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Calabasas, CA 91302-3212

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CALIFORNIA COASTAL COMMISSION

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

Tu 12e

Filed: 7/24/2006
270th Day: 4/20/2007
Staff: James Johnson
Staff Report: 3/29/2007
Hearing Date: 4/10/2007



STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 4-05-141

APPLICANT: Jeffery Biebuyck

AGENTS: Nathan Otto, Charles Santos

PROJECT LOCATION: 24677 Dry Canyon Cold Creek, Calabasas, Los Angeles County

PROJECT DESCRIPTION: Construct a 4,607 sq. ft., 28 ft. high, two-story single family residence with an attached 230 sq. ft. garage; a 256 sq. ft. covered patio; a detached 24 ft. high guest house/garage with a 650 sq. ft. garage on the first floor and a 600 sq. ft. guest house on the second floor; a 145 sq. ft. covered patio; a pool and spa; five retaining walls; drainage swales, a driveway, a septic system, obtain after-the-fact approval for a temporary construction trailer and a total of 5,399 cu. yds. of new proposed and as-completed grading. Proposed new grading will consist of 4,299 cu. yds. (250 cu. yds. cut & 560 cu. yds. fill for driveway & fire dept. turnaround; 1,219 cu. yds. cut & 1,650 cu. yds. fill for building pad & driveway spur) and 620 cu. yds. of additional grading for removal and recompaction and the request for after-the-fact of approval of as-built grading consists of 1,100 cu. yds. (550 cu. yds. cut; 550 cu. yds. fill). The application also includes the request for after-the-fact approval of the subject lot which was recognized for Subdivision Map Act purposes by Certificate of Compliance # 88-0342 and new proposed restoration and replanting with native vegetation of a portion of the as-graded slope along the southern and western boundary of the primary driveway and complete restoration of a secondary driveway .

Lot Area:	3.59 acres
Building Pad:	9,970 sq/ft
Building Coverage:	3,696 sq/ft
Paved Coverage:	9,000 sq/ft
Landscape Coverage:	5,000 sq. ft.
Parking Spaces:	5
Ht Above Finish Grade:	28 ft.

LOCAL APPROVALS RECEIVED: Approval in Concept: Los Angeles County Regional Planning Department; Los Angeles County Department of Health Services; Preliminary Fuel Modification Approval, County of Los Angeles, Fire Department; Approved Grading and Access, County of Los Angeles, Fire Department.

SUBSTANTIVE FILE DOCUMENTS: Update Geologic and Soils Engineering Investigation by GeoConcepts dated November 4, 2004 and Supplemental Report No. 1 dated May 1, 2006; Nathan and Gina Otto Residential Property Bio Constraints and

Opportunities, by Baker and Rappaport dated May 2006; Conditional Certificate of Compliance #88-0342 recorded as document 88-1097866 on July 13, 1988; Certificate of Compliance #88-0342 Clearance of Conditions recorded as document 05-1939410 on August 12, 2005; Coastal Permit No. 4-04-121, Miran; Coastal Permit No. 4-04-086, Murchland.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends **APPROVAL** of the proposed project with SEVENTEEN (17) SPECIAL CONDITIONS regarding (1) geologic recommendations, (2), assumption of risk, (3) landscaping and erosion control plans, (4) native vegetation restoration / revegetation plan, (5) removal of natural vegetation, (6) habitat impact mitigation, (7) drainage and polluted runoff control plan, (8) pool and spa drainage and maintenance, (9) future development restriction, (10) structural appearance, (11) lighting restrictions, (12) deed restriction, (13) removal of temporary construction trailer, (14) open space deed restriction, (15) cumulative impact mitigation, (16) indemnification by applicant and (17) condition compliance.

This application was previously scheduled for the March 2007 Commission meeting. The applicant requested that this application be postponed to allow him to provide an accurate grading plan identifying the remedial grading required as a result of past unpermitted grading completed by a prior property owner. The applicant also submitted a revised site plan reducing the size of the proposed development area to less than 10,000 sq. ft. as previously requested by Staff and would have been required by on of the staff's proposed special conditions. As a result, the previous special condition requiring revised plans to reduce the developable area to less than 10,000 sq. ft. is no longer necessary.

The applicant requests approval to construct a new two story residence with a detached garage/guest house, covered patio; a pool and spa; a retaining wall; drainage swales, a driveway, a septic system, a temporary construction trailer, and a total of 5,399 cu. yds. of combined as-built and new proposed grading. New proposed grading will include 4,299 cu. yds. (250 cu. yds. cut & 560 cu. yds. fill for driveway & fire department turnaround; 1,219 cu. yds. cut 1,650 cu. yds. fill for building pad & driveway spur) and 620 cu. yds. of additional grading for removal and recompaction and the previously completed grading includes 1,100 cu. yds. (550 cu. yds. cut; 550 cu. yds. fill) and restoration with limited fill included in the above grading for the driveway and revegetation along the driveway all on a 3.59 acre lot. The application also seeks approval of the subject lot which was recognized for Subdivision Map Act purposes by Certificate of Compliance # 88-0342 and new proposed restoration and replanting with native vegetation of a portion of the as-graded slope along the southern and western boundary of the primary driveway in the areas beyond the proposed development area and on a secondary driveway. Construction of the residence, garage/guest house and driveway requires the removal of chaparral ESHA as a result of fire protection-fuel modification purposes.

A review of the Commission's historic aerial photographs from 1977 indicates that the subject lot was entirely vegetated with undisturbed chaparral vegetation which was part of a larger chaparral habitat community which extended offsite to the west and south (Exhibit 21). In addition, approximately two acres of chaparral vegetation has been removed from the northern portion of the subject lot as a result of the required fuel modification for the existing residence located on the adjacent lot immediately to the north and for two existing residences located on adjacent lots immediately to the northeast and east for fuel modification purposes. The residence that is proposed on the subject site as part of this application will be located entirely within a portion of the site that will overlap with these existing fuel modification zones for the neighboring three residences (Exhibit 23). Further, a large oak woodland is located on the southern portion of the site; thus, the southern portion of the site would not be appropriate for new development. Thus, for this reason, the proposed location for the new residence is in an appropriate area of the site for new development that will serve to minimize new vegetation clearance that will occur from fuel modification requirements for the new residence.

Staff discovered during the processing of this application that the putative existing lot that is the site of the proposed project was purportedly created between 1956 and 1963, not in compliance with State and County Subdivision regulations at that time. Further attempts at creation of the lot occurred in 1988 with submittal of an application for a certificate of compliance, but due to the original noncompliance with the requirements for creation of lots, the County issued a *conditional* certificate of compliance, which was not authorized by a coastal development permit. Thus, no legal lot was created at that time. In addition, an unknown quantity of grading and vegetation removal was performed in the 1980's by a previous property owner and a second area of the site was later graded between 2001 and 2006 without the required Coastal Development Permit by a prior property owner.

The project site is a vacant 3.59 acre lot (APN 4455-039-008)¹ accessed from a private driveway from Dry Canyon Cold Creek Road near the intersection with Mulholland Highway in the Santa Monica Mountains. The property is located within relatively undisturbed chaparral habitat considered to be environmentally sensitive habitat area (ESHA). The project site includes native chaparral on nearly the entire property, which is considered environmentally sensitive habitat. A portion of this vegetation has been removed as a result of unpermitted development. The project site is not located within the Cold Canyon Significant Watershed, but drains into Dry Canyon Cold Creek which

¹ From time to time, this report will refer to the project site as an existing lot, in part for convenience, and in part because the staff recommendation is to approve the creation of the lot. These references do not change the fact that the lot does not currently legally exist, as it was effectively created, for Subdivision Map Act purposes, in 1988, and that creation was not authorized by the required coastal development permit. Similarly, this report sometimes refers to the other purported lots in the purported five-lot subdivision of which the project site is a part as existing lots.

then drains to Cold Canyon Creek. Both Dry Canyon Cold Creek and Cold Canyon Creek includes riparian habitat that is considered environmentally sensitive habitat.

Standing alone, Section 30240 would require the denial of the proposed development to prevent adverse impacts to ESHA from the construction of the proposed development. However, Section 30010 provides that the Commission cannot construe the Coastal Act as authorizing the denial of a permit in a manner that will take private property for public use. To avoid a "taking" of private property, the Commission must allow a reasonable residential development on the applicant's land. Although the original application included the request for a 13,238 sq. ft. development area on site; at staff's request, the applicant has since revised the proposed project to include a total proposed development area on only 9,970 sq. ft. in area. The proposed building pad is located within the existing 200 ft. fuel modification area of the existing residence (24671 Dry Canyon Cold Creek) to the north of the subject property. The proposed project will also have an overlapping fuel modification area with existing residences to the southeast and east of the subject property and a new fuel modification area to the west, south and southeast.

The proposal also includes the request for after-the-fact approval of Certificate of Compliance #88-0342 to legalize the subject lot. The subject 3.59-acre lot was first described by deed between 1956 and 1963 as part of a purported five-lot subdivision. This five-lot subdivision was not properly permitted pursuant to the requirements of the Subdivision Map Act and Los Angeles County Planning and Zoning Codes. The Commission has previously approved two coastal permits for residential development on the subject lot but it has not approved anything on the remaining four lots. However, two of those other lots in this subdivision have existing residential development that has been in place since 1964 and 1966, as it was constructed soon after the original actions to create the five-lot subdivision. Lastly, the subject lot is not in common ownership with the other contiguous lots created from the parent parcel and has not been so since the late 1950s. In fact, it has changed hands at least three times just in the last 10 years or so.

The standard of review for the proposed permit application is the Chapter Three policies of the Coastal Act. As conditioned, the proposed project is consistent with all applicable Chapter Three policies of the Coastal Act.

STAFF RECOMMENDATION:

MOTION: I move that the Commission approve Coastal Development Permit No. 4-05-141 pursuant to the staff recommendation.

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

I. Resolution for Approval with Conditions

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. Standard Conditions

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. Special Conditions

1. PLANS CONFORMING TO GEOLOGIC RECOMMENDATION

By acceptance of this permit, the applicant agrees to comply with the recommendations contained in the Update Geologic and Soils Engineering Investigation by GeoConcepts dated November 4, 2004 and Supplemental Report No. 1 dated May 1, 2006. These recommendations shall be incorporated into all final design and construction plans including all recommendations concerning existing fill, foundations, settlement, excavations, retaining walls, slabs on grade, sewage disposal system and plan review and plan notes. All plans must be reviewed and approved by the consultants prior to commencement of the development.

The final plans approved by the consultants shall be in substantial conformance with the plans approved by the Commission relative to construction, grading and drainage. Any substantial changes to the proposed development approved by the Commission, which may be recommended by the consultants shall require an amendment(s) to the permit or a new coastal permit(s).

2. ASSUMPTION OF RISK, WAIVER OF LIABILITY AND INDEMNITY

By acceptance of this permit; the applicant acknowledges and agrees (i) that the site may be subject to hazards from wildfire; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commissions approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

3. LANDSCAPE, EROSION CONTROL AND FUEL MODIFICATION PLANS

Prior to issuance of a coastal development permit, the applicant shall submit landscaping and erosion control plans, prepared by a licensed landscape architect or a qualified resource specialist, for review and approval by the Executive Director. The drainage and erosion control plans shall be reviewed and stamped by a geotechnical engineer confirming stability of the site. The plans shall incorporate the criteria set forth

below. All development shall conform to the approved landscaping and erosion control plans:

A) Landscaping Plan

- 1) All graded & disturbed areas on the subject site shall be planted and maintained for erosion control purposes within (60) days of receipt of the certificate of occupancy for the residence. To minimize the need for irrigation all landscaping shall consist primarily of native/drought resistant plants, as listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended List of Plants for Landscaping in the Santa Monica Mountains, dated February 5, 1996. All native plant species shall be of local genetic stock. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized or maintained within the property.
- 2) All cut and fill slopes shall be stabilized with planting at the completion of final grading. Planting should be of native plant species indigenous to the Santa Monica Mountains using accepted planting procedures, consistent with fire safety requirements. All native plant species shall be of local genetic stock. Such planting shall be adequate to provide 90 percent coverage within two (2) years, and this requirement shall apply to all disturbed soils. The landscape plan shall be designed with vertical elements to partially screen and soften the visual impact of the structures and driveway with trees and shrubs as viewed from the public lands, proposed and existing public trails to the north, east and southeast;
- 3) Plantings will be maintained in good growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape requirements;
- 4) The Permittee shall undertake development in accordance with the final approved plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Coastal Commission - approved amendment to the coastal development permit, unless the Executive Director determines that no amendment is required.
- 5) Vegetation within 20 feet of the proposed house may be removed to mineral earth, vegetation within a 200-foot radius of the main structure may be selectively thinned in order to reduce fire hazard. However, such thinning shall only occur in accordance with an approved long-term fuel modification

plan submitted pursuant to this special condition. The fuel modification plan shall include details regarding the types, sizes and location of plant materials to be removed, and how often thinning is to occur. In addition, the applicant shall submit evidence that the fuel modification plan has been reviewed and approved by the Forestry Department of Los Angeles County. Irrigated lawn, turf and ground cover planted within the twenty foot radius of the proposed house shall be selected from the most drought tolerant species or subspecies, or varieties suited to the Mediterranean climate of the Santa Monica Mountains.

- 6) Rodenticides containing any anticoagulant compounds (including, but not limited to, Warfarin, Brodifacoum, Bromadiolone or Diphacinone) shall not be used.
- 7) Fencing of the entire property is prohibited. Fencing shall extend no further than Zone B of the final fuel modification plan approved by the Los Angeles County Fire Department pursuant to subsection (5) above, except for an entry gate and fencing along the driveway. The fencing type and location shall be illustrated on the landscape plan. Fencing shall also be subject to the color requirements outlined in Special Condition No. Ten (10).

B) Interim Erosion Control Plan

- 1) The plan shall delineate the areas to be disturbed by grading or construction activities and shall include any temporary access roads, staging areas and stockpile areas. The natural areas on the site shall be clearly delineated on the project site with fencing or survey flags.
- 2) The plan shall specify that grading shall take place only during the dry season (April 1 – October 31). This period may be extended for a limited period of time if the situation warrants such a limited extension, if approved by the Executive Director. The applicant shall install or construct temporary sediment basins (including debris basins, desilting basins, or silt traps), temporary drains and swales, sand bag barriers, silt fencing, and shall stabilize any stockpiled fill with geofabric covers or other appropriate cover, install geotextiles or mats on all cut or fill slopes, and close and stabilize open trenches as soon as possible. These erosion control measures shall be required on the project site prior to or concurrent with the initial grading operations and maintained throughout the development process to minimize erosion and sediment from runoff waters during construction. All sediment should be retained on-site, unless removed to an appropriate, approved dumping location either outside of the coastal zone or within the coastal zone to a site permitted to receive fill.

- 3) The plan shall also include temporary erosion control measures should grading or site preparation cease for a period of more than 30 days, including but not limited to: stabilization of all stockpiled fill, access roads, disturbed soils and cut and fill slopes with geotextiles and/or mats, sand bag barriers, silt fencing; temporary drains and swales and sediment basins. The plans shall also specify that all disturbed areas shall be seeded with native grass species and include the technical specifications for seeding the disturbed areas. These temporary erosion control measures shall be monitored and maintained until grading or construction operations resume.

