Santa Monica Mountains Land Use Plan, the *Coastal Act*, or the North Area Plan, which governs the property north

of the coastal zone. Save Open Space, Preserve Calabassas, the Westside Coalition, and the Malibu Canyon Community Association go on record as being in opposition to the proposed Coastal Development Permit and granting of any variances.

Heal the Bay, Sierra Club, and CLEAN are all here to speak for themselves, or have submitted comments that ask for the same denial, and that there be no variances to setback requirements. Those are minimum requirements. There is much documentation saying that more is better.

The Malibu Creek Watershed Council and the Resource Conservation District support minimum 100-foot setback requirements and have gone on record in this case. The California State Parks just did, I read their letter.

There has also been a significant investment by the public in watershed restoration in the area. I want to detail some of those investments that we have recently made, and show you the trend that is happening in the area. Las Virgenes Creek restoration, $1,126,000 which is being funded by the Santa Monica Bay Restoration Commission, Coastal Conservancy, City of Calabassas, and other grantors.

The City of Calabassas has put in a new storm water filtration system for another $400,000. Other Malibu Creek restoration projects that have happened since 2002, when Mr. Boudreau first filed his CDP application,

incidentally, $5 million. Another $100 million in trout habitat restoration. A $210 million for open space acquisition in the area, plus an additional $500 million in proposed projects from the Integrated Regional Watershed Management Plan.

To undermine those efforts would be devastating at this point. We are finally making progress with this watershed, and finally getting people to be aware of what has been happening, and what needs to be done to fix it.

The last question is: do viable alternative exist? CEQA prohibits the proposed development from being approved if there are alternatives --

CHAIR KRUER: Miss, your time is up.

MS. HUBBARD: Okay.

CHAIR KRUER: Thank you, very much.

MS. HUBBARD: Thank you.

CHAIR KRUER: Now, we will go to, since we have had the organized from the applicant and from the opposition, we will now go to -- again, I report that we have over 45 speakers slips here, that we have granted 2 minutes to, and if people cede their time if someone else has said something, there are about 40 in favor and 5 opposed, we would appreciate it, as it helps us get to deliberations faster. But, we do want to hear from everybody who wants to talk. So, again, I just make that point, and ask you if your

neighbor, the person sitting next to you, has already said the same thing, maybe you just want to get up and say, "We support it," or "We oppose it," or whatever, but you all will be given 2 minutes.

With that, we will start with Mr. Sean Doherty, then after Mr. Doherty, Laura Blank.

MR. DOHERTY: Commission, Chairman, thank you for this opportunity to speak before you today. I am here on behalf of the thoroughbred owners of California. Unfortunately, our president, Mr. Drew Catto was unavoidably detained. He sends his regrets and apologies and asked me to speak on behalf of the TOC.

The horse industry in California is a $7 billion industry -- let me repeat that, a $7 billion industry. We employ over 600,000 people up and down California, of all races, creeds, breeds and economic status. We are one of the largest employers, single employers, as far as an industry, in the State of California.

The thoroughbred industry, and the horse racing industry in particular, contributes a significant portion of that $7 billion into the California economy. As you can see here today, Malibu Valley Farms is the premier horse breeding, thoroughbred breeding operation in California, and they have been nationally recognized as the No. 1 operation in California.

I want to propose to you, Commissioners, that should you decide to disapprove the application, what you will be doing, as you can see here in the evidence, is shutting down an operation that produces champion thoroughbreds, and significantly contributes to the economy of California.

So, before you is simply not a question of whether or not the mitigation plan, which is truly state-of-the-art, will, in fact, protect the creek. It is not whether or not just the 100-foot setback should be upheld, but the ripple effects of the economy. What is going to happen should you shut down this particular operation?

And, I would pose to you, Commissioners, that the ripple effects will reach up and down the state. That is why the horse community is here in mass today. We are watching this decision, from Eureka to San Diego, and in the halls of the capitol, we are very concerned about what this Commission does, and what actions you take today.

CHAIR KRUER: Can you wind up.

MR. DOHERTY: We ask that you consider all impacts and I urge your "Aye" vote.

CHAIR KRUER: Thank you, sir.

Ms. Blank, and after Ms. Blank, Ms. Akhvar, and after that Kathy Clark.

MS. BLANK: Hi, Chairman, and board of directors,

I am Laura Blank, the executive director of the Los Angeles County Farm Bureau, and I am here today to read a letter from our president.

"Dear Chairman and Board of Directors, the Los Angeles County Farm Bureau is a non-profit grass roots organization serving over 5400 members throughout L.A. County. California is number 1 in the nation with agricultural production, and Los Angeles County contributes over $25 million. The coastal areas of California not only produce vegetables consumed in our local grocery store, but are also graze lands for livestock throughout the state. The Los Angeles County Farm Bureau strongly disagrees with the notion that horses are not agriculture. As outlined in the *Food and Agricultural Code Section 55701* livestock means any cattle, sheep, swine, goat, or any horse, mule, and other equine. In addition, the state's Right to Farm Law, *Civil Code Section 3482.5.* states, for purposes of this section, the term agricultural activity, operation, or facility, thereof, shall include but not limited to the cultivation and tillage of the soil, during the production, cultivation, growing and harvesting

of any agricultural commodity, including timber, floraculture, agriculture, horticulture and the raising of livestock, fur bearing animals, fish, or poultry. It is important, not only to our county, but to our State of California that we maintain a strong agriculture economy. Even the *Coastal Act Section 30241* states the maximum amount of prime agricultural land shall be maintained in agricultural production to insure the protection of areas..." --

CHAIR KRUER: Ms. Blank.

MS. BLANK: Yes.

CHAIR KRUER: Your time is up.

MS. BLANK: Thank you.

CHAIR KRUER: Thank you, very much.

Ms. Akhvar, and then after that Ms. Kathy Clark, and then Ms. Deborah Collins.

MS. AKHVAR: My name is Mayisha Akhvar. I am the founder of the Compton Junior Posse, a nonprofit childrens charity targeting at-risk youth, ages 5 to 19, who come from toxic environments, filled with crimes, gangs, violence, and little supervision.

Many youth have reached out for support, and the Compton Junior Posse provided a home for hope. The majority of our youth are young men, who came to us very angry. They

have learned through working with horses, to effectively communicate without aggression or violence.

Managing, engaging and exposing our youth to varied horse communities has been an overwhelming job. When we reached out for support, folks like Malibu Valley Farms opened their arms and facilities to us, when it was not popular to invite inner-city youth to their community.

We believe horses are compatible with nature and the environment. So, when our youth go back to their community, they can encourage others to change their lives, because they have been there, and they have done it.

Save Malibu Valley Farms, please. With the setback and the recommendations that they make, it will be far reaching to the community as Malibu Valley Farms extends an inclusive embrace.

The results are these, we have our children, who are inner-city youth who are winning blue ribbons. At our last show in Malibu, our young men won first place in each of the classes that they competed in. We could not have done that without the help of Malibu Valley Farms.

Thank you, please accept their recommendations.

CHAIR KRUER: Thank you, Ma'am.

Ms. Clark.

MS. CLARK: I cede my time.

CHAIR KRUER: Okay, thank you, Ms. Clark.

And, now Ms. Collins, Deborah Collins, and then after that Ruth Gerson.

MS. COLLINS: Hi, I am Deborah Collins. I am here on behalf of the Arabian Horse Association.

I would like to read a portion of a letter from our executive vice president.

"To Whom it May Concern, as executive vice president of the Arabian Horse Association, an organization with over 5,000 members in California, I am writing this letter to show our support for Malibu Valley Farms, and request that the Coastal Commission approve their Coastal Development application. The 50-foot setback, and water runoff mitigation plan they have offered, is more than reasonable and addresses any concerns the Commission may have with runoff or exposure, as evidenced by water quality studies that have been conducted at the farm."

And, that was written by Gary Zimmerman, executive vice president of the Arabian Horse Association.

CHAIR KRUER: Thank you, Ma'am.

Ms. Gerson, again, everybody is 2 minutes.

MS. GERSON: Good evening, Commissioners, my name is Ruth Gerson. I am president of the Recreation and

Equestrian Coalition. And, yes, it is a viable organization, and yes, it is community based, and yes, we have been around for almost 10 years, as opposed to some testimony you may have heard before.

It is wonderful that the *Coastal Act* embodies the important issues of trails, access, and especially of visitor serving uses. Malibu Valley Farms is the ideal location for promoting those goals of the *Coastal Act*, and in addition, it provides a place for disaster, for inner-city youths as you just heard from Mayisha, and for many other activities.

Has there been any scientific reports done on what you hear about horse pollution? I don't know of any, and I wonder if you do? or does staff? or has any been done? or is it just a guesstimate? because they are a large animal, and they are easy to put blame on for problems.

So, I think before you accept your staff's recommendations, you need to find out if there really are any viable, truthful, reports against what horses produce, besides the enjoyment.

Thank you.

CHAIR KRUER: Thank you, Ms. Gerson.

Jeanne Wallace, and Ralph Holman, and Elizabeth Schumann.

MS. WALLACE: My name is Jeanne Wallace. I live at 1710 N. Corral Canyon Road, Calabassas. I am the

immediate past-president of Corral 36, the Monte Nido Area Chapter of Equestrian Trails, incorporated. Our current president was unable to attend this hearing today, but he asked that I speak on his behalf.

We urge you to approve the application for Malibu Valley Farms, to allow it to continue to operate as an equestrian facility. Corral 36, and literally hundreds of other equestrians in the Santa Monica Mountains, and throughout the entire state rely heavily on the generosity and presence of Malibu Valley Farms. Without that facility, we will all suffer in our ability to continue the rich history of horsemanship in the Santa Monica Mountains, and to provide recreational activities, not only to the local equestrians, but to others, such as the Junior Compton Posse.

We are very concerned about the pseudo science and rank assumptions made all of those who oppose any horse facilities within the coastal zone. We know that most of those who oppose are well intentioned, but their conclusions are based upon absolutely no evidence, no science.

If you look at the letter written by Heal the Bay, an organization with tremendous resources, even in that letter, the best Heal the Bay can charge is that the facility is likely to contribute nutrients to the stream. "Likely to" and not "our studies show that it does." Do you know why they can't say that any studies show that the facilities

contribute nutrients to the stream? because there aren't any such studies. There are no studies at all that show that this, or any other horse facility, operated with best management practices, adds to any water pollution.

In fact, the studies show that bird and human wastes cause vast majority of the pollution. There are no studies to show that the horse facility placed 50 feet from a blue line stream can cause any greater negative effect than one placed 100 feet -- not one study.

All those who oppose simply assume that it is so, but it isn't so, yet they want to put out of business a well run, community friendly, visitor serving, horse facility based upon rank assumption.

CHAIR KRUER: Thank you, your time is up.

CHAIR WALLACE: That is wrong.

CHAIR KRUER: Your time is up, Ma'am.

CHAIR WALLACE: And, all of us could --

CHAIR KRUER: Ma'am, please --

CHAIR WALLACE: -- have driven ourselves here, but we came on the bus because it made more sense.

CHAIR KRUER: Thank you.

Ralph Holman, Elizabeth Schumann, and Diane Odell.

CHAIR HOLMAN: My name is Ralph Holman, and I am the president of the Caster Horseman's Club. I am a horse trainer and also avid trail rider. I am here to support

Malibu Valley Farms. I feel it is important that they remain a facility that offers access to public lands, and to trails, and to all of the adventures that we now have.

I sincerely hope that you vote in favor of them, thank you.

CHAIR KRUER: Thank you.

Ms. Schumann, then Diane Odell.

MS. SCHUMANN: I just recommend the project.

CHAIR KRUER: Okay, and thank you, very much.

Diane Odell, Michael Resnick.

[No Response]

Is Michael Resnick here?

MR. RESNICK: Yes.

CHAIR KRUER: Okay, and then after Michael, Dr. Richard Stevens.

MR. RESNICK: Good afternoon, Commissioners, my name is Michael Resnick. I am a a resident of Calabassas, California. I am here today representing the California Thoroughbred Breeders Association, which represents over 1600 thoroughbred breeders in the State of California.

I would like to read a letter written by Doug Burch. He is the executive vice-president and general manager. He has given me the authority to read it on his behalf.

In an effort to save time, and to keep it under 2

minutes, I will read the first 2 paragraphs, and the full letter was actually mailed to the Commission on April 2, 2007.

So, the letter states:

"On behalf of the California Thoroughbred Breeders Association, an association with over 1600 members in California, I am writing this letter to show our support for Malibu Valley Farms, and request that the Coastal Commission approve their Coastal Development application. The 50-foot setback, and water runoff mitigation plan they have offered is more than reasonable and addresses any concerns the Commission may have with runoff or exposure, as evidenced by the water quality studies that have been conducted at the farm. Malibu Valley Farms has been a part of the community for over 25 years. They have proven time and again to be an operation that cares for their facilities, horses, community, and the environment by going above and beyond what is required to insure that there are no issues with waste. They even won the award from Los Angeles County for their best management practices with regards to their waste

management. It would be a tragedy for the area and the agricultural community if they were shut down over erroneous information and policy."

Thank you, for your time.

CHAIR KRUER: Thank you, sir.

Dr. Richard Stevens, Don Wallace, and then Christine Baumgartner.

MR. STEVENS: Thank you for permission to speak. My name is Dr Richard Stevens, and I have been an equine veterinarian in this area for 27 years, and I am also the regional disaster coordinator for the California Veterinarian Medical Association.

One of the special features that Malibu Valley Farms offers is a safe zone, and they have the green pastures that have saved a lot of animals, and provides an escape route for a lot of people. They have the reserve capacity to suck up all of the horses in that area, and if that area was excluded, they would no longer have that. So, I think, from a regional standpoint that is vital.

And, a lot of people will speak to the special features that they offer, but I think there is an implication that if we don't follow these guidelines, that we are asking for permission to pollute, and that is simply not the case. As a scientist and a veterinarian, I a little bit concerned

about the information you have got, that it is all black and white. I think the reason we have a Commission like this is so you can put judgment, and to scale this thing, and to say that because there is a road crossing there that is driven across once a week, that that permanently degrades the quality of the water. We know that that simply is not true.

And, I would like for you to put some reason into this. They do outstanding manure management, they control the runoff. There are some farms that shouldn't be within 5 miles of this creek. This one could be within 10 feet of this creek and not degrade the qualities of the water.

And, my daughter and I, as a science fair project, looked at e coli counts above and below horse facilities, above and below urban areas, and I can tell you, it is not the horse facilities that are doing it. If we really want to talk about water quality, we should talk about septic tanks and other things. This is not the fact that is causing the Malibu Bay to degrade in quality.

Thank you.

CHAIR KRUER: Thank you, doctor.

Don Wallace.

MR. WALLACE: Honorable Chairman Kruer and Commissioners, my name is Don Wallace, retired fire captain and a 40-year community and environmental activist. I am a former board member of both the Los Angeles League of

Conservation Voters, and the Coalition for Clean Air. Despite Mary Hubbard's assertions, I am a long term community member. I live very close to Malibu Valley Farms.

I am here to strongly urge that you approve Malibu Valley Farms' application. I am here to advocate that you use this opportunity to move Commission deliberations and approvals from an arbitrary and capricious 100-feet setback from seasonal streams to a performanced based system, as epitomized by Malibu Valley Farms' application.

You have the power to approve this sensible way to protect our environment. I urge you to take it, thank you.

CHAIR KRUER: Thank you, sir.

Christine Baumgartner, and then Trina Lemus, and the Ms. Cardiel, or Mr. Cardiel.

MS. BAUMGARTNER: Hello, I am Christine Baumgartner, and I just want to start by saying that I was not paid to come here, or anything like that. I was a homeowner in the area for 10 years, to Malibu Valley Farms, and I also was a surfer at Malibu Surfrider Beach, and I can tell you that Malibu Valley Farms had nothing to do with our contamination down there.

I would like to read a letter from Linda Palmer. Just to let you know who she is, she was the past president of Santa Monica Mountains Trails Council. She is on the advisory board of the Santa Monica Mountains Conservancy, and

she is a strong supporter of trails, lands, and the Coastal Commission.

She writes:

"Horses are one of our cleanest and safest domestic animals. As quoted by the veterinarian Dr. Elzer, Malibu Valley Farms provides recreation, diversity, and scenic resources, for the general public. It is extremely important for the farm to remain as it is."

Thank you, very much.

CHAIR KRUER: Thank you.

Trina Lemus, thank you, sir.

MR. LEMUS: My name is Trina Lemus, and I have been working for Malibu Valley Farms for 16 years. I love my job. My family depends on my job. My family was born and raised in the farm. Please don't take my job, please, thank you.

CHAIR KRUER: Thank you, sir.

Ms. Cardiel, and then Mark Cardiel, and then Angelica Cardiel.

MS. J. CARDIEL: Good afternoon, my name is Juana Cardiel. Malibu Valley Farms has been my home for almost 20 years, and it is very important that all of the facilities remain as is.

This farm is taking the best of care of the creek and lands, things which draws on the property. Please approve the application. I have already lost my home in the fire. Please do not take my job away, thank you.

CHAIR KRUER: Thank you.

Mark, yes, sir.

MR. CARDIEL: Good afternoon, my name is Mark Cardiel. I live at 4131 Defender Drive in Agoura Hills. I have been the farm manager for Malibu Valley Farms for over 20 years. Over the years, I have gained knowledge of agriculture, its functions, and its necessary improvements.

All of the improvements at Malibu Valley Farms have been a necessity to its horse operations. Caring for horses requires special needs and appropriate facilities.

Yes, Malibu Valley Farms has green pastures for horses to roam freely. I need those pastures. But, those horses need to be cared for. We need to put them in these confined areas, so that we can care for them in the best possible manner.

The location in question, today is set up in a way so that we can care for the needs for those horses. We can see them at all times.

The facility has served as an evacuation center for fires, floods, and earthquakes. The facility is located in such a way that horses can be tended to safely, and in a

professional manner.

The farm has achieved a reputation to be one of its kind in the Santa Monica Mountains. The staff constantly works hard to maintain good appearance, and a clean environment. My staff and I take great pride for that. The farm has been a significant part of my life.

And, I know that your decision today will not only impact my and my family's life, but the communities and the future generations to come. The 100-foot setback is going to wipe me out. If you take this way, I have nothing. This would make my farming operations impossible to function, and I need to get a lot more of those, okay, I need more of those, I am not done.

So, I am asking you to please grant this Coastal Development Permit, thank you.

CHAIR KRUER: Thank you, sir.

Angelica Cardiel, and after than, Rochelle Abram Dick, and then Valerie Godfrey.

MS. A. CARDIEL: Good afternoon, my name is Angelica Cardiel. I say this with all of my heart.

I have been extremely lucky to be a part of Malibu Valley Farms. I was born there and raised there. I will never be able to forget about it. Because of my wonderful experiences, I want to go to university and major in veterinary medicine.

Over the years, I have seen countless events that the farm has hosted. Not only do adults attend these activities, but so do children. It is such a joy to see their joy completely filled on their faces. I feel so proud to be a part of something that gives the children an opportunity such as this, an opportunity so special, that teaches them to be responsible, to be careful, to be hard-working, being able to work with these horses is an incredible experience that can never be forgotten.

Most importantly, the kids are filled with the love for the horses, and the outdoors. They will always remember it. That is the same love and passion that fills me, and that drives me to be the best that I can be.

Closing these doors will take away these incredible opportunities, that are now available to the community. It will not only be devastating, because it will be hard for the farm to function, but it will deprive future generations of unique and an unforgettable joy.

Thank you.

CHAIR KRUER: Thank you, very much.

Rochelle Abram Dick, and Valerie Godfrey, and then Stephanie Green.

MS. DICK: First of all, I am not a relative or an employee. My name is Rochelle. I live in Woodland Hills, and I am a member of the ETI Corral 36.

I take riding lessons at Malibu Valley Farms. I don't have any horse property, and if it were not for Malibu Valley Farms I wouldn't have a place to ride my horse in an arena, or access to the wonderful trails. Also, I just joined this Corral, who does, obviously you know, all of the fund raising events for worthy charities, like the Compton Junior Posse, which we are still working on another one right now, and they offer their facility for many, many, people.

And, also, I must repeat that emergency access is extremely important, a place for people to put their horses.

Thank you.

CHAIR KRUER: Thank you.

Ms. Godfrey, Stephanie Green.

UNIDENTIFIED SPEAKER: Ms. Godfrey left.

CHAIR KRUER: Okay, Stephanie Green, and then Karen Boudreau.

MS. GREEN: Greetings, Stephanie Green, from Nipomo, California. I represent Ride Nipomo, Save Nipomo Park, and Horse Emergency Evacuation Team.

Khatchik is my board of supervisors, he knows that we are always fighting to keep horse property, horse trails, anything related to horses. It is difficult.

The Coastal Commission has the duty to protect ag land. The California State lists as agriculture, horses, and I believe it listed as 5th in economic revenue impact.

Talk about filthy trashy groups, in fact, polluting beaches and oceans are Save the Bay types, leaving tons of debris after all of their events, they are the real polluters of the beaches. Horse urine, primerin gave it to women safely, so no problem there. Horse manure can be composted to become money making manure, high grade compost.

This decision will have effect on all horse keeping throughout the state. The most endangered species is the urban equine. Every city, county, state, federal or commission is forcing the demise of urban horses, forcing equestrians to leave the state for more friendly states and areas built for equestrians. The horse made this state, help keep horses in this perpetual blacktopping era, you have the power to do it.

Please support this, thank you.

CHAIR KRUER: Thank you.

Karen Boudreau, and then Mia Boudreau, and then Laura Fisher.

MS. BOUDREAU: Hello, my name is Karen Boudreau. I am a resident of Calabassas, and also a relative of Brian Boudreau, which evidently means I have unclean hands.

I am reading on behalf of Carolyn Tice, president of the California Dressage Society.

"Dear Commissioners, the California Dressage Society with membership of more than 5,000

throughout California has a mission to foster interest and participation in the sport of dressage, and to more generally, to support the continuing existence and growth of equine activities.

"Many of our members participate in a variety of equine activities, in addition to dressage competitions. Unfortunately, we continue to witness increasing pressure to limit, or eliminate access to equine related recreational opportunities in California. Access to park and trail systems, which have welcomed riders for years is being cut off, or significantly curtailed. Zoning changes are resulting in the closure of longstanding facilities that have served the public, and allowed people to experience one of the few remaining prestigious forms of life before motorized transportation.

"The current controversy over the closure of Malibu Valley Farms is emblematic of this trend. Although, similar situations are occurring throughout the state. There is no good reason why equine facilities and equine activities cannot continue to coexist

with other uses, as they have for years.

"Recent scientific research indicates that well managed equine operations do not result in significant environmental hazards, and the methods for minimizing environmental impacts are well known, and accepted throughout the industry.

"In that the California horse industry produces services and goods in excess of $4.1 billion, and more than 54,000 full time employment positions, where more than 300,000 Californians are involved as owners, service providers, employees, and volunteers, with an uncountable number of spectators, where more than 698,000 horses live in California, and more than 70 percent of those horses are used for showing and recreation" --

CHAIR KRUER: Ma'am, your time is up.

MS. BOUDREAU: Oh, thank you, very much.

CHAIR KRUER: Thank you, very much.

Mia Boudreau, and then Laura Fisher, and then Adriana Gonzalez.

UNIDENTIFIED SPEAKER: Mia wants to donate her time to me.

CHAIR KRUER: Pardon?

UNIDENTIFIED SPEAKER: Mia is not going to speak, and will donate her time to me.

CHAIR KRUER: Is Mia here?

[No Response]

Is she here?

UNIDENTIFIED SPEAKER: She is not, and she would like to donate her 2 minutes.

CHAIR KRUER: I can't do that, I am sorry, she has to be here to donate, thank you.

Laura Fisher.

[No Response]

Adriana Gonzalez, Carole Hansen.

MS. GONZALEZ: Hello, I am Adriana Gonzalez, and I am just here to say that I strongly support Malibu Valley Farms and the benefits it produces for our community.

Thank you.

CHAIR KRUER: Thank you, Ms. Gonzalez.

Again, Laura Fisher, Carole Hansen.

MS. FISHER: I want to donate my time.

CHAIR KRUER: And, your name?

MS. FISHER: Laura Fisher.

CHAIR KRUER: Laura Fisher, and you are donating your 2 minutes to who?

MS. FISHER: To Don Schmitz.

EXECUTIVE DIRECTOR DOUGLAS: Don Schmitz, Mr.

Chairman.

CHAIR KRUER: Well, we can't give him more time. We have already -- he is the last person we are going to give more time, right now, okay. Anybody who wears boots and a suit like that, I mean, so thank you, though.

Carole Hansen, Mike Harrison.

[No Response]

Is Mike here? okay.

MR. HARRISON: Good evening, Commissioners, I am Mike Harrison from Diamond West Engineering. I worked with the product team in development of the Comprehensive Management Plan, and I must say that the BMPs, the best management practices that were defined therein were done in accordance with the standards of Los Angeles County standard urban storm water mitigation plan.

Projects developed in accordance with that plan, are in compliance with the national pollutants discharge eliminate system permit, which is adopted by the Regional Water Quality Control Board.

And, in terms of the 100-foot setback, in terms of water quality, the required treated runoff would actually travel more than 100 feet, as it travels through the swales.

Thank you.

CHAIR KRUER: Thank you, very much.

Mike Lynden, Kathi McEwan, then Lisa Newkirk.

MR. LYNDON: Michael Lyndon. I am a resident of Simi, Ventura, California.

I had the good fortune to board at Malibu Valley Farms for 5 years. I have been acquainted with the farm and the farm operation for 17 years.

One of the earlier speakers, in the earlier matters, talked about if something looks like a duck, maybe it is not a duck. There is a lot of talk about this being a creek, and a stream, and there is talk about the grade crossings, and I rode my horse through both of those grade crossings, day after day for 5 years, and he never got his feet wet, because there is just no water running in that creek.

[Audience Reaction]

CHAIR KRUER: We are going to ask everybody not to applaud, or boo, or anything like that.

MR. LYNDEN: Well, I kind of liked it.

CHAIR KRUER: I know you did. It is probably the only applause you have gotten in a long time, so, but go ahead.

MR. LYNDEN: I failed to say I have been a lawyer for 35 years, also.

The other point, staff said that there has got to be 100-foot setback. They showed a lot of slides. You got a good look at the actual ground, and that is some pretty dry,

miserable ground, that doesn't have any growth on it, and a bio-swale that is required to be maintained with selected plants to filter the water is going to be far more effective than that bare ground at 100 feet.

Thank you.

CHAIR KRUER: Thank you, sir.

Kathi McEwen, Lisa Newkirk, and then Patty Nottoli.

MS. MC EWEN: Hello, my name is Kathi McEwen, and I am a resident of Paso Robles, and I just want to say I am very much in support of Malibu Valley Farms.

As a retired officer here at the Sheriff's Department, I can tell you how important it is to have a horse evacuation site available. I, being one of them that have used them in the past, and I hope that you do support Malibu Valley Farms.

Thank you.

CHAIR KRUER: Thank you, Ma'am.

Lisa Newkirk, and again Patty Nottoli.

MS. NEWKIRK: Hi, I am Lisa Newkirk, from Lake Pablo, California, and I am here in support of Malibu Valley Farms, thank you.

CHAIR KRUER: Thank you, Ma'am.

Patty Nottoli.

MS. NOTTOLI: I am here in support of Malibu

Valley Farms.

CHAIR KRUER: You need to speak on the microphone, I am sorry. Thank you for coming up, and state your name.

MS. NOTTOLI: I am Patty Nottoli. I am here in support of Malibu Valley Farms. I am yielding my time.

