

CALIFORNIA COASTAL COMMISSION

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original staff report

Th 5.1 & 5.2

ADDENDUM

September 9, 2014

TO: Coastal Commissioners and Interested Parties

FROM: Lisa Haage, Chief of Enforcement

SUBJECT: ADDENDUM TO **ITEM NOS. TH 5.1 & 5.2** – CONSENT CEASE AND
DESIST ORDER NO. CCC-14-CD-03 AND CONSENT RESTORATION
ORDER NO. CCC-14-RO-03 (JEFF KIM)
FOR THE COMMISSION MEETING OF **September 11, 2014**

Documents Received:

Documents included in this addendum are the following letters in support of the Consent Cease & Desist Order and Consent Restoration Order:



DEPARTMENT OF PARKS AND RECREATION

Lisa Ann L. Mangat, Acting Director

Angeles District
1925 Las Virgenes Road
Calabasas, California, 91302

September 10, 2014

Peter Allen
California Coastal Commission

Re: State Parks Support of Cease and Desist / Removal and Restoration Orders

Dear Mr. Allen:

We have received the Cease and Desist and Removal and Restoration Orders for the encroachment on Malibu Creek State Park near Saddle Peak, adjacent to the Kim parcel, APN 4453-026-056.

Parks supports the California Coastal Commission exercising jurisdiction over the matter, and supports the Consent Cease and Desist and Restoration Orders proposed to the commission. Parks is supportive of the proposed restoration of the site to as close to what was there in its native state as is possible.

As a reminder, Mr. Kim, the confirmed responsible party, will be required to facilitate and fund the CEQA process and obtain a Right of Entry (ROE) permit from this office. We provided your agency with a list of approved biological consultants and are looking forward to reviewing all removal and revegetation plans, which we understand are in their draft forms.

Thank you for including State Parks in this process.

Sincerely,

A handwritten signature in blue ink that reads "Suzanne Goode".

Suzanne Goode
Senior Environmental Scientist

(818)880-0364

Cc: Craig Sap, District Superintendent
Lynette Brody, Malibu Sector Superintendent
Tom Dore, Associate Park & Recreation Specialist

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Th5.1 & Th5.2

Staff: P. Allen–SF
Staff Report: August 26, 2014
Hearing Date: September 11, 2014

STAFF REPORT: Recommendations and Findings for Consent Cease and Desist and Consent Restoration Orders

Consent Cease and Desist Order No.:	CCC-14-CD-03
Consent Restoration Order No.:	CCC-14-RO-03
Related Violation File:	V-4-13-0213
Persons Subject to these Orders:	Jeff Kim
Property Location:	333 Moonrise Drive, unincorporated Los Angeles County, Los Angeles County Assessor's Parcel Number (APN) 4453-026-046; California State Parks Property at APN 4453-017-906; 373 Mildas Drive, Los Angeles County, APN 4453-026-047.
Violation Description:	Unpermitted development and development inconsistent with CDP No. 5-87-425, including, but not limited to: the placement of fencing, concrete pathways, retaining walls, a solar array, a gazebo, and turf areas; and the removal of major vegetation consisting of southern maritime chaparral.
Substantive File Documents:	<ol style="list-style-type: none">1. Public documents in the Cease and Desist and Restoration Order files No. CCC-14-CD-03 and CCC-14-RO-03.2. Exhibits 1 through 14 and Appendix A of this staff report.
CEQA Status:	Exempt (CEQA Guidelines (CG) §§ 15060(c)(2) and (3)) and Categorically Exempt (CG §§ 15061(b)(2), 15307, 15308, and 15321).

SUMMARY OF STAFF RECOMMENDATION AND FINDINGS

These proceedings address violations of the Coastal Act in the form of development both inconsistent with a previously issued Coastal Development Permit (“CDP”) and undertaken without a CDP, located in an environmentally sensitive habitat area (“ESHA”) in the Santa Monica Mountains. Staff recommends that the Commission approve Consent Cease and Desist Order No. CCC-14-CD-03 and Consent Restoration Order No. CCC-14-RO-03 (hereinafter collectively referred to as “Consent Orders”), which will establish a process by which Respondent will resolve the Coastal Act violations. These Consent Orders, executed by the owner of the Property, Jeff Kim (“Respondent”), are included as Appendix A of this staff report.

The development activities (“Unpermitted Development”) that are the subject of these proceedings include: the construction of paved and unpaved walkways, the erection of concrete retaining and curb walls, the placement of fencing, the placement of one gazebo, the placement of a solar array, extensive landscaping with non-native plant species, large-scale removal of major vegetation (southern maritime chaparral), and associated grading (Exhibit 8). All such activities are directly inconsistent with the Coastal Act. The Unpermitted Development occurred in part on Respondent’s approximately two and one-half acre property at 333 Moonrise Drive in unincorporated Los Angeles County (Malibu) in the Santa Monica Mountains (Exhibit 1). The Unpermitted Development also substantially occurred on an adjacent California Department of Parks and Recreation (“State Parks”) property, and included removing approximately one acre of native ESHA vegetation from State Parks property and placing unpermitted items on State Parks land, including fencing, additional paved walkways, the gazebo, large portions of the concrete curb walls, and extensive portions of the artificial landscaping (Exhibit 9). The Unpermitted Development also extended onto an adjacent private property at 373 Mildas Drive, including parts of the fencing, vegetation removal, and placement of concrete pathways.

All of the development activities on Respondent’s property also violated specific terms and conditions of a CDP issued by the Commission in 1988, CDP 5-87-425 (Exhibit 3), which included conditions to address erosion concerns, preserve native vegetation, and to limit development to a smaller, more stable area of the property. These conditions were all determined necessary to ensure compliance with the Coastal Act (Exhibit 2). CDP 5-87-425 specifically required a new CDP for any future development, explicitly including vegetation removal.

Respondent, through these Consent Orders, has agreed to resolve all matters related to the Coastal Act violations described herein. Commission staff has worked closely and cooperatively with Respondent to reach an agreement through these Consent Orders. Commission staff has also coordinated with the State Parks staff to enable Respondent to address the Unpermitted Development on State Park property. These Consent Orders also require Respondent to coordinate with the adjacent private property owners to resolve Respondent’s violations on their property. Through the execution of these Consent Orders, Respondent has agreed to: remove the unpermitted items and non-native landscaping; restore the areas impacted by the Unpermitted Development with native chaparral and other native vegetation; and resolve civil liability obligations under the Coastal Act.

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APPENDICES

Appendix A: Consent Cease and Desist Order No. CCC-14-CD-03 and Consent Restoration Order CCC-14-RO-03

EXHIBITS

- Exhibit 1: General location map
- Exhibit 2: Staff Report CDP No. 5-87-425
- Exhibit 3: CDP No. 5-87-425
- Exhibit 4: Staff Report CDP No. 5-87-425-A3
- Exhibit 5: “As-Built” Survey for CDP No. 5-87-425-A3
- Exhibit 6: Oblique aerial view of Properties in 2003
- Exhibit 7: Oblique aerial view of Properties in 2006
- Exhibit 8: Oblique aerial view of Properties after development in 2008
- Exhibit 9: Aerial view of Properties with annotated property borders
- Exhibit 10: August 2013 photo of landscaping, gazebo, curb walls and chaparral removal
- Exhibit 11: Letter to property owners at 373 Moonrise Drive, August 26, 2014
- Exhibit 12: “Notice of Violation of The California Coastal Act” letter, June 4, 2013
- Exhibit 13: “Notification of Intent” letter, April 03, 2014
- Exhibit 14: Recorded Notice of Violation of the Coastal Act

I. MOTION AND RESOLUTION

Motion 1: Consent Cease and Desist Order

I move that the Commission issue Consent Cease and Desist Order No. CCC-14-CD-03 pursuant to the staff recommendation.

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in issuance of the Consent Cease and Desist Order. The motion passes only by an affirmative vote of a majority of Commissioners present.

Resolution to Issue Consent Cease and Desist Order:

The Commission hereby issues Consent Cease and Desist Order No. CCC-14-CD-03, as set forth below, and adopts the findings set forth below on grounds that development, conducted and/or maintained by Jeff Kim, has occurred without a coastal development permit and in violation of CDP 5-87-425, as amended, in violation of the Coastal Act, and that the requirements of the Order are necessary to ensure compliance with the Coastal Act.

Motion 2: Consent Restoration Order

I move that the Commission issue Consent Restoration Order No. CCC-14-RO-03 pursuant to the staff recommendation.

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in issuance of the Consent Restoration Order. The motion passes only by an affirmative vote of a majority of Commissioners present.

Resolution to Issue Consent Restoration Order:

The Commission hereby issues Consent Restoration Order No. CCC-14-RO-03, as set forth below, and adopts the findings set forth below on the grounds that 1) development has occurred without a coastal development permit, 2) the development is inconsistent with the Coastal Act, and 3) the development is causing continuing resource damage.

II. JURISDICTION

The Properties are located within the Santa Monica Mountains in unincorporated Los Angeles County. On July 10, 2014, the Commission approved the Local Implantation Plan element of the Los Angeles County LCP for the Santa Monica Mountains segment of the County's coastal zone. While the Commission has approved the Los Angeles County Local Coastal Program ("LCP"), the LCP has yet to be effectively certified, and therefore, the County does not currently have a certified Local Coastal Plan, and so the Commission retains primary enforcement and permitting jurisdiction, and the standard of review is the Chapter 3 policies of the Coastal Act.

Even if the County had a certified LCP for this area, in this case, the Commission has jurisdiction in this matter because the violations involve actions in conflict with a Commission-issued CDP, and the development inconsistent with that CDP required an amendment of those permits, which must be issued by the Commission, and no CDP nor CDP amendment was ever issued by the Commission for that development at issue. Thus, both prongs of Coastal Act Section 30810(a) conferring enforcement jurisdiction on the Commission are triggered.

III. COMMISSION'S AUTHORITY

The Commission can issue a Cease and Desist Order under Coastal Act Section 30810 when it finds that the activity that is the subject of the order has occurred either without a required CDP or in violation of a previously issued CDP. The Commission can issue a Restoration Order under Section 30811 of the Coastal Act if it finds that development 1) has occurred without a CDP, 2) is inconsistent with the Coastal Act, and 3) is causing continuing resource damage. These criteria are all met in this case, as summarized here, and discussed in more detail in Section V.E. below.

Coastal Act Section 30600 states that, in addition to obtaining any other permit required by law, a CDP is required when any person wishes to perform or undertake any non-exempt development in the Coastal Zone. The activity that has occurred on the Properties meets the definition of "development" as defined in Coastal Act Section 30106 and is within the coastal zone. No CDP was obtained and the development was not exempt from permitting requirements. Additionally, in this case the development at issue here also violates the terms and conditions of a previous Commission-issued CDP. Therefore, the Commission has authority to issue a Cease and Desist Order under Coastal Act Section 30810.

The Commission has authority to issue a Restoration Order under section 30811 of the Coastal Act because development 1) has occurred without a CDP, 2) is inconsistent with the Coastal Act, including Sections 30240 (protection of environmentally sensitive habitat areas), Section 30253 (minimization of adverse impacts/avoiding alteration of natural land forms), and Section 30251 (scenic and visual qualities), and 3) is causing continuing resource damage as that term is defined in the California Code of Regulations, Title 14 ("14 CCR") Section 13190.

IV. HEARING PROCEDURES

The procedures for a hearing on a Cease and Desist Order and Restoration Order are outlined in 14 CCR Section 13185 and 14 CCR Section 13195.

For a Cease and Desist Order and Restoration Order hearing, the Chair shall announce the matter and request that all parties or their representatives present at the hearing identify themselves for the record. The Chair shall then have staff indicate what matters are already part of the record, and the Chair shall announce the rules of the proceeding, including time limits for presentations. The Chair shall also announce the right of any speaker to propose to the Commission, before the close of the hearing, any question(s) for any Commissioner, at his or her discretion, to ask of any

other party. Staff shall then present the report and recommendation to the Commission, after which the alleged violator(s), or their representative(s), may present their position(s) with particular attention to those areas where an actual controversy exists. The Chair may then recognize other interested persons, after which time staff typically responds to the testimony and to any new evidence introduced.

The Commission will receive, consider, and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceedings, as specified in 14 CCR Sections 13195 and 13186, incorporating by reference Section 13065. The Chair will close the public hearing after the presentations are completed. The Commissioners may ask questions to any speaker at any time during the hearing or deliberations, including, if any Commissioner so chooses, any questions proposed by any speaker in the manner noted above. Finally, the Commission shall determine, by a majority vote of those present and voting, whether to issue the Cease and Desist Order and Restoration Order, either in the form recommended by the Executive Director, or as amended by the Commission. Passage of the motion above, per the staff recommendation or as amended by the Commission, will result in issuance of the Cease and Desist Order and Restoration Order.

V. FINDINGS FOR CONSENT CEASE AND DESIST ORDER NO CCC-14-CD-03 AND CONSENT RESTORATION ORDER NO. CCC-14-RO-03¹

A. DESCRIPTION OF PROPERTY

The Properties that are involved in this matter are located in the Santa Monica Mountains, approximately 6.5 miles inland of the coast (Exhibit 1). The Unpermitted Development is located on three separate lots: 1) the lot currently owned by Respondent, 2) a 108-acre property owned by California State Parks and located along Respondent's western property boundary (APN 4453-017-906), and 3) a 2.4-acre privately owned property located along Respondent's eastern property boundary (APN 4453-026-047).

The Properties are in the very upper reaches of Las Flores Canyon, just below Saddle Peak, on steep hillsides. Respondent's property is a rectangular site running north-south with natural gradients flatter in the upper north corner, but steeper in the south and west portions, generally sloping west and downhill to a gully located on the State Park property. The Respondent's property drops some 200 feet in topography running north-south, and drops roughly 100 feet in the 260 feet from the Respondent's residence to the bottom of the gully in the adjacent California State Parks property.

The area functions as a major component of the drainage of Las Flores Canyon.² The site is visible from state parkland of the Santa Monica Mountains, which includes the Backbone Trail, a

¹ These findings also hereby incorporate by reference the sections "Summary of Staff Report and Findings," "Section II. Jurisdiction," and "Section III. Commission Authority," at the beginning of this August 26, 2014 staff report ("STAFF REPORT: Recommendations and Findings for Consent Cease and Desist and Consent Restoration Orders") in which these findings appear.

² Staff Report and Recommendation for Application 5-87-425 (Jan. 27, 1988).

very popular hiking trail that traverses, for the most part, the entire length of the Santa Monica Mountains.

Except for the areas that have been altered by development, the Properties are covered with a large swath of native southern maritime chaparral. In this case, the native habitat located on the Properties is intrinsically valuable from an ecological standpoint in terms of the biodiversity supported and the ecosystem services provided. As described below, the native habitat on the Properties, including the removed habitat, is ESHA.

B. PERMIT HISTORY

On February 25, 1988, the Commission approved with conditions CDP No. 5-87-425, a permit sought by prior owners Wayne and Gloria McFarland, for 10,000 cubic yards of grading on an approximately 2.5-acre vacant lot and the construction of a 6,800 square-foot single-family residence, with a driveway, attached garage, separate guesthouse with a studio, and a pool. To ensure compatibility with the Coastal Act and to address erosion concerns, the CDP was conditioned to restrict development to certain areas on the upper portion of the property and clustering the residence as close to the entry driveway as possible, leaving the rest of the lot undisturbed. The adopted findings for CDP 5-87-425 stated, “[the site is] too steep and narrow to accommodate additional structures without excessive grading” (Exhibit 2). The findings also state “the balance of the site must be protected from future development so that adverse effects of grading and erosion can be assured,” and only “as conditioned to restrict future improvements,” would the project be “consistent with the resource protection policies of the . . . Coastal Act.”

The Commission approved CDP 5-87-425 with standard conditions and five special conditions (Exhibit 3). Standard Condition 3 required that all development “occur in strict compliance with the proposal” as submitted with the application. Special Condition 4 required a new CDP for any future development, explicitly including vegetation clearing, on the property. The condition required the recordation of a deed restriction that specified for future owners that: “any future additions or improvements to the property including clearing of vegetation and grading will require a new Coastal Development Permit from the Coastal Commission or its successor agency.” The permit condition also specified that the requirement for a new CDP for any new development was “binding on all successors in interest, heirs and assigns.”³ The deed restriction was recorded on June 22, 1988 as Instrument Number 88-988411.⁴ Because, the later development activities did not occur in compliance with the original CDP application, and did not occur under a new CDP, both Standard Condition 3 and Special Condition 4 were violated. Additionally, Special Condition 3 of the CDP required a Fuel Modification and Landscape Plan and that the plan “shall incorporate the use of primarily native plants which are suitable for fuel modification criteria” and “controlling erosion” to address the dangers of fire and erosion on the

³ Even without such an explicit condition, these CDP conditions run with the land and remain requirements on subsequent property owners. See *Ojavan Investors, Inc. v. California Coastal Com.* (1994) 26 Cal.App.4th 516, 526 (“It is well settled that the burdens of permits run with the land once the benefits have been accepted.”). The CDP also reaffirms this principle in its Standard Condition 7 of the CDP: “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.”

⁴ This deed restriction was a second recordation, to correct a technical error in the original recordation of May 17, 1988 as Instrument Number 88-786475.

site. Since the CDP conditions are an ongoing obligation to future owners, Respondent is required to maintain the native landscaping to avoid impacts to ESHA and minimize erosion from occurring across the property. The removal of native plants and the replacement of those plants with non-native plants or other materials, violates the terms of Special Condition 3 of the original permit. All Standard Conditions as well as Special Conditions 3 and 4 were explicitly incorporated in all later permit amendments.

Before construction began, on January 3, 1990, the Commission approved CDP Amendment No. 5-87-425-A1 sought by McFarland to amend the previously approved plans to include a 630 square-foot second story to an existing attached garage. The single family residence was then constructed later in 1990, but was inconsistent in a number of respects with the plans approved by the Commission in February 1988. As built, the driveway was relocated and the guest house/studio was constructed as a two-story guest house greater than 750 square feet in size, which not only violated the original CDP but also violated the SMM-Malibu LUP maximum allowable square footage for guest houses. The original owner had also begun construction of two ponds and above-grade concrete walkways extending south and west downhill from the residence. The Commission opened a violation file (V-5-91-093) on July 30, 1991 for the unpermitted development. On September 28, 1993, the property was purchased by a new owner, John Gist, who worked with the Commission on an after-the-fact permit to resolve the violations.

The Commission approved CDP No. 5-87-425-A3⁵ on November 17, 1993 for the after-the-fact authorization to reduce the square footage of the guest house to 661 square feet by converting the lower unit into a garage, and to approve the above-grade walkways and two ponds (Exhibit 4). The adopted findings for CDP No. 5-87-425-A3 state that except for the reconversion of the guest house, “all work has been completed on site,” and included an “as-built” survey depicting the development approved in the after-the-fact permit, which showed the two concrete walkways, two ponds, and other development (Exhibit 5). The amendment thereby resolved the violations at the property at that time.

On November 23, 2005, Respondent acquired the property at 333 Moonrise Drive.

C. DESCRIPTION OF COASTAL ACT VIOLATIONS

The violations being resolved by these Consent Orders include development activities that were both unpermitted and inconsistent with CDP 5-87-425, as amended. The violations include, but are not necessarily limited to: the construction of paved and unpaved walkways, the erection of concrete retaining and curb walls, the placement of fencing, the placement of one gazebo, the placement of a solar array, extensive landscaping with non-native plant species, large-scale removal of major vegetation (southern maritime chaparral), and associated grading.

