

**CALIFORNIA COASTAL COMMISSION**

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# Th13a

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 Hearing Date: 2/7/19

## STAFF REPORT: PERMIT AMENDMENT

**Application No.:** 5-85-214-A5

**Applicant:** Chip McClean

**Agent:** Schmitz & Associates

**Location:** 2003 Delphine Lane, Santa Monica Mountains; Los Angeles County (APN 4455-013-002)

**Description of Project Previously Approved:** Subdivide three (3) parcels consisting of about 160 acres into 13 residential lots, grade a total of 134,600 cubic yards of material to create one access road and 13 building pads (removal and compaction; cut 31,700 cubic yards and fill 31,700 cubic yards; road cut 29,700 cubic yards and road fill 28,500 cubic yards; site pad cut 7,000 cubic yards and site pad fill 6,000 cubic yards).

**Proposed Amendment:** Amend the recorded open space deed restriction to allow for equestrian-related facilities within an approximately 9,800 sq. ft. portion of the open space deed restricted area.

**Staff Recommendation:** Denial

## SUMMARY OF STAFF RECOMMENDATION

Staff recommends **denial** of the proposed amendment. The standard of review for the amendment request is the policies and provisions of the certified Los Angeles County-Santa Monica Mountains Local Coastal Program (LCP).

The applicant is requesting an amendment to Special Condition 7 of coastal development permit (CDP) No. 5-85-214 to allow equestrian facilities within an approximately 9,800 sq. ft. portion

of a recorded Open Space Deed Restriction Area located at 2003 Delphine Lane in the Santa Monica Mountains area of unincorporated Los Angeles County (County).

Originally, the subject parcel was part of the larger 160 acre Old Abercrombie Ranch that was subdivided into 13 residential lots pursuant to Commission CDP No. 5-85-214. Special Condition 7 (Open Space Deed Restriction) of CDP No. 5-85-214 restricts future development beyond the approved building pads for each of the 13 created residential lots, including the subject lot (Lot 7). Specifically, the recorded Open Space Deed Restriction prohibits development beyond a “No Build Line”, except for vegetation removal for fire management purposes and planting of native vegetation and minor hiking and equestrian trails if approved through a CDP. On the subject parcel, the Open Space Deed Restriction Area extends between two “No Build Lines” which were established by the County Building and Safety Division to provide a safe distance from a stream to avoid flood hazards.

In 2002, the Commission approved CDP No. 4-02-088 for the construction of a single-family residence and accessory structures on the subject parcel. The CDP was issued in March 2005 and the approved development was constructed. No horse facilities were included in the Commission’s approval of that development. However, the previous property owner constructed equestrian corrals, shade structures, and trails on the property without the benefit of a valid CDP, in part within the Open Space Deed Restriction Area required by Special Condition 7 of CDP No. 5-85-214. This development is the subject of an open Coastal Commission violation case and Commission Enforcement Staff are coordinating with Los Angeles County to resolve it, consistent with the requirements of the approved Commission CDPs as well as the policies and provisions of the certified LCP.

On October 10, 2014 the Los Angeles County Santa Monica Mountains Local Coastal Program (LCP) was effectively certified by the Commission. The Commission no longer has jurisdiction over new CDPs in this area since the LCP was certified. However, portions of the unpermitted equestrian facilities have been constructed within an area that is deed restricted for open space, in violation of Special Condition 7 of Commission-issued CDP No. 5-85-214, and an amendment to CDP No. 5-85-214 would be necessary to modify the deed restriction in order to legalize those portions of the equestrian facilities. The Commission retains authority over CDPs granted by the Commission, including amendments to Commission-granted CDPs such as the subject amendment request, as well as the authority to enforce the terms and conditions of Commission-granted CDPs. As explained further below, Staff is recommending that the Commission deny this CDP amendment to modify the deed restriction, which will preclude the applicant from legalizing those portions of the unpermitted equestrian facilities located within the deed restricted area. Commission Enforcement Staff will consider options to address the unpermitted development within the deed restricted areas, as well as any other development on site that is not authorized pursuant to the Coastal Act or LCP.

Although the matter before the Commission in this case is a request to amend the recorded Open Space Deed Restriction Area of the Commission’s CDP to allow for horse facility uses within a specific portion of the Open Space Deed Restricted Area (and not the physical development itself, which would require a CDP from the County), the standard of review for the subject amendment request is the certified LCP. As such, the Commission must determine whether

allowing equestrian-related facilities within a specific portion of the Open Space Deed Restricted Area would conflict with any provisions of the LCP.

The applicant provided a site specific engineering analysis and topographical cross sections that demonstrated that the height and distance of the existing unpermitted horse facilities from a nearby stream would ensure that the facilities would be sufficiently safe from flood hazards, consistent with the mandates of the LCP. Although the Commission's justification for the Open Space Deed Restricted Area boundaries on the site pursuant to its 1999 action on CDP 5-85-214-A3 was related to flood hazards only, the standard of review of the proposed permit amendment to modify what is allowed within the deed restricted area is now all applicable policies and provisions of the certified LCP, including those that address biological resource protection.

The applicant provided a site specific biological assessment and map, which indicate that the subject equestrian facilities within the designated portion of the Open Space Deed Restricted Area are inconsistent with the policies and provisions of the LCP regarding allowable development within the requisite buffers from a nearby stream/riparian Environmentally Sensitive Habitat Area (ESHA). The biological resource protection approach certified by the Commission for the Santa Monica Mountains LCP designates H1 and H2 habitat, which both constitute ESHA. In this case, there is stream riparian habitat on and near the subject site that is designated H1 habitat. The LCP requires new development to provide a 100-foot H1 habitat buffer measured from the outermost edge of the riparian canopy, as well as an additional 100-foot H1 Quiet Zone measured from the H1 buffer, for a total of a 200-foot restricted area. Confined animal facilities and equestrian pasture are prohibited within the 100 foot H1 habitat buffer. Within the H1 Quiet Zone, confined animal facilities and equestrian pasture may be allowed only if existing fuel modification from the principal permitted use (in this case the approved single-family residence) is located within the Quiet Zone. Lastly, within the Quiet Zone and outside of the required fuel modification area for the residence, equestrian pasture and other minor improvements may be permitted only if there are no feasible areas within the fuel modification area of the residence.

In this case, the required fuel modification area for the residence is not located within the H1 Quiet Zone. Further, there appear to be locations within the fuel modification area for the residence that would be suitable for equestrian-related facilities outside of the H1 habitat buffer and H1 Quiet Zone. As such, the limited exceptions that allow equestrian facilities in H1 Quiet Zone do not apply to this property. In addition, the property owner has already been afforded a reasonable economic use of the property, and there are more suitable alternative locations on the site for equestrian facilities that would be consistent with the LCP. For all of these reasons, the proposed CDP amendment cannot be found consistent with the certified LCP.