C) Monitoring

Five years from the date of the receipt of the Certificate of Occupancy for the residence the applicant shall submit for the review and approval of the Executive Director, a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies the on-site landscaping is in conformance with the landscape plan approved pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the applicant, or successors in interest, shall submit a revised or supplemental landscape plan for the review and approval of the Executive Director. The revised landscaping plan must be prepared by a licensed Landscape Architect or a qualified Resource Specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

4. NATIVE VEGETATION RESTORATION / REVEGETATION PLAN

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, two (2) sets of restoration / revegetation plans. The plan shall include a grading plan, prepared by a licensed civil engineer to restore the area on the subject parcel where unauthorized vegetation removal and grading has previously occurred (about 2,000 sq. ft.) beyond the area of proposed grading for the proposed primary driveway and building pad (as shown on Exhibit 10) and a secondary driveway to an approximation of the original topography that existed prior to the unpermitted vegetation removal and grading (which is the area of the dirt roadway leading south to north on the eastern most portion of the lot). The plan shall also include a revegetation and erosion control plan, including an irrigation plan, prepared by a qualified habitat restoration consultant. The revegetation and erosion control plan shall be reviewed and approved by the consulting civil engineer and geotechnical engineer to ensure that the plan is in conformance with the applicable recommendations regarding slope stability. The restoration and revegetation plan shall include, but not be limited to, the following criteria:

- (a) A detailed grading plan, prepared by a licensed professional civil engineer, that illustrates remedial grading to restore the slope to an approximation of the contours existing prior to the removal of the vegetation and grading including the addition of topsoil in the areas of the site shown on Exhibit 10. The plan shall include temporary erosion control measures such as geofabrics, silt fencing, sandbag barriers, or other measures to control erosion until revegetation of the restored slope is completed. These erosion control measures shall be required on the project site prior to and concurrent with the initial grading operations and shall be maintained throughout the process to minimize erosion and sediment to runoff waters during construction. All sediment shall be removed to an appropriate disposal site, approved by the Executive Director, either outside the coastal zone or to a site within the coastal zone permitted to receive fill.
- (b) A revegetation program, prepared by a qualified habitat restoration consultant with credentials acceptable to the Executive Director, which utilizes only native plant species that have been obtained from local Santa Monica Mountains genetic stock, and are consistent with the surrounding native plant community. Native seeds shall be collected from areas as close to the restoration site as possible. The plan shall specify the preferable time of year to carry out the restoration and describe the supplemental watering requirements that will be necessary, including a detailed irrigation plan. The plan shall also specify performance standards to judge the success of the restoration effort. The revegetation plan shall identify the species, location, and extent of all plant materials and shall use a mixture of seeds and container plants to increase the potential for successful revegetation. The plan shall include a description of technical and performance standards to ensure the successful revegetation of the restored slope. A temporary irrigation system may be used until the plants are established, as determined by the habitat restoration consultant, and as approved by the consulting civil engineer, but in no case shall the irrigation system be in place longer than two (2) years. The restored area shall be planted within thirty (30) days of completion of the remedial grading operations.
- (c) Implementation of the restoration plan shall commence within ninety (90) days of the issuance of this permit. Revegetation shall provide ninety percent (90%) coverage within five (5) years and shall be repeated, if necessary, to provide such coverage. The Executive Director may extend this time period for good cause. Plantings shall be maintained in good growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the revegetation requirements.
- (d) A monitoring program, prepared by a qualified environmental resource specialist. The monitoring program shall demonstrate how the approved revegetation and restoration performance standards prepared pursuant to section (b) above shall be implemented and evaluated for compliance with this

Special Condition. The program shall require the applicant to submit, on an annual basis for a period of five years (no later than December 31st each year), a written report, for the review and approval of the Executive Director, prepared by an environmental resource specialist, indicating the success or failure of the restoration project. The annual reports shall include further recommendations and requirements for additional restoration activities in order for the project to meet the criteria and performance standards listed in the restoration plan. These reports shall also include photographs taken from pre-designated locations (annotated to a copy of the site plans) indicating the progress of recovery. During the monitoring period, all artificial inputs shall be removed except for the purposes of providing mid-course corrections or maintenance to ensure the long-term survival of the plantings. If these inputs are required beyond the first two (2) years, then the monitoring program shall be extended for a sufficient length of time so that the success and sustainability of the project is ensured. Successful site restoration shall be determined if the revegetation of native plant species on-site is adequate to provide ninety percent (90%) coverage by the end of the five (5) year monitoring period, all replacement/relocated oak trees are surviving, and all vegetation is able to survive without additional outside inputs, such as supplemental irrigation.

- (e) At the end of the five year period, a final detailed report shall be submitted, for the review and approval of the Executive Director, that indicates whether the on-site landscaping is in conformance with the revegetation / restoration plan approved pursuant to this Special Condition. The final report shall include photographic documentation of plant species and plant coverage. If this report indicates that the restoration project has in part, or in whole, been unsuccessful, based on the approved performance standards, the applicant shall be required to submit a revised or supplemental restoration program to compensate for those portions of the original plan that were not successful. The revised, or supplemental, restoration program shall be processed by the applicant/landowner as an amendment to this Coastal Development Permit unless the Executive Director determines that no amendment is required.

B. The Permittee shall undertake development in accordance with the final approved plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Coastal Commission-approved amendment to the coastal development permit, unless the Executive Director determines that no amendment is required.

5. REMOVAL OF NATURAL VEGETATION

Removal of natural vegetation for the purpose of fuel modification within the 20-foot zone surrounding the proposed structure shall not commence until the local government has issued a building or grading permit for the development approved pursuant to this permit. Vegetation thinning within the 20-200 foot fuel modification zone shall not occur until commencement of construction of the structure approved pursuant to this permit.

6. HABITAT IMPACT MITIGATION

Prior to the issuance of the coastal development permit, the applicant shall submit for the review and approval of the Executive Director, a map delineating all areas of chaparral habitat that are "environmentally sensitive habitat area" (ESHA), that will be disturbed by the proposed development, (including all as-graded and new proposed flat pads and access roads/driveways and their related cut/fill slopes, all areas where vegetation will be removed as a result of fuel modification for the proposed residence but not including any areas where vegetation clearance has already occurred as a result of the required 200 ft. radius fuel modification for an existing residence on an adjacent property, and all areas where vegetation removal has already occurred but is being authorized after the fact through this permit). The chaparral ESHA areas on the site and adjacent property shall be delineated on a detailed map, to scale, illustrating the subject parcel boundaries and adjacent parcel boundaries where the fuel modification/brush clearance zones extend onto adjacent property. The delineation map shall indicate the total acreage for all chaparral ESHA both on and offsite, that will be impacted by the proposed development, including the fuel modification/brush clearance areas. The delineation shall be prepared by a qualified resource specialist or biologist familiar with the ecology of the Santa Monica Mountains.

Mitigation shall be provided for impacts to the chaparral ESHA from the proposed development and fuel modification requirements by one of the three following habitat mitigation methods:

A. Habitat Restoration

1) Habitat Restoration Plan

Prior to the issuance of the coastal development permit, the applicant shall submit a habitat restoration plan, for the review and approval of the Executive Director, for an area of degraded chaparral habitat equivalent to the area of chaparral ESHA impacted by the proposed development and fuel modification area. The habitat restoration area may either be onsite or offsite within the coastal zone in the City of Malibu or in the Santa Monica Mountains. The habitat restoration area shall be delineated on a detailed site plan, to scale, that illustrates the parcel boundaries and topographic contours of the site. The habitat restoration plan shall be prepared by a qualified resource specialist or biologist familiar with the ecology of the Santa Monica Mountains, and shall be designed to restore the area in question for habitat function, species diversity and vegetation cover. The restoration plan shall include a statement of goals and performance standards, revegetation and restoration methodology, and maintenance and monitoring provisions. If the restoration site is offsite the applicant shall submit written evidence to the Executive Director that the property owner agrees to the restoration work, maintenance and monitoring required by this condition and agrees not to disturb any native vegetation in the restoration area.

The applicant shall submit, on an annual basis for five years, a written report, for the review and approval of the Executive Director, prepared by a qualified resource specialist, evaluating compliance with the performance standards outlined in the restoration plan and describing the revegetation, maintenance and monitoring that was conducted during the prior year. The annual report shall include recommendations for mid-course corrective measures. At the end of the five-year period, a final detailed report shall be submitted for the review and approval of the Executive Director. If this report indicates that the restoration project has been in part, or in whole, unsuccessful, based on the approved goals and performance standards, the applicant shall submit a revised or supplemental restoration plan with maintenance and monitoring provisions, for the review and approval of the Executive Director, to compensate for those portions of the original restoration plan that were not successful. A report shall be submitted evaluating whether the supplemental restoration plan has achieved compliance with the goals and performance standards for the restoration area. If the goals and performance standards are not met within 10 years, the applicant shall submit an amendment to the coastal development permit for an alternative mitigation program.

The habitat restoration plan shall be implemented prior to occupancy of the residence.

2) Open Space Deed Restriction

No development, as defined in section 30106 of the Coastal Act shall occur in the habitat restoration area, as shown on the habitat restoration site plan, required pursuant to (A)(1) above.

Prior to the issuance of the coastal development permit, the owner of the habitat restoration area shall execute and record a deed restriction in a form and content acceptable to the Executive Director, reflecting the above restriction on development and designating the habitat restoration area as open space. The deed restriction shall include a graphic depiction and narrative legal descriptions of both the parcel and the open space area/habitat restoration area. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

3) Performance Bond

Prior to the issuance of the permit, the applicant shall post performance bonds to guarantee implementation of the restoration plan as follows: a) one equal to the value of the labor and materials; and b) one equal to the value of the maintenance and monitoring for a period of 5 years. Each performance bond shall be released upon satisfactory completion of items (a) and (b) above. If the applicant fails to

either restore or maintain and monitor according to the approved plans, the Coastal Commission may collect the security and complete the work on the property.

B. Habitat Conservation

Prior to issuance of the coastal development permit, the applicant shall execute and record an open space deed restriction in a form and content acceptable to the Executive Director, over a parcel or parcels containing chaparral ESHA. The chaparral ESHA located on the mitigation parcel or parcels must be of equal or greater area than the ESHA area impacted by the proposed development, including the fuel modification/brush clearance areas. No development, as defined in section 30106 of the Coastal Act, shall occur on the mitigation parcel(s) and the parcel(s) shall be preserved as permanent open space. The deed restriction shall include a graphic depiction and narrative legal descriptions of the parcel or parcels. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction.

Prior to occupancy of the residence the applicant shall submit evidence, for the review and approval of the Executive Director, that the recorded documents have been reflected in the Los Angeles County Tax Assessor Records.

If the mitigation parcel is larger in size than the impacted habitat area, the excess acreage may be used to provide habitat impact mitigation for other development projects that impact like ESHA.

C. Habitat Impact Mitigation Fund

Prior to the issuance of the coastal development permit, the applicant shall submit evidence, for the review and approval of the Executive Director, that compensatory mitigation, in the form of an in-lieu fee, has been paid to the Mountains Recreation and Conservation Authority to mitigate adverse impacts to chaparral habitat ESHA. The fee shall be calculated as follows:

1. Development Area, Irrigated Fuel Modification Zones

The in-lieu fee for these areas shall be \$12,000 per acre within the development area and any required irrigated fuel modification zones. The total acreage shall be based on the map delineating these areas required by this condition.

2. Non-irrigated Fuel Modification Zones

The in-lieu fee for non-irrigated fuel modification areas shall be \$3,000 per acre. The total acreage shall be based on the map delineating these areas required by this condition.

Prior to the payment of any in-lieu fee to the Mountains Recreation and Conservation Authority, the applicant shall submit, for the review and approval of the Executive Director, the calculation of the in-lieu fee required to mitigate adverse impacts to chaparral habitat ESHA, in accordance with this condition. After review and approval of the fee calculation, the fee shall be paid to the Mountains Recreation and Conservation Authority's Coastal Habitat Impact Mitigation Fund for the acquisition, permanent preservation or restoration of chaparral habitat in the Santa Monica Mountains coastal zone. The fee may not be used to restore areas where development occurred in violation of the Coastal Act's permit requirements.

7. DRAINAGE AND POLLUTED RUNOFF CONTROL PLAN

Prior to the issuance of the Coastal Development Permit, the applicant shall submit for the review and approval of the Executive Director, final drainage and runoff control plans, including supporting calculations. The plan shall be prepared by a licensed engineer and shall incorporate structural and non-structural Best Management Practices (BMPs) designed to control the volume, velocity, and pollutant load of stormwater leaving the developed site. The plan shall be reviewed and approved by the consulting engineering geologist to ensure the plan is in conformance with geologist's recommendations. In addition to the specifications above, the plan shall be in substantial conformance with the following requirements:

- (a) Selected BMPs (or suites of BMPs) shall be designed to treat, infiltrate or filter stormwater from each runoff event, up to and including the 85th percentile, 24-hour runoff event for volume-based BMPs, and/or the 85th percentile, 1-hour runoff event, with an appropriate safety factor, for flow-based BMPs.
- (b) Runoff shall be conveyed off site in a non-erosive manner.
- (c) Energy dissipating measures shall be installed at the terminus of outflow drains.
- (d) The plan shall include provisions for maintaining the drainage system, including structural BMPs, in a functional condition throughout the life of the approved development. Such maintenance shall include the following: (1) BMPs shall be inspected, cleaned and repaired when necessary prior to the onset of the storm season, no later than September 30th each year and (2) should any of the project's surface or subsurface drainage/filtration structures or other BMPs fail or result in increased erosion, the applicant/landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage/filtration system or BMPs and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicant shall submit a repair and restoration plan to the Executive Director to determine if amendment(s) or new Coastal Development Permit(s) are required to authorize such work.

8. POOL and SPA DRAINAGE and MAINTENANCE

By acceptance of this permit, the applicant agrees to install a no chlorine or low chlorine purification system and agrees to maintain proper pool water pH, calcium and alkalinity balance to ensure any runoff or drainage from the pool or spa will not include excessive amounts of chemicals that may adversely affect water quality or environmentally sensitive habitat areas. In addition, the applicant agrees not to discharge chlorinated or non-chlorinated pool water into a street, storm drain, creek, canyon drainage channel, or other location where it could enter receiving waters.

9. FUTURE DEVELOPMENT RESTRICTION

This permit is only for the development described in Coastal Development Permit No. 4-05-141. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6) and 13253(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610 (a) and (b) shall not apply to the entire property. Accordingly, any future improvements to the entire property, including but not limited to the residence, garage, fencing and gate, grading, and clearing of vegetation, other than as provided for in the approved fuel modification landscape and erosion control plan prepared pursuant to Special Condition No. Three (3), and Native Vegetation Restoration / Revegetation, Special Condition No. Four (4) shall require an amendment to Permit No. 4-05-141 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

10. STRUCTURAL APPEARANCE

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for the review and approval of the Executive Director, a color palette and material specifications for the outer surface of all structures, including the driveway pavement authorized by the approval of coastal development permit 4-05-141. The palette samples shall be presented in a format not to exceed 8 1/2" X 11" X 1/2" in size. The palette shall include the colors proposed for the all of the roofs, trims, exterior surfaces, retaining walls, driveway, or other structures authorized by this permit. Acceptable colors shall be limited to colors compatible with the surrounding environment (earth tones), including shades of green, brown and gray with no white or light shades, and no bright tones. All windows shall be comprised of non-glare glass.

The approved structures shall be colored with only the colors and window materials authorized pursuant to this special condition. Alternative colors or materials for future repainting or resurfacing or new windows may only be applied to the structures authorized by Coastal Development Permit No. 4-05-141 if such changes are specifically authorized by the Executive Director as complying with this special condition.

11. LIGHTING RESTRICTION

A. The only outdoor night lighting allowed on the subject lot is limited to the following to minimize night time intrusion of light and disruption of wildlife traversing this area at night within this rural area:

1. The minimum necessary to light walkways used for entry and exit to the structures, including parking areas and driveways, on the site. This lighting shall be limited to fixtures that do not exceed two feet in height, that are directed downward, and use incandescent bulbs that do not exceed 60 watts, energy efficient bulbs such as compact florescent that do not exceed a 12 watt rating, or bulbs generating the equivalent amount of lumens, unless a higher wattage is authorized by the Executive Director.
 2. Security lighting attached to the residence and garages that is controlled by motion detectors and is limited to incandescent bulbs that do not exceed 60 watts, energy efficient bulbs such as compact florescent that do not exceed a 12 watt rating, or bulbs generating the equivalent amount of lumens, unless a higher wattage is authorized by the Executive Director.
 3. The minimum lighting necessary for safe vehicular use of the driveway. That lighting shall be limited to incandescent bulbs that do not exceed 60 watts, energy efficient bulbs such as compact florescent that do not exceed a 12-watt rating, or bulbs generating the equivalent amount of lumens, unless a higher wattage is authorized by the Executive Director.
- B. No lighting shall be installed on the remainder of the parcel, including the slopes and other areas, and no lighting for aesthetic purposes is allowed.

12. **DEED RESTRICTION**

Prior to issuance of the coastal development permit the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing all the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the applicant's entire parcel governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the

13. **REMOVAL OF TEMPORARY CONSTRUCTION TRAILER**

With the acceptance of this coastal permit, the applicant agrees that the temporary construction trailer on the site shall be removed within two years of the issuance of this coastal development permit or within thirty (30) days of the applicants receipt of the Certificate of Occupancy for the proposed residence from the County of Los Angeles, whichever occurs first, to a site located outside the Coastal Zone or a site with a valid coastal development permit for the installation of temporary trailers.

