

CALIFORNIA COASTAL COMMISSION

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# Th22a

## STAFF REPORT: REGULAR CALENDAR

**APPLICATION NO.:** 4-07-144

**APPLICANT:** [REDACTED]

**PROJECT LOCATION:** 22262 Swenson Drive, Topanga, Los Angeles County  
(APN 4448-024-033)

**PROJECT DESCRIPTION:** Construct a 2-story, 23-foot-high, 2,231-square-foot single family residence with a 460-square-foot attached garage, 202-square-foot detached art studio, septic system, water well and tank, driveway, wood fencing, landscaping, 276 cubic yards of grading (26 cubic yards cut, 250 cubic yards fill), 908 cubic yards of removal and compaction, and placement of a 480-square-foot temporary construction trailer on site during construction. The application also includes a request for after-the-fact approval for 1,640 cubic yards of grading to create an 8,135-square-foot building pad. Finally, the application includes a request for the legalization of the subject parcel, which the County recognized pursuant to Certificate of Compliance #99-0167.

<b>Lot area:</b>	1.84 acres
<b>Building coverage:</b>	1,881 sq. ft.
<b>Pavement coverage:</b>	1,227 sq. ft.
<b>Landscape coverage:</b>	2,000 sq. ft.
<b>Height:</b>	23 ft.

**LOCAL APPROVALS RECEIVED:** Los Angeles County Department of Regional Planning Approval-in-Concept, dated March 18, 2008; Los Angeles County Department of Health Services Approval-in-Concept for septic system, dated November 4, 2007; Los Angeles County Fire Department Preliminary Fuel Modification Plan Approval, dated January 23, 2007; Los Angeles County Fire Department Access Approval, dated February 21, 2008; Los Angeles County Health Division Well Permit, dated February 5, 2007.

**SUBSTANTIVE FILE DOCUMENTS:** "Updated Geologic and Soils Engineering Report for Proposed Custom-Build Single-Family Residence," prepared by Gold Coast GeoServices, Inc., dated February 8, 2007; "Percolation Test Results and Septic System Report for Proposed Single Family Residence, Lot 23, 22262 Swenson Drive, Malibu Area, County of Los Angeles," prepared by Gold Coast Geoservices, Inc., dated August 8, 2007," Response to County of Los Angeles Department of Health Services review letter dated September 21, 2007, for proposed septic system at proposed

residence at 22262 Swenson Drive,” prepared by Gold Coast GeoServices, Inc., dated October 18, 2007; “Biological Resource Evaluation, [REDACTED] Property Project Site,” prepared by Impact Sciences, Inc., dated October, 2006; “Geologic and Geotechnical Engineering Report on Completed Rough Grading for Proposed Single-Family Residence, APN 4448-024-024, 2112 Bilberry Avenue,” prepared by Gold Coast Geoservices, Inc., dated September 10, 2003; “Engineered Grading Consultant Statement,” prepared by Los Angeles County Department of Public Works, dated September 16, 2003; CDP No. 4-95-196 (Russell); CDP No. 4-95-196-E1 (Russell); CDP No. 4-95-196-E2 (Russell); CDP No. 4-95-196-E3 (Hoang); CDP No. 4-07-001 (Hoang); CDP No. 4-04-036 (Ferrell); CDP No. 4-97-002 (Smith).

### **SUMMARY OF STAFF RECOMMENDATION**

Staff recommends **APPROVAL** of the proposed project with **Fourteen (14) CONDITIONS** regarding: (1) plans conforming to geotechnical engineer’s recommendations; (2) landscaping and erosion control plans; (3) drainage and polluted runoff control plans; (4) removal of natural vegetation; (5) structural appearance; (6) lighting restriction; (7) habitat impact mitigation; (8) future development restriction; (9) deed restriction; (10) open space conservation easement; (11) assumption of risk, waiver of liability and indemnity; (12) removal of temporary construction trailer; (13) cumulative impact mitigation; and (14) condition compliance.

The applicant proposes to construct a two-story, 23-foot-high, 2,231-square-foot single family residence with a 460-square-foot attached garage, 202-square-foot detached art studio, septic system, water well and tank, driveway, wood fencing, landscaping, and 276 cubic yards of grading (26 cubic yards cut, 250 cubic yards fill).

The project site is a vacant 1.84-acre lot (APN 4448-024-033) located at 22262 Swenson Drive, just east of the intersection with Bilberry Avenue, in the Santa Monica Mountains, in unincorporated Los Angeles County. The site occurs on a ridgeline and south-facing slope, with topography sloping heavily to the east. The area surrounding the project site is characterized by heavily sloped hillsides with thick chaparral/coastal scrub vegetation, as well as several single-family residences. The parcel is undeveloped, with the exception of a previously graded 0.46-acre flat pad in the location of the proposed development, which was created without the benefit of the necessary coastal development permit. The undisturbed portions of the property contain chaparral and coastal scrub vegetation contiguous with a larger area of native habitat. In addition, because the 0.46-acres of disturbance occurred after 1976 without the benefit of a coastal development permit, and because the area appears to have been vegetated with chaparral prior to that unpermitted grading, this existing area must also be considered chaparral and coastal scrub habitat. Therefore, the entire site is considered an environmentally sensitive habitat area (ESHA) pursuant to Section 30107.5 of the Coastal Act.

The proposed residence would be visible from Swenson Drive, a public roadway, but would not be visible from the Backbone Trail or any other public trails.

The standard of review for the project is the Chapter 3 policies of the Coastal Act. In addition, the policies of the certified Malibu–Santa Monica Mountains Land Use Plan (LUP) serve as guidance. As conditioned, the proposed project will be consistent with the applicable policies of the Coastal Act and the LUP.

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**EXHIBITS**

- Exhibit 1: Vicinity Map
- Exhibit 2: Site Plan
- Exhibit 3: First Floor Plan
- Exhibit 4: Second Floor Plan
- Exhibit 5: East and North Elevations
- Exhibit 6: South and West Elevations

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- Exhibit 7: Grading Plan/Development Area Calculation
  - Exhibit 8: Aerial of Project Site
  - Exhibit 9: Fuel Modification Plan
  - Exhibit 10: Open Space Deed Restriction Plan
  - Exhibit 11: Original Six-Acre Parcel
  - Exhibit 12: Creation of Lot 18
  - Exhibit 13: Creation of Lot 24
  - Exhibit 14: Creation of Lots 32 and 33

## I. STAFF RECOMMENDATION

**MOTION:** *I move that the Commission approve Coastal Development Permit No. 4-07-144 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.

### **RESOLUTION TO APPROVE THE PERMIT:**

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.** This permit is not valid and development shall not commence until copies of the permits, signed by the permittee or authorized agent, acknowledging receipt of the permits and acceptance of the terms and conditions, are 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 de novo appeal of the permits. Development shall be pursued in a diligent manner and completed in a reasonable

period of time. Application(s) for extension of the permit must be made prior to the expiration date.

3. **Interpretation.** Any questions of intent or interpretation of any term or 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 permits.

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 properties to the terms and conditions.

### III. SPECIAL CONDITIONS

#### 1. **Plans Conforming to Geotechnical Engineer's Recommendations**

By acceptance of this permit, the applicant agrees to comply with the recommendations contained in each of the reports prepared by GeoSystems, Inc. for the site, including: "Updated Geologic and Soils Engineering Report for Proposed Custom-Build Single-Family Residence," prepared by Gold Coast GeoServices, Inc., dated February 8, 2007; "Percolation Test Results and Septic System Report for Proposed Single Family Residence, Lot 23, 22262 Swenson Drive, Malibu Area, County of Los Angeles," prepared by Gold Coast Geoservices, Inc., dated August 8, 2007," Response to County of Los Angeles Department of Health Services review letter dated September 21, 2007, for proposed septic system at proposed residence at 22262 Swenson Drive," prepared by Gold Coast GeoServices, Inc., dated October 18, 2007. These recommendations shall be incorporated into all final design and construction plans, including recommendations concerning grading, foundation, retaining walls, sewage disposal, and drainage.

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 in the proposed development approved by the Commission that may be required by the consultant shall require amendment(s) to the permit(s) or new Coastal Development Permit(s).

#### 2. **Landscaping and Erosion Control Plans**

***Prior to issuance of a coastal development permit,*** the applicant shall submit final 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 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 Native Plants for Landscaping in the Santa Monica Mountains, updated August 2007. 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 shall be primarily 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.
- 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) 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 the approved final approved fuel modification plan. Irrigated lawn, turf and ground cover planted within the first 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.
- 5) Rodenticides containing any anticoagulant compounds (including, but not limited to, Warfarin, Brodifacoum, Bromadiolone or Diphacinone) shall not be used.
- 6) Fencing of the entire property is prohibited. The design and size of the fencing for the proposed dog run shall be illustrated on the landscape plan. Fencing shall also be subject to the color requirements outlined in Special Condition Five (5) below.

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.

**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 applicants 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**

- (1) Five years from the date of the receipt of the Certificate of Occupancy for the residence the applicants 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 whether 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.
- (2) 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 applicants, 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.

### **3. Drainage and Polluted Runoff Control Plan**

**A. *Prior to 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 the amount of stormwater runoff produced by all storms up to and including the 85<sup>th</sup> percentile, 24-hour runoff event for volume-based BMPs, and/or the 85<sup>th</sup> percentile, 1-hour runoff event, with an appropriate safety factor (i.e., 2 or greater), 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 30<sup>th</sup> 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 applicants shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new coastal development permit is required to authorize such work.

**B.** The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

### **4. Removal of Natural Vegetation**

Removal of natural vegetation for the purpose of fuel modification within the 50 foot zone surrounding the proposed structure(s) 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 50-200 foot fuel modification zone shall not occur until commencement of construction of the structure(s) approved pursuant to this permit.



## 5. Structural Appearance

By acceptance of this permit, the applicant agrees to utilize the color palette and material specifications for the outer surface of all structures provided as part of the permit application on November 26, 2007. Acceptable colors are 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 and constructed 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. 4-07-144 if such changes are specifically authorized by the Executive Director as complying with this special condition.

## 6. Lighting Restriction

A. The only outdoor night lighting allowed on the subject parcel is limited to the following:

1. The minimum necessary to light walkways used for entry and exit to the structures, including parking areas on the site. This lighting shall be limited to fixtures that do not exceed two feet in height above finished grade, are directed downward and generate the same or less lumens equivalent to those generated by a 60 watt incandescent bulb, unless a greater number of lumens is authorized by the Executive Director.
2. Security lighting attached to the residence and garage shall be controlled by motion detectors and is limited to same or less lumens equivalent to those generated by a 60 watt incandescent bulb.
3. The minimum necessary to light the entry area to the driveway with the same or less lumens equivalent to those generated by a 60 watt incandescent bulb.

B. No lighting around the perimeter of the site and no lighting for aesthetic purposes is allowed.

## 7. Habitat Impact Mitigation

***Prior to 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 (ESHA) that will be disturbed by the proposed development, including fuel modification on the project site and brush clearance requirements on adjacent

property. 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, if the fuel modification/brush clearance zones extend onto adjacent property, adjacent parcel boundaries. 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. A 200-foot clearance zone from the proposed structures shall be used to determine the extent of off-site brush clearance for fire protection purposes. 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/brush clearance 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/brush clearance area. The habitat restoration area may either be onsite or offsite within the coastal zone either in the City of Malibu or elsewhere 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 applicants shall submit written evidence to the Executive Director that the property owner has irrevocably agreed to allow the restoration work, maintenance and monitoring required by this condition and 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 applicants 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. Should supplemental restoration be required, the applicants 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 the supplemental restoration areas. At the end of the five-year period, a final 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 applicants shall submit an application for an amendment to the coastal development permit for an alternative mitigation program and shall implement whatever alternative mitigation program the Commission approves, as approved.

