

CALIFORNIA COASTAL COMMISSION

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



Th.6.1 & Th.6.2

Staff: R.Moddelmog-SF
Staff Report: 8/31/18
Hearing Date: 9/13/18

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

Consent Cease and Desist Order No.: CCC-18-CD-03

Consent Restoration Order No.: CCC-18-RO-02

Related Violation File: V-4-01-099

Respondents: Victor H. and Susan R. Knipe

Property Location: 25575 Piuma Road (Assessor's Parcel Numbers 4456-037-038, 4456-037-037, 4456-037-010), and the adjacent property, currently owned by the Mountains Recreation and Conservation Authority (MRCA), identified as Assessor's Parcel Number 4456-013-904.

Violation Description: Grading, clearance of major vegetation, and construction of a horseback riding arena (including placement of fencing around the arena and sand within the arena), partly on land owned by the Mountains Recreation Conservation Authority and held for conservation purposes, adjacent to a blue line stream and within an environmentally sensitive habitat area; and clearance of major vegetation, construction of horseback riding trails, fencing, a tack shed, tractor overhang and a hay storage structure within an environmentally sensitive habitat area.

Substantive File Documents:

1. Public documents in Cease and Desist and Restoration Order file Nos. CCC-18-CD-03 and CCC-18-RO-02
2. Exhibits 1 through 20 and Appendix A of this staff report

SUMMARY OF STAFF RECOMMENDATION AND FINDINGS

This matter involves unpermitted development in the Santa Monica Mountains undertaken on both private and public land, including the construction of a sand-filled horseback riding ring and horse-related structures, horseback riding trails, a tack shed, tractor overhang, hay shed, and fences; removal of major vegetation to a) expand that horseback riding arena, b) to create trails west of that arena, and c) to clear the “meadow” area; which collectively had the effect of clearing approximately 2.25 acres of an Environmentally Sensitive Habitat Area (“ESHA”) (“Unpermitted Development”); and was carried out by Victor H. and Susan R. Knipe (“Respondents”), the persons subject to Cease and Desist Order No. CCC-18-CD-03 and Restoration Order No. CCC-18-RO-02 (“Consent Orders”). These unpermitted activities were undertaken on Respondents’ three parcels located at 25575 Piuma Road (“Respondents’ Properties”), as well as on the adjoining public property owned by The Mountains Recreation and Conservation Authority (“MRCA”).

Respondents’ Properties and MRCA Property (used together as “the Properties”) are located in the Santa Monica Mountains, which is part of a unique ecosystem that comprises the largest and most pristine example of Mediterranean habitat remaining in coastal southern California. Both Respondents’ Properties and the MRCA Property are adjacent to approximately 2,800 acres of wilderness; about half of which is public parkland. Further, the Properties are bisected by Dark Canyon Creek, a U.S.G.S. designated “blue line stream” that is part of the Malibu Creek watershed. Thus, as explained in Commission Senior Ecologist Dr. Jonna Engel’s memo at Exhibit 10, the Properties and “surrounding wildlands offer large, nearly pristine, un-fragmented areas of native habitat that support a wealth of native animals, including... mountain lions, bobcats, gray foxes, coyotes... the [threatened] Pacific Pond Turtle,... raptors, and owls.”

The Coastal Commission (“the Commission”) staff first discovered these Coastal Act violations in 2004 and notified Respondents at that time. During the intervening time, attempts by Commission staff to reach a consensual resolution were made but proved unsuccessful, and Respondents continued to retain and use the amenities generated by the Unpermitted Development, which increased the impacts on coastal resources. However, Respondents remained willing to work towards an amicable resolution, and Respondents have now agreed to a resolution that benefits coastal resources, the public, and MRCA.

Under the proposed agreement, Respondents have agreed to remove items of Unpermitted Development and restore areas impacted by these activities, to address temporal losses of habitat and to address civil liabilities associated with the Unpermitted Development, and have agreed to a number of additional activities, some of which are briefly mentioned here. First, Respondents have agreed to remove approximately 62 large, fire-prone, invasive pepper trees plus 13 other invasive trees and replace them with approximately 75 new, native trees, such as oaks. Respondents have also agreed, as part of the Consent Orders, to restore additional areas on the Properties. Further, Respondents have also agreed to transfer nearly all of two undeveloped parcels owned by Respondents, representing roughly 22 acres of land, and worth approximately \$1 million, to MRCA. These two parcels are immediately adjacent to land held by MRCA and Malibu Creek State Park and consist entirely of ESHA, and their permanent protection will therefore be a significant benefit to coastal resources, the public, and MRCA.

The Properties at Issue

The Unpermitted Development occurred on four parcels, three of which are owned by Respondents, and one of which is public land owned for conservation purposes by MRCA, as shown on the map at **Exhibit 3**. One of Respondents' properties, APN 4456-037-037 ("the 17 Acre Parcel"), is mostly undeveloped and consists of steep ravines and hillside, and part of Dark Canyon Creek. This parcel is the location of part of the unpermitted "upper" horse riding ring, as well as the location of where clearance of ESHA occurred. Another of Respondents' properties, APN 4456-037-010 ("the 6 Acre Parcel"), consists of sloping hillsides, dense native vegetation, and part of Little Dark Canyon Creek. On this property is the location of a large area of unpermitted clearance of ESHA alongside the creek, which has been used for horse activities. The last of the three properties owned by Respondents, APN 4456-037-038 ("the 3 Acre Parcel"), is the central parcel and is mostly developed, and includes Respondents' residence and studio (formerly a barn), a separate and pre-Coastal Act "lower" horseback riding ring, horse corrals and sheds, and some unpermitted, cleared areas of ESHA located in the meadow area. Finally, APN 4456-013-024 ("the MRCA Property") consists of 62 acres of undeveloped and mostly mountainous terrain, including a steep ravine and part of Dark Canyon Creek, but also includes most of the unpermitted "upper" horse riding ring, and a large area of partially cleared ESHA.

Unpermitted Development on the MRCA Property

In 1983, 20 years before the MRCA Property was owned by MRCA, the Commission ensured that this property would be permanently protected via mitigation for a subdivision permit issued by the Commission (Quaker)¹. Special Condition 1 of the Quaker CDP required an offer to dedicate 70 acres of property, 62 of which now consist of the MRCA Parcel, to a public or non-profit agency in order to mitigate for the effects of a nearby large subdivision on coastal resources. In 2001, Respondents purchased the adjacent 17 Acre Parcel and apparently began building the upper horseback riding ring. In 2004, no entity had yet accepted the offer to dedicate the land pursuant to Special Condition 1 of the CDP and so the area remained under ownership of Quaker's successor, Rossco, but was still to be protected from development under the terms of the permit. It was at this time, while investigating an issue on another nearby property, when Commission staff discovered that there was an unpermitted horseback riding arena in this protected area. Commission enforcement staff therefore sent a Notice of Violation letter in 2004, first to Rossco, and then shortly after to Respondents, explaining that there was Unpermitted Development in this area, and that this was both unpermitted and inconsistent with the permit conditions. Commission staff thus began talks with Respondents in 2004 to attempt to consensually resolve the violations. In 2005, MRCA accepted the offer to dedicate fee title to the property and took title to the MRCA Property.

