

## CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA  
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# W 28b

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Staff: D. Christensen  
Staff Report: 8/26/09  
Hearing Date: 9/9/09



## STAFF REPORT: REGULAR CALENDAR

**APPLICATION NO:** 4-08-080

**APPLICANT:** Eric Horsted

**AGENT:** Tara Moore & Associates, Inc.

**PROJECT LOCATION:** 2118 Rockview Terrace, Santa Monica Mountains, Los Angeles County

**PROJECT DESCRIPTION:** Construction of a two-story, 35 ft. high, 5,788 sq. ft. single family residence with 680 sq. ft. attached garage, 123 sq. ft. balcony, swimming pool, septic system, driveway, retaining walls, 1,070 cu. yds. grading (680 cu. yds cut, 390 cu. yds fill), and request for after-the-fact approval for creation of the subject lot that is the proposed project site.

<b>Lot area:</b>	<b>1.03 acres</b>
<b>Building coverage:</b>	<b>3,499 sq. ft.</b>
<b>Ht. abv. fin. Grade:</b>	<b>35 ft.</b>

### SUMMARY OF STAFF RECOMMENDATION

Staff recommends **approval** of the proposed project with **sixteen (16) special conditions** relating to (1) plans conforming to geotechnical engineer's recommendations, (2) assumption of risk, (3) drainage and polluted runoff control plans, (4) interim erosion control and construction responsibilities, (5) landscaping and fuel modification plans, (6) structural appearance, (7) lighting restriction, (8) future development restriction, (9) deed restriction, (10) habitat impact mitigation, (11) open space restriction, (12) site inspection, (13) removal of natural vegetation, (14) removal of excess excavated material, (15) pool and spa maintenance, and (16) cumulative impact mitigation. 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. Following is a summary of the main issues raised by the project and how they are resolved by staff's recommendation:

- **CUMULATIVE IMPACTS.** The project includes the legalization of the subject parcel, which was created through an unpermitted land division prior to the effective date of the Coastal Act. The issuance of a certificate of compliance after the effective date of the Coastal Act, which legalized the subject parcel, is a land division that required the approval of a coastal development permit, but no permit was obtained. Based on several factors, it is appropriate to approve the land division, with a condition to retire the development credits equivalent to one existing building site in the Santa Monica Mountains. As conditioned, the project will minimize the cumulative impacts of creating an additional parcel.

- **ENVIRONMENTALLY SENSITIVE HABITAT AREA.** The project site contains habitat that meets the definition of ESHA and the project will have adverse impacts on ESHA. The proposed residence is not a resource dependent use, but will be approved to permit the applicant a reasonable economic use of the property. The structure(s) is sited to minimize significant disruption of habitat values and the development area conforms to 10,000 square feet. The project is conditioned to require an open space restriction in order to ensure that the remaining ESHA on the site will be preserved. Mitigation is required for the loss of ESHA due to the development and the required fuel modification around structures.

**LOCAL APPROVALS RECEIVED:** Los Angeles County Department of Regional Planning Approval-in-Concept, dated February 20, 2008; Los Angeles County Department of Health Services Approval-in-Concept for septic system, dated September 8, 2008; Los Angeles County Fire Department Preliminary Fuel Modification Plan Approval, dated November 17, 2005; Los Angeles County Fire Department Access Approval, dated May 19, 2008.

**SUBSTANTIVE FILE DOCUMENTS:** Certified Malibu/Santa Monica Mountains Land Use Plan; The March 25, 2003 Memorandum Regarding the Designation of ESHA in the Santa Monica Mountains, prepared by John Dixon, Ph. D; "Biological Resource Evaluation," by Compliance Biology, dated January 8, 2007; "Percolation Test Report", by Lawrence Young, dated June 18, 2008; "Preliminary Geologic and Soils Engineering Investigation," by Subsurface Designs Inc., dated February 8, 2005; "Update Report," by Subsurface Designs Inc., dated April 22, 2009, and Addendum dated June 30, 2009.

## **I. STAFF RECOMMENDATION**

**MOTION:**        *I move that the Commission approve Coastal Development Permit No. 4-08-080 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.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

## **III. SPECIAL CONDITIONS**

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

By acceptance of this permit, the applicant agrees to comply with the recommendations contained in all of the geology, geotechnical, and/or soils reports referenced as Substantive File Documents. These recommendations, including recommendations concerning foundations, sewage disposal, and drainage, shall be incorporated into all final design and construction plans, which must be reviewed and approved by the consultant prior to commencement of development.

The final plans approved by the consultant 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. 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 and erosion; (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.

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

A. ***Prior to issuance of the Coastal Development Permit***, the permittee shall submit to the Executive Director, two (2) copies of a final Permanent Drainage and Runoff Control Plan for the post-construction project site, prepared by a licensed civil engineer or qualified water quality professional. The Plan shall include detailed drainage and runoff control plans with supporting calculations. The plans shall incorporate Best Management Practices (BMPs) including site design, source control and treatment control measures designed to reduce, to the maximum extent practicable, the volume, velocity and pollutant load of stormwater and dry weather flows leaving the developed site. The consulting civil engineer or water quality professional shall certify in writing that the final Permanent Drainage and Runoff Control Plan is in substantial conformance with the following minimum requirements:

- (1) The plan shall demonstrate the use of distributed small-scale controls or integrated Best Management Practices (BMPs) that serve to minimize alterations to the natural pre-development hydrologic characteristics and conditions of the site, and effectively address pollutants of concern.
- (2) Post-development peak runoff rate and average volume from the site shall be maintained at levels similar to pre-development conditions.
- (3) Selected BMPs shall consist, or primarily consist, of site design elements and/or landscape based systems or features that serve to maximize site permeability, avoid directly connected impervious area and/or retain, infiltrate, or filter runoff from rooftops, driveways and other hardscape areas, where feasible. Examples of such features include but are not limited to porous pavement, pavers, rain gardens, vegetated swales, infiltration trenches, cisterns.
- (4) Landscaping materials shall consist primarily of native or other low-maintenance plant selections which have low water and chemical treatment demands, consistent with **Special Condition 5, Landscaping and Fuel Modification Plans**. An efficient irrigation system designed based on hydrozones and utilizing drip emitters or micro-sprays or other efficient design should be utilized for any landscaping requiring water application.

- (5) All slopes should be stabilized in accordance with provisions contained in the Landscaping and/or Interim Erosion and Sediment Control Condition for this Coastal Development Permit.
- (6) Runoff shall be discharged from the developed site in a non-erosive manner. Energy dissipating measures shall be installed at the terminus of outflow drains where necessary. The consulting engineer shall provide plan details and cross sections for any rock rip-rap and/or other energy dissipating devices or structures associated with the drainage system. The drainage plans shall specify, the location, dimensions, cubic yards of rock, etc. for the any velocity reducing structure with the supporting calculations showing the sizing requirements and how the device meets those sizing requirements. The engineer shall certify that the design of the device minimizes the amount of rock and/or other hardscape necessary to meet the sizing requirements.
- (7) Post-construction structural 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 85th percentile, 24-hour storm event for volume-based BMPs, and/or the 85th percentile, 1-hour storm event, with an appropriate safety factor (i.e., 2 or greater), for flow-based BMPs.
- (8) All BMPs shall be operated, monitored, and maintained in accordance with manufacturer's specifications where applicable, or in accordance with well recognized technical specifications appropriate to the BMP for the life of the project and at a minimum, all structural BMPs shall be inspected, cleaned-out, and where necessary, repaired prior to the onset of the storm season (October 15<sup>th</sup> each year) and at regular intervals as necessary between October 15<sup>th</sup> and April 15<sup>th</sup> of each year. Debris and other water pollutants removed from structural BMP(s) during clean-out shall be contained and disposed of in a proper manner.
- (9) For projects located on a hillside, slope, or which may otherwise be prone to instability, final drainage plans should be approved by the project consulting geotechnical engineer.
- (10) Should any of the project's surface or subsurface drainage/filtration structures or other BMPs fail or result in increased erosion, the applicant/landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage/filtration system or BMPs and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicant shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new coastal development permit is required to authorize such work.

B. The final Permanent Drainage and Runoff Control Plan shall be in conformance with the site/ development plans approved by the Coastal Commission. Any changes to the Coastal Commission approved site/development plans required by the consulting civil engineer/water quality professional or engineering geologist shall be reported to the

Executive Director. No changes to the Coastal Commission approved final site/development plans shall occur without an amendment to the coastal development permit, unless the Executive Director determines that no amendment is required.

#### **4. Interim Erosion Control Plans and Construction Responsibilities**

A. ***Prior to the issuance of the Coastal Development Permit***, the applicant shall submit to the Executive Director an Interim Erosion Control and Construction Best Management Practices plan, prepared by licensed civil engineer or qualified water quality professional. The consulting civil engineer/water quality professional shall certify in writing that the Interim Erosion Control and Construction Best Management Practices (BMPs) plan is in conformance with the following requirements:

##### 1. Erosion Control Plan

- (a) 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 plan and on-site with fencing or survey flags.
- (b) Include a narrative report describing all temporary run-off and erosion control measures to be used during construction.
- (c) The plan shall identify and delineate on a site or grading plan the locations of all temporary erosion control measures.
- (d) The plan shall specify that should grading take place during the rainy season (November 1 – March 31) the applicant shall install or construct temporary sediment basins (including debris basins, desilting basins or silt traps); temporary drains and swales; sand bag barriers; silt fencing; 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.
- (e) The erosion measures shall be required on the project site prior to or concurrent with the initial grading operations and maintained through out 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 the coastal zone or to a site within the coastal zone permitted to receive fill.
- (f) 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.

## 2. Construction Best Management Practices

- (a) No demolition or construction materials, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion.
- (b) No demolition or construction equipment, materials, or activity shall be placed in or occur in any location that would result in impacts to environmentally sensitive habitat areas, streams, wetlands or their buffers.
- (c) Any and all debris resulting from demolition or construction activities shall be removed from the project site within 24 hours of completion of the project.
- (d) Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters.
- (e) All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.
- (f) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.
- (g) Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required.
- (h) All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil.
- (i) Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems.
- (j) The discharge of any hazardous materials into any receiving waters shall be prohibited.
- (k) Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible.

- (l) Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity
- (m) All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

B. The final Interim Erosion Control and Construction Best Management Practices plan, shall be in conformance with the site/ development plans approved by the Coastal Commission. Any changes to the Coastal Commission approved site/development plans required by the consulting civil engineer/water quality professional shall be reported to the Executive Director. No changes to the Coastal Commission approved final site/development plans shall occur without an amendment to the coastal development permit, unless the Executive Director determines that no amendment is required.

## **5. Landscaping and Fuel Modification Plans**

***Prior to issuance of the Coastal Development Permit***, the applicant shall submit two sets of landscaping and fuel modification plans, prepared by a licensed landscape architect or a qualified resource specialist. The consulting landscape architect or qualified landscape professional shall certify in writing that the final Landscape and Fuel Modification plans are in conformance with the following requirements:

### **A) Landscaping Plan**

- (1) All graded & disturbed areas on the subject site shall be planted and maintained for erosion control purposes within thirty (30) days of receipt of the certificate of occupancy for the residence. To minimize the need for irrigation all landscaping shall consist primarily of native/drought resistant plants, as listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended List of Plants for Landscaping in the Santa Monica Mountains, dated February 5, 1996. All native plant species shall be of local genetic stock. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be identified from time to time 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 within the property.
- (2) All cut and fill slopes shall be stabilized with planting at the completion of final grading. Planting should be of native plant species indigenous to the Santa Monica Mountains using accepted planting procedures, consistent with fire safety requirements. All native plant species shall be of local genetic stock.



Such planting shall be adequate to provide 90 percent coverage within two (2) years, and this requirement shall apply to all disturbed soils;

- (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) Rodenticides containing any anticoagulant compounds (including, but not limited to, Warfarin, Brodifacoum, Bromadiolone or Diphacinone) shall not be used.
- (5) Fencing of the entire property is prohibited. Fencing shall extend no further than the approved development area. The fencing type and location shall be illustrated on the landscape plan. Fencing shall also be subject to the color requirements outlined in **Special Condition 6, Structural Appearance**, below.

## **B) Fuel Modification Plans**

Vegetation within 20 feet of the proposed house may be removed to mineral earth, vegetation within a 200-foot radius of the main structure may be selectively thinned in order to reduce fire hazard. However, such thinning shall only occur in accordance with an approved long-term fuel modification plan submitted pursuant to this special condition. The fuel modification plan shall include details regarding the types, sizes and location of plant materials to be removed, and how often thinning is to occur. In addition, the applicant shall submit evidence that the fuel modification plan has been reviewed and approved by the Forestry Department of Los Angeles County. Irrigated lawn, turf and ground cover planted within the twenty foot radius of the proposed house shall be selected from the most drought tolerant species or subspecies, or varieties suited to the Mediterranean climate of the Santa Monica Mountains.

## **C) Conformance with Commission Approved Site/Development Plans**

The Permittee shall undertake development in accordance with the final Landscape and Fuel Modification Plans. The final Landscape and Fuel Modification Plans shall be in conformance with the site/development plans approved by the Coastal Commission. Any changes to the Coastal Commission approved site/development plans shall be reported to the Executive Director. No changes to the Coastal Commission approved final site/development plans shall occur without an amendment to the coastal development permit, unless the Executive Director determines that no amendment is legally required.

## **D) Monitoring**

Three years from the date of the receipt of the Certificate of Occupancy for the residence the applicant shall submit to the Executive Director, a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies the on-site landscaping is in conformance with the landscape plan

approved pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the requirements specified in this condition, the applicant, or successors in interest, shall submit, within 30 days of the date of the monitoring report, a revised or supplemental landscape plan, certified by a licensed Landscape Architect or a qualified Resource Specialist, that specifies additional or supplemental landscaping measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan. This remedial landscaping plan shall be implemented within 30 days of the date of the final supplemental landscaping plan and remedial measures shall be repeated as necessary to meet the requirements of this condition.