The habitat restoration work approved in the restoration plan shall be carried out 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 applicant shall submit evidence that the applicants have executed and recorded a deed restriction (if the applicants are not the owners, then the applicants shall submit evidence that the owner has executed and recorded the 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 on which the restoration area lies 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 applicants fail 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 the issuance of the coastal development permit, the applicants shall (or, if the applicants are not the owner of the habitat conservation site, then the owners of the habitat conservation site shall) execute and record an open space deed restriction in a form and content acceptable to the Executive Director, over the entirety of a legal 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 applicants 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(s) is/are 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, Off-site Brush Clearance**

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, or permanent preservation of chaparral habitat in the Santa Monica Mountains coastal zone.

#### **8. Future Development Restriction**

This permit is only for the development described in Coastal Development Permit No. 4-07-144. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6) the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to any future development on any portion of the parcel. Accordingly, any future improvements to any portion of the property, including but not limited to the residence, garage, septic system, landscaping, and removal of vegetation or grading other than as provided for in the approved fuel modification/landscape plan prepared pursuant to Special Condition Two (2), shall require an amendment to Coastal Development Permit No. 4-07-144 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

#### **9. 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 applicants have executed and recorded against the parcel(s) 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 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 entire parcel or parcels 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 subject property.

#### **10. Open Space Conservation Easement**

A. 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 shown in **Exhibit 10** except for:

1. Fuel modification required by the Los Angeles County Fire Department undertaken in accordance with the final approved fuel modification plan required by Special Condition Two (2) or other fuel modification plans required and approved by the Commission pursuant to a different CDP(s) issued by the Commission;
2. Seepage pit installation and maintenance of two seepage pits in the location depicted on the plans entitled "[REDACTED] Residence, Grading and Drainage Plan, Sheet 2," prepared by JSA and dated on February 20, 2008, and undertaken in accordance with the Los Angeles County Department of Public Health's septic system approval, dated November 4, 2007. Any vegetation removal or clearance necessary for the installation or maintenance of the septic system shall be revegetated consistent with the requirements of Special Condition Two (2).
3. Drainage and polluted runoff control activities required and approved pursuant to:
  - a. The drainage and runoff control plans approved pursuant to Special Condition Three (3) of this permit; and
  - b. The landscaping and erosion control plans approved pursuant to Special Condition Two (2);
4. If approved by the Commission as an amendment to this coastal development permit or a new coastal development permit:
  - a. construction and maintenance of public hiking trails, and
  - b. construction and maintenance of roads, trails, and utilities consistent with existing easements.

B. 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 10**. The recorded easement 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 (other than existing easements for roads, trails, and utilities) that 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.

## **11. 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 Commission's 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.

## **12. Removal of Temporary Construction Trailer**

By acceptance of this permit, the applicant agrees that the temporary construction trailer shall be removed within two years of the issuance of this coastal development permit or within sixty (60) days of the applicant's 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 a temporary construction trailer. After the trailer is removed, the site disturbed by its placement shall be revegetated within 60 days consistent with the requirements of Special Condition Number Two (2).

## **13. 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 activities undertaken for roads, trails, and utilities pursuant to existing easements.

- 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. The recorded document shall reflect that development in the parcel is restricted as set forth in this permit's condition. The grant of easement, or irrevocable offer to dedicate, shall be recorded free of prior liens and encumbrances (other than existing easements for roads, trails, and utilities) 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(s) extinguished in Section 3 above have 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.

#### **14. 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 provision of Chapter 9 of the Coastal Act.



## IV. FINDINGS AND DECLARATIONS

### A. PROJECT DESCRIPTION AND BACKGROUND

#### 1. Project Description

The applicant is proposing to construct a two-story, 23-foot-high, 2,231-square-foot single-family residence with a 460-square-foot attached garage, 202-square-foot detached art studio, septic system, water well and tank, driveway, wood fencing, landscaping, 276 cubic yards of grading (26 cubic yards cut, 250 cubic yards fill), 908 cubic yards of removal and compaction, and placement of a 480-square-foot temporary construction trailer on site during construction (**Exhibits 2 - 7**). The application also includes a request for after-the-fact authorization for 1,640 cubic yards of grading and approval of the subject parcel, which was recognized pursuant to Certificate of Compliance #99-0167, and is further explained below (**Exhibits 11 - 14**).

The project site is a vacant 1.84-acre lot (APN 4448-024-033)<sup>1</sup> located at 22262 Swenson Drive, just east of the intersection with Bilberry Avenue, in the Santa Monica Mountains, in unincorporated Los Angeles County (**Exhibit 1**). The site is located within the Las Flores Canyon watershed and is approximately 1,600 feet to the west of the Dix Canyon blue line stream designated by USGS. The Backbone Trail runs east to west approximately one to 1.5 miles north of the project site. The Saddle Peak significant ridgeline runs in an east-west direction, between the project site and the Backbone Trail. Additionally, a second, smaller ridgeline intersects the Saddle Peak ridgeline to the east. Due to these ridgelines, the proposed residence would not be visible from the Backbone Trail.

#### 2. Unpermitted Development

The subject parcel is located on a south-facing slope, with topography sloping heavily to the east. The eastern portion of the subject parcel is vegetated with a mix of chaparral and coastal sage scrub that meets the definition of Environmentally Sensitive Habitat Area (ESHA), as described below. The western portion of the parcel, on which the residence is proposed to be constructed, is disturbed buckwheat scrub habitat and consists of a previously graded flat pad (**Exhibit 8**). The applicant's civil engineer estimates that approximately 1,640 cubic yards of material was graded to establish the flat pad area. Historical aerial photographs from 1977, 1986, and 1994 do not show any land disturbance or evidence of grading on this portion of the project site. Review of a 2001 aerial photograph depicts the graded area on the project site; therefore grading on the site took place between 1994 and 2001. There is no evidence that a coastal development permit was obtained to authorize this grading.

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<sup>1</sup> 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, through a Certificate of Compliance in 1999, 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 four-lot subdivision of which the project site is a part as existing lots.

Based on the aerial photographs, it appears that prior to grading, the disturbed area supported native chaparral vegetation similar to the ESHA on the rest of the subject parcel. Therefore, although the graded area is now disturbed buckwheat scrub habitat, the Commission considers the flat pad area to be ESHA, given that the grading was unpermitted. This application includes a request for after-the-fact approval of this unpermitted grading on the western portion of the subject parcel.

### **3. Unpermitted Lot**

The subject lot was part of a six-acre parcel that was subdivided into four separate parcels, as described further in Section IV.F below. The subject lot was granted a Certificate of Compliance “waiver” (99-0167) in 1999 and a corrected Certificate of Compliance “exemption” in 2000 from the County of Los Angeles’ Department of Regional Planning. The County issued these Certificates of Compliance with the intention of “legalizing” these lots for purposes of the Subdivision Map Act and the County’s Subdivision Ordinance. However, there is no record of a coastal development permit being issued for the creation of the subject property, either prior to or after the recording of Certificate of Compliance in 1999. Furthermore, there is no record of a coastal development permit being issued prior to or after the recording of the corrected Certificate of Compliance in 2000.

At the time the certificates of compliance were issued, the owner of the subject lot did not obtain a coastal development permit to legalize the parcel. The Coastal Act requires a coastal development permit prior to undertaking development, including the division of land. Because the Certificate of Compliance for the subject lot was recorded without the required coastal development permit, it was not legally effective, and thus, the subject lot was not created legally. The applicant is requesting after-the-fact approval to legalize the creation of the subject parcel (APN 4448-024-033).

## **B. HAZARDS AND GEOLOGIC STABILITY**

The proposed development is located in the Malibu/Santa Monica Mountains area, an area historically subject to significant natural hazards including, but not limited to, landslides, erosion, flooding and wild fire. The submitted geology, geotechnical, and/or soils reports referenced as Substantive File Documents conclude that the project site is suitable for the proposed project based on the evaluation of the site’s geology in relation to the proposed development. The reports contain recommendations to be incorporated into the project plans to ensure the stability and geologic safety of the proposed project, the project site, and the adjacent properties. To ensure stability and structural integrity and to protect the site and the surrounding sites, the Commission requires the applicant to comply with the recommendations contained in the applicable reports, to incorporate those recommendations into all final design and construction plans, and to obtain the geotechnical consultant’s approval of those plans prior to the commencement of construction.

Additionally, to minimize erosion and ensure stability of the project site, the project must include adequate drainage and erosion control measures. In order to achieve these goals, the Commission requires the applicant to submit drainage and interim erosion control plans certified by the geotechnical engineer.

Further, the Commission finds that, for the project to ensure stability and avoid contributing significantly to erosion, all slopes and disturbed areas of the subject site must be landscaped, primarily with native plants, to stabilize disturbed soils and reduce erosion resulting from the development.

Although the conditions described above render the project sufficiently stable to satisfy the requirements of Section 30253, no project is wholly without risks. Due to the fact that the proposed project is located in an area subject to an extraordinary potential for damage or destruction from natural hazards, including wildfire, those risks remain substantial here. If the applicant nevertheless chooses to proceed with the project, the Commission requires the applicant to assume the liability from these associated risks. Through the assumption of risk condition, the applicant acknowledges the nature of the fire and/or geologic hazard that exists on the site and that may affect the safety of the proposed development.

The following special conditions are required, as determined in the findings above, to assure the project's consistency with Section 30253 of the Coastal Act and as a response to the risks associated with the project:

- Special Condition 1: Plans Conforming to Geotechnical Engineer's Recommendations
- Special Condition 2: Landscaping and Erosion Control Plans
- Special Condition 3: Drainage and Polluted Runoff Control Plan
- Special Condition 4: Removal of Native Vegetation
- Special Condition 11: Assumption of Risk, Waiver of Liability and Indemnity

## C. ENVIRONMENTALLY SENSITIVE HABITAT AREAS

Section 30240 of the Coastal Act protects environmentally sensitive habitat areas (ESHA) by restricting development in and adjacent to ESHA. Section **30240** states:

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

***(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.***

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.***

In addition, the Malibu/Santa Monica Mountains LUP provides policy guidance regarding the protection of environmentally sensitive habitats. The Coastal Commission has applied the following relevant policies as guidance in the review of development proposals in the Santa Monica Mountains.

***P57 Designate the following areas as Environmentally Sensitive Habitat Areas (ESHAs): (a) those shown on the Sensitive Environmental Resources Map (Figure 6), and (b) any undesignated areas which meet the criteria and which are identified through the biotic review process or other means, including those oak woodlands and other areas identified by the Department of Fish and Game as being appropriate for ESHA designation.***

***P63 Uses shall be permitted in ESHAs, DSRs, Significant Watersheds, and Significant Oak Woodlands, and Wildlife Corridors in accordance with Table I and all other policies of this LCP.***

***P68 Environmentally sensitive habitat areas (ESHAs) shall be protected against significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas. Residential use shall not be considered a resource dependent use.***

***P69 Development in areas adjacent to environmentally sensitive habitat areas (ESHAs) shall be subject to the review of the Environmental Review Board, 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.***

***P72 Open space or conservation easements or equivalent measures may be required in order to protect undisturbed watershed cover and riparian areas located on parcels proposed for development. Where new development is proposed adjacent to Environmentally Sensitive Habitat Areas, open space or conservation easements shall be required in order to protect resources within the ESHA.***

***P74 New development shall be located as close as feasible to existing roadways, services, and existing development to minimize the effects on sensitive environmental resources.***

***P82 Grading shall be minimized for all new development to ensure the potential negative effects of runoff and erosion on these resources are minimized.***

***P84 In disturbed areas, landscape plans shall balance long-term stability and minimization of fuel load. For instance, a combination of taller, deep-rooted plants and low-growing ground covers to reduce heat output may be used. Within ESHAs and Significant Watersheds, native plant species shall be used, consistent with fire safety requirements.***

## 1. Project Description and Site Specific Biological Resource Information

The project site is a vacant 1.84-acre lot located on Swenson Drive, just east of the intersection with Bilberry Avenue, in the Santa Monica Mountains. The site occurs on a ridgeline and south-facing slope, with topography sloping heavily to the east. The subject parcel is located within the Las Flores Canyon watershed and is approximately 1,600 feet to the west of the Dix Canyon blue line stream designated by USGS. The area adjacent to the project site is characterized by heavily sloped hillsides with thick chaparral/coastal scrub vegetation.