Therefore, Staff recommends that the Commission **deny** proposed CDP Amendment No. 5-85-214-A5. The motion and resolution to adopt the staff recommendation of denial of the permit amendment is found starting on page 5.

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### APPENDICES

[Appendix 1 - Substantive File Documents](#)

### EXHIBITS

[Exhibit 1 – Vicinity Map](#)

[Exhibit 2 – Aerial View](#)

[Exhibit 3 – Recorded Open Space Deed Restriction \(OSDR\) Area](#)

[Exhibit 4 – Survey of Parcel with Existing Equestrian-Related Facilities and OSDR Area](#)

[Exhibit 5 – Proposed Area within OSDR for Equestrian-Related Facilities](#)

[Exhibit 6 – Site-Specific Biological Survey Map of H1 Habitat with H1 Habitat Buffer and H1 Quiet Zone relative to Equestrian-Related Facilities](#)

[Exhibit 7 – Map of Required Fuel Modification Areas relative to H1 Habitat, H1 Habitat Buffer, and H1 Quiet Zone](#)

[Exhibit 8 – Schmitz & Associates, Inc. Memorandum, dated January 3, 2019](#)

## I. MOTION AND RESOLUTION

### Motion:

*I move that the Commission **approve** proposed amendment to Coastal Development Permit No. 5-85-214 for the development as proposed by the applicant.*

### Staff Recommendation of Denial:

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit amendment and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

### Resolution to Deny the Permit Amendment:

*The Commission hereby denies the proposed amendment to the coastal development permit on the grounds that the development as amended will not conform with the policies of the Los Angeles County-Santa Monica Mountains Local Coastal Program. Approval of the amendment would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the amended development on the environment.*

## II. FINDINGS AND DECLARATIONS

### A. PROJECT BACKGROUND AND AMENDMENT DESCRIPTION

The applicant proposes to amend the recorded Open Space Deed Restriction that was required pursuant to Special Condition 7 of the subject CDP to allow for equestrian-related facilities within an approximately 9,800 sq. ft. portion of the open space deed restricted area that is located on Lot 7 (2003 Delphine Lane; APN 4455-013-002) of the approved 13-lot subdivision.

The subject site is located approximately four and one quarter miles inland of the coast on the inland side of Cold Canyon Road, north of the two intersections where Cold Canyon Road meets Mulholland Road, in the Santa Monica Mountains coastal zone area of Los Angeles County ([Exhibit 1](#)). The subject site consists of a single, 10.5-acre lot with gently sloping and steeply sloping terrain with ravines and was once part of the Old Abercrombie Ranch. Residential development, consisting of a 4,950 sq. ft. single-family residence, 920 sq. ft. garage, 370 sq. ft. detached recreation room, swimming pool, spa, driveway, fencing, and septic system, was permitted and constructed on the site adjacent to Delphine Lane ([Exhibit 2](#)). A stream bisects the middle of the property in a generally north-south direction. The parcel is zoned Rural-Coastal (R-C), which allows allow for residential development that is consistent with the goals of preserving the rural character and scenic quality of the coastal zone. The surrounding area is partially developed with low density residential development on parcels that range from one half acre to 80 acres in size.

### **Permit History**

In 1979 the State Coastal Commission, acting on an appeal of a South Coast Regional Commission action, approved coastal development permit (CDP) No. A-204-79 for the subdivision of the 160-acre Old Abercrombie Ranch into 51 lots, but the permit eventually expired due to the applicant's inability to comply with the CDP's special conditions. Later, on September 27, 1985 the Commission conditionally approved CDP No. 5-85-214 to subdivide the 160-acre, three-parcel site into 23 residential lots. The applicant's original request was for a permit to subdivide the site into 51 residential lots of one acre each; however, in approving the permit, the Commission included a special condition requiring the applicant to submit a revised Tentative Tract Map to reduce the proposed lots to a maximum of 23. The permit also authorized 187,199 cu. yds. of grading to create a building pad on each of the 23 lots and a common access road. An easement for open space and view protection was required as a condition of the permit (Special Condition 4), which prohibits development over the steep hillside portions of the 160-acre site.

In 1987 the Commission approved CDP Amendment No.5-85-214-A1 to delete Special Condition 1 requiring participation in the alternative fee program in order to retire lots in the Cold Creek Basin and instead to substitute a revised special condition requiring lots to be retired pursuant to the policies contained in the former 1986 certified Malibu/Santa Monica Mountains Land Use Plan to ensure that the cumulative impacts of creating additional legal buildable lots are adequately mitigated. In 1997 the applicant submitted CDP Amendment No. 5-85-214-A2 to reduce the number of lots from 23 to 13 and to reconfigure the arrangement of the lots, but that application was never filed complete and was ultimately returned to the applicant.

On July 13, 1999 the Commission heard CDP Amendment Application No. 5-85-214-A3, which proposed to reduce the number of approved residential lots from 23 to 13, to reduce the proposed grading down to a total of 134,600 cubic yards, and to create one access road and 13 building pads. Commission staff had recommended approval of the amendment with nine special conditions, including Special Condition 7 requiring the applicant to execute and record a deed restriction prohibiting any additional site alteration or grading on any of the 13 residential lots approved by the amendment except for excavation necessary for future development of foundations, basements, pools/spas and other development normally associated with a single family residence and a second unit or guest house located on the approved building pad. Commission staff recommended this restriction on future grading in order to minimize landform alteration and potential impacts to nearby riparian and oak woodland environmentally sensitive habitat areas (ESHA) and sensitive watershed areas of Cold Creek.

However, during the hearing for CDP Amendment Application No. 5-85-214-A3, the applicant requested that the Commission consider options for allowing future development within the areas outside of the approved pads on each lot. In their discussion of possible alternatives to allow future development, the Commissioners identified a series of "No Build Lines" depicted on the project plans. The applicant indicated that those lines were established by Los Angeles County during its preliminary review of the project and the lines were located approximately 200 feet from a creek in order to provide an adequate buffer for future development from flood hazards.

In response to Commissioner discussion during the hearing, Commission staff modified the staff recommendation and suggested replacing Special Condition 7 (Future Grading Limitation Deed Restriction) with a special condition requiring the recordation of an Open Space Deed Restriction for the area between the County's "No Build Line" and the previously recorded open space/view protection easement area (if applicable) for each of the 13 lots. Pursuant to revised Special Condition 7, no development shall occur in the area located between the "No Build Line" and the existing recorded Open Space area (previously recorded pursuant to Special Condition 4 of CDP No. 5-85-214) except for vegetation removal for fire management purposes and planting of native vegetation and minor hiking and equestrian trails if approved by the Commission or Los Angeles County pursuant to a separate CDP ([Exhibit 3](#)). However, for two of the 13 approved lots that did not contain the previously recorded open space/view protection easement area, the Open Space Deed Restriction area for those lots would extend between two "No Build Lines" established by the County for flood hazard protection. The subject lot (Lot 7) is one of the lots in which the restriction extends between the County's "No Build Lines" ([Exhibit 3](#)).