CHAIR KRUER: Thank you, Ma'am.

Peggy Portanova -- can't quite read it, I apologize.

MS. PORTANOVA: I cede my time.

CHAIR KRUER: Thank you.

Chris Rothaupt, and then after that, Robin Schneider.

MR. ROTHAUPT: I am Chris Rothaupt, and I in here support of the Malibu Valley Farms. I don't have any horses, but I do have 2 young daughters that like to bring bags of carrots and go over there and feed the horses, and thank Mark for letting them do that any time they like.

CHAIR KRUER: Would you state your name for the record, just so that we have it.

MR. ROTHAUPT: Chris Rothaupt.

CHAIR KRUER: Thank you, sir.

MR. ROTHAUPT: Thank you.

CHAIR KRUER: Robin Schneider.

MS. SCHNEIDER: Hello, my name is Robin Schneider. I just want to say, I don't think it has been

mentioned, or probably has, but Malibu Valley Farms is pretty much across the street from Malibu Creek State Park, which has many, many riding trails, and in this day and age it is just so hard to find a place that you can actually have horses and ride out onto trails. So, this, I think, is a very important factor, as well.

I want to thank Malibu Valley Farms for hosting many of ETI 36's events, and thank you.

CHAIR KRUER: Thank you, very much.

Isabel Supteran, Karyne Ventris, and Tom Webb.

MS. SUPTERAN: Hi, I am Isabel Supteran, and I am here in support of Malibu Valley Farms.

Thank you.

CHAIR KRUER: Thank you, Ma'am.

Karyne Ventris, and them Tom Webb, and then Wanda Weir.

MS. VENTRIS: Hi, I am Karyne Ventris, and I am here in support of Malibu Valley Farms. I have nothing to gain from them. I don't want anything from them. Haven't gotten anything from them.

I have lived in the area for 40 years, had a 50-horse boarding facility in the Santa Monica Mountains until a few years ago, and I wish that I had known as much about best management practices as the Boudreau's do now.

The thing we do know is they serve a good purpose,

that it is useful to the community, all of those things you have heard. The things we don't know for sure is the damage to the creek.

If you ride into Malibu Creek State Park, or any of the national parks the horses, we swim in those creeks that run into the same thing, the horses are permitted to cross those creeks. The horses are constantly in the creeks at Malibu Creek State Park, and in the national parks, so apparently the parks don't think they have an adverse effect. They swim in there, and they walk in there, so I think that is a non-issue.

The thing that we don't know is that it actually does any damage for the horses to be there at Malibu Valley Farms.

Thank you.

CHAIR KRUER: Thank you, very much.

Tom Webb, Wanda Weir, and then Ms. West.

MR. WEBB: My name is Tom Webb. I come to this hearing at my own expense, and I am here to support Malibu Valley Farms, and I urge you to grant their permit.

Thank you.

CHAIR KRUER: Thank you, sir.

Wanda Weir, Donita West, after that.

MS. WEIR: Good afternoon, my name is Wanda Weir, and I am the former vice president of the Southern California

American Saddle Bred Horse Association.

Riding horses, whether on well managed farm land or whether it is on a spectacular Pacific Trail, or any trail, is a real pleasure for many of our state residents. California is second only to Texas in the number of horses that people maintain.

I appreciate the effort of Malibu Valley Farms to supervise the services that it does, and I hope it gets full support from this Commission, thank you.

CHAIR KRUER: Thank you, very much.

Ms. West.

MS. WEST: I am Donita West, and I am here to support Malibu Valley Farms, thank you.

CHAIR KRUER: Thank you, Ms. West.

I now go to some of the opponents, Lee Renger.

MR. RENGER: I am Lee Renger. I live in Stokes Canyon. I have been there about 38 years, and I am a mile and a quarter up from Mulholland.

We have always enjoyed the horse breeding operation. We haven't enjoyed the illegal boarding.

Now, the staff report was excellent, and I have read the whole thing. The 100-foot setback is not capricious. Our local water district is now spending $10 million to decrease the amount of nutrients that it puts out, and if that doesn't work, then the state water quality agency

may require them to spend $160 million. That is a lot of money for something that size. The septic tank rules are being tightened.

It is only reasonable that you not allow this form of pollution to occur. Alternate siting is definitely viable for the farm. People have been saying all afternoon, that if you refuse this proposition that the farm will disappear. That shouldn't be true. It doesn't have to be true.

Don't retreat from the 100-foot rule. It is necessary. This is the time when that has to be maintained, because our environment has to be protected.

Thank you, very much.

CHAIR KRUER: Thank you, sir.

Tarren Collins, and after Tarren Collins, James Wrigley, and after that Mark Massara, and after that, Marcia Hanscom.

MS. COLLINS: Good evening, Chair Kruer, members of the Commission, my name is Tarren Collins. Today, I speak on behalf of Heal the Bay.

Heal the Bay strongly supports the staff recommendation to deny this application. The extent of the unpermitted development at this site is widespread, and detrimental to water quality and natural resources.

The proposed and existing development at this site threatens Stokes Canyon Creek, an intermittent blue line

stream as structures are located in and adjacent to the creek. This unpermitted development likely contributes to degraded water quality at Heal the Bay's downstream monitoring sites.

Monitoring conducted by Heal the Bay's stream team has indicated periodic exceedences of e coli and high levels of algae just downstream of this site, and I am grateful that this Commission subscribes to the precautionary principle and requires these 100-foot setbacks to error on the side of caution.

Extensive development is also built directly within the riparian ESHA, which is impermissible under the *Coastal Act Section 30240*. Under the Malibu Santa Monica Mountains Land Use Plan, Stokes Creek Canyon and its associated riparian canopy are designated as inland ESHA. The Land Use Plan specifically requires an interim setback of 100 feet from all designated ESHA, and prohibits alterations of stream beds in ESHA.

Heal the Bay is greatly concerned about the impacts of this development on water quality and ESHA within the Santa Monica Mountains, and strongly urges this Commission to deny the application, and provide no exceptions.

Thank you.

CHAIR KRUER: Thank you, Ms. Collins.

Mr. Wrigley.

MR. WRIGLEY: My name is James Wrigley, and I live on Stokes Canyon Road, at about a half of a mile -- or maybe a quarter of a mile, from this project.

I am in favor of the staff's position in denying their application, and one of the reasons is that I have horses on my property, but I certainly look after them a lot better than Mr. Boudreau's staff looks after his. For instance, we feed our horses twice a day, and we pick up the manure twice a day, put it in covered bins, and it is taken away once a week, and that certainly is not what the Boudreau does with his operation, in spite of this thing over here, that says they got an award from the county. I have asked the county where can I find that, and they said, "We've never heard of that before." So, it is just one of their many things that they make up.

And, let me tell you about the guy that you will be doing business with. In 1998, Boudreau sent a letter to Mr. Ainsworth here, saying that he was building additional facilities on the site, that had burned in the fire of 1996. This was approved by the Commission, and then a neighbor sent information to the Commission that there were no such structures at the time of the fire. And, those buildings, and in fact, the L.A. County's building staff told him not to occupy the buildings because they were illegal. And, those

buildings are now occupied, and then --

CHAIR KRUER: Mr. Wrigley.

MR. WRIGLEY: -- 8 months ago, after --

CHAIR KRUER: Mr. Wrigley.

MR. WRIGLEY: Yes?

CHAIR KRUER: Your time is up, sir, thank you, very much.

MR. WRIGLEY: They are still there.

CHAIR KRUER: Thank you.

Mark Massara.

MR. MASSARA: Honorable Chair, Commissioners, Mark Massara, Sierra Club Coastal Programs. The Sierra Club joins with Heal the Bay in support of your staff, and I refer you to our letters in the record.

This hearing comes on the heels of this Commission's denial of vested rights claim, and involves much of the same discussion regarding ranch benefits, setback issues, development footprints, and *Coastal Act* violations that you are hearing again today.

Had you approved the vested rights claim some of this discussion might be appropriate, otherwise, it is not. In both the existing LUP and the draft LCP 100-foot setbacks are mandated for ESHA and riparian areas. Your staff report is clear on the environmental resource benefits associated with such setbacks.

It goes without saying that should you whack those setbacks in half, or much more today, that you cannot expect others to abide by them in the future, especially, if you explicitly find that mitigation plans trump setbacks.

But, more importantly, for the Sierra Club is that you take account of the critical importance of Stokes Creek. Stokes Creek flows through this property and directly into and onto the famous Soka University property, the same property over which the Sierra Club won a large lawsuit based on the need to protect blue line streams, and fishery habitat in the Santa Monica Mountains.

Today, the Soka property is slated to become the main visitor serving interpretive center for the entire Santa Monica Mountains Park system. That Soka property, also known as King Gillette Ranch, is now open to the public. From Soka, the creek flows into the most heavily used areas of Malibu Creek State Park where kids wade and swim. It then continues down Malibu Canyon to Malibu Lagoon and Surfrider Beach, used annually by millions.

All this is to say that little Stokes Creek is a critical element to water quality throughout the Malibu Creek watershed, the lagoon, and the ocean, and it is enjoyed by wildlife and millions of people.

While we sympathize with the equestrian community and support their desire to continue to use this property,

disregarding riparian setbacks and the future health of the watershed is no way to get there. This is not about rank science, or equestrian benefits that we all support. This is about --

CHAIR KRUER: Mr. Massara.

MR. MASSARA: -- simply compliance with the LUP. Thank you.

CHAIR KRUER: Thank you.

Marcia Hanscom.

MS. HANSCOM: Honorable Commissioners, Marcia Hanscom, with CLEAN, the Coastal Law Enforcement Action Network.

We are in strong support of the staff report today on this matter. We are heartened that staff is not rewarding people for illegal actions, and we hope this becomes a habit. There have been far too many after-the-fact permits for illegal activities in our view in the past.

And, we also are heartened to see 100-foot buffers from ESHAs and streams, and we also hope that continues to be a good habit, and we don't get sidetracked on that.

In November, this Commission spent a lot of time deliberating, and determined that this was, indeed, years and years of illegal structures, and development on this property, and because of your sympathy for the equestrian center, you gave them 60 days, in spite of a very bad track

record of not coming forth with communications when staff asked for it. You gave them 60 days to complete, submit a complete application. They failed to do that.

It is time to enforce the Cease and Desist Order. In fact, if you did more enforcing of Cease and Desist Orders, your sister agency, the Coastal Conservancy, would end up with more penalties, and you would end up with, possibly, the money to acquire sensitive lands that we need acquire in the coastal zone.

So, I would recommend that you deny this project, per staff. I think they did an excellent job on the staff report, and you are on fully legal ground, I believe, to do so.

Thank you.

CHAIR KRUER: Thank you, very much.

Okay, with that, I go back for the rebuttal time. We have allotted five minutes to Mr. Schmitz, and Mr. Gaines. How are you going to share that?

Mr. Gaines, how much time do you want?

MR. GAINES: I am going to go as fast as I can, and then I am going to turn it to Don.

CHAIR KRUER: Okay, not the correct answer.

MR. GAINES: Excuse me?

CHAIR KRUER: I know, but you can go ahead, then Mr. Schmitz will finish it up.

MR. GAINES: Thank you, very much, Mr. Chairman, honorable members. My name is Fred Gaines with the law offices of Gaines and Stacey. We are counsel for Malibu Valley Farms.

Let me try to rebut a couple of the issues that have come up. One has to do with the alternative sites. There was some allegation that Mr. Boudreau has a controlling interests in some alternative sites, and that is absolutely not true. There is no evidence in the record, and he has no controlling interest in any of the off site alternatives that have been mentioned.

There has been an issue raised about county permits. First of all, the county permits are effective. They have not been violated, believe me. As you know, we have neighbors that are watching every day. We have no violations whatsoever, and as is the county's policy, those permits are tolled during the time we are going through the coastal process, which often takes more than the two years, and you can ask the county, all of those permits are in place.

There was a mention of a suit that brought against Ms. Hubbard. There was a suit brought against Ms. Hubbard. She had filed a ballot measure statement that my client had thought was misleading, so there was a lawsuit about that, which my client won. The ballot statement had to be changed,

because of its misleading statements. That is the lawsuit that was brought against Ms. Hubbard.

The application was completed in time. We actually made a submission within 30 days after the November hearing, and you can ask staff, as we went back and forth with them, and there is no issue in us not having gone in in time.

And, finally, let me just make one last point. I hope when you go into your deliberations, you will do it in the context of what is the law. The *Coastal Act* -- there is no law that requires a 100-foot setback. There is no law. It is not in the *Coastal Act*. It is not in your regulations. It is not in a certified LCP.

There is a statement in the certified LUP which talks about having -- which says you should have a 100-foot setback, and right above it, before it says that, it says:

> "Variations from these standards will be considered on an individual basis, according to their potential environmental effects as determined by the Environmental Review Board."

Which is exactly what happened in this case.

So, we are not talking about a law, we are talking about a regulation which had a preamble, which is exactly what was followed here.

And, so I hope you will look at that, during your

deliberations, you will look at the context of where that comes from, and then balance it against what is in the law, in terms of some of the issues that Mr. Schmitz is going to cover, in terms of access, in terms of agriculture, in terms of recreational opportunities.

Thank you.

CHAIR KRUER: Thank you, Mr. Gaines.

MR. SCHMITZ: I'll cover it if he will give me a little bit of time, Commissioners, Don Schmitz. That was excellent.

And, I would say that I agree with Mr. Douglas, that it is about the law, and the Table 1 policies do, specifically, allow the ERB to make findings for a review setback as they did.

But, as stated in the staff report, Commissioners, you are tasked under the *Coastal Act* to balance all of the *Coastal Act* resources. What about Section 30253 of the *Coastal Act*? it specifies that development shall minimize risks to life and property due to fire. This is the only evacuation center for equestrians in the Santa Monica Mountains. The next closest one is at Pierce College.

What about Section 30222 of the *Coastal Act*? it specifies that low-cost visitor-serving recreational opportunities shall be enhanced and maintained. Yet, the Compton Posse has been coming out for 10 years, and Malibu

Valley Farms has been subsidizing them, and allowing them to come out for free -- that is lower-cost visitor-serving commercial uses.

What about access? you heard the testimony, you saw the slides, the Recreation Equestrian Coalition, the local ETIs, they all use the facilities.

What about agriculture? 29 Code of the Federal Regulations specifies under 780.120 that, in fact, horses are agriculture. And, it goes on to say, under 780.122 that the breeding of horses is agriculture. And, the *Coastal Act* specifies under 30241 and 30242 that agriculture is probably the priority use under the *Coastal Act*. And, the *Coastal Act*, itself specifies that there must be a balanced approach.

Now, the staff and the opponents, the Sierra Club, have said over and over it must be 100 foot. It does not say that in the *Coastal Act*, nor does it say that the 100-foot setback is in the Land Use Plan. It says that that is where you start, and if the ERB comes up with an alternative, which is environmentally superior, then it can be less -- that is exactly what it says.

And, when you look at the vegetated bio-swale, which is part of the drainage plan which is before you today, that water won't be going 100 foot to get to the creek. In most places it will be going 1000 feet, or more, and it will be purified, and that is what the biologists are here to say.

Again, there is no contravening evidence in the other direction.

This is an application in balance that is worthy of your support and your approval, and Chair Kruer, I apologize for the suit.

CHAIR KRUER: Thank you, Mr. Schmitz.

MR. SCHMITZ: I will be available for any questions you may have.

CHAIR KRUER: Okay, thanks.

And, with that I will close public hearing portion, and go back to staff.

Mr. Ainsworth.

DISTRICT DIRECTOR AINSWORTH: Yes, regarding ERB review and the setback requirement.

When this project first came before us, it did receive ERB review; however, I was shocked to find out there was absolutely no setback required whatsoever. The ERB did not require a setback here. The setback that is proposed now was the result of a plan that was in response to some of the comments the Commission made at the Cease and Desist and Restoration Order hearings.

The ERB, the requirement in the Table 1 policies is a minimum 100-foot setback. ERB does have discretion in some cases; however, in this case, I can't understand for the life of me how the ERB found that no setback for a horse

facility is appropriate in this case.

We do think there are alternatives on this site for either a equestrian activity, or a residential use, so there are viable alternatives in this case.

With regard to the realignment of the creek, and how this creek became, or was vegetated, is really not relevant at this time. It is what is on the ground is the important point here, and what is on the ground now has been determined to be environmentally sensitive habitat area.

The other issue is, the 50-foot setback that is before you, is not a true 50-foot setback from the riparian corridor. They are taking it from the edge of the creek, and it also does not include elements of the development such as the roads and the bio-swales and filters.

This Commission, in past permit actions in the Santa Monica Mountains, and other areas, has required, you know, substantial buffers from riparian areas and ESHA. And, has required that these water quality measures are sited outside of those buffers. In this case, they are sited up to within 20 to zero feet of the edge of the creek.

With regard to the agricultural designation here, this isn't designated as prime ag farm land in any way. Whether this is an agricultural use, or a recreational use, or commercial use is really not relevant, it is what is the adequate setback from the riparian corridor, and to protect

the ESHA and water quality here.

In our opinion, and in our biologist and water quality staff, believe that a 100-foot buffer is the absolute minimum buffer, and actually a larger buffer would probably be appropriate, when you have a very intense horse facility, such as this.

The other thing, with regard to whether horse manure causes increases in the nitrogen and coliform bacteria, I just want to quote from the staff report:

> "The Regional Water Quality Control Board has developed a total daily maximum load for bacteria in Malibu Creek watershed, including Stokes Creek, which took effect in January of 2006."

The TMDL states:

> "Manure produced by horses, cattle, sheep, goats, birds and other wildlife in Malibu Creek watershed are sources of both nutrients and coliforms."

So, horse manure does have a impact on nutrient load, and bacteria within creeks, and that is why adequate setbacks are so critical.

With that, that will conclude staff, except for Peter has some additional comments.

EXECUTIVE DIRECTOR DOUGLAS: Just relative to the

standard of law that has to be applied here.

The standard is the *Coastal Act*. The LUP provides guidance, only. The Environmental Review Board does not have the legal authority to make any determination under the *Coastal Act* because there is no fully certified, effective, Local Coastal Program that is applicable here. And, I share Mr. Ainsworth's consternation about how they could recommend, even it is just an advisory recommendation, no setback in their review of this particular facility.

So, it is the *Coastal Act* that is the standard, and there you have to look to your precedent, the actions this Commission has taken, and the precedent, if you were to allow this variation from the setback, required and recommended in the staff report.

CHAIR KRUER: Thank you, Director Douglas.

With that, I will come back to the Commission for deliberation, and call on Commissioner Burke.

[**MOTION**]

COMMISSIONER BURKE: Mr. Chairman, I am going to move that the Commission approve Coastal Development Permit No. 4-06-163 for development proposed by the applicant, and recommend a "Yes" vote.

COMMISSIONER BLANK: Second.

CHAIR KRUER: It has been moved by Commissioner Burke, and seconded by Commissioner Blank -- or Commissioner

Potter, I am sorry.

COMMISSIONER POTTER: Well, I am willing to yield to the --

COMMISSIONER BURKE: It was a tie.

COMMISSIONER POTTER: -- new Commissioner.

COMMISSIONER BURKE: It was a tie.

CHAIR KRUER: That's okay, it was a tie. We'll give it to Commissioner Blank this time, okay.

It has been moved and seconded. There is a motion, and they are asking for a "Yes" vote, and the approval of this will result in the approval of the permit --

COMMISSIONER BURKE: Mr. Chairman.

CHAIR KRUER: -- would you like to speak to your motion, Commissioner Burke?

COMMISSIONER BURKE: I would like to defer to my "seconder" to have the initial comments, and then I will make my comments.

CHAIR KRUER: Okay.

Commissioner Blank.

COMMISSIONER BLANK: Thank you, Mr. Chairman.

I guess I was just a little surprised in hearing the comments that the staff would never -- and shocked -- that they would never have approved something so close to the ESHA buffer. I just want to refer the staff to a staff report written on March 2005, Thursday, 14.f. on another

equestrian facility, and it says, I quote:

"The applicant is proposing to establish and enhance a buffer area along the north side of the river that is generally about 25 feet in width. The buffer will not be 25 feet in the area of the..." blah, blah, blah...

"The applicant proposes to retain a zero buffer in the area of the training rings..."

And it says:

"...and provide a wider portion, among other portions of the river bank. The buffer would be wider than 25 feet to the extent necessary to offset the lack of buffer at the training rings." et cetera, et cetera.

It then goes on to say:

"However, the distance created will shield wildlife from the riparian vegetation, the river channel, from the equestrian activities occurring on site."

So, it appears that staff has looked, as Director said, at other equestrian facilities, and has found that other buffer widths, other than 100 feet, seemed to be appropriate, and I would like to have some staff comment, if you can, on that issue.

EXECUTIVE DIRECTOR DOUGLAS: I don't know which

case you are talking about, but just to compare --

COMMISSIONER BURKE: It is March 22, 2005.

EXECUTIVE DIRECTOR DOUGLAS: Yes, I don't know the project that you are talking about, and just taking a comment like that out of context doesn't tell us what considerations were taken into account? on the ground, what kind of project it was? what the riparian habitat is like? I can't answer the question because I don't know what you are talking about.

COMMISSIONER BLANK: It was 22nd District Agricultural Association, after-the-fact approval of several existing structures in an existing equestrian facility, including 18 barns, 2 fenced open show rings, 4 fenced open training rings, et cetera.

Does that ring a bell?

EXECUTIVE DIRECTOR DOUGLAS: It rings a bell, because there has been extensive -- well, I don't know about litigation, but your Deputy Attorney General can fill you in on that.

The history of dealing with the 22nd Ag District, which is another state agency and this Commission, is very tortured, and we had a history of violations there. We had a history of development that they were not willing to correct in light of *Coastal Act* violations, as we asserted them.

We were in a situation where we could not enforce, because the Attorney General represents both the 22nd Ag

District and the Coastal Commission. We had to find a way to resolve these outstanding violations, and the reluctance, or recalcitrants of this other state agency to comply with the *Coastal Act*, and that was the balance that was taken into account to reach the conclusion of resolving a whole variety of violations and issues, and this particular part of what was approved by the Commission was part of that overall package.

I think the circumstances there are substantially different from what we are talking about here, in terms of riparian habitat in the Santa Monica Mountains.

COMMISSIONER BLANK: So, Director Douglas, given the extensive history of equestrian approvals, what other equestrian facilities, not individual horse barns with homes, but what other equestrian facilities have we approved? what is the most recent facility?

DISTRICT DIRECTOR AINSWORTH: Other than single family home --

COMMISSIONER BLANK: Yes.

DISTRICT DIRECTOR AINSWORTH: -- equestrian facilities?

COMMISSIONER BLANK: Right, yes.

DISTRICT DIRECTOR AINSWORTH: I think the most recent one was sometime back in the '80s in the Malibu area, Malibu Equestrian Center, I believe is the one, but we

haven't had any large scale equestrian facilities proposed in the Santa Monica Mountains recently.

COMMISSIONER BLANK: And, so this one, with the litigation, was the one in between the '80s and this one today, is that correct?

DISTRICT DIRECTOR AINSWORTH: This one?

COMMISSIONER BLANK: The 22nd Agricultural District was the only one since the 1980s and Malibu Farms, is that correct?

DISTRICT DIRECTOR AINSWORTH: I thought you were referring to the Santa Monica Mountains.

COMMISSIONER BLANK: No, just in general.

DISTRICT DIRECTOR AINSWORTH: I am not aware of the others throughout the other districts.

COMMISSIONER BLANK: I am just referring, Director Douglas, to your comment earlier that we have approved other equestrian facilities. Were you referring to barns at individual homes? or equestrian facilities of this scale and magnitude?

EXECUTIVE DIRECTOR DOUGLAS: I was referring to a variety of projects that came before the Commission in the past, that included equestrian components, and those were approved by the Commission, and including protecting trails, including riding areas that were being proposed by the property owner. I can't give you examples of those, but I do

know that the Commission has approved facilities that include equestrian facilities.

COMMISSIONER BLANK: Okay, when I was just doing a search, this was the only one I could find that is on the line that wasn't associated with a private homeowner, and I am sure there are others.

EXECUTIVE DIRECTOR DOUGLAS: Oh, I am sorry, I include what was approved for a private homeowner as an equestrian use --

COMMISSIONER BLANK: I see, okay.

EXECUTIVE DIRECTOR DOUGLAS: -- and so I wasn't distinguishing between --

COMMISSIONER BLANK: Okay.

EXECUTIVE DIRECTOR DOUGLAS: -- commercial operation and the private homeowner.

COMMISSIONER BLANK: Those are my questions and comments Mr. Chairman.

CHAIR KRUER: Okay.

Commissioner Burke.

COMMISSIONER BURKE: I think those who know me from this Commission know that I take what I do seriously, and I try to take myself not so seriously.

But, the reason that I made the motion that I made was that there were two things that motivated me. One, was Commissioner Blank's comments and research; but, the other

was the lady who testified about angry young men going to a facility like this, and it changing their life. And, I am the expert on this Commission on that, because I was one of those angry young men, who was born and raised in an extra-ordinarily violent neighborhood, and was picking up the sense and the essence of that neighborhood.

I was becoming a violent young man, when my father took me one Saturday afternoon to a place where no kid from my neighborhood ever went because it was called a sissy sport. He took me out to a tennis court, and I told him I wasn't going to do it, I wasn't going to go there, because the guys from my neighborhood didn't recognize that as a real sport. He made me stay. I didn't know my old man was that good at tennis. He wore me out. He beat me like a runaway slave, and then I realized that this was a real sport.

It was an awareness that came to me from a direction that I would never have dreamed in my life. And, it made it possible for me to at least work with this anger that has stayed with me, basically, all of my life, because this anger does not go away, just because you go out and ride a horse, or win a tennis tournament. It stays with you your entire life. It doesn't go away when you buy nice clothes, or nice cars, or eat at nice restaurants. It stays with you your entire life, and you are forever trying to control it.

When you find projects like this, that have any

question at all about the benefit to the people that it would serve, I am in favor of those, and I would encourage, and cajole my fellow Commissioners to support this project, because you don't know whose lives you are changing. You don't know who will be the next angry young man, angry young lady, who will serve on this Coastal Commission and make this state proud.

This project needs to be approved.

CHAIR KRUER: Thank you.

Commissioner Wan.

COMMISSIONER WAN: Before I get started, I have a question of staff. Someone brought up that the permit approval from the county was not for a commercial facility, is that correct? do you know?

DISTRICT DIRECTOR AINSWORTH: I believe the original approval in concept was for a private use, not a commercial use, but I am not sure, I think there was a follow up conditional use permit that dealt with the commercial aspect. But, I would defer to --

COMMISSIONER WAN: Yes, Mr. Schmitz.

DISTRICT DIRECTOR AINSWORTH: -- the applicant.

MR. SCHMITZ: Through the Chair.

Commissioner Wan, the permitting by the County of Los Angeles, obviously, was not something pertinent to a single family home. It is for a commercial equestrian

facility, but it was constrained from being a commercial boarding facility, whereupon it would be serving people all throughout the Santa Monica Mountains who would be bringing their horses.

COMMISSIONER WAN: So, it is for a commercial facility, but not for a commercial boarding facility.

MR. SCHMITZ: Boarding facility, that is the distinction, Commissioner, yes.

COMMISSIONER WAN: Thank you.

CHAIR KRUER: Thank you sir.

COMMISSIONER WAN: I don't think that anybody should doubt my commitment to public access, or even commitment to equestrian use. Before I sat on the Commission, I was a member of the Malibu Trails Council, so I have fought for equestrian use in the mountains for a long time.

