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CALIFORNIA COASTAL COMMISSION
SOUTH CENTRAL COAST AREA
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VENTURA, CA 93001
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Th 8a-f

Filed:	11/17/10
180th Day:	5/16/11
Staff:	D. Christensen
Staff Report:	1/26/11
Hearing Date:	2/10/11

STAFF REPORT: REGULAR CALENDAR

APPLICATION NUMBERS: 4-10-040, 4-10-041, 4-10-042, 4-10-043, 4-10-044, 4-10-045

APPLICANTS: Lunch Properties LLLP, Vera Properties LLLP, Mulryan Properties LLLP, Morleigh Properties LLLP, and Ronan Properties LLLP, respectively

AGENTS: Schmitz & Associates Inc. (Lunch Properties LLLP)
Jim Vanden Berg (Vera Properties LLLP)
Stanley Lamport of Cox, Castle, & Nicholson LLP (Mulryan Properties LLLP)
Timi Hallem and Susan Hori of Manatt, Phelps & Phillips LLP (Morleigh Properties LLLP)
Paul Weinberg (Ronan Properties LLLP)

PROJECT LOCATION: North of Sweetwater Mesa Road, Santa Monica Mountains, Los Angeles County

APNs: 4453-005-037, 4453-005-018, 4453-005-092, 4453-005-091, 4453-005-038

PROJECT DESCRIPTIONS: These applications are for: (1) five new single family residences ranging from 7,220 sq. ft. to 12,785 sq. ft. in size on five adjoining parcels, each of which claims to be owned by a different LLLP; (2) 28,050 cu. yds. of grading (26,250 cu. yds. cut; 1,800 cu. yds. fill; 21,600 cu. yds. excess) for the residence development areas and private driveways; (3) a 6,010 linear ft., 20 ft. wide access road (includes residential driveways) extending from Sweetwater Mesa Road in Malibu to the development sites with 43,050 cu. yds. of grading (20,100 cu. yds. cut, 22,950 cu. yds. fill), 123 caisson piles up to 79 ft. deep and up to 5 ft. in diameter, and 960 linear ft. of retaining walls; (4) three Fire Department staging areas utilizing 10,000 cu. yds. of excess excavated material, (5) placement of 13,950 cu. yds. of excess excavated material upon a 1.88 acre grassland mesa area; (6) a new 7,800 linear ft. waterline with 900 linear ft., 10 ft. wide maintenance road; and (7) a lot line adjustment between two of the subject parcels. Total project grading is approximately 95,050 cu. yds. (46,350 cu. yds. cut, 48,700 cu. yds. fill). Due to the related nature of the six coastal development permit ("CDP") applications, all of the proposed development will be addressed in one staff report. The project descriptions for each separate application are provided below.

CDP Application No. 4-10-040 (Lunch Properties LLLP) (APN 4453-005-037)

The applicant is proposing to construct a 22-ft. high, three-level, 12,004 sq. ft. single-family residence with 629 sq. ft. storage space and an attached 2,128 sq. ft. garage on an approximately 20-acre parcel, swimming pool, 200-ft. long driveway, septic system, and 4,800

cu. yds. grading (4,000 cu. yds. cut; 800 cu. yds. fill). The proposed development area is approximately 10,000 sq. ft. in size. The proposed project also includes an approximately 2,500 ft. long, 20 ft. wide shared access road to connect Sweetwater Mesa Road in the City of Malibu north to the subject property, involving 10,750 cu. yds. grading (4,800 cu. yds. cut; 5,950 cu. yds. fill), approximately 500 lineal feet of 5 to 17-ft. high retaining walls, drainage improvements, entry gate, and two Fire Department staging areas (2,800 sq. ft. and 6,200 sq. ft. in size) that will require 700 cu. yds. of grading (fill). The proposed access road will disturb an approximately 4-acre area. In addition, the water line extension proposed as part of CDP Application No. 4-10-041 below will also serve the proposed residential project.

CDP Application No. 4-10-041 (Vera Properties LLLP) (APN 4453-005-018)

The applicant is proposing to construct a 22-ft. high, two-level, 12,785 sq. ft. single-family residence with 2,116 sq. ft. storage space and 1,694 sq. ft. detached garage on an approximately 20-acre parcel, swimming pool, 1,595 sq. ft. terraces, septic system, 292 ft. long, 20-ft. wide access drive, approximately 380 linear feet of 5 to 10-ft. high retaining walls, and 10,700 cu. yds. (cut) of total grading. The applicant is proposing a 10,000 sq. ft. development area that will require 5,400 cu. yds. (cut) of the total grading amount. Construction of the proposed 280-ft. long driveway will involve 5,300 cu. yds. (cut) of the total grading amount, and result in disturbance of an 14,000 sq. ft. (0.32 acres) area.

The proposed project also includes extension of an 8-inch diameter water line down to the subject property and the four other adjacent properties from an existing municipal water main beneath Costa Del Sol Way to the north. The total length of the proposed water line is approximately 7,800 feet. In addition, a 10-ft. wide maintenance road is proposed along a 900-ft. long portion of the proposed water main alignment. The proposed road will commence where the existing dirt road ends, but the proposed road will end about 1,000 feet shy of the northernmost proposed residential development due to the extreme steepness of that segment of the terrain. According to preliminary grading plans, the proposed 900-ft. long maintenance road will require a 60-ft. long, 2 to 6-ft. high retaining wall and approximately 1,145 cu. yds. grading (1,135 cu. yds. cut; 10 cu. yds. fill) on steep slopes. The gradient of the cut slopes will range from 1:1 to 0.5:1. Approximately 20,000 sq. ft. of vegetation removal will be associated with construction of the proposed water line maintenance road.

CDP Application No. 4-10-042 (Mulryan Properties LLLP) (APN 4453-005-092)

The applicant is proposing to construct a 28-ft. high, two-level, 7,220 sq. ft. single-family residence on an approximately 40-acre parcel, with a 1,398 sq. ft. attached garage, 3,709 sq. ft. terraces, swimming pool, septic system, 850 linear foot shared access road, two Fire Department hammerhead turnarounds, and 5,950 cu. yds. of total grading (3,800 cu. yds. cut; 2,150 cu. yds. fill). The applicant is proposing a 10,000 sq. ft. development area that will require 2,000 cu. yds. (1,600 cu. yds. cut; 400 cu. yds. fill) of the total grading amount. The proposed access drive will involve 3,950 cu. yds. (2,200 cu. yds. cut, 1,750 cu. yds. fill) of the total grading amount and will disturb an approximately 1-acre area. The proposed project includes a 20,000 sq. ft. Fire Department staging area involving 9,400 cu. yds. grading (fill). Since there will be excess excavated material generated by the five residential development projects that are the subject of this staff report, the applicant is proposing to place and contour grade 13,950 cu. yds. of excess material upon a grassland mesa area

surrounding the 20,000 sq. ft. Fire Department staging area. The applicant has also proposed to re-vegetate this fill area with a mix of native shrub species and oak trees. In addition, the water line extension proposed as part of CDP Application No. 4-10-041 above will also serve the proposed residential project.

CDP Application No. 4-10-043 (Morleigh Properties LLLP) (APN 4453-005-091)

The applicant is proposing to construct a 28-ft. high, three-level, 8,348 sq. ft. single-family residence on an approximately 40-acre parcel, with a 753 sq. ft. attached garage, swimming pool, septic system, a 1,600-ft. long shared access road that extends from the road proposed as part of CDP Application 4-10-040 north to the proposed development area, two Fire Department hammerhead turnarounds, approximately 950 linear feet of 5 to 18-ft. high retaining walls, and 18,050 cu. yds. of total grading (14,350 cu. yds. cut; 3,700 cu. yds. fill). The applicant is proposing a 10,000 sq. ft. development area that will require 1,300 cu. yds. (cut) of grading. The proposed access road and driveway will involve 16,750 cu. yds. of grading (13,050 cu. yds. cut; 3,700 cu. yds. fill) and will disturb an approximately 2-acre area. In addition, the water line extension proposed as part of CDP Application No. 4-10-041 above will also serve the proposed residential project.

CDP Application No. 4-10-044 (Ronan Properties LLLP) (APN 4453-005-038)

The applicant is proposing to construct a 28-ft. high, three-level, 12,143 sq. ft. single-family residence, 2,232 sq. ft. storage space, 3,161 sq. ft. terraces, and 1,762 sq. ft. detached two-level garage on an approximately 27-acre parcel, swimming pool, septic system, 35 linear ft. of 1 to 5.5-ft. high retaining wall, 780 linear ft. access drive, one Fire Department hammerhead turnaround, and 16,000 cu. yds. of total grading (3,850 cu. yds. cut; 12,150 cu. yds. fill). The applicant is proposing a 10,000 sq. ft. development area that will require 3,650 cu. yds. (cut) of the total grading amount. The proposed access drive will involve 12,350 cu. yds. of grading (200 cu. yds. cut; 12,150 cu. yds. fill) and disturb an approximately 1-acre area. In addition, the water line extension proposed as part of CDP Application No. 4-10-041 above will also serve the proposed residential project.

CDP Application No. 4-10-045 (Mulryan Properties LLLP and Morleigh Properties LLLP) (APNs 4453-005-092 and -091).

The applicants of this CDP application propose a lot line adjustment between their respective 40-acre parcels in order to optimally site future residential development proposed in CDP applications 4-10-042 and 4-10-043 above in consideration of geologic and topographic site constraints. The size of each parcel will not change as a result of the proposed reconfiguration.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends **denial** of the proposed projects. The standard of review for the projects 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.

The subject permit applications are for: (1) five new single family residences ranging from 7,220 sq. ft. to 12,785 sq. ft. in size on five adjoining parcels, each of which claims to be owned by a different LLLP; (2) 28,050 cu. yds. of grading (26,250 cu. yds. cut; 1,800 cu. yds. fill; 21,600 cu. yds. excess) for the residence development areas and private driveways; (3) a 6,010 linear ft., 20 ft. wide access road (includes residential driveways) extending from Sweetwater Mesa Road in Malibu to the development sites with 43,050 cu. yds. of grading (20,100 cu. yds. cut, 22,950 cu. yds. fill), 123 caisson piles up to 79 ft. deep and up to 5 ft. in diameter, and 960 linear ft. of retaining walls; (4) three Fire Department staging areas utilizing 10,000 cu. yds. of excess excavated material, (5) placement of 13,950 cu. yds. of excess excavated material upon a grassland mesa area; (6) a new 7,800 linear ft. waterline with 900 linear ft., 10 ft. wide maintenance road; and (7) a lot line adjustment between two of the subject parcels. Total project grading is approximately 95,050 cu. yds. (46,350 cu. yds. cut, 48,700 cu. yds. fill). Due to the related nature of the six coastal development permit ("CDP") applications, all of the proposed development is analyzed in one staff report.

The subject contiguous properties are located on the southern flank of the Santa Monica Mountains, about a mile inland from Pacific Coast Highway, east of Malibu Canyon Road, and west of Las Flores Canyon Road. The Malibu Civic Center area, Malibu Pier, Malibu Creek, and Malibu Lagoon State Park are located about a mile away to the southwest. The five properties, totaling 156 acres, are situated along an approximately 3,000-ft. long stretch of a prominent ridgeline separating the Sweetwater Canyon and Carbon Canyon watersheds. This ridgeline extends inland approximately 2.18 miles from the narrow coastal terrace traversed by Pacific Coast Highway to the backbone crest of the Santa Monica Mountain Range. The Malibu/Santa Monica Mountains Land Use Plan (LUP) designates this ridge as a "Significant Ridgeline". The area is undeveloped and comprised of steep, rugged mountain terrain that is blanketed by various natural rock outcroppings and primarily undisturbed native chaparral habitat that is part of a large contiguous area of undisturbed native vegetation that constitutes an environmentally sensitive habitat area (ESHA). A large area of public parkland that is part of Malibu Creek State Park is located on the adjacent parcels to the west. The nearest development in the vicinity is the residential enclave of Serra Retreat located within the municipal limits of the City of Malibu approximately a half mile to the southwest.

The subject ridgeline is a prominent landscape feature along a significant stretch of the Malibu coast. The ridge is visible from several significant public vantages along Pacific Coast Highway, including: Malibu Bluffs Park (2.5 miles west); Pacific Coast Highway and Malibu's Civic Center and Colony Plaza areas (2 miles west); Malibu Lagoon State Park and Surfrider Beach areas (1.2 miles southwest); and Malibu Pier (1 mile southwest). The ridge is also highly visible from Malibu Creek State Park land, portions

of Malibu Canyon Road, and the Saddle Peak Trail about a quarter mile to the west, portions of Piuma Road approximately a mile to the north, and several LUP-mapped Vista Points along Rambla Pacifico Road a mile to the east.

The proposed construction of single family residences within ESHA is not consistent with Section 30240 of the Coastal Act or the guidance policies of the Malibu-Santa Monica Mountains LUP because residences are not resource-dependent uses and because the habitat removal associated with the proposed development does not protect ESHA against significant disruption of habitat values. In addition, the proposed development would not serve to protect public views, minimize landform alteration, or ensure compatibility with the character of the surrounding area. As such, the proposed development would result in significant impacts to visual resources, inconsistent with Section 30251 of the Coastal Act and the guidance policies of the Malibu-Santa Monica Mountains LUP. Furthermore, the proposed development will not avoid significant adverse effects, either individually or cumulatively, on coastal resources, which is in direct conflict with Section 30250 of the Coastal Act. Although the Commission does sometimes allow development that violates one or more of the policies in Chapter 3 of the Coastal Act (including residential development in ESHA) pursuant to Section 30010 of the Coastal Act, it can only do so where to do otherwise would result in a constitutional taking. As is explained in detail below, due to the specific facts of this case, the Commission can deny the present applications without committing such a taking. That is true, in part, because there are feasible alternatives to the proposed development that would avoid or substantially reduce the adverse environmental effects of the projects and the impacts that are inconsistent with the policies in Chapter 3 of the Coastal Act. Therefore, for the above reasons and for the reasons more fully explained in the following sections of this report, staff recommends that the Commission deny these applications.

Motions and Resolutions for the Staff Recommendation commence on page 9.

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LIST OF EXHIBITS

LOCAL APPROVALS RECEIVED: Los Angeles County Department of Regional Planning Approval-in-Concepts, dated December 12, 2006, June 26, 2007, September 20, 2007, October 11, 2007; Los Angeles County Fire Department approval of access and turnaround areas, dated October 13, 2009, October 20, 2009, and October 21, 2009; Los Angeles County Fire Department approval of Preliminary Fuel Modification Plans, dated June 27, 2007, July 9, 2007, March 5, 2008; Los Angeles County Department of Health Services, Conceptual Approvals for Private Septic Systems, dated February 13, 2008, September 17, 2007; October 1, 2007, May 20, 2008; Los Angeles County Department of Regional Planning letter dated November 20, 2008 stating that an approval-in-concept for the proposed water main extension and associated maintenance road and retaining wall will not be issued because the development is exempt from local zoning review; Las Virgenes Municipal Water District approval of Water System Design Report, dated January 23, 2007; Los Angeles County Department of Public Works Geotechnical and Materials Engineering Division review letter dated October 27, 2008.

SUBSTANTIVE FILE DOCUMENTS: Malibu/Santa Monica Mountains Land Use Plan (LUP); Dispute Resolution Nos. A-4-07-067-EDD, A-4-07-068-EDD, A-4-07-146-EDD, A-4-07-147-EDD, and A-4-07-148-EDD; "Water System Design Report for Sweetwater Mesa Properties," by Boyle Engineering Corp., dated January 2007; "Biological Constraints Analysis" for each property, by Steven Nelson, dated July 2007; "Biological Constraints Analysis" for proposed water line, by Steven Nelson, dated January 2008; "Oak Tree Report for APN 4453-005-018," by Neighborhood Consulting Arborist, dated November 18, 2007; "Oak Tree Report for APN 4453-005-038, -091 and -092," by Neighborhood Consulting Arborist, dated December 31, 2007; "Percolation Test Report" for each property, by Lawrence Young, dated July 20, 2007; "Visual Assessment" report for each property, by Envicom Corporation, dated July 2009; "Comparative Impact Analysis of Potable Water Service Options," by Envicom Corporation, dated October 21, 2009; "Summary of Findings – Civil and Geotechnical Engineering and Engineering Geologic Peer Review Services," by Cotton, Shires, and Associates, dated March 8, 2010; "January 2011 Summary of Findings – Engineering Geologic, Geotechnical, Civil and Structural Engineering Peer Review Services," by Cotton, Shires, and Associates, dated January 21, 2011; Aerial Photographs of central Malibu area provided by I.K. Curtis Services Inc. (Photo Nos. 2-158: 5/5/75, 3-223: 3/22/76, 75: 7/27/77, 52:5/12/79, 133: 7/10/80, 384: 11/3/83, 677: 2/12/85, 242: 4/20/87, 215: 2/5/88, 1554: 4/4/89, 990: 1/31/92, 227: 4/6/93, 95-316: 2/19/95, 27: 12/20/96, 181: 8/23/98, 493: 11/4/00); Dept. of Water Resources 2001 Coastal Aerial Photographs Index CCC-BQK-C Photo No. 58A-12: 6/28/0; Aerial Imagery from Google Earth™ mapping service (©2011 Google, Map Data ©2011 Tele Atlas) dated 8/22/04, 12/30/03, 11/12/04, 3/15/06, and present 2011; CDP Nos. 4-04-012 through 4-04-016; CDP No. 5-89-133; CDP No. 5-89-260; Memo by Lesley Ewing, dated January 24, 2011; Geologic and Geotechnical Reports listed in the January 24, 2011 Lesley Ewing Memo; Memo by Mark Johnsson, dated January 25, 2011; Memo by Dr. Jonna Engel, dated January 25, 2011.