In addition, Commission staff also modified its recommendation to add Special Condition 10 (Future Development Deed Restriction) requiring the applicant to execute and record a deed restriction for the area between the "No Build Line" and the approved graded building pad identified on each of the 13 lots. Pursuant to Special Condition 10, the exemptions for future improvements to residential development provided pursuant to Coastal Act Section 30610 shall not apply, and any future improvements to the approved residential development on each lot will require an additional CDP. The Commission approved the CDP amendment with these conditions at the July 13, 1999 hearing. After the applicant satisfied the requirements of the prior-to-issuance special conditions, the CDP was issued in August 2000.

Another amendment (CDP Amendment No. 5-85-214-A4) was approved by the Commission at the November 2001 hearing for the construction of two vehicle and one pedestrian security gate and a continuous fence set back from Cold Canyon Road for a distance of 200 ft. in each direction. The gate and fence were proposed to provide security into Abercrombie and Delphine Lanes, which are the private roads that provide access to the 13 approved lots. That amendment did not include any changes to the previously approved special conditions.

In summary, there are three special conditions associated with CDP No. 5-85-214 that restrict future development beyond the approved building pads for each of the 13 created residential lots, including the subject lot (Lot 7). The areas subject to each of these conditions are defined by legal descriptions and graphic depictions in the recorded legal documents that apply to each of the 13 parcels.

- Special Condition 4 - Open Space/View Easement: Prohibits development within the open space and view protection easement area located over the steep hillside portions of the 13-lot site.
- Special Condition 7 - Open Space Deed Restriction: Prohibits development within the area between the Open Space/View Easement area required above (if applicable) and a "No Build Line", except for vegetation removal for fire management purposes and planting of native vegetation and minor hiking and equestrian trails if approved through a

CDP. For two of the 13 approved lots that did not contain the previously recorded open space/view protection easement area, the Open Space Deed Restriction extends between two “No Build Lines” which were established by the County Building and Safety Division to provide a safe distance from a stream to avoid flood hazards.

- Special Condition 10 - Future Development Deed Restriction: Requires that future improvements to the approved residential development in the area between the approved graded building pad on each of the 13 lots and the “No Build Line”, that would otherwise be exempt from coastal permit requirements pursuant to Coastal Act Section 30610, shall instead be reviewed by the Commission or certified local government in the context of a CDP application due to the sensitive environmental and scenic resources of the area.

In 2002, the Commission approved CDP No. 4-02-088 for the construction of a single-family residence and accessory structures on Lot 7 of that subdivision, which is the lot that is the subject of this permit amendment staff report. CDP No. 4-02-088 was amended in 2005 (4-02-088-A1) to redesign and reduce the size of the approved residence and to eliminate a garage and attached guest unit. The CDP was issued in March 2005 and the approved development was constructed. No horse facilities were included in the Commission’s approval of that development.

### **Violation History**

On March 7, 2013, Commission enforcement staff opened Violation File No. V-4-13-011 after enforcement staff noticed unpermitted development on the subject property while in the process of reviewing a neighboring property. On January 24, 2014 Commission enforcement staff sent a Notice of Violation (NOV) letter to the property owner regarding the unpermitted clearing of vegetation and construction of two horse corrals, horse stables (which include pipe stall shade structures with tack room), and trails, inconsistent with the terms and conditions of CDP Nos. 5-85-214 and 4-02-088. The two horse corrals, horse stables, and tack room are depicted on [Exhibit 4](#). The unpermitted pipe stall horse stables are located within the recorded Open Space Deed Restriction area that was required by CDP No. 5-85-214. The NOV letter concluded by suggesting that the unpermitted development be removed and the site restored through the issuance of a Consent Cease and Desist Order and a Consent Restoration Order and that if a resolution cannot be reached the Commission may seek issuance of a Cease and Desist Order, civil fines, litigation, and the recordation of a Notice Of Violation against the property. Commission enforcement staff exchanged several letters of correspondence with the property owners regarding the NOV including the most recently issued correspondence from Commission enforcement staff on May 27, 2017; however, the property owner did not agree to resolve the violation. Violation No. V-4-13-011 remains open at this time.

On October 10, 2014 the Los Angeles County Santa Monica Mountains Local Coastal Program (LCP) was effectively certified by the Commission. Pursuant to Section 22.44.690.Y.5 of the Local Implementation Plan (Confined Horse Facility Special Compliance Program), confined horse facilities that are the subject of an Open Coastal Commission Violation Case and that are eligible to participate in the Special Compliance Program are immune from further Commission enforcement action for a period of 12 months from the date of LCP certification. However, to remain immune from further enforcement action beyond that one year period, the LCP requires

that the property owners of those subject horse facilities submit a complete CDP application with the County of Los Angeles (County) within the one-year period to bring those facilities into conformance with the certified LCP, and to continue through the permitting and permit compliance process of the program<sup>1</sup>. The LCP allowed the Executive Director of the Commission to extend this one-year period for an additional 180 days for good cause. The 12-month period for submittal of a complete permit application to the County ended on October 10, 2015. However, the County requested a 180-day time extension prior to the deadline for eight properties/property owners with confined horse facilities (subject of an Open Coastal Commission Violation Case) that have been diligently working with County staff in beginning the application process and needed additional time to compile the required materials for the submittal of a complete coastal development permit application pursuant to the Special Compliance Program. The subject property was one of the eight properties that was the subject of the County's time extension request. On November 19, 2015, the Executive Director determined that it was appropriate to grant additional time in those eight cases and authorized a time extension of 180 days – to a new deadline of April 7, 2016. In the case of the subject unpermitted horse facilities, the property owner successfully submitted a complete CDP permit application with the County prior to the expiration of the application period and is in the process of seeking permit approval from the County for the development. However, since a portion of the unpermitted development on the subject property, specifically the approximately 9,800 sq. ft. pipe stall horse stables, is located within the recorded Open Space Deed Restriction Area pursuant to Commission CDP No. 5-85-214, the County will not complete their analysis of the proposed development nor schedule the application for a local hearing until after the Commission takes action on the subject amendment request.