Specifically, the Unpermitted Development undertaken by Respondents on the MRCA Property includes the construction of a horseback riding arena (including placement of fencing around the arena and sand within the arena), and clearance of "Major Vegetation" and grading, all located within ESHA. The unpermitted horseback riding arena was constructed within 100 feet of Dark

¹ Special Condition 1 of CDP No. 5-83-004, issued to Quaker.

Canyon Creek, and has the potential to impact water quality there. In addition, this development has visual impacts in this highly scenic area—the large cleared area is visible from Malibu Creek State Park and the highly used Backbone Trail, one of the most popular recreational hiking trails in the State Park.

Unpermitted Development on Respondents' Properties

The rest of the Unpermitted Development being addressed in these Consent Orders, including additional clearance of major vegetation, construction of horseback riding trails, fencing, a tack shed, tractor overhang, and a hay shed, was done on the three parcels owned by Respondents--the 17 Acre Parcel, the 6 Acre Parcel, and the 3 Acre Parcel. The Unpermitted Development on Respondents Properties' resulted in clearance of and impacts to sensitive habitat, including oak woodland, southern maritime chaparral, coastal sage scrub, and riparian habitats.

Resource Impacts

The presence of the Unpermitted Development, as fully discussed in Section III.D below, has the potential to impact species that rely on this habitat by further fragmenting habitat linkages. For examples, mountain lions require large territories to roam in the Santa Monica Mountains, but the clearance of large areas of ESHA increased the human footprint into what would otherwise be pristine wilderness. In addition, many other animals are potentially impacted when sensitive habitat disappears, including mule deer, foxes, bobcats, badgers, lizards, snakes, and many species of raptors and owls.

The Unpermitted Development has the potential to adversely impact water quality and marine resources, and to contribute to erosion of the site that may fill and alter the blue line stream onsite, Dark Canyon Creek, as well as the smaller stream, Little Dark Canyon Creek. Commission Senior Ecologist Dr. Engels explained in her memo that “horse facilities, if not landscaped, designed, and sited properly for supporting appropriate vegetation, waste capture, and drainage, can adversely impact native habitat and water quality.” The upper horseback riding ring is within the riparian buffer area for Dark Canyon Creek, could not be permitted under the Coastal Act, and has the potential to impact the creek, as well as the numerous species that inhabit the creeks and waterways, including the threatened Pacific Pond Turtle, a California Species of Special Concern, as well as several species of salamanders and frogs.

Resolution

Over the years, Commission staff has twice sent Notices of Intent to issue Cease and Desist and Restoration Orders, but hearings have twice been postponed due to efforts to reach an amicable resolution with Respondents. Prior attempts at consensual resolution were made but were unsuccessful. While Respondents were generally open to discussing potential amicable resolutions to the violations, a resolution was not reached, and in the interim, they also continued to use and maintain the areas of Unpermitted Development during this fourteen year period, and

the impact on coastal resources therefore continued.² However, during the last year, Commission staff has again worked closely with Respondents to reach a proposed amicable resolution to these matters, and to resolve the Coastal Act violations described herein. Thus, Respondents have agreed to resolve these violations in a way that benefits coastal resources, MRCA, and the public.

Under the proposed agreement, Respondents have agreed to remove physical items of Unpermitted Development, restore the areas impacted by the Unpermitted Development, mitigate for the temporal losses of habitat caused by the Unpermitted Habitat, and address the monetary penalties associated with the Unpermitted Development. Specifically the mitigation and civil liabilities will be addressed by restoring many other areas of the Properties and transferring fee title of nearly all of both the 17 Acre Parcel and the 6 Acre Parcel to MRCA, which constitute a land value estimated to be approximately \$1,000,000.

The agreement also provides for addressing the effects of the unpermitted development on the site. First, through the proposed Consent Orders, Respondents will remove the unpermitted “upper” horseback riding arena, most of which is located on the MRCA Property, and restore this area by, among other things, planting with native vegetation. Second, Respondents will also remove an unpermitted hay shed, tack shed, and tractor storage overhang, and restore the other areas where native vegetation was removed, for a total restoration area of approximately 2.25 acres. Third, as additional mitigation for the resource impacts of the unpermitted development, Respondents have also agreed to restore several other areas that are not associated with the Unpermitted Development undertaken by Respondents, including by removing a large area of non-native grasses on the 6 Acre Parcel, as well as removing a pre-Coastal Act concrete koi pond, and restoring the areas with native plants. Fourth, Respondents have agreed to remove approximately 62 large, non-native, invasive, and fire-prone pepper trees plus approximately 13 other non-native trees, as well as other non-native plants that have supplanted native vegetation, and replace most of these trees with native trees on a 1:1 basis for a total of approximately 75 new native trees. Fifth, Respondents will implement a Livestock Waste Management Plan for the remaining pre-Coastal Act horse facilities to ensure that water quality is not impacted in the future.

Finally, Respondents will resolve all liabilities for these Coastal Act violations by providing for habitat protection through a combination of property protection and property transfer. Respondents have agreed to deed restrict the entirety of the 17 Acre Parcel and the 6 Acre Parcel for habitat conservation and open space, other than some limited uses, including a potential future public trail on the 6 Acre Parcel. They have also committed through the settlement to transfer ownership of nearly all of the 17 Acre Parcel and nearly all of the 6 Acre Parcel, all of

² During the intervening time between the postponed hearings in 2004 and 2005 and this month’s hearing, Commission staff visited the site several times, and communicated with Respondents and their attorney, but the Commission paused enforcement between 2014- 2016 to give Respondents time to apply for a time-limited “amnesty program” specifically intended to address some types of unpermitted horse facilities under the new Santa Monica Mountains LCP, but in the end, Respondents’ Unpermitted Development did not qualify.

which consists of ESHA, to MRCA³. Adding to the resource value of this land is the fact that the 17 Acre Parcel is bordered to the east by Malibu Creek State Park, and to the north by the current MRCA Property; and the 6 Acre Parcel is also bordered to the north by the current MRCA Property. Therefore, the land that will be transferred to MRCA is contiguous with other public land and allows for better habitat linkages, and will therefore be even more beneficial to coastal resources, including species such as mountain lions, foxes, badgers, owls, and many others, as well as riparian species such as the threatened Pacific Pond Turtle, salamanders, and frogs. In addition, the public will also greatly benefit because the 6 Acre Parcel in particular is near the existing Backbone Trail, and could potentially serve as a trail access point in the future.

Thus, MRCA will receive two parcels for a total of roughly 22 acres, with a total monetary value of approximately \$1 million, to be protected for conservation and open space for the public in perpetuity.