## **6. Structural Appearance**

***Prior to issuance of the Coastal Development Permit***, the applicant shall submit for the review and approval of the Executive Director, a color palette and material specifications for the outer surface of all structures authorized by the approval of this Coastal Development Permit. The palette samples shall be presented in a format not to exceed 8½" x 11" x ½" in size. The palette shall include the colors proposed for the roofs, trims, exterior surfaces, driveways, retaining walls, and other structures authorized by this permit. Acceptable colors shall be limited to colors compatible with the surrounding environment (earth tones) including shades of green, brown and gray with no white or light shades and no bright tones. All windows shall be comprised of non-glare glass.

The approved structures shall be colored with only the colors and window materials authorized pursuant to this special condition. Alternative colors or materials for future repainting or resurfacing or new windows may only be applied to the structures authorized by this Coastal Development Permit if such changes are specifically authorized by the Executive Director as complying with this special condition.

## **7. 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.

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

This permit is only for the development described in this Coastal Development Permit. Pursuant to Title 14 California Code of Regulations Sections 13250(b)(6) and 13253(b)(6), the exemptions otherwise provided in Public Resources Code section 30610(a) and (b) shall not apply to the development governed by this Coastal Development Permit. Accordingly, any future structures, future improvements, or change of use to the permitted structures authorized by this permit, including but not limited to, any grading, clearing or other disturbance of vegetation other than as provided for in the approved landscape plan prepared pursuant to **Special Condition 5, Landscaping and Fuel Modification Plans**, shall require an amendment to this Coastal Development Permit 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 applicant has 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. 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 and coastal sage scrub habitat (ESHA) that will be disturbed by the proposed development, including fuel modification and brush clearance requirements on the project site and adjacent property. The chaparral and coastal sage scrub 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 and coastal sage scrub 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 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 applicant 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 applicant shall submit a revised or supplemental restoration plan with maintenance and monitoring provisions, for the review and approval of the Executive Director, to compensate for those portions of the original restoration plan that were not successful. Should supplemental restoration be required, 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 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 applicant 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 applicant has executed and recorded a deed restriction (if the applicant is not the owner, then the applicant 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 issuance of the Coastal Development Permit***, the applicant shall post performance bonds to guarantee implementation of the restoration plan as follows:

a) one equal to the value of the labor and materials; and b) one equal to the value of the maintenance and monitoring for a period of 5 years. Each performance bond shall be released upon satisfactory completion of items (a) and (b) above. If the applicant fails to either restore or maintain and monitor according to the approved plans, the Coastal Commission may collect the security and complete the work on the property.

## **B. Habitat Conservation**

***Prior to issuance of the Coastal Development Permit***, the applicant shall (or, if the applicant is not the owner of the habitat conservation site, then the owner 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 applicant shall submit evidence, for the review and approval of the Executive Director, that the recorded documents have been reflected in the Los Angeles County Tax Assessor Records.

If the mitigation parcel(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 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 and coastal sage scrub 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, any required irrigated fuel modification zones, and required off-site brush clearance areas (assuming a 200-foot radius from all structures). 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 and/or coastal sage scrub habitat ESHA, in accordance with this condition. After review and approval of the fee calculation, the fee shall be paid to the Mountains Recreation and Conservation Authority's Coastal Habitat Impact Mitigation Fund for the acquisition, permanent preservation or restoration of habitat in the Santa Monica Mountains coastal zone, with priority given to the acquisition of or extinguishment of all development potential on properties containing environmentally sensitive habitat areas and properties adjacent to public parklands.. The fee may not be used to restore areas where development occurred in violation of the Coastal Act's permit requirements.

## 11. Open Space Restriction

A. No development, as defined in Section 30106 of the Coastal Act, grazing, or agricultural activities shall occur in the Open Space Area as described and depicted in an Exhibit attached to the Notice of Intent to Issue Permit (NOI) that the Executive Director issues for this permit except for:

- (1) Fuel modification required by the Los Angeles County Fire Department undertaken in accordance with the final approved fuel modification plan approved pursuant to **Special Condition 5, Landscaping and Fuel Modification Plans**, of this permit or other fuel modification plans required and approved by the Commission pursuant to a different CDP(s) issued by the Commission;
- (2) Drainage and polluted runoff control activities required and approved pursuant to:
  - a. The drainage and runoff control plans approved pursuant to **Special Condition 3, Permanent Drainage and Runoff Control Plan**, of this permit; and
  - b. The landscaping and erosion control plans approved pursuant to **Special Condition 4, Interim Erosion Control & Construction Best Management Practices Plan, and Special Condition 5, Landscaping and Fuel Modification Plans**, of this permit;

- (3) Planting of native vegetation and other restoration activities, if approved by the Commission as an amendment to this coastal development permit or a new coastal development permit;
- (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 the issuance by the Executive Director of the NOI for this Coastal Development Permit***, the applicant shall submit for the review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, a formal legal description and graphic depiction, prepared by a licensed surveyor, of the portion of the subject property affected by this condition, as generally described on **Exhibit 8** attached to the findings in support of approval of this permit.

## **12. Site Inspection**

A. By acceptance of this permit, the applicant irrevocably authorizes, on behalf of the applicant and all successors-in-interest with respect to the subject property, Coastal Commission staff and its designated agents to enter onto the property to undertake site inspections for the purpose of monitoring compliance with the permit, including the special conditions set forth herein, and to document their findings (including, but not limited to, by taking notes, photographs, or video), subject to Commission staff providing 24 hours advanced notice to the contact person indicated pursuant to paragraph B prior to entering the property, unless there is an imminent threat to coastal resources, in which case such notice is not required. If two attempts to reach the contact person by telephone are unsuccessful, the requirement to provide 24 hour notice can be satisfied by voicemail, email, or facsimile sent 24 hours in advance or by a letter mailed three business days prior to the inspection. Consistent with this authorization, the applicant and his successors: (1) shall not interfere with such inspection/monitoring activities and (2) shall provide any documents requested by the Commission staff or its designated agents that are relevant to the determination of compliance with the terms of this permit.

**B. *Prior to issuance of the Coastal Development Permit***, the applicant shall submit to Commission staff the email address and fax number, if available, and the address and phone number of a contact person authorized to receive the Commission's notice of the site inspections allowed by this special condition. The applicant is responsible for updating this contact information, and the Commission is entitled to rely on the last contact information provided to it by the applicant.

## **13. 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.

#### **14. Removal of Excavated Material**

***Prior to issuance of the Coastal Development Permit***, the applicant shall provide evidence to the Executive Director of the location of the disposal site for all excess excavated material from the site. If the disposal site is located in the Coastal Zone, the disposal site must have a valid coastal development permit for the disposal of fill material. If the disposal site does not have a coastal permit, such a permit will be required prior to the disposal of material.

#### **15. Pool and Spa Drainage and Maintenance**

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

#### **16. 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 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 lot(s) whose development rights are to be extinguished (hereinafter, the "TDC lot(s)" or "TDC donor lot(s)") satisfy 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 construction and maintenance of roads, trails, and utilities consistent with existing easements.

- 3) The applicant shall demonstrate that a document in a form and content acceptable to the Executive Director has been executed and recorded, 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, of the TDC lot. The recorded document shall reflect that development in the parcel is restricted as set forth in this permit condition. The grant of easement, or irrevocable offer to dedicate, shall be recorded free of prior liens and encumbrances (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, such that (1) 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, lease, development, taxation, or encumbrance and (2) the single parcel created thereby shall not be divided, and none of the parcels existing at the time of this permit approval shall be alienated from each other or from any portion of the combined and unified parcel hereby created. The applicant shall execute and record a deed restriction against the TDC lot(s) and the lot(s) with which it/they are combined, 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, including tax liens, that the Executive Director determines may affect the enforceability of the restriction. After the deed restriction is recorded, the applicant shall provide evidence to the Executive Director that the applicant has provided a copy of the recorded deed restriction to the county assessor's office and requested that the assessor's office (1) revise its records and maps to reflect the combination of the parcels, including assigning a new, single APN for the unified parcel, and (2) send the Commission notice when it has done so, indicating the new, single APN.
- 5) The applicant shall submit, for the review and approval of the Executive Director, a title report for the combined lot created by recordation of the Deed Restriction that recombines 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.

#### **IV. Findings and Declarations**

The Commission hereby finds and declares:

##### **A. Project Description and Background**

###### **1. Project Description and Environmental Setting**

The applicant is proposing to construct a two-story, 35 ft. high, 5,788 sq. ft. single family residence with 680 sq. ft. attached garage, 123 sq. ft. balcony, swimming pool, septic system, driveway, retaining walls, and 1,070 cu. yds. grading (680 cu. yds cut, 390 cu. yds fill) (**Exhibits 3-7**). The application also includes a request for after-the-fact approval for creation of the subject lot that is the proposed project site, which was recognized pursuant to Conditional Certificate of Compliance #26571 (Instrument #84-1307548).

The subject site is a vacant 1.03 acre lot (APN 4448-021-028)<sup>1</sup> located within the Las Flores Canyon Watershed in the southeastern portion of the Santa Monica Mountains, unincorporated Los Angeles County. The site is situated on the south side of Rockview Terrace Road, south of Saddle Peak Road, and northwest of Tuna Canyon Road (**Exhibits 1-2**). The property is situated on the crest and descending hillside slope of a north-south trending ridge that sustains a dense growth of native chaparral vegetation, with the exception of the northern-most 100 feet of the property, which has been disturbed by geologic testing and brush clearance associated with a neighboring residence (**Exhibit 12**). Site elevations range from approximately 2,220 feet in the north, down to approximately 2,000 feet in the south.

To the northeast of the site, there are several existing single family residences, one of which is less than 100 feet from the subject property. A large area of undisturbed native chaparral vegetation exists to the south, east, and west of the site. The Little Las Flores blue line stream is approximately 500 feet southwest of the site. The applicant is proposing residential development on the disturbed northernmost portion of the property that is adjacent to Rockview Terrace Road and an existing residence to the northeast.

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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 Conditional Certificate of Compliance in 1984, 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 seven-lot subdivision of which the project site is a part as existing lots.

The project site is located on a ridge in a scenic area, distantly visible from various public viewing points, such as Tuna Canyon Road to the south, and public park land approximately 3,000 feet to the west and 4,000 feet to the south. However, no alternative siting or design options exist on the parcel in which the development would be significantly less visible from public viewing areas. There are no existing or mapped public trails on or adjacent to the subject property.

The Malibu/Santa Monica Mountains LUP designates the subject parcel as Mountain Land, allowing one dwelling unit per twenty acres.

## 2. Parcel Legality

In 1984, the County of Los Angeles issued a Conditional Certificate of Compliance (CC #26571) for the subject property, to “legalize” the lot pursuant to the Subdivision Map Act (**Exhibit 9**). In 1985, the County of Los Angeles issued a “Clearance of Conditions” for Certificate of Compliance #26571 (**Exhibit 10**), which confirmed that the condition of Certificate of Compliance to provide proof of access to a feasible building site from a public street was completed. By issuing a Clearance of Conditions, Los Angeles County considered the lot to comply with applicable provisions of the Subdivision Map Act and the County Subdivision Ordinance.

The lot was illegally created as a result of an unauthorized subdivision in which seven lots were separately conveyed via grant deeds within a one year period by a group of individuals where there was a unity of interest. These seven lots, created by separate grant deeds between June 15, 1964 and February 11, 1965, were not created in compliance with the applicable laws and regulations in effect at the time. The Subdivision Map Act (SMA), which sets statewide standards for the division of land that are implemented by local governments through their ordinances, required approval of a Tract Map for the division of five or more parcels by a subdivider within any one year period.

As such, the purported land division that created, for SMA and County purposes, the subject lot and six other lots in 1964-1965 required approval of a Tract Map. Since no Tract Map was approved by the County, the lots were not created in compliance with the SMA at the time of creation. Based on these facts, the County determined, in its review of an application for a certificate of compliance in 1984, that the subject lot was not created in compliance with the laws and regulations applicable at the time. The County of Los Angeles therefore issued a Conditional Certificate of Compliance (CC 26571) in 1984 (recorded as Instrument No. 84-1307548) and Clearance of Conditions in 1985 (recorded as Instrument No. 85-578212), in order to legalize the lot after-the-fact for purposes of the Subdivision Map Act.

The Coastal Act requires a coastal development permit prior to undertaking development, including the division of land. The vested rights exemption allows the completion or continuance of development that was commenced prior to the Coastal Act

without a coastal development permit only if, 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. As such, the application of the property owner for a certificate of compliance and the subsequent issuance of the Conditional Certificate of Compliance in 1984 and the 1985 Clearance of Conditions Certificate of Compliance, both of which “legalized” this lot for purposes of the Subdivision Map Act, is considered a form of land division and, therefore, requires a coastal development permit, pursuant to the provisions of the Coastal Act, to be effective.

There is no record of a coastal development permit issued for the creation of this lot either prior to or after the November 1, 1984 recording of Conditional Certificate of Compliance No. 26571. Since the Conditional Certificate of Compliance was recorded without the required coastal development permit, it was not legally effective, and no legal lot was created. A “Clearance of Conditions” in Certificate of Compliance No. 26571 was recorded on May 22, 1985, which confirmed that the condition of Certificate of Compliance No. 26571 to provide proof of access to a feasible building site on the property from a public street was completed. By issuing the Clearance of Conditions, Los Angeles County indicated that it then considered the lot to comply with applicable provisions of the Subdivision Map Act and the County Subdivision Ordinance.

