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# W8&W9

Staff: Logan Tillema-SF  
Staff Report: 10/16/20  
Hearing Date: 11/04/20

## STAFF REPORT: Recommendations and Findings for Consent Cease and Desist Order No. CCC-20-CD-03 and Consent Restoration Order No. CCC-20-RO-02

**Consent Cease and Desist Order No.:** CCC-20-CD-03

**Consent Restoration Order No.:** CCC-20-RO-02

**Related Violation File:** V-5-19-0109

**Respondent:** Los Angeles Department of Water and Power

**Project Location:** Five parcels owned by the California Department of Parks and Recreation located in Topanga State Park – Los Angeles County Assessors' Parcel Numbers ("APNs") 4431-023-901; APN 4432-002-922; APN 4432-002-923; APN 4432-002-920; APN 4432-002-919; and three adjacent privately-owned properties: APN 4431-023-028; APN 4431-039-010; APN 4431-040-012.<sup>1</sup>

**Violation Description:** Unpermitted Development, including, but not limited to: grading/creating new roads; grading and expansion of an existing fire road; depositing graded material; creating earthen berms; removing major vegetation, including numerous individual specimens of Braunton's milk-vetch, a species federally-listed as endangered, all within an environmentally sensitive habitat area; and disrupting the Braunton's milk-vetch's critical habitat.

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<sup>1</sup> These parcels are collectively referred to as "the Properties" in this staff report.

**Substantive File Documents:** 1. Public documents in Cease and Desist and Restoration Order File Nos. CCC-20-CD-03 and CCC-20-RO-02; Exhibits 1 through 8; and Appendix **A** of this staff report

**CEQA Status:** Exempt (CEQA Guidelines (CG) §§ 15060(c)(2) and (3)) and Categorically Exempt (CG §§ 15061(b)(2), 15307, 15308, and 15321)

## SUMMARY OF STAFF RECOMMENDATION AND FINDINGS

This Consent Cease and Desist Order and Consent Restoration Order (hereinafter referred to collectively as the “Consent Orders”) are a result of the effort of the Los Angeles Department of Water and Power (“Respondent”) working with California Coastal Commission (“Commission”) staff to find an amicable resolution of Coastal Act violations related to the unpermitted grading of and damage to coastal resources. Staff appreciates the efforts that Respondent made to reach this proposed agreement and recommends that the Commission approve the proposed Consent Orders that are attached to this staff report as **Appendix A**, as described in more detail in this report.

### Background

The Coastal Act violations addressed herein are located primarily in Topanga State Park in the Santa Monica Mountain range. To summarize the violations, Respondent began an infrastructure project to replace roughly 220 wooden power poles with stronger, more fire-resistant steel poles. In order to access the existing power poles for replacement, Respondent, without any Coastal Act authorization, substantially widened an existing fire road (“Temescal Ridge Fire Road”) by grading the area and removing the native vegetation. This native vegetation included Braunton’s milk-vetch,<sup>2</sup> a plant species the United States Fish and Wildlife Service (“USFWS”) lists as federally endangered under the Endangered Species Act.<sup>3</sup> In addition to expanding the road Respondent graded new “spur roads” from the main road. Similar to the fire road expansion, grading the spur roads removed coastal sage scrub, chaparral habitat and Braunton’s milk-vetch, all of which, in this location, the Commission identifies as an Environmentally Sensitive Habitat Area (“ESHA”). (**Exhibit 4**) In addition to the graded area and removal of native habitat (including Braunton’s milk-vetch in some locations), Respondent placed fill from its grading activities into “berms” onto the sides of the Temescal Ridge Fire Road, some of which has since eroded into the local water shed.

<sup>2</sup> Scientific name *Astragalus Brauntonii*.

<sup>3</sup> 16 U.S.C. Ch. 35 § 1531 et seq.; 50 C.F.R. 17.12(h) (listing).