I. STAFF RECOMMENDATION

The staff recommends that the Commission adopt the following resolutions:

A. Denial of CDP No. 4-10-040

MOTION I: ***I move that the Commission approve Coastal Development Permit No. 4-10-040 for the development proposed by the applicant.***

STAFF RECOMMENDATION OF DENIAL:

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

RESOLUTION TO DENY THE PERMIT:

The Commission hereby denies the coastal development permit for the proposed development on the ground that the development will not conform with the policies of Chapter 3 of the Coastal Act and will 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 would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

B. Denial of CDP No. 4-10-041

MOTION II: ***I move that the Commission approve Coastal Development Permit No. 4-10-041 for the development proposed by the applicant.***

STAFF RECOMMENDATION OF DENIAL:

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

RESOLUTION TO DENY THE PERMIT:

The Commission hereby denies the coastal development permit for the proposed development on the ground that the development will not conform with the policies of Chapter 3 of the Coastal Act and will 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 would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

C. Denial of CDP No. 4-10-045

MOTION III: ***I move that the Commission approve Coastal Development Permit No. 4-10-045 for the development proposed by the applicant.***

STAFF RECOMMENDATION OF DENIAL:

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

RESOLUTION TO DENY THE PERMIT:

The Commission hereby denies the coastal development permit for the proposed development on the ground that the development will not conform with the policies of Chapter 3 of the Coastal Act and will 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 would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

D. Denial of CDP No. 4-10-042

MOTION IV: ***I move that the Commission approve Coastal Development Permit No. 4-10-042 for the development proposed by the applicant.***

STAFF RECOMMENDATION OF DENIAL:

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

RESOLUTION TO DENY THE PERMIT:

The Commission hereby denies the coastal development permit for the proposed development on the ground that the development will not conform with the policies of Chapter 3 of the Coastal Act and will 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 would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

E. Denial of CDP No. 4-10-043

MOTION V: ***I move that the Commission approve Coastal Development Permit No. 4-10-043 for the development proposed by the applicant.***

STAFF RECOMMENDATION OF DENIAL:

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

RESOLUTION TO DENY THE PERMIT:

The Commission hereby denies the coastal development permit for the proposed development on the ground that the development will not conform with the policies of Chapter 3 of the Coastal Act and will 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 would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

F. Denial of CDP No. 4-10-044

MOTION VI: ***I move that the Commission approve Coastal Development Permit No. 4-10-044 for the development proposed by the applicant.***

STAFF RECOMMENDATION OF DENIAL:

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

RESOLUTION TO DENY THE PERMIT:

The Commission hereby denies the coastal development permit for the proposed development on the ground that the development will not conform with the policies of Chapter 3 of the Coastal Act and will 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 would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

II. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. PROJECT DESCRIPTIONS AND ENVIRONMENTAL SETTING

Five of the six subject permit applications were submitted in the names of five separate, limited liability companies, or "LLCs," (one application from each), each of which held title to a unique parcel within a block of five contiguous parcels in the Sweetwater Mesa area of the Santa Monica Mountains, north of the end of Sweetwater Mesa Road. Each of those five applications seeks authorization to construct a single family residence on the applicant's parcel. In addition, the applications collectively seek authorization to construct a common access road, and one is for a municipal water line that would supply water to all five residences. The sixth application was filed by two of the entities jointly and seeks authorization for a lot line adjustment between their two parcels.

Each of the five applicants now presents itself as a distinct Limited Liability Limited Partnership (LLLP) bearing the same name as its predecessor LLC and claims that the parcel on which it seeks authorization to construct a residence is now owned by the new LLLP; however, the recorded grant deeds provided by the applicants continue to indicate that each of the parcels is owned by the original LLC. The applicants have provided "Certificates of Conversion" filed with the California Secretary of State's Office in 2006 indicating that each LLC was converted to an LLLP. However, Commission staff has independently checked the public records, and as of January of 2011, there was no public record of grant deeds being recorded to reflect the ownership change. These findings will sometimes refer to the five entities by their proper names, without the subsequent description of the form of business organization.

The subject contiguous properties are located on the southern flank of the Santa Monica Mountains, about a mile inland from Pacific Coast Highway, east of Malibu Canyon Road, and west of Las Flores Canyon Road. The Malibu Civic Center area, Malibu Pier, Malibu Creek, and Malibu Lagoon State Park are located about a mile away to the southwest (Exhibits 1-2). The five properties, totaling 156 acres, are situated along an approximately 3,000-ft. long stretch of a prominent ridgeline separating the Sweetwater Canyon and Carbon Canyon watersheds. This ridgeline extends inland approximately 2.18 miles from the narrow coastal terrace traversed by Pacific Coast Highway to the backbone crest of the Santa Monica Mountain Range. The Malibu/Santa Monica Mountains Land Use Plan (LUP) designates this ridge as a "Significant Ridgeline". The area is undeveloped and comprised of steep, rugged mountain terrain that is blanketed by various natural rock outcroppings and primarily

undisturbed native chaparral habitat that is part of a large contiguous area of undisturbed native vegetation. To the west of the ridge is a prominent south-trending canyon that contains a USGS-designated blue-line stream. Another blue-line stream exists in a canyon bottom downslope to the east. The nearest development in the vicinity is the residential enclave of Serra Retreat located within the municipal limits of the City of Malibu approximately a half mile to the southwest. A large area of public parkland that is part of Malibu Creek State Park is located on the adjacent parcels to the west. In addition, the adjacent parcel to the south of the subject block of parcels is owned by the Mountains Recreation and Conservation Authority (MRCA) and restricted as open space (Exhibit 6). The Saddle Peak Trail (an LUP-mapped public trail) is situated on the adjacent ridgeline to the west, within Malibu Creek State Park. The planned Coastal Slope Trail has been slated by the National Park Service and the MRCA to pass through, in an east-west direction, an MRCA-owned property to the south of the subject sites. To connect to the Saddle Peak Trail, the planned Coastal Slope Trail has been proposed/mapped to bisect two of the subject parcels. However, the proposed developments would not be inconsistent with the proposed public trail route.

The subject ridgeline is a prominent landscape feature along a significant stretch of the Malibu coast. The ridge is visible from several significant public vantages along Pacific Coast Highway, including Malibu Bluffs Park (2.5 miles west), Pacific Coast Highway and Malibu's Civic Center and Colony Plaza areas (2 miles west), Malibu Lagoon State Park and Surfrider Beach areas (1.2 miles southwest), and Malibu Pier (1 mile southwest). The ridge is also highly visible from Malibu Creek State Park land, portions of Malibu Canyon Road, and the Saddle Peak Trail about a quarter mile to the west, portions of Piuma Road approximately a mile to the north, and several LUP-mapped Vista Points along Rambla Pacifico Road a mile to the east (Exhibit 20).

The subject applications propose: (1) five new single family residences ranging from 7,220 sq. ft. to 12,785 sq. ft. in size on five adjoining parcels, each of which claims to be owned by a different LLLP; (2) 28,050 cu. yds. of grading (26,250 cu. yds. cut; 1,800 cu. yds. fill; 21,600 cu. yds. excess) for the residence development areas and private driveways; (3) a 6,010 linear ft., 20 ft. wide access road (includes residential driveways) extending from Sweetwater Mesa Road in Malibu to the development sites with 43,050 cu. yds. of grading (20,100 cu. yds. cut, 22,950 cu. yds. fill), 123 caisson piles up to 79 ft. deep and up to 5 ft. in diameter, and 960 linear ft. of retaining walls; (4) three Fire Department staging areas utilizing 10,000 cu. yds. of excess excavated material, (5) placement of 13,950 cu. yds. of excess excavated material upon a gradually sloping mesa area; (6) a new 7,800 linear ft. waterline with 900 linear ft., 10 ft. wide maintenance road; and (7) a lot line adjustment between two of the subject parcels. Total project grading is approximately 95,050 cu. yds. (46,350 cu. yds. cut, 48,700 cu. yds. fill). The applicants have stated that each of the proposed five residences will seek LEED Gold Certification by incorporating innovative green building elements to reduce greenhouse gas emissions, and water, energy, and natural resource use.

To clearly address what is proposed on each parcel, the project descriptions and environmental setting are provided below for each separate application. For clarity and ease of reference in differentiating between the five proposed residential developments throughout this report, each of the five proposed residences will be referred to as follows, with Residence 1 being the southernmost (seaward-most) residence, and Residence 5 being the northernmost (inland-most) residence:

- **Residence 1 (Vera)**
- **Residence 2 (Lunch)**
- **Residence 3 (Morleigh)**
- **Residence 4 (Mulryan)**
- **Residence 5 (Ronan)**

Designation	Owner	CDP App. No.	APN	Location
Residence 1	Vera	4-10-041	4453-005-018	Bottom; Southern-most
Residence 2	Lunch	4-10-040	4453-005-037	Middle-right/East
Residence 3	Morleigh	4-10-043	4453-005-091	Top-left; Northwest corner
Residence 4	Mulryan	4-10-042	4453-005-092	Middle-left/West
Residence 5	Ronan	4-10-044	4453-005-038	Top-right; Northeast corner
Lot Line Adjustment (LLA)	Morleigh/ Mulryan	4-10-045	4453-005-091 & 4453-005-092	Upper two lots on the west side

Residence 1 (Vera)

CDP Application No. 4-10-041 (Vera Properties LLLP) (APN 4453-005-018)

The applicant is proposing to construct a 22-ft. high, two-level, 12,785 sq. ft. single-family residence with 2,116 sq. ft. storage space and 1,694 sq. ft. detached garage on an approximately 20-acre parcel, swimming pool, 1,595 sq. ft. terraces, septic system, 280 ft. long, 20-ft. wide driveway, approximately 380 linear feet of 5 to 10-ft. high retaining walls, and 10,700 cu. yds. of total grading (cut). The applicant is proposing a 10,000 sq. ft. development area that will require 5,400 cu. yds. (cut) of the total grading amount. Construction of the proposed 280-ft. long driveway will involve 5,300 cu. yds. (cut) of the total grading amount, and result in disturbance of an 14,000 sq. ft. (0.32 acres) area (Exhibit 8). In addition, a municipal water line extension is proposed down to the subject property from Costa Del Sol Way to the north, as discussed in more detail later in this section (Exhibit 18).

The subject property is situated on the nose of the north/south-trending ridge. Site elevations range from approximately 1,050 feet above sea level at the ridge-top on the far eastern portion of the property, and the remainder of the property steeply descends in a western direction down to approximately 600 feet above sea level. The western half of the parcel is underlain by landslide debris. The majority of the site is vegetated with a mixed chaparral plant community, with the exception of the existing pilot access road

and areas of disturbance adjacent to the road. A few scattered oak trees exist among the site vegetation (Exhibits 3-5). However, none of the existing oak trees would be impacted by the proposed project.

The residence has been proposed in the eastern portion of the parcel, on the outer (seaward) face of the ridge crest and rises up in elevation jointly with the rise in elevation to the top of the ridge. The applicant had originally proposed the residence in a slightly different design configuration, in which the residence was wrapped farther around the western side of the ridge crest. In an effort to reduce the residence's visibility from public viewing areas to the west and southwest, the applicant made plan revisions in 2009 to reduce the overall height of the residential structure, from 28-ft. to 22-ft., and omitted the western-most approximately 40 feet of the structure.

Parcel Legality

As evidence of lot legality, the applicant submitted Certificate of Compliance No. 01-421, issued by the County of Los Angeles on November 7, 2002. This Certificate of Compliance contains a "Determination of Compliance (E)", with the (E) indicating that it is an "exempt" Certificate of Compliance, or in other words, a Certificate of Compliance issued pursuant to the provisions of Section 66499.35(a) of the State Subdivision Map Act. The subject Certificate of Compliance certifies that the parcel complies with the applicable provisions of the State Subdivision Map Act and of the County Subdivision Ordinance, having been exempt from said act and ordinance at the time of its creation. At staff's request, the applicant also submitted a chain of title for the property that demonstrated that the subject parcel was first created in 1900 by U.S. patent. This method of creation was in conformance with the laws at the time and therefore, the lot is legal.

Residence 2 (Lunch)

CDP Application No. 4-10-040 (Lunch Properties LLLP) (APN 4453-005-037)

The applicant is proposing to construct a 22-ft. high, three-level, 12,004 sq. ft. single-family residence with 629 sq. ft. storage space and an attached 2,128 sq. ft. garage on an approximately 20-acre parcel, swimming pool, 200-ft. long driveway, septic system, and 4,800 cu. yds. grading (4,000 cu. yds. cut; 800 cu. yds. fill). The proposed development area is 10,000 sq. ft. in size. The proposed project also includes an approximately 2,500 ft. long, 20 ft. wide access road to connect Sweetwater Mesa Road in the City of Malibu north to the subject property, involving 10,750 cu. yds. grading (4,800 cu. yds. cut; 5,950 cu. yds. fill), approximately 500 lineal feet of 5 to 17-ft. high retaining walls, drainage improvements, entry gate, and two Fire Department staging areas (2,800 sq. ft. 6,200 sq. ft. in size) that will require 700 cu. yds. of grading (fill). The proposed access road will disturb an approximately 4-acre area. The proposed access road deviates from the existing pilot access road in several areas and the applicant proposes to re-contour and re-vegetate those abandoned access road areas. However, the applicant has not identified the total extent of the abandoned road areas and has not

provided a plan for their re-grading and re-vegetation. In addition, the water line extension proposed as part of CDP Application No. 4-10-041 (Vera) above will also serve the proposed residential project (Exhibit 9).

The subject property is situated on the crest and east flank of a prominent north/south-trending ridge between Sweetwater Canyon to the west and Carbon Canyon to the east. The west-facing slopes of the property descend more gradually into Sweetwater Canyon and east-facing slopes descend more abruptly into Carbon Canyon. Site elevations range from approximately 1,070 feet above sea level at the ridge-top on the far western portion of the property, and descend in an eastern direction down to approximately 700 feet above sea level. Landslide debris underlies the gently-sloping western portion of the property where the residential development is proposed along the ridgeline. The remainder of the property consists of very steep east-facing slopes. The proposed building site and the majority of the proposed access road are proposed atop landslide material. However, there are no other feasible alternative locations for the building site or access road on the property that could avoid the landslide areas.

The majority of the property is vegetated with a mixed chaparral plant community, with the exception of a small portion of the property along the western parcel boundary that is dominated by non-native grasses and part of a larger, disturbed “mesa” area to the west (Exhibits 3, 5).

The applicant had originally proposed the residence in a slightly different siting and design configuration, in which the residence was situated at the furthest edge of the ridge-top and just above two canyon “chimneys”. Commission staff had expressed concerns with this original design given the residence’s visual prominence from several viewing areas and its close proximity to the ridge-top edge and canyon chimneys that pose a high fire risk and increased potential for erosion.

The proposed residence was then revised and reconfigured by the applicant in 2009 to be sited farther away from the ridge-top edge and tiered into a natural saddle location of the site where the structure would step up in elevation in concert with the underlying rise in elevation along the top of the ridge in order to minimize grading of the site. The “tails” and the “nose” of the residence’s wedge-shaped footprint were pulled back from the saddle’s ridge-top. The north and south “tails” of the structure were moved 21 feet and 35 feet and the taller “nose” of the structure was moved back 53 feet from the slope edge. At its highest point the residential structure has been reduced from 28 to 22 feet above grade, with a roofline that resembles a gently sloping dome.

Parcel Legality

As evidence of lot legality, the applicant submitted Certificate of Compliance No. 01-150, issued by the County of Los Angeles on November 29, 2001. This Certificate of Compliance contains a “Determination of Compliance (E)”, with the (E) indicating that it is an “exempt” Certificate of Compliance, or in other words, a Certificate of Compliance issued pursuant to the provisions of Section 66499.35(a) of the State Subdivision Map

Act. The subject Certificate of Compliance certifies that the parcel complies with the applicable provisions of the State Subdivision Map Act and of the County Subdivision Ordinance, having been exempt from said act and ordinance at the time of its creation. At staff's request, the applicant also submitted a chain of title for the property that demonstrated that the subject parcel took its current form in 1962, when a grant deed transferring a portion of the parent lot fixed the eastern boundary of the subject lot in its current location. This method of creation was in conformance with the laws at the time and therefore, the lot is legal.

Residence 3 (Morleigh)

CDP Application No. 4-10-043 (Morleigh Properties LLLP) (APN 4453-005-091)

The applicant is proposing to construct a 28-ft. high, three-level, 8,348 sq. ft. single-family residence on an approximately 40-acre parcel, with a 753 sq. ft. attached garage, swimming pool, septic system, a 1,600-ft. long access road that extends from the road proposed as part of CDP Application 4-10-040 north to the proposed development area, two Fire Department hammerhead turnarounds, approximately 950 linear feet of 5 to 18-ft. high retaining walls, and 18,050 cu. yds. of total grading (14,350 cu. yds. cut; 3,700 cu. yds. fill). The applicant is proposing a 10,000 sq. ft. development area that will require 1,300 cu. yds. (cut) of grading of the total grading amount. The proposed access road and driveway will involve 16,750 cu. yds. of grading (13,050 cu. yds. cut; 3,700 cu. yds. fill) and will disturb an approximately 2-acre area. In addition, the water line extension proposed as part of CDP Application No. 4-10-041 above will also serve the proposed residential project (Exhibit 10).

The subject property is situated on the crest and west flank of the north/south-trending ridge. This western flank of the ridge consists of west-facing hillside slopes that descend to a north-south trending canyon. Site elevations range from approximately 1,400 feet above sea level at the ridge-top in the eastern portion of the property, and the remainder of the property steeply descends in a western direction down to approximately 900 feet above sea level. The northernmost portion of the parcel is underlain by landslide debris, however, no development is proposed in that area. The majority of the site is vegetated with a mixed chaparral plant community, with the exception of areas of disturbance along an existing access road (Exhibits 3, 5). There is one mature oak tree in the northeast corner of the subject property, however, it will not be impacted by the proposed project.

The applicant had originally proposed the residence in a slightly different siting and design configuration, in which the residence was overhanging the furthest edge of the site's southwestern ridgeline slope and atop a large natural rock outcropping. Commission staff had expressed concerns with this original design given the residence's visual prominence from several viewing areas to the west/southwest and its close proximity to the ridge-top edge and steep canyon chimneys that pose a high fire risk and increased potential for erosion.

The proposed residence was then revised and reconfigured by the applicant in 2009 to be shifted to the north approximately 100 feet in order to avoid the rock outcropping and be set farther back from the edge of the site's southwestern ridgeline slope. The new location would be less visually prominent and require less grading and a shorter access driveway.

As discussed in detail later in this section, the subject property is involved in a proposed lot line adjustment with the adjacent parcel to the south in order to allow that property's residential development to be more optimally sited outside mapped landslide areas (Exhibits 5, 15).

Parcel Legality

As evidence of lot legality, the applicant submitted Certificate of Compliance No. 01-151, issued by the County of Los Angeles on November 29, 2001. This Certificate of Compliance contains a "Determination of Compliance (E)", with the (E) indicating that it is an "exempt" Certificate of Compliance, or in other words, a Certificate of Compliance issued pursuant to the provisions of Section 66499.35(a) of the State Subdivision Map Act. The subject Certificate of Compliance certifies that the parcel complies with the applicable provisions of the State Subdivision Map Act and of the County Subdivision Ordinance, having been exempt from said act and ordinance at the time of its creation. At staff's request, the applicant also submitted a chain of title for the property that demonstrated that the subject parcel took its current form in 1990, when a portion of the parent parcel was deeded to the State of California for use as public parkland, which is a type of division that is exempt from the Subdivision Map Act and, in that case, was also exempt from the Coastal Act. Prior to that, the history indicates that the parcel had existed in its pre-1990 form since a 1959 grant deed had transferred a portion of its parent lot, thus fixing its eastern boundary. This method of creation was in conformance with the laws at the time and therefore, the lot is legal.

