CALIFORNIA COASTAL COMMISSION
SOUTH CENTRAL COAST AREA
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Th16a

Submitted: 12/8/08;
Amended 10/5/09
Staff: Shana Gray
Staff Report: 3/29/11
Hearing Date: 4/14/11

STAFF REPORT: REVOCATION REQUEST

APPLICATION NO.: R-4-06-163

APPLICANT: Malibu Valley Farms, Inc.

AGENT: Fred Gaines and Don Schmitz

PROJECT DESCRIPTION: (APPROVED July 9, 2007) 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. stable, 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 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 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-acres of riparian restoration.

PROJECT LOCATION: Northeast corner of Mulholland Highway and Stokes Canyon Road, Santa Monica Mountains (Los Angeles County) (APN NO: 4455-028-044)

ENTITY REQUESTING REVOCATION: Save Open Space, 5411 Ruthwood, Calabasas, CA 91302.

MOTION & RESOLUTION: Page 23

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission **deny** the request for revocation on the basis that no grounds have been shown to exist for revocation under Section 13105 of the

Commission's regulations.[1] The party requesting revocation contends that grounds for revocation in Section 13105(a) exist because the applicant submitted inaccurate, erroneous and incomplete information to the Commission in connection with coastal development permit application 4-06-163. The request for revocation does not assert that grounds for revocation in Section 13105(b) exist.

The Executive Summary begins on **Page 4** of this report.

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[1] All further numerical section references are to the Commission's regulations in Title 14 of the California Code of Regulations.

TABLES

EXHIBITS

ATTACHMENT

KEY ACRONYMS AND TERMS

AIC	Approval-In-Concept
Applicant	Malibu Valley Farms, Inc., and its owners, officers, representatives, and agents
BMPs	Best Management Practices
CDFG	California Department of Fish and Game
CDP	Coastal Development Permit
CMP	Comprehensive Management Plan
County	County of Los Angeles
CUP	Conditional Use Permit
DPW	Los Angeles County, Department of Public Works
DRP	Los Angeles County, Department of Regional Planning
ERB	County of Los Angeles, Environmental Review Board
LCP	Local Coastal Program
LUP	Malibu/Santa Monica Mountains Land Use Plan

MVF	Malibu Valley Farms, Inc.
RWQCB	Regional Water Quality Control Board
SWRCB	State Water Resources Control Board
Transcript	Where no date is provided, all references to the "transcript" shall mean the July 9, 2007 Commission hearing transcript
TUP	Temporary Use Permit
VRC	Vested Rights Claim

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; Coastal Development Permit Application 4-06-163; 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. "Reporter's Transcript of Proceedings" for Agenda Item No. 18a (Malibu Valley Farms, Inc.) on Wednesday, June 11, 2008.

EXECUTIVE SUMMARY

The request for revocation, submitted by Save Open Space on October 5, 2009 (amending the revocation request submitted December 8, 2008), asserts six overarching grounds for revocation under Section 13105(a), claiming that the applicant intentionally submitted erroneous and/or incomplete information resulting in a material change in the Commission's action. The standard of review of this revocation request, under Section 13105(a) of the Commission's regulations, can be reduced to three essential elements or tests, all of which must be satisfied for the Commission to grant the request:

> Test 1: Did the applicant for Coastal Development Permit 4-06-163 (Malibu Valley Farms, Inc.) include inaccurate, erroneous or incomplete information in connection with its application?
>
> Test 2: If the applicant included inaccurate, erroneous or incomplete information, was the inclusion of such information intentional?
>
> Test 3: If the answers to Test 1 and Test 2 are yes, would accurate and complete information have caused the Commission to require additional or different conditions or to deny the application?

The full text of the revocation request is attached as Exhibit 1 to this staff report, and Section 13105(a) analyses corresponding to each of the six stated grounds for revocation are provided in Section H.1 of this report. For the purposes of this report, the six overarching grounds listed in the revocation request have been broken down into thirteen identifiable components, or assertions. As detailed in Sections H.1 of this report, and summarized in Table A below, staff recommends that the Commission find that, with respect to five of the thirteen assertions lodged herein to support revocation, the party requesting revocation has not demonstrated the inclusion of erroneous or incomplete information in connection with the coastal development permit amendment application. Thus, those five grounds for revocation (Assertions 2C, 3, 4, 5, and 6) do not meet Tests 1 or 2. Additionally, for those five assertions that do not meet Test 1 or 2, even if true, they do not involve information that is relevant for the purposes of determining whether the proposed project was consistent with the Chapter 3 policies of the Coastal Act. Thus, there could be no finding that the alleged corrected and completed information would have caused the Commission to require additional or different conditions or to deny the application. Consequently, these allegations would not satisfy Test 3, even if they satisfied Tests 1 and 2. Therefore, these five assertions are not legitimate grounds for revocation under Section 13105(a) of Title 14 of the California Code of Regulations.

However, in respect to the remaining eight of the thirteen assertions, Commission staff concludes (and thus recommends that the Commission find) that the applicant did provide erroneous and/or incomplete information, so these assertions would meet Test 1. This includes Assertions 1A, 1B, 1C, 1D, 1E, 2A, 2B, and 2D. Under Test 2, the Commission must then consider whether the applicant *intentionally* included the inaccurate, erroneous or incomplete information identified in these eight assertions. Of these eight assertions, Commission staff concludes that all eight also meet Test 2.

In sum, Commission staff believes that eight of the thirteen assertions meet both Test 1 and Test 2 (Assertions 1A, 1B, 1C, 1D, 1E, 2A, 2B, and 2D) such that the applicant intentionally provided erroneous and/or incomplete information in connection with the subject application. However in all eight cases, Commission staff believes that the Commission would not have altered its decision on the Coastal Development Permit even if the complete and accurate information was available because: (1) such information was not relevant to the Commission's findings of consistency with the Chapter 3 policies of the Coastal Act and/or (2) was already made known to the Commission at the time of its decision. Therefore these eight assertions do not meet Test 3, even though Tests 1 and 2 were satisfied. Thus, these grounds for revocation do not meet Test 3 and would not be legitimate grounds for revocation under Section 13105(a) of the California Code of Regulations.

Accordingly, Staff recommends that the Commission deny the request for revocation on the basis that no grounds exist for revocation under either Section 13105(a) or (b).

Table A. Summary of Revocation Request Grounds and Staff Recommendation

Grounds & Sub-Grounds in Revocation Request	**Revocation Request – Summary of Main Assertions**	**Test #1: Inaccurate Information?**	**Test #2: Intentional?**	**Test #3: Change Commission's Decision?**
1. Misrepresentation of State and Local Agency Approvals				
1A. Misrepresentation of the Scope of the L.A. County Environmental Review Board (ERB) Approval (See pages 40-48 below for detailed analysis)	The revocation request asserts that the applicant "deliberately manipulated the ERB 'approval' to make it appear to be an approval for the project described in the Coastal Development Permit application when in fact it was for a differently-premised project."	YES, inaccurate or incomplete information with regard to the scope of the ERB approval was provided in connection with the subject application. The available evidence supports the claim that the ERB approval was only for the *changes* to the existing (and incorrectly presumed to be vested) equestrian facility. The applicant asserted that the scope of the ERB approval covered the entire project, and in fact covered additional development that was no longer proposed under CDP 4-06-163. Additionally, the applicant asserted that the ERB specifically recommended a less-than-100-ft setback from the creek. The evidence in the record does not support those claims. The evidence supports the fact that the ERB approval was limited by the applicant's position that the existing development was vested for the purposes of review.	YES, there is sufficient evidence to conclude that the applicant *intentionally* included inaccurate, erroneous or incomplete information with regard to the scope of the ERB approval. Given that the logical outcome of treating the existing facility as vested was to limit the scope of the ERB's review, and that is what occurred, the nuance of whether the ERB's approval specifically "recommended" less than a 100-foot setback versus *accepted* its inability to review the 100-foot setback due to the presumed vested status of the development is not something that could have been overlooked by the applicant. Therefore the applicant's erroneous statements that the ERB specifically "recommended" a reduced setback and found that an even larger project was consistent with the Coastal Plan are presumably intentional.	NO, the Final Revised Findings (July 2009; Exhibit 2) included separate findings with regard to the creek setback under its own authority without relying on the ERB decision. In the findings, the Commission found ample support for its approval in the evidence in the record without the need to rely on the ERB approval.
1B. Misrepresentations of the Scope of the L.A. County Plot Plan 48295 Approval-In-Concept (See pages 48-55 below for detailed analysis)	The revocation request asserts that the County Plot Plan approval was only for "modifications to an existing equestrian facility" rather than an approval of the entire facility (as the applicant claimed) because it was based on a similarly-limited ERB approval, and further that this was specifically written on the Plot Plan approval-in-concept (AIC). In support of the above assertion, the revocation request	YES, inaccurate or incomplete information with regard to the scope of the L.A. County, Department of Regional Planning's AIC was provided in connection with the subject application. The available evidence supports the claim that the AIC was only for the *changes* to the existing (and incorrectly presumed to be vested) equestrian facility. The Plot Plan Review application indicates that the proposed development includes the "retention" of certain equestrian facilities and the "removal" of other portions of the	YES, regarding the information that staff agrees was inaccurate or incomplete (the information regarding the scope of the AIC), there is sufficient evidence to conclude that the applicant *intentionally* included inaccurate, erroneous or incomplete information with regard to the County's AIC. Given that the project approved in concept pursuant to the AIC was only for modifications to an existing equestrian operation, and that those words were	NO, the Commission would not have made a different decision, either denying the project or adding conditions, because the Commission found the project consistent with the policies and provisions of the Coastal Act – the standard of review in this case – for reasons separate from the County's AIC. The Commission's findings, make clear that the Commission found ample support for its approval in the evidence in the record without the need to rely on the County's AIC.

Grounds & Sub-Grounds in Revocation Request	Revocation Request – Summary of Main Assertions	Test #1: Inaccurate Information?	Test #2: Intentional?	Test #3: Change Commission's Decision?
	contends that County approval of the existing structures is not legally possible if there was no specific ERB review of those structures. Further, the "late add-on components" (i.e., drainage ditch, drainage pond, rip rap) were not included in the local approvals.	equestrian facilities. This implies that the entire project is subject to review. However, the letter from the applicant accompanying the application assessed impacts from a baseline of the existing disturbed conditions, which contradicts the idea that the application was for the entire unpermitted facility. Additionally, the accompanying letter from the applicant provided confusing information regarding the vested status of the project, asserting that the project is vested. Staff agrees that the County's addition of the phrase "Plot Plan 48295 is approved for modifications to an existing equestrian facility" as a condition of the AIC is also indicative that the AIC was intended to be limited to the changes only. This interpretation was confirmed by Department of Regional Planning staff. The applicant's statements that the ERB recommended a reduced setback and that ERB and county staff both found this project consistent with the coastal plan in regard to the 100-ft setback are misleading and incorrect. Therefore, the applicant <u>did</u> provide erroneous and/or incomplete information relative to the County's AIC. There is no evidence that the applicant ever claimed that the late add-on components were included in the local government approval in concept, so there was no inaccurate information presented related to this point.	specifically written on the approval, the applicant must be presumed to have known about the scope and conditions of the County's preliminary approval. Further, given that, during the course of the County's approval process, the applicant argued that the existing development is vested, the applicant affirmatively sought to limit the scope of the County's review, so that the nuance of whether the County's approval "recommended" less than a 100-ft setback versus *accepted* its inability to review the less than a 100-ft. setback due to the vested status of the development, is not something that could have been overlooked. As a result, such statements are presumably intentional.	
<u>1C. Misrepresentations Regarding the Department of Fish & Game Review</u> (See pages 56-63 below for detailed analysis)	The revocation request asserts that the applicant misrepresented the California Department of Fish and Game's (CDFG's) correspondence as a merit-based approval, rather than correspondence stating that a Streambed Alteration	YES, inaccurate or incomplete information with regard to CDFG's approval was provided in connection with the subject application. The CDFG correspondence did not convey a merit-based approval, and in fact there is no reason to assume that CDFG performed any substantive	YES, there is sufficient evidence to conclude that the applicant *intentionally* included inaccurate, erroneous or incomplete information with regard to (1) the fact that CDFG did not bestow a merit based approval and (2) the scope of the CDFG project	NO, the Commission would not have made a different decision, either denying the project or adding conditions, because the Commission found the project consistent with the policies and provisions of the Coastal Act – the standard of review in this case – for

Grounds & Sub-Grounds in Revocation Request	**Revocation Request – Summary of Main Assertions**	**Test #1: Inaccurate Information?**	**Test #2: Intentional?**	**Test #3: Change Commission's Decision?**
	Agreement was not necessary due to the agency failing to meet applicable deadlines. Further, the revocation request asserts that the project for which the applicant sought approval from Fish and Game was for "installment of Turf Reinforcement Mats to facilitate equestrian crossings across an existing unvegetated, soft bottomed Arizona crossing of Stokes Canyon Creek," and therefore, the Fish and Game correspondence did not cover the creation of the two Arizona crossings through the creek bed.	review at all since the correspondence indicates that the applicant may proceed because the agency failed to meet its statutory deadlines. Further, staff agrees, based on the March 15, 2005 correspondence from CDFG, that the scope of the project subject to the CDFG correspondence was limited to the installment of turf reinforcement mats and does not include any specific analysis or review of the crossings themselves.	description. Incorrect information appears to be intentional since there could be no misinterpreting the 'absence of a requirement' to get a Streambed Alteration Agreement as a substantive 'approval' of the project. The correspondence: (1) provides the relevant project description within it and (2) does not support that a substantive review occurred with regard to the project. The applicant is responsible for knowing the details of the project description and the distinction between these two types of approvals.	reasons and based on evidence that was separate from and did not rely on CDFG's approval or correspondence. The Commission's findings, make clear that the Commission found ample support for its approval in the evidence in the record without the need to rely on the CDFG's correspondence.
1D. Misrepresentation of the State Water Resources Control Board Review (See pages 63-69 below for detailed analysis)	The revocation request asserts that the applicant misrepresented the State Water Resources Control Board approval. The record indicates that the scope of the SWRCB review of MVF's proposed activity is limited to stormwater runoff during construction. The revocation request asserts that the applicant stated that the SWRCB had also approved its equestrian site plan in concept; however, that the applicant has not submitted documentation to support this claim. The revocation request makes a separate assertion that the bioswale outlets and rip rap require Regional Water Quality Control Board Review, which did not occur.	YES, inaccurate or incomplete information with regard to the scope of the nature and scope of the SWRCB's review was provided in connection with the subject application. The record indicates that the SWRCB review was limited to the ministerial acknowledgment of receipt of the applicant's Notification that the applicant intends to comply with provisions of the General Permit To Discharge Storm Water Associated With Construction Activity." However, the testimony by the applicant at the July 9, 2007 hearing implied that a substantive SWRCB review of the equestrian facility occurred and also implied that the scope of the project did in fact include some portions of the equestrian facility, not just demolition and construction. As to the separate point regarding the bioswale and other water quality features, while it is true that the bioswale outlets and rip rap may require a Section 401 Water Quality	YES, there is sufficient evidence to conclude that the applicant *intentionally* included inaccurate, erroneous or incomplete information with regard to the scope of the SWRCB review. The scope of the SWRCB Notification process only covered the proposed demolition and construction activities, and did not apply to any long-term operation, or runoff plan, associated with the facility. However, the applicant erroneously suggested that the SWRCB did in fact conduct some substantive review of the ongoing operations and approve portions of the equestrian facility. Given that the Notification process is related only to construction activity, and that the correspondence from SWRCB recognized and processed MVF's *Notice of Intent to Comply with the Terms of the General Permit to*	NO, the Commission would not have made a different decision, either denying the project or adding conditions, because the Commission found the project consistent with the policies and provisions of the Coastal Act – the standard of review in this case – for reasons and based on evidence that was separate from and did not rely on SWRCB's approval or correspondence.

Grounds & Sub-Grounds in Revocation Request	**Revocation Request – Summary of Main Assertions**	**Test #1: Inaccurate Information?**	**Test #2: Intentional?**	**Test #3: Change Commission's Decision?**
		Certification from the Regional Water Quality Control Board, there is insufficient evidence to conclude that the applicant asserted that these water quality features did not need such approvals or already had them.	*Discharge Storm Water Associated With Construction Activity*, the applicant had direct knowledge of the details of the both the Notice and the applicable project description with regard to SWRCB's review. Consequently, the misstatements that confirmed the SWRCB approval was for both a runoff plan associated with construction and a runoff plan associated with the equestrian operations, even as corrected to exclude the bioswale, as well as statements that the Regional Board "did, in fact, approve the project" were presumably intentional.	
1E. Misrepresentation of Recycling Recognition Certificate as a Competitive Best Practices Manure Management Award (See pages 69-77 below for detailed analysis)	The revocation request asserts that the applicant intentionally misrepresented Malibu Valley Farms's manure management program by claiming that MVF had won a competitive award for state-of-the-art manure management practices.	YES, inaccurate or incomplete information with regard to CDFG's approval was provided in connection with the subject application. The information provided by the applicant at the hearing, and within correspondence to the Commission, inaccurately describes the award as a "manure management award" and an "award winning Best Management Practices Plan" rather than ascribing it to waste reduction and diversion efforts. By mentioning Best Management Practices and manure management, it implies that other on-the-ground aspects of managing horse waste were also reviewed such as methods of clean-up and maintenance, timing, location of facilities and storage, success of water quality protection practices, etc. However, that is not the case. The Commission's record indicates that MVF was presented with a 'SmartBusiness Recycling Program' award by the L.A. County Dept. of	YES, there is sufficient evidence to conclude that the applicant *intentionally* included inaccurate, erroneous or incomplete information with regard to the receipt of an award for its manure management program. Given that the applicant confidently provided a detailed account of the number of facilities and participants in the award process and a PowerPoint slide was dedicated to the award during the applicant's organized presentation, it is fair to conclude that the applicant specifically researched the details of the award. It can be inferred from the level of knowledge proclaimed by the applicant, that the use of the phrase 'manure management award' was intentionally used, rather than more accurate terminology such as "waste	NO, the Commission would not have made a different decision, either denying the project or adding conditions, because the Commission found the project consistent with the policies and provisions of the Coastal Act – the standard of review in this case – for reasons independent of whether the facility received an award for its manure management practices. The fact of whether the applicant's on-site manure management received an award from another entity may be perhaps laudable but not material to determining the project's consistency with the Coastal Act.

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		Public Works for notable waste diversion practices in 2002. The award was for participating in a waste reduction program to reduce the amount of waste going to landfills. A letter from L.A. County, Department of Regional Planning indicates that the criteria for the award were "strictly based on a reduction in the amount – the weight – of all waste (including manure) sent to a landfill. The SmartBusiness Recycling Program recognized waste reduction efforts and did not evaluate any BMPs related to management of horse waste."	reduction" or "recycling."	
2. Misrepresentation of Commercial Public Recreation v. Private Horse Breeding Operations				
2A. Misrepresentation of Whether and to What Degree the Facility Provides Public Recreation and Access Opportunities (See pages 78-91 below for detailed analysis)	The revocation request asserts that the applicant misrepresented the legal nature and status of the equestrian operation in that MVF does not have Los Angeles County approvals for commercial activities on the site. The revocation request also asserts that MVF does not have the necessary local approvals for private commercial operations, including private recreation clubs, a riding academy, or the boarding of any horses except its own; nor does MVF have the necessary local approvals for public commercial recreation (e.g., trail rides, riding lessons). And thus, MVF cannot legally provide commercial equestrian opportunities or public recreation at the site. The revocation request further asserts that the claim that MVF serves as an important public access point is deliberately misleading since no trailheads to public trails lead from the	YES, inaccurate or incomplete information with regard to local approvals was provided in connection with the subject application. L.A. County Dept. of Regional Planning staff confirmed that the site does not have local permits to conduct any commercial activities. Nevertheless, testimony from the applicant's representatives: (1) indicated that all permits are in place, presumably for the project at hand, which includes commercial recreation and commercial boarding operations, and (2) specified that the preliminary L.A. County approval authorized some commercial activities on the site. This testimony is contrary to the Commission's record as well as the County staff's correspondence. The L.A. County Plot Plan in the Commission's record, dated February 3, 2004, indicates that the preliminary approval of the equestrian facility is "*for private equestrian use, not commercial use. Not approved for boarding of horses*." However, the representative's testimony conveyed that the County had approved commercial activity on	YES, there is sufficient evidence to conclude that the applicant *intentionally* included inaccurate, erroneous or incomplete information with regard to the local AIC as it relates to public and private commercial operations. The inaccurate information appears to have been provided intentionally since the applicant would know the nature of the County's permitting approvals and could not misinterpret the phrase "for private equestrian use, not commercial use" to allow for some commercial uses. The applicant presented itself as an authority on both the permitting and history of the site back to the 1950s. Additionally, it is unlikely that an approval specifically for "private" equestrian uses could be misinterpreted as allowing some commercial uses. The approval is so specific that there can be no question that the Plot Plan approval is limited to private	NO, the Commission would not have made a different decision, either denying the project or adding conditions, because the Commission found the project consistent with the policies and provisions of the Coastal Act – the standard of review in this case – for reasons separate from whether it provided public access and recreational opportunities.

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	property and since there are other ample public access trails in the vicinity. Moreover, MVF cannot legally provide public access opportunities at the site because they do not have local approvals to do so.	the site but not 'commercial boarding facilities.' Regarding the assertion that the applicant inaccurately represented that the site serves as an important public access point, NO, inaccurate or incomplete information of that sort was not provided in connection with the subject application. The record suggests that the subject site is not an important public *access point* because there are no trailheads or trails available to the general public; though it may serve public *recreational* purposes. With regard to the claim that MVF falsely asserted that the site is an important public access point, staff could find no evidence or testimony in the record specifically reflecting any such assertion by MVF. There is no indication that the applicant provided inaccurate information regarding MVF's linkage to other trail systems, as no information was provided in this regard.	uses and that no commercial uses were approved in concept.	
2B. MVF Cannot Legally Provide the Community Benefits Heavily Relied on in the Revised Findings Report. (See pages 91-94 below for detailed analysis)	The revocation request asserts that MVF provided misleading comments to Commissioners implying that the facility is open to the public for boarding, riding, private clubs, or access to recreation areas, fire refuge, and to serve underprivileged children; whereas, in fact, the facility cannot provide these community benefits because the subject property is not zoned for commercial or public equestrian operations, and MVF has no CUP to authorize such uses. The permitted equestrian uses on the property are limited by County ordinances to the keeping of the owner's own	YES, inaccurate or incomplete information with regard to the facility's ability to provide community benefits was provided in connection with the subject application. The foundation of this assertion was addressed in Assertion 2A. As concluded in that section: (1) MVF does not have the necessary local permits to undertake any commercial activities (e.g., horse boarding) at the site, including public recreation (e.g., riding lessons); (2) MVF cannot accommodate events or rides for outside groups without first obtaining a Temporary Use Permit from the local government; and (3) MVF is not a *public access point*, does not have parking, trails, or trailheads available to the general public and did not offer to dedicate parking, trails, or	YES, there is sufficient evidence to conclude that the applicant *intentionally* included inaccurate, erroneous or incomplete information with regard to MVF's permit approvals for boarding, riding, and private clubs, and its ability to provide access to recreation areas, or to serve underprivileged children. As discussed in Assertions 2A above, Tests #1 and #2 determined that the applicant intentionally misrepresented the legal nature and status of the equestrian operation presently occurring on the site. This would include its ability to provide legal boarding, riding, private clubs, or access to recreation areas, or to	NO, the Commission would not have made a different decision, either denying the project or adding conditions, because the Commission found the project consistent with the policies and provisions of the Coastal Act – the standard of review in this case – and did so independently of and without relying upon the applicant's assertions regarding the facility's ability to provide boarding, riding, private clubs, access to recreational areas, and to serve underprivileged children.

Grounds & Sub-Grounds in Revocation Request	Revocation Request – Summary of Main Assertions	Test #1: Inaccurate Information?	Test #2: Intentional?	Test #3: Change Commission's Decision?
	horses and private horse breeding, neither of which are considered a public recreation benefit.	trailheads as part of the subject project. For the same reasons found in Assertion 2A, above, the applicant misrepresented MVF's permit approvals for boarding, riding, private clubs, or access to recreation areas, or to serve underprivileged children.	serve underprivileged children.	
2C. Misrepresentation of Involvement in the Compton Jr. Posse Program (See pages 94-99 below for detailed analysis)	The revocation request asserts that the applicant intentionally caused the Commissioners to believe that MVF was supplying social programs for disadvantaged youth that specifically relied upon the location and configuration of MVF's current facilities. And specifically that the applicant overstated and misrepresented the true nature of MVF's involvement in the Jr. Posse program. Since private horse breeding is the only equestrian use allowed on the site by local ordinance, the revocation request asserts that either MVF is bringing in disadvantaged youth from 70 miles away to ride the thoroughbred horses it breeds, or they are allowing commercial horse boarding, riding academy, and/or private club uses, which is no more legal for them to do when it benefits a nonprofit corporation than if it benefits a for-profit organization. The revocation request asserts that MVF willfully and knowingly expanded that concept to intentionally mislead Commissioners into believing the physical location of the farm determines its ability to contribute to the Jr. Posse	NO, there is no evidence that the applicant provided inaccurate or incomplete information with regard to MVF's involvement with the Compton Jr. Posse program in connection with the subject application. As staff interprets the applicant's testimony, it was that the Jr. Posse is invited to use MVF facilities periodically. The testimony of the founder of the Jr. Posse corroborates MVF's claims to provide support to the Jr. Posse program. Therefore staff concludes that although MVF has not obtained the proper permits to conduct commercial recreation or host equestrian events for outside groups for the reasons concluded in Assertion 2A, MVF has, in fact, hosted the Jr. Posse on various occasions, and staff finds no evidence that the applicant testified that it did so in compliance with local laws. Since there are no identifiable errors in the testimony, the question is whether the lack of additional details regarding the program, lack of local permits, nondisclosure of the fact that the Jr. Posse is operated in a facility 70 miles away, nondisclosure that the visits are infrequent, and nondisclosure that MVF operates other facilities constitute incomplete information with regard to the subject application. The details of the Jr. Posse program, frequency of visits, location of other Jr. Posse facilities, and MVF's other	NO, as described in Test #1, there is no evidence that the applicant included inaccurate, erroneous or incomplete information relative to MVF's involvement with the Jr. Posse program, nor is there any evidence that the applicant intentionally included inaccurate, erroneous or incomplete information. Therefore, this assertion does not meet the grounds for revocation pursuant to the first two tests.	NO, the Commission would not have made a different decision, either denying project or adding conditions, because the Commission found the project consistent with the policies and provisions of the Coastal Act – the standard of review in this case – for reasons independent of the testimony regarding the use by the J. Posse program. Although more information could have been provided, the details of the Jr. Posse program, frequency of visits, location of Jr. Posse facilities, and MVF's other facilities are not pertinent to whether the project is consistent with the policies in Chapter 3 of the Coastal Act, which formed the sole basis for the Commission's decision. In addition, because the disclosure of this information is not relevant, it could not have changed the Commission's action. Since the requester's assertion would not modify the analysis as to the project's consistency under the Coastal Act, the Commission would not modify its decision even if Tests 1 and 2 were satisfied. Therefore this ground does not meet Test 3.

Grounds & Sub-Grounds in Revocation Request	Revocation Request – Summary of Main Assertions	Test #1: Inaccurate Information?	Test #2: Intentional?	Test #3: Change Commission's Decision?
	charity. And embedded into this is the implication that MVF was permitted for such commercial use, which it is not. Finally, the revocation requests asserts that MVF inaccurately represented that it provides legal access to public trails for those visitors who come to the area for local equestrian competitions and, while here, are well served by the many existing public access points to the extensive 500 miles of public trails in the area.	facilities are not pertinent to whether the proposed periodic use of the facility by the Jr. Posse or the facility more generally would be consistent with the Coastal Act and therefore such information is not relevant to the review of the subject application. Since this information is irrelevant to the application that was before the Commission, the applicant's failure to disclose it would not constitute incomplete information. Therefore, in this case, there is no evidence that the applicant included inaccurate, erroneous or incomplete information.		
2D. Misrepresentation of Designated Fire Evacuation Center Status (See pages 99-102 below for detailed analysis)	The revocation request asserts that the applicant misrepresented its role in fire evacuations. The applicant asserted that it is the only evacuation center for equestrians in the Santa Monica Mountains and that it has certified staff with the California Department of Forestry. The California Department of Forestry stated that it does not designate large animal evacuation centers and it does not certify people to work at evacuation centers. It denies having so designated MVF and MVF has provided no evidence to support its claim. Los Angeles County has designated only Pierce College as a large animal evacuation center and Ventura County has designated the Ventura County fairgrounds. LA County's Department of Animal Care and Control personnel explained that only publicly-owned property would ever be as a designated evacuation center.	YES, inaccurate or incomplete information with regard to MVF's role as a fire evacuation center was provided in connection with the subject application. At the hearing, the applicant emphasized the importance of the site to serve as an evacuation center during fires. In its testimony, the applicant asserted that MVF is the "designated evacuation center for the area" and "we are the local evacuation center and certified staff with the California Department of Forestry." By stating that MVF has certified staff with the California Department of Forestry, the implication is that the "designation" was given by the California Department of Forestry. Alternately, by stating that MVF is a "local" evacuation center implies, at a minimum, that some local agency such as the County has designated it as an official fire evacuation site. However, neither CAL FIRE nor the County Dept of Animal Control and Care, Equine Response Team has designated Malibu Valley Farms as a local evacuation site for horses or other large animals.	YES, there is sufficient evidence to conclude that the applicant *intentionally* included inaccurate, erroneous or incomplete information with regard to MVF's designation as a fire evacuation center. MVF has indicated that it is a "designated" evacuation center. Although the site may serve as an informal location for fire evacuation for the local equestrian community, MVF has not been designated by the County or State to provide that function. Given that the applicant would have specific and detailed knowledge as to MVF's designation as a fire evacuation center, the inclusion of the inaccurate information must be presumed to be intentional. Therefore, this ground for revocation meets Test #2.	NO, the Commission would not have made a different decision, either denying project or adding conditions, because the Commission found the project consistent with the policies and provisions of the Coastal Act – the standard of review in this case – for reasons independent of whether the facility serves as a formal and officially recognized or designated evacuation center. The Commission's approved project description in the Final Revised Findings (Exhibit 2) includes that MVF may serve as a refuge for horses in the event of fire. The Revised Findings did not require that the facility be officially designated by a public agency in order for the site to serve that function. Whether the site receives an official designation for that function has no bearing on the project's consistency with the policies in Chapter 3 of the Coastal Act, which formed the sole basis for the Commission's decision. Since the requester's assertion would not modify the analysis as to

Grounds & Sub-Grounds in Revocation Request	**Revocation Request – Summary of Main Assertions**	**Test #1: Inaccurate Information?**	**Test #2: Intentional?**	**Test #3: Change Commission's Decision?**
		Regardless, and in lieu of any additional information from the applicant regarding the certification or designation, the implication that the Department of Forestry or L.A. County designated the site as an official local evacuation center is inaccurate. Therefore the applicant did provide inaccurate, erroneous, or incomplete information with regard to MVF's official status as a designated fire evacuation site.		the project's consistency under the Coastal Act, the Commission would not modify its decision even if Tests 1 and 2 were satisfied. Therefore this ground does not meet Test 3.
3. Misrepresentation of Property Ownership and Location of MVF Operations				
3. Misrepresentation of Property Ownership and Location of MVF Operations (See pages 103-110 below for detailed analysis)	The third ground for revocation provided in the revocation request asserts that the applicant misrepresented its property ownership and interest in the alternative sites identified by the Commission as potential off-site alternative locations for siting equestrian operations outside of the 100-foot buffer from riparian areas; misrepresented the location of Malibu Valley Farms business operations; and withheld information that the applicant is already using the alternative parcels for equestrian operations. The revocation request contends that Brian Boudreau has exclusive control over Malibu Valley Farms, Inc. (the applicant) and exclusive control over Spectrum Development, Inc. (which is the sole General Partner to Malibu Canyon L.P, the identified owner of the three off-site alternative properties). The revocation request asserts that the applicant misrepresented that Brian Boudreau does not own or	NO, there is insufficient evidence to conclude that inaccurate or incomplete information with regard to property ownership and MVF business operation was provided in connection with the subject application. The applicant's stated position was that Mr. Boudreau does not have a "controlling interest" in Malibu Canyon L.P. The publicly available facts confirm that the subject site is owned by Malibu Valley Farms, Inc., and that all officer positions of Malibu Valley Farms, Inc. are held by Brian Boudreau. The alternative sites identified in the Commission's staff report are owned by Malibu Canyon L.P. Public documents identify the sole General Partner of Malibu Canyon L.P. as Spectrum Development. All officer positions of Spectrum Development, Inc. are also held by Brian Boudreau. Therefore, Mr. Boudreau has exclusive executive control over Malibu Valley Farms, Inc. and Spectrum Development, Inc., which is the sole general partner of the company that owns the alternative sites (Malibu Canyon, L.P.). Thus, Mr. Boudreau has controlling interests in Malibu Valley Farms, Inc. and in Spectrum Development, but he	N/A	NO, the Commission would not have made a different decision, either denying the project or adding conditions, because the Commission found the project, as conditioned, consistent with the policies and provisions of the Coastal Act – the standard of review in this case. Because the subject project is consistent with the Coastal Act, the consideration of alternative sites is not necessary, as is the location of the business operation. Further to the extent that the applicant may have misrepresented MVF's use of adjacent sites, the use of adjacent parcels for MVF's operations is irrelevant as the approval was not based on the assumption that MVF was not using, or could not use, adjacent sites. Moreover, in this case, the ownership / management connection to the applicant was specifically presented in the Commission's Findings in the review of alternative siting. The Commission considered these sites as viable off-site alternatives for the purposes of the alternatives analysis, and therefore these

Grounds & Sub-Grounds in Revocation Request	Revocation Request – Summary of Main Assertions	Test #1: Inaccurate Information?	Test #2: Intentional?	Test #3: Change Commission's Decision?
	control any of the alternative site properties; however, that in the absence of any partnership agreement to indicate otherwise, all public records indicate that Brian Boudreau is the person behind all the business entities listed as owners of the subject and alternative properties. Secondly, the revocation request asserts that the applicant also misrepresented the location of Malibu Valley Farms' business operations and withheld information that MVF is already using the alternative parcels for equestrian operations. The revocation request asserts that MVF's claim that it only operates its farm on one parcel (i.e., the subject parcel, APN 4455-028-044) is false because MVF also operates on the west side of Stokes Canyon Road. The parcel on the west side of Stokes Canyon Road was identified in the staff report as a potential alternative site for the proposed equestrian development.	does not thereby necessarily have a controlling interest over Malibu Canyon, L.P. Staff does not have access to documents that indicate the degree of ownership or control of Malibu Canyon, L.P. by Spectrum Development, Inc. The ownership may be 1% as claimed by the applicant, even though Spectrum is the sole general partner. Additionally, staff does not have access to any applicable partnership documents which would clarify whether Mr. Boudreau has the authority to make decisions on behalf of the L.P. Therefore, staff cannot make an informed conclusion as to whether inaccurate information was provided. Secondly, the revocation request asserts that the applicant also misrepresented the location of Malibu Valley Farms' business operations and withheld information that MVF is already using the alternative parcels for its operations. With regard to the second point that the applicant misrepresented the location of Malibu Valley Farms' business operations, staff found only one reference along the lines of denying that MVF is using nearby properties. At the hearing, the applicant indicated that if the project were denied, or if the 100-foot buffer were imposed, such changes "utterly and completely destroys this operation." It is not clear what "this operation" is. It could be interpreted to mean the operation of the existing MVF facility, rather than destroying Malibu Valley Farms, Inc.'s business operations. Because it could be attributed to the equestrian facility itself, the above-quoted statement alone is not sufficient		alternative sites were considered as part of the decision-making process. Consequently, the Commission had the available information for consideration at the time the decision was made, further proving that the information could not have changed the Commission's position, since it did not in fact do so. Since the requester's assertion would not modify the analysis as to the project's consistency under the Coastal Act, the Commission would not modify its decision even if Tests 1 and 2 were satisfied.

Grounds & Sub-Grounds in Revocation Request	Revocation Request – Summary of Main Assertions	Test #1: Inaccurate Information?	Test #2: Intentional?	Test #3: Change Commission's Decision?
		evidence to conclude that the applicant misrepresented the location or extent of MVF's business operations.		
4. Misrepresentation by Applicant that the Applicant Created The Riparian Canopy				
4. Misrepresentation by Applicant that the Applicant Created The Riparian Canopy (See pages 111-117 below for detailed analysis)	The revocation request asserts that MVF's claim that the farmers planted the trees along the riparian corridor is inaccurate.	NO, there is insufficient evidence to conclude that the applicant provided inaccurate or incomplete information with regard to planting of trees along the riparian corridor in connection with the subject application. The applicant stated at the hearing that the owner planted over 1,000 trees on the site and thus created the riparian habitat that exists today. The applicant has not provided any details regarding the planting of the trees on the site or evidence supporting that claim. The party requesting revocation has not provided any additional information that would help make that determination, and staff has found nothing in the record to assist with that determination. Staff concurs with the revocation request's statement that thousands of trees do not appear to exist on the subject site. Based on a review of aerial photos, the trees on the subject site appear to be more in the realm of hundreds, rather than thousands. Moreover, some of the trees on the site are in the upland areas rather than in the riparian area where the thousands of trees were asserted to be planted. However, the fact that thousands of trees do not currently exist on site is not proof that thousands of trees were not, at some point, planted on the site. There may be any number of reasons for this discrepancy. It may be that the applicant is characterizing each willow sprig as a tree, or including other woody shrub species in the assessment. Or it may be that the	N/A	N/A

Grounds & Sub-Grounds in Revocation Request	**Revocation Request – Summary of Main Assertions**	**Test #1: Inaccurate Information?**	**Test #2: Intentional?**	**Test #3: Change Commission's Decision?**
		applicant applied 1,000 seeds, acorns, or other early-stage plantings along the riparian area and only a small percentage of those survived to a noticeable stage in the aerial photograph. Or it may be that the applicant is counting plantings that were planted on nearby properties also used by the applicant. Because there are any number of potential meanings to the applicant's assertion that MVF planted of thousands of trees to create the riparian canopy, the party requesting revocation has not provided any conclusive evidence that the planting of trees did not occur. Therefore, in this case, there is no evidence that the applicant included inaccurate, erroneous or incomplete information.		
5. Misrepresentation of Outside Agency Approvals for Development Embedded in the Comprehensive Management Plan Misled Commissioners into Creating New Significant Impacts that were not Reviewed or Mitigated				
5. Misrepresentation of Outside Agency Approvals for Development Embedded in the Comprehensive Management Plan (CMP) Misled Commissioners into Creating New Significant Impacts that were not Reviewed or Mitigated (See pages 117-120 below for detailed analysis)	The revocation request asserts that MVF misrepresented that the work outlined in the Comprehensive Management Plan (i.e., water quality features including bioswale, detention pond, and rip rap along stream) had been approved by the other jurisdictional agencies. The revocation request argues that the applicant's claims regarding outside agency approvals misled the Commissioners into believing that there would be no significant impacts from the CMP-related development. The revocation request contends that the CMP became the Commission's primary justification for approval of the CDP, and that the Commissioners would not have relied on a CMP that lacks the	NO, there is insufficient evidence to conclude that inaccurate or incomplete information with regard to water quality features proposed in the CMP was provided in connection with the subject application. The bioswale, retention basin, and rip rap were required by the Commission pursuant to Appendix C of the Malibu Valley Farms Comprehensive Management Plan which was required to be implemented by Special Condition 1 of CDP 4-06-163 as water quality protection measures to minimize adverse effects to the creek. The party requesting revocation asserts that these developments constitute streambed alterations and development in ESHA that have the potential to create new significant impacts and require multiple agency reviews. Staff agrees that the bioswale	N/A	N/A

Grounds & Sub-Grounds in Revocation Request	Revocation Request – Summary of Main Assertions	Test #1: Inaccurate Information?	Test #2: Intentional?	Test #3: Change Commission's Decision?
	proper permits and agency approvals required by law. However, the bioswale, retention pond, and riprap installation constitute streambed alterations and development in ESHA that have the potential to create new significant impacts, and this development requires multiple agency reviews which have not been performed. The revocation request asserts that MVF misrepresented that the development within the CMP had been approved by the other jurisdictional agencies. However, just before the vote, they retracted their previous statement but implied that they didn't need review because there were no significant impacts from them.	(including two outlets into the creek), retention pond, and riprap are development in a stream that requires additional approvals and review by L.A. County (Plot Plan Review), CDFG (Streambed Alteration Agreement), and possibly by the Regional Water Quality Control Board (Section 401 Water Quality Certification), L.A. County ERB and USACE (Section 404 Permit – depending on presence of USACE jurisdictional waters). However, Test #1 requires that incorrect or incomplete information be provided by the applicant in association with the subject application. At the July 9, 2007 Commission hearing, the applicant stated that the CDFG and SWRCB approvals encompassed these features, but then retracted those statements at the same hearing. Thus, ultimately, the correct information was provided with regard to fact that these components were not yet permitted. Moreover, even if the issue had not been raised at all, it is not clear that the absence of this information would constitute incomplete information. With regard to the Commission's awareness of the impacts of such development, the Commission's Final Revised Findings (Exhibit 2) found that the CMP would not degrade or disrupt the habitat value of Stokes Creek, and found the CMP development consistent with the Chapter 3 policies of the Coastal Act.		
6. Misrepresentation of the Offer To Dedicate An Agricultural Easement				
<u>6. Misrepresentation of the Offer To Dedicate An Agricultural Easement</u> (See pages 120-126 below for detailed analysis)	The revocation request asserts that the applicant provided incomplete information with regard to the offer-to-dedicate an agricultural easement. Specifically, the graphic provided by the applicant showing the 23-	NO, there is insufficient evidence to conclude that inaccurate or incomplete information with regard to the proposed agricultural easement was provided in connection with the subject application. It is true that the applicant's agricultural easement graphic does not identify the	N/A	N/A

Grounds & Sub-Grounds in Revocation Request	Revocation Request – Summary of Main Assertions	Test #1: Inaccurate Information?	Test #2: Intentional?	Test #3: Change Commission's Decision?
	acre agricultural easement area did not show that the entire agricultural easement area is ESHA. The keeping of livestock in the agricultural easement area will degrade the ESHA and due to the steep slopes and proximity to the creek, the keeping of livestock will adversely impact water quality. Had the Commission understood that the area in the agricultural easement is ESHA, they would not have approved the agricultural easement because such use is not consistent with Section 30240 of the Coastal Act, which requires it to be "protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas." The Commission did not mitigate the adverse impacts of the agricultural use on the ESHA because the Commission was led to believe that the agricultural easement itself was mitigation.	ESHA areas. However, this does not render the graphic inaccurate or erroneous. Additionally, the failure to identify ESHA on the graphic does not constitute incomplete information because the primary purpose of the graphic was to depict the location of the agricultural easement area proposed to be recorded. The applicant provided a separate biological resources map which illustrated the oak woodland, annual grassland, and chamise chaparral in the eastern portion of the property, which served the purpose of identifying habitats that qualify as ESHA. Moreover, the applicant testified at the July 9, 2007 Commission hearing stating that Commission staff identified the east side of the property as an oak woodland ESHA. Further, as described above, in the Final Revised Findings, adopted by the Commission on July 8, 2009, the Commission found that the eastern portion of the property was ESHA as detailed in the staff report. Therefore, the applicant would understandably assume that the Commissioners were made aware of the fact that the eastern part of the property was ESHA. Therefore, in this case, there is no evidence that the applicant included inaccurate, erroneous or incomplete information relative to the agricultural easement.		

PROCEDURAL NOTE: The California Code of Regulations, Title 14, Section 13105 states that the grounds for the revocation of a coastal development permit are as follows:

Grounds for revocation of a permit shall be:

a) Intentional inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit application, where the Commission finds that accurate and complete information would have caused the Commission to require additional or different conditions on a permit or deny an application;

b) Failure to comply with the notice provisions of Section 13054, where the views of the person(s) not notified were not otherwise made known to the Commission and could have caused the Commission to require additional or different conditions on a permit or deny an application. 14 Cal. Code of Regulations Section 13105.

REVOCATION REQUEST CONTENTIONS:

The request for revocation contends that grounds for revocation in Section 13105(a) exist because the applicant submitted inaccurate, erroneous and incomplete information to the Commission in conjunction with the coastal development permit application with regard to six separate, overarching grounds. The full text of the revocation request is attached as Exhibit 1 to this staff report, and Section 13105(a) analyses corresponding to each of the six stated grounds for revocation are provided in Section H.1 of this report. The revocation request can be summarized as follows:

1) The party requesting revocation asserts that that the applicant intentionally included inaccurate, erroneous, or incomplete information with regard to the status of local and state approvals in that: (1) the County Environmental Review Board's approval did not encompass the entire project that is subject to CDP 4-06-163; (2) the County Department of Regional Planning's Plot Plan approval did not encompass the entire project that is subject to CDP 4-06-163; (3) the California Department of Fish and Game's approval was not a merit-based approval, but rather correspondence stating that a Streambed Alteration Agreement was not necessary due to the agency failing to meet applicable deadlines, and also that the CDFG application did not encompass the entire project that is subject to CDP 4-06-163; (4) the State Water Resources Control Board's approval applied only to stormwater runoff during construction, rather than the entire equestrian site plan as claimed by the applicant; and (5) the award granted to MVF by Los Angeles County Department of Public Works was misrepresented as a competitive award for state-of-the-art manure management practices.

2) The party requesting revocation asserts that the applicant intentionally included inaccurate, erroneous, or incomplete information with regard to the project's alleged

recreational and access value to the community, which is misleading since the facility is not permitted for commercial use or public access. This second ground for revocation is broken up into five separate contentions as described below.

First with respect to MVF's provision of community benefits, the revocation request contends that the applicant misrepresented the legal nature and status of the equestrian operation in that MVF does not have Los Angeles County approvals for commercial activities on the site which means that MVF does not have the necessary local approvals for private commercial operations, including private recreation clubs, a riding academy, or the boarding of any horses except its own; nor does MVF have the necessary local approvals for public commercial recreation. And thus, MVF cannot legally provide commercial equestrian opportunities or public recreation at the site.

Second with respect to MVF's provision of community benefits, the revocation request contends that the information that MVF is an important public access point is deliberately misleading since no trailheads to public trails lead from the property and since there are other ample public access trails in the vicinity. MVF cannot legally provide public access opportunities at the site because they do not have local approvals to do so.

Third with respect to MVF's provision of community benefits, the revocation request contends that MVF provided misleading comments to Commissioners implying that the facility is open to the public for boarding, riding, private clubs, or access to recreation areas, fire refuge, and to serve underprivileged children. However, this is false information because MVF has no CUP to authorize such public uses.

Fourth with respect to MVF's provision of community benefits, the revocation request contends that the applicant intentionally caused the Commissioners to believe that MVF was supplying social programs for disadvantaged youth that specifically relied upon the location and configuration of MVF's current facilities. And that specifically the applicant overstated and misrepresented the true nature of MVF's involvement in the Compton Jr. Posse program.

Last, with respect to MVF's provision of community benefits, the revocation request contends that the applicant misrepresented its role in fire evacuations.

3) The party requesting revocation asserts that the applicant intentionally included inaccurate, erroneous, or incomplete information with regard to: misrepresentation of its property ownership and interest in the alternative sites identified by the Commission as potential off-site alternative locations for siting equestrian operations outside of the 100-foot buffer from riparian ESHA; misrepresentation of the location of Malibu Valley Farms business operations, and nondisclosure of the fact that MVF was already using the alternative parcels for equestrian operations. The revocation request contends that the applicant misrepresented the applicant's ownership and control of the three properties that were identified as potential

alternative sites in the Commission's staff reports. Secondly, the revocation request contends that the applicant also misrepresented the *location* of Malibu Valley Farms' business operations and withheld information that MVF is already using the alternative parcels for equestrian operations. The revocation request asserts that MVF's claim that it only operates its farm on one parcel (i.e., the subject parcel, APN 4455-028-044) is false because MVF also operates on the west side of Stokes Canyon Road. The revocation request contends that the Commissioners relied on and were misled by the pervasive underlying premise promoted by the applicant that failure to approve the subject CDP meant that the equestrian operations would end; whereas, in reality, the operations wouldn't end because there are already other locations from which to operate. The revocation contends that Commissioners were influenced by the potential closure of the farm, and that the Commissioners would have voted differently if they had understood that viable alternative sites were not only available to the applicant but were already in operation.

4) The party requesting revocation asserts that the applicant intentionally included inaccurate, erroneous, or incomplete information with regard to MVF's claim that the applicant planted thousands of trees along the riparian corridor, thus creating the riparian canopy. The applicant claims to have created the riparian canopy on the subject site, and specifically that the applicant planted thousands of trees on the site. Thousands of trees do not exist on the property as the applicant claimed, unless this refers to trees on surrounding parcels that the applicant is claiming not to own.

5) The party requesting revocation asserts that the applicant intentionally included inaccurate, erroneous, or incomplete information with regard to the development embedded within Malibu Valley Farms' Comprehensive Management Plan (CMP). The revocation request claims that the CMP contains development involving streambed alterations within ESHA that has not been reviewed as required by State law or local ordinances. The bioswale, retention pond, and riprap installation constitute streambed alterations and development in ESHA that have the potential to create new significant impacts and require multiple agency reviews, including the Environmental Review Board, L.A. County, California Department of Fish and Game, the Regional Water Quality Control Board, and the Army Corps of Engineers. The revocation request further claims that MVF misrepresented that the CMP had been approved by the other jurisdictional agencies. However, just before the vote, they retracted their previous statement but implied that they didn't need review because there were no significant impacts from them. The party requesting revocation asserts that the CMP was the Commission's primary justification for approval of the CDP, and that the Commissioners would not have relied on a CMP that lacks the proper permits and agency approvals required by law.