But, public access and equestrian use, if you quote the *Coastal Act* policies correctly, have to be consistent with natural resource protection.

This particular facility, as it is designed, and as it exists, has gone into and is here, actually, development in the riparian ESHA that has been delineated in the Malibu Land Use Plan. The Malibu Land Use Plan was adopted in 1986, by the way, so it is very old. It has been around -- has designated riparian habitat for a long time, and we

are not talking here about a reduction of 100 feet for a small amount. We are talking about reduction down to, in some places along the south, of only 10 feet from a stream.

This isn't just from, you know, some other kind of ESHA. This is from the riparian habitat and from the edge of a stream, and I don't know how you can make the findings to approve that kind of reduction given the impacts on pollution that equestrian facilities have.

It would set -- as Mr. Massara said -- an unbelievable precedent, that you can simply allow equestrian facilities right up to the edge of the stream.

And, I do want to say that the 22nd Ag District, as Mr. Douglas said, is a tortured history, but that is a state agency, unfortunately.

Santa Monica Mountains and the creeks are very important to protect. I don't see how you can allow this kind of facility and be consistent with the *Coastal Act* policies that protect water quality, and environmentally sensitive habitat, and approve this.

CHAIR KRUER: Thank you, Commissioner Wan.

Commissioner Kinsey.

COMMISSIONER KINSEY: This is a really challenging issue for me. It certainly isn't black and white. The history of the site plays into it, a number of issues, and I just had a question for the staff.

In the presentation that the Malibu Valley Farms made they identified that they had received approvals from the State Water Resource Control Board, as well as one other permit approved -- the Fish and Game, did we have any communications with Fish and Game staff about that approval, what their thinking was. And, as it relates to the State Water Resource Control Board, you mentioned that this was identified as impaired water body, and how would they reconcile that?

DISTRICT DIRECTOR AINSWORTH: We did not have direct communications, to my knowledge, with the Department of Fish and Game on this issue. The Fish and Game approval was a stream bed alteration agreement for development directly in the creek, is my recollection.

And, to my knowledge, I am not sure which local approval was received. I don't recall an approval from the Regional Water Quality Control Board, but I could be wrong. It is not listed here in our local approvals received. We do have the State Water Resources Control Board receipt, notice of intent to comply with terms of a general permit to discharge storm water associated with construction activity, that is listed in our local approvals received.

Maybe the applicant can clarify exactly what Water Quality Control Board approval was issued for this.

CHAIR KRUER: Please.

MR. SCHMITZ: Through the Chair.

Commissioners, to answer the question --

CHAIR KRUER: Would you speak into the microphone, please.

MR. SCHMITZ: Last time I did it, it echoed off of the walls -- maybe a little intimidated. Don Schmitz, again, for the record.

Yes, the project has received review and approval from the Water Quality Control Board, which included the construction practices, and the runoff control plan, that there would be no debris, or any undue runoff into the creek.

Yes, there was approval by the Department of Fish and Game, not only for the two existing dirt paths which go through the creek bed, that that would not have a significant deleterious impact to the riparian corridor. But, the Fish and Game, typically, wants to take a look at setbacks from riparian corridors, and this project does comply with that. In fact, the proposal before you today will expand that.

So, yes, both of those approvals were received and are a part of the file before the Coastal Commission.

COMMISSIONER KINSEY: Thank you, very much. Those are my questions. I'll reserve until the vote.

CHAIR KRUER: Okay.

Commissioner Lowenthal.

COMMISSIONER LOWENTHAL: Thank you, I wanted to

ask a few questions, and make some short remarks, and want to apologize ahead of time, some of my questions might seem a bit pedestrian, since I am new, but I am hoping that Commissioner Gonzalez, perhaps, can appreciate a few of them.

I wanted to know, should this Commission deny the permit, and concur with the staff recommendation, what occurs at that point?

DISTRICT DIRECTOR AINSWORTH: The applicant would then be required to comply with the Commission's Cease and Desist and Restoration Order, to remove the unpermitted development from the site.

COMMISSIONER LOWENTHAL: Okay.

EXECUTIVE DIRECTOR DOUGLAS: That is the development that located within the setback area, that is not all of the development that is associated with this particular operation, but that portion of the development that was deemed to be unimproved and illegal, and covered by the Cease and Desist Order.

COMMISSIONER LOWENTHAL: Do you know what percentage of the total operations that is?

DISTRICT DIRECTOR AINSWORTH: The entire site is unpermitted. All of the development on the site is unpermitted.

And, one other point, our Attorney General just noted, is that the applicant has challenged the Cease and

Desist and Restoration Order in court, and there is a pending lawsuit.

COMMISSIONER LOWENTHAL: And, then, I had a follow-up question to the Regional Water Quality Control Board question that my colleague just asked.

In response to that, the response was that there was approval for the runoff plan, is that the runoff plan associated with construction? or runoff plan associated with the equestrian operations?

May I ask the applicant? I'm sorry.

Please come forward.

MR. SCHMITZ: Again, Don Schmitz, through the Chair.

Commissioner Lowenthal, it is for both. It is for the construction, the removal of existing facilities toward the back, that there be no deleterious impacts. And, it is also for the runoff filtration plan, the bio-swale that is before you today.

COMMISSIONER LOWENTHAL: Okay, thank you.

EXECUTIVE DIRECTOR DOUGLAS: Mr. Chairman.

CHAIR KRUER: Yes.

EXECUTIVE DIRECTOR DOUGLAS: If I can clarify my answer to Commissioner Lowenthal's question.

CHAIR KRUER: Yes.

EXECUTIVE DIRECTOR DOUGLAS: What I was saying is

the outcome, the end of the day, if the Commission denies this, would be from our perspective that, yes, all of the development that is on the site is unpermitted, but what we have indicated is that development outside of the setback area, is something that we would see could be approved by the Commission, with a permit application.

So, that is the reason I said that I felt that that development outside of the setback area could be approved, and then would be retained.

CHAIR KRUER: Commissioner Lowenthal, do you have a question for Mr. Schmitz?

MR. SCHMITZ: I need to clarify my previous answer.

COMMISSIONER LOWENTHAL: I think he is here to clarify.

EXECUTIVE DIRECTOR DOUGLAS: Yes.

MR. SCHMITZ: In actuality, the Water Quality Control Board, and Fish and Game, approvals were for the project without the bio-swale, with the approximate 50-foot setback and the removal of the development which is presently closer to the creek.

The bio-swale and the improved filtration plan, which is before you today, goes above and beyond that which was before the Fish and Game and Water Quality Control Board, which did, in fact, approve the project.

COMMISSIONER LOWENTHAL: And, perhaps you can answer my next question.

I wanted to know who the local water agency was? is this Calleguas Municipal Water District, that covers --

MR. SCHMITZ: I am sorry, Commissioner, I didn't intend to speak over you.

The water districts, or the water purveyors -- this is, I believe, the Las Virgenes Municipal Water District. The Water Quality Control Board is regulatory authority which deals with ground water and water runoff issues. The are two completely separate issues, but I believe we are in the Las Virgenes Municipal Water District.

COMMISSIONER LOWENTHAL: Thank you, they were separate questions.

And, the other question I had was when did the unpermitted development occur? and perhaps staff can answer this, and if not, then Mr. Schmitz. How far back was that?

DISTRICT DIRECTOR AINSWORTH: Just one minute, and I'll get that in just a minute.

[Pause]

It was discovered -- let's see, in December of -- no, January of 1999.

COMMISSIONER LOWENTHAL: And, when you say "discovered" this would probably answer my next question: I am not clear as to how this is all before us now. Did the

applicant make an application for an addition? or, it was something that the staff stumbled upon, and now it is before us?

DISTRICT DIRECTOR AINSWORTH: Originally, what happened here was that the landowner applied for an exemption determination for disaster replacement rebuild of some facilities there.

We, initially, issued that, or made that determination that the reconstruction of some of these facilities lost to fire were exempt under disaster replacement provisions of the *Coastal Act*.

Later, we discovered that these facilities were constructed after the *Coastal Act*, without the benefit of a Coastal Development Permit. We notified the applicant of that situation, and indicated he needed to submit a Coastal Development Permit to legalize these facilities.

COMMISSIONER LOWENTHAL: Okay, that's it for my question. I -- yes?

MR. SCHMITZ: I have a markedly different opinion --

COMMISSIONER LOWENTHAL: Your response.

MR. SCHMITZ: -- with regards to when the property was developed, Commissioner Lowenthal.

The portion that Mr. Ainsworth brought to your attention is true. What he fails to mention was that in the

early '90s there was a coastal zone boundary determination application, with a staff report, that was before the Commission, that did lay out all of the existing development that is on the site today. No concern was raised by the Commission staff, or the Commission, at that time, that, in fact, the development which is on the site today was constructed in the mid-1980s, that the farmers sought the opinion of the Attorney General in regards to whether or not a -- the '70's excuse me -- regards to whether or not that needed a permit. And, in fact, there is documentation for the dry land farming, and the grazing, going back to the early 1900s. So, the development for agricultural purposes on this site goes back the better part of 60 or 70 years, and what is on the property now was constructed in the mid-1970s.

EXECUTIVE DIRECTOR DOUGLAS: But, Mr. Chairman, in terms of the issue that was raised by Commissioner Lowenthal, these issue were discussed when the issue of whether or not the applicant had a vested right to continue the operations here. This was extensively discussed before this Commission. The Commission did not agree with the applicant, and denied the vested right claim.

Then, subsequently, there was a Cease and Desist Order, and an Restoration Order, which the Commission held in abeyance pending the application for development. And, from our perspective, I mean, and that is why it is before you

today.

So, if it had been for those areas outside, development outside of the setback area, our recommendation would have been different then what it is today.

COMMISSIONER LOWENTHAL: Thank you.

CHAIR KRUER: Okay, is that fine?

COMMISSIONER LOWENTHAL: Yes, that is fine for my questions. May I make just a few short remarks?

CHAIR KRUER: Yes, you can, absolutely.

COMMISSIONER LOWENTHAL: What I wanted to do was to thank everyone that has been here. I know you have waited all day to speak before this Commission, and I truly appreciate that. This is a long and arduous process, and for those of us who are new, I hope you do understand there is an appreciation for that.

What I heard today was that Malibu Valley Farms is a good employer. It is a good community servant. I heard from a lot of individuals that speak something that is very near and near to not only Commissioner Burke's heart, but I think a lot of us. A lot of us do live in urbanized areas. I, for one, represent a very urbanized area in the City of Long Beach, and first hand understand the struggles that our at-risk youth face, and the struggles that those of us who would like to provide alternatives for individuals to channel their individual energy, as well as their fraternal energies,

into good activities. We all face these challenges.

But, a lot of the times, what happens when we have conflicting passions, A, a passion for the environment, a passion for the natural resources. I have a 10-year background in water policy, so I bring a passion for that, not just imported water delivery, but also ground water, and natural water resources.

And, then a passion for these children that we are talking about that now have an opportunity to engage in an activity that lets them channel the anger, the energy that they have no other means to do so. And, also the right of an employer, a good employer to continue to operate.

But, what I cannot advocate for is teaching young adults that a trade off, that we can sacrifice the natural resource for another positive tradeoff. And, I know life is about tradeoffs, in general, but it is difficult for me to suggest that that is what we can do. I think we must compel ourselves to find other ways to assist the young individuals that we need to assist.

About 15 years ago, when I worked -- I believe it was that long ago -- for the Los Angeles City Attorneys Office. There was a proposal for a project called Horses in the Hood, and it is very similar to the Compton Posse that was just described here, and it was a project that was run out of the horse trails up at Griffith Park. It is something

that a lot of people supported, myself included, but it did not impair or compromise natural resources.

And, so I think what we have to do is to challenge ourselves to find mechanisms, such as this, for students and young adults to be able to engage in positive activities.

And, so I wanted to convey a deep gratitude for your passionate testimony today, but I would be in support of the staff recommendation, because I find myself having to balance my water policy concerns, with my natural resources concerns, and my concerns for at-risk youth, as well as my concerns for employees, and those who are employed here, who seems to be a very good employer.

Thank you.

CHAIR KRUER: Thank you, Commissioner Lowenthal.

Vice Chair Neely.

VICE CHAIR NEELY: Thank you, Mr. Chairman.

I just wanted to say that I do think the Commission has discretion in this matter, and that we can consider variations on a case-by-case basis, and that I think the mitigation offered by the applicant identifies an alternative that can minimize impacts.

And, I just had a question for the maker and the seconder about conditions, if they were going to propose any conditions with the motion? I think that the applicant offered an agricultural easement in their proposal. I think

we should have some sort of monitoring of the program, of the mitigation program, and then I think there should be the assumption of risk waiver and liability, and definitely an indemnification condition.

CHAIR KRUER: Commissioner Blank.

COMMISSIONER BLANK: I was going to offer some water quality monitoring conditions, as well.

CHAIR KRUER: Okay.

COMMISSIONER BURKE: So, the answer is "Yes".

COMMISSIONER BLANK: Yes.

CHAIR KRUER: You will put those in, accept those in the motion, and the "seconder" is okay with that, too?

COMMISSIONER BLANK: Yes.

CHAIR KRUER: Yes, Commissioner Blank, thank you.

Okay, yes, Commissioner Potter.

COMMISSIONER POTTER: Hi, down there.

I just wanted to take a moment to actually weigh in here, and let you know what my thoughts are here, and that is, what is, basically, before us today? And, it is really not a hearing on Mr. Boudreau's character, or the sincerity of his supporters, or, you know, the importance of the equine industry on the economies of the State of California.

What is really before us is an after-the-fact permit application, and that is not a unique experience for this body. And, frankly, for me, I am not really that

surprised to see structures in an agricultural operation that were unpermitted. In fact, in several areas, accessory ag structures that are relevant to ag operations don't need permits in certain areas.

What is unique, in my mind, is the fact that Mr. Boudreau seems to be victim of his own good intentions, and by enhancing the site has created this conflict that we are struggling with.

If you look at the photos that are in the packet, the '40s, the '50s, the '60s, it is indisputable that this was a disturbed site, that there has been a significant amount of work that has been done on that site, alteration of stream beds, miscellaneous topographical modifications, and what has happened is that over the course of the time, this site has been enhanced. And, I don't think that is a bad thing.

I think that the site, as it now is configured, is much, much better than it used to be, and I don't think it is necessarily fair to penalize the applicant for those improvements.

And, when you look at what are the improvements, or what are the consistencies of the *Coastal Act* that have occurred, the agricultural uses are continued, and they are enhanced. The recreational uses have certainly been retained an improved. And, public access is undoubtedly enhanced.

The scenic views have been preserved.

And, as far as the water quality issue goes, I think it is probably one of the most aggressive management plans I've seen, and I don't argue with the fact that this might well be a model for new standards that we should be trying to implement more regularly.

I think commissioner Wan does raise a good question regarding what kind of findings can we put in here that substantiate or support the decision that I am willing to support, and that is the motion that is before us.

And, I think we can look at the Public Resources Code and note that Section 30231 states that the Act supports minimizing adverse effects on waste water discharge and controlling runoff. And, the improvements that we see on this project, whether it is the 700-foot swale, it is the guttering of the buildings that are there, the channeling of that runoff in appropriate directions, and frankly, the removal and relocation of some of the buildings that are in question.

I think you see a very sincere effort to actually improve the water quality, and I think that specific site helps in that manner.

I don't really want to have one of these classic cases, where, you know, no good deed goes unpunished in the coastal zone. It is a controversial issue, I can understand

that, but I do think that the benefits that have been highlighted by my fellow Commissioners, along with those that I just mentioned, are significant and compelling to make me feel very solid in the way I would cast my vote today.

CHAIR KRUER: Thank you, Commissioner Potter.

Commissioner Gonzalez.

COMMISSIONER GONZALEZ: I have additional questions, along the same questioning as Commission Lowenthal.

It was discovered in 1999, I know someone alluded to it, when they were speaking, but what was the cause of the delay to get to this point now, and in 2007?

DISTRICT DIRECTOR AINSWORTH: There was a long period when the applicant first submitted an application, was reviewed through L.A. County Regional Planning. That took, as I recall, several years, if that is correct, Don.

And, then the applicant withdrew that application and brought forward the vested rights claim, and that took time to process, as well. But, it took a number of years to get through L.A. County, and that was the most significant delays in this case.

And, as well, then, the applicant withdrew that application, and went forward with a vested rights claim.

COMMISSIONER GONZALEZ: Yes.

MR. SCHMITZ: Through the Chair, Commissioner

Gonzalez, again, Don Schmitz. There are some other nuances which should be reiterated to the Commission.

After it became apparent to the farmers that there was a problem. There was an application for vesting that was originally submitted. There was a meeting, as the matter was being scheduled before the Commission, whereupon the staff was recommending denial of that vesting application.

And, it is my client's position that in that meeting with the previous District Director Damm, that it was indicated that, perhaps, a 50-foot setback would be something that would be tenable.

My clients redesigned their project. They did go through a lengthy permit process. It did take years to get the county, the fire department, water quality control board, fish and Game, and the last one of those approvals came forward in about '05, if memory serves.

Staff then indicated that they could no longer be supportive of a 50-foot setback. At that time, my clients decided to proceed with the vesting application, which was before the Commission last November. The Commission did not see it our way, and then the Commission directed us to come forward with the Coastal Development Permit application, which is where we find ourselves today, with the modified project.

COMMISSIONER GONZALEZ: As to an explanation for

the original claim that those structures were existing prior to a fire, and then a claim that they weren't, how was that ever resolved?

MR. SCHMITZ: If I may.

CHAIR KRUER: So, is that question to --

COMMISSIONER GONZALEZ: Whoever can tell me.

EXECUTIVE DIRECTOR DOUGLAS: I think staff should respond first.

CHAIR KRUER: Mr. Schmitz, you can have a seat, unless one of the Commissioners call you up.

DISTRICT DIRECTOR AINSWORTH: I am sorry, could you repeat that question? I didn't get all of it.

COMMISSIONER GONZALEZ: In the testimony there was discussion about how this came to be, and how you came to discover this, and that there was a claim put forward to build these structures because they were destroyed in a fire, and then it was approved, and then withdrawn because there was claims that those structures never existed. How was that -- I am trying to get to the veracity of all of these claims.

I am sorry, I am having a little hard to understand the timing, without having gone through this before.

DISTRICT DIRECTOR AINSWORTH: There was a report after we issued the exemption determination, a member of the public came forward and indicated that those structures were

built after the *Coastal Act*.

Staff initiated investigation, reviewed our aerial photographs, and also the county permit records, and determined that, in fact, these structures were built after the *Coastal Act* without the benefit of a permit.

EXECUTIVE DIRECTOR DOUGLAS: So, as I understand that, the claim that structures never existed, and never burned down, that is not our conclusion. As I understand it, our conclusion was that whatever structures were there simply had no coastal permits. And, we couldn't issue an exemption to rebuild something that wasn't legally there in the first place.

COMMISSIONER GONZALEZ: Okay, thank you for clarifying that.

I want to point out, because I was somewhat offended by some of the speakers, who somehow decided that bringing people in by a bus was not a good thing. As somebody who works with community organizers in my job, with labor, I think any time you can bring people out, that that is a positive thing, and exposing people to a Commission like that, this is very positive, anyway you can get here, so thank you for pooling your resources and bringing a bus. I don't care who pays for it. I think that that is an important factor.

And, I really want to thank all of the people who

built after the *Coastal Act*.

Staff initiated investigation, reviewed our aerial photographs, and also the county permit records, and determined that, in fact, these structures were built after the *Coastal Act* without the benefit of a permit.

EXECUTIVE DIRECTOR DOUGLAS: So, as I understand that, the claim that structures never existed, and never burned down, that is not our conclusion. As I understand it, our conclusion was that whatever structures were there simply had no coastal permits. And, we couldn't issue an exemption to rebuild something that wasn't legally there in the first place.

COMMISSIONER GONZALEZ: Okay, thank you for clarifying that.

I want to point out, because I was somewhat offended by some of the speakers, who somehow decided that

testified today, especially workers. Any time that workers come before us, and can explain how important a decision is upon their jobs, I think that that is vital.

Also, want to thank Commissioner Burke, who pointed out something very important, and actually probably having an effect on me that he didn't mean to. He described these good works that is being done for the young men in Compton, and spoke as a voice of one of those young men.

I would like to speak also as the voice of somebody who grew up in a working class neighborhood, who valued the ability to get away from that, and how much of an effect that had had on my life. The difference, probably, between Mr. Burke and I, though, was my getting away was going to the ocean, and that is probably why my brother and myself both became environmental attorneys. It was truly our ability to get away and escape, and is why I have such a passion for water and for coastal resources.

So, as moved as I was by so much of the testimony, I find it very hard to be able to allow for something that has such a negative effect on water quality, and I think that it is terrible to allow a precedent, especially given -- almost post-facto, to allow this without a 100-foot setback.

Thank you.

CHAIR KRUER: Thank you, Commissioner Gonzalez.

Other -- yes, Commissioner Baird.

COMMISSIONER BAIRD: Just a follow up on Commissioner Kinsey's question earlier about the Fish and Game and the State Water Resources Control Board permits.

What does trouble me about this report, and this is a bit of a reoccurring theme sometimes, is that you had, apparently, an approval that you disagreed with, with the Environmental Review Board, and apparently their previous approvals by the Department of Fish and Game, the State Wildlife Management agency, apparently their approvals by the State Water Resources Control Board, the state water quality control agency, and your partner on non-point source pollution. I hope in future reports I see these mentioned in the reports, and if you have got issues with or disagreements with it, I think those ought to be brought out throughout the document, you know, otherwise, I think we are asking this question, because that wasn't in the document.

And, this is very similar to the last time I came here, when there was a Fish and Game letter on an issue that didn't make it into the analysis, or wasn't an attachment. So, I really want to see a reasoned analysis through this, because I do think what happens on the ground is the most important thing.

There is a lot of mitigation that has gone on here that I don't know what the state board has done, and if they have gone through an extensive analysis and found that this

is more protective?

I want to send a strong signal, that I would really like to see agency positions in their analyses, put into these reports, and to have a reasoned discussion about them.

EXECUTIVE DIRECTOR DOUGLAS: Relative to the Department of Fish and Game, it is my understanding that they were dealing with a stream bed alteration request --

If I could ask the camera operator to just step back a little bit.

-- and they don't have discretion to deny those, as I understand it, and they did not look at the question of the natural resource impacts on the riparian habitat, of a setback of any particular amount.

It is my understanding that they were only looking at the question of the stream bed alteration that was related to -- Jack, the development or the process?

DISTRICT DIRECTOR AINSWORTH: My understanding is they were limited to the development that is actually in the creek.

EXECUTIVE DIRECTOR DOUGLAS: And, relative to the State Water Resources Control Board, their approval, I think you have got a good point. I think that, frankly, I don't know what the scope of their approval, or their review was, at this point, and I think you raise a good point, that in

the future we need to make sure that we are clear on what, exactly, they were looking at, and approving.

So, that point is well taken.

CHAIR KRUER: Commissioner Wan, you have a question.

COMMISSIONER WAN: Just on this one point.

I would like to point out that stream bed alternation agreements with the Fish and Game Department are one thing, but there is a *Coastal Act* policy, and I don't know if it is 30236, or something like that.

What is our stream bed alteration policy? 36, whatever it is.

And, that specifically, under the *Coastal Act*, which is what is our jurisdiction, prohibits alterations of stream bed, except for three specific reasons: one is flood control; the other is -- I have forgotten --

DISTRICT DIRECTOR AINSWORTH: Water supply projects.

COMMISSIONER WAN: -- water supply projects --

DISTRICT DIRECTOR AINSWORTH: And --

COMMISSIONER WAN: -- or habitat restoration.

This doesn't comply with any of those three policies in parts of that, and is therefore a violation of -- those stream crossings are a violation of that provision of the *Coastal Act*.

EXECUTIVE DIRECTOR DOUGLAS: Right, and to supplement that, that is the reoccurring problem that we have with Fish and Game and other agencies. They have a different law, different standards to apply. They are not looking at these projects under the *Coastal Act*.

So, you look at the Regional Water Quality Control Board, they are not looking at the question of impacts on environmentally sensitive habitat, like the riparian. They may be looking solely at the water quality effects, and not the broader effects that the buffer that we are talking about here is designed to protect. The purpose of this buffer is both water quality and protection of the environmentally sensitive habitat, which is the riparian corridor.

So, that is why we constantly get into these seeming conflicting situations, where one state agency approves a project that comes before you, and we recommend a different outcome based on the application of the law that is our standard.

CHAIR KRUER: Commissioner Shallenberger.

COMMISSIONER SHALLENBERGER: Well, on exactly that same line, I want to point out that we do have a letter from the Department of Parks and Recreation, who urges us to -- another department within the Resources Agency -- who asks that it be denied because of their mandates, which are protecting the parks, and specifically they are worried about

Gillette Ranch and Santa Monica Conservancy, so this isn't an uncommon thing, and it is how we are kind of set up with different departments, and agencies have their own mandates that they are supposed to be, you know, following, and at the end of the day, we end up with, hopefully with a good strong project.

Let me ask staff, we heard testimony that the L.A. County permits had expired. Do you know whether that is true, or not?

DISTRICT DIRECTOR AINSWORTH: That may well be true. They are only good for several years; however, when the Commission -- when the applicant requested that, to bring this back for a permit, after the Cease and Desist hearing, the Executive Director waived that particular requirement --

COMMISSIONER SHALLENBERGER: Okay.

DISTRICT DIRECTOR AINSWORTH: -- for additional reviews, because we didn't want to get stuck in that long delay again, that we had at Regional Planning and --

COMMISSIONER SHALLENBERGER: So, that is, actually, not relevant to us?

DISTRICT DIRECTOR AINSWORTH: It really is not.

COMMISSIONER SHALLENBERGER: Whether it expired, or not.

All right, and then just a final point, just to remind Commissioners, that since this is an unpermitted

development, that our standard is really as if there never had been a development there. And, everything that I heard from the project proponent was why what they are proposing was so much better than what is currently on the ground, not that it is the best way to do a horse facility on this property.

So, I just wanted to be sure that we have the correct standard in our mind, and that these wonderful programs that we heard about, the Calabassas Posse, and things, are not and needn't to be at risk, one way or the other, because this is not, as we heard from staff, if we were to go with the staff recommendation, or if we were to defeat the motion before us, it doesn't mean that it is the end of all of the buildings and all of the horses on the property. It merely means that -- not merely, as these are large things -- but, the program doesn't have to be at risk, just because if we choose to deny the project.

CHAIR KRUER: Thank you, Commissioner Shallenberger.

Commissioner Burke.

COMMISSIONER BURKE: Commissioner Shallenger brings us a good point, and there are two or three that I would like to get cleared up.

Could the applicant respond to the fact of what if this application is denied, what happens to the program?

MR. SCHMITZ: What happens to what, Commissioner?

COMMISSIONER BURKE: The programs that have been going on, do you continue to operate as you have before, because some people tell me 80 percent of the buildings have to come down, some people tell me that none of the building have to come down. What is the true story, here.

MR. SCHMITZ: Through the Chair.

Commissioner Burke, it utterly and completely destroys this operation.

COMMISSIONER BURKE: So, everything falls apart.

MR. SCHMITZ: All that would be left would be an area of an arena, only a part of it, and a small portion of pasture.

COMMISSIONER BURKE: Thank you.

Now, here is one of the things that I find hard to understand, and I know the 26th Agricultural District -- or whatever number it is, down in San Diego, I know how much Chairman Kruer loves that place.

CHAIR KRUER: The 22nd.

COMMISSIONER BURKE: The 22nd, right.