Residence 4 (Mulryan)

CDP Application No. 4-10-042 (Mulryan Properties LLLP) (APN 4453-005-092)

The applicant is proposing to construct a 28-ft. high, two-level, 7,220 sq. ft. single-family residence on an approximately 40-acre parcel, with a 1,398 sq. ft. attached garage, 3,709 sq. ft. terraces, swimming pool, septic system, 850 linear foot access drive, two Fire Department hammerhead turnarounds, and 5,950 cu. yds. of total grading (3,800 cu. yds. cut; 2,150 cu. yds. fill). The applicant is proposing a 10,000 sq. ft. development area that will require 2,000 cu. yds. (1,600 cu. yds. cut; 400 cu. yds. fill) of the total grading amount. The proposed access drive will involve 3,950 cu. yds. (2,200 cu. yds. cut, 1,750 cu. yds. fill) of the total grading amount and will disturb an approximately 1-acre area. The proposed project includes a 20,000 sq. ft. Fire Department staging area involving 9,400 cu. yds. grading (fill). Since there will be excess excavated material generated by the five residential development projects that are the subject of this staff report, the applicant is proposing to place and contour grade 13,950 cu. yds. of excess

material upon a grassland mesa area surrounding the 20,000 sq. ft. Fire Department staging area. The applicant has specified that approximately 13,950 cu. yds. of excess material, to a maximum depth of 5 feet and a maximum slope of 3:1 (H:V), would be placed upon an approximately 81,750 sq. ft. (1.88 acres) of the mesa, immediately adjacent to the proposed access road and Fire Department staging area,. The applicant has also proposed to re-vegetate this fill area with a mix of native shrub species and oak trees. In addition, the water line extension proposed as part of CDP Application No. 4-10-041 above will also serve the proposed residential project (Exhibits 11, 16).

The subject property is situated on the crest and west flank of the north/south-trending ridge. This western flank of the ridge consists of west-facing hillside slopes that descend to a north-south trending canyon. Site elevations range from approximately 1,050 feet above sea level at the ridge-top in the eastern portion of the property, and the remainder of the property steeply descends in a western direction down to approximately 600 feet above sea level. The eastern portion of the property is the crest of the ridge that contains a large, gently-sloping grassland mesa area. A large landslide underlies a significant portion of the property, including the gently-sloping mesa area. The landslide poses a significant constraint for residential development of the property, which is why the applicant is proposing a lot line adjustment with the adjacent property to the north in order to site residential development in an area that is now the Morleigh parcel and outside mapped landslide areas.

The majority of the site is vegetated with a mixed chaparral plant community, with the exception of an existing access road up the eastern edge of the property and a disturbed mesa area in the southeastern portion of the property that is dominated by non-native grasses. There is one mature oak tree in the southern portion of the subject property, however, it will not be impacted by the proposed project (Exhibits 3, 5).

The applicant had originally proposed the development envelope in a slightly different configuration, in which the residence and hammerhead turnaround driveway were more fanned out within that gently-sloping portion of the ridgeline. Commission staff had expressed concerns that the original design was too close to the ridgetop edge that steeply descends into Carbon Canyon and had exceeded the maximum square footage development area allowed for residential projects that would have unavoidable impacts to ESHA. The proposed development envelope was then revised by the applicant in 2009 to shift the development farther away from the ridge edge by 25 to 40 feet in a westerly direction, and to condense the development area into a tighter circular form to comply with the 10,000 sq. ft. development area maximum. The east side of the residence was also notched into the hillside more to lower its profile when viewed from public viewing areas to the east. The height of the west side of the structure is 28 feet above grade, while the height of the east side of the structure is much less, 21.5 feet above grade.

<u>Parcel Legality</u>

As evidence of lot legality, the applicant submitted Certificate of Compliance No. 91-0086, issued by the County of Los Angeles on June 21, 1991 and corrected on March 9, 2006. The corrected Certificate of Compliance contains a "Determination of Compliance (E)", with the (E) indicating that it is an "exempt" Certificate of Compliance, or in other words, a Certificate of Compliance issued pursuant to the provisions of Section 66499.35(a) of the State Subdivision Map Act. The subject Certificate of Compliance certifies that the parcel complies with the applicable provisions of the State Subdivision Map Act and of the County Subdivision Ordinance, having been exempt from said act and ordinance at the time of its creation. At staff's request, the applicant also submitted a chain of title for the property that demonstrated that the subject parcel took its current form in 1990, when a portion of the parent parcel was deeded to the State of California for use as public parkland, which is a type of division that is exempt from the Subdivision Map Act and, in that case, was also exempt from the Coastal Act. Prior to that, the history indicates that the parcel had existed in its pre-1990 form since a 1959 grant deed had transferred a portion of its parent lot, thus fixing its eastern boundary. This method of creation was in conformance with the laws at the time and therefore, the lot is legal.

Residence 5 (Ronan)

CDP Application No. 4-10-044 (Ronan Properties LLLP) (APNs 4453-005-038)

The applicant is proposing to construct a 28-ft. high, three-level, 12,143 sq. ft. single-family residence, 2,232 sq. ft. storage space, 3,161 sq. ft. terraces, and 1,762 sq. ft. detached two-level garage on an approximately 27-acre parcel, swimming pool, septic system, 35 linear ft. of 1 to 5.5-ft. high retaining wall, 780 linear ft. access drive, one Fire Department hammerhead turnaround, and 16,000 cu. yds. of total grading (3,850 cu. yds. cut; 12,150 cu. yds. fill). The applicant is proposing a 10,000 sq. ft. development area that will require 3,650 cu. yds. (cut) of the total grading amount. The proposed access drive will involve 12,350 cu. yds. of grading (200 cu. yds. cut; 12,150 cu. yds. fill) and disturb an approximately 1-acre area. In addition, the water line extension proposed as part of CDP Application No. 4-10-041 above will also serve the proposed residential project (Exhibit 12).

The subject property is situated on the crest and east flank of the north/south-trending ridge. The east, south, and southeast flanks of the ridge descend to a north-south trending canyon below. Site elevations range from approximately 1,500 feet above sea level at the ridge-top in the northwest corner of the property, and the remainder of the property steeply descends in an eastern direction down to approximately 900 feet above sea level. Landslide debris is not present on the subject property. The majority of the site is vegetated with a mixed chaparral plant community, with the exception of areas of disturbance associated with an existing access road. Approximately 20 small oak trees are located on the northeast-facing slopes of the northern portion of the subject property. Proposed development will not impact any of these on-site trees (Exhibits 3, 5).

The proposed residential envelope is situated in the far western portion of the parcel and notched into the south-facing slope of the ridgetop. The applicant had originally proposed the residence in a different siting and design configuration that was approximately 90 feet to the north, at a higher elevation on the ridge (approximately 50 feet higher in elevation). Due to Commission staff concerns about the development's visual prominence from public viewing areas to the east and southeast, the development was shifted to the south and notched into the south-facing hillside terrain. Given the relocated residence, the proposed access road had to be reconfigured. While the length of road was reduced by approximately 200 feet and retaining walls eliminated, the amount of grading required (fill) increased substantially in order to achieve the necessary elevation and comply with Fire Department access requirements.

Parcel Legality

As evidence of lot legality, the applicant submitted Certificate of Compliance No. 91-0460, issued by the County of Los Angeles on November 29, 2001, and corrected by the County of Los Angeles on March 11, 2004. The corrected Certificate of Compliance contains a "Determination of Compliance (E)", with the (E) indicating that it is an "exempt" Certificate of Compliance, or in other words, a Certificate of Compliance issued pursuant to the provisions of Section 66499.35(a) of the State Subdivision Map Act. The subject Certificate of Compliance certifies that the parcel complies with the applicable provisions of the State Subdivision Map Act and of the County Subdivision Ordinance, having been exempt from said act and ordinance at the time of its creation. At staff's request, the applicant also submitted a chain of title for the property that demonstrated that the subject parcel took its current form in 1962, when a grant deed transferring a portion of the parent lot fixed the eastern boundary of the subject lot in its current location. This method of creation was in conformance with the laws at the time and therefore, the lot is legal.

Lot Line Adjustment

CDP Application No. 4-10-045 (Mulryan Properties LLLP and Morleigh Properties LLLP) (APNs 4453-005-092 and -091)

The applicants of this CDP application propose a lot line adjustment between their two vacant 40-acre parcels in order to better site future residential development proposed in CDP applications 4-10-042 and 4-10-043 above, with regard to geologic stability, grading, and clustering of development (Exhibits 15, 5). As discussed above, landslide debris underlies the majority of the Mulryan property (APN 4453-005-092). By adjusting the lot lines between the two parcels, residential development of both parcels can be located outside mapped landslide areas. The size of each parcel will not change as a result of the proposed lot reconfiguration.

Proposed Access Road

To access the subject properties from Sweetwater Mesa Road in the City of Malibu, an approximately 7,600-ft. long access road is required. A portion of this total length (1,669 feet) is situated within the City of Malibu and the City is processing a coastal development permit (No. 05-053) for that segment. On September 2, 2008, the City Planning Commission approved the coastal development permit. However, the project was appealed to the City Council and the City Council decided at its January 12, 2009 meeting to postpone action on the CDP until after the Coastal Commission's hearing on the subject permit applications.

The remainder of the proposed access road (approximately 6,010 foot long) is situated within unincorporated Los Angeles County and is included as part of the subject permit applications (Exhibits 5, 17). Of the proposed 6,010 foot length of roadway construction, 4,883 feet (0.9 mile) is the main stem of the access road and the remaining 1,127 feet of roadway is for the construction of five driveways coming off the main stem, one to each of the proposed residences. The Lunch application (CDP No. 4-10-040) proposes the most significant portion of the access road length (2,485 feet). The Morleigh application (CDP No. 4-10-043) proposes to extend the road from the Lunch property up 1,615 feet to their proposed development area. The Mulryan application (CDP No. 4-10-042) continues the road 850 feet up to their proposed development area, and the Ronan application (CDP No. 4-10-044) takes it another 780 feet from that point up to the northernmost proposed development area. Approximately 43,050 cu. yds. of grading (20,100 cu. yds. cut, 22,950 cu. yds. fill) is proposed to construct the entire length of the proposed access road. The estimated area of disturbance is approximately 6.75 acres. The proposed road crosses two large landslides. As such, two sections of the road, one 590 feet long and one 905 feet long, would be supported on caissons to provide for safe access across these slide areas. Approximately 123 large diameter reinforced concrete caissons, ranging from 2 to 5 feet in diameter and up to 79 feet in length are proposed. An additional fourteen (14), 5-foot diameter caissons for rock fall protection are also proposed at the southern portion of the road, close to the City of Malibu boundary. Of the 20,100 cu. yds. of cut that is proposed for the road, almost 25%, or 4,850 cu. yds., will be cut material excavated for installation of the caissons. In addition to the 1,495 feet of caisson-supported roadway, there will be several retaining walls and a significant amount of cut and fill to provide for a level road surface. In total, there are five retaining walls proposed, ranging from 90 feet to 390 feet in length, and totaling 955 feet of wall length. The proposed retaining walls range in height from averages of 5 to 11 feet and maximum heights of 7.5 to 18 feet. The longest retaining wall, along the right side (or upslope side) of the northern portion of the road, would be 390 feet long and would have an average height of 11 feet and a maximum height of 18 feet.

Several sections of the proposed road would be quite steep. There are sections approximately 998 feet long, 1,085 feet long, and 535 feet long that would have a grade of 18.95%. There is one additional 285 foot long section that would have a grade of 17.25%. These steep grade sections do not connect; each section would be separated by stretches of road that are at a much gentler grade. Construction of the stabilized sections of the proposed access road would require large temporary construction

staging pads. The applicants have identified those construction staging areas, which are within areas proposed for development, such as the Fire Department staging areas and proposed residential development pads.

In 2004, the Commission approved CDP No. 4-01-108 to improve an existing, pre-Coastal Act, 1,750 ft. long, 10-ft. wide jeep trail up to the Lunch parcel to provide access for geologic testing purposes (Exhibit 19). The approved pilot access road (part of which was approved by the Commission and part of which was approved by the City of Malibu) traversed north from the terminus of Sweetwater Mesa Road in the City of Malibu, across three parcels within the jurisdiction of the City of Malibu, and across two of the subject parcels (Vera and Mulryan). Special conditions of the Commission's permit approval related to revegetation of graded and disturbed slopes on either side of the existing 10-ft. wide jeep trail, erosion control and drainage, and City of Malibu approval of the improvements within their jurisdiction.

Fire Department Staging Areas

On October 21, 2009 the applicants submitted modified plans for the shared access road that depicted a new element: three Fire Department staging areas. Given the remoteness of the area and the length and steepness of the road, the Fire Department had decided to require the three Fire Department staging areas along the access road to accommodate safe emergency vehicle access and staging. According to Captain James Bailey of the Los Angeles County Fire Department Fire Protection Engineering Division (phone conversation on Dec. 9, 2009), the applicants had previously taken advantage of a loop-hole in the County road grade requirement (no more than 150 ft. at 20% grade) by proposing over 1,000 ft. at 19.95% grade. Thereafter, higher level staff took a closer look at the proposal in 2009 and worked with the applicant to reduce those steep portions of the road to 18.95% grade and to add staging areas as a way to allow fire trucks to stop and to cool down truck brakes, etc.

The Fire Protection Engineering Division of the Los Angeles County Fire Department approved the modified access road plans on October 20, 2009. Two of the staging areas (approximately 2,800 sq. ft. and 6,200 sq. ft. in size) are adjacent to one another and located where the proposed access road begins within the unincorporated Los Angeles County jurisdiction on the Vera parcel. These two staging areas would require 700 cu. yds. of grading (fill) and are being proposed as part of the access road improvements associated with the Lunch permit application. The third staging area, which is 20,000 sq. ft. in size, is situated farther up the road, upon the mesa area of the Mulryan parcel. The third staging area would involve 9,400 cu. yds. of grading (fill) and is being proposed as part of the Mulryan permit application. In addition, it is estimated that the three Fire Department staging areas would disturb approximately 1.19 acres (Exhibit 5).

Excess Excavated Material

All of the proposed development of the subject applications will consist of a total of approximately 95,050 cu. yds. of grading (46,350 cu. yds. cut, 48,700 cu. yds. fill). Of that amount, the 6,010 linear ft. shared access road extending up from Sweetwater Mesa Road in Malibu will require 43,050 cu. yds. of grading (20,100 cu. yds. cut, 22,950 cu. yds. fill). The three proposed fire department staging areas along the access road will involve 10,000 cu. yds. of grading (fill). The five residential development areas and private driveways will require 28,050 cu. yds. of grading (26,250 cu. yds. cut; 1,800 cu. yds. fill; 21,600 cu. yds. excess). Taken together, the total project will generate approximately 8,750 cu. yds. of net excess excavated material. As discussed above as part of the Residence 4 (Mulryan) application, it is proposed that excess excavated material generated by the five residential development projects will be balanced on-site by the placement and contour grading of excess material upon the disturbed mesa area surrounding the Fire Department staging area proposed on the Mulryan parcel. Although it appears that the total project among all applications will generate 8,750 cu. yds. of excess material, the applicant has specified that a maximum of approximately 13,950 cu. yds. of excess material, to a maximum depth of 5 feet and a maximum slope of 3:1 (H:V), would be placed upon an approximately 81,750 sq. ft. (1.88 acres) area of the mesa, immediately adjacent to the proposed access road and a Fire Department staging area (Exhibits 5, 16). The applicant has also proposed to re-vegetate this fill area with a mix of native shrub species and oak trees.

Proposed Water Line

The Vera permit application includes extension of an 8-inch diameter water line down to the subject property and the four other adjacent properties which are the subject of this staff report from an existing municipal water main beneath Costa Del Sol Way to the north (Exhibits 4, 6, 18). The applicant has obtained easements across all affected parcels associated with the proposed water line extension. The total length of the proposed water line is approximately 7,800 feet. The line would be installed by trenching along the existing paved roadway of Costa del Sol Way for approximately 1,200 linear feet, and then beneath an existing unnamed dirt road for approximately 1,400 linear feet. Installation of the water line extension within this northern section would involve excavation of a four foot wide trench that would occur entirely within an existing paved road and an existing unpaved dirt road. When the existing dirt road ends, the proposed water line would continue for another approximately 1,800 feet through rugged, undeveloped mountain terrain, down to the driveway of the proposed Ronan residence. This section of the water line would also involve construction of an unpaved maintenance road for approximately 990 linear feet just west of the ridgeline that separates the Sweetwater and Carbon Canyons. The 10-ft. wide maintenance road to service the water line would end approximately 1,000 feet shy of the northernmost proposed residential development due to the extreme steepness of that segment of the terrain in that area. According to preliminary grading plans, the proposed 990-ft. long maintenance road will require a 60-ft. long, 2 to 6-ft. high retaining wall and approximately 1,145 cu. yds. grading (1,135 cu. yds. cut; 10 cu. yds. fill) on steep slopes. The gradient of the cut slopes range from 1:1 to 0.5:1. Approximately 20,000 sq. ft. of vegetation removal will be associated with construction of the proposed water line

maintenance road. The applicant has stated that the proposed maintenance road is being required by the Las Virgenes Municipal Water District for regular meter reading, maintenance, and repairs. But due to the extreme steepness of the topography, LVMWD is not requiring the maintenance road to extend the entire length of the proposed water line.

From where the proposed maintenance road ends, the water line is proposed to continue for another approximately 900 feet across rugged, undeveloped mountain terrain down to the Ronan residence. In order to operate the machinery to dig a four foot wide trench and install the water line, the applicant has stated that a disturbance area of 10 ft. wide would be required along this section of the line. Upon installation of the pipeline, the trench would be backfilled and the disturbance area would be restored with native species. From the Ronan residence, the proposed water line would then follow the proposed shared access road down to the southern-most proposed residence, Vera Properties, LLLP (approximately 3,300 feet).