14. OPEN SPACE CONSERVATION EASEMENT

No development, as defined in Section 30106 of the Coastal Act, grazing, or agricultural activities shall occur outside of the approved development area, within the portion of the property identified as the "open space conservation easement area", as generally shown in **Exhibit 20** except for:

Fuel modification required by the Los Angeles County Fire Department undertaken in accordance with the final approved fuel modification plan required by Special Condition No. Three (3); drainage and polluted runoff control activities pursuant to Special Condition No. Seven (7); and construction and maintenance of roads, trails, and utilities pursuant to existing easements, if approved by the Commission in a new coastal development permit.

Prior to issuance of the Coastal Development Permit, the applicant shall execute and record a document in a form and content acceptable to the Executive Director, granting to the Mountains Recreation and Conservation Authority ("MRCA") on behalf of the people of the State of California an open space conservation easement over the "open space conservation easement area" described above, for the purpose of habitat protection. The recorded easement document shall include a formal legal description of the entire property; and a metes and bounds legal description and graphic depiction, prepared by a licensed surveyor, of the open space conservation easement area, as generally shown on **Exhibit 20**. The recorded document shall reflect that no development shall occur within the open space conservation easement area except as otherwise set forth in this permit condition. The grant of easement shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed, and shall run with the land in favor of the MRCA on behalf of the people of the State of California, binding all successors and assigns.

15. CUMULATIVE IMPACT MITIGATION

The applicant shall mitigate the cumulative impacts of the subject development with respect to build-out of the Santa Monica Mountains by ensuring that development rights for residential use have been extinguished on the equivalent of one (1) building site in the Santa Monica Mountains Coastal Zone through a Transfer of Development Credit (TDC) transaction.

Prior to the issuance of the Coastal Development Permit, the applicant shall complete the following steps to ensure that the development rights are extinguished on the lot(s) equivalent to one Transfer of Development Credit (TDC):

- 1) The applicant shall provide, for the review and approval of the Executive Director, evidence that the TDC lot(s) to be extinguished qualify with the criteria for TDC donor lots established in past Commission actions.
- 2) No development, as defined in Section 30106 of the Coastal Act, grazing, or agricultural activities shall occur on the TDC lot(s) except for:

Brush clearance required by Los Angeles County for permitted structures on adjacent parcels; planting of native vegetation and other restoration activities, if approved by the Commission in a coastal development permit; construction and maintenance of public hiking trails, if approved by the Commission in a coastal development permit; and existing easements for roads, trails, and utilities

- 3) The applicant shall execute and record a document in a form and content acceptable to the Executive Director, granting or irrevocably offering to dedicate, an open space easement over the TDC lot(s) to be restricted for TDC credit for the purpose of development right extinguishment. The recorded easement document shall include a formal legal description and graphic depiction, prepared by a licensed surveyor, of the entire parcel(s). The recorded document shall reflect that development in the parcel(s) is restricted as set forth in this permit condition. The grant of easement, or irrevocable offer to dedicate, shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed. Such grant of easement or offer to dedicate shall run with the land in favor of the People of the State of California, binding all successors and assigns, and any such offer to dedicate shall be irrevocable.
- 4) The applicant shall provide evidence, for the review and approval of the Executive Director, that the TDC lot extinguished pursuant to Section 3 above has been combined with an adjacent lot(s) that is developed or developable and held in common ownership. The combined lot shall be considered and treated as a single parcel of land for all purposes with respect to the lands included therein, including but not limited to sale, conveyance, taxation, or encumbrance. The applicant shall execute and record a deed restriction, in a form acceptable to the Executive Director, reflecting the restrictions set forth above. The deed restriction shall include a legal description and graphic depiction of the parcels being combined and unified. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction.
- 5) The applicant shall submit, for the review and approval of the Executive Director, a title report for the combined lot created by the TDC lot(s) and the developed or

developable lot(s) that demonstrates that the open space easement grant or offer to dedicate required in Section 3 above is on the title.

16. INDEMNIFICATION BY APPLICANT

Liability for Costs and Attorneys Fees: By acceptance of this permit, the Applicant/Permittee agrees to reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys fees -- including (1) those charged by the Office of the Attorney General, and (2) any court costs and attorneys fees that the Coastal Commission may be required by a court to pay -- that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the Applicant/Permittee against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval or issuance of this permit. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission.

17. CONDITION COMPLIANCE

Within 120 days of Commission action on this coastal development permit application, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

IV. Findings and Declarations

The Commission hereby finds and declares:

A. Project Description and Background

1. Project Description

The applicant proposes to construct a 4,607 sq. ft., 28 ft. high, two-story single family residence with an attached 230 sq. ft. garage; a 256 sq. ft. covered patio; a detached 24 ft. high guest house/garage with a 650 sq. ft. garage on the first floor and a 600 sq. ft. guest house on the second floor; a 145 sq. ft. covered patio; a pool and spa; five retaining walls; drainage swales, a driveway, a septic system, a temporary construction trailer and a total of 5,399 cu. yds. of new proposed and as-completed grading. Proposed new grading will consist of 4,299 cu. yds. (250 cu. yds. cut & 560 cu. yds. fill for driveway & fire dept. turnaround; 1,219 cu. yds. cut & 1,650 cu. yds. fill for building pad & driveway spur) and 620 cu. yds. of additional grading for removal and recompaction and the request for after-the-fact of approval of as-built grading consists of 1,100 cu. yds. (550 cu. yds. cut; 550 cu. yds. fill). The application seeks approval of the subject lot which was recognized for Subdivision Map Act purposes by Certificate of

Compliance # 88-0342 and new proposed restoration and replanting with native vegetation of a portion of the as-graded slope along the southern and western boundary of the primary driveway and complete restoration of a secondary driveway

The project site is located within the inland area of the Santa Monica Mountains about four and one half miles inland along the west side of Mulholland Highway near its intersection with Dry Canyon Cold Creek Road (Exhibits 1 and 2). The project site is a vacant 3.59 acre lot² (APN 4455-039-008) accessed by a private driveway from Dry Canyon Cold Creek Road. The area surrounding the parcel is characterized by natural hillsides covered predominantly with undisturbed chaparral and oak trees. There is undeveloped land located to the west of the subject lot and to the south. There are seven existing residences located on nearby lots to the northeast, east and southeast along Dry Canyon Cold Creek Road and Mulholland Highway. There is one residence located on the adjacent lot to the north.

The property is located within and is surrounded to the west and south by relatively undisturbed chaparral habitat that this Commission considers to be environmentally sensitive habitat area (ESHA). The project site includes native chaparral on nearly the entire property, which is considered environmentally sensitive habitat, and 28 oak trees. A portion of this chaparral vegetation was removed without the required coastal development permit between the 1980's and 2006. In addition, unpermitted grading occurred on site creating two driveways and a flat pad area also between the 1980's and 2006. The project site is not located within the Cold Canyon Significant Watershed, but drains into Dry Canyon Cold Creek, which has riparian habitat that is considered environmentally sensitive habitat. The site is accessed along an existing common driveway from Dry Canyon Cold Creek Road.

The 3.59-acre project site is located on a lot that is roughly a trapezoid in shape with two approximately parallel northeast-trending property boundaries with a small valley between them. The western boundary is near the ridge of a north-south trending ridge. Past unpermitted grading has created an approximate 300 foot long dirt primary driveway which connects west from an existing paved common driveway (which also accesses three lots located to the southeast) to an existing flat pad and an approximate 260 foot long dirt secondary driveway along the eastern portion of the property. An existing paved driveway created, prior to 1977, accesses the subject lot and provides access to three other developed lots located to the east along Mulholland Highway. In addition, the existing level pad on site where the proposed residence and guest house is located was constructed without the required coastal permit and has been cut into the hillside with ascending slopes to the west to the ridge above and descending slopes to the south, east and north. Maximum topographic relief is about 150 feet. Ascending slopes from the as-built pad have a gradient of 2:1 or less (horizontal to vertical) with the exception of the steeper 25 foot high cut slope adjacent to the pad on the west side. Descending slopes are generally a 2:1 gradient or less.

² See footnote 1, on page 3 of this staff report, which footnote is hereby incorporated by reference into these findings.

The parcel drains to the east into a tributary leading to Dry Canyon Creek, which then leads to Cold Canyon Creek. The subject lot includes relatively undisturbed chaparral vegetation, except where the unpermitted removal of about 0.37 acres of formerly undisturbed Bigpod Ceanothus Chaparral vegetation has occurred as the result of the unpermitted grading to create the existing building pad and two driveways/access roads on site. A review of the Commission's historic aerial photographs from 1977 indicate that the subject lot was completely vegetated with chaparral vegetation which was part of a larger undisturbed chaparral habitat which extended offsite to the west and south (Exhibit 21). Approximately one acre of chaparral vegetation was removed on the northern portion of the subject lot as a result of the fuel modification requirements for an existing residence located on the lot immediately to the north. Approximately another acre of chaparral vegetation was removed on the northeastern portion of the lot as a result of fuel modification requirements for the existing two residences located to the northeast and east. The subject lot includes 28 oak trees ranging in size from 14 inches to 67 inches in circumference 4 ½ feet above mean natural grade. Although none of the 28 oak trees are proposed to be removed, the unpermitted grading that has previously occurred on site has encroached into the driplines of two of the existing oak trees on site. The proposed project includes the restoration and revegetation of the areas under these two oak trees.

At the request of staff, the applicant has reduced the size of the initially proposed residential and garage building pads twice from about 24,000 sq. ft. to a total of 9,970 sq. ft. as noted on Exhibits 7 and 12. The applicant has provided an itemized listing of the proposed grading to create the driveway and fire department turnaround, and the building pad areas. The applicant has provided a revised grading plan totaling both as-graded and new proposed grading as 4,479 cu. yds. of grading (Exhibits 11 and 12). Proposed new grading will consist of 4,299 cu. yds. (250 cu. yds. cut & 560 cu. yds. fill for driveway & fire department turnaround; 1,219 cu. yds. cut & 1,650 cu. yds. fill for building pad & driveway spur) and 620 cu. yds. of additional grading for removal and recompaction. Previously completed grading will consist of 1,100 cu. yds. (550 cu. yds. cut; 550 cu. yds. fill). The applicant is proposing, as part of the subject application, to restore the area on the subject site where unpermitted grading occurred between 2001 and 2006 (immediately west and south of the as-graded driveway) and the secondary as-graded driveway created in the 1980's as shown on Exhibit 10.

The proposed residence will be located on the existing as-built approximate 3,000 sq. ft. graded and cleared flat area located about 120 feet from the as-built private access driveway and about 350 feet from Mulholland Highway. The residence will be cut further into the hillside and will require additional cut and fill grading to create the building pad areas (including removal and recompaction grading for the building pad area) for the residence and garage/guest house. The applicant proposes to regrade and plant a portion of the slope along the southern and western boundary of the driveway with native vegetation following construction. The applicant also proposes to restore and plant a secondary driveway located on the eastern portion of the lot. In addition to the residence and driveway, a septic tank is proposed immediately adjacent

to the house. The proposed septic seepage pit system will be located on the northwest portion of the building pad.

The applicant has submitted a preliminary Fuel Modification Plan for the proposed residence that has been approved by the Los Angeles County Fire Department. This plan calls for clearance and thinning of vegetation 200 feet west, south, east, and north of the proposed residence. As a result of the existing residences located on the neighboring adjacent lots to the northwest, northeast, and east, vegetative thinning and clearance has already occurred on the subject lot as a result of fuel modification (Exhibit 23).

2. Property History

a. Unpermitted Lot

According to Los Angeles County's file record for Conditional Certificate of Compliance 88-0342 (file information was obtained by Commission staff directly from Los Angeles County Department of Regional Planning; Exhibits 15 and 16), the subject lot was created as one of 5 lots that were created as a result of an unauthorized 5-lot subdivision of a single parcel between 1956 and 1958, achieved through the execution of grant deeds for each of the separate portions of the pre-existing lot. This County record also indicates that the subject lot was created on August 30, 1963, in non-compliance with the applicable laws and regulations existing at that time. In addition, County staff have indicated that they believe the subject parcel was created in violation of the applicable laws and regulations because at the time the five parcels were created between 1956 and 1957, the subdivision regulations allowed no more than four lots or parcels to be created out of a single lot by deed. The creation of more than four lots by a subdivision (as occurred in this case) would have required the approval of a Tract Map by Los Angeles County. The Conditional Certificate of Compliance 88-0342 specifically states "[t]he above described parcel was not created in compliance with State and County Subdivision regulations." (Exhibit 13)

Therefore, because the subject lot was not created in compliance with the laws and regulations at the time of its original purported creation in 1963, the County of Los Angeles issued a Conditional Certificate of Compliance (CC 88-0342) in 1988 in order to recognize the lot after-the-fact in regards to compliance with the Subdivision Map Act. The Coastal Act requires that one secure a coastal development permit prior to undertaking development, including the division of land. The vested rights exemption allows the completion or continuance of development that was commenced prior to the Coastal Act without a coastal development permit only if all other necessary and required permits were obtained. However, in this case, the unpermitted subdivision of land that was first attempted prior to the effective date of the Coastal Act on January 1, 1977, can not be considered vested or "grandfathered" development because it occurred in non-compliance with the applicable laws and regulations and without the required approvals. As such, the application of the property owner for a certificate of compliance in 1988 and the subsequent issuance of the 1988 Conditional Certificate of

Compliance, which "legalized" this lot for purposes of the Subdivision Map Act, is considered a form of land division and, therefore, required a coastal development permit, pursuant to the provisions of the Coastal Act.

There is no record of a Coastal Development Permit issued for the creation of this lot either before or after the July 13, 1989 recording of Conditional Certificate of Compliance 88-0342. Therefore, the subject lot was purportedly created in an illegal manner prior to the effective date of the Coastal Act, and the Conditional Certificate of Compliance 88-0342 was issued and recorded without the required Coastal Development Permit. A "Clearance of Conditions in Certificate of Compliance 88-0342" was recorded August 12, 2005, which confirmed that the conditions in Certificate of Compliance 88-0342, such as road rights of way, were completed and the lot was now considered by Los Angeles County to comply with applicable provisions of the Subdivision Map Act and the County Subdivision Ordinance.

The applicant is now requesting approval for the creation of the subject lot through this coastal development permit, which is discussed in detail below (Section VI. F. Cumulative Impacts).

b. Prior Approved Coastal Permits on Subject Lot

On August 8, 1990, the Commission approved Coastal Development Permit (CDP) No. 5-89-1115 (Gault) to construct a 3,603 sq. ft., 35 ft. high single family residence with septic system and 6,684 cu. yds. of grading at 24677 Dry Canyon Cold Creek Road. This Coastal Permit was extended once to August 8, 1993 and was issued March 17, 1992 with three special conditions addressing a landscape plan, future development restriction, and plans conforming to geologic recommendations. The applicants submitted a second extension request, however, it was received after the expiration of the coastal permit. Although a copy of the 1988 certificate of compliance was submitted in conjunction with the application for CDP 5-89-1115, the applicant did not request authorization for the creation of the lot, and the Commission's approval of CDP 5-89-1115 did not involve such authorization, instead being based on the incorrect premise that the subject site had been legally created prior to the effective date of the Coastal Act because this lot had been shown on a map titled "1978 County of Los Angeles Buildout Survey" and that, therefore, the lot was considered as a legal lot.

Subsequently, on October 13, 1993, the Commission approved a second coastal permit, Coastal Administrative Permit No. 4-93-152 (Gault), to construct the same residence as previously approved by Coastal Permit No. 5-89-1115 (Gault) consisting of a 3,603 sq. ft., 35 ft. high single family residence with septic system and 6,684 cu. yds. of grading at 24677 Dry Canyon Cold Creek Road. The Commission's approval was again based on the incorrect premise stated in the staff report that the subject site had been legally created prior to the effective date of the Coastal Act because this lot had been shown on a map titled "1978 County of Los Angeles Buildout Survey" and that, therefore, the lot was considered as a legal lot. Coastal Administrative Permit No. 4-93-152 was extended three times until October 13, 1998 when this permit expired (Coastal

Administrative Permit No. 4-93-152, E1, E2, E3). However, Coastal Administrative Permit No. 4-93-152 was not determined to be effective (not issued) as all of the special conditions were not completed by the applicant prior to the issuance of this Permit.

c. Residential Development on Two of the Five Illegal Lots

A review by Staff of the historic aerial photographs for this area (Exhibits 21 and 22) confirmed that, prior to any CDP applications on the subject lot, a residence had been constructed on each of two of the five unauthorized lots. These residential developments were constructed in 1964 and 1966 and existed prior to the effective date of the Coastal Act in 1977. There are no records that any coastal permits were ever approved for any subsequent development on either of these two residentially developed lots or the other two remaining vacant lots after 1977.