In total, these unpermitted activities impacted 9.15 acres of native habitat within the Coastal Zone and an additional 18.83 acres outside the Coastal Zone. **(Exhibit 5 and 6)** Within that 9.15 acres of habitat impacted by the Unpermitted Development<sup>4</sup> in the Coastal Zone, an estimated 182 individuals' specimens of the endangered Braunton's milk-vetch were removed by Respondent. The impacted area also includes approximately 2.72 acres of federally listed critical habitat for Braunton's milk-vetch. **(Exhibit 5)**

The proposed Consent Orders require Respondent to cease and desist from engaging in any further unpermitted development, remove any physical material placed on the Properties, and restore the 9.15-acre area within the Coastal Zone impacted by the Unpermitted Development. In addition, to mitigate for the temporal loss of habitat, the Consent Orders require Respondent to restore the additional 18.83 acres of damaged habitat located outside the Coastal Zone, all on California Department of Parks and Recreation ("DPR") property. Respondent will also make payments totaling \$1,947,500.00 to remedy the violation and to further mitigate for the temporary loss of habitat. Lastly, the Consent Orders require Respondent to complete a Coastal Development Permit ("CDP") application for the pole replacement project and to comply with the terms and conditions of any permit issued by the Commission. Since Commission staff's initiation of these formal enforcement proceedings, Respondent, and the City Attorneys' office who represents them, worked diligently with staff and the other resources agencies involved (DPR and the USFWS) to craft a resolution that addresses and mitigates the violations and provides additional benefits to the public.

### **Affected Coastal Resources**

The Unpermitted Development conducted by Respondent caused significant harm to coastal resources within the Coastal Zone, as it damaged and destroyed ecologically important vegetation, such as the federally listed endangered species the Braunton's milk-vetch, that constitutes "major vegetation" as that term is used in the Coastal Act. The newly graded roads and widened existing road went directly through coastal chaparral and coastal sage scrub communities -- both of which are relatively rare and important ecosystems that support and include a wide variety of coastally important plants, insects, mammals, and birds. Because of their importance to coastal ecosystems, the Commission has already, in numerous prior actions, found coastal chaparral and coastal sage scrub in this area to be ESHA.<sup>5</sup> **(Exhibit 4)** The coastal chaparral and coastal sage scrub habitat, including the Braunton's milk-vetch habitat

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<sup>4</sup> As defined in the Violation description found on page one, and as described in the Consent Orders found in Appendix A, unpermitted development performed at the site by Respondent includes, but is not limited to: grading/creating new roads; grading and expansion of an existing fire road; depositing graded material; creating earthen berms; removing major vegetation, including numerous individual specimens of Braunton's milk-vetch, a species federally listed as endangered, all within an environmentally sensitive habitat area; and disrupting the Braunton's milk-vetch's critical habitat.

<sup>5</sup> See Coastal Act sections 30107.5 for definition of "Environmental Sensitive [Habitat] Area" and 30240 for ESHA protection policy.

located on the Properties, is afforded the highest protections under the Coastal Act and therefore such protection is a high priority for the Commission.

Respondent's grading (both to widen the existing Temescal Ridge Fire Road and to create spur roads from the trail) and the removal of native vegetation resulted in the creation of bare soil, changes to the topography of the site, and increased erosion across the Properties. DPR reported that rain events following the unpermitted grading caused loose soil to erode down the steep slopes and into drainage courses. This has the effect of removing beneficial topsoil from the area and, as described below, can lead to sediment contamination in streams that damages the streams ecology. Respondent also created "berms" from the grading materials at the edge of the Temescal Ridge Fire Road and allowed loose soil to fall from the hill tops down into the ravine and drainage course that abut the ridgeline and trail. (**Exhibit 3**) This had the potential to result in an increased sediment load in the local watershed, which in turn has the potential to increase turbidity, reduce the growth of aquatic plants, and harm benthic organisms by changing the composition of the streambed habitat, and burying invertebrates.

When Respondent mechanically altered the topography of the area, they did so without the Commission evaluating whether the development was consistent with the Coastal Act, and without any conditions being placed on the work so as to protect coastal resources, and, as importantly, without input from Commission experts, such as the Commission's staff geologist. As reported by DPR, erosion due to the Unpermitted Development has occurred. The earthen "berms" that Respondent created are simply not stable (as the berms are simply made up of loose mounds of soil) -- these berms have already begun to spill over down steep slopes and into the ravines below, damaging vegetation and harming the local ecosystem.

Lastly, the Unpermitted Development negatively impacted the scenic resources of the area and altered natural landforms on the Properties. The Temescal Ridge Fire Road, where a majority of the Unpermitted Development occurred, is an extremely popular public access trail that allows visitors easy access to the Santa Monica Mountains and the Backbone Trail (a trail that allows visitors to traverse the Santa Monica Mountain range). The Coastal Act protects scenic and visual qualities of coastal areas as well as limiting landform alterations. In addition, the Topanga State Park general plan minimizes trail widths and require trails to be sited to minimize their visual appearance and blend in with the natural surroundings.<sup>6</sup> The General Plan mirrors the Coastal Act's requirements to minimize alterations of natural land forms and to be visually compatible with the character of the surrounding area. When Respondent substantially altered the trail beyond its pre-existing width, Respondent negatively altered the visual layout of the trail and affected Coastal Resources.