But, when that project was approved, it was approved unanimously, and half of the people who are speaking opposed to this voted for that. Now, the only people who didn't vote for it, were the people who weren't here.

Now, can somebody help me out here, if you say

that they are hard to get along with, if these people were hard to get along with, would that mean that you would approve it? And, the same water quality issues that you are about on this project, you weren't concerned about enough to vote against that project?

So, this is, you know, strange to me.

EXECUTIVE DIRECTOR DOUGLAS: Commissioner Burke, would you like to hear me respond to that?

COMMISSIONER BURKE: No.

EXECUTIVE DIRECTOR DOUGLAS: That is what I thought.

COMMISSIONER BURKE: I don't like my friends and I to argue.

CHAIR KRUER: Anyone else?

I would like to just add a little bit on this. This is a very difficult one, but listening to all of the testimony today, and listening to my colleagues, et cetera, the water quality issues are very important, and very critical, but with all of the water studies, and the bio-swale, and the bio-filter thing, I have had horse operations, and if you monitor and maintain them you can keep the water quality, I know that is a fact.

I also know that when I first came here, before this hearing started today, I was very supportive of staff's position, but as I listened to the testimony more and more

today -- and I know referring and staying with the *Coastal Act* -- how critical -- no one has mentioned this -- the fire safety issues of having this as a staging area. This is one of the hardest, most difficult things, where I live, in finding horses in fires is a disaster. They get lost, and you have got to have staging areas. It is very difficult to obtain them. You would think that they would be easier, but it is not.

Also, when you have an existing facility, you just can't tear half of it down, or whatever percentage it is, and most likely would destroy the economic viability of it, because this one, like a lot of the horse areas, they have horse trails, and networks, et cetera, and you just don't get the right to connect with those horse trails, and you lose all of that by moving something, if you can ride, and go around the facilities.

I was moved, like all of the Commissioners today, by the testimony on both sides, but I am very concerned that we sent this -- we talk about the 22nd Agricultural District, and I remember that approval that was brought up, and I didn't until they raised it today. And, it is a state agency.

But, you know we have this, we try all of the time to get this 100 foot, it is true, but what is a little different here is that you do have -- I never would say that

the ERB in Los Angeles is a walk in the park. I mean, it is pretty difficult to get something through them, too, and that weighs in on me, too. It isn't like, this hasn't been researched, et cetera.

So, I believe I have been moved today to be in a position to support my colleague, Commissioner Burke, in his motion.

I'll call the roll, so will the clerk call the roll. They are asking for a "Yes" vote.

SECRETARY MILLER: Commissioner Lowenthal?

COMMISSIONER LOWENTHAL: No.

SECRETARY MILLER: Commissioner Gonzalez?

COMMISSIONER GONZALEZ: No.

SECRETARY MILLER: I didn't hear you.

COMMISSIONER GONZALEZ: No.

CHAIR KRUER: No, she said.

SECRETARY MILLER: Commissioner Secord?

COMMISSIONER SECORD: Yes.

SECRETARY MILLER: Commissioner Neely?

VICE CHAIR NEELY: Yes.

SECRETARY MILLER: Commissioner Potter?

COMMISSIONER POTTER: Aye.

SECRETARY MILLER: Commissioner Kinsey?

COMMISSIONER KINSEY: No.

SECRETARY MILLER: Commissioner Shallenberger?

COMMISSIONER SHALLENBERGER: No.

SECRETARY MILLER: Commissioner Wan?

COMMISSIONER WAN: No.

SECRETARY MILLER: Commissioner Achadjian?

COMMISSIONER ACHADJIAN: Yes.

SECRETARY MILLER: Commissioner Blank?

COMMISSIONER BLANK: Yes.

SECRETARY MILLER: Commissioner Burke?

COMMISSIONER BURKE: Yes.

SECRETARY MILLER: Chairman Kruer?

CHAIR KRUER: Yes.

SECRETARY MILLER: Seven, five.

CHAIR KRUER: Can we ask everyone to go outside, as we need to move onto the next item. We would appreciate it if you would go out quietly, we would appreciate it.

EXECUTIVE DIRECTOR DOUGLAS: Yes, Mr. Chairman, that brings us to the next item.

*

*

[Whereupon the hearing concluded at 7:35 p.m.]

NOTICE

This transcript has been sealed to protect its integrity. Breaking my signature seal, or the transcript binding seal, will void the Reporter's Certification

If either of these seals is broken, the transcript shall be returned to the court reporter for recertification for an additional fee of $500.00.

To purchase a certified copy of this transcript please contact the court reporter who is the signatory below.

REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
) SS.
COUNTY OF MADERA)

I, PRISCILLA PIKE, Hearing Reporter for the State of California, do hereby certify that the foregoing 137 pages represents a full, true, and correct transcript of the proceedings as reported by me before the California Coastal Commission on July 9, 2007.

Dated: February 24, 2008

PRISCILLA PIKE

39672 WHISPERING WAY
OAKHURST, CA 93644

PRISCILLA PIKE
Court Reporting Services
mtnpris@sti.net

TELEPHONE
(559) 683-8230

To Whom It May Concern:

I have been a member of the Los Angeles County Environmental Review Board (ERB) since its inception in 1992. The ERB consists of nine professional scientists, planners or other technical professionals with expertise in the natural resources of the Santa Monica Mountains, or other expertise such as fire, water quality, planning and public works. The ERB meets once monthly to review development projects proposed in proximity to sensitive resources in the unincorporated Los Angeles County portion of the Coastal Zone in the Santa Monica Mountains. The ERB is tasked with finding these projects consistent or inconsistent with the policies of the LUP, and with making recommendations for mitigating potential adverse environmental impacts.

I attended the January 27, 2003, ERB meeting in which Plot Plan 48295, located at 2200 Stokes Canyon Road, Calabasas, was presented. I also attended a site visit the previous week. Present at the site visit were ERB member Richard Ibarra; Regional Planning staff Joe Decruyenaere and Daryl Koutnik; and project representatives Brian Boudreau, Stanley Lamport and Don Schmitz.

The project representatives stated that this was not a regular application for an approval in concept preparatory to a Coastal Development Permit, but was a review by the County prior to a vested rights claim before the Coastal Commission. The project representatives spent a lot of time at the site visit explaining why they felt the structures were vested. Since only the Coastal Commission had the authority to approve a vested rights claim, we were told by the representatives that our review of the structures on site was limited only to proposed changes to the site. We were instructed not to comment on structures that were the subject of the vested rights claim, some of which were located within the 100 foot setback from the Stokes Creek Environmentally Sensitive Habitat Area (ESHA).

The only ERB recommendations made in the January 27 meeting, therefore, were related to Best Management Practices and exterior lighting. We made no findings related to the proximity of the existing structures to the ESHA. Had Plot Plan 48295 been presented as a Coastal Development Permit approval in concept, the ERB would have found the project inconsistent due to the encroachment of certain structures in the ESHA setback. In my 15 years on the ERB, there have been no more than one or two instances in which the ERB found that placement of structures within the 100 foot ESHA setback to be consistent with the LUP. These would have been instances in which the structure was modest in size and for which no environmentally superior site was available on the parcel.

Suzanne Goode
ERB Member

Goode, Suzanne

From: Daryl Koutnik [DKoutnik@impactsciences.com]
Sent: Wednesday, September 19, 2007 3:22 PM
To: Goode, Suzanne
Subject: RE: Malibu Valley Farms

Well, in the absence of the tape for that meeting, my recollection is that the "vested right" position is how the County presented the site plan for review to ERB, basing this on the information that the barn/stable/corral was constructed prior to the establishment of the 1986 Malibu Land Use Plan.

Do this answer your question?

Daryl

From: Goode, Suzanne [mailto:sgood@parks.ca.gov]
Sent: Wednesday, September 19, 2007 2:20 PM
To: Daryl Koutnik
Subject: Malibu Valley Farms

Daryl:

I am just confirming that the Environmental Review Board review of the Malibu Valley Farms proposal in January, 2003, was for a vested rights claim, Correct?

Suzanne

MINUTES OF THE ENVIRONMENTAL REVIEW BOARD (ERB)
MEETING OF JANUARY 27, 2003

(Approved as amended, February 24, 2003)

PERSONS IN ATTENDANCE:

ERB MEMBERS	**REGIONAL PLANNING STAFF**
Noel Davis, PhD	Hsiao-ching Chen
Suzanne Goode	Joe Decruyenaere
Richard Ibarra	Daryl Koutnik
Travis Longcore, PhD	
Rudi Mattoni, PhD	
Bradley Yocum	

Preoject 02-329 Representatives and Interested Parties

Travis Cullen	(818) 879-4700
Denise Goldberg	(213) 891-7829
Doni Harmon	(310) 457-5994
Joe Kronsberg	(310) 457-4874
Lynne Kronsberg	(310) 457-4874
Bruce Lackow	(310) 451-4488
Steve Nelson	(949) 753-7001
Ken Orgel	(310) 337-1661
Francis Park	(213) 891-3786
Kathy Patey	(818) 879-4733
Bob Ralls	(323) 295-4555
Kristin Szabo	(949) 753-7001
Carl Wishner	(818) 879-4700

Plot Plan 48488 Representative

Terry Valenti	(310) 456-8990

Plot Plan 48295 Representatives

Brian Boudreau	(818) 880-5139
Frank Hovore	(661) 250-8311
Stanley W. Lamport	(310) 224-2275
Don Schmitz	(310) 589-0773

ENVIRONMENTAL REVIEW BOARD

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

ERB Meeting Date: January 27, 2003

ERB Evaluation: ___ Consistent X Consistent after Modifications ___ Inconsistent

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

Staff Recommendation: X Consistent ___ Consistent after Modifications ___ Inconsistent

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

Plot Plan 39621 Representatives

James Austin	(202) 258-2991
Suzanne Smith	(310) 415-5719

MINUTES
JANUARY 27, 2003

AGENDA ITEMS

1. Goode moved and Ibarra seconded to approve the December 16, 2002 ERB Minutes as written.

   Plot Plan 48295 was moved to Item 4 on the agenda, by request of the Plot Plan Representative.

NEW BUSINESS

2. **Project No. 02-329**: see ERB Item 2.

3. **Plot Plan 48488**: see ERB Attachment 3.

4. **Plot Plan 48295**: see ERB Attachment 4.

5. **Plot Plan 39621**: see ERB Attachment 5.

****

NOTE: ERB MEETINGS ARE INFORMAL WORKING SESSIONS. MEMBERS ARE APPOINTED AS VOLUNTEERS TO SERVE IN AN ADVISORY CAPACITY. MINUTES ARE PREPARED BY PLANNING STAFF PRIMARILY FROM NOTES. MEETINGS ARE ALSO RECORDED ON TAPE WHICH IS USED PRIMARILY AS A BACK-UP FOR STAFF. VISITORS ARE ADVISED TO TAKE PROPER NOTES AND/OR RECORD THE MEETING. NEW OR CLARIFIED INFORMATION PRESENTED IN BIOTA REVISIONS MAY RAISE NEW ISSUES AND REQUIRE FURTHER ANALYSIS. MINUTES ARE GENERALLY APPROVED AT THE FOLLOWING MEETING. DRAFT MINUTES MAY BE REQUESTED BUT ARE SUBJECT TO REVISION.

ERB REPORT - ITEM 2

PROJECT NOS. 02-329 – OAK TREE PERMIT/CONDITIONAL USE PERMIT

ERB MEETING DATE JANUARY 27, 2003

SITE PLANS DATED SEPTEMBER 18, 2002; BIOLOGICAL CONSTRAINTS ANALYSIS DATED NOVEMBER 2002

First ERB Meeting

PROPOSED PROJECT: 02-329 – Conditional Use Permit to authorize the renovation and replacement of existing cabins and facilities, to construct a new pool house (3,000 sq. ft.) and pool, residence (2,000 sq. ft.), cabins (6 X 1,150 sq. ft.), arts and crafts building (900 sq. ft.), nature center (2400 sq. ft.), lodge (9000 sq. ft.), office/infirmary/staff quarters (6,000 sq. ft.), pond, stable and corral, court and climbing wall, two water tanks (126,000 and 10,000 gallons), vehicle access bridge, two foot bridges and to improve the existing 1,170 ft. access road from Mulholland Highway over an adjacent lot with 5186 cu. yd. cut and 5045 cu. yd. fill. The subject property is located at 35375 Mulholland Highway, Malibu, within the Arroyo Sequit Significant ESHA and Watershed.

SENSITIVE ENVIRONMENTAL RESOURCE DESCRIPTIONS: Arroyo Sequit supports one of the most extensive and well-developed riparian and oak woodlands and associated stream habitats in the Santa Monica Mountains coastal zone. Natural pools, waterfalls, and a variety of riparian trees are present. Arroyo Sequit is one of the few streams in southern California that still sustains a native steelhead trout (*Oncorhynchus mykiss*) population. Dense bay (*Umbellularia californica*) thickets grow extensively along the East Fork. Above the East Fork, the main reach of Arroyo Sequit habitat is poorly developed and the watershed is undisturbed with the exception of one small stretch of the canyon bottom which is fragmented by homes, camps, and associated paved areas. The lower half of the canyon is within Leo Carrillo State Park and is mostly undisturbed with the exception of campground facilities located on the canyon floor. The mouth of the canyon contains significant marine resources.

ERB COMMENTS AND RECOMMENDATIONS:

1. The site is not likely to require as much irrigated area as is depicted on the current plans; consult with the Los Angeles County Fire Department for advice on how to minimize impacts related to fuel modification.

2. Neighboring property owners will be responsible for fuel modification if buildings are configured per the current plan; the California Department of Parks and Recreation will not clear on their property. The siting of buildings and facilities shall respect the property boundaries and avoid the necessity of invoking neighbors' responsibility for fire protection of the site.

3. ERB is concerned with the degraded condition of oaks and riparian habitat on the site, and with the potential for further loss; development shall be planned so as to save as many trees as possible (including sycamores); non-essential features, such as ponds, shall be configured to avoid impacts to trees; eliminate lawns and irrigation around oak trees.

4. Oak tree surveys shall include an area 50 feet to either side of the approach easement and 75 feet from all structures; secure permission from neighboring property owners to survey oak trees and vegetation on their properties.

5. The stream is known to support southern steelhead (Federally Threatened, California Species of Special Concern), and restoration of the site is a high priority. Prepare an abatement program for invasive *Eucalyptus* trees and Cape ivy (*Delairea odorata*, toxic to aquatic animals); remove grouted rip-rap from the stream; revegetate the stream with native vegetation; address the causes for cliff erosion at the west end of the property. Pool water shall be contained so as not to contaminate the stream.

6. Propose a long-term plan to set development away from the stream, to remove non-native trees and to return ecological function to the stream for the continuance of southern steelhead.

7. Address issues pertaining to the connectivity of biological resources throughout the Arroyo Sequit watershed; include impacts of sedimentation and erosion downstream and at the mouth of Arroyo Sequit.

8. Revise the map of Designated Sensitive Resource Areas (Figure 10) to include oak trees and other vegetation, such as that shown on Figure 4; the "developed area," as shown on Figure 10, has not lost all ecosystem function and should be regarded thus.

9. Include the approach easement in all discussions and maps.

10. Use permeable surfaces in parking spaces, driveways and along the approach road.

11. The development footprint should be clustered, and open space should be maximized. New development on this property would be limited to a single family home with one accessory structure; the existing development of the site already exceeds that and expansion should be discouraged.

12. Prepare a waste management plan for any animals housed on the site; specify the location of septic systems, respecting oak, waterway and structural constraints.

13. Exterior night lighting shall be directed downward, of low intensity, at low height and shielded to prevent illumination of surrounding properties and undeveloped areas; security lighting, if any is used, shall be on a motion detector.

14. Use earth tone colors of the surrounding areas on all structures to minimize visual impacts to the viewshed. Shield the water tank with native vegetation.

15. This project warrants an EIR.

ACTION TAKEN: Further ERB review is required; prepare a full Biota Report which considers the project plan in light of the biological constraints of the project site.

ENVIRONMENTAL REVIEW BOARD

Case No.	Plot Plan 48488
Location	3705 Carbon Canyon Road, Malibu, CA 90290
Applicant	Emmett DeCou
Request	Restore a length of Carbon Creek to mitigate for impacts from the unauthorized emplacement of gabions used for creek stabilization to protect a single-family residence.
Resource Category	Carbon Canyon ESHA

ERB Meeting Date: January 27, 2003

ERB Evaluation: ___ Consistent X Consistent after Modifications ___ Inconsistent

ERB Recommendations:
- ERB approves of the restoration plan in concept; however, the applicant must see the project through to completion.
- Remove nasturtium (*Tropaeolum majus*).

Staff Recommendation: X Consistent ___ Consistent after Modifications ___ Inconsistent

Suggested Modifications: -

ENVIRONMENTAL REVIEW BOARD

Case No.	Plot Plan 39621
Location	2540 Caymen Road, Malibu, CA 90265
Applicant	Suzanne Smith
Request	Construct a 3,200 sq. ft. single-family residence with driveway, garage and septic system
Resource Category	Eastern Wildlife Movement Corridor

ERB Meeting Date: January 27, 2003

ERB Evaluation: ___ Consistent X Consistent after Modifications ___ Inconsistent

ERB Recommendations:

- Minimize the fuel modification footprint and the use of irrigation; thin vegetation and dead wood, as opposed to clearing, for fuel modification in Zone C; consult with the Los Angeles County Fire Department for advice on how to minimize impacts related to fuel modification.
- Establish a conservation easement for the undeveloped portion of the property.
- Exterior night lighting shall be directed downward, of low intensity, at low height and shielded to prevent illumination of surrounding properties and undeveloped areas; security lighting, if any is used, shall be on a motion detector.
- Use earth tone colors of the surrounding areas on all structures to minimize visual impacts to the viewshed.
- Consider replacing the pool with a below ground cistern or other water-storage facility.

Staff Recommendation: X Consistent ___ Consistent after Modifications ___ Inconsistent

Suggested Modifications: -

MALIBU VALLEY FARMS

June 30, 2007

RECEIVED
JUL - 3 2007
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

VIA OVERNIGHT MAIL

Mr. Steve Blank
45 Fremont St., Suite 2000
San Francisco, CA 94105

Re: Malibu Valley Farms
CDP Application No.: 4-06-163
Hearing Date: July 9, 2007
Agenda Item No.: 13(e)

Dear Mr. Blank:

Thank you in advance for taking time out of your busy schedule to review the enclosed information on our application. In this letter we would like to address specific statements included in the staff report issued for our application.

The Staff Report recommends denial of our application based on the fact that structures on the farm are within 100-feet of riparian canopy that Staff defines as ESHA. The guidelines that Staff is using to form this recommendation are simply guidelines, not absolute requirements, and Coastal Commissioners have the discretion to determine the proper setbacks and mitigation on a case by case basis.

The land upon which Malibu Valley Farms sits is not pristine. This land has been disturbed for over 70 years in its use as agricultural farm land, which is not in dispute. Additionally, two public highways have been created on this property. Prior to 1950, Mulholland Highway ran through the property in a large "U" shape. At this time, Stokes Canyon Road was a winding dirt road and Stokes Creek, the creek at issue in our application, was located approximately 100 feet northwest of its current location. Please see Exhibit "A" to this letter which is an aerial photograph of the property from 1944.

In 1952, the County of Los Angeles approved the improvement of Stokes Canyon Road from a dirt road to an 80-foot wide highway. To build this road, the creek had to be moved from its original location to its current location. Additionally, Mulholland Highway was reconfigured to make it straight. To accomplish this, the original creek was filled in, the area between the new road and the current location of Stokes Creek was completely graded and compacted, and the new creek dug. Please see Exhibit "B" to this letter which is an aerial photograph of the property from 1962, showing the new locations of Mulholland Highway, Stokes Canyon Road, and Stokes Creek.

Livestock continued to open-graze on the entire property, including in the new creek, as it had for decades. Because of the open-grazing by livestock, vegetation did not grow. Please see Exhibit "C" to this letter which is an aerial photograph of the property in 1972, showing that no vegetation existed during this time period.

Malibu Valley Farms, Inc.
26885 Mulholland Highway, Calabasas, CA 91302
(818) 880-5139 • Fax (818) 880-5414 • e-mail mvfi@malibuvalley.com

MALIBU VALLEY FARMS

In the mid-1970s, Malibu Valley Farms purchased the property. Brian Boudreau ended open-grazing, restricted animals from entering the creek, and planted over 1,000 trees on his property, fostering the growth of the riparian area that is at issue at our hearing. Before Malibu Valley Farms owned the property, riparian canopy did not exist on the property. The evolution of site and riparian canopy is shown in Exhibit "D" to this letter, which includes photographs of the property in 1979 and 2005.

In its report, Staff states that the property is ESHA; that ESHA existed prior to Malibu Valley Farms owning the property; and that our farm disturbed the ESHA. This is the basis for their recommendation of denial. Staff has a fundamental misunderstanding of the site in that they do not understand the history of the site and the fact that the property was disturbed before Malibu Valley Farms owned the farm, not because of it. The riparian canopy that exists today was created by and has flourished in harmony with Malibu Valley Farms' horse facilities, which are not set back from the top of creek.

The local Land Use Plan, adopted by the Coastal Commission, acknowledges that riparian areas that have been disturbed over time, such as those on our farm, exist and are referred to as Disturbed Sensitive Resources (DSR), which is a separate classification from ESHA. DSR is defined as "Riparian woodlands, streams, oak woodlands, and savannahs which are located in areas of existing development and can no longer support a significant number of species normally associated with healthy habitat." (LUP Section 4.2.1 P58). Disturbed Sensitive Resources do not require any setback.

Whether the riparian canopy is ESHA or DSR, the governing body, such as the Coastal Commission, has the discretion to determine the appropriate setback on a case by case basis. Both the Los Angeles County Department of Regional Planning and the Environmental Review Board exercised this discretion and approved Malibu Valley Farms' application as proposed.

In working with the Coastal Commission, Malibu Valley Farms has developed a Comprehensive Management and Emergency Preparedness Plan which moves the structures back from the creek an average of 50-feet and implements various mitigation measures. These measures include having roofs on structures with gutters and downspouts to collect rainwater and direct it to the creek through underground pipes so that it never comes into contact with the bare land; installing a vegetative bio-swale which will trap any run-off and have it travel down a bio-swale that is over 700 feet in length, filtrating the run-off the entire time before it meets the creek; and finally, planting a vegetative buffer which will collect and filtrate any run-off before it hits the creek. Scientific studies have shown that a vegetative buffer alone is 99.9% effective and we have implemented two other mitigation measures in addition to the buffer.

In addition to these measures, Malibu Valley Farms already has in place and commits to continue implementing, an award-winning Best Management Practices Plan. This state of the art plan has been in place on the farm for many, many years and the County of Los Angeles rewarded Brian Boudreau and Malibu Valley Farms with the honor of being named the farm with the best waste management plan in Los Angeles County in an independent study. Also, the County of Los Angeles has asked to use Malibu Valley Farms' plan as the example to give to other owners seeking equestrian permits. Additionally, Brian Boudreau was asked to consult on the development of the Local Coastal Plan by the County on these issues. Please see Exhibit "E" for a copy of the award.

MALIBU VALLEY FARMS

Malibu Valley Farms developed a site plan that removes several structures that exist today and reconfigures some others. These changes are a part of the Comprehensive Management Plan. To further work with the Coastal Commission, Malibu Valley Farms is now offering to remove two additional structures, a barn and a wash-area, to further increase the setback area from the creek to the structures. We have included for you copies of the current site plan, and this new site plan being submitted. These plans show the structures that are being offered for removal. Please see Exhibit "F" for these plans.

Malibu Valley Farms is committed to the environment, as shown by the planting of over 1,000 trees which have flourished, and through the continual implementation of its award-winning management plan. Malibu Valley Farms is offering to increase the mitigation measures on its property in exchange for a permit approving the site plan presented. Quite simply, Malibu Valley Farms is making this compromise in exchange for its life because it simply cannot exist with a 100-foot setback. If the site plan proposed by Malibu Valley Farms is not approved, the farm will have to close.

We know you have heard all the wonderful things Malibu Valley Farms does for the community as well as the champion horses it breeds and we know that both the equestrian community and racing industry will suffer if this farm no longer exists. This property is unique. It has been farmed, degraded, had roads built through it, creeks moved and then left barren. The Boudreau Family has made it as beautiful as it is today and we hope that you will take the history of the property and the care and generosity of the Boudreau Family into consideration and approve our application for a Coastal Development Permit on July 9th.

Thank you again for taking the time to read this letter and please feel free to contact us if you would like to discuss this further.

Sincerely,

Beth Palmer

CALIFORNIA COASTAL COMMISSION
SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(05) 585-1800

W 18a

Filed:	3/21/07
Staff:	D. Christensen
Action Date:	7/9/07
Action:	Approved with Conditions
Revised Findings	
Staff Report:	5/29/08
Hearing Date:	6/11/08

STAFF REPORT: REVISED FINDINGS

APPLICATION NO: 4-06-163

APPLICANT: Malibu Valley Farms, Inc.

AGENT: Fred Gaines and Don Schmitz

PROJECT LOCATION: Northeast corner of Mulholland Highway and Stokes Canyon Road, Santa Monica Mountains (Los Angeles County)

APN NO: 4455-028-044

COMMISSION ACTION: Approval with Conditions

DATE OF COMMISSION ACTION: July 9, 2007

COMMISSIONERS ON THE PREVAILING SIDE: Achadjian, Blank, Burke, Secord, Neely, Potter, and Kruer.

PROJECT DESCRIPTION: Request for after-the-fact approval for an equestrian facility, including a 45,000 sq. ft. arena with five-foot high surrounding wooden wall with posts, 576 sq. ft. covered shelter, 25,200 sq. ft. riding arena, approximately 2,000 sq. ft. parking area, 2,660 sq. ft. back to back mare motel, 1,440 sq. ft. one-story barn, approximately 15,000 sq. ft. fenced paddock, fencing, dirt access road with at-grade crossing through Stokes Creek, and a second at-grade dirt crossing of Stokes Creek. The proposed project also includes removal of twenty-eight 576 sq. ft. portable pipe corrals, four 400 sq. ft. portable pipe corrals, a 288 sq. ft. storage shelter, 200 sq. ft. portable storage trailer, 200 sq. ft. portable rollaway bin/container, 160 sq. ft. storage container, three-foot railroad tie walls, 101 sq. ft. tack room with no porch, four 101 sq. ft. portable tack rooms with 4-ft. porches, 200 sq. ft. portable tack room with four-foot porch, 150 sq. ft. cross tie area, 250 sq. ft. cross tie area, 360 sq. ft. cross tie shelter, two 2,025 sq. ft. covered corrals, and one 1,080 sq. ft. covered corral, and reduction in the size of the fenced paddock area by approximately 5,000 sq. ft. The proposed project also includes new construction of four 2,660 sq. ft. covered pipe barns, two 576 sq. ft. shelters, three 96 sq. ft. tack rooms, two 225 sq. ft. manure storage areas, vegetative swales totaling 1,400 feet in length, an approximately 850 sq. ft. retention basin, 250 sq. ft. riprap pad, 65.8 cu. yds. of grading (32.9 cu. yds. cut, 32.9 cu. yds. fill), and 0.5-acre riparian restoration.

Lot Area:	***31.02 acres***
Lot Area within Coastal Zone (CZ):	***~28 acres***
Proposed development area (in CZ):	***~6 acres***
Zoning:	***Rural Land III (1 du/2 acres)***

SUMMARY OF STAFF RECOMMENDATION

Staff recommends the Commission adopt the following revised findings in support of the Commission's action on July 9, 2007, approving the proposed project with conditions. Adoption of the revised findings as set forth in this staff report requires a majority vote of the members from the prevailing side who are also present at the revised findings hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action are eligible to vote on the revised findings.