6) The party requesting revocation asserts that the applicant intentionally included inaccurate, erroneous, or incomplete information with regard to the offer-to-dedicate an agricultural easement. Specifically, the graphic provided by the applicant showing the 23-acre agricultural easement area did not show that the entire agricultural easement area is ESHA. The revocation request claims that the keeping of livestock

in the agricultural easement area will degrade the ESHA and due to the steep slopes and proximity to the creek, the keeping of livestock will adversely impact water quality. Had the Commission understood that the area in the agricultural easement is ESHA, they would not have approved the agricultural easement because such use is not consistent with Section 30240 of the Coastal Act, which requires it to be "protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas." The Commission did not mitigate the adverse impacts of the agricultural use on the ESHA because the Commission was led to believe that the agricultural easement itself was mitigation.

STAFF NOTE

A revocation of a permit rescinds a previously granted permit. Even if the applicant has undertaken construction of the project, if the Commission revokes the permit, the applicant is required to stop work and if wishing to continue, to reapply for a coastal development permit for the project. If the evidence shows that there are grounds for revocation, the Executive Director, upon receipt of a request for revocation, can order the project to stop work. Section 13107 provides, in part: "Where the executive director determines, in accord with Section 13106, that grounds exist for revocation of a permit, the operation of the permit shall be suspended." In this case, the Executive Director notified the applicant, in correspondence dated December 30, 2008, that the Coastal Development Permit 4-06-163 was suspended pending outcome of the subject revocation request.

Because of the impacts on an applicant, the grounds for revocation are necessarily narrow. The rules of revocation do not allow the Commission to have second thoughts on a previously issued permit based on information that comes into existence after the granting of the permit, no matter how compelling that information might be. Similarly, a violation of the Coastal Act or the terms and conditions of a permit or an allegation that a violation has occurred are not grounds for revocation under the California Code of Regulations. The grounds for revocation are, of necessity, confined to information in existence at the time of the Commission's action.

I. STAFF RECOMMENDATION

DENY REVOCATION

MOTION: ***I move that the Commission grant revocation of Coastal Development Permit Amendment No. 4-06-163.***

STAFF RECOMMENDATION OF DENIAL:

Staff recommends a **NO** vote on the motion. Following this staff recommendation will result in denial of the request for revocation and adoption of the following resolution and

findings. The motion passes only by affirmative vote of a majority of Commissioners present.

RESOLUTION TO DENY REVOCATION:

The Commission hereby denies the request for revocation of the Commission's decision on coastal development permit amendment no. 4-06-163 on the grounds that there was no:

(a) intentional inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit application, where the Commission finds that accurate and complete information would have caused the Commission to require additional or different conditions on a permit or deny an application; OR

(b) failure to comply with the notice provisions of § 13054, where the views of the person(s) not notified were not otherwise made known to the Commission and could have caused the Commission to require additional or different conditions on a permit or deny an application.

II. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares as follows:

A. PROJECT DESCRIPTION

The coastal development permit that is the subject of this revocation request was approved by the Commission in July of 2007, thereby providing after-the fact approval of 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. stable, 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 (Exhibit 8). The Commission found that 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 Commission's approval also authorized the 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 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.

The applicant, Malibu Valley Farms, Inc. (MVF), did not provide 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, the Commission estimated that a larger numbers of horses (approximately 76) could be accommodated.

B. BACKGROUND

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 5-6). The parcel is divided 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. 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 equestrian facility.

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). In its July 9, 2007 approval, the Commission found that the stream and surrounding riparian habitat, as well as the hillside oak woodland and chaparral habitat, on the site constitute ESHA. In addition, some of the proposed development to be retained is within the protected zones of individual oak trees outside of the hillside oak woodland.

C. TIMELINE

1952	County of Los Angeles Re-aligned Stokes Canyon Road and Mulholland Highway in this location
Jan 1 1977	The effective date of the Coastal Act for the subject site is January 1, 1977.
1977	Aerial photo in Commission archives shows no development on the property.
~1978	Charles Boudreau, or a member of the Boudreau family, acquired the property from the Claretian Missionaries circa 1978.
1978 & After	Development of the structures and improvements associated with the equestrian facility presumed to begin after acquisition of the property from the Claretian Missionaries in 1978.
1986	Land Use Plan for the Malibu-Santa Monica Mountains segment of Los Angeles County is certified by the Commission.
1996	Robert K Levin apparently acquired the property from Charles Boudreau, or a member of the Boudreau family, circa 1996.
1996	Pipe corrals and storage shed destroyed in fire.
Nov 1998	Exemption Request submitted to Commission staff for pipe corrals, tack storage room, and covered bin "erected prior to the passage of the Coastal Act" and destroyed by fire in 1996 and severe flooding in the winter season 1997/1998 (Exemption Request No. 4-98-125-X)
Dec 1998	Exemption Issued by Commission staff for Exemption No. 4-98-125-X
Jan 1999	Exemption rescinded by Commission staff upon finding that the development was not constructed prior to the Coastal Act as asserted by applicant and the requisite Coastal Development Permit had not been obtained for the development.
Jan 1999	Letter from L.A. County Department of Regional Planning: informing the applicant that horse boarding on the property requires a Conditional Use Permit, requesting proof of horse ownership, and ordering compliance with the County's Zoning Ordinance.
Feb 1999	Letter from L.A. County Department of Regional Planning ordering the applicant to resolve violation of the boarding of horses on the property within 10 days.
Jun 2000	Vested Rights Claim submitted to Commission office (Vested Rights Claim No. 4-00-279-VRC)
Jan 2001	Staff report circulated for 4-00-279-VRC with a staff recommendation of denial
Feb 2001	Applicant requested postponement of the Vested Rights Claim hearing scheduled for the February Commission Meeting
Feb 2002	Malibu Valley Farms, Inc., whose president is Brian Boudreau, acquired the property from Robert Levin pursuant to an unrecorded grant deed
May 2002	CDP application submitted to Commission Office (CDP No. 4-02-231)
Aug 2002	Applicant submitted the Plot Plan Review Application Form to the Los Angeles County Dept of Regional Planning. The application indicated that the type of case is Coastal Approval in Concept and Environmental Review Board
Jan 2003	L.A. County's Environmental Review Board (ERB) convened to review the Plot Plan
Feb 2004	L.A. County, Department of Regional Planning signed the Plot Plan Approval-In-Concept
Jan 2005	The Department of Fish and Game deemed the applicant's Lake or Streambed Alteration Notification to be complete.
Mar 2005	The Department of Fish and Game sent a letter regarding the Lake or Streambed Alteration Notification explaining that because CDFG missed the required deadline, the applicant did not need a Lake or Streambed Alteration Agreement. This letter

	describes the project that does not require an agreement as: "the installment of Turf Reinforcement Mats" to facility at equestrian crossings across an existing, unvegetated, soft bottomed Arizona crossing of Stokes Canyon Creek."
Jun 2005	State Water Resources Control Board received and processed the "Notice of Intent to Comply with the Terms of the General Permit to Discharge Storm Water Associated with Construction Activity"
Mar 2006	CDP application 4-02-231 deemed complete & scheduled for the May 2006 Commission meeting; subsequently the applicant requested postponement from the May 2006 calendar and the item was rescheduled to Aug 2006
Jul 2006	Commission staff report circulated for 4-02-231 with a staff recommendation of denial
Aug 2006	The applicant withdrew CDP Application 4-02-231
Nov 2006	Commission denied Vested Rights Claim No. 4-00-279-VRC and issued the Cease and Desist Order (CCC-06-CD-14) and Restoration Order (CCC-06-RO-07), allowing Malibu Valley Farms to seek an after-the-fact permit that would moot the enforcement orders before having to comply with them
Dec 2006	The applicant submitted a new CDP application (CDP No. 4-06-163)
Jun 2007	Staff report circulated for 4-06-163 with a staff recommendation of denial
Jul 2007	Commission approved CDP 4-06-163 with conditions
Aug 2007	Coastal Law Enforcement Action Network and Marcia Hanscom filed a petition for writ of mandate challenging the Commission's approval
Jun 2008	Commission adopted revised findings for its 2007 approval
Dec 2008	Revocation Request received from Save Open Space
Dec 2008	Commission staff advised the applicant that the CDP approval was suspended pending the revocation request
Mar 2009	Court in Coastal Law Enforcement Action Network et al v. CCC remanded matter back to the Commission
Jul 2009	Commission adopted revised version of Revised Findings pursuant to Remand
Oct 2009	Amended Revocation Request received from Save Open Space

Note, the boundary determination frequently referenced by the applicant is for a different parcel than the subject site; for this and other reasons, the aforementioned boundary determination is therefore irrelevant to the subject project and is not included in the above timeline.

D. PREVIOUS COMMISSION ACTIONS

As described above, there is a large equestrian facility existing on the proposed project site. The Commission has taken several actions that relate to the project site, including the denial of the applicant's claim of vested rights, the approval of Cease and Desist and Restoration Orders, and after-the-fact approval of Coastal Development Permit 4-06-163 for a similar but modified equestrian facility.

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. The exemption request stated that the facilities had been "erected prior to the passage of the Coastal Act". 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 that still existed 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. 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 was later amended to change the applicant from Malibu Valley, Inc. to Malibu Valley Farms, Inc. 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.

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. 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 permit application contained 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 included 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 3.

Revised Findings were adopted by the Commission on June 11, 2008 (Exhibit 4 provides a transcript of the June 11, 2008 hearing). The June 11, 2008 findings were revised and adopted by the Commission a second time, on July 8, 2009, to comply with a Judgment and Writ issued by the Los Angeles Superior Court in Coastal Law Enforcement Action Network v. California Coastal Commission, Los Angeles Superior Court Case No. BS112422 (Judgment Granting the Petition for Writ of Mandate was entered on March 10, 2009).

E. REVOCATION REQUEST CONTENTIONS

A revocation request for CDP 4-06-163 (Malibu Valley Farms, Inc.) was submitted by Save Open Space on December 8, 2008, subsequent to the Commission's adoption of the Revised Findings on June 11, 2008. The June 11, 2008 Revised Findings were revised and adopted by the Commission a second time, on July 8, 2009, to comply with a Judgment and Writ issued by Los Angeles Superior Court in Coastal Law Enforcement Action Network v. California Coastal Commission, Los Angeles Superior Court Case No. BS112422 (Judgment Granting the Petition for Writ of Mandate was

entered on March 10, 2009). Save Open Space updated its Revocation Request in response to the July 2009 Revised Findings, submitting an amended Revocation Request on October 5, 2009. The amended, 72-page Revocation Request articulates six overarching grounds for revocation of coastal development permit 4-06-163 pursuant to Section 13105(a).[2] The request for revocation contends that grounds for revocation in Section 13105(a) exist because the applicant submitted inaccurate, erroneous and incomplete information to the Commission in the coastal development permit application. The full text of the revocation request is attached as Exhibit 1 to this staff report (without attachments), and Section 13105(a) analyses corresponding to each of the six separate, overarching grounds for revocation are provided in Section H.1 of this report. The request for revocation does not assert that grounds for revocation in Section 13105(b) exist. The revocation request can be generally summarized as follows:

1) The party requesting revocation asserts that that the applicant intentionally included inaccurate, erroneous, or incomplete information with regard to the status of local and state approvals in that: (1) the County Environmental Review Board's approval did not encompass the entire project that is subject to CDP 4-06-163; (2) the County Department of Regional Planning's Plot Plan approval did not encompass the entire project that is subject to CDP 4-06-163; (3) the California Department of Fish and Game's approval was not a merit-based approval, but rather correspondence stating that a Streambed Alteration Agreement was not necessary due to the agency failing to meet applicable deadlines, and also that the CDFG application did not encompass the entire project that is subject to CDP 4-06-163; (4) the State Water Resources Control Board's approval applied only to stormwater runoff during construction, rather than the entire equestrian site plan as claimed by the applicant; and (5) the award granted to MVF by Los Angeles County Department of Public Works was misrepresented as a competitive award for state-of-the-art manure management practices.

2) The party requesting revocation asserts that the applicant intentionally included inaccurate, erroneous, or incomplete information with regard to the project's alleged recreational and access value to the community, which is misleading since the facility is not permitted for commercial use or public access. This second ground for revocation is broken up into five separate contentions as described below.

   First with respect to MVF's provision of community benefits, the revocation request contends that the applicant misrepresented the legal nature and status of the equestrian operation in that MVF does not have Los Angeles County approvals for commercial activities on the site which means that MVF does not have the necessary local approvals for <u>private</u> commercial operations, including private recreation clubs, a riding academy, or the boarding of any horses except its own; nor does MVF have the necessary local approvals for <u>public</u> commercial recreation.

[2] All numerical section references in these findings are to the Commission's regulations in Title 14 of the California Code of Regulations.

And thus, MVF cannot legally provide commercial equestrian opportunities or public recreation at the site.

Second with respect to MVF's provision of community benefits, the revocation request contends that the information that MVF is an important public access point is deliberately misleading since no trailheads to public trails lead from the property and since there are other ample public access trails in the vicinity. MVF cannot legally provide public access opportunities at the site because they do not have local approvals to do so.

Third with respect to MVF's provision of community benefits, the revocation request contends that MVF provided misleading comments to Commissioners implying that the facility is open to the public for boarding, riding, private clubs, or access to recreation areas, fire refuge, and to serve underprivileged children. However, this is false information because MVF has no CUP to authorize such public uses.

Fourth with respect to MVF's provision of community benefits, the revocation request contends that the applicant intentionally caused the Commissioners to believe that MVF was supplying social programs for disadvantaged youth that specifically relied upon the location and configuration of MVF's current facilities. And that specifically the applicant overstated and misrepresented the true nature of MVF's involvement in the Compton Jr. Posse program.

Last with respect to MVF's provision of community benefits, the revocation request contends that the applicant misrepresented its role in fire evacuations.

3) The party requesting revocation asserts that the applicant intentionally included inaccurate, erroneous, or incomplete information with regard to: misrepresentation of its property ownership and interest in the alternative sites identified by the Commission as potential off-site alternative locations for siting equestrian operations outside of the 100-foot buffer from riparian ESHA; misrepresentation of the location of Malibu Valley Farms business operations, and nondisclosure of the fact that MVF was already using the alternative parcels for equestrian operations. The revocation request contends that the applicant misrepresented the applicant's ownership and control of the three properties that were identified as potential alternative sites in the Commission's staff reports. Secondly, the revocation request contends that the applicant also misrepresented the *location* of Malibu Valley Farms' business operations and withheld information that MVF is already using the alternative parcels for equestrian operations. The revocation request asserts that MVF's claim that it only operates its farm on one parcel (i.e., the subject parcel, APN 4455-028-044) is false because MVF also operates on the west side of Stokes Canyon Road. The revocation request contends that the Commissioners relied on and were misled by the pervasive underlying premise promoted by the applicant that failure to approve the subject CDP meant that the equestrian operations would end; whereas, in reality, the operations wouldn't end because there are already other locations from which to operate.. The revocation contends that Commissioners were influenced by

the potential closure of the farm, and that the Commissioners would have voted differently if they had understood that viable alternative sites were not only available to the applicant but were already in operation.

4) The party requesting revocation asserts that the applicant intentionally included inaccurate, erroneous, or incomplete information with regard to MVF's claim that the applicant planted thousands of trees along the riparian corridor, thus creating the riparian canopy. The applicant claims to have created the riparian canopy on the subject site, and specifically that the applicant planted thousands of trees on the site. Thousands of trees do not exist on the property as the applicant claimed, unless this refers to trees on surrounding parcels that the applicant is claiming not to own.

5) The party requesting revocation asserts that the applicant intentionally included inaccurate, erroneous, or incomplete information with regard to the development embedded within Malibu Valley Farms' Comprehensive Management Plan (CMP). The revocation request claims that the CMP contains development involving streambed alterations within ESHA that has not been reviewed as required by State law or local ordinances. The bioswale, retention pond, and riprap installation constitute streambed alterations and development in ESHA that have the potential to create new significant impacts and require multiple agency reviews, including the Environmental Review Board, L.A. County, California Department of Fish and Game, the Regional Water Quality Control Board, and the Army Corps of Engineers. The revocation request further claims that MVF misrepresented that the CMP had been approved by the other jurisdictional agencies. However, just before the vote, they retracted their previous statement but implied that they didn't need review because there were no significant impacts from them. The party requesting revocation asserts that the CMP was the Commission's primary justification for approval of the CDP, and that the Commissioners would not have relied on a CMP that lacks the proper permits and agency approvals required by law.

6) The party requesting revocation asserts that the applicant intentionally included inaccurate, erroneous, or incomplete information with regard to the offer-to-dedicate an agricultural easement. Specifically, the graphic provided by the applicant showing the 23-acre agricultural easement area did not show that the entire agricultural easement area is ESHA. The revocation request claims that the keeping of livestock in the agricultural easement area will degrade the ESHA and due to the steep slopes and proximity to the creek, the keeping of livestock will adversely impact water quality. Had the Commission understood that the area in the agricultural easement is ESHA, they would not have approved the agricultural easement because such use is not consistent with Section 30240 of the Coastal Act, which requires it to be "protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas." The Commission did not mitigate the adverse impacts of the agricultural use on the ESHA because the Commission was led to believe that the agricultural easement itself was mitigation.

F. RELEVANT REGULATIONS

The following Coastal Act policies, Commission regulations in Title 14 of the California Code of Regulations, and Certified Malibu/Santa Monica Mountains Land Use Plan policies are relevant to the consideration of this revocation request.

1. Coastal Act Policies

Section 30004 Legislative findings and declarations; necessity of continued planning and management

The Legislature further finds and declares that:

(a) To achieve 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.

(b) To ensure conformity with the provisions of this division, and to provide maximum state involvement in federal activities allowable under federal law or regulations or the United States Constitution which affect California's coastal resources, to protect regional, state, and national interests in assuring the maintenance of the long-term productivity and economic vitality of coastal resources necessary for the well-being of the people of the state, and to avoid long-term costs to the public and a diminished quality of life resulting from the misuse of coastal resources, to coordinate and integrate the activities of the many agencies whose activities impact the coastal zone, and to supplement their activities in matters not properly within the jurisdiction of any existing agency, it is necessary to provide for continued state coastal planning and management through a state coastal commission.

2. Commission's Regulations

CHAPTER 5. COASTAL DEVELOPMENT PERMITS ISSUED BY COASTAL COMMISSIONS

ARTICLE 1. WHEN LOCAL APPLICATIONS MUST BE MADE FIRST

§ 13052. When Required.

When development for which a permit is required pursuant to Public Resources Code, Section 30600 or 30601 also requires a permit from one or more cities or counties or other state or local governmental agencies, a permit application shall not be accepted for filing by the Executive Director unless all such governmental agencies have granted at a minimum their preliminary approvals for said development, except as provided in section 13053. An applicant shall have been deemed to have complied with the requirements of this Section when the proposed development has received approvals of any or all of the following aspects of the proposal, as applicable:

(a) Tentative map approval;

(b) Planned residential development approval;

(c) Special or conditional use permit approval;

(d) Zoning change approval;

(e) All required variances, except minor variances for which a permit requirement could be established only upon a review of the detailed working drawings;

(f) Approval of a general site plan including such matters as delineation of road and public easement(s) for shoreline access;

(g) A final Environmental Impact Report or a negative declaration, as required, including (1) the explicit consideration of any proposed grading; and (2) explicit consideration of alternatives to the proposed development; and (3) all comments and supporting documentation submitted to the lead agency;

(h) Approval of dredging and filling of any water areas;

(i) Approval of general uses and intensity of use proposed for each part of the area covered by the application as permitted by the applicable local general plan, zoning requirements, height, setback or other land use ordinances;

(j) In geographic areas specified by the Executive Director of the Commission, evidence of a commitment by local government or other appropriate entity to serve the proposed development at the time of completion of the development, with any necessary municipal or utility services designated by the Executive Director of the Commission;

(k) A local government coastal development permit issued pursuant to the requirements of Chapter 7 of these regulations.

§ 13053. Where Preliminary Approvals Are Not Required.

(a) The executive director may waive the requirement for preliminary approval by other federal, state or local governmental agencies for good cause, including but not limited to:

(1) The project is for a public purpose;

(2) The impact upon coastal zone resources could be a major factor in the decision of that state or local agency to approve, disapprove, or modify the development;

(3) Further action would be required by other state or local agencies if the coastal commission requires any substantial changes in the location or design of the development;

(4) The state or local agency has specifically requested the coastal commission to consider the application before it makes a decision or, in a manner consistent with the applicable law, refuses to consider the development for approval until the coastal commission acts, or

(5) A draft Environmental Impact Report upon the development has been completed by another state or local governmental agency and the time for any comments thereon has passed, and it, along with any comments received, has been submitted to the commission at the time of the application.

(b) Where a joint development permit application and public hearing procedure system has been adopted by the commission and another agency pursuant to Public Resources Code Section 30337, the requirements of Section 13052 shall be modified accordingly by the commission at the time of its approval of the joint application and hearing system.

(c) The executive director may waive the requirements of Section 13052 for developments governed by Public Resources Code, Section 30606.

(d) The executive director of the commission may waive the requirement for preliminary approval based on the criteria of Section 13053(a) for those developments involving uses of more than local importance as defined in Section 13513.

(e) The executive director shall waive the requirement for preliminary approval when required pursuant to Government Code section 65941(c).

ARTICLE 14. VOTING PROCEDURE

§ 13096. Commission Findings.

(a) All decisions of the commission relating to permit applications shall be accompanied by written conclusions about the consistency of the application with Public Resources Code section 30604 and Public Resources Code section 21000 and following, and findings of fact and reasoning supporting the decision. The findings shall include all elements identified in section 13057(c).

(b) Unless otherwise specified at the time of the vote, an action taken consistent with the staff recommendation shall be deemed to have been taken on the basis of, and to have adopted, the reasons, findings and conclusions set forth in the staff report as modified by staff at the hearing. If the commission action is substantially different than that recommended in the staff report, the prevailing commissioners shall state the basis for their action in sufficient detail to allow staff to prepare a revised staff report with proposed revised findings that reflect the action of the commission. Such report shall contain the names of commissioners entitled to vote pursuant to Public Resources Code section 30315.1.

(c) The commission vote taken on proposed revised findings pursuant to Public Resources Code section 30315.1 shall occur after a public hearing. Notice of such hearing shall be distributed to the persons and in the manner provided for in section 13063. The public hearing shall solely address whether the proposed revised findings reflect the action of the commission.

ARTICLE 16. REVOCATION OF PERMITS

§ 13105. Grounds for Revocation.

Grounds for revocation of a permit shall be:

(a) Intentional inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit application, where the commission finds that accurate and complete information would have caused the commission to require additional or different conditions on a permit or deny an application;

(b) Failure to comply with the notice provisions of Section 13054, where the views of the person(s) not notified were not otherwise made known to the commission and could have caused the commission to require additional or different conditions on a permit or deny an application.

§ 13106. Initiation of Proceedings.

Any person who did not have an opportunity to fully participate in the original permit proceeding by reason of the permit applicant's intentional inclusion of inaccurate information or failure to provide adequate public notice as specified in Section 13105 may request revocation of a permit by application to the executive director of the commission specifying, with particularity, the grounds for revocation. The executive director shall review the stated grounds for revocation and, unless the request is patently frivolous and without merit, shall initiate revocation proceedings. The executive director may initiate revocation proceedings on his or her own motion when the grounds for revocation have been established pursuant to the provisions of Section 13105.

§ 13107. Suspension of Permit.

Where the executive director determines in accord with Section 13106, that grounds exist for revocation of a permit, the operation of the permit shall be automatically suspended until the commission votes to deny the request for revocation. The executive director shall notify the permittee by mailing a copy of the request for revocation and a summary of the procedures set forth in this article, to the address shown in the permit application. The executive director shall also advise the applicant in writing that any development undertaken during suspension of the permit may be in violation of the California Coastal Act of 1976 and subject to the penalties set forth in Public Resources Code, Sections 30820 through 30823.

§ 13108. Hearing on Revocation.

(a) At the next regularly scheduled meeting, and after notice to the permittee and any persons the executive director has reason to know would be interested in the permit or revocation, the executive director shall report the request for revocation to the commission with a preliminary recommendation on the merits of the request.

(b) The person requesting the revocation shall be afforded a reasonable time to present the request and the permittee shall be afforded a like time for rebuttal.

(c) The commission shall ordinarily vote on the request at the same meeting, but the vote may be postponed to a subsequent meeting if the commission wishes the executive director or the Attorney General to perform further investigation.

(d) A permit may be revoked by a majority vote of the members of the commission present if it finds that any of the grounds specified in section 13105 exist. If the commission finds that the request for revocation was not filed with due diligence, it shall deny the request.

3. Certified Malibu/Santa Monica Mountains Land Use Plan

Policy 64, under Protection of Environmental Resources:

An Environmental Review Board (ERB) comprised of qualified professionals with technical expertise in resource management (modeled on the Significant Ecological Areas Technical Advisory Committee) shall be established by the Board of Supervisors as an advisory body to the Regional Planning Commission and the Board to review development proposals in the ESHAs, areas adjacent to the ESHAs, Significant Watersheds, Wildlife Corridors, Significant Oak Woodlands, and DSRs. The ERB shall provide recommendations to the Regional Planning Commission (or decision-making body for

coastal permits) on the conformance or lack of conformance of the project to the policies of the Local Coastal Program. Any recommendation of approval shall include mitigation measures designed to minimize adverse impacts on environmental resources. Consistent with P271(a)(7), projects shall be approved by the decision-making body for coastal permits only upon a finding that the project is consistent with all policies of the LCP.

Policy 271(a)(7), under Land Use Plan Map:

New development in the Malibu Coastal Zone shall be guided by the Land Use Plan Map and all pertinent overlay categories. The land use plan map is inserted in the inside back pocket. All properties are designated for a specific use. These designations reflect the mandates of the California Coastal Act, all policies contained in this Local Coastal Plan, and the constraints and sensitivities of resources present in the coastal zone. All existing zoning categories will be modified as necessary to conform with and carry out the LCP land use plan.

The land use plan map presents a base land use designation for all properties. Onto this are overlaid three resource protection and management categories: (a) significant environmental resource areas, (b) significant visual resource areas, and (c) significant hazardous areas. For those parcels not overlaid by a resource management category, development can normally proceed according to the base land use classification and in conformance with all policies and standards contained herein. Residential density shall be based on an average for the project; density standards and other requirements of the plan shall not apply to lot line adjustments. In those areas in which a resource management overlay applies, development of the underlying land use designation must adhere to the special policies, standards, and provisions of the pertinent designation.

a. Land Use Designation

The following describes each land use designation and its principal permitted uses:

…

(7) Discretionary Review

All development subject to coastal permits within the coastal zone is subject to findings by the coastal-permit issuing agency of Los Angeles County that it is consistent with the Local Coastal Program.

…

G. GROUNDS FOR REVOCATION

Pursuant to Title 14 of the California Code of Regulations (14 C.C.R.) Section 13108(d), the Commission has the discretion to grant or deny a request to revoke a coastal development permit if it finds that either of the grounds specified in 14 C.C.R. Section 13105 exist. 14 C.C.R. Section 13105 establishes that the grounds for revoking a permit are: (1) the intentional inclusion of inaccurate, erroneous or incomplete information in connection with a permit application where accurate and complete information would have caused the Commission to act differently; or (2) that there was a failure to comply with the notice provisions of Section 13054, where the views of the person(s) not

notified were not otherwise made known to the Commission and could have caused the Commission to act differently.

1. Analysis of the Revocation Request's Contentions with Respect to Section 13105(a)

The South Central Coast District office has received a written request for revocation of Coastal Development Permit 4-06-163 from Save Open Space. The request for revocation asserts six overarching grounds for revocation under Section 13105(a), claiming that the applicant intentionally submitted erroneous and/or incomplete information resulting in a material change in the Commission's action. Grounds for revocation under Section 13105(a) of the Commission's regulations can be reduced to three essential elements or tests, all of which must be satisfied for the Commission to grant revocation:

> Test 1: Did the applicant for Coastal Development Permit 4-06-163 (Malibu Valley Farms, Inc.) include inaccurate, erroneous or incomplete information in connection with its application?
>
> Test 2: If the applicant included inaccurate, erroneous or incomplete information, was the inclusion of such information intentional?
>
> Test 3: If the answers to both Test 1 and Test 2 are yes, would accurate and complete information have caused the Commission to require additional or different conditions or to deny the application?

The following Section 13105(a) analysis addresses each of the six grounds for revocation asserted in the October 5, 2009 amended revocation request. The revocation request is a detailed, 72-page document and is provided as Exhibit 1 of this staff report.

NOTE REGARDING OTHER REVIEWING AGENCIES

Several of the claims in the revocation request indicate that some portions of the development approved by the Commission pursuant to CDP 4-06-163 require additional review and/or permits from other local, state, or federal agencies. The revocation request appears to rely on these claims for at least two different purposes – one substantive and one procedural.

The first way in which the revocation request asserts the absence of these other approvals is relevant is the claim that the Commission's substantive review of the impacts of the project was inappropriate influenced by the misperception that other agencies with expertise in the subject-matter at issue had already found the impacts to be acceptable. That argument is addressed below in detail.

The other way in which the revocation request asserts the absence of these other approvals is relevant appears to be the claim that, for procedural reasons, the Commission would not have proceeded had it understood that other agencies had yet to act. In some cases, the revocation request even argues that the Commission could not have legally granted approval of the subject CDP without these other agencies' approvals. However, the absence of other approvals does not preclude the Commission from processing a permit application, and the lack of, or need for, additional permits or other jurisdictional reviews is not a ground for revocation under the Coastal Act.

- Section 13052 provides that a coastal development permit application shall not be accepted for filing by the Executive Director unless all cities and counties and other state or local governmental agencies that must grant permits for the project have granted at a minimum their preliminary approvals for said development, except where waived by the Executive Director pursuant to Section 13053. In some cases the Executive Director waived preliminary approvals for the subject application; however, in other cases preliminary approvals were not obtained for the full project approved by the Commission. While one could have raised this as a basis for objecting to the filing of the application, once an application was filed, the Commission was not precluded from acting on the application, and in fact, was required to do so within a specified time period.

- The standard of review of the subject CDP is consistency with the Chapter 3 policies of the Coastal Act. Permits and/or reviews from other agencies do not constitute a standard of review under the Coastal Act. Moreover, the standard of review of a revocation request is as stated above, and an applicant's failure to obtain other agency approvals is not a basis for a revocation request.

- Regardless of whether a CDP was approved by the Commission, the subject CDP does not eliminate, or materially affect, any other requirements by other agencies for the same development. Thus, the Commission's action in no way undermined the jurisdiction of these other agencies. And while, in these circumstances, the Commission does sometimes include a condition requiring an applicant to secure all other necessary approvals before the Commission's permit will issue, it is not required to do so, and would not necessarily have done so here even if it had been aware of the status of those other approvals.

FIRST GROUND: Misrepresentation of State and Local Agency Approvals

ASSERTION 1.A: Misrepresentation of the Scope of the L.A. County Environmental Review Board (ERB) Approval. The revocation request asserts that the applicant "deliberately manipulated the ERB 'approval' to make it appear to be an approval for the project described in the Coastal Development Permit application when in fact it was for a differently-premised project."

The revocation request lays out the following argument in support of this assertion:

- Local approvals are required under the Coastal Act (Section 30004/ Regs Section 13052).
- Local approval is implemented by obtaining a Plot Plan Approval-In-Concept (AIC) in order to demonstrate consistency with local zoning.
- L.A. County's AIC process requires applicants to obtain approval from the County's Environmental Review Board (ERB) for development in or near ESHA; further, Policy 64 of the certified Malibu/Santa Monica Mountains Land Use Plan (LUP) requires that the ERB serve as an advisory body to the Regional Planning Commission and provide recommendations to the Regional Planning Commission regarding the conformance, or lack of conformance, of the project to the policies of the LCP.
- MVF switched back and forth for seven years between a vested rights claim and a coastal development permit. In the four years that it took MVF to submit what appeared to be the state and local approvals for the CDP application, it exploited the open vested rights claim by representing the project to each public agency as being only for modifications to existing vested development, and then submitting the alleged approvals to the Coastal Commission as satisfaction of its state and local agency requirements.
- "The project the ERB reviewed was only a proposal to remove the pipe corrals and storage structures that were right next to the creek. It did not include the 114,906 square feet of structure that would replace the structures being removed or that would remain for which no permit had ever been granted. It did not include the access road that is right next to the creek. It did not include the two at-grade stream crossings. It did not include livestock fencing around 23 acres of oak woodlands ESHA. It did not include 250 feet of riprap the applicant wants to add to the creek or outlets to the creek for the 1,440 foot ditch and the 850 square foot retention pond that it proposed to place right next to the creek." Therefore the ERB approval was for a different project than the project the Commission approved, and the ERB approval does not legally satisfy the requirement to show local zoning consistency.
- The applicant's misleading account of the ERB's action was established in ex parte communications, during the hearing, and even earlier to Commission staff during the CDP process.
- Commissioners and staff were led to believe that the ERB had, in fact, made a case-by-case exception to the LUP setback standard.
- The Commission relied heavily on local agency approvals in making its decision.
- The Commissioners would have voted differently if they had been given correct and complete information because local approvals are required under Section 13052 and must be relied on heavily by the Commissioners in their

decisions (Coastal Act Section 30004); ERB review of the full project would have addressed riparian setbacks and provided recommendations for consistency with the LUP; and findings for the proposed project could not be justified in lieu of the other project alternatives that would have minimized impacts.

- The lack of ERB review cannot be dismissed because the L.A. County Plot Plan Approval-In-Concept is, by default, similarly limited in scope to only the proposed changes, which leaves the project without proof of local zoning consistency required by Section 13052.
- CEQA allows approval only if a project is "otherwise permissible under applicable laws and regulations [13 Pub. Res. 21002.1(c)]."

The party requesting revocation cites the following evidence that the ERB review was limited: (1) the first sentence of the ERB project description states that it is for retaining facilities on "an existing equestrian operation;" (2) a letter from Third District Supervisor Zev Yaroslavsky stating, in part, that the "ERB was asked to consider only a much smaller subset of the overall project that is under consideration;" (3) a letter and testimony by Suzanne Goode, a member of the ERB and present at the time of the subject review, stating that the applicant represented to ERB members that the review is only for modifications to existing vested development; (4) the Commission's revised findings continue to state that the ERB found the project consistent with the LUP which is used as justification that the implementation of project alternatives is not necessary; (5) pursuant to Coastal Law Enforcement Action Network v. California Coastal Commission, Los Angeles Superior Court Case No. BS112422, the court ruled that there was no substantial evidence that the ERB had reviewed the full project brought before the CCC.

Also, the party requesting revocation contends that the project-switching that occurred explains why the ERB did not require a biological assessment or require any setback from the creek when the Malibu LUP requires a minimum 100-ft setback.

ASSERTION 1.A, TEST #1: The first test in the review of the revocation grounds is whether the applicant included inaccurate, erroneous or incomplete information in connection with the subject coastal development permit application. The Environmental Review Board reviewed the Malibu Valley Farms application at its January 27, 2003 meeting. The meeting minutes state that the project requested was to "retain facilities on an existing equestrian operation: relocate a 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". (Exhibit 12) Further, this is the project description read into the record at the meeting, as confirmed by the audio tape of the meeting.

<u>The ERB Review was Limited to the Modifications to the Existing Facility</u>

There is conflicting evidence with regard to the scope of the ERB approval. For instance, given that there has been no information to the contrary, or objection, the Commission presumes that the project plans reviewed at the January 2003 ERB meeting match the plans provided to Regional Planning Department for the Plot Plan Review. The plans approved-in-concept included the equestrian facility itself but not the bioswale, rip rap, or retention basin. Because the plans show the equestrian facility and the ERB approved those plans, the applicant maintains that the ERB's intent was to approve the overall equestrian facility with the approximate 50-foot creek setback.

On the other hand, for a number of reasons, the evidence that the ERB approval was limited in its scope is more persuasive than the evidence that the approval encompassed the entire equestrian operation or that the ERB reviewed the facility as an entirely new project.

First, the letter and testimony provided by ERB member, Suzanne Goode, is compelling since she participated in the decision-making at the time. In her capacity as an ERB member, Ms. Goode writes in her letter that at a site visit a week prior to the ERB meeting, the applicant stated that this was not a regular application for an approval-in-concept in association with a Coastal Development Permit application and should only be reviewed in the context of a vested rights claim. The letter further states that at the site visit the applicant explained why the applicant believed the structures were vested, and also explained that since only the Coastal Commission had the authority to approve a vested rights claim, ERB's comments should be limited to only the proposed changes to the site. Given that there was a pending vested rights claim, as well as a Coastal Development Permit application at the Commission, it is entirely feasible that there was confusion as to the nature and the extent of the project to be reviewed by the ERB.

While the applicant did not instruct the ERB members to limit their review to modifications of the existing facility at the January 2003 ERB meeting, review of an audio tape of the January 2003 ERB meeting revealed that the applicant stated multiple times that the applicant's position was that the equestrian operation and facilities were vested based on the site's long history as a ranch and farm going back to the 1920s and 1930s. Additionally, the applicant stated that the equestrian and livestock operations date back to about 1975, prior to the effective date of the Coastal Act. In support of the vesting argument, the applicant went on to explain that any development that predates the Coastal Act is vested, and that the location utilized by the current equestrian operation had been historically used.

The applicant transitioned into the review of the project by explaining that even though MVF's position is that the project is vested, MVF was trying to respond to Coastal Commission staff concerns by providing a project that would establish an

approximately 50-ft setback from the creek. They indicated that a 100-foot setback from the creek would not be feasible because it would eliminate usable area.

Based on the audio tape of the meeting, it is apparent that the baseline from which the project was reviewed was in the context of the existing facility. There was no detailed discussion with regard to the facilities that would be retained for this existing equestrian operation, nor was there any discussion that this project should be reviewed in its entirety. The detailed discussion focused on the relocation and removal of structures to obtain a 50-ft creek setback. So it is a credible conclusion that the ERB members in fact believed that the existing structures were vested and that the only project components to be evaluated were the changes to the existing configuration of the facility.

The idea that the ERB limited its review to modifications of the existing facility is further supported by the fact that there was no discussion at the ERB meeting of providing a 100-ft setback once the applicant had explained its position that the facility was vested. Given the mission and history of the ERB, it seems an unlikely oversight that the ERB did not affirmatively discuss the 100-ft setback, or other setback opportunities between 50 and 100 feet from the creek, or make specific findings that a lesser setback was justified in this case. The ERB did not make a specific finding that a 50-foot setback was warranted in these unique circumstances.

At the ERB meeting, the applicant did mention that both a biological report and soils report were prepared for the site, and that the soils were of a nature that the existing operations could be accommodated without adversely impacting the creek. Additionally, the applicant stated that the project was designed with best management practices for the equestrian operation that would ensure that there would be no adverse impacts to the creek with a 50-ft setback. The applicant went on to state that the equestrian operation is actually preferable to the historic livestock operations which included slaughtering animals next to the creek. This information could be interpreted to be in support of the overall project with a reduced 50-ft setback or alternately, in support of the 50-ft setback being created by removing the project components. Therefore the inclusion of this information does not help provide a basis as to whether the ERB was considering the entire project or just the modifications to the existing equestrian operation.

The fact that the project was clouded with speculation regarding vested development as described above, combined with the fact that one of the decision-makers, ERB member Suzanne Goode, confirms that it was her belief that only the new project components were reviewed in this case, support the claim that the ERB approval was only for a limited portion of the project. Therefore the Commission finds that the ERB approval was not for the project as a whole, but instead limited its review to the *changes* to the existing facility.

The Applicant Represented the ERB Review as Being Broader Than It Was

At the July 9, 2007 Commission hearing, the applicant stated the following (Page 40 of the transcript):

> … 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.

Additionally, at the July 9, 2007 Commission hearing, the applicant represented that ERB specifically recommended a less than 100-ft buffer from the creek. The applicant stated the following in its organized presentation (Page 33 of Transcript):

> 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. [Emphasis added]

Following up the above discussion, Mr. Decrenerus, the previous county biologist, spoke briefly as a biological consultant during the applicant's organized presentation on July 9, 2007; however, his status as a representative to speak on behalf of the applicant is not on file with the Commission. Mr. Decrenerus made the following statement at the hearing:

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

Although the following statement occurred at the Revised Findings hearing, long after the Commission had acted, it is instructive in that it shows the applicant's continuing position on this issue. At the June 11, 2008 Commission hearing the applicant stated the following with regard to the scope of the ERB approval (Page 14 of the June 11, 2008 transcript):

> …One talks about – two main issues are raised in those oppositions, and one has to do with the county ERB. There is a claim that the county ERB, when they approved this, was approving a smaller project, or some different project, and in fact that is not the case. The project that went to the county ERB was a larger project, and included an additional 10-stall barn that was removed as part of our negotiations when we were working with the Commission staff.

There was no – as you will recall, we did a very extensive bio-swale and mitigation plan here. That was not part of what the ERB sought. We moved some of the structures further away from the creek.

So, the project here is, actually, more mitigated, smaller in size, and further away from the creek than what the ERB had recommended approval, and then of course, the county regional planning had approved. …

Conclusion

Consequently, it is clear that the applicant asserted to the Commission that the ERB approved the project that was before the Commission and found the entire equestrian facility consistent with the County's environmental protection policies in the Land Use Plan. Since the ERB approval did not encompass the entire project for the reasons stated above, the Commission finds that incorrect information with regard to the scope of the ERB approval was provided in connection with the subject application, and therefore this ground for revocation meets Test 1.

ASSERTION 1.A, TEST #2: Pursuant to Test 2, the Commission must consider whether the applicant *intentionally* included inaccurate, erroneous or incomplete information. As determined in Test #1 above, the Commission finds that the scope of the ERB approval did not include the project in its entirety. With regard to that approval, the applicant asserted that the ERB approval was for the overall equestrian facility. Further, the Commission was led to believe that the ERB had, in fact, made a case-by-case exception to the LUP setback standard.

The application submitted to the Department of Regional Planning, filing date of September 26, 2002, includes the following project description:

> Retention of a portable equipment shop, grain room, portable rollaway bin/container, arena with 5-foot high surrounding wooden wall and post 5-feet o.c. with possible future cover, 200 sq. ft. portable tack room with 4-foot porch, three (3) roofed corals, [sic] 576 sq. ft. pipe corral, covered shelter, riding arena with possible future cover, parking stalls, back to back mare motel, cross tie area, one-story barn, 160 sq. ft. storage container, 3-foot rail road tie walls, and fencing as depicted in site plan sheet 3 of 3; and Removal of storage shelter, portable storage trailer, cross tie area, twenty-eight (28) 24x24-foot portable pipe corrals, tack room with no porch, cross tie shelter, 101 sq. ft. portable tack room with 4-foot porch and four (4) 20x20-foot portable pipe corrals as depicted in site plan sheet 2 of 2.

The submittal letter from the applicant that accompanied the County's application, however, asserted that the equestrian operation was vested and therefore the assessment of consistency with the LUP provided by the applicant was conducted from a baseline condition that assumed the existence of the equestrian facility. This seems to be where the confusion originates because the application submittal itself appears to request that the entire project operation be considered in the application (per the project description) but that the assessment of the entire facility be based from the existing (unpermitted) conditions due to unsubstantiated claims of vesting. This is contradictory. If the project *is* vested, then the vested project does not need a planning approval. If it

is not vested, and has not received the requisite planning permits, then the project must be assessed from a baseline as if it were not in existence.

At this point in the planning process, in January 2003, the Commission had not acted upon the Vested Rights Claim (VRC) application and the matter was not formally settled. However, a Commission staff report, dated January 26, 2001, was circulated to the Commission, applicant, and the public. Staff was recommending denial based on a detailed vesting analysis laid out in the staff report. As a result, the applicant had cause to know the exact nature of the Commission's vested rights process.

However, because the applicant had an open vested rights claim before the Commission, the applicant was rooted to the position that the project was vested until the vested rights claim was denied by the Commission in 2006. And until the official VRC denial, project discussion and submittals appear to be presented by the applicant with the assertion that the project was vested. Given the numerous claims that the equestrian operation was vested, it is reasonable that the reviewing parties may have been confused as to their role.

The applicant maintains that the ERB approval was for the entire project because the project description included the retention of structures and also because the project plans that were reviewed at the meeting included the full project. However, it remains a question as to why the applicant continued to raise the issue of vested development if the project really was to be considered as a whole. The issue of whether any of the development was vested would have been irrelevant for the purposes of reviewing the project under its own merits, as an approval-in-concept for the coastal development permit. The logical reason for proactively asserting the vested status of the facility to the ERB at the time of the ERB's decision was to limit the scope of the ERB's review. The benefit of declaring the existing facilities vested is that the ERB's analysis of the impacts would be considered from the baseline of the existing development rather than if the equestrian facilities were proposed on a vacant parcel. As described above, the ERB analysis did occur in this way.

Given that the logical outcome of asserting the vested status was to limit the scope of the ERB's review, and that is what occurred, the nuance of whether the ERB's approval "recommended" less than a 100-foot setback versus *accepted* its inability to review the 100-foot setback due to the vested status of the development is not something that could have been overlooked by the applicant. Therefore the applicant's erroneous statements that the ERB specifically "recommended" a reduced setback and found that an even larger project was consistent with the Coastal Plan must be deemed to have been intentional. Therefore the Commission finds that this ground for revocation meets Tests 1 and 2. Consequently, this assertion requires analysis under the third and final test to determine whether a ground for revocation exists.

ASSERTION 1.A, TEST #3: Under Test 3, the Commission must determine whether the complete and accurate information would have caused the Commission to require additional or different conditions or deny the application. Under Test 3, the question is whether the Commission would have modified its decision if the Commission had a clear understanding that the ERB approval did not encompass the entire project from a "clean-slate" perspective.

In this case, the correct information would not have made a difference because the Revised Findings, dated June 25, 2009, specifically considered this issue and made separate findings with regard to the creek setback under its own authority without relying on the ERB decision. The Commission made findings, irrespective of the action of the ERB, that the project would not have adverse impacts on coastal resources. The Commission specifically considered and found that a 50-foot buffer would be adequate in these unique circumstances. In the findings, the Commission found ample support for its approval in the evidence in the record without the need to rely on the ERB approval. Therefore, accurate information would not have changed, and if fact did not change, the Commission's action to approve the project with conditions.

ASSERTION 1.B: Misrepresentations of the Scope of the L.A. County Plot Plan 48295 Approval-In-Concept (AIC). The revocation request asserts that the County Plot Plan approval was only for "modifications to an existing equestrian facility" rather than an approval of the entire area because it was based on a limited ERB approval, and further that this was specifically written on the Plot Plan approval-in-concept. The revocation request asserts that County approval of the existing structures is not legally possible if there was no specific ERB review of those structures. Further, the "late add-on components" (i.e., drainage ditch, drainage pond, rip rap) were not included in the local approvals.

The revocation request lays out the following argument in support of this assertion:

- The ERB approval was pivotal to the County's decision to issue a Plot Plan Approval-In-Concept.
- The Plot Plan approval was for the vested development project, not the overall development considered in the Commission's coastal development permit application. Specifically, the Plot Plan approval is for "modifications to an existing equestrian facility."
- The Plot Plan application provided by the applicant does not list grading or oak tree encroachments, both of which would be necessary if the project were being considered from the perspective that it is not a vested project.

- The Plot Plan AIC is limited to the same scope as the ERB approval because the County's AIC cannot exceed the scope of an ERB review that is dependent upon it. That is, the approval of the existing structures is not legally possible if there was no specific ERB review of those structures.
- The "late add-on components" comprised of the drainage ditch, drainage pond, and rip rap were not reviewed by the ERB. The applicant represented the late add-on components as having received ERB, County of Los Angeles, Department of Regional Planning, Fish and Game, Regional Water Quality Control Board, and Army Corps of Engineers review.
- The late add-on components are new development in ESHA, they involve streambed alterations, and have the potential to cause significant impacts.
- The court ruled that there was no substantial evidence that the ERB had reviewed the full project, and the Revised Findings were updated to omit reliance on the ERB approval. The court's ruling on the ERB renders the LA. County Plot Plan AIC similarly limited in scope to only the proposed changes, which leaves the project without proof of local zoning consistency that is required by Section 13052 of the California Code of Regulations.
- The Commissioners would have voted differently as evidenced by previous Commission decisions that upheld the 100-ft setback required in the LUP, including a recent Commission action on the Tapia Water Reclamation Plant.
- The Commissioners, by their legal requirements, by past and future precedent, as well as by their comments at the hearing would had to have voted otherwise if they had been given accurate and complete information that the project lacked required local zoning consistency approvals.
- The Coastal Act requires Commissioners to favor environmental protection provisions when conflicts among Coastal Act policies arise (Section 30007.5), to heavily weight local agency approvals (Section 30004), and to require proof of local zoning consistency, so those local agency approvals were the main factor influencing the Commissioners who voted in favor of granting the CDP. Because the approvals were based on a differently-premised project that contained only a subset of the actual development, and did not include review of the whole site, they do not provide the legal justification necessary to override the staff recommendation to deny the project.

ASSERTION 1.B, TEST #1: The first test in the review of the revocation grounds is whether the applicant included inaccurate, erroneous or incomplete information relative to the subject coastal development permit application.

The Plot Plan approval-in-concept, dated February 3, 2004, specifically states the following (Exhibit 10):

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 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.

Though the applicant may have submitted the full project description on the Plot Plan Review application submitted to the County, it appears that, based on the condition listed in the first bullet point of the approval, the County was specifically intending to limit the County's AIC to only the proposed modifications to the equestrian facility. Staff interprets that if the approval was for the entire project, as stated by the applicant, the County would not have needed to proactively place a condition on the project plans to reference the "modifications" to the facility as these would have been included (Exhibit 10).

The application submitted to the Department of Regional Planning, filing date of September 26, 2002, includes the following project description:

> Retention of a portable equipment shop, grain room, portable rollaway bin/container, arena with 5-foot high surrounding wooden wall and post 5-feet o.c. with possible future cover, 200 sq. ft. portable tack room with 4-foot porch, three (3) roofed corals, [sic] 576 sq. ft. pipe corral, covered shelter, riding arena with possible future cover, parking stalls, back to back mare motel, cross tie area, one-story barn, 160 sq. ft. storage container, 3-foot rail road tie walls, and fencing as depicted in site plan sheet 3 of 3; and Removal of storage shelter, portable storage trailer, cross tie area, twenty-eight (28) 24x24-foot portable pipe corrals, tack room with no porch, cross tie shelter, 101 sq. ft. portable tack room with 4-foot porch and four (4) 20x20-foot portable pipe corrals as depicted in site plan sheet 2 of 2.