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

## **B. Hazards and Geologic Stability**

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

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

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 and erosion, 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:** Assumption of Risk, Waiver of Liability and Indemnity

**Special Condition 3:** Permanent Drainage and Polluted Runoff Control Plans

**Special Condition 5:** Landscaping and Erosion Control Plans

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

### **C. Water Quality**

Section **30231** of the Coastal Act states that:

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

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

The Commission recognizes that new development in the Santa Monica Mountains has the potential to adversely impact coastal water quality and aquatic resources 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, reductions in groundwater recharge 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. Additionally, both leakage and periodic maintenance drainage of the proposed swimming pool, if not monitored and/or conducted in a controlled manner, may result in excess runoff and erosion potentially causing the instability of the site and adjacent properties and potential impacts from pool chemicals (i.e. pool water algaecides, chemical pH balancing, and other water conditioning chemicals).

Therefore, in order to minimize the potential for such adverse impacts to water quality and aquatic resources resulting from 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 and dry weather flows leaving the developed site, including: 1) site design, source control and/or treatment control measures; 2) implementing erosion sediment 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 3: Permanent Drainage and Polluted Runoff Control Plans**

**Special Condition 4:** Interim Erosion Control Plans and Construction Responsibilities

**Special Condition 5:** Landscaping and Erosion Control Plans

**Special Condition 13:** Removal of Native Vegetation

**Special Condition 14:** Removal of Excess Excavated Material

**Special Condition 15:** Pool Drainage and Maintenance

Therefore, the Commission finds that the proposed project, as conditioned, is consistent with Section 30231 of the Coastal Act.

## D. Cumulative Impacts

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 that:

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

The Commission has consistently emphasized the need to address the cumulative impacts of new development in the Malibu/Santa Monica Mountains area, particularly those of subdivisions, multi-family residential development, and second residential units, all of which result in increased density. It is particularly critical to evaluate the potential cumulative impacts of increased density given the existence of thousands of undeveloped and poorly sited parcels in the mountains that were created decades ago in antiquated subdivisions. The future development of the existing undeveloped parcels in conjunction with any increased density will result in tremendous increases in demands on road capacity, services, recreational facilities, beaches, and associated impacts to water quality, geologic stability and hazards, rural community character, and contribution to fire hazards. In addition, future build-out of many lots located in environmentally sensitive areas will create adverse cumulative impacts on coastal resources.

In this case, the applicant is requesting after-the-fact approval for creation of the parcel that is the proposed project site. As discussed below, the subject parcel was created



through a method that required approval by the Commission in a coastal development permit, but no CDP was obtained.

### **Regulation of Land Divisions**

In order to determine if the date and method of the creation of a parcel was in compliance with the laws and ordinances in place at the time, it is necessary to review the applicable regulations that govern the division of property in Los Angeles County, both at present and in the past.

The Subdivision Map Act (SMA) [Cal. Gov't Code §§ 66410 *et seq.*] is a state law that sets statewide standards for the division of land that are implemented by local governments through their ordinances. Among other requirements, the SMA currently requires that all divisions of land must be approved by the local government through a parcel map (for the division of four or fewer parcels) or a tract map (for the division of five or more parcels). Prior to legislative changes to the SMA that were effective 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, including the cumulative division of property by the same subdivider within a one-year period).

The SMA contains provisions that prohibit the sale, lease, or finance of any parcels for which a final map approval is required until such map is approved and recorded. The SMA also provides that any owner of property may request that the local government determine whether the property complies with the provisions of the SMA and local subdivision ordinances. If the local government, in this case, Los Angeles County, determines that the property complies, then the County shall issue a "certificate of compliance" (C of C) which will be recorded<sup>2</sup>. If the County determines that the property does not comply with the SMA or local ordinances, then it shall issue a "conditional certificate of compliance"<sup>3</sup>. The conditional C of C will be subject to conditions that would have been applicable to the division of the property at the time that the owner acquired it. If the applicant was the owner who divided the property in violation of the SMA, then the County may impose any conditions that would be applicable to a land division at the time the C of C is issued.

The Coastal Act requires a coastal development permit prior to undertaking "development", which includes: "...change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits..." (Coastal Act Section 30106). The subject division of land that created the parcel that is the project site occurred prior to the effective date of the Coastal Act (January 1, 1977). The vested rights exemption allows the completion or continuance of development that was commenced prior to the Coastal Act without a

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<sup>2</sup> This type of certificate of compliance issued pursuant to Gov't Code § 66499.35(a) is commonly known as an "exempt" C of C, in that it indicates that the parcel was created legally or before there were regulations.

<sup>3</sup> This type of certificate of compliance is issued pursuant to Gov't Code § 66499.35(b).

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 can not be considered vested or “grandfathered” development because it did not occur in compliance with the applicable laws and regulations (including the SMA and Los Angeles County subdivision ordinances) and with the required approvals. As such, the application of the property owner for a C of C and the subsequent issuance of a conditional C of C, after the effective date of the Coastal Act, which “legalized” this lot for purposes of the Subdivision Map Act, is considered a land division that requires a coastal development permit, pursuant to the provisions of the Coastal Act, to be effective. No CDP was obtained for this land division.

### **Description of Lot Creation and Chain of Title Information**

The owner of the subject lot in 1984 applied for and was granted a conditional certificate of compliance by the County of Los Angeles. The owner of the lot at that time did not obtain a coastal development permit to legalize the parcel. The applicant, who obtained the property in 2005, is now requesting after-the-fact approval of the lot that is the project site (APN 4448-021-028). This lot was created as one of eight total lots that were created by deed from one parent parcel between May 20, 1963 and February 11, 1965, as explained in greater detail below.

The applicant submitted a copy of the C of C issued by Los Angeles County for the subject project site. In order to review applicable records regarding the creation of the subject parcel, staff requested and the applicant submitted, a chain of title for the property and all available information from the County of Los Angeles’ file for the certificate of compliance. The chain of title includes all property deeds for the parcel, including those of the “parent parcel”, or the lot that was divided to create the subject parcel. 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 an approximately 20-acre parcel that was a portion of the northwest quarter of the northwest quarter of Section 24, Township 1 South, Range 17 West, San Bernardino meridian, in the County of Los Angeles, State of California. The original configuration of land, which was one parcel, now currently encompasses eight separate parcels, APNs 4448-021-028 (subject property), 4448-021-023, 4448-021-026, 4448-021-027, 4448-021-028, 4448-021-029, 4448-021-030, 4448-021-031, and 4448-021-032 (**Exhibit 11**). The eight lots were created from a single parcel between May 20, 1963 and February 11, 1965. As outlined in the table below, the 20-acre parent parcel was first subdivided into five separate lots by grant deeds: the first of the five lots was created on May 20, 1963, and on June 15, 1964, more than one year later, the other four lots were created. Given that more than a year had passed between division of the first lot and the other four, it appears that this first lot (now APN 4448-021-023) was created in compliance with the SMA and local subdivision ordinance. However, one of the remaining four created lots was subdivided further, into three additional lots, one of which is the subject parcel (APN 4448-021-028) (**Exhibit 11**). This subsequent division occurred less than a

year later and the subdivider had been a party involved in the prior division. According to the County of Los Angeles, the seven lots were created in violation of the SMA since five or more parcels were created within a one year period and by a group of individuals where there was a unity of interest. One of the seven lots contains a single-family residence constructed prior to the effective date of the Coastal Act. CDP's for residential development were also approved on another two of the seven lots, however, the permits expired and the residences were never built.

	Date	Conveyance	Identified as APN(s)	Development			
1	May 20, 1963	Donald McGovern conveyed a portion of the 20-acre parent parcel (appx. 1-acre) to Heinz & Erika Wiechmann by grant deed (Instru. # 1098).	4448-021-023	On March 29, 1979, the Commission issued a coastal development permit (CDP 79-4848) for development of a single family home on this property.* The residence was constructed and currently exists on the parcel.			
2	June 15, 1964	Donald McGovern, Allen and Charlotte Dale, and Freida Borman conveyed a portion of the 20-acre parent parcel (appx. 6.25-acre) to Frederick Scott and Robert Trujillo (Instru. # 258).	4448-021-027	This parcel is currently vacant. No development has been authorized by the Commission on the property.			
3	June 15, 1964	Donald McGovern, Allen and Charlotte Dale, and Freida Borman conveyed a portion of the 20-acre parent parcel (appx. 4.5-acre) to Jack Borman by grant deed (Instru. # 294).	4448-021-031 4448-021-032	Since this conveyance it appears that the lot was divided into two lots, as there are now two APNs associated with the lot. Both parcels are currently vacant, however, a CDP for a residence was approved by the Commission on APN 4448-021-031 (CDP 5-86-650).* This permit was issued in 1987, but the residence was never constructed.			
4	June 15, 1964	Donald McGovern, Allen and Charlotte Dale, and Freida Borman conveyed another portion of the 20-acre parent parcel (appx. 4-acre) to Jack Borman by grant deed (Instru. # 295).	A	Feb. 8, 1965	Jack Borman conveyed a portion to Ralph and Ruby Kewley by grant deed (Instru. # 661).	4448-021-028	Subject Parcel Vacant
			B	Feb. 11, 1965	Jack Borman conveyed a portion to William Adams by grant deed (Instru. # 1170).	4448-021-026	Contains residence that was constructed prior to the effective date of the Coastal Act.
			C	-	Remainder	4448-021-029	Currently vacant. No development has been authorized by the Commission.
5	June 15, 1964	The remaining portion of land (appx. 4-acre) that resulted from the partial land conveyances described above. Sheldon Greene conveyed this lot area to Harold Behl by grant deed Aug. 28, 1964 (Instru. # 1429).	4448-021-030	This parcel is currently vacant, however, the Commission had approved a CDP for a residence on the property (CDP 5-90-225).* However, the permit was never issued and had expired on July 12, 1993.			

\* The CDP approval did not explicitly involve authorization for the creation of the lot because the approval was based on the premise that the subject site had been legally created.

Based on these facts, the County determined, in its review of an application for a certificate of compliance, that the subject lot was not created in compliance with the laws and regulations applicable at the time of its original identification in 1965. The County of Los Angeles therefore issued a Conditional Certificate of Compliance in 1984 in order to authorize the lot after-the-fact in regard to compliance with the Subdivision Map Act. So, 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. As such, the application of the property owner for a certificate of compliance and the subsequent issuance of the Conditional Certificate of Compliance in 1984 and the 1985 Clearance of Conditions, both of which “legalized” this lot for purposes of the Subdivision Map Act, is considered a form of land division and, therefore, requires a coastal development permit, pursuant to the provisions of the Coastal Act, to be effective.

There is no record of a Coastal Development Permit issued for the creation of this lot (APN 4448-021-028) either prior to or after the November 1, 1984 recording of Conditional Certificate of Compliance. Since the Conditional Certificate of Compliance was recorded without the required Coastal Development Permit, it was not legally effective, and no legal lot was created. A “Clearance of Conditions” in Certificate of Compliance was recorded on May 22, 1985, which confirmed that the condition of Certificate of Compliance to provide proof of access to a feasible building site from a public street, was completed. By issuing a Clearance of Conditions, Los Angeles County considered the lot to comply with applicable provisions of the Subdivision Map Act and the County Subdivision Ordinance.

### **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, as well as an analysis of project alternatives that would eliminate or reduce impacts. 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, which created several separate parcels (including the subject parcel), 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. Additionally, the Commission has previously approved residential development on one or more of the other parcels involved in the unpermitted land division. Further, one or more of the other parcels created in the subject land division are developed with residences that were constructed prior to the effective date of the Coastal Act (January 1, 1977).

The Commission has addressed similar situations of unpermitted land divisions in past CDP actions (including 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 4-04-032 (Hannon), the Commission approved the creation of a lot because the Commission had already approved a permit for residential development on one of the parcels 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 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 lots created from the parent parcel, and the Commission has previously approved CDPs for development on other lots created from the same 20-acre parent parcel, one of which was effective at the time the applicant purchased the property. The applicant purchased the property in 2005 for approximately \$415,000 according to tax assessments available as public information. Although the 1984 Conditional Certificate of Compliance ("CoC") was recorded against the property indicating that the original subdivision was not performed in compliance with applicable laws, CoCs indicate the recognition of a lot, and nothing in the recordation of the CoC revealed the fact that it had been issued without a coastal development permit. In addition, a Clearance of Conditions had been recorded on title to the property as well, suggesting that the lot was now fully developable. Thus, a title search would not have indicated to the purchaser the legal status of the lot. The parcel was designated in the County's certified LUP in 1986 as Mountain Land, which allows for 1 dwelling unit per 20 acres. However, based on the purchase price, and the fact that several CDPs were approved for residential development on nearby parcels that were created from the same parent parcel, the applicant had reason to believe that he had purchased a lot on which he 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. In this case, the after-the-fact approval of an additional parcel will increase the density of development in the area. It is particularly critical to evaluate the potential cumulative impacts of increased density given the existence of thousands of undeveloped and poorly sited parcels in the mountains that were created decades ago in antiquated subdivisions. The cumulative effect of developing additional lots in conjunction with the large number of existing undeveloped lots will be a tremendous increase in the demand for road capacity, services, recreational facilities, and beaches. The construction of additional facilities to serve this build-out, particularly within environmentally sensitive areas will create adverse cumulative impacts on coastal resources.

As a means of addressing the cumulative impacts of increased density 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), 4-05-141 (Biebuyck), and 4-07-001 (Hoang). 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 the number of 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 subject parcel, which was created through an unpermitted land division in 1965. 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 other lot(s) that was(ere) part of the previous land division 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 are adequately mitigated.

Therefore, the Commission 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 identifying a vacant parcel that qualifies for TDC credit, recordation of an open space easement across the parcel that ensures the site may not be developed in the future, and combining the TDC parcel with an adjacent developable parcel.