B. Geologic and Wildfire Hazard

The proposed development is located in the Santa Monica Mountains, an area that is generally considered to be subject to an unusually high amount of natural hazards. Geologic hazards common to the Santa Monica Mountains area include landslides, erosion, and flooding. In addition, fire is an inherent threat to the indigenous chaparral community of the coastal mountains. Wildfires often denude hillsides in the Santa Monica Mountains of all existing vegetation, thereby contributing to an increased potential for erosion and landslides on the property.

Section 30253 of the Coastal Act states in pertinent part that new development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.***
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, 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.***

Geology

Section 30253 of the Coastal Act mandates that new development be sited and designed to provide geologic stability and structural integrity, and minimize risks to life and property in areas of high geologic, flood, and fire hazard. The applicant has submitted the Update Geologic and Soils Engineering Investigation by GeoConcepts dated November 4, 2004 and Supplemental Report No. 1 dated May 1, 2006. This report addresses the geologic conditions on the site, including drainage, subsurface conditions, groundwater, landslides, faulting, and seismicity.

The applicant proposes to construct a 4,607 sq. ft., 28 ft. high, two-story single family residence with an attached 230 sq. ft. garage; a 256 sq. ft. covered patio; a detached 24 ft. high guest house/garage with a 650 sq. ft. garage on the first floor and a 600 sq. ft. guest house on the second floor; a 145 sq. ft. covered patio; a pool and spa; five retaining walls; drainage swales, a driveway, a septic system, a temporary construction trailer and a total of 5,399 cu. yds. of new proposed and as-completed grading. Proposed new grading will consist of 4,299 cu. yds. (250 cu. yds. cut & 560 cu. yds. fill for driveway & fire dept. turnaround; 1,219 cu. yds. cut & 1,650 cu. yds. fill for building pad & driveway spur) and 620 cu. yds. of additional grading for removal and recompaction and the request for after-the-fact approval of as-built grading consists of 1,100 cu. yds. (550 cu. yds. cut; 550 cu. yds. fill). The application also includes the request for after-the-fact approval of the subject lot that was created pursuant to Certificate of Compliance # 88-0342 and new proposed restoration and replanting with native vegetation of a portion of the as-graded slope along the southern and western boundary of the primary driveway and complete restoration of a secondary driveway

The 3.59-acre project site is located on a lot that is roughly a trapezoid in shape with two approximately parallel northeast-trending property boundaries with a small valley between them. The western boundary is near the ridge of a north-south trending ridge. An as-built approximate 300 foot long dirt primary driveway which connects west to an existing flat pad from a existing paved common access driveway to three other lots located to the southeast. There is also an approximate 260 foot long dirt secondary driveway along the eastern portion of the property. An existing paved driveway created, prior to 1977, accesses the subject lot and provides access to three other developed lots located to the east along Mulholland Highway. In addition, the existing level pad on site where the proposed residence and guest house is located was constructed without the required coastal permit and has been cut into the hillside with ascending slopes to the west to the ridge above and descending slopes to the south, east and north. Maximum topographic relief is about 150 feet. Ascending slopes from the as-built pad have a gradient of 2:1 or less (horizontal to vertical) with the exception of the steeper 25 foot high cut slope adjacent to the pad on the west side. Descending slopes are generally a 2:1 gradient or less. There is a second unpermitted access road on site extends approximately 260 ft. in length along the eastern portion of the lot parallel to the common paved driveway.

The parcel drains to the east into a tributary leading to Dry Canyon Creek, which then leads to Cold Canyon Creek and Malibu Canyon Creek. The subject lot includes relatively undisturbed chaparral vegetation with the exception of approximately 0.37 acres of the lot where the removal of about 0.37 acres of formerly undisturbed Bigpod Ceanothus Chaparral vegetation has occurred as the result of previous unpermitted grading to create the existing building pad and two driveways.

The geologic consultant, GeoConcepts, Inc., has found the geology of the proposed project site to be suitable for the construction of a single-family residence. The geologic and geotechnical engineering consultants in their geologic and engineering report state that:

"It is the finding of this corporation, based upon the subsurface data, that the proposed project will be safe from landslide, settlement or slippage and will not adversely affect adjacent property, provided this corporation's recommendations and those of the County of Los Angeles and Uniform Building Code are followed and maintained."

The engineering geologic and geotechnical consultant conclude that the proposed developments are feasible and will be free from geologic hazard provided their recommendations are incorporated into the proposed development. The geologic and geotechnical reports contains several recommendations to be incorporated into project construction, design, drainage, foundations, and sewage disposal to ensure the stability and geologic safety for the proposed project site and adjacent properties.

In order to ensure that the recommendations of the geologic consultant have been incorporated into all proposed development, and that the project will therefore minimize risk, assure stability and structural integrity, and otherwise be consistent with Section 30253, the Commission, as specified in **Special Condition No. One (1)**, requires the applicant to incorporate the recommendations cited in the geotechnical reports into all final design and construction plans. Final plans approved by the consultant shall be in substantial conformance with the plans approved by the Commission. Any substantial changes to the proposed developments, as approved by the Commission, which may be recommended by the consultant, shall require an amendment to the permit or a new coastal development permit.

The Commission notes that there remains some inherent risk in building in the Santa Monica Mountains, which are prone to landslides and destruction from wildfire. The Commission can only approve the project if the applicant assumes the liability from the associated risks as required by **Special Condition No. Two (2)**. The assumption of risk will show that the applicant is aware of and appreciates the nature of the hazards which exist on the site and which may adversely affect the stability or safety of the proposed development and agrees to assume any liability for the same.

The Commission finds that controlling and diverting run-off in a non-erosive manner from the proposed structures, impervious surfaces, and building pad will also add to the geologic stability of the project site, not doing so would create the potential for geologic instability in a manner that is inconsistent with Section 30253. Therefore, in order to minimize erosion and ensure stability of the project site, and to ensure that adequate drainage and erosion control is included in the proposed development, the Commission requires the applicants to submit drainage and erosion control plans certified by the geotechnical engineer, as specified in **Special Condition Nos. Three (3) and Four (4)**.

Further, the Commission finds that landscaping of graded and disturbed areas on the subject site will serve to stabilize disturbed soils, reduce erosion and thus enhance and maintain the geologic stability of the site. Therefore, **Special Condition No. Three (3)** requires the applicant to submit landscaping plans certified by the consulting

geotechnical engineer as in conformance with their recommendations for landscaping of the project site. **Special Condition No. Three (3)** also requires the applicant to utilize and maintain native and noninvasive plant species compatible with the surrounding area for landscaping the project site.

Invasive and non-native plant species are generally characterized as having a shallow root structure in comparison with their high surface/foilage weight. The Commission notes that non-native and invasive plant species with high surface/foilage weight and shallow root structures do not serve to stabilize slopes and that such vegetation results in potential adverse effects to the stability of the project site. Native species, alternatively, tend to have a deeper root structure than non-native and invasive species, and once established aid in preventing erosion. Therefore, the Commission finds that in order to ensure site stability, all slopes and disturbed and graded areas of the site shall be landscaped with appropriate native plant species, as specified in **Special Condition No. Three (3)**. Additionally, the restoration of the unpermitted dirt road spanning the eastern portion of the property, shall, according to **Special Condition No. Four (4)**, include weeding of non-native plants and planting of native species as allowed in the approved Final Fuel Modification Plan for the proposed residence.

Furthermore, in order to ensure that vegetation clearance for fire protection purposes does not occur prior to commencement of grading or construction of the proposed structures, the Commission finds that it is necessary to impose a restriction on the removal of natural vegetation as specified in **Special Condition No. Five (5)**. This restriction specifies that natural vegetation shall not be removed until grading or building permits have been secured and construction of the permitted structures has commenced. The limitation imposed by **Special Condition No. Five (5)** avoids loss of natural vegetative coverage resulting in unnecessary erosion in the absence of adequately constructed drainage and run-off control devices and implementation of the landscape and interim erosion control plans.

Special Condition No. Twelve (12) requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on the use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property.

The Commission finds that the proposed project, as conditioned, will serve to minimize potential geologic hazards of the project site and adjacent properties, as outlined in §30253 of the Coastal Act

Wildfire

The proposed project is located in the Santa Monica Mountains, an area subject to an extraordinary potential for damage or destruction from wild fire. Typical vegetation in the Santa Monica Mountains consists mostly of coastal sage scrub and chaparral.

Many plant species common to these communities produce and store terpenes, which are highly flammable substances (Mooney in Barbour, *Terrestrial Vegetation of California*, 1988). Chaparral and sage scrub communities have evolved in concert with, and continue to produce the potential for, frequent wild fires. The typical warm, dry summer conditions of the Mediterranean climate combine with the natural characteristics of the native vegetation to pose a risk of wild fire damage to development that cannot be completely avoided or mitigated.

Due to the fact that the proposed project is located in an area subject to an extraordinary potential for damage or destruction from wild fire, the Commission can only approve the project if the applicant assumes the liability from these associated risks. Through **Special Condition No. Two (2)**, the assumption of risk, the applicant acknowledges the nature of the fire hazard which exists on the site and which may affect the safety of the proposed development. Moreover, through acceptance of **Special Condition No. Two (2)**, the applicant also agrees to indemnify the Commission, its officers, agents and employees against any and all expenses or liability arising out of the acquisition, design, construction, operation, maintenance, existence, or failure of the permitted project.

For the reasons set forth above, the Commission finds that, as conditioned, the proposed project is consistent with §30253 of the Coastal Act.

C. Environmentally Sensitive Habitat Areas

Section 30230 of the Coastal Act states that:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 states:

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

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

Section 30240 states:

- (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.***
- (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.***

Section 30107.5 of the Coastal Act, defines an environmentally sensitive area as:

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

Sections 30230 and 30231 of the Coastal Act require that the biological productivity and the quality of coastal waters and streams be maintained and, where feasible, restored through, among other means, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flows, maintaining natural buffer areas that protect riparian habitats, and minimizing alteration of natural streams. In addition, Sections 30107.5 and 30240 of the Coastal Act state that environmentally sensitive habitat areas must be protected against disruption of habitat values. Therefore, when considering any area, such as the Santa Monica Mountains, with regard to an ESHA determination one must focus on three main questions:

- 1) Is a habitat or species rare or especially valuable?
- 2) Does the habitat or species have a special nature or role in the ecosystem?
- 3) Is the habitat or species easily disturbed or degraded by human activities and developments?

The Coastal Commission has found that the Mediterranean Ecosystem in the Santa Monica Mountains is itself rare and valuable because of its relatively pristine character, physical complexity, and resultant biological diversity. Therefore, habitat areas that provide important roles in that ecosystem are especially valuable and meet the second criterion for the ESHA designation. In the Santa Monica Mountains, coastal sage scrub and chaparral have many important roles in the ecosystem, including the provision of critical linkages between riparian corridors, the provision of essential habitat for species that require several habitat types during the course of their life histories, the provision of

essential habitat for local endemics, the support of rare species, and the reduction of erosion, thereby protecting the water quality of coastal streams. For these and other reasons discussed in Exhibit 17, which is incorporated herein, the Commission finds that large contiguous, relatively pristine stands of coastal sage scrub and chaparral in the Santa Monica Mountains meet the definition of ESHA. This is consistent with the Commission's past findings on the Malibu LCP³.

For any specific property within the Santa Monica Mountains, it is necessary to meet three tests in order to assign the ESHA designation. First, is the habitat properly identified, for example as coastal sage scrub or chaparral? Second, is the habitat undeveloped and otherwise relatively pristine? Third, is the habitat part of a large, contiguous block of relatively pristine native vegetation?

The applicant proposes to construct a 4,607 sq. ft., 28 ft. high, two-story single family residence with an attached 230 sq. ft. garage; a 256 sq. ft. covered patio; a detached 24 ft. high guest house/garage with a 650 sq. ft. garage on the first floor and a 600 sq. ft. guest house on the second floor; a 145 sq. ft. covered patio; a pool and spa; five retaining walls; drainage swales, a driveway, a septic system, a temporary construction trailer and a total of 5,399 cu. yds. of new proposed and as-completed grading. Proposed new grading will consist of 4,299 cu. yds. (250 cu. yds. cut & 560 cu. yds. fill for driveway & fire dept. turnaround; 1,219 cu. yds. cut & 1,650 cu. yds. fill for building pad & driveway spur) and 620 cu. yds. of additional grading for removal and recompaction and the request for after-the-fact of approval of as-built grading consists of 1,100 cu. yds. (550 cu. yds. cut; 550 cu. yds. fill). The application also seeks approval of the subject lot which was recognized for Subdivision Map Act purposes by Certificate of Compliance # 88-0342 and new proposed restoration and replanting with native vegetation of a portion of the as-graded slope along the southern and western boundary of the primary driveway and complete restoration of a secondary driveway

The project site is located within the inland area of the Santa Monica Mountains about four and one half miles inland along the west side of Mulholland Highway near its intersection with Dry Canyon Cold Creek Road (Exhibits 1 and 2). The project site is a vacant 3.59 acre lot (APN 4455-039-008) accessed from a private driveway from Dry Canyon Cold Creek Road. The area surrounding the parcel is characterized by natural hillsides covered predominantly with undisturbed chaparral and oak trees. Undeveloped land vegetated with chaparral is located to the west of the subject lot and to the south. There are seven existing residences located to the northeast, east and southeast lots along Dry Canyon Cold Creek Road and Mulholland Highway. There is one residence located on the adjacent lot to the north.

The property is located within and is surrounded to the west and south by relatively undisturbed chaparral habitat considered to be environmentally sensitive habitat area (ESHA). The project site includes native chaparral on nearly the entire property, which is considered environmentally sensitive habitat and 28 oak trees. A portion of this vegetation has been removed without the required coastal development permit in order

³ Revised Findings for the City of Malibu Local Coastal Program (as adopted on September 13, 2002) adopted on February 6, 2003.

to construct the two as-built driveways and flat building pad where the applicant is proposing to locate the residence. The applicant is proposing to restore portions of the graded driveway on the south side in areas beyond the area now proposed for this project as part of this pending permit application. In addition the applicant is proposing to restore and revegetate completely the secondary driveway. The project site is not located within the Cold Canyon Significant Watershed but drains into Dry Canyon Cold Creek that includes riparian habitat that is considered environmentally sensitive habitat.

The 3.59-acre project site is located on a lot that is roughly a trapezoid with two approximately parallel northeast-trending property boundaries with a small valley between them. The western boundary is near the ridge of a north-south trending ridge. Past unpermitted grading has created an approximate 300 foot long driveway cut westerly from the existing paved driveway accessing three other developed lots located to the east along Mulholland Highway. In addition, the existing level pad on site where the proposed residence and guest house is located was constructed without the required coastal permit and has been cut into the hillside with ascending slopes to the west to the ridge above and descending slopes to the south, east and north. This near level pad cut is into the hillside has ascending slopes to the west to the ridge above (where an existing residence constructed in 1966 is located), and descending slopes to the south, east and north. Maximum topographic relief is about 150 feet. Ascending slopes from the pad have a gradient of 2:1 or less (horizontal to vertical) with the exception of the steeper 25 foot high cut slope adjacent to the pad on the west side. Descending slopes are generally a 2:1 gradient or less. There is a second existing unpermitted 260 foot long narrow driveway on the eastern portion of the lot which is parallel to the existing paved common driveway which accesses 3 lots located to the southeast.

The parcel drains both to the east into a tributary leading to Dry Canyon Creek which then leads to Cold Canyon Creek. The subject lot includes relatively undisturbed chaparral vegetation, except for the unpermitted removal of about 0.37 acres of formerly undisturbed Bigpod Ceanothus Chaparral vegetation. In addition, although no oak trees have been removed on site, the previously completed as-built grading encroached into the driplines of two oak trees on site. The unpermitted vegetation removal and grading resulted from the construction of the existing building pad and two driveways. A review of the Commission's historic aerial photographs from 1977 indicates that the subject lot was entirely vegetated with undisturbed chaparral vegetation which was part of a larger chaparral habitat community which extended offsite to the west and south (Exhibit 21).