The submittal letter from the applicant that accompanied the County's application, however, asserted that the equestrian operation was vested and therefore the assessment of consistency with the LUP provided by the applicant was conducted from a baseline condition that assumed the existence of the equestrian facility (Exhibit 11). This is evidenced by the policy analysis provided by the applicant as well as the fact that no grading was included as part of the project description (i.e., even on a relatively flat parcel, six acres of development would require some grading).

At the time the Plot Plan was approved-in-concept by the County, on February 3, 2004, the Commission had not acted upon the Vested Rights Claim application and the matter was not formally settled. However, a Commission staff report, dated January 26, 2001, was circulated to the Commission, applicant, and the public. Staff was recommending denial based on a detailed vesting analysis laid out in the staff report. However, because the applicant had an open vested rights claim before the Commission, the applicant was rooted to the position that the project was vested until the vested rights claim was denied by the Commission in

2006. And until the official VRC denial, project discussion and submittals appear to be presented by the applicant with the caveat that the project was vested.

The subject of vesting seems to be the pivotal point with regard to whether the project was reviewed by the County in its entirety or whether only the modifications to the existing, applicant-maintained-vested, equestrian facilities.

The addition of the words “approved for modifications to an existing equestrian facility as shown” to the County’s AIC seems clearly intended to specifically convey that only the changes to the existing equestrian facility were included as part of the approval-in-concept. Presumably, this is to clarify what is covered under the AIC since the applicant had explained MVF’s position that the existing equestrian operation and structures were vested. There appears to be no other feasible explanation for the affirmative addition of those words if the project was being reviewed as a whole.

The applicant maintains that the County’s AIC was for the entire project because the project description included the retention of structures and also because the project plans that were stamped with the preliminary approval included the full project. However, this can be explained in context with the phrase “approved for modifications to an existing equestrian facility as shown.” Though the entire project is shown on the plans, and those plans are approved in concept, presumably the Department of Regional Planning signed off on those plans under the assumption that the existing structures are vested, as asserted by the applicant. And further, the conditions specifically listed on the front of those signed plans must be interpreted to be a part of the sign-off/approval of the plans.

If County staff assumed that the approval was constrained by the fact that the existing development was vested and was not the subject of the application, then relocating structures away from the stream in an attempt to provide a 50-foot buffer would be seen as beneficial. And since the development was assumed to be vested, a variance to the 100-ft buffer was not “approved” but rather the default from which the decision-makers based their decision.

Additional evidence pointed to by the applicant as proof that the AIC is for the whole project is that the County biologist that reviewed the case, Joe Decrenerus, believed that the plot plan approval was for the entire project. And further, that he believed that the ERB approval was for the entire project. The facts of the case – including the audio tape of the ERB meeting and the specific conditions of the Plot Plan -- do not support the opinion of the previous County biologist. Additionally, Mr. Decrenerus was not the planner assigned to the case, nor did he sign off on the final project plans. It is presumed that as the biologist he was responsible for assessing biological impacts associated with the project. It is presumed that the project planner would have had the responsibility and authority to evaluate zoning consistency and consistency with the policies of the

LUP, and further that the planner would be responsible for synthesizing the data received from other departments (that reviewed the project for consistency with other aspects of the County Code) into the final analysis and approval. Therefore, Mr. Decrenerus may not have had the full facts before him on which to base his opinion.

For the above reasons, the Commission finds that the County's approval-in-concept is only for the changes to the existing facility (i.e., the relocation and removal of structures to create a larger setback than existing conditions). However, Test #1 requires that incorrect information be provided in association with the subject application. The applicant submitted the Plot Plan approval and the condition "approved for modifications to an existing equestrian facility as shown" was specifically placed on the approval. This was made part of the record and available to Commission staff, opponents, and the public. Therefore correct information was provided in regard to the County's AIC at the time of the application submittal.

However, at the July 9, 2007 Commission hearing, the applicant represented that the County's approval was for the entire project, and that the County specifically found that the 100-ft buffer could be reduced. Therefore inaccurate information was provided at the hearing by the applicant. The applicant stated in the organized presentation (Page 33 of Transcript):

> 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. [Emphasis added]

Following up the above discussion, Mr. Decrenerus, the previous county biologist, spoke briefly as a biological consultant during the applicant's organized presentation on July 9, 2007; however, his status as a representative to speak on behalf of the applicant is not on file with the Commission. Mr. Decrenerus made the following statement at the hearing:

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

As discussed in detail in Assertion 1A, above, the ERB did not recommend a reduced setback. Instead, the ERB accepted the modifications to the existing equestrian facility which would increase the buffer of the equestrian structures from the creek to approximately 50 feet. This is not semantics, but rather the central basis from which the County staff would have considered consistency with the certified LUP policies under the incorrect assumption that existing facilities were vested.

As a result, these statements on behalf of the applicant are, at a minimum, misleading. Both statements indicate that a proactive position regarding the variance to the 100-foot buffer was obtained. This is not supported by the audio tape of the ERB meeting or the specific conditions of the Plot Plan. Therefore, the Commission finds that incorrect information was provided in association with the subject application with regard to the scope of the County's approval-in-concept, particularly the assertion that specific consideration was given to reduce the 100-ft. buffer by County staff.

With regard to a separate point by the requestor, the Commission does not agree that the lack of a full ERB review necessarily negates the approval of the plot plan. ERB is advisory and the final responsibility for Approval-In-Concept signoff for consistency with the County Code, including the certified LUP, is the Department of Regional Planning. Regardless, in this case, it appears that the Plot Plan was reviewed by Department of Regional Planning and the necessary notes were made to ensure that the project was not misconstrued to cover the existing structures.

With regard to what the revocation request deems the "late add-on" components of the project, the Commission does not agree that the lack of their inclusion within the Plot Plan approval negates, or limits, the preliminary approval. As quite common, the Commission may determine that water quality measure or other measures are required in order to mitigate the impacts of development to coastal resources. If the mitigation measures represent significant development in and of themselves, the applicant may need to amend, or otherwise update, the previous preliminary local approval. That is the purpose of a *preliminary* approval. If, for some reason, the County cannot approve the mitigation measure through its Code, then the County is not required to automatically accept, or approve, the mitigation/development. If such a situation were to occur, then it would likely require the applicant to come up with a new proposal that is acceptable to both the County and Commission. Although this would result in additional processing and a longer timeline for the project, the final local approval process is setup to catch these potential conflicts (mission of the local government vs. mission of the Commission).

As detailed above, the Commission concurs that the County AIC is only for the "modifications to an existing equestrian facility" which assumed the project was vested (which it was not), and therefore the applicant's statements that the ERB recommended a reduced setback and that ERB and county staff both found this project consistent with the coastal plan in regard to the 100-ft setback are misleading and incorrect. Therefore the Commission finds that the applicant included inaccurate, erroneous or incomplete information relative to local preliminary approval in connection with the application, and therefore this ground for revocation meets Test 1.

ASSERTION 1.B, TEST #2: Pursuant to Test 2, the Commission must consider whether the applicant *intentionally* included inaccurate, erroneous or incomplete information. The applicant's statements that the county staff found this project consistent with the coastal plan in regard to the 100-ft setback are misleading and incorrect. The fact that the AIC specifically states that the preliminary approval is only for "modifications" to the existing facilities, particularly in view of the applicant's vesting argument, is evidence that the County considered the existing facilities vested and in fact did not consider a 100-ft setback. Therefore, the applicant did provide erroneous and/or incomplete information relative to the County's AIC.

Given that the project approved in concept in the AIC was only for modifications to an existing equestrian operation, and that those words were specifically written on the approval, the applicant must be presumed to have known about the scope and conditions of the County's preliminary approval. Further, given that, during the course of the County's approval process, the applicant argued that the existing development is vested, the applicant affirmatively sought to limit the scope of the County's review, so that the nuance of whether the County's approval "recommended" less than a 100-ft setback versus *accepted* its inability to review the 100-ft. setback due to the vested status of the development, is not something that could have been overlooked by the applicant. As a result, the erroneous statements regarding the scope of the County's approval-in-concept are presumably intentional. Therefore the Commission finds that this ground for revocation meets Tests 1 and 2. Consequently, this assertion requires analysis under the third and final test to determine whether a ground for revocation exists.

ASSERTION 1.B, TEST #3: Under Test 3, the Commission must determine whether the complete and accurate information would have caused the Commission to require additional or different conditions or deny the application. Under Test 3, the question is whether the Commission would have modified its decision if the Commission had a clear understanding that the County's preliminary approval did not encompass the entire project because it assumed that the existing facility was vested.

Other regulatory approvals, either preliminary or final, are generally required to be submitted prior to filing a coastal development permit application pursuant to 13052. However, pursuant to 13052 and 13053, these preliminary approvals may be waived by the Executive Director as a filing requirement for the CDP application for good cause. Having these other regulatory approvals at the time of processing the CDP is indicative that the applicant is working in good faith with all relevant regulatory bodies to develop a project that is consistent with the regulatory mission of each agency that has authority over the project. In this case, as explained by staff at the July 9, 2007 hearing (page 131 of the transcript), the Executive Director waived the local government approval pursuant to 13053 at the time the applicant requested to bring the permit back after the Cease and Desist hearing. Therefore, due to the fact that this

requirement was waived for the purpose of filing the CDP application and that the Commissioners were made aware of this information at the July 2007 hearing, the Commission finds that the County's preliminary approval was not a key factor in the Commission's decision. Further proof that the County's preliminary approval was not a basis of the decision is that it is not reflected in the Final Revised Findings (Exhibit 2) adopted by the Commission on July 8, 2009, nor is the County's preliminary approval a standard of review under the Coastal Act.

Coastal Act Section 30004 states, in part:

> The Legislature further finds and declares that:
>
> (a) To achieve 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.

Section 30004 indicates that it is necessary to rely heavily on local government and local land use planning procedures to achieve maximum responsiveness to local conditions. Another way of saying this is that the Commission must put its trust in local government and land use planning to respond to local conditions. It is not explicit in how this will be achieved. Accepting a preliminary approval for a portion of the project (intended or unintended) does not discount the County's input on local conditions because even after the Commission's action on the CDP, the applicant must once again go back to the County for its final approval and building permits. The County is under no obligation to approve a project identical to the Commission's CDP if the development does not meet its own legitimate mandates and code. If the applicant is unable to obtain the requisite permits from the County, the applicant would not be able to undertake the development regardless of whether the Commission's CDP was approved.

In any case, the acceptance of a preliminary approval that did not fully review a project is not inconsistent with reliance on the local government. Further, Section 30004 language does not require Commission decisions to match those of the local government.

With regard to the subject CDP, the entire project was reviewed and approved at the July 2007 hearing, and the Commission found the project consistent with the Coastal Act. A clear understanding that the County's preliminary approval did not encompass the entire project would not have caused the Commission to make a different decision, either denying the project or adding conditions, because the Commission found the project consistent with the policies of Chapter Three of the Coastal Act – the standard of review in this case – for reasons separate from the County's AIC.

Therefore, accurate information related to local approvals would not have changed the Commission's action to approve the project with conditions. Therefore this ground for revocation does not meet Test 3.

ASSERTION 1.C: Misrepresentations Regarding the Department of Fish & Game Review. The revocation request asserts that the applicant misrepresented the Department of Fish and Game's correspondence as a merit-based approval, rather than correspondence stating that a Streambed Alteration Agreement was not necessary due to the agency failing to meet applicable deadlines. Further, the revocation request asserts that the project for which the applicant sought approval from Fish and Game was for "installment of Turf Reinforcement Mats to facilitate equestrian crossings across an existing unvegetated, soft bottomed Arizona crossing of Stokes Canyon Creek" and therefore, the Fish and Game correspondence did not cover the *creation* of the two Arizona crossings through the creek bed.

The revocation request lays out the following argument in support of this assertion:

- The Department of Fish and Game approval was misrepresented as a review of the subject project rather than Fish and Game failing to act within the regulated review period. Evidenced provided that the approval was not merit-based includes the Fish and Game notification letter, dated March 15, 2005, which states:

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

- The applicant misrepresented the above Fish and Game correspondence at the July 9, 2007 hearing.
- The Fish and Game correspondence indicates that the development addressed under the notification was for "installment of Turf Reinforcement Mats to facilitate equestrian crossings across an existing unvegetated, soft bottomed Arizona crossing of Stokes Canyon Creek."
- The description of the development in the Fish and Game correspondence implies that the Arizona crossings are vested or already approved. As a result, the crossings themselves were not subject to CDFG review, only the actual modifications to the crossings. Further evidence that the CDFG correspondence did not cover the crossings themselves is that the application to CDFG stated that the project would not involve work in the bed of the stream, would not involve any equipment, and would not involve the placement of any permanent or temporary structure. However, it would not be feasible to construct an Arizona crossing without doing one or more of the aforementioned.
- At the hearing, the CDFG correspondence was presented to the Commission by the applicant as a merit-based, fully-reviewed approval for the two crossings and the applicant implied that the approval included review of the less-than-100-foot setback.

- The bioswale, with its two direct outlets to the creek, and the riprap proposed on 250 feet of the streambank also need CDFG approval but never received it. Additionally, these two features, along with the two stream crossings also need an Army Corps of Engineers 404 permit and Regional Water Quality Control Board 401 certification (33 U.S.C. Sec 1341, 1344).
- The Commission's Final Revised Findings (Pages 4-5) present the CDFG approval as providing evidence of ERB approval. The Revised Findings are in error because it fails to consider the project description specifically listed in CDFG correspondence.
- The applicable project description pursuant to the CDFG Notification is based on only a subset of the proposed development and does not satisfy the public agency approval requirements per Section 13052.
- Revised Findings are limited to documenting the information Commissioners revealed in their deliberations that they relied on in making their decision to vote against the staff recommendation.
- Due to the misrepresentation by the applicant, the Commissioners did not know that the CDFG "approval" was only a Notification letter that the agency had missed the deadline.
- The Commission would have conditioned the project differently or voted to deny the CDP if they had known that the applicant did not have the requisite permits for the project described to the Commission.

ASSERTION 1.C, TEST #1: The first test in the review of the revocation grounds is whether the applicant included inaccurate, erroneous or incomplete information relative to the subject coastal development permit application.

The requestor asserts that the project did *not* undergo review and analysis by the Department of Fish and Game or receive a merit-based approval. Instead CDFG provided correspondence that a Streambed Alteration Agreement was not necessary because the Department failed to meet the applicable regulatory deadline. This assertion is true as evidenced by the letter to Beth Palmer, dated March 15, 2005, from the Department of Fish and Game (Exhibit 13). The letter indicates that by law the applicant may proceed with the project without an Agreement from Fish and Game because the Department had not met its statutory deadline.

The Department of Fish and Game notification letter, dated March 15, 2005, states:

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

Test #1 requires that incorrect information be provided in association with the subject application. The applicant submitted the March 15, 2005 Fish and Game correspondence to Commission staff on December 12, 2006 prior to the Commission's July 2007 approval of the project. This was made part of the record and available to the public. Therefore the correct information with regard to CDFG's review, or lack thereof, was submitted by the applicant in association with the application.

However, at the July 9, 2007 Commission hearing, the applicant represented that the Fish and Game approval confirms that the two creek crossings would not have a significant deleterious impact to the riparian corridor. The applicant provided the following testimony during the organized presentation (Page 34 of the Transcript):

> …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.

Then, in response to Commissioner questioning, the applicant reaffirms the CDFG approval and clarifies that the CDFG approval includes review of setbacks from the riparian corridor (Page 108 and109 of the Transcript):

> COMMISSIONER KINSEY: …In the presentation that the Malibu Valley Farms made they identified that they had received approvals from the State Water Resources 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 Resources Control Board, you mentioned that this was identified as impaired water body, and how would they reconcile that?
>
> MR. SCHMITZ: … 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.

Further clarification regarding the CDFG approval was provided by the applicant (Page 112 of the Transcript):

> 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.

Based on the above testimony by the applicant and given that the CDFG correspondence indicates that the notice to proceed is based on failure to meet

the statutory deadline, the Commission finds that the applicant provided inaccurate and incomplete information to the Commission with regard to the Fish and Game "approval, " and thus, this ground for revocation meets Test #1.

Second, the requestor asserts that the applicable project description pursuant to the CDFG Notification is based on a subset of the proposed development, and that the Arizona crossings were misrepresented as "existing" development. The March 15, 2005 Fish and Game correspondence indicates that the development addressed under the notification was for "installment of Turf Reinforcement Mats to facilitate equestrian crossings across an existing unvegetated, soft bottomed Arizona crossing of Stokes Canyon Creek." The correspondence cross-references "the project described in the Notification." The Notification of Lake or Streambed Alteration submitted by the applicant to Commission staff on December 12, 2006 appears to be a copy of the Notification that might have been associated with the March 15, 2005 correspondence. However, the submitted Notification cannot be confirmed because there is no CDFG Notification Number written in the applicable space. Also, the project description listed on the Notification does not include any reference to the two Arizona crossings of Stokes Canyon Creek which are the subject of the correspondence.

Even if the Notification submitted to Commission staff is the same that was submitted to CDFG, it is clear from the markedly different project description in the March 15, 2005 correspondence that the original Notification project description did not sufficiently address the development that would be subject to the Streambed Alteration Program. The project description listed in the CDFG correspondence appears to be limited to the applicable development that is in the stream and on the stream banks. The applicant has argued that the March 15, 2005 CDFG correspondence supports that CDFG approved the equestrian facility because the Notification submitted by the applicant references Plot Plan 48295. However, the Plot Plan 48295 approved-in-concept by Los Angeles County Department of Regional Planning does not identify the stream crossing or the location of any proposed turf reinforcement mats. This fact further supports that CDFG intentionally limited its notice-to-proceed to the two Arizona Crossings on the site and not the equestrian facility itself.

Proceeding under the assumption that the project description in the March 15, 2005 correspondence is the accurate description, Fish and Game's project description appears to be "installment of Turf Reinforcement Mats to facilitate equestrian crossings across an existing unvegetated, soft bottomed Arizona crossing of Stokes Canyon Creek." The requestor asserts that this project description implies that the Arizona crossings are vested or already approved since the word "existing" is included, whereas the project description should have presented them as new development.

Both Arizona crossings were considered within the applicant's Vested Rights Claim previously evaluated by the Commission. The Vested Rights Claim was

denied by the Commission on November 15, 2006. The Commission found that Malibu Valley Farms, Inc. had not submitted any evidence indicating that this development was undertaken prior to enactment of the Coastal Act or after enactment in reliance on governmental approvals. Therefore, the applicant had not met its burden of establishing a vested right in this development via the Coastal Act.

At the time the Fish and Game correspondence was written in 2005, the Commission had not taken final action on the Vested Rights Claim. Given that the applicant was still, at the time of the Fish and Game application, maintaining that all development on the site was vested, it is feasible that the vesting is the reason the crossings are described as "existing" for the purposes of regulatory review. Regardless, the wording of the scope of the project description within the CDFG correspondence does indicate that the crossings themselves were not requested by the applicant for CDFG review, only the modifications to the crossings, as asserted in the revocation request.

The revocation request asserts that further evidence that the CDFG correspondence did not cover the crossings themselves is that the application to CDFG stated that the project would not involve work in the bed of the stream, would not involve any equipment, and would not involve the placement of any permanent or temporary structure. However, it would not be feasible to construct an Arizona crossing without doing one or more of the aforementioned. The Notification submitted by the applicant includes a Project Questionnaire which states that the project or activity does not involve work in the bed or channel of a stream. This additional evidence cannot be corroborated since the Notification cannot be confirmed by Commission staff to be definitively associated with the March 15, 2005 correspondence. Regardless, as described above, the wording of the project description in the March 15, 2005 correspondence denotes that the crossings themselves were not subject to CDFG review, only the proposed *modifications* to the crossings, as asserted in the revocation request.

Test #1 requires that incorrect information be provided in association with the subject application with regard to the revocation request's second point: that the Fish and Game approval represented only a subset of the project, and further that the subset of the project was misrepresented as "existing." The Fish and Game March 15, 2005 correspondence as well as the Streambed Alteration Notification were provided to Commission staff on December 12, 2006 prior to the Commission's July 2007 approval of the project. This was made part of the record and available to the public. Therefore the correct information with regard to the project description subject to Fish and Game's review was provided by the applicant in association with the application submittal.

However, at the hearing the applicant stated that the Department of Fish and Game approval included retention of the two dirt trails which go through the drainage (i.e., the subject Arizona crossings). In contrast to the Fish and Game

project description (of which a strict interpretation signifies that the crossings themselves were not subject to CDFG purview but rather the *modifications* to the crossings), the applicant's statement implies that the proactive "retention" of the crossings was under consideration.

Moreover, given that there is no mention of the proposed improvements (i.e., turf reinforcement mats) to the crossings either in the staff report, at the hearing, or in the required Malibu Valley Farms Comprehensive Management Plan (Dec 2006), it does not appear that the turf reinforcement mats were included in the proposed development before the Commission at the July 9, 2007 hearing. Further, neither the project plans on file, nor the Comprehensive Management Plan identify the stream crossings themselves, thought they were included as part of the project description approved by the Commission. As a result, since the Fish and Game correspondence did not include the "retention" of the crossings (which were a part of the subject CDP), and the turf mats that were the subject of the CDFG review were not a part of the proposed CDP, it appears that the scope of the project addressed by the CDFG correspondence was unrelated to the project that the Commission approved. Therefore the testimony that the Fish and Game "did, in fact, approve the project" is erroneous on the grounds that no portion of the project in CDP 4-06-163 appears to have been the subject of the CDFG Notification. Subsequently, incorrect information was provided to the Commission at the hearing with regard to the scope and applicability of the Fish and Game "approval," and thus this ground for revocation meets Test #1.

Third, the revocation request asserts that the bioswale, with its two direct outlets to the creek, and the riprap proposed on 250 feet of the stream bank also need CDFG approval but never received it. At the hearing, the applicant stated that the bioswale, and impliedly the riprap, was not included within the CDFG Notification. Therefore, there is no evidence that the applicant misrepresented the fact that this portion of the development was not reviewed or approved by Fish and Game. The Commission finds that with regard to the Fish and Game approval of the bioswale and riprap, the applicant did not provide incorrect or incomplete information in association with the subject application, and thus, this ground for revocation does not meet Test #1.

ASSERTION 1.C, TEST #2: Pursuant to Test 2, the Commission must consider whether the applicant *intentionally* included inaccurate, erroneous or incomplete information. As discussed in Test #1 above, inaccurate, erroneous or incomplete information was provided at the hearing with respect to: (1) the fact that CDFG did not bestow a merit-based approval since the correspondence to the applicant indicates that the notice to proceed is based on failure to meet the statutory deadline; and (2) the scope of the CDFG project subject to the notice to proceed in contrast with the project reviewed and approved by the Commission.

With regard to the revocation request's first point, that the CDFG correspondence was misrepresented as a merit-based approval, as described in detail in Test #1

above, the applicant asserted that the Department of Fish and Game approved the project and found that the two stream crossings would not have a significant deleterious impact to the riparian corridor. However, due to the unquestionable clarity of the CDFG correspondence, there could be no misinterpreting the 'absence of a requirement' to get a Streambed Alteration Agreement as an 'approval' of the project. Such statement would presumably be intentional since the applicant would have known about the correspondence, and in fact submitted the correspondence to Commission staff as part of the CDP record. Therefore, the Commission finds that the misrepresentation of the CDFG correspondence at the hearing was intentional and that this ground for revocation meets Tests 1 and 2. Consequently, this assertion requires analysis under the third and final test to determine whether a ground for revocation exists.

With regard to the revocation request's second point, that the project for which the applicant sought approval from Fish and Game was for "installment of Turf Reinforcement Mats to facilitate equestrian crossings across an existing unvegetated, soft bottomed Arizona crossing of Stokes Canyon Creek," and therefore, the Fish and Game correspondence did not cover the *creation* of the two Arizona crossings through the creek bed. The applicant asserted at the hearing that CDFG approved "this" project, presumably indicating the equestrian facility that was the subject of the CDP application. Additionally, the applicant asserted that the project approved by CDFG was specifically intended to include the "retention" of the two stream crossings. As detailed in Test 1 above, the evidence does not support the fact that CDFG included the "retention" of the two stream crossings, but instead limited its project description to the improvements to the existing stream crossings. While staff cannot confirm the contents of the original Notification provided to CDFG by the applicant, the scope of the project that CDFG indicated could go forward without a Streambed Alteration Agreement is for improvements to the stream crossings (which were not a part of the subject CDP). The applicant is responsible for knowing the details of the project description that was accepted by CDFG and specified in the March 15, 2005 correspondence, and further the applicant had access to and in fact submitted CDFG's March 15 2005 correspondence with its application. Consequently, the misstatements that "this" project and the "retention" of the two stream crossings were reviewed and subject to CDFG's notice were presumably intentional. Therefore, the Commission finds that the incomplete information provided in connection with the scope of the Fish and Game project description was intentional, and thus, this ground for revocation meets Tests 1 and 2.

ASSERTION 1.C, TEST #3: Under Test 3, the Commission must determine whether the complete and accurate information would have caused the Commission to require additional or different conditions or deny the application. Under Test 3, the question is whether the Commission would have modified its decision if the Commission had a clear understanding that: (1) the Fish and Game Approval was not a merit-based approval or (2) the project description for

which CDFG indicates could proceed without a Streambed Alteration Agreement did not encompass the equestrian facility or the two stream crossings.

With regard to the subject CDP, the six-acre equestrian facility was reviewed and approved at the July 2007 hearing, and the Commission found the project consistent with the Coastal Act, as reflected in the Final Revised Findings (Exhibit 2) adopted by the Commission on July 8, 2009. Preliminary approvals from other regulatory bodies are not a standard of review under the Chapter 3 policies of the Coastal Act. A clear understanding of the scope and applicability of CDFG's review of the project would not have caused the Commission to make a different decision, either denying the project or adding conditions, because the Commission found the project consistent with the policies of Chapter Three of the Coastal Act – the standard of review in this case.

Therefore, accurate information related to CDFG's review would not have changed the Commission's action to approve the project with conditions. Therefore this ground for revocation does not meet Test 3.

ASSERTION 1.D: Misrepresentation of the State Water Resources Control Board (SWRCB) Review. The revocation request asserts that the applicant misrepresented what actions, if any, had been taken by the State Water Resources Control Board. The record indicates that the scope of the SWRCB review of MVF's proposed project was limited to reviewing the Notice of Intent submitted by the applicant to be covered by the SWRCB's General Permit governing stormwater runoff during construction. The revocation request asserts that the applicant stated that the SWRCB also approved its equestrian site plan in concept; however, that no documentation has been submitted to support this claim. The applicant responded to Commissioner Lowenthal that the approval was for a runoff plan associated with construction and equestrian operations.

The revocation request lays out the following argument in support of this assertion:

- The State Water Resources Control Board approval is for stormwater runoff during construction, as indicated directly on SWRCB's July 27, 2005 correspondence as follows:

  > The State Water Resources Control Board (Slate Water Board) has received and processed your NOTICE OF INTENT TO COMPLY WITH THE TERMS OF THE GENERAL PERMIT TO DISCHARCE STORM WATER ASSOCIATED WITH CONSTRUCTION ACTIVITY... When construction is complete ...dischargers are required to notify the Regional Water Board by submitting a Notice of Termination (NOT). All State and local requirements must be met in accordance with Special Provision No. 7 of the General Permit.

- The applicant stated at the hearing that "we have State Water Resources Control Board approval" (Page 34 of the Transcript).
- The applicant stated that the project 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 in the creek (Page 109 of the Transcript).

- When asked by a Commissioner whether the runoff plan was associated with construction or the equestrian operations, the applicant stated that it was for both. However, this statement was later revised that the State Water Resources Control Board approval did not include the runoff filtration plan (i.e., bioswale) for the equestrian operations.
- Though the applicant later came forward to revise his response regarding the inclusion of the *bioswale, riprap, and retention pond features*, the revisions did not address the salient deficiencies in the truth of the previous statements regarding review of the existing facilities.
- The updated application for the SWRCB approval received in the Commission's record on December 12, 2006 indicates that the applicant applied for a *General Permit to Discharge Storm Water Associated With Construction Activity* (WQ Order No. 99-08-DWQ) for development that comprised only 9,354 sq. ft. And that the application indicates that it is not part of a larger common plan of development, entailed no grading, and contained no roofed impermeable surfaces.
- The bio-swale with its two direct outlets to the creek and the riprap that is part of the "filtration plan" are also streambed alterations that require Fish and Game, Army Corps of Engineers and Regional Water Quality Control Board review (33 U.S.C. Sec. 1341, 1344).
- Commissioners would have conditioned the project differently or would not have approved the CDP for development that did not receive a valid permit from the agencies with jurisdiction over it.

ASSERTION 1.D, TEST #1: The first test in the review of the revocation grounds is whether the applicant included inaccurate, erroneous or incomplete information relative to the subject coastal development permit application.

The available evidence in the record indicates that the SWRCB review was limited to the ministerial act of acknowledging receipt of the applicant's Notification that the applicant intended to comply with the provisions of the National Pollutant Discharge Elimination System (NPDES) *General Permit for Storm Water Discharges Associated with Construction Activity*. The Notification process is ministerial, and there is nothing in the record to suggest that either the SWRCB or any Regional Water Quality Control Board performed any substantive review of MVF facilities. If such an approval were available, it is presumed that the applicant would have provided it for the record by this time. It is not clear that the SWRCB or RWQCB would have the responsibility or authority to review the runoff plan for the equestrian operation itself under its mandate. It does, however, appear (based on the agency's Section 401 guidance document) that certain project components that result in hyrdomodification of the stream, including the in-stream development as well as any project components that

affect stormwater discharge to the creek, may be subject to SWRCB's Section 401 Water Quality Certification Program.

Test #1 requires that incorrect information be provided in association with the subject application. The applicant submitted the June 27, 2005 State Water Resources Control Board's *Notice of Intent to Comply with the Terms of the General Permit to Discharge Storm Water Associated With Construction Activity* (WDID No. 419C330921) to Commission staff on December 12, 2006 prior to the Commission's July 2007 approval of the project. This was made part of the record and available to the public. Therefore the correct information with regard to the scope SWRCB's review was provided by the applicant in association with the application submittal.

However, at the July 9, 2007 Commission hearing, as described in the revocation request, the applicant represented SWRCB's processing of the Notice of Intent to Comply with the Terms of the General Permit as an "approval" of the storm water runoff associated with construction and, moreover, of the long-term equestrian operations, as indicated in the following testimony.

The applicant indicated at the July 9, 2007 Commission hearing that a SWRCB approval was obtained for the subject project (Page 33-34 of the Transcript):

> … 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.

Then, in response to a Commissioner's question, the applicant asserted at the July 9, 2007 Commission hearing that the SWRCB approval included construction practices and the runoff control plan (Page 108 and109 of the Transcript):

> COMMISSIONER KINSEY: …In the presentation that the Malibu Valley Farms made they identified that they had received approvals from the State Water Resources 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 Resources Control Board, you mentioned that this was identified as impaired water body, and how would they reconcile that?
>
> MR. SCHMITZ: … 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.

Further clarification regarding the SWRCB approval was later provided by the applicant (Page 111 of the Transcript) at the July 9, 2007 Commission hearing:

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?...

MR. SCHMITZ: … 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.

Shortly thereafter, the applicant clarified that the SWRCB approval did not include the bioswale (Page 112 of the Transcript):

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.

The testimony above is misleading for two reasons, it implies that a substantive SWRCB review of the equestrian facility occurred and it implies that the scope of the project did in fact include some portions of the equestrian facility, not just construction.

By stating that "the project has received review and approval from the Water Quality Control Board" and that the Water Quality Control Board "did, in fact, approve the project," the applicant implied that another state agency with specific water quality expertise had conducted a substantive review and that that review covered not only the construction phase, but also the ongoing operations of the facility. Given that the applicant only went through a ministerial Notification process, the use of the word "approval" is misleading in and of itself. However, even assuming that use of the word "approval" was appropriate to describe the fact that the applicant was authorized to proceed with the demolition and construction portion of the project, the use of the phrase "review and approval" specifically connotes that the reviewing party undertook a discretionary review. The fact that Commissioners believed the SWRCB to be a substantive review of the project is reflected in Commissioner Kinsey's question. Commissioner Kinsey's question of the applicant reflects the idea that a substantive review occurred and that the scope of the SWRCB covers the equestrian facility as a whole and not just construction activities.

Moreover, the applicant's original claim that the SWRCB's review was "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" also implies that a substantive review was performed since the SWRCB presumably found that there would be "no deleterious impacts" from the project. Even after the applicant revises its statements that the review did not encompass the bio-swale (and impliedly the rip rap), the previous statements regarding the review of impacts seem to apply to the entire project with the exception of these water quality features. Therefore the Commission finds that incorrect information was provided by the applicant in association with the subject application with respect to the ministerial nature of the SWRCB approval, and thus this ground for revocation meets Test #1.

Second, the testimony above leaves the false impression that SWRCB reviewed a runoff plan for the long-term operation of the equestrian facility, not merely a runoff plan for the proposed construction activity. This is evident as Commissioner Lowenthal asked whether the SWRCB approval was for the "runoff plan associated with construction? Or runoff plan associated with the equestrian operations?" The applicant replied "…it is for both." Later at the same hearing, the applicant attempted to correct the misinformation to the extent that the "bioswale" was not included in the SWRCB review. However, this clarification does not make it clear that the applicant is retracting all previous references to the review of a runoff plan associated with the operation of MVF's facility. The lingering impression is that the entire project minus the bio-swale and the improved filtration plan "was before [DFG] and Water Quality Control Board, which did, in fact, approve the project." Because the previous Commissioner question was framed to separate construction versus runoff associated with long-term operations, the applicant's clarification regarding the bioswale does not dispel the underlying assertion that SWRCB undertook a review of the equestrian facility. Given that the SWRCB did not undertake any review of the runoff plan associated with the facility, the testimony provided by the applicant at the July 9, 2007 hearing is incorrect and incomplete with regard to the scope of the SWRCB review. Therefore the Commission finds that incorrect information was provided by the applicant in association with the subject application with respect to the scope of the SWRCB approval, and thus this ground for revocation meets Test #1.

The revocation request makes a separate assertion that the bioswale outlets and rip rap require Regional Water Quality Control Board Review, which did not occur. Although there is no supporting documentation that indicates that a more expansive review of the proposed equestrian facility itself requires further review by SWRCB, or the Regional Water Quality Control Board, beyond the 9,354 sq. ft, it appears that the bioswale outlets and rip rap may be subject to the Section 401 Water Quality Certification Program. Therefore, the revocation assertion that additional review is necessary by SWRCB/RWQCB, appears to be accurate. At the hearing, the applicant indicated that the SWRCB review did not cover the "bioswale;" however, the applicant implied at the same time that additional review by SWRCB may not be necessary since the bioswale development "goes above

and beyond" the project previously submitted to the SWRCB. Regardless, this statement alone is not adequate to conclude that the applicant provided incorrect or incomplete information regarding the permitting status of the bioswale and related water quality features. Therefore, the Commission finds that the applicant did not provide incorrect or incomplete information with regard to whether the bioswale and other runoff filtration development require additional review by the SWRCB/RWQCB, and this ground for revocation does not meet Test #1.

ASSERTION 1.D, TEST #2: Pursuant to Test 2, the Commission must consider whether the applicant *intentionally* included inaccurate, erroneous or incomplete information. As discussed in Test #1 above, inaccurate, erroneous or incomplete information was provided at the hearing with respect to the fact that: (1) the SWRCB review was not a merit-based approval or (2) the scope of the SWRCB review did not include a review of the runoff plan for the equestrian operation.

With regard to the first point, as discussed above, the ministerial nature of the SWRCB was misrepresented by the applicant. In this case, there is insufficient evidence to prove that the applicant intentionally misrepresented the ministerial nature of the SWRCB review. Though the applicant certainly over-stated the merit of the review, it may be that the pervasive use of the word "approval" was intended to convey that the SWRCB processed the applicant's Notification through the official means. Therefore in regard to this point, the requestor has not presented any circumstances or evidence that indicate the applicant intentionally provided information that is inaccurate, erroneous, or incomplete relative to the ministerial nature of the SWRCB approval.

With regard to the second point, as discussed above, the scope of the SWRCB Notification process only covered the proposed demolition and construction activities, and did not apply to any long-term operation, or runoff plan, associated with the facility. However, the applicant erroneously suggested that the SWRCB did in fact approve portions of the equestrian facility. Given that the Notification process is related only to construction activity, and that the correspondence from SWRCB recognized and processed MVF's *Notice of Intent to Comply with the Terms of the General Permit to Discharge Storm Water Associated With Construction Activity*, the applicant had direct knowledge of the details of the both the Notice and the applicable project description with regard to SWRCB's review. Consequently, the misstatements that confirmed the SWRCB approval was for both a runoff plan associated with construction and a runoff plan associated with the equestrian operations (even as corrected to exclude the bioswale), as well as statements that the Regional Board "did, in fact, approve the project" were presumably intentional. Therefore, the Commission finds that the incomplete information provided in connection with the scope of the SWRCB review was intentional.

ASSERTION 1.D, TEST #3: Under Test 3, the Commission must determine whether the complete and accurate information would have caused the Commission to require additional or different conditions or deny the application. Under Test 3, the question is whether the Commission would have modified its decision if the Commission had a clear understanding that: (1) the SWRCB review was not a merit-based approval or (2) the scope of the SWRCB review did not include a review of the runoff plan for the equestrian operation.

With regard to the subject CDP, the six-acre equestrian facility was reviewed and approved at the July 2007 hearing, and the Commission found the project consistent with the Coastal Act, as reflected in the Final Revised Findings (Exhibit 2) adopted by the Commission on July 8, 2009. Preliminary approvals from other regulatory bodies are not a standard of review under the Chapter 3 policies of the Coastal Act. A clear understanding of the nature and scope of the SWRCB review would not have caused the Commission to make a different decision, either denying the project or adding conditions, because the Commission found the project consistent with the policies of Chapter Three of the Coastal Act – the standard of review in this case.

Therefore, accurate information related to SWRCB's review would not have changed the Commission's action to approve the project with conditions. Therefore this ground for revocation does not meet Test 3.

ASSERTION 1.E: Misrepresentation of Recycling Recognition Certificate as a Competitive Best Practices Manure Management Award. The revocation request asserts that the applicant intentionally misrepresented Malibu Valley Farm's manure management program by claiming that the MVF had won a competitive award for state-of-the-art manure management practices.

The revocation request lays out the following argument in support of this assertion:

- The applicant intentionally, specifically, and repeatedly misrepresented MVF's stewardship as expressed through its manure management program by repeatedly claiming that MVF had won a competitive award for state-of-the-art manure management.
- Horse facilities generate significant quantities of manure, and therefore the method by which manure is managed is critically important to coastal resources. The major issue confronting the approval of the project was the LUP's required 100-ft setback which exists in part to serve as a buffer to prevent pollutants associated with animal waste from degrading water quality.
- The applicant received a SmartBusiness Recycling Award certificate from the Los Angeles County Department of Public Works (DPW) in 2002. The SmartBusiness Recycling Program is a program that links businesses with recyclers with the purpose of reducing the amount of waste going to landfills

by finding recycling alternatives. The participants in the SmartBusiness Recycling Program are not limited to equestrian facilities.

- The SmartBusiness Recycling Award is not obtained through a competitive process but represents a certificate of participation. A participant becomes eligible for a certificate by implementing the recommendations offered by the SmartBusiness Recycling Program consultant.
- Therefore the SmartBusiness Recycling Award certificate received by the applicant is based on waste reduction and diversion practices, and is not a "manure management" award. The award was not obtained as a result of a competitive process in which MVF demonstrated its superiority over 700 other equestrian centers as the applicant claimed.
- The SmartBusiness Recycling Award certificate was issued in 2002 but not renewed for subsequent years. MVF is not currently included in the SmartBusiness Recycling Program database of participating organizations and has not been recognized as a participant of the program beyond the initial certificate of participation given in 2002 based on a single visit in 2000.
- Evidence provided that the SmartBusiness Recycling Award is not for MVF's Manure Management Plan includes a series of emails from staff at the Department of Public Works, reproductions from the SmartBusiness Recycling website, and testimony from LA. County Planning Department Supervisor Gina Natoli at the Commission's July 8, 2009 hearing to adopt Final Revised Findings.
- The applicant stated that the County is using MVF's manure management plan as a template to incorporate into the County's proposed Local Coastal Plan. However, the Department of Regional Planning is not using Malibu Valley Farms as a model for manure management BMPs, and MVF's manure management practices are not being disseminated to other equestrian facilities or being incorporated into the County's proposed Local Coastal Program. The applicant's statements regarding the County's use of MVF's manure management plan as a template for other equestrian facilities cumulatively influenced the Commissioners into believing L.A. County was monitoring and in approval of more than they actually were.
- The Commissioners would have denied the project or required different conditions if they had not been deliberately mislead to think that MVF was already using exemplary manure management practices and not in need of further direction or monitoring.
- Evidence that the Commission relied upon the applicant's claim of state-of-the-art manure management plan to approve the project with a less-than-100-ft buffer is two-fold: (1) during deliberations, the Commissioners who voted in favor of the project voiced their overall impression of MVF as an environmentally conscientious organization, and (2) the Revised Findings adopted July 8, 2009 inaccurately report that MVF has developed and continues to implement an equestrian waste management program that has

already been recognized with a Los Angeles County Best Management Practices Award (p. 23). The Commissioners' perceptions of MVF's expertise and integrity were significantly altered by the misinformation since it was included in the Revised Findings Report as justification of the CMP on which the Revised Findings Report lies.

ASSERTION 1.E, TEST #1: The first test in the review of the revocation grounds is whether the applicant included inaccurate, erroneous or incomplete information relative to the subject coastal development permit application. The revocation request asserts that the applicant intentionally, specifically, and repeatedly misrepresented MVF's stewardship as expressed through its manure management program by repeatedly claiming that MVF had won a competitive award for state-of-the-art manure management.

MVF's Manure Management Plan is comprised of four bullet points contained within the Malibu Valley Farms Comprehensive Management Plan, dated December 2006, as follows (Page 8):

Malibu Valley Farms proposes to continue its current manure management program, including:

- All stalls, corrals, barns, wash areas, etc. shall be cleaned and manure removed three times per day.
- Manure is to be placed in two separate large trash bins (used exclusively for manure waste); one for the north side and one for the south side of the farm.
- Manure trash bins will be located on an impervious surface and will have tarps placed over them during rains.
- Trash bins will be collected at least once a week and will be taken to a mushroom farm for recycled use. If the mushroom farms are unable to accept the manure, the manure will be taken to the local landfill.

The applicant asserted in the organized presentation that (Page 34 of the Transcript):

…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.

Other characterizations of the applicant's award were represented in written form as follows:

… 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 an example to give to other owners seeking equestrian permits. (Letter from applicant to Commissioner Blank, pg. 2)

…The Los Angeles County Department of Public Works ("County") has recognized the facility as achieving the highest levels of best management practices. The facility recently received a County award for exemplary leadership through its participation in the County SmartBusiness Recycling Program, one of only ten facilities, out of over 2000 participating commercial facilities, that received the County award. (Letter from applicant to Rudy Silva, L.A. County Department of Regional Planning, accompanying the Plot Plan AIC application, Page 5)

As indicated above, the applicant refers to the award as follows: "the best waste management plan in Los Angeles County," "won the manure management award," and "award-winning Best Management Practices Plan."

The SmartBusiness Recycling Program Award certificate was reproduced as a slide in the applicant's organized presentation at the July 9, 2007 Commission hearing and was available as part of the Commission's record (Exhibit 14). The award reads:

THE COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

PROUDLY RECOGNIZES

BOUDREAU TRUST OF 1990

FOR EXEMPLARY LEADERSHIP IN THE BUSINESS COMMUNITY THROUGH PARTICIPATION IN THE SMARTBUSINESS RECYCLING PROGRAM. THE COUNTY OF LOS ANGELES COMMENDS YOUR CONTRIBUTION AND COMMITMENT TO PRESERVE THE ENVIRONMENT.

Because the organized presentation included a picture of the SmartBusiness Recycling award, this analysis assumes that the applicant's assertions in regard to receiving a manure management plan award refer specifically to the SmartBusiness Recycling Program Award. This is the only award mentioned in the Commission's record and if a separate award were available, it is presumed that the applicant would have provided it for the record by this time.

The Commission's record indicates that MVF was presented with a SmartBusiness Recycling Program award by the Los Angeles County Department of Public Works (DPW) for notable waste reduction and diversion practices in 2002. The award was for participating in a waste reduction program to reduce the amount of waste going to landfills. A letter from Los Angeles County, Department of Regional Planning states, "While the Malibu Valley Farms waste evaluated by the Department of Public Works included horse manure, the award given to Malibu Valley Farms was strictly based on a reduction in the amount – the weight – of all waste sent to a landfill. The SmartBusiness Recycling Program merely recognized waste reduction efforts and did not evaluate any BMPs related to management of horse waste." (Exhibit 11) An email, dated March 11, 2010, from the Department of Public Works to the Department of Regional Planning indicates that the waste reduction was mostly due to recycling manure (Exhibit 11).

The revocation request asserts that the SmartBusiness Recycling Award is not obtained through a competitive process but represents a certificate of participation. A participant becomes eligible for a certificate by implementing the recommendations offered by the SmartBusiness Recycling Program consultant. A strict read of the award indicates that it is for "exemplary leadership … through participation in the SmartBusiness Recycling Program." This could be interpreted to mean that the award was to recognize "participation" in the program. However, based on available information in the emails from the DPW to Mary Hubbard, businesses that receive a SmartBusiness Award are selected from a pool of eligible participants. Eligible participants were determined by a Program consultant based a site assessment of the waste and waste diversion practices of a business.

In an August 25, 2008 email, DPW staff indicates the following:

> In Spring 2002, "Boudreau Trust of 1990" received the SmartBusiness Recycling Award. In order to qualify for an award, each business voluntarily agreed to a SmartBusiness Recycling Program site visit, where their disposal and waste reduction activities were surveyed. At the conclusion of the site visit, the existing diversion was assessed and/or recommendations to the business were made. If the business showed existing significant waste diversion or implemented the waste diversion suggestions provided from the site visit, they became eligible for the award.

From the above, it appears that the award was more than a certificate for participation, and that MVF received a reward from a pool of businesses in the SmartBusiness Recycling Program. In a March 11, 2010 email from DPW staff to Department of Regional Planning staff, DPW confirms that the award was for waste diversion, mostly for recycling manure.

Test #1 requires that incorrect information be provided in association with the subject application. As shown above, the applicant refers to the award as: "the best waste management plan in Los Angeles County," "the manure management award," and "award-winning Best Management Practices Plan." The applicant explained in the organized presentation that it "won the manure management award" and at least one Commissioner, received correspondence which described the award as an "award-winning Best Management Practices Plan."

The letter from the applicant to the Department of Regional Planning in association with the local government's preliminary approval was not a part of the Commission's record, and therefore not an influencing factor in the Commission's July 9, 2007 approval of the project. Regardless, the letter to the Department of Regional Planning was not received by the Commission or otherwise represented in the record and therefore this correspondence is not subject to Test #1 review since it was not provided to the Commission by the applicant in association with the subject CDP. However, the information provides background with regard to the applicant's interpretation of the award.

Focusing on the two identified instances in which the applicant asserted directly to the Commission the scope of the award, the applicant did provide incorrect or incomplete information with regard to the subject application. As shown in the transcript excerpt above, the applicant specifically indicated that MVF won a manure management award from the County out of 700 equestrian facilities in the County of Los Angeles, and that MVF was "deemed the very best." Given that 700 equestrian facilities did not participate in the SmartBusiness Program, MVF was not the equestrian facility identified as having the very best manure management in the County. In fact the participants in the SmartBusiness Program include a variety of business with no focus or special recognition of equestrian facilities. The DPW did not have available information on the number of equestrian facilities that might have been included in the Program at that time. Moreover, the September 18, 2008 email from DPW indicates that "in general, the program visits not a large number of businesses each year, and therefore requires a period to accumulate potential winners." For the above reasons, the assertion that MVF received a competitive award over 700 equestrian facilities is erroneous.

Further, consideration must be given to both the phrases "manure management award" and "award-winning Best Management Practices Plan." Can the Smart Business Recycling Program award be accurately characterized as a manure management award? The September 23, 2008 email from DPW indicates that the award is not accurately described as a manure management award since the award is not specific to manure management and there is no comparative ranking of equestrian facilities. Moreover, both "manure management award" and "award-winning Best Management Practices Plan" imply that other on-the-ground aspects of managing horse waste were also reviewed such as methods of clean-up and maintenance, timing, location of facilities and storage, success of water quality protection practices, etc. However, the SmartBusiness Recycling Program award is limited to waste diversion practices, specifically the reduction in the amount of waste from the MVF business going to the landfill. Since most of the waste at the MVF facility is manure, the recycling of manure was a significant factor in the waste reduction effort, but not the only factor in the review. For these reasons, the Commission finds that incorrect information was provided to the Commission with regard to the scope and applicability of the SmartBusiness Recycling award, and thus this ground for revocation meets Test #1.

The revocation request also asserts that the applicant provided incorrect information with regard to the County's use of MVF's manure management plan as a template for incorporation into the County's LCP. The revocation request asserts that the Department of Regional Planning is not using MVF as a model for manure management BMPs, and MVF's manure management practices are not being disseminated to other equestrian facilities or being incorporated into the County's proposed Local Coastal Program. The revocation request also asserts that the applicant's statements regarding the County's use of MVF's manure management plan as a template for other equestrian facilities

cumulatively influenced the Commissioners into believing L.A. County was monitoring and in approval of more than they actually were.