The following special conditions are required, as determined in the findings above, to assure the project's consistency with Section 30250 of the Coastal Act:

### **Special Condition 16. Cumulative Impact Mitigation**

The Commission finds that, as conditioned, the proposed project is consistent with §30250 of the Coastal Act.

#### **E. Environmentally Sensitive Habitat**

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.

### **Project Description and Site Specific Biological Resource Information**

The subject site is a vacant 1.03 acre lot located within the Las Flores Canyon Watershed in the southeastern portion of the Santa Monica Mountains. The property is situated on the crest and descending hillside slope of a north-south trending ridge that sustains a dense growth of native chaparral vegetation, with the exception of the northern-most 100 feet of the property, which has been disturbed by geologic testing and brush clearance associated with a neighboring residence. Site elevations range from approximately 2,220 feet in the north, down to approximately 2,000 feet in the south.

To the northeast of the site, there are several existing single family residences, one of which is less than 100 feet from the subject property. A large area of undisturbed native chaparral vegetation exists to the south, east, and west of the site. The Little Las Flores blue line stream is approximately 500 feet southwest of the site. The applicant is proposing residential development on the disturbed northernmost portion of the property that is adjacent to Rockview Terrace Road and an existing residence to the northeast.

The applicant submitted the Biological Assessment, 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 describes these habitats thus:

#### ***Disturbed Habitat***

*The northern approximately 20% of the site has been cleared of most vegetation.*

#### ***Mixed Chaparral***

*The remainder of the site, south of the disturbed area, contains dense mixed chaparral vegetation, including ceanothus, laurel sumac, toyon, and black sage.*

Commission staff reviewed current and historic aerial photographs of the subject property and confirmed that the northernmost 100-ft. of the property is disturbed and the remainder of the property is comprised of undisturbed native chaparral vegetation that is part of a large, contiguous area of chaparral habitat to the south, east and west of the site. **Exhibit 12** is a current aerial photograph of the immediate area around the project site.

According to public information, the applicant purchased the subject parcel in 2005 for \$415,000. The parcel was designated in the Los Angeles County Land Use Plan for residential use. The land use designation of the property is Mountain Land, which allows residential development at a maximum density of 1 dwelling unit per 20 acres of land. The parcel is approximately 1-acre in size, and there are other scattered, residential developments in the same area. There is no parkland or public open space directly adjacent to the project site (although there are significant areas of parkland nearby). There is currently no offer to purchase the property from any public park agency.

The project has been designed to place all structures in the disturbed northernmost portion of the site that is directly adjacent to Rockview Terrace Road. Any alternative location on the site would likely include the removal of more native vegetation. Not including the area of the driveway or turnaround, the proposed development area is estimated by the applicant to measure approximately 8,664 sq. ft. 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 100 feet from the proposed structures. A "C" Zone (thinning zone) is provided for a distance of 100 feet beyond the "A" and "B" zones.

#### **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>4</sup> (hereinafter "Dr. Dixon Memorandum"), which is incorporated as if set forth in full herein.

Unfortunately, the native habitats of the Santa Monica Mountains, such as coastal sage scrub, chaparral, oak woodland and riparian woodlands 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 areas of native habitats, such as coastal sage scrub, chaparral, oak woodland, and riparian woodlands 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 consistent with the Commission's past findings in support of its actions on many permit applications and in adopting the Malibu LCP<sup>5</sup>.

As described above, the project site, with the exception of the northernmost 100 feet of the property, contains pristine chaparral habitat 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 habitat on the project site meets the definition of ESHA in the Coastal Act.

### **Resource Dependent Use**

The Commission finds that the subject property and the surrounding area constitutes an environmentally sensitive habitat area (ESHA), with the exception of the disturbed northernmost 100 feet of the property. Although the proposed structures will not be located within ESHA, required fuel modification to protect these structures from wildfire

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<sup>4</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>

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

will require removal or modification of vegetation that is 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 removal of ESHA only from fuel modification for fire protection purposes around the proposed residence, the project would 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.

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 in the discussion of cumulative impacts above, the parcel in question was not created legally. However, for the reasons set forth above, the Commission is approving the after-the-fact division of the parcel with mitigation. Further, 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.

**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 required fuel modification, 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.

### **Open Space Restriction**

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, this project must constitute the maximum amount of ESHA destruction on the site and the remaining ESHA on the property must be preserved in perpetuity.

As such, the approved project will minimize impacts to ESHA to the maximum extent feasible if the remaining ESHA on the project site is protected as open space. The Commission has found, in past permit actions 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 (MRCA). The MRCA accepts and monitors open space easements over larger areas of land to ensure the preservation of ESHA. However, in this case, due to the relatively small size of the parcel, the Commission requires the applicant to limit development over the open space area (shown in **Exhibit 8**) through an open space restriction. The open space restriction will ensure that development within the open space area must be limited to: approved fuel modification and drainage control activities; planting of native vegetation and other restoration activities; and construction and maintenance of public hiking trails, if approved by the Commission as an amendment to this coastal development permit, or as a new coastal development permit, and the use of existing easements. To implement the open space restriction, the applicant is required to record a deed restriction that imposes the terms and conditions of this permit, including the open space restriction (along with a legal description and graphic depiction of the open space area) 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. Only as so conditioned, will the proposed project minimize impacts to ESHA, pursuant to Section 30240 of the Coastal Act.

### **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<sup>6</sup>, 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

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<sup>6</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>

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 condition 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. Only as conditioned will the proposed project minimize impacts to ESHA, pursuant to Section 30240 of the Coastal Act.

### **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, the Commission 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, the Lighting Restriction condition 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 on this parcel. Therefore, the Commission finds it is necessary to limit fencing to the perimeter of the approved development area, turnaround, and driveway. This is required to be shown on the landscaping plan.

Additionally, in order to ensure that vegetation clearance for fire protection purposes does not occur prior to commencement of grading or construction of the proposed structures, the Commission finds that it is necessary to require that natural vegetation shall not be removed until grading or building permits have been secured and construction of the permitted structures has commenced. This limitation avoids loss of natural vegetation coverage resulting in unnecessary erosion in the absence of adequately constructed drainage and run-off control devices and implementation of the landscape and interim erosion control plans.

The Commission also 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, the future development restriction is required.

Further, the Commission 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. Finally, in order to ensure that the terms and conditions of this permit are adequately implemented, the Commission conditions the applicant to allow staff to enter onto the property (subject to 24 hour notice to the property owner) to undertake site inspections for the purpose of monitoring compliance with the permit.

The following special conditions are required, as determined in the findings above, to assure the project's consistency with Section 30240 of the Coastal Act:

- Special Condition 5.** Landscaping and Fuel Modification Plans
- Special Condition 7.** Lighting Restriction
- Special Condition 8.** Future Development Restriction
- Special Condition 9.** Deed Restriction
- Special Condition 10.** Habitat Impact Mitigation
- Special Condition 11.** Open Space Restriction
- Special Condition 12.** Site Inspection
- Special Condition 13.** Removal of Natural Vegetation

For the reasons set forth above, the Commission finds that the proposed project, as conditioned, is consistent with Section 30240 of the Coastal Act.

## F. 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 Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

The subject site is a vacant 1.03 acre lot located within the Las Flores Canyon Watershed in the southeastern portion of the Santa Monica Mountains. The site is situated on the south side of Rockview Terrace Road, south of Saddle Peak Road, and northwest of Tuna Canyon Road. The property is situated on the crest and descending hillside slope of a north-south trending ridge. Site elevations range from approximately 2,220 feet in the north, down to approximately 2,000 feet in the south. To the northeast of the site, there are several existing single family residences, one of which is less than 100 feet from the subject property. The applicant is proposing residential development in the northernmost portion of the property that is adjacent to Rockview Terrace Road and an existing residence to the northeast.

The project site is located on a ridge in a scenic area, distantly visible from various public viewing points, such as Tuna Canyon Road to the south, and public park land approximately 3,000 feet to the west and 4,000 feet to the south. However, no alternative siting or design options exist on the parcel in which the development would be significantly less visible from public viewing areas. There are no existing or mapped public trails on or adjacent to the subject property.

Development of the proposed residence raises two issues regarding the siting and design: (1) whether or not public views from public roadways will be adversely affected; or, (2) whether or not public views from public lands and trails will be affected.

The proposed residence is two-stories with a maximum height of 35 feet from existing grade at any given point. The residence is designed to be partially stepped into the hillside. The development has been clustered on one pad area less than 10,000 sq. ft. in size and designed to reduce landform alteration and removal of native vegetation that is considered environmentally sensitive habitat. The proposed structures are sited and designed to minimize impacts to visual resources to the extent feasible.

The proposed structure is compatible with the character of other residential development in the area. The proposed structure height is consistent with the maximum height (35 feet above existing grade) that the Commission has permitted in past decisions in the Santa Monica Mountains and with the maximum height (35 feet) allowed under the guidance policies of the Malibu/Santa Monica Mountains LUP.

However, the proposed development will be unavoidably visible from public viewing areas. The Commission has considered siting and design alternatives that would avoid or reduce any impacts to visual resources. There is no feasible alternative whereby the structure would not be visible from public viewing areas. To minimize the visual impacts associated with development of the project site, the Commission requires: that the structure be finished in a color consistent with the surrounding natural landscape; that windows on the development be made of non-reflective glass; use of appropriate, adequate, and timely planting of native landscaping to soften the visual impact of the development from public view areas; and a limit on night lighting of the site to protect the nighttime rural character of this portion of the Santa Monica Mountains.

In recognition that future development normally associated with a single-family residence, that might otherwise be exempt, has the potential to impact scenic and visual resources of the area, the Commission requires that any future improvements on the subject property shall be reviewed by the Commission for consistency with the resource protection policies of the Coastal Act through a coastal development permit.

Additionally, the Commission requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property.

The following special conditions are required to assure the project's consistency with Section 30251 of the Coastal Act:

**Special Condition 5:** Landscaping and Fuel Modification Plans

**Special Condition 6:** Structural Appearance

**Special Condition 7:** Lighting Restriction

**Special Condition 8:** Future Development Restriction

**Special Condition 9:** Deed Restriction

For the reasons set forth above, the Commission finds that the proposed project, as conditioned, is consistent with Section 30251 of the Coastal Act.

## **G. Local Coastal Program Preparation**

Section **30604(a)** 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 coastal 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 projects will be in conformity with the provisions of Chapter 3 if certain conditions are incorporated into the projects and are accepted by the applicant. As conditioned, the proposed development will avoid or minimize adverse impacts and is found to be consistent with the applicable policies contained in Chapter 3. The following special conditions are required to assure the project's consistency with Section 30604 of the Coastal Act:

### **Special Conditions 1 through 16**

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. California Environmental Quality Act**

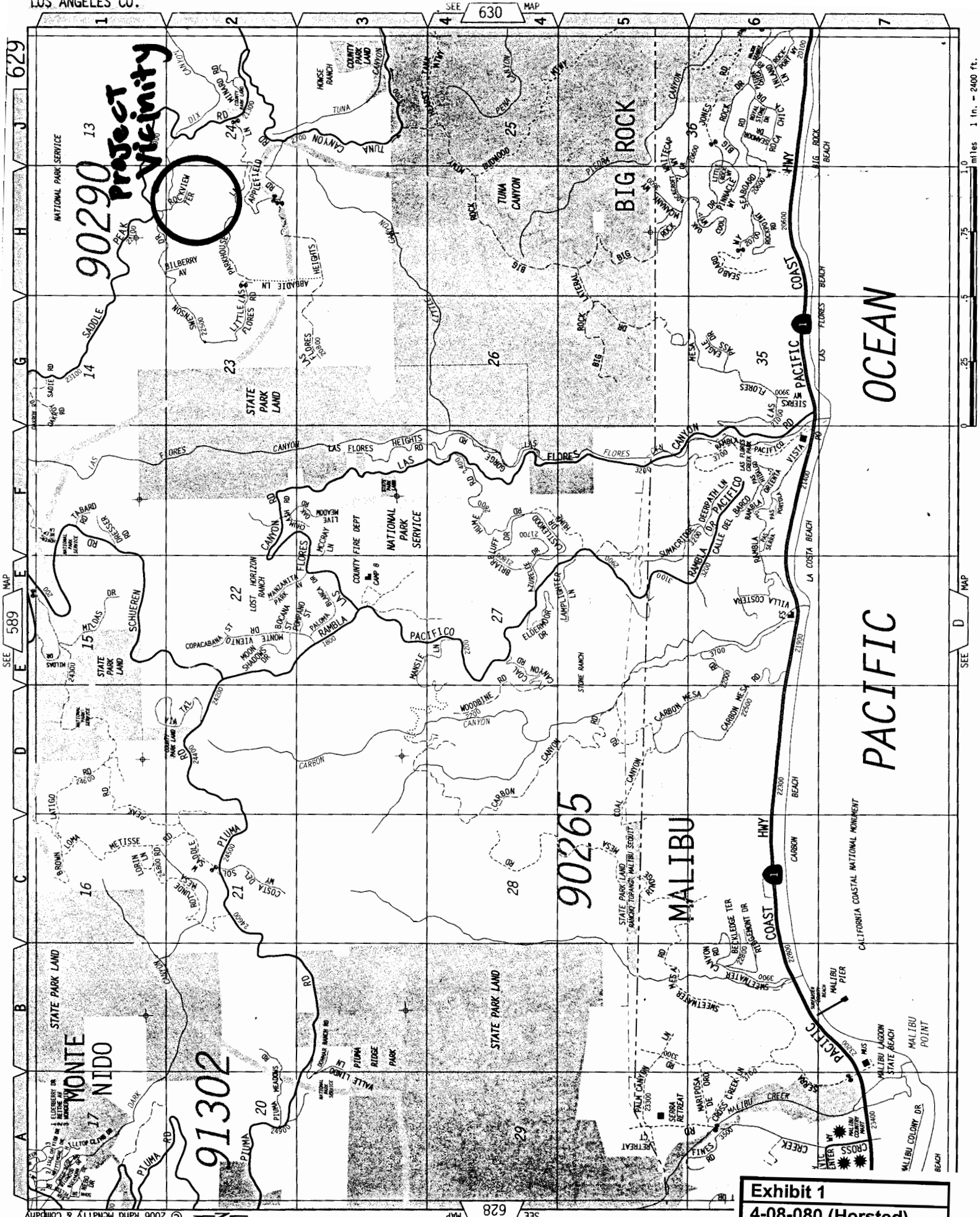
Section 13096(a) of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California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

The Commission incorporates its findings on Coastal Act consistency at this point as if set forth in full. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. As discussed in detail above, project alternatives and mitigation measures have been considered and incorporated into the project. Five types of mitigation actions include those that are intended to avoid, minimize, rectify, reduce, or compensate for significant impacts of development. Mitigation measures required as part of this coastal development permit include the avoidance of impacts to ESHA through clustering structures, and by prohibiting development outside of the approved development area as required by the recording an open space deed restriction. Mitigation measures required to minimize impacts include requiring drainage best management practices (water quality), interim erosion control (water quality and ESHA), limiting lighting (ESHA), restricting structure color (visual resources), and requiring future improvements to be considered through a CDP. Finally, the habitat impact mitigation condition is a measure required to compensate for impacts to ESHA.