A review of aerial photographs indicates that the Unpermitted Development occurred primarily between 2005 and 2008, though not necessarily limited to those dates. However, at some point subsequent to the approval of CDP No. 5-87-425-A3 and before the purchase of the property by Respondent, the additional walkway along the eastern property border was constructed, the solar array was installed, and some additional vegetation clearance was performed. These violations,

⁵ CDP 5-87-425-A2 was an application from June 25, 1992 deemed “incomplete” and never “completed.”

which run with the property and are the responsibility of Respondent, are evident in an aerial view from 2003 (Exhibit 6). A similar view in 2006 shortly after Respondent purchased the property show some additional clearing but no other development (Exhibit 7). A similar view in 2008, however, shows new unpermitted development: substantial clearing of native vegetation, the extensive placement of fencing around the property, the construction of a retaining wall and a curb wall, the substantial installation of non-native landscaping and turfs, the placement of a gazebo, and the construction of additional paved walkways and a concrete staircase (Exhibit 8).

The unpermitted development extended beyond Respondent's property onto adjacent properties, primarily onto property owned by the California Department of Parks and Recreation (Exhibit 9). On the State Parks property, Respondent's unpermitted activities impacted approximately one acre and included the placement of the gazebo, the construction of additional concrete walkways, the placement of fencing, and extensive landscaping and native vegetation removal (Exhibit 10). In addition, on the adjacent private property at 373 Mildas Drive on the eastern boundary, the Unpermitted Development included vegetation removal, landscaping, and the extension of a paved walkway to create a small viewing area.

D. HISTORY OF VIOLATION/SETTLEMENT DISCUSSIONS

While researching another property in the area on May 10, 2013, Commission staff noticed that native vegetation had been removed from Respondent's property. Commission staff then discovered that the vegetation removal also occurred on State Parks land, and once this was confirmed contacted California State Parks staff on May 30, 2013 to alert them to the development on state property. In subsequent communications, Commission staff continued to coordinate with State Parks staff, who have supported Commission enforcement action of the violations across both properties, and have indicated a desire to coordinate in the future restoration work, including review of any eventual restoration plan, and in ensuring that Respondent obtain a Right-of-Entry permit for potential restoration work on state property. Commission staff also sent a letter to the adjacent private property owners notifying them of the Commission enforcement action and eventual restoration work (Exhibit 11).

Commission staff sent a Notice of Violation letter to Respondent on June 4, 2013 (Exhibit 12). On August 22, 2013, Commission staff, State Parks staff, and Respondent's agents met on site to discuss the enforcement matter. Commission staff explained the potential to resolve the violation through a consent order, and Respondent's agents stated that Respondent wanted to cooperate in resolving the violations. In subsequent meetings and telephone conversations, Respondent continued to express his interest in working towards settlement and resolving the issues through consent orders. On April 03, 2014, Commission Staff sent a "Notification of Intent to Commence Cease and Desist Order and Restoration Order Proceedings and Notification of Intent to Record a Notice of Violation of the Coastal Act" (Exhibit 13). Subsequently, a new agent for Respondent called Commission staff and continued to work cooperatively in our joint effort to resolve the case. On May 15, 2014, pursuant to the requirements of Section 30812 of the Coastal Act, Commission staff recorded a "Notice of Violation of the Coastal Act," which will have the effect of alerting future property owners that Coastal Act violations are present on Respondent's property (Exhibit 14). On June 3, 2014, Enforcement staff sent Respondent proposed Consent Orders and on June 11 and July 7, 2014, multiple new representatives for Respondent contacted Enforcement staff to discuss the draft Consent Orders. During the following month, Commission

staff, Respondent's representatives, and the Respondent continued to work together on mutually acceptable language for an agreement. On August 21, 2014, Respondent agreed to and signed the Consent Orders attached to this staff report as Attachment A.

Through these Consent Orders, Respondent has agreed not to contest the legal and factual bases for, the terms of, or the issuance of these Consent Orders, and has elected to settle this matter rather than submit a Statement of Defense ("SOD") form and contest issuance of these Consent Orders. Specifically, Respondent has agreed to, among other things, remove unpermitted development, restore impacted areas with native vegetation, and address civil liabilities associated with the violation.

E. BASIS FOR ISSUANCE OF ORDERS

1. Statutory Provisions

The statutory authority for issuance of the Consent Cease and Desist Order is provided in Section 30810 of the Coastal Act, which states, in relevant part:

- (a) If the commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person or governmental agency to cease and desist. . . .*
- (b) The cease and desist order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with this division, including immediate removal of any development or material*

The statutory authority for issuance of the Consent Restoration Order is provided in Section 30811 of the Coastal Act, which states, in relevant part:

In addition to any other authority to order restoration, the commission . . . may, after a public hearing, order restoration of a site if it finds that [a] the development has occurred without a coastal development permit from the commission, local government, or port governing body, [b] the development is inconsistent with this division, and [c] the development is causing continuing resource damage.

2. Factual Support for Statutory Elements

The following pages set forth the basis for the issuance of the proposed Consent Cease and Desist and Restoration Orders by providing substantial evidence that the Unpermitted Development meets all of the required grounds listed in Coastal Act Sections 30810 and 30811 for the Commission to issue Cease and Desist Order and Restoration Orders.

- a) Development Occurred Without a CDP And Inconsistent With a Previous CDP

Unpermitted Development, as described in Section V.C, above, has occurred on the Properties without a CDP. Section 30600(a) of the Coastal Act states that, in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the Coastal Zone must obtain a coastal development permit. “Development” is defined broadly by Section 30106 of the Coastal Act as follows:

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

The activities subject to this matter clearly meet the definition of development under Section 30106. No exemptions under the Coastal Act apply to these activities and therefore the Unpermitted Development required a CDP and no CDP was issued.

Additionally, the Unpermitted Development on Respondent’s property is in violation of a permit previously issued by the Commission. This development violated Special Condition 3 and Special Condition 4 of CDP 5-87-425, as originally issued by the Commission and as specifically included in all later amendments. Special Condition 4, and the concomitant recorded deed restriction, required any future owner to obtain a new CDP for any future additions or improvements to the property, explicitly including the clearing of vegetation. In this case, no new CDP was acquired for the vegetation clearing and other development activities on Respondent’s property, in violation of Special Condition 4. Special Condition 3 required the use of native plants to reduce the risk of fire and erosion on the site, and in this case, native plants were removed and replaced with non-native turf grasses and other non-native landscaping.

Therefore, both the performance of this development without a CDP and undertaking the development in violation of the terms of the existing CDP meet the criteria for issuance of a cease and desist order pursuant to Section 30810 of the Coastal Act and meets the first prong for issuance of a restoration order pursuant to Section 30811 of the Coastal Act.

b) The Unpermitted Development Is Inconsistent With the Coastal Act

As described below, the Unpermitted Development is inconsistent with multiple resource protection policies of the Coastal Act, including, but necessarily limited to: Section 30240, which requires the protection of environmentally sensitive habitat areas (“ESHA”); Section 30253(b), which requires that new development minimize erosion; and Section 30251, which requires that development be sited and designed to protect the scenic and visual qualities of coastal areas.

Environmental Sensitive Habitat Areas/Parks

The Unpermitted Development is inconsistent with Coastal Act Section 30240, which requires the protection of ESHA. 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.

Coastal Act Section 30107.5 defines ESHA 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.

In this case, the Properties are located within the Santa Monica Mountains, a large and pristine Mediterranean type ecosystem in coastal Southern California. The Commission has found in multiple previous CDP reviews and enforcement actions in the area, through concurrence with the determination of its senior ecologist, that the “Santa Monica Mountains ecosystem is itself rare and especially valuable because of its special nature as the largest, most pristine, physically complex, and biologically diverse example of a Mediterranean ecosystem in coastal southern California.”⁶ The Commission has therefore found that “because of the rare and special nature of the Santa Monica Mountains ecosystem,” large, contiguous, substantially intact areas of specific constituent plant communities in that ecosystem are “especially valuable” under the Coastal Act. Contiguous swaths of chaparral constitute one such plant community that has specifically been found to rise to the level of ESHA in the Santa Monica Mountains. Chaparral within the Santa Monica Mountains provides critical linkages among riparian corridors, provides essential habitat for species that require several habitat types during the course of their life histories, provides essential habitat for sensitive species, and stabilizes steep slopes and reduces erosion, thereby protecting the water quality of coastal streams and drainages. The Commission has found that “because of its important roles in the functioning of the Santa Monica Mountains Mediterranean ecosystem and its extreme vulnerability to development, chaparral within the Santa Monica Mountains meets the definition of ESHA under the Coastal Act.”⁷

Commission staff has visited the Properties and confirmed that the area contains contiguous areas of chaparral, and as noted above, this type of chaparral within the Santa Monica Mountains has been determined to meet ESHA criteria. Therefore, the removal of chaparral ESHA by Respondent on the Properties inherently contradicted Section 30240 of the Coastal Act.

⁶ John Dixon, Ph.D., “Designation of ESHA in the Santa Monica Mountains,” (March 25, 2003), p. 5-6.

⁷ Id. at 17.

Respondent also replaced ESHA with non-native plant species, gazebos, fences, concrete walls, and concrete pathways, among other things, all of which displaced ESHA and interrupted the habitat functions of the contiguous blocks of chaparral.

Moreover, Section 30240(b) of the Coastal Act sets limits on development “in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas.” In this case, the Unpermitted Development at issue not only borders both ESHA and State Parks land—in fact, it encroaches into ESHA and onto state parkland. The Unpermitted Development did not meet Section 30240 (b) requirements that development in areas adjacent to ESHA and parks be “sited and designed to prevent impacts which would significantly degrade those areas,” and be “compatible with the continuance of those habitat and recreation areas.”

Erosion/Geologic Instability

The Unpermitted Development is also inconsistent with Coastal Act Section 30253, which requires that new development minimize adverse impacts including erosion:

New development shall... (b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter landforms along bluffs and cliffs.

As stated above, CDP 5-87-425 was conditioned to ensure that the development was clustered to minimize erosion by locating the house close to the roadway and leaving the remaining steep areas of the property undeveloped and protected from future development. The adopted findings for the CDP found that only with such protections could the development be consistent with the Coastal Act. Instead, in this case, development was performed on a steep slope without any soil erosion protection measures, and native vegetation that supported the slope stability of the Properties was removed. The Unpermitted Development has thus put the Properties and surrounding habitat areas at risk of the effects of unregulated erosion.

Scenic and Coastal Views

The Unpermitted Development is also inconsistent with Coastal Act Section 30251, which requires that the protection of the scenic and visual qualities of coastal areas. Section 30251 states that:

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.

In this case, the Properties are visible from nearby state park lands of the Santa Monica Mountains, which includes the Saddle Peak section of the Backbone Trail, a significant coastal trail extending across ridgelines of the Santa Monica Mountains with views of scenic coastal

areas and the ocean. The destruction of the native vegetation of this coastal area, including on State Parks property, as well as its replacement with development and non-native landscaping, results in the diminution of views of a scenic coastal area, and degrades the scenic and visual qualities of coastal areas from the Backbone trail and California parks property.

In total, the destruction of major chaparral vegetation and the undertaking of Unpermitted Development activities have, and are, negatively impacting the habitat functions of contiguous blocks of chaparral vegetation considered ESHA, negatively contributing significantly to potential erosion and geologic instability, and are diminishing views of scenic coastal areas. Therefore, the Unpermitted Development is inconsistent with the resource protection policies of the Coastal Act, and thus the second prong for issuance of a restoration order has been met.

c) The Unpermitted Development Is Causing Continuing Resource Damage

The Unpermitted Development is causing “continuing resource damage,” as defined in 14 CCR Section 13190. 14 CCR Section 13190(a) defines the term “resource” as it is used in Section 30811 of the Coastal Act as follows:

‘Resource’ means any resource that is afforded protection under the policies of Chapter 3 of the Coastal Act, including but not limited to public access, marine and other aquatic resources, environmentally sensitive wildlife habitat, and the visual quality of coastal areas.

The term “damage” in the context of Restoration Order proceedings is defined in Section 14 CCR 13190(b) as follows:

‘Damage’ means any degradation or other reduction in quality, abundance, or other quantitative or qualitative characteristic of the resource as compared to the condition the resource was in before it was disturbed by unpermitted development.

The term “continuing” is defined by 14 CCR Section 13190(c) of the Commission’s regulations as follows:

‘Continuing’, when used to describe ‘resource damage’, means such damage, which continues to occur as of the date of issuance of the Restoration Order.

In this case, the resource damages are the negative impacts caused by the Unpermitted Development including the reduction in quality and abundance of contiguous blocks of chaparral vegetation considered ESHA, degradations to erosion and geologic stability, and diminishing visual quality of coastal areas. As of this time, that Unpermitted Development and the results thereof remain on the Properties. The removal of native chaparral, its replacement with non-native or artificial landscaping, and the placement of unpermitted structures continues to impact the coastal resources, by displacing the native ecosystem and preventing it from functioning and thereby disrupting the biological productivity of that ecosystem. The removal of native vegetation and placement of non-native vegetation continues to reduce the geologic stability of the Properties. The removal of native vegetation and placement of unpermitted artificial

structures and non-native vegetation also continues to result in diminished visual qualities of a coastal area.

The Unpermitted Development is therefore causing damage to resources protected by the Coastal Act that continues to occur as of the date of this proceeding, and therefore damage to resources is “continuing” for purposes of Section 30811 of the Coastal Act. That there is continuing damage caused by the unpermitted development therefore satisfies the third and final prong for the issuance of a restoration order pursuant to Section 30811 of the Coastal Act.

d) Consent Orders Are Consistent With Chapter 3 of the Coastal Act

These Consent Orders, attached to this staff report as Appendix A, are consistent with the resource protection policies found in Chapter 3 of the Coastal Act. These Consent Orders require Respondent to cease and desist from conducting any further unpermitted development on the Properties, remove the physical items that were placed or have come to rest as a result of Unpermitted Development, and restore the areas impacted by the Unpermitted Development using restorative grading and planting of native vegetation.

Further, the Consent Orders require Respondent to plant native plant species to be compatible with the surrounding chaparral habitat, and to ensure that non-native plant species do not colonize the newly restored site and spread from there to supplant the surrounding native habitat. Failure to revegetate the site would lead to potential invasion of non-native plant species, thus decreasing the biological productivity of this habitat, inconsistent with the resource protection policies of the Coastal Act. The primary function of the native habitat revegetation is the restoration of ESHA; therefore the proposed use is consistent with Sections 30231 and 30240. Therefore, these Consent Orders are consistent with the Chapter 3 policies of the Coastal Act.

F. SETTLEMENT OF CIVIL LIABILITIES

Chapter 9, Article 2, of the Coastal Act provides that violators may be civilly liable for a variety of penalties for violations of the Coastal Act, including daily penalties for knowingly and intentionally undertaking development in violation of the Coastal Act. Respondent have clearly stated their willingness to completely resolve the violations at issue herein, including any civil liability, administratively and amicably, through a settlement process. To that end, Respondent has committed to comply with all terms and conditions of the Consent Orders, including the provisions regarding monetary penalties, and not to contest the issuance or implementation of the Consent Orders.

G. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The Commission finds that issuance of these Consent Orders to compel the restoration of the Properties is exempt from any applicable requirements of the California Environmental Quality Act of 1970 (CEQA), Cal. Pub. Res. Code §§ 21000 *et seq.*, and will not have significant adverse effects on the environment, within the meaning of CEQA. The Consent Orders are exempt from the requirement for the preparation of an Environmental Impact Report, based on 14 CCR. Sections 15060(c)(2) and (3), 15061(b)(2), 15307, 15308, and 15321 of CEQA Guidelines.

H. SUMMARY OF FINDINGS OF FACT

1. Respondent Jeff Kim is the owner of property at 333 Moonrise Drive, Los Angeles County, CA 90265 (APN 4453-026-046).
2. This property is adjacent to California State Park property (APN 4453-017-906) and an adjacent private property at 373 Mildas Drive, Malibu, CA 90265 (APN 4453-026-047).
3. Respondent knowingly undertook development, as defined by Coastal Act Section 30106, without a CDP. The Unpermitted Development on Respondent's property also violates the terms and conditions of a CDP previously issued by the Commission, CDP No. 5-87-425.
4. The Coastal Commission has jurisdiction over these violations because they occurred in a non-certified LCP segment area and involved actions inconsistent with the terms and conditions of a CDP previously issued by the Commission.
5. The Unpermitted Development occurred on all three properties: 1) property owned by Jeff Kim (APN 4453-026-046), 2) property owned by State Parks (APN 4453-017-906), and, 3) adjacent private property (APN 4453-026-047).
6. The Properties are located within the Coastal Zone and include ESHA.
7. The Unpermitted Development is inconsistent with Chapter 3 of the Coastal Act Section 30240 (protection of environmentally sensitive habitat areas, or "ESHA"), Coastal Act Section 30253 (minimization of adverse impacts), and Coastal Act Section 30251 (protection of coastal scenic qualities). The Unpermitted Development is causing "continuing resource damage" within the meaning of Coastal Act Section 30811 and 14 CFR Section 13190.
8. Coastal Action Section 30810 authorizes the Commission to issue a Cease and Desist Order in these circumstances. Coastal Act Section 30811 authorizes the Commission to issue a Restoration Order in these circumstances.
9. The criteria for issuance of both a Cease and Desist Order and a Restoration Order have been met pursuant to Section 30810 and 30811 of the Coastal Act.
10. Jeff Kim has agreed to undertake and comply with these Consent Orders and signed these Consent Orders agreeing to their issuance.
11. The work to be performed under these Consent Orders, if completed in compliance with the Orders and the plans required therein, will be consistent with Chapter 3 of the Coastal Act.

Appendix A

CONSENT CEASE AND DESIST ORDER CCC-14-CD-03

AND

CONSENT RESTORATION ORDER CCC-14-RO-03

CONSENT CEASE AND DESIST ORDER CCC-14-CD-03 AND
CONSENT RESTORATION ORDER CCC-14-RO-03

1.0 CONSENT CEASE AND DESIST ORDER CCC-14-CD-03

Pursuant to its authority under California Public Resources Code ("PRC") section 30810, the California Coastal Commission ("Commission") hereby orders and authorizes Jeff Kim, and all of his successors, assigns, employees, agents, and contractors, and any persons acting in concert with any of the foregoing ("Respondent") to:

- 1.1 Cease and desist from engaging in any further development, as that term is defined in PRC Section 30106, that would normally require a Coastal Development Permit ("CDP") on any of the properties identified in Section 5.3 below ("Properties"), unless authorized pursuant to the Coastal Act (PRC sections 30000-30900), which includes through these Consent Orders.
- 1.2 Fully and completely comply with the terms and conditions of CDP No. 5-87-425, as amended (CDP No. 5-87-425-A2 and CDP No. 5-87-425-A3).
- 1.3 Remove, pursuant to and consistent with the terms of an approved Removal Plan set for in Section 6.3 below, and pursuant to the terms and conditions set forth herein, all physical items placed or allowed to come to rest on the Properties as a result of any "Unpermitted Development," as defined in Section 5.2, below, including, but not necessarily limited to: gazebos, fencing, landscaping, concrete paving, concrete walkways, curb or retaining walls, or any other development not authorized by CDP No. 5-87-425 or its amendments.
- 1.4 Fully and completely comply with the terms and conditions of Consent Restoration Order CCC-14-RO-03 as provided in Section 2.0, below, including the restoration of chaparral and other native vegetation in accordance with the specifications set forth in the Restoration Plan described in Section 6.0, below.

2.0 CONSENT RESTORATION ORDER CCC-14-RO-03

Pursuant to its authority under the PRC Section 30811, the Commission hereby orders and authorizes Respondent to restore the Properties by complying with Consent Order CCC-14-RO-03 described herein, and taking all other restorative actions described in Section 6.0, below, including restoring disturbed and maintaining existing chaparral and other native habitat.