The applicant asserted in its July 9, 2007 organized presentation that (Page 34 of the Transcript):

> …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. [Emphasis added]

The applicant also asserted the following in a letter to Commissioner Blank:

> … 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 an example to give to other owners seeking equestrian permits. (Letter from MVF to Commissioner Blank, pg. 2) [Emphasis added]

As indicated above, the applicant does claim that the "County" is using the manure management plan as a template to incorporate into the LCP and that the waste management plan will be used as an example to give to other owners seeking equestrian permits. The Department of Regional Planning has confirmed that their department is not incorporating MVF's manure management plan into the LCP and that they are not disseminating the information to other equestrian operators. It would be expected that the Department of Regional Planning would be the department in charge of LCP development, and therefore statements from a Department of Regional Planning supervisor are enough evidence to conclude that MVF's manure management plan is not intended to be incorporated into the LCP. Therefore, the applicant's claims to the contrary are incorrect, and thus, this ground for revocation meets Test #1.

However, available evidence within the Commission's record supports the applicant's claim that the County has asked to use MVF's plan as an example to be distributed to other applicant's proposing equestrian facilities. The ERB Meeting Minutes state under '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." Therefore, the Commission finds that with regard to statements the County asked to distribute MVF's waste management plan, the applicant did not provide incorrect or incomplete information in association with the subject application, and thus this ground for revocation does not meet Test #1.

ASSERTION 1.E, TEST #2: Pursuant to Test 2, the Commission must consider whether the applicant *intentionally* included inaccurate, erroneous or incomplete information. As discussed in Test #1 above, inaccurate, erroneous or incomplete information was provided at the hearing with respect to: (1) the fact that the award received by MVF was for waste diversion rather than manure

management practices; and (2) the claim that the County intends to incorporate MVF's manure management plan into the Local Coastal Program.

As described in Test #1, above, the information provided at the hearing inaccurately describes the SmartBusiness Recycling Program award as a manure management award (which implies that other on-the-ground aspects of managing horse waste were also reviewed such as methods of clean-up and maintenance, timing, location of facilities and storage, success of water quality protection practices, etc.) rather than ascribing it to waste reduction and diversion efforts. Further, the applicant's claim that the certificate was awarded in a comparative ranking of 700 equestrian facilities was incorrect because the actual pool of potential recipients of the award were a subset of a variety commercial businesses within the County, with no special emphasis or participation by equestrian facilities.

Given that the applicant confidently provided a detailed account of the number of facilities and participants and the applicant had a PowerPoint slide dedicated to the award during the applicant's organized presentation, it is presumed, and implied by the applicant, that the applicant knew the details of the award. Even if it is assumed that such statements at the hearing (regarding the competitive claims and assertions that MVF is "deemed the very best" equestrian facility in the County due to its waste management practices) were off-the-cuff, the applicant provided written statements, for which the applicant would have the opportunity to more thoughtfully consider, to at least one Commissioner representing similar claims. For these reasons, the Commission finds that the applicant *intentionally* provided inaccurate, erroneous or incomplete information in conjunction with this assertion, and therefore this ground for revocation meets Test #2.

As described in Test #1 above, the applicant's claims that the County intends to incorporate MVF's manure management plan into the Local Coastal Program are unsupported. However, the purpose of Test #2 is to consider whether the applicant intentionally misrepresented information in association with the subject application. Establishing that the applicant intentionally provided inaccurate or erroneous information is challenging in this case. The requestor has not presented any circumstances or evidence that indicate the applicant intentionally provided information that is inaccurate, erroneous, or incomplete relative to this assertion. There is no information in the record as to where this misinformation originated – the only fact that is clear is that the Department of Regional Planning does not plan to incorporate MVF's plan into the LCP. While unrelated to the specific development of the LCP, there is one other fact in the record that supports the applicant's perception that at least some staff at the County found the manure management practices at MVF template-worthy. The meeting minutes of the ERB reflect that the ERB specifically requested a copy of MVF's waste management program for distribution to other ERB applicants with equestrian facilities. This certainly provides the impression that the ERB had a

favorable view of the current manure management practices and that these practices would provide a model to other such facilities.

Based on the considerations above, the Commission finds insufficient evidence to conclude that the applicant *intentionally* provided inaccurate, erroneous or incomplete information in conjunction with this assertion, and therefore this ground for revocation does not meet Test 2 and would not be a legitimate ground for revocation under Section 13105(a) of the California Code of Regulations.

ASSERTION 1.E, TEST #3: Under Test 3, the Commission must determine whether the complete and accurate information would have caused the Commission to require additional or different conditions or deny the application. Under Test 3, the question is whether the Commission would have modified its decision if the Commission had a clear understanding that MVF did not win a competitive award for its manure management plan over 700 other equestrian facilities.

With regard to the subject CDP, the entire project was reviewed and approved at the July 2007 hearing, and the Commission found the project consistent with the Coastal Act. The Final Revised Findings (Exhibit 2) adopted by the Commission on July 8, 2009 reflect that the Commission approved the project based on independent findings of consistency with regard to the protection of coastal resources, including water quality and ESHA. The manure management plan was submitted with the application as part of the Malibu Valley Farms Comprehensive Management Plan (CMP) and therefore part of the record available to the public. To ensure that the applicant continued to remove and manage waste, the Commission required the CMP to be implemented pursuant to Special Condition 1. The fact of whether the manure management plan itself received an award from another entity may be perhaps laudable but not material to determining the project's consistency with the Coastal Act.

Since the project was approved based on analysis of the project's impacts to coastal resources, a clear understanding that MVF's manure management plan did not win an award would not have caused the Commission to make a different decision, either denying the project or adding conditions, because the Commission found the project consistent with the policies of Chapter Three of the Coastal Act – the standard of review in this case.

Since the requester's assertion would not modify the analysis as to the project's consistency under the Coastal Act, the Commission would not modify its decision even if Tests 1 and 2 were satisfied. Therefore this ground for revocation does not meet Test 3.

SECOND GROUND: Misrepresentation of Commercial Public Recreation v. Private Horse Breeding Operations

ASSERTION 2.A: Misrepresentation of Whether and to What Degree the Facility Provides Public Recreational and Access Opportunities. The revocation request asserts that the applicant misrepresented the legal nature and status of the equestrian operation in that MVF does not have Los Angeles County approvals for commercial activities on the site. The revocation request asserts that MVF does not have the necessary local approvals for private commercial operations, including private recreation clubs, a riding academy, or the boarding of any horses except its own; nor does MVF have the necessary local approvals for public commercial recreation. And thus, MVF cannot legally provide commercial equestrian opportunities or public recreation at the site.

Additionally, the revocation request asserts that the claim that MVF is an important public access point is deliberately misleading since no trailheads to public trails lead from the property and since there are other ample public access trails in the vicinity. MVF cannot legally provide public access opportunities at the site because it does not have local approvals to do so.

Further, that the Commission would have made a different decision if not for the misrepresentation of the public benefits of the project because the Commission could not approve facilities that violate local zoning (13 Pub. Res. 21002.1(c)).

The revocation request lays out the following argument in support of this assertion:

- MVF is located within the A-1-10 Light Agricultural Zone. With respect to equestrian uses, the A-1-10 zone only allows the raising of horses and the grazing of horses provided: (a) such grazing is not a part of or in conjunction with any commercial riding academy located on the premises; and (b) that no buildings, structures, pens or corrals designed or intended to be used for the housing or concentrated feeding of such stock be used on the premises for such grazing other than racks for supplementary feeding, troughs for watering, or incidental fencing (LA County Code Sec 22.24.070).
- The A-1-10 allows some additional equestrian uses provided that a Conditional Use Permit (CUP) is obtained. The following equestrian uses on A-1-10 require a CUP: (a) the raising of horses including the breeding and training of such animals, not subject to the limitations of Sec 22.24.070; (b) recreation clubs, private, including polo; and (c) riding academies and stables, with the board of horses (LA County Code Sec 22.24.100).
- A Director's Permit is required for riding and hiking trails (LA County Code Sec 22.24.090).

- The only equestrian uses allowed on the property are those that require no [discretionary] permits from the Department of Regional Planning, i.e., the keeping one's own horses and horse breeding.
- MVF does not have a CUP for private recreation clubs, a riding academy, or the boarding of any horses except its own, or any other type of commercial permit to serve the public. MVF does not have a Director's Permit for riding and hiking trails.
- The LA County Plot Plan Approval-In-Concept specifically states that the property is not approved for commercial use, as do the January 2003 ERB meeting minutes.
- The applicant asserted at the hearing that all necessary permits from the local government were in place.
- The applicant repeatedly stated and/or implied that MVF was an important public access point, which is knowingly and deliberately misleading because no trailheads to public trails lead from the property and ample opportunity for access to public lands and trails exists at both the publicly-owned King Gillette Ranch across the street and Malibu Creek State Park less than one mile away.
- MVF's proximity to publicly owned lands does not mean that it provides access to them. Its proximity means that its own potential recreational access value is limited since more than adequate public access and recreational opportunities exist in the area.
- The applicant intentionally, specifically, and repeatedly stated and/or implied that MVF is an important public recreation facility, which is misleading and inaccurate since the facility is not zoned or permitted for public commercial use. Consequently, MVF cannot rent or board horses, provide riding lessons, or operate private recreation clubs without a permit.
- Past LA County actions indicate a disinclination to approve discretionary permits and substantial amounts of public resources have been consumed in fighting the illegal use of the property.
- On the CDP application, the applicant indicated that the "facility provides equestrian opportunities for the public" and checked boxes to indicate that the development would a) protect existing lower-cost visitor and recreational facilities, and b) that the development provides "public or private recreational opportunities."
- That the Commissioners were mislead is evident by their comments during the hearing and by the Final Revised Findings (Exhibit 2) adopted by the Commission on July 8, 2009, which heavily used public access and recreation opportunities as a primary rationale for approving the CDP. However, this rationale is based on false information, however, leaving the Commission without legal justification for approving the CDP.

- If the Commissioners had correctly understood that MVF does not and cannot provide public access and recreational opportunities, they would have conditioned the project differently or voted to deny the project.
- CEQA provides that "[i]f economic, social, or other conditions make it infeasible to mitigate one or more significant effects on the environment of a project, the project may nonetheless be carried out or approved at the discretion of a public agency if the project is otherwise permissible under applicable laws and regulations [13 Pub. Res. 21006.2(c)].
- With regard to the applicant's claims that MVF hosts equestrian clubs, once a year members of the Recreation and Equestrian Coalition come together for a ride that occurs on Malibu Creek State Park trails, not on Malibu Valley Farms trails. Only the private barbeque that occurs after the ride occurs at MVF. This public knowledge is corroborated by a picture and caption about the event that appeared in the 10-16-08 edition of the local newspaper, *The Acorn*. The picture shows the riders having to use public highways to get from MVF to the trail system and Malibu Creek State Park.

ASSERTION 2.A, TEST #1: The first test in the review of the revocation grounds is whether the applicant included inaccurate, erroneous or incomplete information relative to the subject coastal development permit application.

Malibu Valley Farms has not clarified the exact nature of all of the commercial activities that occur on the site. The approved project description, from the June 25, 2009 staff report, includes:

> …[A]fter-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 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 Commission-approved project description is silent on whether the equestrian facility would be for commercial or private purposes. However, the approved project description includes the phrase "boarding of horses" which implies the

boarding of horses, other than just by the owner. Additionally, the project description specifically includes the use of the facilities for equestrian recreational opportunities. From the description, the MVF facility approved by the Commission included both public recreational and commercial components.

However, the scope of the commercial activities and recreational uses was not specifically described in the Final Revised Findings (Exhibit 2) adopted by the Commission on July 8, 2009, nor specified by the applicant within the CDP application. Therefore, a review of the record has been undertaken to attempt to discern, as best as possible, the types of uses that the project includes in order to assess the permits that are required at the local level.

At the July 9, 2007 hearing the applicant used the following words and phrases to describe the types of use of the property:

- "established equestrian center" "premier equestrian center"
- "critical equestrian facility in an equestrian area"
- "thoroughbred breeding ranch" "produce approximately 20 beautiful foals per annum"
- "the farm"
- "the ranch"
- "agriculture"
- "host the annual recreational equestrian coalition ride"
- "host the Compton Junior Posse, including sleepovers. The kids come out from Compton, they ride the horses, they stay there."
- "host the Princess Riding Club"
- "host to the Corral 36 Pony Club"
- "the Recreation Equestrian Coalition, the local ETIs [Equestrian Trails, Inc. members], they all use the facilities"
- "the local evacuation center and certified staff with the California Department of Forestry"
- "the only evacuation center for equestrians in the Santa Monica Mountains"
- "thriving business"
- "public recreation uses… like the rec ride, or the Compton Posse"
- "lower-cost visitor-serving commercial uses [like the Compton Posse]"

In addition, there was testimony from employees that work at Malibu Valley Farms and the applicant indicated that "certified staff" are associated with MVF, so it is logical to conclude that personnel are present on the site to serve the equestrian facility. In addition, the representative stated that "the deliberations today will have implications for a $7 billion equestrian industry in the State of California." (Page 29 of the Transcript)

From the above, it can be inferred that an equestrian business is occurring on the site. Further, it can be taken from the comments listed above that MVF serves

equestrian community groups. Additionally, members of the public testified that they had either boarded horses or taken riding lessons at MVF. From the outside testimony, it seems that additional commercial activities provided by MVF currently include, or included in the past, riding lessons and horse boarding available to the public.

The revocation request asserts that the applicant misrepresented the legal nature and status of the equestrian operation in that MVF does not have Los Angeles County approvals for commercial activities on the site. The revocation request asserts that MVF does not have the necessary local approvals for private commercial operations, including private recreation clubs, a riding academy, or the boarding of any horses except its own; nor does MVF have the necessary local approvals for public commercial recreation. And thus, MVF cannot legally provide commercial equestrian opportunities or public recreation at the site.

The site is zoned Light Agriculture, minimum 10 acres, (A-1-10) which, per County Code Section 22.24.070.B, allows some agricultural uses as a Permitted Use:

22.24.070 Permitted uses. Premises in Zone A-1 may be used for:

…

B. The following light agricultural uses; provided that all buildings or structures used in conjunction therewith shall be located not less than 50 feet from any street or highway or any building used for human habitation:

- The raising of horses and other equine, cattle, sheep, goats, alpacas, and llamas, including the breeding and training of such animals, on a lot or parcel of land having an area of not less than one acre and provided that not more than eight such animals per acre of the total ground area be kept or maintained in conjunction with such use.
- The grazing of cattle, horses, sheep, goats, alpacas, or llamas on a lot or parcel of land with an area of not less than five acres, including the supplemental feeding of such animals, provided:
    a. That such grazing is not part of nor conducted in conjunction with any dairy, livestock feed yard, livestock sales yard or commercial riding academy located on the same premises;
    b. That no buildings, structures, pens or corrals designed or intended to be used for the housing or concentrated feeding of such stock be used on the premises for such grazing other than racks for supplementary feeding, troughs for watering, or incidental fencing.

Additionally, the Light Agricultural zone requires certain uses to obtain a Director's Review, per County Code Section 22.24.090:

22.24.090 Uses subject to a director's review and approval. If site plans therefore are first submitted to and approved by the director, premises in Zone A-1 may be used for:

A. The following uses, subject to the same limitations and conditions provided in Section 22.20.090 (Zone R-1):

…

- Riding and hiking trails excluding trails for motor vehicles.

…

Moreover, the Light Agricultural zone requires certain uses to obtain a Conditional Use Permit, per County Code Section 22.24.100:

22.24.100 Uses subject to permits. Property in Zone A-1 may be used for:

A. The following uses, provided a conditional use permit has first been obtained as provided in Part 1 of Chapter 22.56, and while such permit is in full force and effect in conformity with the conditions of such permit for:

…

- The raising of horses and other equine, cattle, sheep, goats, alpacas, and llamas, including the breeding and training of such animals, not subject to the limitations of Section 22.24.070, on a lot or parcel of land having, as a condition of use, an area of not less than five acres.

- Recreation clubs, private, including tennis, polo and swimming; where specifically designated a part of an approved conditional use permit, such use may include a pro shop, restaurant and bar as appurtenant uses.

…

- Riding academies and stables, with the boarding of horses, on a lot or parcel of land having, as a condition of use, an area of not less than five acres.

B. The following uses, provided the specified permit has first been obtained, and while such permit is in full force and effect in conformity with the conditions of such permit for:

- Temporary uses, as provided in Part 14 of Chapter 22.56

Temporary uses are also regulated by the County as required in Part 14 of Chapter 22.56 of the County Code:

Part 14 TEMPORARY USE PERMITS

22.56.1830 Purpose.

The temporary use permit is established to recognize that certain temporary activities may be appropriate at specific locations but would be inappropriate on a permanent basis. The intent in establishing the temporary use permit procedure is to provide a mechanism to regulate specified short-term land use activities to avoid or mitigate adverse effects or incompatibility between such short-term land uses activities and the surrounding area where these temporary activities are proposed. (Ord. 99-0071 § 7, 1999: Ord. 1494 Ch. 5 Art. 14 § 514.1, 1927.)

22.56.1835 List of temporary uses.

The following temporary uses may be established with a valid temporary use permit:

-- Carnivals, exhibitions, fairs, festivals, pageants and religious observances sponsored by a public agency or a religious, fraternal, educational or service organization directly engaged in civic, charitable or public service endeavors conducted for no more than six weekends or seven days during any 12-month period except where a longer time period is approved pursuant to Section 22.56.1885. "Weekend" means Saturday and Sunday, but national holidays observed on a Friday or Monday may be included. This provision shall not include outdoor festivals and tent revival meetings.

-- Movie on-location filming for a period of time to be determined by the Director.

-- Outside display or sales of goods, equipment, merchandise or exhibits, in a commercial zone, conducted not more than once during any 30-day period nor more than four times during any 12-month period with each time not exceeding one weekend or three consecutive calendar days, provided that all goods, equipment and merchandise are the same as those sold or held for sale within the business on the lot or parcel of land where the outside display and sales are proposed. This provision shall not permit the outside storage of goods, equipment, merchandise or exhibits except as otherwise may be provided by this Title 22. (Ord. 99-0071 § 8, 1999: Ord. 88-0022 § 1, 1988: Ord. 83-0069 § 1, 1983; Ord. 83-0007 § 6, 1983.)

The only preliminary County approval available in the Commission's record is limited to the Approval-In-Concept (AIC) of the Plot Plan (including the associated ERB Review). The Plot Plan approval-in-concept, dated February 3, 2004 specifically states the following (Exhibit 10):

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 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.

From the language of the AIC, it is abundantly clear that the County Department of Regional Planning's preliminary approval of the subject facilities is for *private* use of the site. The AIC specifically did not approve any commercial use on the subject property.

Based on a review of the record, the County Code, and communication with Department of Regional Planning staff, it can be concluded that MVF does not have the requisite local permits for the facility, as approved by the Commission. Table 1, below, describes the permits/reviews that need to be undertaken by MVF at the local level if it intends to implement commercial operations, retain riding trails, or host equestrian events for outside groups. Even if the applicant chooses not to undertake any future commercial operations, retain riding trails on

site, or host any temporary events, the applicant still needs to re-file the Plot Plan for the full original development.

Table 1. The key discretionary actions required at the County level.

Permit Action	Need For	Status	Comment
Plot Plan Review	Proposed Development	Only For A Portion Of The Project	Needs to be Re-filed
Conditional Use Permit	Commercial Uses	Application Has Not Yet Been Submitted	Original Plot Plan application did not request commercial activities
Director's Review	Riding and Hiking Trails	Application Has Not Yet Been Submitted	Original Plot Plan application did not request riding trails
Temporary Use Permit	Special Events, including Hosting Equestrian Clubs and Trail Rides	Application As Needed For Event, No Evidence Indicating Past TUPs Obtained	This includes hosting of charitable activities (i.e., even when no fees charged)

Therefore it can be concluded that MVF does not have the necessary local approvals for private commercial operations, including private recreation clubs, a riding academy, or the boarding of any horses except its own; nor does MVF have the necessary local approvals for public commercial recreation.

However, Test #1 requires that incorrect or incomplete information be provided by the applicant in association with the subject application. The revocation request asserts that the applicant misrepresented that MVF had all necessary permit from the local government. Specifically, testimony from the applicant: (1) indicated that all permits are in place, presumably for the project at hand, which includes commercial recreation and commercial boarding operations, and (2) explained that the preliminary L.A. County [Plot Plan] approval allowed some commercial activities on the site, with the only exception being commercial boarding of horses.

The applicant stated at the July 9, 2007 Commission hearing (Page 90 of the Transcript):

> 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.

The testimony above is seemingly contradictory because the representative indicates that all county permits are "effective" and "in place." On the other hand, the representative indicates that there are no violations because the requirement to obtain county permits are suspended or interrupted during the CDP review process. To best reconcile these statements, staff would assume that preliminary approvals for all requisite county permits have been obtained for the subject development, and that such approvals are merely waiting for the outcome of the Coastal Development Permit in order to be issued. However, based on the

Commission's record and confirmation with County staff, the proposed project does not have the necessary permits in place waiting to be issued, some have not been applied for, and the Plot Plan review was limited to private use only.

Further, correspondence from the County, dated July 6, 2010, confirms that the applicant has not applied for, nor received, the requisite conditional use permit necessary to undertake commercial activity on the site (Exhibit 11). Since the County Code requires the subject commercial equestrian operation to obtain a CUP, there is little leeway to dispute the fact that the necessary local permits are not "effective" or "in place." Therefore, the Commission finds that the applicant provided inaccurate or incomplete information with regard to the County-permitting of the equestrian operation.

Additional testimony at the Commission's July 9, 2007 hearing was provided by the applicant with regard to MVF's underlying local approvals. The following series of comments were made regarding the commercial use of the property (excerpt from pgs. 105-106 of the July 9, 2007 Transcript):

> 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 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.

The above testimony from the applicant is indisputably inaccurate with regard to the extent of the county's approval of the on-site commercial activities. The representative's testimony conveys that the County has approved commercial activity on the site but not 'commercial boarding facilities.' However, as stated above, the Los Angeles County Plot Plan in the Commission's record, dated February 3, 2004, indicates that the preliminary approval of the equestrian facility is "***for private equestrian use, not commercial use. Not approved for boarding of horses***." Additionally, a letter from the Los Angeles Department of

Regional Planning, dated July 6, 2010, states that "Malibu Valley Farms has never received a conditional use permit to authorize horse boarding or any other commercial activity." Therefore, the Commission finds that the applicant provided inaccurate or incomplete information with regard to the County-permitting of commercial activities at the site.

For the above reasons, the Commission finds that the applicant misrepresented the legal nature and status of the equestrian operation in that MVF does not have Los Angeles County approvals for public or private commercial activities on the site, including commercial equestrian opportunities or public recreation at the site. Thus, this ground for revocation meets Test #1.

Secondarily, the party requesting revocation asserts that the applicant's claims that MVF is an important public access point is deliberately misleading since no trailheads to public trails lead from the property and because there are other ample public access trails in the vicinity. Additionally, the revocation request states that MVF cannot legally provide public access opportunities at the site because they do not have local approvals to do so.

Though perhaps a fine point, the secondary assertion seems to be particularly directed at MVF serving as a "public access point" which connotes another type of public access, rather than the public access recreational opportunities described above. For this ground, staff interprets a distinction such that the public recreation component described above relies on the existence of the equestrian facilities; however, the site's ability to serve as a public access point would not require the existence of the equestrian facility. If MVF were to serve as a public access point, the implication is that it would be a staging area for the public to access trails, trailheads, and/or provide public parking.

There is no evidence that the public would be permitted to use the subject site for parking, trails, or as an access point to other public trails in the vicinity, except in association with the commercial equestrian operation. The project did not include an offer to dedicate trails, open space, or coastal parking. However, the applicant has indicated that the site "hosts" various equestrian clubs and trail rides at the subject site which addresses the recreational access component above.

The subject site does not serve the implied role of a *public access point* because there are no trailheads, trails, or public parking available to the general public, and therefore the site does not serve as an important connection to the public trail system.

The revocation request implies that even if the subject property provided public access beyond that related to the equestrian facility, the existence of numerous public trail opportunities in the vicinity would significantly reduce the importance of one access point. There are, in fact, several recreational parks, trails, and trailheads in the vicinity of the subject property, including: The Backbone Trail,

Calabasas Cold Creek Trail, Grasslands Trailhead (Trailhead and Parking On Mulholland Highway, just west of Las Virgenes Rd), Grasslands_Trail, King Gillette Ranch (588-acre public park south of the subject site), Las Virgenes View Park, Las Virgenes View Trail, Las Virgenes View Trail Trailhead (Trailhead and Parking on the north-east corner of Las Virgenes Rd and Mulholland), Las Virgenes View Park Connector Trail, Malibu Creek State Park, Malibu Creek Trail, Stokes Ridge Trail (through the adjacent MRCA properties), and Tapia County Park.

However, the presence of other public access trailheads and trails in the vicinity does not diminish the importance of additional public access, such as from the subject site. In fact, in general, additional trailheads and trail linkages within an established trail system may well complement the trail system and provide greater public benefit in circumstances such as these. However the point is moot because, as described above, there is no evidence that the subject site provides the function of a public access point.

Test #1 requires that incorrect or incomplete information be provided by the applicant in association with the subject application. The revocation request asserts that the applicant repeatedly stated and/or implied that MVF was an important public access point, which is knowingly and deliberately misleading because no trailheads to public trails lead from the property and ample opportunity for access to public lands and trails exists at both the publicly-owned King Gillette Ranch across the street and Malibu Creek State Park less than one mile away.

With regard to the claim that MVF falsely asserted that the site is an important public access point, staff could find no evidence or testimony in the record specifically reflecting any such assertion by MVF. However, the record does indicate that the applicant asserted that the facility would provide public recreational opportunities to equestrians. The revocation request cites testimony by the applicant at the Commission's July 9, 2007 hearing with regard to public access claims.

The following testimony was provided by the applicant as part of the applicant's organized presentation at the July 9, 2007 Commission hearing (Page 38 of the Transcript):

> … 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.

Additional testimony by the applicant at the July 9, 2007 hearing also addressed public access (Page 92 of Transcript):

> …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 closer 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. …

The first quote above seems to make some sort of argument about the ability of the public to access the coastal zone, this could possibly be related to a public access point function. However, staff is unable to decipher the exact meaning of the argument. So considering both portions of the testimony related to public access, together, staff interprets that the applicant meant that MVF provides public access in the coastal zone via public recreational opportunities to various equestrian groups. There is no indication that the applicant provided inaccurate information regarding MVF's linkage to other trail systems, as no information was provided in this regard. Moreover, the CDP application submitted by the applicant supports this interpretation by indicating that the "facility provides equestrian opportunities for the public" and marked boxes to indicate that the development would protect existing lower-cost visitor and recreational facilities, and that the development provides public or private recreational opportunities. Therefore, the Commission finds that with regard to the grounds that MVF asserted that it is an important public access point, the applicant did not provide incorrect or incomplete information in association with the subject application. Thus this ground for revocation does not meet Test #1.

ASSERTION 2.A, TEST #2: Pursuant to Test 2, the Commission must consider whether the applicant *intentionally* included inaccurate, erroneous or incomplete information. As discussed in Test #1 above, inaccurate, erroneous or incomplete information was provided at the hearing with respect to the fact that the applicant misrepresented the legal nature and status of the equestrian operation in that MVF does not have Los Angeles County approvals for public or private commercial activities on the site, including commercial equestrian opportunities or public recreation at the site.

The inaccurate information appears to have been provided intentionally since the applicant would know the nature of the County's permitting approvals for the equestrian facility and could not misinterpret the phrase "for private equestrian use, not commercial use.". The approval is so specific that there can be no question that the Plot Plan approval is limited to private uses and that no commercial uses were approved in concept.

Specifically with regard to horse boarding, the County informed the applicant in a series of letters in 1999 that commercial horse boarding on the site requires a Conditional Use Permit. Given that the Commission's July 9, 2007 approval included boarding of horses, staff interprets that commercial boarding of horses is a proposed use of the site that still requires a local permit, and that the applicant has been made aware of that fact directly and repeatedly by the County.

For these reasons, the Commission finds that the applicant intentionally provided inaccurate or incomplete information on the status/nature of the County's permitting approvals with regard to MVF's legal ability to undertake commercial activities on the site, including equestrian recreation. Therefore the Commission finds that this ground for revocation meets Tests 1 and 2. Consequently, this assertion requires analysis under the third and final test to determine whether a ground for revocation exists.

ASSERTION 2.A, TEST #3: Under Test 3, the Commission must determine whether the complete and accurate information would have caused the Commission to require additional or different conditions or deny the application. Under Test 3, the question is whether the Commission would have modified its decision if the Commission had a clear understanding that the MVF does not have the underlying local government approvals to undertake commercial activities on the site, including equestrian recreation.

The revocation request outlines the following arguments with regard to this ground for revocation: (1) The applicant implied that MVF is an important public recreation facility which is misleading and inaccurate since the facility is not zoned or permitted for public commercial use. Consequently, MVF cannot rent or board horse, provide riding lessons, or operate private recreation clubs without additional local permits. (2) The Commission's primary rationale for approving the project was its public access and recreational benefits. However, these benefits cannot be derived without additional permits. If the Commissioners had correctly understood that MVF does not and cannot provide public access and recreational opportunities, they would have conditioned the project differently or voted to deny the project.

As discussed above, it is true that MVF does not have requisite permits from L.A. County for public commercial use, it cannot currently rent or board horses, provide riding lessons, or operate private recreational clubs without additional permits from the County. Therefore, it stands to reason that MVF cannot currently, legally provide commercial equestrian opportunities at the site, and cannot accurately be characterized as an important functioning public recreational facility.

However, it does not follow that the lack of full permitting by the local government means that the Commission's findings with regard to the facility's public recreational benefits is in error. The facilities as proposed by the applicant, and approved by the Commission, *do* have the potential to provide equestrian recreational opportunities to the public. In order to effectuate the project approved by the Commission, the applicant must secure any and all additional permits from the local government or other applicable regulatory authority.

With regard to the subject CDP, the entire project was reviewed and approved at the July 2007 hearing, and the Commission found the project consistent with the Coastal Act. A clear understanding that the MVF does not have the underlying local government approvals to undertake commercial activities on the site, including equestrian recreation would not have caused the Commission to make a different decision, either denying the project or adding conditions, because the Commission found the project consistent with the policies of Chapter Three of the Coastal Act – the standard of review in this case. The County's permitting status is not a standard of review under the Coastal Act.

Moreover, the potential public access and recreational benefits that may be realized from the facility (after all necessary permits are obtained) are consistent with the Coastal Act. The Commission's adopted Findings did not balance coastal resources in this case, but found that the project, as conditioned, would be consistent with the Coastal Act.

Therefore, accurate information would not have changed the Commission's action to approve the project with conditions. Therefore this ground for revocation does not meet Test 3.

ASSERTION 2.B: MVF Cannot Legally Provide the Community Benefits Heavily Relied on in the Revised Findings Report. The revocation request asserts that MVF provided misleading comments to Commissioners implying that the facility is open to the public for boarding, riding, private clubs, or access to recreation areas, fire refuge, and to serve underprivileged children. However, this is a false claim because the subject property is not zoned for commercial or public operations, and MVF has no CUP to authorize such public uses.

The revocation request lays out the following argument in support of this assertion:

- LA County Planning Department staff testified at the Commission's Revised Findings hearing in July 2009 that that neither commercial activities, nor public recreation have been authorized by the County at the subject site.
- An ERB member testified at the Commission's Revised Findings hearing in July 2009 that MVF "is not a recreation facility, is not opened to the public, is not open to little inner-city kids to ride thoroughbred race horses. It does not have a public trail head."

- National Parks Superintendent submitted written comments to the Commission for the Revised Findings hearing in July 2009 stating that MVF cannot legitimately claim to provide access to publicly-owned and operated trail networks.
- At the Commission hearing and in ex parte communications, however, MVF repeatedly led Commissioners to believe that such uses occur on the property and that those uses justified approval of the CDP because they fulfilled Sections 30213, 30222, and 30223 of the Coastal Act.
- Members of the public corroborated the occurrence of illegal activity by stating that they had boarded their horses or taken riding lessons there.
- L.A. County Notices of Violation show a long history of such illegal activity, and the facility is currently the subject of a nuisance complaint.
- The Commissioners relied heavily on the community benefits that they were led to believe the facility provides. The fact that Commissioners relied heavily on the community benefits is evident in the Revised Findings adopted by the Commission which retains the community benefits language throughout the report. The continued use of this language speaks loudly of the fundamental misunderstanding created by MVF in the minds of the Commissioners.
- The permitted equestrian uses on the property are limited by county ordinances to the keeping of the owner's own horses and private horse breeding, neither of which are considered a public recreation benefit.
- The Final Revised Findings adopted by the Commission reference the San Digeo 22nd Ag District's public commercial facility as precedent for excusing the 100-ft setback required in the Santa Monica Mountains LUP. This by implication communicates that the Commission relied on its erroneous belief that the MVF facility is a public recreational facility.
- No part of the Coastal Act grants the Coastal Commission authority to permit activities or development in violation of local zoning regulations, and it inadvertently acted improperly when, after being misinformed by the applicant into believing that MVF was operating in consistency with local zoning regulations. It issued a CDP based on activities that, if they occurred, would constitute illegal zoning violations.

ASSERTION 2.B, TEST #1: The first test in the review of the revocation grounds is whether the applicant included inaccurate, erroneous or incomplete information relative to the subject coastal development permit application.

The foundation of this assertion has been addressed in Assertion 2A above. As concluded in that section: (1) MVF does not have the necessary local permits to undertake any commercial activities (e.g., horse boarding) at the site, including public recreation (e.g., riding lessons); (2) MVF cannot accommodate events or rides for outside groups without first obtaining a Temporary Use Permit from the

local government; and (3) MVF is not a *public access point*, does not have parking, trails, or trailheads available to the general public and did not offer to dedicate parking, trails, or trailheads as part of the subject project.

For the same reasons found in Assertion 2A, above, the applicant misrepresented MVF's permits for boarding, riding, and private clubs, and its ability to provide access to recreation areas, or to serve underprivileged children. Thus, the facility cannot legally provide boarding, riding, private clubs, access to recreation areas, or serve underprivileged children. Therefore, the Commission finds that the applicant misrepresented its legal ability to provide the community benefits described in this assertion, and thus, this ground for revocation meets Test #1.

ASSERTION 2.B, TEST #2: As discussed in Assertions 2A above, Tests #1 and #2 determined that the applicant intentionally misrepresented the legal nature and status of the equestrian operation presently occurring on the site. This includes MVF's ability to accommodate boarding, riding, and private clubs, and to provide access to recreation areas, and serve underprivileged children. Therefore, the Commission finds that this ground for revocation meets Test #2.

ASSERTION 2.B, TEST #3: Under Test 3, the Commission must determine whether the complete and accurate information would have caused the Commission to require additional or different conditions or deny the application. Under Test 3, the question is whether the Commission would have modified its decision if the Commission had a clear understanding that, currently, MVF cannot legally provide facilities open to the public for boarding, riding, private clubs, or provide access to recreation areas, or to serve underprivileged children because MVF has no CUP or Temporary Use Permit from the County to authorize such public uses.

As discussed previously, it is true that MVF does not have requisite permits from L.A. County for public commercial use, it cannot currently rent or board horses, provide riding lessons, or operate private recreational clubs without additional permits from the County. Therefore, MVF cannot currently, legally provide commercial equestrian opportunities at the site, and cannot be accurately characterized as an important functioning public recreational facility.

However, the project description approved by the Commission included both a commercial equestrian component (boarding of horses) as well as the following recreational component (Page 8): "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." Clearly the project approved by the Commission allows for these community benefits to occur at the site.

Moreover, the entire project was reviewed and approved at the July 2007 hearing, and the Commission found the project, including the potential community benefits that may be realized from the facility (after all necessary permits are obtained), consistent with the Coastal Act. A clear understanding that MVF does not have the underlying local government approvals for community activities on the would not have caused the Commission to make a different decision, either denying the project or adding conditions, because the Commission found the project consistent with the policies of Chapter Three of the Coastal Act – the standard of review in this case. The status of local permits is not a standard of review under the Coastal Act.

Therefore, accurate information would not have changed the Commission's action to approve the project with conditions. Therefore this ground for revocation does not meet Test 3.

ASSERTION 2.C: Misrepresentation of Involvement in the Compton Jr. Posse Program. The revocation request asserts that the applicant intentionally caused the Commissioners to believe that MVF was supplying social programs for disadvantaged youth that specifically relied upon the location and configuration of MVF's current facilities. And specifically that the applicant overstated and misrepresented the true nature of MVF's involvement in the Jr. Posse program.

The revocation request lays out the following argument in support of this assertion:

- The applicant intentionally, specifically, and repeatedly caused Commissioners to believe that MVF was supplying site-specific social programs for disadvantaged youth.
- Since private horse breeding and private horse keeping is the only equestrian use allowed on the site by local ordinance, either MVF is bringing in disadvantaged youth from 70 miles away to ride the thoroughbred horses its breeds, or they are allowing commercial horse boarding, riding academy, and/or private club uses, which is no more legal for them to do when it benefits a nonprofit corporation than if it benefits a for-profit organization.
- MVF's financial contributions to the Jr. Posse are acts that are not dependent on any given location or site configuration and are private decisions that could be made by any individual with any type of business in any location.
- Other individuals and organizations who contribute to the Jr. Posse are not eligible to receive variances from county ordinances based on the charitable, but private contributions to worthy programs.
- MVF does not have commercial privileges to allow these visitor-serving uses.
- MVF willfully and knowingly expanded that concept to intentionally mislead Commissioners into believing the physical location of the farm determines its

ability to contribute to the Jr. Posse charity. And embedded into this is the implication that MVF was permitted for such commercial use, which it is not.

- MVF misrepresented the fact that MVF provides no legal access to public trails for those visitors who come to the area for local equestrian competitions and, while here, are well served by the many existing public access points to the extensive 500 miles of public trails in the area.
- The Commissioners were led to believe that the Jr. Posse *program* would come to an end – i.e., that the program itself depended on MVF's continued existence on Parcel 4455-028-044 with all structures intact. However, this is not true because no portion of the program operates out of MVF – it operates out of a facility 70 miles away.
- The applicant omitted the following highly relevant concepts:
    - MVF supplies only financial donations to the Jr. Posse
    - The Jr. Posses has many contributors and is not dependent on the financial contributions it receives from Malibu Valley Farms
    - The Jr. Posse operations out its own distinct facility that legally provides weekly riding academy lessons to Jr. Posse participants and coordinates participation in competitive equestrian events, none of which Malibu Valley Farms can do because it is 1) 70 miles from the program's participants, 2) it is prohibited by zoning from operating a riding academy, boarding another organization's horses, or being the site of a private recreation club without a Conditional Use Permit specifically authorizing such uses.
    - The Jr. Posse visits are infrequent at best, and are primarily social visits to a benefactor.
    - Malibu Valley Farms operates on extensive properties north, south, and west of the subject parcel to which it can invite its Jr. Posse friends.

ASSERTION 2.C, TEST #1: The first test in the review of the revocation grounds is whether the applicant included inaccurate, erroneous or incomplete information relative to the MVF's involvement in the Compton Jr. Posse program.

The following testimony at the July 9, 2007 Commission hearing with regard to the Jr. Posse:

> ... 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 Montevideo 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. (Page 32 of Transcript)

> 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. (Page 37 of the transcript)

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. (Page 92 of Transcript)

Then a series of comments (beginning Page 131 of Transcript):

Commissioner Shallenberger:

…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 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 (sic) 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 (sic) 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 buildings 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.

At the July 9, 2007 hearing, none of the Commissioners indicated that they received additional information regarding the Compton Jr. Posse in ex parte communications, and staff did not find additional references to the Jr. Posse in the application. Therefore there is very limited information from the applicant for which to review this ground for revocation.

The party requesting revocation asserts that the applicant overstated and misrepresented the true nature of MVF's involvement in the Jr. Posse program. The applicant's testimony at the July 9, 2007 hearing asserts that the Jr. Posse is invited to use the MVF facilities, and the participants are provided accommodations to stay overnight. Additionally, the applicant asserts that that the Compton Posse has been coming out to MVF for 10 years and that Malibu Valley Farms has been subsidizing them and allowing them to come out for free. Although during the Commission's deliberations, Commissioner Burke asked what would happen to MVF's program of hosting the Jr. Posse if the permit were to be denied, the applicant did not answer that question but instead indicated that MVF's operations would be completely destroyed.

As staff interprets the applicant's testimony, it was that the Jr. Posse is invited to use MVF facilities periodically. At the July 9, 2007 Commission hearing, the founder of the Compton Jr. Posse, Mayisha Akhvar, testified that "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" and "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" (Page 57 of Transcript).

The testimony of the founder of the Compton Jr. Posse program corroborates MVF's claims to provide support to the Jr. Posse. Therefore it can be concluded that although MVF has not obtained the proper permits to conduct commercial recreation or host equestrian events for outside groups for the reasons concluded in Assertion 2A, MVF has, in fact, hosted the Jr. Posse on various occasions, and staff finds no evidence that the applicant testified that it did so in compliance with local laws. There is no specific information as to timing, frequency, or the types of activities undertaken during these events.

Under Test #1, the question is whether the above testimony is inaccurate, inaccurate, erroneous or incomplete. Since there are no identifiable errors in the testimony, the question is whether the lack of additional details regarding the program, lack of local permits, nondisclosure of the fact that the Jr. Posse is operated in a facility 70 miles away, nondisclosure that the visits are infrequent, and nondisclosure that MVF operates other facilities constitute incomplete information with regard to the subject application.

The relevance of the Jr. Posse to the application is that the facility proposes to provide a public recreation benefit consistent with the provisions of the Coastal Act. The applicant stated that they have historically invited the Jr. Posse to ride horses and stay overnight. This seems to be a true statement based on public testimony. The implication is that the facility will continue to allow such visits in the future. The provision of this type of public recreational component was determined to be consistent with the Coastal Act. The details of the Jr. Posse program, frequency of visits, location of other Jr. Posse facilities, and MVF's

other facilities are not pertinent to whether the proposed periodic use of the facility by the Jr. Posse or the facility more generally would be consistent with the Coastal Act and therefore such information is not relevant to the review of the subject application. Since this information is irrelevant to the application that was before the Commission, the applicant's failure to disclose it would not constitute incomplete information. Therefore, in this case, there is no evidence that the applicant included inaccurate, erroneous or incomplete information and thus, this ground for revocation does not meet Test #1.

ASSERTION 2.C, TEST #2: Pursuant to Test 2, the Commission must consider whether the applicant *intentionally* included inaccurate, erroneous or incomplete information. In this case, as described in Test #1 above, there is no evidence that the applicant included inaccurate, erroneous or incomplete information relative to MVF's involvement with the Jr. Posse program, nor is there any evidence that the applicant intentionally included inaccurate, erroneous or incomplete information. Therefore, the above assertion does not meet the grounds for revocation pursuant to the first two tests.

ASSERTION 2.C, TEST #3: As described above, there is no evidence that the applicant included inaccurate, erroneous or incomplete information relative to MVF's involvement with the Jr. Posse program. Even assuming that Tests 1 and 2 were confirmed in this case, under Test 3, the Commission must determine whether the complete and accurate information would have caused the Commission to require additional or different conditions or deny the application.

Although more information could have been provided, the details of the Jr. Posse program, frequency of visits, location of Jr. Posse facilities, and MVF's other facilities are not pertinent to whether the proposed periodic use of the facility by the Jr. Posse or the facility more generally would be consistent with the policies in Chapter 3 of the Coastal Act, which formed the sole basis for the Commission's decision. In addition, because the disclosure of this information is not relevant, it could not have changed the Commission's action. Since the requester's assertion would not modify the analysis as to the project's consistency under the Coastal Act, the Commission would not modify its decision even if Tests 1 and 2 were satisfied. Therefore this ground does not meet Test 3.

Further, this ground for revocation implies that the Commission bestowed special privileges on the project because of its charitable functions, including hosting the Compton Jr. Posse. This is not supported by the Final Revised Findings (Exhibit 2) adopted by the Commission on July 8, 2009. The Commission found that the project is consistent with all Chapter 3 policies of the Coastal Act, and did not rely on balancing the protection of one coastal resource over another. The Commission made specific findings in regard to ESHA - that the project, as conditioned, is consistent with the ESHA protection policies of the Coastal Act. Therefore, the Commission did not sacrifice ESHA for public recreation as is implied in the scope of the revocation request.

Since the requester's assertion would not modify the analysis as to the project's consistency under the Coastal Act, the Commission would not modify its decision even if Tests 1 and 2 were satisfied. Therefore this ground does not meet Test 3.

ASSERTION 2.D: Misrepresentation of Designated Fire Evacuation Center Status. The revocation request asserts that the applicant misrepresented its role in fire evacuations.

The revocation request lays out the following argument in support of this assertion:

- The applicant asserted that MVF is the only evacuation center for equestrians in the Santa Monica Mountains. And that it has certified staff with the California Department of Forestry.
- The California Department of Forestry stated that it does not designate large animal evacuation centers and it does not certify people to work at evacuation centers. It denies having so designated MVF and MVF has provided no evidence to support its claim.
- Los Angeles County has designated only Pierce College as a large animal evacuation center and Ventura County has designated the Ventura County fairgrounds. LA County's Department of Animal Care and Control personnel explained that only publicly-owned property would ever be a designated evacuation center.
- Los Angeles County Department of Animal Control and Care has an Equine Response Team (LACDACCERT) made of volunteers from Palmdale to Rancho Palos Verdes. The Equine Response Team Coordinator, describes the program as a volunteer response unit in which volunteers are trained at three different levels:
    - Level 1 volunteers manage phones and paperwork to disseminate information.
    - Level 2 volunteers provide assistance at designated evacuation centers: Pierce College and the Ventura County fairgrounds.
    - Level 3 volunteers are horse trailer owners and horse handlers who respond to calls for assistance by going to people's homes and helping them evacuate their animals to Pierce College.
- The Equine Response Team Coordinator indicated that one of MVF's employees is an LACDACCERT volunteer but other than the one specific employee, MVF staff, as a whole or in part, was not known to be trained or certified by LACDACCERT. Additionally, the Coordinator confirmed that MVF is not a LACDACCERT designated evacuation center. And that LACDACCERT volunteers do not evacuate horses to private property.

- The Commissioners made their decision, in part, on the misrepresentation that the facility is an officially designated fire evacuation center. The Commissioners would not have approved a CDP based on a status not conferred upon the property by a public agency if the applicant had not misled the Commission into thinking that the subject property was used in that way.

ASSERTION 2.D, TEST #1: The first test in the review of the revocation grounds is whether the applicant included inaccurate, erroneous or incomplete information relative to MVF's role in fire evacuations.

Evacuating horses or other large animals during an emergency can be complicated. As a result, agencies responsible for emergency planning encourage advance disaster-preparedness planning with regard to potential routes, destinations, food, shelter, transportation, and agreements with neighbors.

The Commission approved a fire refuge component within the project description (Final Revised Findings, Page 8):

> …[A]fter-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 following testimony was provided by the applicant at the July 9, 2007 hearing regarding fire evacuation status:

> ... 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. (Page 32 of Transcript)
>
> … 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. (Page 32 of Transcript)
>
> …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 closer one is at Pierce College. (Page 92 of Transcript)

In the testimony above, the applicant asserts that MVF is a "designated evacuation center for the area." By stating that MVF has certified staff with the California Department of Forestry, the implication is that the "designation" was given by the California Department of Forestry. Alternately, by stating that MVF is

a “local” evacuation center, it could be taken to mean that the County has bestowed this designation.

With regard to the California Department of Forestry, staff was unable to find a program run by the Department of Forestry that designates large animal evacuation centers. The California Department of Forestry and Fire (CAL FIRE) coordinates cooperative emergency response efforts with other state, federal, and local agencies to respond to emergencies like wildland and structure fires, floods, earthquakes, hazardous material spills, and medical aids. CAL FIRE has its own Fire Academy and training programs, and provides education to the public. Staff was unable to find training or coursework specific to the evacuation of large animals. It is possible that the employee(s) had received some other fire fighting certifications that were not specific to local evacuations or large animal evacuations. However, if such certification were available, it is presumed that the applicant would have provided that information for the record by this time.

More likely, as presented in the revocation request, the “certification” referred to by the applicant at the hearing relates to training received for becoming a volunteer of the Los Angeles County Department of Animal Control and Care, Equine Response Team (LACDACCERT). The Equine Response Team, formed in 1996 in the Santa Monica Mountains, is a group of qualified, trained, certified volunteers whose purpose is help conduct the safe evacuation of livestock from areas imperiled by disaster or emergency under the authority of the Los Angeles County Department of Animal Care & Control. The group also works to educate large animal owners on how to be prepared in case of an emergency. During an emergency, the Los Angeles County Department of Animal Care and Control is informed of areas presenting the greatest threat and alerts its Equine Response Teams to begin strategic evacuation for horses and animals in the immediate vicinity of the emergency.

The LACDACCERT has not designated Malibu Valley Farms as a local evacuation site for horses or other large animals.

Regardless, and in lieu of any additional information from the applicant regarding the certification or designation, the implication that the California Department of Forestry or L.A. County designated the site as an official local evacuation center is inaccurate. Therefore the applicant did provide inaccurate, erroneous, or incomplete information with regard to MVF’s official status as a designated fire evacuation site, and thus, this ground for revocation meets Test #1.

ASSERTION 2.D, Test #2: As discussed in Test #1 above, inaccurate, erroneous or incomplete information was provided at the hearing with respect to MVF’s official status as a designated fire evacuation site.

Pursuant to Test 2, the Commission must consider whether the applicant *intentionally* included inaccurate, erroneous or incomplete information. The applicant has claimed that MVF is a “designated” fire evacuation center. The

applicant did not specify which public agency designated MVF as a fire evacuation center. However, as described above, the relevant public agencies have not designated MVF as a fire evacuation center. Given that the applicant would have specific and detailed knowledge as to MVF's designation as a fire evacuation center, the inclusion of the inaccurate information must be presumed to be intentional. Therefore, this ground for revocation meets Test #2.

ASSERTION 2.D, TEST #3: As described above, the applicant intentionally included inaccurate, erroneous or incomplete information relative to MVF's fire evacuation status. Under Test 3, the Commission must determine whether the complete and accurate information would have caused the Commission to require additional or different conditions or deny the application.

The revocation request asserts that the Commissioners made their decision, in part, on the misrepresentation that the facility is an officially designated fire evacuation center, and further that the Commissioners would not have approved a CDP based on a status not conferred upon the property by a public agency.