The following special conditions are required to assure the project's consistency with Section 13096 of the California Code of Regulations:

**Special Conditions 1 through 16**

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.



SEE 589 MAP

SEE 628 MAP

**Exhibit 1**  
**4-08-080 (Horsted)**  
**Vicinity Map**

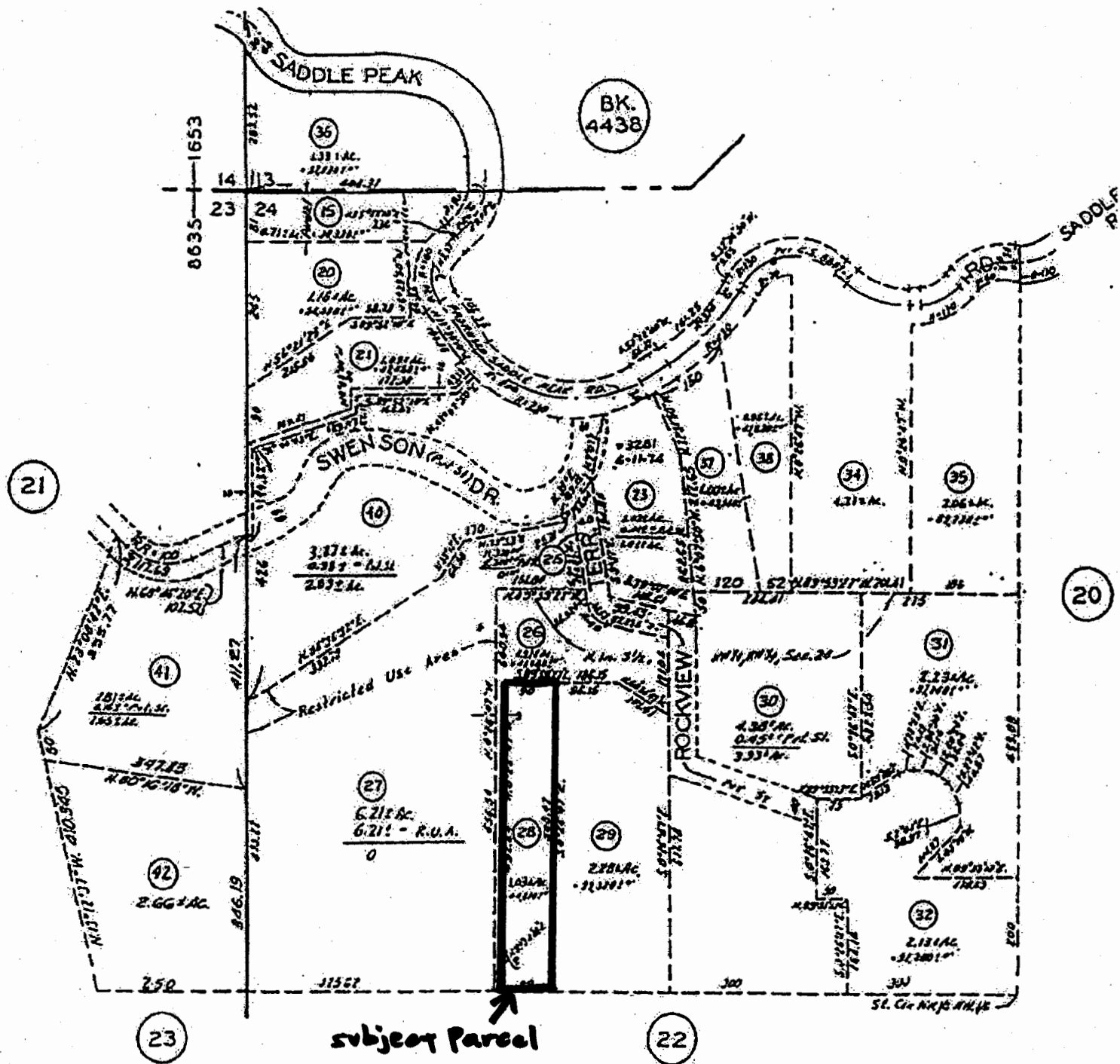
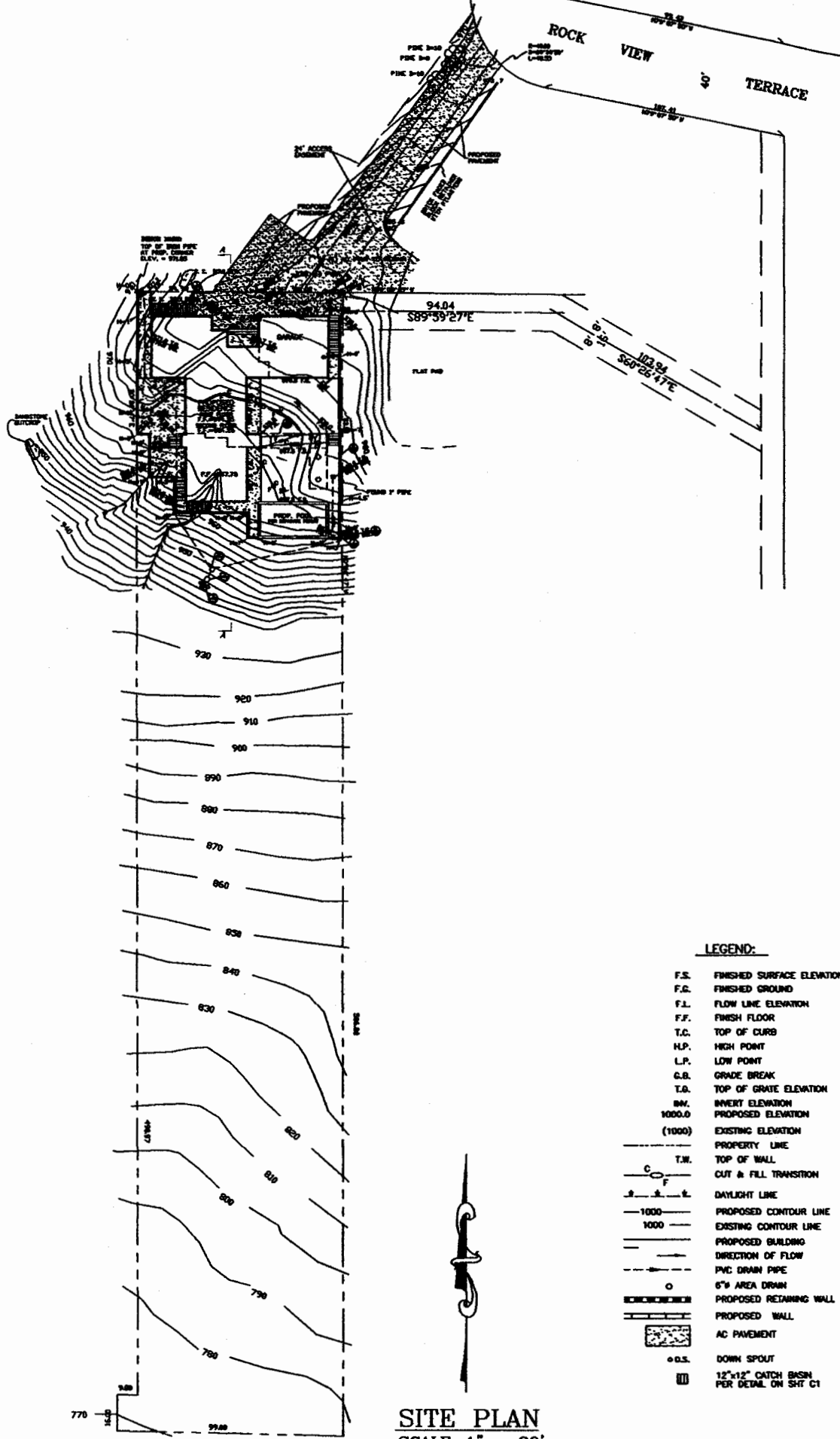


Exhibit 2
4-08-080 (Horsted)
Parcel Map





**SITE PLAN**  
SCALE: 1" = 30'

Exhibit 3
4-08-080 (Horsted)
Site Plan

PROPOSED RESIDENCE

R

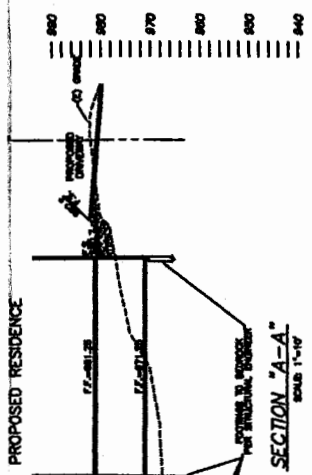
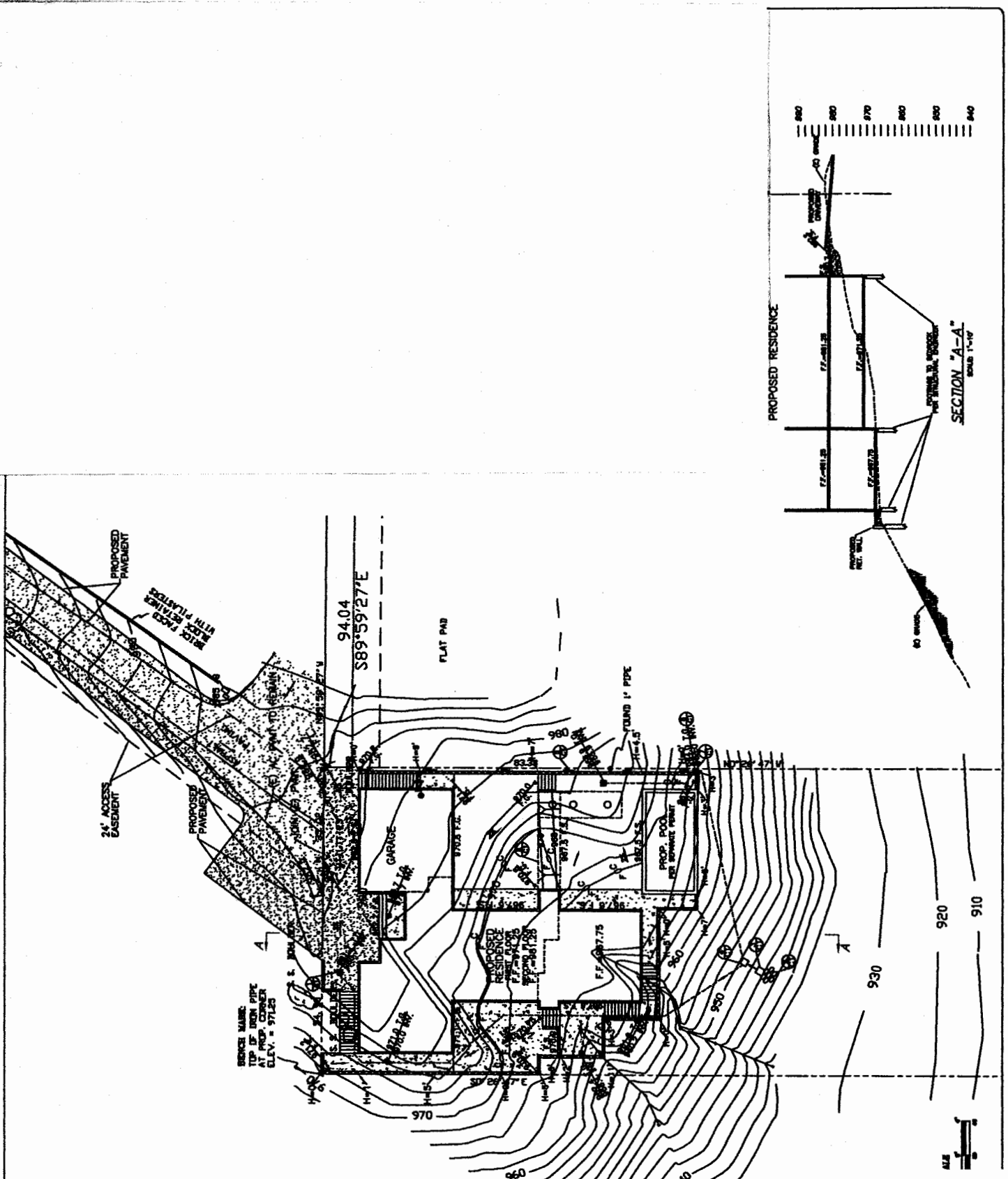
DATE	07/28/07
V.D.	AS SHOWN
SCALE	AS SHOWN
PROJECT	07-08-080
NO.	2