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<sup>6</sup> See Chapter 3 of the Topanga State Park General Plan

**Consensual Resolution**

Under the proposed Consent Order, Respondent has agreed to conduct restorative activities, including removal of fill and other materials, placement of temporary erosion control measures, and revegetation of native plants species in the 9.15-acre area where it performed Unpermitted Development within the Coastal Zone. In addition, to mitigate for the temporal losses of habitat caused by the Unpermitted Development, Respondent, has agreed to restore the additional 18.83 acres of sage scrub and chaparral habitat disturbed by Respondent’s actions outside of the Coastal Zone along the Temescal Ridge Fire Road. Thus, by undertaking the above activities, Respondent will ensure that the habitat impacted by the Unpermitted Development is restored.

In addition to the additional 18.83 acres of on the ground mitigation proposed to occur, the proposed Consent Orders also provides for the Respondent to pay three payments, totaling \$1,947,500.00. First, Respondent, in light of settling its Coastal Act liabilities, has agreed to pay \$575,000.00 to the Violation’s Remediation Account held by the State Coastal Conservancy. Second, to address the temporary loss of habitat caused by the Unpermitted Development, the Consent Orders provide for Respondent to pay \$272,500.00 to DPR to be used for the purpose of habitat enhancement and removal of non-native vegetation from the surrounding area. And third, to further address the temporary loss of habitat and to mitigate for the harm caused to the resources, the Consent Orders provide for Respondent to pay \$1,100,00.00 to the Mountains Recreation and Conservation Authority (“MRCA”) for the express purpose of acquiring property of similar ecological value in the Santa Monica Mountains. This property will be held by MRCA to protect its ecological value in perpetuity for the people of California. Commission staff has coordinated with both DPR and MRCA regarding this proposed settlement.

Staff therefore recommends that the Commission **APPROVE** Consent Cease and Desist Order No. CCC-20-CD-03 and Consent Restoration Order CCC-20-RO-02.

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**APPENDIX A – Proposed Consent Cease and Desist Order No. CCC-20-CD-03 and Consent Restoration Order No. CC-20-RO-02**

**EXHIBITS**

- Exhibit 1: Vicinity Map
- Exhibit 2: Location of Properties
- Exhibit 3: Violation Photographs
- Exhibit 4: Memorandum from Dr. John Dixon, To Coastal Commission Ventura Staff, subject “Designation of Esha in the Santa Monica Mountains”, March 25, 2003
- Exhibit 5: Biological Resources Impact Evaluation Temescal Ridge Pole Replacement Project prepared by Aspen Environmental Group prepared for Los Angeles Department of Water and Power, May 2020
- Exhibit 6: Aspen Environmental Group Impact Acreage Update for Temescal Ridge Pole Replacement project, August 13, 2020
- Exhibit 7: Notice of Violation Letter, August 16, 2019
- Exhibit 8: Notice of Intent to Commence Cease and Desist and Restoration Order Proceedings, March 2, 2020

Motion and Resolution

**Motion 1: Consent Cease and Desist Order**

I move that the Commission **issue** Consent Cease and Desist Order No. CCC-20-CD-03 pursuant to the staff recommendation.

**Staff Recommendation of Approval:**

Staff recommends a **YES** vote. 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 Approve the Consent Cease and Desist Order:**

The Commission hereby issues Consent Cease and Desist Order No. CCC-20-CD-03, as set forth in Appendix A, and adopts the findings set forth below on the ground that development has occurred without the requisite Coastal Development Permit, in violation of the Coastal Act, and that the requirements of the Consent Cease and Desist 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-20-RO-02 pursuant to the staff recommendation.

**Staff Recommendation of Approval:**

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in adoption of the resolution immediately below and the 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-20-RO-02, as set forth in Appendix A, and adopts the finding set forth below on the grounds that (1) development has occurred without a Coastal Development Permit, (2) the development is inconsistent with the Coastal Act, and (3) the development is causing continuing resource damage.