PROVISIONS COMMON TO BOTH ORDERS

3.0 PERSONS SUBJECT TO THESE ORDERS

Jeff Kim, all of his successors, assigns, employees, agents, and contractors, and anyone acting in concert with the foregoing, are jointly and severally subject to all requirements of these Consent Orders. Respondent agrees to undertake the work required herein and agrees to cause its employees and agents, and any contractors performing any of the work required herein, and any persons acting in concert with any of these entities, as well as any future owners of the property currently owned by Jeff Kim at 333 Moonrise Drive in Los Angeles County California (Los Angeles County Assessor's Parcel Nos. ("APNs") 4453-026-046 and 4453-026-049), to comply with the terms and conditions of these Consent Orders. Respondent shall provide notice to all successors, assigns, and potential purchasers of the Kim Property of any remaining restrictions or obligations under these Consent Orders.

4.0 NATURE OF ORDERS AND OF CONSENT

- 4.1 Through the execution of Consent Cease and Desist Order CCC-14-CD-03 and Consent Restoration Order CCC-14-RO-03(hereinafter collectively referred to as "the(se) Consent Orders"), Respondent agrees to comply with the terms and conditions of these Consent Orders. These Consent Orders authorize and require the removal, restoration, and mitigation activities, among other things, outlined in these Consent Orders. Nothing in these Consent Orders conveys any right to development on the Properties other than the work expressly authorized by these Consent Orders. Any development subject to Coastal Act requirements that is not specifically authorized under these Consent Orders requires a CDP. Through the execution of these Consent Orders, Respondent agrees to comply with these Consent Orders including the following terms and conditions.
- 4.2 Respondent further agrees to condition any contracts for work related to these Consent Orders upon an agreement that any and all employees, agents, and contractors, and any persons acting in concert with any of the foregoing, adhere to and comply with the terms and conditions set forth herein.

5.0 DEFINITIONS

5.1 "Consent Orders"

In this document the(se) Consent Orders refers to Coastal Commission Cease and Desist Order No. CCC-14-CD-03 and Restoration Order No. CCC-14-RO-03.

5.2 "Unpermitted Development"

Means all "development" as that term is defined in the Coastal Act (PRC section 30106) that 1) has occurred on the Properties and required authorization pursuant to the Coastal Act, but for which no such authorization was obtained, and/or 2) is inconsistent with the requirements of CDP No. 5-87-425, including the

amendments thereto. This specifically includes, but is not necessarily limited to, the placement and construction of a gazebo, solar array, fencing, concrete pavement, paved and/or unpaved walkways, landscaping and turf areas, concrete curbs and retaining walls; the removal of native vegetation and the placement of that vegetation into debris piles; and any grading associated for the above.

5.3 “Properties”

The Properties that are the subject of these Consent Orders are described as follows: 1) 333 Moonrise Drive, Malibu, CA 90265, currently owned by Respondent, which is also identified as APNs 4453-026-046 and 4453-026-049; 2) the adjacent public property, currently owned by the California Department of Parks and Recreation, identified as APN 4453-017-906; and 3) the adjacent private property at 373 Mildas Drive, Malibu, CA 90265, identified as APN 4453-026-047.

5.4 “Restoration Area”

The area of the Properties that has been impacted by the Unpermitted Development, as well as any areas that may be impacted during the course of the removal and restoration activities required by these Consent Orders, in which the restoration and revegetation activities specified in Section 6.0, below, will occur.

6.0 RESTORATION PLAN

These Consent Orders require the preparation and implementation of a Temporary Erosion Control Plan, Removal Plan, Remedial Grading Plan (if necessary), Revegetation Plan, and Monitoring Plan (hereinafter collectively referred to as “the Restoration Plan”). The Restoration Plan shall set forth the measures that Respondent proposes to use install temporary erosion control measures, to remove the unpermitted items subject to these Consent Orders, to conduct remedial grading, to revegetate the Restoration Area, and to monitor to ensure the success of restoration activities.

6.1 General Provisions

- A. Within **thirty (30) days** of the effective date of these Consent Orders, Respondent shall submit, for the review and approval of the Executive Director, the Restoration Plan.
- B. The Restoration Plan shall contain all the following plan components of restoration described in detail below: 1) Temporary Erosion Control Plan; 2) Removal Plan; 3) Remedial Grading Plan (if necessary); 4) Revegetation Plan; and 5) Monitoring Plan. The Restoration Plan shall outline all proposed removal activities, all proposed temporary erosion control measures to be implemented, all remedial grading activities, and all monitoring activities to address impacts

caused by the Unpermitted Development or potential impacts caused by any activities undertaken through these Consent Orders.

- C. The Restoration Plan, and any reports prepared pursuant to the Restoration Plan or these Consent Orders, shall be prepared by a qualified restoration ecologist(s), resource specialist(s), and/or engineer(s) ("Specialist"). Within **fifteen (15) days** of the effective date of these Consent Orders and prior to the submittal of the Restoration Plan, Respondent shall submit, for the Executive Director's review and approval, a description of the qualifications of the proposed Specialist, including a description of the Specialist's educational background, training, and experience related to the preparation and implementation of the Restoration Plan described herein. If the Executive Director determines that the qualifications of the Specialist are not adequate to conduct the required restoration work, he shall notify Respondent and within **ten (10) days** of such notification, Respondent shall submit a different Specialist for the Executive Director's review and approval.
- D. The Restoration Plan shall include a map(s), drawn to scale, that shows the specific parameters, locations and extents of: 1) all applicable property boundaries; 2) the physical items placed or allowed to come to rest on the Properties as a result of Unpermitted Development that are to be removed under Section 6.3, below; 3) the areas of native vegetation removal resulting from the Unpermitted Development; 4) the current topography of all landscape features on the Properties; 5) the locations of all erosion control measures to be installed pursuant to Section 6.2, below; 6) any existing non-native and invasive plants that shall be removed pursuant to Section 6.5, below; 7) the locations of all species, individually delineated and labeled, to be planted pursuant to Section 6.5, below; and 8) the specific locations and directions from which photographs will be taken for the annual monitoring reports pursuant to 6.6.D.1, below.
- E. The Restoration Plan shall provide that, prior to the initiation of any restoration or removal activities, the boundaries of the Restoration Area shall be physically delineated in the field, using temporary measures such as fencing, stakes, colored flags, or colored tape. The Restoration Plan shall further provide that all delineation materials shall be removed when no longer needed, and verification of such removal shall be provided in the annual monitoring report corresponding to the reporting period during which the removal occurred.
- F. The Restoration Plan shall include a specific schedule/timeline of activities for each of the Restoration Plan components, below, the procedures to be used, and identification of the parties who will be conducting the restoration activities.
- G. The Restoration Plan shall describe, in detail, all equipment to be used. All tools utilized shall be hand tools unless the Specialist demonstrates to the satisfaction of the Executive Director that mechanized equipment is needed and will not impact resources protected under the Coastal Act, including but not limited to: geological stability, integrity of landforms, freedom from erosion, and existing native

vegetation. If mechanized equipment is proposed, the Restoration Plan shall provide for:

1. Limitations on the hours of operations for all equipment and a contingency plan that addresses at a minimum: 1) potential impacts from equipment use, including disturbance of areas where revegetation and/or mitigation will occur and the responses thereto; 2) potential spills of fuel or other hazardous releases that may result from the use of mechanized equipment and the responses thereto; and 3) any potential water quality impacts.
 2. Designated areas for staging of any construction equipment and materials, including receptacles and temporary stockpiles of materials. All stock piles and construction materials shall be covered, enclosed on all sides, located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil. No demolition or construction materials, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wind or runoff erosion and dispersion
 3. Designated and confined areas for maintaining and washing machinery and equipment specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems. The discharge of hazardous materials into any receiving waters is prohibited.
- H. The Restoration Plan shall be provided to the California Department of Parks and Recreation prior to submittal to the Executive Director.

6.2 Temporary Erosion Control Plan

- A. Respondent shall submit, as part of the Restoration Plan, a Temporary Erosion Control Plan, prepared by a qualified Specialist approved pursuant to Section 6.1.C, above, to stabilize the soil and prevent erosion, to address ground disturbance during any construction or restoration activities, and to stabilize the soil and prevent erosion during the establishment of any vegetation planted pursuant to Section 6.5, below.
- B. The Temporary Erosion Control Plan shall: 1) include a narrative report describing all temporary run-off and erosion control measures to be used during remedial grading/removal/restoration activities; 2) identify and delineate on a site or grading plan the location of all temporary erosion control measures; and 3) specify that the remedial grading, removal work, and construction of erosion control features shall take place only during the dry season (April 1 – November 1). If recommended by the Specialist, this period may be extended for a limited period of time pursuant to Section 14.0, below.

- C. The Temporary Erosion Control Plan shall indicate that all erosion control measures are required to be installed and fully functional on the Restoration Area prior to, or concurrent with, the initial removal activities required by these Consent Orders and maintained at all times of the year throughout the removal, remedial grading, and revegetation process, to minimize erosion across the site and potential sedimentation of streams, drains, and/or culverts.
- D. The Temporary Erosion Control Plan shall indicate that all erosion control measures, including measures to encase filtering devices, shall be comprised of bio-degradable materials. Any soil stabilizers shall be compatible with native plant recruitment and establishment. Soil stabilization methods shall not include the placement of retaining walls or other permanent structures, grout, geogrid, or similar materials.
- E. The Temporary Erosion Control Plan shall indicate that all erosion control measures are temporary and will be eliminated from the Restoration Area by Respondent once the native plant habitat is established. Verification of such removal shall be provided in the annual monitoring report for the reporting period during which the removal occurred.
- F. The Temporary Erosion Control Plan shall include the following deadlines:
 - 1. Within **ten (10) days** of approval of the Restoration Plan by the Executive Director, Respondent shall commence implementation of the Temporary Erosion Control Plan.
 - 2. Within **fifteen (15) days** of commencing installation activities under the Temporary Erosion Control Plan, Respondent shall conclude installation.
 - 3. Within **fifteen (15) days** of the completion of the installation of erosion control measures under the Temporary Erosion Control Plan, Respondent shall submit evidence, for the Executive Director's review and approval in the form of a narrative report as described in 6.7.B below. The Temporary Erosion Control Plan Report shall also show the devices installed, the type of devices installed, and document their impact.

6.3 Removal Plan

- A. Respondent shall submit, as part of the Restoration Plan, a Removal Plan, prepared by a qualified Specialist approved pursuant to Section 6.1.C, that will describe, in detail, all measures to be used for the removal and off-site disposal of all physical items that were placed or that have come to rest on the Properties as a result of the Unpermitted Development and are required to be removed pursuant to these Consent Orders except for those items identified in Section 7.0, below.

- B. The Removal Plan shall include a description of the location and identity, and proposed plan for the removal of all physical items or vegetation resulting from Unpermitted Development to be removed from the Properties, including all of the items specifically identified in Section 5.2, above, not including those identified in Section 7.0, below. The Removal Plan may include a proposal prepared by the Specialist for the review and approval of the Executive Director to retain select trees in the Restoration area on the Respondent's property.
- C. The Removal Plan shall identify the location of the site(s) for the off-site disposal of all materials removed from the Properties and all waste generated during restoration activities pursuant to these Consent Orders. If a disposal site is located in the Coastal Zone and is not an existing sanitary landfill, a CDP is required for such disposal. All hazardous waste must be disposed of at a suitable licensed disposal facility.
- D. The Removal Plan shall indicate that removal activities shall not disturb areas outside of the Restoration Area. The Removal Plan shall indicate that any areas in or outside of the Restoration Area disturbed by the removal activities under the Removal Plan shall be included in restoration activities under this Restoration Plan, including any further removal, temporary erosion control, regrading, and/or revegetation measures that are required to address the additional disturbance.
- E. The Removal Plan shall include a specific plan to remove the unpermitted concrete walkway and stairs that extend across the restoration area on the adjacent State park property.
 - 1. This concrete walkway and stairs shall be allowed to remain in place through the completion of the initial planting phase of the revegetation plan in Section 6.5, below and in no case longer than one year from the beginning of activities under the revegetation plan or December 1, 2015, whichever date comes first.
 - 2. The removal plan shall include under this section a plan for the removal of the concrete walkway and stairs that minimizes impacts to the restoration area. All areas covered by this concrete walkway or stairs and any areas disturbed its removal shall be restored consistent with Section 6.5, below.
- F. The Removal Plan shall include the following deadlines:
 - 1. Within **fifteen (15) days** of approval of the Restoration Plan by the Executive Director, Respondent shall initiate removal of the physical items related to the Unpermitted Development.
 - 2. Within **thirty (30) days** from the implementation of the Removal Plan, all removal activities except those specified in 6.3.E, above, shall be completed.

3. Within **fifteen (15) days** of the completion of the removal of all unpermitted items, Respondent shall submit evidence, for the Executive Director's review and approval, in the form of a narrative report as described in 6.7.B, below, showing that the removal has been completed pursuant to the approved Restoration Plan.

6.4 Remedial Grading Plan

- A. Respondent shall submit, as part of the Restoration Plan, a Remedial Grading Plan prepared by a qualified Specialist approved pursuant to Section 6.1.C, above, that will describe all measures necessary to return the Properties to their pre-violation topography.
- B. The Remedial Grading Plan shall include sections showing original and finished grades, and a quantitative breakdown of grading amounts (cut/fill), drawn to scale with contours that clearly illustrate, as accurately as possible, the pre-violation and the current, unpermitted topography. The Remedial Grading Plan shall demonstrate how the proposed remedial grading will restore the Properties to their original, pre-violation topography. The Remedial Grading Plan shall identify the source and date of all data used to produce this information.
- C. The Remedial Grading Plan shall indicate that the proposed remedial grading will restore the original topography of the Properties to the condition that existed prior to any unpermitted disturbance and that will be sufficient to support restoration of chaparral and other native habitat.
- D. If the Specialist determines that alterations to the original topography, or to any other aspect of the Properties from its pre-violation state, are necessary to ensure successful restoration of chaparral or other native habitat, the Remedial Grading Plan shall include this proposed topography or a description of the proposed changed aspects and the methods to be used to attain the modified outcome.
- E. Implementation of the Restorative Grading Plan shall be undertaken in a way that minimizes the impacts to the Restoration Area. Areas adjacent to the Restoration Area shall not be disturbed by activities related to remedial grading or any other activity required by these Consent Orders. Prior to initiation of any activities resulting in physical alteration of the Properties, the disturbance boundary shall be physically delineated in the field using temporary measures identified in Section 6.1.E, above.
- F. Respondent may submit a report prepared by the Specialist for review and approval of the Executive Director that shows pre-violation and current topography as described in 6.4.B, above, to demonstrate that no unpermitted grading has occurred. The Executive Director may then determine that no remedial grading plan is required to be submitted pursuant to these Consent Orders.

- G. The Remedial Grading Plan shall include the following deadlines:
1. Within **fifteen (15) days** of the completing implementation of the Removal Plan, Respondent shall begin implementation of the Remedial Grading Plan.
 2. Within **thirty (30) days** of commencing implementation of the remedial grading activities, Respondent shall complete implementation of the Remedial Grading Plan.
 3. Within **fifteen (15) days** of the completion of the Remedial Grading Plan, Respondent shall submit evidence, for the Executive Director's review and approval in the form of a narrative report as described in 6.7.B, below, showing that the remedial grading has been completed pursuant to the approved Restoration Plan. The Remedial Grading Report will also include any reference sites, case studies, or other data that was used in the analysis; and, if applicable, provide reasons for altering the topography from the original contours or changing any other aspect of the pre-violation topography conditions of the Properties.

6.5 Revegetation Plan

- A. Respondent shall submit, as part of the Restoration Plan, a Revegetation Plan prepared by a qualified Specialist approved pursuant to Section 6.1.C, above, that will describe the measures necessary to revegetate the Restoration Area such that the Restoration Area has a similar plant density, total cover and species composition as that typical of undisturbed native chaparral vegetation in the surrounding area.
- B. The Revegetation Plan shall include a detailed description of the methods that shall be utilized to restore the Restoration Area to the condition that existed prior to the Unpermitted Development occurring. The Revegetation Plan shall include detailed descriptions, including graphic representations, narrative reports, and photographic evidence, as necessary.
- C. The Revegetation Plan shall identify the natural habitat type that is the model for the restoration and describe the desired relative abundance of particular species in each vegetation layer. This section shall explicitly lay out the restoration goals and objectives for the revegetation based on that model.
1. Based on these goals, the Revegetation Plan shall list the species to be planted, including other native species that may be utilized alongside chaparral. The plan shall identify, describe, and provide a rationale for the species that are to be planted, as well as their size and number, the number of container plants and the rate and method of seed application.

2. The Revegetation Plan shall indicate that plant propagules and seeds must come from local, native stock of the Santa Monica Mountains. If plants, cuttings, or seed are obtained from a nursery, the nursery must certify that they are of local origin (Santa Monica Mountains) and are not cultivars. The Revegetation Plan shall provide specifications for preparation of nursery stock. Technical details of planting methods (e.g. spacing, micorrhizal inoculation, etc.) shall be included. Respondent shall not employ non-native plant species, which could supplant native plant species in the Restoration Area.
- D. The Revegetation Plan shall include a map showing the type, size, and location of all plant materials that will be planted in the Restoration Area; the location of all non-native plants to be removed from the Restoration Area; the topography of all other landscape features on the site; and the location of photographs of the Restoration Areas that will provide reliable photographic evidence for annual monitoring reports, as described in Section 6.6.D.1, below.
 - E. The Revegetation Plan shall include, for the review and approval of the Executive Director, a schedule for installation of plants, removal of non-native plants, and completion of revegetation on the properties prepared by the Specialist.
 1. The revegetation schedule shall include specific time periods and deadlines, including identifiable interim goals, for planting, other revegetation activities, and additional non-native species removal work spread out over the time period established in this section.
 - F. The Revegetation Plan shall include a detailed explanation of the performance standards that will be utilized to determine the success of the restoration. The performance standards shall identify that 'x' native species appropriate to the habitat should be present, each with at least 'y' percent cover or with a density of at least 'z' individuals per square meter. The description of restoration success shall be described in sufficient detail to enable an independent specialist to duplicate it.
 - G. The Revegetation Plan shall demonstrate that all non-native vegetation within the Restoration Area will be eradicated prior to any revegetation activities on the Properties. In addition, the Revegetation Plan shall specify that non-native vegetation removal shall occur year round, including on a monthly basis during the rainy season (January through April) for the duration of the Monitoring Plan.
 - H. The Revegetation Plan shall describe the proposed use of artificial inputs, such as irrigation, fertilizer or herbicides, including the full range of amounts of the inputs that may be utilized. The minimum amount necessary to support the establishment of the plantings for successful restoration shall be utilized.

1. No permanent irrigation system is allowed in the Restoration Area. A temporary above-ground irrigation to provide for the establishment of plantings is allowed for a maximum of three (3) years or until the revegetation has become established, whichever comes first.
2. If, after the three (3) year time limit, the vegetation planted pursuant to the Revegetation Plan has not become established, the Executive Director may, upon receipt of a written request from Respondent, allow for the continued use of the temporary irrigation system. The written request shall outline the need for and duration of the proposed extension.

I. Deadlines

The deadlines for the Revegetation Plan shall be specified by the revegetation schedule submitted per Section 6.4.E, above. In the event that schedule is not submitted or approved by the Executive Director, the following deadlines for revegetation will be applicable:

1. Within **thirty (30) days** of completion of the Remedial Grading Plan, Respondent shall commence initial phases of revegetation activities by implementing the Revegetation Plan.
2. Within **thirty (30) days** of commencing implementation of activities under the Revegetation Plan, Respondent shall complete implementation of all planting activities under the Revegetation Plan.
3. Within **fifteen (15) days** from completion of the Revegetation Plan, Respondent shall submit a report for the Executive Director's review and approval as described in 6.7.B, below, showing that the revegetation has been completed pursuant to the Restoration Plan.
4. If the Specialist recommends planting to occur at a certain time of year beyond deadlines set forth herein, the Executive Director may, at the written request of Respondent, extend the deadlines as set forth in Section 14 of these Consent Orders in order to achieve optimal growth of the vegetation.