B. BACKGROUND

Original Submittals

The subject permit applications were originally submitted in 2007/2008. Since that time, the applications have been withdrawn and re-submitted twice by the applicants in order to allow more time to resolve outstanding issues that were identified during staff analysis of the proposed projects. Consistent with the Commission's record-keeping practices, when the permit applications were withdrawn, they were assigned new permit application numbers upon re-submittal. The table below is a summary of the various permit application numbers associated with the subject applications:

Applicant Name	Original Application No.	Re-submitted Application No.	Re-submitted Application No.
Lunch Properties LLLP	4-07-067 (submitted July 16, 2007; filed Jan. 8, 2009; withdrawn Aug. 26, 2009)	4-09-056 (filed Aug. 26, 2009; withdrawn Apr. 22, 2010)	4-10-040 (filed Nov. 17, 2010)
Vera Properties LLLP	4-07-068 (submitted July 16, 2007; filed Jan. 8, 2009; withdrawn Aug. 26, 2009)	4-09-057 (filed Aug. 26, 2009; withdrawn Apr. 22, 2010)	4-10-041 (filed Nov. 17, 2010)
Mulryan Properties LLLP	4-07-146 (submitted Nov. 30, 2007; filed Jan. 8, 2009; withdrawn Aug. 26, 2009)	4-09-058 (filed Aug. 26, 2009; withdrawn Apr. 22, 2010)	4-10-042 (filed Nov. 17, 2010)
Morleigh Properties LLLP	4-07-147 (submitted Nov. 30, 2007; filed Jan. 8, 2009; withdrawn Aug. 26, 2009)	4-09-059 (filed Aug. 26, 2009; withdrawn Apr. 22, 2010)	4-10-043 (filed Nov. 17, 2010)
Mulryan/Morleigh LLLP Lot Line Adjustment	4-07-148 (submitted Nov. 30, 2007; filed Jan. 8, 2009; withdrawn Aug. 26, 2009)	4-09-061 (filed Aug. 26, 2009; withdrawn Apr. 22, 2010)	4-10-045 (filed Nov. 17, 2010)
Ronan Properties LLLP	4-08-043 (submitted June 24, 2008; filed Jan. 8, 2009; withdrawn Aug. 26, 2009)	4-09-060 (filed Aug. 26, 2009; withdrawn Apr. 22, 2010)	4-10-044 (filed Nov. 17, 2010)

Five of the subject six applications were originally submitted in 2007. On July 16, 2007, the Commission received CDP Application Nos. 4-07-067 (Lunch Properties LLLP) and 4-07-068 (Vera Properties LLLP) for residential development on two adjacent vacant properties. On August 10, 2007, Commission staff sent a letter to the applicants' common agent, notifying them that the applications were incomplete and outlining the items that needed to be submitted in order for Commission staff to deem the applications complete. On November 30, 2007, the Commission received CDP Application Nos. 4-07-146 (Mulryan Properties LLLP), 4-07-147 (Morleigh Properties LLLP), and 4-07-148 (Mulryan Properties LLLP and Morleigh Properties LLLP) for development on two other adjacent properties (including a lot line adjustment between the two lots and residential development on each lot) that are contiguous with the properties of Application Nos. 4-07-067 and 4-07-068. The same agent, Schmitz & Associates, was the representative for each of the applicants. On December 17, 2007, Commission staff sent a letter to the agent, notifying him that applications 4-07-146, 4-07-147, and 4-07-148 were incomplete and outlining the items needed in order to deem the applications complete.

Commission staff received additional information from the applicants' agent on January 30, 2008 (regarding applications 4-07-146, -147, and -148) and February 20, 2008

(regarding applications 4-07-067 and -068). Some of the information that staff had initially requested was provided at this time. However, several outstanding items remained, and additional information/clarification based upon the agent's submittals was needed. Commission staff sent a follow-up letter (dated February 29, 2008) to the applicants' agent regarding all five of the permit applications, noting the items still needed and requesting additional information and clarification based upon the new information provided by the agent.

Appeal of Incompleteness Determination

The applicants' agent submitted a letter in response to staff's February 29, 2008 letter for each application, dated March 24, 2008, stating that several of the staff's information requests were "irrelevant, onerous, or impossible to provide" and that the applicants wished to appeal the Executive Director's "incomplete" determination to the Commission pursuant to Section 13056(d) of Title 14 of the California Code of Regulations. As such, Permit Application Nos. 4-07-067, 4-07-068, 4-07-146, 4-07-147, and 4-07-148 were the subject of dispute resolution action by the Commission in May 2008 (Dispute Resolution Nos. A-4-07-067-EDD, A-4-07-068-EDD, A-4-07-146-EDD, A-4-07-147-EDD, and A-4-07-148-EDD). At the Commission hearing of May 7, 2008, Commission staff dropped some of its demands, and the Commission concurred with the Executive Director's determination that the subject coastal development permit applications were incomplete in the other respects alleged by Commission staff. The Commission concluded that three of the five disputed items were necessary for staff's analysis of the development proposals, and for the Commission's consideration of the CDP applications to determine whether the projects comply with all relevant policies of the Coastal Act.

Below is a summary of the incomplete items disputed by the applicants and how each item was resolved by the Commission's May 7, 2008 dispute resolution action:

1. *An analysis of alternatives to the proposed water main line and feasibility of an on-site water well to supply the proposed development with potable water.*

   Commission staff decided to forego, as an application filing requirement, an analysis of alternative water sources prepared by the applicants. Staff concluded and the Commission found that the issue could be further analyzed by staff and considered by the Commission in its review of the applications.

2. *A County-approved Geologic Review Sheet for all proposed development.*

   In an effort to address the applicants' concerns regarding the expense of preparing full working drawings for each residence to proceed with County geologic review, Commission staff had spoken with the County District Engineer, Soheila Kahlor, specifically regarding this issue and the subject projects. She indicated that the County can proceed with geologic review of grading plans without more information (i.e., not require full working drawings for the residences), given the concern of the geologic and grading issues in this case. In fact, she noted that the applicants were already in process with the County for obtaining this review. Staff conveyed this to the applicants' agent. However, the applicants' agent still opposed the filing requirement. The

Commission reviewed this disputed issue and upheld the Executive Director's determination, finding that the County-approved Geologic Review Sheet is information necessary for the Commission's consideration of the subject applications and their consistency with the Chapter 3 policies of the Coastal Act.

3. *Evidence of the City of Malibu's approval of the proposed access road segment within the City's jurisdiction.*

   Upon further consideration, staff concluded that while it would be better to know the final configuration of the road that will be approved within the City of Malibu, the Commission could require evidence of the City of Malibu's approval of the proposed road segment within the City boundaries as a special condition of approval for the subject permit applications (should the applications be approved) thus alleviating the need to treat that information as a necessary filing requirement. If the City did require that the road be relocated, the corresponding relocation of the portion of the road in the Commission's jurisdiction could then be required to come back before the Commission for further review. Therefore, Commission staff concluded this information was no longer required for filing the applications, and the Commission concurred.

4. *Analysis of alternative parcel configurations that would minimize grading, fuel modification, landform alteration, and serve to cluster all development to the maximum extent feasible, in order to minimize impacts to coastal resources.*

   Commission staff decided to forego, as an application filing requirement, an analysis of alternative lot configurations prepared by the applicants. Staff concluded and the Commission found that the issue could be further explored by staff (including the Commission's legal staff) and considered by the Commission in its review of the applications.

5. *Los Angeles County approval-in-concept for the proposed water main line and maintenance road portion of the proposed development.*

   Commission staff concluded that County approval-in-concept was required for the grading work associated with installation of the proposed water line and maintenance road development. However, in the face of continued disagreement from the applicants' agent and allegations that the County had told him otherwise, staff also decided that, if the applicants could provide evidence from the County indicating that their review and approval was <u>not</u> needed for construction of the proposed water line and maintenance road, that would be adequate to satisfy the subject filing requirement. The Commission upheld the Executive Director's determination, finding that the applicants needed to provide either the County Approval-In-Concept of the water line extension development or evidence that it is not required.

In essence, upon further consideration of the five incomplete items that were the subject of the appeals, Commission staff concluded that three of the five incomplete items that they had requested could be adequately addressed after filing of the applications. Thus, staff did not require that those items (Water Supply Alternatives Analysis, City of Malibu

Approval and Alternative Parcel Configuration Analysis) be provided as a prerequisite to the filing of the applications. The remaining two disputed incomplete items were found to be necessary for staff's analysis of the development proposals, and for the Commission's consideration of the CDP applications, to determine whether the projects comply with all relevant policies of the Coastal Act.

On June 24, 2008, the same agent who had submitted the first five applications and had indicated that a sixth, related permit application for residential development on an adjacent parcel was forthcoming, submitted that sixth application (CDP Application No. 4-08-043 by Ronan Properties LLLP). On July 16, 2008, Commission staff sent a letter to the applicants' common agent, notifying him that the new application was incomplete and outlining the items that needed to be submitted in order for Commission staff to deem the application complete.

In response to incomplete letters regarding each of the subject six applications, the applicants' agent submitted additional information to Commission staff on November 24, 2008. On December 4, 2008, Commission staff determined the applications incomplete and requested the additional information items necessary to file the applications.

Filing of Applications and Emergent Geological Issues

On January 8, 2009, after receiving the requested incomplete items outlined in the Commission's December 4, 2008 incomplete letter, regarding all of the applications, Commission staff filed each of the subject applications as complete and tentatively scheduled them for the June 2009 Commission hearing. However, regarding the County-approved Geologic Review Sheet incomplete item, rather than proceeding through County geotechnical review per what was agreed upon by the County and Commission staff and noted in the Commission's findings on the dispute resolution action, the applicants had submitted County Geotechnical and Materials Engineering Division review sheets for each application that stated the following:

> "A visual inspection of the proposed building site and a cursory review of the submitted geotechnical reports indicate there are no apparent adverse geotechnical conditions that would preclude the development of the identified building site as long as the geotechnical consultants' recommendations are followed. However, additional data may become available in the future, which may supercede this finding. Specific development plans must be submitted for review during the building/grading permit process. At that time, a comprehensive geotechnical review will be conducted, which may require addendum geology and soils reports."

Such remarks on a County Geotechnical and Materials Engineering review sheet are atypical. Usually County review sheets either indicate that the grading plans are recommended for approval or they are not recommended for approval and additional information is requested (as had been the case for previous review sheets issued by the County for the subject projects). The County geologic review process requires an applicant to provide a significant amount of information to the County regarding the geology and engineering of a proposed project. For this reason, Commission staff only

requires such review prior to filing in cases with complex geology or soils, or where there are significant geologic hazards present. The process ensures that the geologic, soils and geotechnical reports provide the necessary information and, more importantly, ensures that a project will meet the County standards regarding such issues as maximum slope angle for cut and fill slopes, remedial grading, siting of roads and pads, foundation design, etc. It has been the Commission's experience that for projects on sites with complex geologic issues, including landslides, the County geologic review process often results in significant project redesign that can greatly alter the area of the site that will be impacted, as well as the significance of impacts. Given the County Geotechnical and Materials Engineering Division's change of approach in dealing with their geologic review of the subject projects, and the fact that the applicants did submit the County document that Commission staff had requested, Commission staff proceeded to accept the County's letter for purposes of filing the applications complete and proceeded with its own geologic/engineering analysis of the proposed developments.

The proposed access road crosses several landslides and the geologic conditions pose significant engineering challenges to provide safe development, especially for the access road. During Commission staff analysis of the project's geology, geotechnical, and structural engineering elements, it was found that no structural calculations or design parameters had been provided to demonstrate that a particular engineering design could attain the required factors of safety and assure stability for the economic life of the development. Commission staff geologist, Mark Johnsson, and Commission staff civil engineer, Lesley Ewing, provide staff with technical assistance in analyzing projects that have significant geologic issues and/or complex engineering for consistency with Section 30253 of the Coastal Act. Commission technical staff began conversations with the applicants' representatives and consultants to obtain the engineering design details that were required to make the appropriate findings regarding consistency with the hazard and stability policies of the Coastal Act.

Visual Issues and Reconfiguration

Due to potential visibility from public viewing areas, Commission staff also requested that the mass of the proposed structures be physically depicted by staking the sites, i.e. story poles & flagging. Commission staff conducted a site visit on April 23, 2009 to view the staked sites. After touring the staked sites, Commission staff expressed concerns regarding the siting and design of each of the proposed residences and their visual prominence from public viewing areas, as well as their close proximity to the ridge-top edge and canyon chimneys that pose a high fire risk and increased potential for erosion. Each residence, with the exception of the Mulryan residence, had been placed at the furthest edge of the ridge-top and just above canyon "chimneys". There appeared to be alternatives to minimize the visibility of the residences and to pull them off the outermost edge of the ridge. In order to address staff concerns, the applicants worked to reconfigure the siting and design of each of the proposed residences to reduce their visibility.

In May 2009, the applicants made modifications to the proposed residences in an effort to reduce their visibility. For the Vera residence, the applicant reduced the overall height of the residential structure, from 28-ft. to 22-ft., and omitted the western-most approximately 40 feet of the structure. For the Lunch residence, it was revised and reconfigured to be sited further away from the ridge-top edge and tiered into a natural saddle location of the site where the structure would step up in elevation in concert with the underlying rise in elevation along the top of the ridge in order to minimize grading of the site. The north and south "tails" of the structure were moved 21 feet and 35 feet and the taller "nose" of the structure was moved back 53 feet from the slope edge. At its highest point the residential structure has been reduced from 28 to 22 feet above grade, with a roofline that resembles a gently sloping dome. Regarding the Morleigh residence, it shifted to the north approximately 100 feet in order to avoid the rock outcropping and to be set further back from the edge of the site's southwestern ridgeline slope. The new location would be less visually prominent and require less grading and a shorter access driveway. The development envelope of the Mulryan residence was shifted farther away from the ridge edge by 25 to 40 feet in a westerly direction, and the development area was condensed into a tighter circular form to comply with the 10,000 sq. ft. development area maximum. The east side of the residence was also notched into the hillside more to lower its profile when viewed from public viewing areas to the east. The height of the west side of the structure is 28 feet above grade, while the height of the east side of the structure is much less, 21.5 feet above grade. The Ronan residence was reconfigured and shifted to the south to be notched into the south-facing hillside terrain. This change required that the access driveway configuration be modified between the shared access road and the residence. In addition, a new project element was proposed by the applicants, consisting of placing approximately 36,000 cu. yds. of excess fill generated from the overall project upon the mesa area that is underlain by landslide debris.

Continuing Geologic Issues and Withdrawal and Re-Submittal of Applications

On May 12, 2009, Commission staff met with the applicants' agent to convey what additional information was needed in order to analyze the revised project and make the necessary findings regarding hazards and stability. In order to allow more time to provide Commission staff with the information requested, the applicants extended the July 7, 2009 time limit for Commission action by 90 days, to October 5, 2009. Given the constraining geology and topography of the area, the engineering design of the shared access road is complex and unique. By August 2009, it became clear that the applicants had not provided enough information to demonstrate that the selected engineering design could attain the required factors of safety and assure stability for the economic life of the development. Commission Staff Civil Engineer, Lesley Ewing, and Commission Staff Geologist, Mark Johnsson, were not satisfied with the level of detail and analysis provided given the complex geology and engineering constraints of these sites. Structural engineering designs and calculations of the pile/caisson systems were needed to demonstrate that the projects can be designed with the amount of grading being proposed and that it will support the forces the geotechnical engineer indicates is necessary. Without the structural engineering calculations, it cannot be found that the conceptual designs will be sufficient to assure stability for the economic life of the

development. Commission staff had asked that the applicants provide structural plans merged with the grading plan set, structural calculations, and design parameters. Understanding that there was not enough time to resolve these geology, geotechnical and engineering issues before the Commission's October 5, 2009 deadline for action, the applicants agreed to withdraw and re-submit the subject applications. The applications were formally withdrawn and re-submitted on August 26, 2009. Commission staff considered the re-submitted applications complete as of that date, waived any new permit application fees, assigned new permit application numbers, and tentatively scheduled the applications for the November 2009 hearing. However, the requested materials regarding the geotechnical engineering aspects were not provided in time for the November hearing. Materials were provided by the applicant in October 2009, but still not to the satisfaction of Commission staff. In November 2009, the applicants provided the complete civil/structural engineering plans for the access road as requested.

Engineering Geologic, Geotechnical, Civil and Structural Engineering Peer Review and Second Withdrawal and Re-Submittal of Applications

During Commission staff review of the project, three different structural engineering designs had been developed and proposed for the access road. The initial engineering design proposed to place the road on a combination of deep caissons and "dog bone" or double-barreled caissons. There were approximately a dozen different caisson templates that would be used for different segments of the road. The depth was specified for each caisson and reinforcing steel for each caisson would be carefully oriented to the main direction of the slide at each caisson site. The caisson road support was a rather complex structural engineering system. It was a type of system that Commission Staff Civil Engineer, Lesley Ewing, had never seen before. Given the complexity and uniqueness of the engineering design demonstrated in the submitted structural engineering plans, Commission technical staff found that review of the design was outside their field of expertise and requested that an experienced outside consultant be hired to assist staff with the technical review. The applicants agreed to this approach and Cotton, Shires and Associates Inc. (CSA), a professional firm of consulting engineers and geologists based in California, was contracted to perform the civil and geotechnical engineering and engineering geologic peer review services in direct support of the Commission's review and analysis of the subject permit applications.

The funding arrangements for the outside consultant were completed on February 22, 2010 and on March 8, 2010, CSA provided staff and the applicant with their review findings on the project. CSA had found that the information provided up to that point was insufficient to justify approval of the proposed project design. The geologic characterization did not provide sufficient accuracy, detail, or aerial coverage for design level analyses. Additional geologic mapping and subsurface exploration were recommended by CSA to refine the consultant's geologic characterization. CSA found there was the possibility of an additional large landslide in the area, which either needed to be disproved or taken into consideration in the design. In addition, various aspects of

the investigation, analysis, and design were not in conformance with typical investigations for a project of this magnitude and complexity. CSA recommended additional investigation, laboratory testing, and analysis to better quantify key geotechnical design criteria parameters and landslide loading scenarios.

In order to allow additional time under the Permit Streamlining Act to respond and resolve the issues contained in the CSA report, the applicants again had to withdraw and re-submit the applications. The applications were formally withdrawn and resubmitted on April 22, 2010. Given that this was the second time that the applicants had withdrawn and re-submitted their applications, and since the County's Geologic Review Sheet had not contained the information Commission staff was anticipating, Commission staff found it necessary to request updated information prior to filing of the applications, including geological and engineering information addressing the concerns raised by CSA, updated application forms, mailing lists and envelopes, owner/agent authorizations, and filing fees. At this time, Commission staff also assigned the applications new permit application numbers.

In response to the March 8, 2010 CSA report, the applicants' consultants proceeded to address the detailed comments it contained. Commission staff, CSA staff, and the applicants' consultants worked closely and expeditiously toward that goal. In response to the review comments, the applicants' consultants performed additional geologic mapping, geomorphic analysis, subsurface exploration, refinement of their geologic cross-sections, geotechnical engineering analysis, and modifications to the structural engineering design of the access road. After receiving additional information from the applicants' consultants, CSA and the Commission's geologist remained concerned about the soil strength parameters being used and the justification for using them. This was an important element to resolve because the soil strength parameters are the basis for design of the road stabilization measures. CSA provided a memo to the applicants' consultants, dated October 26, 2010, outlining their concerns. The applicants' consultants, CSA staff, and Commission technical staff then worked closely to resolve that issue and arrive at parameters that were appropriate and justifiable. By refining the geologic landslide mapping and using the appropriate parameters, the applicants' consultant were able to replace the previously proposed dog-bone caissons with cylindrical caissons and reduce the amount and size of the stabilization elements of the access road. The applicants' final response to CSA review and final grading/structural engineering plans were received by Commission staff and CSA on November 17, 2010. In response, Commission staff issued letters on December 10, 2010 stating that the applications were filed as complete as of November 17, 2010.