## **B. FLOOD HAZARDS AND BIOLOGICAL RESOURCES**

### **1. Applicable LCP Policies and Provisions**

Policy CO-33 of the Santa Monica Mountains Land Use Plan states (in relevant part):

*Sensitive Environmental Resource Areas (SERAs) are areas containing habitats of the highest biological significance, rarity, and sensitivity. SERAs are divided into two habitat categories – H1 habitat and H2 habitat – that are subject to strict land use protections and regulations.*

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<sup>1</sup> The Special Compliance Program includes two compliance pathways for eligible unpermitted confined horse facilities. The first compliance path (Full Conformity) includes those unpermitted horse facilities that can be brought into full conformity with the LCP through the CDP process. The second path (Phased Conformity) involves unpermitted horse facilities that because of parcel size, topography, onsite resources, or other constraints make it infeasible to re-site, re-size and/or re-design the facility in a manner that is in full conformity with the LCP. In these cases, a CDP may be granted to authorize the facility on a temporary basis (eight years from LCP certification with potential for two, eight-year extensions that shall not exceed 24 years total) provided the facility complies with certain terms and minimum requirements.

*1) H1 habitat consists of areas of highest biological significance, rarity, and sensitivity-- alluvial scrub, coastal bluff scrub, dune, native grassland and scrub with a strong component of native grasses or forbs, riparian, native oak, sycamore, walnut and bay woodlands, and rock outcrop habitat types. Wetlands, including creeks, streams, marshes, seeps and springs, are also H1 habitat. Coast live and valley oak, sycamore, walnut, and bay woodlands are all included in H1 habitat. H1 habitat also includes populations of plant and animals species (1) listed by the State or Federal government as rare, threatened or endangered, listed by NatureServe as State or Global-ranked 1, 2, or 3, and identified as California Species of Special Concern, and/or (2) CNPS-listed 1B and 2 plant species<sup>3</sup>, normally associated with H1 habitats, where they are found within H2 or H3 habitat areas.*

*2) H2 habitat consists of areas of high biological significance, rarity, and sensitivity that are important for the ecological vitality and diversity of the Santa Monica Mountains Mediterranean Ecosystem. H2 habitat includes large, contiguous areas of coastal sage scrub and chaparral-dominated habitats. ...*

Policy CO-55 of the Santa Monica Mountains Land Use Plan states (in relevant part):

*New development adjacent to H1 habitat shall provide native vegetation buffer areas to serve as transitional habitat and provide distance and physical barriers to human intrusion. Buffers shall be of a sufficient size to ensure the biological integrity and preservation of the H1 habitat areas they are designed to protect. New development shall provide a buffer of no less than 100 feet from H1 habitat. ...*

Policy CO-57 of the Santa Monica Mountains Land Use Plan states (in relevant part):

*New non-resource-dependent development shall also provide an additional 100-foot Quiet Zone from H1 habitat where feasible (measured from the outer edge of the 100-foot H1 habitat buffer required above). New development is not permitted in the H1 habitat Quiet Zone except resource-dependent uses, non-irrigated fuel modification required by the Fire Department for lawfully-established structures, and the following other uses in very limited circumstances:...(3) a development on a lawfully-created parcel that is the minimum development necessary to provide a reasonable economic use of the property and where there is no feasible alternative...(4) equestrian pasture outside of the fuel modification zone, consistent with the requirements of the LCP, where the development is sited and designed to ensure that no required fuel modification extends into H1 habitat or H1 buffer, it will not significantly degrade H1 habitat, and will not adversely affect wildlife usage, including movement patterns, of the local area or region. Additionally, if existing fuel modification for the principal use is located within the Quiet Zone, confined animal facilities may be established within the Quiet Zone on slopes of 3:1 or less only if the facilities will not require fuel modification to extend into H1 habitat or the H1 habitat buffer, and subject to Environmental Review Board (ERB) review. ...*

Policy CO-104 of the Santa Monica Mountains Land Use Plan states (in relevant part):

*In areas of H2 habitat or H1 Quiet Zone, equestrian pasture comprised of only fenced areas for turnout, water troughs, and other minor improvements for which the Fire Department does not require fuel modification may be permitted outside of the fuel modification area for the principal permitted use, only when all of the following are met: 1) there is no feasible area within the fuel modification of the principal permitted use that meets the 3:1 slope requirement pursuant to Policy CO-103; 2) the pasture area is located on slopes no steeper than 4:1; and 3) habitat impact mitigation is required pursuant to Policy CO-86b. Such pasture facilities shall not exceed an area more than 5 percent of the total parcel size, or two acres, whichever is less. Lighting and irrigation are not allowed in these areas. No locally-indigenous vegetation may be removed except as incidental and necessary to the setting of posts for fencing and gates. ...*

Policy SN-12 of the Santa Monica Mountains Land Use Plan states (in relevant part):

*Site, design and size all new development to minimize risks to life and property from flood hazard, considering changes to inundation and flood zones caused by rising sea level.*

Policy SN-14 of the Santa Monica Mountains Land Use Plan states (in relevant part):

*Prohibit development within flood hazard areas, in consideration of rising sea level, unless no alternative building site exists on the property and proper mitigation measures are provided to minimize or eliminate risks to life and property from flood hazard.*

Section 22.44.630 of the Santa Monica Mountains Local Implementation Plan states (in relevant part):

*“Confined Animal Facilities” mean facilities built and used for the keeping of livestock and equines.*

Section 22.44.1890 of the Santa Monica Mountains Local Implementation Plan states (in relevant part):

*Development is prohibited in the following habitats, with the exception of the permitted uses listed below. Notwithstanding the allowable uses detailed in Sections 22.44.1700 through 22.44.1780, only the following uses may be permitted within each of the following habitat areas...*

*D. H1 Habitat Buffer (all land within 100 feet of H1).*

- 1) Public accessways and trails, including directional signs.*
- 2) Interpretive signage designed to provide information about the value and protection of the resources.*
- 3) Restoration projects where the primary purpose is restoration of the habitat.*

- 4) *Invasive species eradication projects if they are designed to protect and enhance habitat values.*
- 5) *Low-impact campgrounds.*
- 6) *Public works projects to repair or protect existing public roads, consistent with subsection F of Section 22.44.1920.*
- 7) *Access road, consistent with subsection C of Section 22.44.1920, to a lawfully-permitted use only where all of the following apply:...*
- 8) *A development not permitted in H1 Habitat Buffer may be approved only where all of the following apply:*
  - a. *The project site is on a lawfully created parcel;*
  - b. *The development is the minimum necessary to provide the landowner a reasonable economic use of the property, and in no case shall it exceed the maximum standards provided in Sections 22.44.1910 and 22.44.1920;*
  - c. *There is no other feasible alternative building site location that can avoid the H1 Habitat Buffer;*
  - d. *The maximum feasible buffer width is provided between the development and the H1 Habitat area;*
  - e. *The development is sited and designed to prevent impacts that would significantly degrade H1 Habitat; and,*
  - f. *All feasible mitigation measures have been provided to minimize adverse environmental effects.*