Therefore, staff recommends that the Commission issue these Consent Orders, which would establish a process for Respondents to resolve this matter, and result in the benefits described above. The motions and resolutions for these actions are found on **page 9** of this staff report.

³ The small parts of the parcels retained by the Knipes will allow the Knipes to continue to own their emergency fire road on the 17 acre parcel and part of the “meadow” on the 6 acre parcel for their horses, and allow them to conduct any necessary brush clearance that is required by the Los Angeles County Fire Code.

TABLE OF CONTENTS

I. MOTION AND RESOLUTION.....	9
II. HEARING PROCEDURES	9
III. FINDINGS FOR CONSENT CEASE AND DESIST ORDER NO. CCC-18-CD-03 AND CONSENT RESTORATION ORDER NO. CCC-18-RO-02	10
A. PROJECT LOCATION AND VICINITY	10
B. DESCRIPTION OF UNPERMITTED DEVELOPMENT	11
1) UPPER HORSEBACK RIDING ARENA	12
2) AREAS OF MAJOR VEGETATION REMOVAL	12
3) OTHER STRUCTURES	13
C. PERMIT AND ENFORCEMENT HISTORY	13
1) PERMIT HISTORY OF THE MRCA PROPERTY	13
2) ENFORCEMENT HISTORY	13
D. BASIS FOR ISSUANCE OF ORDERS	15
1) STATUTORY PROVISIONS	15
2) FACTUAL SUPPORT FOR STATUTORY ELEMENTS	15
E. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA).....	24
F. SUMMARY OF FINDINGS OF FACT	25

APPENDICES

Appendix A Proposed Consent Cease and Desist and Consent Restoration Orders

EXHIBITS

Exhibit 1:	Vicinity Map
Exhibit 2:	Parcels Overview
Exhibit 3:	Map of Areas of Unpermitted Development
Exhibit 4:	Photo Overview of Respondents’ Properties and Surroundings
Exhibit 5:	Photos of Unpermitted Horseback Riding Arena on MRCA Property
Exhibit 6:	Photos of Other Unpermitted Horse-Related Structures
Exhibit 7:	Map of Proposed Deed Restrictions
Exhibit 8:	Map of Proposed Land Transfers
Exhibit 9:	Photos of Land Proposed For Transfer
Exhibit 10:	Memorandum of Commission Senior Ecologist Dr. Jonna Engels Regarding ESHA Determinations on Respondents’ Properties
Exhibit 11:	CDP No. 5-83-004 (Quaker) Issued July 23, 1985
Exhibit 12:	Development Area Demarcation, Exhibit 2b from Staff Report for CDP 5-89-743
Exhibit 13:	Staff Report for CDP 5-83-004 (Quaker Corporation) approved by the Commission on July 28, 1983

CCC-18-CD-03 & CCC-18-RO-02 (Knipe)

- Exhibit 14: Irrevocable Offer to Dedicate Fee Title to APN 4456-013-024, Los Angeles County Recorded Document No. 85 844016
- Exhibit 15: Notice of Violation letter dated June 24, 2004
- Exhibit 16: Notice of Intent to Commence a Cease and Desist and Restoration Order Proceeding dated July 30, 2004
- Exhibit 17: Supplemental Notice of Intent to Commence a Cease and Desist and Restoration Order Proceeding dated February 11, 2005
- Exhibit 18: Resolution No. 03-05: Resolution of the Mountains Recreation and Conservation Authority Authorizing Acceptance of an Offer to Dedicate in Fee Simple (the Rossco Property) and a Conservation Easement in Dark Canyon, dated January 27, 2003
- Exhibit 19: MRCA's Certification of Acceptance of Offer to Dedicate Fee Title dated April 1, 2005
- Exhibit 20: Miscellaneous Grading Permit Issued by Los Angeles County September 3, 1974

I. MOTION AND RESOLUTION

Motion 1: Consent Cease and Desist Order

*I move that the Commission **issue** Consent Cease and Desist Order No. CCC-18-CD-03 pursuant to the staff recommendation.*

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in adoption of the resolution immediately below and 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-18-CD-03, as set forth below, and adopts the findings set forth below on grounds that development has occurred on the Properties without the requisite coastal development permit, and in violation of CDP 5-83-004, 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-18-RO-02 pursuant to the staff recommendation.

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in adoption of the resolution immediately below and 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-18-RO-02, as set forth below, and adopts the findings set forth below on the grounds that 1) development has occurred on the Properties without a coastal development permit, 2) the development is inconsistent with the Santa Monica Mountains LCP and the Coastal Act, and 3) the development is causing continuing resource damage.

II. HEARING PROCEDURES

The procedures for a hearing on a Cease and Desist Order under Section 30810 of the Coastal Act and a Restoration Order under Section 30811 of the Coastal Act are outlined in Title 14 of the California Code of Regulations (“14 CCR”) in Sections 13185 and 13195, respectively.

For the joint hearing on the proposed Cease and Desist Order and Restoration Order discussed in this staff report, 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 parts of the record already, 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 any new evidence introduced.

The Commission will receive, consider, and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceedings, as specified in 14 CCR Section 13186 and 14 CCR Section 13195, incorporating by reference Section 13065. The Chair will close the public hearing after the presentations are completed. The Commissioners may ask questions of 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. 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 staff, or as amended by the Commission. Passage of the motions above, per the staff recommendation, or as amended by the Commission, will result in issuance of the Cease and Desist Order and Restoration Order.

III. FINDINGS FOR CONSENT CEASE AND DESIST ORDER NO. CCC-18-CD-03 AND CONSENT RESTORATION ORDER NO. CCC-18-RO-02⁴

A. PROJECT LOCATION AND VICINITY

The Properties are located in the central Santa Monica Mountains, in Los Angeles County. The Properties are inland of the City of Malibu, and are approximately 2.5 miles from the Malibu Pier and Pacific Coast Highway. Immediately adjacent to the Properties lies a largely undisturbed block of wilderness approximately 2,800 acres in size; the area has no paved roads and a minimal amount of dirt roads. About half of this 2,800 acre area is public parkland, most of which is located within the Malibu Creek State Park and the remainder of which consists of Piuma Ridge Park, which is owned by the Santa Monica Mountains Conservancy (“SMMC”) and MRCA.

The Properties lie within the Malibu-Cold Creek Resource Management Area and are adjacent to and bisected by Dark Canyon Creek (a United States Geological Survey (hereinafter “USGS”) designated blue line stream), which is part of the Malibu Creek watershed. Furthermore, the

⁴ These findings also hereby incorporate by reference the Summary at the beginning of the 8/31/18 staff report (“Staff Report: Recommendations and Findings for Consent Cease and Desist Order No. CCC-18-CD-03 and Consent Restoration Order No. CCC-18-RO-02”) in which these findings appear, which section is entitled, “Summary of Staff Recommendations and Findings.”