The majority of the subject parcel is vegetated with chaparral and coastal scrub vegetation, with the exception of the previously graded building pad area, which is vegetated with disturbed buckwheat scrub including several non-native plant species. The applicant submitted the Biological Resource Evaluation listed in the Substantive File Documents, which addresses the habitats present on the project site. The report identifies two vegetation/habitat communities on the project site. The report approximates the acreages and describes these habitats as:

### **Disturbed Habitat (0.46 acres)**

The disturbed area was created by unauthorized grading and includes buckwheat scrub habitat dominated by California buckwheat. In addition to the existing flat building pad, the disturbed area includes a private street easement for Swenson Drive and grading associated with Bilberry Avenue. The disturbed scrub also contains wild oats (*Avena fatua*), red brome (*Bromus madritensis* ssp. *rubens*), cryptantha (*Cryptantha* sp.), California everlasting (*Gnaphalium californicum*), telegraph weed (*Heterotheca grandiflora*), golden bush (, laurel sumac, sticky monkey flower, purple needlegrass, and twiggy wreath plant.

### **Chaparral and Coastal Scrub Habitat (1.38 acres)**

This is the most abundant vegetation type found on site and is dominated by chamise (*Adenostoma fasciculatum*), bigpod ceanothus (*Ceanothus megacarpus*), and laurel sumac (*Malosma laurina*). This plant community also includes mule fat (*Baccharis salicifolia*), California buckwheat (*Eriogonum fasciculatum*), black sage (*Salvia mellifera*), toyon (*Heteromeles arbutifolia*), holly-leaved cherry (*Prunus ilicifolia*), scrub oak (*Quercus berberidifolia*), and yucca (*Yucca whipplei*).

A map of the habitats on the site was also prepared by the biological consultant. Commission staff visited the subject property in June 2008 and confirmed that, with the exception of the disturbed flat pad area, the subject parcel is undisturbed and comprised of chaparral and coastal sage scrub habitats. While there are scattered residential developments in the area, undisturbed, contiguous coastal sage scrub and chaparral habitat exist to the north and east of the site. Furthermore, although the existing flat pad area is now disturbed buckwheat scrub habitat, this grading was conducted without a coastal development permit. Review of aerial photographs indicates that prior to grading, the disturbed area supported native chaparral vegetation similar to the habitat on the rest of the subject parcel. Because the 0.46-acres of disturbance occurred without the benefit of a coastal development permit, this existing

area must also be considered chaparral and coastal scrub habitat. Therefore, the entire site is considered an environmentally sensitive habitat area (ESHA) pursuant to Section 30107.5 of the Coastal Act.

According to public information, the applicant purchased the subject parcel in 2006 for \$505,000. The parcel was designated in the Los Angeles County Land Use Plan for residential use. The site's land designation in the Los Angeles County Land Use Plan is Rural Land I, which allows for one unit per 10 acres. The parcel is 1.84-acres in size, and there are other scattered, residential developments in the same area. Public parkland has been acquired in the general vicinity, within the Santa Monica Mountains National Recreation Area, but there is no parkland or public open space directly adjacent to the project site (although there are significant areas of parkland quite nearby). There is currently no offer to purchase the property from any public park agency.

The project has been designed to place all structures on the previously graded flat pad adjacent to Swenson Drive. The proposed development area, excluding the driveway, is estimated by the applicant to measure approximately 8,135 square feet (**Exhibit 7**). In order to minimize impacts to ESHA associated with fuel modification, Commission staff requested that the applicant evaluate a project alternative that shifted the residence closer to the proposed art studio location, towards the southern portion of the parcel. This shift would result in increased overlapping fuel modification zones with the adjacent residence to the south and would reduce the amount of required native vegetation removal to the north. Due to the size and configuration of the subject parcel, it would not be feasible to relocate the residence more than 50 feet to the south from its originally proposed location.

In response to this request, the applicant received approval from the Los Angeles County Fire Department to reduce the required fuel modification for Zone C north of the proposed residence from 200 feet from the structure to 150 feet from the structure (**Exhibit 9**). This reduction in 50 feet of fuel modification to the north is equivalent to the applicant relocating the residence 50 feet to the south. Therefore the residence, in its originally proposed location with a reduced fuel modification zone, has been sited to minimize the removal of native vegetation within ESHA.

The applicant's approved fuel modification plan (approved by the Los Angeles County Fire Department) shows the use of the standard three zones of vegetation modification. Zones "A" (setback zone) and "B" (irrigation zone) are shown extending in a radius of approximately 50 feet from the proposed structures. A "C" Zone (thinning zone) is provided for a distance of 100 feet beyond the "A" and "B" zones to the north and 150 feet beyond "A" and "B" zones to the east.

## **2. ESHA Designation on the Project Site.**

Pursuant to Section 30107.5, in order to determine whether an area constitutes an ESHA, and is therefore subject to the protections of Section 30240, the Commission must answer three questions:

- 1) Is there a rare species or habitat in the subject area?
- 2) Is there an especially valuable species or habitat in the area, which is determined based on:
  - a) whether any species or habitat that is present has a special nature, OR
  - b) whether any species or habitat that is present has a special role in the ecosystem;
- 3) Is any habitat or species that has met either test 1 or test 2 (i.e., that is rare or especially valuable) easily disturbed or degraded by human activities and developments?

If the answers to questions one or two and question three are “yes”, the area is ESHA.

The project site is located within the Mediterranean Ecosystem of the Santa Monica Mountains. The Coastal Commission has found that the Mediterranean Ecosystem in the Santa Mountains is rare, and valuable because of its relatively pristine character, physical complexity, and resultant biological diversity. Large, contiguous, relatively pristine areas of native habitats, such as coastal sage scrub, chaparral, oak woodland, and riparian woodland have many special roles in the Mediterranean 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. Additional discussion of the special roles of these habitats in the Santa Monica Mountains ecosystem are discussed in the March 25, 2003 memorandum prepared by the Commission’s Ecologist, Dr. John Dixon<sup>2</sup> (hereinafter “Dr. Dixon Memorandum”), which is incorporated as if set forth in full herein.

Unfortunately, coastal sage scrub, chaparral, oak woodland and riparian habitats are easily disturbed by human activities. As discussed in the Dr. Dixon Memorandum, development has many well-documented deleterious effects on natural communities of this sort. These environmental impacts may be both direct and indirect and include, but certainly are not limited to, the effects of increased fire frequency, of fuel modification, including vegetation clearance, of introduction of exotic species, and of night lighting. Increased fire frequency alters plant communities by creating conditions that select for some species over others. The removal of native vegetation for fire protection results in the direct removal or thinning of habitat area. Artificial night lighting of development affects plants, aquatic and terrestrial invertebrates, amphibians, fish, birds and mammals. Thus, large, contiguous, relatively pristine stands of coastal sage scrub, chaparral, oak woodland, and riparian habitats are especially valuable because of their special roles in the Santa Monica Mountains ecosystem and are easily disturbed by human activity. Accordingly, these habitat types meet the definition of ESHA. This is

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<sup>2</sup> The March 25, 2003 Memorandum Regarding the Designation of ESHA in the Santa Monica Mountains, prepared by John Dixon, Ph. D, is available on the California Coastal Commission website at <http://www.coastal.ca.gov/ventura/smm-asha-memo.pdf>

consistent with the Commission's past findings in support of its actions on many permit applications and in adopting the Malibu LCP<sup>3</sup>.

As described above, the project site contains chaparral and coastal sage scrub habitats that is part of a large, contiguous block of pristine native vegetation. As discussed above and in the Dr. Dixon Memorandum, this habitat is especially valuable because of its special role in the ecosystem of the Santa Monica Mountains and it is easily disturbed by human activity. Accordingly, the Commission finds that the chaparral and coastal sage scrub habitats on the project site meets the definition of ESHA in the Coastal Act.

### **3. Resource Dependent Use.**

The Commission finds that the project site and the surrounding area constitutes an environmentally sensitive habitat area (ESHA). Section 30240 of the Coastal Act restricts development within ESHA to only those uses that are dependent on the resource. The applicant proposes to construct a single family residence on the parcel. As single-family residences do not have to be located within ESHA to function, single-family residences are not a use dependent on ESHA resources. Section 30240 also requires that ESHA be protected against significant disruption of habitat values. As the construction of a residence on the site will require both the complete removal of ESHA from the home site and fuel modification for fire protection purposes around it, the proposed project would also significantly disrupt the habitat value in those locations. Application of Section 30240, by itself, would therefore 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 United States Supreme Court's 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 sort of government action results in a "taking" was addressed by the Court in the *Lucas* case. 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 the proposed project, and that project denial would deprive his or her property of all economically viable use, 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 reasonable investment-backed expectations.

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



The Commission interprets Section 30010, together with the *Lucas* decision, to mean that if Commission denial of the project would deprive an applicant's property of all reasonable economic use, the Commission may be required to allow some development even if 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 30240 cannot be interpreted to require the Commission to act in an unconstitutional manner.

As described above, the subject parcel was designated in the Los Angeles County Land Use Plan for residential use. Residential development has previously been approved by the Commission on sites in the immediate area. 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 these facts, along with the presence of existing and approved residential development in the area, the applicant had reason to believe that it had purchased a parcel on which it would be possible to build a residence.

The Commission finds that in this particular case, other allowable uses for the subject site, such as a recreational park or a nature preserve, are not feasible and would not provide the owner an economic return on the investment. There is currently no 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 outright denial of all residential use on the project site would interfere with reasonable investment-backed expectations and 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 on the project site would create a nuisance under California law. Other houses have been constructed in similar situations in similar habitat areas 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, notwithstanding Section 30240, a residential project on the subject property must be allowed to permit the applicant a reasonable economic use of their property consistent with Section 30010 of the Coastal Act.

#### **4. Siting and Design Alternatives to Minimize Significant Disruption of Habitat Values**

While the applicant is entitled under Section 30010 to an assurance that the Commission will not act in such a way as to "take" the 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 assure compliance with Section 30240 by avoiding impacts that would significantly disrupt and/or degrade environmentally sensitive habitat, to the extent this can be done without taking the property.

Obviously, the construction of residential development, including vegetation removal for both the development area as well as required fuel modification, grading, construction of a residence and accessory structures, and the use of the development by residents will result in unavoidable loss of ESHA. The development can be sited and designed to minimize ESHA impacts by measures that include but are not limited to: limiting the size of structures, limiting the number of accessory structures and uses, clustering structures, siting development in any existing disturbed habitat areas rather than undisturbed habitat areas, locating development as close to existing roads and public services as feasible, and locating structures near other residences in order to minimize additional fuel modification.