*E. H1 Quiet Zone (all land within 100 feet of H1 Habitat Buffer).*

- 1) *Non-irrigated fuel modification required by the Fire Department for lawfully-established structures.*
- 2) *Public accessways and trails, including directional signs.*
- 3) *Interpretive signage designed to provide information about the value and protection of the resources.*
- 4) *Restoration projects where the primary purpose is restoration of the habitat.*
- 5) *Invasive species eradication projects if they are designed to protect and enhance habitat values.*

- 6) *Low-impact campgrounds.*
- 7) *Public works projects to repair or protect existing public roads, consistent with subsection F of Section 22.44.1920.*
- 8) *Access road, consistent with subsection C of Section 22.44.1920, to a lawfully-permitted use only where all of the following apply:...*
- 9) *Equestrian pasture outside of the fuel modification area for the principal permitted use, consistent with subsection E and F of Section 22.44.1940, only where all of the following apply: the development is sited and designed to ensure that no Fire Department required fuel modification extends into H1 Habitat or H1 Habitat Buffer, it will not significantly degrade H1 habitat, and will not adversely affect wildlife usage, including movement patterns, of the local area or region.*
- 10) *Confined animal facilities, consistent with Section 22.44.1950, only if existing fuel modification for the principal permitted use is located within the Quiet Zone, the facilities are located on slopes of 3:1 or less, the facilities will not require fuel modification to extend into H1 habitat or H1 habitat buffer, and subject to the recommendation of the ERB.*
- 11) *Public recreation facilities, only if the Quiet Zone area is developed and/or disturbed by an historic, legally established use.*
- 12) *A development not permitted in H1 Habitat Quiet Zone may be approved only where all of the following apply:*
  - a. *The project site is on a lawfully created parcel;*
  - b. *The development is the minimum necessary to provide the landowner a reasonable economic use of the property, and in no case shall it exceed the maximum standards provided in Sections 22.44.1910 and 22.44.1920;*
  - c. *There is no other feasible alternative building site location that can avoid the H1 Habitat Quiet Zone;*
  - d. *The maximum feasible Quiet Zone width is provided between the development and the H1 Habitat Buffer;*
  - e. *The development is sited and designed to prevent impacts that would significantly degrade H1 Habitat; and,*
  - f. *All feasible mitigation measures have been provided to minimize adverse environmental effects.*

*13) If an area designated as the Quiet Zone contains areas of other mapped Habitat Categories (e.g., H2, H3) and the proposed development includes more than one habitat category, the development standards, including the permitted uses, that are most restrictive shall regulate the entire development of the area.*

Section 22.44.1900 of the Santa Monica Mountains Local Implementation Plan states (in relevant part):

*New development adjacent to H1 habitat shall provide native vegetation buffer areas to serve as transitional habitat and provide distance and physical barriers to human intrusion. Buffers shall be of a sufficient size to ensure the biological integrity and preservation of the habitat they are designed to protect. Vegetation removal, vegetation thinning, or planting of non-native or invasive vegetation shall not be permitted within buffers.*

*A. H1 Habitat Buffer.*

*New non-resource dependent development shall provide a buffer of no less than 100 feet from H1 Habitat, unless otherwise provided in subsection D of Section 22.44.1890.*

...

*B. H1 Habitat Quiet Zone. New development shall also provide an additional 100-foot Quiet Zone from H1 Habitat where feasible (measured from the outer edge of the 100 foot H1 Habitat buffer required above), unless otherwise provide in subsection E of Section 22.44.1890.*

Section 22.44.1940.E of the Santa Monica Mountains Local Implementation Plan states (in relevant part):

*1. In areas of H2 Habitat or H1 Quiet Zone outside of the fuel modification zone for the principal permitted use, equestrian pasture comprised of only fenced areas for turnout, water troughs, and other minor improvements for which the Fire Department does not require fuel modification may be permitted outside of the fuel modification area required for the principal permitted use, if approved pursuant to a major CDP, only when all of the following are met:*

*a. There is no feasible area within the fuel modification zones of the principal permitted use that meets the 3:1 slope requirement pursuant to subsection C above;*

*b. There is no feasible area of H3 habitat on natural slopes of 4:1 or less steep; and*

*c. The pasture area is located on slopes no steeper than 4:1.*

*2. Such pasture facilities shall not exceed an area more than five percent of the total parcel size, or two acres, whichever is less.*

*3. Lighting and irrigation are not allowed in these areas.*

*4. No locally-indigenous vegetation may be removed except as incidental and necessary to the setting of posts for fencing and gates.*

*5. Such pasture facilities shall not require additional or expanded roads.*

*6. The CDP approving development subject to this section shall include a condition requiring habitat impact mitigation, in accordance with subsection B of Section 22.44.1950.*

Section 22.44.1940.F of the Santa Monica Mountains Local Implementation Plan states (in relevant part):

*The maximum area of impacts to H2 habitat outside of the fuel modification are required by the Fire Department for the approved structures comprising the principal permitted use for confined animal facilities shall be five percent of the total parcel size, or two acres, whichever is less, and this maximum shall be cumulative for facilities allowed by subsections D and E above.*

Section 22.44.2102.A of the Santa Monica Mountains Local Implementation Plan states (in relevant part):

*All new development shall be sized, sited, and designed to minimize risks to life and property from geologic, flood, and fire hazard, considering changes to inundation and flood zones caused by rising sea level.*

Section 22.44.2102.I of the Santa Monica Mountains Local Implementation Plan states (in relevant part):

*Where feasible, development shall be sited outside of special flood hazard areas or County Floodways. Special flood hazard areas are defined as areas identified by the FIA of the FEMA as having special flood or flood-related erosion hazards, and designated on a FHBM or FIRM as Zones A, A0, AE, A99, AH, V, VE, or V...*

## **2. Flood Hazards**

A United States Geological Survey (USGS) National Hydrography Dataset (NHD)-identified Blue Line Stream crosses the middle of the subject lot in a generally north to south direction. The aforementioned “No Build Lines” discussed previously in Section A above were established by Los Angeles County Building and Safety Division in its review of the approved subdivision to create a sufficient buffer from the stream for any new development to avoid risks from flooding. In approving the CDP Amendment 5-85-214-A3 for the subdivision, the Commission prohibited new development beyond the County’s “No Build Line” on each created lot, except for vegetation removal for fire management purposes and planting of native vegetation and minor hiking and equestrian trails (Special Condition 7).