Properties are located within a habitat linkage area, identified in the National Park Service's Santa Monica Mountains National Area Land Protection Plan, that connects Malibu Creek State Park with Cold Creek Canyon Preserve and its surroundings to the northeast, and provide important habitat for wildlife.

As explained in a memorandum by the Commission's Senior Ecologist Dr. Jonna Engels at **Exhibit 10**, "the Properties and surrounding wildlands offer large, nearly pristine, un-fragmented areas of native habitat that support a wealth of native animals, including mammal species such as mountain lions, bobcats, gray foxes, coyotes, mule deer, badgers, raccoons, skunks, rabbits, squirrels, woodrats, mice and voles; reptiles including numerous species of lizards and snakes and the [threatened] Pacific Pond Turtle; amphibians including several species of salamanders and frogs; and numerous species of song birds and many species of raptors and owls." Thus, Dr. Engels explained that almost the entirety of the Properties are considered ESHA, as designated under the Coastal Act, and are primarily H1 and H2 Habitat as designated by the Santa Monica Mountains certified Local Coastal Program ("SMM LCP").

Both the MRCA Property and Knipe Properties are vegetated with coastal sage scrub/chaparral, oak woodland, and riparian habitat. Dark Canyon Creek runs across and adjacent to the north and east side of Respondents' Properties and, as it flows downstream toward Malibu Creek, bisects the MRCA Property. In addition, Little Dark Creek, a tributary to Cold Creek, crosses portions of the MRCA Property and Respondents' Properties.

Above Dark Canyon and north and east of both the MRCA Property and Knipe Properties is the Backbone Trail, one of the most popular recreational hiking trails in the State Park, which roughly follows the crest of the Santa Monica Mountains for approximately 70 miles from Point Mugu State Park in Ventura County east to Will Rogers Historical State Park near the city of Santa Monica, in Los Angeles County. The Unpermitted Development on the MRCA and Knipe Properties are visible from this segment of the Back Bone trail.

B. DESCRIPTION OF UNPERMITTED DEVELOPMENT

The Unpermitted Development being addressed in this action includes, but may not necessarily be limited to, the following. On the MRCA Property, and within the area required to be dedicated for conservation purposes by the Offer to Dedicate per CDP No. 5-83-004: creation of a sand-filled horseback riding arena, with fences and other minor structures, along with areas of grading and major vegetation removal. In addition, on land owned by Respondents (the 17 Acre Parcel, the 6 Acre Parcel, and the 3 Acre Parcel): major vegetation removal, construction of horseback riding trails, a tack shed, tractor overhang, and a hay shed. The total amount of ESHA cleared by this Unpermitted Development amounts to approximately 2.25 acres. All of the Unpermitted Development was undertaken without a CDP, and the Unpermitted Development on the MRCA Property was also inconsistent with CDP No. 5-83-004. The Unpermitted Development is discussed in greater detail below.

1) UPPER HORSEBACK RIDING ARENA

A horseback riding arena was constructed without a CDP mostly on the MRCA Property and portions of which is on Respondents' Properties. The creation of the arena involved major vegetation removal, grading, and the installation of fences and placement of sand. At the time of construction, the land was owned by Rossco Holdings Corporation ("Rossco") and was already the subject of an "offer to dedicate" the parcel per CDP No. 5-83-004. MRCA accepted the offer of dedication in 2005. Neither Rossco nor MRCA consented to the construction of the arena on their property or knew about its existence, and, regardless of their knowledge or consent, a horseback riding arena could not be permitted per the CDP since this area was legally protected from development under its terms nor could it be found consistent with the Coastal Act or SMM LCP policies regarding development near streams and in ESHA. These Consent Orders require the removal of the arena and restoration of the area, as well as the transfer of nearly all of Respondents' bordering 17 Acre Parcel (of which a portion of the arena lies on) to MRCA.

2) AREAS OF MAJOR VEGETATION REMOVAL

Over the years, Respondents and the past owners of the property engaged in multiple instances of major vegetation removal on both Respondents' Property and the MRCA Property. This resulted in a cumulative total (including all areas where Unpermitted Development occurred) of approximately 2.25 acres of removed vegetation visible at present.

MRCA Property

On the MRCA Property, major vegetation removal was done in order to construct and expand the upper arena. In addition, a large area of hillside just to the west of the arena was also partially cleared of vegetation.

Respondents' 6 Acre Parcel

On the 6 Acre Parcel, removal of major vegetation southwest of the access road and lower arena has occurred. Although the area is now referred to as "the meadow" by Respondents and is used for horseback riding, aerial images show that it previously consisted of dense native vegetation. Site visits have confirmed that since the area was cleared, it is now filled with non-native, invasive grasses. These Consent Orders provide for the restoration of this area and the transfer of nearly all of this parcel to MRCA.

Respondents' 3 Acre Parcel

The central parcel owned by Respondents is mostly developed, including a house, a studio (formerly a barn), as well as a lower horseback riding arena, horse corrals, an auxiliary tack shed and a tool shed that the evidence appears to show were built prior to the passage of the Coastal Act in 1976. This property does, however, include some Unpermitted Development consisting of major vegetation removal near the meadow described above.

Respondents' 17 Acre Property

The largest parcel owned by Respondents is mostly undeveloped, but does contain a portion of the upper arena, and a portion of the cleared hillside adjacent to it, which activities were both conducted without benefit of a CDP.

3) OTHER STRUCTURES

In addition to the upper horseback riding arena and major vegetation removal, several smaller structures were built without permits. These include a tack shed, tractor overhang, and hay shed near the lower arena on the 3 Acre Parcel. The Consent Orders provide for removal of these sheds and native trees being planted nearby.

C. PERMIT AND ENFORCEMENT HISTORY

1) PERMIT HISTORY OF THE MRCA PROPERTY

On July 28, 1983, the Commission approved CDP No. 5-83-004 for the subdivision of a 102-acre parcel into 22 one-acre lots for residential development, a flood control lot, grading, and construction of roads and utility extensions, and an offer to dedicate fee title to all land outside the residential lots. The original application was for 23 2-acre parcels spread across most of the 102-acre property. However, the Commission required the applicant to cluster the development, reduce the number of residential lots, and increase the density, in light of and in an attempt to protect the sensitive coastal resources on the property. Therefore, the area now owned by MRCA and referred to herein as the MRCA Property, was therefore established by Condition 1 of CDP 5-83-004.

The Commission found in its approval of the CDP that the proposed development would have an impact on the sensitive resources within and surrounding this area. The findings state:

“The project site is located within an SEA (Significant Ecological Area) Buffer Zone between the Malibu Creek and Cold Creek SEA’s... The SEA report states:

‘The buffer zone of Malibu Canyon... include[s] important watershed area, the use of which will directly influence valuable riparian habitat in these canyons. ...Malibu Canyon supports the last remaining steelhead run and salt-water lagoon in the County... The survival of these resources depends on proper watershed management.... Alteration of natural drainage patterns and disturbances to riparian vegetation should be avoided.’