In this case, siting and design alternatives have been considered in order to identify the alternative that can avoid and minimize impacts to ESHA to the greatest extent feasible. In past permit actions, the Commission has allowed up to 10,000 sq. ft. of development area for a residence on a parcel zoned for residential development in this area of the Santa Monica Mountains to avoid a taking of property. As detailed above, the proposed development area conforms to the maximum development area of 10,000 sq. ft. All proposed structures are located within this development area. Although a smaller development area would reduce the ESHA loss somewhat, the reduction would not be significant. Nor are there other resources such as streams, riparian areas, or visual resources that would be protected by a smaller development area. As such, the Commission concludes that the proposed siting and design of the project will minimize impacts to ESHA to the extent feasible. The Commission also finds that the proposed development area provides a reasonable economic use.

## **5. Open Space Conservation.**

This project is inconsistent with Section 30240 of the Coastal Act, and is only being allowed to avoid a taking of private property for public use. The Commission finds that for the project to be consistent with Section 30240 to the maximum extent feasible, while providing a reasonable economic use, the approved project must represent the maximum amount of ESHA destruction on the site at any time and the remaining ESHA on the property must be preserved in perpetuity.

The Commission finds that the most effective way to assure ESHA preservation on the site is the granting of an open space conservation easement to the Mountains Recreation and Conservation Authority (a joint powers authority) that prohibits development on the remainder of the site now and in the future. The Mountains Recreation and Conservation Authority (MRCA) is a public agency that represents a partnership between the Santa Monica Mountains Conservancy, the Conejo Recreation and Park District, and the Rancho Simi Recreation and Park District. The MRCA is dedicated to the preservation and management of open space, parkland, watershed lands, trails, and wildlife habitat. The MRCA manages and provides ranger services for

almost 50,000 acres of public lands and parks that it owns or that are owned by the Santa Monica Mountains Conservancy. In the course of its normal duties, the MRCA park rangers and other staff are better able to monitor open space areas to ensure that the restrictions are followed than Commission staff. Further, an easement will be recorded against the title to the property and thus provide notice to future owners of the limitations that apply to the open space conservation area, reducing the risk of a future irreparable violation of the restriction. The governing board of the MRCA has agreed to accept all open space easements required by the Commission for properties within the Santa Monica Mountains National Recreation Area.

It is important that the property owner grant an easement to MRCA rather than simply record an open space deed restriction. Although a deed restriction should notify future owners of the restriction in the same manner that a recorded easement would, it would not be as effective in preserving the remaining ESHA for the following two reasons. First, a deed restriction is not as reliable because a property owner can record another document purporting to rescind the deed restriction. Although any attempt to rescind a deed restriction required by a coastal development permit ("CDP") without an amendment to that CDP authorizing such a rescission would constitute a violation of the CDP and the Coastal Act, the County Recorder's office is likely to allow recordation of a rescission without the required Coastal Commission authorization. Indeed, the Commission has experienced the phenomenon of property owners recording documents purporting to modify deed restrictions recorded pursuant to CDP requirements. See, e.g., Commission findings for CDP Amendment F7453-A2 (Stephenson), approved March 2005, and Violation File V-6-04-010 (Del Mar Estates). On the other hand, because an easement necessarily involves more than one person, the County Recorder would not likely record a document purporting to rescind an easement unless the easement holder was also to sign the document. Thus, a condition requiring a deed restriction is much easier to violate, and therefore much less protective, than a condition requiring an easement.

Second, the Legislature has recently adopted new provisions to the Government Code specifically sanctioning the use of conservation easements for this purpose and changing procedures to ensure that they are prominent in searching title to property. In 2001, the Legislature adopted a new requirement that County Recorders keep a separate and "comprehensive index of conservation easements." See Cal. Gov't Code § 27255(a). As such, the Commission finds that the requirement of an open space and conservation easement is the most effective method of ensuring that the remaining ESHA on the project site will be conserved in the future. Finally, the Commission concludes that an open space easement that allows only the easement holder and no other entity to enter the property for inspection purposes does not interfere with the fee title owner's right to exclude the general public. It therefore does not constitute a significant invasion of the fee title owner's property interest.

In conclusion, the Commission finds that it is necessary to require the applicant to grant an open space easement to the MRCA over the open space area on the project site in order to insure that the remaining ESHA will be preserved, as detailed in **Special Condition 10**. Only as conditioned will the proposed project minimize impacts to ESHA, pursuant to Section 30240 of the Coastal Act.

## 6. Habitat Impact Mitigation

While impacts resulting from development within ESHA can be reduced through siting and design alternatives for new development and by ensuring that the remaining ESHA on the site is permanently protected, they cannot be completely avoided, given the location of ESHA on and around the project site, the high fire risk in the Santa Monica Mountains, and the need to modify fuel sources to protect life and property from wildfire.

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 will 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 Los Angeles County Fire Department, which include a setback zone immediately adjacent to the structure (Zone A) where all native vegetation must be removed, an irrigated zone adjacent to Zone A (Zone B) where most native vegetation must be removed or widely spaced, and a thinning zone (Zone C) where native vegetation may be retained if thinned or widely spaced although particular high-fuel plant species must be removed. 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. In this way, for a large area around any permitted structures, native vegetation will be cleared, selectively removed to provide wider spacing, and thinned. The Commission has found in past permit actions, that a new residential development (with a 10,000 sq. ft. development area) within ESHA with a full 200 foot fuel modification radius will result in impact (either complete removal, irrigation, or thinning) to ESHA habitat of four to five acres.

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. As discussed in the Dr. Dixon Memorandum, 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. Further, fuel modification can result in changes to the composition of native plant and wildlife communities, thereby reducing their habitat value. Although the impacts from habitat removal cannot be avoided, the Commission finds that the loss of ESHA resulting from the removal, conversion, or modification of natural habitat for new development including the building site area, and fuel modification can be mitigated in order to ensure that ESHA impacts are minimized to the extent feasible.

The Commission has identified three appropriate methods for providing mitigation for the unavoidable loss of ESHA resulting from development; namely, habitat restoration, habitat conservation, and the payment of an in-lieu fee for habitat conservation. The Commission finds that any of these measures is appropriate in this case to mitigate the loss of ESHA on the project site. 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 provisions for maintenance and monitoring. The restored habitat must be permanently preserved through the recordation of an open space easement.

The second habitat impact mitigation method is habitat conservation. This includes the conservation of an area of intact habitat of a similar type as that impacted 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.

The third habitat impact mitigation option is the payment of an in-lieu fee for habitat conservation. The fee is based on the habitat types in question, the cost per acre to restore or create comparable habitat types, and the acreage of habitat affected by the project. The Commission has, in past permit decisions, determined the appropriate fee for the restoration or creation of chaparral and coastal sage scrub habitat, based on research carried out by the Commission's biologist. A range of cost estimates was obtained that reflected 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.

The Commission 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). The in-lieu fee found by the Commission to be appropriate to provide mitigation for the habitat impacts to ESHA areas where all native vegetation will be removed (building site, the "A" zone required for fuel modification, and off-site brush clearance areas), 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) is \$12,000 per acre. Further, the Commission has required a fee of \$3,000 per acre for areas where the vegetation will be thinned, but not irrigated ("C" zone or other non-irrigated fuel modification zone).

The acreage of ESHA that is impacted must be determined based on the size of the development area, required fuel modification (as identified on the fuel modification plan approved by the Los Angeles County Fire Department) on the site, and required brush clearance off-site. The Commission finds that it is necessary to require the applicant to delineate the total acreage of ESHA on the site (and offsite brush clearance areas, if applicable) that will be impacted by the proposed development, and provide mitigation to compensate for this loss of habitat, through one of the three methods described above, and required by **Special Condition Seven (7)**. Only as conditioned will the proposed project minimize impacts to ESHA, pursuant to Section 30240 of the Coastal Act.

## 7. Additional Mitigation Measures to Address Additional ESHA Impacts

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. Direct adverse effects from such landscaping result from the direct occupation or displacement of native plant communities by new development and associated non-native landscaping, and mitigation for that effect was discussed in the previous section. 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. This sort of impact was not addressed in the prior section. Therefore, in order to minimize adverse effects to the indigenous plant communities of the Malibu/Santa Monica Mountains area that are not directly and immediately affected by the proposed development, **Special Condition Two (2)** requires that all landscaping consist primarily of native plant species and that invasive plant species shall not be used.

In addition, the Commission has found that night lighting of ESHA areas in the Malibu/Santa Monica Mountains may alter or disrupt feeding, nesting, and roosting activities of native wildlife species. Therefore, **Special Condition Six (6)**, Lighting Restriction, limits night lighting of the site in general; limits lighting to the developed area of the site; and requires that lighting be shielded downward. Limiting security lighting to low intensity security lighting will assist in minimizing the disruption of wildlife that is commonly found in this rural and relatively undisturbed area and that traverses the area at night.

Furthermore, fencing of the property would adversely impact the movement of wildlife through the ESHA and wildlife migration corridor on this parcel. Therefore, the Commission finds it is necessary to limit fencing to Zone B on the approved fuel modification plan. The limits of fencing are required to be shown on the landscaping plan required in **Special Condition Two (2)**.

Finally, the Commission finds that the amount and location of any new development that could be built in the future on the subject site consistent with the resource protection policies of the Coastal Act is significantly limited by the unique nature of the site and the environmental constraints discussed above. Therefore, the permitting exemptions that apply by default under the Coastal Act for, among other things, improvements to existing single family homes and repair and maintenance activities may be inappropriate here. In recognition of that fact, and 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 Eight (8)**, the future development restriction, has been required.

Finally, **Special Condition Nine (9)** 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 thereby 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 Section 30240 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 because changes such as the removal of native vegetation, the increase in impervious surfaces, and the introduction of new residential uses cause increases in runoff, erosion, and sedimentation and the introduction of pollutants such as petroleum, cleaning products, pesticides, and other pollutants, as well as effluent from septic systems.

The proposed development will result in an increase in impervious surfaces, which leads to an increase in the volume and velocity of stormwater runoff that can be expected to leave the site and eventually be discharged to coastal waters, including streams, wetlands, and estuaries. The pollutants commonly found in runoff associated with residential use can reduce the biological productivity and the quality of such waters and thereby reduce optimum populations of marine organisms and have adverse impacts on human health.

Therefore, in order to minimize the potential for such adverse impacts to water quality resulting from drainage runoff both during construction and in the post-development stage, the Commission requires the incorporation of Best Management Practices designed to control the volume, velocity and pollutant load of stormwater leaving the developed site, including: 1) sizing post-construction structural BMPs to accommodate (infiltrate, filter, or otherwise treat) the runoff from all storms up to and including the 85<sup>th</sup> percentile storm runoff event; 2) implementing erosion control measures during construction and post construction; and 3) revegetating all graded and disturbed areas with primarily native landscaping.

Additionally, the applicant's geologic consultants have concluded that the site is suitable for the proposed septic system and that there would be no adverse impact to the site or surrounding areas from the use of a septic system. The County of Los Angeles Environmental Health Department has given in-concept approval of the proposed septic system, indicating that it meets the plumbing code requirements. The Commission has found that conformance with the provisions of the plumbing code is protective of water resources.

The following special conditions are required, as determined in the findings above, to assure the project's consistency with Section 30231 of the Coastal Act:

- Special Condition 2: Landscaping and Erosion Control Plans
- Special Condition 3: Drainage and Polluted Runoff Control Plans
- Special Condition 4: Removal of Natural Vegetation

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.***

In addition, the Malibu/Santa Monica Mountains LUP provides policy guidance regarding the protection of visual resources. The Coastal Commission, as guidance in the review of development proposals in the Santa Monica Mountains, has applied these policies.