The Commission's approved project description in the Final Revised Findings (Exhibit 2) includes that MVF serves as a refuge for horses in the event of fire. The Revised Findings did not require, or rely on such fact, that the facility be officially designated by a public agency in order for the site to serve that function. Whether the site receives an official designation for that function has no bearing on the project's consistency with the policies in Chapter 3 of the Coastal Act, which formed the sole basis for the Commission's decision. Since the requester's assertion would not modify the analysis as to the project's consistency under the Coastal Act, the Commission would not modify its decision even if Tests 1 and 2 were satisfied. Therefore this ground does not meet Test 3.

Further, this ground for revocation implies that the Commission bestowed special privileges on the project because of it may serve a community benefit during times of emergency. This is not supported by the Final Revised Findings adopted by the Commission on July 8, 2009. The Commission found that the project is consistent with all Chapter 3 policies of the Coastal Act, and did not rely on balancing the protection of one coastal resource over another. The Commission made specific findings in regard to ESHA - that the project, as conditioned, is consistent with the ESHA protection policies of the Coastal Act.

Since the requester's assertion would not modify the analysis as to the project's consistency under the Coastal Act, the Commission would not modify its decision even if Tests 1 and 2 were satisfied. Therefore this ground does not meet Test 3.

THIRD GROUND: Misrepresentation of Property Ownership and Location of MVF Operations

The third ground for revocation provided in the revocation request asserts that the applicant misrepresented its property ownership and interest in the alternative sites identified by the Commission as potential off-site alternative locations for siting equestrian operations outside of the 100-foot buffer from riparian areas; misrepresented the location of Malibu Valley Farms business operations; and withheld information that he is already using the alternative parcels for equestrian operations. The revocation request contends that Brian Boudreau has exclusive control over Malibu Valley Farms, Inc. (the applicant) and exclusive control over Spectrum Development, Inc. (which is the sole General Partner of Malibu Canyon L.P, the identified owner of the three off-site alternative properties). The revocation request asserts that the applicant incorrectly represented that Brian Boudreau does not own or control any of the alternative site properties; however, that in the absence of any partnership agreement to indicate otherwise, all public records indicate that Brian Boudreau is the person behind all the business entities listed as owners of the subject and alternative properties.

The revocation request lays out the following argument in support of this assertion:

- The Commission's staff report lists three off-site alternatives that would allow equestrian operations to be relocated outside of the 100-foot buffer zone.
- The three alternatives properties, APNs 4455-028-054, 4455-028-093, and 4455-028-007 are each owned by Malibu Canyon L.P.
- The applicant denied being the owner or having a controlling interest in Malibu Canyon L.P.
- Malibu Valley Farms, Inc. corporate status:

  CEO: Brian Boudreau

  CFO: Brian Boudreau

  Secretary: Brian Boudreau

  Director: Brian Boudreau

  Agent of Service: Brian Boudreau
- Malibu Canyon L.P. corporate status:
  - General Partner= Spectrum Development

    Spectrum Development, Inc. status:

    CEO: Brian Boudreau

    CFO: Brian Boudreau

    Secretary: Brian Boudreau

    Director: Brian Boudreau

    Agent of Service: Brian Boudreau

- The applicant, Malibu Valley Farms, Inc. is controlled exclusively by Brian Boudreau, with no other persons named in any capacity of that corporation, according to the Articles of Incorporation filed with the California Secretary of State.
- The three alternative sites are owned by Malibu Canyon L.P. The sole General Partner of that organization is Spectrum Development.
- Spectrum Development, Inc. is also exclusively controlled by Brian Boudreau, with no other persons named in any capacity of that corporation, according to the Articles of Incorporation filed with the Secretary of State.
- In a limited partnership, only General Partners participate in control of the business unless specifically stated otherwise in a partnership agreement (California Corporations Code Sections 15632, 15643). In a limited partnership, the General Partner may also be the sole Limited Partner.
- As the sole General Partner of Malibu Canyon L.P., Spectrum Development, Inc., Mr. Boudreau controls the partnership including decisions about where to operate and whether to buy or lease land for its facility.
- Because a Limited Partner is only a financial investor and does not control the business, the extent of investment by a Limited Partner is irrelevant to discussions of who controls the business.
- In the absence of any partnership agreement to indicate otherwise, all public records indicate that Brian Boudreau is the person behind all of the business entities listed as owners of the subject and alternative properties.
- A corporation is a legal entity defined by its articles of incorporation, not by the land on which it operates.

Secondly, the revocation request asserts that the applicant also misrepresented the location of Malibu Valley Farms' business operations and withheld information that MVF is already using the alternative parcels for equestrian operations. The revocation request asserts that MVF's claim that it only operates its farm on one parcel (i.e., the subject parcel, APN 4455-028-044) is false because MVF also operates on the west side of Stokes Canyon Road. The parcel on the west side of Stokes Canyon Road was identified in the staff report as a potential alternative site for the proposed equestrian facility.

The revocation request lays out the following argument in support of this assertion:

- Throughout the Coastal Development Permit approval process, the applicant represented Malibu Valley Farms as consisting of only parcel 4455-028-044 on the east side of Stokes Canyon Road, with a total of 31.04 acres; however, Malibu Valley Farms has been operating for years on the properties identified as alternative sites.
- One of the alternative sites identified in the Commission's staff reports is located just north of the subject property on the east side of Stokes Canyon Road and the other two are just across the street on the west side of Stokes Canyon Road.

- The applicant has repeatedly told the Coastal Commission that the alternative sites were not feasible.
- In a 1998 Conditional Use Permit application to Los Angeles County to allow three caretaker mobile homes, alternative site 4455-028-093 on the west side of Stokes Canyon Road was represented as being Malibu Valley Farms' equestrian facility. In fact, it was because of the existence of Malibu Valley Farms on the property that the caretaker mobile homes were demonstrated by the applicant as necessary and could be permitted consistent with the property's zoning.
- Condition 12(d) of the County's Conditional Use Permit 97-142-(3) states that "[s]hould the property cease to function as a working horse ranch with breeding operations, the caretakers' residences shall be removed.
- The parcel on the east side of Stokes Canyon Road, which is the property that is the subject of the CDP, was represented as the boarding facility in the County's CUP action, not the thoroughbred breeding facility.
- The applicant rents out the east side property to Apollo Farms who leases horses and boards them.
- The applicant gave the same street address, 2200 Stokes Canyon Road, for the property on the west side of Stokes Canyon Road in the above-reference CUP application as he gave for the property on the east side of the road in the subject CDP application.
- The current mailing address for Malibu Valley Farms, Inc., Malibu Valley L.P., and Spectrum Development, Inc. are all 26885 Mulholland Highway.
- In the Environmental Impact Report for a convention center proposed for the alternative site property in 2005, the applicant – Brian Boudreau dba Spectrum Development, a real estate company, dba Malibu Canyon L.P. – presented Malibu Valley Farms as being 60.11 acres, encompassing the subject parcel (APN 4455-028-044) as well as APN 4455-028-045 and APN 4455-028-007 (Malibu Valley Inn and Spa Project DEIR, IV-1). The DEIR states, "The existing Malibu Valley Farms Equestrian Facility makes up the portion of the project site on the east side of Stokes Canyon Road (Malibu Valley Inn and Spa Project DEIR, IV-14)." Thus, it appears that MVF already includes 4455-028-007 (one of the alternative sites in the Commission's staff report).
- Malibu Canyon L.P. also controls seven other parcels in the immediate vicinity: APNs 4455-048-007; 4455-028-093; 4455-028-054; 4455-028-096; 4455-028-073; 4455-028-091; 4455-028-070; 4455-028-075; 4455-028-071; and 4455-028-076.
- The applicant stated that the entire operation would be wiped out, and withheld the information that MVF is already using the alternative parcels for equestrian operations. Thus, the applicant misrepresented both his ownership of the properties involved and the location and nature of the current operations, which became the critical issue on which the whole case pivoted.

Based on those assertions, the revocation request contends that the Commissioners relied on and were misled by the pervasive underlying premise promoted by the applicant that failure to approve the subject CDP meant that the equestrian operations would end. The revocation request contends that the fact that Commissioners were influenced by the potential closure of the farm was evident in their deliberations. Further, that the Commissioners would have voted differently if they had understood that viable alternative sites were not only available to the applicant but were already in operation and had been so used for as long as the subject site had.

The revocation request states that CEQA demands that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects, but the conditions and findings for the CDP fail to address significant impacts of ESHA streambed alterations, ESHA oak woodlands, and impacts to other individual oak trees identified as significant coastal resources. If the alternatives were technically infeasible because the applicant could not operate on those sites, unmitigated significant effects were allowable, but commissioners would have to adhere to the code if the applicant is actually the owner of those properties or controls their use.

ASSERTION 3, TEST #1: The first test in the review of the revocation grounds is whether the applicant included inaccurate, erroneous or incomplete information relative to the subject coastal development permit application.

The applicant asserted the following with regard to the off-site alternatives, at the Commission's July 9, 2007 hearing (Page 90 of Transcript):

> …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. …

At the June 11, 2008 Commission hearing, the applicant stated the following with regard to ownership of the off-site alternative properties (Page 15 of Transcript):

> … It [revised findings staff report] talks about how certain properties owned by Malibu Canyon LP are owned and controlled by the same entity as here, and is just simply not the case. There are no facts in the record. Mr. Boudreau is a one percent owner – actually, the company that he is president is a one percent owner as the general partner of a limited partnership, and 99 percent controlled by other entities of certain other properties.
>
> In addition, it talks about Mr. Levin's property nearby, and it says that Mr. Boudreau is a partner, and is not a partner. And, so we just wanted to clarify on the record that some of these items are factually incorrect, in that one section. …

All three of the aforementioned properties are listed under the same ownership (RealQuest, January 17, 2011):

> MALIBU CANYON Mailing Address: 26885 MULHOLLAND HWY, CALABASAS CA 91302-1947 R003 C/O SPECTRUM DEVELOPMENT INC

The publicly available facts regarding ownership confirm that the subject site is owned by Malibu Valley Farms, Inc. and that all officer positions of Malibu Valley Farms, Inc. are held by Brian Boudreau. The alternative sites identified in the Commission's findings are owned by Malibu Canyon L.P. Public documents identify the sole General Partner of Malibu Canyon L.P. as Spectrum Development. All officer positions of Spectrum Development, Inc. are also held by Brian Boudreau. Therefore, Mr. Boudreau has exclusive executive control over Malibu Valley Farms, Inc. and Spectrum Development, Inc.

In this case, the applicant has not provided any documentation regarding the partnership agreement, nor provided any ownership information or information about management of Malibu Canyon L.P., other than to assert that "Mr. Boudreau has no controlling interest in the off site properties" and that "the company that he is president [Spectrum Development] is a one percent owner as the general partner of a limited partnership."

The defining argument of this ground for revocation seems to be that as the sole General Partner of Malibu Canyon L.P., Spectrum Development, Inc. (i.e., Brian Boudreau) controls the partnership including decisions about where to operate and whether to buy or lease land for its facility. Because a Limited Partner is only a financial investor and does not control the business, the extent of investment by a Limited Partner is irrelevant to the discussions of who controls the business.

However, without ownership records disputing the applicant's claim or the applicable partnership agreement, there is nothing in the record to confirm the ownership or the designated decision-making authority. Therefore there is nothing to substantiate the claim that the applicant provided inaccurate information with regard to Mr. Boudreau's ownership interest or authority. Moreover, in this case, the ownership/authority connection to the applicant was presented in the Revised Findings to emphasize the viability of the alternative site in relation to the subject CDP. Therefore, since the findings assumed there was a connection, the lack of such information does not constitute incomplete information for the purposes of revocation.

The revocation request asserts that public records indicate that Brian Boudreau is the person behind all the business entities listed as owners of the subject property as well as the potential alternative off-site properties. As discussed in the Final Revised Findings, dated June 25, 2009, the Commission also assumed that Mr. Boudreau was the person with authority over the alternative sites:

> 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, 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.

The applicant has disputed these findings regarding ownership, but has not commented regarding the actual management or level of control over the decisions affecting these properties. Because this information is relevant only to the extent that the Commission considered feasible alternatives, it is important to note that the Commission did consider these sites as viable off-site alternatives for the purposes of the alternatives analysis, and therefore these alternative sites were considered as part of the decision-making process.

As described above, the absence, from the Commission's record, of the partnership agreement for Malibu Canyon L.P. (the "LP") has the effect that the Commission cannot know how the LP is structured and therefore also cannot know the nature of Spectrum's, and therefore Mr. Boudreau's, control over the LP. We are aware of no reason why a partnership agreement could not be structured to limit the powers of its general partner(s) so that, even though Spectrum is the sole general partner of the LP, it (and therefore Mr. Boudreau) would not have a controlling interest in the LP. Given that the Commission never requested the partnership agreement for the LP, and that it was never provided to the Commission, the fact that the Commission does not have it neither proves that it does not exist, nor does it allow us to derive conclusions about the relationship among the partners that are based on what state law would establish were there to be no such agreement. In sum, without the agreement, we cannot conclude, based on the information presented by the revocation requester, that the applicant's statements about Mr. Boudreau's control were either inaccurate or incomplete.

Secondly, the revocation request asserts that the applicant also misrepresented the location of Malibu Valley Farms' business operations and withheld information that he is already using the alternative parcels for equestrian operations. The revocation request asserts that MVF's claim that it only operates its farm on one parcel (i.e., the subject parcel, APN 4455-028-044) is false because MVF also operates on the west side of Stokes Canyon Road.

The fact of MVF's business operations is only relevant with regard to the Commission's alternatives analysis, which included consideration of five other neighboring parcels.

The Commission does not generally require full disclosure of the business operations of applicants because the Commission does not oversee business themselves, only the development undertaken by a business. The party requesting revocation asserts that the applicant's claim that the entire operation would be wiped out is false.

The applicant asserted the following at the July 9, 2007 Commission hearing with regard to the potential impact to the facility with regard to the 100-foot setback (beginning Page 131 of Transcript):

> Commissioner Shallenberger:
>
> …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 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 (sic) 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 (sic) 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 buildings 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.

From above, the applicant indicates that if the project were denied, or if the 100-foot buffer was imposed, such changes "utterly and completely destroys this operation." It is not clear what "this operation" is. It could be interpreted to mean the operation of the existing MVF facility, rather than destroying Malibu Valley Farms, Inc.'s business

operations. Because it could be attributed to the equestrian facility itself, the above-quoted statement alone is not sufficient evidence to conclude that the applicant intentionally misrepresented the location or extent of MVF's business operations. Moreover, the parcel on the west side of Stokes Canyon Road, for which MVF may also operate, was identified in the staff report and considered as a potential alternative site.

Therefore, in this case, there is no evidence that the applicant included inaccurate, erroneous or incomplete information relative to ownership and control of potential off-site alternative properties or MVF's location and business operations. Therefore, the above assertion does not meet the grounds for revocation pursuant to Test #1.

ASSERTION 3, TEST #2: Pursuant to Test 2, the Commission must consider whether the applicant *intentionally* included inaccurate, erroneous or incomplete information. As described above, there is no evidence that the applicant included inaccurate, erroneous or incomplete information relative to the ownership of off-site properties or the location of MVF operations, nor has revocation request presented any circumstances or evidence that indicate the applicant intentionally provided information that is inaccurate, erroneous, or incomplete relative to the subject coastal development permit.

ASSERTION 3, TEST #3: Under Test 3, the Commission must determine whether the complete and accurate information would have caused the Commission to require additional or different conditions or deny the application. Under Test 3, the question is whether the Commission would have modified its decision if the Commission had a clear understanding of the connection between the applicant and the ownership and control of potential off-site alternative properties or if the Commission had a clear understanding of the scope and extent of MVF's location and business operations.

As discussed above, the Commission does not generally require full disclosure of the business operations of applicants because the Commission does not oversee businesses themselves, only the development undertaken by the business. Moreover, this information is relevant only in regard to the Commission's consideration of feasible alternatives. The Commission did consider these sites as viable off-site alternatives for the purposes of the alternatives analysis, and therefore these alternative sites were considered as part of the decision-making process. The Commission determined that there was no need to implement alternatives because the project, as conditioned, was consistent with the Coastal Act. Consequently, the Commission had the available information for consideration at the time the decision was made, further proving that the information could not have changed the Commission's position, since it did not in fact do so. Since the requester's assertion would not modify the analysis as to the project's consistency under the Coastal Act, the Commission would not modify its decision even if Tests 1 and 2 were satisfied. Therefore this ground for revocation does not meet Test 3.

Therefore, accurate information would not have changed the Commission's action to approve the project with conditions. Therefore this ground for revocation does not meet Test 3.

FOURTH GROUND: Misrepresentation By Applicant That The Applicant Created The Riparian Canopy

The revocation request asserts that the applicant falsely claims that the farmers planted thousands of trees along the riparian corridor, thus creating the riparian canopy.

The revocation request lays out the following argument in support of this assertion:

- The applicant claims to have created the riparian canopy on the subject site, and specifically that the applicant planted thousands of trees on the site.
- The applicant's own biologist's description of the riparian canopy concurs with the Coastal Commission's biologist that the characteristics of the riparian canopy on the property are consistent with the characteristics of naturally occurring canopy that randomly occurs over time along riparian corridors with a reliable supply of water. These characteristics include:
    - Random occurrence of trees
    - Native variety of trees
    - Varied age of trees
    - Continuation of the riparian canopy upstream and downstream of the property
- Thousands of trees do not exist on the property as the applicant claimed, unless this refers to trees on surrounding parcels that the applicant is claiming not to own.
- While, technically and legally, how the trees came to be where they are should not make a difference to the Commission in deciding how to protect ESHA and water quality, it nevertheless raised the sympathies of the commissioners in this discretionary process.

ASSERTION 4, TEST #1: The first test in the review of the revocation grounds is whether the applicant included inaccurate, erroneous or incomplete information relative to planting of the riparian canopy on the subject site.

In Dr. John Dixon's Memo, dated March 25, 2003, regarding ESHA in the Santa Monica Mountains, Dr. Dixon describes the types of riparian woodland that may occur in the Santa Monica Mountains, in part (Page 6):

> Some 49 streams connect inland areas with the coast, and there are many smaller drainages as well, many of which are "blue line." Riparian woodlands occur along both perennial and intermittent streams in nutrient-rich soils. Partly because of its multi-layered vegetation, the riparian community contains the greatest overall biodiversity of all the plant communities in the area. 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 mulefat. …

The stream habitat on the subject site is described in the Final Revised Findings (Exhibit 2) adopted by the Commission on July 8, 2009 as follows:

> 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.
>
> 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.

Dr. Dixon's November 2, 2006 memorandum specific to Malibu Valley Farms indicated:

> Riparian vegetation is better developed toward the southern end of the property that farther north.
>
> … Even though degraded by adjacent land uses, Stokes Creek and its riparian areas should be considered ESHA and provided with adequate protective set backs or buffers. The existing riparian corridor is relatively narrow and was probably reduced by historical human activities. The existing habitat should be delineated by the outer edge of riparian vegetation that is currently present including those mature trees that appear somewhat isolated because all of the understory vegetation has been removed.

At the Commission's July 9, 2007 hearing, the applicant asserted the following regarding the applicant's role in creating the on-site riparian canopy (Page 31 of Transcript):

> …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 the 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. …

The applicant also asserted the following at the July 9, 2007 Commission hearing (Page 34 of Transcript):

> … 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. …

And in a letter to Commissioner Blank, dated June 30, 2007, the applicant asserts (Page 2):

> 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 Frank Hovore & Associates report, dated January 2002 and updated October 2004, states:

> …The property owner planted and irrigated numerous trees, including Fremont cottonwood, ash and locust, on the alluvial terrace margin within the developed footprint of the equestrian facility during the 1970's. These trees have matured and some now possess trunks that are greater than 12" dbh. A mature coast live oak is present on the terrace west of the creek in the northern portion of the property. … (Page 5)
>
> …Riparian habitats typically have very high density of insects and other arthropods, and oak habitats provide food sources for hundreds of arthropod taxa locally. Cottonwood trees, though, have relatively limited specific insect faunas, similar to those of willows, with almost no species endemic strictly to them. Because the creek channel riparian area is dominated by mulefat and fast-growing willow, it can support a moderate density population of live-wood borers and leaf feeding insects. Coast live oaks provide a long-lived, widely-distributed food and sheltering resource for arthropods, and therefore may support very high numbers of insect species locally, perhaps more than all other plant species or formations together. The trees on site are part of a larger formation within Stokes drainage, and while isolated they are functionally intact. The willow riparian area on site is small and disturbed, and so would be expected to contribute only a limited insect mass to the ecosystem. … (Page 6)
>
> … The riparian habitat along the creek bed contains elements of southern riparian scrub habitat, but is very thinly distributed, and nowhere forms habitat typical of this community. Riparian scrub, willow scrub and other early successional community types are seral stages of riparian woodland or forest ecosystems, but in many riverine basins they never attain mature status due to repeated flooding or scouring. The creek adjacent to the equestrian center does not contain a typical formation because it is too narrowly incised, and surface flows are insufficient to sustain a willow overstory. (Page 15)
>
> Potential project impacts to sensitive communities: The proposed continued use of the site would not adversely affect sensitive habitat types or natural communities. The current property owner has planted native cottonwood trees along the creek channel margin, structurally enhancing riparian canopy values. … (Page 15)

As described above, the applicant's biologist reports that the "property owner planted and irrigated numerous trees, including Fremont cottonwood, ash and locust, on the alluvial terrace margin within the developed footprint of the equestrian facility during the 1970's" (Frank Horvore & Associates, 2004). The applicant's biological report does not

map, nor otherwise indicate the locations, types, or size of any these trees, except for the very general location described as “on the alluvial terrace margin within the developed footprint of the equestrian facility.” There was no effort to separate out the trees that were planted versus the natural riparian canopy. Thus such trees were included in the mapped riparian area on the property.

The applicant’s biologist describes the riparian area as “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.” This is consistent with Dr. Dixon’s overall assessment of the types of riparian habitats that occur within the Santa Monica Mountains which included mulefat-dominated riparian areas and willow riparian areas. Specific to Malibu Valley Farms, the Commission’s biologist indicates that the “[r]iparian vegetation is better developed toward the southern end of the property than farther north.” The Commission’s biologist did not evaluate the individual trees on site relative to the claim that some of the trees had been planted. Since a specific analysis of the trees was not conducted, the revocation request’s characterization of the subject riparian canopy cannot be verified. The revocation request asserts that the riparian habitat on MVF is naturally occurring based on the following characteristics: random occurrence of trees; native variety of trees; varied age of trees; and continuation of the riparian canopy upstream and downstream of the property.

As provided above, the applicant stated, “We created the riparian habitat in the first place. We planted thousands of trees there, over 1,000 trees.” Given that the riparian area is described as mulefat and willow-dominated by the applicant’s own biological consultant and that the main trees known to be planted by the applicant include Fremont cottonwood, ash and locust, this suggests that that the riparian corridor filled itself out over time and was not the direct result of a tree planting effort. However, the ability of the creek to return to its natural state may be explained in part by the fact that, as stated by the applicant, MVF ended open-grazing and restricted animals from entering the creek. The applicant’s biological report indicates that the “owner has planted native cottonwood trees along the creek channel margin, structurally enhancing riparian canopy values.” This suggests that some trees were planted between the native riparian habitat and the equestrian facilities. If so, such trees would have been included in the riparian canopy that was mapped by the applicant’s biologist. Without a specific evaluation of individual trees on the site, staff cannot definitively establish whether any of the trees within the mapped riparian habitat area were planted.

However, on the assumption that at least some trees were planted in this area, there is some validity in the applicant’s claims to have “created” the riparian habitat in cases where individual planted trees expanded the mapped riparian canopy. Since the individual “planted” trees were not identified or removed from the mapped riparian habitat, then “planted” mature trees contiguous with the riparian corridor would be indistinguishable from the rest of the riparian canopy. This would result in “planted” mature trees adjacent to the rest of the riparian canopy to be mapped as part of the riparian canopy. Therefore, since the applicant’s claims to have created the riparian

canopy may be characterized relative to the biological resources mapping methodology, in this case, there is no evidence that the applicant included inaccurate, erroneous or incomplete information.

As part of the creation of the riparian area, the applicant claims to have planted thousands of trees on the site. The planting of thousands of trees would be a significant undertaking, even if the trees to be planted only included the planting of willow tree cuttings. There is nothing in the record for staff to determine whether the applicant planted thousands of trees, and the party requesting revocation has not provided any additional information that would help make that determination. Staff concurs with the revocation request's statement that thousands of trees do not appear to exist on the subject site. Based on a review of aerial photos, the trees on the subject site appear to be more in the realm of hundreds, rather than thousands. Moreover, some of the trees on the site are in the upland areas rather than in the riparian area where the thousands of trees were asserted to be planted. However, the fact that thousands of trees do not currently exist on site is not proof that thousands of trees were not, at some point, planted on the site. There may be any number of reasons for this discrepancy. It may be that the applicant is characterizing each willow sprig as a tree, or including other woody shrub species in the assessment. Or it may be that the applicant applied 1,000 seeds, acorns, or other early-stage plantings along the riparian area and only a small percentage of those survived to a noticeable stage in the aerial photograph. Or it may be that the applicant is counting plantings that were planted on nearby properties also used by the applicant. Because there are any number of potential meanings to the applicant's assertion that MVF planted of thousands of trees to create the riparian canopy, the party requesting revocation has not provided any conclusive evidence that the planting of trees did not occur. Therefore, in this case, there is insufficient evidence that the applicant included inaccurate, erroneous or incomplete information, and thus this ground for revocation does not meet Test #1..

ASSERTION 4, TEST #2: Pursuant to Test 2, the Commission must consider whether the applicant *intentionally* included inaccurate, erroneous or incomplete information. In this case, as described in Test #1 above, there is no evidence that the applicant included inaccurate, erroneous or incomplete information relative to the applicant's planting of the riparian corridor, nor is there any evidence that the applicant intentionally included inaccurate, erroneous or incomplete information. Therefore, the above assertion does not meet the grounds for revocation pursuant to the first two tests.

ASSERTION 4, TEST #3: As described above, there is no evidence that the applicant included inaccurate, erroneous or incomplete information relative to the applicant's planting of the riparian corridor. Even assuming that Tests 1 and 2 were confirmed in this case, under Test 3, the Commission must determine whether the complete and accurate information would have caused the Commission to require additional or different conditions or deny the application.

Whether the applicant planted thousands of trees or even created the riparian canopy has no bearing on the project's consistency with the policies in Chapter 3 of the Coastal

Act, which formed the sole basis for the Commission's decision. The Commission found that the riparian canopy on the subject site meets the definition of environmentally sensitive habitat. This determination was made regardless of the origin of the species comprising the riparian canopy. As adopted in the Final Revised Findings (Exhibit 2), the Commission found that the project, as conditioned, is consistent with the Coastal Act policies that protect ESHA. Moreover, the Commission found that the project, as conditioned, is consistent with *all* Chapter 3 policies of the Coastal Act, and did not rely on balancing the protection of one coastal resource over another. Therefore, the Commission did not make concessions regarding ESHA under the assumption that the applicant created the ESHA.

Since the requester's assertion would not modify the analysis as to the project's consistency under the Coastal Act, the Commission would not modify its decision even if Tests 1 and 2 were satisfied. Therefore this ground does not meet Test 3.

FIFTH GROUND: Misrepresentation of Outside Agency Approvals for Development Embedded in the Comprehensive Management Plan Misled Commissioners into Creating New Significant Impacts that were not Reviewed or Mitigated

The revocation request asserts that the Comprehensive Management Plan (CMP) became the Commission's primary justification for approval of the CDP, and that the CMP contains development involving streambed alterations within ESHA that has not been reviewed as required by State law or local ordinances. The bioswale, retention pond, and riprap installation constitute streambed alterations and development in ESHA that have the potential to create new significant impacts and require multiple agency reviews, including the Environmental Review Board, L.A. County, California Department of Fish and Game, the Regional Water Quality Control Board, and the Army Corps of Engineers.

The revocation request further asserts that MVF misrepresented that the Comprehensive Management Plan had been approved by the other jurisdictional agencies. However, just before the vote, they retracted their previous statement but implied that they didn't need review because there were no significant impacts from them.

The revocation request further asserts that the Commissioners would not have approved a CDP that lacks the proper permits and agency approvals required by law if the applicant had not misled the Commission into thinking that it held such approvals or did not need such approvals.

ASSERTION 5, TEST #1: The first test in the review of the revocation grounds is whether the applicant included inaccurate, erroneous or incomplete information relative to the subject coastal development permit application.

The bioswale, retention basis, and rip rap were required by the Commission pursuant to Appendix C of the Malibu Valley Farms Comprehensive Management Plan which was required to be implemented by Special Condition 1 of CDP 4-06-163 as water quality protection measures to minimize adverse effects to the creek.

The foundation of this assertion has been previously addressed in Assertions 1A (Environmental Review Board Approval), 1B (ERB and L.A. County Plot Plan Approvals), 1C (California Department of Fish and Game Approval), and 1D (State Water Resources Control Board Approval). As discussed in detail, and concluded in Assertion 1A, the scope of the Environmental Review Board (ERB) approval did not cover the full subject project approved by the Commission. As discussed in detail, and concluded in Assertion 1B, the scope of the L.A. County Plot Plan approval-in-concept did not cover the full subject project approved by the Commission. As discussed in detail, and concluded in Assertion 1C, the California Department of Fish and Game (CDFG) approval was unrelated to the subject project approved by the Commission. As discussed in detail, and concluded in Assertion 1D, the scope of the State Water Resource Control Board (SWRCB) review did not encompass the runoff plan for the equestrian operation.

However, this ground for revocation is specific to what the revocation request refers to as the “late add-on” components of the project. These late add-on components comprise the bioswale, retention pond, and riprap as designed and embedded in the Malibu Valley Farms Comprehensive Management Plan. The party requesting revocation asserts that these developments constitute streambed alterations and development in ESHA that have the potential to create new significant impacts and require multiple agency reviews, including the Environmental Review Board, L.A. County, California Department of Fish and Game, the Regional Water Quality Control Board (RWQB), and the Army Corps of Engineers (USACE).

Staff agrees that the bioswale (including two outlets into the creek), retention pond, and riprap are development in a stream that requires additional approvals and review by L.A. County (Plot Plan Review), CDFG (Streambed Alteration Agreement), and possibly Regional Water Quality Control Board (Section 401 Water Quality Certification), the ERB, and USACE (Section 404 Permit – depending on presence of USACE jurisdictional waters).

However, Test #1 requires that incorrect or incomplete information be provided by the applicant in association with the subject application. As discussed in Assertions 1A through 1D, the applicant did not provide inaccurate information with regard to the approvals for these components of the project. Except that at the July 9, 2007 Commission hearing, the applicant did state that the CDFG and SWRCB approvals encompassed these features, but then retracted those statements at the same hearing. Additionally, staff found nothing in the record that suggests the applicant misrepresented the status of permitting from L.A. County. Thus, the correct information was provided with regard to fact that these components were not yet permitted.

Moreover, it is not clear that lack of this information would constitute incomplete information.

Secondarily, this ground for revocation implies that the lack of disclosure of the impacts of the water quality features constitutes incomplete information since it misled Commissioners into approving a project with significant adverse impacts. Thus, MVF failed to tell the CCC that the CMP, which MVF characterized as mitigation, actually had impacts of its own. However, the CMP itself, including the water quality development, was reviewed and available as part of the Commission's record and the findings reflect that the riparian area was considered ESHA. Since the relevant facts were laid out in the staff report, the lack of affirmative disclosure of the impacts does not constitute incomplete information relevant to this ground for revocation.

ASSERTION 5, TEST #2: Pursuant to Test 2, the Commission must consider whether the applicant *intentionally* included inaccurate, erroneous or incomplete information. In this case, as described in Test #1 above, there is no evidence that the applicant included inaccurate, erroneous or incomplete information relative to the required permitting for the bioswale, retention basin, or riprap, nor is there any evidence that the applicant intentionally included inaccurate, erroneous or incomplete information. Therefore, the above assertion does not meet the grounds for revocation pursuant to the first two tests.

ASSERTION 5, TEST #3: Under Test 3, the Commission must determine whether the complete and accurate information would have caused the Commission to require additional or different conditions or deny the application. As described above, there is no evidence that the applicant included inaccurate, erroneous or incomplete information relative to the required permitting for the bioswale, retention basin, or riprap.

The bioswale, retention basis, and rip rap were required by the Commission pursuant to Appendix C of the Malibu Valley Farms Comprehensive Management Plan which was required to be implemented by Special Condition 1 of CDP 4-06-163 as water quality protection measures to minimize adverse effects to the creek. As quite common, the Commission may determine that water quality measure or other measures are required in order to mitigate the impacts of development to coastal resources. If the mitigation measures represent significant development in and of themselves, the applicant may need to amend, or otherwise obtain, the applicable regulatory approvals. If, for some reason, a regulatory agency cannot approve the mitigation measure under its mandate, then the agency is not required to automatically accept, or approve, the mitigation/development on the basis that the Commission approved such development. If such a situation were to occur, then it would likely require the applicant to come up with a new proposal that is acceptable to all applicable regulatory agencies with jurisdiction over the revised development.

With regard to the subject CDP, the six-acre equestrian facility was reviewed and approved at the July 2007 hearing, and the Commission found the project consistent with the Coastal Act, as reflected in the Final Revised Findings (Exhibit 2) adopted by

the Commission on July 8, 2009. Preliminary approvals from other regulatory bodies are not a standard of review under the Chapter 3 policies of the Coastal Act. A clear understanding that additional permits are necessary for the bio-swale, retention basin, or riprap would not have caused the Commission to make a different decision, either denying the project or adding conditions, because the Commission found the project consistent with the policies of Chapter Three of the Coastal Act – the standard of review in this case.

Therefore, accurate information would not have changed the Commission's action to approve the project with conditions. Therefore this ground for revocation does not meet Test 3.

SIXTH GROUND: Misrepresentation of the Offer To Dedicate An Agricultural Easement

The revocation request asserts that the applicant provided incomplete information with regard to the offer-to-dedicate an agricultural easement. Specifically, the graphic provided by the applicant showing the 23-acre agricultural easement area did not show that the entire agricultural easement area is ESHA. The keeping of livestock in the agricultural easement area will degrade the ESHA and due to the steep slopes and proximity to the creek, the keeping of livestock will adversely impact water quality. Had the Commission understood that the area in the agricultural easement is ESHA, they would not have approved the agricultural easement because such use is not consistent with Section 30240 of the Coastal Act, which requires it to be "protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas." The Commission did not mitigate the adverse impacts of the agricultural use on the ESHA because the Commission was led to believe that the agricultural easement itself was mitigation.

The revocation request lays out the following argument in support of this assertion:

- At the July 9, 2007 Commission hearing, the Commission accepted what it perceived to be an offer-to-dedicate land to protect it from development.
- At the end of the July 9, 2007 Commission hearing proceedings, Commissioner Neely reminded the Commission "…that the applicant offered an agricultural easement in their proposal" (Page 118 of Transcript). Without further discussion, the Commission accepted the offer made by the applicant and included it as Special Condition #4 – an Agricultural Easement to be applied to 23 acres of hillside.
- The offer-to-dedicate consisted of a single sentence: "An agricultural easement is to be recorded affecting the portion of the site as designated on the attached site plan (Revised Findings Exhibit 28)."
- The map that accompanied the offer did not show that the 23 acres subject to the easement was ESHA, to which overlay of an agricultural easement would cause a *loss* of protection (Revised Findings Exhibit 29).
- Land designated as ESHA is given the highest protection by Section 30240 of the Coastal Act, which requires it to be "protected against any significant disruption of

habitat values, and only uses dependent on those resources shall be allowed within those areas."

- Commissioners must have been misled or they wouldn't have down-zoned ESHA to a less protected status and creating new significant impacts by allowing livestock grazing of ESHA that could result in the eventual demise of the protected oaks, as seedlings are consumed by livestock. The livestock area is on a steep slope and is within 30 feet of the stream on east side of the property which does not have any bio-swale to protect the creek from agricultural runoff.
- At the Commission's 2008 Revised Findings hearing, the Commission directed staff to adopt the wording urged by the applicant which allows the property owner to maintain livestock on the 23 acres without the need for further Coastal Commission review.
- The applicant's language with regard to the keeping of livestock, adopted by the Commission, essentially negates the rest of the agricultural easement language which requires maintenance/restoration of natural habitat since agricultural use by its very nature degrades natural habitat and allows development through "associated structures."
- CEQA requires mitigation of significant impacts or the use of site alternatives to avoid significant impacts but neither occurred relative to the agricultural easement, which is evidence that Commissioners were led to believe that the easement was itself mitigation.
- The 2009 Revised Findings Report relies on the CMP as mitigation for the lack of 100-foot buffer; however, the CMP addresses only water quality issues, and only those occurring on the west side of the creek. The CMP makes no attempt to mitigate the significant impacts to the east side of the creek, oak woodlands ESHA, the chaparral and sage ESHA, the individual oaks identified as significant resources, or the fuel modification areas in the ESHA at the north portion of the property.
- Commissioners would not have voted to grant a CDP in direct violation of Coastal Act policies without mitigation of violations.

ASSERTION 6, TEST #1: The first test in the review of the revocation grounds is whether the applicant included inaccurate, erroneous or incomplete information relative to the subject coastal development permit application. This ground for revocation primarily contends the merits of the Commission's decision rather than addressing whether inaccurate, erroneous, or incomplete information was provided by the applicant relative to the offered agricultural easement. Specifically, the overarching argument for this ground contends that maintaining livestock within the agricultural easement will damage ESHA, and therefore the Commission could not have understood the impacts of approving an agricultural easement in that location.

The relevant arguments with regard to Test #1 appear to be limited to the fact that the applicant's graphic showing the agricultural easement area does not indicate that the area within the boundaries is ESHA. Secondly, that by offering the agricultural

easement in the form of a special condition implied that the agricultural easement itself was mitigation. Therefore, these two facts are the focus of the discussion for Test #1 below.

At the Commission's July 9, 2007 hearing, the applicant represented the following about the east side of the property (Page 30 of Transcript):

> …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 reference to the project's agricultural component, the applicant stated the following at the Commission's July 9, 2007 hearing:

> …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. (Page 37 of Transcript)
>
> It specifies under 30242 that all land suitable for agricultural uses shall not be converted to non-agricultural uses. … (Page 37 of Transcript)
>
> … 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 to the better part of 60 or 70 years, and what is on the property now was constructed in the mid-1970s. …(Page 115 of Transcript)

Special Condition #4 of CDP 4-06-163 states:

> 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. Maintaining livestock and 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.
>
> 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 agricultural 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. 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.

The Commission's adopted Final Revised Findings (Exhibit 2), dated June 25, 2009, indicate the following with regard to the presence of ESHA on the site (Page 21):

> 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.

The Commission's adopted Final Revised Findings, dated June 25, 2009, indicate the following with regard to the agricultural easement proposed by the applicant (Page 26):

> 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.

It is true that the applicant's agricultural easement graphic does not identify the ESHA areas. However, this does not translate to the graphic being inaccurate or erroneous. Additionally, the lack of identifying ESHA on the graphic does not constitute incomplete information because the overarching purpose of the graphic was to depict the location

of the agricultural easement area proposed to be recorded. The applicant provided a separate biological resources map which illustrated the oak woodland, annual grassland, and chamise chaparral in the eastern portion of the property which served the purpose of identifying habitats that qualify as ESHA. Moreover, the applicant testified at the July 9, 2007 Commission hearing stating that Commission staff identified the east side of the property as an oak woodland ESHA. Further, as described above, in the Final Revised Findings (Exhibit 2), adopted by the Commission on July 8, 2009, the Commission found that the eastern portion of the property was ESHA as detailed in the staff report. Therefore, the applicant would understandably assume that the Commissioners were made aware of the fact that the eastern part of the property was ESHA.

As to the second contention, there is no testimony or available records that suggest the applicant provided inaccurate, erroneous, or incomplete information by offering to dedicate the proposed agricultural easement. The applicant provided the Commissioners with a proposed recommendation to approve the project, mocked up in the same format used in Commission staff reports. MVF's recommendation sheet (Exhibit 15) included a motion and resolution to approve the project with conditions. The conditions on MVF's recommendation sheet included five special conditions, including conformance to site plan, agricultural easement, mitigation monitoring program, assumption of risk, and deed restriction.

MVF's recommendation sheet included the following summary of the recommendation:

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

MVF's recommended Special Condition Two, Agricultural Easement stated the following:

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

There is no additional information provided with MVF's recommendation sheet regarding the proposed agricultural easement, other than the exhibit of the proposed agricultural easement area. The fact that the applicant is proposing the agricultural easement as a special condition may imply that it is a protection that the Commission finds necessary to ensure that development is consistent with the Coastal Act. However, other than this indirect implication, there is nothing to suggest that MVF's offer of an agricultural easement is mitigation to offset adverse impacts related to the project. The Commission found the project, as conditioned, consistent with the Coastal Act, and further that the agricultural easement would preserve the land in its current state so that

it is available for agricultural use, consistent with the Section 30242 of the Coastal Act as described below.

The Commission's adopted Final Revised Findings, dated June 25, 2009, indicate the following with regard to the agricultural easement (Page 44; Exhibit 2):

> 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.

Therefore, in this case, there is no evidence that the applicant included inaccurate, erroneous or incomplete information relative to the agricultural easement. Therefore, the above assertion does not meet the grounds for revocation pursuant to Test #1.

ASSERTION 6, TEST #2: Pursuant to Test 2, the Commission must consider whether the applicant *intentionally* included inaccurate, erroneous or incomplete information. In this case, as described in Test #1 above, there is no evidence that the applicant included inaccurate, erroneous or incomplete information relative to MVF's proposed agricultural easement, nor is there any evidence that the applicant intentionally included inaccurate, erroneous or incomplete information. Therefore, the above assertion does not meet the grounds for revocation pursuant to the first two tests.

ASSERTION 6, TEST #3: Under Test 3, the Commission must determine whether the complete and accurate information would have caused the Commission to require additional or different conditions or deny the application. As described above, there is no evidence that the applicant included inaccurate, erroneous or incomplete information to MVF's proposed agricultural easement.

Regardless, even assuming that Tests 1 and 2 were confirmed in this case, under Test 3, the Commission must determine whether the complete and accurate information would have caused the Commission to require additional or different conditions or deny the application.

As described above, the Commission found that the eastern side of the subject site was ESHA. Further, the Commission found that implementation of the applicant's proposal, via Special Condition No. Four (4), to record of an agricultural easement across the eastern portion of the property would ensure that the area is not allowed to be

converted to non-agricultural uses consistent with Section 30242 of the Coastal Act. Therefore, the Commission had the complete and accurate information available for consideration by the Commission at the time the decision was made, further proving that the information could not have changed the Commission's position, since it did not in fact do so. Since the requester's assertion would not modify the analysis as to the project's consistency under the Coastal Act, the Commission would not modify its decision even if Tests 1 and 2 were satisfied. Therefore this ground for revocation does not meet Test 3.

Therefore, accurate information would not have changed the Commission's action to approve the project with conditions. Therefore this ground for revocation does not meet Test 3.

2. Section 13105(b) of the California Code of Regulations

Section 13105(b) of the Commission's regulations provides an alternative ground for the revocation of a permit, based upon an applicant's failure to comply with the Commission's noticing requirements. However, the party requesting revocation did not allege any such failure as a basis for revocation, and the Commission is aware of no evidence that such a failure occurred. Therefore, there is no basis for revocation of the permit pursuant to the grounds listed in Section 13105(b).

3. Conclusion

For the reasons discussed in detail in the preceding sections of this report, the revocation request does not demonstrate that the applicant knowingly and intentionally provided inaccurate, erroneous, or incomplete information relevant to the Coastal Act analysis as to whether the MVF equestrian facility is consistent with the Chapter 3 policies of the Coastal Act. Thus, the grounds necessary for revocation under Section 13105(a) of the Commission's regulations have not been satisfied. In addition, there is no claim or evidence of grounds for revocation under Section 13105(b). The Commission finds that the revocation request must be denied because the contentions raised in the revocation request do not establish the grounds identified in Sections 13105 (a) or (b) of Title 14 of the California Code of Regulations.

PETITIONER:

Save Open Space
5411 Ruthwood
Calabasas, CA 91302
Tel: (818) 880-6445

Amendment to

REQUEST FOR REVOCATION OF COASTAL DEVELOPMENT PERMIT NO. 4-06-163

SAVE OPEN SPACE,
Petitioner,

CALIFORNIA COASTAL COMMISSION,
Respondent,

MALIBU VALLEY FARMS, INC.,
Real Party in Interest.

R-4-06-163
Exhibit 1
Amended Revocation Request

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REQUEST FOR REVOCATION OF COASTAL DEVELOPMENT PERMIT 4-06-163 GRANTED TO MALIBU VALLEY FARMS

INTRODUCTION

This revocation is being sought by Save Open Space (SOS) under Section 13105(a) of the California Code of Regulations, which provides the following grounds for revocation of a Coastal Development Permit: intentional inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit application, where the commission finds that accurate and complete information would have caused the commission to require additional or different conditions on a permit or deny an application (14 CCR § 13105).

Intentional Misrepresentation

The Coastal Commission's 7-5 vote to issue a retroactive Coastal Development Permit to Malibu Valley Farms was based on inaccurate, erroneous and incomplete information upon which commissioners relied heavily in making their decisions as is reflected in their comments during pre-vote deliberations, their votes, and the revised findings that formalize and justify those decisions.

Section 13105(a) of The Coastal Act states that Intentionally providing incomplete information is considered as much a misrepresentation of the truth as supplying incorrect information, and the commission of either allows the revocation of a permit that has been obtained by such practices. Because many of the issues involve incorrect, erroneous, and incomplete information, and because it is not necessary to distinguish among them, the three types of occurrences will be collectively referred to as misrepresentations or misinformation throughout this document.

Existing Information

The evidence used to refute the applicant's claims is not new information that has just come into existence; it was in existence and publicly available before the permit was granted. The petitioners gathered the documentation after the July 9, 2007, hearing to refute statements made by the applicant at that hearing that petitioners knew to be misrepresentations and omissions of fact. The documentation

could not have been assembled before that because the misrepresentations were first made known to the public at the hearing, though the evidence was all in existence at the time of the Commission's action. Since the submission of this Revocation Request in 2008, litigation ensued that resulted in the case being remanded back to the Coastal Commission and a new Revised Findings Report being approved. Transcripts of those proceedings are being referenced to further support points made in the Revocation Request and raise an issue that becomes paramount as a result of the court's ruling in that litigation.

Due Diligence

This revocation request is being filed with due diligence. Although the permit in question was granted in July of 2007, the Revised Findings were not adopted until June of 2008. The intervening months were spent reviewing administrative records that extend back ten years, requesting and analyzing public records, and assembling the evidence into a cohesive whole. Although that process took five months, it is far less than the eight years that it took the applicant to bring forward the Coastal Development Permit action after receiving his first Notice of Violation from the Commission in 2000, and it is less than the year it took the Commission to bring forth the Revised Findings. This Amendment to the original Revocation Request was filed within three months of the 2009 Revised Findings Hearing at which final approval of the CDP was granted. Amendments to the original Revocation Request are underlined in this version.

Quotes taken from the transcript of the public hearing and other public documents include the errors in those documents. Any corrections needed to clarify a statement occur in brackets next to the error. "Applicant" refers to Malibu Valley Farms, Inc. (MVF) and its owners, officers, representatives, agents, lobbyists, and employees, including, but not limited to Brian Boudreau, Don Schmitz, Fred Gaines, Beth Palmer, and Sean Doherty.

Issues not raised during the public comment period cannot be considered by a court of law in a Writ of Mandamus action, which relies entirely on information in the administrative record, so this revocation request is the only forum to address in their entirety the omissions of fact and the false or misleading information provided to the Coastal Commission by the applicant.

FIRST CAUSE FOR REVOCATION:
MISREPRESENTATION OF STATE AND LOCAL AGENCY APPROVALS

MISREPRESENTATION TO ACQUIRE L.A. COUNTY ENVIRONMENTAL REVIEW BOARD APPROVAL

The Coastal Act requires Coastal Development Permit applicants to obtain local agency approvals to demonstrate a project's consistency with local zoning and it requires commissioners to heavily weight local agency approvals in their decisions.

> "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 (14 Pub.Res. § 30004(a))."

CEQA allows approval only if a project is "otherwise permissible under applicable laws and regulations [13 Pub. Res. 21002.1(c)]."

Those local approval policies are implemented by requiring Coastal Development Permit (CDP) applicants to obtain a local Plot Plan Approval in Concept (AIC) to demonstrate consistency with local zoning (Exhibit 9: Coastal Development Permit Application, Appendix B). L.A. County's plot plan approval process, in turn, requires applicants to obtain approval from the county's Environmental Review Board (ERB). Policy 64 of the Malibu Land Use Plan (LUP), which is binding on LA County, states that development in ESHA must be reviewed by the ERB:

> P64 An Environmental Review Board...shall be established...as an advisory body to the Regional Planning Commission and the Board to review development proposals in the ESHAs, areas adjacent to ESHAs, Significant Oak Woodlands...The ERB shall provide recommendations to the Regional Planning Commission...on the conformance or lack of conformance of the project to the policies of the Local Coastal Program. Any recommendation of approval shall include mitigation measures designed to minimize adverse impacts on environmental resources...projects shall be approved by the decision-making body for coastal permits only upon a finding that the project is consistent with all policies of the LCP.

In *Sierra Club v. County of Los Angeles* (C752027, 1991), the court confirmed that requirement and forced L.A. County to convene an Environmental Review Board and incorporate it into the permit approval process. In that case, the county had never formed an ERB by the time it approved a golf course

development in Corral Creek's ESHA. Hence, the county Board of Supervisors did not comply with Malibu Land Use Policy 64 which mandates ERB review of projects altering ESHA in order to provide expert advice to county decision-making bodies regarding the ESHA impacts and ways to avoid them. The court mandated that an ERB be convened and that development proposals in the resource protection areas could not be approved without first getting recommendations from the Environmental Review Board.

The applicant deliberately manipulated the ERB "approval" to make it appear to be an approval for the project described in the Coastal Development Permit application when in fact it was for a differently-premised project.