6.6 Monitoring Plan

- A. Respondent shall submit, as part of the Restoration Plan, a Monitoring Plan prepared by a qualified Specialist approved pursuant to Section 6.1.C, above that will provide for monitoring the Restoration Area over a period of, at a minimum, **five (5) years** from the completion and full implementation of the Revegetation Plan to ensure successful restoration.

- B. The Monitoring Plan will describe the monitoring and maintenance methodology, including sampling procedures, sampling frequency, and contingency plans to address potential problems with restoration activities or unsuccessful restoration of the Properties.
- C. The Monitoring Plan shall specify that the Specialist shall conduct at least **four (4)** site visits annually for the duration of the Restoration Plan, for the purposes of inspecting and maintaining: all erosion control measures; non-native species eradication; trash and debris removal; the health and abundance of existing vegetation and/or vegetation planted pursuant to these Consent Orders; and any other activities undertaken through the Restoration Plan.
- D. Respondent shall submit, on an annual basis and during the same one-month period of each year (no later than December 31st of the first year), for **five (5)** years starting from the completion of the revegetation phase of the Restoration Plan, a written report, for the review and approval of the Executive Director, prepared by the Specialist, evaluating compliance with the Restoration Plan.
 - 1. These reports shall include photographs taken during the periodic site inspections at the same time of year indicating the progress of recovery in the Restoration Area. The photographs will be taken from the same pre-designated locations (as identified on the map submitted pursuant to 6.1.D, above). The locations from which the photographs are taken shall not change over the course of the monitoring period unless the Specialist requests changes that are approved by the Executive Director.
- E. If periodic inspections or the monitoring reports indicate that the restoration project or a portion thereof is not in conformance with the Restoration Plan or these Consent Orders, or is failing to meet the goals and/or performance standards specified in the Restoration Plan, Respondent shall submit a revised or supplemental Restoration Plan ("Revised Restoration Plan") for review and approval of the Executive Director.
 - 1. The Revised Restoration Plan shall be prepared by a qualified Specialist, approved by the Executive Director pursuant to Section 6.1.C, above, and shall specify measures to correct those portions of the restoration that have failed or are not in conformance with the original, approved Restoration Plan or these Consent Orders. The Executive Director will then determine whether the Revised Restoration Plan must be processed as a modification of these Consent Orders, a new Restoration Order, or a new or amended Coastal Development Permit.
 - 2. After the Revised Restoration Plan has been approved, these measures, and any subsequent measures necessary to carry out the original, approved Restoration Plan, shall be undertaken by Respondent until the goals of the original, approved Restoration Plan have been met to the satisfaction of

the Executive Director. Following completion of the Revised Restoration Plan's implementation, the duration of the monitoring period shall be extended for at least a period of time equal to that during which the project remained out of compliance, but in no case less than two (2) annual reporting periods.

- F. At the end of the five (5) year monitoring period, or any other monitoring duration required by a Revised Restoration Plan, Respondent shall submit for the review and approval of the Executive Director a final, detailed report prepared by the Specialist that documents the successful restoration of the Properties.
1. If the Executive Director determines from this final report that the restoration has in part, or in whole, been unsuccessful, based on the requirements of the approved Restoration Plan, Respondent shall submit a Revised Restoration Plan, in accordance with the requirements of these Consent Orders, and the monitoring program shall be revised accordingly.

6.7 Implementation and Completion of Restoration Plan

- A. Upon approval of the Restoration Plan (including the Temporary Erosion Control, Removal, Remedial Grading, Revegetation, and Monitoring plan components) by the Executive Director, Respondent shall fully implement each phase of the Restoration Plan consistent with all of its terms and the terms set forth herein. Respondent shall complete all work described in the Restoration Plan no later than **160 days** after the Restoration Plan is approved.
- B. Within **fifteen (15) days** of the completion of all the work described pursuant to the Temporary Erosion Control, Removal, Remedial Grading, and Revegetation plan components of the Restoration Plan, Respondent shall submit a written report, prepared by the Specialist, for the review and approval of the Executive Director, documenting all restoration work performed on the Properties pursuant to the Restoration Plan. This report shall include a summary of dates when work was performed and photographs taken from the pre-designated locations documenting implementation of the respective components of the Restoration Plan, as well as photographs of the Properties before the work commenced and after completion.

7.0 SUBMITTAL OF AFTER-THE-FACT COASTAL DEVELOPMENT PERMIT AMENDMENTS

7.1 Retaining Wall

- A. Within **ninety (90) days** of the effective date of these Consent Orders, Respondent shall submit, and shall not withdraw or impede final Commission action in any way on, a "complete" coastal development permit amendment application to amend CDP No. 5-87-425 for after-the-fact approval of the

unpermitted retaining wall running parallel to the driveway and continuing until it joins with existing concrete walkways, not including the concrete curbing alongside the currently turfed area and any development on State property.

- B. Respondent shall comply with the terms and conditions of any permit amendment issued pursuant to the application submitted under Section 7.1.A, above, within **two (2) years** of final Commission action or any deadline established by the permit amendment, whichever date comes first.
- C. Within **ninety (90) days** of the effective date of these Consent Orders, if Respondent does not submit the permit amendment application required by Section 7.2.A, Respondent shall submit, for the review and approval of the Executive Director, a Restoration plan, including Removal, Erosion Control, Revegetation, and Monitoring Plans, for the removal of the retaining wall specified above. This Restoration Plan shall be consistent with the provisions in Section 6.0, above.
- D. In the event the Commission denies the coastal development permit amendment application submitted under this section, Respondent shall submit, for the review and approval of the Commission's Executive Director, a Removal, Erosion Control, Restoration, Revegetation, and Monitoring Plan for the removal of the retaining wall and the restoration of any areas impacted by the removal of that development. This Restoration Plan shall be submitted within **ninety (90) days** of final action on said denial, and shall be consistent with the provisions set forth in Section 6.0, above.

7.2 Concrete Walkway

- A. Within **ninety (90) days** of the effective date of these Consent Orders, Respondent shall submit, and shall not withdraw or impede final Commission action in any way on, a "complete" coastal development permit amendment application to amend CDP No. 5-87-425 for after-the-fact approval of the unpermitted concrete walkway constructed and placed along the eastern private property border, not including the section on private property.
- B. Respondent shall comply with the terms and conditions of any permit amendment issued pursuant to the application submitted under Section 7.1.A, above, within **two (2) years** of final Commission action or any deadline established by the permit amendment, whichever date comes first.
- C. Within **ninety (90) days** of the effective date of these Consent Orders, if Respondent does not submit the permit amendment application required by Section 7.2.A, Respondent shall submit, for the review and approval of the Executive Director, a Restoration plan, including Removal, Erosion Control, Revegetation, and Monitoring Plans, for the removal of any remaining

unpermitted concrete walkways. This Restoration Plan shall be consistent with the provisions set forth in Section 6.0, above.

- D. In the event the Commission denies the coastal development permit amendment application submitted under this section, Respondent shall submit, for the review and approval of the Commission's Executive Director, a Removal, Erosion Control, Restoration, Revegetation, and Monitoring Plan for the removal of the concrete walkway and the restoration of any areas impacted by the removal of that development. This Restoration Plan shall be submitted within **ninety (90) days** of final action on said denial, and shall be consistent with the provisions set forth in Section 6.0, above.

7.3 Solar Array

- A. Within **ninety (90) days** of the effective date of these Consent Orders, Respondent shall submit, and shall not withdraw or impede final Commission action in any way on, a "complete" coastal development permit amendment application to amend CDP No. 5-87-425 for after-the-fact approval of the unpermitted solar array placed within the eastern portion of the property.
- B. Respondent shall comply with the terms and conditions of any permit amendment issued pursuant to the application submitted under Section 7.1.A, above, within **two (2) years** of final Commission action or any deadline established by the permit amendment, whichever date comes first.
- C. Within **ninety (90) days** of the effective date of these Consent Orders, if Respondent does not submit the permit application required by Section 7.3.A, Respondent shall submit, for the review and approval of the Executive Director, a Restoration plan, including Removal, Erosion Control, Revegetation, and Monitoring Plans, for the removal of the solar array. This Restoration Plan shall be consistent with the provisions set forth in Section 6.0, above.
- D. In the event the Commission denies the coastal development permit amendment application submitted under this section, Respondent shall submit, for the review and approval of the Commission's Executive Director, a Removal, Erosion Control, Restoration, Revegetation, and Monitoring Plan for the removal of the solar array and the restoration of any areas impacted by the removal of that development. This Restoration Plan shall be submitted within **ninety (90) days** of final action on said denial, and shall be consistent with the provisions set forth in Section 6.0, above.

ADDITIONAL PROVISIONS COMMON TO BOTH ORDERS

8.0 SUBMITTAL OF DOCUMENTS

All documents submitted to the Commission pursuant to these Consent Orders must be sent to:

California Coastal Commission
Attn: Peter Allen
45 Fremont St, Suite 2000
San Francisco, CA 94105

With a copy sent to:

California Coastal Commission
Attn: Pat Veasart
89 S. California Street, Suite 200
Ventura, CA 93001

9.0 SITE ACCESS

- 9.1 Respondent shall provide access to the Properties at all reasonable times to Commission staff and any agency having jurisdiction over the work being performed under these Consent Orders. Commission staff may enter and move freely about the portions of the Restoration Area and on adjacent areas to view the areas where development is being performed pursuant to these Consent Orders for purposes including, but not limited to: inspecting records, operating logs, and contracts relating to the site and overseeing, inspecting, and reviewing the progress of Respondent in carrying out the terms of these Consent Orders. Nothing in these Consent Orders is intended to limit in any way the right of entry or inspection that any agency may otherwise have by any law.
- 9.2 Respondent shall provide, within **fifteen (15) days** of the effective date of these Consent Orders, written documentation from the property owners of the adjacent private property at 373 Mildas Drive, Malibu, CA 90265 (APN 4453-026-047) that Respondent, and other parties including Commission staff, have permission to access and perform restoration activities as set forth in these Consent Orders on the part of their private property onto which the Restoration Area extends, and that they agree to not impede Respondent from undertaking the activities required by these Consent Orders.
- 9.3 Respondent shall provide, within **fifteen (15) days** of the effective date of these Consent Orders, a "Right-of-Entry Permit" or other written documentation from the California Department of Parks and Recreation providing documentation that Respondent, and other parties including Commission staff, have permission to access and perform restoration activities as set forth in these Consent Orders on the part of the adjacent State Property (APN 4453-017-906) onto which the Restoration Area extends, and that they agree to not impede Respondent from undertaking the activities required by these Consent Orders.
- 9.4 If at any point prior to Respondent's completion of the obligations set forth in these Consent Orders, Respondent is denied permission to access or perform restoration activities in any part of the Restoration Area on an adjacent property, Respondent shall refrain from accessing or performing work on that adjacent property and notify the Executive Director immediately.

APPENDIX A

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(JEFF KIM)

- 9.5 If at any point prior to Respondent's completion of the obligations set forth in these Consent Orders, Respondent is denied permission to access or perform restoration activities in any part of the Restoration Area on an adjacent property, the obligation to resolve the violations described in these Consent Orders shall remain in effect and Respondent shall utilize all reasonable efforts in a timely fashion to re-secure permission to access and complete restoration work upon the Properties.
- 9.6 If at any point prior to Respondent's completion of the obligations set forth in these Consent Orders, Respondent is denied permission to access or perform restoration activities in any part of the Restoration Area on an adjacent property, Respondent shall continue to promptly complete removal and restoration activities in all other areas of the Restoration Area in accordance with all deadlines in these Consent Orders.
- 9.7 If at any point prior to Respondent's completion of the obligations set forth in these Consent Orders, Respondent is denied permission to access or perform restoration activities in any part of the Restoration Area on an adjacent property and is unable to complete restoration activities under Section 6.0, above, Respondent may submit a request for the Executive Director's approval to substitute for that unrestored portion of the Restoration Area by increasing the area covered in the Mitigation Bank purchases described in Section 17.D, below. The area to be increased in the mitigation plan shall be twice the size of the area in the Restoration Area left unrestored.

10.0 EFFECTIVE DATE AND TERMS OF THESE CONSENT ORDERS

The effective date of these Consent Orders is the date the Commission votes to issue these Consent Orders. These Consent Orders shall remain in effect permanently unless and until rescinded by the Commission.

11.0 FINDINGS

These Consent Orders are issued on the basis of the findings adopted by the Commission, as set forth in the document entitled "Staff Report and Findings for Consent Cease and Desist Order No. CCC-14-CD-03 and Consent Restoration Order No. CCC-14-RO-03." The Commission has authorized the activities required in these Consent Orders as being consistent with the resource protection policies set forth in Chapter 3 of the Coastal Act.

12.0 COMMISSION JURISDICTION

The Commission has jurisdiction over resolution of the Coastal Act violations on the Properties pursuant to the Coastal Act PRC sections 30810 and 30811. In light of the desire of the parties to settle these matters, Respondent agrees to not contest the Commission's jurisdiction to issue or enforce these Consent Orders.

13.0 REVISIONS OF DELIVERABLES

The Executive Director may require revisions to deliverables required under these Consent Orders, and the Respondent shall revise any such deliverables consistent with the Executive Director's specifications, and resubmit them for further review and approval by the Executive Director within any deadlines established by the modification request from the Executive Director.

14.0 DEADLINES

Prior to the expiration of any given deadline established by these Consent Orders, Respondent may request from the Executive Director an extension of the unexpired deadline. Such a request shall be made in writing **ten (10) days** in advance of the deadline, and directed to the Executive Director, care of Peter Allen of the Commission's staff at the San Francisco address identified in Section 9.0, above. The Executive Director may grant an extension of deadlines upon a showing of good cause, if the Executive Director determines that Respondent has demonstrated that Respondent has diligently worked to comply with its obligations under these Consent Orders but cannot meet deadlines due to unforeseen circumstances beyond its control. A violation of deadlines established pursuant to these Consent Orders will result in stipulated penalties, as provided for in Section 17.2, below.

15.0 RESOLUTION OF MATTER VIA SETTLEMENT

In light of the intent of the parties to resolve these matters in settlement, Respondent has not submitted a "Statement of Defense" form as provided for in Sections 13181 and 13191 of the Commission's regulations in Title 14 of the California Code of Regulations ("14 CCR") and has agreed not to contest the legal and factual bases for, the terms of, or the issuance of these Consent Orders, including the allegations of Coastal Act violations contained in the Notice of Intent to Commence Cease and Desist and Restoration Order Proceedings and to Record a Notice of Violation, dated April 3, 2014 ("NOI"). Specifically, Respondent has agreed not to contest the issuance or enforcement of these Consent Orders at a public hearing or other proceeding.

16.0 SETTLEMENT VIA CONSENT ORDERS

In light of the desire to settle this matter via these Consent Orders and avoid litigation, pursuant to the agreement of the parties as set forth in these Consent Orders, Respondent hereby agrees not to seek a stay pursuant to PRC section 30803(b) or to challenge the issuance and enforceability of these Consent Orders in a court of law or equity.

17.0 SETTLEMENT OBLIGATION

17.1 In light of the intent of the parties to resolve these matters in settlement, Respondent has agreed to make monetary payments that will go towards enhancement and protection of coastal resources in the Santa Monica Mountains

and to provide for additional resource protection, as described below. This settlement component shall be divided into three separate parts:

- A. Respondent agrees to make a payment of \$25,000 due on September 1, 2015, and the following payments of \$30,000 due on September 1, 2016, September 1, 2017, and September 1, 2018, respectively. These settlement monies shall be deposited in the Violation Remediation Account of the California Coastal Conservancy (see PRC section 30823) or into such other public account as authorized by applicable California law at the time of the payment, and as designated by the Executive Director. These settlement payments shall be directed to the Commission's San Francisco office, at the address listed in Section 9.0, above, to the attention of Peter Allen, payable to the account designated under the Coastal Act. Such settlement payments shall be used for the maintenance, protection, and enhancement of coastal resources in the Santa Monica Mountains. If Respondent completes the interim planting goals established by the approved Revegetation Plan in Section 6.5, above, without requesting deadline extensions, and successfully completes the installation of all plants required to be planted in the manner and timeframe established by the Revegetation Plan by November 15, 2015, and has fully met all other requirements required in these Consent Orders, Respondent may submit a request to the Executive Director for his review and approve to have the fourth payment of September 1, 2018 waived.
- B. Within ninety (90) days of the effective date of these Consent Orders Respondent shall execute and record a Deed Restriction in a form and content acceptable to the Executive Director over Respondent's property currently designated by the Los Angeles County Assessor's office as APNs 4453-026-046 and 4453-026-049 to preserve the open space and habitat values of certain portions of Respondent's property. The recorded document shall reflect that no development, as defined in PRC Section 30106, shall occur on the areas on Respondent's property located in the Restoration Area, defined in Section 5.4, above, with three exceptions: 1) the Deed Restriction may allow for the continued existence and maintenance of the concrete walkways and two ponds previously authorized by CDP No. 5-87-425-A3; 2) the Deed Restriction may provide for the continued existence and maintenance of any of the items specified in Section 7.0 only if approved by the CDP amendment applications pursuant to Section 7.0; and 3) the Deed Restriction shall provide that any activities still required under these Consent Orders will not be prohibited.

All documents to be recorded to effectuate the Deed Restriction shall be submitted to the Executive Director for review and approval prior to recordation. The recorded Deed Restriction shall include a formal legal description of the property and a metes and bounds legal description and graphic depiction, prepared by a licensed surveyor, of the area subject to the development prohibition, including identification of the existing items that maybe exempt from the prohibition on development. The Deed Restriction shall be recorded free of prior liens and encumbrances that the Executive Director determines may affect the

enforceability of the restrictions and shall run with the land, binding all successors and assigns. Certified copies of all documents recorded by the County Recorder's Office shall be submitted to Commission staff, according to Section 9.0 of these Consent Orders, within thirty (30) days of recordation.

- C. Respondent agrees to provide funding in the amount of \$10,000 for public trail or trail signage improvements on nearby publicly owned properties or easements in the Saddle Peak area, or adjacent areas, including but not limited to areas along Schueren Road, Stunt Road, or the Backbone Trail. Respondent shall submit the trail improvement project by September 15, 2015 for the review and approval of the Executive Director. If no project is submitted by Respondent and approved by the Executive Director by November 15, 2015, Respondent shall instead pay into the Santa Monica Mountains Recreation and Conservation Authority's Mitigation Bank the amount of \$12,000 by December 31, 2015.
 - D. Respondent agrees to pay into the Santa Monica Mountains Recreation and Conservation Authority's Mitigation Bank a total of \$48,000. These payments shall be made in four payments of \$12,000, starting with the first payment due on September 1, 2015, and the following payments due September 1, 2016, September 1, 2017 and December 31, 2017.
- 17.2 Strict compliance with these Consent Orders by all parties subject hereto is required. Failure to comply with any term or condition of these Consent Orders, including any deadline contained in these Consent Orders, unless the Executive Director grants an extension under Section 14.0, will constitute a violation of these Consent Orders and shall result in Respondent being liable for stipulated penalties in the amount of \$1,000 per day per violation. Respondent shall pay stipulated penalties regardless of whether Respondent subsequently complies. If Respondent violates these Consent Orders, nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of the Commission to seek any other remedies available, including the imposition of civil penalties and other remedies pursuant to PRC Sections 30820, 30821.6, and 30822, as a result of the lack of compliance with these Consent Orders and for the underlying Coastal Act violations as described herein.

18.0 SETTLEMENT OF MONETARY CLAIMS

The Commission and Respondent agree that these Consent Orders settle the Commission's monetary claims for relief from Respondent for the violations of the Coastal Act specified in Section 5.2 above occurring prior to the date of these Consent Orders, (specifically including claims for civil penalties, fines, or damages under the Coastal Act, including under PRC Sections 30805, 30820, and 30822), provided that the Restoration Plan discussed in Section 6.0 is fully implemented and the obligations in Section 18.0 are fully satisfied, and with the exception that, if Respondent fails to comply with any term or condition of these Consent Orders, the Commission may seek monetary

or other claims for both the underlying violations of the Coastal Act and for the violation of these Consent Orders.