- P91**      ***All new development shall be designed to minimize impacts and alterations of physical features, such as ravines and hillsides, and processes of the site (i.e., geological, soils, hydrological, water percolation and runoff) to the maximum extent feasible.***
- P125**      ***New development shall be sited and designed to protect public views from LCP-designated highways to and along the shoreline and to scenic coastal areas, including public parklands. Where physically and economically feasible, development on a sloped terrain should be set below road grade.***
- P129**      ***Structures should be designed and located so as to create an attractive appearance and harmonious relationship with the surrounding environment.***
- P130**      ***In highly scenic areas and along scenic highways, new development (including buildings, fences, paved areas, signs, and landscaping) shall:***
- ***Be sited and designed to protect views to and along the ocean and to and along other scenic features, as defined and identified in the Malibu LUP.***
  - ***Minimize the alteration of natural landforms***
  - ***Be landscaped to conceal raw cut slopes***
  - ***Be visually compatible with and subordinate to the character of its setting.***



- ***Be sited so as to not significantly intrude into the skyline as seen from public viewing places.***

- P131 Where feasible, prohibit placement of structures that will break the ridgeline views, as seen from public places***
- P134 Structures shall be sited to conform to the natural topography, as feasible. Massive grading and reconfiguration of the site shall be discouraged.***
- P142 New development along scenic roadways shall be set below the road grade on the down hill side wherever feasible, to protect designated scenic canyon and ocean views.***

Section 30251 of the Coastal Act requires scenic and visual qualities to be considered and preserved. In the review of this project, Commission staff analyzed the publicly accessible locations where the proposed development is visible to assess potential visual impacts to the public. Staff examined the building site, the size of the proposed structure, and alternatives to the size, bulk and scale of the structure. The development of the residence raises the issue of whether or not views from public roadways or public viewing areas will be adversely affected.

The subject site is adjacent to residential development to the south and southwest. The Backbone Trail runs east to west approximately one to 1.5 miles north of the project site. The Saddle Peak significant ridgeline runs in an east-west direction, between the project site and the Backbone Trail. Additionally, a second, smaller ridgeline intersects the Saddle Peak ridgeline to the east. Due to these ridgelines, the proposed residence would not be visible from the Backbone Trail. The proposed project would be sited directly adjacent to Swenson Drive and would be highly visible from this public roadway.

Within areas of the Santa Monica Mountains that contain ESHA, the Commission has required, through past permit actions, that development be clustered and the development area, including all building pads, graded slopes, and parking areas, not exceed 10,000 square feet in order to minimize impacts on sensitive habitat and the surrounding watershed. In this case, the proposed residence and art studio would be constructed on an existing flat pad that was created without a coastal development permit. The applicant's civil engineer estimates that 1,640 cubic yards of material was graded to create the flat pad and the applicant is seeking after-the-fact authorization for this development. An additional 26 cubic yards of cut and 250 cubic yards of fill would be necessary as part of the proposed development. The residence and art studio have been clustered to further minimize landform alteration and the total development area, including the unauthorized grading, would be 8,135 square feet. As a result, the alteration of natural landforms has been minimized by this project.

The proposed development would be sited close to Swenson Drive and significant view impacts would only result from the portions of Swenson Road that are immediately adjacent to the subject parcel. Relocating the residence or reducing its height to one-story would not alter the visual impacts, as the residence would be visible from any location on the project site, regardless of its location or height. Since the project site

would be visible from a public roadway, mitigation to address potential visual impacts is needed for the proposed residence. The visual impact of the proposed structures can be minimized by requiring these structures to be finished in a color consistent with the surrounding natural landscape and, further, by requiring that windows on the proposed residence be made of non-reflective glass. To ensure visual impacts associated with the colors of the structures and the potential glare of the window glass are minimized, the Commission requires the applicants to use colors compatible with the surrounding environment and non-glare glass, as detailed in **Special Condition Five (5)**.

Visual impacts can be further reduced by the use of appropriate and adequate landscaping. Therefore, **Special Condition Two (2)** requires the applicants to ensure that the vegetation on site remains visually compatible with the native flora of surrounding areas. Implementation of Special Condition 2 will soften the visual impact of the development from public view areas. To ensure that the final approved landscaping plans are successfully implemented, Special Condition 2 also requires the applicants 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.

Additionally, the Commission has found that night lighting of areas in the Malibu/Santa Monica Mountains 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. Therefore, **Special Condition Six (6)** 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. Additionally, the lighting restrictions will attenuate the impacts of unnatural light sources and reduce impacts to sensitive wildlife species that may move across the project site.

Long-term presence of construction trailers throughout the Santa Monica Mountains would result in degradation to the visual characteristics of the landscape. In order to ensure that the construction trailer proposed to be installed does not remain onsite as a permanent feature, **Special Condition Twelve (12)** requires that this structure be removed within two years of the issuance of this coastal development permit or within sixty days of the applicant's receipt of the Certificate of Occupancy for the residence.

Finally, regarding future developments or improvements, certain types of development on the property, normally associated with a single-family residence, which might otherwise be exempt, have the potential to impact visual resources in this area. Thus, it is necessary to ensure that any future development or improvements normally associated with the entire property, which might otherwise be exempt, is reviewed by the Commission for compliance with the scenic resource policy, Section 30251 of the Coastal Act. Therefore, **Special Condition Eight (8)**, the Future Development Restriction, will ensure that the Commission will have the opportunity to review future projects for compliance with the Coastal Act. Further, **Special Condition Nine (9)** 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.

Therefore, the Commission finds that the project, as conditioned, minimizes adverse effects to visual resources by protecting public views to and along the coast, minimizing the alteration of natural landforms, and by being visually compatible with the character of the surrounding area. 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.***

### Lot Creation

The applicant is requesting after-the-fact approval to legalize the subject parcel (APN 4448-024-033). The subject lot was part of a 6-acre parcel that was subdivided into four separate parcels, as described in further detail below. The subject lot was granted a Certificate of Compliance “waiver” in 1999 and a corrected Certificate of Compliance “exemption” in 2000 from the County of Los Angeles’ Department of Regional Planning. At the time the certificates of compliance were issued, the owner of the subject lot did not obtain a coastal development permit to legalize the parcel. The Coastal Act requires a coastal development permit prior to undertaking development, including the division of land. Because the certificate of compliance for the subject lot was recorded

without the required coastal development permit, it was not legally effective, and thus, the subject lot was not created legally.

At the request of staff, the applicant provided the available information from the County of Los Angeles' file for the Certificate of Compliance as well as a chain of title for the subject lot, including copies of all deeds referenced in the title report and exhibits showing the configuration of the subject and surrounding lots as they changed over time. Based on this evidence, staff was able to determine the chronology and method of lot creation. The earliest information provided indicates that the subject property was part of a 6-acre parcel that was acquired by one owner in 1964. Between 1973 and 1999, this original 6-acre parcel was divided into three parcels, APNs 4448-024-018, 4448-024-023, and 4448-024-024. In 1999, parcel 4448-024-023 was subsequently divided into two lots to create parcel 4448-024-032 and subject lot 4448-024-033 (**Exhibits 11 – 14**). The existing four parcels that make up the original 6-acre parcel will further be referred to throughout this report as Lots 18, 24, 32, and 33. The details of the lot creation are as follows:

On June 30, 1964, Edward Glauder, Jesus Rodarte, and Jack Lawrence Gardener conveyed the original six-acre parcel to Vlasta Cernik (**Exhibit 11**). On March 20, 1973, Lot 18 was conveyed from Vlasta Cernik to Harry Lampert by Grant Deed (Instrument No. 338) (**Exhibit 12**). Lot 18 was subsequently conveyed two additional times, once on February 7, 1977 from Harry Lampert to Arden and Marilyn Dockter by Joint Tenancy Grant Deed (Instrument No. 77-135136) and again on April 17, 1984, by Grant Deed from Arden and Marilyn Dockter to Thomas and Andrea Ryan (Instrument No. 84-460532).

Lot 18, created by deed on March 20, 1973, was not created in compliance with the applicable laws and regulations at the time. The Subdivision Map Act (SMA) sets statewide standards for the division of land that are implemented by local governments through their ordinances. Effective March 4, 1972, the SMA required that divisions of fewer than five parcels must be approved through a parcel map and divisions of five or more lots must be approved through a tract map. Prior to March 4, 1972, the SMA did not require approval for divisions of fewer than five parcels (although the division of five or more parcels did require a tract map approval).

The purported land division that created Lot 18 for SMA and County purposes occurred through the recordation of a deed on March 20, 1973. The creation of this lot was a division of fewer than five parcels that required approval through a parcel map pursuant to the SMA. However, there is no evidence that this land division was approved by the County of Los Angeles through the creation of a parcel map. Therefore, Lot 18 was not created in compliance with the laws and regulations applicable at the time of its original identification in 1973.

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, among other things, 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 (January 1, 1977) can not be considered vested or “grandfathered” development because it did not occur in compliance with the applicable laws and regulations and with the required approvals. Therefore, Lot 18 is a parcel that was illegally subdivided and is not considered by the Commission to be a legal lot.

On August 28, 1981, the original six-acre parcel was further subdivided by the creation of Lot 24 (Exhibit 13). Lot 24 was created by Grant Deed (Instrument No. 81-866874), which conveyed the property from Vlasta Cernik to Miloslav Tauterman. The creation of this lot was a division of fewer than five parcels that required approval through a parcel map pursuant to the SMA. However, there is no evidence that this land division was approved by the County of Los Angeles through the creation of a parcel map. Therefore, Lot 24 was not created in compliance with the laws and regulations applicable at the time of its original identification in 1981. As described above, subdivisions occurring after the effective date of the Coastal Act require a coastal development permit. There is no record of a coastal development permit being issued for this lot creation. Therefore, Lot 24 is a parcel that was illegally subdivided and is not considered by the Commission to be a legal lot.

After the 1981 subdivision, the original six-acre parcel existed as three separate parcels, APN 4448-024-018 (Lot 18), 4448-024-024 (Lot 24), and 4448-024-023 (Lot 32 and 33 combined). On June 24, 1999, the County of Los Angeles issued two Certificates of Compliance “waivers” (99-0167 and 99-0168) to Vlasta Cernik that further subdivided parcel 4448-024-023 into two separate parcels: Lot 32 (4448-24-032) and the subject property, Lot 33 (4448-024-033). This is the first point in time that the subject parcel, Lot 33, existed in its present configuration (Exhibit 14). When these two separate parcels were created, APN 4448-024-023 was extinguished. Issuance of Certificates of Compliance waivers indicates that Lots 32 and 33 were not created in compliance with the laws and regulations applicable at the time of their creation and that despite this fact, the County of Los Angeles waived any requirements for conditions on the certificates of compliance.

On July 20, 2000, Vlasta Cernik conveyed Lots 32 and 33 to Christian Popa. On August 11, 2000 and October 20, 2000, the County of Los Angeles issued Certificate of Compliance Corrections (from “waiver” to “exemption”) to Vlasta Cernik for Certificates of Compliance 99-0167 and 99-0168, respectively. This correction indicates that the County revised their determination and concluded that the parcels complied with the applicable provisions of the Subdivisions Map Act and the County Subdivision Ordinance because they were exempt from the act and ordinance at the time of their creation. The applicant reviewed the County’s certificate of compliance files for these two lots and was unable to find any evidence explaining the justification for changing the status of these documents from waivers to exemptions. Certificate of Compliance 99-0168 was further corrected on March 29, 2002, to record the correct legal description for the Lot 32. The previous version of this certificate of compliance had incorrectly referenced the legal description for Lot 33.