In the subject amendment application, the applicant is requesting to amend the recorded Open Space Deed Restriction of Special Condition 7 to allow for equestrian related facilities within an

approximately 9,800 sq. ft. portion of the Open Space Deed Restricted Area ([Exhibit 5](#)). Since the Open Space Deed Restricted Area on the subject property coincides with the County's "No Build Lines", which were established to avoid risks from flooding, the Commission must analyze whether allowing development within a portion of the restricted area would conflict with the flood hazard policies of the certified LCP. Policy SN-12 of the certified LUP requires new development to minimize risks to life and property in areas of flood hazard and LUP Policy SN-14 prohibits new development within flood hazard areas. Similarly, Sections 22.44.2102.A and I of the certified LIP require development to be sited outside of flood hazard areas, specifically FEMA flood zones A, A0, AE, A99, AH, V, or VE.

The applicant provided surveys of the project site, including topographical cross sections, illustrating that the locations of the unpermitted, as-built equestrian confined animal facilities proposed to be allowed within the open space restricted area are approximately 30-35 feet above the elevation of the stream bed located to the northwest of the facilities. In addition, the applicant submitted an analysis from an engineer which concluded that the unpermitted, as-built horse facilities would be sufficiently safe from flood hazards due to their elevation, as well as distance (approximately 100 feet) from the stream.

The certified LUP defines a flood hazard area as "the relatively level land area on either side of the banks of a drainage course regularly subject to flooding. The Federal Insurance Administration designates that part of the flood plain subject to a one percent chance of flooding in any given year as an 'area of special flood hazard'." Map 5 of the County's LUP illustrates the fire and flood hazards within the plan area, and the location of the subject site is not depicted within a designated 100-year flood plain. It should be noted that a "100-year floodplain" is defined by the Federal Emergency Management Agency (FEMA) as an area with a one in 100, or one-percent, chance of a flood at that level occurring in any given year. So the terms "100-year flood plain" and "one percent chance of flooding" are synonymous. As such, because the subject site is not depicted within the designated 100-year flood plain it is not located within an area of special flood hazard area. In addition, the applicant submitted flood maps generated from FEMA showing that the site of the unpermitted, as-built horse facilities are not located within any Zones designated A, A0, AE, A99, AH, V, VE, or V, consistent with Section 22.44.2102.I of the certified LIP. Staff is not aware of any other evidence that the subject area of the site is "regularly subject to flooding".

Therefore, on this specific lot of the approved subdivision and in this specific case, amending the recorded Open Space Deed Restriction to allow equestrian facilities within the subject portion of the Open Space Deed Restricted area is consistent with the relevant flood hazard policies and provisions of the Santa Monica Mountains LCP because the development would not be located within any designated special flood hazard area and would be sited to minimize risk from flood hazards. As demonstrated in the topographical cross sections and the analysis from the applicant's engineer, the location of the unpermitted, as-built horse facilities are situated sufficiently high on a ridge and back from the stream that the risk to life or property from flooding is minimized. It appears that the existing "No Build Lines" established by the County in the 1980's to protect development from flood hazards may have included some higher elevation landform areas either in error or in caution. Although the proposed amendment request is consistent with the LCP's flood hazard policies and provisions, the amendment is inconsistent

with the biological resource protection policies and provisions of the LCP as discussed in further detail below.

### **3. Biological Resources**

The biological resource protection approach certified by the Commission for the Santa Monica Mountains LCP designates three habitat categories: H1 habitat, H2 habitat, and H3 habitat. H1 and H2 habitats are collectively described as Sensitive Environmental Resource Areas (SERA). H1 and H2 habitats also meet the definition of ESHA under the Coastal Act. Although both H1 and H2 habitats are considered SERA's and meet the definition of ESHA, the County made a distinction between the two sensitive habitats in the LCP in order to carry out a different regulatory approach for the protection of each category of habitat. The LCP policies and provisions require that H1 and H2 habitat must be protected against any significant disruption of habitat values, and they generally only allow resource dependent uses in H1 and H2 habitat, consistent with Section 30240 of the Coastal Act.

Pursuant to Policy CO-33, H1 habitat consists of areas of the highest biological significance, rarity and sensitivity, which include alluvial scrub; dunes; coastal bluff scrub; native grassland; riparian; native oak, sycamore, walnut and bay woodlands or savannahs; and rock outcrop habitat types. Wetlands, including creeks, streams, marshes, seeps and springs are also H1 habitat. H2 habitat consists of areas of high biological significance, rarity, and sensitivity that are important for the ecological vitality and diversity of the Santa Monica Mountains Mediterranean Ecosystem, but which don't qualify as H1 habitat. H2 habitat includes large, contiguous areas of coastal sage scrub and chaparral-dominated habitats. The H3 habitat designation consists of all other areas within the plan area that are not H1 or H2 habitats. While H3 habitat does not constitute a "SERA", or ESHA, the County had determined that these areas provide important biological functions that warrant specific development standards for the siting and design of new development.

The LUP policies establish the protection of H1 habitat through the provision of buffers between these areas and new development. Policy CO-55 states that new development is required to provide a buffer of no less than 100 feet from H1 habitat. Policy CO-57 states that new development is also required to provide an additional 100 foot Quiet Zone buffer from H1 habitat where feasible (measured from the outer edge of the 100-foot H1 habitat buffer discussed above).

#### **Habitats and Buffers Designated on the Site.**

The Biological Resources Map of the certified LUP depicts a stream that transverses generally north to south through the properties created in CDP No. 5-85-214, specifically the subject property located on Lot 7 and the property immediately north located on Lot 8. Additionally, the map depicts H1 habitat on both sides of the stream. Policies CO-36 and CO-37 of the LUP provide that although the designated sensitive habitat categories are generally depicted on the Biological Resources Map, the precise boundaries of the habitat categories shall be determined based on a site-specific biological inventory and/or assessment at the time development is proposed. Based on substantial evidence, a resource on any site may be classified or reclassified

from one category to a higher or lower category. Policies CO-33 through CO-35 provide the criteria for what constitutes the various habitat categories, and Policy CO-36 further provides that any area not previously designated on the Biological Resources Map that meets the criteria of a habitat category (H1, H2, H3) shall be accorded all the protection provided for that habitat category in the LCP. In this case, the applicant's biologists prepared a site specific biological survey (dated June 15, 2015) and a focused memorandum (dated November 6, 2018) which found the stream path to be generally consistent with the mapping in the certified LCP and included updates to the location and amount of H1 habitat in the vicinity of the stream and its riparian corridor ([Exhibit 6](#)).

In addition to delineating the path of the stream and mapping H1 habitat in the vicinity, the habitat map from the applicant's biologist also depicts the requisite 100 foot H1 habitat buffer and 100 foot H1 Quiet Zone pursuant to the LCP policies cited above ([Exhibit 6](#)). Commission Staff Ecologist, Dr. Jonna Engel, has reviewed the biological survey and map and visited the site on July 26, 2018. Dr. Engel has determined that the depiction in [Exhibit 6](#) of habitat that meets the definition of H1 habitat in the vicinity of the existing unpermitted horse stable structures on the subject property is accurate and the Commission concurs with this conclusion. As illustrated on [Exhibit 6](#), a portion of the existing unpermitted horse stable structures are located within the required 100 foot H1 habitat buffer, with the majority of this development located within the required 100 foot H1 Quiet Zone.