Accordingly, on July 22, 1985, the irrevocable offer-to-dedicate was recorded in the Los Angeles County Recorder’s Office as Instrument No. 85 844016. On April 1, 2005, MRCA accepted the offer to dedicate the parcel. The MRCA property is adjacent to Malibu Creek State Park and may eventually be incorporated within it.

2) ENFORCEMENT HISTORY

This enforcement case has a long history. While Enforcement staff attempted to resolve this case early on, these earlier attempts were unsuccessful. Discussions in this matter were episodic, spanning a number of years. During this period, Respondents retained virtually all of the Unpermitted Development, and continued to use the unpermitted upper horseback riding arena on MRCA property, and also used the areas that had been cleared of major vegetation for horseback riding, among other things.

Commission staff discovered the Coastal Act violations that are the subject of these enforcement actions during a site inspection of a neighboring property, on March 15, 2001. On April 22, 2004, Enforcement staff sent a Notice of Violation of the Coastal Act to Rossco the then-owner of the MRCA Property. Upon receiving the Notice, Rossco's attorney telephoned Commission staff and indicated that Rossco was unaware of the Unpermitted Development on its property.

On May 24, 2004, Commission staff conducted a site inspection with Rossco's attorney to determine the extent of the violations and discuss resolution. During the site inspection, Respondents arrived and informed Commission staff and Rossco's attorney that the upper horseback riding arena belonged to Respondents. They also asserted that all horse facilities predated the Coastal Act. The legal standards and requirements regarding pre-Coastal Act development are discussed more fully in Section III.D of this staff report. However, it should be noted that persons cannot have vested rights to illegal development, such as the upper horseback riding arena, which was illegally placed on property not owned by Respondents, and without permission of the property owner. On June 24, 2004, Enforcement staff sent a letter to Respondents informing them of the Coastal Act violations and asking them to indicate by July 16, 2004 what steps they would take to resolve the violations (**Exhibit 15**). While Respondents did make an offer of settlement such an offer would not have fully addressed the Unpermitted Development.

On July 30, 2004, Enforcement staff also sent a Notice of Intent to Commence a Cease and Desist and Restoration Order Proceedings (NOI) to Respondents for the Coastal Act violations that are the subject of this enforcement action (**Exhibit 16**). As part of their response, Respondents commissioned a property survey, which showed that additional items of Unpermitted Development were located on the other properties owned by Respondents. Therefore, to address the Unpermitted Development on Respondents' Properties, and to include these properties in this proceeding, the Executive Director sent a Supplemental NOI on February 11, 2005 (**Exhibit 17**).

Commission staff visited the Properties and met with Respondents and their attorney on a number of occasions, as well as having several phone conversations and communicating via letters. During this time, other attempts at resolution were made but were also unsuccessful. In the fall of 2017, talks with Respondents recommenced. Over the last several months, Commission staff and Respondents worked cooperatively to reach an amicable resolution of the matter, and Commission staff thanks Respondents for their efforts in reaching an amicable agreement. On August 29, 2018, Respondents agreed to and signed the Consent Orders, which are being presented to the Commission for its approval today.

D. BASIS FOR ISSUANCE OF ORDERS

1) STATUTORY PROVISIONS

(a) Consent Cease and Desist Orders

The statutory authority for issuance of this 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...

(b) Restoration Orders

The statutory authority for issuance of this 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 the development has occurred without a coastal development permit from the commission, local government, or port governing body, the development is inconsistent with this division, and the development is causing continuing resource damage.

2) FACTUAL SUPPORT FOR STATUTORY ELEMENTS

The following pages set forth the basis for the issuance of these Consent 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 Orders and Restoration Orders.

(a) Development has occurred without a Coastal Development Permit

The Property is located in the Santa Monica Mountains area of unincorporated Los Angeles County, within the Coastal Zone. Section 30600(a) of the Coastal Act states that, in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the Coastal Zone must obtain a coastal development permit. "Development" is broadly defined by Section 30106 of the Coastal Act, as well in the SMM LCP, in relevant part as follows:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure...; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits...change in the intensity of use of water, or of access thereto...and the removal or harvesting of major vegetation other than for agricultural purposes...

Unpermitted Development, as described above, has occurred on the Properties without a CDP and, in part, inconsistent with a previously issued CDP. The construction of the upper horseback riding ring and other structures, clearance of major vegetation, and undertaking of grading activities meet the definition of “development” contained in § 30106 of the Coastal Act. In this case, 1) grading, 2) clearance of major vegetation, and 3) construction of horseback riding trails, tack shed, tractor overhang, and hay shed are all “development” as defined by §30106.

The Unpermitted Development is not exempt from the Coastal Act’s permitting requirements under §30610 of the Coastal Act and/or Title 14, California Code of Regulations §§13250-13253. It does not qualify for an exemption because the development is not an improvement directly attached to an existing single family home or other structure, is not a structure normally associated with a single-family home, and is not a repair and maintenance activity. Even if it was in one of these categories, it is not exempt because it has a potential for significant adverse effects on coastal resources in one or more of the respects identified in §13250 and §13252 of the Commission’s regulations. In fact, much of the Unpermitted Development at issue is on a completely undeveloped, open-space, parcel owned by a different party. The exemptions under §13250 that apply to additions to existing single-family homes, including those regarding landscaping, do not apply to separate and/or adjacent properties where no primary structure exists. The exemptions only apply to the single property containing the existing primary residence.

(b) The Unpermitted Development is not Consistent with the Terms and Conditions of a Previously Issued Permit (CDP No. 5-83-004)

As noted in Section C above, on July 28, 1983, the Commission approved CDP No. 5-83-004 for the subdivision of a 102-acre parcel into 22 one-acre lots for residential development, a flood control lot, an offer to dedicate fee title to all land outside the residential lots, grading, and construction of roads and utility extensions. The special conditions included in CDP 5-83-004 (which apply only to the MRCA Property, not Respondents’ Properties) were designed to minimize impacts to coastal resources and ensure that the authorized development would comply with the Chapter 3 policies of the Coastal Act.

Condition 1 of the CDP required the applicant to record an Irrevocable Offer-to-Dedicate Fee Title to lands outside the residential lots (what is now the MRCA Property) “...so as to prevent the adverse and cumulative effects on coastal resources and public access to the coast which could occur if the Property were not restricted in accordance with this Offer.”⁵ On July 22, 1985,

⁵ Irrevocable Offer to Dedicate, Exhibit 14, page 2.

the Irrevocable Offer-To-Dedicate was recorded in the Los Angeles County Recorder's Office as Instrument No. 85 844016.