19.0 LIMITATION OF AUTHORITY

- 19.1 Except as expressly provided herein, nothing in these Consent Orders shall limit or restrict the exercise of the Commission's enforcement authority pursuant to Chapter 9 of the Coastal Act, including the authority to require and enforce compliance with these Consent Orders and the authority to take enforcement action for Coastal Act violations beyond those that are specified in Section 5.2 of these Consent Orders. Failure to enforce any provision of these Consent Orders shall not serve as a waiver of the ability to enforce those provisions or any others at a later time.
- 19.2 Correspondingly, Respondent has entered into these Consent Orders and waived the right to contest the factual and legal bases for issuance of these Consent Orders, and the enforcement thereof according to its terms. Respondent has agreed not to contest the Commission's jurisdiction to issue and enforce these Consent Orders.

20.0 SEVERABILITY

Should any provision of these Consent Orders be found invalid, void or unenforceable, such illegality or unenforceability shall not invalidate the whole, but these Consent Orders shall be construed as if the provision(s) containing the illegal or unenforceable part were not a part hereof.

21.0 GOVERNMENT LIABILITIES

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

22.0 GOVERNMENT JURISDICTION

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

23.0 CONTRACTUAL OBLIGATION

These Consent Orders constitute both an administrative order issued to Respondent personally and a contractual obligation between Respondent and the Commission, and therefore shall remain in effect until all terms and conditions are fulfilled, regardless of

whether Respondent has a financial interest in the Property or any other property within the Coastal Zone.

24.0 SUCCESSORS AND ASSIGNS

These Consent Orders shall run with the land binding Respondent and all successors in interest, heirs, assigns, future owners of the property currently owned by Respondent at 333 Moonrise Drive (APNs 4453-026-046 and 4453-026-049). Respondent shall provide notice to all successors in interest, heirs, assigns, and future owners of the property currently owned by Respondent at 333 Moonrise Drive (APNs 4453-026-046 and 4453-026-049), of any remaining obligations under these Consent Orders.

25.0 MODIFICATIONS AND AMENDMENTS

Except as provided in Section 14.0, and for other minor, immaterial modifications, upon mutual written agreement of the Executive Director and Respondent, these Consent Orders may be amended or modified only in accordance with the standards and procedures set forth in Sections 13188(b) and 1319714 CCR.

26.0 INTEGRATION

These Consent Orders constitute the entire agreement between the parties and may not be amended, supplemented, or modified except as provided in these Consent Orders.

27.0 STIPULATION

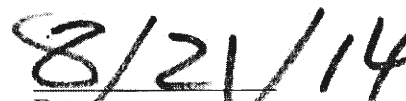
Respondent attests that he has reviewed the terms of these Consent Orders and understands that his consent is final and stipulates to its issuance by the Commission.

IT IS SO STIPULATED AND AGREED:

On behalf of Respondent:



Jeff Kim



Date

Executed in _____ on behalf of the California Coastal Commission:

Charles Lester, Executive Director

Date

APPENDIX A
CCC-14-CD-03 & CCC-14-RO-03
(JEFF KIM)



Exhibit 1
 CCC-14-CD-03 & CCC-14-RO-03
 (JEFF KIM)

CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA
245 WEST BROADWAY, SUITE 380
LONG BEACH, CA 90802
(213) 590-5071

FILED: 9-9-87
49th DAY: 10-21-87
180th DAY: 2-24-87
STAFF: J. Leslie
STAFF REPORT: 9-9-87
HEARING DATE: 11/17-20/87

REGULAR CALENDARSTAFF REPORT AND RECOMMENDATION

Application: 5-87-425

Applicant: Wayne McFarland
10063 Olive Street
Temple City CA 91780

Agent: Robert Foster

Description: Construction of a 6800 square foot single family residence, guest house, swimming pool, tennis court, driveway and retaining walls on a 2.5 acre vacant lot; approve conditional certificate of compliance.

Site: 333 Mildas Drive Malibu

Substantive File Documents:

1. Malibu Land Use Plan
2. Coastal Permits 5-80-7129 and 5-86-668

SUMMARY

Staff recommends approval with conditions addressing grading, erosion control, assumption of risk and mitigation for cumulative impact of buildout.

Exhibit 2
CCC-14-CD-03 & CCC-14-RO-03
(JEFF KIM)

STAFF RECOMMENDATION

I. Approval with conditions

The Commission hereby grants, subject to the conditions below, a permit for the proposed development on the grounds that the development, as conditioned, will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgement. 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. Compliance. All development must occur in strict compliance with the proposal as set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. 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.
7. 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. Applicant's Assumption of Risk

Prior to transmittal of permit, the applicant as landowner shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide (a) that the applicant understands that the site may be subject to extraordinary hazard from fire and wave damage and applicant assumes the liability from such hazards; and (b) that the applicant unconditionally waives any claim of liability on the part of the Commission and agrees to indemnify and hold harmless the Commission and its advisors relative to the Commission's approval of the project for any damage due to natural hazard. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed.

2. Revised Grading Plans

Prior to issuance of coastal permit, the applicant shall submit for the review and approval of the Executive Director, revised grading plans which show that grading and the use of retaining walls has been minimized through the deletion of the accessory structures including the tennis court, guest house, pool and studio/exercise room. The residence shall be located as close to the adjacent road as feasible.

3. Landscape and Erosion Control Plans

Prior to issuance of coastal permit, the applicant shall submit for the review and approval of the Executive Director, a preliminary construction schedule for grading and construction operations.

Earth moving operations shall be prohibited between November 1 and March 31 unless a delay in grading until after the rainy season is determined by the Executive Director to be more environmentally damaging. In which case landscape and erosion control plans which show methods of controlling all exposed soils during the grading activities must be submitted to the Executive Director for approval. Should grading begin before the rainy season, but extends into the rainy season for reasons beyond the applicant's control, measures to control erosion must be implemented at the end of each day's work. The approved erosion control plan shall be in place prior to November 1.

4. Fuel Modification and Landscape Plans.

Prior to transmittal of permit the applicant shall submit for review and approval by the Executive Director, plans prepared by a licensed landscape architect that show the provision for the Los Angeles County Fire Marshall fuel modification requirements. The plan shall

incorporate the use of primarily native plants which are suitable for fuel modification criteria, controlling erosion, and are suitable to be used as part of the ornamental planting scheme.

5. Cumulative Impact Mitigation

Prior to transmittal of the permit the applicant shall submit evidence, subject to the review and approval of the Executive Director, that the cumulative impacts of the subject development with respect to build out of the Santa Monica Mountains are adequately mitigated. Evidence of mitigation shall be in one of the following forms:

Prior to issuance of this permit, the applicant shall provide evidence to the Executive Director that development rights for residential use have been extinguished on one building site in the Santa Monica Mountains Coastal zone. The method used to extinguish the development rights shall be either

a) one of the five lot retirement or lot purchase programs contained in the Malibu Santa Monica Mountains Land Use Plan (policy 272 2-6),

b) a TDC-type transaction, consistent with past Commission actions such as 5-84-789 (Miller),

c) or participation along with a public agency or private nonprofit corporation to retire habitat or watershed land in amounts that the Executive Director determines will retire the equivalent number of potential building sites. Retirement of a site that is unable to meet the County's health and safety standards, and therefore unbuildable under the Land Use Plan, shall not satisfy this condition.

The building site on which residential uses are extinguished must either be a legal lot in a small lot subdivision or a potential building site located in a Significant Watershed. Unsubdivided land within Significant Watersheds may be used to generate building sites in numbers based on densities consistent with the proposed densities of the Land Use Plan; sites that are unable to meet the County's health and safety standards shall not be counted.

6. Future Improvements

Prior to authorization of permit, the applicant shall record a deed restriction, in a form and content acceptable to the Executive Director, which provides that Coastal Development Permit 5-87-425 is for the approved development only, and that any future additions or improvements to the property including clearing of vegetation and grading will require a new Coastal Development Permit from the Coastal Commission or its successor agency. The deed restriction shall be binding on all successors in interest, heirs and assigns.

IV. FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

A. Project Description

Applicant proposes to construct a 2-story, 30-foot high, 6800 square foot single family residence, guest house, swimming pool, tennis court, driveway and retaining walls on a 2.5 acre vacant lot located between Mildas Drive and Schueren Road on a south-facing slope below Saddle Peak.

The site is a long rectangular shaped parcel 165 feet wide by 640 feet long or approximately 2.42-acres in total area. Close inspection of the available resource maps indicate the site is located within the Rural Land III (1 DU/2 acres) as well as the M2 land use designation (1 DU/20 acres) (see exhibit 1). The first 200 feet or so of the lot adjacent to Mildas Road is within the Rural Land III category while the balance is M2. This particular M2 area is not designated as a significant watershed, but nevertheless functions as the major component of the drainage of Las Flores Canyon. The site is in the upper reaches of Los Flores Canyon.

Due to the Rural Land III land use designation boundary crossing the site at the upper third of the lot, the effective density proposed is 1 DU/.8 acres (one third of 2.42 is approximately .8). Therefore, the proposed project is below the permitted density for this area of Malibu.

B. Malibu Land Use Plan.

The certified Land Use Plan in policy 271 addresses residential development categories and any overlay resource protection categories (ESHA, Significant Watershed, etc.). The site does not have any overlay categories, only the Rural Land III and M2 designations:

Rural Land. Generally low-intensity, rural areas characterized by rolling to steep terrain usually outside established rural communities. Principal permitted land uses shall include: large lot residential use. The following maximum residential density standards shall apply:

Rural Land III - one dwelling unit per two acres average, consistent with other policies of the LCP.

Mountain Land. Generally very rugged terrain and/or remote land characterized by very low-intensity rural development. Principal Permitted uses would include: very low-intensity residential development. Low-intensity recreational uses, the undeveloped or open space portions of rural and urban developments, and lower cost visitor residential and

recreational uses designed for short-term visitor use such as hostels, tent camps, recreational vehicle parks, and similar uses are permitted as a conditional uses, provided that any residential use for more than short term visitor occupancy shall not exceed the intensity of use of the equivalent residential density. The following maximum residential density standards shall apply:

Mountain Land - one dwelling unit per 20 acres average, consistent with other policies of the LCP.

Given that the lot does not meet the density requirements of the LUP, the legality of the lot must be examined. Parcels less than the permitted density are allowed, provided they are of legal record. The Commission has, however, permitted buildout of such non-conforming parcels provided they otherwise meet all applicable policies of the LUP and the Coastal Act. Unless the project cannot be found consistent with the applicable policies, the Commission has not denied a project of less than the permitted density where the lot has been bought and sold with the understanding that entitlement to use has been established. Therefore the Commission can approve the project at the proposed density provided other land use plan policies are met.

C. Cumulative Impacts of New Development

The project description also includes the legalization of the lot through approval of a conditional Certificate of Compliance, issued by the County on April 1, 1987 (exhibit 2).

Section 30250(a) of the Coastal Act states:

(a) 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, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

Section 30105.5 of the Coastal Act defines the term "cumulatively", as it is used in Section 30250(a), to mean that:

the incremental effects of an individual project shall be reviewed in conjunction with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

The Coastal Act requirement is that new development, including subdivisions and multi-family projects, shall be permitted only where public services are adequate and only where public access and coastal resources will not be cumulatively affected by such development. The Commission has repeatedly emphasized the need to address the cumulative impacts of new development in the Malibu/Santa Monica Mountains area in past permit actions. The cumulative impact problem stems from the existence of thousands of undeveloped and poorly sited parcels in the mountains along with the potential for creating additional parcels and/or residential units through subdivisions and multi-unit projects. Because of the large number of existing undeveloped lots and potential future development, the demands on road capacity, services, recreational facilities and beaches could be expected to grow tremendously. In addition, future build out of many lots located in environmentally sensitive areas would create adverse cumulative impacts on coastal resources.

As a means of addressing the cumulative impact problem in past actions, the Coastal Commission has consistently required, as a special condition to development permits for land divisions and multiple-unit projects, participation in the Transfer of Development Credit (TDC) program as mitigation (155-78, Zal; 158-78, Fide; 182-81, Malibu Deville; 196-86, Malibu Pacifica; 5-83-43, Heathercliff; 5-83-591, Sunset-Regan; and 5-85-748, Ehrman & Coombs). The TDC program resulted in the retirement from development of existing poorly sited and non-conforming parcels at the same time new parcels or units were created. The intent was to insure that no net increase in residential units resulted from the approval of land divisions or multi-family projects while allowing development to proceed consistent with the requirements of Section 30250(a).

The recently certified Malibu/Santa Monica Mountains Land Use Plan (LUP) does not contain the TDC Program as a means of mitigating the cumulative impacts of the potential buildout of existing non-conforming lots. Instead the LUP contains in Policy 272, six alternative mitigation techniques to prevent the buildout of existing small lots and the development of lots of less than 20 acres in designated significant watersheds in order to ensure that land divisions and multiple-unit projects are consistent with the requirements of Section 30250(a). The six basic components of Policy 272 are as follows:

1. Application of a residential building cap of 6,582 new units, or which no more than 1,200 units shall be in designated small lot subdivisions;
2. Acquisition, by outright public purchase, non-conforming lots and lots in designated Significant Watersheds through the continuing acquisition programs of several agencies;
3. Offering tax delinquent lots to adjoining lot owners, under attractive terms which would provide incentives for acquisition and consolidation into larger conforming parcels;
4. Offering incentives to owners of contiguous legally divided lots to voluntarily consolidate the lots into larger single holdings;

5. Empowering the County Community Redevelopment Agency to redevelop areas in order to achieve more appropriate lot and subdivision configurations and development sites;

6. Providing opportunities to owners of non-conforming lots to exchange their property for surplus governmental properties in more suitable development areas inside and outside the Coastal Zone.

The County currently does not have the mechanisms in place to implement any of these six programs. In several recent permit actions subsequent to certification of the Land Use Plan (5-86-592, Central Diagnostic Labs, 5-86-951, Ehrman and Coombs, 5-85-459A2, Ohanian, and 5-86-299A2 and A3, Young and Golling), the Commission found that until the County has the means to implement these programs, it is appropriate for the Commission to continue to require purchase of TDC's as a way to mitigate the cumulative impacts of new subdivisions and multi-residential development. In approving these permit requests, the Commission found that none of the County's six mitigation programs were "self-implementing" and that mitigation was still required to offset the cumulative impacts created by land divisions and multi-unit projects. The Commission found that the TDC program, or a similar technique to retire development rights on selected lots, remained a valid means of mitigating cumulative impacts in the interim period during which the County prepares its implementation program. Without some means of mitigation, the Commission would have no alternative but denial of such projects based on the provisions of section 30250(a).

Adding to the potential cumulative impact problem in the Santa Monica Mountains is the existence of hundreds of illegally subdivided lots, which were not created in conformance with subdivision regulations in force at the time. Many of these lots have been bought and sold numerous times; however, the lots cannot be built on until they have been certified by the County as being in conformance with the Subdivision Map Act and local subdivision regulations. The method employed by the County in such cases is the issuance of a "Certificate of Compliance," which in effect creates a new legal lot. Generally, when a lot is determined by the County to have been illegally created, a "conditional" certificate is issued first, which lists conditions (such as road dedications, access and utility easements) which must be met before the County will legalize the lot.

According to a 1980 opinion by Dennis Egan, Deputy Attorney General (provided in response to a staff inquiry), under the Coastal Act, creation of a new legal lot through the Certificate of Compliance procedure is considered a subdivision, and is subject to all applicable Coastal Act policies, including section 30250(a). In addition, Policy 273f of the certified Land Use Plan (Land Division Policy) states:

P273f Issuance of a conditional certificate of compliance pursuant to Government Code section 66499.35(b) shall be subject to a coastal development permit which shall be approved, but shall be subject to conditions to implement all applicable policies of this LUP, including land division policies. (emphasis added.)

Exhibit 2
CCC-14-CD-03 & CCC-14-RO-03
(JEFF KIM)

Similar to a subdivision of one parcel into several smaller parcels, the legalization of illegally created lots through the Certificate of Compliance process adds to the total number of lots that may be built out in the Santa Monica Mountains, resulting in additional cumulative impacts on resources and infrastructure. For this reason, the Commission has in the past required owners of such lots to mitigate these cumulative impacts by purchasing a TDC as a condition of obtaining a permit. (See e.g., 5-85-552, Dawn Investments; 5-86-003, Iles; 5-86-592, Central Diagnostic Labs; 5-86-808, Roth). The Commission has imposed this requirement only in cases where the conditional Certificate of Compliance, or the final clearance of conditions, was issued after the effective date of the Coastal Act, in which case a Coastal Development Permit would be required for the new subdivision. The Commission has not required mitigation of cumulative impacts in other instances, for example where it could be demonstrated that the lot was counted as a "buildable" lot in buildout surveys conducted in 1978 (5-82-884, Zilinskas), that adequate alternate mitigation, in the form of a major land dedication, was being provided (5-86-438, Morgan), or where the lot, although illegal, had been developed for many years with a single family residence (5-86-366, Falso).

In the present case, the applicant received a conditional Certificate of Compliance dated April 1, 1987. The conditions have not yet been cleared. The Commission finds that approval of the conditional certificate constitutes a subdivision under the terms of the Coastal Act, and therefore the project must comply with the requirements of section 30250(a) of the Coastal Act and policy 273f of the certified Land Use Plan. While Policy 273f states that conditional certificates shall be approved, that policy also states that such approval shall be subject to all other policies of the Land Use Plan, including the land division policies. The referenced land division policies -- 271, 272, 273, and 274 -- require, among other things, that the cumulative impacts of new subdivisions be adequately mitigated.

As discussed above, the certified Land Use Plan contains six potential techniques to mitigate cumulative impacts, none of which are easily implemented at the present time. In the interim, the Commission has approved new subdivisions, but has continued to require purchase of TDC's as one of the alternative mitigation strategies. The Commission finds that it is necessary to impose a similar requirement on the applicant, in order to ensure that the cumulative impacts of the creation of a new legal, buildable lot is adequately mitigated. The Commission also finds, however, that if it can be adequately demonstrated that the applicant's lot was counted as an existing lot at the time of the 1978 buildout survey (which formed the basis for the Transfer of Development Credit Program), the lot will not be considered as creating an additional, previously unaccounted for, impact on resources, and no requirement for mitigation shall be necessary. This permit has therefore been conditioned to require the applicant to mitigate the cumulative impacts of the subdivision of his lot, either through purchase of a TDC or by participation in one of the County's alternative programs, or demonstrate, to the satisfaction of the Executive Director, that such mitigation is not necessary. The Commission finds that as conditioned, the permit is consistent with section 30250(a) of the Coastal Act, and the land division policies of the certified Land Use Plan.

C. Hazards.

The Malibu land use plan and the Coastal Act provide for development in hazardous areas:

30253 states that 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 applicant's geology report prepared by GeoSoils dated December 8, 1986, indicates that the site is a steep, brush-covered slope which is relatively free of hazards except for a large shallow slide that exists to the east off-site and extends locally onto a portion of the lot. The geologist recommends that development be restricted to the northern 300 feet of the lot. The Commission finds that due to the possibility of slope failure and the inherent risk of fire, the applicant shall assume these risks as a condition of approval as well as prepare a fuel modification plan. Therefore, the project, as conditioned, is consistent with the Malibu Land Use Plan and 30253 of the Coastal Act.

Pursuant to Section 13166(a)(1) of the Commission's administrative regulations, an application may be filed to remove Special Condition No. 1 from this permit if new information is discovered which (1) tends to refute one of more findings of the Commission regarding the existence of any hazardous condition affecting the property and (2) could not, with reasonable diligence, have been discovered and produced at or before the original hearing on the permit.