**PEG**  
PROJECT ENGINEERING GROUP  
Civil and Structural Engineering

15335 MORRISON ST.  
SUITE 305  
SHERMAN OAKS, CA 91403  
(818) 784-8110  
(818) 784-8116 FAX

**GRADING & DRAINAGE NOTES**  
ADDRESS: 2118 ROCKVIEW TERRACE,  
TOPANGA, CA 90290  
OWNER: ERIC HORSTED

NO.	DATE	BY



**Exhibit 4**  
**4-08-080 (Horsted)**  
**Grading Plan**

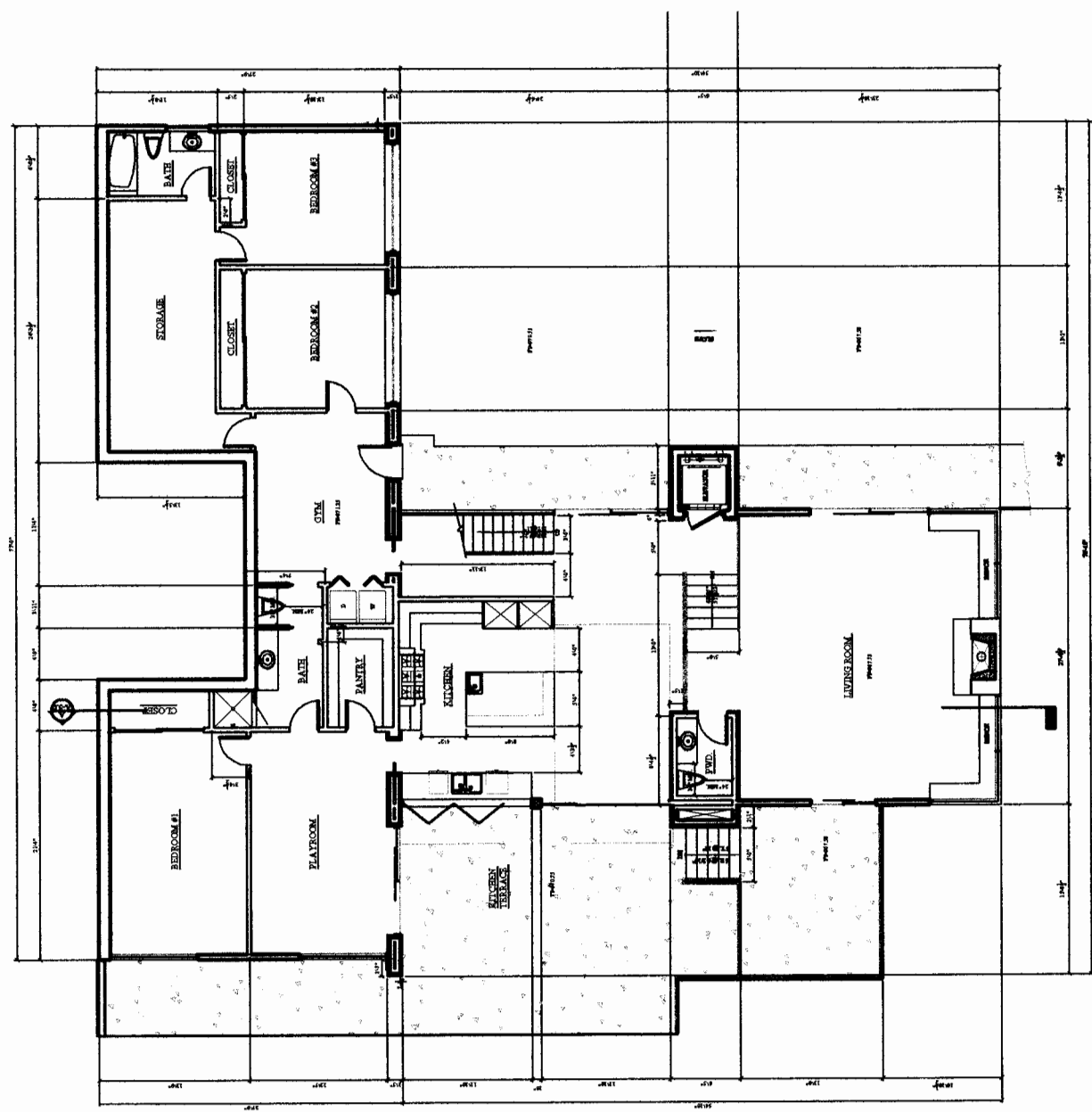
SCHEDULE	
1	FOUNDATION
2	FRAMING
3	MECHANICAL
4	ELECTRICAL
5	PLUMBING
6	PAINTING
7	FINISHES

1. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE CALIFORNIA BUILDING CODES AND ALL APPLICABLE LOCAL ORDINANCES.
2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPLICABLE AGENCIES.
3. THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AT ALL TIMES.
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**GENERAL NOTES**

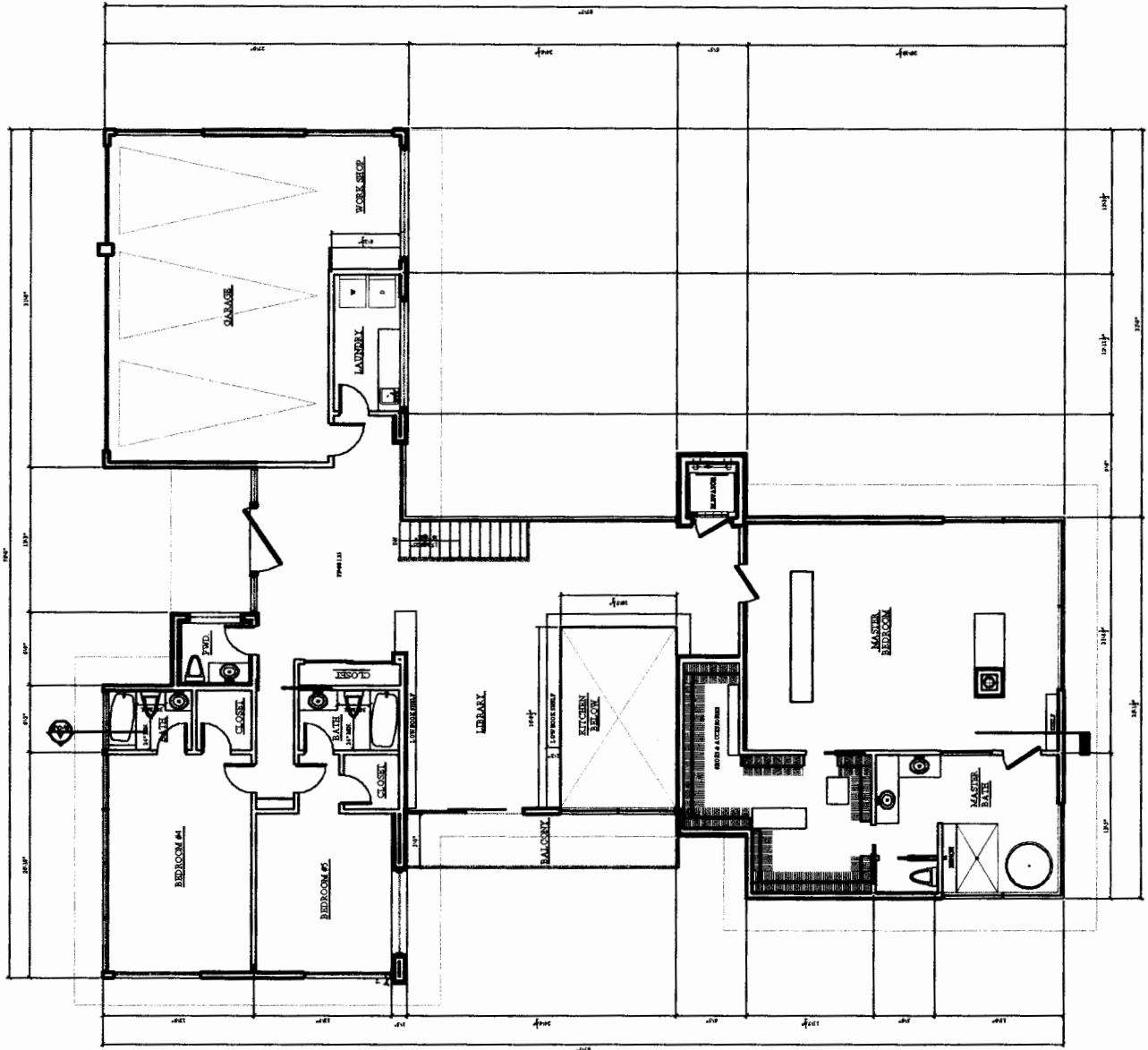


**Exhibit 5**  
**4-08-080 (Horsted)**  
**1st Floor Plan**

NO.	DESCRIPTION	DATE
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2	PERMITS	11/15/11
3	CONSTRUCTION	12/15/11
4	FINAL	01/15/12

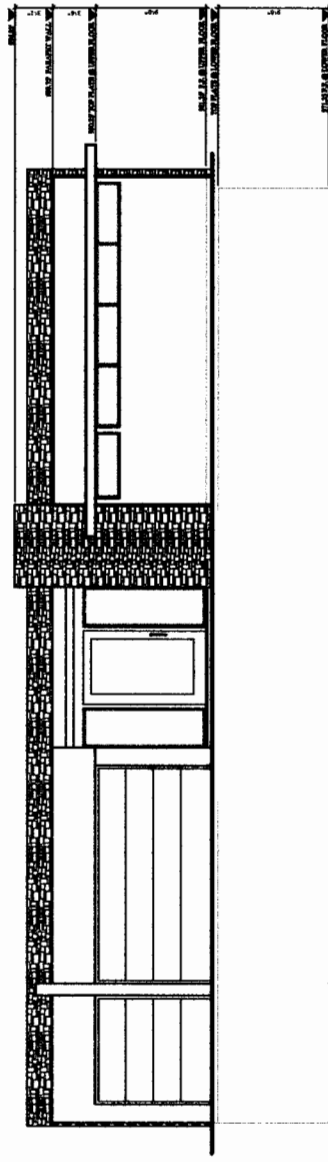
1. ALL DIMENSIONS UNLESS OTHERWISE NOTED.
2. FINISHES TO BE DETERMINED BY THE CLIENT.
3. SEE ARCHITECTURAL SPECIFICATIONS FOR MATERIALS AND FINISHES.
4. SEE MECHANICAL AND ELECTRICAL PLANS FOR SYSTEMS.
5. SEE STRUCTURAL PLANS FOR FOUNDATION AND FLOOR SYSTEMS.
6. SEE EXTERIOR ARCHITECTURAL FOR LANDSCAPE AND CURBS.
7. SEE EXTERIOR ARCHITECTURAL FOR PORCHES AND PATIOS.
8. SEE EXTERIOR ARCHITECTURAL FOR WALLS AND ROOFING.
9. SEE EXTERIOR ARCHITECTURAL FOR WINDOWS AND DOORS.
10. SEE EXTERIOR ARCHITECTURAL FOR SITES AND TERRACE.
11. SEE EXTERIOR ARCHITECTURAL FOR DRIVEWAY AND GARAGE.
12. SEE EXTERIOR ARCHITECTURAL FOR FENCE AND GATES.
13. SEE EXTERIOR ARCHITECTURAL FOR LIGHTING AND IRRI.
14. SEE EXTERIOR ARCHITECTURAL FOR UTILITY AND SERVICE.
15. SEE EXTERIOR ARCHITECTURAL FOR SIGNAGE AND MARKING.
16. SEE EXTERIOR ARCHITECTURAL FOR SECURITY AND SAFETY.
17. SEE EXTERIOR ARCHITECTURAL FOR ACCESSIBILITY AND COMPLIANCE.
18. SEE EXTERIOR ARCHITECTURAL FOR ENERGY EFFICIENCY.
19. SEE EXTERIOR ARCHITECTURAL FOR SUSTAINABILITY AND GREEN.
20. SEE EXTERIOR ARCHITECTURAL FOR HISTORIC PRESERVATION.
21. SEE EXTERIOR ARCHITECTURAL FOR CULTURAL HERITAGE.
22. SEE EXTERIOR ARCHITECTURAL FOR COMMUNITY INTEGRATION.
23. SEE EXTERIOR ARCHITECTURAL FOR SOCIAL RESPONSIBILITY.
24. SEE EXTERIOR ARCHITECTURAL FOR ETHICAL PRACTICES.
25. SEE EXTERIOR ARCHITECTURAL FOR TRANSPARENCY AND ACCOUNTABILITY.
26. SEE EXTERIOR ARCHITECTURAL FOR INNOVATION AND CREATIVITY.
27. SEE EXTERIOR ARCHITECTURAL FOR LEADERSHIP AND INSPIRATION.
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- KEY NOTES**
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**Exhibit 6**  
**4-08-080 (Horsted)**  
**2<sup>nd</sup> Floor Plan**