In light of the sensitive values of the habitat, the CDP had a number of conditions designed to mitigate the effects of development. It is clear from the Commission's findings and permit conditions that the requirement to record the offer to dedicate fee title to all the land within the subdivided parcel outside of the 22 approved residential lots (approximately 70 acres now included within the MRCA Property) was required to ensure that the habitat values of the area would not be adversely impacted and to find the subdivision consistent with § 30231 and 30240 of the Coastal Act. Portions of the Unpermitted Development (the grading and clearance of major vegetation and construction of a fenced, sand-filled horseback riding arena) are located on this encumbered property. The Unpermitted Development that occurred on the MRCA Property is thus clearly inconsistent with the terms and conditions of the CDP, which was required to prevent damage to the sensitive habitat on this property.

Therefore, the criterion for issuance of a cease and desist order has been met and the first of three criteria has been met for the issuance of a restoration order.

(c) The Unpermitted Development is Inconsistent with the Coastal Act and the Santa Monica Mountains LCP

As described below, the Unpermitted Development is inconsistent with the following policies of the Coastal Act and analogous sections of the SMM LCP: Coastal Act Section 30231 and LCP Goal CO-1 (biological productivity and water quality), Section 30240 and Goal CO-2 (environmentally sensitive habitat areas), and Section 30251 and Goal CO-5 (scenic and visual qualities), as well as Section 30253 (geological stability).

Environmentally Sensitive Habitat Areas

The landscape on the Property and in the vicinity of the site is characterized by large swaths of mostly undeveloped, densely vegetated and rugged terrain, traversing steep ridges and deep canyons. The publicly owned property surrounding Respondents' Properties consists of peaks with spectacular rock outcrops, steep slopes, and canyons that support pristine chaparral, coastal sage scrub and riparian habitats (**Exhibit 10**). The Properties are located within the Malibu-Cold Creek Resource Management Area and are adjacent to and bisected by Dark Canyon Creek, a USGS designated blue line stream, which is part of the Malibu Creek watershed (**Exhibit 10**).

The vegetative communities within and surrounding the Property are part of the Mediterranean ecosystem that is characteristic of the Santa Monica Mountains. The Mediterranean ecosystem occurs in only five distinct coastal regions around the world (the west coast of California, Chile, South Africa, the Mediterranean, and south and southwest Australia), and encompasses only two percent of the earth's total land area. Worldwide, only 18 percent of the Mediterranean ecosystem remains undisturbed. In numerous prior Commission actions, and in the context of the SMM LCP, the Commission found that the Mediterranean ecosystem of the Santa Monica Mountains is a mosaic of vegetation types linked together ecologically, and that areas of native habitat (e.g. coastal sage scrub, chaparral, oak woodland) in the Santa Mountains are rare and

especially valuable because of their relatively pristine character, physical complexity, and biological diversity; and that areas of undeveloped native habitat may meet the definition of ESHA by virtue of their important roles in that ecosystem.

Section 30107.5 of the Coastal Act states:

'Environmentally sensitive area' means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

Section 30240 of the Coastal Act states:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(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 those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Goal CO-2 of the SMM LCP states:

Sensitive Environmental Resource Areas shall be protected against any significant disruption of habitat values. Development in areas adjacent to Sensitive Environmental Resource Areas shall be sited and designed to prevent impacts which would significantly degrade these areas and shall be compatible with the continuance of the habitat.

The SMM LCP designates the property as Sensitive Environmental Resource Area (SERA), a term used in the LCP to designate the location of ESHA. SERA is broken into varying levels of habitat sensitivity; the SERA on the property includes H1 habitat (defined by the LCP as “areas of highest biological significance, rarity, and sensitivity”) along Dark Canyon Creek and other blue line streams, H2 habitat (defined by the LCP as “areas of high biological significance, rarity, and sensitivity”) on most of the remainder of the Properties, and H3 habitat (defined by the LCP as areas that would otherwise be designated as H2 habitat, but for disturbance from lawfully-established development) located around the house and generally where the Unpermitted Development occurred, because this survey was done after the Unpermitted Development was undertaken.⁶

⁶ However, with the exception of the house, studio, lower arena and surrounding horse facilities on the 3 Acre Parcel, this designation reflects the state of Respondent’s Property as altered by Unpermitted Development. Review of the Property must be analyzed as if the Unpermitted Development had not occurred; and therefore, the entirety of Respondent’s Properties, except for the areas described above, is ESHA (See Goal CO-40 of the SMM LCP).

The Properties are also located within a habitat linkage area, identified in the National Park Service's Santa Monica Mountains National Area Land Protection Plan, that connects Malibu Creek State Park with Cold Creek Canyon Preserve and surroundings to the northeast. The plan defines habitat linkages as "areas which serve to connect two or more core areas and are of sufficient habitat value such that they provide substantial native vegetation cover or, optimally, serve as foraging or breeding grounds for wildlife." As pointed out in the "Designation of ESHA in the Santa Monica Mountains" memorandum (Dixon 2003):

Connectivity among habitats within an ecosystem and connectivity among ecosystems is very important for the preservation of species and ecosystem integrity. In a recent statewide report, the California Resources Agency identified wildlife corridors and habitat connectivity as the top conservation priority.

In 2001 the National Park Service (NPS) undertook an ambitious vegetation mapping effort in the Santa Monica Mountains. The NPS vegetation mapping was completed in 2007 and covers the entire Santa Monica Mountain ecosystem, including the Properties. The NPS map layers of the public property surrounding the Knipe's parcels shows the area as dominated by native chaparral habitats intermixed with coastal sage scrub habitats and riparian habitats (Figure 3). The vegetation associations in this area include bigpod ceanothus-chamise, bigpod ceanothus, greenbark ceanothus-bigpod ceanothus, greenbark ceanothus, laurel sumac-California buckwheat, California sycamore-coast live oak south coast and California bay-California walnut/greenbark ceanothus. The northern edge of Respondents' Properties consists of a steep slope that drops into Dark Canyon and Dark Canyon Creek which are characterized by lush California sycamore/coast live oak riparian habitat. Little Dark Canyon Creek spans much of the 6 Acre Parcel and through part of the 3 Acre Parcel.

The Coastal Act includes policies to protect, maintain, enhance and restore the quality of coastal resources within the coastal environment. As described below, the Unpermitted Development is inconsistent with multiple resource protection policies of the Coastal Act, including Section 30240 (environmentally sensitive habitat areas), Section 30231 (biological productivity and water quality), and Section 30253 (hazards/geologic stability), as well as corresponding policies of the certified Santa Monica Mountains LCP.

The Commission's staff ecologist, Dr. Jonna Engel, visited the site on July 23, 2013, and May 7, 2018, and also reviewed the NPS vegetation map. Dr. Engel observed that while the portions of Respondents' 3 Acre Parcel immediately surrounding development are landscaped and dominated by non-native and invasive species, the remainder of the property is characterized by relatively pristine native chaparral, coastal sage scrub, and riparian habitat areas. In addition, she observed similar habitats on the 17 Acre Parcel and the 6 Acre Parcel. Dr. Engel thus determined that the coastal sage scrub, chaparral, and riparian habitats outside of the developed area on the 3 Acre Parcel and all of the undeveloped parcels, including Respondents' 6 Acre Parcel and 17 Acre Parcel both meet the Coastal Act definition of ESHA. Further, the portions of the upper horseback riding arena on the MRCA Property are within a riparian buffer and would be ESHA but for the Unpermitted Development.