In addition, approximately two acres of chaparral vegetation has been removed from the northern portion of the subject lot as a result of the required fuel modification for the existing residence located on the adjacent lot immediately to the north and two existing residences located on adjacent lots immediately to the northeast and east for fuel modification purposes. The residence that is proposed on the subject site as part of this application will be located within a portion of the site that will overlap with these existing fuel modification zones for the neighboring three residences (Exhibit 23). Thus, due to the presence of overlapping fuel modification zones for the existing neighboring

residences, the proposed location for the new residence is in an appropriate area of the site for new development that will serve to minimize new vegetation clearance that will occur from fuel modification requirements for the new residence. As noted below, an additional 0.37 acres of chaparral was removed without a coastal permit as identified in the Biological Study, resulting in a total of about 2 1/3 acres of vegetation removal for the subject lot.

At the request of staff to reduce the development area to a maximum of 10,000 sq. ft., the applicant has reduced the size of the initially proposed residential and garage building pads beyond the turnaround area from about 24,000 sq. ft. to a total of 13,238 sq. ft., and a second time reduced to 9,970 sq. ft. as noted on Exhibits 7 and 12. As a result of the vegetation removal that has already occurred on site from the required fuel modification for the three adjacent residences on neighboring properties to the north and east, further reduction of the development area would not serve to further lessen impacts to ESHA on site that will otherwise result from the construction of the proposed residence.

The applicant has provided a revised grading plan totaling as-built and proposed grading as 5,399 cu. yds. of grading including grading for removal and recompaction. The applicant is proposing, as part of the subject application, to restore the slopes located beyond the area proposed for the development building pad areas and the secondary driveway.

The proposed residence will be located on the existing approximate 3,000 sq. ft. as-built graded and cleared flat area located about 120 feet from the private common access driveway and about 350 feet from Mulholland Highway. The residence will be cut further into the hillside and will require additional cut and fill grading to create the building pad areas (including removal and recompaction grading for the building pad area) for the residence and garage/guest house. The applicant proposes to regrade and plant a portion of the slope along the southern and western boundary of the driveway with native vegetation beyond the graded area required to construct the proposed project following construction.

The applicant has submitted a preliminary Fuel Modification Plan for the proposed residence that has been approved by the Los Angeles County Fire Department. This plan calls for clearance and thinning of vegetation 200 feet west, south, east, and north of the proposed residence. As a result of the existing residence located to the northwest, vegetative thinning and clearance has occurred on the subject lot as a result of fuel modification. The fuel modification that will be required for the proposed residence will overlap with the existing fuel modification zone for the existing residence on the neighboring property to the north.

The applicant has submitted a Biological Study for the property, prepared by Blair Baker and Jessica Rappaport in May 2006. In this report, the biological consultants describe the subject parcel as primarily vegetated with native Bigpod Ceanothus Chaparral. Approximately 0.37 acres of the chaparral was previously removed on site without a

coastal permit as a result of the construction of the as-built driveways and building pad. The subject lot also includes 28 oak trees ranging in size from 14 inches to 67 inches in circumference measured at 4 ½ feet above mean natural grade. Although the applicant is not proposing to remove any of the 28 oak trees, the Commission notes that the previously completed unpermitted grading on site encroached into the driplines of two of the oak trees. These two oak trees (*Quercus agrifolia*) are both 24 inches in circumference measured at 4 ½ feet above mean natural grade and are located on the south side of the proposed primary driveway in an area proposed by the applicant to be restored and revegetated as required by **Special Condition No. Four (4)**. As a result, the formerly vegetated area beneath their driplines will be restored to protect the oak trees.

An aerial photograph taken in 1977 from the Commission's historic photographic records shows the site to be fully vegetated in what appears to be chaparral vegetation similar to the native species currently found on most portions of the property and surrounding properties located to the west and south (Exhibit 21). Due to the important ecosystem role of chaparral in the Santa Monica Mountains (detailed in Exhibit 17), and the fact that the subject parcel is relatively undisturbed, with the exception of the unpermitted two graded access driveways and graded pad, and part of a large, unfragmented block of habitat, the Commission finds that the chaparral habitat on and surrounding the subject site meets the definition of ESHA under the Coastal Act. The Commission also finds that had grading and vegetative clearance not occurred to create the existing unpermitted two driveways and a pad on the property, these areas would also be vegetated with native chaparral vegetation and likely meet the definition of ESHA under the Coastal Act.

As explained above, the project site and the surrounding area constitute an environmentally sensitive habitat area (ESHA) pursuant to Section 30107.5. Section 30240 requires that "environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas." Section 30240 restricts development on the parcel to only those uses that are dependent on the resource. The applicant proposes to construct a single-family residence on the parcel. The majority of the development is proposed to be located in areas currently supporting chaparral ESHA or on the existing unpermitted dirt road on the property, which likely supported chaparral ESHA before creation of the road. As single-family residences do not have to be located within ESHAs to function, the Commission does not consider single-family residences to be a use dependent on ESHA resources. Application of Section 30240, by itself, would require denial of the project, because the project would result in significant disruption of habitat values and is not a use dependent on those sensitive habitat resources.

However, the Commission must also consider Section 30010, and the Supreme Court decision in *Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003, 112 S.Ct. 2886. Section 30010 of the Coastal Act provides that the Coastal Act shall not be construed as authorizing the Commission to exercise its power to grant or deny a permit

in a manner that will take private property for public use. Application of Section 30010 may overcome the presumption of denial in some instances. The subject of what government action results in a "taking" was addressed by the U.S. Supreme Court in *Lucas v. South Carolina Coastal Council*. In *Lucas*, the Court identified several factors that should be considered in determining whether a proposed government action would result in a taking. For instance, the Court held that where a permit applicant has demonstrated that he or she has a sufficient real property interest in the property to allow him or her to undertake the proposed project, and that project denial would deprive the owner-applicant of all economically viable use of the property, then denial of the project by a regulatory agency might result in a taking of the property for public use unless the proposed project would constitute a nuisance under State law. Other Supreme Court precedent establishes that another factor that should be considered is the extent to which a project denial would interfere with the property owner's reasonable investment-backed expectations regarding the development of the property.

The Commission interprets Section 30010, together with the *Lucas* decision, to mean that if Commission denial of the project would deprive an applicant of all reasonable economic use of his or her property, the Commission may be required to allow some development even where a Coastal Act policy would otherwise prohibit it, unless the proposed project would constitute a nuisance under state law. In other words, Section 30240 of the Coastal Act cannot be read to deny all economically beneficial or productive use of land because Section 30010 clarifies that Section 30240 cannot be interpreted to require the Commission to act in an unconstitutional manner.

In the subject case, the applicant purchased the property in July, 2006 for approximately \$750,000. Although the 1988 Conditional Certificate of Compliance ("CoC") was recorded against the property indicating that the original subdivision was not performed in compliance with applicable laws, CoCs generally indicate the recognition of a lot, and nothing in the recordation of the CoC revealed that it was issued without a coastal development permit. So the title search would not have indicated the legal status of the lot. The parcel was designated in the County's certified Land Use Plan in 1986 for residential use as Rural Land III, which allows for residential development at a maximum density of one dwelling unit per 2 acres. At the time the applicant purchased the parcel, the County's certified Land Use Plan did not designate the vegetation on the site as ESHA. Based on this fact, the purchase price, the presence of existing residential development on nearby parcels, and the Commission's approval of two coastal permits to construct residential development (CDPs 5-89-1115 and 4-93-152 (Gault)), the applicant had reason to believe that he had purchased a lot on which he would be able to build a residence.⁴

The Commission finds that in this particular case, other uses for the subject site such as a recreational park or a nature preserve, are not feasible on lands zoned by the County

⁴ The Commission notes that at least this last factor does not apply to the other two undeveloped lots within the purported subdivision. Accordingly, the analysis in this report is not necessarily transferable to those lots. Whether those lots warrant retroactive legalization and/or are developable is not before the Commission at this time, and the Commission takes no position on these questions.

of Los Angeles for residential development and such uses would not provide the owner an economic return on the investment. The parcel is 3.59 acres and there are other residential developments to the north, the northeast, east, and southeast of the site. Public parkland and open space has been acquired in the vicinity east of Mulholland Highway but there is currently not an offer to purchase the property from any public park agency. The Commission thus concludes that in this particular case, there is no viable alternative use for the site other than residential development. The Commission finds, therefore, that given the totality of the circumstances, outright denial of all residential use would interfere with reasonable investment-backed expectations and/or deprive the property of all reasonable economic use.

Next the Commission turns to the question of nuisance. There is no evidence that construction of a residence would create a nuisance under California law. Other houses have been constructed in similar situations in chaparral habitat in Los Angeles County, apparently without the creation of nuisances. The County's Health Department has not reported evidence of septic system failures. In addition, the County has reviewed and approved the applicant's proposed septic system, ensuring that the system will not create public health problems. Furthermore, the use that is proposed is residential, rather than, for example, industrial, which might create noise or odors or otherwise create a public nuisance. In conclusion, the Commission finds that a residential project can be allowed to permit the applicant a reasonable economic use of his property consistent with Section 30010 of the Coastal Act.

While the applicant is entitled under Section 30010 to an assurance that the Commission will not construe or implement the Coastal Act in such a way as to take his property, this section does not authorize the Commission to avoid application of the policies of the Coastal Act, including Section 30240, altogether. Instead, the Commission is only directed to avoid construing these policies in a way that would take property. Aside from this instruction, the Commission is still otherwise directed to enforce the requirements of the Act. Therefore, in this situation, the Commission must still comply with Section 30240 by avoiding impacts that would disrupt and/or degrade environmentally sensitive habitat, to the extent this can be done without taking the property.

As discussed above, the proposed development will be approved within ESHA in order to provide an economically viable use. Siting and design alternatives have been considered in order to identify the alternative that can avoid and minimize impacts to ESHA to the maximum extent feasible consistent with the provision of an economically viable residential use. In this case, very steep terrain on the property limits the potential locations for siting of a residence. The proposed building site is located on a 3,000 sq. ft. area that has been cleared and graded in association with the unpermitted grading on the subject property. More importantly, the residence is proposed in a location where the required fuel modification for the new residence will overlap with the existing fuel modification zone for the existing residence on the adjacent property located to the north, the northeast, and the east and will therefore, serve to minimize vegetation removal. As a result of overlapping fuel modification, over about half of the property

(the northern area) has been cleared of chaparral ESHA leaving a number of oak trees along the eastern portion of the property. The southern portion of the property, less than half, includes relatively undisturbed chaparral ESHA and a few oak trees along the southeast portion of the lot. Thus, the Commission finds that the proposed development area of approximately 9,970 sq. ft. (Exhibit 7 identifies proposed 9,970 sq. ft. of development area) is the appropriate location on site for new development to occur since it will be located entirely within an area of the site where all native vegetation has been cleared as a result of the existing fuel modification for the adjoining residences located to the north, northeast, and east (Exhibit 23).

In addition, because the proposed development area has been reduced in size to less than 10,000 sq. ft., the development area will be located entirely within the existing cleared area resulting from fuel modification to protect the adjoining residences to the north, northeast and east. Further, the Commission finds that, in this case, further reduction in the size of the developable area or relocation of the developable area to another site on the subject lot would not serve to lessen or avoid any new adverse impacts to ESHA. Therefore, regardless of the fact of the unpermitted grading that has occurred on site, the Commission finds that there are no feasible alternative locations on the site for a residence that would not result in greater amounts of grading and removal of native vegetation and that; therefore, the proposed building location is the environmentally preferred alternative.

Within areas of the Santa Monica Mountains with chaparral and coastal sage scrub, which is considered ESHA, the Commission has required, through past permit actions, that development be clustered on a lot and the building pad size not exceed 10,000 sq. ft. as measured from the top of the cut slope to the bottom of the fill slope, excluding the size of the necessary fire truck hammerhead turnaround area, to minimize impacts on this sensitive habitat and the surrounding watershed resulting from both landform alteration and vegetation clearance. In this case, the applicant is proposing to construct two separate flat pad/development areas for the residence and garage/guest house, including the connecting driveway beyond the hammerhead turnaround that would be approximately 9,970 sq. ft. in combined size (Exhibit 7).

The proposed residence, garage/guest house, septic system, driveway, and the fuel modification area required for the residence will be located in chaparral habitat considered ESHA that would have been considered ESHA if it had not been cleared, and which the Commission must still treat as ESHA for purposes of this application, since the clearing was done without the required Coastal Development Permit. Additionally, the applicant has secured Los Angeles Fire Department Fuel Modification Plans for the residence that limit the irrigated Zone B to a maximum of 100 feet from the residence. Zone C, where vegetation is thinned, but not cleared, would extend from the edge of Zone B to 100 feet from Zone B a total of 200 feet from the residence. Additionally, the applicant has proposed restoration of those portions of the site where unpermitted grading occurred along the access driveway beyond the area proposed to be graded for the driveway and the building pad area once construction is complete. The second driveway along the eastern portion of the property is also proposed to be

restored to chaparral habitat. **Special Condition No. Four (4)** ensures completion of these restoration activities consistent with other landscaping requirements for the property. Therefore, the proposed development area conforms to the maximum development area of 10,000 sq. ft. that the Commission has typically allowed in similar situations on sites containing ESHA. However, given the location of ESHA on the site, there will still be significant impacts to ESHA resulting from construction of the residence, septic system, garage/guest house, driveway, and fuel modification area around the residence. The following discussion of ESHA impacts from new development and fuel modification is based on the findings of the Malibu LCP⁵.

Fuel modification is the removal or modification of combustible native or ornamental vegetation. It may include replacement with drought tolerant, fire resistant plants. The amount and location of required fuel modification would vary according to the fire history of the area, the amount and type of plant species on the site, topography, weather patterns, construction design, and siting of structures. There are typically three fuel modification zones applied by the Fire Department:

Zone A (Setback Zone) is required to be a minimum of 20 feet beyond the edge of protected structures. In this area native vegetation is cleared and only ground cover, green lawn, and a limited number of ornamental plant species are allowed. This zone must be irrigated to maintain a high moisture content.

Zone B (Irrigated Zone) is usually required to extend from the outermost edge of Zone A to a maximum of 100 feet.. In this area ground covers may not extend over 18 inches in height. Some native vegetation may remain in this zone if they are adequately spaced, maintained free of dead wood and individual plants are thinned. This zone must be irrigated to maintain a high moisture content.

Zone C (Thinning Zone) is usually required to extend from the outermost edge of Zone B up to a maximum of 200 feet. This zone would primarily retain existing native vegetation, with the exception of high fuel species such as chamise, red shank, California sagebrush, common buckwheat and sage. Dead or dying vegetation must be removed and the fuel in existing vegetation reduced by thinning individual plants.

Thus, the combined required fuel modification area around structures can extend up to a maximum of 200 feet. If there is not adequate area on the project site to provide the required fuel modification for structures, then brush clearance may also be required on adjacent parcels.

Notwithstanding the need to protect structures from the risk of wildfire, fuel modification results in significant adverse impacts that are in excess of those directly related to the development itself. Within the area next to approved structures (Zone A), all native vegetation must be removed and ornamental, low-fuel plants substituted. In Zone B,

⁵ Revised Findings for the City of Malibu Local Coastal Program (as adopted on September 13, 2002) adopted on February 6, 2003.

most native vegetation will be removed or widely spaced. Finally, in Zone C, native vegetation may be retained if thinned, although particular high-fuel plant species must be removed (Several of the high fuel species are important components of the coastal sage scrub community). In this way, for a large area around any permitted structures, native vegetation will be cleared, selectively removed to provide wider spacing, and thinned.

Obviously, native vegetation that is cleared and replaced with ornamental species, or substantially removed and widely spaced will be lost as habitat and watershed cover. Additionally, thinned areas will be greatly reduced in habitat value. Even where complete clearance of vegetation is not required, the natural habitat can be significantly impacted, and ultimately lost. For instance, in coastal sage scrub and chaparral habitat, the natural soil coverage of the canopies of individual plants provides shading and reduced soil temperatures. When these plants are thinned, the microclimate of the area will be affected, increasing soil temperatures, which can lead to loss of individual plants and the eventual conversion of the area to a dominance of different non-native plant species. The areas created by thinning between shrubs can be invaded by non-native grasses that will over time out-compete native species.

For example, undisturbed coastal sage scrub and chaparral vegetation typical of coastal canyon slopes, and the downslope riparian corridors of the canyon bottoms, ordinarily contains a variety of tree and shrub species with established root systems. Depending on the canopy coverage, these species may be accompanied by understory species of lower profile. The established vegetative cover, including the leaf detritus and other mulch contributed by the native plants, slows rainfall runoff from canyon slopes and staunches silt flows that result from ordinary erosional processes. The native vegetation thereby limits the intrusion of sediments into downslope creeks. Accordingly, disturbed slopes where vegetation is either cleared or thinned are more directly exposed to rainfall runoff that can therefore wash canyon soils into down-gradient creeks. The resultant erosion reduces topsoil and steepens slopes, making revegetation increasingly difficult or creating ideal conditions for colonization by invasive, non-native species that supplant the native populations.