Vested Rights Exemption vs. Coastal Development Permit

If development on a property occurred before the implementation of the Coastal Act, it can be exempted from meeting Coastal Act provisions. Once such a "vested rights" determination has been made, only *modifications to the existing vested development* need Coastal Commission approval (14 Pub.Res. § 30608) referred to in this document as a "review for modifications to existing vested development" or similar wording.

If development on a property occurred after implementation of the Coastal Act, but without Coastal Commission approval, it is illegal, but may be made legal by approval of a retroactive Coastal Development Permit that treats the development as though it had never occurred and subjects it to the same application process that proposed new development undergoes. This more comprehensive review is referred to in this document as a "full site review" or similar wording.

Project Switching

MVF switched back and forth for seven years between a Vested Rights Claim (VRC) and a Coastal Development Permit application while it continued to operate without a permit. It started with a Vested Rights Claim in 2000, but when the Coastal Commission staff recommended denial, MVF postponed the 2001 public hearing before a formal decision could be made. One year later, in 2002, MVF started a Coastal Development Permit application and then stalled for four years while it collected the local agency

approvals required to complete the application. A Coastal Development Permit application is not considered legally open until it is complete, which did not occur until 2006 in this case, but the Vested Rights Claim remained open from 2000 to 2006 because it had only been postponed, not withdrawn or decided.

When the Coastal Commission staff released a report recommending denial of the CDP, MVF withdrew the Coastal Development Permit application and reverted back to pursuing its *original* Vested Rights Claim. In 2006, the Coastal Commission voted to deny the Vested Rights Claim and issued a Cease and Desist Order and a Restoration Order, but gave the applicant 60 days to file a new Coastal Development Permit application. The local agency approvals had expired, but in a good faith effort to bring the case to closure, the Coastal Commission's executive director allowed their inclusion. Although the staff again recommended denial of the Coastal Development Permit, in 2007 the Coastal Commission approved it. Another year passed before the Coastal Commission produced the Revised Findings in 2008 to support its deviation from the staff's recommendation.

In the four years that it took MVF to submit what appeared to be the state and local agency approvals required for the Coastal Development Permit application, it exploited the open VRC file by representing the project to each public agency as being only for modifications to existing vested development, and then submitting the alleged "approvals" to the Coastal Commission as satisfaction of its state and local agency requirements.

MVF's plan to win Coastal approval for its unpermitted development was to remove those pipe corrals and storage structures that were right on the creek and replace them with new barns that were 50 feet from the creek. Although Coastal Commission staff identified that there is room on the site to do that in such a way that the new structures would be outside the 100-foot setback from the creek, MVF claimed, albeit without any supporting evidence, that the alternative plan was infeasible. The project the ERB reviewed was only a proposal to remove the pipe corrals and storage structures that were right next to the creek. It did not include the 114,906 square feet of structures that would replace the structures being

removed or that would remain for which no permit had ever been granted. It did not include the access road that is right next to the creek. It did not include the two at-grade stream crossings. It did not include livestock fencing around 23 acres of oak woodlands ESHA. It did not include 250 feet of riprap the applicant wants to add to the creek or outlets to the creek for the 1,440 foot ditch and the 850 square foot retention pond that it proposed to place right next to the creek.

MVF presented its zoning consistency application to the Los Angeles County Environmental Review Board in 2003 as a review for *modifications to existing vested development*. Because the proposed modifications were ostensibly only for the removal of some of the buildings closest to the stream, and because MVF told the ERB that the rest of the development on the site was vested and, thus, not subject to ERB review, the ERB approved the removal of the structures. The ERB did not, however, ever consider or approve *all the development on the site as though it had not yet occurred* as is the requirement for a retroactive CDP. When MVF submitted the deceptive ERB "approval" to the LA County Department of Regional Planning, the county approved the proposed plot plan based on its Environmental Review Board's approval and picked up the language used by the ERB, so the Plot Plan Approval in Concept became only an "approval of modifications to an existing equestrian facility" rather than a full site review (Exhibit 1: LA County Plot Plan Approval in Concept, Exhibit 9 Coastal Development Permit Application Appendix B: Approval in Concept).

In a letter to the Coastal Commission recommending denial of the Revised Findings, Third District Supervisor Zev Yaroslavsky described LA County's position on the misrepresentation:

> "...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* equestrian facility.' (Emphasis added.) 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 (Exhibit 2: Letter from LA County Third District Supervisor Yaroslavsky, 1-2)."

At the public hearing, after reading aloud Section 30004 of the Coastal Act to remind Commissioners of their duty to "rely heavily on local government and local land use planning procedures and enforcement (*supra*)," the applicant not only intentionally omitted the key information that the ERB hearing was for only the removal of a portion of the structures, but also specifically stated that the ERB had found the project to be consistent with the Malibu Land Use Plan that specifies a 100-foot setback from ESHA and streams:

> **MR. SCHMITZ:**
> "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 (Exhibit 3: Transcript, 41)."

Suzanne Goode, the ERB's California State Parks representative referred to in the applicant's above statement, had reason to recall the specific meeting since MVF is only few miles from her home and within the area of the homeowners association over which she presides, making her the ERB member most familiar with the property. The following letter from Goode documents that the project being proposed by the applicant at that hearing could not be given a comprehensive full site review because the applicant represented the project as being only for modifications to existing vested development, to which the ERB had no reason to object since the proposed changes only entailed removal of some of the buildings closest to the stream as MVF sought Coastal Commission approval.

> "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 right 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. (Exhibit 4: Statement by Suzanne Goode)."

Ms. Goode submitted similar comments to the court in a sworn Declaration:

> "As the California Coastal Commission is the agency with sole authority to approve that vested right claim at the Malibu Valley Farms site, we were told by these representatives that our review of the structures on the property was strictly limited to the proposed modifications to the site. We were specifically instructed not to review or comment on existing structures which were the subject of the vested rights claim, some of which were located within the 100-foot setback from Stokes Creek.
>
> At the January 27, 2003 ERB hearing, the Board's review was therefore limited to the proposed modifications to the existing facilities at the Malibu Valley Farms site, and the only recommendations it made related to Best Management Practices and exterior lighting. We made no findings related to the proximity of the existing structures to 'Environmentally Sensitive Habitat Areas' (Declaration by California States Parks Representative and ERB member Suzanne Goode, February 18, 2009)."

The court agreed that Ms. Goode's explanation of the ERB's understanding of what was reviewed was more compelling than the testimony and declaration of L.A. County staff member Joe Decruyanaere who had claimed at the initial public hearing that the ERB had approved the project.

> "The evidence presented by Malibu Valley Farms is mostly circumstantial, although there is—I think the biologist provided direct evidence that he thought they did consider them, so you have conflicting evidence. But one of the decision makers says they didn't. I think that's fairly strong." (emphasis added) (Judge Chalfant, Reporter's Transcript of Proceedings, March 5, 2009, page 3).

Ms. Goode also appeared at the July 2009 Revised Findings hearing to provide further clarification.

> "The applicant and his representatives informed the ERB that at no time were we to consider the current location within the ESHA setbacks of structures that were on the site at that time. We were told that these structures were the subject of an ongoing vested rights claim that had begun in 2001. Therefore, the ERB did not review the locations of the structures that are the subject of this after-the-fact permit. But, what we did is we looked at some of the best management practices, and some minor modifications, and that was it.
>
> He did come back to you for the vested rights claim, which was denied by this body in 2006. He was then instructed to come back to the Coastal Commission with an after-the-fact development permit application. He never returned to Los Angeles County to come before the ERB to review an after-the-fact Coastal Development Permit...We are very concerned with a process that should have occurred, but has not occurred—Policy 64, which was not followed—so this after-the-fact development proposal was not reviewed by the Los Angeles County Environmental Review Board, which is required by Policy 64."

COASTAL COMMISSION PROJECT DESCRIPTION VS. ERB PROJECT DESCRIPTION

DEVELOPMENT	COMMISSION	ERB
four 2,660 ft^2 covered pipe barns	approved	not included
three 96 ft^2 tack rooms	approved	not included
45,000 ft^2 riding arena	approved	not included
three 576 ft^2 shelters	approved	not included
two 225 ft^2 manure storage areas	approved	not included
1440 ft^2 barn	approved	not included
2660 ft^2 mare motel	approved	not included
2,000 ft^2 parking lot	approved	not included
25,200 ft^2 riding arena	approved	not included
15,000 ft^2 fenced paddock	approved	not included
dirt access road	approved	not included
two at-grade stream crossings	approved	not included
livestock fencing enclosing 23-acres hillside	approved	not included
Facilities Removed		
twenty-eight 576 ft^2 portable pipe corrals	approved	approved
four 400 ft^2 portable pipe corrals	approved	approved
288 ft^2 storage shelter	approved	approved
200 ft^2 storage trailer	approved	approved
200 ft^2 portable rollaway bin/container	approved	relocate
101 ft^2 tack room-no porch	approved	approved
four 101 ft^2 tack rooms w/ 4-ft. porches	approved	approved one
150 ft^2 cross-tie area	approved	approved
250 ft^2 cross-tie area	approved	approved
360 ft^2 cross-tie shelter	approved	approved
200 ft^2 tack room with 4-ft. porch	approved	not included
two 2,025 ft^2 covered corrals	approved	not included
1,080 ft^2 covered corral	approved	not included
160 ft^2 storage container	approved	not included
three-foot railroad tie walls	approved	not included
5,000 ft^2 of fenced paddock	approved	not included
Mitigation		
1400 ft of vegetative swales	approved	not included
850 ft^2 retention basin	approved	not included
250 ft^2 riprap pad	approved	not included
65.8 yd^3 grading	approved	not included
.5 acre riparian restoration	approved	not included

An e-mail from LA County Staff member Daryl Koutnik, who was present at the ERB meeting and also participated in the site visit, to fellow ERB member Suzanne Goode corroborates Goode's recollection that the hearing was limited to the changes being made to vested development. Koutnik stated:

> "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 (Exhibit 5: E-mail from LA County Staff Member Daryl Koutnik)."

Although LA County staff member Joe Decruyenaere, on the request of the applicant to serve as a witness and whose testimony was part of the applicant's prepared presentation, testified accurately at the hearing that the ERB had approved the MVF application, his testimony offered no more than the wording from the summary minutes of that ERB hearing and did not address the nature of the project the ERB approved or the ERB's process or reasoning; his statement could have been made by anyone given a copy of that summary. ~~Furthermore, Mr. Decruyenaere did not participate in the site visit that Dr. Koutnik and Ms. Goode did where the extensive Vested Rights claims lobbying occurred.~~

> **MR. DECRUYENAERE**:
>
> "...the minutes of that meeting, summarized, basically, ERB's only concerns were with an erosion problem along the stream...and the exterior night lighting, that that be minimized and downcast. And, the county's staff recommendation was that they provide us their our (sic) 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 (Exhibit 3: Transcript, 39-40)."

In comparison, the wording of the ERB Summary minutes states:

> **"ERB Evaluation: Consistent after Modifications**
> **ERB Recommendations:**
> The Department of Public Works shall address the hydrological issues on the site and correct the problems contributing to erosion and undercutting of structures.
> Exterior night lighting shall be directed downward, of low intensity, at low height and shielded to prevent illumination of surrounding properties and undeveloped areas; security lighting, if any is used, shall be on a motion detector.
>
> **Staff Recommendation: Consistent**
> Suggested modifications: Provide a copy of the waste management program currently in use at the facility for distribution to other ERB applicants with equestrian facilities. (Exhibit 6: ERB Summary Minutes)."

Unlike ERB member Suzanne Goode, Mr. Decruyenaere, who was not a member of the ERB ~~and did not participate in the site visit~~ (*id.*), neither supports nor refutes the fact that the request for Coastal Development Permit approval was submitted as a request for approval of only the changes to an otherwise vested development. He also leaves out the fact that as a result of the ERB hearing, the Department of Regional Planning included the statement "modifications to an existing equestrian facility" in the list of conditions on its Plot Plan 48295 Approval in Concept (Exhibit 9: Approval in Concept).

A misrepresention did occur in his testimony, however, when he stated that "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 (Exhibit 3: Transcript, 39)" by misconstruing the fact that the ERB did not comment on the 100-foot setback to conclude that it was because the lack of setback was acceptable to them, when in fact it was because they had no authority to comment on a setback for a vested development that existed prior to the Malibu Land Use Plan and the Coastal Act. ~~This~~ *Mr. Decruyanaere's* conclusion is not supported by the meeting minutes, the nature of the proceeding, or the testimony of other ERB members or Department of Regional Planning staff.

The applicant repeatedly made the point that the ERB has the discretion to make exceptions to the 100-foot setback policy on an individual case-by-case basis, which is true, but he intentionally and willfully misrepresented the ERB's "approval" as being just such an exception, when, in actuality, the ERB's approval was based, not on an exception, but on only the removal of some structures and not the replacement of them.

> **SCHMITZ:**
> We received a number of different agency approvals for this: ...the Environmental Review Board, which is critically important...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... (Exhibit 3: Transcript, 33)."
>
> "[LUP] Table 1 policies do, specifically, allow the ERB to make findings for a review setback as they did (Exhibit 3: Transcript, 92)."

The applicant also implied that it was the ERB who came up with the swale and retention basin as an alternative to the 100-foot setback:

> "[The Coastal Act] says that [a 100-foot setback] is where you start, and if the ERB comes up with an alternative, which is environmentally superior, then it can be less (Exhibit 3: Transcript, 93)."

In addition, the applicant consistently withheld information that the Plot Plan approvals had been based on an ERB approval for a different project (Exhibit 3: Transcript, 23, 29, 33, 93)."

The applicant's misleading account of the ERB's action was first established in ex parte communications. Although the Coastal Act requires that commissioners who are the recipients of ex parte communications provide "a complete description of the content of the communication" (Coastal Act, §30324(C))," many commissioners only revealed the *topics* of the discussions, not what information was given *about* those topics, which is not full disclosure that fulfills the intent of this Coastal provision.

By analogy, if a teacher asks her students what they learned on a field trip, the answer, "We learned about bears" does not answer the question. "We learned that bears eat people" does because it gives the teacher information to correct or confirm and an opportunity to know if the learning objectives were achieved, missed, or distorted.

If the applicant gave false information during a public hearing, it can be refuted; if the applicant gave false information during an oral ex parte communication that was not fully disclosed, there is no opportunity to correct it or even know if it affected a decision, so such incomplete disclosures do not fulfill the intent of Coastal Act policies 30324 and 30006.

Almost every commissioner who voted in favor of the project was the recipient of in-depth ex parte communications from a team compromised of the applicant and/or his agents.

Thus, in the absence of more complete information, and in the absence of any protest from commissioners at the hearing that they were receiving conflicting testimony, it will have to be assumed that the applicant's ex parte statements contained at least the same misleading statements regarding ERB

approval as were made by the applicant during the hearing. In the absence of any opportunity for public scrutiny, rebuttal, or recording, that misinformation was left unchallenged to take root in the commissioners' sympathies:

> **COMMISSIONER POTTER:**
> I had a discussion...with Don Schmitz...that the environmental review board had the authority to, on a case-by-case, to make individual ESHA setback determinations (Exhibit 3: Transcript, 23)."
>
> **COMMISSIONER ACHADJIAN:**
> "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 (Exhibit 3: Transcript, 23)."
>
> **COMMISSIONER BLANK:**
> "Our discussion topics were the same as other ex partes (Exhibit 3: Transcript, 27)."

In addition, Commissioner Blank, *if not all Commissioners*, received a letter from Malibu Valley Farms on June 30, 2007, a week prior to the hearing, that stated:

> "...the governing body, such as the Coastal Commission, has the discretion to determine the appropriate setbacks on a case by case basis. Both the Los Angeles County Department of Regional Planning and the Environmental Review Board exercised this option and approved Malibu Valley Farms as proposed (Exhibit 7: Letter from MVF to Commissioner Blank, 2)."

Furthermore, in one of the few oral ex parte communication disclosures to reveal not just the topic of discussion, but also the statements made by the applicant about the topic, Commissioner Burke divulged a conversation in which Malibu Valley Farms representatives had led him to believe that the project had District Supervisor Yaroslavsky's full support:

> **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 the Supervisor from the third district was in full support, and his staff had been out and reviewed the project (Exhibit 3: Transcript, 28)."

Third District Supervisor Zev Yaroslavsky later emphatically refuted this in a letter to the Coastal Commission urging them not to adopt the Revised Findings:

> "...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 (Exhibit 2: Supervisor Yaroslavsky's Letter)."

The applicant later attempted to correct Commissioner Burke by saying that he had simply told the Commissioner that MVF had won a manure management award and "that the Department of Regional Planning had approved the project", offering as a possible explanation for the discrepancy in their accounts of the conversation that "[t]he room was loud" (Exhibit 3: Transcript, 29); however, Commissioner Burke's detailed perception and confident, but markedly different, portrayal of that earlier conversation belie the applicant's version, and it is more logical to conclude that Commissioner Burke had stated exactly what the applicant, in response to a direct question, had led him to erroneously conclude. Commissioner Burke did not retract or correct his statement.

The project-switching that occurred explains why the ERB did not require a biological assessment or require *any* setback from the creek when the Malibu LUP requires a minimum 100-foot setback. It also explains the Commission's executive director's and district director's confusion regarding the local agency approvals. Like the commissioners and the LA County Department of Regional Planning, they, too, were misled by MVF's misrepresentation about its local agency approvals.

> **DISTRICT DIRECTOR AINSWORTH:**
> "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. ...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 (Exhibit 3: Transcript, 94-95).
>
> **EXECUTIVE DIRECTOR DOUGLAS:**
> "...I share Mr. Ainsworth's consternation about how they could recommend, even if it is just an advisory recommendation, no setback in their review of this particular facility (Exhibit 3: Transcript, 97)."

The project-switching was compounded and expanded into appearing as both ERB and Department of Regional Planning approvals, which influenced those commissioners who tipped the balance in favor of approval of the Coastal Development Permit in the 7-5 vote. Commissioners and staff were understandably confused by the shifting premises and approvals and their comments reflect their confusion and the extent to which they believed that the ERB had, in fact, made a case-by-case exception to the LUP setback standard and that they relied heavily on those local agency approvals in making their decisions.

CHAIR KRUER:
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 (Exhibit 3: Transcript, 135-136).

That Commissioners relied on the veracity of those local agency approvals and would have voted otherwise if correctly informed is also reflected in the Revised Findings they made to legally justify deviating from the staff recommendation for denial because, without those justifications, they would not have had legal grounds to do so. The following Revised Findings do not address or adjust for this misrepresentation. Section E, which addresses water quality and stream resources, relies on the ERB approval in multiple places to justify its conclusion that it was not necessary to require the applicant to implement any project alternatives:

> "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 (Exhibit 8: Revised Findings, 21, 34).
>
> . . .
>
> "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 (Exhibit 8: Revised Findings, 21-22)."
>
> . . .
>
> "...the ERB found that these crossings are consistent with the resource protection policies of the LUP (Exhibit 8: Revised Findings, 35)."

That Commissioners would have voted differently if they had been given correct and complete information is almost unquestionable since they would not have had the legal grounds to go against the staff recommendation. The key ERB approval was for a different project, which does not legally satisfy the requirement to show local zoning consistency, and the applicant deliberately and repeatedly misrepresented that project approval. Other public agency approvals were similarly misrepresented.

LA Superior Court Found No Evidence of ERB Review of Any Existing Structures

Immediately following the Commission's approval of the 2008 Revised Findings, which relied heavily on the ERB review of the project, Coastal Law Enforcement Action Network (CLEAN) filed a Petition for a Writ of Mandate (Coastal Law Enforcement Action Network v. California Coastal Commission, Los Angeles Superior Court Case No. BS112422). A judgment granting that writ was entered March 10, 2009, that required the Commission "to set aside its Revised Findings of June 11, 2008, of Coastal Development Permit Number 4-06-193 [sic] approved on July 9, 2007, in the administrative proceedings entitled 'Application No. 4-06-163 (Malibu Valley Farms, Inc., Santa Monica Mountains, Los Angeles Co.);' [and] ... to reconsider its Revised Findings and/or its approval of the project (2009 Revised Findings Report, p.3)."

Specifically, the court ruled that there was no substantial evidence that the ERB had reviewed the full project brought before the CCC:

> "[Commissioners] don't have the discretion to call the ERB decision something other than what it is. It is not a decision concerning the existing structure. So they don't have the discretion to say, we think it is, and therefore, we're relying on it. They cannot do that. (Judge Chalfant, Reporter's Transcript of Proceedings, March 5, 2009, p. 18)."

In reconsidering the Revised Findings, the Commission chose to separately decide to impose less than a 100-foot setback under its own authority without relying on the ERB decision. That action was finalized at the July, 2009, Revised Findings Hearing.

The lack of ERB review cannot so easily be dismissed, however, as it has much broader implications; the court's ruling on the ERB issue, in fact, renders the L.A. County Plot Plan Approval-in-Concept similarly limited in scope to only the proposed changes, which leaves the project without the proof of local zoning consistency that is required by Section 13052 of the California Code of Regulations.

MISREPRESENTATIONS OF L.A. COUNTY PLOT PLAN 48295 APPROVAL IN CONCEPT

The ERB "approval" was pivotal to the County's decision to issue a Plot Plan Approval in Concept. Like the ERB approval, however, the County Plot Plan approval was for a vested development project, not the project the Coastal Commission was considering. In applying for a retroactive CDP, development has to

be evaluated as though it has not yet occurred, but the Plot Plan Approval in Concept, as approved, is for "modifications to an existing equestrian facility (Exhibit 1: LA County Plot Plan Approval in Concept, Exhibit 9: Coastal Development Permit Application Appendix B: Approval in Concept).

The Plot Plan application that lists no grading requirements and no oak tree encroachment is further evidence of this misrepresentation because the buildings, roads, and other structures do encroach on oak trees and required grading when they were constructed (Exhibit 35: Staff Report), so the grading and encroachments should have been included in a full site analysis (Exhibit 10: L.A. County Plot Plan Approval in Concept Application). In submitting the fraudulently-obtained AIC as fulfillment of its requirement to show local zoning consistency, MVF perpetrated its first and most fundamental misinformation to the Commission. Statements made at the hearing reinforced it:

> "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 the Supervisor from the third district was in full support, and his staff had been out and reviewed the project (Reporter's Transcript of Proceedings, July 9, 2007 Public Hearing, p. 28)."

MVF representative Don Schmitz continued to insist that the L.A. County had given full approval:

> "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 [Manure] Management Plan Award, and that the Department of Regional Planning had approved the project. (Transcript, July 9, 2007 Public Hearing, p. 29)" (Emphasis added.)
>
> "Now this application is very comprehensive. It has been thoroughly reviewed and approved by multiple agencies. It has a Comprehensive Management Plan, including the bioswale. We received a number of different agency approvals for this: the Fire Department, the Environmental Review Board...Then Regional Planning approval...(Transcript, July 9, 2007 Public Hearing, p. 33). (Emphasis added.)"
>
> "There has been an issue raised about county permits. First of all, the county permits are effective. They have not been violated, believe me...We have no violations whatsoever...you can ask the county—all of those permits are in place (Transcript, July 9, 2007 Public Hearing, p. 90)."

No County Approval of the Existing Structures is Legally Possible if There Was No ERB Review of Them

With the judge's ruling in CLEAN v. CCC that the ERB review was limited to only the modifications being made to the development, the L.A. County Plot Plan Approval-in-Concept becomes similarly limited even

if the county did not intend to limit it because an Approval-in-Concept cannot exceed the scope of an ERB review that it is dependent on.

No Jurisdictional Agency Approvals of Late Add-On Components

The drainage ditch, drainage pond, rip rap received no ERB. County of Los Angeles Department of Regional Planning, Fish and Game, Regional Water Quality Control Board, or Army Corps of Engineers review as required for new development in ESHA .

MVF, however, continually represented those components as being part of the ERB review. Although it later admitted that the added components weren't part of the ERB's review, the misconceptions had been set and, after perpetrating them, no information was provided to inform commissioners that the new development components had, in fact, not been reviewed by any agency, that they involved streambed alterations in ESHA that had the potential to cause significant impacts.

That Commissioners would have voted differently is not only implied in their deliberations, in the votes they cast, and in the findings they made to support their deviation from the staff's recommendation, but also in the votes they cast at the next Coastal Commission hearing on a similar proposal in the same compromised watershed.

At the next Coastal Commission hearing after the MVF Coastal Development Permit approval, in August of 2007, the Tapia Water Reclamation Plant's proposed percolation ponds were denied by the Commission. Even though the ponds, like MVF's swale and retention basin, were intended to increase filtration of water going into the stream, *they constituted development within ten feet of the stream* and had the potential to flow into the creek through the groundwater or in a storm event. The Coastal Commission demonstrated its commitment to uphold the 100-foot setback requirements of the LUP even when the development's alleged intent was to enhance water filtration. "Commissioners said they might approve seepage ponds if Tapia moved them further away from the creek," stated the *Malibu Surfside News* (Exhibit 11: Malibu Surfside News Article at **www.malibusurfsidenews.com/archives/08162007.pdf**).

As detailed in the staff report, the Commission has consistently upheld the setback requirements in previous decisions within the jurisdiction of this local watershed, and the Tapia Plant decision showed its willingness to continue to do so (Exhibit 8: Revised Findings, 11-12). The aberrant decision made in the MVF case, then, can be attributed in large part to the Commission's legal requirement to give the greatest weight to local agency approvals and its belief in the veracity of those "approvals."

Thus, the decision-makers, *by their legal requirements*, by past and future precedent, as well as by their comments at the hearing-- later formalized and repeated in the Revised Findings--*would had to have voted otherwise* if they had been given accurate and complete information *that the project lacked required local zoning consistency approvals.* The Coastal Act requires Commissioners to favor environmental protection provisions when conflicts among Coastal Act policies arise (§ 30007.5), to heavily weight local agency approvals (§ 30004), *and to require proof of local zoning consistency,* so those local agency approvals were the main factor influencing the seven Commissioners who voted in favor of granting the CDP. Because they were based on a differently-premised project that contained only a subset of the actual development, and did not include review of the whole site, they do not provide the legal justification necessary to override the staff recommendation to deny the project.

All seven of the Commissioners who voted to grant a CDP to MVF unanimously agreed in the first Revised Findings hearing (2008) that the Revised Findings, with their heavy emphasis on the ERB approval, represented their rationale for granting the CDP in spite of a staff recommendation for denial. Multiple references regarding their reliance on ERB approval appeared in the 2008 Revised Findings Report. After the court ruled that there was no substantial evidence that the ERB had reviewed the full project, the Commissioners changed the Revised Findings to omit reliance on the ERB and use other features to justify the permit. The court's ruling on the ERB issue renders the L.A. County Plot Plan Approval-in-Concept similarly limited in scope to only the proposed changes, which leaves the project without the proof of local zoning consistency that is required by Section 13052 of the California Code of Regulations.

MISREPRESENTATIONS REGARDING FISH & GAME APPROVAL

The applicant's Department of Fish & Game "approval" was a misrepresentation in two significant ways. First, it was based on a technicality rather than on any review of the site's configuration because Fish & Game failed to act within the regulated review period.

> "The purpose of this letter is to inform you that the Department failed to meet our deadline for the project you described in the above-referenced notification. As a result, and as explained in greater detail below, you do not need a Lake or Streambed Alteration Agreement from the Department of Fish and Game to complete the project you described in your notification. (Exhibit 12: Fish & Game Letter)."

This was deliberately and specifically misconstrued by the applicant in his statements to the Coastal Commission when the applicant intentionally led commissioners to believe it was a merit-based approval for the streambed crossings.

> **MR.SCHMITZ:**
> "We received...Department of Fish & Game approval, including retention of the two dirt trails which go through the drainage. (Exhibit 3: Transcript, 34) "

The deception goes much deeper, however. MVF's project request to Fish and Game was not for approval of the at-grade stream bed alterations as it should have been for a retroactive Coastal Development Permit application in which all unpermitted development is treated as though it has not yet occurred; instead, it was for "installment of Turf Reinforcement Mats to facilitate equestrian crossings across *an existing* unvegetated, soft bottomed Arizona crossing of Stokes Canyon Creek (emphasis added) (Exhibit 12: Fish & Game Letter)." This implies that the Arizona crossings are vested or already approved, i.e. not subject to review, and that the applicant is merely seeking approval for innocuous improvements to them.

Furthermore, In the written application to Fish & Game, the applicant stated the project would not involve work in the bed of the stream, would not involve any equipment, and that it would not involve the placement of any permanent or temporary structure, though it is not possible to create an Arizona crossing or install Turf Reinforcement mats without doing one or more of the aforementioned. Moreover, the applicant stated that the area—Stokes Creek--does not periodically become inundated with water project (Exhibit 13: Fish & Game application). MVF also stated on that application that it had not

contacted any other local agency about the project. These two documents do not mesh with each other or with the project that was the subject of the Coastal Development Permit, yet they were presented to the Coastal Commission as a merit-based, fully-reviewed approval for the two Arizona stream crossings. The applicant even implied that the approval included review of the less-than-100-foot setback.

Commissioner Kinsey specifically asked for clarification of the Fish and Game approval:

> **COMMISSIONER KINSEY:**
> In the presentation that the MVF made they identified that they had received approvals from...Fish and Game, did we have any communications with Fish and Game staff about that approval, what their thinking was (Exhibit 3: Transcript, 108).
>
> **MR. SCHMITZ:**
> "...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.
>
> So, yes, both of those approvals were received and are a part of the file before the Coastal Commission. (Exhibit 3: Transcript, 109). "

In response to specific questioning from Commissioner Lowenthal, the applicant came forward to "clarify my previous answer."

> **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 (Exhibit 3: Transcript, 112)."

The bioswale, however, with its two direct outlets to the creek, and the riprap proposed for 250 feet of the streambank also need Fish and Game approval but never received it (Fish and Game § 1602). They, along with the two stream crossings, also need an Army Corps of Engineers 404 permit and Regional Water Quality Control Board 401 certification (33 U.S.C. §§1341, 1344).

Thus, the applicant misled the Coastal Commission into mistakenly approving multiple streambed alterations that are properly under the jurisdiction of Fish & Game, the Army Corps of Engineers, the State Water Resources Control Board, and the Regional Water Quality Control Board, but received no review from any of those agencies.

The post-litigation 2009 Revised Findings Report presents the Fish and Game permit as providing evidence of ERB approval. This conclusion is flawed on several levels. The 2009 Revised Findings Report attempts to state that the Fish and Game letter referencing approval by the County of "Plot Plan number 48295" must be proof that the AIC included existing structures, and thus, the ERB review must have included them, as well. The Fish & Game letter only references the Plot Plan, however, because *that is the information MVF gave to Fish & Game in its application. The whole point of the notification letter is that F & G did no analysis of the project.* The Revised Findings Report selectively omits, however, the salient quote on page 2 of that letter that the F & G Notification was in reference to a project described to them by the applicant as "installment of turf reinforcement mats," and not for review of two Arizona stream crossings as though they were new development as required for a retroactive CDP. The project F & G approved is, like the ERB and L.A. County "approvals," based on only a subset of the proposed development, and thus similarly defective for satisfying the public agency approval requirements and does not speak at all to whether or not the ERB reviewed the project beyond what the MVF chose to tell F & G.

Revised Findings are limited to documenting the information Commissioners revealed in their deliberations that they relied on in making their decision to vote against a staff recommendation. In the present case, Commissioners did not know that the Fish and Game "approval" was only a Notification letter that the agency had missed the deadline. That information was not provided until the court case whereupon the Commission's counsel blocked the court from considering it *on the grounds that the issue had not been raised at the initial public hearing.* To then include it in the Revised Findings as representing the Commissioner's perceptions layers another misrepresentation on top of an existing one. Counsel's objection to the evidence undermining the F & G approval does, however, supply proof for the purpose of

this revocation that the Commissioners made their decision without knowing the F & G approval was not for the project *as the applicant led them to believe.*

Commissioners would certainly have conditioned the project differently or voted to deny the CDP if they had known that the applicant did not have the requisite permits for the project described to the Commission.

MISREPRESENTATION OF STATE WATER RESOURCES CONTROL BOARD APPROVAL

The applicant supplied only an approved State Water Resources Control Board (SWRCB) plan *for stormwater runoff during construction*, which was worded as follows:

> "The State Water Resources Control Board (State Water Board) has received and processed your NOTICE OF INTENT TO COMPLY WITH THE TERMS OF THE GENERAL PERMIT TO DISCHARGE STORM WATER ASSOCIATED WITH CONSTRUCTION ACTIVITY...When construction is complete...dischargers are required to notify the Regional Water Board by submitting a Notice of Termination (NOT). All State and local requirements must be met in accordance with Special Provision No. 7 of the General Permit (Exhibit 14: State Water Quality Control Board Stormwater Runoff During Construction Permit)."

The applicant stated at the Coastal Development Permit hearing that "...we have State Water Control Resources Board approval (Exhibit 3: Transcript, 34)," and then went on to state conclusively that the SWRCB had also approved its equestrian site plan in concept although no documentation was submitted to support this claim.

The undated application for State Water Resources Control Board approval, received by the Coastal Commission in July of 2005, stated that the development comprised only 9,354 square feet, was not part of a larger common plan of development or sale, entailed no grading, and contained no roofed impermeable surfaces. In response to Commissioner Kinsey's and Commissioner Lowenthal's specific requests for more information about the public agency approval, MVF provided a completely unsupported statement that the State Water Quality Control Board had approved of the site plan in concept:

COMMISSIONER KINSEY:
"In the presentation that the Malibu Valley Farms made they identified that they had received approvals from the State Water Resources Control Board...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?"

MR. SCHMITZ:
"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 (Exhibit 3: Transcript, 109)."

Not satisfied by the vagueness of the applicant's responses, Commissioner Lowenthal sought additional clarification of the state agency approvals:

COMMISSIONER LOWENTHAL:
"...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?"

MR. SCHMITZ:
"...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 (Exhibit 3: Transcript, 111).

Schmitz later came forward to revise his response *regarding the inclusion of the bioswale, riprap, and retention pond features,* but the revisions did not address the salient deficiencies in the truth of the previous statements regarding review of the existing facilities *and even continued to perpetrate that misinformation:*

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 (Exhibit 3: Transcript, 112)."

The bio-swale with its two direct outlets to the creek and the riprap that that is part of the "filtration plan" are also streambed alterations, however, which subjects them to the jurisdiction and permitting

processes of Fish and Game, the Army Corps of Engineers and Regional Water Quality Control Board. (33 U.S.C. §§ 1341, 1344)

Commissioners would have conditioned the project differently or would not have approved a CDP for development that did not receive valid permits from the various agencies with jurisdiction over it.

Thus, although MVF holds a valid county Approval-in-Concept, it is not for the same project approved by the Commission, though it was misleadingly presented as such to the Commission by the applicant. Since the ERB reviewed only a subset of the project, i.e. the proposed modifications, the county's approval can encompass no more than the proposed modifications, and so does not include approval of existing structures as though they were new development as required for retroactive permits. Similarly, as detailed in the Revocation Request, MVF holds a valid Notification from Fish and Game, but it does not encompass existing development as required for retroactive permits. The Regional Water Quality Control Board approval is only for construction run-off, there is no 401 certification as required by law, or an Army Corps of Engineers 404 permit as required for installation of riprap. That leaves only the fire and fuel modification approvals intact, and the fuel modification plan encroaches on ESHA without mitigation of that significant impact.

MISREPRESENTATION OF RECYCLING RECOGNITION CERTIFICATE AS A COMPETITIVE BEST PRACTICES MANURE MANAGEMENT AWARD

The major issue confronting the equestrian center in this Coastal Development Permit application was the LUP's 100-foot setback, which exists in part to serve as a buffer to prevent pollutants from animal waste from degrading the water quality in Stokes Creek, Malibu Creek, and eventually Surfrider Beach. Horse facilities generate significant quantities of manure, so the methods by which it is managed are critically important in a watershed.

The applicant intentionally, specifically, and repeatedly misrepresented MVF's stewardship as expressed through its manure management program by repeatedly claiming that MVF had won a competitive award for state-of-the-art manure management.

> **MR. SCHMITZ:**
> "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 (Exhibit 1: Transcript, 34)."
>
> "...the county 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 (Exhibit 7: Letter from MVF to Commissioner Blank, 2)."
>
> "The facility recently received a County award for exemplary leadership through its participation in the County Smartbusiness Recycling Program, one of only ten facilities, out of over 2000 participating commercial facilities, that received the County award (Exhibit 15: Letter to Rudy Silva, LA County Department of Regional Planning, accompanying the Plot Plan AIC application)."

The Supervising Regional Planner for the Community Studies Section of the LA County Local Coastal Program, Gina Natoli, stated that "the Department of Regional Planning is not using Malibu Valley Farms as a model for BMPs in the Santa Monica Mountains. We have not spoken to Malibu Valley Farms about their BMPs (Exhibit 16: Gina Natoli, E-mail). "

In a series of e-mails responding to requests for clarification about the nature of the award, staff at the Department of Water and Power revealed that the "award" was not a "manure management" award, and it was not obtained through any competitive process in which MVF demonstrated its superiority over 700 other equestrian centers as the applicant claimed at the Coastal Commission hearing. It was simply a certificate of participation in a recycling program that links businesses with recyclers. The applicant did not apply for it or "win" in a competitive field of contestants as he purports, but was instead randomly contacted by program personnel to participate and became eligible for the recognition by implementing suggestions offered by the program consultant. The number of businesses that can be recognized is limited only by the number of businesses that program consultants have time to visit and the pool of participants was not constrained to only equestrian facilities. The following responses to the included requests for information were provided by the SmartBusiness Program division of the Department of Water and Power:

In Spring 2002, 'Boudreau Trust of 1990' received the SmartBusiness Recycling Award. In order to qualify for an award, each business voluntarily agreed to a SmartBusiness Recycling Program site visit, where their disposal and waste reduction activities were surveyed. At the conclusion of the site visit, the existing diversion was assessed and/or recommendations to the business were made. If the business showed existing significant waste diversion or implemented the waste diversion suggestions provided from the site visit, they became eligible for the award

Was the award given for "manure management" practices?
The award was given for overall waste reduction and diversion efforts.

Does your agency assess manure management programs or provide any publications or guidance on best management practices specifically for manure?
No, not that we are aware.

"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...The supervisor's office had provided us the Manure Management Plan Award."

Does the above statement [made by the applicant] accurately capture the character of the SmartBusiness Recycling Award given to The Boudreau Trust?
No, for these reasons. The award is not specific only to manure management. The latter sentence is untrue in that we did not deem any comparative ranking of the subject facility with regard to equestrian facilities in Los Angeles County, nor is the award for "Manure Management Plan."

If not, which parts would you correct and how would you change them to make this statement more accurately reflect the scope and intent of the SmartBusiness Recycling Award received by The Boudreau Trust?
The statement should be replaced with: "The Boudreau Trust was presented with a SmartBusiness Recycling Program award by the Los Angeles County Department of Public Works for notable waste diversion practices."

Is the SmartBusiness Recycling Award issued by the Board of Supervisor's, by Zev Yaroslavsky's office, or by another agency?
The award is issued by the Los Angeles County Department of Public Works.

(Exhibit 17: Department of Power and Water SmartBusiness Recycling Program E-mails)

Other clarifications are necessary in light of MVF's claims and inferences:

- The certificate was issued in 2002 based on a site visit in 2000 and a follow-up phone call in 2000, *but not renewed for subsequent years.*
- MVF is *not currently included* in the Smartbusiness Recycling program's database of participating organizations and *has not been recognized as a participant* of that program beyond the initial certificate of participation given in 2002 based on a single site visit in 2000.

- None of Mr. Boudreau's various business enterprises are found among the published Case Study businesses that have achieved exceptional waste material reductions, including Malibu Valley Farms, Malibu Canyon L.P., Malibu Valley, Inc., Spectrum Development, or Malibu Canyon Development, Inc. (Exhibit 18: SmartBusiness Recycling Program website pages).

Commissioner's comments during deliberations reveal that they relied on the existence of local agency approvals in making their decisions as required by Section 30004 of the Coastal Act. Commissioners would have voted otherwise or may have required different conditions for Coastal Development Permit approval had they been correctly and fully informed of the true nature or limited scope of the alleged "approvals."

Commissioners who voted in favor of the Coastal Development Permit voiced their overall impression of MVF as an environmentally conscientious organization, both during hearing deliberations and in the Revised Findings, an impression that would have been formed or enhanced by information that the organization was a recognized leader in manure management since the impact of manure on water quality was a salient issue:

> **COMMISSIONER POTTER:**
> As far as the water quality issue goes, I think it is probably 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 (Exhibit 3: Transcript, 121).

In addition, Commissioners might have required other conditions if they had not been deliberately misled into thinking that the farm was already using exemplary practices and not in need of further direction or monitoring. Use of LA County Manure Management Best Practices guidelines are not verified by LA County, MVF's manure management program is not being disseminated to other equestrian facilities, and it is not being incorporated into the County's proposed Local Coastal Program (Exhibit 16: Gina Natoli E-mail). These misleading statements, along with others, cumulatively influenced the commissioners into believing LA County was monitoring and in approval of more than they actually were.

Further Proof That MVF Misrepresented Its "Waste Management Award"

Claims made by the applicant regarding its "Waste Management Award" were retained in the 2009 Revised Findings Report, providing direct evidence that the Commission was misled into believing they were true and that the Commissioners relied on the perception MVF created in deciding that MVF's implementation of the CMP would adequately replace the prescribed 100-foot buffer.

> "Moreover, Malibu Valley Farms has developed and continues to implement an equestrian waste management program that has already been recognized with a Los Angeles County Best Management Practices Award (p. 23)."

L.A. County Planning Department Supervisor Gina Natoli testified at the July, 2009 RF hearing that the subject property had not been given a competitive waste management award as the applicant led the Commission to believe.

> "The applicant did not receive an award from Los Angeles County for BMPs related to an equestrian waste management program. The county has no such awards. Malibu Valley Farms was given an award in 2001-2002 by our Department of Public Works, through their SmartBusiness Recycling Program, for agreeing to participate in office waste reduction practices, such as double-sided copying, to reduce the amount of paper waste going to county landfills."

Commissioners' perceptions of MVF's expertise and integrity were significantly altered by the misinformation since it was included in the Revised Findings Report as justification of the CMP on which the Revised Findings Report lies.

The obvious implication is that some Commissioners would have voted otherwise or required different conditions if they had been correctly and fully informed that those local agency approvals had only occurred by default without *any* review or biological assessment (Fish & Game), or had been for a VRC that included only a subset of the development, precluded review by local agencies, *and had subsequently been found by the Coastal Commission to be without merit* (ERB and AIC), or did not include review or permitting of the riprap, bioswale, and retention basin construction (all local and state agencies), or were only for the construction phase of the development, which occurred at least a decade ago (State Water Board).

The other main premise on which the deviation from the staff report was based was the project's alleged recreational/access value to the community, which is equally misleading since the facility is not permitted for commercial use or public access and the applicant misrepresented that, as well.

SECOND CAUSE FOR REVOCATION:
MISREPRESENTATION OF
COMMERCIAL PUBLIC RECREATION V. PRIVATE HORSEBREEDING OPERATIONS

Commissioners and staff were understandably confused by the shifting local agency approval premises and their comments reflect their confusion and the erroneous information they relied on for their decisions. More error-inducing project-shifting occurred that led Commissioners to become confused over the legal nature and status of the operations on the facility.

> **MR. SCHMITZ:**
> The permitting by the County of Los Angeles was, obviously, not something pertinent to a single family home. It is for a commercial equestrian facility, though 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 (Exhibit 3: Transcript, 105-106)

According to this statement by the applicant's agent, then, either MVF is actually *not* serving people all throughout the Santa Monica Mountains, contradicting the applicant's many statements about the public recreational and social activities at the facility, or it is doing so illegally, which then contradicts his statement that the facility is fully permitted. Because the Coastal Commission cannot approve facilities that violate local zoning (13 Pub. Res. 21002.1(c), and since the Commissioners relied on public recreation benefits as a basis for approval in the Revised Findings, either conclusion leaves the Coastal Commission without legal justification for approval of the Coastal Development Permit against its staff's recommendation for denial, so Commissioners must have been confused by the subtle but misleading commercial recreation vs. private horse-breeding switching that occurred and would have voted otherwise or conditioned the property differently if they had correct and complete information rather than violate the law.

MISREPRESENTATION OF PUBLIC RECREATIONAL AND ACCESS OPPORTUNITIES

MVF's A-1-1 Light Agricultural Zoning allows only the following equestrian uses of the premises:

> "The raising of horses and. . .the grazing of . . . horses, including the supplemental feeding of such animals, provided:
> a. That such grazing is not a part of nor conducted in conjunction with any... commercial riding academy located on the same premises;
> b. That no buildings, structures, pens or corrals designed or intended to be used for the housing or concentrated feeding of such stock be used on the premises for such grazing other than racks

for supplementary feeding, troughs for watering, or incidental fencing (LA County Code §22.24.070)."

A Director's Permit is required for "Riding and hiking trails..." (Los Angeles County Code §22.24.090),"

A Conditional Use Permit is required for

— The raising of horses. . .including the breeding and training of such animals, not subject to the limitations of Section 22.24.070. . .
— Recreation clubs, private, including. . .polo. . .;
— Riding academies and stables, with the boarding of horses (LA County Code §22.24.100).

MVF has no Director's Permit or Conditional Use Permit for private recreation clubs, a riding academy, or the boarding of any horses except its own, or any other type of commercial permit to serve the public, and L.A. County has in past actions shown its disinclination to approve any such permits. In fact, the L.A. County Plot Plan Approval in Concept specifically states that the property is not approved for commercial use, as do the ERB minutes (Exhibit 1: LA County Plot Plan Approval in Concept; Exhibit 6: Environmental Review Board Summary Minutes). An e-mail between LA Regional planner Richard Claghorn and his supervisor, Daryl Koutnik, show the County's awareness of the need to be very specific with this applicant about the prohibitions on commercial use of the property in A-1 zoning.

> "This issue about the "commercial" versus "private" use of Mr. Boudreau's property was extensively discussed during the public hearing on CUP 97-142, his property on the west side of Stokes Canyon Road. It was purported that Malibu Valley Farms was boarding horses on properties on both sides of the roadway...Your suggestion to condition the plot plan with "no boarding" is absolutely appropriate. Even better would be an affidavit from the applicant stating that no horse boarding occurs on that parcel of land." (Exhibit 19: E-mail exchange between Regional Planning Staff Members).

The only equestrian uses allowed on the property are those that require no permits because they are granted by right in A-1 zoning, i.e. keeping one's own horses and horsebreeding. The applicant, however, embedded the premise that special permits existed into the following statement:

> **MR. GAINES:**
> The County permits are effective. They have not been violated, believe me...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 (Exhibit 3: Transcript, 90).

The applicant repeatedly stated and/or implied that MVF was an important public access point, which is knowingly and deliberately misleading because no trailheads to public trails lead from the property and ample opportunity for access to public lands and trails exists at both the publicly-owned King Gillette Ranch across the street and at Malibu Creek State Park less than one mile away.

> **MR. SCHMITZ:**
> "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 (Exhibit 3: Transcript, 38)."
>
> "...Commissioners, you are tasked under the Coastal Act to balance all of the Coastal Act resources....What about access? You heard the testimony, you saw the slides, the Recreation Equestrian coalition, the local ETIs, they all use the facilities (Exhibit 3: Transcript, 93).

Malibu Valley Farms' proximity to publicly owned lands does not mean it provides access to them. In fact, its proximity means that its own potential recreational and access value is limited since more than adequate public access and recreational opportunities exist in the area.

The applicant also intentionally, specifically, and repeatedly stated and/or implied that MVF is an important public recreational facility, which is misleading and inaccurate because, since the applicant is not zoned or permitted for public commercial use, it cannot rent or board horses, provide riding lessons, or operate private recreation clubs without a permit. The fact that it has done so was used to make Commissioners think that it was permitted to do so, though substantial amounts of public resources have been consumed in fighting that illegal use (Exhibit 20: LA County Notice of Violation). On the CDP application, the applicant stated, "The Facility provides equestrian opportunities for the public," and checked boxes to indicate that the development would a) protect existing lower-cost visitor and recreational facilities, and b) that the development provides "public or private recreational opportunities (Exhibit 21: Coastal Development Permit Application, 4)."

> **MR. SCHMITZ:**
> "We host the Princess Riding Club, they are in Montevido [sic] [Monte Nido] Valley. We are host to the Corral 36 Pony Club (Exhibit 3: Transcript, 32)."
>
> "What about Section 30222 of the Coastal Act? It specifies that low-cost visitor-serving recreational opportunities shall be enhanced and maintained (Exhibit 3: Transcript, 92)."

That commissioners were misled by this misinformation is evident by their comments during the hearing and by the Revised Findings, which heavily used public access and recreation opportunities as a primary rationale for approving the Coastal Development Permit. This rationale is based on false information, however, leaving the Commission without legal justification for deviating from the staff's recommendation. It follows, then, that had Commissioners correctly understood that MVF does not and cannot provide public access and recreational opportunities, they would have conditioned the project differently or voted otherwise rather than violate the Coastal Act. CEQA provides that "[i]f economic, social, or other conditions make it infeasible to mitigate one or more significant effects on the environment of a project, the project may nonetheless be carried out or approved at the discretion of a public agency *if the project is otherwise permissible under applicable laws and regulations* [13 Pub. Res. 21006.2 (c)].

Commissioner Kruer indicated that he was under the impression that Malibu Valley Farms connected to public trails and that the public could access these trailheads through Malibu Valley Farms:

> **CHAIR KRUER:**
> "...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 (Exhibit 3: Transcript, 135)."

In truth, once a year members of the Recreation and Equestrian Coalition come together for a ride that occurs *on Malibu Creek State Park trails,* not on Malibu Valley Farms trails. Only the private barbecue that occurs after the riders have enjoyed their access to those public trail systems occurs at Malibu Valley Farms. This public knowledge is corroborated by a picture and caption about the event that appeared in the 10-16-08 edition of the local newspaper, *The Acorn*. The picture shows the riders having to use public highways to get from Malibu Valley Farms to the trail system at Malibu Creek State Park where they conducted their ninth such ride (Exhibit 22: Acorn article).