D. Grading.

Grading in the Santa Monica Mountains is a key issue. Loss of on-site soil and downstream sedimentation of sensitive resource areas may result if the grading on the steeper lots is unchecked. Land Use Plan policies 80 through 96 address grading activities and erosion control. Briefly, the land use plan policies provide that new development shall minimize grading required for the development, shall provide erosion control measures with respect to the rainy season, shall cluster structures near existing roads and protect exposed soils with landscaping and other methods which retain sediment on site.

The applicant proposes to construct numerous structures that would cascade down the slope of his narrow lot. The existing terrain varies from 33% to 65% slope with a topographic differential of about 225 feet.

The proposed structures include the main residence, access driveway, fire truck turnaround, guest house, tennis court, studio/exercise room and swimming pool. The grading involves 5,000 cubic yards of cut and 5,000 cubic yards of fill and numerous retaining walls supporting 1.5:1 cut slopes and 2:1 fill slopes up to 30 feet in height. Due to the steepness of the site, retaining walls are required for each of the component structures.

The Commission finds that the policies in the land use plan requiring new development to minimize grading can feasibly be met by re-siting the residence closer to Mildas Road and shortening the access driveway. The site is too steep and narrow to accommodate all of the proposed structures without excessive grading. Therefore, the remaining structures downslope of the residence cannot be accommodated and still comply with the grading policies. Therefore, by clustering the main structures near the access road, the amount of earth moved about and exposed is minimized. Retaining walls would also be minimized.

Because the development is to be restricted to the upper portion of the lot, the balance of the site must be protected from future development so that the adverse effects of grading and erosion can be assured. The short term effects of grading must also be mitigated through landscaping and erosion control provisions. Therefore, the Commission finds that, as conditioned to restrict future improvements and require landscaping, erosion control and grading plans, the project is consistent with the resource protection policies of the land use plan and Coastal Act.

3672A.

CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA
WEST BROADWAY, SUITE 380
LONG BEACH, CA. 90802
(213) 590-5071.



COASTAL DEVELOPMENT PERMIT NO. 5-87-425/JL:mr
Page 1 of 3

On February 25, 1988, the California Coastal Commission granted to
Wayne McFarland
this permit for the development described below, subject to the attached
Standard and Special Conditions.

Description: Construction of a 6800 square foot single family residence,
studio/gym, swimming pool, short driveway and approve
conditional certificate of compliance on a 2.5 acre vacant lot.

Site: 333 Mildas Drive, Malibu, California

Issued on behalf of the California Coastal Commission by

PETER DOUGLAS
Executive Director
and

Terese Henry

IMPORTANT: THIS PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT
WITH THE SIGNED ACKNOWLEDGEMENT HAS BEEN RETURNED TO THE COMMISSION OFFICE.

ACKNOWLEDGEMENT

The undersigned permittee acknowledges
receipt of this permit and agrees to
abide by all terms and conditions
thereof.

Date

Signature of Permittee

Exhibit 3
CCC-14-CD-03 & CCC-14-RO-03
(JEFF KIM)

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgement. 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. Compliance. All development must occur in strict compliance with the proposal as set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. 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.
7. 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.

SPECIAL CONDITIONS:

1. Applicant's Assumption of Risk

Prior to transmittal of permit, the applicant as landowner shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide (a) that the applicant understands that the site may be subject to extraordinary hazard from fire and wave damage and applicant assumes the liability from such hazards; and (b) that the applicant unconditionally waives any claim of liability on the part of the Commission and agrees to indemnify and hold harmless the Commission and its advisors relative to the Commission's approval of the project for any damage due to natural hazard. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed.

Exhibit 3
CCC-14-CD-03 & CCC-14-RO-03
(JEFF KIM)

2. Landscape, Drainage and Erosion Control Plan

Prior to issuance of coastal permit, the applicant shall submit for the review and approval of the Executive Director, a preliminary construction schedule for grading and construction operations. Earth moving operations shall be prohibited between November 1 and March 31 unless a delay in grading until after the rainy season is determined by the Executive Director to be more environmentally damaging. In which case landscape and erosion control plans which show methods of controlling all exposed soils during the grading activities must be submitted to the Executive Director for approval. Should grading begin before the rainy season, but extends into the rainy season for reasons beyond the applicant's control, measures to control erosion must be implemented at the end of each day's work. The approved erosion control plan shall be in place prior to November 1. Regardless of when construction activities are to take place, a drainage plan incorporating other site planning criteria shall be submitted to the Executive Director for review and approval.

3. Fuel Modification and Landscape Plans.

Prior to transmittal of permit, the applicant shall submit for review and approval by the Executive Director, plans that show the provision for the Los Angeles County Fire Marshall fuel modification requirements. The plan shall incorporate the use of primarily native plants which are suitable for fuel modification criteria, controlling erosion, and are suitable to be used as part of the ornamental planting scheme.

4. Future Improvements

Prior to authorization of permit, the applicant shall record a deed restriction, in a form and content acceptable to the Executive Director, which provides that Coastal Development Permit 5-87-425 is for the approval development only, and that any future additions or improvements to the property including clearing of vegetation and grading will require a new Coastal Development Permit from the Coastal Commission or its successor agency. The deed restriction shall be binding on all successors in interest, heirs and assigns.

5. Prior to transmittal of permit, the applicant shall submit for review and approval by the Executive Director a follow-up geology report and percolation test which provides for the design of a septic system capable of handling the needs of the approved project, and which is sited to avoid the triggering of a landslide on or off the project site for the life of the proposed structure if properly maintained. Septic system shall be in full compliance with all applicable Los Angeles County Plumbing and Health Code requirements.

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., 2ND FLOOR
VENTURA, CA 93001
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W12b
Filed: 10-15-93
49th Day: 12-3-93
180th Day: 4-13-94
Staff: SPF-V *SPF*
Staff Report: 11-4-93
Hearing Date: November 16-19, 1993
Commission Action:

STAFF REPORT: PERMIT AMENDMENT

APPLICATION NO.: 5-87-425A3

APPLICANT: John Gist

PROJECT LOCATION: 333 Mildas Drive, Malibu; Los Angeles County

DESCRIPTION OF PROJECT PREVIOUSLY APPROVED: Construction of a 6,800 sq. ft. single family residence, guest house, swimming pool, tennis court, driveway and retaining walls on a 2.5 acre vacant lot; approve a conditional certificate of compliance. Amended to include an addition of 630 sq. ft. to second story of the attached garage including two bedrooms and one-half bath. New proposed height will be 22 feet above existing grade.

DESCRIPTION OF AMENDMENT: Changes to the approved grading plan reducing the total grading on the site to 6,896 cubic yards of grading (3196 cu. yds cut, 3,700 cu. yds. fill), changes to the guest house to reduce the square footage to 661 sq. ft. with a two car garage, and the construction of above-grade walkways and two ponds.

LOCAL APPROVALS RECEIVED: Los Angeles County grading and construction permits

PROCEDURAL NOTE: The Commission's regulations provide for referral of permit amendment requests to the Commission if:

- 1) The Executive Director determines that the proposed amendment is a material change,
- 2) Objection is made to the Executive Director's determination of immateriality, or
- 3) the proposed amendment affects conditions required for the purpose of protecting a coastal resource or coastal access.

If the applicant or objector so requests, the Commission shall make an independent determination as to whether the proposed amendment is material. 14 Cal. Admin. Code 13166.

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission determine that the proposed development with the proposed amendment, subject to the conditions below, is consistent with the requirements of the Coastal Act.

Exhibit 4
CCC-14-CD-03 & CCC-14-RO-03
(JEFF KIM)

W 610 P

STAFF RECOMMENDATION

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions

The Commission hereby approves the amendment to the coastal development permit, subject to the conditions below, on the grounds that, as conditioned, the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. Special Conditions.

NOTE: Unless specifically altered by the amendment, all conditions attached to the previously approved permit remain in effect.

6. Plans Conforming to Geotechnical Recommendations

All recommendations contained in the report dated November 21, 1989 by GeoSoils shall be incorporated into all final design and construction of the walkway and ponds; all plans must be reviewed and approved by the consultant prior to commencement of development. Prior to the issuance of the coastal development permit, the applicant shall submit evidence for the review and approval of the Executive Director of the consultant's review and approval of all final design and construction plans.

The final plans approved by the consultant shall be in substantial conformance with the plans approved by the Commission relative to construction and drainage. Any substantial changes in the proposed development approved by the Commission which may be required by the consultant shall require an amendment to the permit or a new coastal permit.

7. Timing of Completion of Work

The applicant agrees to reduce the size of the guest house to a 661 sq. ft. structure by converting the first floor to a garage as shown in the plans submitted as a part of this application, within 90 days of the issuance of the permit.

8. Condition Compliance

All requirements specified in the foregoing condition that the applicant is required to satisfy as a prerequisite to the issuance of this permit must be fulfilled within 30 days of Commission action. Failure to comply with such additional time as may be granted by the Executive Director for good cause, will terminate this permit.

III. Findings and Declarations

The Commission finds and declares as follows:

A. Project Description and Background

This is an after-the-fact permit application for changes to the approved grading plan reducing the total grading on the site to 6,896 cubic yards of grading (3196 cu. yds cut, 3,700 cu. yds. fill), changes to the guest house to reduce the square footage to 661 sq. ft. with a two car garage, and the construction of 160 foot long above-grade walkways and two ponds. With the exception of the reduction of the guest house, all work has been completed on site. The changes to the guest house involve converting the first floor to a garage and removing the interior stairway between the first and second floor.

The site is located on Mildas Drive between Schueren road, to the south and Saddlepeak Road to the north. The site is rather steep, with slopes varying from 35 % to 66%, and a topographical difference across this site of 225 feet. Crib walls were required for the construction of a driveway in order to gain access to the site. The site encompasses 2.5 acres and has received a certificate of compliance, approved by the Commission, for the development of a single family residence. The applicant's parcel is not located within an environmentally sensitive habitat area, nor is it visible from any designated scenic highways.

The Commission approved the residence on this site in coastal development permit 5-87-425 (McFarland). The permit was issued with five special conditions regarding the recordation of an assumption of risk deed restriction and a future improvements deed restriction, a landscaping and erosion control plan, a fuel modification plan and a follow up geology report and percolation tests. Subsequently, the applicant recieved an amendment to the permit for an addition to the residence over the attached garage.

B. Grading and Geologic Hazards

Section 30251 of the Coastal Act states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Section 30253 of the Coastal Act 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.

In addition, the Malibu Land Use Plan contains several policies regarding grading and the associated geologic hazards.

- P82 Grading shall be minimized for all new development to ensure the potential negative effects of runoff and erosion on these resources are minimized.
- P84 In disturbed areas, landscape plans shall balance long-term stability and minimization of fuel load. For instance, a combination of taller, deep-rooted plants and low-growing ground covers to reduce heat output may be used. Within ESHAs and Significant Watersheds, native plant species shall be used, consistent with fire safety requirements.
- P90 Grading plans in upland areas of the Santa Monica Mountains should minimize cut and fill operations in accordance with the requirements of the County Engineer.
- P91 All new development shall be designed to minimize impacts and alterations of physical features, such as ravines and hillsides, and processes of the site (i.e., geological, soils, hydrological, water percolation and runoff) to the maximum extent feasible.
- P94 Cut and fill slopes should be stabilized with planting at the completion of final grading. In Environmentally Sensitive Habitat Areas and Significant Watersheds, planting should be of native plant species using accepted planting procedures, consistent with fire safety requirements. Such planting should be adequate to provide 90% coverage within 90 days, and should be repeated if necessary to provide such coverage. This requirement should apply to all disturbed soils. Jute netting or other stabilization techniques may be utilized as temporary methods. The County Forestry Division should be consulted for recommendations for appropriate plant materials.

In the original permit, the applicant was approved for 10,000 cubic yards of grading for the excavation of the driveway and the construction of the residence, pool, and guest house. The driveway also required the construction of retaining walls up to 30 feet in height, due to the steepness of the site. Based on the constraints of this steep, narrow site, there was no way to re-site the residence to reduce the amount of grading. Grading on the site was restricted by clustering the residence and guest house as close to the driveway as feasible leaving the southerly portion of the lot undisturbed. The applicant is now proposing for an after-the-fact amendment for the changes to the original plan. The structures were built in the same location. However, the driveway's configuration was altered, changing the necessary

total amount of grading necessary for the site to a total of 6,896 cubic yards of grading (3196 cu. yds cut, 3,700 cu. yds. fill). The consulting geologist has reviewed and confirmed that all grading operations, foundation excavations retaining wall backfill, and construction of the residence and guest house were done in accordance with the consulting geologist recommendations. The Commission finds that the reduction of grading is consistent with Sections 30251 and 30253 of the Coastal Act and the applicable policies of the Malibu Land Use Plan which call for the minimization of landform alteration. No landscaping plan for the graded areas is necessary in this case because the area has been landscaped. Moreover, the original permit require a landscaping plan for fuel load reduction and erosion control.

The changes to the proposed plan also request two small ponds and an above grade walkway. These features require only a minimal amount of grading for the excavation of the ponds and the footings for the walkway. The ponds and walkway will not cause significant landform alteration and should not create an increase in erosion of the site. However, the consulting geologist noted that the lower pond is located in a geologic restricted use area. However, it is not located near the existing slide. The consulting geologist has stated that the construction of the walkways and ponds will not create a geologic hazard on the site. In the report regarding the ponds and walkway, the geologist stated several recommendations that should be followed for their construction. A final report by the consulting geologist regarding the construction of the walkway and ponds has not been submitted by the applicant. In order to ensure that the project was built per these recommendations, the Commission finds it necessary to require the applicant to submit evidence of conformance with the geologist's recommendations prior to the issuance of the permit.

C. Second Units

Sections 30250, 30251 and 30252 of the Coastal Act address the cumulative impacts of new development. Based on these policies the Commission has limited the development of second units on residential lots in Malibu. The Commission has found that guest houses or second units can intensify the use of a site and impact public services, such as water, sewage, electricity, and roads.

Policy 271 of the certified Malibu Land Use Plan states:

In any single family residential category, the maximum additional residential development above and beyond the principal unit shall be one guest house or other second unit with an interior floor space not to exceed 750 gross square feet, not counting garage space.

In this case, the previous owner, approved for a detached garage with a guest unit above, built a two story guest unit which exceeds this 750 square foot maximum. The applicant is therefore proposing to convert the first floor back into a garage and modify the upper story to remove the interior stairway. The revised guest unit will be 661 sq. ft.. The new proposed guest unit will conform with the LUP criteria. In order to ensure that the guest house is redesigned into a garage and second unit, the Commission finds it necessary to require that this work be completed within 90 days of the issuance of the permit. The previous permit for this site required the recordation of a future improvements deed restriction. This deed restriction would insure that

no additions are done to the guest unit that would cause the unit to exceed the maximum allowable square footage. Since such a restriction has already been recorded against the property, it is not necessary for the applicant to record a new future improvements deed restriction. The Commission therefore finds that as conditioned the project is consistent with applicable sections of the Coastal Act and Section 271 of the LUP.

D. Violation

Although development has taken place prior to submission of this permit application, consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Approval of this permit does not constitute a waiver of any legal action with regard to any violation of the Coastal Act that may have occurred; nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal development permit.

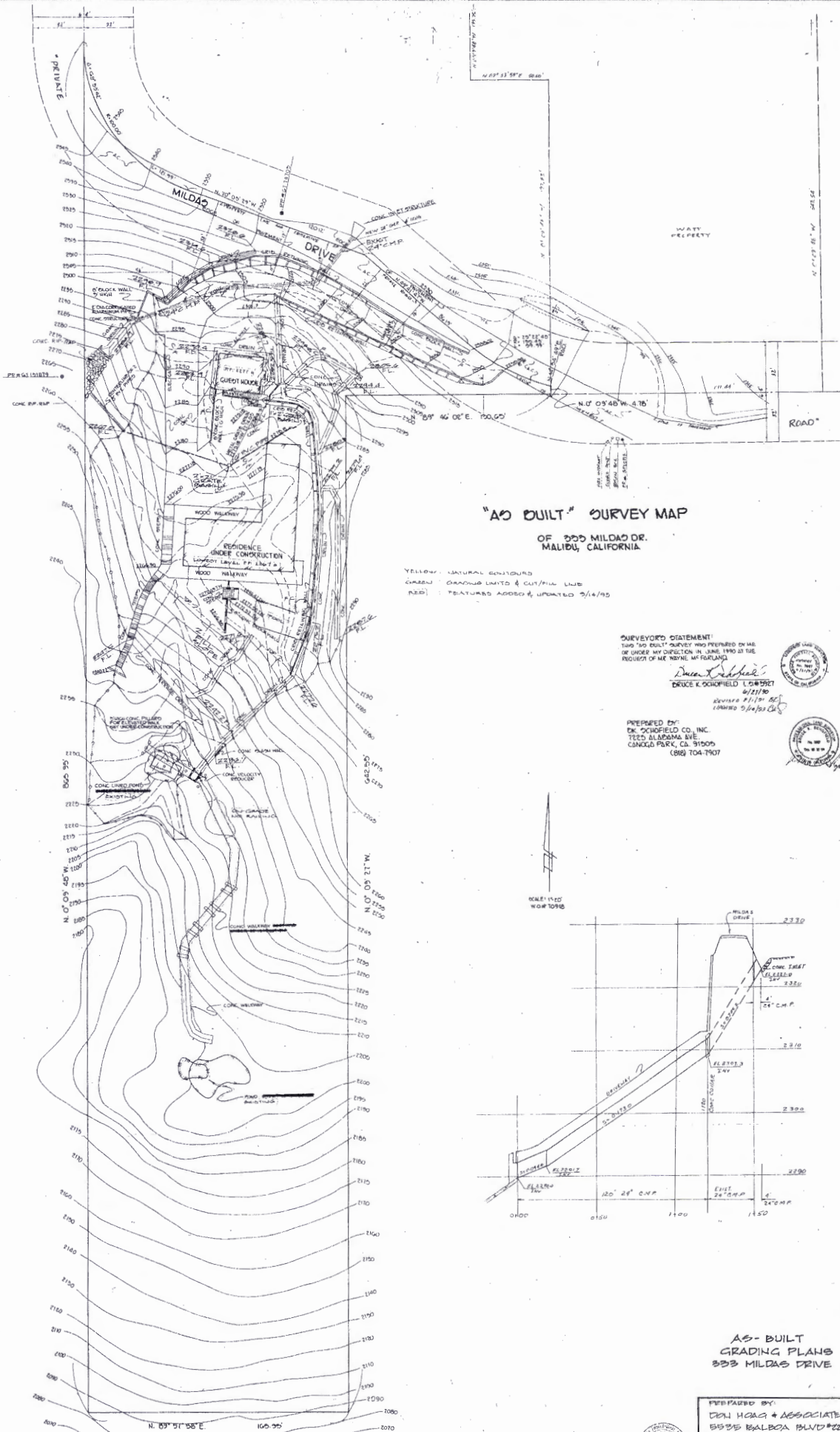
E. Local Coastal Program.

Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act. On December 11, 1986, the Commission certified the Land Use Plan portion of the Malibu/Santa Monica Mountains Local Coastal Program. The certified LUP contains policies to guide the types, locations, and intensity of future development in the Malibu/Santa Monica Mountains area. Among these policies are those specified in the preceding sections grading and geologic hazards and second units. As conditioned, the proposed development will not create adverse impacts and is consistent with the policies contained in the LUP. Therefore, the Commission finds that approval of the proposed development, as conditioned, will not prejudice the County's ability to prepare a Local Coastal Program implementation program for Malibu and the Santa Monica Mountains which is consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

F. CEQA

Section 13096(a) of the Commission's administrative regulations requires Commission approval of Coastal Development Permit application to be supported by a finding showing the application, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(i) 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 impact which the activity may have on the environment.