The Unpermitted Development adversely impacted approximately 2.25 acres of riparian, chaparral, coastal sage scrub and oak woodland habitats. The Unpermitted Development (including major vegetation removal) eliminated mature vegetation that served as food, foraging habitat, and shelter for many species of native animals, eliminated and disturbed numerous physical and biological habitat services and functions, and left the cleared and graded areas vulnerable to the negative impacts associated with erosion. Therefore, the Unpermitted Development resulted in the significant disruption of ESHA by removing the native vegetation. The Unpermitted Development eliminated mature vegetation that had the potential to serve as a food source, foraging habitat, and shelter for many species of native animals such as: native animals including mammal species such as mountain lions, bobcats, gray foxes, coyotes, mule deer, badgers, raccoons, skunks, rabbits, squirrels, woodrats, mice and voles; reptiles including numerous species of lizards and snakes and the pacific pond turtle; amphibians including several species of salamanders and frogs; and numerous species of song birds and many species of raptors and owls. The Unpermitted Development eliminated and disturbed numerous physical and biological habitat services and functions, and left portions of the Property cleared of native vegetation and vulnerable to erosion. These impacts occurred within and within the buffers of, sensitive riparian, oak woodland, and chaparral habitat. Thus, the Unpermitted Development resulted in the significant disruption of ESHA.

Section 30240 of the Coastal Act requires that only uses dependent on the resource be allowed in ESHA. However, the Unpermitted Development, including major vegetation removal, grading, a horseback riding arena, etc, does not constitute a resource-dependent use. Furthermore, the Unpermitted Development also impacted areas adjacent to the cleared and graded areas by creating erosion leading to the potential deposition of sediment into Dark Canyon Creek and tributaries of Cold Creek and Malibu Creek. Therefore, the Unpermitted Development has resulted in impacts to ESHA and has significantly disrupted habitat values on the site, inconsistent with Coastal Act Section 30240 and the analogous policies of the SMM LCP regarding the protection of sensitive habitat.

Geological Stability

Section 30253 of the Coastal Act states:

New development shall do all of the following:

- (a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs....*

Topographic changes on the site and the removal of vegetation have contributed to increased runoff and erosion. Therefore, the Unpermitted Development has not assured the stability of the area and has contributed to erosion, and is therefore inconsistent with Coastal Act Section 30253 and the analogous sections of the SMM LCP.

Impacts to Adjacent State Park

In addition, above Dark Canyon and north and east of both the MRCA and Properties is the Backbone Trail (located within Malibu Creek State Park), one of the most popular recreational hiking trails in the State Park, which roughly follows the crest of the Santa Monica Mountains for approximately 70 miles from Point Mugu State Park to Will Rogers Historical State Park near the city of Santa Monica. The Unpermitted Development on the Properties are visible from this segment of the Backbone trail. The Unpermitted Development located on the MRCA Property is also located on lands that were protected via a CDP.

Scenic Resources

The Coastal Act and the SMM LCP include protections for scenic resources.

Coastal Act section 30251 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.

Goal CO-5 of the SMM LCP states:

Retain the scenic beauty of the plan area by considering and protecting its scenic and visual qualities as a resource of public importance.

The recreational experience intended for Malibu Creek State Park is an open, coastal mountain appearance. However, the unpermitted horseback riding arena has visual impacts in this highly scenic area—the large cleared area is visible from Malibu Creek State Park and the highly used Backbone Trail, one of the most popular recreational hiking trails in the State Park. In addition, under section 30240 of the Coastal Act, all development located adjacent to the State Park system must be sited and designed to prevent impacts that would significantly degrade such areas. Development that could occur in this area must be compatible with the scenic qualities of the park system. The Unpermitted Development consists of a sand-filled horseback riding arena, as well as grading and clearance of major vegetation.

Biological Productivity / Water Quality

Section 30231 of the Coastal Act states:

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

maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Goal CO-1 of the SMM LCP states:

Maintain and restore biological productivity and coastal water quality appropriate to maintain optimum populations of marine and freshwater organisms and to protect human health.

Riparian habitats and their associated streams form important links in the Santa Monica Mountains through the flow of nutrients from high elevation chaparral and woodland habitats to lower elevation riparian habitats and ultimately to the sea, benefiting many different species along the way. Riparian communities are the most species-rich habitats to be found in the Santa Monica Mountains⁷. 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.

One USGS designated blue line streams runs through the Properties, the highly significant Dark Canyon Creek. Dark Canyon is identified as an important California Natural Area by the California Natural Areas Coordinating Council. It is also one of the few perennial streams in the region, provides a permanent water source for riparian vegetation and for the wildlife. The well-developed riparian areas include major stands of Wild Grape, as well as some of the strongest stands of White Alder and Big Leaf Maple in West Los Angeles County.

The Unpermitted Development has resulted in the removal of native vegetation, creation of bare soil, changes to the topography of the site, and increased erosion. Increased sediment loads in streams and coastal waters have the potential to increase turbidity, reducing the growth of aquatic plants, and harming benthic organisms by changing the composition of the streambed habitat, and burying invertebrates. These impacts had the potential to reduce the biological productivity and the quality of coastal waters and reduce optimum populations of marine organisms. Therefore, the Unpermitted Development impacts the biological productivity of riparian areas, inconsistent with Section 30231 of the Coastal Act and the water quality policies of the SMM LCP and the second of three criteria for the issuance of a restoration order has been met.

(c) 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 water quality and biological productivity of streams, the chaparral, riparian, and oak woodland habitats, and stability of the steep slopes on the Property are afforded protection under Coastal Act Sections 30231, 30240, 30251, and 30253, and are therefore “resources” as defined in Section 13190 (a) of the Commission’s regulations.

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 caused by the Unpermitted Development include the reduction in quality and abundance of ESHA, the increase in potential adverse impacts to water quality and scenic resources, and contributed to erosion and the potential for geologic instability. As of this time, the Unpermitted Development and the results thereof remain on the Properties. The removal of native vegetation and the placement of unpermitted structures continue to impact the coastal resources by displacing the native ecosystem and preventing it from functioning, thereby disrupting the biological productivity of that ecosystem. Without removing physical items of Unpermitted Development and restoring the impacted areas, among other things, the foregoing impacts are continuing. The persistence of these impacts constitutes “continuing” resource damage, as defined in Section 13190(c) of the Commission’s regulations. As a result, the third and final criterion for the Commission’s issuance of the proposed Restoration Order pursuant to Coastal Act Section 30811 is therefore satisfied.