Other Commissioners indicated they were convinced that the benefits to the community were the salient reasons for permitting the development:

COMMISSIONER POTTER:
And when you look at what are the improvements, or what are the consistencies of the Coastal Act that have occurred...The recreational uses have certainly been retained and improved. And public access is undoubtedly enhanced....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 (Exhibit 3: Transcript, 120-122).

Commissioner Blank compared MVF's operations to the massive 64-acre, commercially-operated 22ND District Agricultural Association Horsepark facility near San Diego with its 18 barns, 12 show and training rings, two large arenas, and its own septic system to manage runoff, as the only fitting precedent for "equestrian facilities of this scale and magnitude (Exhibit 3: Transcript, 102)," which revealed how successfully the applicant had distorted the Commissioners' understanding of MVF's limited horsebreeding facility into a perception that it had the physical and legal ability to provide public recreation and access uses.

Those perceptions were reiterated and formalized in the Revised Findings:

"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 (Exhibit 8: Revised Findings, 7)."

"The proposed facility sponsors educational and recreational opportunities for lower-income youth and provides equestrians with opportunity to access important trail networks in the area...As such, the Commission finds that the proposed project enhances equestrian access and recreation opportunities in the Santa Monica Mountains, consistent with Sections 30212, 30222, and 30223 of the Coastal Act (*id.*, 39)."

"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 (*id,*, 23)."

"...the alternatives...would disrupt and constrain the existing equestrian operation, which provides important recreational, access, and fire safety benefits (*id.*, 27)."

'[The on-site] alternative would constrain the facility's equestrian operations and limit its recreational and other benefits (*id.*, 27-28, 36)."

'[The single-family residence] alternative would result in the elimination of the equestrian facility and the various benefits it provides to coastal resources, including recreation, access, and fire safety (*id.*, 28, 36)."

> "Requiring relocation of the facility to...alternative sites would significantly disrupt and constrain the benefits it provides in terms of recreation, access, and fire safety (*id.*, 28)."
>
> [The alternatives] would disrupt and constrain the existing equestrian operation, which provides important recreational, access, and fire safety benefits (*id.*, 36)."
>
> "The proposed development enhances equestrian opportunities...consistent with Coastal Act policies that promote public access and recreation (*id.*, 39)."

Even Commissioners who voted against the CDP believed the applicant could offer recreational and access opportunities and their decisions to vote against the CDP were only the result of prioritizing environmental considerations over recreation and access benefits (Exhibit 2: Transcript, 116-118).

MVF CANNOT LEGALLY PROVIDE THE "COMMUNITY BENEFITS" HEAVILY RELIED ON IN THE REVISED FINDINGS REPORT

MVF's repeated misleading comments to Commissioner's that either directly state or imply that MVF's facilities are open to the public for boarding, riding, private clubs, or access to recreation areas, fire refuge, and to serve underprivileged children were documented in the original Revocation Request and are incorporated by reference herein.

At the July, 2009, Revised Findings public hearing, L.A. County Planning Department Supervisor Gina Natoli testified on behalf of the county that the subject property is not zoned for commercial or public operations such as the type the applicant led the commission to believe occur there, and that MVF has no Conditional Use Permit to authorize such public uses.

> "To the extent that visitor-serving, commercial, recreation is considered positive, it is not authorized on this site. Malibu Valley Farms is not an approved commercial facility, or public facility. Conducting visitor-serving, commercial, recreation activities on the property at this time would be a violation of county code. Malibu Valley Farms has never received the Conditional Use Permit that is required by the county to conduct commercial activities, including horse boarding on the property. So, at this time, Malibu Valley Farms should be treated like any other private, non-commercial use."

California State Parks Senior Environmental Scientist and ERB member Suzanne Goode also testified at the 2009 Revised Findings hearing that MVF "is not a recreation facility, is not opened to the public, is not open to little inner-city kids to ride thoroughbred race horses. It does not have a public trail head."

National Parks Superintendent Woody Smeck similarly pointed out in written comments submitted for the 2009 Revised Findings hearing, that the private MVF facility cannot legitimately claim to provide access to publicly-owned and operated trail networks.

> "We would like clarification with regard to what public-serving equestrian programs Malibu Valley Farms provides. In order for these programs to be carried out on parkland, a concessionaire's permit is required. As we have stated in previous comment letters on the subject application, we welcome horseback riding programs on public lands tat are offered by private, park-permitted concessionaires—including one for a program serving at-risk youth—we have not permitted programs from this facility and are not aware of permits from the other park agencies. Given the assertion in the staff report that public-serving recreational programs are being provided by the applicant and they are accessing "important trail networks in the area" (p. 44), we find it important for Coastal to clarify that such programs are fully public, and if using public trails, a park special use permit is required (Letter from National Parks Superintendent Woody Smeck, p. 4)."

At the initial public hearing and in ex parte communications, however, MVF repeatedly led commissioners to believe that such uses occur on the property and that those uses justified approval of the CDP because they fulfilled Sections 30213, 30222, and 30223 of the Coastal Act. Members of the public corroborated the occurrence of illegal activity by stating that they had boarded their horses tor taken riding lessons there.

> **MS. DICK:**
> "My name is Rochelle. I am a member of ETI Corral 36. I take riding lessons at Malibu Valley Farms (Transcript, p. 70-71)."
>
> **MR. LINDON:**
> "I had the good fortune to board at Malibu Valley Farms for five years...I rode my horse through both of those stream crossings day after day for five years... (Transcript, p. 77)."""

L.A. County Notices of Violation show a long history of such illegal activity, and the facility is currently the subject of a public nuisance complaint.

The Commissioners' heavy reliance on the supposed community benefits they were led to believe the facility provides occurs repeatedly throughout both the initial, unanimously approved Revised Findings and the final, also unanimously approved, 2009 Revised Findings. In the 2008 Revised Findings Report, the supposed community benefits were used to justify the Commission's decision not to consider

alternatives. Although the 2009 Revised Findings Report uses the Comprehensive Management Plan proposal to argue that all significant impacts are avoided so alternatives need not be considered, *the community benefits language is retained throughout the report* and continues to speak loudly of the fundamental misunderstanding created by MVF in the minds of the Commissioners.

> "The proposal will allow continued operation of an equestrian facility that provides important recreational, access, and fire safety benefits (p. 2)."
>
> "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 (p. 8)."
>
> "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* (emphasis added) (pp. 26-27)."
>
> "Table 1 identifies *horseback riding* as an allowable resource-dependent use in ESHA. [*Implies that MVF provides horseback riding services to the public.*] Recreational trails are allowed where constructed to minimize grading and runoff and where a drainage control plan is implemented. [*Implies that MVF provides access to public trails.]* [Implications added.](p. 22)."
>
> "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 (pp. 30, 40)."
>
> "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...It does allow for two areas...to be used for development...However...This alternative would constrain the facility's equestrian operations and limit its recreational and other benefits (pp. 30-31, 40-41)."
>
> "Another feasible alternative would be the construction of a single-family residence...but [it] would result in the elimination of the equestrian facility and the various benefits it provides to coastal resources, including recreation, access, and fire safety (pp. 31, 41)"
>
> "There are also potential siting alternatives off-site. 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 (pp. 31, 41)."
>
> "The proposed development enhances equestrian opportunities in the Santa Monica Mountains. This is consistent with Coastal Act policies that promote public access and recreation...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."

Permitted equestrian uses on the property are limited, however, by county ordinances to keeping of the owner's own horses and private horse breeding, neither of which are considered a public recreation benefit (LA County Ordinances 22.24.070, 22.23.090, 22.23.100).

In addition, by using the San Diego 22nd Ag District's public, commercial facility as precedent for excusing the 100-foot setback required in the Santa Monica Mountains, the Revised Findings Report, by implication, communicates the Commission's reliance on its erroneous belief that the MVF facility is a public recreational facility.

> "...reduced setbacks were approved by the Commission in a proposed development for the 22nd Agricultural District, similar to the current proposed development as a result of site-specific analysis (p. 36)."

> "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)] (p. 38)."

No part of the Coastal Act grants the Coastal Commission authority to permit activities or development in violation of local zoning regulations, and it inadvertently acted improperly when, after being misinformed by the applicant into believing that MVF was operating in consistency with local zoning regulations, it issued a Coastal Development Permit based on activities that, if they occurred, would constitute illegal zoning violations.

MISREPRESENTATION OF INVOLVEMENT IN JR. POSSE PROGRAM

The applicant intentionally, specifically and repeatedly caused commissioners to believe MVF was supplying site-specific social programs for disadvantaged youth.

> **MR. SCHMITZ:**
> "We host the Compton Junior Posse, including sleepovers. The kids come out from Compton, they ride the horses, they stay there (Exhibit 3: Transcript, 31-32)."

Since private horsebreeding and horsekeeping is the only equestrian use allowed on the site by local ordinance, which the Coastal Commission has no authority to overthrow, either MVF is bringing in disadvantaged urban youth from 70 miles away to ride the thoroughbred horses it breeds, or they are allowing commercial horse boarding, riding academy, and/or private club uses, which is no more legal for them to do when it benefits a nonprofit corporation than if it benefits a for-profit organization. MVF's *financial* contributions to the Jr. Posse are acts that are not dependant on any given location or site configuration and are private decisions that could be made by any individual with any type of business in any location. Certainly, the other individuals and organizations who contribute to the Jr. Posse are not eligible to receive variances from county ordinances based on their charitable, but private contributions to worthy programs. To set such a precedent would mean that individuals trying to develop bluffside mansions or corporations trying to develop oceanside hotels would only need to show a list of sufficiently worthy charities for whom they receive tax deductions in order to be considered for, among other things, setback, septic, height, and view variances. Without commercial privileges that allow visitor-serving uses, MVF has no more right to such bestowed advantages than any other private individual or organization, and no law supports such a basis for project approval.

In the same vein, holding a private party, such as a barbecue for fellow equestrians once a year, e.g. the annual REC party, does not bestow special zoning exemptions on the host any more than when a private homeowner further up the street hosts an end-of-year sleepover party at her house for her daughter's Girl Scout troop.

The applicant, however, willfully and knowingly expanded that concept to intentionally mislead commissioners into believing the physical location of the farm determines its ability to contribute to Ms. Akhbar's Jr. Posse charity. Embedded into this was an implied statement that Malibu Valley Farms was permitted for such commercial use.

> **MR. SCHMITZ:**
> "...Commissioners, you are tasked under the Coastal Act to balance all of the Coastal Act resources....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* (emphasis added) (Exhibit 3: Transcript, 92-93)."

Unfortunately, the applicant deliberately obscured the fact that he is not permitted by county zoning for commercial uses and he has obscured the fact that the Posse is permanently located at a facility 70 miles away and only occasionally pays social visits to its benefactor. He has also intentionally misrepresented the fact that MVF provides no legal access to public trails for those visitors who come to the area for local equestrian competitions and, while here, are well served by the many existing public access points to the extensive 500 miles of public trails in the area.

Commissioner Shallenberger's comments revealed the extent of confusion created by the applicant regarding the *Compton* Jr. Posse program, which she mistakenly, but revealingly, referred to as the "Calabasas Posse" and spoke as though it occurred at Malibu Valley Farms, which it does not (Exhibit 23: Compton Jr. Posse website pages).

COMMISSIONER SHALLENBERGER:
"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 Calabasas Posse (sic), and things, are not and needn't 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 (Exhibit 3: Transcript, 132).

Her comments reassuring the other commissioners that denying the Coastal Development Permit wouldn't mean the program(s) would have to end because it wouldn't mean that *all the buildings and horses* would come to an end imply that she had been led to believe that the program *would* come to an end if *the buildings and horses had to come to an end.* In other words, the Jr. Posse program depended on Malibu Valley Farms' continued existence on Parcel 4455-028-044 with all structures intact. This is not true because the Compton Jr. Posse program doesn't operate any portion of its program out of Malibu Valley Farms. It operates out of a facility 70 miles away.

That Commissioner Burke had fallen into this trap as well was apparent when he asked what would happen to the programs if the Coastal Development Permit were to be denied,

> **COMMISSIONER BURKE:**
> [I]f this application is denied, what happens to the *program*(emphasis added) ?
>
> **MR. SCHMITZ:**
> What happens to what, Commissioner?
>
> **COMMISSIONER BURKE:**
> *The programs that have been going on* (emphasis added), do you continue to operate as before, because some people tell me 80 percent of the buildings have to come down, some people tell me that none of the buildings have to come down. What is the true story, here.
>
> **MR. SCHMITZ:**
> Commissioner Burke, it utterly and completely destroys this operation (Exhibit 3: Transcript, 132-133).

Like Commissioner Shallenberger, Commissioner Burke had tied the existence of the buildings on Parcel 4455-028-044 to the existence of the "program(s)," as though the Compton Jr. Posse program was dependent on the MVF facility for its operation. His question indicated that in his mind the existence of Malibu Valley Farms buildings and the Jr. Posse program were synonymous.

This is another example of a shift in meaning that resulted in omission of the truth in response to a direct question by a Commissioner. The topic of the conversation had been the Jr. Posse program. Commissioner Burke specifically asked about "the program," yet the applicant responded that it "utterly and completely" destroys "the operation," deliberately attempting to imply that the program also ends. The information omitted included the following highly relevant concepts:

a) MVF supplies only financial donations to the Jr. Posse
b) The Jr. Posse has many contributors and is not dependent on the financial contributions it receives from Malibu Valley Farms
c) The Jr. Posse operates out of its own distinct facility that legally provides weekly riding academy lessons to Jr. Posse participants and coordinates participation in competitive equestrian events, none of which Malibu Valley Farms can do because it is 1) 70 miles from the program's

participants, 2) it is prohibited by zoning from operating a riding academy, boarding another organization's horses, or being the site of a private recreation club without a Conditional Use Permit specifically authorizing such uses (LA County Municipal Code § 22.24.090, 22.24.100).

d) The Jr. Posse visits are infrequent at best, and are primarily social visits to a benefactor.

e) Malibu Valley Farms operates on extensive properties north, south, and west of the subject parcel to which it can invite its Jr. Posse friends.

Thus, the applicant's incomplete and misleading response to the Commissioner's specific question was a gross misrepresentation of the true nature of MVF's involvement in the Jr. Posse program and is one more example of a pattern of switching projects, properties, topics, and ownership that affected every facet of the proceedings in this CDP application.

That Commissioners were misled by the misrepresentations is evident in the comments they made during the public hearing and in the Revised Findings they approved:

> "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 (Exhibit 8: Revised Findings, 7)."
>
> "The proposed facility sponsors educational and recreational opportunities for lower-income youth and provides equestrians with opportunity to access important trail networks in the area...As such, the Commission finds that the proposed project enhances equestrian access and recreation opportunities in the Santa Monica Mountains, consistent with Sections 30212, 30222, and 30223 of the Coastal Act (*id.*, 39)."
>
> "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* (emphasis added*)* (*id.*, 23)."
>
> "...the alternatives...would disrupt and constrain the existing equestrian operation, which provides important recreational, access, and fire safety benefits (*id.*, 27)."
>
> '[The on-site] alternative would constrain the facility's equestrian operations and limit its recreational and other benefits (*id.*, 27-28, 36)."

'[The single-family residence] alternative would result in the elimination of the equestrian facility and the various benefits it provides to coastal resources, including recreation, access, and fire safety (*id.*, 28, 36)."

"Requiring relocation of the facility to...alternative sites would significantly disrupt and constrain the benefits it provides in terms of recreation, access, and fire safety (*id.*, 28)."

[The alternatives] would disrupt and constrain the existing equestrian operation, which provides important recreational, access, and fire safety benefits (*id.*, 36)."

MISREPRESENTATION OF DESIGNATED FIRE EVACUATION CENTER STATUS

The applicant also misrepresented its role in fire evacuations.

MR. SCHMITZ:
"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...It is the designated evacuation center for the area. . (Exhibit 3: Transcript, 32)"
. . .
"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 (Exhibit 3: Transcript, 92)."

The California Department of Forestry stated that it does not designate large animal evacuation centers and it does not certify people to work at evacuation centers. It denies having so designated MVF and MVF has provided no evidence to support its claim.

Los Angeles County has designated only Pierce College as a large animal evacuation center and Ventura County has designated the Ventura County fairgrounds. L.A. County Department of Animal Care and Control personnel explain that only publicly-owned property would ever be a designated evacuation center.

Los Angeles County Department of Animal Control and Care has an Equine Response Team (LACDACCERT) made of volunteers from Palmdale to Ranch Palos Verdes. Mary Lukins, the Equine Response Team Coordinator, describes the program as a volunteer response unit in which volunteers are trained at three different levels:

- Level 1 volunteers manage phones and paperwork to disseminate information.

- Level 2 volunteers provide assistance at designated evacuation centers: Pierce College and the Ventura County fairgrounds.
- Level 3 volunteers are horse trailer owners and horse handlers who respond to calls for assistance by going to people's homes and helping them evacuate their animals to Pierce College.

With 103 trained volunteers, the Equine Response Team is not currently recruiting new members or conducting new training sessions. Ms. Lukins stated that one of MVF's employees--Mark Cardiel--is a LACDACCERT volunteer but denied that an all-inclusive MVF "staff" was trained or certified or that MVF is a designated evacuation center. "That would be right in the path of our fires," explained one Agoura Hills Animal Control staff member (August 2008 phone conversation).

The staff report and Revised Findings both document that the proposed development is located in an area "which is generally considered to be subject to an unusually high amount of natural hazards" and that "wild fires often denude hillsides in the Santa Monica Mountains...(Revised Findings, 38)." LACDACCERT emergency response training includes the importance of getting large animals *out* of such an area when danger looms.

Mary Lukins emphasized the importance of preparedness and explained that while private agreements among equestrians for assisting each other in emergencies are encouraged, just as they are for people, LACDACCERT volunteers only evacuate horses to the official, publicly-owned evacuation centers. Ms. Lukins also explained that evacuation advice during a fire was entirely dependent on the path of the fire. Because people often panic and do not make logical decisions, arbitrarily designating a neighborhood facility as an evacuation center could be detrimental if people panicked and blindly followed the advice regardless of the location of the fire and were put in danger because of it.

Furthermore, MVF employee Mark Cardiel's training may benefit only MVF. As a LACDACCERT volunteer, Mr. Cardiel would be called *away* from MVF in the event of a fire—either to assist at Pierce College or to assist in evacuating animals *to Pierce*. Ms. Lukins explained that LACDACCERT volunteers do not evacuate

horses to private property. In addition, because it is in a high risk area, MVF might not be able to spare him to participate in helping others because his employer would need him to evacuate MVF's horses to Pierce.

In any case, Mr. Cardiel's personal participation in LACDACCERT training does not legally justify excusing *MVF* from Coastal Act provisions any more than it allows any of the other 103 volunteers to have their employers excused from having to meet local development ordinances or to be personally exempt from such ordinances on their own private property.

While some people in the area did bring their horses to MVF during the 1996 fire, it turned out to be near disastrous since MVF was, indeed, right in the path of the fire. Furthermore, the neighbors' horses were put on the flat, open green pastures on the *west* side of Stokes Canyon Road—the very property Mr. Boudreau claimed to the Coastal Commission that he had no ownership or controlling interest in (Exhibit 3: Transcript, 90). The property that is the subject of this revocation request is on the *east* side of the road next to a riparian corridor that would provide enormous amounts of fuel to a wildfire. Thus, either it must be admitted that people did not evacuate their animals--even privately—to property owned by MVF or MVF is inclusive of the west side of the road in addition to the property on the east side. Both statements cannot be true at the same time.

The mayhem that occurred in the 1996 fire, in fact, was the impetus for creating the LACDACCERT, explained Ms. Lukins. When someone got onto KFI radio and announced that people should bring their horses to a local facility, the roads were clogged with panicked horse owners blindly following the well-intentioned, but misguided advice, impeding fire vehicles and putting everyone at risk. Anyone who brought a horse to MVF was bringing a horse into the path of the fire rather than away from the path of the fire as it swept through Stokes Canyon. LACDACCERT was formed to provide a more organized, logical evacuation process. MVF's initial contact with the Coastal Commission in 1998 was an attempt to gain an exemption from the Coastal Commission because its facilities had burned in the very fire it later cites as proof of its "refuge" status. (The mobile homes the fire burned on the MVF property referred to in the

Revised Findings as a "refuge for horses in the event of fire" were the impetus for this Coastal Development Permit application, in fact, because in order to replace the caretaker residences that burned, the applicant had to get permits from the county and from the Coastal Commission. MVF started its Vested Rights Claim after receiving a Notice of Violation.)

> "The facility...serves as a refuge for horses in the event of fire (Exhibit 8: Revised Findings, 7)."
>
> "...the alternatives...would disrupt and constrain the existing equestrian operation, which provides important recreational, access, and fire safety benefits (Revised Findings, 27)."
>
> '[The on-site] alternative would constrain the facility's equestrian operations and limit its recreational and other benefits (Revised Findings, 27-28, 36)."
>
> '[The single-family residence] alternative would result in the elimination of the equestrian facility and the various benefits it provides to coastal resources, including recreation, access, and fire safety (Revised Findings, 28, 36)."
>
> "Requiring relocation of the facility to...alternative sites would significantly disrupt and constrain the benefits it provides in terms of recreation, access, and fire safety (Revised Findings, 28)."
>
> [The alternatives] would disrupt and constrain the existing equestrian operation, which provides important recreational, access, and fire safety benefits (Revised Findings, 36)."

That commissioners relied on the distorted misinformation given by the applicant and would have conditioned the property differently or would have voted otherwise in its absence is evident in comments made in pre-vote deliberations and in the Revised Findings used to justify their deviation from the staff recommendation for denial of the CDP.

> **CHAIR KRUER:**
> 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 in a disaster. They get lost, and you have got to have staging areas (emphasis added) (Exhibit 3: Transcript, 134-135)."

The Revised Findings show the Commissioners' reliance on the applicant's unsupported claim that the facility is a state-designated fire evacuation center by using the fire safety claim to balance other deficiencies to justify the Coastal Development Permit approval:

"...the facility serves as a refuge for horses in the event of fire. It therefore minimizes fire hazards consistent with Section 30253(1) (Exhibit 8: Revised Findings, 39)."

"The facility also provides a place of refuge for horses in the event of wildfire (Exhibit 8: Revised Findings, 39)."

"...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 (Exhibit 8: Revised Findings , 28, 36)."

"[the alternatives] would disrupt and constrain the existing equestrian operation, which provides important recreational, access, and fire safety benefits (Exhibit 8: Revised Findings 36)."

FURTHER PROOF THAT MVF MISREPRESENTED ITS FIRE REFUGE STATUS

L.A. County Planning Department Supervisor Gina Natoli testified at the July, 2009 Revised Findings hearing that the subject property was not a designated fire evacuation center as the applicant led the Commission to believe.

The fact that the Commission relied on MVF statements that it is a designated fire refuge is reflected in all of the following statements that were retained as part of the final approved 2009 Revised Findings Report (emphases added):

"The proposal will allow continued operation of an equestrian facility that provides important recreational, access, *and fire safety benefits* (p. 2)."

"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* (p. 8)."

"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* (pp. 26-27)."

"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* (pp. 30, 40)."

"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...It does allow for two

areas…to be used for development…However…This alternative would constrain the facility's equestrian operations and limit its recreational *and other benefits* (pp. 30-31, 40-41)."

"Another feasible alternative would be the construction of a single-family residence…but [it] would result in the elimination of the equestrian facility and the various benefits it provides to coastal resources, including recreation, access, *and fire safety* (pp. 31, 41)"

"There are also potential siting alternatives off-site. 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* (pp. 31, 41).

"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."

Commissioners would, of course, not have approved a CDP based on a status not conferred upon the property by any public agency if the applicant had not misled the Commission into thinking that the subject property was used in that way.

THIRD CAUSE FOR REVOCATION:
MISREPRESENTATION OF PROPERTY OWNERSHIP

The Coastal Commission staff report identified at least three off-site alternatives that would allow equestrian operations to be relocated outside of the 100-foot buffer zone: AIN 4455-028-054, 4455-028-093, and 4455-028-007.

According to the LA County Tax Assessor's Office, the three parcels proposed as alternatives are all owned by Malibu Canyon L.P. (Exhibit 24: Tax Assessor Property Data); however, at the public hearing for the CDP, the applicant denied being the owner or having a controlling interest in Malibu Canyon L.P:

> **MR. GAINES:**
> "There was some allegation that Mr. Boudreau has a controlling interest 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 (Exhibit 3: Transcript, 90)."

That information was repeated during the Revised Findings public hearing:

> **MR. GAINES:**
> [A letter written by an opponent] talks about how certain properties owned by the Malibu Canyon L.P. are owned and controlled by the same entity as here. It's just simply not the case. There's no facts in the record.
>
> Mr. Boudreau is a 1% owner---actually his---a company that he is president of is a 1% owner—as the general partner of a limited partnership 99% controlled by other entities of certain other properties.

It is worth noting that in the above statements, the applicant's representative referred to the applicant, not as Malibu Valley Farms, but as Brian Boudreau. Research into the corporate status reveals why.

Malibu Valley Farms, Inc.

CEO:	Brian Boudreau
CFO:	Brian Boudreau
Secretary:	Brian Boudreau
Director:	Brian Boudreau
Agent of Service:	Brian Boudreau

Malibu Canyon L.P.
General Partner: Spectrum Development

Spectrum Development, Inc.

CEO:	Brian Boudreau
CFO:	Brian Boudreau
Secretary:	Brian Boudreau
Director:	Brian Boudreau
Agent of Service:	Brian Boudreau

The applicant, Malibu Valley Farms, Inc. is controlled exclusively by Brian Boudreau who is named as the CEO, CFO, Secretary, Director, and Agent of Service, with no other persons named in any capacity of that corporation, according to the Articles of Incorporation filed with the California Secretary of State (Exhibit 25: Malibu Valley Farms Statement by Domestic Stock Corporation and Articles of Incorporation).
The three alternative sites are owned by Malibu Canyon L.P. The sole General Partner of that organization is Spectrum Development.

Spectrum Development, Inc. is also controlled exclusively by Brian Boudreau who is named as the CEO, CFO, Secretary, Director, and Agent of Service with no other persons named in any capacity of that corporation, according to the Articles of Incorporation filed with the Secretary of State (Exhibit 26: Spectrum Development Statement by Domestic Stock Corporation and Articles of Incorporation).
In a limited partnership, only General Partners participate in control of the business unless specifically stated otherwise in a partnership agreement (California Corporations Code §§ 15632, 15643). As the sole General Partner of Malibu Canyon L.P., Spectrum Development, Inc., i.e. Mr. Boudreau, controls the partnership including decisions about where to operate and whether to buy or lease land for its facility. Although there must be at least one Limited Partner in a Limited Partnership, the General Partner could also be the sole Limited Partner. Because a Limited Partner is only a financial investor and does not control the business, the extent of investment by a Limited Partner is irrelevant to discussions of who controls the business (Exhibit 8: Revised Findings, 33).

The applicant misrepresented the ownership of the property. In the absence of any partnership agreement to indicate otherwise, all public records indicate that Brian Boudreau is the person behind all the business entities listed as owners of the subject and alternative properties. The applicant has provided the Commission no evidence to accompany his response that he does not own or control the alternative-site property while a preponderance of evidence indicates that he does. The Coastal Development Permit application requires the applicant to reveal "the identity of all persons or entities which have an ownership interest in the property superior to that of the applicant (Exhibit: 21 Coastal Development Permit Application, 7)."

A corporation is a legal entity defined by its articles of incorporation, not by the land on which it operates. Until only the most recent years, the subject property in this case was owned by Robert Levin, yet it has been used by the applicant for its equestrian operations since 1978. The property MVF operates on west of Stokes Canyon Road was owned by Soka University for many years until it transferred to Malibu Canyon L.P. in 2005. Thus, MVF has operated for most of its existence on land owned by others and even saw fit to erect unpermitted structures on that land.

The applicant also misrepresented the location of Malibu Valley Farms' business operations. Throughout the Coastal Development Permit approval process, the applicant represented Malibu Valley Farms as consisting of only parcel 4455-028-044 on the east side of Stokes Canyon Road, with a total of 31.04 acres; however, Malibu Valley Farms has been operating for years on the properties identified as alternative sites. One of the alternative sites is just north of the subject property on the east side of Stokes Canyon Road and the other two are just across the street on the west side of Stokes Canyon Road (Exhibit 27: LA County Tax Assessor's Office Parcel Maps).

Although the applicant repeatedly told the Coastal Commission that the alternative sites were not feasible, in a 1998 Conditional Use Permit application to LA County to allow three caretaker mobile homes, alternative site 4455-028-093 on the *west* side of Stokes Canyon Road was represented as being Malibu Valley Farms' equestrian facility. "Malibu Valley Farms, Inc. is a thoroughbred breeding and foaling farm (Exhibit 28: Findings and Order of the Regional Planning Commission County of Los Angeles, 3)." In fact, i*t was because of the existence of Malibu Valley Farms on the property* that the caretaker mobile homes were demonstrated by the applicant as necessary and could be permitted as consistent with the property's zoning (LA County Code 22.24.100; Exhibit 28: Conditional Use Permit 97-142-(3)). Condition 12(d) states that "[s]hould the property cease to function *as a working horse ranch with breeding operations*, the caretakers' residences shall be removed (emphasis added) (Exhibit 29: Conditional Use Permit 97-142-(3), Conditions, 3)." The parcel on the east side of Stokes Canyon Road, which is the property that is the subject of the CDP, was represented as the boarding facility in the CUP action, not the

thoroughbred breeding facility. In fact, the applicant rents out east side property to Apollo Farms who leases horses and boards them (Exhibit 30: Apollo Farms article).

> "This issue about the "commercial" versus "private" use of Mr. Boudreau's property was extensively discussed during the public hearings on CUP 97-142, his property on the west side of Stokes Canyon Road. It was purported that Malibu Valley Farms was boarding horses on properties on both sides of the roadway (Exhibit 19: E-mail exchange between Regional Planning Staff Members)."

In addition, the applicant gave the same street address, 2200 Stokes Canyon Road, for the property on the west side of Stokes Canyon Road in the above-referenced CUP application as he gave for the property on the east side of the road in the Coastal Development Permit application that is the subject of this document.

Furthermore, the current mailing addresses for Malibu Valley Farms, Inc., Malibu Valley L.P., and Spectrum Development, Inc. are all 26885 Mulholland Highway (Exhibit 24: Tax Assessor's Office Property Data **http://maps.assessor.lacounty.gov/mapping/viewer.asp**). The office at that address "would be allowed only as an accessory to permitted uses on the property (Exhibit 29: Conditional Use Permit 97-142-(3), 4)."

In the Environmental Impact Report for a convention center proposed for the alternative site property in 2005, the applicant—Brian Boudreau dba Spectrum Development, a real estate company, dba Malibu Canyon L.P.-- presented Malibu Valley Farms as being 60.11 acres (Exhibit 31: Malibu Valley Inn and Spa Project DEIR, IV-1), and including not just the subject parcel 4455-028-044, but also parcels 4455-028-045 and 4455-028-007 for a total of 60.11 acres (Exhibit 32: Malibu Valley Inn and Spa Project DEIR Figure IV-1 and Figure III-4). That DEIR states, "The existing Malibu Valley Farms Equestrian Facility makes up the portion of the project site on the east side of Stokes Canyon Road (Exhibit 33: Malibu Valley Inn and Spa DEIR, IV-14)." Thus, it appears that Malibu Valley Farms Equestrian Facility already includes parcel 4455-028-007—the suggested alternative site immediately north of the subject parcel that the applicant told Commissioners wasn't feasible.

COMPARISON OF THE SCOPE OF MALIBU VALLEY FARMS BY PROJECT DESCRIPTIONS

LA COUNTY C.U.P.			CONVENTION CENTER			COASTAL PERMIT		
alternative 4455-028-093	Stokes Canyon Road			Stokes Canyon Road	alternative 4455-028-007		Stokes Canyon Road	
alternative 4455-028-054					subject site 4455-028-044			subject site 4455-028-044

In addition to all the adjacent land west and north of MVF identified as alternative sites (Parcels 4455-028-007, 4455-028-093, and 4455-028-054), Malibu Canyon L.P. also controls seven other parcels in the immediate vicinity (Exhibit 24: LA County Tax Assessor's Office Property Data, 1-11):

PARCEL	OWNER	RECORDED
4455-043-007	**Malibu Canyon L.P.**	**7-15-98**
4455-028-093	**Malibu Canyon L.P.**	**4-12-05**
4455-028-054	**Malibu Canyon L.P.**	**4-12-05**
4455-028-096	Malibu Canyon L.P.	4-12-05
4455-028-073	Malibu Canyon L.P.	4-12-05
4455-028-091	Malibu Canyon L.P.	4-12-05
4455-028-070	Malibu Canyon L.P.	4-12-05
4455-028-075	Malibu Canyon L.P.	4-12-05
4455-028-071	Malibu Canyon L.P.	4-12-05
4455-028-076	Malibu Canyon L.P.	4-12-05

The applicant stated that the entire operation would be completely wiped out, and withheld the information that he is already using the alternative parcels for equestrian operations. Thus, the applicant misrepresented both his ownership of the properties involved and the location and nature of the current operations, which became the critical issue on which the whole case pivoted.

MR. SCHMITZ:
...a 100-foot setback will, in fact, eliminate Malibu Valley Farms (Exhibit 3: Transcript, 37)." This is what staff is...suggesting that you should utilize to, essentially, close this farm down (Exhibit 3: Transcript, 31).

This misinformation was initially successfully sowed during ex parte communication lobbying:

COMMISSIONER SECORD:
I met with Brian Boudreau, Justin Wolmer, Mike Stoker, Beth Palmer, and Sean Doherty...My question—which they answered, I think—was if you crafted a project that would avoid all of these touchy spots, what was left?...There was discussion about the offsite alternatives on other property, and project alternatives in general (Exhibit 3: Transcript, 26)."

The question of whether the farm would have to close if the Coastal Development Permit were not granted was the pivotal point on which the whole case rested. The applicant rallied the entire equestrian community with tales that the Coastal Commission was trying to shut down an equestrian facility. Equestrians across the state wrote letters or showed up at the public hearings to beg the commission not to "shut down" an equestrian operation and employees pleaded with the Commission not to end their employment:

"I want to propose to you, Commissioners, that should you decide to disapprove the application, what you will be doing,is shutting down an operation that produces champion thoroughbreds, and significantly contributes to the economy of California...What is going to happen should you shut down this particular operation? (Exhibit 3: Transcript, 54)"

"Save Malibu Valley Farms, please (Exhibit 4: Transcript, 57)."

"We urge you to approve the application for Malibu Valley Farms, to allow it to continue to operate as an equestrian facility...Without that facility, we will all suffer...they want to put out of business a well run, community friendly, visitor serving, horse facility... (Exhibit 3: Transcript, 60)."

"It would be a tragedy for the area and the agricultural community if they were shut down...(Exhibit 3: Transcript, 64)."

"Please don't take my job (Exhibit 3: Transcript, 67)."

"...it is very important that all of the facilities remain as is...Please do not take my job away (Exhibit 3: Transcript, 68)."

"Please do not take this farm away from our community (Exhibit 34: 44 letters in Addendum to July 7, 2007 Staff Report for Agenda Item M-13e, page 43)."

"...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...(Exhibit 3: Transcript, 69)"

"Closing these doors will take away these incredible opportunities, that are not available to the community. It will not only be hard for the farm to function, but it will deprive future generations of unique and an unforgettable joy (Exhibit 3: Transcript, 70)."

"The current controversy over the closure of Malibu Valley Farms is emblematic [sic] of this trend {to eliminate equine related recreational opportunities in California] (Exhibit 3: Transcript, 73)"

All of these emotional pleas influenced the Commissioners to craft a decision that would not require the applicant to move outside the 100-foot setback or the coastal zone. Their comments reveal that they relied on and were misled by the pervasive underlying premise promoted by the applicant that failure to approve the Coastal Development Permit meant that the equestrian operations would end.

Commissioner Shallenberger, who did not vote for the CDP, tried to point out that not granting the Coastal Development Permit did not have to mean ending equine use on the property, but the applicant continued to insist that there was no alternative but to close the entire facility:

COMMISSIONER SHALLENBERGER:
"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 Calabasas Posse (sic), and things, are not and needn't 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 (Exhibit 3: Transcript, 132).

COMMISSIOMER BURKE:
...if the application is denied, what happens to the...programs that have been going on, do you continue to operate as you have before...what is the true story here.

MR. SCHMITZ:
Commissioner Burke, it utterly and completely destroys this operation.

COMMISSIONER BURKE:
So everything falls apart. (Exhibit 3: Transcript, 133).

CHAIR KRUER:
...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 (Exhibit 3: Transcript, 135)."

Commissioners Burke and Kruer quoted above voted to grant the CDP.

At the hearing, Commissioners relied on the misrepresentations provided by the applicant to make their decisions and would have voted otherwise if they had understood that viable alternative sites were not only available to the applicant but were already in operation and had been so used for as long as the subject site had. CEQA demands that "public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects (13 Pub. Res. § 21002), but the conditions and findings for the Coastal Development Permit fail to address significant impacts of ESHA streambed alterations, ESHA oak woodlands, and impacts to other individual oak trees identified as significant coastal resources.

If the alternatives were technically infeasible because the applicant could not operate on those sites, unmitigated significant effects were allowable, but commissioners would have to adhere to the code if the applicant is actually the owner of those properties or controls their use as demonstrated by a) legal documentation of ownership and control, b) his continued operation on those sites, and c) his representation to other public agencies as having the controlling interest in the properties.

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FOURTH CAUSE FOR REVOCATION
MISREPRESENTATION BY APPLICANT THAT HE CREATED THE RIPARIAN CANOPY

Every commissioner who voted for the project was the recipient of ex parte communications. Of the seven commissioners who were lobbied and eventually voted in favor of granting the CDP, five of them—Commissioners Potter, Achadjian, Kruer, Secord, and Blank--indicated that the private ex parte conversations included information about the history of the farm (Exhibit 3: Transcript, 23-27).

Chair Kruer specifically indicated in his ex parte communications revelations that the information given to him by the applicant included ". . .the *landscaping* that created the riparian habitat (emphasis added) (Exhibit 35: Transcript, 25)."

Commissioners' incomplete divulgences did not elaborate on *what* they were told about the history of the farm; but since there were no objections or questions from commissioners regarding the formal presentation of the farm's history at the Coastal Commission public hearing, it must be assumed that the information presented at the hearing satisfactorily mirrored the information presented during ex parte communications. However, at least one significant portion of the information that commissioners relied on was not true.

The applicant told commissioners that "the farmers" planted the trees that line the riparian corridor:

> **MR. SCHMITZ:**
> "In 1972, again, . . .where do you see the riparian canopy . . . the reason it doesn't exist is because it was created by the farmers. They are the ones who went out and planted the trees along that drainage" (Exhibit 3: Transcript, 31).

Then he directly stated that the applicant planted the trees:

> "We created the riparian buffer in the first place. We planted thousands of trees there, over 1,000 trees . . ." (Exhibit 3: Transcript, 34).
>
> "Brian Boudreau...planted over 1,000 trees on his property...fostering the growth of the riparian area that is at issue in our hearing today (Exhibit 7: Letter from MVF to Commissioner Blank)."

While, technically and legally, how the trees came to be where they are should not make a difference to the Commission in deciding how to protect ESHA and water quality, it nevertheless raised the sympathies of commissioners in this discretionary process. Commissioner Potter, in his deliberations, revealed that this information influenced his decision and that he believed Mr. Boudreau was the one who "improved" the land and shouldn't be penalized for it:

> **COMMISSIONER POTTER:**
> "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 40's, the 50's, the 60's, 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 is now 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...I don't really want to have one of these classic cases, where, you know, no good deed goes unpunished in the coastal zone...(Exhibit 3: Transcript, 120-121)."

Commissioner Achadjian agreed with Commissioner Potter's statements (Exhibit 3: Transcript, 24).

Evidence that this was a deliberate misrepresentation comes from several sources. The applicant's own biologist's description of the riparian canopy concurs with the Coastal Commission's biologists that the characteristics of the riparian canopy on the property are consistent with the characteristics of naturally occurring canopy that randomly occurs over time along riparian corridors with a reliable supply of water (Exhibit 35: Staff Report, 16) These characteristics include:

- random occurrence of trees
- native variety of trees
- varied ages of trees
- continuation of the riparian canopy upstream and downstream of the property (Exhibit 36: Google Map of Stokes Creek in vicinity of Malibu Valley Farms).

Finally, "thousands of trees" do not exist on the property as the applicant's agent claimed unless he is referring to trees on the other 300 acres in the area that the applicant is claiming not to own.

FIFTH CAUSE FOR REVOCATION:

UNPERMITTED DEVELOPMENT EMBEDDED IN COMPREHENSIVE MANAGEMENT PLAN MISLED COMMISSIONERS INTO CREATING NEW SIGNIFICANT IMPACTS THAT WERE NOT REVIEWED OR MITIGATED

MVF misled the Commission to believe, in the statements on this subject referenced in the original Revocation Request and incorporated by reference herein, that it had all its required local agency approvals.

The Comprehensive Management Plan (CMP), which became the Commission's primary justification for approval of the CDP in the 2009 Revised Findings Report, contains development involving streambed alterations within ESHA that has not been reviewed as required by state law and local ordinances. The "bioswale," "retention pond," and riprap installation constitute streambed alterations and development in ESHA that have the potential to create new significant impacts and require multiple agency reviews, including the ERB, L.A. County, Fish and Game, the Regional Water Quality Control Board, and the Army Corps of Engineers.

Throughout the hearing, MVF misrepresented the Comprehensive Management Plan as including the "bioswale," "retention pond," and riprap installation and as having been approved by the other jurisdictional agencies. Not until just before the vote did MVF retract that statement, but, in so doing, implied that they didn't need review because there were no significant impacts from them.

> "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 (Transcript, p 112)."

The fact that the Commission relied on MVF's representations is reflected in all of the following statements that were a part of the final approved Revised Findings Report:

> "...the Commission finds that the applicant's proposed project, with the operational Best Management Practices, outlined in the Malibu Valley Farms Comprehensive Management Plan, will not disrupt or degrade the habitat values of Stokes Creek consistent with Section 30240 of the Coastal Act (2009 RF, p. 24)."
>
> 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.(2009 RF, p. 25)."
>
> "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 (2009 Revised Findings Report, p. 26)."

Commissioners would, of course, not have approved a CDP that lacks the proper permits and agency approvals required by law if the applicant had not misled the Commission into thinking that it held such approvals or did not need such approvals.

SIXTH CAUSE FOR REVOCATION:
AGRICULTURAL EASEMENT MISREPRESENTED AS BEING AN "OFFER TO DEDICATE"

At the initial public hearing, the Commission accepted what it perceived to be an offer-to-dedicate land to protect it from development. At the end of the proceedings, Commissioner Neely reminded the Commission, "...that the applicant offered an agricultural easement in their proposal (2007 Transcript, p. 118)." Without further discussion of it, the Commission accepted the offer made by the applicant and included it as Special Condition #4—an Agricultural Easement to be applied to 23 acres of hillside. That "offer" consisted of the single sentence in the Applicant's Proposed Conditions of Approval: "An agricultural easement is to be recorded affecting the portion of the site as designated on the attached site plan (Revised Findings Exhibit 28)." The map that accompanied the offer did not show that the 23 acres subject to the easement was ESHA, to which overlay of an agricultural easement would cause a *loss* of protection (Revised Findings Exhibit 29). Land designated ESHA is given the highest protection by Section 30240 of the Coastal Act, which requires it to be "protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas." Since livestock grazing is a widely-recognized significant disruption to habitat values and is not dependent on ESHA, Commissioners must have been misled or they would not deliberately have violated the Coastal Act by downzoning ESHA to a less protected status and creating new significant impacts by allowing livestock grazing of ESHA that could result in the eventual demise of the protected oaks as the seedlings ensuring future generations are consumed by livestock. The livestock area is on a steep slope and is within 30 feet of the stream on the *east* side of the property, which does not have any bioswale to protect the creek from agricultural runoff.

Staff interpreted the "acceptance" of an "offer" as an offer to protect Open Space with obtainable agricultural rights because they wrote the easement Special Condition to allow only maintenance or restoration of natural habitat with the right to have specific agricultural activities approved by the Commission. Before the Revised Findings hearing, MVF complained to the Commission that that was not what it had meant by its "offer" and publicized to the rural community that the Commission was now trying to suppress agriculture in the Coastal Zone and convert agricultural land to nonag designation,

which was another misinformation campaign since the land had been designated ESHA, not agricultural and had only acquired as yet undefined agricultural rights by this very vague "offer" by the applicant. A flurry of indignant letters ensued and at the 2008 Revised Findings hearing, after being lobbied by the applicant, Commissioners directed staff to adopt the wording urged by the applicant, which allows the property owner to maintain livestock on the 23 acres without need for further Coastal Commission review and carefully removes the language that requires maintenance/restoration of natural habitat since agricultural use by its very nature degrades natural habitat and allows more development through "associated structures" than would otherwise be allowed in ESHA.

National Parks Superintendent Woody Smeck testified in written comments that the agricultural easement is not a protection, but an opportunity to degrade ESHA-protected land, in direct conflict with Coastal Act ESHA policies.

> "...agricultural uses that include confined livestock and grazing tend to compact and pulverize soils and denude vegetation to the point of complete removal of the native species understory and eventual loss of the riparian canopy owing to the inability for oak and other native tree seedlings to regenerate. We find the proposed easement is a significant departure from accepted interpretation of Coastal Act policies to protect the sensitive natural resources in this area which the staff report indicates is ESHA. We request clarification on how the agricultural easement is consistent with ESHA and other natural resource protection policies of the Coastal Act (Letter from National Parks Superintendent Woody Smeck, pp.3-4)."

CEQA requires mitigation of significant impacts or the use of site alternatives to avoid significant impacts but neither occurred relative to the agricultural easement, which is evidence that Commissioners were led to believe the easement was itself mitigation (a Special Condition).

The 2009 Revised Findings Report relies on the CMP as mitigation for the lack of buffer zone prescribed by the Malibu LUP, however the CMP addresses only water quality issues, and only those occurring on the west side of the creek; it makes no attempt to mitigate the significant impacts to the east side of the creek, the oak woodlands ESHA, the chaparral and sage ESHA, the individual oaks identified as significant resources, or the fuel modification areas in the ESHA at the north portion of the property.

The fact that the Commission relied on the statements made by the applicant is reflected in the following portions of the final approved 2009 Revised Findings Report (emphases added):

> *"In addition [to the mitigation provided in the CMP],* 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. (p. 26)."
>
> "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 (page 3)."
>
> "...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."

Commissioners would, of course, not have voted to grant a CDP in direct violation of Coastal Act policies without mitigation of violations.

CONCLUSION

Mr. Boudreau has in the past pleaded ignorance of the law as justification for his unpermitted operations, but his real estate office and the twenty plus years he has spent navigating County and Coastal Act regulations belie that excuse; indeed his manipulations of those regulations are indicative of a sophisticated level of comprehension of them. Thus, it cannot be said that the many misleading statements and omissions of information made by the applicant in these proceedings were anything but deliberate attempts to confuse commissioners and obfuscate the truth.

In its current state, the project approved by the Coastal Commission with its bioswale, retention pond, riprap and agricultural easement does not match the project approved by LA County, Fish and Game, or the Regional Water Quality Control Board and it still needs to go back to those agencies for approval of the additional development in ESHA that was piecemealed into the project without benefit of jurisdictional agency review and permits. Thus, the CDP is an empty shell without the requisite public agency approvals, which leaves it in a state of limbo subject to manipulation and misinterpretation by those who might benefit from such actions, and thus subject to constant and costly litigation.

Revoking the CDP is necessary to clean up the administrative tangles, the circular logic, the multi-layered misconceptions, and the endless drain on public resources that have resulted from compounded misrepresentations by the applicant, and let him move the facility to one of the many alternative sites that the corporate records search indicates are available to him.

A major purpose of a public hearing is to bring in community members who may have more institutional memory on a property than a remote coastal staff could have. In fact, it was an alert neighbor who supplied information to the Coastal Commission in 1998 that resulted in their rescinding an exemption that had been wrongly granted to the applicant when he falsely claimed his buildings had burned down in a fire. In the current issue, comments made by the applicant at the 2007 hearing and the Commissioners' obvious confusion about the status and operations of MVF again motivated members of the public who are familiar with the property and the applicant's representations to other agencies to collect the evidence for this revocation request. The evidence discussed herein is public information that was in existence at the time of the hearing, which is reassembled and presented herein to provide evidence that the grounds for revocation are more than adequately established:

> intentional inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit application, where the commission finds that accurate and complete information would have caused the commission to require additional or different conditions on a permit or deny an application (14 CCR §13105).

In light of the direct and circumstantial evidence showing not one deception, but many, each of which had not only its own individual impact in the minds of the decision-makers, but each of which also contributed to a more insidious cumulative influence as shown by Commissioners' questions, their pre-vote deliberations, their votes, and the statements made in the Revised Findings to justify those votes, we respectfully request the Coastal Commission to provide the following relief:

The applicant should be required to supply the following proof of the aforementioned disputed and unsubstantiated claims:

a) ERB approval for new development as opposed to modifications to vested development

b) exemption from setback requirements by the ERB

c) LA County Plot Plan Approval in Concept for the structures as *new development* as opposed to being constrained to only the modifications to vested development, including permits for structures

d) approval of the bioswale, riprap, and retention basin from all jurisdictional agencies, including the ERB, LA County, Fish and Game, the Army Corps of Engineers, and the Regional Water Quality Control Board.

e) approval of the two at-grade stream crossings from all jurisdictional agencies, including the ERB, LA County, Fish and Game, the Army Corps of Engineers, and the Regional Water Quality Control Board.

f) zoning and authorization for commercial use of the facilities to provide needed public recreation and access to public lands that is not otherwise readily available in the area

g) commercial permits to allow the Jr. Posse riding academy to utilize the facility for its program and to allow private clubs, such as the various local Corrals, the Princess Riding Club, and the Monte Nido Riding Club to utilize the facilities for their programs.

h) approved access points to public lands that is not already available in the area

i) SWRCB approval of a site plan for new development that includes the streambed alterations, inclusive of the Arizona crossings, the bioswale, and retention basin, in addition to the intent to comply with construction stormwater run-off currently on file

j) Fish and Game approval of a site plan for new development that includes the streambed alterations, inclusive of the Arizona crossings, the bioswale, and retention basin

k) designation as the local fire evacuation center

l) receipt of competitive manure management award

m) position as county model for manure management

n) ~~commercial/dairy~~ identification, review, and mitigation of potential significant impacts arising from installation of bioswale, retention pond, riprap, and downzoning of ESHA to Agricultural designation.