The subject property is an approximately 31.02-acre parcel at the northeast corner of Mulholland Highway and Stokes Canyon Road in the Santa Monica Mountains area of unincorporated Los Angeles County. The southern approximately 28 acres of the parcel is located within the Coastal Zone. Stokes Canyon Creek, a stream that is recognized by the United States Geological Survey (USGS) as an intermittent blue-line stream, runs in a southwesterly direction through the western half of the parcel. The parcel area east of the creek consists of mountainous terrain containing chaparral, oak woodland, and annual grassland habitats; the parcel area west and south of the creek is level and contains the approximately six-acre unpermitted equestrian facility that the Commission approved after-the-fact last July, and that is the subject of this report.

The proposed equestrian facility, including the as-built components, is located in and adjacent to Stokes Creek. The proposal includes removing several existing structures nearest the creek's riparian canopy and replacing them with structures that are set farther back from the creek. The proposal also includes swales, riparian restoration, and other water quality protection features to minimize adverse effects to the creek. The proposal will allow continued operation of an equestrian facility that provides important recreational, access, and fire safety benefits.

The Commission's action for **approval** of the proposed application includes five (5) special conditions of approval, including management plan implementation and monitoring, assumption of risk, deed restriction, agricultural easement, and indemnification condition. As conditioned, the proposed project is consistent with all applicable Chapter Three policies of the Coastal Act.

LOCAL APPROVALS RECEIVED: County of Los Angeles Department of Regional Planning, Approval in Concept, February 2, 2004; County of Los Angeles Environmental Review Board Evaluation, Consistent after Modifications, January 27, 2003; County of Los Angeles Fire Prevention Engineering Approval in Concept, June 5, 2002; County of Los Angeles Preliminary Fuel Modification Plan, December 18, 2002; State Water Resources Control Board Receipt of Notice of Intent to Comply with the Terms of the General Permit to Discharge Storm Water Associated with Construction Activity, WDID No. 419C330921, June 27, 2005; Letter re: Lake or Streambed Alteration Notification No. 1600-2004-0539-R5, California Department of Fish and Game, March 15, 2005.

SUBSTANTIVE FILE DOCUMENTS: Malibu/Santa Monica Mountains certified Land Use Plan; "Biological Resource Analysis of Proposed ESHA Setback for Malibu Valley Farms Equestrian Center Improvements," Frank Hovore & Associates, January 2002, updated October 2004; "Biological Assessment in Support of Malibu Valley Farms, Inc., Coastal Development Permit Application No. 4-02-131," Sapphos Environmental Inc., October 25, 2005; "Evaluation of Surface Water and Groundwater Quality Impacts Resulting from the Proposed Equestrian

Facility at 2200 Stokes Canyon Road, Calabasas, California," by Jones & Stokes, July 3, 2002; "Policies in Local Coastal Programs Regarding Development Setbacks and Mitigation Ratios for Wetlands and Other Environmentally Sensitive Habitat Areas," California Coastal Commission, January 2007; Claim of Vested Rights File No. 4-00-279-VRC (Malibu Valley); "Malibu Valley Farms Comprehensive Management Plan", by Malibu Valley Farms, Inc., dated December 2006; Coastal Development Permit Application No. 4-02-131 (Malibu Valley Farms, Inc.); Claim of Vested Rights No. 4-00-279-VRC (Malibu Valley Farms, Inc.); Cease and Desist Order No. CCC-06-CD-14 and Restoration Order No. CCC-06-RO-07; Malibu Valley Farms' Proposed Conditions of Approval, presented to Commissioners and staff at July 9, 2007 Commission Hearing; "Reporter's Transcript of Proceedings" for Agenda Item No. 13e (Malibu Valley Farms) on Monday, July 9, 2007.

STAFF NOTE: Subsequent to the Commission's July 9, 2007 public hearing on the subject permit application, Commission staff ("Staff") received a letter from Mary Hubbard of the organization Save Open Space (SOS) suggesting that, because a 2002 deed transferring the subject property from Robert Levin to Malibu Valley Farms, Inc. ("MVF"), had not been recorded prior to the Commission's action, the Commission had lacked authority to conduct its hearing and the subject permit was null and void (Exhibit 34). A much more recent letter from Marcia Hanscom of the Coastal Law Enforcement Action Network (CLEAN) expressed continuing concern over the same issue and stated that the Commission's approval had been "based on representations that the subject property would be transferred to ownership of the applicant" (Exhibit 33). Both organizations objected to the release of these Revised Findings because of their concerns. However, these claims raise no question as to the validity of the Commission's action and do not necessitate any delay in the adoption of these findings, for the reasons explained below.

The specific information requirement that SOS claims was not satisfied is a requirement for a "description and documentation of the applicant's legal interest in . . . the property." Cal. Code of Regulations, Title 14 ("14 CCR") § 13053.5(b). However, the Commission did have documentation of the applicant's legal interest in the property at the time it acted, and that documentation indicated that MVF had a sufficient legal interest in the property. Most significantly, the Commission had the unrecorded deed. Although an unrecorded deed does not render the grantee the "record" owner of the property, it does effectively transfer title. See Cal. Civil Code § 1217 ("An unrecorded instrument is valid as between the parties thereto and those who have notice thereof"). Thus, MVF was the legal owner of the subject property at the time the Commission acted, and nothing in Section 13053.5(b) says anything about "record title." In addition, in response to Staff's question to MVF about this ownership issue, the party who transferred the property to MVF, Robert Levin, submitted a letter in January of 2007, six months before the Commission acted, consenting to the processing of the permit application. Thus, even if there had been a question as to the validity of the deed, there was no question as to MVF's ability to seek the subject permit.[1]

Finally, although SOS quotes a February 16, 2007 letter from Staff to the applicant, that letter does not support SOS's position. The letter simply noted that Staff had asked for a "clarification" of the ownership issue, due to the unrecorded deed, but then stated that Staff intended to "proceed with the assumption that [MVF] is the owner of the project site," which is exactly what staff, and the Commission, did. Similarly, CLEAN's contention that the

[1] Incidentally, even if the information listed in section 13035.5 had not been provided, that section just imposes standards for the Commission's permit application form; it does not prohibit the Commission from proceeding simply because the information that Section 13035.5 requires to be on the application form was not provided.

Commission's approval was "based on representations that the subject property would be transferred to ownership of the applicant" is simply inaccurate.

I. Staff Recommendation

MOTION: ***I move that the Commission adopt the revised findings in support of the Commission's action on July 9, 2007 concerning Coastal Development Permit No. 4-06-163.***

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote on the motion. Passage of this motion will result in the adoption of revised findings as set forth in this staff report. The motion requires a majority vote of the members from the prevailing side present at the revised findings hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action are eligible to vote on the revised findings.

Commissioners Eligible to Vote: Achadjian, Blank, Burke, Secord, Neely, Potter, Chairman Kruer.

RESOLUTION TO ADOPT REVISED FINDINGS:

The Commission hereby adopts the findings set forth below for **Approval with Conditions** of Coastal Development Permit No. 4-06-163 on the ground that the findings support the Commission's decision made on July 9, 2007 and accurately reflect the reasons for it.

This Revised Findings Report revises the original Staff Recommendation and Findings by **adding new language** and ~~**deleting existing language**~~ as follows below:

II. Standard Conditions

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

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

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

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

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

III. Special Conditions

1. Comprehensive Management Plan Implementation and Monitoring

By acceptance of this permit, the applicant agrees to implement its proposed "Malibu Valley Farms Comprehensive Management Plan" (December 2006). The applicant shall provide an independent monitoring report to the Executive Director, prepared by a qualified environmental specialist, one year after initiation of implementation of the Malibu Valley Farms Comprehensive Management Plan, and again five years after initiation of implementation of the Plan. The monitoring report shall certify whether the plan has been implemented and plan elements are operational in conformance with the terms of the plan.

If a monitoring report indicates that any plan elements are not operational or in conformance with the terms of the plan, the applicant, or successors in interest, shall submit a revised or supplemental management plan for the review and approval of the Executive Director. The revised plan must specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan. The Executive Director will determine whether an amendment to the permit is necessary prior to implementing the revised plan. If the Executive Director determines that no amendment is needed, the applicant, or successors in interest, shall implement the revised plan upon Executive Director approval. If the Executive Director determines that an amendment is needed, the applicant, or successors in interest, shall submit the necessary amendment application and implement the approved plan upon approval of the amendment.

2. Assumption of Risk

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

3. Indemnification by Applicant

Liability for Costs and Attorneys Fees: By acceptance of this permit, the Applicant/Permittee agrees to reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys fees -- including (1) those charged by the Office of the Attorney General, and (2) any court costs and attorneys fees that the Coastal Commission may be required by a court to pay -- that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the Applicant/Permittee against the Coastal Commission, its officers,

employees, agents, successors and assigns challenging the approval or issuance of this permit. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission.

4. Agricultural Easement

A. No development, as defined in Section 30106 of the Coastal Act, shall occur in the Agricultural Easement Area as shown on **Exhibit 29** except for:

1. Restoration, protection, and enhancement of native habitat and/or sensitive resources;

2. Existing livestock fencing as shown on Exhibit 29.

AND

3. The following development, if approved by the Coastal Commission as an amendment to this coastal development permit:

- Agricultural production activities defined as "activities that are directly related to the cultivation of agricultural products for sale. Agricultural products are limited to food and fiber in their raw unprocessed state, and ornamental plant material."

- Agricultural support facilities directly related to the cultivation of food, fiber, and ornamental plants being undertaken on the site.

- Maintaining livestock

B. ***Prior to issuance of the Coastal Development Permit***, the applicant shall execute and record a document in a form and content acceptable to the Executive Director, granting to a public agency or private association approved by the Executive Director an agricultural conservation easement over the "agricultural easement area" described above, for the purpose of preventing the development or improvement of the land for purposes other than agricultural production or restoration, protection, and enhancement of native habitat and/or sensitive resources. The recorded easement document shall include a formal legal description of the entire property; and a metes and bounds legal description and graphic depiction, prepared by a licensed surveyor, of the agricultural easement area, as generally shown on **Exhibit 29**. The recorded document shall reflect that no development shall occur within the agricultural easement area except as otherwise set forth in this permit condition. The offer shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed.

5. Deed Restriction

Prior to issuance of the coastal development permit, the applicant shall submit to the Executive Director, for review and approval, documentation demonstrating that the applicants have executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property,

subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

~~II~~ IV. Findings and Declarations

The Commission hereby finds and declares:

A. Project Description

The applicant, Malibu Valley Farms, Inc. (MVF), requests after-the fact approval for an equestrian facility that is used for breeding, raising, training, stabling, exercising, rehabilitation, and boarding of horses. The facility includes a 45,000 sq. ft. arena with five-foot high surrounding wooden wall with posts, 576 sq. ft. covered shelter, 25,200 sq. ft. riding arena, approximately 2,000 sq. ft. parking area, 2,660 sq. ft. back to back mare motel, 1,440 sq. ft. one-story barn, approximately 15,000 sq. ft. fenced paddock, fencing, dirt access road with at-grade crossing through Stokes Creek, and a second at-grade dirt crossing of Stokes Creek (**Exhibits 4-6**). The facility provides equestrians with opportunity to access important trail networks, sponsors educational and recreational opportunities for lower-income youth, and serves as a refuge for horses in the event of fire.

The proposed project includes removal of twenty-eight 576 sq. ft. portable pipe corrals, four 400 sq. ft. portable pipe corrals, a 288 sq. ft. storage shelter, 200 sq. ft. portable storage trailer, 200 sq. ft. portable rollaway bin/container, 160 sq. ft. storage container, three-foot railroad tie walls, 101 sq. ft. tack room with no porch, four 101 sq. ft. portable tack rooms with four-foot porches, 200 sq. ft. portable tack room with four-foot porch, 150 sq. ft. cross tie area, 250 sq. ft. cross tie area, 360 sq. ft. cross tie shelter, two 2,025 sq. ft. covered corrals, and one 1,080 sq. ft. covered corral, and reduction in the size of the fenced paddock area by approximately 5,000 sq. ft.

The proposed project also includes new construction of four 2,660 sq. ft. covered pipe barns, two 576 sq. ft. shelters, three 96 sq. ft. tack rooms, two 225 sq. ft. manure storage areas, vegetative swales totaling 1,400 feet in length, an approximately 850 sq. ft. retention basin, 250 sq. ft. riprap pad, 65.8 cu. yds. of grading (32.9 cu. yds. cut, 32.9 cu. yds. fill), and 0.5-acre riparian restoration (**Exhibits 7-15**).

The applicant has not provided any information regarding the maximum number of horses that are intended to be maintained on the project site. However, a March 2005 Draft Environmental Impact Report (EIR) prepared for the proposed Malibu Valley Inn and Spa, which was to be developed by the applicant on a site located nearby, estimated that an average of 50 horses were stabled on the subject project site at that time. Based on the existing and proposed site facilities, staff estimates that a larger numbers of horses (approximately 76) could be accommodated.

The subject property is an approximately 31.02-acre parcel at the northeast corner of Mulholland Highway and Stokes Canyon Road in the Santa Monica Mountains area of unincorporated Los Angeles County (**Exhibits 1-2**). The parcel is bisected by the coastal zone boundary. The southern approximately 28 acres of the parcel is located within the coastal zone and is subject to the Coastal Commission's jurisdiction (**Exhibit 3**). Stokes Canyon Creek, an intermittent blue-line stream recognized by the United States Geological Survey (USGS), runs in a southwesterly direction through the western half of the parcel and supports riparian habitat within its boundaries and along its banks. The parcel area east of the creek consists of mountainous terrain containing chaparral, oak woodland, and annual grassland habitats; the parcel area west and south of the creek is level and contains the approximately six-acre unpermitted equestrian facility that is the subject of this application (**Exhibits 26, 27**).

The site is located immediately north of the former campus of Soka University, which is now public parkland. Scattered rural and residential development is located west and south of the project site, and undeveloped hillside terrain containing primarily chaparral habitat is located to the east of the property. The site is visible from Mulholland Highway, a designated scenic highway in the Malibu-Santa Monica Mountains Land Use Plan (LUP), as well as from various public viewing points, including along the Backbone Trail and the Las Virgenes View trail, that afford scenic vistas of the relatively undisturbed natural area. Stokes Canyon Creek and its associated riparian canopy are designated as inland ESHA in the Malibu-Santa Monica Mountains Land Use Plan (LUP). Commission staff biologist John Dixon has visited the site, most recently on August 22, 2005, and has confirmed that the stream and surrounding riparian habitat, as well as the hillside oak woodland and chaparral habitat, on the site constitutes ESHA. In addition, some of the existing unpermitted development that the applicant proposes to retain is within the protected zones of individual oak trees outside of the hillside oak woodland.

Correspondence that has been received to date from interested parties in support of the proposed project are attached as **Exhibit 21**. Staff has received approximately 205 copies of the same letter from different individuals. One example of this letter has been attached. The letters express that the horse facility is a valuable asset to the equestrian community and should be preserved. Commissioner ex parte communications are attached as **Exhibit 22**.

B. Background

Previous Commission Actions on the Project Site

As described above, there is a large equestrian facility existing on the proposed project site. The Commission has not previously approved any coastal development permit for this development or any other development on the site. However, the Commission has taken several other actions that relate to the project site, including the denial of the applicant's claim of vested rights and the approval of Cease and Desist and Restoration Orders. Commission staff first became aware that there is unpermitted development on the site in 1999.

On November 20, 1998, Brian Boudreau, president of Malibu Valley Farms, Inc., submitted an exemption request for replacement of pipe corrals and related improvements that had been destroyed by wildfire in 1996. On December 7, 1998, the Commission issued Exemption Letter No. 4-98-125-X for replacement of 14 pipe corrals (totaling 2,500 sq. ft). However, the Commission rescinded this exemption letter shortly thereafter, in January 1999, because staff discovered that the equestrian facility on the site was constructed after the January 1, 1977 effectiveness date of the Coastal Act, without benefit of a coastal development permit. Exemptions from the Coastal Act's permit requirements for replacement of structures destroyed

by disaster (Section 30610(g)) only apply to structures that were either legally constructed prior to the Coastal Act, or were constructed after the Coastal Act with the appropriate authorization under the Act.

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

Commission staff visited the site in November 1999 and March 2000. In March 2000, Commission staff notified Mr. Boudreau that it intended to initiate cease and desist order proceedings regarding the development at the site. Mr. Boudreau, Malibu Valley Farms, Inc., and Robert Levin, the owner of the property at the time, submitted a Statement of Defense dated April 10, 2000. The Executive Director scheduled a Cease and Desist Order hearing at the Commission's June 2000 meeting. However, just prior to the June 2000 hearing, MVF expressed a desire to cooperate and take necessary steps to resolve the violation and on June 12, 2000 submitted a Claim of Vested Rights application for all of the unpermitted development. On June 13, 2000, Malibu Valley, Inc. (a separate corporation also owned by Mr. Boudreau) submitted a Claim of Vested Rights application (Vested Rights Claim Application No. 4-00-279-VRC). The application contended that a vested right exists to conduct agricultural and livestock activities and erect and maintain structures in connection with those activities on the site.

A public hearing on Vested Rights Claim Application No. 4-00-279-VRC was scheduled for the February 2001 Commission meeting, with a staff recommendation of denial. On February 15, 2001, at the applicant's request, the hearing on the application was continued to allow for the submittal and processing of a coastal development permit application for the unpermitted development instead. More than a year later, the applicant submitted a CDP application (No. 4-02-131). Unfortunately, the CDP application did not contain enough information to deem the application "complete" under the applicable regulations. Over the next four years numerous contacts were made by Commission staff to the applicant attempting to obtain the necessary information. In March 2006, the CDP application was deemed complete and Commission staff scheduled the hearing for the Commission's August 2006 hearing.

Unfortunately, after years of Commission staff time and effort to obtain the information necessary to complete the CDP application, and after preparation of a staff recommendation of denial for the Commission's consideration, the applicant withdrew the application (in a July 27, 2006 letter) just before the Commission hearing was to be held and stated that it wished to proceed with its Claim of Vested Rights application (4-00-279-VRC). This was the Vested Rights application that was previously scheduled for Commission action at the February 2001 hearing and postponed at the request of the applicant so it could submit the very CDP application (4-02-131) that it later withdrew in July 2006.

The Commission heard the applicant's Claim of Vested Right No. 4-00-279-VRC (Malibu Valley Farms, Inc.) at the November 2006 Commission hearing. The applicant claimed that it had a vested right to: "conduct agricultural and livestock activities on the property that were commenced prior to 1930, right to build new structures in connection with that use, and right to construct, operate, and maintain the equestrian facility that currently exists on the property". The Commission considered the applicant's claim, including supporting evidence. The Commission denied the applicant's claim, finding that the evidence provided by the applicant did not substantiate the claim of vested rights for any of the development existing on the project site.

The findings adopted by the Commission in its denial of Vested Rights Claim 4-00-279-VRC are attached as **Exhibit 17**.

A Cease and Desist Order (CCC-06-CD-14) and Restoration Order (CCC-06-RO-07) regarding the subject development were also heard at the November 2006 Commission hearing, following the Commission's denial of the Claim of Vested Rights (**Exhibit 18**). The Commission approved the orders, requiring the applicant to cease and desist from maintaining the unpermitted development on the site, to remove the unpermitted development, and to restore the site (including the implementation of restorative grading, erosion control, and revegetation). However, the Commission also provided for the applicant to again submit a coastal development permit application to retain some or all of the unpermitted development on the site. Cease and Desist Order (CCC-06-CD-14) and Restoration Order (CCC-06-RO-07) contained the following provision:

> If a complete CDP application is not received within 60 days from issuance of these Orders (unless the Executive Director makes the determination that additional water quality studies cannot be completed within this timeframe) or if Respondent either withdraws the application or otherwise prevents it from coming to a hearing as per the Commission staff planned hearing schedule, Respondent shall remove all unpermitted development and restore these areas consistent with these Orders, set forth herein. Moreover, in the event that the Commission denies all or any part of such application, Respondent shall remove all unpermitted development, and restore these areas in the same manner and timeframes consistent with these Orders set forth herein.

In approving the orders, the Commission found that the development on the site meets the definition of "development" (as defined by Section 30106 of the Coastal Act), that it is subject to the permit requirements of Section 30600(a) of the Coastal Act, and that no permit had been approved for this development. The Commission further found that this unpermitted development is inconsistent with the applicable Chapter 3 policies of the Coastal Act, including Sections 30231, 30236, 30240, and 30251. It was found that Stokes Canyon Creek and its associated riparian woodland on the project site meet the definition of ESHA under the Coastal Act. The Commission found that the unpermitted development on the site is located within and adjacent to the riparian ESHA, does not protect the ESHA from significant disruption of habitat values, and has not been sited or designed to prevent impacts that would significantly degrade the ESHA, inconsistent with Section 30240 of the Coastal Act. The Commission further found that the existing confined animal facility does not provide an adequate setback from Stokes Creek, resulting in degradation of water quality, inconsistent with the requirements of the LUP and Section 30231 of the Coastal Act. Additionally, the existing at-grade dirt crossings of Stokes Canyon Creek on the project site required alteration of the stream, but are not for any of the three permittable uses detailed in Section 30236 of the Coastal. As such, the Commission found that the unpermitted development is inconsistent with this policy as well. The Commission also found that the development is not consistent with Section 30251 of the Coastal Act in that it did not minimize alteration of landforms, was not sited or designed to protect the scenic and visual characteristics of the surrounding area, and that it contributes to a cumulative adverse impact of increased development along Stokes Creek and the adjacent upland areas. Finally, the Commission found that the unpermitted development on the site is causing continuing resource damage.

On December 12, 2006 the applicant submitted a new coastal development permit application (No. 4-06-163, the subject of this staff report). The subject permit application contains ~~a few~~ changes to the proposed project previously considered by staff under CDP application No. 4-02-131. These changes include the omission of a proposed 2,400 sq. ft. hay barn south of the

northern riding arena, the removal of several structures situated just north of an existing barn, and the incorporation of a site-specific Comprehensive Management Plan that includes vegetative swales, bioretention basin, riparian restoration, and other Best Management Practices to control erosion and runoff from the equestrian facility. Again, the CDP application did not contain enough information to deem the application "complete" under the applicable regulations. After receiving additional information from the applicant, Commission staff deemed the application complete on March 21, 2007 and tentatively scheduled it for the July 2007 Commission hearing. On July 9, 2007, the Commission approved the proposed project with conditions, by a vote of 7 to 5. A transcript of the proceedings is attached as Exhibit 35.

Previous Commission Actions on Equestrian Facilities in the Santa Monica Mountains

The Commission has considered coastal development permit applications for many equestrian facilities in the Santa Monica Mountains area, although none that have been of the same size, scale, or intensity as the project considered herein. The majority of the projects considered have involved facilities that are accessory to a residence. The Commission has long recognized that confined animal facilities are a major source of non-point source pollution and have the potential to significantly impact the water quality of coastal streams. Additionally, such facilities may result in other impacts associated with their construction, such as landform alteration, habitat displacement or disruption, fuel modification and vegetation removal required to provide fire protection, increased erosion and sedimentation. While the Commission has consistently required the clustering of development in order to minimize impacts to coastal resources, it is difficult to cluster equestrian facilities with other types of development like residential structures. This is because of health restrictions that require a separation of at least fifty feet between confined animal facilities and habitable structures.

The Commission has required equestrian facilities to be appropriately sited and designed to minimize impacts to coastal resources, including ESHA. The overall square footage of such facilities has been counted towards the total allowable development area for project sites that contain ESHA [4-02-110 (Khalsa); 4-03-085-A1 (WF Trust); 4-05-202 (Aurora Family LLC)]. Where there is a larger area on a project site that is not considered ESHA (as a result of clearance or grading that was permitted or carried out prior to the effective date of the Coastal Act), the Commission has allowed larger facilities so long as they are constructed of non-combustible materials so that fuel modification is minimized [4-00-128 (Farinella); 4-00-143-A2 (Weeger); 4-05-042 (Weintraub); 4-06-032 (Giraldin)].

The Commission has considered several projects with equestrian facilities located in proximity to streams and riparian corridors and has consistently required that such facilities provide adequate buffers between the development and the canopy of riparian vegetation (if riparian vegetation is present). In Permit 4-00-055 (Stark), the Commission considered a residential project including a home and several accessory structures on a 63-acre site. This project site contained existing unpermitted equestrian facilities, including a 2,000 sq. ft. barn, 21,000 sq. ft. graded arena, and stream culverts within a riparian woodland and stream designated ESHA by the Malibu/Santa Monica Mountains LUP. In order to bring the development into conformity with the policies of Chapter 3 and the LUP, the applicant proposed and the Commission required the removal of all of the equestrian facilities, restorative grading, and riparian revegetation. A new barn and smaller arena located 300 feet from the stream was approved as part of the project.

The Commission approved Cease and Desist Order 03-CD-02, and Restoration Order 03-RO-03 (Teherani) to require the removal of unpermitted development, including 1) grading and fencing, 2) clearance of vegetation, 3) construction of a horse corral, 4) construction of a

path/road from a previously permitted horse corral to the new, unpermitted horse corral, and 5) construction of railroad tie retaining walls, and restoration of all disturbed areas. The unpermitted development in this case was located within an oak woodland and adjacent to Cold Creek (a blue-line stream designated as ESHA by the Malibu/Santa Monica Mountains LUP). Both the oak woodland and riparian/stream habitats were determined by the Commission to constitute ESHA. The Commission found that the horse corral was constructed within the riparian area (therefore not providing an adequate buffer) and that it was impacting mature oak trees by allowing horses to compact the soil within the dripline. The Commission found that the unpermitted development was not consistent with Section 30240 of the Coastal Act. Further, the corral was located approximately 10 feet from the bank of Cold Creek, and the Commission found that, as long as it remained in that location, there was no means of preventing horse wastes from entering the stream, adversely impacting water quality. The Commission therefore found that the unpermitted development was inconsistent with Section 30231 of the Coastal Act. The Commission also found that the development resulted in increased erosion, inconsistent with Section 30253 of the Coastal Act and that it did not minimize alteration of landforms, inconsistent with Section 30251 of the Coastal Act. Finally, the Commission found that the unpermitted development was causing continuing resource damage. The owner was ordered to remove all of the unpermitted development, to restore the topography, and to implement a habitat restoration plan.

In Permit 4-03-117 (Teherani) for development on this same project site, the Commission approved the construction of an approximately 2,500 sq. ft. horse corral with three-rail split wood fencing and an approximately 35 foot long, 7 foot wide access path adjacent to an existing single family residence, with approximately 50 cu. yds. of grading (25 cu. yds. cut, 25 cu. yds. fill) on the same property. This new development was sited on an existing developed area of the project site that is over 100 feet from the oak woodland and riparian ESHA areas on the site. The Commission found this new development, as sited to provide an adequate buffer from the stream and ESHA, and as conditioned to employ animal waste containment management practices and drainage devices, would be consistent with the ESHA and water quality policies of the Coastal Act.