## I. 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.

Pursuant to the above authorities, for the joint hearing on the proposed Cease and Desist Order and Restoration Order discussed in this 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.<sup>7</sup>

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, will result in issuance of the Cease and Desist Order and Restoration Order.

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<sup>7</sup> Note virtual hearing procedures, available at <https://documents.coastal.ca.gov/assets/virtual-hearing/VIRTUAL-HEARING-PROCEDURES.pdf>.



## II. FINDINGS FOR CONSENT CEASE AND DESISTER ORDER CCC-20-CD-03 AND CONSENT RESTORATION ORDER NO. CCC-20-RO-02<sup>8</sup>

### A. Description of Properties

The Properties that are the subject of these Consent Orders are located in the eastern portion of the Santa Monica Mountain range in Los Angeles County, inland of the Palisades Highlands community in the City of Los Angeles (**Exhibit 1 and 2**). More specifically, the Properties are located north of Pacific Coast Highway (State Route 1), south of U.S. Highway 101, east of Topanga Canyon Road (State Route 27), and west of Interstate 405 (**Exhibit 1**), and within and adjacent to Topanga State Park. The topography is gently sloped along a series of ridgelines with steeper slopes immediately adjacent to the Temescal Ridge Fire Road. The Properties are made up of seven separate parcels: four of the parcels are located entirely in Topanga State Park, identified by the following Los Angeles County Assessor's Parcel Numbers ("APN"): 4431-023-901, 4432-002-922, 4432-002-923, 4432-002-920, and 4432-002-919, and three of the parcels are located adjacent to Topanga State Park in The Palisades Highlands community identified by the following APNs: 4431-023-028; 4431-039-010, 4431-040-012.

The Properties and surrounding lands are large, nearly pristine, un-fragmented areas of native habitat that support a wealth of native plants and animals. Because of this the Commission classifies all of the impacted areas as ESHA, as detailed in (**Exhibit 4 and 5**), and discussed in more detail in section E.2.b, below:

"[T]he Mediterranean Ecosystem in the Santa Mountains is rare, and especially valuable because of its relatively pristine character, physical complexity, and resultant biological diversity. Therefore, areas of undeveloped native habitat in the Santa Monica Mountains that are large and relatively unfragmented may meet the definition of ESHA by virtue of their valuable roles in that ecosystem, regardless of their relative rarity throughout the state."

Additionally, located in the Properties is the plant Braunton's milk-vetch, which, as stated above, is a species federally-listed as endangered by the United States Fish and Wildlife Service ("USFWS"). Braunton's milk-vetch is a short-lived perennial plant in the pea family. It typically has purple flowers and un-inflated seed pods. USFWS listed the species as endangered in 1997.<sup>9</sup> And in 2006, the USFWS listed areas of the

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<sup>8</sup> These findings also hereby incorporate by reference the Summary at the beginning of the 10/16/20 staff report ("Staff Report: Recommendations and Findings for Consent Cease and Desist Order No. CCC-20-CD-03 and Consent Restoration Order No. CCC-20-RO-02") in which these findings appear, which section is entitled, "Summary of Staff Recommendations and Findings."

<sup>9</sup> USFWS (U.S. Fish and Wildlife Service). 1997. Endangered and threatened wildlife and plants; determination of endangered status for two plants and threatened status for four plants from southern California. Federal Register Federal Register 62(19):4172-4183.

Properties as critical habitat for the Braunton's milk-vetch. The Unpermitted Development adversely impacted both individual species of Braunton's milk-vetch and areas designated by USFWS as critical habitat for the Milk-vetch.<sup>10</sup>

## B. Description of Coastal Act Violations

The crux of the Coastal Act violations is the Unpermitted Development Respondent undertook on the Properties. The Unpermitted Development, as described above, centers on the unpermitted grading of ESHA inside the Coastal Zone in which 9.15 acres of habitat, including habitat for an endangered species, were damaged, and in which the endangered species itself was removed. Respondent performed two types of unpermitted grading. The first was the expansion of the Temescal Ridge Fire Road. The second was the creation of new, spur roads that crop out from the Temescal Ridge Fire Road towards each of the power poles Respondent plans to replace. Because the act of grading necessarily destroys the vegetation found on top of the soil, Respondent removed major vegetation from the Properties. The major vegetation removed, as shown in **Exhibit 5**, is mainly coastal sage scrub and chaparral which the Commission classifies as ESHA in this area. Along with those critical species Respondent removed an estimated 183 individual specimens of Braunton's milk-vetch and impacted approximately 2.72 acres of critical habitat for Braunton's milk-vetch. Pictures of the violation can be found in **Exhibit 3**.