The County issued these certificates of compliance with the intention of “legalizing” these lots for purposes of the Subdivision Map Act and the County’s Subdivision

Ordinance. However, there is no record of a coastal development permit being issued for the creation of Lot 32 or the subject property, Lot 33, either prior to or after the recording of certificates of compliance 99-0167 and 99-0168 (Instrument No. 99-1157011 and 99-1157012) in 1999. Furthermore, there are no records of coastal development permits being issued prior to or after the recording of the corrected certificates of compliance in 2000 (Instrument 00-1262432 and 00-1644991) and 2002 (Instrument No. 02-0753587). Because these certificates of compliance were recorded without the required coastal development permits, they are not legally effective, and therefore no legal lots have been created.

On January 4, 2001, Lot 32 was conveyed from Christian Popa to Jerald and Kathryn Ferrell. On February 6, 2002, Lot 33 was conveyed from Christian Popa to Chaim and Dalia Pelleg. On March 27, 2006, Chaim and Dalia Pelleg conveyed the subject property, Lot 33, to Dan and Dianne [REDACTED] the current owners and applicants for the proposed project.

#### Factors Considered for Development on Lot Created by an Unpermitted Land Division

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 review necessarily includes the analysis of the individual and cumulative impacts of the 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, 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 proposed subdivision.

In this case, a comprehensive analysis of the land division of the original six-acre parcel, which created four 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 Commission has already issued coastal development permits for two of the four parcels (Lot 18 and Lot 32) that were illegally subdivided from the six-acre parcel, as described below.

On April 10, 1997, the Commission approved Coastal Development Permit (CDP) 4-97-002 (Horton) for the construction of a two story, 26-foot-high 2,112-square-foot single family residence with an attached garage, septic system, water well and 1,200 cubic yards of grading at 2112 Bilberry Avenue (Lot 18). This permit was subsequently assigned to a new owner, Ken Smith, and five time extensions to the permit were granted, with the last time extension extending the permit through May 6, 2003. Although construction of the approved single-family residence has not yet commenced, the rough grading for the building pad that was approved as part of CDP 4-97-002 has been completed as documented in the "Engineered Grading Consultant Statement" from the County of Los Angeles' Building and Safety Division and the geologic and geotechnical engineering report prepared by Mr. Smith's consultant. Despite the fact

that construction on the residence has not begun, CDP 4-97-002 is considered to be vested because significant grading associated with the proposed development has been completed.

On October 5, 2004, the Commission approved CDP 4-04-036 (Ferrell) for the construction of a two-story, 34-foot-high, 3,422-square-foot single family residence with detached garage and guest house, pool/spa, water well and storage tank, septic system, two retaining walls, temporary construction trailer/mobile home, driveway, septic system and 713 cubic yards of grading at 22260 Swenson Drive (Lot 32). The permit was subsequently assigned to the new owner, Dan Schag, in 2007, two time extensions were issued extending the permit through 2008, and one immaterial amendment was issued in 2007 authorizing a minor reconfiguration of the design/footprint of the residence. Construction of this development is currently underway.

The Commission has addressed similar situations of unpermitted land divisions in past CDP actions [including 4-07-001 (Hoang), 4-04-032 (Hannon), 4-04-121 (Miran), and 4-05-141 (Biebuyck)] for development proposed on a lot that was not created in compliance with the laws in effect at the time of its creation. Factors considered by the Commission in its review of such development includes: 1) whether the applicant carried out the unpermitted land division that created the parcel or acquired the parcel later in a good faith, arm's length transaction, and if the latter, whether the applicant had reason to know of the illegal subdivision; 2) whether the lots involved in the unpermitted land division are in common or separate ownership; 3) whether any of the unpermitted lots has been developed; and 4) whether the Commission has previously approved a CDP(s) for development on the proposed project site or other lots involved in the unpermitted land division, and if such CDP(s) is effective.

In CDP 4-07-001 (Hoang), the Commission approved the creation of a lot because the Commission had already approved permits for residential development on the subject property and on a nearby parcel that was created from the same parent parcel, the applicant purchased the property in a good faith, arm's length transaction, and the subject parcel was not in current ownership with any other contiguous parcels created from the parent parcel. In that case, the Commission also found that it was necessary to require the applicant to mitigate the cumulative impacts of creating the parcel through the retirement of the development rights on an existing parcel in the Santa Monica Mountains through a Transfer of Development Credit (TDC) transaction. In CDP 4-04-032 (Hannon), the Commission similarly found that the project parcel had been created as the result of an unpermitted land division, but that the owner acquired the parcel in a good faith, arm's length transaction and the Commission had already approved a permit for residential development on one of the parcels created from the same parent parcel. The Commission required the applicant to retire one TDC as mitigation for the impacts of creating one new parcel. In approving CDP 4-04-121 (Miran), the Commission similarly found that the project parcel had been created as the result of an unpermitted land division, but that the owner acquired the parcel in a good faith, arm's length transaction and several other parcels created in the same unpermitted land division were already developed, including three that the Commission had approved in earlier CDP's. The Commission required the applicant to retire one TDC as mitigation for the

impacts of creating one new parcel. In the case of CDP 4-05-141 (Biebuyck), the Commission found that the owner acquired the parcel in a good faith, arm's length transaction, that five other parcels created in the same unpermitted land division were already developed with single family residences, and that the Commission had previously approved development on the project site, although the CDP had expired before the applicant acquired the property. The Commission approved the creation of the project site, subject to the mitigation of the cumulative impacts of an additional parcel through the retirement of one TDC.

In this case, the applicant purchased the property in a good faith, arm's length transaction, the subject parcel is not in common ownership with any other contiguous lot created from the parent parcel, and the Commission has previously approved coastal development permits for residential development on two nearby parcels (CDP 4-97-002 and CDP 4-04-036) created from the same six-acre parent parcel. The applicants purchased the property in 2006 for approximately \$505,000 according to tax assessments available as public information. Although the 1999 Certificate of Compliance that was recorded against the property indicated that the original subdivision was in compliance with the applicable laws because it was exempt from the laws at the time of its creation, the recordation of the certificate of compliance did not inform the applicant of the separate legal requirement to obtain a coastal development permit for this land division. The parcel was designated in the County's certified LUP in 1986 as Rural Land 1, which allows for one dwelling unit per 10 acres. However, based on the purchase price and the Commission's approval of residential developments on two nearby parcels created from the same parent parcel, the applicants had reason to believe that they purchased a lot on which they would be able to build a residence.

Based on the above set of facts, the Commission finds that approval of the land division created through 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 adverse cumulative impacts to coastal resources, particularly considering the ESHA present on and surrounding the project site. Although the cumulative impacts cannot be completely avoided, they can be reduced through the mitigation measures 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 to development permits 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) and 4-01-046 (PCH-Tyler Associates, Inc.), 4-04-121 (Miran), and 4-05-141 (Biebuyck). 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 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 1.84-acre subject parcel, which was created through an unpermitted land division in 1999. 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 the three other lots that were part of the two previous subdivisions 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 Thirteen (13)** requires the applicant to mitigate the cumulative impacts of the creation of the subject lot through a land division and the development of this property 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. The process for extinguishing the development rights is detailed in Special Condition Thirteen (13). The Commission finds that, as conditioned, the proposed project is consistent with §30250 of the Coastal Act.

## **G. LOCAL COASTAL PROGRAM**

Section 30604 of the Coastal Act states:

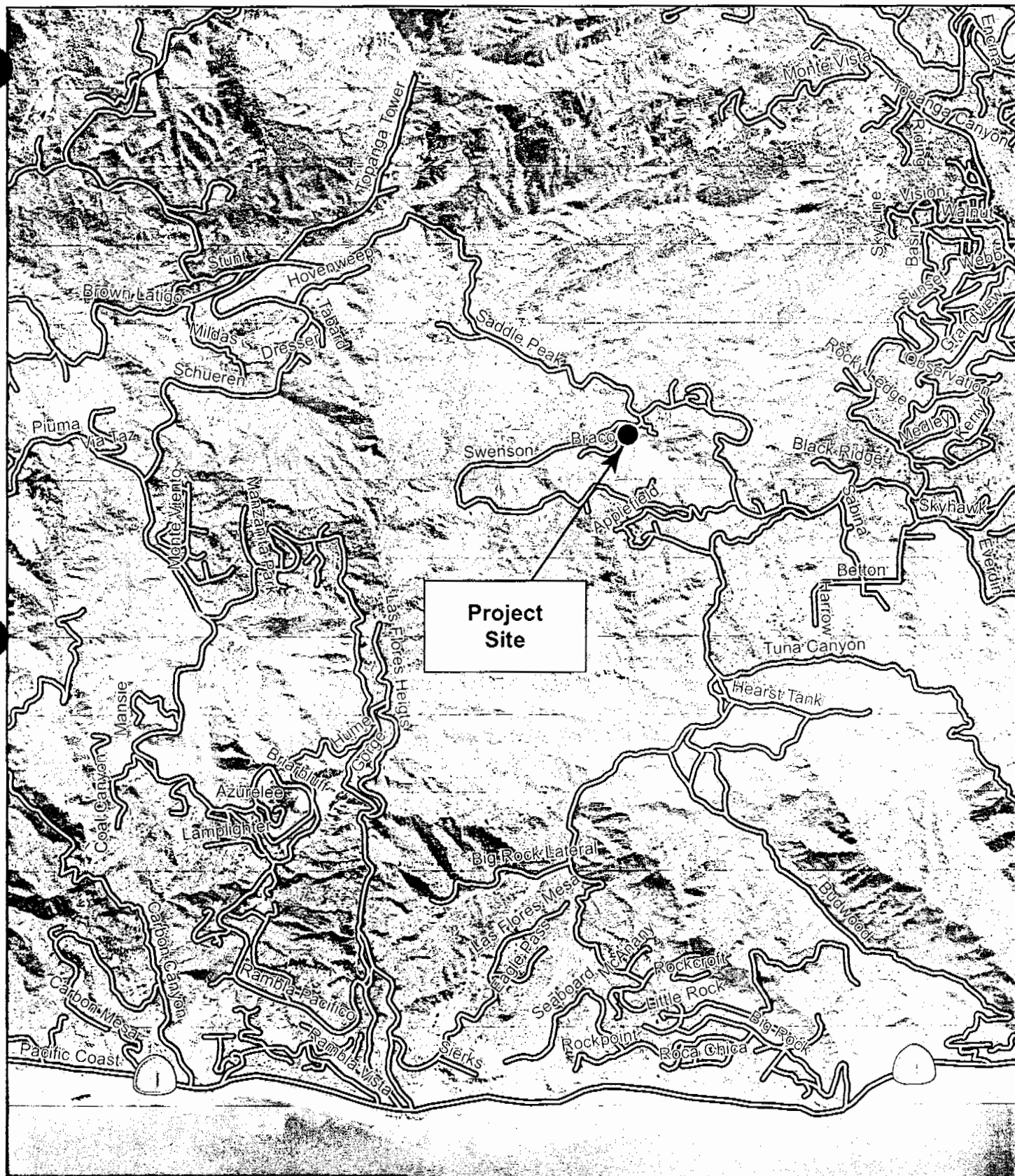
***a) Prior to certification of the local coastal program, a coastal development permit shall be issued if the issuing agency, or the commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the 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 Development Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program, which conforms to 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 are accepted by the applicant. As conditioned, the proposed development will not create adverse impacts and is found to be consistent with the applicable policies contained in Chapter 3. Therefore, the Commission finds that approval of the proposed development, as conditioned, will not prejudice the County of Los Angeles' ability to prepare a Local Coastal Program for this area which is also consistent with the policies of Chapter 3 of the Coastal Act, as required by Section 30604(a).