In Permit Application 4-03-022 (Rex), the Commission denied an after-the-fact request for a small equestrian facility as an accessory to a single family residence, consisting of an 836 sq. ft. horse corral, 45 sq. ft. hay shed, 13 ft. long retaining wall, and a new 144 sq. ft. awning on posts. The proposed development would have been located approximately 42 feet from the top of bank of an un-named tributary to Cold Creek. The on-site tributary is a blue-line stream and is designated ESHA by the Malibu/Santa Monica Mountains LUP. The Commission required development to be located no closer than 100 feet from ESHA, in order to protect the biological integrity of the ESHA, provide space for transitional vegetated buffer areas, and minimize human intrusion. In denying this permit, the Commission found that not only did the proposed equestrian facilities not provide a 100 foot buffer, but that no area on the project site could provide this buffer, while maintaining the required 50 foot separation from the existing residence. The Commission found that this development would result in significant disruption to habitat values in the ESHA and would not maintain the biological productivity and quality of coastal waters and streams, inconsistent with Sections 30230, 30231 and 30240 of the Coastal Act, and the applicable policies of the LUP.

C. Standard of Review

The standard of review for the proposed project is the Chapter Three policies of the Coastal Act. In addition, the policies of the certified Malibu-Santa Monica Mountains Land Use Plan (LUP) serve as guidance. As noted above, the applicant's proposal includes a request for after-the-fact approval for equestrian facilities that were constructed after the January 1, 1977 effectiveness date of the Coastal Act without benefit of a coastal development permit. In evaluating such proposals, the Commission considers all development, including existing unpermitted development, as if it were not already constructed, and considers the condition of the site prior to any unpermitted development.

D. Environmentally Sensitive Habitat Areas

Section **30240** states:

> ***(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.***
>
> ***(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.***

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

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

Section **30250(a)** of the Coastal Act states, in relevant part:

> ***New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.***

In addition, the Malibu/Santa Monica Mountains LUP provides policy guidance regarding the protection of environmentally sensitive habitats. The Coastal Commission has relied upon the following policies as guidance in its review of development proposals in the Santa Monica Mountains:

> ***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.

P63 ***Uses shall be permitted in ESHAs, DSRs, Significant Watersheds, and Significant Oak Woodlands, and Wildlife Corridors in accordance with Table I and all other policies of this LCP.***

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.***

P74 ***New development shall be located as close as feasible to existing roadways, services, and existing development to minimize the effects on sensitive environmental resources.***

P81 ***To control runoff into coastal waters, wetlands and riparian areas, as required by Section 30231 of the Coastal Act, the maximum rate of storm water runoff into such areas from new development should not exceed the peak level that existed prior to development.***

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

Table 1 (ESHAs)

Permitted uses within the habitat area: Resource-dependent uses such as nature observation, research/education, passive recreation including hiking and horseback riding.

The following standards are established for development in sensitive environmental resource areas. Development proposals consistent with these standards shall be subject to normal review procedures. Variations from these standards will be considered on an individual basis according to their potential environmental effects as determined by the Environmental Review Board.

****Land alteration and vegetation removal, including brushing, shall be prohibited within undisturbed riparian woodlands, oak woodlands, and any areas designated as ESHAs by this LCP, except that controlled burns and trails or roads constructed for providing access to recreational areas may be permitted consistent with other policies of the LCP.***

****Trails or roads permitted for recreation shall be constructed to minimize grading and runoff. A drainage control plan shall be implemented.***

****Streambeds in designated ESHAs shall not be altered except where consistent with Section 30236 of the Coastal Act. Road crossings shall be***

minimized, and where crossings are considered necessary, should be accomplished by bridging. Tree removal to accommodate the bridge should be minimized.

****A minimum setback of 100 feet from the outer limit of the pre-existing riparian tree canopy shall be required for any structure associated with a permitted use within or adjacent to an Environmentally Sensitive Habitat Area.***

****Structures shall be located in proximity to existing roadways, services and other development to minimize the impacts on the habitat. Approval of development shall be subject to review by the Environmental Review Board.***

Section 30250 of the Coastal Act requires that development be located to ensure that significant adverse impacts, both individual and cumulative, be avoided. In addition, Section 30240 of the Coastal Act states that environmentally sensitive habitat areas must be protected against disruption of habitat values.

Environmentally Sensitive Habitat Determination

Pursuant to Section 30107.5, in order to determine whether an area constitutes an ESHA, and is therefore subject to the protections of Section 30240, the Commission must ask four questions:

1) What is the area of analysis?
2) Is there a rare habitat or species in the subject area?
3) Is there an especially valuable habitat or species in the area, based on:
    a) Does any habitat or species present have a special nature?
    b) Does any habitat or species present have a special role in the ecosystem?
4) Is any habitat or species that has met test 2 or 3 (i.e., that is rare or especially valuable) easily disturbed or degraded by human activities and developments?

The Coastal Commission has found that the Mediterranean Ecosystem in the Santa Mountains is itself rare, as well as being especially valuable, because of its relatively pristine character, physical complexity, and resultant biological diversity. The Commission further finds that because of the rare and special nature of the Santa Monica Mountains ecosystem, the ecosystem roles of substantially intact areas of the constituent plant communities discussed below are "especially valuable" under the Coastal Act. Therefore, the habitat areas discussed below, which provide important roles in that ecosystem, are especially valuable because of that role and meet the second criterion for the ESHA designation. The subject site contains several habitat types that are part of the Santa Monica Mountains Mediterranean Ecosystem, including riparian woodland, oak woodland, and chaparral.

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

In the Santa Monica Mountains, riparian woodland contains the greatest overall diversity of all the plant communities in the area, partly because of its multi-layered vegetation.[2] At least four types of riparian communities are discernable in the Santa Monica Mountains: walnut riparian areas, mulefat-dominated riparian areas, willow riparian areas and sycamore riparian woodlands. Of these, the sycamore riparian woodland is the most diverse riparian community in the area. In these habitats, the dominant plant species include arroyo willow, California black walnut, sycamore, coast live oak, Mexican elderberry, California bay laurel, and mule fat. Wildlife species that have been observed in this community include least Bell's vireo (a State and federally listed species), American goldfinches, black phoebes, warbling vireos, bank swallows (State listed threatened species), song sparrows, belted kingfishers, raccoons, and California and Pacific tree frogs.

Riparian communities are the most species-rich to be found in the Santa Monica Mountains. Because of their multi-layered vegetation, available water supply, vegetative cover and adjacency to shrubland habitats, they are attractive to many native wildlife species, and provide essential functions in their lifecycles[3]. During the long dry summers in this Mediterranean climate, these communities are an essential refuge and oasis for much of the areas' wildlife.

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

The streams themselves provide refuge for sensitive species including: the coast range newt, the Pacific pond turtle, and the steelhead trout. The coast range newt and the Pacific pond turtle are California Species of Special Concern and are proposed for federal listing[4], and the steelhead trout is federally endangered. The health of the streams is dependent on the ecological functions provided by the associated riparian woodlands. These functions include the provision of large woody debris for habitat, shading that controls water temperature, and input of leaves that provide the foundation of the stream-based trophic structure.

The importance of the connectivity between riparian areas and adjacent habitats is illustrated by the Pacific pond turtle and the coast range newt, both of which are sensitive and both of which require this connectivity for their survival. The life history of the Pacific pond turtle demonstrates the importance of riparian areas and their associated watersheds for this species. These turtles require the stream habitat during the wet season. However, recent radio tracking work[5] has found that although the Pacific pond turtle spends the wet season in streams, it also requires upland habitat for refuge during the dry season. Thus, in coastal southern California, the Pacific pond turtle requires both streams and intact adjacent upland habitats such as coastal sage scrub, woodlands or chaparral as part of their normal life cycle. The turtles spend about four months of the year in upland refuge sites located an average distance of 50 m (but up to 280 m)

---

[2] National Park Service. 2000. Draft: General Management Plan & Environmental Impact Statement, Santa Monica Mountains National Recreation Area, US Dept. of Interior, National Park Service, December 2000.
[3] Walter, Hartmut. Bird use of Mediterranean habitats in the Santa Monica Mountains, Coastal Commission Workshop on the Significance of Native Habitats in the Santa Monica Mountains. CCC Hearing, June 13, 2002, Queen Mary Hotel.
[4] USFWS. 1989. Endangered and threatened wildlife and plants; animal notice of review. Fed. Reg. 54:554-579. USFWS. 1993. Endangered and threatened wildlife and plants; notice of 1-year petition finding on the western pond turtle. Fed. Reg. 58:42717-42718.
[5] Rathbun, G.B., N.J. Scott and T.G. Murphy. 2002. Terrestrial habitat use by Pacific pond turtle in a Mediterranean climate. Southwestern Naturalist. (*in Press*).

from the edge of the creek bed. Similarly, nesting sites where the females lay eggs are also located in upland habitats an average of 30 m (but up to 170 m) from the creek. Occasionally, these turtles move up to 2 miles across upland habitat[6]. Like many species, the pond turtle requires both stream habitats and the upland habitats of the watershed to complete its normal annual cycle of behavior. Similarly, the coast range newt has been observed to travel hundreds of meters into upland habitat and spend about ten months of the year far from the riparian streambed[7]. They return to the stream to breed in the wet season, and they are therefore another species that requires both riparian habitat and adjacent uplands for their survival.

Riparian habitats in California have suffered serious losses and such habitats in southern California are currently very rare and seriously threatened. In 1989, Faber estimated that 95-97% of riparian habitat in southern California was already lost[8]. Writing at the same time as Faber, Bowler asserted that, *"[t]here is no question that riparian habitat in southern California is endangered."*[9] In the intervening 13 years, there have been continuing losses of the small amount of riparian woodlands that remain. Today these habitats are, along with native grasslands and wetlands, among the most threatened in California.

In addition to direct habitat loss, streams and riparian areas have been degraded by the effects of development. For example, the coast range newt, a California Species of Special Concern has suffered a variety of impacts from human-related disturbances[10]. Human-caused increased fire frequency has resulted in increased sedimentation rates, which exacerbates the cannibalistic predation of adult newts on the larval stages.[11] In addition, impacts from non-native species of crayfish and mosquito fish have also been documented. When these non-native predators are introduced, native prey organisms are exposed to new mortality pressures for which they are not adapted. Coast range newts that breed in the Santa Monica Mountain streams do not appear to have adaptations that permit co-occurrence with introduced mosquito fish and crayfish[12]. These introduced predators have eliminated the newts from streams where they previously occurred by both direct predation and suppression of breeding.

More recently, surveys conducted in Spring 2006 found the invasive New Zealand mud snail (*Potamopyrgus atipodarum)* in the Malibu Creek watershed. The tiny snails reproduce rapidly and can achieve densities of up to 500,000 organisms per square meter. Because of their massive density and quantity, the New Zealand mud snail can out-compete and reduce the number of native aquatic invertebrates that the watershed's fish and amphibians rely on for food. This reduction in aquatic invertebrate food supply can disrupt the entire food web with dramatic consequences.

Therefore, because of the essential role that riparian plant communities play in maintaining the biodiversity of the Santa Monica Mountains, because of the historical losses and current rarity of

---

[6] Testimony by R. Dagit, Resource Conservation District of the Santa Monica Mountains at the CCC Habitat Workshop on June 13, 2002.
[7] Dr, Lee Kats, Pepperdine University, personal communication to Dr J. Allen, CCC.
[8] Faber, P.A., E, Keller, A. Sands and B.M. Massey. 1989. The ecology of riparian habitats of the southern California coastal region: a community profile. U.S. Fish and Wildlife Service Biological Report 85(7.27) 152pp.
[9] Bowler, P.A. 1989. Riparian woodland: An endangered habitat in southern California. Pp 80-97 *in* Schoenherr, A.A. (ed.) Endangered plant communities of southern California. Botanists Special Publication No. 3.
[10] Gamradt, S.C., L.B. Kats and C.B. Anzalone. 1997. Aggression by non-native crayfish deters breeding in California newts. Conservation Biology 11(3):793-796.
[11] Kerby, L.J., and L.B. Kats. 1998. Modified interactions between salamander life stages caused by wildfire-induced sedimentation. Ecology 79(2):740-745.
[12] Gamradt, S.C. and L.B. Kats. 1996. Effect of introduced crayfish and mosquitofish on California newts. Conservation Biology 10(4):1155-1162.

these habitats in southern California, and because of their extreme sensitivity to disturbance, the native riparian habitats in the Santa Monica Mountains generally meet the definition of ESHA under the Coastal Act, as detailed in **Exhibit 16**.

Additionally, the important ecosystem functions of oak woodlands and savanna are widely recognized[13]. These habitats support a high diversity of birds[14], and provide refuge for many species of sensitive bats[15]. Typical wildlife in this habitat includes acorn woodpeckers, scrub jays, plain titmice, northern flickers, cooper's hawks, western screech owls, mule deer, gray foxes, ground squirrels, jackrabbits and several species of sensitive bats. Oak woodlands adjacent to grasslands, such as on the subject site, provide valuable perching opportunities for birds of prey who forage in the grasslands. Therefore, because of their important ecosystem functions and vulnerability to development, the Commission finds that oak woodlands and savanna within the Santa Monica Mountains generally meet the definition of ESHA under the Coastal Act.

Further, In the Santa Monica Mountains, coastal sage scrub and chaparral have many important roles in the ecosystem, including the provision of critical linkages between riparian corridors, the provision of essential habitat for species that require several habitat types during the course of their life histories, the provision of essential habitat for local endemics, the support of rare species, and the reduction of erosion, thereby protecting the water quality of coastal streams. For these and other reasons discussed in **Exhibit 16**, which is incorporated herein, the Commission finds that large, contiguous, relatively pristine stands of coastal sage scrub and chaparral in the Santa Monica Mountains meet the definition of ESHA. This is consistent with the Commission's past findings on the Malibu LCP[16].

The subject parcel contains varied terrain and habitats. Stokes Canyon Creek, a stream recognized by the United States Geological Survey (USGS) as an intermittent blue-line stream, runs in a southwesterly direction through the western half of the parcel. The parcel area east of the creek consists of mountainous terrain containing chaparral habitat, Coast live oak woodland, and annual grassland; the parcel area west and south of the creek is level and is the location of the approximately six-acre proposed equestrian facility that is the subject of this application. This area was graded and disturbed in the 1950's when Los Angeles County constructed the 60-foot wide Stokes Canyon Road off Mulholland Highway. The road alignment required channelizing and relocating portions of Stokes Canyon Creek. Particularly, in the area of the proposed equestrian facility on the subject parcel, the stream channel was relocated from the area where Stokes Canyon Road is now situated to its present configuration. Although this reach of Stokes Canyon Creek was significantly altered in the past, the hydrological connections from the Stokes Canyon watershed to the stream have been maintained and riparian habitat has been established within and along the banks of the modified stream course, as discussed further below.

---

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

[14] Cody, M.L. 1977. Birds. Pp. 223–231 *in* Thrower, N.J.W., and D.E. Bradbury (eds.). *Chile-California Mediterranean scrub atlas*. US/IBP Synthesis Series 2. Dowden, Hutchinson & Ross, Stroudsburg, Pennsylvania. National Park Service. 1993. A checklist of the birds of the Santa Monica Mountains National Recreation Area. Southwest Parks and Monuments Assoc., 221 N. Court, Tucson, AZ. 85701

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

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

The applicant has submitted two biological reports that discuss the habitats on site ("Biological Resource Analysis of Proposed ESHA Setback for Malibu Valley Farms Equestrian Center Improvements," Frank Hovore & Associates, January 2002, updated October 2004; "Biological Assessment in Support of Malibu Valley Farms, Inc., Coastal Development Permit Application No. 4-02-131," Sapphos Environmental Inc., October 25, 2005). The report by Sapphos Environmental provides a map that shows the location of the varied habitats on the subject parcel (**Exhibit 26**).

Stokes Canyon Creek and its associated riparian canopy is a designated inland environmentally sensitive habitat area (ESHA) in the certified Malibu-Santa Monica Mountains LUP. The riparian canopy contains native riparian woodland species including arroyo willow, mulefat and elderberry. The October 2004 biological report by Frank Hovore & Associates states that the riparian habitat is not typical of southern riparian scrub habitat. This report states that:

> A thin, but relatively well-developed mulefat and willow-dominated riparian scrub vegetation occupied the bed and bank of the reach of Stokes Creek passing by and through the facility during surveys. Other woody riparian species present within the banks of the seasonal creek include a few blue elderberry, coffeeberry, Indian tobacco, and bush mallow. The hydrophytic herbaceous component is not well developed, reflecting the ephemeral hydrology, sandy substrate and episodic scouring flows of the water course.

The report goes on to discuss that no sensitive plant or animal species were identified on the site even though riparian habitat might be expected to support them. Of course, it should be noted that these biological surveys were conducted after the unpermitted development had been in place and the facilities were in operation for over 25 years. There is no discussion in the report regarding the likely effects that the ongoing disturbance has had on the stream and riparian habitat or how the riparian habitat in Stokes Creek would be constituted without the impacts that have resulted. Because the existing development on the site has been determined to be unpermitted, as discussed above, the Commission must consider the application as though the development had not occurred and must regard the habitat on the site as though it had not previously been disturbed by this development. Commission staff, including staff biologist John Dixon, have observed native vegetation on the site that is typical of riparian woodlands in the Santa Monica Mountains. Commission staff biologist John Dixon visited the site on August 22, 2005, and has confirmed that Stokes Creek and its associated riparian woodland habitat on the site meet the definition of ESHA pursuant to Section 30107.5 of the Coastal Act. Therefore, the Commission finds the riparian habitat along Stokes Creek on the project site to be an environmentally sensitive habitat area.

In addition, the hillside east of the creek contains an extensive oak woodland, covering approximately 10 acres and containing hundreds of trees, that was also confirmed by staff biologist John Dixon to meet the definition of an environmentally sensitive habitat area (ESHA) pursuant to Section 30107.5 of the Coastal Act. Additionally, although this area is not shown as ESHA on the Malibu/Santa Monica Mountains Land Use Plan Sensitive Resource Map, there is a provision detailed under Policy 57 of the Malibu-Santa Monica Mountains LUP for ESHA not shown as ESHA on the map to be so designated as part of a site specific biotic review or other means. The Commission finds that, based on the site specific review of the habitats on the project site by Dr. Dixon, that the oak woodland habitat on the project site is ESHA.

In addition, the hillside in the northeast portion of the property contains chaparral habitat that is contiguous with a larger area of chaparral and coastal sage scrub habitat that extends several miles east of the site. Thus the chaparral on the subject site also is considered an environmentally sensitive habitat area (ESHA) pursuant to Section 30107.5 of the Coastal Act and the provisions for ESHA designation under Policy 57 of the Malibu-Santa Monica Mountains LUP.

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

Environmentally Sensitive Habitat Protection Policies

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

Additionally, the Los Angeles County certified Malibu/Santa Monica Mountains Land Use Plan (LUP) contains policies that require the protection of streams and environmentally sensitive habitat areas. While the County does not have a fully certified Local Coastal Plan, and the standard of review for Commission decisions on coastal developments in the Santa Monica Mountains is the Coastal Act, the Commission has used the policies of the LUP as guidance. The Table 1 (ESHA) development standards and stream protection policies of the certified Malibu-Santa Monica Mountains LUP limit uses adjacent to ESHA to permitted uses that are set back a minimum of 100 feet, and that are consistent with appropriate erosion control and stream protection policies, as well as any other LUP Policy. Table 1 also requires that a minimum 100-foot setback be provided from the ESHA for structures associated with a permitted use and that this setback is measured from the outer edge of the riparian canopy. Table 1 identifies horseback riding as an allowable resource-dependent use in ESHA. Recreational trails are allowed where constructed to minimize grading and runoff and where a drainage control plan is implemented. Table 1 allows stream crossings in ESHA where necessary, although it provides that they should be accomplished by installation of a bridge. Table 1 also indicates that variations from such development standards will be considered on an individual basis according to their potential environmental effects as determined by the County's Environmental Review Board.

Analysis of Project Impacts

The applicant requests after-the-fact approval for construction of an approximately six-acre equestrian facility, including two riding arenas, fencing, a dirt access road with at-grade crossing through Stokes Creek, corrals, paddock, shelters, tack rooms, barn, and similar structures, as described fully in Section A. above. The proposed project also includes removal of 32 pipe corrals, and several covered corrals, cross-tie areas, storage containers, and tack rooms. In addition, the proposed project includes reduction in the size of the fenced paddock area and construction of four covered pipe barns, two shelters, three tack rooms, and two manure storage areas as also detailed in Section A. above. Finally, the applicant proposes storm water pollution control measures, streambank stabilization, and riparian restoration.

Although the applicant has not provided information regarding the maximum number of horses that it proposes to maintain on the site, the March 2005 Draft Environmental Impact Report (EIR) that was prepared for the nearby Malibu Valley Inn and Spa project (that was to have been developed by the applicant) estimates that an average of 50 horses were stabled on the project site at that time. Based on the proposed new and as-built facilities used for horse breeding, raising, training, stabling, exercising, boarding and rehabilitation of horses, staff estimates that the project will provide stalls for approximately 76 horses.

The proposed equestrian facility can be divided into two areas: the northern area, on which the applicant proposes four 2,660 sq. ft. covered pipe barns, two 576 sq. ft. shelters, three 96 sq. ft. tack rooms, one manure storage area, and an approximately 45,000 sq. ft. riding arena; and the southern area, located south of Stokes Creek, between the stream and Mulholland Highway, on which the applicant proposes a 576 sq. ft. shelter, 1,440 sq. ft. barn, 2,660 sq. ft. mare motel, one manure storage area, an approximately 2,000 sq. ft. parking lot, approximately 24,000 sq. ft. riding arena, and approximately 15,000 sq. ft. fenced paddock. In addition, the northern and southern portions of the facility will be linked by an as-built dirt access road with at-grade crossing through Stokes Creek; the road crosses the creek at the northern riding arena, and then runs parallel to the paddock and smaller arena in the southern portion of the property. A second existing at-grade dirt creek crossing, to be retained as part of the proposed project, runs from the southwest corner of the northern arena to the stable area in the southern portion of the property. Lastly, the proposed project includes livestock fencing enclosing the approximately 23-acre hillside area of the property east of Stokes Creek.

The proposed new and as-built facilities provide a setback of 50 feet from the top of bank of Stokes Canyon Creek. ~~However, the~~ The Table 1 development standards and stream protection policies of the certified Malibu-Santa Monica Mountains LUP, which the Commission uses as guidance, generally require that structures adjacent to ESHA be set back a minimum of 100 feet from the outer edge of the riparian tree canopy, not the top of the bank of whatever stream happens to be located within the ESHA. When ~~properly~~ measured from the outer edge of the riparian canopy, portions of the proposed equestrian facilities do not ~~even~~ meet a 50-foot setback. The proposed pipe barns and associated development in the northern portion of the property are approximately 30 feet from the edge of the riparian canopy at its closest point. The proposed arena in the northern portion of the property is located as close as 30 feet from the riparian tree canopy. In the southern portion of the site, the proposed development is located as close as 10 feet from the edge of the riparian vegetation canopy. Portions of the dirt access road network that encircles all of the proposed structures and arenas on the site are situated immediately adjacent to the edge of the riparian canopy (**Exhibit 23**). However, the LUP indicates that variations from such development standards will be considered on an individual basis according to their potential environmental effects as determined by the County Environmental Review Board (ERB).The County ERB reviewed an application to relocate and remove various structures associated with the existing equestrian facility on January 27, 2003. The ERB found the project consistent with the LUP and recommended approval of the project with suggested modifications to limit night lighting and address erosion issues on the site. The ERB did not find that increased setbacks were necessary in order to protect the riparian canopy and stream.

The development that is proposed to be located within the riparian corridor, as conditioned, is consistent with Section 30240(a) and the ESHA protection policies of the LUP. Equestrian trails, including stream crossings, are resource dependent uses. The stream crossings have been designed to minimize runoff and include drainage control features. Although the LUP calls for stream crossings to be accomplished by bridges, it does allow the ERB to allow exceptions.

Here, the ERB approved the crossings, finding that they were consistent with the LUP's resource protection policies. The livestock fencing in the upland areas does not significantly disrupt habitat values. The Commission finds that with these features and implementation of the Malibu Valley Farms Comprehensive Management Plan, as required by Special Condition No. 1, the proposed development is a resource-dependent use and that it avoids significant disruption of habitat values.

~~As noted above, the applicant requests approval for construction of an approximately six-acre equestrian facility within and adjacent to a riparian woodland ESHA, and livestock fencing enclosing the approximately 23-acre hillside area east of Stokes Creek, which contains chaparral and oak woodland ESHA. The portions of the proposed development that are within ESHA are inconsistent with Section 30240 of the Coastal Act. Equestrian facilities and livestock enclosures do not have to be located within ESHA to function. Therefore, the Commission finds that the proposed development within ESHA is not a use dependent on ESHA resources. Thus, the livestock fencing and the two proposed stream crossings that extend into the riparian canopy, which involve development directly in ESHA, are inconsistent with Section 30240.~~

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

~~The portions of the equestrian facility that are located adjacent to the on-site ESHA are also inconsistent with Coastal Act Section 30240. The majority of these portions of the proposed development are located between 0 and 100 feet from the edge of the stream riparian canopy. Approval of the proposed project would allow intensive equestrian use and equestrian-related development within and immediately adjacent to the boundaries of the riparian woodland ESHA. This development would significantly degrade the riparian woodland ESHA by increasing human and equine activity and its attendant impacts, including noise, lighting, irrigation, erosion, increased introduction of animal waste and other pollutants and, potentially, invasive plant and animal species into the ESHA. The proposed project would also require fuel modification, which would extend into the riparian ESHA. The fuel modification plan submitted by the applicant indicates that riparian vegetation in the southern portion of the property would remain, but does not note the same protection for riparian vegetation on the remainder of the property.~~

Section 30240(b) requires development in areas adjacent to ESHA to be sited and designed to prevent impacts that would significantly degrade such areas, and to be compatible with the continuance of such habitat areas. Section 30231 and 30240(b) require maintenance of natural vegetation buffer areas that protect riparian habitats. The Table 1 development standards and stream protection policies of the certified Malibu-Santa Monica Mountains LUP, which the Commission uses as guidance, generally limits uses adjacent to ESHA to permitted uses that are set back a minimum of 100 feet, and that are consistent with appropriate erosion control and stream protection policies, as well as any other LUP Policy. The LUP provides that the 100-foot setback from the ESHA is measured from the outer edge of the riparian canopy, although there is also a provision for variations from this development standard to be considered on an individual basis by the ERB according to a project's potential environmental effects. ~~Further,~~ In past permit actions in the Santa Monica Mountains, the Commission has consistently required development to be located no closer than 100 feet from ESHA, in order to protect the biological

integrity of the ESHA, provide space for transitional vegetated buffer areas, and minimize human intrusion. The Commission's recent actions with respect to equestrian facilities in the Santa Monica Mountains have addressed facilities associated with private residences, rather than equestrian facilities such as this that serve the public. In addition, in other areas, the Commission has previously approved a narrower riparian buffer [CDP 6-04-029 (22nd Ag. District)]. In the case of the proposed project, the applicant proposes to set back the majority of the proposed development 50 feet from the top of stream bank. The applicant also proposes to remove existing structures that are located closest to the riparian areas, install approximately 1,400 linear feet of vegetative swales and a retention basin between development and the creek, restore 0.5-acres of disturbed riparian vegetation, and implement the "Malibu Valley Farms Comprehensive Management Plan" that includes construction and operational Best Management Practices. These proposed improvements will reduce or mitigate adverse impacts to riparian habitat and water quality as a result of the project and reduced buffer area. The Commission finds that although the proposed project provides a less than 100 foot buffer between development and riparian vegetation, incorporation of proposed measures to enhance the habitat value of the on-site riparian corridor will serve to minimize adverse impacts from noise, activity, human intrusion, equine intrusion, erosion, and runoff to the on-site ESHA, consistent with Table 1 of the LUP. Thus, the proposed project would maintain an adequate natural vegetation buffer area and not significantly degrade the on-site riparian or oak woodland ESHA.