As an ineluctable byproduct of Respondent's grading activity, a substantial amount of material was placed onto "berms" on the side of Temescal Ridge Fire Road and the spur roads. Due to the topography of the area, in some area, the built-up berm material was cast over the edge of the trail down the sides of the hills. This material, or "spoil", further damaged vegetation downhill from the development.

## C. Timeline and Enforcement Activities

On or around March of 2019, without authorization under the Coastal Act, Respondent began a power pole replacement project from the Palisades Highlands community in Pacific Palisades (within the Coastal Zone) to Mulholland Drive in the Encino/Tarzana area of the San Fernando Valley (outside the Coastal Zone). On July 7, 2019, a member of the public (who is familiar with Braunton's milk-vetch) was hiking on the Properties and observed Respondent's ongoing project. The next day that same member of the public sent Respondent an e-mail message alerting Respondent's staff of the presence of Braunton's milk-vetch in the area where Respondent was working. In an e-mail message response, Respondent thanked the member of the public for bringing the presence of the plant to its attention; despite this, eight days later, that same member of the public visited the site and discovered Respondent's crews had continued the power pole replacement work located within the Braunton's milk-vetch

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<sup>10</sup> Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Astragalus brauntonii* and *Pentachaeta lyonii*; Final Rule, Federal Register 71:66388-66391 (2006, November 14).

critical habitat area. Ultimately, the work performed by Respondent damaged an estimated 183 individual specimens of Braunton's milk-vetch. (**Exhibit 3**)

On July 25, 2019, a conservation analyst for the California Native Plant Society informed Commission staff that the Respondent's power pole replacement project appeared to be partially in the Coastal Zone and that Respondent's development appeared to significantly disrupt ESHA including endangered species. On July 31, 2019, Commission staff sent an e-mail message to Respondent to inform its staff that it must cease all development in the Coastal Zone unless and until Respondent obtained a CDP from the Commission for the work. At this time, Commission staff also informed Respondent that almost all of the area where development occurred is ESHA that additionally provides habitat for a federally-listed endangered species. On August 14, 2019, Charles Holloway of LADWP's Environmental Affairs called Commission staff and committed to resolve the matter. On August 16, 2019, Commission Enforcement staff sent a notice of violation letter to Respondent notifying Respondent of the specific Coastal Act violations on the Properties and describing the process to resolve the matter (**Exhibit 7**); three days later Respondent sent a letter pledging to work with the Commission towards a mutual resolution. On August 28, 2019, Commission Enforcement and Planning staff met in person with Respondent, and staff from USFWS and DPR to discuss the next steps to address this matter. During that meeting Commission staff discussed the significance of the violations and requested a survey on the extent of habitat damage. Respondent's staff expressed a desire to properly permit the project and discussed different options how to align the power lines. Commission staff informed Respondent that the Commission may only approve the least environmentally damaging alternative with the smallest amount of clearance of ESHA.

On March 2, 2020, the Commission's Executive Director issued a Notice of Intent to Commence Cease and Desist and Restoration Proceedings ("NOI") to Martin L. Adams the General Manager and Chief Engineer at LADWP. (**Exhibit 8**) Subsequent to receiving the NOI, Respondent and Commission staff, in coordination with USFWS and DPR staff, worked amicably to arrive at the current resolution.

## **D. Basis for Issuing Cease and Desist order**

### **1. Statutory Provision**

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

- (a) [I]f he 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 . . . 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 or the setting of a schedule within which steps shall be taken to obtain a permit pursuant to this division.

## 2. Factual Support for Statutory Elements

The statutory provision requires the Commission to demonstrate that Respondent undertook an activity that requires a CDP where Respondent did not secure one.

In this case, it is uncontroverted that Respondent does not have a CDP. The subsequent step is demonstrating Respondent took an action requiring a CDP. Section 30600(a) of the Coastal Act states that, in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the Coastal Zone must obtain a CDP. "Development" is broadly defined by Coastal Act Section 30106, in relevant part:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure or of any . . . grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land . . . and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations . . .

Under the Coastal Act's definition of development, Respondent performed the following acts of "development": graded/created new roads; graded and expanded an existing fire road; deposited graded material; created berms; removed "major vegetation" including vegetation that constitutes environmentally sensitive habitat area and dozens of specimens of Braunton's milk-vetch; and changed the intensity of use of land.