(d) Consent Orders are Consistent with Chapter 3 of the Coastal Act and the Santa Monica Mountains LCP

The Consent Orders, attached to this staff report as Appendix A, including the restoration and mitigation activities as well as the deed restrictions, lot line adjustments, and land transfers, are consistent with the resource protection policies found in Chapter 3 of the Coastal Act and the Coastal Act policies on land divisions and development, as well as the corresponding policies of the SMM LCP. These Consent Orders require and authorize Respondents to, among other things, cease and desist from conducting any further Unpermitted Development on the Property, remove the physical items that were placed or allowed to come to rest as a result of Unpermitted Development, and restore the areas impacted by the Unpermitted Development through, among

other things, undertaking restorative grading, removing non-native vegetation, and planting native vegetation. The Consent Orders require Respondents to improve native habitat by: replacing non-native and invasive plant species on the MRCA Property and Knipe Properties with native plant species appropriate to the habitat type; to comply with CDP No. 5-83-004 by restoring developed areas on the MRCA Property with native habitat.

In addition, as mitigation and to resolve all liabilities for these Coastal Act violations, Respondents will provide additional habitat protection through a combination of property protection and property transfer. Respondents have agreed to deed restrict the entirety of the 17 Acre and 6 Acre Parcels for habitat conservation and open space, other than some limited uses. In addition, Respondents have agreed through the settlement to transfer ownership of nearly all of the 17 Acre Parcel and nearly all of the 6 Acre Parcel, all of which consists of ESHA, to MRCA. To effectuate this transfer of property to a public agency for the purpose of public recreation, these Consent Orders order and authorize Respondents to undertake a lot line adjustment. This lot line adjustment will allow for Respondents to retain their emergency access road and allow them to undertake necessary brush clearance as may be required by applicable fire code, and at the same time provide for MRCA to obtain the approximately 22 acres of property so as to protect it in perpetuity. These properties are contiguous with other public land and will allow for better habitat linkages, and will therefore be even more beneficial to coastal resources and the public. Thus, MRCA will receive two parcels for a total of roughly 22 acres, to be protected for conservation and open space for the public in perpetuity. Therefore, these Consent Orders, and the requirements therein, including the requirement to undertake a lot line adjustment to effectuate the transfer of property to MRCA, are consistent with the Chapter 3 policies of the Coastal Act, and their issuance is consistent with Coastal Act Section 30810(b).

E. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The Commission finds that issuance of these Consent Orders, to compel the removal of the Unpermitted Development and the restoration of the Property, among other things, as well as the implementation of these Consent Orders, are exempt from the requirements of the California Environmental Quality Act of 1970 (CEQA), Cal. Pub. Res. Code §§ 21000 *et seq.*, for the following reasons. First, the CEQA statute (section 21084) provides for the identification of “classes of projects that have been determined not to have a significant effect on the environment and that shall be exempt from [CEQA].” *Id.* at § 21084. The CEQA Guidelines (which, like the Commission’s regulations, are codified in 14 CCR) provide the list of such projects, which are known as “categorical exemptions,” in Article 19 (14 CCR §§ 15300 *et seq.*). Because this is an enforcement action designed to protect, restore, and enhance natural resources and the environment, and because the Commission’s process, as demonstrated above, involves ensuring that the environment is protected throughout the process, three of those exemptions apply here: (1) the one covering actions to assure the restoration or enhancement of natural resources where the regulatory process involves procedures for protection of the environment (14 CCR § 15307); (2) the one covering actions to assure the restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment (14 CCR § 15308); and (3) the one covering enforcement actions by regulatory agencies (14 CCR § 15321).

Secondly, although the CEQA Guidelines provide for exceptions to the application of these categorical exemptions (14 CCR § 15300.2), the Commission finds that none of those exceptions applies here. Section 15300.2(c), in particular, states that:

A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

CEQA defines the phrase “significant effect on the environment” (in Section 21068) to mean “a substantial, or potentially substantial, adverse change in the environment.” These Consent Orders are designed to protect and enhance the environment, and they contain provisions to ensure, and to allow the Executive Director to ensure, that they are implemented in a manner that will protect the environment. Thus, this action will not have any significant effect on the environment, within the meaning of CEQA, and the exception to the categorical exemptions listed in 14 CCR section 15300.2(c) does not apply. An independent but equally sufficient reason why that exception in section 15300.2(c) does not apply is that this case does not involve any “unusual circumstances” within the meaning of that section, in that it has no significant feature that would distinguish it from other activities in the exempt classes listed above. This case is a typical Commission enforcement action to protect and restore the environment and natural resources.

In sum, given the nature of this matter as an enforcement action to protect and restore natural resources and the environment, and since there is no reasonable possibility that it will result in any significant adverse change in the environment, it is categorically exempt from CEQA.

F. SUMMARY OF FINDINGS OF FACT

1. Respondents are the owners of the Properties located at 25575 Piuma Road, Calabasas, Los Angeles County, CA, and currently identified by the Los Angeles County Assessor’s Office as Assessor’s Parcel Nos. (“APNs”) 4456-037-038, 4456-037-037, and 4456-037-010. The adjacent property, identified as APN 4456-013-904, is owned by the Mountains Recreation and Conservation Authority and was protected via an Offer to Dedicate per Condition #1 of CDP 5-83-004. The above-listed Properties are located within the Coastal Zone.
2. Respondents undertook development, as defined by Coastal Act Section 30106, on the Properties without a coastal development permit.
3. The Unpermitted Development includes, but may not necessarily be limited to: Grading, clearance of major vegetation, and construction of a horseback riding arena without a coastal development permit on land dedicated for conservation and adjacent to a blue line stream and environmentally sensitive habitat; and clearance of major vegetation, construction of horseback riding trails, fencing, a tack shed, tractor overhang, and a hay shed without a coastal development permit.

4. The Coastal Commission has jurisdiction over these violations because they involved development that, at the time it occurred, required a permit from the Commission, and none was obtained.
5. The Unpermitted Development is inconsistent with PRC sections 30231, 30240, and 30253 and the corresponding sections of the certified Local Coastal Program for the Santa Monica Mountains area of unincorporated Los Angeles County.
6. The Unpermitted Development is inconsistent with CDP 5-83-004.
7. The Unpermitted Development is causing “continuing resource damage” within the meaning of Coastal Act Section 30811 and Title 14, California Code of Regulations, Section 13190.
8. On June 24, 2004, Staff sent a letter to Respondents informing them of the Coastal Act violations.
9. On July 30, 2004, Staff sent a Notice of Intent to Commence a Cease and Desist and Restoration Order Proceedings (NOI) to Respondents for the Unpermitted Development on the Property now owned by MRCA. To address the Unpermitted Development on Respondents’ Properties, the Executive Director sent a Supplemental NOI on February 11, 2005.
10. Coastal Act 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.
11. 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. The activities to be performed under these Consent Orders, including the restoration and mitigation activities as well as the lot line adjustments, land transfers, and deed restrictions, if completed in compliance with the Orders and the plans required therein, are consistent with and authorized pursuant to Chapter 3 of the Coastal Act as well as the Santa Monica Mountains Local Coastal Plan.