In order to ensure that the applicant's proposed "Malibu Valley Farms Comprehensive Management Plan" for the facility is implemented, **Special Condition No. One (1)** is required. Special Condition One (1) requires the applicant to provide an independent monitoring report to the Executive Director, prepared by a qualified environmental specialist, one year after implementation of the Malibu Valley Farms Comprehensive Management Plan, and again five years after implementation of the Plan. The monitoring report shall certify that the plan has been implemented and plan elements are operational in conformance with the approved plan. If a monitoring report indicates that any plan elements are not operational or in conformance with the approved plan, the applicant, or successors in interest, shall submit a revised or supplemental management plan for the review and approval of the Executive Director. The revised plan must specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

In addition, the applicant proposes an agricultural easement across the eastern portion of the property that is in the coastal zone (as shown on **Exhibit 29**). This eastern portion of the property (east of Stokes Creek) consists of approximately 10 acres that contain an extensive oak woodland and chaparral/annual grassland habitat that was confirmed by staff biologist John Dixon to meet the definition of an environmentally sensitive habitat area (ESHA) pursuant to Section 30107.5 of the Coastal Act. The area is currently bound by livestock fencing, which the applicant proposes to retain as part of the proposed project. In order to implement the applicant's proposal to record an offer-to-dedicate an agricultural easement to maintain this area as open space, **Special Condition No. Four (4)** has been imposed.

For the reasons discussed above, the Commission finds that, as conditioned, the proposed project is consistent with Section 30240 of the Coastal Act and the applicable policies of the Malibu/Santa Monica Mountains Land Use Plan, which the Commission uses as guidance.

~~All of those concerns are relevant here, and thus, in this case, the Commission finds that a 100 foot buffer from the riparian woodland ESHA and the oak woodland ESHA is necessary to prevent impacts that would significantly degrade these ESHAs. Because the proposed~~

development is set back less than 50 feet from the riparian woodland ESHA on the site, the proposed development is inconsistent with Section 30240(b) of the Coastal Act, and the associated standards provided in the certified LUP for the area.

Furthermore, Section 30231 and 30240(b) require maintenance of natural vegetation buffer areas that protect riparian habitats. Approval of the proposed development would result in placement of structures and confinement of horses adjacent to the riparian habitat on site, and the construction of at-grade crossings within the stream itself. The proposed project thus would not maintain an adequate natural vegetation buffer area to protect the riparian habitat, inconsistent with Section 30231 and 30240(b) of the Coastal Act.

The primary functions of buffers are to protect against human and domestic animal disturbance, that is, to keep disturbance at a distance from sensitive environmental resources, and to provide ecosystem services in benefit of the adjacent ESHA. Riparian buffers adjacent to streams and creeks serve to maintain the integrity of the waterway, stabilize the stream banks, reduce pollution, and provide food, habitat, and thermal protection for both terrestrial and aquatic organisms. Riparian buffers benefit aquatic habitat by improving the quality of nearby waters through shading, filtering, and moderating stream flow. Shade provided by the plants maintains cooler, more even water temperatures. Cooler water holds more oxygen that helps reduce stress on fish and other aquatic animals. The layers of vegetation in a riparian zone include a leafy canopy which provides cover and food to many birds, including flycatchers, owls, and raptors which are helpful to equestrians in insect and rodent control. Plant debris also contributes to a more complex food web providing a food source to microbes, insects, and other invertebrates benefiting all fish and wildlife. Plant roots hold bank soil together and plant stems protect banks by deflecting the cutting action of storm runoff. The vegetation helps stabilize banks and reduces water velocity and erosion. With the vegetation slowing down the velocity of the runoff, the riparian buffer allows water to infiltrate the soil and recharge the groundwater supply. Another benefit is that near-surface groundwater will reach the waterway at a much slower rate over a longer period of time than if it had directly flowed into the waterway. Water infiltration helps control flooding and maintains water flow even during dry periods. The water infiltration capacity of the riparian buffer area also allows sediments and pollutants to settle out, be modified by soil bacteria, and taken up by plants, thereby minimizing the amount of sediment and pollutants that may enter the waterway.[17] In this case, the applicant proposes an equestrian facility that could accommodate the boarding of up to approximately 75 horses. Given this intensity of development, the water infiltration capacity of the riparian buffer to absorb and filter nutrients and other pollutants that result from confined animals is particularly critical in order to avoid or minimize impacts to environmentally sensitive habitat.

According to a California Coastal Commission January 2007 report entitled, "Policies in Local Coastal Programs Regarding Development Setbacks and Mitigation Ratios for Wetlands and Other Environmentally Sensitive Habitat Areas", which documents and provides assessment of the resource protection policies in the Local Coastal Programs that currently exist in the state of California, research on the effectiveness of riparian buffers have found that 30-60m (97.5-195 feet) wide riparian buffer strips will effectively protect water resources through physical and chemical filtration processes. For the purpose of filtering nitrogen compounds, a study determined that "the most effective buffers are at least 30m (97.5 feet) or 100 feet wide composed of native forest, and are applied to all streams, including small ones." Studies of the distribution of plant and bird species in relation to variable riparian buffer dimensions within

[17] Council of Bay Area Resource Conservation Districts, June 2003. Equine Facilities Manure Management Practices Fact Sheet, "Managing Manure: The Role of Riparian Buffers".

~~several riparian systems have found that to include 90% of streamside plants, the minimum buffer ranged from 10m (32.5 feet) to 30m (97.5 feet), depending on the stream, whereas minimum buffers of 75m (250 feet) to 175m (570 feet) were needed to include 90% of the bird species. Research suggests that recommended widths for ecological concerns in riparian buffer strips typically are much wider than those recommended for water quality concerns, often exceeding 100m (325 feet) in width.[18] In general, as the goals of riparian buffers change from single function to multiple or system functions, the required buffer widths increase. For a riparian ESHA buffer to serve multiple functions, the research indicates that a 100-foot buffer is the absolute minimum required for protecting the habitat area and water quality from adverse environmental impacts caused by development. In the case of an intensive use near a stream, such as the proposed project, the need for a generously sized and functional buffer between development and the waterway becomes greater. As previously described above, the LUP policies require a minimum setback of 100 feet from ESHA. The Commission has consistently required a 100 foot buffer between riparian ESHA and development, including equestrian facilities. It should be noted that in order to protect riparian and other types of ESHA from significant habitat disruption, the Commission has required the 100-foot riparian buffer to be maintained in projects, including equestrian facilities, that are much less dense and intense than the development considered herein. Given the intensity of development proposed and the adverse impacts on ESHA that can result, a buffer of 100 feet is clearly a bare minimum that should be provided in this case.~~

~~As mentioned previously, the applicant proposes to set back the majority of the proposed development 50 feet from the top of stream bank. The riparian canopy (the dripline of all riparian trees and shrubs) extends outward from the stream top of bank a distance that varies from 1 foot to 20 feet on the development side of the stream. This means that the proposed setback will be less than 50 feet from the stream's riparian canopy. This will not provide an adequate buffer to avoid or minimize impacts to ESHA from noise, activity, human intrusion, equine intrusion, erosion, runoff, or introduction of animal waste or other pollutants.~~

~~The applicant proposes to install vegetative swales, a bioretention basin, and restoration of a 0.5-acre area of damaged riparian habitat located within the setback area, approximately 20 feet from the riparian canopy, as part of the proposed project. However, while these proposed improvements attempt to reduce or mitigate for adverse impacts to riparian habitat and water quality as a result of the project and reduced buffer area, these measures do not address many of the impacts listed above and are far from adequate to avoid even the exclusively water quality-related impacts to ESHA from the introduction of animal waste and other pollutants, as discussed in greater detail in Section E below. The buffer will not be of sufficient size to provide physical or chemical filtering of runoff in order to protect the riparian ESHA. Furthermore, siting alternatives exist to comply with the minimum required buffer area of 100 feet and avoid impacts to ESHA.~~

In addition, some of the proposed development is located within the protected zones of individual oak trees in the equestrian area. Specifically, fencing, as well as a cleared area surrounding the arena, is within the protected zone of a mature oak tree adjacent to Stokes Canyon Road in the northern portion of the property. In addition, the access road, fencing, and paddock are within the protected zones of three oak trees in the southern portion of the property, southeast of Stokes Creek (**Exhibit 27**).

---

[18] ~~"Stream Setback Technical Memo", James D. Robins of Jones & Stokes, October 18, 2002. Prepared for the Napa County Conservation, Development, and Planning Department.~~

The Commission finds that native oak trees are an important coastal resource. Native trees prevent the erosion of hillsides and stream banks, moderate water temperatures in streams through shading, provide food and habitat, including nesting, roosting, and burrowing to a wide variety of wildlife. The individual oak trees on the subject site (i.e., those that are not part of the oak woodland that is located to the east of Stokes Canyon Creek) provide habitat for wildlife and are an important part of the character and scenic quality of the area. Therefore, even the oak trees on the subject site that are not part of an oak woodland ESHA are still an important coastal resource that is protected by Coastal Act Section 30250.

Oak trees are a part of the California native plant community and need special attention to maintain and protect their health. Oak trees in residentially landscaped areas often suffer decline and early death due to conditions that are preventable. Damage can often take years to become evident and by the time the tree shows obvious signs of disease it is usually too late to restore the health of the tree. Oak trees provide important habitat and shading for other animal species, such as deer and bees. Oak trees are very long lived, some up to 250 years old, relatively slow growing becoming large trees between 30 to 70 feet high, and are sensitive to surrounding land uses, grading or excavation at or near the roots and irrigation of the root area particularly during the summer dormancy. Improper watering, especially during the hot summer months when the tree is dormant and disturbance to root areas are the most common causes of tree loss.

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

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

That publication goes on to state:

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

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

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

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

> *"...my observations are that horses are the worst in causing compaction in a confined situation. Six horses over 2 acres seems like an extremely high density to me (here at the SFREC we have about one cow per 20 acres) and I would guess that after a year, there would be little or no ground vegetation left in the pasture and there would be a risk of heavy compaction during wet periods."*

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

In this case, through implementation of the Malibu Valley Farms Comprehensive Management Plan, the Commission finds that the proposed development will not result in significant adverse impacts, either individual or cumulative, to the oak trees on site, as required by Section 30250 of the Coastal Act. ~~As such, the proposed project would not have significant avoidable adverse impacts to individual oak trees on the site that are considered an important coastal resource, inconsistent with Section 30250 of the Coastal Act.~~

Project Alternatives

Alternatives must be considered to determine if there is an alternative project that would lessen or avoid ~~the~~ significant environmental impacts to ESHA to such an extent that it would be consistent with the ESHA protection policies listed above. An alternative is a description of another activity or project that responds to the major environmental impacts of the project identified through the Commission's analysis. Project alternatives can fall into one of two categories: 1) on-site alternatives, which generally consist of different uses of the land under consideration, or different siting or design of the proposed development; and 2) off-site alternatives, which usually involve similar uses at different locations. In this case, as discussed above, the proposed development has been designed and conditioned to avoid significant effects to ESHA. Although the alternatives described below would provide different ways to avoid adverse effects, they would disrupt and constrain the existing equestrian operation, which provides important recreational, access, and fire safety benefits. ~~In this case, as discussed in great detail above, the proposed project does not provide an adequate buffer to minimize the impacts of the construction and operation of the equestrian facilities on ESHA.~~

There are on-site siting and design alternatives to the proposed project that would be consistent with Section 30240 of the Coastal Act and the applicable policies of the LUP, but ~~. Although~~ application of the 100-foot setback significantly reduces the amount of area available for development on the lower portion of the property. ~~, it~~ It does allow for two areas – an approximately 40,000 sq. ft area adjacent to Stokes Canyon Road in the central portion of the property, and an approximately 20,000 sq. ft. area in the southern portion of the property, adjacent to Mulholland Highway – to be used for development (**Exhibit 24**). These areas could accommodate the majority of the proposed structural development, including the covered corrals, barns, tack rooms, mare motel, storage buildings, shelters and other buildings, although they could not accommodate the riding arenas as well. However, there are already additional equestrian facilities existing on the site, including two riding rings, in the far northern portion of the property, which is outside of the Coastal Zone. This alternative would constrain the facility's

equestrian operations and limit its recreational and other benefits. Another ~~feasible~~ alternative would be the construction of a single-family residence in the approximately 40,000 sq. ft. area adjacent to Stokes Canyon Road which would provide a reasonable economic use of the property, but would result in the elimination of the equestrian facility and the various benefits it provides to coastal resources, including recreation, access, and fire safety.

There are also potential siting alternatives off-site. Brian Boudreau, president of Malibu Valley Farms, Inc., also owns several other parcels in the project vicinity that appear to contain suitable areas for low-intensity equestrian facility use and are not located in or adjacent to a stream course (**Exhibit 25**). The parcel to the north, APN 4455-043-007, is owned by Malibu Canyon LP (whose president is Brian Boudreau). While this parcel is also bisected by Stokes Creek, there appear to be areas on the property that are level and can provide a 100 setback from the riparian canopy. Another parcel, APN 4455-028-045, located to the south of the subject parcel, is owned by Robert Levin, a partner of Mr. Boudreau. This parcel contains a flat strip of land adjacent to Mulholland Highway and the subject parcel that appears suitable for equestrian-related development. Additionally, there are a few parcels (APN 4455-028-094, -093, and -096) located on the west side of Stokes Canyon Road that are also controlled by Mr. Boudreau (Malibu Canyon LP) and appear to already be in agricultural use. These parcels also contain level areas that appear appropriate for low-intensity equestrian-related facilities. Although the Commission cannot conclusively state what sort of development would be approvable, or approved, on a given site until it is presented with all of the necessary information, there appear to be ample opportunities in the immediate vicinity for development along the lines of what is currently proposed. However, requiring relocation of the facility to these alternative sites would significantly disrupt and constrain the benefits it provides in terms of recreation, access, and fire safety.

In sum, ~~feasible~~ alternatives exist, both on-site and off-site, to accommodate low-intensity equestrian facilities while providing at least a 100-foot setback from streams and avoiding or minimizing impacts to sensitive coastal resources. However, as described above, the Commission finds that the proposed project, as conditioned, is consistent with Sections 30240 and 30250 of the Coastal Act and avoids significant impacts to coastal resources. As such, the Commission does not find it necessary to require the applicant to implement any project alternative in order to minimize environmental impacts.

~~For the reasons discussed above, the Commission finds that the proposed project does not protect the Stokes Canyon Creek ESHA from significant disruption of habitat values and has not been sited and designed in a manner that would prevent impacts that would significantly degrade the riparian woodland ESHA on the site. The project is therefore not consistent with Section 30240 of the Coastal Act. The proposed project would also have significant avoidable adverse impacts on non-ESHA biological coastal resources, such as individual oak trees, inconsistent with Section 30250 of the Coastal Act. Finally, the proposed project is inconsistent with the applicable policies of the Malibu/Santa Monica Mountains Land Use Plan, which the Commission uses as guidance. The project must therefore be denied.~~

E. Water Quality and Stream Resources

Section **30231** of the Coastal Act states:

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

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

Section **30236** of the Coastal Act states:

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

In addition, the Malibu/Santa Monica Mountains LUP provides policy guidance regarding the protection of water quality and marine resources. The Coastal Commission has relied upon the following policies as guidance in its review of development proposals in the Santa Monica Mountains:

P76 ***In accordance with Section 30236 of the Coastal Act, channelizations, dams, or other substantial alterations of stream courses shown as blue line streams on the latest available USGS map should incorporate the best mitigation measures feasible, and be limited to 1) necessary water supply projects, 2) flood control projects that are necessary to protect public safety or existing structures, and 3) developments where the primary purpose is the improvement of fish and wildlife habitat.***

P78 ***Stream road crossings shall be undertaken by the least environmentally damaging feasible method. Road crossings of streams should be accomplished by bridging, unless other methods are determined by the ERB to be less damaging. Bridge columns shall be located outside stream courses, if feasible. Road crossings of streams within ESHAs designated by the LCP may be allowed as a conditional use for the purpose of providing access to recreational areas open to the public or homesites located outside the ESHA where there is no feasible alternative for providing access.***

P81 ***To control runoff into coastal waters, wetlands and riparian areas, as required by Section 30231 of the Coastal Act, the maximum rate of storm water runoff into such areas from new development should not exceed the peak level that existed prior to development.***

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

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.

P96 ***Degradation of the water quality of groundwater basins, nearby streams, or wetlands shall not result from development of the site. Pollutants, such as chemicals, fuels, lubricants, raw sewage, and other harmful waste shall not be discharged into or alongside coastal streams or wetlands.***

T 1 ***Permitted uses within the habitat area: Resource-dependent uses such as nature observation, research/education, passive recreation including hiking and horseback riding.***

The following standards are established for development in sensitive environmental resource areas. Development proposals consistent with these standards shall be subject to normal review procedures. Variations from these standards will be considered on an individual basis according to their potential environmental effects as determined by the Environmental Review Board.

****A minimum setback of 100 feet from the outer limit of the pre-existing riparian tree canopy shall be required for any structure associated with a permitted use within or adjacent to an Environmentally Sensitive Habitat Area.***

Non-point source pollution is the pollution of coastal waters (including streams and underground water systems), by sources that do not discharge from a discernible, confined, discrete conveyance point, such as a pipe outfall. Non-point source pollutants include suspended solids, coliform bacteria and nutrients. These pollutants can originate from many different sources such as overflow septic systems, storm drains, runoff from roadways, driveways, rooftops and horse facilities.

Confined animal facilities are one of the most recognized sources of non-point source pollutants since these types of developments are cleared of vegetation and have concentrated sources of animal wastes that are rarely channeled into any sort of sewage conveyance system. Use of horse corrals generates horse wastes, which includes manure, urine, waste feed, and straw, shavings and/or dirt bedding, which can be significant contributors to pollution. In addition, horse wastes contain organic matter, nutrients such as phosphorous and nitrogen, as well as microbial pathogens such as coliform bacteria which can cause eutrophication and a decrease in oxygen levels resulting in clouding, algae blooms, and other impacts adversely affecting the biological productivity of coastal waters. Other contaminants in runoff from horse facilities can include pesticide residues (fly sprays and wormers), herbicide residues, and chemicals from soaps and other horse-care products.

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

wetlands, estuaries, and lakes, reduce optimum populations of aquatic organisms, and can have adverse impacts on human health.

These types of pollutants are particularly significant here since Stokes Creek has been placed on the State of California's list of impaired water bodies (Clean Water Act 303(d) list) in both 2002 and 2006, due to its high coliform count. As noted above, the subject development is located on Stokes Creek, approximately one mile from its outlet into Las Virgenes Creek. Stokes Creek enters Las Virgenes Creek just above the latter stream's confluence with Malibu Creek, in Malibu Creek State Park. Las Virgenes Creek and Malibu Creek are also listed as impaired water bodies (Clean Water Act 303(d) list) by the Los Angeles Regional Water Quality Control Board (LARWQCB). Malibu Creek outlets into Malibu Lagoon and Surfrider Beach, which is consistently one of the most polluted beaches within the Santa Monica Bay[19]. The LARWQCB has developed a Total Maximum Daily Load (TMDL) for bacteria in the Malibu Creek Watershed, including Stokes Creek, which took effect January 24, 2006. This TMDL states[20] "Manure produced by horses, cattle, sheep, goats, birds and other wildlife in the Malibu Creek Watershed are sources of both nutrients and coliforms." The Draft Implementation Plan for this TMDL is currently being reviewed by the LARWQCB, and includes provisions to reduce horse facility-related pollutants from entering the watershed. Therefore, the discharge of additional pollutants into Stokes Creek detracts from the efforts being made by LARWQCB to restore this water body and further degrades an already impaired stream, in contravention of the mandates of Section 30231 of the Coastal Act.

In addition, Stokes Canyon Creek's water quality has also been monitored by *Heal the Bay*, a non-profit environmental organization dedicated to research, education, and advocacy for clean coastal waters in Southern California. *Heal the Bay's* volunteer water quality monitoring program (the Stream Team) for the Malibu Creek watershed has a monitoring station located at the Stokes Creek outlet within Malibu Creek State Park, just downstream from the subject property. According to a letter to the Commission from *Heal the Bay*, dated August 4, 2006, regarding Malibu Valley Farms, Inc. previous permit application (4-02-131), Stokes Creek has periodically exceeded State freshwater bacterial standards for *E. coli* (coliform bacteria) and has commonly had high amounts of algae at the Stokes Creek outlet monitoring station (**Exhibit 20**). In addition, Heal the Bay's Stream Team had documented both hay and horse manure floating in Stokes Creek at discharge points in the southwest corner of the subject property.

The applicant requests after-the-fact approval for construction and operation of an approximately six-acre equestrian facility that includes two riding arenas, fencing, a dirt access road with two at-grade crossings through Stokes Creek, corrals, paddock, shelters, tack rooms, barn, and similar structures, as described fully in Section A. above. The proposed project also includes removal of 32 pipe corrals, and several covered corrals, cross-tie areas, storage containers, and tack rooms. In addition, the proposed project includes reduction in the size of the fenced paddock and construction of four covered pipe barns, two shelters, three tack rooms, and two manure storage areas as also detailed in Section A. above. The proposed new structures are located farther away from the riparian corridor than the structures they replace. Although the applicant has not provided information regarding the maximum number of horses that it proposes to maintain on the site, the March 2005 Draft Environmental Impact Report (EIR) that was prepared for the nearby Malibu Valley Inn and Spa project (that was to have been developed by the applicant) estimates that an average of 50 horses were stabled on the

[19] According to Heal the Bay's Beach Report Card: http://www.healthebay.org/brc/gradehistory.asp?beach=10
[20] Taken from the TMDL Staff report, page 20:
http://www.swrcb.ca.gov/rwqcb4/html/meetings/tmdl/santa_monica/malibu/05_0309/TMDL%20Staff%20Report.pdf

project site at that time. Based on the proposed new and as-built facilities used for horse breeding, raising, training, stabling, exercising, boarding and rehabilitation of horses, staff estimates that the project will provide stalls for approximately 76 horses). Ground cover at the facility consists of primarily bare soil, with the exception of the paddock in the southern portion of the property, and lawn areas surrounding the riding arenas.

The proposed equestrian facility is located in and adjacent to Stokes Creek. The proposed pipe barns and associated development in the northern portion of the property provide a setback of approximately 30 feet from the edge of the riparian tree canopy around Stokes Creek at its closest point. The proposed arena in the northern portion of the property is also located approximately 30 feet from the riparian dripline at its nearest point. In the southern portion of the site, proposed development is located approximately 10 feet from the riparian tree canopy at its closest point. In addition, the northern and southern portions of the facility are linked by an existing dirt access road with at-grade crossing through Stokes Creek, which crosses the creek at the northern riding arena, and then runs parallel to the paddock and smaller arena in the southern portion of the property. A second at-grade dirt creek crossing runs from the southwest corner of the northern arena to the stable area in the southern portion of the property.

Drainage from the site is currently by sheet flow runoff. The applicant has submitted a report ("Evaluation of Surface Water and Groundwater Quality Impacts Resulting from the Proposed Equestrian Facility at 2200 Stokes Canyon Road, Calabasas, California," by Jones & Stokes, July 3, 2002) indicating that the proposed project will cause roof runoff and runon water in the northern portion of the project site to be diverted to the area between the riding arena in the central portion of the site and Stokes Canyon Road, or between the riding arena and the stream, and allowed to infiltrate. The report also said that exposed areas between the stream would be stabilized with deer grass (*Muhlenbergia rigens*) in order to serve as filter strips for the overland flow that occurs between the pole corrals and the edge of the stream. The report also notes that the applicant will implement a manure management program that will involve the regular collection, storage, and treatment of manure generated in the pipe corral areas.

The applicant has also submitted a site management plan, entitled "Malibu Valley Farms Comprehensive Management Plan: A Site Specific Animal Management and Emergency Preparedness Manual", dated December 2006 (**Exhibit 15**). The plan includes design details and implementation guidance for proposed best management practices (BMP) to be utilized by the facility regarding erosion control, water quality/runoff mitigation, general housekeeping management, and emergency preparedness/fire safety.

A Storm Water Runoff Plan, prepared by Diamond West Engineering, Inc. and dated December 2006, has been included as part of the submitted Comprehensive Site Management Plan and discusses the proposed water quality measures for the project (**Exhibit 15**). These measures include two vegetated swales, totally 1,400 lineal feet, that are situated between the creek and the developed portions of the site in order to convey and treat runoff from the site prior to discharge, and a retention basin located at the south side of the site designed to capture runoff from only a small portion of the site (0.1 acres). These measures are located less than 20 feet from the stream's riparian canopy. In addition, the applicant is proposing to restore and increase the riparian buffer in certain areas adjacent to the creek (totaling approximately ½ acre). Regarding control of erosion, the plan describes the proposed use of pasture rotation and management to maintain grass cover, rip rap velocity reducers to slow storm flows, stabilization of eroded stream banks, and implementation of dust control measures. Finally, source control measures, including Manure Management and Integrated Pest Management (IPM), are also proposed to protect water quality.

~~While these proposed measures will help control erosion and polluted runoff from the proposed development to an extent, they are not sufficient to ensure maximum water quality protection, especially for such a large, intensive site use as the proposed project. The proposed project is a large-scale horse facility adjacent to an impaired waterbody, and therefore requires additional protections to prevent pollutants from entering the stream. An increase in the proposed riparian buffer would be necessary to ensure adequate water quality protection and increase the effectiveness of the proposed pollution control measures.~~ The Council of Bay Area Resource Conservation Districts notes that:

> ***"Riparian Buffers...are one of the most effective tools to help assure clean runoff from horse facilities. Buffers can be considered a last line of defense against the natural downslope flow of runoff down streambanks before that runoff reaches the creek. As with all horse keeping practices, buffers should be integrated with other proven pollution control and management practices, and incorporated into a facility's conservation plan to maximize their effectiveness in protecting overall water quality" (Managing Manure: The Role of Riparian Buffers, Fact Sheet, CBARCD, June 2003).***

The aforementioned publication goes on to state that "generally, the wider the buffer, the greater the environmental benefit." A setback distance (for horse facilities) from a water course of 100 feet is specified as ideal by the Resource Conservation District of the Santa Monica Mountains.[21] In past permit actions in the Santa Monica Mountains, the Commission has required horse facilities to be located a minimum distance of 100 feet from streams, in addition to requiring the employment of best management practices to minimize runoff of pollutants, in order to protect water quality. The 100-foot setback is measured from the outer edge of the riparian canopy. This setback ~~is necessary to~~ provides sufficient area for infiltration of runoff, prevention of erosion and sedimentation, minimization of the spread of invasive exotic plant and animal species, and to allow for an adequate and functional natural vegetation buffer consistent with Section 30231.