The cumulative loss of habitat cover also reduces the value of the sensitive resource areas as a refuge for birds and animals, for example by making them—or their nests and burrows—more readily apparent to predators. The impacts of fuel clearance on bird communities was studied by Stralberg who identified three ecological categories of birds in the Santa Monica Mountains: 1) local and long distance migrators (ash-throated flycatcher, Pacific-slope flycatcher, phainopepla, black-headed grosbeak), 2) chaparral-associated species (Bewick's wren, wrentit, blue-gray gnatcatcher, California thrasher, orange-crowned warbler, rufous-crowned sparrow, spotted towhee, California towhee) and 3) urban-associated species (mourning dove, American crow, Western scrub-jay, Northern mockingbird)⁶. It was found in this study that the number of migrators and

⁶ Stralberg, D. 2000. Landscape-level urbanization effects on chaparral birds: a Santa Monica Mountains case study. Pp. 125–136 in Keeley, J.E., M. Baer-Keeley, and C.J. Fotheringham (eds.). *2nd interface between ecology and land development in California*. U.S. Geological Survey, Sacramento, California.

chaparral-associated species decreased due to habitat fragmentation while the abundance of urban-associated species increased. The impact of fuel clearance is to greatly increase this edge-effect of fragmentation by expanding the amount of cleared area and "edge" many-fold. Similar results of decreases in fragmentation-sensitive bird species are reported from the work of Bolger et al. in southern California chaparral⁷.

Fuel clearance and habitat modification may also disrupt native arthropod communities, and this can have surprising effects far beyond the cleared area on species seemingly unrelated to the direct impacts. A particularly interesting and well-documented example with ants and lizards illustrates this point. When non-native landscaping with intensive irrigation is introduced, the area becomes favorable for the invasive and non-native Argentine ant. This ant forms "super colonies" that can forage more than 650 feet out into the surrounding native chaparral or coastal sage scrub around the landscaped area⁸. The Argentine ant competes with native harvester ants and carpenter ants displacing them from the habitat⁹. These native ants are the primary food resource for the native coast horned lizard, a California "Species of Special Concern." As a result of Argentine ant invasion, the coast horned lizard and its native ant food resources are diminished in areas near landscaped and irrigated developments¹⁰. In addition to specific effects on the coast horned lizard, there are other Mediterranean habitat ecosystem processes that are impacted by Argentine ant invasion through impacts on long-evolved native ant-plant mutualisms¹¹. The composition of the whole arthropod community changes and biodiversity decreases when habitats are subjected to fuel modification. In coastal sage scrub disturbed by fuel modification, fewer arthropod predator species are seen and more exotic arthropod species are present than in undisturbed habitats¹².

Studies in the Mediterranean vegetation of South Africa (equivalent to California shrubland with similar plant species) have shown how the invasive Argentine ant can disrupt the whole ecosystem.¹³ In South Africa the Argentine ant displaces native ants as they do in California. Because the native ants are no longer present to collect and bury seeds, the seeds of the native plants are exposed to predation, and consumed by seed eating insects, birds and mammals. When this habitat burns after Argentine ant

⁷ Bolger, D. T., T. A. Scott and J. T. Rotenberry. 1997. Breeding bird abundance in an urbanizing landscape in coastal Southern California. *Conserv. Biol.* 11:406-421.

⁸ Suarez, A.V., D.T. Bolger and T.J. Case. 1998. Effects of fragmentation and invasion on native ant communities in coastal southern California. *Ecology* 79(6):2041-2056.

⁹ Holway, D.A. 1995. The distribution of the Argentine ant (*Linepithema humile*) in central California: a twenty-year record of invasion. *Conservation Biology* 9:1634-1637. Human, K.G. and D.M. Gordon. 1996. Exploitation and interference competition between the invasive Argentine ant, (*Linepithema humile*), and native ant species. *Oecologia* 105:405-412.

¹⁰ Fisher, R.N., A.V. Suarez and T.J. Case. 2002. Spatial patterns in the abundance of the coastal horned lizard. *Conservation Biology* 16(1):205-215. Suarez, A.V. J.Q. Richmond and T.J. Case. 2000. Prey selection in horned lizards following the invasion of Argentine ants in southern California. *Ecological Applications* 10(3):711-725.

¹¹ Suarez, A.V., D.T. Bolger and T.J. Case. 1998. Effects of fragmentation and invasion on native ant communities in coastal southern California. *Ecology* 79(6):2041-2056. Bond, W. and P. Slingsby. Collapse of an Ant-Plant Mutualism: The Argentine Ant (*Iridomyrmex humilis*) and Myrmecochorous Proteaceae. *Ecology* 65(4):1031-1037.

¹² Longcore, T.R. 1999. Terrestrial arthropods as indicators of restoration success in coastal sage scrub. Ph.D. Dissertation, University of California, Los Angeles.

¹³ Christian, C. 2001. Consequences of a biological invasion reveal the importance of mutualism for plant communities. *Nature* 413:635-639.

invasion the large-seeded plants that were protected by the native ants all but disappear. So the invasion of a non-native ant species drives out native ants, and this can cause a dramatic change in the species composition of the plant community by disrupting long-established seed dispersal mutualisms. In California, some insect eggs are adapted to being buried by native ants in a manner similar to plant seeds¹⁴.

While these impacts resulting from fuel modification can be reduced through siting and design alternatives for new development, they cannot be completely avoided, given the high fire risk and the extent of ESHA on the site. The Commission finds that the loss of chaparral ESHA resulting from the removal, conversion, or modification of natural habitat for new development including fuel modification and brush clearance must be mitigated. The acreage of habitat that is impacted must be determined based on the size of the required fuel modification zone.

In this case, the applicant's fuel modification plan (approved by the Los Angeles County Fire Department) shows the use of the standard three zones of vegetation modification, with adjustments made due to the proximity of neighboring parkland and retaining walls on the property. Zones "A" (setback zone) is shown in a radius extending approximately 20 feet from the proposed structure. The "B" Zone (irrigation zone) extends from the outer edge of Zone A to 100 feet from the proposed structure. The "C" Zone (thinning zone) extends for a distance of 200 feet, beyond the "A" and "B" zones, from the proposed structure. As such, the ESHA areas that will be permanently impacted by the proposed project include a portion of the fuel modification area for the project and the residence, garage/guest house, driveway, slope remediation, and septic system. The precise area of ESHA that will be impacted by the proposed development has not been calculated. Therefore, the Commission finds that it is necessary to require the applicant to delineate the ESHA (including both new proposed and as-built driveways and building pads where unpermitted vegetation clearance has previously occurred) both on and offsite that will be impacted by the proposed development including the areas affected by fuel modification and brushing activities (but not including any areas that have already been cleared of vegetation as a result of the required 200 ft. radius fuel modification zone for an existing residence on an adjacent property located to the northwest), as required by **Special Condition No. Six (6)**.

The Commission has identified three methods for providing mitigation for the unavoidable and permanent loss of ESHA resulting from development, including habitat restoration, habitat conservation, and an in-lieu fee for habitat conservation. The Commission finds that these measures are appropriate in this case to mitigate the loss of chaparral habitat on and offsite. These three mitigation methods are provided as three available options for compliance with **Special Condition No. Six (6)**. The first method is to provide mitigation through the restoration of an area of degraded habitat (either on the project site, or at an off-site location) that is equivalent in size to the area of habitat impacted by the development. A restoration plan must be prepared by a biologist or qualified resource specialist and must provide performance standards, and

¹⁴ Hughes, L. and M. Westoby. 1992. Capitula on stick insect eggs and elaiosomes on seeds: convergent adaptations for burial by ants. *Functional Ecology* 6:642-648.

provisions for maintenance and monitoring. The restored habitat must be permanently preserved through the recordation of an open space easement. This mitigation method is provided for in **Special Condition No. Six (6), subpart A.**

The second habitat impact mitigation method is habitat conservation. This includes the conservation of an area of intact habitat equivalent to the area of the impacted habitat. The parcel containing the habitat conservation area must be restricted from future development and permanently preserved. If the mitigation parcel is larger in size than the impacted habitat area, the excess acreage could be used to provide habitat impact mitigation for other development projects that impact ESHA. This mitigation method is provided for in **Special Condition No. Six (6), subpart B.**

The third habitat impact mitigation option is an in-lieu fee for habitat conservation as provided for in **Special Condition No. Six (6), subpart C.** The fee is based on the habitat types in question, the cost per acre to restore or create the comparable habitat types, and the acreage of habitat affected by the project. In order to determine an appropriate fee for the restoration or creation of chaparral and coastal sage scrub habitat, the Commission's biologist contacted several consulting companies that have considerable experience carrying out restoration projects. Overall estimates varied widely among the companies, because of differences in the strategies employed in planning the restoration (for instance, determining the appropriate number of plants or amount of seeds used per acre) as well as whether all of the restoration planting, monitoring and maintenance was carried out by the consultant or portions are subcontracted. Additionally, the range of cost estimates reflect differences in restoration site characteristics including topography (steeper is harder), proximity to the coast (minimal or no irrigation required at coastal sites), types of plants (some plants are rare or difficult to cultivate), density of planting, severity of weed problem, condition of soil, etc. Larger projects may realize some economy of scale.

Staff has determined that the appropriate mitigation for loss of coastal sage scrub or chaparral ESHA should be based on the actual installation of replacement plantings on a disturbed site, including the cost of acquiring the plants (seed mix and container stock) and installing them on the site (hydroseeding and planting). Three cost estimates were obtained for the installation of plants and seeds for one-acre of restoration. These estimates were \$9,541, \$12,820, and \$13,907 per acre of plant installation. The Commission finds it appropriate to average the three estimates of plant installation to arrive at the reasonable in-lieu fee to mitigate for the loss of ESHA associated with the approval of development within an ESHA. Based on this averaging, the required in-lieu fee for habitat mitigation is \$12, 000 (rounded down from the average figure of \$12,089 to simplify administration) per acre of habitat.

The Commission finds that the in-lieu fee of \$12,000 per acre is appropriate to provide mitigation for the habitat impacts to ESHA areas where all native vegetation will be removed (building site and the "A" zone required for fuel modification), and where vegetation will be significantly removed and any remaining vegetation will be subjected to supplemental irrigation (the "B" zone or any other irrigated zone required for fuel

modification). In these areas, complete removal or significant removal of ESHA, along with irrigation completely alters the habitat and eliminates its value to the native plant and animal community.

ESHA modified for the "C" zone that is thinned but non-irrigated (required for fuel modification) is certainly diminished in habitat value, but unlike the building site, "A" zone, "B" zone, and any other irrigated zone, habitat values are not completely destroyed. Native vegetation in the "C" zone is typically required to be thinned, and shrubs must be maintained at a certain size to minimize the spread of fire between the individual plants. This area is not typically required to be irrigated. As such, the Commission finds that it is not appropriate to require the same level of in-lieu fee mitigation for impacts to ESHA within a non-irrigated "C" zone required for fuel modification. Although the habitat value in the "C" zone (or any other non-irrigated zone) is greatly reduced, it is not possible to precisely quantify the reduction. The Commission's biologist believes that the habitat value of non-irrigated fuel modification zones is reduced by at least 25 percent (and possibly more) due to the direct loss of vegetation, the increased risk of weed invasion, and the proximity of disturbance. The Commission finds that it is also less costly difficult to restore chaparral habitat when some of the native vegetation remains, rather than when the entire native habitat is removed. Because of the uncertainty and the inability to precisely quantify the reduction in habitat value, the Commission concludes that it is warranted to impose a mitigation fee of \$3,000 per acre (one quarter of the cost of full restoration) for the "C" zone or other non-irrigated fuel modification zone.

In this case, the applicant's approved fuel modification plan shows the use of the three zones of vegetation modification. Zones "A" (setback zone) is shown extending 20 feet from the structure. Zone "B" (irrigation zone) extends 80 beyond Zone "A." Zone "C" (thinning zone) is provided for a distance of 200 feet beyond Zone "B," except to the west where it extends to Las Virgenes Road. Brush clearance will not be required on adjacent properties. As discussed above, the ESHA area affected by the proposed development does not include the existing disturbed County owned road easement area previously denuded of ESHA prior to the effective date of the Coastal Act. As such, the ESHA areas that will be impacted by the proposed project are the required fuel modification area and the areas where the residence, garage, septic tank, stairway, and a portion of the driveway will be sited. The appropriate in-lieu fee calculation would then be based on \$12,000 per acre for any irrigated fuel modification area (the "A" and "B" Zones) or developed area and \$3,000 per acre of un-irrigated fuel modification area (zone "C") or brush clearance area.

Should the applicant choose the in-lieu fee mitigation method, the fee shall be provided to the Mountains Recreation and Conservation Authority for the acquisition or permanent preservation of natural habitat areas within the coastal zone. This mitigation method is provided for in **Special Condition No. Six (6), subpart C.**

The Commission finds that the use of non-native and/or invasive plant species for residential landscaping results in both direct and indirect adverse effects to native plants

species indigenous to the Malibu/Santa Monica Mountains area. Adverse effects from such landscaping result from the direct occupation or displacement of native plant communities by new development and associated non-native landscaping. Indirect adverse effects include offsite migration and colonization of native plant habitat by non-native/invasive plant species (which tend to outcompete native species) adjacent to new development. The Commission notes that the use of exotic plant species for residential landscaping has already resulted in significant adverse effects to native plant communities in the Malibu/Santa Monica Mountains area. Therefore, in order to minimize adverse effects to the indigenous plant communities of the Malibu/Santa Monica Mountains area, **Special Condition No. Three (3)** requires that all landscaping consist primarily of native plant species and that invasive plant species shall not be used. Additionally, **Special Condition No. Four (4)** ensures that the applicant proposal to restore and revegetate the unpermitted secondary driveway and related cut/fill slopes along the primary driveway (as shown on Exhibit 10) is successfully implemented and includes use of native plant species.

The Commission notes that the use of rodenticides containing anticoagulant compounds have been linked to the death of sensitive predator species, including mountain lions and raptors, in the Santa Monica Mountains. These species are a key component of chaparral and coastal sage scrub communities in the Santa Monica Mountains considered ESHA. Therefore, in order to avoid adverse impacts to sensitive predator species, **Special Condition No. Three (3)**, prohibits the use of rodenticides containing any anticoagulant compounds on the subject property.

Furthermore, in order to ensure that vegetation clearance for fire protection purposes does not occur prior to commencement of grading or construction of the proposed structures, the Commission finds that it is necessary to impose a restriction on the removal of natural vegetation as specified in **Special Condition No. Five (5)**. This restriction specifies that natural vegetation shall not be removed until grading or building permits have been secured and construction of the permitted structures has commenced. The limitation imposed by **Special Condition No. Five (5)** avoids loss of natural vegetative coverage resulting in unnecessary erosion in the absence of adequately constructed drainage and run-off control devices and implementation of the landscape and interim erosion control plans.

The Commission notes that streams and drainages, such as streams located downslope of the property, provide important habitat for plant and animal species. Section 30231 of the Coastal Act provides that the quality of coastal waters and streams shall be maintained and restored whenever feasible through means such as: controlling runoff, preventing interference with surface water flows and alteration of natural streams, and by maintaining natural vegetation buffer areas. In past permit actions the Commission has found that new development adjacent to or upslope of coastal streams and natural drainages results in potential adverse impacts to riparian habitat and marine resources from increased erosion, contaminated storm runoff, introduction of non-native and invasive plant species, disturbance of wildlife, and loss of riparian plant and animal habitat.

The Commission finds that potential adverse effects of the proposed development on riparian and aquatic habitats of these streams may be further minimized through the implementation of a drainage and polluted runoff control plan, which will ensure that erosion is minimized and polluted run-off from the site is controlled and filtered before it reaches natural drainage courses within the watershed. Therefore, the Commission requires **Special Condition No. Seven (7)**, the Drainage and Polluted Runoff Control Plan, which requires the applicant to incorporate appropriate drainage devices and Best Management Practices (BMPs) to ensure that run-off from the proposed structures, impervious surfaces, and building pad area is conveyed offsite in a non-erosive manner and is treated/filtered to reduce pollutant load before it reaches coastal waterways. **Special Condition No. Seven (7)** will ensure implementation of these and other BMPs to reduce polluted runoff. **Special Condition No. Eight (8)** requires that by the acceptance of this permit, the applicant agrees to install a no chlorine or low chlorine purification system and agrees to maintain proper pool water pH, calcium and alkalinity balance to ensure any runoff or drainage from the pool or spa will not include excessive amounts of chemicals that may adversely affect water quality or environmentally sensitive habitat areas. In addition, the applicant agrees not to discharge chlorinated or non-chlorinated pool water into a street, storm drain, creek, canyon drainage channel, or other location where it could enter receiving waters.