## **H. CEQA**

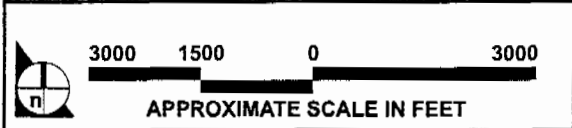
Section 13096(a) of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California 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 above, the proposed development, as conditioned, is consistent with the policies of the Coastal Act. Feasible mitigation measures which will minimize all adverse environmental effects have been required as special conditions. 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.



**Project Site**

*Pacific Ocean*



SOURCE: AirPhoto USA - 2006, Impact Sciences, Inc. - October 2006

**EXHIBIT 1**  
**4-04-144**  
**Vicinity Map**





**ARCHITECTURE**  
**tobylongdesign**  
 445 THIRD STREET SUITE 400 SAN FRANCISCO, CA 94107  
 P: 415.305.9930 F: 415.305.9025 WWW.TOBYLONGDESIGN.COM

DATE: 08/20/07  
 DRAWN BY: J. HENNING  
 CHECKED BY: J. HENNING  
 SCALE: AS SHOWN  
 SHEET: 10 OF 10

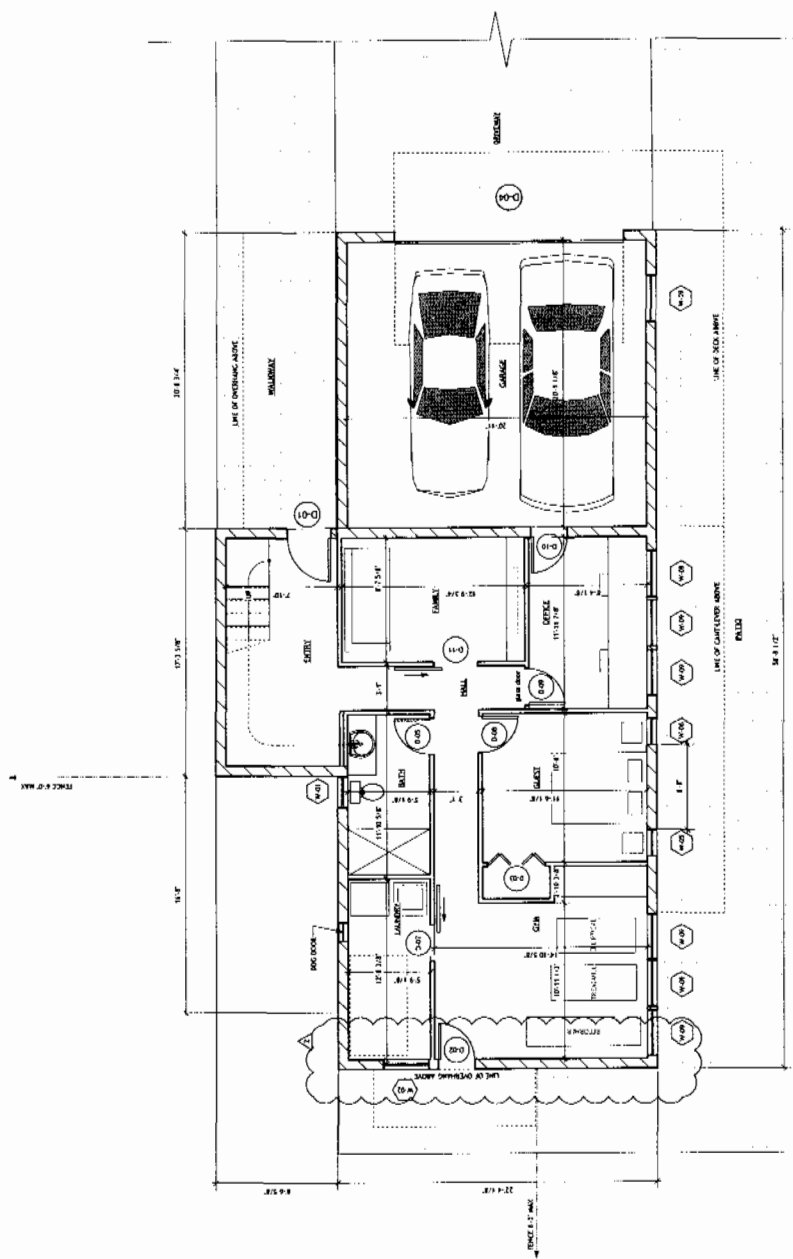
**Clever Homes**  
 RESIDENCE  
 4448-024-033  
 SWENSON DRIVE  
 TOPANGA, CA 90290

FIRST FLOOR PLAN  
 1/8" = 1'-0"

NO. 100001  
 DATE 10/10/07  
 SCALE 1/8" = 1'-0"  
**A2.0**

**RECEIVED**  
 NOV 28 2007

COASTAL COMMISSION  
 SOUTH CENTRAL COAST DISTRICT



**EXHIBIT 3**  
**4-04-144 ( )**  
**First Floor Plan**



**to bylongdesign**  
ARCHITECTURE  
445 7840 STREET SUITE 400 SAN FRANCISCO, CA 94107  
P: 415.903.9038 F: 415.903.9035 www.tobydesign.com

STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO  
CITY AND COUNTY OF SAN FRANCISCO  
PLANNING DEPARTMENT  
1555 MARKET STREET, SUITE 100  
SAN FRANCISCO, CA 94102

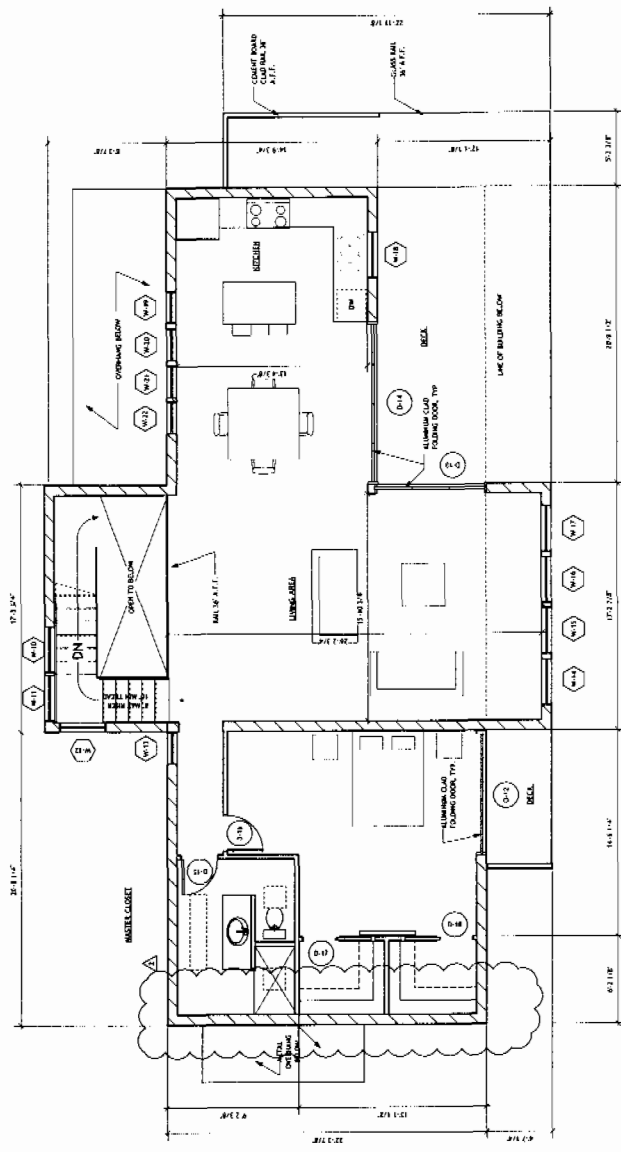
**Clever Homes**  
RESIDENCE  
4448-024-033  
SWENSON DRIVE  
TOPANCA, CA 90290

SECOND FLOOR PLAN  
DATE: 01/28/11  
DRAWN BY: [REDACTED]  
CHECKED BY: [REDACTED]  
APPROVED BY: [REDACTED]

**A2.1**



SCALE 1/4" = 1'-0"



00R PLAN

**EXHIBIT 4**  
**4-04-144 ( [REDACTED] )**  
**Second Floor Plan**



**toby long design**  
ARCHITECTURE

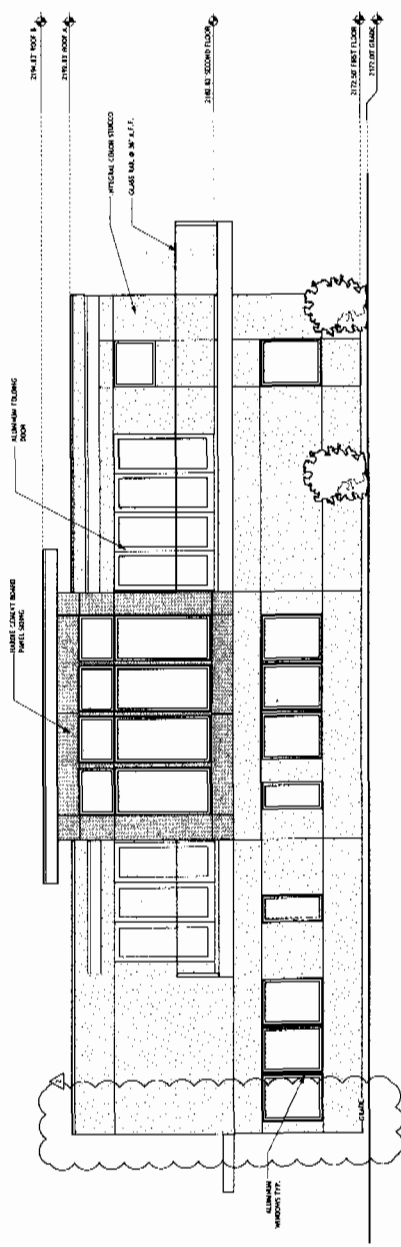
445 THIRD STREET SUITE 400 SAN FRANCISCO, CA 94107  
P: 415.775.9020 F: 415.775.9023 WWW.TOBYLONGDESIGN.COM

NAME: [REDACTED]  
PROJECT: [REDACTED]  
DATE: [REDACTED]  
SCALE: [REDACTED]

**Clever Homes**  
RESIDENCE  
4448-024-033  
SWENSON DRIVE  
TOPANGA, CA 90290

DATE: [REDACTED]  
SCALE: [REDACTED]  
DRAWN BY: [REDACTED]  
CHECKED BY: [REDACTED]

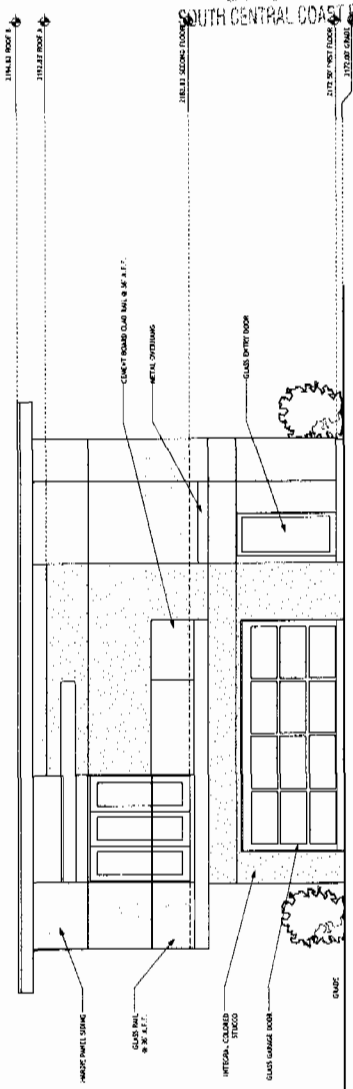
**A 5.0**  
SCALE: 1/4" = 1'-0"