In December 2010, CSA prepared their Draft Summary of Findings of their engineering geologic, geotechnical, civil and structural engineering peer review services in support of Commission staff's analysis of the applications. Commission technical staff reviewed the CSA Draft Findings and concurred with the facts and conclusions. The CSA Draft Findings were then transmitted to the applicants, who provided several comments and suggested edits. CSA was willing to accept many of the suggested edits, but there remained disagreements in the way the applicants' consultants had calculated and

applied seismic forces to the structural design. After a series of exchanges in December 2010 and January 2011 between CSA, the applicants' consultants, and Commission staff, these differences were finally resolved in mid-January with the applicant's January 20, 2011 Supplemental Geotechnical Engineering Letter #8 (revised). Although the applicants' consultant felt that checking the structural calculations against the California Building Code would result in an overly conservative design, the applicant's consultant finally agreed to perform this check as part of the final project design. On January 21, 2011, CSA submitted to staff their Final Summary of Findings.

CSA technical review of the project has proven valuable for Commission analysis of the project. Staff also believes that the process was valuable for the applicants. The process resulted in a simplification of the structural engineering design of the access road, which will be less complex and less costly to construct. In addition, the constraints of the complex geology and topography of the sites has been thoroughly analyzed and understood. While the process was much more arduous and time-consuming than is typical in Commission review of residential development applications, in this case, it was required given the significance and complexities of the proposed development. Specifically, the evaluation of the structural engineering required for this development fell outside the field of expertise of the Commission's technical staff. The technical consultants were hired to address this aspect of the proposed development, but they had to evaluate the underlying geologic and geologic engineering aspects in order to meet their professional responsibilities. When CSA found concerns with these aspects of the development, the scope of their review had to be increased. The size and extent of stabilization elements could be reduced due to the refined landslide mapping. Ultimately, the structural engineering aspects of the development were substantially redesigned as a result of this review.

Correspondence Received

Commissioner reports of ex parte communications received to-date are attached as Exhibit 23 of this staff report.

Commission staff has also received correspondence regarding the proposed projects from various interested parties, as summarized below:

- Mary Ann Webster, Chair of the Angeles Chapter of the Sierra Club, submitted a letter on November 18, 2010, in opposition to the proposed development. This letter is attached as Exhibit 24 of the staff report.

- Gina Natoli, Supervising Regional Planner for Los Angeles County Department of Regional Planning, submitted a letter dated November 18, 2010 outlining how the proposed plot plans for the subject projects would be evaluated against the policies and provisions of the Los Angeles County Draft Local Coastal Program (LCP). The letter states that the proposed development, as proposed, would require a Major CDP, CEQA review, and several variances, and that the development would be inconsistent with policies of the Draft LCP related to

habitat protection, grading, significant ridgeline protection, scenic resource protection, access, safety, and preservation of natural topography. The purpose of the County letter appears to be to demonstrate the resource protection policies of the County Draft LCP by using the subject projects as an example. However, it bears noting that the County Draft LCP has not been certified by the Commission or even submitted to Commission staff. As such, it does not establish standards that the Commission can use in reviewing the proposed project. This letter is attached as Exhibit 24.

- Adam Keats, Urban Wildlands Program Director of the Center for Biological Diversity, submitted a letter dated August 17, 2010, in opposition to the proposed development. This letter is attached as Exhibit 24.

- The Santa Monica Mountains Conservancy submitted a letter dated November 23, 2009, expressing opposition to the development for the stated reason that it would have significant adverse impacts to visual and ecological resources. This letter is attached as Exhibit 24.

- Timm and Julie Woolley, residents at 3021 Rambla Pacifico Road in Malibu, submitted a letter dated June 30, 2009, expressing opposition to the proposed development for the stated reason that it would have an adverse impact on the scenic quality of the natural area. This letter is attached as Exhibit 24.

- Ron and Sally Munro, residents at 3085 Rambla Pacifico Road in Malibu, submitted a letter dated June 23, 2009, expressing opposition to the development for the stated reason that it would adversely impact views of the undeveloped ridgeline. This letter is attached as Exhibit 24.

- Jeff Divine of The Surfer's Journal submitted a letter dated April 20, 2009, expressing support for the proposed development. This letter is attached as Exhibit 24.

- George Toberman, resident at 3539 Cross Creek Lane in Malibu, submitted a letter dated March 21, 2009, expressing support for the proposed development. This letter is attached as Exhibit 24.

Commission staff has also received correspondence from three of the applicants' attorneys (Mulryan, Morleigh, and Ronan) indicating that the Commission has no basis to inquire as to the ownership of each entity nor any basis to assert "unity of ownership" among the five applicants and deny the applications. These letters are attached as Exhibit 24. The issues raised by these letters are addressed in Section D of this staff report.

C. CONSISTENCY ANALYSIS

1. 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 l 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.
>
> 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.

The five subject properties cover an approximately 156-acre area of undeveloped ridgeline mountain terrain located on the southern flank of the Santa Monica Mountains about a mile inland from Pacific Coast Highway and the coast. This ridgeline extends inland approximately 2.18 miles from the narrow coastal terrace traversed by Pacific Coast Highway to the backbone crest of the Santa Monica Mountain Range (Exhibit 6). The Malibu/Santa Monica Mountains Land Use Plan (LUP) designates this ridge as a "Significant Ridgeline". The area is undeveloped and comprised of steep, rugged mountain terrain that is blanketed by various natural rock outcroppings and primarily undisturbed native chaparral habitat that is part of a large contiguous area of undisturbed native vegetation. To the west of the ridge is a prominent south-trending canyon that contains a USGS-designated blue-line stream. Another blue-line stream exists in a canyon bottom downslope to the east. The nearest development in the vicinity are residential enclaves of Serra Retreat located within the municipal limits of the City of Malibu approximately a half mile to the southwest.

Site-Specific Biological Information

The applicants have submitted Biological Assessments for their respective developments, listed in the Substantive File Documents, which address the habitats present on each project site. The reports identify three vegetation/habitat communities on the project sites: Mixed Chaparral, Non-native Grassland, and Ruderal Vegetation. The reports also state that several widely-scattered coast live oak trees are present on several of the properties, but note that they do not form woodland communities. A map of the habitats on the sites was also prepared by the biological consultant. The mapped ruderal and non-native grassland communities are primarily situated in the areas of the existing access route and the parts of the proposed development areas that have been traversed for site reconnaissance and geologic testing. In addition, a large area on the Mulryan and Lunch properties is identified as non-native grassland and is characterized as a mesa. The biological consultant delineates the disturbed non-native grassland mesa as a large approximately 245,000 sq. ft. (5.6 acre) area on the Mulryan and Lunch properties. The remainder (and majority) of on-site vegetation is mapped as mixed chaparral. The proposed off-site water line alignment is identified as consisting of a mix of mixed chaparral, ruderal, and non-native plant communities. No sensitive species were detected on the two survey dates cited in the Biological Assessments (May 10, 2001 and June 1, 2007). In the submitted biological reports, the biological consultant makes the determination that the sites do not support Environmentally Sensitive Habitat Areas (ESHA) for the following reasons: 1) neither mixed chaparral nor non-native grassland is considered rare, and 2) neither mixed chaparral nor non-native grassland on the sites are considered especially valuable because the mixed chaparral is fairly uniformly spread over the properties and broken only in limited areas by previous disturbance. The biological consultant also states that in the strictest sense of the ESHA

definition, the mixed chaparral would have to be considered ESHA, but that the Commission's ESHA test is flawed and impractical.

Commission Staff Ecologist, Dr. Jonna Engel, has reviewed all available biological information, visited the subject properties on April 23, 2009, and prepared a memo regarding the biological resources of the subject properties, dated January 25, 2011, which is hereby incorporated herein, and which is attached as Exhibit 27. The Commission concurs with the following conclusions reached by Dr. Engel regarding the biological resources on the subject sites.

Vera Parcel

The subject 20-acre property is situated on the nose of the north/south-trending ridge between Sweetwater Canyon to the west and Carbon Canyon to the east. The majority of the site is vegetated with a mixed chaparral plant community (laurel sumac shrubland is the dominant chaparral alliance), with the exception of areas of disturbance associated with the existing pilot access road and geologic testing. A few scattered oak trees exist among the site vegetation. Dr. Engel has concluded that this entire property is nearly pristine to pristine native habitat.

Lunch Parcel

The subject 20-acre property is situated on the crest and east flank of the north/south-trending ridge between Sweetwater Canyon to the west and Carbon Canyon to the east. The west-facing slopes of the property descend more gradually into Sweetwater Canyon and east-facing slopes descend more steeply into Carbon Canyon. The majority of the property is vegetated with a mixed chaparral plant community (greenbark ceanothus, bigpod ceanothus, mountain mahogany shrubland superalliance, chamise shrubland, and mountain mahogany shrubland), with the exception of a small portion of the property along the western parcel boundary that is dominated by non-native grasses and part of a larger, grassland "mesa" area to the west (on the Mulryan parcel). The mesa area is described in more detail below. Dr. Engel has concluded that this entire property is nearly pristine to pristine native habitat, with the exception of the historic mesa area described below.

Mulryan Parcel

The subject 40-acre property is also situated on the crest and west flank of the north/south-trending ridge. This western flank of the ridge consists of west-facing hillside slopes that descend to a north-south trending canyon. The majority of the site is vegetated with a mixed chaparral plant community (laurel sumac shrubland and fingers of greenbark ceanothus shrubland), with the exception of an existing access road up the eastern edge of the property and a large, gently-sloping grassland mesa area in the southeastern portion of the property that is dominated by non-native grasses (mesa described in more detail below). However, review of permit records and aerial photographs dating from 1975 to present, indicate that the access road and disturbed

areas north of the mesa were not existing prior to the effective date of the Coastal Act (1977), the road and the disturbance were not permitted, and they were not a part of CDP No. 4-01-108, which authorized a road to reach areas of the site to allow geologic testing. The road first appears in aerial photos from 2001, and through to the present. Prior to that, that area had been undisturbed and part of the larger undisturbed block of native chaparral vegetation. No road or trail is evident in the area north of the historic mesa from 1975 through 2000. As such, the existing road and adjacent disturbed areas north of the mesa are unpermitted, and the Commission must treat them as if the unpermitted development had not occurred for the purpose of assessing the impacts of the proposed development.

A large landslide underlies a significant portion of the property, including the gently-sloping mesa area. As such, a lot line adjustment is proposed with the adjacent property to the north (Morleigh) in order to site residential development in an area that is now the Morleigh parcel and outside mapped landslide areas. The area of the proposed Mulryan residence is flat plateau that supports a nearly pure stand of chamise chaparral, surrounded by laurel sumac chaparral. As such, with the exception of the grassland mesa area described below, the proposed Mulryan parcel contains nearly pristine to pristine native habitat.

Mesa Area on the Lunch and Mulryan Parcels

The “mesa” area on the Lunch and Mulryan parcels is dominated by non-native annual European grasses. In addition, the highly invasive Geraldton Spurge (*Euphorbia terracina)* that has become a serious problem in southern California coastal habitats was observed. While the mesa supports scattered native species, non-natives currently dominate the area. The applicants assert that the mesa area has been disturbed consistently since the late 1920’s and was likely used for grazing livestock. However, there is no evidence available to confirm that. It is also possible that the distinct grassland character of the mesa is due to the underlying landslide geology, rather than human disturbance. Given that the history of this area is a mystery and that determining the species character of the area from aerial photos is difficult, it is not possible to ascertain if the distinct pattern visible in photos of the mesa area is attributable to pristine native grassland, non-native grassland, or a mix of the two habitat types.

Upon review of aerial photographs dating from 1975 to present, the mesa area appears consistently as grassland habitat that is distinct from the surrounding mixed chaparral. However, the size of the mesa area had historically been smaller than is presently delineated by the applicant’s biological consultant. Aerial photos from 1975 through 2003 indicate that the mesa area had been relatively constant in size, occupying the south half of the area the applicant’s consultant has delineated. The historic mesa area that pre-dates the effective date of the Coastal Act is estimated to be approximately 3.0 acres in size (Exhibit 7). Starting in 2004, aerial photographs show additional disturbance in the mesa area in which chaparral vegetation cover was cleared by mechanized equipment (vehicle tracks are evident) and replaced by non-native

grassland vegetation cover. However, there is no record of that disturbance being authorized through a coastal development permit. Coastal Development Permit No. 4-01-108, associated with the pilot access road, did not permit development beyond the historic mesa area. As such, the additional disturbance that occurred in the mesa area beginning in 2004 is considered unpermitted. Therefore, for purposes of determining ESHA and analyzing impacts, the Commission treats the mesa area as being approximately 3.0 acres in size, and it is treated as being surrounded by undisturbed native chaparral vegetation.

Morleigh Parcel

The subject 40-acre property is situated on the crest and west flank of the north/south-trending ridge. This western flank of the ridge consists of west-facing hillside slopes that descend to a north-south trending canyon. The majority of the site is vegetated with a mixed chaparral plant community (California sage brush, ashyleaf buckwheat, bush mallow, sawtooth goldenbush, chamise, big pod ceanothus, and laurel sumac), with the exception of areas of disturbance associated with an existing access road and geologic testing. However, as discussed previously, review of permit records and aerial photographs dating from 1975 to present, indicate that the existing access road and disturbed areas adjacent to the road were not existing prior to the effective date of the Coastal Act (1977), were not permitted, and were not a part of CDP No. 4-01-108. The road first appears in aerial photos from 2001, and through to the present. Prior to that, that area had been undisturbed and part of the larger undisturbed block of native chaparral vegetation. No road or trail is evident in the area north of the historic mesa from 1975 through 2000. As such, the existing road and disturbed areas north of the mesa are unpermitted. As such, the entirety of the proposed Morleigh parcel is treated as containing nearly pristine to pristine native habitat.

Ronan Parcel

The subject 27-acre property is situated on the crest and east flank of the north/south-trending ridge. The east, south, and southeast flanks of the ridge descend to a north-south trending canyon below. The majority of the site is vegetated with a mixed chaparral plant community (laurel sumac, chamise and greenbark ceanothus chaparral), with the exception of unpermitted areas of disturbance associated with an existing access road and geologic testing. A pocket of coast live oak trees are located on the northeast-facing slopes of the northern portion of the subject property. As such, the entirety of the parcel contains nearly pristine to pristine native habitat.

Existing Pilot Access Road

In 2004, the Commission approved CDP No. 4-01-108 to improve an existing 1,750 ft. long jeep trail to provide access to the Lunch parcel for geologic testing purposes. The approved pilot access road (part of which was approved by the Commission and part of which was approved by the City of Malibu) traversed north from the terminus of Sweetwater Mesa Road in the City of Malibu, across three parcels within the jurisdiction

of the City of Malibu, and across two of the subject parcels (Vera and Mulryan). Special conditions of the Commission's permit approval required revegetation of graded and disturbed slopes, erosion control and drainage measures, and City of Malibu approval of the improvements within their jurisdiction. The applicant performed the rough-grading of the pilot access road from July through September 2006. Due to the fact that the pilot road followed an old jeep trail that pre-dated the effective date of the Coastal Act, the Commission only required re-vegetation of the disturbed slopes on either side of the 10-ft. wide trail/road upon completion of final grading, and a 5 yr. monitoring report, as part of the CDP. It does not appear that the disturbed slopes of the pilot road were ever re-vegetated as required by the permit. A revegetation monitoring report is due to be submitted in the summer of 2011 that would provide an assessment of whether site revegetation occurred and if it is in conformance with the approved revegetation plan.

Water Line Alignment

The proposed water line alignment north of the subject properties is also situated in undisturbed native mixed chaparral habitat areas that are part of a large expanse of undisturbed, contiguous native mixed chaparral habitat, with the exception of the northernmost approximately 1,200 ft. portion of the water line alignment, which follows Costa Del Sol Way. The existing 1,400 ft. long dirt road that the water line follows just south of Costa Del Sol Way contains non-native ornamental and ruderal species, but that road is unpermitted, and thus, the conditions associated with the presence of that road cannot be considered the baseline ecological condition for analyzing impacts. Prior to the unpermitted grading of the dirt road, the area had been undisturbed native chaparral vegetation, similar to that of the surrounding area. According to permit records and aerial photographs dating back to 1975, the existing unpaved dirt road that the proposed water line follows for 1,400 feet just south of Costa Del Sol Way is unpermitted. The road does not appear in aerial photos dating from 1975 through 1980. The dirt road appears in aerial photographs from 1983 to present, which indicates that it was rough-graded at some point between 1980 and 1983 (no known photos are available between July 1980 and November 1983). However, there is no record of a coastal development permit being applied for or granted for this development. The 1,400 ft. long dirt road traverses two parcels: APNs 4453-001-029 and 4453-001-030. In 1989, the Commission approved CDP No. 5-89-133 for construction of a single family residence on APN 4453-001-029, and CDP No. 5-89-260 for construction of a single family residence on APN 4453-001-030. The approvals included the extension of Costa Del Sol Way to provide access to each of the residences. However, the approved residential developments and access road are not located in the area of the existing dirt road that the water line is now proposed within. Although the dirt road appears on topographic site plans for the approved developments, the applicants did not include the grading of the road as part of the project description for either of the two permit applications. Further, the dirt road was not discussed, labeled, or described in the Commission analysis and findings on those permits. Since the road was not specifically approved in the Commission actions (and in fact was not even recognized in the findings), it must be concluded that no determination was made by the Commission at that time regarding the road's legality.

The applicant's agent has provided staff with a copy of an aerial photograph, asserted to be from 1968, that shows the subject dirt road. Commission staff cannot confirm the date of the photograph copy provided. Even if it could be confirmed that the dirt road existed in 1968, the road had evidently grown over with vegetation and ceased to exist by 1975 because it is clear from aerial photographs from 1975 through 1980 that the road was not there. As such, it must be concluded that the existing 1,400 ft. long dirt road is unpermitted and cannot be considered the baseline ecological condition for analyzing impacts. Prior to the unpermitted grading of the road, the area had been undisturbed native chaparral vegetation, similar to that of the surrounding area. In 1989, the Commission approved residential development on the parcels of land that the dirt road traverses. One of the residences has been built, but no portion of the development or required fuel modification extends into the area of the on-site dirt road. The other approved residence was never built and the permit has since expired, however, even if it had been built, the approved development does not extend into the area of the dirt road, except for a small portion of residence's fuel modification radius.

Prior to the unpermitted grading of the road, the area had been undisturbed native chaparral vegetation, similar to that of the surrounding area. Given the location of approved development on the properties that the road traverses, the road should have remained undisturbed native chaparral vegetation. As such, the proposal to utilize the existing 1,400 ft. dirt road to install the water line and access the line for maintenance must be considered a new impact for purposes of analyzing the biological impacts of the proposal. It is estimated that this stretch of the water line would result in approximately 0.31 acres of permanent impacts to native chaparral vegetation.