In addition, the Commission has found that night lighting of areas in the Malibu/Santa Monica Mountains area creates a visual impact to nearby scenic roads, parks, and trails. In addition, night lighting may alter or disrupt feeding, nesting, and roosting activities of native wildlife species. The subject site contains environmentally sensitive habitat. Therefore, **Special Condition No. Eleven (11)** limits night lighting of the site in general; limits lighting to the developed area of the site; and specifies that lighting be shielded downward. The restriction on night lighting is necessary to protect the night time rural character of this portion of the Santa Monica Mountains consistent with the scenic and visual qualities of this coastal area. In addition, low intensity security lighting will assist in minimizing the disruption of wildlife traversing this area at night that are commonly found in this rural and relatively undisturbed area. Thus, the lighting restrictions will attenuate the impacts of unnatural light sources and reduce impacts to sensitive wildlife species.

Furthermore, fencing of the site would adversely impact the movement of wildlife through the chaparral ESHA on this parcel. Therefore, the Commission finds it is necessary to limit fencing to the building pad area (and no further than Zone B of the approved Fuel Modification Plan) and driveway entry area as required in **Special Condition No. Three (3)**.

Finally, the Commission finds that the amount and location of any new development that may be proposed in the future on the subject site is significantly limited by the unique nature of the site and the environmental constraints discussed above. Therefore, to ensure that any future structures, additions, change in landscaping or intensity of use at

the project site, that may otherwise be exempt from coastal permit requirements, are reviewed by the Commission for consistency with the resource protection policies of the Coastal Act, **Special Condition No. Nine (9)**, the future development restriction, has been required. **Special Condition No. Twelve (12)** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property.

For the reasons set forth above, the Commission finds that the proposed project, as conditioned, is consistent with Sections 30230, 30231, 30240, and 30107.5 of the Coastal Act.

D. Water Quality

The Commission recognizes that new development in the Santa Monica Mountains has the potential to adversely impact coastal water quality through the removal of native vegetation, increase of impervious surfaces, increase of runoff, erosion, and sedimentation, and introduction of pollutants such as petroleum, cleaning products, pesticides, and other pollutant sources, as well as effluent from septic systems. Section 30231 of the Coastal Act states:

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

The project site is located in the upper Dry Canyon Creek watershed. Cold Canyon Creek and Malibu Creek are located downstream of the property. While no development is proposed in drainages onsite, the proposed residential development described above will result in an increase in impervious surface, which in turn decreases the infiltrative function and capacity of existing permeable land on site. The reduction in permeable space leads to an increase in the volume and velocity of stormwater runoff that can be expected to leave the site. Further, pollutants commonly found in runoff associated with residential use include petroleum hydrocarbons including oil and grease from vehicles; heavy metals; synthetic organic chemicals including paint and household cleaners; soap and dirt from washing vehicles; dirt and vegetation from yard maintenance; litter; fertilizers, herbicides, and pesticides; and bacteria and pathogens from animal waste. The discharge of these pollutants to coastal waters can cause cumulative impacts such as: eutrophication and anoxic conditions resulting in fish kills and diseases and the alteration of aquatic habitat, including adverse changes to species

composition and size; excess nutrients causing algae blooms and sedimentation increasing turbidity which both reduce the penetration of sunlight needed by aquatic vegetation which provide food and cover for aquatic species; disruptions to the reproductive cycle of aquatic species; and acute and sublethal toxicity in marine organisms leading to adverse changes in reproduction and feeding behavior. These impacts reduce the biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes and reduce optimum populations of marine organisms and have adverse impacts on human health.

Therefore, in order to find the proposed development consistent with the water and marine resource policies of the Coastal Act, the Commission finds it necessary to require the incorporation of Best Management Practices designed to control the volume, velocity and pollutant load of stormwater leaving the developed site. Critical to the successful function of post-construction structural BMPs in removing pollutants in stormwater to the Maximum Extent Practicable (MEP), is the application of appropriate design standards for sizing BMPs. The majority of runoff is generated from small storms because most storms are small. Additionally, storm water runoff typically conveys a disproportionate amount of pollutants in the initial period that runoff is generated during a storm event. Designing BMPs for the small, more frequent storms, rather than for the large infrequent storms, results in improved BMP performance at lower cost.

The Commission finds that sizing post-construction structural BMPs to accommodate (infiltrate, filter or treat) the runoff from the 85th percentile storm runoff event, in this case, is equivalent to sizing BMPs based on the point of diminishing returns (i.e. the BMP capacity beyond which, insignificant increases in pollutants removal (and hence water quality protection) will occur, relative to the additional costs. Therefore, the Commission requires the selected post-construction structural BMPs be sized based on design criteria specified in **Special Condition No. Seven (7)**, and finds this will ensure the proposed development will be designed to minimize adverse impacts to coastal resources, in a manner consistent with the water and marine policies of the Coastal Act.

Special Condition No. Eight (8) requires that by the acceptance of this permit, the applicant agrees to install a no chlorine or low chlorine purification system and agrees to maintain proper pool water pH, calcium and alkalinity balance to ensure any runoff or drainage from the pool or spa will not include excessive amounts of chemicals that may adversely affect water quality or environmentally sensitive habitat areas. In addition, the applicant agrees not to discharge chlorinated or non-chlorinated pool water into a street, storm drain, creek, canyon drainage channel, or other location where it could enter receiving waters.

Furthermore, interim erosion control measure implemented during construction and post construction landscaping will serve to minimize the potential for adverse impacts to water quality resulting from drainage runoff during construction and in the post-development stage. Therefore, the Commission finds that **Special Condition No.**

Three (3) is necessary to ensure the proposed development will not adversely impact water quality or coastal resources.

Finally, the proposed development includes the installation of an onsite private sewage disposal system to serve the residence. The County of Los Angeles Environmental Health Department has given in-concept approval of the proposed septic system, determining that the system meets the requirements of the plumbing code. The Commission has found that conformance with the provisions of the plumbing code is protective of resources. Therefore, the Commission finds that the proposed project, as conditioned, is consistent with Section 30231 of the Coastal Act.

E. Visual 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 Reservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Section 30251 of the Coastal Act requires scenic and visual qualities to be considered and preserved. Section 30251 also requires that development be sited and designed to protect views of scenic areas, minimize alteration of landforms, and be visually compatible with the surrounding area. The Commission is required to review the publicly accessible locations where the proposed development is visible to assess potential visual impacts to the public.

The subject site is located within a rural area characterized by expansive, naturally vegetated mountains. The Malibu/Santa Monica Mountains Land Use Plan (LUP) protects visual resources in the Santa Monica Mountains. Mulholland Highway is recognized as a priority scenic highway, while Stunt Road is also recognized as a scenic highway as well (Exhibit 1). A portion of the proposed two story residence will be visible from Dry Canyon Cold Creek Road, which is located about 500 feet to the north of the project site; although this road is not a designated scenic highway pursuant to the LUP. The proposed project is not visible from Mulholland Highway. In addition, the subject site would also be visible from the planned "Stokes Ridge Trail", a future public trail identified by the Los Angeles County Department of Parks and Recreation, Malibu/Santa Monica Mountains Trail System Map adopted by the Commission in June 1983, which traverses Dry Canyon Cold Creek immediately adjacent to the project site.

in a north-south direction (Exhibit 18). A portion of this planned Stokes Ridge Trail, traverses north along Dry Canyon Cold Creek Road and then continues both west within the Thousand Peaks subdivision and east across Dry Canyon Creek and Mulholland Highway and then climbs east to the ridge joining the existing Calabasas Cold Creek Trail (follows the Calabasas Peak Motorway) that traverses north-south across the ridge top to Calabasas Peak.

In addition, to the south of the subject site (south of the intersection of Mulholland Highway and Stunt Road) are three trails (two of these trails are planned future trails and one trail is an existing trail currently used by hikers) all identified on the adopted Malibu/Santa Monica Mountains Trail System Map. The two future planned trails include another portion of the Calabasas Cold Creek that traverses west – east and the Stunt High Trail that connects near Stunt Road on the east to the existing Backbone Trail on the west. The third identified trail is the existing Backbone Trail that crosses east – west across the top of the Santa Monica Mountains. Public Lands owned by the Santa Monica Mountains Conservancy (SMMC) are located to the east of the subject site at Calabasas Peak, and along Stunt Road which includes an existing Upper Stunt High Trail leading to the existing Backbone Trail (Exhibit 19). Additional public lands are located south of the intersection of Mulholland Highway and Stunt Road near Saddle Peak that include the Malibu Creek State Park, and various properties owned by the Mountains Restoration Trust.

The applicant proposes to construct a 4,607 sq. ft., 28 ft. high, two-story single family residence with an attached 230 sq. ft. garage; a 256 sq. ft. covered patio; a detached 24 ft. high guest house/garage with a 650 sq. ft. garage on the first floor and a 600 sq. ft. guest house on the second floor; a 145 sq. ft. covered patio; a pool and spa; five retaining walls; drainage swales, a driveway, a septic system, a temporary construction trailer and a total of 5,399 cu. yds. of new proposed and as-completed grading. Proposed new grading will consist of 4,299 cu. yds. (250 cu. yds. cut & 560 cu. yds. fill for driveway & fire dept. turnaround; 1,219 cu. yds. cut & 1,650 cu. yds. fill for building pad & driveway spur) and 620 cu. yds. of additional grading for removal and recompaction and the request for after-the-fact of approval of as-built grading consists of 1,100 cu. yds. (550 cu. yds. cut; 550 cu. yds. fill). The application also seeks approval of the subject lot which was recognized for Subdivision Map Act purposes by Certificate of Compliance # 88-0342 and new proposed restoration and replanting with native vegetation of a portion of the as-graded slope along the southern and western boundary of the primary driveway and complete restoration of a secondary driveway

This proposed development is located within the Mulholland Corridor near its intersection with Stunt Road. There are numerous existing residences located to the northeast, east, and southeast along Dry Canyon Creek. Adjacent to the subject parcel to the west and south are vacant lands with chaparral vegetation. In the review of this project, the Commission reviews the publicly accessible locations where the proposed development is visible to assess potential visual impacts to the public.

In addition, to assess potential impacts to public views where new development will be visible from public areas, the Commission examines the building site, the proposed grading, and the size of the building pad and structures. The construction of the proposed residence, garage/guest house raises, two issues regarding the siting and design: one, whether or not public views from public roadways will be adversely impacted, or two, whether or not public views from public lands and trails will be impacted.

The proposed project includes the request for approval of both as-built and new proposed grading totaling 5,399 cubic yards including removal and recompaction for the building pad and driveway and the construction of five retaining walls (Exhibits 1 – 12). The proposed residence, garage/guest house, and retaining walls, will be visible to a limited degree from a portion of Dry Canyon Cold Creek Road located to the northeast creating an impact to public views.

Thus, the Commission finds that the proposed 28 foot high residence and 23 ft. 9 inch high garage/guest house will be visible to a limited degree from Dry Canyon Cold Creek Road at a distance of about 500 feet. The visibility of this development from a portion of Dry Canyon Cold Creek Road which is also a portion of the planned Stokes Ridge Trail, will be limited to only along the section of this road and trail located about 500 feet to the northeast from the proposed development due to the sharp and blind curves along this Road.

More importantly, the proposed residence and garage/guest house will not be visible from Mulholland Highway, a designated scenic highway, in both the northbound and southbound directions due to an intervening hilltop and substantial intervening mature riparian vegetation, sycamores and oak trees located along Dry Canyon Creek. The proposed residence, garage/guest house, retaining walls and driveway will be visible from the portion of the planned future Stokes Ridge Trail (Exhibit 18) which leads to the top of the ridge about one third to one half mile to the east connecting to the existing Calabasas – Cold Creek Trail that traverses an area also about one half mile to the east along the ridgeline. The proposed project will also be visible from SMMC public lands at the top of Calabasas Peak also located about one half of a mile to the east. This public view from a distance between one third to one half of a mile of the existing residence and the proposed project is against the backdrop of a chaparral vegetated hillside adjacent to the project site. There are no feasible alternative building locations on the subject lot that would significantly reduce visual impacts of the proposed project additions.

As viewed from the planned and existing public trails to the south (a portion of the planned Calabasas – Cold Creek Trail, the existing Stunt High Trail, and the existing Backbone Trail) and the public lands located to the south, the proposed residence, garage/guest house, retaining walls and driveway will either not be visible or its visibility will be limited due to the distance from these public trails and lands which are as close as one mile. Since the proposed development will be visible from the planned Stokes

Ridge Trail, the special conditions of approval recommended below are necessary to ensure consistency with Coastal Act Section 30251.

In previous permit actions, the Commission has found it is necessary to require mitigation measures to minimize visual impacts associated with new proposed residential addition that include finishing the exterior of the residence, garage/guest house, retaining walls and driveway with a color consistent with the surrounding environment and, by incorporating windows for the residence and garage/guest house of a non-reflective glass type to minimize impacts on public views.

Therefore, in order to ensure that the public views of the proposed development on site and its visual impacts are minimized, **Special Condition No. Ten (10)** requires that prior to the issuance of the coastal development permit, the applicant shall submit for the review and approval of the Executive Director, a color palette and material specifications for the outer surface of: (1) all existing structures on site (including, but not limited to, the residence, garage/guest house, retaining walls and driveway). The palette samples shall be presented in a format not to exceed 8½" x 11" x ½" in size. The palette shall include the colors proposed for the roof, trim, exterior surfaces, retaining walls, driveway, and other structures authorized by this permit. Acceptable colors shall be limited to colors compatible with the surrounding environment (earth tones) including shades of green, brown and gray with no white or light shades and no bright tones. All windows shall be comprised of non-glare glass.

Visual impacts associated with proposed grading, and the structures themselves, can be further reduced by the use of appropriate and adequate landscaping. As such, **Special Condition No. Three (3)** requires the applicant to prepare a revised landscape plan relying on native, non-invasive plant species to ensure that the vegetation on site remains visually compatible with the native flora of surrounding areas. Implementation of **Special Condition No. Three (3)** will partially screen the proposed residential structure, retaining walls, and driveway and soften the visual impact of the development from public views from portion of the planned Stokes Ridge Trail located about 500 feet from the subject property, the eastern portion of this planned trail located to the east about one third to one half mile, the existing Calabasas Cold Creek Trail, and the SMMC public lands located to the south about one mile. To ensure that the final approved landscaping plans are successfully implemented, **Special Condition No. Three (3)** also requires the applicant to revegetate all disturbed areas in a timely manner and includes a monitoring component to ensure the successful establishment of all newly planted and landscaped areas over time.

The Commission has found that night lighting of areas in the Malibu / Santa Monica Mountains area creates a visual impact to nearby scenic beaches, scenic roads, parks, and trails. In addition, night lighting may alter or disrupt feeding, nesting, and roosting activities of native wildlife species. Therefore, in order to protect the night time rural character of this portion of the Santa Monica Mountains, consistent with the scenic and visual qualities of this coastal area, the Commission limits the nighttime lighting of the property, residence, garage/guest house, and driveway to that necessary for safety as outlined in **Special Condition No. Eleven (11)**.

In addition, regarding future developments or improvements, certain types of development to the property, normally associated with the residence and garage/guest house, which might otherwise be exempt, have the potential to impact scenic and visual resources in this area. In past permit actions, the Commission has found that future additions to or expansion of the residence and detached accessory structures may result in adverse impacts to coastal resources, including public views. Therefore, **Special Condition No. Nine (9)** has been required to ensure that any future development or improvements normally associated with the proposed residence, garage/guest house, which might otherwise be exempt, are reviewed by the Commission for compliance with the scenic resource policy, Section 30251 of the Coastal Act. Finally, **Special Condition No. Twelve (12)** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the subject property and provides any prospective purchaser with recorded notice that the restrictions are imposed on the subject property.