All of the above activities fall clearly into the Coastal Act definition of development. Grading is expressly listed as development and is the prime component of Respondent's actions. Respondent performed grading activities when it expanded the width of Temescal Ridge Fire Road and when it graded new spur roads to a majority of the power poles it is seeking to replace.

Respondent also performed unpermitted development by removing major vegetation. The mechanical act of grading necessarily dictates that any vegetation in that area is removed and here, vegetation was in fact removed. Because the vegetation removal was substantial, it qualifies as removal of major vegetation and classified as "development" under the Coastal Act. Additionally, the removal of a listed plant species further adds to the determination that the activity was unpermitted.

Additionally, Respondent placed "solid fill" in the form of the soil generated from grading when it placed the soil into "berms" on the side of Temescal Ridge Fire Road. Not only was the act of placing and erecting berms along the side of the road "development", it also had the effect of further removing major vegetation because it crushed and damaged plants in that additional location, by burying them. This solid fill also spilled over the sides of the trails and further buried major vegetation.

Lastly, all of the above listed activities performed by Respondent resulted in a change in the intensity of use of the land, which is also development that requires a CDP. More specifically, the unpermitted grading and removal activities directly resulted in a reduced intensity of use of land by the native species of the area.

Therefore, because Respondent performed the development activities described above that require a CDP and because it did not obtain one, Respondent's actions have met the statutory requirements for the Commission to issue the proposed Cease and Desist Order.

## **E. Basis for Issuing Consent Restoration Order**

### **1. Statutory Provision**

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 in the City of Los Angeles, 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 CDP. "Development" is broadly defined by Section 30106 of the Coastal Act in relevant part

Development" means, on land, in or under water, the placement or erection of any solid material or structure or of any . . . grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land . . . and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations . . .

As described above, Respondent performed Unpermitted Development on the Properties without a CDP. That development undertaken by Respondent includes graded/created new roads; graded and expanded an existing fire road; deposited

graded material; created berms; removed “major vegetation” including vegetation that constitutes environmentally sensitive habitat area and dozens of specimens of Braunton’s milk-vetch; and changing the intensity of use of the land.

Furthermore, the Unpermitted Development at issue here is not exempt, and cannot qualify as exempt repair and maintenance activities. Pursuant to Section 13252 of the Commission’s Regulations, activities that involve a risk of substantial adverse environmental impacts in ESHA shall require a CDP. As described throughout this report, the Unpermitted Development activities performed by Respondent occurred in ESHA and resulted in substantial habitat impacts to the Braunton’s milk-vetch, coastal sage scrub and chaparral ESHA on the Properties.

## **b) Unpermitted Development is Inconsistent with the Coastal Act**

The Unpermitted Development resulted in continuing natural resource impacts that are inconsistent with Chapter 3 of the Coastal Act, including: Coastal Act Section 30231(biological productivity and water quality), Section 30240(environmentally sensitive habitat areas), and Section 30251(scenic and visual qualities), as well as Section 30253 (geological stability).

### **Environmentally Sensitive Habitat Areas**

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.

The landscape on the Properties is gently sloped along a series of ridgelines with steeper slopes immediately adjacent to the Temescal Ridge Fire Road. As described above, the Properties are located wholly within the Santa Monica Mountain range, with the majority of the Unpermitted Development occurring inside Topanga State Park. **(Exhibit 5)**. The Santa Monica Mountains comprise the largest, most pristine, and ecologically complex example of a Mediterranean ecosystem in coastal southern California. One can only find this type of ecosystem in five localities in the world: the Mediterranean coast, California, Chile, South Africa, and south and southwest Australia. And throughout the world this eco system has suffered severe loss and degradation from human development. As of early 2000, only “18 percent of the Mediterranean community type remain[ed] undisturbed.” **(Exhibit 4)** However, in the Santa Monica Mountain range, an estimated 90 percent of this valuable habitat is free from development. Making this habitat relatively pristine and, due to its unfragmented nature, protecting it is a fundamental tenant of conservation biology. **(Exhibit 4)**

Because 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 the Commission, in numerous prior actions, has declared this area ESHA by virtue of its important roles in the ecosystem. (**Exhibit 4**)

Once the Commission identifies an area as ESHA, the Coastal Act provides for increased protection and scrutiny to any development in that area. Section 30240(a) 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.