The primary functions of buffers are to keep disturbance at a distance from sensitive environmental resources and to provide ecosystem services in benefit of the adjacent ESHA, including water quality. Riparian buffers adjacent to streams and creeks serve to maintain the integrity of the waterway, stabilize the stream banks, reduce pollution, and provide food, habitat, and thermal protection for both terrestrial and aquatic organisms. Riparian buffers benefit aquatic habitat by improving the quality of nearby waters through shading, filtering, and moderating stream flow. Plant roots hold bank soil together and plant stems protect banks by deflecting the cutting action of storm runoff. The vegetation catches dust and pollutants carried by the wind and helps stabilize banks and reduce water velocity and erosion. With the vegetation slowing down the velocity of the runoff, the riparian buffer allows water to infiltrate the soil to help control flooding and runoff pollution. Water infiltration allows sediments and pollutants to settle out, be modified by soil bacteria, and taken up by plants, thereby minimizing the amount of sediment and pollutants that may enter the waterway.[22] However, it is also important that pollution control measures, such as vegetative swales and bioretention basins, be situated on the outer edge of the riparian buffer if feasible in order to allow additional infiltration and absorption of excess nutrients, sediments, and pollutants within the buffer before they reach

[21] Stable and Horse Management in the Santa Monica Mountains, A Manual on Best Management Practices for the Reduction of Non-point Source Pollution, RCD/SMM, 1999.
[22] "Managing Manure: The Role of Riparian Buffers", Equine Facilities Manure Management Practices Fact Sheet, Council of Bay Area Resource Conservation Districts, June 2003.

the creek. Buffers are a last line of defense against the natural flow of runoff down slopes and streambanks before that runoff reaches a waterway. Vegetated buffer areas are especially critical when the nature of the development creates organic and chemical waste and is highly compacting of site soils. These conditions result in reduced site infiltration capacity and increased potential for nutrient, chemical, and sediment-loading of coastal waters. As previously described above, the LUP policies require a minimum setback of 100 feet from streams or riparian areas. ~~It should be noted that in order to protect the water quality of streams and other coastal waters, the Commission has required the 100-foot riparian buffer to be maintained in projects, including equestrian facilities, which are much less dense and intense than the development considered herein. Given the intensity of development proposed and the adverse impacts on water quality that can result, particularly in an impaired water body, a buffer of 100-feet is clearly a bare minimum that should be provided in this case.~~ However, the LUP also indicates that variations from such development standards will be considered on an individual basis according to their potential environmental effects as determined by the County Environmental Review Board (ERB). The County ERB reviewed an application to relocate and remove various structures associated with the existing equestrian facility on January 27, 2003. The ERB found the project consistent with the LUP and recommended approval of the project with suggested modifications to limit night lighting and address erosion issues on the site. The ERB did not find that increased setbacks were necessary in order to protect the riparian canopy and stream.

The Commission has required a 100 foot buffer in the Santa Monica Mountains, between riparian areas and development, including for equestrian facilities associated with private residences. However, in other areas, the Commission has previously approved a narrower riparian buffer [CDP 6-04-029 (22nd Ag. District)]. In the case of the proposed project, the applicant proposes to set back the majority of the proposed development 50 feet from the top of stream bank. The applicant also proposes to remove existing structures that are located closest to the riparian areas, install approximately 1,400 linear feet of vegetative swales and a retention basin between development and the creek, restore 0.5-acres of disturbed riparian vegetation, and implement the "Malibu Valley Farms Comprehensive Management Plan" that includes construction and operational Best Management Practices. These proposed improvements will reduce or mitigate adverse impacts to riparian habitat and water quality as a result of the project and reduced buffer area. Although the proposed project provides a less than 50 foot buffer between development and riparian vegetation, incorporation of proposed measures to enhance the habitat value of the on-site riparian corridor will serve to minimize adverse water quality impacts from noise, activity, human intrusion, equine intrusion, erosion, and runoff. Thus, the proposed project would maintain an adequate natural vegetation buffer area and protect riparian habitat and water quality as required by Section 30231 and the applicable LUP policies.

~~The proposed new and as-built development, including the vegetated swales and basin, is located less than 50 feet from the edge of the canopy of the riparian ESHA in several areas, and well within 100 feet of the stream for most of the proposed development. In the case of the as-built stream crossings, the development is in the streambed itself. This is all inconsistent with the LUP standard for setbacks (100 feet). Approval of the proposed development would thus allow placement of structures and confinement of horses within and adjacent to the riparian habitat on site and would not maintain a natural vegetation buffer area to protect the riparian habitat, and water quality, as required by Section 30231.~~

Section 30231 also requires minimal alteration of natural streams. Similarly, the Malibu-Santa Monica Mountains LUP also prohibits alteration of streambeds in ESHA where there are less environmentally damaging feasible alternatives for access, and requires any such crossings that

are unavoidable to consist of bridging. In addition, Policy P76 of the LUP limits significant alterations of blue line streams to 1) necessary water supply projects, 2) flood control projects that are necessary to protect public safety or existing structures, and 3) developments where the primary purpose is the improvement of fish and wildlife habitat, consistent with the requirements of Section 30236 of the Coastal Act. Furthermore, Policy P78 of the LUP requires any stream crossings to be undertaken by the least environmentally damaging feasible method, and requires any crossings to consist of bridging unless a less damaging method is recommended by the Los Angeles County Environmental Review Board (ERB).

The proposed project includes two at-grade, as-built dirt crossings of Stokes Creek. Although these as-built creek crossings have reduced portions of the existing streambed to compacted bare soil, these areas were disturbed as early as the 1950's. The crossings are not considered a significant stream alteration and would not increase the transport of pollutants into the stream. In addition, they include features to limit runoff. As allowed under Table 1 of the LUP, the ERB found that these crossings are consistent with the resource protection policies of the LUP. ~~and thereby increase the transport of pollutants into the stream, inconsistent with Section 30231 of the Coastal Act and stream protection standards of the Malibu Santa Monica Mountains LUP. The proposed crossings are furthermore inconsistent with the LUP policies regarding stream crossings and alteration of streams cited above, and with Section 30236 of the Coastal Act.~~

Further, as mentioned previously, the applicant proposes the use of rip rap as both a velocity reducer for flows discharging into the creek, and to repair and stabilize the streambank on the south side of the creek - a combination of rip rap and erosion control blankets, or other suitable methods, is specifically indicated. ~~In order~~ These measures will serve to minimize the alteration of the stream and protect the integrity of this resource in a manner consistent with Section 30231 and other applicable Coastal Act policies.~~, the most environmentally sensitive methods of reducing flow velocity at creek outlets and stabilizing the streambank, such as the use of bioengineering techniques, should be employed where feasible~~.

In order to ensure that the applicant's proposed "Malibu Valley Farms Comprehensive Management Plan" for the facility is implemented to protect water quality, **Special Condition No. One (1)** is required. Special Condition One (1) requires the applicant to provide an independent monitoring report to the Executive Director, prepared by a qualified environmental specialist, one year after initiation of implementation of the Malibu Valley Farms Comprehensive Management Plan, and again five years after implementation of the Plan. The monitoring report shall certify that the plan has been implemented and plan elements are operational in conformance with the terms of the plan. If a monitoring report indicates that any plan elements are not operational or in conformance with the terms of the plan, the applicant, or successors in interest, shall submit a revised or supplemental management plan for the review and approval of the Executive Director. The revised plan must specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

In summary, the proposed development will serve to maintain the biological productivity and water quality of Stokes Creeks and downstream coastal waters by controlling polluted runoff, maintaining natural vegetation buffer areas, or minimizing alteration of natural stream banks. Therefore, approval of the proposed development is consistent with Section 30231 and 30236 of the Coastal Act, as well as the policies of the certified LUP listed above.

Project Alternatives

Alternatives must be considered to determine if there is an alternative project that can lessen or avoid significant environmental impacts to water quality. An alternative is a description of another activity or project that responds to the major environmental impacts of the project identified through the Commission's analysis. Project alternatives can fall into one of two categories: on-site alternatives which generally consist of different uses of the land under consideration; and off-site alternatives which usually involve similar uses at different locations. . In this case, as discussed above, the proposed development has been designed and conditioned to avoid significant effects to water quality. Although the alternatives described below would provide different ways to avoid adverse effects, they would disrupt and constrain the existing equestrian operation, which provides important recreational, access, and fire safety benefits. ~~In this case, as discussed in great detail above, the proposed project does not provide an adequate buffer or adequate BMPs to reduce the impacts of the construction and operation of the equestrian facilities on water quality to an acceptable level based on the standards provided by Chapter 3 of the Coastal Act.~~

There are also potential siting and design alternatives to the proposed project that would be consistent with the stream protection and water quality policies of the Coastal Act and LUP. ~~Although~~ but application of the 100-foot setback does significantly reduce the amount of area available for development on the lower portion of the property. ~~, it~~ It does allow for two areas – an approximately 40,000 sq. ft area adjacent to Stokes Canyon Road in the northern portion of the property, and an approximately 20,000 sq. ft. area in the southern portion of the property, adjacent to Mulholland Highway – to be used for development (**Exhibit 24**). These areas could accommodate the majority of the proposed structural development, including the covered corrals, barns, tack rooms, mare motel, storage buildings, shelters and other buildings, although they could not accommodate the riding arenas as well. ~~However, t~~There are also already additional equestrian facilities existing on the site, including two riding rings, in the far northern portion of the property, which is outside of the Coastal Zone. Nevertheless, this alternative would constrain the facility's equestrian operations and limit its recreational and other benefits. Another feasible alternative would be the construction of a single-family residence in the approximately 40,000 sq. ft. area adjacent to Stokes Canyon Road which would provide a reasonable economic use of the property, but would result in the elimination of the equestrian facility and the various benefits it provides to coastal resources, including recreation, access, and fire safety.

There are also potential siting alternatives off-site. Brian Boudreau, president of Malibu Valley Farms, Inc., also owns several other parcels in the project vicinity that contain suitable areas for low-intensity equestrian facility use and are not located in or adjacent to a stream course (**Exhibit 25**). The parcel to the north, APN 4455-043-007, is owned by Malibu Canyon LP (whose president is Brian Boudreau). While this parcel is also bisected by Stokes Creek, there appear to be areas on the property that are level and can provide a 100 setback from the stream. Another parcel, APN 4455-028-045 located to the south of the subject parcel, is owned by Robert Levin, a partner of Mr. Boudreau. This parcel contains a flat strip of land adjacent to Mulholland Highway and the subject parcel that appears suitable for equestrian-related development. Additionally, there are a few parcels (APN 4455-028-094, -093, and -096) located on the west side of Stokes Canyon Road that are also controlled by Mr. Boudreau (Malibu Canyon LP) and appear to already be in agricultural use. These parcels also contain level areas that appear appropriate for low-intensity equestrian-related facilities. However, requiring relocation of the facility to these alternative sites would significantly disrupt and constrain the benefits it provides in terms of recreation, access, and fire safety.

In sum, ~~feasible~~ alternatives exist, both on-site and off-site, to accommodate low-intensity equestrian facilities while providing at least a 100-foot setback from streams and avoiding or minimizing impacts to water quality to such a degree as to make the project consistent with the standard in Chapter 3 of the Coastal Act. As described above, the Commission finds that the proposed project, as conditioned, is consistent with Sections 30230 and 30231 of the Coastal Act and avoids significant impacts to coastal resources. As such, the Commission does not find it necessary to require the applicant to implement any project alternative in order to minimize environmental impacts.

~~In summary, the proposed development does not maintain or restore the biological productivity and water quality of Stokes Creeks or downstream coastal waters to maintain optimum aquatic populations or for the protection of human health by controlling polluted runoff, maintaining natural vegetation buffer areas, or minimizing alteration of natural stream banks. There are project alternatives that can reduce or avoid impacts to water quality. Therefore, approval of the proposed development is inconsistent with Section 30231 of the Coastal Act. It is also inconsistent with Section 30236, for the reasons stated above, and the policies of the certified LUP listed above. The project must therefore be denied.~~

F. Visual Resources

Section **30251** of the Coastal Act states, in part:

> ***The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.***

Section 30251 of the Coastal Act requires scenic and visual qualities to be considered and preserved. Section 30251 also requires that development be sited and designed to protect views of scenic areas, minimize alteration of landforms, and be visually compatible with the surrounding area.

The subject property is located immediately north of the former campus of Soka University, which is now public parkland. Scattered rural and residential development is located west and south of the subject property, and an undeveloped hillside containing primarily chaparral and oak woodland habitat is located to the east of the property. The subject site is highly visible from Mulholland Highway, a designated scenic highway in the Malibu-Santa Monica LUP, as well as from numerous public viewing points, including along the Backbone Trail, one of the most popular public hiking trails in the Santa Monica Mountains, and the Las Virgenes View trail, that afford scenic vistas of the relatively undisturbed natural area. However, the proposed equestrian development is compatible with the area and will preserve scenic views and will not result in significant visual impacts to the surrounding area.

The natural landscape of the Santa Monica Mountains consists of lush riparian environments, oak woodlands, and chaparral and coastal sage scrub communities. The landscape ranges from steeply sloping canyons, to high rocky mountain peaks, to relatively flat alluvial flood plains. In addition to the varied landscape and vegetative communities, the Santa Monica Mountains provides habitat for such species as cooper's hawk, western screech owl, mule deer, gray foxes, and steelhead trout. Horses are also a relatively common part of the Santa Monica

Mountains landscape. This unique natural experience is one that you would find walking, hiking, or driving through the Santa Monica Mountains.

~~The as-built equestrian facility was not sited and designed to protect these views to and across this scenic area. The subject as-built development replaced riparian habitat and oak woodland, chaparral, and coastal sage scrub vegetative communities with an extensive equestrian facility. In addition, the as-built development included the grading of a dirt access road with crossings through Stokes Creek, thereby altering the stream bed and carving out a portion of the stream bank on either side of Stokes Creek. The facility's many structures, fencing, and access roads are visible along Mulholland Highway (designated as a scenic highway in the Malibu Santa Monica LUP), and along the many public trails above the subject property.~~

Therefore, the Commission finds that the proposed equestrian development is compatible with its surroundings and is consistent with the visual protection policies of Section 30251. ~~not consistent with Section 30251 of the Coastal Act because it was not sited and designed to protect the scenic and visual characteristics of the surrounding area, and it contributes to a cumulative adverse impact of increased development along Stokes Creek and the adjacent upland areas. As such, the proposed development is inconsistent with Section 30251 and must be denied.~~

G. Hazards and Geologic Stability

Coastal Act Section 30253 states in part:

> ***New development shall:***
>
> ***(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.***
>
> ***(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.***

The proposed development is located in the Santa Monica Mountains, an area which is generally considered to be subject to an unusually high amount of natural hazards. Geologic hazards common to the Santa Monica Mountains include landslides, erosion, and flooding. In addition, fire is an inherent threat to the indigenous chaparral community of the coastal mountains. Wild fires often denude hillsides in the Santa Monica Mountains of all existing vegetation, thereby contributing to an increased potential for erosion and landslides on property.

The applicant requests after-the-fact approval for construction of facilities close to Stokes Creek. The application includes relocation of some existing structures so they are located farther away from the creek.

The Coastal Act recognizes that certain development projects located in hazardous areas, such as the subject site, still involve the taking of some risk. Coastal Act policies require the Commission to establish the appropriate degree of risk acceptable for the proposed development and to determine who should assume the risk. When development in areas of

identified hazards is proposed, the Commission considers the hazard associated with the project site and the potential cost to the public, as well as the individual's right to use his property. As such, the Commission finds that due to the foreseen possibility of erosion, flooding, and slope failure, the applicants shall assume these risks as a condition of approval. Therefore, **Special Condition No. Two (2)** requires the applicant to waive any claim of liability against the Commission for damage to life or property which may occur as a result of the permitted development. The applicant's assumption of risk will show that the applicant is aware of and appreciate the nature of the hazards which exist on the site, and which may adversely affect the stability or safety of the proposed development. **Special Condition No. Five (5)** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as a restriction on the use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restriction are imposed on the subject property.

In addition, the facility serves as a refuge for horses in the event of fire. It therefore minimizes fire hazards consistent with Section 30253(1).

Therefore, for the reasons discussed above, the Commission finds that the proposed project, as conditioned, is consistent with Section 30253 of the Coastal Act.

G. Access, Recreation, and Agriculture

The proposed development enhances equestrian opportunities in the Santa Monica Mountains. This is consistent with Coastal Act policies that promote public access and recreation. These include:

Coastal Act Section 30213, which states in part:

> ***Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.***

Coastal Act Section 30222, which states:

> ***The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.***

Coastal Act Section 30223, which states:

> ***Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.***

The proposed equestrian facility sponsors educational and recreational opportunities for lower-income youth and provides equestrians with opportunity to access important trail networks in the area. The facility also provides a place of refuge for horses in the event of wildfire. As such, the Commission finds that the proposed project enhances equestrian access and recreation opportunities in the Santa Monica Mountains, consistent with Sections 30213, 30222, and 30223 of the Coastal Act.

Section 30242 of the Coastal Act provides for the protection of agricultural land by restricting the conversion of lands suitable for agricultural use. Section 30242 of the Coastal Act specifically states:

> ***All other lands suitable for agricultural use shall not be converted to nonagricultural uses unless (l) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or concentrate development consistent with Section 30250 such permitted conversion shall be compatible with continued agricultural use on surrounding lands.***

The agricultural easement proposed by the applicant for the eastern portion of the property will preserve the land in its current state so that it is available for this favored use by giving a third party the ability to prevent the development or improvement of the land for any purpose other than agricultural production. To implement the applicant's proposal, **Special Condition No. Four (4)** requires recordation of an agricultural easement across the eastern portion of the property indicated on Exhibit 29 so the area is not allowed to be converted to non-agricultural uses.

H. Indemnification

Coastal Act section 30620(c)(1) authorizes the Commission to require applicants to reimburse the Commission for expenses incurred in processing CDP applications. *See also* 14 C.C.R. § 13055(e). Thus, the Commission is authorized to require reimbursement for expenses incurred in defending its action on the pending CDP application. Therefore, consistent with Section 30620(c), the Commission imposes **Special Condition No. 3**, requiring reimbursement of any costs and attorneys fees the Commission incurs "in connection with the defense of any action brought by a party other than the Applicant/Permittee challenging the approval or issuance of this permit."

~~G. Alternatives~~

~~Denial of the proposed project will neither eliminate all economically beneficial or productive use of the applicant's property nor unreasonably limit the owner's reasonable investment-backed expectations of the subject property. Several alternatives to the proposed development exist. Some of those possible alternatives are discussed in Sections D. and E. above, although those discussions are not intended to be, nor are they, comprehensive. Note that although the Commission presents those alternatives in an effort to assist the applicant and to point out potentially approvable alternative projects, the Commission cannot now guarantee that any given alternative would receive Coastal Act approval when it is presented in the future. This is true for many reasons, among them that: (1) the Commission reviews each project independently when it is presented, along with the required information about impacts to coastal resources, (2) the composition of the Commission may not be the same as it is now, and a different Commission may interpret the governing standards differently, view the facts differently, or simply exercise its discretion differently, and (3) the specific details of the project presented may raise additional issues that the general discussion above does not anticipate.~~

I. Violation

Development has occurred on the subject site without the required coastal development permit, including, but not limited to, an equestrian facility containing a 45,000 sq. ft. arena with five-foot high surrounding wooden wall with posts, 200 sq. ft. portable rollaway bin/container, 200 sq. ft. portable tack room with four-foot porch (to be relocated approximately 20 feet west), 576 sq. ft. pipe corral, 576 sq. ft. covered shelter, 25,200 sq. ft. riding arena, approximately 2,000 sq. ft. parking area, 2,660 sq. ft. back to back mare motel, 150 sq. ft. cross tie area, 1,440 sq. ft. one-story barn, 160 sq. ft. storage container, three-foot railroad tie walls, twenty-eight 576 sq. ft. portable pipe corrals, a 288 sq. ft. storage shelter, 200 sq. ft. portable storage trailer, four 400 sq. ft. portable pipe corrals, 101 sq. ft. tack room with no porch, four 101 sq. ft. portable tack rooms with four-foot porches, 250 sq. ft. cross tie area, 360 sq. ft. cross tie shelter, two 2,025 sq. ft. covered corrals, a 1,080 sq. ft. covered corral, an approximately 20,000 sq. ft. fenced paddock, fencing, dirt access road with at-grade crossing through Stokes Creek, and a second at-grade dirt crossing of Stokes Creek. The unpermitted development occurred prior to submission of this permit application.

The applicant is requesting after-the-fact approval for the unpermitted development, with the exception of twenty-eight 576 sq. ft. portable pipe corrals, four 400 sq. ft. portable pipe corrals, a 288 sq. ft. storage shelter, 200 sq. ft. portable storage trailer, 200 sq. ft. portable rollaway bin/container, 160 sq. ft. storage container, three-foot railroad tie walls, 101 sq. ft. tack room with no porch, four 101 sq. ft. portable tack rooms with four-foot porches, 200 sq. ft. portable tack room with four-foot porch, 150 sq. ft. cross tie area, 250 sq. ft. cross tie area, 360 sq. ft. cross tie shelter, two 2,025 sq. ft. covered corrals, and one 1,080 sq. ft. covered corral, which the applicant proposes to remove, and reduction in the size of the fenced paddock area by approximately 5,000 sq. ft.

As described above, the Commission approved Cease and Desist Order CCC-06-CD-14 and Restoration Order CCC-06-RO-07 (collectively, "Enforcement Orders") at the November 2006 hearing. These orders require the applicant to cease and desist from maintaining unpermitted development on the site, to remove unpermitted development, and to restore the site (including the implementation of restorative grading, erosion control, and revegetation). The applicant was given the opportunity to apply to retain or remove the unpermitted development before the removal/restoration requirements of the Enforcement Orders would apply. This permit application followed. However, the applicant must remove all unpermitted development that is denied in the subject coastal development permit application and restore the site in the manner and timeframes set forth in the Enforcement Orders. As discussed above, ~~and consistent with the findings in the Enforcement Orders,~~ the proposed project is ~~not~~ consistent with the environmentally sensitive habitat area (ESHA), water quality, or visual resource policies of the Coastal Act or the Malibu/Santa Monica Mountains LUP, and it is therefore being ~~denied~~ approved.

Although development has taken place prior to submission of this permit application, consideration of this application by the Commission has been based solely upon the Chapter Three policies of the Coastal Act. Review of this permit application does not constitute a waiver of any legal action with regard to the alleged violations nor does it constitute an admission as to the legality of any development undertaken on the subject sites without a coastal development permit.

J. Local Coastal Program

Section **30604** of the Coastal Act states, in part:

a) Prior to certification of the local coastal program, a coastal development permit shall be issued if the issuing agency, or the commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a local program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200).

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal development permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program that conforms with Chapter 3 policies of the Coastal Act. ~~The preceding sections provide findings that the proposed project will not be in conformity with the provisions of Chapter 3 of the Coastal Act. The proposed development will create adverse impacts and is found to be inconsistent with the applicable policies contained in Chapter 3. As discussed, there are alternatives to the project that would conform with the ESHA, water quality, and visual resources of the Coastal Act. Therefore, the Commission finds that approval of the proposed development, as conditioned, would prejudice the County of Los Angeles' ability to prepare a Local Coastal Program for this area that is also consistent with the policies of Chapter 3 of the Coastal Act, as required by Section 30604(a), and the project must therefore be denied~~. The preceding sections provide findings that the proposed project will be in conformity with the provisions of Chapter 3 if certain conditions are incorporated into the project and are accepted by the applicant. As conditioned, the proposed development will not create adverse impacts and is found to be consistent with the applicable policies contained in Chapter 3. Therefore, the Commission finds that approval of the proposed development, as conditioned, will not prejudice the County of Los Angeles' ability to prepare a Local Coastal Program for this area which is also consistent with the policies of Chapter 3 of the Coastal Act, as required by Section 30604(a).

K. California Environmental Quality Act

Section 13096(a) of the Commission's administrative regulations requires Commission approval of a coastal development permit application to be supported by a finding showing the application is consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect that the activity may have on the environment.

~~Previous sections of these findings contain documentation of the adverse impacts that the proposed equestrian facility would have on the environment. There are feasible alternatives to and mitigation measures for the proposed project that would lessen the impact on the environment. Therefore, for reasons previously cited in the findings above, the Commission finds that the proposed project is not the least environmentally damaging feasible alternative and is determined to be inconsistent with CEQA and inconsistent with the policies of the Coastal Act. It is therefore denied.~~

The Commission incorporates its findings on Coastal Act consistency at this point as if set forth in full. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. As discussed above, the proposed development, as conditioned, is consistent

with the policies of the Coastal Act. Feasible mitigation measures which will minimize all adverse environmental effects have been required as special conditions. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, can be found to be consistent with the requirements of the Coastal Act to conform to CEQA.

EXHIBITS

Exhibit Number	Description
1.	Vicinity Map
2.	Parcel Map
3.	Coastal Zone Boundary Determination
4.	Existing Conditions Site Plan
5.	Site Detail – North (Existing)
6.	Site Detail – South (Existing)
7.	Proposed Site Plan
8.	Site Detail – North (Proposed)
9.	Drainage Detail – North (Proposed)
10.	Drainage Cross-Section – North (Proposed)
11.	Site Detail – South (Proposed)
12.	Drainage Detail – South (Proposed)
13.	Drainage Cross-Section – South (Proposed)
14.	Structural Details
15.	Site Management Plan
16.	Dr. Dixon ESHA Memo
17.	Claim of Vested Right No. 4-00-279-VRC Staff Report
18.	Cease & Desist/Restoration Orders No. CCC-06-CD-14, CCC-06-RO-07 Staff Report (without Exhibits)
19.	California Coastal Commission Report on Local Coastal Program Policies Regarding Setbacks and Mitigation Ratios for Wetlands and Environmentally Sensitive Habitat Areas (CCC Setback Report)
20.	*Heal the Bay* Comment Letter, August 4, 2006
21.	Correspondence
22.	Ex Parte Communications
23.	Riparian Canopy Site Plan
24.	On-site Alternatives Site Plan
25.	Off-site Alternatives Aerial Photo
26.	Biological Resource Map
27.	Aerial Views (2)
28.	Applicant's Proposed Conditions of Approval, presented at 7/9/07 Hearing
29.	Applicant's Proposed Agricultural Easement Area, presented at 7/9/07 Hearing
30.	County Environmental Review Board (ERB) Approval Form
31.	Ca. Department Fish & Game Letter
32.	State Water Resources Control Board Letter
33.	CLEAN 5/16/08 Correspondence
34.	Save Open Space 9/14/07 Correspondence
35.	Transcript of 7/9/07 Commission Hearing

RECEIVED
FEB 03 2004
CALIFORNIA COASTAL COMMISSION SOUTH CENTRAL COAST DISTRICT

APPLICATION FOR COASTAL DEVELOPMENT PERMIT

APPENDIX B

LOCAL AGENCY REVIEW FORM

SECTION A (TO BE COMPLETED BY APPLICANT)

Applicant: Malibu Valley Farms, Inc.

Project Description: Modifications to existing equestrian facility

Location: 2200 Stokes Canyon Rd.

Assessor's Parcel Number: 4455-028-044

SECTION B (TO BE COMPLETED BY LOCAL PLANNING OR BUILDING INSPECTION DEPARTMENT)

Zoning Designation	A-1-1	1 du/ac
General or Community Plan Designation	Rural land I	1 du/10 ac
	Rural land II	1 du/5 ac
	Rural land III	1 du/2 ac

Local Discretionary Approvals

- ☐ Proposed development meets all zoning requirements and needs no local permits other than building permits.
- ☒ Proposed development needs local discretionary approvals noted below.

Needed	Received	
☐	☐	Design / Architectural review
☐	☐	Variance for
☐	☐	Rezone from
☐	☐	Tentative Subdivision / Parcel Map No.
☐	☐	Grading / Land Development Permit No.
☐	☐	Planned Residential / Commercial Development Approval
☒	☒	Site Plan Review
☐	☐	Condominium Conversion Permit
☐	☐	Conditional, Special, or Major Use Permit No.
☐	☐	Other

CEQA Status

- ☐ Categorically Exempt — Class _____ Item _____
- ☐ Negative Declaration Granted (Date) _____
- ☐ Environmental Impact Report Required, Final Report Certified (Date) _____
- ☐ Other _____

Prepared for the ~~City~~ / County of Los Angeles by [signature]

Date 2-2-04 Title Regional Planning Assistant II