As discussed in Section IV. C. Environmentally Sensitive Habitat Areas, outright denial of all residential use of the property would interfere with reasonable investment-backed expectations of the applicant and/or deprive the property of all reasonable economic use in a manner that Section 30010 of the Coastal Act makes clear the Chapter 3 policies do not require. In chaparral ESHA areas in the Santa Monica Mountains, the Commission has required, through past permit actions, that development be clustered on a lot and the total development area (including the building pad and cut/fill slopes but not including the required fire department turnaround the portion of the driveway necessary to reach the turnaround) not exceed 10,000 sq. ft. to minimize impacts on the sensitive habitat. In this case, the proposed project includes a building pad not exceeding a maximum of 10,000 sq. ft. as it is now proposed to be approximately 9,970 sq. ft. Additionally, the development has been sited on a relatively flat area as the result of unpermitted grading so as to reduce landform alternation, the removal of native chaparral vegetation and existing oak trees. As such, the proposed structures will be sited to minimize impacts to coastal resources to the extent feasible, while still providing adequate residential use of the site.

Therefore, the Commission finds that the proposed project, as conditioned, minimizes adverse effects to public views to and along the coast and minimizes the alternation of natural landforms. Therefore, the Commission finds that the proposed project, as conditioned, is consistent with Section 30251 of the Coastal Act.

F. Cumulative Impacts

The Commission has consistently emphasized the need to address the cumulative impacts of new development in the Malibu/Santa Monica Mountains area. Section 30250(a) of the Coastal Act states:

New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within,

contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

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

[T]he incremental effects of an individual project shall be reviewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

The applicant is requesting after-the-fact approval of one lot (APN 4455-039-008) which was created as part of a purported five lot subdivision. Based on a review of file documents for Conditional Certificate of Compliance 88-0342 that were provided to Commission staff by the Los Angeles County Department of Regional Planning (Exhibits 14 and 15), staff has confirmed that between 1956 and 1963 five putative lots were purportedly created from a single 13.4 acre parcel. The subject 3.59-acre lot was first described, as one of these 5 lots, between 1956 and 1958. Specifically, the County records also indicate that subject site was created on August 30, 1963. In addition, County staff have stated that the subject parcel was created in violation of the applicable laws and regulations because at the time the five parcels were created between 1956 and 1957, the subdivision regulations allowed no more than four lots or parcels to be created by deed. The creation of more than four lots from one (as was attempted in this case) would have required the approval of a Tract Map by Los Angeles County. The Conditional Certificate of Compliance 88-0342 specifically states "[t]he above described parcel was not created in compliance with State and County Subdivision regulations." (Exhibit 13)

Therefore, because the subject lot was not created in compliance with the laws and regulations applicable at the time of its original identification, the County of Los Angeles issued a Conditional Certificate of Compliance (CC 88-0342) in 1988 in order to authorize the lot after-the-fact in regards to compliance with the Subdivision Map Act. The Coastal Act requires a coastal development permit prior to undertaking development, including the division of land. The vested rights exemption allows the completion or continuance of development that was commenced prior to the Coastal Act without a coastal development permit only if all other necessary and required permits were obtained. However, in this case, the unpermitted subdivision of land that was first attempted prior to the effective date of the Coastal Act on January 1, 1977, can not be considered vested or "grandfathered" development because it occurred in non-compliance with the applicable laws and regulations and without the required approvals.

As such, the application of the property owner for a certificate of compliance in 1988 and the subsequent issuance of the 1988 Certificate of Compliance which "legalized" this lot for purposes of the Subdivision Map Act is considered a form of land division and, therefore, requires a coastal development permit, pursuant to the provisions of the Coastal Act, to be effective.

There is no record of a Coastal Development Permit issued for the creation of this lot either prior to or after the July 13, 1989 recording of Conditional Certificate of Compliance 88-0342. Since the Conditional Certificate of Compliance 88-0342 was recorded without the required Coastal Development Permit, it was not legally effective, and no legal lot was created. A "Clearance of Conditions in Certificate of Compliance 88-0342" was recorded August 12, 2005, which confirmed that the conditions of Certificate of Compliance 88-0342, such as road rights of way were completed and the lot was now considered by Los Angeles County to comply with applicable provisions of the Subdivision Map Act and the County Subdivision Ordinance.

According to Los Angeles County, the properties with the following assessor's parcel numbers were originally included in the 13.5-acre area encompassed by the unpermitted five-lot subdivision: 4455-039-014; 4455-039-015; 4455-039-008; 4455-039-011; 4455-039-013 (Exhibit 2).

The Commission typically reviews the creation of lots through a subdivision of land in a comprehensive manner and not on a piecemeal basis. The Commission's review typically entails an analysis of the individual and cumulative impacts of the proposed subdivision on coastal resources. To accomplish this the Commission reviews the proposed lot sizes and lot configurations to ensure consistency with minimum lot size requirements of the LUP and surrounding lot sizes, and to ensure each lot can be developed consistent with Chapter Three Policies of the Coastal Act. To adequately analyze the environmental impacts of a subdivision and determine consistency with Chapter Three Policies of the Coastal Act the applicant is required to submit detailed grading plans, geology reports, percolation tests, biological studies, viewshed analysis and other studies that encompass the entire subdivision.

In this case, a comprehensive analysis of the purported land divisions, which sought to create a total of five separate parcels, is not possible because the lots have been sold to multiple owners, and the successor to only one of those buyers is before the Commission at this time. In addition, the property owned by that buyer is property on which the Commission has twice permitted development. On the other four lots no coastal permits have been issued nor have applications for such permits been filed since 1977, the effective date of the Coastal Act. It's important to note that two of these five lots have included residential development since 1964 (APN 4455-039-013 located at 24753 Mulholland Highway) and 1966 (APN 4455-039-015 located at 24671 Dry Canyon Cold Creek Road) respectively according to Real Quest property records

In addition, on August 8, 1990, the Commission approved Coastal Permit No. 5-89-1115 (Gault) to construct a 3,603 sq. ft., 35 ft. high single family residence with septic system

and 6,684 cu. yds. of grading at 24677 Dry Canyon Cold Creek Road. This Coastal Permit was extended once to August 8, 1993 and was issued March 17, 1992 with three special conditions addressing a landscape plan, future development restriction, and plans conforming to geologic recommendation. The applicants submitted a second extension request; however, it was received after the expiration of this coastal permit. Although a copy of the 1988 certificate of compliance was submitted in conjunction with the application for CDP 5-89-1115, the applicant did not request authorization for the creation of the lot, and the Commission's approval of CDP 5-89-1115 did not involve such authorization, instead being based on the incorrect premise that the subject site had been legally created prior to the effective date of the Coastal Act because this lot had been shown on a map titled "1978 County of Los Angeles Buildout Survey" and that, therefore, the lot was considered as a legal lot.

Subsequently, on October 13, 1993, the Commission approved a second coastal permit, Coastal Administrative Permit No. 4-93-152 (Gault), to construct the same residence as previously approved in Coastal Permit No. 5-89-1115 (Gault) consisting of a 3,603 sq. ft., 35 ft. high single family residence with septic system and 6,684 cu. yds. of grading at 24677 Dry Canyon Cold Creek Road. This staff report again confirmed that this lot was included in the 1978 County of Los Angeles buildout stating that "[a]ccording to the County of Los Angeles the subject lot was created in 1963. Therefore, the subject lot was counted in the 1978 County of Los Angeles buildout survey." Coastal Administrative Permit No. 4-93-152 was extended three times until October 13, 1998 (Coastal Administrative Permit No. 4-93-152, E1, E2, E3).

The subject lot and adjacent lots that were subject to the underlying subdivision are in separate ownerships and the current landowners were not involved in the original subdivision of the original parent parcel. The Commission recently addressed this specific situation in the approval of the Malibu Local Coastal Program (LCP). Although the Malibu LCP is not the standard of review for development in unincorporated Los Angeles County, the LCP provides policy guidance regarding the certificate of compliance issue in this particular case. The Commission found in the approval of the Malibu LCP that:

A land division for which a certificate of compliance is requested may be approved where the land division complies with all requirements of Section 15.2 except the minimum parcel size, in two situations: 1) where the Coastal Commission previously approved a permit for development on one of the parcels created from the same parent parcel, those parcels do not have a common owner, and the owner requesting the certificate of compliance acquired the parcel prior to certification of the LCP in a good-faith, arm's length transaction and 2) where the parcel for which the certificate is requested is not in common ownership with any other contiguous parcels created from the same parent parcel and the owner acquired the parcel prior to certification of the LCP in a good-faith, arm's length transaction. (Sections 15.3 (C) and (D)). These provisions will

prevent hardship to a subsequent purchaser, who was not the one who illegally subdivided the property and did not know or have reason to know that the parcel was created without compliance with the Coastal Act, if applicable, or other state laws or local ordinances. For all certificates of compliance that require a coastal development permit, a transfer of development credit is required to mitigate the cumulative impacts on coastal resources from creating a new parcel.

In this case, the Commission has previously approved two separate coastal permits for development on the subject lot created from the parent parcel, the applicant purchased the property in a good faith, arm's length transaction (see findings on page 33 and 34 regarding the scope of purchaser's constructive notice of the legality of the lot), and the subject parcel is not in common ownership with any other contiguous lot created from the parent parcel. Based on the above set of facts, in addition to the other factors discussed on page 35, the Commission finds that approval of the certificate of compliance is appropriate in this case. Given the facts of this particular case, denial of the coastal development permit would result in an unreasonable hardship to the applicant who purchased this property in good faith without knowing the subject parcel was created without the benefit of a coastal development permit. However, the creation of an additional parcel in the Santa Monica Mountains will result in potential adverse cumulative impacts to coastal resources and therefore mitigation is required as discussed below.

The Commission has repeatedly emphasized the need to address the cumulative impacts of new development in the Malibu/Santa Monica Mountains area in past permit actions. The cumulative impact problem stems from the existence of thousands of undeveloped and poorly sited parcels in the mountains along with the potential for creating additional parcels and/or residential units through subdivisions and multi-unit projects. Because of the large number of existing undeveloped lots and potential future development, the demands on road capacity, services, recreational facilities, and beaches could be expected to grow tremendously. In addition, future build-out of many lots located in environmentally sensitive areas would create adverse cumulative impacts on coastal resources.

As a means of addressing the cumulative impact problem in past actions, the Commission has consistently required, as a special condition of any authorization for land divisions and multi-unit projects, participation in the Transfer Development Credit (TDC) program as mitigation, such as has been done in past actions including CDPs P-78-155 (Zal), P-78-158 (Eide), P-81-182 (Malibu Deville), 5-83-43 (Heathercliff), 5-83-591 (Sunset-Regan), 5-85-748 (Ehrman & Coombs), 4-98-281 (Cariker), 4-00-028 (Layman), 4-00-044 (Blank Par-E, LLC), 4-01-046 (PCH-Tyler Associates, Inc.), and 4-04-121 (Miran). The TDC program has resulted in the retirement from development of existing, poorly sited, and non-conforming parcels at the same time new parcels or units were created. The intent of the program is to insure that no net increase in residential units results from the approval of land divisions or multi-family projects and to optimize the location of existing lots while allowing development to proceed consistent with the

requirements of §30250(a). In summary, the Commission has found that the TDC program, or a similar technique to retire development rights on selected lots, remains a valid means of mitigating cumulative impacts. Without some means of mitigation, the Commission would have no alternative but to deny such projects, based on the provisions of §30250(a) of the Coastal Act.

The applicant is requesting approval to legalize the 3.59-acre subject lot, which was created through an unpermitted five-lot subdivision. Staff's review indicates that the incremental contribution to cumulative impacts would be the creation, in this case, of one additional lot. As described above, the subject lot and other four lots that were part of the previous subdivision are held in separate ownerships. At such time as development is proposed on one or more of the other parcels, the Commission will consider the cumulative impacts associated with the creation of that or those lots and, if the Commission decides to approve such development, determine the appropriate mitigation that should be required. Impacts such as traffic, sewage disposal, recreational uses, visual scenic quality, and resource degradation are associated with the development of an additional lot in this area. Therefore, the Commission finds it necessary to impose cumulative impact mitigation requirements as a condition of approval of this permit in order to insure that the cumulative impacts of the creation of an additional buildable lot is adequately mitigated.

Therefore, **Special Condition No. Fifteen (15)** requires the applicant to mitigate the cumulative impacts of the development of this property, either through purchase of one (1) TDC or participation along with a public agency or private nonprofit corporation in retiring habitat or watershed land in amounts that the Executive Director determines will retire the equivalent potential building site [I don't see this second option in SC 16]. The Commission finds that, as conditioned, the proposed project is consistent with §30250 of the Coastal Act.

G. Unpermitted Development

Unpermitted development has occurred on the subject parcel prior to submission of this permit application including, but not limited to, the creation of the subject lot and grading and clearing of vegetation for two dirt driveways, one flat pad area, and graded slopes.

The subject lot was created as part of a five lot subdivision sometime between 1956 and 1963. The five lot subdivision that created the subject lot did not comply with the requirements of the Subdivision Map Act and/or Los Angeles County Planning and Zoning ordinances. In 1988, the County of Los Angeles issued a Conditional Certificate of Compliance (#88-0342) for the property to "legalize" the lot pursuant to the Subdivision Map Act. The 1988 Certificate of Compliance which "legalized" this lot pursuant to the Subdivision Map Act is the first legal recognition of this lot within the subdivision and, therefore, required a coastal development permit. However, the landowners at the time failed to secure a coastal development permit for the Certificate of Compliance. The applicant is now requesting after-the-fact approval to authorize the subject parcel as it was created pursuant to the 1988 Certificate of Compliance in order

to address the unpermitted development. **Special Condition No. Fifteen (15)** requires the applicant to mitigate the cumulative developments associated with creation of a new lot by extinguishing development rights on one building site in the Santa Monica Mountains.

Development in the form of grading an unknown quantity of cut and fill, the clearance of about 0.37 acres of chaparral vegetation for two dirt driveways and one flat pad area has also occurred on the subject site without the required coastal development permits. The applicant is proposing, as part of this application, restoration and replanting of that portion of the grading that is beyond the proposed graded driveway and building pad in addition to the restoration of an unpermitted secondary driveway on the eastern portion of the lot. In addition, as part of this pending application, the applicant is requesting after-the-fact approval for one of the as-built flat pad area and the existing primary driveway. In order to ensure that the applicant's proposal to restore these areas is successful, **Special Condition No. Four (4)** requires the application to submit final restoration / revegetation plans that will include the restoration of the flat pad/graded area located west and south of the primary driveway and on the secondary driveway as shown on Exhibit 10, for review by the Executive Director. These plans shall include use of native drought resistant plants and monitoring for a period no less than five years.

In order to ensure that the matter of unpermitted development is resolved in timely manner, **Special Condition No. Seventeen (17)** requires the applicant satisfy all conditions of this permit, which are prerequisite to the issuance of this permit within 120 days of commission action, or within such additional time as the Executive Director may grant for good cause.

Consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Review of this permit does not constitute a waiver of any legal action with regard to the alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

H. Local Coastal Program

Section 30604 of the Coastal Act states, in part:

a) Prior to certification of the local coastal program, a coastal development permit shall be issued if the issuing agency, or the commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a local program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200).

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program that conforms with Chapter 3 policies of the Coastal Act. The preceding sections provide findings that the proposed project will be in conformity with the provisions of Chapter 3 if certain conditions are incorporated into the project and accepted by the applicant. As conditioned, the proposed development will not create adverse impacts inconsistent with the Chapter 3 policies of the Coastal Act and is found to be consistent with the applicable policies contained therein. Therefore, the Commission finds that approval of the proposed development, as conditioned, will not prejudice the County of Los Angeles's ability to prepare a Local Coastal Program for this area of the Santa Monica Mountains that is also consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

I. California Environmental Quality Act

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

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 in detail above, project alternatives and mitigation measures have been considered and incorporated into the project. Five types of mitigation actions include those that are intended to avoid, minimize, rectify, reduce, or compensate for significant impacts of development. Mitigation measures required as part of this coastal development permit include the avoidance of impacts to ESHA through clustering structures, prohibiting development outside of the approved development area as required by the granting of an open space and conservation easement, and identifying an appropriate location for disposal of excess cut material. Mitigation measures required to minimize impacts include requiring drainage best management practices (water quality), interim erosion control (water quality and ESHA), limiting lighting (ESHA), restricting structure color (visual resources), requiring future improvements to be considered through a CDP, and employing non-chlorine water purification for the swimming pool (water quality). As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, can be found to be consistent with the requirements of the Coastal Act to conform to CEQA.

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