In summary, Dr. Engel has confirmed that, with the exception of an approximately 3-acre non-native grassland mesa area located on the Mulryan and Lunch properties and the 10 ft. wide jeep trail leading up to it, the entire 156 acres that make up the subject properties is comprised of relatively pristine native chaparral, sage scrub, and oak woodland habitat areas. In addition, a large expanse of undisturbed, contiguous native chaparral, sage scrub, and oak woodland habitat surrounds the subject properties. Further, the proposed water line alignment north of the subject properties is also situated in undisturbed native mixed chaparral habitat areas that are part of a large expanse of undisturbed, contiguous native mixed chaparral habitat, with the exception of the northernmost approximately 1,200 ft. portion of the water line alignment, which follows the paved Costa Del Sol Way. The proposed project area is situated within a largely undisturbed block of wilderness approximately 2,800 acres in size; the area has no paved roads and a minimal amount of dirt roads. About half of this larger area is public parkland: Malibu Creek State Park (State-owned public parkland) and Piuma Ridge Park (Santa Monica Mountains Conservancy-owned public parkland) are located on the adjacent properties to the west of the Vera, Mulryan, and Morleigh properties. The subject properties are located within a habitat linkage area, identified in the National Park Service's "Santa Monica Mountains National Area Land Protection Plan" that connects Malibu Creek State Park with Cold Creek Canyon Preserve and surroundings to the northeast.

ESHA Determination

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 sites are 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 that it is 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[1] (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

[1] 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-esha-memo.pdf

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[2].

As described above, the project sites contain pristine native chaparral, sage scrub, and oak woodland habitat areas that are part of a large, contiguous block of pristine native chaparral, sage scrub, and oak woodland habitat. The exceptions are the approximately 3-acre mesa area on the Mulryan and Lunch parcels and the 10-ft wide jeep trail leading up to it, and the northernmost approximately 1,200 ft. section of the water line alignment that is within an existing disturbed roadway of Costa Del Sol Way. 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, sage scrub, and oak woodland habitat on the project sites meet the definition of ESHA in the Coastal Act.

The Commission finds that the project sites and the surrounding area (with the exception of the approximately 3-acre mesa area on the Mulryan and Lunch parcels, the 10-ft wide jeep trail leading up to it, and the northernmost approximately 1,200 ft. section of the water line alignment that is within an existing roadway) constitute environmentally sensitive habitat areas (ESHAs). Section 30240(a) of the Coastal Act restricts development within ESHA to only those uses that are dependent on the resource and prohibits significant disruption of the habitat values of such areas.

Impact Analysis

Residences and Fuel Management

The applicants propose to construct a single family residence on each of their respective parcels, along with a common access road and municipal water line. Given that the vast majority of the subject properties and the surrounding area is ESHA, every element of the proposed projects will result in impacts to ESHA. As single-family residences, roads, and water lines do not have to be located within ESHA to function, these are not uses dependent on ESHA resources. Section 30240 also requires that ESHA be protected against significant disruption of habitat values. Obviously, the construction of residential development, including vegetation removal for both the

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

development area as well as required fuel modification, grading, construction of a residence, and the use of the development by residents will result in unavoidable loss of ESHA. Notwithstanding the need to protect structures from the risk of wildfire, fuel modification results in significant adverse impacts that are in excess of those directly related to the development itself.

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 required 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 (Exhibits 5,13).

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

For example, undisturbed coastal sage scrub and chaparral vegetation typical of coastal canyon slopes, and the downslope riparian corridors of the canyon bottoms, ordinarily contains a variety of tree and shrub species with established root systems. Depending on the canopy coverage, these species may be accompanied by understory species of lower profile. The established vegetative cover, including the leaf detritus and other mulch contributed by the native plants, slows rainfall runoff from canyon slopes and staunches silt flows that result from ordinary erosional processes. The native vegetation thereby limits the intrusion of sediments into downslope creeks. Accordingly,

disturbed slopes where vegetation is either cleared or thinned are more directly exposed to rainfall runoff that can therefore wash canyon soils into down-gradient creeks. The resultant erosion reduces topsoil and steepens slopes, making revegetation increasingly difficult or creating ideal conditions for colonization by invasive, non-native species that supplant the native populations.

The cumulative loss of habitat cover also reduces the value of the sensitive resource areas as a refuge for birds and animals, for example by making them—or their nests and burrows—more readily apparent to predators. The impacts of fuel clearance on bird communities was studied by Stralberg who identified three ecological categories of birds in the Santa Monica Mountains: 1) local and long distance migrators (ash-throated flycatcher, Pacific-slope flycatcher, phainopepla, black-headed grosbeak), 2) chaparral-associated species (Bewick's wren, wrentit, blue-gray gnatcatcher, California thrasher, orange-crowned warbler, rufous-crowned sparrow, spotted towhee, California towhee) and 3) urban-associated species (mourning dove, American crow, Western scrub-jay, Northern mockingbird)[3]. It was found in this study that the number of migrators and chaparral-associated species decreased due to habitat fragmentation while the abundance of urban-associated species increased. The impact of fuel clearance is to greatly increase this edge-effect of fragmentation by expanding the amount of cleared area and "edge" many-fold. Similar results of decreases in fragmentation-sensitive bird species are reported from the work of Bolger et al. in southern California chaparral[4].

Fuel clearance and habitat modification may also disrupt native arthropod communities, and this can have surprising effects far beyond the cleared area on species seemingly unrelated to the direct impacts. A particularly interesting and well-documented example with ants and lizards illustrates this point. When non-native landscaping with intensive irrigation is introduced, the area becomes favorable for the invasive and non-native Argentine ant. This ant forms "super colonies" that can forage more than 650 feet out into the surrounding native chaparral or coastal sage scrub around the landscaped area[5]. The Argentine ant competes with native harvester ants and carpenter ants displacing them from the habitat[6]. These native ants are the primary food resource for the native coast horned lizard, a California "Species of Special Concern." As a result of Argentine ant invasion, the coast horned lizard and its native ant food resources are diminished in areas near landscaped and irrigated developments[7]. In addition to specific effects on the coast horned lizard, there are other Mediterranean habitat

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

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

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

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

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

ecosystem processes that are impacted by Argentine ant invasion through impacts on long-evolved native ant-plant mutualisms[8]. The composition of the whole arthropod community changes and biodiversity decreases when habitats are subjected to fuel modification. In coastal sage scrub disturbed by fuel modification, fewer arthropod predator species are seen and more exotic arthropod species are present than in undisturbed habitats[9].

Studies in the Mediterranean vegetation of South Africa (equivalent to California shrubland with similar plant species) have shown how the invasive Argentine ant can disrupt the whole ecosystem.[10] In South Africa the Argentine ant displaces native ants as they do in California. Because the native ants are no longer present to collect and bury seeds, the seeds of the native plants are exposed to predation, and consumed by seed eating insects, birds and mammals. When this habitat burns after Argentine ant invasion the large-seeded plants that were protected by the native ants all but disappear. So the invasion of a non-native ant species drives out native ants, and this can cause a dramatic change in the species composition of the plant community by disrupting long-established seed dispersal mutualisms. In California, some insect eggs are adapted to being buried by native ants in a manner similar to plant seeds[11].

As the construction of a residence on each property will require both the complete removal of ESHA from the home development area and fuel modification for fire protection purposes around it, the proposed projects would significantly disrupt the habitat value in those locations. In addition, the proposed projects do not allow for clustering of building sites such that any significant overlap of fuel modification for structures could occur (although the applicants have stated that the proposed Residences 3 (Morleigh), 4 (Mulryan), and 5 (Ronan) would be clustered and would have overlapping fuel modification areas, the overlap is not substantial as shown on Exhibits 5, 13). The proposed development would thus result in significant removal of vegetation for fuel modification and brush clearance around the five building areas. The proposed project therefore does not minimize potential vegetation clearance and associated impacts to ESHA. In addition, the value of the area as a wildlife migration corridor would be drastically reduced because the large expanse of proposed development along the ridgeline would significantly fragment the habitats between the western and eastern slopes and their respective watersheds within an otherwise pristine 2,800 acre block of Mediterranean ecosystem habitats. Thus, the construction of the proposed residences would be inconsistent with the ESHA protection policies listed above.

Lot Line Adjustment among the Morleigh and Mulryan Properties

[8] Suarez, A.V., D.T. Bolger and T.J. Case. 1998. Effects of fragmentation and invasion on native ant communities in coastal southern California. Ecology 79(6):2041-2056. Bond, W. and P. Slingsby. Collapse of an Ant-Plant Mutualism: The Argentine Ant (*Iridomyrmex humilis*) and Myrmecochorous Proteaceae. Ecology 65(4):1031-1037.
[9] Longcore, T.R. 1999. Terrestrial arthropods as indicators of restoration success in coastal sage scrub. Ph.D. Dissertation, University of California, Los Angeles.
[10] Christian, C. 2001. Consequences of a biological invasion reveal the importance of mutualism for plant communities. Nature 413:635-639.
[11] Hughes, L. and M. Westoby. 1992. Capitula on stick insect eggs and elaiosomes on seeds: convergent adaptations for burial by ants. Functional Ecology 6:642-648.

In CDP application No 4-10-045, Morleigh and Mulryan jointly propose a lot line adjustment between their respective 40-acre parcels so that both of their proposed residences can be located outside mapped landslide areas since the majority of the Mulryan property is underlain by landslide debris. The size of each parcel will not change as a result of the proposed lot reconfiguration. Given the significant geologic and topographic constraints of the Mulryan parcel, the proposed lot line adjustment would enable the Mulryan residential development to be sited in a gently-sloping area of the existing Morleigh parcel to the north. The proposed Morleigh residential development would then be situated in another gently-sloping portion of the Morleigh parcel approximately 350 feet to the southwest of the proposed Mulryan development.

The applicants have stated that siting a residence on the Mulryan parcel as that parcel is currently configured would subject the structure to potential geologic hazards and would require large quantities of grading and landform alteration (removal/recompaction and slide remediation) and large retaining walls to construct. The applicants assert that, in addition to minimizing impacts from geologic hazards, the lot line adjustment and proposed buildings sites would allow the homes to be more clustered in order to minimize impacts to biological and visual resources. However, the result of the proposed lot line adjustment is to place a third home farther north along the pristine ridgeline, requiring additional road length and resulting in significant impacts to ESHA. As is explained below, in section II.D.2, the applicants may not be entitled to more than three houses on the site as a whole (if that many). Thus, allowing a third house significantly farther up the ridgeline could involve a significant increase in impacts.

In addition, the proposed lot reconfiguration would allow for the development of a much larger house on the proposed Mulryan lot than could be potentially accommodated on the Mulryan parcel in its existing configuration. While the minor overlap of fuel modification zones for two proposed residences on the proposed parcels would result in less vegetation removal than if each of the two residences was sited in sufficient isolation to avoid any overlap of fuel modification, even without a lot line adjustment, the Commission would seek to ensure similar overlap and significant reduction in vegetation removal between residences on the existing Mulryan parcel and one of the adjacent vacant parcels that is to be developed. Additionally, given the fact that the adjacent vacant lots within the subject site may be able to be developed with one or more residences, the reduction in impacts to ESHA that the applicant asserts will result from the proposed lot line adjustment will not be realized because the fuel modification required for development on one or more of the adjacent lots would be much the same as that required for development of the Mulryan lot. As such, the proposed lot line adjustment would position future development and its associated impacts further north into undeveloped native habitat areas and would not result in any significant reduction in ESHA impacts. Therefore, the proposed lot line adjustment would be inconsistent with the ESHA protection policies listed above.

<u>Access Road and Staging Area Siting and Design</u>

The proposed 6,010-ft. long access road design up the ridgeline to each of the subject properties is extensive and would have a significant footprint. Approximately 43,050 cu. yds. of grading (20,100 cu. yds. cut, 22,950 cu. yds. fill), 123 caisson piles (up to 79 ft. long and up to 5 ft. in diameter), and approximately 955 linear feet of 5 to 18 ft. high retaining walls are proposed to construct the entire length of the proposed access road. The estimated area of disturbance associated with the access road is approximately 6.75 acres. In addition, there is an area of the proposed access road (Sta. 55+60 to 63+30) that would require 1.5:1 (H:V) cut slopes. If Los Angeles County requires that the 1.5:1 slopes be modified to 2:1, the additional area of disturbance would be approximately 0.5 acre. In addition, the applicants are proposing three Fire Department staging areas along the access road (totaling 29,000 sq. ft.) to accommodate safe emergency vehicle access and staging. It is estimated that the three Fire Department staging areas would disturb approximately 1.19 acres.

The proposed access road and Fire Department staging areas would be located in ESHA, with the exception of the small portions of the proposed road and Fire Department staging areas that are situated within the existing disturbed 10-ft. wide pilot access road and approximately 3-acre historic mesa area. Given that the proposed developments are spread across such a large area, the proposed road and staging areas must traverse a significant, and topographically and geologically complex stretch of the ridgeline terrain. As such, the construction of the road to provide access to each of the proposed single-family residences would require the complete removal of over 6 acres of ESHA, and the habitat value in those locations would be significantly disrupted as a result of the proposed projects, as discussed above, inconsistent with Section 30240 and the LUP ESHA protection policies listed above. In addition, the value of the area as a wildlife migration corridor would be drastically reduced because the large expanse of proposed development along the ridgeline would significantly fragment the habitats between the western and eastern slopes and their respective watersheds within an otherwise pristine 2,800 acre block of Mediterranean ecosystem habitats.

Excess Excavated Material

A maximum of 13,950 cu. yds. of excess excavated material is proposed to be placed upon an approximately 81,750 sq. ft. (1.88 acres) area of the mesa, immediately adjacent to the proposed access road and a Fire Department staging area. The fill material would be contour graded to a 3:1 slope and re-vegetated with a mix of native shrub species and oak trees. The southern half of the proposed fill placement area would be situated within the historic grassland mesa area that Dr. Engel has determined does not constitute ESHA. However, the northern half of the fill placement area would be located in an area that Dr. Engel has determined is ESHA. The fill placement would significantly disrupt the habitat value in that area, inconsistent with the ESHA protection policies listed above. With regard to the mesa area that has traditionally been disturbed and is not considered ESHA, the applicants have proposed to revegetate this area after the fill placement. The applicants have provided a proposed revegetation plan that includes native shrubs and coast live oak trees. While these plantings would serve to stabilize the proposed fill areas and minimize soil erosion, they will not restore the mesa

area to full habitat value, given the human intrusion that would continue in the area. It is more likely that the filled and revegetated mesa area would serve as private park for the residents.

Water Supply

The proposed water line would traverse steep, rugged, mostly undeveloped mountain terrain for a significant distance. Approximately 3,300 feet of the proposed 7,800 foot water line alignment would traverse undeveloped areas to the north of the subject properties that contain undisturbed native chaparral vegetation. Machinery would be used to dig the 4 ft. wide trenches, which are estimated to disturb a 10 ft. wide area along the undeveloped areas of the proposed alignment. With the exception of the northernmost approximately 1,200-ft. portion of the proposed water line alignment, which follows Costa Del Sol Way, and the southern-most 3,300 feet of the water line alignment, which follows the proposed shared access road to each proposed residence, the remainder of the water line alignment (3,300 feet) and the area of the proposed 2,300 ft., 10-ft. wide maintenance road are considered ESHA. It is estimated that the water line and associated maintenance road would result in permanent impacts to at least 0.74 acres of ESHA and temporary impacts to at least 0.21 acres of ESHA. The applicants characterize the lower impact area, where a permanent maintenance road is not proposed, as a temporary impact area because they propose to revegetate this area with native vegetation after construction is complete. However, this area is remote and very steep. It would be very difficult to carry out a full revegetation of the area, particularly to provide ongoing maintenance such as weeding, replacement planting, and midcourse corrections that are necessary to ensure successful revegetation.As such, the proposed water line would have significant and unavoidable permanent impacts to ESHA along an extensive stretch of pristine and undisturbed mountain terrain.

Conclusion

The proposed projects are located in an area of undeveloped, unfragmented, relatively pristine native chaparral and coastal sage scrub habitat that is imbedded in a larger block of undeveloped land (2,800 acres) that also supports unfragmented, pristine native habitat. The Commission finds that the project sites and the surrounding area (with the exception of the approximately 3-acre mesa area on the Mulryan and Lunch parcels, the 10-ft wide jeep trail leading up to it, and the northernmost approximately 1,200 ft. section of the water line alignment that is within an existing roadway) constitutes ESHA. In addition, the subject properties are uniquely sited and suited for linking habitats and providing corridors for wildlife movement. The proposed projects, which include construction of five large single-family residences, associated fuel modification, a 6,010 ft. long access road with 29,000 sq. ft. of Fire Department staging areas, a 7,800 ft. long water line with maintenance road, and placement/contour grading of excess excavated material, would disrupt an uninterrupted mile-long stretch of undeveloped mountain terrain that is considered ESHA. Section 30240 of the Coastal Act restricts development within ESHA to only those uses that are dependent on the

resource. Application of Section 30240, by itself, would therefore require denial of the projects, because each element of the proposed projects, as discussed above, would result in significant disruption of habitat values and is not a use dependent on those sensitive habitat resources.

2. 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.

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

P91 All new development shall be designed to minimize impacts and alterations of physical features, such as ravines and hillsides, and processes of the site (i.e., geological, soils, hydrological, water percolation and runoff) to the maximum extent feasible.

P125 New development shall be sited and designed to protect public views from LCP-designated highways to and along the shoreline and to scenic coastal areas, including public parklands. Where physically and economically feasible, development on a sloped terrain should be set below road grade.

P129 Structures should be designed and located so as to create an attractive appearance and harmonious relationship with the surrounding environment.

P130 In highly scenic areas and along scenic highways, new development (including buildings, fences, paved areas, signs, and landscaping) shall:

- Be sited and designed to protect views to and along the ocean and to and along other scenic features, as defined and identified in the Malibu LUP.
- Minimize the alteration of natural landforms
- Be landscaped to conceal raw cut slopes
- Be visually compatible with and subordinate to the character of its setting.
- Be sited so as to not significantly intrude into the skyline as seen from public viewing places.

P131 Where feasible, prohibit placement of structures that will break the ridgeline views, as seen from public places.

P134 Structures shall be sited to conform to the natural topography, as feasible. Massive grading and reconfiguration of the site shall be discouraged.

P135 Ensure that any alteration of the natural landscape from earthmoving activity blends with the existing terrain of the site and the surroundings.

The five subject properties comprise an approximately 156-acre area of almost entirely undeveloped ridgeline mountain terrain located on the southern flank of the Santa Monica Mountains about a mile inland from Pacific Coast Highway and the coast. The Malibu/Santa Monica Mountains Land Use Plan (LUP) designates this ridge as a "Significant Ridgeline". The area is undeveloped and comprised of steep, rugged mountain terrain that is blanketed by various natural rock outcroppings and primarily undisturbed native chaparral habitat that is part of a large contiguous area of undisturbed native vegetation. The nearest development in the vicinity is the residential enclave of Serra Retreat located within the municipal limits of the City of Malibu approximately a half mile to the southwest.