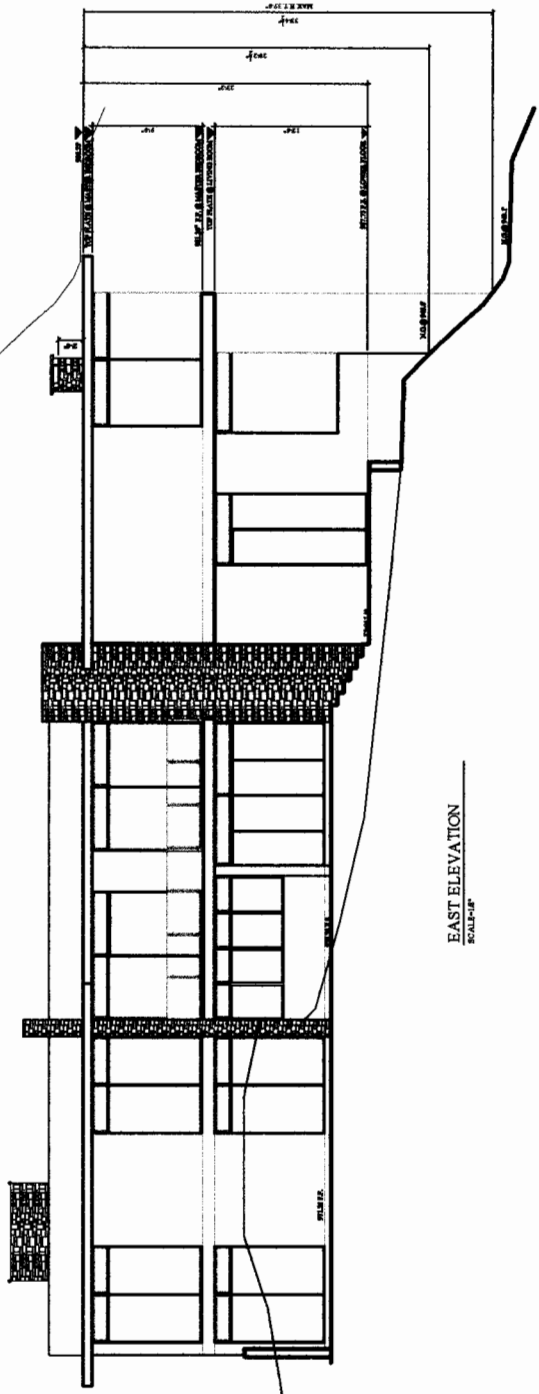
NO.	DESCRIPTION	DATE	BY
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NORTH ELEVATION  
 SCALE: 1/8" = 1'-0"

NORTH ELEVATION

SECTION 1



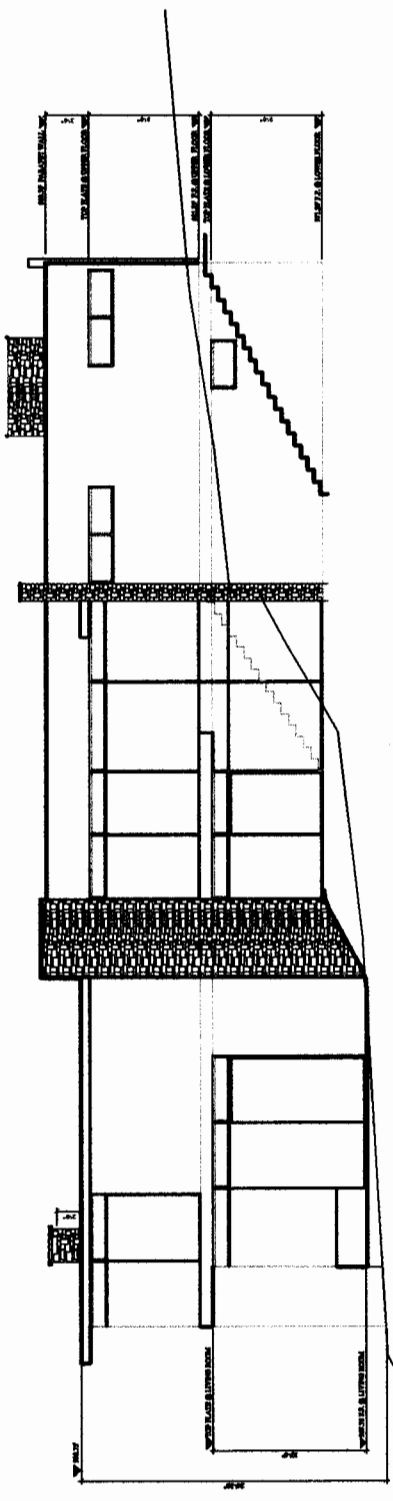
EAST ELEVATION  
 SCALE: 1/8" = 1'-0"

EAST ELEVATION

SECTION 2

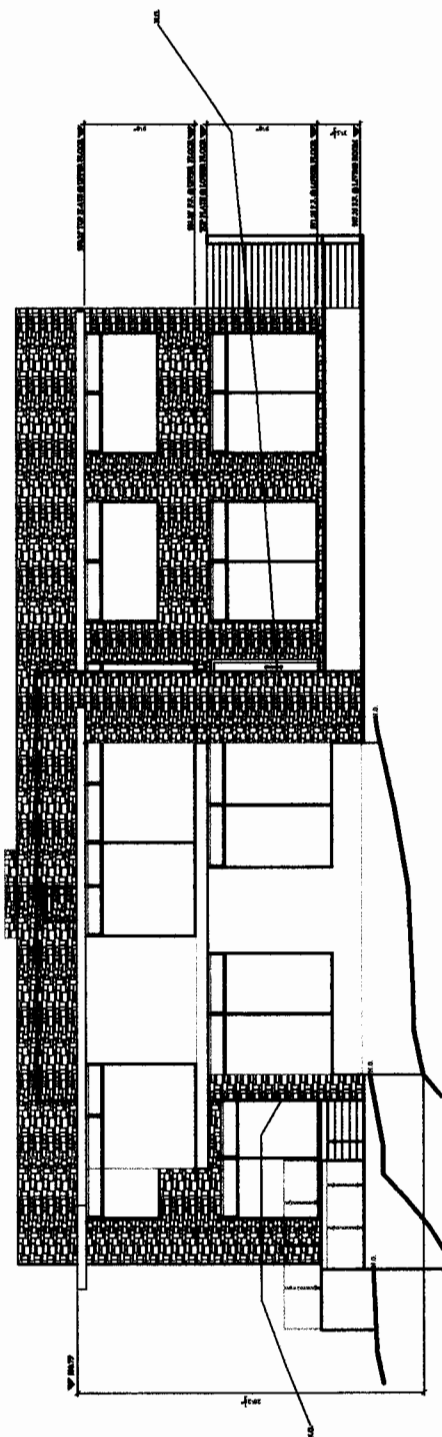
Exhibit 7
4-08-080 (Horsted)
Elevations

NO.	REVISION	DATE
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2	ISSUES	
3	ISSUES	
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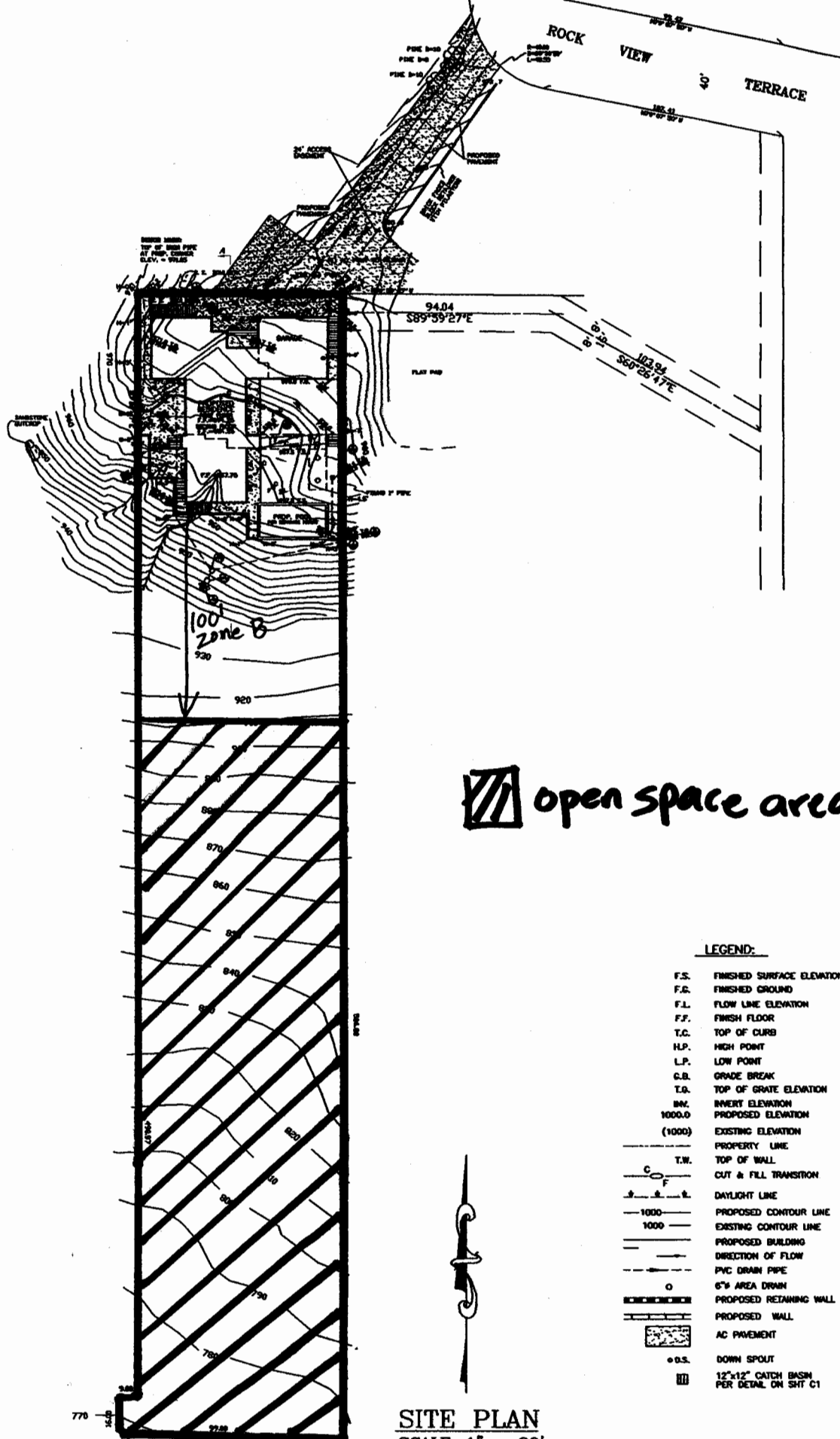
**WEST ELEVATION**  
 SCALE: 1/8" = 1'-0"

**WEST ELEVATION**



**SOUTH ELEVATION**  
 SCALE: 1/8" = 1'-0"

**SOUTH ELEVATION**



 open space area

**LEGEND:**

- F.S. FINISHED SURFACE ELEVATION
- F.G. FINISHED GROUND
- F.L. FLOW LINE ELEVATION
- F.F. FINISH FLOOR
- T.C. TOP OF CURB
- H.P. HIGH POINT
- L.P. LOW POINT
- G.B. GRADE BREAK
- T.G. TOP OF GRATE ELEVATION
- IN. INVERT ELEVATION
- 1000.0 PROPOSED ELEVATION
- (1000) EXISTING ELEVATION
- PROPERTY LINE
- T.W. TOP OF WALL
- C F CUT & FILL TRANSITION
- DAYLIGHT LINE
- 1000- PROPOSED CONTOUR LINE
- 1000 EXISTING CONTOUR LINE
- PROPOSED BUILDING
- DIRECTION OF FLOW
- PVC DRAIN PIPE
- 6" AREA DRAIN
- PROPOSED RETAINING WALL
- PROPOSED WALL
- AC PAVEMENT
- o D.S. DOWN SPOUT
- 12"x12" CATCH BASIN PER DETAIL ON SHT C1

**SITE PLAN**  
SCALE: 1" = 30'

PROPOSED RESIDENCE

<b>Exhibit 8</b>
<b>4-08-080 (Horsted)</b>
<b>Open Space Area</b>

RECORDING REQUESTED BY

Department of Regional Planning  
320 West Temple Street  
Room 1387, Hall of Records  
Los Angeles, California 90012

84 1307548

8

AND WHEN RECORDED MAIL TO

Name: WILLIAM A. & YVONNE STRAHN  
Street: 2251 20th ST  
City: SANTA MONICA, CA. 90405

RECORDED IN OFFICIAL RECORDS  
RECORDER'S OFFICE  
LOS ANGELES COUNTY  
CALIFORNIA  
2J MIN. 10 AM, NOV 1 1984  
PAST.

SPACE ABOVE THIS LINE FOR RECORDER'S USE

CERTIFICATE OF COMPLIANCE 26571



REQUEST FOR CERTIFICATE OF COMPLIANCE

I/We the undersigned owner(s) of record (and/or vendor(s)) in the following described property within the unincorporated territory of the County of Los Angeles, hereby REQUEST the County of Los Angeles to determine if said property described below complies with the provisions of the Subdivision Map Act (Sec. 66410 et seq., Government Code, State of California) and the County Subdivision Ordinance (Ord. 4478, County of Los Angeles)

*William A. Strahn*  
Signature

*Yvonne Strahn*  
Signature

Signature

WILLIAM A. STRAHN  
Name Typed

YVONNE STRAHN  
Name Typed

Name Typed

SEPTEMBER 5, 1984  
Date

SEPTEMBER 5, 1984  
Date

Date

PARCEL 1:

LEGAL DESCRIPTION (TYPED)

That portion of the Northwest quarter of the Northwest quarter of Section 24, Township 1 South, Range 17 West, San Bernardino Meridian, according to the official plat of said land filed in the District Land Office on August 31, 1896, described as follows:

Beginning at a point on the westerly line of said Section 24, distant thereon South 0 degrees 08' 40" East 842.00 feet from the Northwest corner of said Section 24, thence North 58 degrees 36' 32" East 392.70 feet; thence North 33 degrees 13' 00" East 64.50 feet; thence North 79 degrees 33' 00" East 170.00 feet; thence North 35 degrees 00' 00" East 25.21 feet; thence South 9 degrees 37' 00" East 127.49 feet to the northerly line of the South half of said Northwest quarter of the Northwest quarter; thence along said northerly line North 89 degrees 59' 27" West 151.80 feet; thence South 0 degrees 26' 47" East in a direct line to a point in the southerly line of said Northwest quarter, distant thereon North 89 degrees 54' 05" East 425.62 feet from the Southwest corner of said Northwest quarter of the Northwest quarter; thence North 89 degrees 54' 05" East along said southerly line, a distance of 99.00 feet to the true point of beginning; thence South 89 degrees 54' 05" West 99.00 feet; thence North 0 degrees 26' 47" West 16.00 feet; thence North 89 degrees 54' 05" East 9.00 feet; thence North 0 degrees 26' 47" West 492.64 feet; thence South 89 degrees 59' 27" East 90.00 feet; thence South 0 degrees 26' 47" East 508.47 feet to the true point of beginning.