1 | EAST ELEVATION

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NOV 28 2007

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

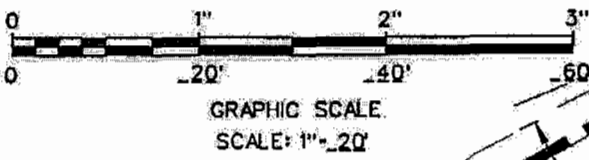
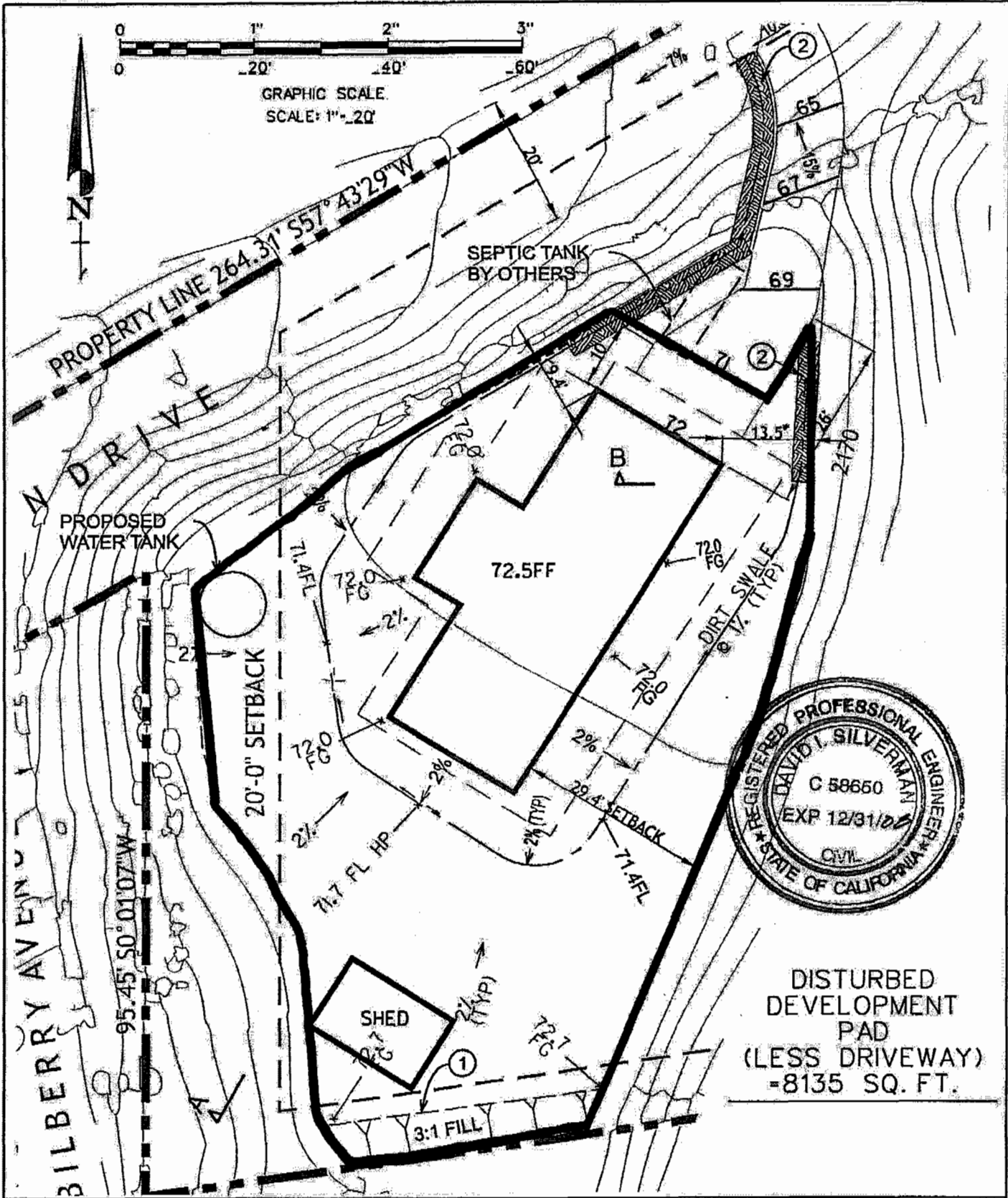


2 | NORTH ELEVATION

**EXHIBIT 5**  
**4-04-144 ( [REDACTED] )**  
**East and North Elevations**







DISTURBED  
DEVELOPMENT  
PAD  
(LESS DRIVEWAY)  
= 8135 SQ. FT.

**DISTURBED DEVELOPMENT  
PAD**  
22262 SWENSON DRIVE  
TOPANGA, CA 90290

DATE	06-17-08
DRAWN	RMD
DESIGNED	RMD
CHECKED	D.S.



CIVIL ENGINEERS • LAND PLANNERS • SURVEYORS  
23801 CALABASAS RD., SUITE 203B, CALABASAS, CALIFORNIA 91302

**EXHIBIT 7**  
4-04-144 ( )  
**Grading Plan/Development Area  
Calculation**



Development Area  
(Previously Graded)

Swenson Dr, Topanga, CA 90290

EXHIBIT 8
4-04-144 ( )
Aerial of Project Site



ARCHITECTURE  
 tobylongdesign  
 605 THIRD STREET SUITE 400 SAN FRANCISCO, CA 94107  
 P: 415.903.9033 WWW.tobylongdesign.com

TYPE: PRELIMINARY  
 DATE: 11/20/07  
 SITE PERMIT ACQUITTANCE  
 DATE: 02/08/07

Clever Homes  
 RESIDENCE  
 4448-024-033  
 SWENSON DRIVE

SITE PLAN

1. ALL DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.  
 2. ALL DIMENSIONS SHALL BE TO FACE UNLESS OTHERWISE NOTED.  
 3. ALL DIMENSIONS SHALL BE TO THE CENTERLINE OF THE ROAD UNLESS OTHERWISE NOTED.  
 4. ALL DIMENSIONS SHALL BE TO THE CENTERLINE OF THE LOT UNLESS OTHERWISE NOTED.  
 5. ALL DIMENSIONS SHALL BE TO THE CENTERLINE OF THE DRIVE UNLESS OTHERWISE NOTED.  
 6. ALL DIMENSIONS SHALL BE TO THE CENTERLINE OF THE SIDEWALK UNLESS OTHERWISE NOTED.  
 7. ALL DIMENSIONS SHALL BE TO THE CENTERLINE OF THE CURB UNLESS OTHERWISE NOTED.  
 8. ALL DIMENSIONS SHALL BE TO THE CENTERLINE OF THE PROPERTY UNLESS OTHERWISE NOTED.  
 9. ALL DIMENSIONS SHALL BE TO THE CENTERLINE OF THE LOT UNLESS OTHERWISE NOTED.  
 10. ALL DIMENSIONS SHALL BE TO THE CENTERLINE OF THE DRIVE UNLESS OTHERWISE NOTED.

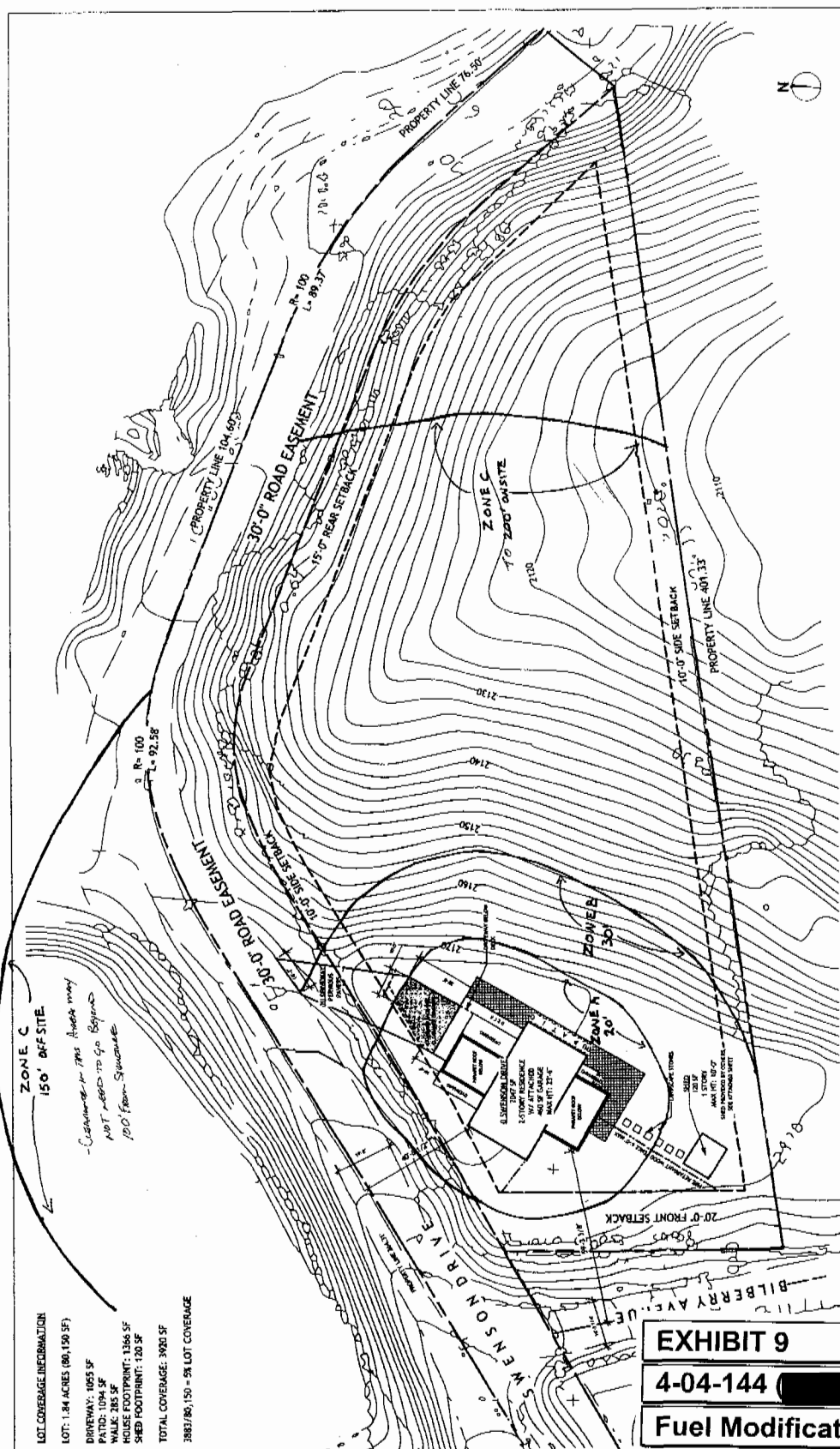
SCALE: 1" = 20' 0"

NOV 26 2007

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SOUTH CENTRAL COAST DISTRICT  
 CALIFORNIA  
 COASTAL COMMISSION

PROJECT: 4448-024-033  
 SHEET: A1.0



LOT COVERAGE INFORMATION  
 LOT: 1.84 ACRES (80,130 SF)  
 DRIVEWAY: 1065 SF  
 PATIO: 1094 SF  
 WALK: 285 SF  
 HOUSE FOOTPRINT: 1366 SF  
 SHED FOOTPRINT: 120 SF  
 TOTAL COVERAGE: 3920 SF  
 3882/80,130 = 5% LOT COVERAGE

EXHIBIT 9  
 4-04-144  
 Fuel Modification Plan

LOCATED WITH THIS PROJECT  
 NTAL FOUNDATION EXCAVATION  
 DESIGNED BY JOHN H. MACNEIL,  
 1936