The subject ridgeline is a prominent landscape feature along a significant stretch of the Malibu coast. The ridge is visible from several significant public vantages along Pacific Coast Highway, including Malibu Bluffs Park (2.5 miles west), Malibu's Civic Center and Colony Plaza areas (2 miles west), Malibu Lagoon State Park and Surfrider Beach areas (1.2 miles southwest), and Malibu Pier (1 mile southwest). The ridge is also highly visible from Malibu Creek State Park land and the Saddle Peak Trail about a quarter mile to the west, portions of Piuma Road approximately a mile to the north, and several LUP-mapped Vista Points along Rambla Pacifico Road a mile to the east.

Section 30251 of the Coastal Act requires scenic and visual qualities to be considered and preserved. In reviewing the proposed projects, Commission staff analyzed the publicly accessible locations from which the proposed development would be visible and the applicant's submitted visual analyses to assess potential visual impacts to the public. Staff examined the building sites, the size of the proposed structures, and alternatives to the size, bulk and scale of the structure. The development of the residences raises the issue of whether or not views from public viewing areas will be adversely affected (Exhibit 20).

Residence 1 (Vera)

The applicant is proposing to construct a 22-ft. high, two-level, 12,785 sq. ft. single-family residence with 2,116 sq. ft. storage space and 1,694 sq. ft. detached garage. The residence has been proposed in the eastern portion of the parcel, on the outer (seaward) face of the ridge crest and rises up in elevation jointly with the rise in elevation to the top of the ridge. The development will effectively appear to cascade down and around the nose of the ridge. The applicant had originally proposed the residence in a slightly different design configuration, in which the residence was wrapped farther around the western side of the ridge crest. In an effort to reduce the residence's visibility from significant public viewing areas to the west and southwest, the applicant made revisions to the development plans in 2009 to reduce the overall height

of the residential structure, from 28-ft. to 22-ft., and omitted the western-most approximately 40 feet of the structure.

However, while visual impacts have been somewhat reduced by the applicant's unique architectural design and the configuration changes that were made, the residence and its associated fuel modification requirements will still be highly visible from multiple public viewing areas, including Pacific Coast Highway (a Scenic Highway) to the southwest and south of the subject ridge (eastbound lanes beginning at the top of the coastal terrace south of Pepperdine University and down to Malibu Creek/Lagoon); Malibu Bluffs Park, Malibu Lagoon State Beach, Surfrider Beach, and the Malibu Pier that are situated to the southwest and south of the subject ridge. In addition, the proposed residence will be visible from the following Scenic Roads: portions of Malibu Canyon Road to the west, portions of Piuma Road to the north, and portions of Rambla Pacifico to the east. With the proposed residence wrapped around the outer (seaward) face of the ridge crest, ridgeline views from all of these significant public viewing areas in the heart of Malibu's coastline would be broken and appear incompatible with the character of surrounding undeveloped natural area. The proposed residence is large in size (12,785 sq. ft. with 2,116 sq. ft. storage space and 1,694 sq. ft. detached garage), two stories (22 ft. high), and spread approximately 250 linear feet around the face of the ridge crest. Although the design of the residence strives to blend with the surrounding topography and be visually appealing, the siting, scale, and vast size of the residence make it so prominent that it would instead alter the natural landscape rather than blend with it. As such, the proposed residence fails to minimize alteration of natural landforms or protect the scenic and visual qualities or views of this famously scenic coastal area. The proposed project, therefore, has not been sited and designed to protect public views of the pristine coastal ridgeline terrain from public viewing areas and would result in significant impacts to scenic vistas in the area, inconsistent with the visual resource policies of the Coastal Act and Malibu-Santa Monica Mountains LUP listed above.

Residence 2 (Lunch)

The applicant is proposing to construct a 22-ft. high, three-level, 12,004 sq. ft. single-family residence with 629 sq. ft. storage space and an attached 2,128 sq. ft. garage. The applicant had originally proposed the residence in a slightly different siting and design configuration, in which the residence was situated at the furthest edge of the ridge-top and just above two canyon areas that could serve as "chimneys" that would funnel a wildfire toward the structure. Commission staff had expressed concerns with this original design given the residence's visual prominence from several viewing areas and its close proximity to the ridge-top edge and canyon chimneys that pose a high fire risk and increased potential for erosion. The proposed residence was then revised and reconfigured by the applicant in 2009 to be sited further away from the ridge-top edge and tiered into a natural saddle location of the site where the structure would step up in elevation in concert with the underlying rise in elevation along the top of the ridge in order to minimize grading of the site. At its highest point, the residential structure was reduced from 28 to 22 feet above grade, with a roofline that resembles a gently sloping dome.

However, while visual impacts were reduced by the applicant's re-design, the residence and its associated fuel modification requirements will still be highly visible from various public viewing areas, including Pacific Coast Highway to the southwest and south of the subject ridge (eastbound lanes beginning at the top of the coastal terrace south of Pepperdine University and down to Malibu Creek/Lagoon); Malibu Bluffs Park, Malibu Lagoon State Beach, and Surfrider Beach, that are situated to the southwest and south of the subject ridge; and the following Scenic Roads, portions of Malibu Canyon Road to the west, portions of Piuma Road to the north, and portions of Rambla Pacifico to the east.

The proposed residence is large in size (12,004 sq. ft. with 629 sq. ft. storage space and 2,128 sq. ft. attached garage) and 22 ft. high. The structure is proposed to be tiered into a natural saddle location along the top of the ridge and the roofline would be dome-shaped to lower its visual profile. However, the residence would still break ridgeline views from several public viewing areas and appear incompatible with the character of surrounding undeveloped natural area. In addition, the size and scale of the development is large and would not serve to be visually subordinate to the surrounding natural landscape. The proposed project, therefore, has not been sited and designed to protect public views of the pristine coastal ridgeline terrain from public viewing areas and would result in significant impacts to scenic vistas in the area, inconsistent with the visual resource policies of the Coastal Act and Malibu-Santa Monica Mountains LUP listed above.

Lot Line Adjustment among the Morleigh and Mulryan Properties

In CDP application No 4-10-045, Morleigh and Mulryan jointly propose a lot line adjustment between their respective 40-acre parcels so that both of their proposed residences can be located outside mapped landslide areas since the majority of the Mulryan property is underlain by landslide debris. The size of each parcel will not change as a result of the proposed lot reconfiguration. Given the significant geologic and topographic constraints of the Mulryan parcel, the proposed lot line adjustment would enable the Mulryan residential development to be sited in a gently-sloping area of the existing Morleigh parcel to the north. The proposed Morleigh residential development would then be situated in another gently-sloping portion of the Morleigh parcel approximately 350 feet to the southwest of the proposed Mulryan development.

The applicants have stated that siting a residence on the Mulryan parcel as that parcel is currently configured would subject the structure to potential geologic hazards and would require large quantities of grading and landform alteration (removal/recompaction and slide remediation) and large retaining walls to construct. The applicants assert that, in addition to minimizing impacts from geologic hazards, the lot line adjustment and proposed buildings sites would allow the homes to be more clustered in order to minimize impacts to biological and visual resources.

However, the result of the proposed lot line adjustment is to place a third home farther north and higher up along the pristine ridgeline. As is explained below, in section II.D.2, the applicants may not be entitled to more than three houses on the site as a whole (if that many). Thus, allowing a third house significantly farther up the ridgeline could involve a significant increase in impacts. In addition, the proposed building sites on the reconfigured parcels would be significantly more visible from various public viewing areas, including Pacific Coast Highway to the southwest and south of the subject ridge, Malibu Bluffs Park, Malibu Lagoon State Beach, Surfrider Beach, Malibu Creek State Park, and portions of Malibu Canyon Road to the west.

Residence 3 (Morleigh)

The applicant is proposing to construct a 28-ft. high, three-level, 8,348 sq. ft. single-family residence with a 753 sq. ft. attached garage. The applicant had originally proposed the residence in a slightly different siting and design configuration, in which the residence was overhanging the furthest edge of the site's southwestern ridgeline slope and atop a large natural rock outcropping. Commission staff had expressed concerns with this original design given the residence's visual prominence from several viewing areas to the west/southwest and its close proximity to the ridge-top edge and steep canyon chimneys that pose a high fire risk and increased potential for erosion. The proposed residence was then revised and reconfigured by the applicant in 2009 to be shifted to the north approximately 100 feet in order to avoid the rock outcropping and be set further back from the edge of the site's southwestern ridgeline slope. The new location is less visually prominent than it was originally proposed and requires less grading and a shorter access driveway.

However, while visual impacts were reduced by the applicant's re-design, the residence and its associated fuel modification requirements, will still be significantly visible from various public viewing areas, including Pacific Coast Highway to the southwest and south of the subject ridge (eastbound lanes beginning at the top of the coastal terrace south of Pepperdine University and down to Malibu Creek/Lagoon); Malibu Bluffs Park, Malibu Lagoon State Beach, and Surfrider Beach, that are situated to the southwest and south of the subject ridge; and Malibu Creek State Park to the west. In addition, the development will be visible from portions of Malibu Canyon Road to the west.

The proposed residence is large in size (8,348 sq. ft. with 753 sq. ft. attached garage) and 28 ft. high. The façade and roofline of the structure are proposed to be curved in order to lower its visual profile. In addition, the structure is proposed to be notched into the prevailing slope and step up in elevation in concert with the underlying slope. Although the development envelope would not break the background ridgeline and would not result in significant landform alteration, the size and scale of the proposed residence is large and would appear incompatible and insubordinate with the character of surrounding undeveloped natural area. The proposed project, therefore, has not been sited and designed to protect public views of the pristine coastal ridgeline terrain from public viewing areas and would result in significant impacts to scenic vistas in the area,

inconsistent with the visual resource policies of the Coastal Act and Malibu-Santa Monica Mountains LUP listed above.

Residence 4 (Mulryan)

The applicant is proposing to construct a 28-ft. high, two-level, 7,220 sq. ft. single-family residence with a 1,398 sq. ft. attached garage and 3,709 sq. ft. of terraces. The applicant had originally proposed the development envelope in a slightly different configuration, in which the residence and hammerhead turnaround driveway were more fanned out within that gently-sloping portion of the ridgeline. Commission staff had expressed concerns that the original design was too close to the ridgetop edge that steeply descends into Carbon Canyon and had exceeded the maximum square footage development area allowed for residential projects that would have unavoidable impacts to ESHA. The proposed development envelope was then revised by the applicant in 2009 to shift the development further away from the ridge edge by 25 to 40 feet in a westerly direction, and to condense the development area into a tighter circular form to comply with the 10,000 sq. ft. development area maximum. The east side of the residence was also notched into the hillside more to lower its profile when viewed from public viewing areas to the east. The height of the west side of the structure is 28 feet above grade, while the height of the east side of the structure is much less, 21.5 feet above grade.

However, while visual impacts were reduced by the applicant's re-design, the residence and its associated fuel modification requirements, will still be significantly visible from several Scenic Roads that include portions of Malibu Canyon Road to the west, portions of Piuma Road to the north, and portions of Rambla Pacifico to the east. In addition, the development will be visible from Pacific Coast Highway to the southwest and south of the subject ridge (eastbound lanes beginning at the top of the coastal terrace south of Pepperdine University and down to Malibu Creek/Lagoon); Malibu Bluffs Park, Malibu Lagoon State Beach and Surfrider Beach that are situated to the southwest and south of the subject ridge; and Malibu Creek State Park to the west.

The proposed residence is large in size (7,220 sq. ft. with 1,398 sq. ft. attached garage, and 3,709 sq. ft. terraces) and 28 ft. high. The development envelope is proposed to be notched into the hillside slopes west of the ridge crest in order to reduce its profile and skyline intrusion when viewed from the east. However, the development would still break the ridgeline by approximately 7 feet when viewed from the east. In addition, the size and scale of the proposed residence is large and would appear incompatible and insubordinate with the character of surrounding undeveloped natural area. The proposed project, therefore, has not been sited and designed to protect public views of the pristine coastal ridgeline terrain from public viewing areas and would result in significant impacts to scenic vistas in the area, inconsistent with the visual resource policies of the Coastal Act and Malibu-Santa Monica Mountains LUP listed above.

Residence 5 (Ronan)

The applicant is proposing to construct a 28-ft. high, three-level, 12,143 sq. ft. single-family residence, 2,232 sq. ft. storage space, 3,161 sq. ft. terraces, and 1,762 sq. ft. detached two-level garage. The proposed residential envelope is situated in the far western portion of the parcel and notched into the south-facing slope of the ridgetop. The applicant had originally proposed the residence in a different siting and design configuration that was approximately 90 feet to the north, at a higher elevation on the ridge (approximately 50 feet higher in elevation). Due to Commission staff concerns about the development's visual prominence from public viewing areas to the east and southeast, the development was shifted to the south and notched into the south-facing hillside terrain. Given the relocated residence, the proposed access road had to be reconfigured. While the length of road was reduced by approximately 200 feet and retaining walls eliminated, the amount of grading required (fill) increased substantially in order to achieve the necessary elevation and comply with Fire Department access requirements.

However, while visual impacts were reduced by the applicant's re-design, the residence and its associated fuel modification requirements and access drive, will still be visible from several public viewing areas: Scenic Roads that include portions of Malibu Canyon Road to the west and portions of Rambla Pacifico to the east, Pacific Coast Highway to the southwest and south of the subject ridge (eastbound lanes beginning at the top of the coastal terrace south of Pepperdine University and down to Malibu Creek/Lagoon), Malibu Bluffs Park, Malibu Lagoon State Beach and Surfrider Beach that are situated to the southwest and south of the subject ridge; and Malibu Creek State Park to the west.

The proposed residence is quite large in size (12,143 sq. ft. with 2,232 sq. ft. storage space, 3,161 sq. ft. terraces, and 1,762 sq. ft. detached garage) and 28 ft. high. The structure is proposed to be notched into the south-facing slopes of the hillside terrain along the top of the ridge. However, the residence would still break ridgeline views from various public viewing areas and appear incompatible with the character of surrounding undeveloped natural area. In addition, the size and scale of the development is large and would not serve to be visually subordinate to the surrounding natural landscape. The proposed project, therefore, has not been sited and designed to protect public views of the pristine coastal ridgeline terrain from public viewing areas and would result in significant impacts to scenic vistas in the area, inconsistent with the visual resource policies of the Coastal Act and Malibu-Santa Monica Mountains LUP listed above.

Access Road

The proposed access road traverses difficult terrain (topographically and geologically) up the ridgeline to the subject properties. Given the remoteness of the area and the length and steepness of the road, the Fire Department has required three Fire Department staging areas along the access road (totaling 29,000 sq. ft.) to accommodate safe emergency vehicle access and staging. The proposed access road design is complex and would have a significant footprint. The road and its associated retaining walls and cut/fill slopes would be visible from several significant public viewing areas: Pacific Coast Highway to the southwest and south of the subject ridge

(eastbound lanes beginning at the top of the coastal terrace south of Pepperdine University and down to Malibu Creek/Lagoon); Malibu Bluffs Park, Malibu Lagoon State Beach, Surfrider Beach, and the Malibu Pier that are all situated to the southwest and south of the subject ridge; portions of Malibu Canyon Road to the west; portions of Piuma Road to the north; and portions of Rambla Pacifico to the east. In order to reduce the visual impacts associated with the road, the applicants have proposed to utilize on-site aggregate selected to blend with the colors of the landscape in order to mix into concrete for use on the road base and retaining walls. In addition, the applicants have proposed to re-vegetate all cut and fill slopes with plant species native to the Santa Monica Mountains and consistent with the surrounding native vegetation. While such measures may reduce visual impacts somewhat, they do not serve to protect public views or minimize alteration of the natural landscape/landforms. The proposed access road would traverse steep and varied terrain along its 6,010 ft. length and would require a significant amount of grading and large retaining walls and cut/fill slopes. As such, the significant length and footprint of the road would not be compatible with the character of surrounding undeveloped natural area or protect public views of this scenic area.

Conclusion

The applicants have made great strides to reduce the visual impact of the residences by consolidating each development within a single development area, making adjustments to the development area configuration, and by proposing unique architectural designs that attempt to blend and be complimentary with the underlying topography. In addition, the applicants have proposed to utilize on-site aggregate selected to blend with the colors of the landscape in order to mix into concrete for use on the road base and retaining walls. However, the proposed residences and access road would still result in significant impacts to visual resources and are inconsistent with Section 30251 of the Coastal Act. In addition, there are changes that could be made to each component of this project that would further reduce the visual impacts as required by Section 30251 (see Alternatives Section). Therefore, the proposed development is not consistent with the Section 30251 or the guidance policies of the Malibu-Santa Monica Mountains LUP, which require protection of public views, minimization of landform alteration, and compatibility with the character of the surrounding area.

3. 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.

In addition, the Malibu/Santa Monica Mountains LUP provides policy guidance regarding geologic and fire hazards. The Coastal Commission has applied the following relevant policies as guidance in the review of development proposals in the Santa Monica Mountains.

P147 Continue to evaluate all new development for impact on, and from, geologic hazard.

P148 Continue to limit development and road grading on unstable slopes to assure that development does not contribute to slope failure.

P156 Continue to evaluate all new development for impact on, and from, fire hazard.

The proposed developments are 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.

Geology and Engineering

The topography and geology of the subject properties along the subject ridgeline is very complex. A significant portion of the subject properties is underlain by landslide debris, which in general, has been shed westward from the prominent north-south trending ridgeline (Exhibit 28). As such, a significant portion of the proposed access road to serve the subject properties bisect these mapped landslide areas. In addition, one of the five proposed residences (CDP App. 4-10-040 (Lunch)), is proposed atop a mapped landslide area. These conditions pose a significant constraint for development of, and access to, the properties.

The proposed access road traverses the western side of a north-south oriented, sharp-crested ridge. At the City limits, the proposed road is at an elevation of approximately 835 feet, roughly 100 feet below, and 300 feet west of, the crest of the ridge. The proposed road and the ridgeline rise irregularly to a high point within the project area of approximately 1,500 feet over a straight-line distance of approximately 0.53 miles. To the east of the somewhat meandering ridgeline is a very steep slope, marked by vertical cliffs, dropping into Carbon Canyon. To the west, somewhat gentler (but still very steep) slopes descend to Sweetwater Canyon. Several drainages extending from both canyons modify these steep slopes.

The bedrock making up the subject ridge is primarily layered sedimentary rocks (conglomerates, volcanic breccias, sandstones, siltstones and shales) assigned to the Vaqueros Formation, underlain by sandstones of the Sespe Formation. These rocks are broadly folded and lie on the east limb of syncline, or downwarp, and so primarily dip to the west. The Vaqueros Formation makes up most of the western side of the ridge, and the underlying Sespe Formation makes up most of the eastern side of the ridge. This broad structure is interrupted by many minor folds and inactive faults. Isolated igneous rocks, known as the Conejo Volcanics, were intruded into the sedimentary rocks. Due to the fact that layered sedimentary rocks of diverse strengths broadly dip in the same direction as the slope on the western side of the ridge, this slope has been very susceptible to landsliding over recent geologic time. As mapped by Mountain Geology, Inc. (MGI), three large, ancient landslides, themselves cut by younger landslides, extend almost the entire distance from their headscarps at or near the ridge crest, to the canyon bottom. Evidence, such as the formation of soils on the surfaces of these landslides, indicates that they are likely of prehistoric origin. None show evidence of recent slope movement. The eastern side of the ridge also is susceptible to rockfall and landsliding, but since such slope movement would not threaten the proposed development it will not be discussed further.