PARCEL 2:

An easement for ingress and egress and utility purposes over a strip of land 16.00 feet wide over that portion of the Northwest quarter of the Northwest quarter of section 24, Township 1 South, Range 17 West, San Bernardino Meridian, according to the official plat of said land filed in the District Land Office on August 31, 1896, the centerline being described as follows:

7-17-86  
CHECK # 11667  
19.82

FORM 559 - 02-07-1980 (REVISED) PG. 1 OF 2

Description: Los Angeles, CA Document-Year.DocID 1984.1307548 Page: 1 of 5  
Order: nm6969-46 Comment:

Exhibit 9  
4-08-080 (Horsted)  
Certif. of Compliance  
No. 26571



APPLICANT STRAHN, William A. and Yvonne

PAGE 1/3

11

11

**CERTIFICATE OF COMPLIANCE**

26571

CONTINUATION

Beginning at the Northeast corner of the hereinabove last mentioned Parcel 1; thence South 0 degrees 26' 47" East 3.00 feet to the true point of beginning; thence South 89 degrees 59' 27" East 94.04 feet; thence South 60 degrees 26' 47" East 103.92 feet to the Westerly line of that certain 40.00 foot strip of land, as described in Parcel 2 in the deed to Jack Borman, recorded on August 28, 1964 as Instrument No. 1428 in Book D2607 Page 502, Official Records of said county.

The side lines of said 16.00 foot strip to be shortened so as to intersect at angle points and to terminate Westerly in the Easterly line of the hereinabove Parcel 1 and Easterly in the Westerly line of that certain 40.00 foot strip of land hereinabove last mentioned as land of Borman.

**PARCEL 3:**

An easement for ingress and egress and utilities purposes over a strip of land 40.00 feet wide over that portion of the Northwest quarter of the Northwest quarter of Section 24, Township 1 South, Range 17 West, San Bernardino Meridian, according to the official plat of said land filed in the District Land Office on August 31, 1896, the Easterly and the North-easterly lines of which are described as follows:

Beginning at a point on the Westerly line of said Section 24, distant thereon South 0 degrees 08' 40" East 842.00 feet from the Northwest corner of said Section 24; thence North 58 degrees 36' 32" East 392.70 feet; thence North 33 degrees 13' 00" East 64.50 feet; thence North 79 degrees 33' 00" East 170.00 feet; thence North 39 degrees 00' 00" East 82.15 feet to a point hereinafter referred to as Point "A"; thence North 9 degrees 07' east to a point on in the curved Southerly line of Saddle Peak Road, (60.00 feet wide, as shown on County Surveyor's Map 8807, Sheet No. 1 on file in the office of the county surveyor of said county), said point being the true point "A"; thence South 0 degrees 37' 00" East 194.85 feet; thence South 79 degrees 07' 50" East 129.98 feet; thence South 0 degrees 26' 47" East, to a line that bears North 69 degrees 40' West and passes through the Northerly terminus of that certain course hereinafter described as having a bearing and length of "South 0 degrees 26' 47" East 163.77 feet"; thence along said line, South 69 degrees 40' East, 235.05 feet to said Northerly terminus (said course of South 0 degrees 26' 47" East 163.77 feet is included with the following described lines:

Beginning at the Northeast corner of the South half of the Northwest quarter of said Section 24; thence North 29 degrees 59' 27" West along the Northerly line of said South half, a distance of 275.00 feet; thence South 0 degrees 26' 47" East 327.54 feet; thence South 89 degrees 33' 13" West 75.00 feet; thence South 0 degrees 26' 47" East 163.77 feet).

The side lines of said 40.00 foot strip to be prolonged or shortened so as to terminate Northerly in said South line of Saddle Peak Road, and Easterly in said line having a bearing and length of South 0 degrees 26' 47" East 169.77 feet.

84-1307548

22-1484

APPLICANT STKAHN, William A. and Yvonne

PAGE 3/3

**CONDITIONAL CERTIFICATE OF COMPLIANCE** 76171  
CONTINUATION

**DETERMINATION OF CONDITIONAL COMPLIANCE**

The above described parcel was not created in compliance with State and County Subdivision regulations. Under current State law, THE PROPERTY MAY BE SOLD, LEASED, FINANCED OR OTHERWISE CONVEYED WITHOUT RESTRICTION. HOWEVER, THE CONDITIONS LISTED BELOW MUST BE FULFILLED BEFORE ISSUANCE OF A BUILDING PERMIT OR OTHER DEVELOPMENT APPROVAL. These conditions are in addition to any permit requirements which may be imposed.

**CONDITION(S):**

Provide proof of access to a feasible building site on the subject property to demonstrate to the satisfaction of the Director of Planning that the owner of the subject property has the right of free passage over said access to a public street.

**NOTES:**

Water and access requirements may be imposed as a condition of permit approval pursuant to Sections 13.301 and 13.708 of the Fire Code.

Geologic, soils and/or drainage conditions on the subject property may limit development or necessitate that remedial measures be taken in order to obtain a building permit.

AMB 444B-P1-2H

DEPARTMENT OF REGIONAL PLANNING



DEPARTMENT OF REGIONAL PLANNING  
County of Los Angeles, State of California  
Norman Murdoch, Planning Director

By: [Signature]  
Title: Administrator, Subdivision Admin. Div.

Date: NOV. 1 1984

142188 PS 1-83

84-1307548

85 578212

RECORDING REQUESTED BY

Department of Regional Planning  
320 West Temple Street  
Room 1381, Hall of Records  
Los Angeles, California 90012

AND WHEN RECORDED MAIL TO

Name: WILLIAM A. & YVONNE STRAHN

Street: 2251 20th ST.

City: SANTA MONICA, CA. 90405

RECORDED IN OFFICIAL RECORDS  
RECORDER'S OFFICE  
LOS ANGELES COUNTY  
CALIFORNIA  
31 MIN. 2 P.M. MAY 22 1985

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SPACE ABOVE THIS LINE FOR RECORDER'S USE

CERTIFICATE OF COMPLIANCE 26571

CLEARANCE OF CONDITIONS

The owner(s) and/or holder(s) of a title interest in the real property within the unincorporated territory of the County of Los Angeles, having satisfied the conditions as enumerated in the CONDITIONAL CERTIFICATE OF COMPLIANCE, Recorded as document No. 44-1307348 on NOVEMBER 17, 1984; Complies with the provisions of the Subdivision Map Act (Sec. 66410 et seq., Government Code, State of California) and the County Subdivision Ordinance (Ord. 4678, County of Los Angeles.)

OWNER(S): STRAHN, William A.

STRAHN, Yvonne

NOTES:

Water and access requirements may be imposed as a condition of permit approval pursuant to Section 13.301 and 13.208 of the Fire Code.

Geologic, soils and/or drainage conditions on the subject property may limit development or necessitate that remedial measures be taken in order to obtain a building permit.

With respect to the subject property only, this certificate releases the Notice of Intention to Record a Notice of Violation (V-10358) recorded as Document 81-609569 on June 19, 1981.

DETERMINATION OF COMPLIANCE

I hereby certify that the subject parcel complies with the applicable provisions of the Subdivision Map Act and of the County Subdivision Ordinance and may be developed and/or sold, financed, leased or transferred in full compliance with all applicable provisions of the Subdivision Map Act and of the County Subdivision Ordinance.

AMB: 4448-21-28



DEPARTMENT OF REGIONAL PLANNING  
County of Los Angeles, State of California  
Norman Murdoch, Planning Director

DEPARTMENT OF REGIONAL PLANNING  
By: *Debbie Taylor*  
Title: ADMINISTRATOR, SUBDEV. ADMIN.  
Date: MAY 22 1985

780289 - 02-80-1179 - pg 1 of 2

Exhibit 10  
4-08-080 (Horsted)  
Clearance of Cond.  
COC No. 26571

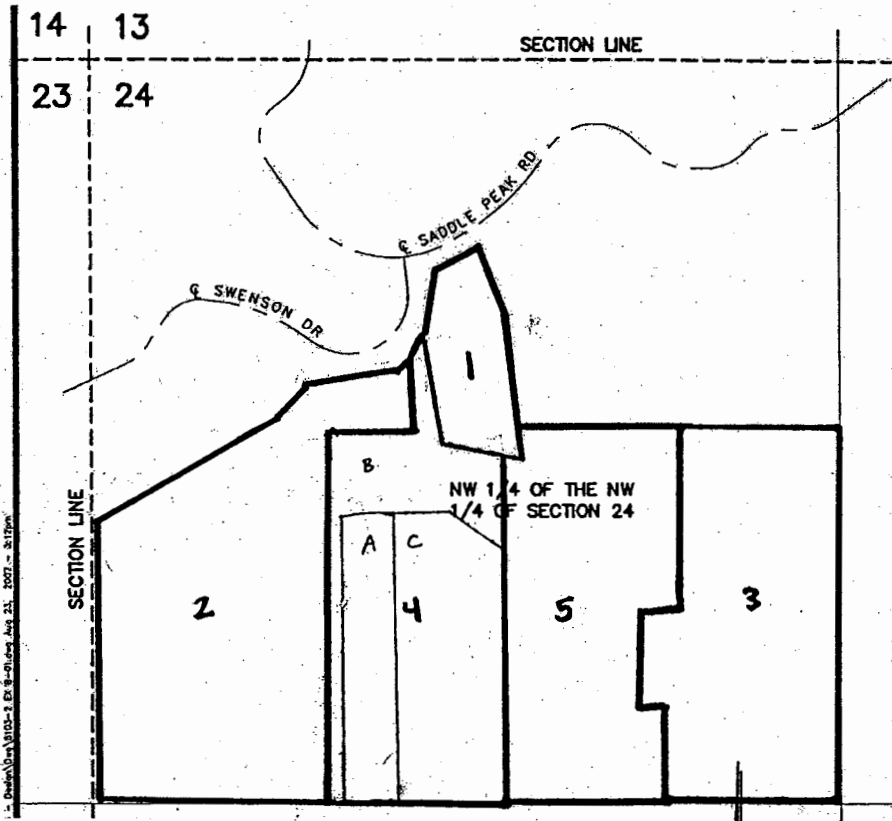
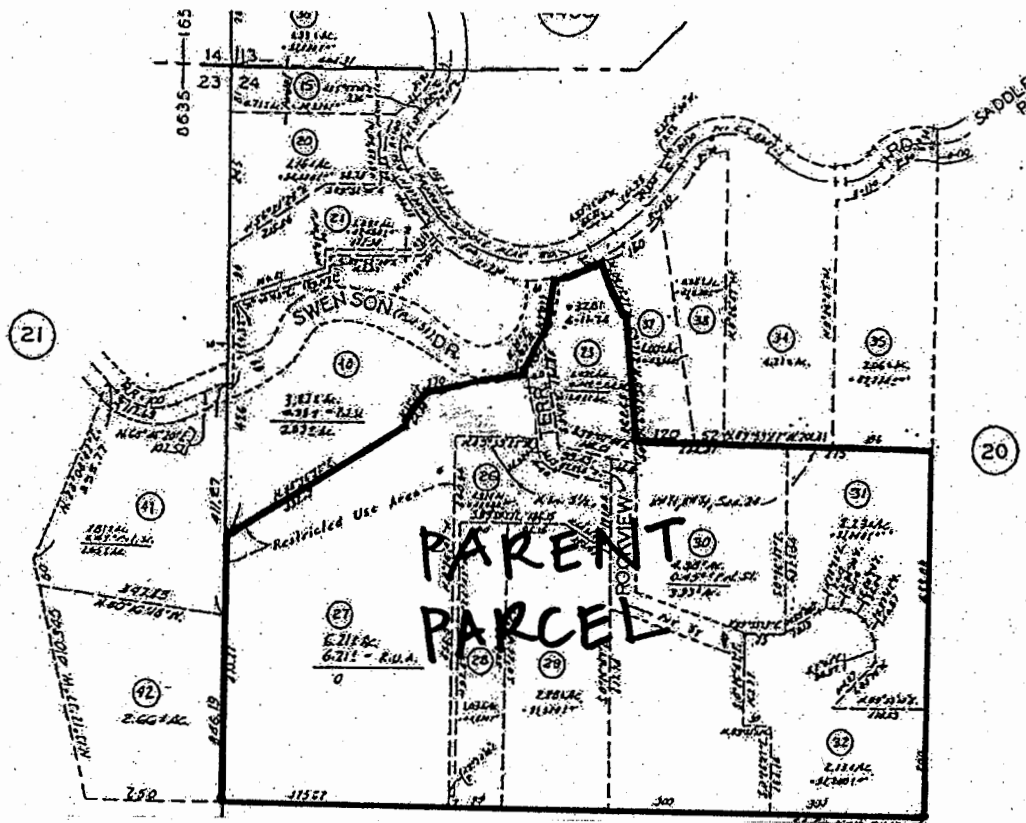


Exhibit 11
4-08-080 (Horsted)
Land Division Visuals



Exhibit 12
4-08-080 (Horsted)
Aerial View