The Unpermitted Development adversely impacted 9.15 acres of chaparral and coastal sage scrub habitats within the Coastal Zone. The Unpermitted Development (including major vegetation removal) eliminated mature vegetation that served as food, foraging habitat, and shelter for many species of native animal and left the cleared and graded areas vulnerable to the negative impacts associated with erosion. Characteristic wildlife that may have been impacted in this community includes Anna's hummingbirds, rufous-sided towhees, California quail, greater roadrunners, Bewick's wrens, coyotes, and coast horned lizard. Most of these species move between coastal sage scrub and chaparral during their daily activities or on a seasonal basis. (**Exhibit 4**) Due to this impact, the Unpermitted Development disrupted habitat values, inconsistent with 30240 of the Coastal Act.

Furthermore, it is beholden on Respondent to demonstrate that development in ESHA is dependent on those resources or some other exemption applies. On its face, a pole replacement project is not dependent upon ESHA and cannot meet the requirements of Section 30240(a).

### **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

The Unpermitted Development includes grading (both to widen the existing Temescal Ridge Fire Road and to create spur roads from the trail to each power pole) and the removal of native vegetation resulted in the creation of bare soil, changes to the topography of the site, and increased erosion across the Properties. DPR reported that rain events following the unpermitted grading caused loose soil to erode down the steep slopes and into drainage courses. Respondent also created "berms" at the edge of the Temescal Ridge Fire Road and allowed loose soil to fall off of the hill tops down into the ravine and drainage course that abut the ridgeline and trail. This had the potential to

result in an increased sediment load in the local watershed, which has the potential to increase turbidity, reduce the growth of aquatic plants, and harm benthic organisms by changing the composition of the streambed habitat, and burying invertebrates. These impacts have 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.

### **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...

As stated above, when Respondent mechanically altered the topography of the area, they did so without authorization, and, importantly, without input from Commission experts, such as the Commission's staff geologist and staff engineers, and without the Commission evaluating whether the development was consistent with the Coastal Act, and without any conditions being placed on the work so as to protect coastal resources. As reported by DPR, erosion due to the Unpermitted Development has occurred. The earthen berms that Respondent created are not stable structures (as they are made up of loose mounds of soil). These berms have already begun to spill over and down the nearby steep slopes and into the ravines below, damaging vegetation and harming the local ecosystem. Therefore, the Unpermitted Development does not minimize risks in this area and has contributed to erosion across the Properties, inconsistent with Section 30253 of the Coastal Act.

### **Scenic Resources**

Section 30251 of the Coastal Act states:

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



Lastly, the Unpermitted Development negatively impacted the scenic resources of the area and altered natural landforms on the Properties. The Temescal Ridge Fire Road, where a majority of the Unpermitted Development occurred, is an extremely popular trail that allows visitors easy access to the Santa Monica Mountains. This trail connects to the popular Backbone Trail (a trail that allows visitors to traverse the Santa Monica Mountain range). In addition, the Topanga State Park general plan limits trail widths and require trails to be sited to minimize their visual appearance and blend in with the natural surroundings.<sup>11</sup> The General Plan mirrors the Coastal Act's requirements to minimize alterations of natural land forms and to be visually compatible with the character of the surrounding area. When Respondent substantially altered the trail beyond its pre-existing width, Respondent negatively altered the visual layout of the trail and affected Coastal Resources. Additionally, the creation of soil "berms" created an obstructive and unnatural object where there was once coastal vegetation. This development damaged the scenic quality of the trail and therefore the Unpermitted Development is inconsistent with Section 30251 of the Coastal Act.

### **c) The Unpermitted Development is Causing Continuing Resource Damage**

The third and final criterion for issuance of a restoration order is that the development at issue is causing continuing resource damage.

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

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

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

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.

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<sup>11</sup> See Chapter 3 of the Topanga State Park General Plan

Coastal Act Section 30240 (environmentally sensitive habitat areas), Section 30231(biological productivity and water quality), Section 30251(scenic and visual qualities) and Section 30253 (geological stability) are all Coastal Resources as defined in Section 13190(a) of the Commission's Regulations.