### **Amendment Proposal**

As previously described, the applicant proposes to amend the recorded open space deed restriction applying to the property to allow for equestrian-related facilities within an approximately 9,800 sq. ft. portion of the open space deed restricted area ([Exhibit 5](#)). A portion of the area proposed to allow equestrian facilities would be within the designated H1 habitat buffer and a portion would be within the designated H1 Quiet Zone. Although the matter before the Commission in this case is a request to amend the recorded Open Space Deed Restriction Area of the Commission's CDP to allow for horse facility uses within a specific portion of the Open Space Deed Restricted Area (and not the physical development itself), the standard of review for the subject amendment request is the certified LCP. As such, the Commission must determine whether allowing equestrian-related facilities within a specific portion of the Open Space Deed Restricted Area would conflict with any applicable provisions of the LCP, including LCP provisions that address biological resource protection.

### **Consistency Analysis**

Limited equestrian-related uses (confined animal facilities and equestrian pasture) are permitted under the LCP as a primary use or accessory to residential development within many of the land use designations; however, they are restricted within or adjacent to SERA's (H1 and H2 habitats) due to their potential to result in adverse impacts to environmental resources, particularly riparian and stream areas. Confined animal facilities and equestrian pasture are prohibited in H1 habitat and within the required 100 foot H1 habitat buffer pursuant to LUP Policies CO-55 and CO-56. Therefore, equestrian-related facilities cannot be approved within the portion of the

recorded Open Space Deed Restricted Area on the site that overlaps with the 100 foot H1 habitat buffer.

Additionally, LUP Policies CO-57 and CO-104 also limit uses within the 100-foot H1 Quiet Zone. Specifically, there are only limited circumstances in which equestrian-related facilities may be allowed within the H1 Quiet Zone.

Confined animal facilities, defined in the LCP as “facilities built and used for the keeping of livestock and horses”, may only be established within the H1 Quiet Zone *if existing fuel modification for the principal permitted use (residence in this case) is located within the Quiet Zone*, and subject to additional standards that relate to slopes and review by the County’s Environmental Review Board (ERB).

Pursuant to Policy CO-104, equestrian *pasture* (non-irrigated), comprised of fenced areas for turnout, water troughs, and other minor improvements for which the Fire Department does not require fuel modification, may only be permitted outside of the fuel modification area for the principal permitted use (residence in this case) if located on slopes no steeper than 4:1 *and if there is no feasible area within the fuel modification area of the residence that meets the slope requirement*. Pasture areas are limited to fenced paddock areas used for turnout (exercise and grazing) only, without stalls or structures. The policies of the LUP also prohibit the removal of vegetation and the construction of structures that require fuel modification in conjunction with equestrian pasture use in the Quiet Zone.

In this case, the subject unpermitted pipe stall horse stables meet the LCP definition of confined animal facilities. As previously discussed, the proposed area of the Open Space Deed Restriction in which the applicant requests the allowance of equestrian-related facilities (which coincides with the location of the existing unpermitted confined horse facilities) is also located within designated H1 Quiet Zone, but outside of the 200 foot fuel modification zone for the single-family residence. Confined animal facilities, such as the subject horse facility, are not an allowed use within the H1 Quiet Zone unless the residence’s fuel modification zone overlaps with the Quiet Zone, which it does not do in this instance. Thus the proposed amendment is inconsistent with the biological resource protection policies of the certified LCP.

Further, even if the applicant proposed to remove the existing unpermitted confined animal facilities and instead create equestrian pasture area within the subject portion of the open space area, the extension of pasture areas outside of the fuel modification zone for the residence would only be allowed if there are no areas available within the fuel modification zone that could accommodate the pasture area because of steep slopes (exceeding 3:1). In this case, there appear to be areas within the applicant’s fuel modification zone for the existing residence that would be suitable for equestrian-related facilities, such as the area where an unpermitted horse corral was constructed ([Exhibit 7](#)). Development of equestrian facilities in that area would not require any amendment to the recorded Open Space Deed Restriction. Therefore, since equestrian-related facilities within the proposed portion of the recorded Open Space Deed Restricted Area on the site would overlap with the 100 foot H1 habitat buffer and 100 foot H1 Quiet Zone, and would not meet the LCP’s limitations for such facilities, the amendment request cannot be approved.

On January 3, 2019 the applicant's agent submitted a memorandum ([Exhibit 8](#)) in which they state that the subject horse facilities were constructed in an area that was cleared and/or disturbed as early as 1928, and that the area has been maintained in a cleared/disturbed state almost continually until the present day. The agent goes on to state that, due to the historic disturbance of the site, the H1 Quiet Zone itself is predominately dominated by H3 habitat consisting of non-native vegetation and legally-established fuel modification, devoid of any vegetation with high conservation value," and that the horse facilities are set back far enough from the stream H1 habitat such that they would not significantly impact that habitat.

Staff notes that it is difficult to determine from the photos provided that the area in question has been continually disturbed. In any case, the LCP does not have a policy or standard stipulating what types of areas can be included in H1 habitat buffer or H1 Quiet Zone; rather, the LCP requires the buffer and Quiet Zone as a measure to protect the integrity of the nearby ESHA (in this case a creek and riparian area) by minimizing disturbance. Certainly the maintenance of natural vegetation within the buffer or Quiet Zone can provide transitional habitat and decrease erosion and sedimentation into the adjacent H1 habitat, but this is not the only kind of disturbance that buffers are designed to avoid. Buffers, including the requisite Quiet Zone, also provide physical distance between development and H1 habitat (ESHA) areas, which helps avoid or minimize impacts from lighting, noise, and other human or equestrian activities. Additionally, buffers provide area for infiltration of runoff and non-point source pollution before it is introduced to streams or other coastal waters. Further, the LCP states (in LIP Section 22.44.1890.E.13) that:

*If an area designated as the Quiet Zone contains areas of other mapped Habitat Categories (e.g., H2, H3) and the proposed development includes more than one habitat category, the development standards, including the permitted uses, that are most restrictive shall regulate the entire development of the area.*

So in this case, even if the subject equestrian facility area were lawfully disturbed (before construction of the unpermitted equestrian facilities) and should therefore be considered as H3 habitat (where horse facilities might otherwise be allowed), the portion of the area that is within the H1 habitat buffer is still governed by the most restrictive standards—i.e., the H1 Habitat buffer standards, and the portion within the H1 Quiet Zone is still governed by the H1 Quiet Zone standards. The applicant's agent acknowledges this reality, stating that "[t]he matter at hand is that the equestrian facilities, while located in H3, are also located within the H1 Quiet Zone." The LCP provisions that govern H1 Quiet Zone and buffer areas thus apply, notwithstanding the applicant's arguments about the intent of the H1 Quiet Zone and H1 habitat buffer provisions, or the alleged lack of need for buffer zones in this instance.