There are no negative impacts caused by the proposed development which have not been adequately mitigated. Therefore, the proposed project is found consistent with CEQA and the policies of the Coastal Act.





01/30/2003 < 21 of 25 >

Exhibit 6
CCC-14-CD-03 & CCC-14-RO-03
(JEFF KIM)



Exhibit 7
CCC-14-CD-03 & CCC-14-RO-03
(JEFF KIM)



Exhibit 8
CCC-14-CD-03 & CCC-14-RO-03
(JEFF KIM)

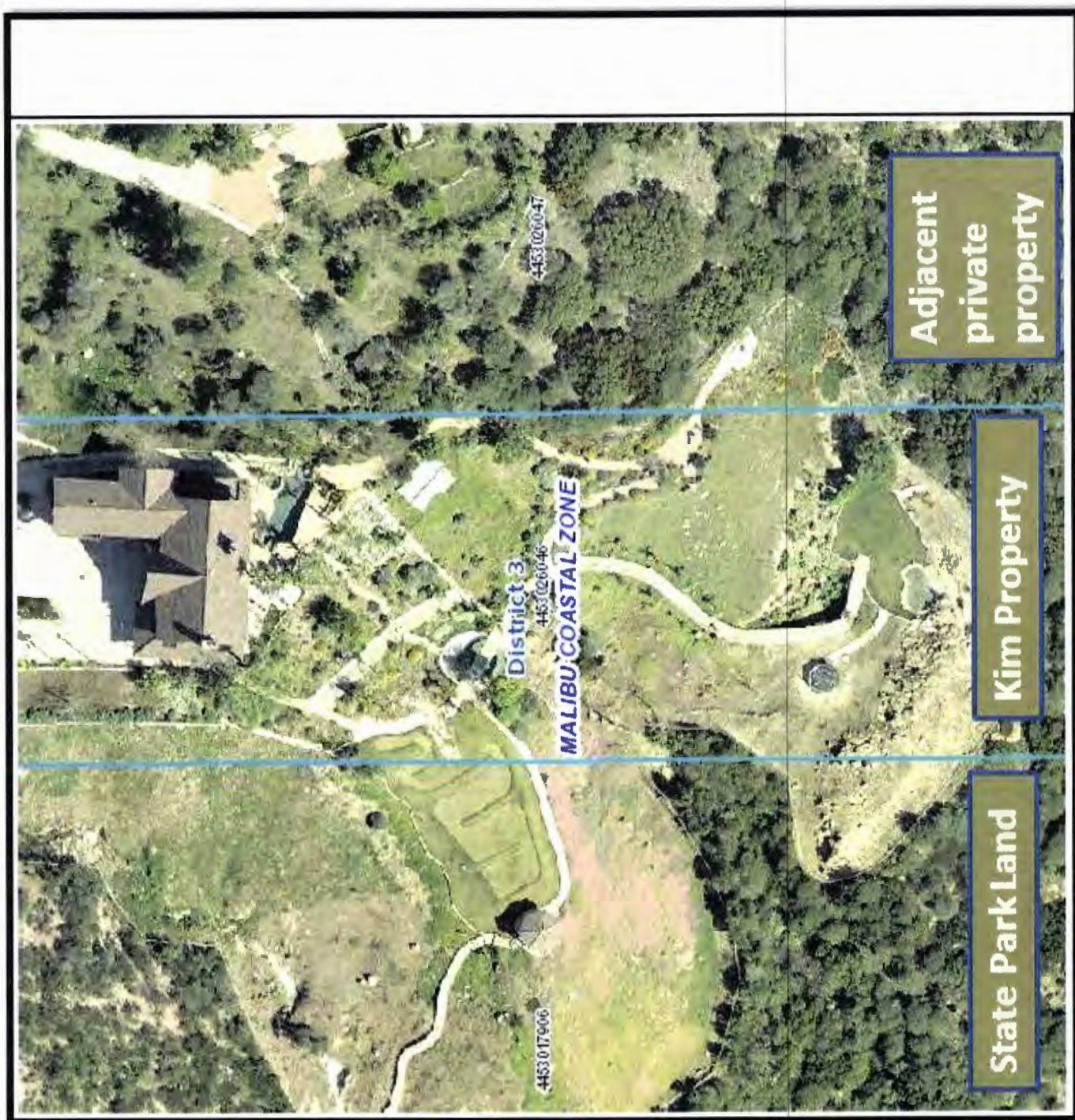




Exhibit 10
CCC-14-CD-03 & CCC-14-RO-03
(JEFF KIM)

CALIFORNIA COASTAL COMMISSION

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

**By Regular Mail**

August 26, 2014

Neal Marlens and Carol Black
373 Moonrise Drive
Malibu, CA 90265

15260 Ventura Blvd. #1040
Sherman Oaks, CA 91403

Subject: 333 Moonrise Drive, Malibu CA (violation file no. V-4-13-0213)

Dear Mr. Marlens and Ms. Black,

I would like to take this opportunity to introduce myself as the staff member of the California Coastal Commission working on resolving a Coastal Act enforcement case that occurred, for the most part, on property adjacent to yours. However, some of the development at issue also occurred on your own property located at 373 Moonrise Drive (formally called Mildas Drive) in the Santa Monica Mountains. I therefore wanted to notify you of the pending administrative action by the Commission that would resolve this matter amicably. The actions likely required by the Commission do not require the need for any effort on your part, except to allow a resource specialist access onto a small portion of your property to undertake some restoration work, as described below.

By way of background, the California Coastal Act was enacted in 1976 to provide long-term protection of California's 1,100-mile coastline. Among other things, Coastal Act policies seek to protect and restore sensitive habitats, protect scenic views of coastal areas, and provide maximum public access to the coastal zone. The Coastal Act created the California Coastal Commission to apply Coastal Act policies through its permitting, land use planning, and enforcement programs.

Commission enforcement staff recently became aware of unpermitted development on the property at 333 Moonrise Drive, as well as development that was inconsistent with a previously issued Coastal Development Permit. We confirmed that after acquiring the property at 333 Moonrise Drive in 2005, the owner of the property undertook extensive landscaping and removal of native vegetation, and constructed paved walkways, fencing, and retaining walls, among other things. These actions amounted to violations of the Coastal Act. In particular, the vegetation removal, placement of paved walkways and fencing all occurred on a small triangle in the western edge of your property. (The property owner's unpermitted development also extended significantly onto California State Park land on the western border of his property.)

Exhibit 11
CCC-14-CD-03 & CCC-14-RO-03
(JEFF KIM)

Letter to Neal Marlens and Carol Black
V-4-13-0213
August 25, 2014
Page 2 of 2

As a result of working with Commission staff cooperatively, the property owner has agreed to resolve the violations through a "Consent" Cease and Desist and Restoration Order, which will be presented to the Commission at a hearing on September 11, 2014. These Consent Orders require the removal of all the unpermitted development and the restoration of the areas impacted by such development to their original condition, including the replanting of the native chaparral and other native plants. These Orders also require Mr. Kim to work with you and obtain permission to correct the Coastal Act violations on your property.

For a more detailed description of these Coastal Act violations, and the requirements of the Consent Orders, please see the attached Staff Report prepared for the upcoming Commission hearing. Exhibit 9 of that Staff Report is an aerial image with annotated property lines, and shows the unpermitted development that occurred on your property.

I would very much like to talk with you about these matters, including any issues or concerns you may have, and the process for restoration work on your property. Additionally, if you would like to submit any public comments for the Commission hearing, such as in writing, you have the opportunity to do so, and should contact me immediately.

I can be reached at 415-904-5236. Thank you for all your time and attention.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Allen", with a long horizontal flourish extending to the right.

Peter Allen
Statewide Enforcement Analyst

Exhibit 11
CCC-14-CD-03 & CCC-14-RO-03
(JEFF KIM)

CALIFORNIA COASTAL COMMISSION

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

**NOTICE OF VIOLATION OF THE CALIFORNIA COASTAL ACT
REGULAR AND CERTIFIED MAIL**

June 4, 2013

Jeff Kim
333 Moonrise Drive
Malibu, CA 90265

Violation File Number: V-4-13-0213

Property location: 333 Moonrise Drive, Malibu; Los Angeles County
Assessor's Parcel Numbers 4453-026-046, 4453-026-047,
and 4453-017-906

Violation¹:
1) Removal of native vegetation; placement of
walkways/pathways, fencing, turf areas (2), a gazebo and
ground-mounted solar arrays.
2) Development not in compliance with Special Condition
3, Fuel Modification and Landscape Plans, and Special
Condition 4, Future Improvements, of CDP No. 4-87-
425A3

Dear Mr. Kim:

The California Coastal Act² was enacted by the State Legislature in 1976 to provide long-term protection of California's 1,100-mile coastline through implementation of a comprehensive planning and regulatory program designed to manage conservation and development of coastal resources. The California Coastal Commission ("Commission") is the state agency created by, and charged with administering, the Coastal Act of 1976. In making its permit and land use planning decisions, the Commission carries out Coastal Act policies, which, amongst other goals, seek to protect and restore sensitive habitats, such as native chaparral; protect natural landforms; protect scenic landscapes and views of the sea; protect against loss of life and property from coastal hazards; and provide maximum public access to the sea.

¹ Please note that the description herein of the violation at issue is not necessarily a complete list of all development on the subject property that is in violation of the Coastal Act and/or that may be of concern to the Commission. Accordingly, you should not treat the Commission's silence regarding (or failure to address) other development on the subject property as indicative of Commission acceptance of, or acquiescence in, any such development.

² The Coastal Act is codified in sections 30,000 to 30,900 of the California Public Resources Code. All further section references are to that code, and thus, to the Coastal Act, unless otherwise indicated.

Exhibit 12
CCC-14-CD-03 & CCC-14-RO-03
(JEFF KIM)

Violation

Our staff has confirmed that unpermitted development has occurred on property owned by you at 333 Moonrise Drive, described by Los Angeles County as APN 4453-026-046, on property owned by the California Department of Parks and Recreation ("DPR") described by Los Angeles County as APN 4453-017-906, and on property owned by Neal Marlens and Carol Black described by Los Angeles County as APN 4453-026-047 ("subject properties"). The subject properties are located within the Coastal Zone.

The unpermitted development at issue here includes, but may not be limited to, extensive removal of native vegetation, placement of walkways/pathways, a gazebo, turf areas (2), fencing, and ground-mounted solar arrays. Much of this unpermitted development has occurred on property not owned by you, including property owned by DPR to the west. Additionally, some of this development is inconsistent with the terms and conditions of a previously issued permit, Coastal Development Permit ("CDP") No. 4-87-425. It appears that the native vegetation removal does not conform to the Fuel Modification and Landscape Plan, as required by Special Condition 3 of CDP No. 4-87-425 as it extends well beyond the fuel modification zone. Additionally, Special Condition 4 of CDP No. 4-87-425 requires an approved CDP for any future improvements to the property. Commission staff has not found any CDPs for the expanded vegetation removal, fencing, walkways/pathways, ground-mounted solar arrays, turf areas or gazebo.

Pursuant to Section 30600 (a) of the Coastal Act, any person wishing to perform or undertake development in the Coastal Zone must obtain a CDP in addition to any other permit required by law. "Development" is defined by Section 30106 of the Coastal Act as:

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

The above-mentioned unpermitted removal of native vegetation and placement of walkways/pathways, ground-mounted solar arrays, fences, turf areas, and gazebo all constitute development under the Coastal Act and, therefore, require a CDP. Any non-exempt development activity (which is the case here) conducted in the Coastal Zone without a valid CDP constitutes a violation of the Coastal Act. Additionally, failure to comply with the terms and conditions of a previously issued CDP (No. 5-87-425) also constitutes a violation of the Coastal Act.

Background

On February 25, 1988, the Commission approved, with conditions, CDP No. 5-87-425 for the construction of a 6,800 sq. ft. residence, studio, pool, driveway, and certificate of compliance for a 2.5 acre vacant lot (APN 4453-026-046). The single family residence was constructed in 1990. This permit was issued to Wayne and Gloria McFarland.

On January 3, 1990, the Commission approved CDP Amendment No. 5-87-425A for the addition of a 630 sq. ft second story to the attached garage.

On July 30, 1991, Violation File No. V-5-91-093 was opened for the unpermitted construction of a guest house and removal of native vegetation on neighboring properties. This development does not conform to the final approved plans for CDP 5-87-425.

A second amendment (No. 5-87-425A2) was submitted but sent back to the applicant as an incomplete application.

On November 1, 1993, the Commission approved, with conditions, CDP No. 5-87-425A3. Amended permit changes included: 1) a grading plan that reduced the total grading on site to 6,896 cubic yards (3,196 cubic yards cut, 3,700 cu. yards fill); 2) conversion of the first floor of the guest house to a two car garage, removing the interior stairway, and reduction of the square footage to 661 sq. ft; and 3) construction of above-grade walkways and two ponds, consistent with the plans submitted with CDP No. 5-87-425A3.

Violation V-5-91-093 was resolved when the applicant met all conditions of CDP 5-87-425A3 and, on May 4, 1994, the violation file was closed.

On November 23, 2005, you, Mr. Kim, acquired APN 4453-026-046.

On May 10, 2013, while researching another property in the area, Commission staff noticed extensive removal of native vegetation on the subject properties including on land owned by the State of California and by Mr. Marlens and Ms. Black (your neighbors to the east). From a review of historic aerial photographs, it appears that removal of vegetation and construction of walkways/pathways occurred between 1994 and 2007, the gazebo and turf areas were constructed on the subject property between 2007 and 2008, fences constructed between 2005 and 2007, and the ground-mounted solar arrays were constructed between 2005 and 2006. It appears that all of the unpermitted development activities enumerated in this letter, including those conducted on properties not owned by you, are contiguous and were conducted by you. Staff has searched Commission records and has not found any CDPs that would authorize the subject unpermitted development.

Resolution

In some cases, violations involving unpermitted development may be resolved through removal of the unpermitted development and restoration of any damaged resources. Removal of the development and restoration of the site generally will require formal approval under the Coastal Act. In order to resolve this matter in a timely manner and reduce the possibility of a monetary penalty or fine, we are requesting that you **immediately stop all unpermitted development activity on the subject property** and contact me by no later than **July 1, 2013** to discuss resolution of this violation.

While we are hopeful that we can resolve this matter amicably, please be advised that the Coastal Act has a number of potential remedies to address violations of the Coastal Act, including the following:

Section 30809 states that if the Executive Director of the Commission determines that any person has undertaken, or is threatening to undertake, any activity that may require a permit from the Coastal Commission without first securing a permit, the Executive Director may issue an order directing that person to cease and desist. Section 30810 states that the Coastal Commission may also issue a cease and desist order. A cease and desist order may be subject to terms and conditions that are necessary to avoid irreparable injury to the area or to ensure compliance with the Coastal Act. Section 30811 also provides the Coastal Commission the authority to issue a restoration order to address violations at a site. A violation of a cease and desist order or restoration order can result in civil fines of up to \$6,000 for each day in which the violation persists.

Additionally, Sections 30803 and 30805 authorize the Commission to initiate litigation to seek injunctive relief and an award of civil fines in response to any violation of the Coastal Act. Section 30820(a)(1) provides that any person who undertakes development in violation of the Coastal Act may be subject to a penalty amount that shall not exceed \$30,000 and shall not be less than \$500 per violation. Section 30820(b) states that, in addition to any other penalties, any person who "knowingly and intentionally" performs or undertakes any development in violation of the Coastal Act can be subject to a civil penalty of not less than \$1,000 nor more than \$15,000 per violation for each day in which the violation persists.

Finally, Section 30812 authorizes the Executive Director to record a Notice of Violation against any property determined to have been developed in violation of the Coastal Act. If the Executive Director chooses to pursue that course, you will first be given notice of the Executive Director's intent to record such a notice, and you will have the opportunity to object and to provide evidence to the Commission at a public hearing as to why such a notice of violation should not be recorded. If a notice of violation is ultimately recorded against your property, it will serve as notice of the violation to all successors in interest in that property³.

³ Even without such notice, by law, while liability for Coastal Act violations attaches to the person or persons originally responsible for said violations (and continues to do so even if they no longer own the property), liability additionally attaches to whomsoever owns the property upon which a Coastal Act violation persists (see *Leslie Salt Co. v. San Francisco Bay Conservation and Development Com.* [1984], 153 Cal. App.3d 605, 622). Therefore, any new owner(s) of the subject property will assume liability for, and the duty to correct, any remaining violations. Under California Real Estate law, if you plan to sell the subject property, it is incumbent upon you to inform any potential new owner(s) of same.

Thank you for your attention to this matter. If you have any questions regarding this letter or the pending enforcement case, please feel free to contact me at (805) 585-1800.

Sincerely,



Whitney Wilkinson
California Coastal Commission, Enforcement Division

cc: Lisa Haage, Chief of Enforcement, CCC
N. Patrick Veesart, Enforcement Supervisor, CCC
Steve Hudson, District Manager, CCC
Barbara Carey, Supervisor, Planning and Regulation, CCC
Alex Helperin, Senior Staff Counsel, CCC
Kristen Hislop, Enforcement, CCC
Suzanne Goode, State Parks
Neal Marlens and Carol Black

CALIFORNIA COASTAL COMMISSION

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

**Via REGULAR AND CERTIFIED MAIL**

April 03, 2014

Jeff Kim
333 Moonrise Drive
Malibu, CA 90265
Certified Receipt # 7006 2760 0005 5883 2773

Sue Han (Daniel Kim)
DGB America
3000 W. 6th St, #317
Los Angeles, CA 90020
Certified Receipt # 7006 2760 0005 5883 2780

Subject: **Notification of Intent to Commence Cease and Desist Order
and Restoration Order Proceedings and Notification of Intent
to Record a Notice of Violation of the Coastal Act**

Violation File Number: V-4-13-0213

Property location: 333 Moonrise Drive, Malibu; Los Angeles County Assessor's
Parcel Number 4453-026-046 (and 4453-026-047, 4453-017-906)

Violation: 1) Removal of native vegetation; 2) Placement of walkways,
pathways, fencing, turf areas, gazebos, and ground-mounted solar
arrays; 3) Development not in compliance with an existing CDP.

Dear Mr. Kim:

The purpose of this letter is to notify you of my intent, as the Executive Director of the California Coastal Commission, to commence proceedings for issuance of a Cease and Desist Order and a Restoration Order ("the Orders"). The Orders are to resolve the violations of the California Coastal Act in the form of unpermitted development and development that is inconsistent with the terms and conditions of an existing Coastal Development Permit ("CDP"). These violations occurred in unincorporated Los Angeles County on property owned by you at 333 Moonrise Drive and on adjacent properties. The unauthorized development on the properties includes, but is not necessarily limited to, grading, the construction and placement of numerous structures (including fencing and turf), and the removal of native vegetation. This letter also serves to notify you of my intent to record a Notice of Violation of the California Coastal Act against your property.

Exhibit 13
CCC-14-CD-03 & CCC-14-RO-03
(JEFF KIM)

As discussed with your agent Sue Han in recent phone calls in February and March 2014, this letter is a step in the formal administrative process intended to remedy the violations on your property. We are very encouraged by your willingness to bring the property into compliance with the Coastal Act and are happy to continue working with you toward that end. This letter in no way precludes our ability to continue to amicably resolve this matter through negotiations. As stated previously, this letter is a required step in the ongoing administrative process that will legally resolve the Coastal Act violations through an enforcement hearing. As discussed, generally the most efficient and beneficial means of resolution is to enter into mutually-agreeable Consent Cease and Desist and Restoration Orders ("Consent Orders"). These Consent Orders are similar to a settlement agreement and provide you with an opportunity to resolve this matter consensually. Consent Orders will still require a formal process and a Commission hearing, and therefore this notice letter remains a necessary first step in the process.