In order to avoid another eight-year stall, the Commission should provide clear time limits that are the shortest reasonable interval.

The Coastal Commission can utilize the intervening time to consult with its legal staff to determine whether the commercial District 22 Agriculture Association approval is in any way binding upon a private development within the Malibu Land Use Plan under LA County jurisidiction, so that Commissioners are fully informed of the precedent value of that state agency project's negotiated approval compromises.

If the applicant is able to obtain those approvals, and Coastal Commission still chooses to grant the CDP, it should be clearly stipulated that it is for private use only, as LA County found it prudent to do, so the applicant cannot continue to compound one agency's misunderstanding with another's to create the illusion that the site has been permitted for commercial use.

Although the issues of state and local agency approval, commercial v. private use, public benefit, and property ownership have been separately addressed in this document, they are, in fact, inextricably interwoven into a comprehensive whole that is greater than the sum of its parts. Each component informed and influenced another and cumulatively affected the decisions of those commissioners who voted in favor of granting a Coastal Development Permit to the applicant. Only one Commissioner needed to have voted differently for this case to have had an entirely different outcome, an outcome in keeping with the precedents set for natural resource protection in the Santa Monica Mountains.

CALIFORNIA COASTAL COMMISSION
SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
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W 9a

Filed: 3/21/07
Action Date: 7/9/07
Action: Approved with Conditions
Revised Findings
Adopted: 6/11/08
Revised Findings
Remand Staff Report: 6/25/09
Hearing Date: 7/8/09

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)***

R-4-06-163
Exhibit 2
Final Revised Findings

In Coastal Law Enforcement Action Network v. California Coastal Commission, Los Angeles Superior Court Case No. BS112422, Judgment Granting the Petition for Writ of Mandate was entered on March 10, 2009. The Judgment requires the Commission to:

> "to set aside its Revised Findings of June 11, 2008, of Coastal Development Permit Number 4-06-193 [sic] approved on July 9, 2007, in the administrative proceedings entitled "Application No. 4-06-163 (Malibu Valley Farms, Inc., Santa Monica Mountains, Los Angeles Co.);" [and] [¶] ... to reconsider its Revised Findings and/or its approval of the project. In reconsidering the Revised Findings, the Commission may: (1) rely on evidence in the record other than the one-page Los Angeles County Environmental Review Board ("ERB") document to conclude that the scope of the ERB hearing included existing structures; (2) conduct a new hearing on the issue of what was the scope of the ERB decision; or (3) separately decide to impose less than a 100-foot setback under its own authority without relying on the ERB decision."

This Revised Findings Report revises the Staff Report approved and adopted by the Commission on June 11, 2008, to comply with the Judgment and Writ by **adding new language** and ~~**deleting existing language**~~ as follows below:

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

Also subsequent to the Commission's July 9, 2007 hearing on the subject permit application, staff received a letter from David M. Brown, stating that an unidentified Los Angeles County Environmental Review Board ("ERB") member that was present at the 2003 hearing wherein the ERB approved the project that is the subject of the subject permit indicated that the ERB discussed only the impacts of relocating certain buildings. According to Mr. Brown's letter, the ERB was led to believe that the entire project was not within the ERB's purview because the existing structures had been "grandfathered."

As an initial matter, no party raised this issue prior to the Commission's final action on the project, so Mr. Brown's objection is untimely. However, even if the issue was properly raised before the Commission's action on the project, the applicant contends that there is substantial evidence in the record that the ERB considered the environmental impacts of the existing equestrian facility as well as the modifications thereto. The evidence includes the fact that the applicant's Claim of Vested Rights Application had been stayed, at the applicant's request, to pursue a CDP for the entire facility in February 2001, so was not pending at the time of the 2003 ERB hearing. Additionally, the applicant submitted copies of the County-approved plans, Plot Plan 48295. The ERB considered Plot Plan 48295 on January 27, 2003. Sheet 1 of Plot Plan 48295 depicts details of some additional structures as well as existing structures. Sheet 2 of Plot Plan 48295 was stamped "approval in concept" by the County on February 3, 2004 after the ERB approval. Sheet 2 specifically identifies existing structures to be removed and existing structures to remain. While Sheet 2 also states "Plot plan 48295 is approved for modifications to an existing equestrian facility as shown" the applicant interprets this as supporting a finding that the ERB reviewed the entire project, not just the relocation of certain structures. The applicant contends that this conclusion is further supported by a letter from the Department of Fish and Game dated March 15,

[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.

2005. Fish and Game advised that because it had not met certain deadlines, the applicant was not required to obtain a Lake or Streambed Alteration Agreement but the applicant should keep a copy of the March 15 letter and its Notification on site. The Notification described the project as "retention" of specified structures and "removal" of specified structures; it also referenced approval by the County of Plot plan number 48295. The applicant further notes that former County Biologist Joe Decruyenaere testified before the Commission at the Commission's July 9, 2007 hearing that he was the County biologist at the time 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, the exterior night lighting, and with a manure management plan. Mr. Decruyenaere testified that "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." Taken together, the applicant believes that there is substantial evidence to support a finding that the ERB considered the project as a whole.

However, regardless of the ERB's action on the project and whether the ERB considered the project as a whole, the Commission found ample support for its approval in the evidence in the record without the need to rely on the ERB approval.

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.

Beginning with the Staff Note, above, this report shows the language of the original Staff Report (dated June 21, 2007) in straight type. The language added or deleted in the Adopted Revised Findings (adopted June 11, 2008) are shown by underline or ~~strikethrough~~. Finally, language added or deleted in the Revised Findings (dated June 25, 2009) considered herein is shown in **bold double-underline** and **~~bold double-strikethrough~~**, respectively.

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. Maintaining livestock and 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.

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 agricultural 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. 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. <u>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.</u>

<u>Previous Commission Actions on Equestrian Facilities in the Santa Monica Mountains</u>

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 l 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

[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.

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) 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

[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*).
[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.

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 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.

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[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.

[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.

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.

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

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

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. **However, the LUP provides guidance only. Because there is no fully effective, certified Local Coastal Program that is applicable, the**

provisions of the Coastal Act control. The Coastal Act does not itself establish specific quantitative standards for buffer areas and, in the absence of binding LCP standards, allows determinations regarding buffer areas to be made on a case-by-case basis.

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 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 and has been designed with four layers of ESHA protection:**

- **Manure Management**
- **Roofed Pipe Corrals with Downspouts**
- **Bio-swale/Retention Pond System**
- **Increased Riparian Buffer**

According to the "Malibu Valley Farms Comprehensive Management Plan" (Exhibit 15), the vegetative swales are designed to travel parallel to the creek and capture all run-off from the farm. As water travels through the vegetative swale, flow velocity will be reduced, allowing suspended solids to settle and other pollutants to infiltrate the soil or be absorbed into the vegetation, providing nutrients to the vegetation while protecting the creek. The vegetative swales are limited to an average 1 % slope which will result in long detention times for maximum contact between the runoff water and the vegetation or soil. Other proposed project design details pertinent to the environmental setting include construction of roofs with rain gutters and downspouts over pipe barns, linkage of horse wash racks and restrooms to the sewer line, and additional storm water management site design recommendations. The gutters and downspouts are proposed on all roofed structures that will direct clean water from roof tops into pipes that outlet into the creek, ensuring that water from roof tops will not mix with bare or manured areas before entering the creek. Conversely, the linkage of the horse wash racks and restrooms to the sewer line will ensure that these potential sources of pollutants will not permeate the ground. In addition, all remaining and future parking lots are proposed to have an impervious gravel bottom, decreasing the potential of polluted run-off. These measures will minimize the introduction of potential pollutants into the stream.

Moreover, Malibu Valley Farms has developed and continues to implement an equestrian waste management program that has already been recognized with a Los Angeles County Best Management Practices Award. As part of standard operating procedure of the equestrian facility, all straw, bedding and manure is removed from stalls three times daily, stored onsite in bins located on an impervious surface and used exclusively for manure waste, and transported weekly off-site to a regional composting facility, which

will protect against significant disruption of habitat values. Additionally, Malibu Valley Farms proposes to increase the riparian buffer between the creek and the farm with new plantings that will result in the following benefits:

- **Dense grasses trap sediment, promote infiltration, and slow run-off flows;**
- **Grasses, shrubs and trees utilize excess nutrients;**
- **Trees and shrubs help stabilize stream banks and create a shade canopy to cool water for aquatic life, reduce floodwater velocity and erosive power, and trap debris during floods; and**
- **A visual screen that will act as a windbreak and help capture dust.**

The proposed improvements will reduce or mitigate adverse impacts to riparian habitat and water quality as a result of the project and reduced buffer area, as determined by Frank Hovore & Associates in its Biological Resource Analysis of Proposed ESHA Setback for Malibu Valley Farms Equestrian Center Improvements Pursuant to Land Use Permit Change Application, dated January 2002, updated October 2004. See also Jones & Stokes Evaluation of Surface Water and Groundwater Quality Impacts Resulting from the Proposed Equestrian Facility at 2200 Stokes Canyon Road, Calabasas, California, dated July 3, 2002; Sapphos Environmental Inc., Biological Assessment in Support of Malibu Valley Farms, Inc. Coastal Development Permit Application, dated October 25, 2005.

~~**However, the**~~ **The** LUP indicates that variations from ~~**such**~~ development standards **regarding buffers** 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.~~ **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. **In any event, the LUP serves as guidance only and it is the Chapter 3 policies of the Coastal Act that are the Commission's standard of review for the proposed project. Regardless of the ERB's action with regard to the proposed project, the Commission must find that the proposed project is consistent with Section 30240 of the Coastal Act. As outlined in the findings below, the Commission has independently analyzed the potential adverse impacts the proposed project may have on the Stokes Creek and its riparian ESHA and has required appropriate mitigation measures to ensure the project will not degrade the riparian ESHA of Stokes creek. Therefore, as described in detail below, the Commission finds that the applicant's proposed project, with the operational Best Management Practices, outlined in the Malibu Valley Farms Comprehensive Management Plan, will not disrupt or degrade the habitat values of Stokes creek consistent with Section 30240 of the Coastal Act.**

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 several riparian systems have found that to include 90% of streamside plants, the minimum~~

~~[17] Council of Bay Area Resource Conservation Districts, June 2003. Equine Facilities Manure Management Practices Fact Sheet, "Managing Manure: The Role of Riparian Buffers".~~

~~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. **These problems generally associated with confined animal facilities, however, can be minimized through comprehensive waste management plans.**

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. **By minimizing the introduction of pollutants, an adequate comprehensive waste management plan can avoid these problems.**

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 **potential** 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. **Therefore, in order for the proposed development to be consistent with the mandates of the Coastal Act, mitigation measures are required.**

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. **Findings such as these are indicative of the importance of implementing a Comprehensive Management Plan to minimize polluted run-off into Stokes Creek. As discussed previously, as part of the Comprehensive Management Plan, the applicant is proposing to incorporate a bio-swale filtration system that will treat the water and provide an effective buffer of over 1,000 ft. before any run-off is conveyed to Stokes Creek thus dramatically minimizing potential impacts to the Creek's water quality. In order to ensure that the management plan is implemented properly, Special Condition 3 requires the applicant to provide an independent mitigation monitoring report to the Executive Director one year after the implementation of the approved Malibu Valley Farms**

[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

Comprehensive Management Plan, and again five years after the implementation of such plan.

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 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. **However, reduced setbacks were approved by the Commission in a proposed development for the 22nd Agricultural District, similar to the current proposed development as a result of site-specific analysis.** 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

[21] Stable and Horse Management in the Santa Monica Mountains, A Manual on Best Management Practices for the Reduction of Non-point Source Polllution, RCD/SMM, 1999.

functional natural vegetation buffer consistent with Section 30231. **In this case, the applicant has submitted a Comprehensive Management Plan detailed above, which the Commission finds to be consistent with water resource protection. Based upon the comprehensive nature of the mitigation measures proposed by the applicant, the Commission finds that the project, as conditioned is consistent with section 30231 of the Coastal Act.**

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 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 **generally** 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~~ 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.~~ **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. **In any event, the LUP serves as guidance only and it is the Chapter 3 policies of the Coastal Act that are the Commission's standard of review for the proposed project. Those policies do not specify quantitative standards regarding buffers. Regardless of the ERB's action with regard to the proposed project, the Commission must find that the proposed project is consistent with Section 30231 of the Coastal Act. As outlined in the findings below, the Commission has independently**

[22] "Managing Manure: The Role of Riparian Buffers", Equine Facilities Manure Management Practices Fact Sheet, Council of Bay Area Resource Conservation Districts, June 2003.

analyzed the potential adverse impacts the proposed project may have on the water quality and biological productivity of Stokes Creek and has required appropriate mitigation measures to ensure the project will not adversely impact the biological productivity of Stokes Creek. Therefore, as described below, the Commission finds that the applicant's proposed project, with the operational Best Management Practices, outlined in the Malibu Valley Farms Comprehensive Management Plan, will reduce or mitigate potential adverse impacts to the water quality and biological productivity of Stokes creek, consistent with Section 30231 of the Coastal Act.

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 **was designed with four layers of ESHA protection and** includes construction and operational Best Management Practices. **According to the "Malibu Valley Farms Comprehensive Management Plan" (Exhibit 15), the vegetative swales are designed to travel parallel to the creek and capture all run-off from the farm. As water travels through the vegetative swale, flow velocity will be reduced, allowing suspended solids to settle and other pollutants to infiltrate the soil or be absorbed into the vegetation, providing nutrients to the vegetation while protecting the creek. The vegetative swales are limited to an average 1 % slope which will result in long detention times for maximum contact between the runoff water and the vegetation or soil. Other proposed project design details pertinent to the environmental setting include construction of roofs with rain gutters and downspouts over pipe barns, linkage of horse wash racks and restrooms to the sewer line, and additional storm water management site design recommendations. The gutters and downspouts are proposed on all roofed structures that will direct clean water from roof tops into pipes that outlet into the creek, ensuring that water from roof tops will not mix with bare or manured areas before entering the creek. Conversely, the linkage of the horse wash racks and restrooms to the sewer line will ensure that these potential sources of pollutants will not permeate the ground. In addition, all remaining and future parking lots are proposed to have an impervious gravel bottom, decreasing the potential of polluted run-off. These measures will minimize the introduction of potential pollutants into the stream.**

Moreover, Malibu Valley Farms has developed and continues to implement an equestrian waste management program that has already been recognized with a Los Angeles County Best Management Practices Award. As part of standard operating procedure of the equestrian facility, all straw, bedding and manure is removed from stalls three times daily, stored onsite in bins located on an impervious surface and used exclusively for manure waste, and transported weekly off-site to a regional composting facility, which will protect water resources. An additional one half acre of additional riparian canopy is proposed in this application. Additionally, Malibu Valley Farms proposes to increase the riparian buffer between the creek and the farm with new plantings that will result in the following benefits:

- **Dense grasses trap sediment, promote infiltration, and slow run-off flows;**

- **Grasses, shrubs and trees utilize excess nutrients;**
- **Trees and shrubs help stabilize stream banks and create a shade canopy to cool water for aquatic life, reduce floodwater velocity and erosive power, and trap debris during floods; and**
- **A visual screen that will act as a windbreak and help capture dust.**

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, as well as stream and groundwater quality, as determined by Frank Hovore & Associates in its Biological Resource Analysis of Proposed ESHA Setback for Malibu Valley Farms Equestrian Center Improvements Pursuant to Land Use Permit Change Application, dated January 2002, updated October 2004. See also Jones & Stokes Evaluation of Surface Water and Groundwater Quality Impacts Resulting from the Proposed Equestrian Facility at 2200 Stokes Canyon Road, Calabasas, California, dated July 3, 2002; Sapphos Environmental Inc., Biological Assessment in Support of Malibu Valley Farms, Inc. Coastal Development Permit Application, dated October 25, 2005. 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
36.	Correspondence and Commissioner Ex Parte Communications Concerning the Revised Findings acted upon by the Commission at the June 11, 2008 hearing.

Click here for Exhibits 1-16
Click here for Exhibits 17-34
Click here for Exhibit 35
Click here for Exhibit 36

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STATE OF CALIFORNIA

COASTAL COMMISSION

CERTIFIED COPY

MALIBU VALLEY FARMS 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 Obispo, California

R-4-06-163
Exhibit 3
July 9, 2007 Hearing Transcript

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INDEX TO SPEAKERS

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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

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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

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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

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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

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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

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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

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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

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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

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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

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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.

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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

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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.

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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:

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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.

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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

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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

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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.

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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

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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

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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,

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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

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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.

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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.

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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

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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.

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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

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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.

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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

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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

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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

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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

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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

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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

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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

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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."

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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.

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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

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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

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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

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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

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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

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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

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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 retro-actively approving this development without any reper-cussions, 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

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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

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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

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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,

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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

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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.

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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,

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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

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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

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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.

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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

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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

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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

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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

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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

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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

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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

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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

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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

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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.

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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

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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.

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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.

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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.

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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

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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

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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?

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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.

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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.

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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,

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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

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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

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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,

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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

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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

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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

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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.

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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

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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.

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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,

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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

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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.

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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,

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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

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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

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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.

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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

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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

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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

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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

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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

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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

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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

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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

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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

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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

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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

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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

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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

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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.

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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.

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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

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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

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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

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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.

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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

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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

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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

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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,

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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

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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

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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

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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.

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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

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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

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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

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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

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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

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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.

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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

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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

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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*.

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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

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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

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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?

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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

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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

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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

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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?

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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.]

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) 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: October 8, 2008

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STATE OF CALIFORNIA

COASTAL COMMISSION

ORIGINAL

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

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Wednesday
June 11, 2008
Agenda Item No. 18.a.

County of Sonoma
Board of Supervisors Chambers
575 Administration Drive
Santa Rosa, California

R-4-06-163
Exhibit 4
June 11, 2008 Hearing
Transcript

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Khatchik Achadjian
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William A. Burke
Larry Clark
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INDEX TO SPEAKERS

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California Coastal Commission
June 11, 2008
Malibu Valley Farms, Inc.

* * * * *

6:00 p.m.

CHAIR KRUER: Now to 18.

DEPUTY DIRECTOR AINSWORTH: All right, 18.a. are the revised findings for Coastal Development Permit No. 4-06-163, the applicant is Malibu Valley Farms.

Okay, ready to go ahead?

CHAIR KRUER: Yes.

DEPUTY DIRECTOR AINSWORTH: The permit authorized an after-the-fact request for approval of a large equestrian facility located at the northeast corner of Mulholland Highway and Stokes Canyon Road in the Santa Monica Mountains.

Your addendum packet includes a letter from the applicant indicating he is not in agreement with the revised findings relative to two special conditions of the permit regarding No. 1, the terms of the agricultural easement condition, required by Special Condition 4 of the permit; and two, the provision in No. 1 in Special Condition 3, the indemnification condition which requires the reimbursement of fees charged by the office of the Attorney General.

With regards to the agricultural easement, the applicant argues staff has written the agricultural easement

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condition in a way that really is, in effect, an open space easement, and staff requires a coastal permit for any and all agricultural activities within this area.

The agricultural easement, in our view, is not akin to an open space easement. An open space easement, typically, prohibits most development, except for a very few, very narrow exceptions. The agricultural easement condition does allow for agricultural uses within the easement area, provided the applicant obtain a Coastal Development Permit for the uses.

At the hearing on this permit, the Commission did not find that the 25-acre area, which is the subject of the agricultural easement, had existing ongoing livestock activities, or other agricultural uses in this area. No substantive evidence was presented at the hearing to demonstrate there were ongoing livestock operations in this area.

In fact, the applicant had previously submitted a vested rights claim for historic and ongoing agricultural uses occurring on this property. The applicant claimed they had a vested rights to conduct agricultural and livestock activities on the property that were commenced prior to 1930, had a right to build structures in connection with that use, and the right to construct, operate, and maintain this equestrian facility.

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In November of 2006, the Commission denied the applicant's vested rights claim, including supporting evidence that there were existing ongoing agricultural and livestock activities on the property. So, the Commission found that there are no existing agricultural activities on the property.

In its approval of the Coastal Development Permit, at the July 2007 hearing, the Commission added agricultural easement conditions referencing the applicant's offer of an agricultural easement over the area. There is no discussion of the terms of the easement, or any discussion regarding the ongoing livestock, or agricultural operations.

Therefore, the fact that there was no specific findings at the 2006 hearing regarding the existing livestock grazing operation, coupled with the denial of the previous vested rights claim, staff drafted an agricultural easement that allows for agricultural use here, subject to a Coastal Development Permit.

The applicant will assert that it was the intent of the Commission to authorize the existing grazing operations within this easement; however, again, there is no evidence in the administrative record to support this claim.

Regarding the indemnification condition, the condition language we used here is our typical language that we have used in the past, and the applicant objects to

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Provision 1, which refers to the reimbursement of costs and fees charged by the Attorney General. Given the Commission is a general fund agency, the Attorney General currently does not charge the Commission for legal representation; therefore, at this time, that should not be an issue. This clause is included in the Commission language, in the event this policy is changed for some reason, and the Attorney General begins charging the Commission for its legal representation.

The Commission has received letters from Mary Hubbard, representing Save Open Space, and Marcia Hanscom, representing CLEAN, arguing that the applicant did not have a legal interest in the property at the time of the Commission's action on this permit, because he had not recorded a deed on the property. Therefore, they claim that the permit is null and void, and they object to the release of these revised findings.

The Commission did have documentation of the applicant's legal interests in the property, at the time it acted. The applicant had submitted an unrecorded deed as evidence of legal interest in the property, and although an unrecorded deed does not render the grantee the record owner of the property it does effectively transfer title. Therefore, the applicant was the legal owner of the property at the time the Commission determined.

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Furthermore, in any event, the previous owner of the property submitted a letter six months before the Commission acted consenting to the processing of the permit application; therefore, even if there had been a question as to the validity of the deed, there was no question the applicant had the ability to seek a permit.

In your addendum packet there is a letter from the applicant's attorney, requesting specific changes to Special Conditions 3 and 4. In addition, the addendum included several examples of 19 form letters objecting to the staff's recommendation on the revised finding regarding the terms of the agricultural easement.

There is also a letter received from Zev Yaroslavsky, the county supervisor who represents this area, requesting the Commission reject the findings based on a number of issues. Most of the supervisor's arguments are factual and policy matters related to the project and the permit, and should not be addressed to the revised findings, as it relates to the Commission's action on this permit. He is, essentially, asking the Commission to go back and reconsider approval of the entire project, and he is recommending that this project be denied, which is not possible at this point, as the Commission has already approved it.

We have also, interestingly, received a letter

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from County Supervisor Mike Antonovich, in support of the applicant's proposed changes to the revised findings. And, we have also received a letter from Heal the Bay, again, just addressing general issues regarding the approval of the project, and not addressing the revised findings.

Only the Commissioners on the prevailing side of the Commission's action are eligible to vote on revised findings. The Commissioners on the prevailing side, in this case, are Commissioners Achadjian, Blank, Burke, Secord, Neely, Potter and Kruer. The motion for adoption of the revised findings can be found on page 4 of the staff report.

This concludes our staff presentation.

CHAIR KRUER: Okay.

Ex partes, starting on my left.

VICE CHAIR NEELY: Mine are on file.

CHAIR KRUER: Okay.

COMMISSIONER ACHADJIAN: Mr. Chair, there was an attempt to have a meeting with me, but I wasn't able to, but I did receive an email that pretty much talks about the position that the condition proposed by staff should be deleted and the language approved by the Commission be included in the permit, as much as they are willing to compromise, but the main differences between the parties is that the language for the easement approved by the Coastal Commission was an agricultural easement, and not an open

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space.

CHAIR KRUER: Okay.

Commissioner Neely.

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

CHAIR KRUER: I had a couple of calls. I was out of town, and I didn't get them or get back to my office. I had a call last night, also, a message left in my room, but again, I didn't talk to anyone, so that was it.

Commission Blank.

COMMISSIONER BLANK: I had an ex parte with Sean Dorougherty, and a couple of emails with Malibu Valley Farms, and those are all on file.

CHAIR KRUER: Commissioner Potter.

COMMISSIONER POTTER: Thank you, Mr. Chair.

Last night I had a brief conversation with Sean Dorougherty and Brian Boudreau regarding their concerns over this not being designated as an agricultural easement, but rather an open space easement; and, also that the appropriate agency, such as the conservancy, should be agriculturally related, as in the Farm Bureau, or a body such as that.

CHAIR KRUER: Thank you, Commissioner Potter.

With that, I will open the public hearing, and again, we only have one speaker slip, Mr. Fred Gaines. How much time are you requesting?

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MR. GAINES: Ten minutes, sir.

CHAIR KRUER: Okay, and please, you know the rules that your testimony should be directed towards the findings and the reasons for the previous action, and not changing that action, okay.

MR. GAINES: Yes, and thank you, very much. Thank you, Mr. Chairman, members, my name is Fred Gaines with the law firm of Gaines and Stacey. I am here today on behalf of the Malibu Valley Farms.

This issue has been properly framed by the Director, with two issues with the conditions of approval. I want to take you through a -- and you have this handout in front of you, if it is easier for you to see.

We provided conditions at the hearing held last July, and here is the condition that we provided. We said a agricultural easement is to be recorded effecting the portion of the site as designated on the attached site plan. That was the condition that was offered at the hearing, and that is in Exhibit 28 that you have attached to your staff report.

Here is the actual map of the easement, showing the agricultural easement area that was attached to that proposed easement, and shows where that agricultural easement was designated to be.

This is the site, and this shows the general easement area, and you can notice that it is the area that

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has been grazed. You can notice the difference between the areas outside of the fenced area, and inside of the fenced area.

So, what happened at the hearing? What happened was the following exchange -- and this is in the transcript that you have attached to your report.

Vice Chair Neely -- after the motion had been made by Commissioner Burke, seconded by Commissioner Blank -- said:

> "I had a question about the conditions. I think the applicant offered a proposed agricultural easement proposal. I think we should have some sort of monitoring program," and so forth.
>
> "Are you going to offer this?" Yes.

The answer is "Yes" and those are the accepted conditions.

So the actual action that was taken was we offered that one-sentence condition, and the map showing the agricultural easement, and that was accepted, that was the action. You are not going to find anything else in the record that says that there are 3 or 4 or 5 other conditions of that particular agricultural easement.

And, if you want to go to the code, as to what an agricultural easement is, there are code sections in *Public*

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Resources Code 10211, and I have that, if you need to see it, which talks you can have a agricultural conservation easement that allows for agricultural uses on the site. But, that wasn't referred to here. It was just the one sentence.

So, now we get the staff report, and the staff report includes this condition, and what the condition says is, okay, you can have a agricultural easement, and in it you can have native habitat our resources, you can do restoration, and you can have your livestock fencing, that is it. So, we are not allowed to do any agricultural uses in the agricultural easement area, except if we go and get another Coastal Permit.

So, we are concerned here that we are making new rules. It certainly was not something that was discussed at the hearing in July. Clearly, the intent of our -- our purpose of intent, we believe the intent of the Commission was to allow for the horses and livestock to continue to graze inside of the existing fencing. The fencing is already there. You have seen the photographs.

We are not asking for vested rights determination. You didn't make a vested rights determination, but you also didn't say that there has never been any grazing. I think staff went a little too far in the staff report saying that you found that there has never been any grazing in that area. The fact is you saw photos of grazing, and you heard

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testimony that the horses went out into that area. You didn't make a vested rights, and we are not asking for vested rights, but we are asking to be able to utilize the agricultural easement area for agricultural purposes.

Now, frankly, we are willing to limit it. What we suggested in the language that we put before you is moving this maintaining livestock up to being allowed, and not requiring an additional permit.

There is actually no reason why we shouldn't be able to have crop activities, as well. We agree that if there are additional facilities, that we would come back for permits.

So, one choice is to do what I think you actually did, which was to adopt our condition which said there shall be an agricultural easement, and then the code tells us, and even gives us language of what the agricultural easement should include. You didn't do this. We don't believe you did this, and that is why we believe this needs to be cleared up.

Now, what we tried to do in the language we have proposed to you is to take as much of what the Commission's staff did. We tried to be as compromising as we can. We moved to maintaining livestock up here to the area of what we are allowed to do, of maintaining livestock and existing fencing, and we left the other items as needing further

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permits.

We are willing to accept this as a compromise, again, I think your real action was you accepted our offer, which was the one sentence that there shall be an agricultural easement.

We also ask that the language be taken out regarding protection and enhancement of native habitat -- it is in the condition here. Now, the one thing you have seen written into the language I have given you is here it says "granting to a public agency or private association." We want the word "agriculture" put in, public agriculture, or private agricultural association. We don't want to get into a situation where we are going to be required to give this agricultural easement to the conservancy, who is then going to fight us every day as to what is agriculture, and what is not agriculture. We can give it to the Farm Bureau, we can give it to other groups.

Remember, the easement in this case, is just a right to enforce that it be used for agriculture. It is not the kind of easement where you get to use a path across the property, that it is a right to enforce that the land will be used in agriculture.

The second condition is really a fairly simple item. We have no problem agreeing to indemnify, should the Commission be required by a court to pay any fees. But, we

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are being asked here to pay those fees charged by the office of the Attorney General, and then we are being -- it is being said that the Attorney General will direct their own defense. Theoretically, if there is a suit -- in fact, there is a suit in this case -- we would have to defend, the Attorney General would defend, and under this language they could then charge us some fee for what is the Attorney General's own fees.

They are not handing the defense to us, as in a typical indemnity, and say, hey, indemnify, defend, and we pay one attorney. Here they are making us pay two. Now, the actual practice, as you heard, is not to do that, which is why when I saw this, I said, "Mr. Director, that is not what goes on."

He goes, "You are right, that is not what goes on, but just in case, we want to throw that in."

And, we don't think that that is right. We are happy, if there is ever an award against the Commission, we are going to pay that award, we are going to defend the case, but we don't think we should pay fees charged by the Attorney General, which in fact are not charged, as you have heard.

So, that is all that we did in changing this condition, to say we will pay in full for all coastal attorney fees and costs, that the Commission may be required by a court to pay, meaning, if the other side were to win, win an attorney's fee award, we will pay that.

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We have proposed a motion here where you would adopt the findings, and make these changes.

The only additional comments that I want to make is in the addendum you did receive some letters from some opponents. They raise two issues, and just for the purpose of the record, we saw them yesterday. They were added to the record yesterday.

One talks about -- two main issues are raised in those oppositions, and one has to do with the county ERB. There is a claim that the county ERB, when they approved this, was approving a smaller project, or some different project, and in fact that is not the case. The project that went to the county ERB was a larger project, and included an additional 10-stall barn that was removed as part of our negotiations when we were working with the Commission staff.

There was no -- as you will recall, we did a very extensive bio-swale and mitigation plan here. That was not part of what the ERB sought. We moved some of the structures further away from the creek.

So, the project here is, actually, more mitigated, smaller in size, and further away from the creek than what the ERB had recommended approval, and then, of course, the county regional planning had approved.

The other item I wanted to raise is there was some discussion in these oppositions about the alternative

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section, which starts on page 28 of the findings. The project, as you will recall, there was an alternative proposed originally to make it much -- too little tiny areas on the property, that would have required getting rid of the riding ring, and so forth, and was found to be infeasible, and inconsistent with the project.

But, it talked about other properties in the neighborhood, and we have informed staff, and they have not agreed to change their report. It talks about how certain properties owned by the Malibu Canyon LP are owned and controlled by the same entity as here, and is just simply not the case. There are no facts in the record. Mr. Boudreau is a one percent owner -- actually, the company that he is president is a one percent owner as the general partner of a limited partnership, and 99 percent controlled by other entities of certain other properties.

In addition, it talks about a Mr. Levin's property nearby, and it says that Mr. Boudreau is a partner, and he is not a partner. And, so we just wanted to clarify on the record that some of these items are factually incorrect, in that one section.

But, again, we ask that either you adopt the language that we think you really adopted, which was that there is an agricultural easement. And, then, the law tells us what to do on an agricultural easement.

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Although, we would like to have a clarification that when these horses that are out there grazing today, go out there tomorrow and the next day, inside of the existing fencing, that that was what was intended, because we believe that was what was intended, and we think that the language we have proposed by moving that maintaining of livestock into the category of allowed without a permit, that that would be the appropriate way to do that.

CHAIR KRUER: Your time is up, Mr. Gaines.

MR. GAINES: I appreciate it. I tried to go as quickly as I could, and of course we are available for any questions. My client is here, and we thank you very much for taking the time to hear this matter.

CHAIR KRUER: Thank you, sir.

I'll go back to staff, and I know that Deputy Attorney, Ms. Patterson, probably wants to make some comments, too, so Mr. Ainsworth, I'll start with you.

DEPUTY DIRECTOR AINSWORTH: Yes, I'll go first.

And, with regards to the agricultural easement, we modeled that after our typical ag easements we have used, and we used that language in order to clarify the terms of the easement, so we do not get into a dispute in the future regarding what is allowed within that easement area.

The Commission, in our opinion, did not find, and coupled with the fact that the Commission found that there

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was no vested rights to ag use there, including grazing of animals, we do not think it was appropriate to allow for that ongoing use within that easement area, and we think that any future agricultural use within that property requires a permit.

Otherwise, the applicant can put an orchard in there. They could run as many cattle as would be allowed under the county code, which is quite intense -- this is on a steeply sloping hillside in an oak woodland, so there are some concerns there, with regards to environmental impacts associated with an agricultural use.

The fencing that Mr. Gaines referred to was an after-the-fact fencing that was approved through this permit, so that area was open before, and as I testified at the hearing, I have never seen, you know, horses, or anything out in that area, and the Commission has found that, in fact, there was no vested right for that, in our view.

With regard to the other land owned and controlled by the applicant, when we looked at this issue, at the time, it indicated, from the Assessor parcel records, RealQuest [sic.] that Mr. Boudreau controlled those lands. He may not have control of those today, I don't know.

So, with that, I will turn it over to Hope Schmeltzer.

CHIEF COUNSEL SCHMELTZER: I just have one thing

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to add to your discussion of the agricultural easement.

Mr. Gaines discussed the *Public Resource Code Section* about agricultural easements. That section also references the *Civil Code* which has a definition of conservation easement, and the language that was originally put into the revised findings, that we did alter after some discussion with Mr. Gaines.

But, the language that we are using is based on the *Civil Code Section* that is incorporated into the *Public Resource Code Section*, so I just wanted to clarify that those sections are to be read together, and we are using that *Civil Code Section*.

CHAIR KRUER: Okay.

Deputy Attorney General Patterson.

DEPUTY ATTORNEY GENERAL PATTERSON: Very briefly, the language regarding indemnification is the standard language used by this Commission.

The Attorney General currently doesn't charge for our services, even if we did, the Commission is not required to turn its defense over to a private law firm. The Attorney General is required by statute to represent the Commission, so we think that the language is entirely appropriate.

CHAIR KRUER: Thank you very much for that input.

Okay, anyone else from staff? any other comments?

DEPUTY DIRECTOR AINSWORTH: No, that is it, Mr.

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Chairman.

CHAIR KRUER: Okay, with that, I'll go back to the Commission, and recognize Vice Chair Neely, and then Commissioner Blank.

[**MOTION**]

VICE CHAIR NEELY: Thank you, Mr. Chairman.

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 with the applicant's revisions to Special Conditions 3 and 4, and recommend a "Yes" vote.

COMMISSIONER POTTER: Second.

CHAIR KRUER: Okay, it has been moved by Commissioner Neely, seconded by Commissioner Potter.

Would you like to speak to your motion?

VICE CHAIR NEELY: Yes, I would.

With regards to the indemnification condition, yes, I think staff is right, that the condition means that we will charge whatever fees for the Attorney General, whoever, and I think on the record today, Mr. Gaines also concurred that that was the situation, that like right now, the Attorney General is not charging, but when he does, that those costs will be picked up by the applicant.

And, then, with regards to Condition 4, the ag easement, I think I am the one that asked that the

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agricultural easement be added, and it was not my intent to prohibit livestock within the easement area. So, I thought it was a good idea, from my perspective, in that there wouldn't be a lot of buildings put in the ag easement, and so that was the intent when I asked the maker and the seconder to add it to the condition.

CHAIR KRUER: Okay.

DEPUTY ATTORNEY GENERAL PATTERSON: I'm confused.

Are you accepting the applicant's changes, because those are not consistent with what the Commission did.

VICE CHAIR NEELY: I am accepting the applicant's revisions to the Conditions 3 and 4.

CHIEF COUNSEL SCHMELTZER: I am not sure that I followed that on the first one, on the indemnification.

EXECUTIVE DIRECTOR DOUGLAS: If I may, relative to the indemnification for the Attorney General's Office, what they are asking is to delete the language relative to requiring indemnification for costs for the Attorney General, and that is we are objecting, again, to that.

VICE CHAIR NEELY: Yes, and maybe it is a fine line, but currently, the Attorney General doesn't charge, is that correct?

And, so, if the Attorney General -- so, there wouldn't be any charges now, and if the Attorney General charges in the future, Mr. Gaines said at the microphone,

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that they would cover those costs, so --

CHAIR KRUER: No.

COMMISSIONER POTTER: Mr. Chair, as the "second" if I might.

VICE CHAIR NEELY: Okay.

CHAIR KRUER: Yes.

COMMISSIONER POTTER: I think staff is struggling with the fact that we weren't specific about indemnification at the time we made this action, and these findings are supposed to be specific to the actions that we took that day.

And, so, for that reason, I "seconded" the motion, I sort of am leaning towards staff's statements re indemnification.

But, I am very, very clear that when we did act on this, at the time, that we were clear on the intention that this remain in ag usage, and it was not supposed to be limited to just one specific aspect of ag. It was certainly not my understanding that we were going to say, "Well, it was not going to be for raising of crops, it was not going to be for cattle, or horse grazing purposes."

And, the fact that we did not find a vested rights determination, the discussion at that time was around the fact that in order to get to the end goal, the vested rights route was not the best way to go. And, Commissioner Reilly was actually quite clear on that, that the intent was to

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bring this to an end by going through the public hearing process, rather than doing a vested rights determination, and that is why we didn't find vested rights at that time. That was the major discussion at that time.

So, I am quite supportive of the motion. I think Commissioner Neely's recollection is accurate on what was intended at that time, and I think with that correction it is accurately reflecting our thoughts.

EXECUTIVE DIRECTOR DOUGLAS: Mr. Chairman.

CHAIR KRUER: Yes, Mr. Douglas.

EXECUTIVE DIRECTOR DOUGLAS: You may want to split the question.

CHAIR KRUER: Yes, that is what I was going to say.

VICE CHAIR NEELY: Okay.

CHAIR KRUER: That is fine.

So, Vice Chair Neely.

[**AMENDED MOTION**]

VICE CHAIR NEELY: I would just amend my motion, then, to just as previously stated, with regard to Special Condition, I guess 4, first.

CHAIR KRUER: Right, okay.

Are you fine with that, Commissioner Potter?

COMMISSIONER POTTER: Right.

CHAIR KRUER: Okay, all right.

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Do you want to speak to that, and then Commissioner Blank.

VICE CHAIR NEELY: I think I have addressed it sufficiently.

CHAIR KRUER: Okay, Commissioner Blank.

COMMISSIONER BLANK: I have a question for staff, without beating a dead horse here, can you help me understand, as staff proposed it, would horse grazing be permitted under the staff's proposal?

DEPUTY DIRECTOR AINSWORTH: If the applicant came back and got a permit --

COMMISSIONER BLANK: No, but as -- under these recommendations?

DEPUTY DIRECTOR AINSWORTH: No.

COMMISSIONER BLANK: And, staff believes that that was what we were permitting?

DEPUTY DIRECTOR AINSWORTH: Yes.

COMMISSIONER BLANK: I see, well, I certainly don't believe that.

And, I also will not be voting for the indemnification clause, and since she took that out, my concerns are addressed.

COMMISSIONER POTTER: Again, if I might, Mr. Chair, as the "seconder" I just want to make sure that incorporated into that motion is that it be an ag related

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agency that is receiving the easement?

VICE CHAIR NEELY: Yes.

COMMISSIONER POTTER: Okay, thank you.

CHAIR KRUER: And, this is on 4, and at this time, if there is not anything else, those people eligible to vote on the motion, Vice Chair Neely's, taking into account per the applicant on No. 4, right?

VICE CHAIR NEELY: Yes.

CHAIR KRUER: Okay, all those eligible for that on No. 4, okay.

[Commission Response]

COMMISSIONER POTTER: Five.

EXECUTIVE DIRECTOR DOUGLAS: Five.

CHAIR KRUER: It is five, unanimous.

Before we make the next motion, I think staff is right on 3. I don't agree with the applicant on that one. I cannot support removing Special Condition 3, and that is all that I am going to say.

So, does somebody want to make that motion?

VICE CHAIR NEELY: No, we --

EXECUTIVE DIRECTOR DOUGLAS: It is the indemnification.

COMMISSIONER POTTER: She amended the motion to delete it, not save it.

VICE CHAIR NEELY: Yes.

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CHAIR KRUER: Okay, then where are you, then?

VICE CHAIR NEELY: I don't think it has support.

CHAIR KRUER: That's it.

*

*

[Whereupon the hearing concluded at 6:35 p.m.]

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) SS.
COUNTY OF MADERA)

I, PRISCILLA PIKE, Hearing Reporter for the State of California, do hereby certify that the foregoing 25 pages represents a full, true, and correct transcript of the proceedings as reported by me before the California Coastal Commission on June 11, 2008.

Dated: October 9, 2008

Priscilla Pike
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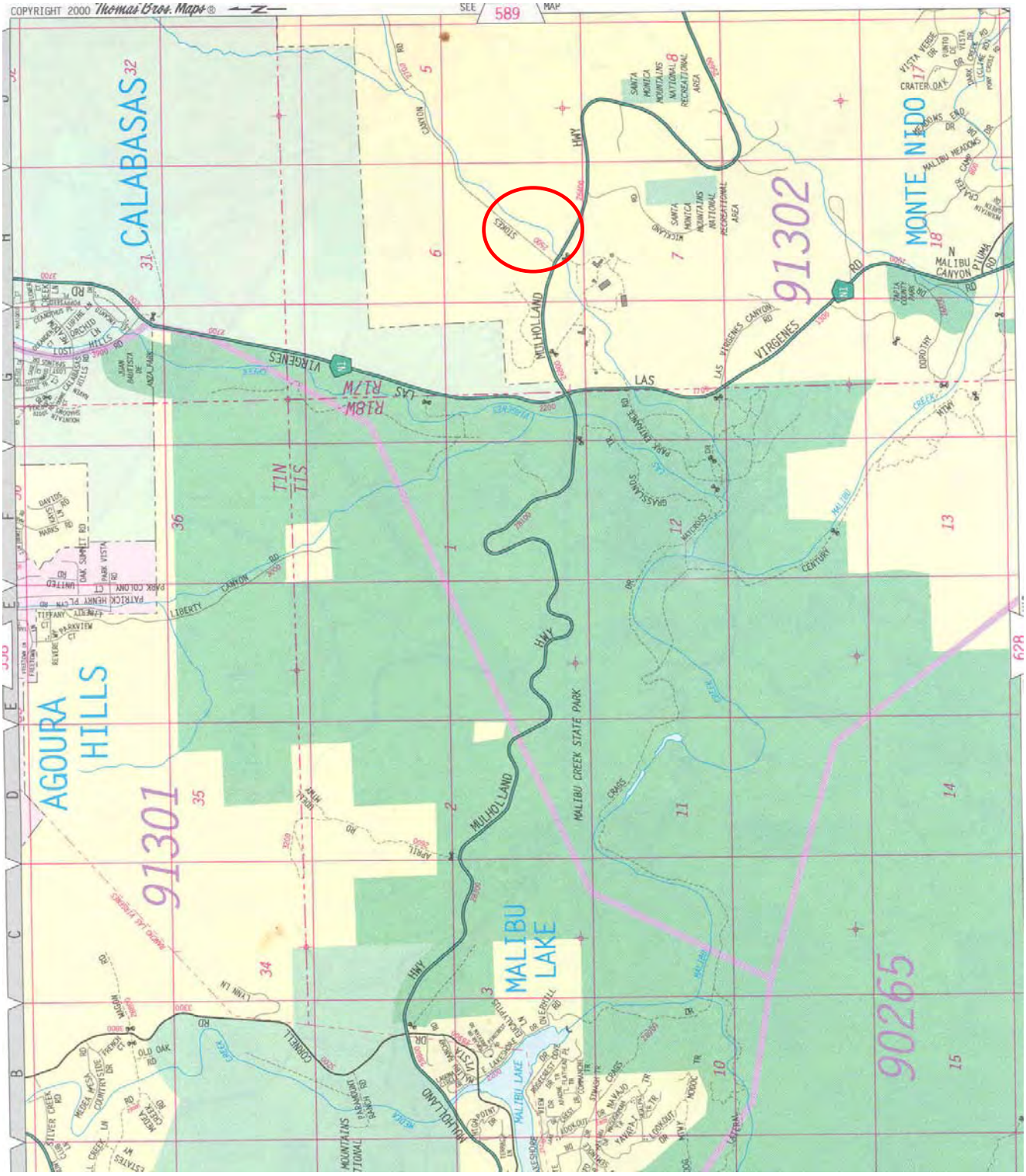

R-4-06-163
Exhibit 5
Vicinity Map

Assessor Map

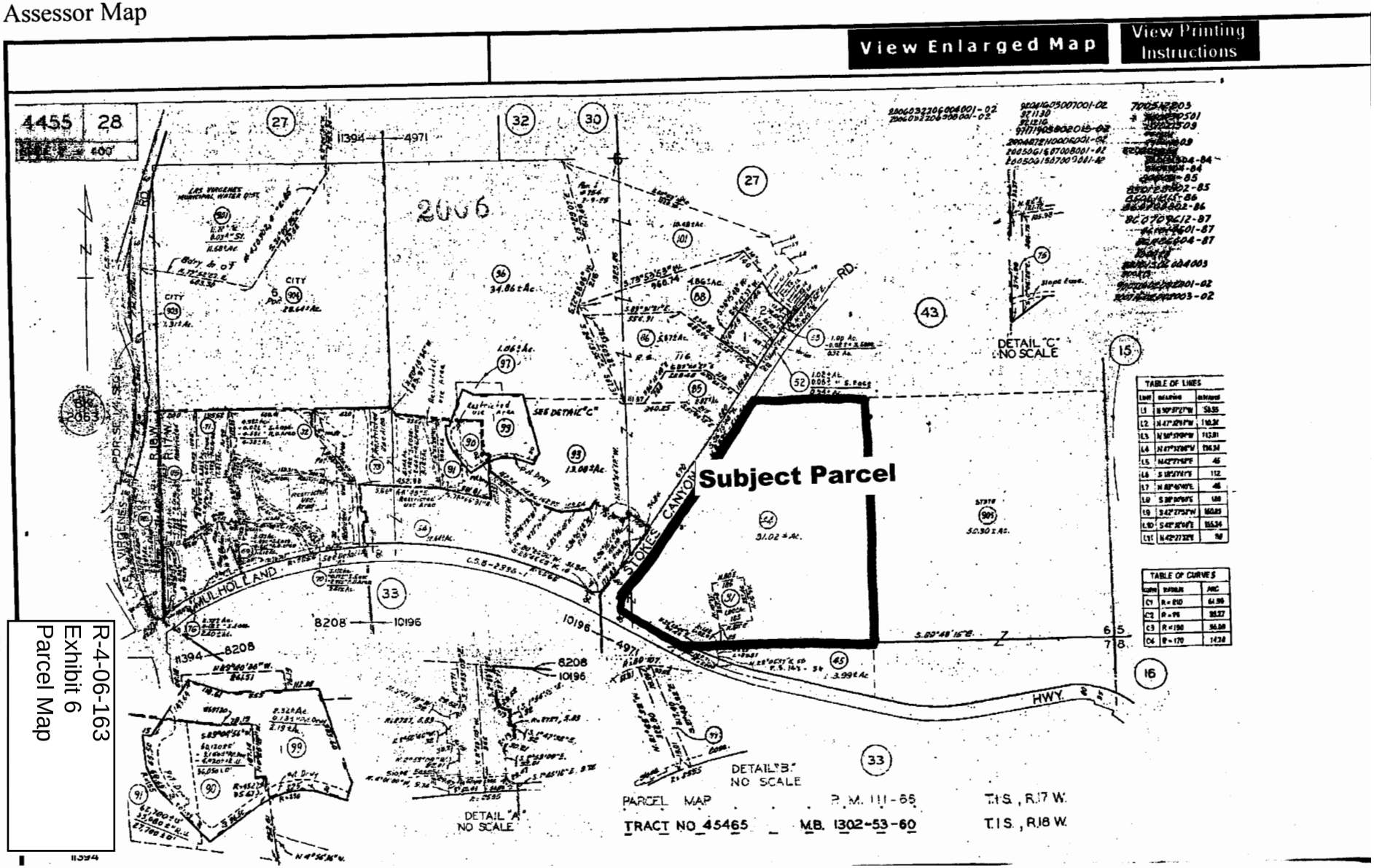

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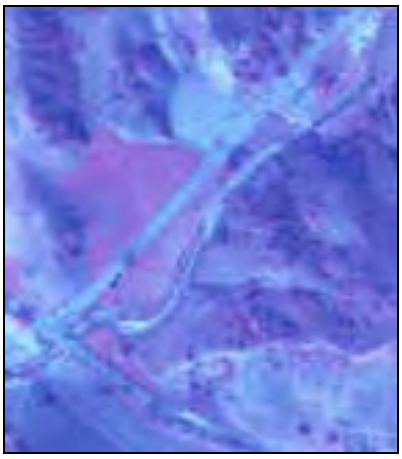
Exhibit 6
Parcel Map



1977

1986

2004

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Exhibit 7
Aerial Views