Finally, the significance of requiring the siting of equestrian related development within the fuel modified area of the approved single-family residence, as discussed above, is to ensure that development is clustered to the maximum extent feasible in order to minimize the amount of area disturbed.

Finally, the agent's memorandum discusses LUP Policy CO-104, which allows for equestrian pasture within H1 Quiet Zone outside of fuel modification areas, and concludes that in light of

that policy, the request to amend the Open Space Deed Restricted area to allow for horse facilities is consistent with the LCP. Firstly, Policy CO-104 requires a proposed pasture to meet several requirements, including the requirement that there is no feasible development location within the existing area of fuel modification for the principal permitted use. As discussed previously, there appears to be a viable building location within the fuel modification area for the single family residence. Secondly, comparing equestrian pasture with the existing unpermitted horse facilities is inaccurate because pastures, unlike the existing unpermitted shade stables in the area of the Open Space Deed Restricted Area, consist of only fenced areas for turnout with no structures except for minor improvements such as water troughs.

Lastly, Policy CO-57 of the LUP states that in addition to the permitted uses previously discussed, a new development may also be allowed within H1 Quiet Zone if necessary in order to provide a reasonable economic use of the property, where the development is the minimum necessary to provide that economic use, and where there is no feasible alternative to avoid the buffer. In the case of the subject parcel, the property owner was already afforded a reasonable economic use of the property - the existing single-family residence that was developed pursuant to CDP No. 4-02-088. In addition, there are other feasible, alternative locations on the property for equestrian facilities that would be located outside of sensitive habitat areas and the requisite buffers (and outside of the Open Space Deed Restricted area)—specifically within the area of the existing unpermitted horse corral located within the fuel modification area of the existing residence ([Exhibit 7](#)). As previously discussed, the applicant has submitted a CDP application to the County to request authorization of the unpermitted horse facilities on the property. The County Environmental Review Board (ERB) reviewed the subject project on August 15, 2016 and concurred with the revised habitat mapping from the applicant's biologist, but the ERB recommended that the horse facilities within the Open Space Deed Restriction area be moved to a viable alternative location, specifically to the western portion of the site where there is an existing unpermitted corral that is outside of the Open Space Deed Restricted Area. Therefore, because the property owner has already been afforded a reasonable economic use of the property in the Commission's approval of the single-family residence, and because there are feasible alternatives for locating the equestrian facility outside of sensitive habitat and the requisite buffers that exist on the property, the proposed amendment cannot be found consistent with LUP Policies CO-55, CO-56, CO-57 and CO-104 (and the corresponding Implementation Plan provisions) of the LCP and must be denied.

#### **4. Conclusion**

For the reasons discussed in detail above, the Commission finds that the permit, as proposed to be amended to allow equestrian facilities within a portion of the recorded Open Space Deed Restricted Area, is not consistent with the biological resource protection policies and provisions of the certified Santa Monica Mountains LCP and there are alternatives available that would achieve consistency. Therefore, the permit amendment application is denied.

### **C. UNPERMITTED DEVELOPMENT**

Violations of the Coastal Act have occurred on the property including, but not limited to, unpermitted clearing of vegetation and construction of two horse corrals, horse stables (which include pipe stall shade structures with tack room), and trails. The horse stables have been constructed in an area that is deed restricted for open space pursuant to Special Condition 7 of Commission-issued CDP No. 5-85-214, in violation of said CDP. The applicant is seeking a CDP from the County of Los Angeles to authorize the unpermitted development described above. Commission enforcement staff will monitor the County CDP process and consider any necessary follow-up actions. In addition, as noted above, portions of the unpermitted equestrian facilities have been constructed within an area that is deed restricted for open space, in violation of Special Condition 7 of Commission-issued CDP No. 5-85-214, and an amendment to the CDP would be necessary to modify the deed restriction in order to legalize those portions of the equestrian facilities. Commission denial of this CDP amendment to modify the deed restriction will preclude the applicant from legalizing those portions of the unpermitted equestrian facilities located within the deed restricted area. Commission enforcement staff will therefore consider its options to address the unpermitted development within the deed restricted areas, as well as any other development on site that is not authorized pursuant to the Coastal Act or LCP.

Although development has taken place prior to submission of this permit application, consideration of this application by the Commission has been based solely upon the LCP. Commission review and action on this permit does not constitute a waiver of any legal action with regard to the alleged violations, nor does it constitute an implied statement of the Commission's position regarding the legality of development, other than the development addressed herein, undertaken on the subject site without a coastal permit.

### **D. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

Section 13096 of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit application to be supported by a finding showing the application, as modified by any conditions of approval, is consistent with any applicable requirement of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse effect that the proposed development may have on the environment.

The Commission incorporates its findings on Coastal Act consistency at this point as if set forth in full. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. As discussed above, the proposed development is not consistent with the policies and provisions of the certified Santa Monica Mountains Local Coastal Program. There are feasible alternatives that would avoid the adverse environmental effects of the project for the reasons listed in this report. Therefore, the Commission finds that the proposed project is not consistent with the requirements of the Coastal Act to conform to CEQA. Pursuant to CEQA

Guidelines (14 CCR) Section 15042 “a public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed.” Section 21080(b)(5) of the CEQA, as implemented by Section 15270 of the CEQA Guidelines, provides that CEQA does not apply to projects which a public agency rejects or disapproves. The Commission finds that denial, for the reasons stated in these findings, is necessary to avoid the significant effects on coastal resources that would occur if the projects were approved as proposed. Accordingly, the Commission’s denial of the project represents an action to which CEQA, and all requirements contained therein that might otherwise apply to regulatory actions by the Commission, do not apply.

## **APPENDIX A**

### **Substantive File Documents:**

File for CDP No. 5-85-214; File for CDP No. 5-85-214-A1; File for CDP No. 5-85-214-A2; File for CDP No. 5-85-214-A3; File for CDP No. 5-85-214-A4; File for CDP No. 4-02-088; File for CDP No. 4-02-088-A1; Los Angeles County Environmental Review Board Minutes of the August 15, 2016 Meeting approved October 17, 2016; 2003 Delphine Lane H1 Habitat and H1 Buffer Survey Memorandum by ESA dated November 6, 2018; Biological Assessment for 2003 Delphine Lane, Calabasas, California APN 4455-060-007 (Violation File No. V-4-13-001) dated July 15, 2015; Ahsirt Engineering Inc. Memorandum dated June 14, 2018; Certified Los Angeles County-Santa Monica Mountains LCP.