In this case, the resource damage caused by the Unpermitted Development continues to cause damage for several reasons, including those listed herein. First, the very act of destroying ESHA harms the surrounding local ecosystem and continues to do so as long as the ecosystem has not been fully restored. Destroying that habitat also eliminated food, foraging habitat, and shelter for local animals. The Unpermitted Development eliminated the ability of the removed habitat to serve its essential biological purposes and functions. Respondent also cleared the area to bare soil, which leaves the area vulnerable to not only erosion, but also the influx of invasive species that are prevalent in the area. Second, the grading Respondent performed continues to harm the scenic qualities of the area. The construction of berms and bare soil that were not designed to blend into the surrounding environment continues to impact the scenic quality of the public park area. Third, the unpermitted berms and the cleared area has caused and will continue to cause geological instability and erosion across the Properties, which will likely become a more significant issue as the area enters into another rainy season. Thus, the Unpermitted Development is causing continuing resource damage as defined by the regulations. Therefore, the Commission finds that the Unpermitted Development is causing continuing resource damage under Coastal Act Section 30811.

#### **d) Consent Orders are Consistent with Chapter 3 of the Coastal Act**

The Consent Orders, attached to this staff report as **Appendix A**, including the restoration and mitigation activities are consistent with the resource protection policies found in Chapter 3 of the Coastal Act. These Consent Orders require and authorize Respondent to, among other things, cease and desist from conducting any further Unpermitted Development on the Properties, remove any physical items it placed or allowed to come to rest as a result of Unpermitted Development, and restore the areas impacted by the Unpermitted Development through undertaking restorative grading, removing non-native vegetation, and planting native vegetation.

In addition, as mitigation and to further resolve Respondent's liabilities for these Coastal Act violations, Respondent agreed to restore the 18.83-acre area, outside of the Coastal Zone, that Respondent damaged during the course of its project. In order to further resolve its liability, Respondent has also agreed to pay money that will be used to fund various habitat acquisition and habitat enhancement projects, totaling \$1,947,500.00. First, Respondent, in light of settling its Coastal Act liabilities, has agreed to pay \$575,000.00 to the Violation's Remediation Account held by the State Coastal Conservancy. Second, to address the temporary loss of habitat caused by the Unpermitted Development the Consent Orders provide for Respondent to pay \$272,500.00 to DPR for the purpose of habitat enhancement and removal of non-native vegetation from the surrounding area. And third, to further address the temporary loss of habitat and to mitigate for the harm Respondent caused, the Consent Orders provide for

Respondent to pay \$1,100,00.00 to the MCRCA for the express purpose of acquiring property of similar ecological value in the Santa Monica Mountains.

The actions Respondent will take under these Consent Orders are consistent with the Chapter 3 policies of the Coastal Act, and their issuance is consistent with Coastal Act Section 30810(b).

## **F. California Environmental Quality Act**

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.

### **III. SUMMARY OF FINDINGS OF FACT**

1. The Unpermitted Development listed in #4 was conducted by the Los Angeles Department of Water and Power.
2. The Unpermitted Development occurred on five parcels owned by California DPR in Topanga State Park – APN 4431-023-901; APN 4432-002-922; APN 4432-002-923; APN 4432-002-920; APN 4432-002-919; and three adjacent privately-owned properties: APN 4431-023-028; APN 4431-039-010; APN 4431-040-012.
3. The Unpermitted Development that occurred on the Properties occurred within the Coastal Zone.
4. Respondent undertook development, as defined by Coastal Act Section 30106, on the Properties without a coastal development permit.
5. The Unpermitted Development that occurred on the Properties includes, but is not limited to: grading/creating new roads; grading and expansion of an existing fire road; depositing graded material; creating berms; removing major vegetation, including vegetation in an environmentally sensitive habitat area that contained numerous individual specimens of Braunton's milk-vetch, a species federally listed as endangered; disrupting the Braunton's milk-vetch's critical habitat; and changing the intensity of use of land.
6. 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.
7. The Unpermitted Development is inconsistent with PRC sections 30240, 30231, 30251, and 30253.
8. The Unpermitted Development is causing "continuing resource damage" within the meaning of Coastal Act Section 30811 and as defined by Title 14, California Code of Regulations, Section 13190.
9. On August 16, 2019, Commission Enforcement staff sent a letter to Respondent informing them of the Coastal Act violations.

10. On March 2, 2020, the Executive Director of the Commission sent a Notice of Intent to Commence Cease and Desist and Restoration Order Proceedings to Respondent for the Unpermitted Development on the Properties.
11. 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.
12. 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. If carried out and implemented in accordance with the terms and conditions of the Consent Orders, the activities to be performed under these Consent Orders, including the restoration and mitigation activities are consistent with and authorized pursuant to Chapter 3 of the Coastal Act.