Background

As you may know, the California Coastal Act was enacted in 1976 to provide long-term protection of California's 1,100-mile coastline through implementation of a comprehensive planning and regulatory program that would manage conservation and development of coastal resources. The Coastal Act created the Commission to apply and enforce Coastal Act policies through its permit, enforcement and land use planning decisions. These Coastal Act policies seek to protect and restore sensitive habitats (such as riparian, coastal sage, oak woodlands, and chaparral habitats), protect natural landforms, protect scenic landscapes and views of coastal areas, and provide maximum public access to the coastal zone, among other things.

On February 25, 1988, the Commission approved, with conditions, CDP No. 5-87-425 a permit sought by Wayne and Gloria McFarland for the construction of a 6,800 sq. ft. single family residence and pool on a 2.5 acre vacant lot at 333 Moonrise Drive (APN 4453-026-046). Special Condition 4 of the CDP specifically required a new CDP for any future development on the property. The condition required the recordation of a deed restriction which specified for future owners that: "any future additions or improvements to the property including clearing of vegetation and grading will require a new Coastal Development Permit from the Coastal Commission or its successor agency." This permit condition and deed restriction also specified that the requirement for a new CDP for any new development was "binding on all successors in interest, heirs and assigns."¹ Special Condition 3 of the CDP also required a Fuel Modification and Landscape Plan to be submitted for review and approval by the Executive Director of the Commission. The condition specified that plan "shall incorporate the use of primarily native plants which are suitable for fuel modification criteria" and "controlling erosion" to address the dangers of fire and erosion on the site. This condition therefore required any future property owners to maintain the use of native plants on the property under the Fuel Modification and Landscape Plan. The single family residence was constructed in 1990.

¹ Even without such an explicit condition, these CDP permit conditions run with the land and remain requirements on subsequent property owners. See *Ojavan Investors, Inc. v. California Coastal Com.* (1994) 26 Cal.App.4th 516, 526 ("It is well settled that the burdens of permits run with the land once the benefits have been accepted."). The CDP also reaffirms this principle in its Standard Condition 7 of the CDP: "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."

On January 3, 1990, the Commission approved CDP Amendment No. 5-87-425A for the addition of a 630 square foot second story to an attached garage. The CDP was amended again on November 1, 1993, an after-the-fact permit amendment to address the unpermitted conversion of the garage into a two-story guest house, over-extensive grading, and the construction of some walkways and two ponds. CDP No. 5-87-425A3 reduced the square footage of the guest house by returning the lower unit to a garage, and approved the grading, walkways, and some landscaping, but only that which was depicted in plans submitted with that amendment. The 1993 Amendment explicitly included all special conditions attached to the original permit, including Special Conditions 3 and 4, which remained in effect.

On November 23, 2005, Mr. Jeff Kim acquired the property at 333 Moonrise Drive. On May 10, 2013, while researching another property in the area, Commission staff noticed extensive removal of native vegetation on the property. Through aerial photograph research and a subsequent site visit, staff confirmed extensive landscaping, construction of several gazebos, and concomitant, large-scale removal of native vegetation, including chaparral vegetation. Staff research confirmed these activities all constituted additional development not approved in the original CDP or its amendments and had occurred primarily between 2005 and 2008, though not necessarily limited to those dates. Staff research also documented that this development extended across and beyond your property lines onto adjacent properties, including land owned by the California Department of Parks and Recreation on the western edge of your property (4453-017-906) and neighboring property owned by Neal Martins and Carol Black at 373 Mildas Drive on the eastern boundary (APN 4453-026-047).

Violations of the Coastal Act

Pursuant to the Coastal Act (Public Resources Code Section 30600(a)),² any person wishing to perform or undertake development in the Coastal Zone must obtain a Coastal Development Permit (“CDP”), in addition to any other permit required by law. Development is defined by Section 30106, as follows (in relevant parts):

“Development” means, on land, in or under water, the placement or erection of any solid material or structure; . . . ; grading, removing, . . . of any materials; . . . ; construction, reconstruction, demolition, or alteration of the size of any structure, . . . ; and the removal or harvest of major vegetation other than for agricultural purposes

As confirmed by my staff, development was undertaken without a CDP on your property at 333 Moonrise Drive and on adjacent state park land and adjacent property at 373 Mildas Drive (“Subject Properties”). The activities that constitute unpermitted development in this case include, but are not necessarily limited to: the placement of gazebos and solar arrays, the placement of walkways, pathways and fencing, the creation of turf areas, and the extensive removal of native vegetation. These are all activities that constitute development as defined in Section 30106 of the Coastal Act, occurred subsequent to the enactment of the California Coastal

² Unless otherwise specified, all section references herein (including references to “Coastal Act” sections or sections “of the Coastal Act”) are technically to sections of the Public Resources Code (and thus, to the Coastal Act).

Act in 1976, and occurred on the Subject Properties, which are within the Coastal Zone. This development therefore required a CDP. Additionally, the development activity above violated Special Condition 3 and Special Condition 4 of CDP 5-87-425, both as originally issued by the Commission and as amended. Special Condition 4, and the concomitant recorded deed restriction, required any future owner to obtain a new CDP for any future additions or improvements to the property, specifically including the clearing of vegetation. In this case, vegetation clearing and property improvements were undertaken on the property without a new CDP, in violation of Special Condition 4. Special Condition 3 required the use of native plants to reduce the risk of fire and erosion on the site, and in this case, native plants were removed and replaced with non-native turf grasses. Therefore, both the performance of this development without a CDP and the fact that some of it was in violation of the terms of the existing CDP, as amended, constitute violations of the Coastal Act that authorize the Commission's issuance of a cease and desist order.

Along with being unpermitted and in violation of conditions of an existing CDP, the above-referenced activities on the Subject Properties raise significant substantive issues in that they have continuing natural resource impacts that are inconsistent with Chapter 3 of the Coastal Act, including impacts to "environmentally sensitive habitat areas" ("ESHA"). The Subject Properties sit within the Santa Monica Mountains, a large and pristine Mediterranean type ecosystem in coastal Southern California managed in part by the 1986 Malibu-Santa Monica Mountains Land Use Plan ("Malibu-SMM LUP").³ This LUP specifically designates some areas as ESHA, including areas of chaparral, while under Section P57 of the LUP other areas may be designated as ESHA on a case-by-case basis when those areas meet the Coastal Act definition of ESHA. Moreover, because the area is not within a certified LCP, the Malibu-SMM LUP only provides guidance, while the Commission retains authority to designate ESHA.⁴ The Coastal Act defines ESHA in Section 30107.5 as "any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments."

The Commission has found in multiple previous CDP actions in the area, through concurrence with the determination of its senior ecologist, that the "Santa Monica Mountains ecosystem is itself rare and especially valuable because of its special nature as the largest, most pristine, physically complex, and biologically diverse example of a Mediterranean ecosystem in coastal southern California."⁵ The Commission has therefore found that "because of the rare and special

³ In 1986, Los Angeles County adopted, and the Commission certified, a Malibu/SMM LUP for the Malibu area Coastal Zone, which included the Santa Monica Mountains and the Subject Properties. Although the Malibu/SMM LUP was the first step towards development of a full LCP, no LCP was ever adopted or certified. In 1991, Malibu incorporated as a city with distinct city limits and was no longer subject to the Malibu/SMM LUP, but that action left the rest of what was informally known as the Malibu Coastal Zone area (the area to the north of the City limits), including the Subject Properties, as an unincorporated area still subject to the now-somewhat-inappropriately-named Malibu/SMM LUP. The Commission certified an LCP for the City of Malibu in September, 2002, which does not apply to the unincorporated area. A separate LCP for the Santa Monica Mountains section of the Coastal Zone, which includes the Subject Properties, is currently pending before the Commission.

⁴ The ability of the Commission to designate ESHA in the area of the Malibu-SMM LUP has been specifically upheld by the California Court of Appeals. See *Douda v. California Coastal Com.* (2008) 159 Cal.App. 1181, 1193-1195; (*LT-WR, LLC v. Cal. Coastal Com.* (2007) 152 Cal.App.4th 770, 789-791.

⁵ John Dixon, Ph.D., "Designation of ESHA in the Santa Monica Mountains," (March 25, 2003), p. 5-6.

nature of the Santa Monica Mountains ecosystem,” the ecosystem roles of large, contiguous, substantially intact areas of specific constituent plant communities are “especially valuable” under the Coastal Act. Commission staff has visited the Subject Properties and confirmed that the property contains, among other elements that appear to meet ESHA criteria, contiguous areas of chaparral. These areas of chaparral are parts of larger contiguous blocks whose valuable role in the Santa Monica Mountains ecosystem meet the designation of ESHA. The Commission has found that “because of its important roles in the functioning of the Santa Monica Mountains Mediterranean ecosystem and its extreme vulnerability to development, chaparral within the Santa Monica Mountains meets the definition of ESHA under the Coastal Act.”⁶

Under Section 30240 (a) of the Coastal Act, ESHA “shall be protected against any significant disruption of habitat values.” In this case, the unpermitted development had significant impacts on the habitat values of the chaparral. These impacts were caused by the direct removal of chaparral vegetation and the construction of turf areas, other landscaping, and a gazebo in areas previously consisting of chaparral. The removal of chaparral and other native vegetation and their replacement with non-native plants and artificial development disrupt and degrade ESHA.

Moreover, Section 30240(b) of the Coastal Act sets limits on development “in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas.” The unpermitted development at issue borders ESHA and state parkland—in fact it encroaches into ESHA and onto state parkland—and did not meet Section 30240 (b) requirements that development in areas adjacent to ESHA and parks be “sited and designed to prevent impacts which would significantly degrade those areas,” and be “compatible with the continuance of those habitat and recreation areas.” The failure to meet those requirements means that the development, in addition to being unpermitted and inconsistent with this provision of the Coastal Act, also has continuing negative impacts on adjacent ESHA and park lands. The continuing resource impacts under Section 30240 (b) are highlighted in this case by the development’s actual continued extension across property lines into adjacent ESHA and onto adjacent park lands themselves.

As stated above, this letter provides notice of my intent to commence proceedings for issuance of a Cease and Desist Order and a Restoration Order. The purpose of these proceedings is to resolve outstanding issues associated with unpermitted development activities that violate the Coastal Act. Collectively, the Orders will direct you to cease and desist from performing any unpermitted development, will compel the removal of unpermitted development, and order the restoration of the areas impacted by the unpermitted development.

Cease and Desist Order

The Commission’s authority to issue Cease and Desist Orders is set forth in Section 30810(a) of the Coastal Act, which states, in part:

If the commission, after public hearing, determines that any person or governmental agency has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously

⁶ Id. at 17.

issued by the commission, the commission may issue an order directing that person or governmental agency to cease and desist.

The activities described in this letter above clearly constitute “development” within the definition of the Coastal Act Section 30106 and are not otherwise exempt from Coastal Act permitting requirements. No CDP was issued to authorize the subject unpermitted development. Therefore, the criteria of Section 30810(a) of the Coastal Act have been satisfied.

Additionally, Coastal Act Section 30810 gives the Commission enforcement jurisdiction in this case to take action to remedy the Coastal Act violations on the Subject Properties because the unpermitted development occurred on properties lying in an unincorporated area of Los Angeles County not covered under a certified Local Coastal Program (LCP), and thus requiring a CDP from the Commission. Coastal Act Section 30810 also enables the Commission to take enforcement action when development is inconsistent with the terms and conditions of a CDP previously issued by the Commission, and the development in this case is inconsistent with the applicable CDP 5-87-425, specifically Special Condition 3 and Special Condition 4, as discussed above.

For these reasons, I am issuing this Notice of Intent to Commence Cease and Desist Order proceedings. The procedures for the issuance of these Cease and Desist Orders are described in Sections 13180 through 13188 of the Commission’s regulations, which are codified in Title 14 of the California Code of Regulations.

Section 30810(b) of the Coastal Act also states that a Cease and Desist Order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with the Coastal Act, including removal of any unpermitted development or material. The proposed Order will therefore direct Jeff Kim and others subject to his control and/or in a legal relationship with Jeff Kim to, among other potential actions: 1) cease and desist from maintaining any development on the Subject Properties not authorized pursuant to the Coastal Act; 2) cease and desist from engaging in any further development on the Subject Properties unless authorized pursuant to the Coastal Act; and 3) take all steps, as identified, necessary to comply with the Coastal Act, including, but not necessarily limited to, the removal of the unpermitted development from the Subject Properties.

Restoration Order

Coastal Act section 30811 authorizes issuance of a Restoration Order when three criteria are satisfied: 1) development has occurred without the requisite CDP, 2) the development is inconsistent with the Coastal Act, and 3) the development is causing continuing resource damage. Pursuant to Section 13191 of the Commission’s regulations, I have determined that the activities specified in this letter meet the criteria of Section 30811 of the Coastal Act, based on the following:

- 1) Unpermitted development has occurred, including but not necessarily limited to, grading, the construction and placement of numerous structures (including fencing and turf), and removal of major vegetation. Such unpermitted activity is “development” as that term is

defined by section 30106 of the Coastal Act, and it has occurred without a CDP from the Commission.

- 2) This unpermitted development is inconsistent with several of the resource protection policies of the Coastal Act and the applicable Malibu-Santa Monica Mountains LUP, including, but not necessarily limited to:
 - a. Coastal Act Section 30240 (a) (protection of environmentally sensitive habitat areas);
 - b. Coastal Act Section 30240 (b) (siting of development adjacent to parks);
 - c. Coastal Act Section 30250 (location of new development);
 - d. Coastal Act Section 30251 (protection of scenic public views and visual qualities of coastal areas);
 - e. Coastal Act Section 30253 (avoidance of geologic and flood hazards, erosion and natural landform alteration);
 - f. Malibu/SMM LUP Sections P63, P64, P65, P68, P69 (protection of environmental resources & ESHA);
 - g. Malibu/SMM LUP Sections P74, P75 (clustering of new development close to existing development & roads; siting of development adjacent to parks to provide for fire preventive clearance);
 - h. Malibu/SMM LUP Sections P125, P130, P135 (protection of visual resources).
- 3) The unpermitted development remains in place and therefore continues to cause continuing resource damage, which is defined by Section 13190 of the Commission's regulations as: "any degradation or other reduction in quality, abundance, or other quantitative or qualitative characteristic of the resource as compared to the condition the resource was in before it was disturbed by unpermitted development." The unpermitted development continues to exist, and therefore, the Coastal Act resources remain degraded and reduced compared to their condition before the unpermitted development occurred.

For the reasons stated above, I am therefore issuing this notice of intent to commence proceedings for a Restoration Order before the Commission in order to compel the restoration of the Subject Properties. The procedures for the issuance of Restoration Orders are described in Sections 13190 through 13197 of the Commission's regulations, which are codified in Title 14 of the California Code of Regulations.

Response Procedure

In accordance with Sections 13181(a) and 13191(a) of the Commission's Regulations, you have the opportunity to respond to the Commission staff's allegations as set forth in this notice of intent to commence Cease and Desist Order and Restoration Order proceedings by completing the enclosed Statement of Defense (SOD) form. **The completed SOD form, including identification of issues and materials for Commission consideration, and documents and issues that you would like the Commission to consider, must be returned to the Commission's San Francisco office, directed to the attention of Peter Allen, no later than**

April 24, 2013. However, should this matter be resolved via a Consent Orders agreement, a statement of defense form would not be necessary.

Notification of Intent to Record a Notice of Violation of the Coastal Act

The Coastal Act contains a provision for recording notice against real property of the existence of a Coastal Act violation on the property. I need to take this action so that potential purchasers of the property will have notice that a violation of the Coastal Act has occurred on the property. In our letter dated June 4, 2013, in accordance with Coastal Act Section 30812(g), we notified you of the potential for the recordation of a Notice of Violation against your property. I have authority to record a Notice of Violation under Section 30812 of the Coastal Act, which states:

Whenever the executive director of the commission has determined, based on substantial evidence, that real property has been developed in violation of this division, the executive director may cause a notification of intention to record a notice of violation to be mailed by regular and certified mail to the owner of the real property at issue, describing the real property, identifying the nature of the violation, naming the owners thereof, and stating that if the owner objects to the filing of a notice of violation, an opportunity will be given to the owner to present evidence on the issue of whether a violation has occurred.

In many instances of cooperation, property owners have agreed to stipulate to the recordation of a Notice of Violation while working with the Commission to resolve the violations through mutual agreement. If you do not agree to stipulate and want to specifically object to the recording of a Notice of Violation, you can object and present evidence to the Coastal Commission at a public hearing on the issue of whether a violation has occurred. **To submit a timely objection you must specifically object, in writing, within 20 calendar days of the postmarked mailing of this notification. The objection should be sent to Peter Allen at the address on the letterhead, no later than April 24, 2014.** Please include the evidence you wish to present to the Commission in your response and identify any issues you would like us to consider. If you do not submit a written objection to the Commission within 20 days of this notification's mailing, I shall record the Notice of Violation in the Los Angeles County Recorder's office. The Notice of Violation will be rescinded once the violations are resolved.

Civil Liability, Exemplary Damages, and Fines

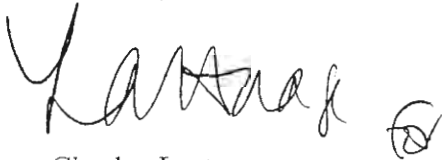
In light of the continued violations on the Subject Properties, the Commission also maintains the authority to pursue penalty provisions and fines. Please be advised that Section 30820(a) provides for civil liability to be imposed on any person who performs or undertakes development without a CDP and/or that is inconsistent with any CDP previously issued by the Commission in an amount that shall not exceed \$30,000 and shall not be less than \$500 for each violation. Section 30820(b) provides that additional civil liability may be imposed on any person who performs or undertakes development without a CDP and/or that is inconsistent with any CDP previously issued by the Commission, when the person intentionally and knowingly performs or undertakes such development, in an amount not less than \$1,000 and not more than \$15,000 per day for each day in which each violation persists.

Resolution

We remain encouraged by your stated willingness to resolve your violations of the Coastal Act and remain committed to working with you to achieve that end. As discussed before, the Consent Order process provides an opportunity to resolve this matter through mutual agreement. While requiring compliance with the Coastal Act, Consent Orders give you some input into the process and timing of the removal of the unpermitted development, restoration of the property, and settlement of a penalty amount. Given your cooperation thus far and stated readiness to continue, we could bring these Consent Orders before the Commission at its May meeting.

Please contact Peter Allen, Statewide Enforcement Analyst at (415) 904-5220 to discuss options to resolve this case. We anticipate some response from you by April 24, 2014.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles Lester", followed by a small circular mark.

Charles Lester
Executive Director

cc: Lisa Haage, Chief of Enforcement
Aaron McLendon, Statewide Enforcement Supervisor
Alex Helperin, Senior Staff Counsel
Pat Veesart, Southern California Enforcement Supervisor

Encl. Statement of Defense Form for Cease and Desist Order and Restoration Order

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Pages:
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Recorded/Filed in Official Records
Recorder's Office, Los Angeles County,
California

05/15/14 AT 08:04AM

FEES:	0.00
TAXES:	0.00
OTHER:	0.00
PAID:	0.00



LEADSHEET



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Exhibit 14
CCC-14-CD-03 & CCC-14-RO-03
(JEFF KIM)

DAR - Mail (Hard Copy)

Page 1 of 2



THIS FORM IS NOT TO BE DUPLICATED

RECORDING REQUESTED BY:
California Coastal Commission

WHEN RECORDED MAIL TO:

CALIFORNIA COASTAL COMMISSION
45 Fremont Street, Suite 2000
San Francisco, Ca 94105-2219
Attention: Peter A. Allen



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

DOCUMENT TITLE:

NOTICE OF VIOLATION OF THE COASTAL ACT

Re: Assessor's Parcel No. 4453-026-046, Los Angeles County

Property Owner: Jeff Kim