Section 30253 requires that new development minimize risks to life and property in high hazard areas, as well as assure stability, structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area. Commission staff geologist, Mark Johnsson, and staff civil engineer, Lesley Ewing, provided staff with assistance in analyzing the subject projects for consistency with Section 30253 of the Coastal Act. In addition, in this case, Cotton, Shires and Associates Inc. (CSA), a professional firm of consulting engineers and geologists, was contracted to perform the civil and geotechnical engineering and engineering geologic review services in support of the Commission's review and analysis of the subject permit applications. CSA submitted to staff and the applicant a March 8 2010 Summary of Findings – Civil and Geotechnical Engineering and Engineering Geologic Peer Review Services in fulfillment of their initial contract on this project. When the application was resubmitted with changes to the engineering design, CSA's contract was extended to allow them review of the revised project. In December 2010, CSA submitted a second Draft Summary of Findings of their engineering geologic, geotechnical, civil and structural engineering peer review services in support of Commission staff's analysis of the applications. Various changes were made to CSA's draft report after receiving additional information from the applicant's consultants. CSA's Final Summary of Findings was submitted on January 21, 2011 (Exhibit 26 attachment). Lesley Ewing and Mark Johnsson have each prepared memoranda for the Commission and Commission staff that summarizes the important issues related to their reviews of the parts of the proposed project under their respective fields of expertise. The Commission concurs with the findings of the CSA final report, as well as the findings contained in the memorandum prepared by Lesley Ewing dated January 24, 2011 (Exhibit 26), and the memorandum prepared by Mark Johnsson dated January 25, 2011 (Exhibit 25), which are hereby incorporated herein by reference.

Proposed Single Family Residences

Of the five proposed residences, only one (Residence 2 - Lunch) is proposed atop a landslide area. However, given the extremely steep topography across the remainder of the Lunch property, there are no other feasible building sites within the bounds of the parcel that are outside landslide areas. Moreover, the submitted geology, geotechnical, and/or soils reports conclude that the Lunch 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. As discussed previously, landslide debris underlies the majority of the Mulryan property. As such, a lot line adjustment is proposed for the Mulryan and Morleigh parcels in order to site the Mulryan residential development outside landslide areas. The submitted geology, geotechnical, and/or soils reports conclude that the proposed Residence 1 - Vera, Residence 3 - Morleigh, Residence 4 - Mulryan, and Residence 5 - Ronan project sites are suitable for the proposed projects 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.

However, each of the proposed home sites (Residences 1 - 5) is situated on or near the ridgeline, with slopes steeply descending to canyons below. The approved fuel modification plan for each of the proposed residences utilizes the standard three zones of vegetation modification, which extend a maximum of 200 feet from the proposed residences. As such, a significant portion of the fuel modification area of each residential structure would extend across steeply sloping terrain below the ridgeline, which has the potential to increase the site's susceptibility to erosion and geologic instability. In addition, the large size of each development area, coupled with the required access drive for each home site and Fire Department requirements for access and staging, would result in a significant area of impervious surfaces along the ridgeline that lies above steep slopes descending to pristine canyons and blue-line streams below. Impervious surfaces have the potential to increase runoff volumes and rates, thereby increasing a site's susceptibility to erosion and geologic instability. There are a number of measures that could be incorporated into the projects that would minimize erosion and ensure geologic stability, such as proper drainage, runoff, and erosion control measures and landscaping of disturbed and graded slopes. Although the proposed residences have been designed to be stable and safe, consistent with Section 30253 of the Coastal Act, all of the development that is required to provide safe access, services, and fire protection and ensure stability for each residence would have significant impacts to coastal resources, particularly ESHA and visual resources, as discussed in the preceding sections. Alternatives exist that would minimize impacts to coastal resources while also assuring safety and stability of residential development. There are discussed in the Alternatives section of this report.

Proposed Access Road

A 4,883 ft./0.9 mile (excludes residential driveways) access road along the ridgeline is proposed in the subject permit applications. Approximately 43,050 cu. yds. of grading (20,100 cu. yds. cut, 22,950 cu. yds. fill) and an approximately 6.75 acre disturbance area is proposed in order to construct the entire length of the proposed shared access road. The proposed road crosses two large landslides. As such, two sections of the road, one 590 feet long and one 905 feet long, would be supported on caissons to provide safe access across these slide areas. Approximately 123 large diameter reinforced concrete caissons, ranging from 2 to 5 feet in diameter and up to 79 feet in length are proposed. An additional fourteen (14) 5-foot diameter caissons for rock fall protection are also proposed at the southern portion of the road, close to the City of Malibu boundary. Of the 20,100 cu. yds. of cut that is proposed for the road, almost 25%, or 4,850 cu. yds., will be cut material excavated for installation of the caissons. In addition to the 1,495 feet of caisson-supported roadway, there will be several retaining walls and a significant amount of cut and fill to provide for a level road surface. In total, there are five retaining walls proposed, ranging from 90 feet to 390 feet in length, and totaling 955 feet. The proposed retaining walls range in height from averages of 5 to 11 feet and maximum heights of 7.5 to 18 feet. The longest retaining wall, along the right side (or upslope side) of the northern portion of the road, would be 390 feet long and would have an average height of 11 feet and a maximum height of 18 feet. In addition, a section of the road (Sta. 27+00 to 30+00) appears to be susceptible to rockfalls, however, the likelihood of permanent damage to the roadway from these hazards appears to be low. Rockfall mitigation recommendations have been provided by the applicants' consultants per the "Rockfall Hazard and Mitigation Study" (Kane Geotech, Inc., June 25, 2007) to reduce the rockfall hazard potential to the road and road users. The recommendations call for a system that is 140 ft. long, 10 ft. tall, and have the capacity to withstand an impact force of 1,500 ft-tons. The structural and civil plans include 14 caissons that would be part of the rockfall mitigation system; however, to date, the access road design plans have not incorporated the rockfall mitigation recommendations.

Several sections of the proposed road would be quite steep. There are sections approximately 998 feet long, 1,085 feet long, and 535 feet long that would have a grade of 18.95%. There is one additional 285 foot long section that would have a grade of 17.25%. These steep grade sections do not connect; each section would be separated by stretches of road that are at a much gentler grade. Construction of the stabilized sections of the proposed access road would require large temporary construction staging pads. The applicants have identified those construction staging areas, which are within areas proposed for development, such as the Fire Department staging areas and proposed residential development pads.

The proposed road support system has been through three different design iterations. The initial design proposed involved a combination of cylindrical caissons and "dog bone" caissons. In early June 2010, Commission staff was provided with a revised road support design that relied upon traditional cylindrical caissons for the entire road support

system and the "dog bone" caissons had been deleted. As with the initial design, the caissons would require careful field installation since reinforcing steel for each caisson was designed to be oriented with the direction of the slide. By refining the geologic landslide mapping and using the appropriate parameters during the CSA review process, the applicants' consultants were able to replace the previously proposed dog-bone caissons with cylindrical caissons and reduce the amount and size of the stabilization elements of the access road.

The applicant's structural engineer also examined the option of a tied-back wall rather than a caisson system because such a design was thought to have the potential to further reduce both the caisson diameter and necessary reinforcing steel. However, the assessment of that option found that the tie-back installation would require far more site disturbance than the caissons, since large trenches would need to be excavated downslope of the slide to install the tiebacks. Approximately 1,010 feet of roadway would require slot excavations at least 30 to 60 feet deep to install the tie-back system, extending the site disturbance well beyond the existing roadway footprint. Lesley Ewing has reviewed the alternative design analysis and concurs that a tie-back stabilization system at this site would cause greater site disturbance than the caissons.

Staff has determined that the site geologic hazards, limits of landslides, type of sliding, and depth of the slide planes in the access road corridor have been appropriately characterized and that the structural design of the road will be safe and stable as long as the recommendations provided in the relevant reports are followed. Staff also has determined that because of the steepness of the access road corridor, the ability to devise other designs that would reduce grading and wall heights is limited. The Commission concurs with its staff's conclusions in these respects.

Although the proposed engineering design of the access road is simpler than what was previously proposed, it is still a relatively complex road design that would require a significant amount of grading, retaining walls, large cut/fill slopes, Fire Department staging areas, drainage devices, and an expansive overall footprint. Although the proposed access road has been designed to be stable and safe, consistent with Section 30253 of the Coastal Act, all of the development that is required to provide that safety and stability would have significant impacts to coastal resources, particularly ESHA and visual resources, as discussed in the preceding chapters. Alternatives exist that would minimize impacts to coastal resources while also assuring safety and stability of development. There are discussed in the Alternatives section of this report.

Fire Department Staging Areas and Placement of Excess Excavated Material

Given the remoteness of the area and the length and steepness of the road, the Fire Department has required construction of the three proposed Fire Department staging areas along the access road to accommodate safe emergency vehicle access and staging. Two of the staging areas (approximately 2,800 sq. ft. and 6,200 sq. ft. in size) are adjacent to one another and located where the proposed access road begins within the unincorporated Los Angeles County jurisdiction on the Vera parcel. These two

staging areas would require 700 cu. yds. of grading (fill). The third staging area, which is 20,000 sq. ft. in size, is situated further up the road, upon the mesa area of the Mulryan parcel. Approximately 9,400 cu. yds. of grading (fill) would be required for construction of this staging area. All three staging areas are located within the boundary of landslide areas. Placement of fill to construct the staging areas has the potential to affect stability. Slope stability analyses were performed to evaluate the effect of fill placement on the landslides and it was found that the slope below the staging areas would not be destabilized significantly as long as the fill slope is keyed and benched, compacted and stabilized to reduce susceptibility to debris flows and erosion. The Commission concurs with its staff's conclusions in this respect.

In addition, construction of the proposed projects would generate a total of approximately 8,750 cu. yds. of net excess excavated material. As discussed previously, it is proposed that excess excavated material generated by the five residential development projects will be balanced on-site by the placement and contour grading of excess material upon the gradually-sloping mesa area on the Mulryan parcel. Although it appears that the total project among all applications will generate 8,750 cu. yds. of excess material, the applicant has specified that a maximum of approximately 13,950 cu. yds. of excess material, to a maximum depth of 5 feet and a maximum slope of 3:1 (H:V), would be placed upon an approximately 81,750 sq. ft. (1.88 acres) area of the mesa adjacent to the proposed access road and upper Fire Department staging area. The applicant also has proposed to re-vegetate this fill area with a mix of native shrub species and oak trees. The proposed fill placement area is underlain by landslide. As such, slope stability analyses were performed to evaluate the effect of fill placement on the landslide. Based upon the results of the analysis, Commission staff has determined that the area designated to receive the excess material, 13,950 cu. yds. and 5 ft. depth, would not be destabilized significantly as long as the fill slope is keyed and benched, compacted and stabilized to reduce susceptibility to debris flows and erosion. The Commission concurs with its staff's conclusions in this respect.

However, the proposed Fire Department staging areas and placement of excess excavated material would encroach into areas that are considered ESHA. Although the proposed staging areas and fill placement may be stable and safe if certain recommendations are incorporated, consistent with Section 30253 of the Coastal Act, the proposed siting of these areas would have significant impacts to ESHA, as discussed in the preceding ESHA section of this report. Alternatives exist that would minimize impacts to ESHA while also assuring safety and stability of development. There are discussed in the Alternatives section of this report.

Proposed Waterline

The proposed project includes extension of an 8-inch diameter water line down to the properties that are the subject of this staff report from an existing municipal water main

beneath Costa Del Sol Way to the north. The total length of the proposed water line is approximately 7,800 feet and will be installed by trenching. A 10-ft. wide maintenance road to service the water line is proposed along a 990-ft. long stretch of the water main alignment, where the existing dirt road ends in the northern section down to approximately 1,000 feet shy of the northernmost proposed residential development due to the extreme steepness of that segment of the terrain in that area. According to preliminary grading plans, the proposed 990-ft. long maintenance road will require a 60-ft. long, 2 to 6-ft. high retaining wall and approximately 1,145 cu. yds. grading (1,135 cu. yds. cut; 10 cu. yds. fill) on steep slopes. The proposed alignment is on bedrock and free of large landslides and other geologic hazards. However, the line will have significant adverse impacts to coastal resources, as discussed in previous sections. As discussed in the Alternatives section of this report, it is feasible to install water wells and water tanks to provide water service to each of the proposed residences.

Wild Fire

The subject five properties are contiguous and located along an approximately 3,000-ft. long stretch of a prominent ridgeline separating the Sweetwater Canyon and Carbon Canyon watersheds of the Santa Monica Mountains, about a mile inland from Pacific Coast Highway. The area is largely undeveloped and in a remote area of the Santa Monica Mountains where there is an extraordinary potential for damage or destruction from wildfire. In addition, the Santa Monica Mountains are classified a Very High Fire Hazard Severity Zone by the Los Angeles County Fire Department. There have been several wildfires in the area of the subject properties in recent history. The latest wildfire occurred on the subject sites in November 2007. Prior to that, significant wildfires occurred in 1942, 1956, 1970, 1985, 1993, and 1996. Fire is an inherent threat to the indigenous chaparral community of the coastal mountains. Wildfires often denude hillsides in the Santa Monica Mountains of all existing vegetation, thereby contributing to an increased potential for erosion and landslides on property. Typical vegetation in the Santa Monica Mountains consists mostly of coastal sage scrub and chaparral. Many plant species common to these communities produce and store terpenes, which are highly flammable substances (Mooney in Barbour, Terrestrial Vegetation of California, 1988). Chaparral and sage scrub communities have evolved in concert with, and continue to produce the potential for, frequent wild fires. The typical warm, dry summer conditions of the Mediterranean climate combine with the natural characteristics of the native vegetation to pose a risk of wild fire damage to development that cannot be completely avoided or mitigated.

Section 30253 of the Coastal Act requires that new development shall minimize risks to life and property in areas of high geologic, flood, and fire hazard. The applicants propose five new single family residences, ranging from 7,220 sq. ft. to 12,785 sq. ft. in size, on five adjoining parcels. In addition, a 6,010 ft. long access road is proposed to reach the subject properties. Due to the steepness and length of the proposed access route, the properties would be difficult to reach and traverse for emergency vehicles. As such, the Fire Department is requiring the three proposed Fire Department staging areas along the access road to accommodate safe emergency vehicle access and

staging. The proposed staging areas total 29,000 sq. ft. in size and are distributed between particularly difficult sections of the road alignment.

With slopes steeply descending from either side of the subject ridgeline to canyons below, the proposed home sites are situated in areas near or at the top of the ridge that are particularly vulnerable to fire hazard. Homes located in natural chimneys, such as narrow canyons and ridgetop saddles, are especially fire-prone because winds are swiftly funneled into these canyons and eddies are created. Homes located where a canyon meets a ridge are more likely to burn than other ridge-top homes because flames and convection heat hit the home directly rather than passing over. In this case, each of the proposed home sites (Residences 1 - 5) is situated on or near the outer edges of the ridgeline or ridgeline saddles and in close proximity to natural chimney features. Further, the Residence 1 (Vera) development area, which is approximately 250 ft. wide, would overhang the front of the subject ridge crest. In addition, each of the proposed home sites possesses a large development area (10,000 sq. ft.). The approved fuel modification plan for each of the proposed residences utilizes 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. In addition, each of the proposed residences are proposed to be equipped with exterior fire suppression sprinkler systems that would shower the residence and an additional 75 ft. radius within the irrigated fuel modification zone with water in case of wildfire. The applicants have asserted that in order to adequately defend the proposed structures in this Class 4 Fire zone, there must be an adequate volume and pressure of water to have the fire suppression sprinkler system shower each development area with water for a period of two to three hours at a rate of up to 127 gallons per minute in case of wildfire (Exhibits 13, 14). As such, the proposed project includes extension of an 8-inch diameter water line down to the subject properties from an existing municipal water main beneath Costa Del Sol Way to the north. The total length of the proposed water line is approximately 7,800 feet.

Captain James Bailey, Head Fire Prevention Engineer for Los Angeles County Fire Department, has provided Commission staff with two letters expressing support for the proposed water line extension, dated December 26, 2007 and April 6, 2010 (Exhibit 22). The most recent letter, dated April 6, 2010, not only expresses support for the water line extension, but indicates that it is a requirement to provide a reliable, sufficient fire flow in this Very High Fire Hazard Severity Zone. In support of this conclusion, Mr. Bailey states the following in his April 6, 2010 letter,

> Pursuant to Section 508.1 of the 2008 Los Angeles County Fire Code, an applicant must provide “an approved water supply capable of supplying the required fire flow for fire protection…” Section 508.3 further explains that “fire flow requirements for buildings or portions of buildings and facilities shall be determined by the fire code official.” Regulation #8 of the Los Angeles County Fire Department establishes the required fire flow for development projects. In accordance with Regulation #8, the proposed development requires a minimum of 2,000 gallons per minute of water flow for the

> duration of two hours. Due to the required fire flow, the proposed extension of the municipal water line is required to meet these standards.

Mr. Bailey also indicates that private water wells, tanks and sprinklers will not be acceptable in this case due to the size of the proposed residences, their location, and the fact that a finding of practical difficulty or unreasonable hardship in constructing the water line cannot be made. However, while the Fire Department may prefer and encourage the water line option for maximum fire protection in this case since it is being proposed by the applicants, it would appear to remain possible that the Fire Department could find the alternative, wells and tanks, consistent with the Fire Department's codes and regulations. In many remote locations in the Santa Monica Mountains the Fire Department has allowed water wells and tanks for proposed single family residences, finding that water line alignments that were shorter or required construction in less steep or remote areas than the proposed alignment to be infeasible.

Due to the fact that the proposed projects are located in an area subject to an extraordinary potential for damage or destruction from wildfire, the applicants have incorporated many fire protection and emergency access provisions to mitigate for the remoteness of the area and the extraordinary fire potential inherent to the area. Although the proposed projects' mitigation provisions may provide a high level of safety from the threat of wildfire, the proposed projects, including its fire hazard mitigation provisions such as the municipal water line and Fire Department staging area, would encroach into areas that are considered ESHA and significantly disrupt the habitat values in the those areas, as discussed in the preceding ESHA section of this report. Alternatives exist that would avoid and minimize impacts to ESHA while also minimizing damage or destruction from wild fire. These are discussed in the Alternatives section of this report.

4. 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), among others, 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.

Section 30250(a) of the Coastal Act requires that new residential development shall be located within, contiguous with, or in close proximity to existing developed areas able to accommodate it, or in other areas with adequate public services, and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.

In the case of the proposed projects, residential development is proposed along a prominent ridgeline in an undeveloped area of the Santa Monica Mountains that consists of primarily undisturbed native chaparral habitat that is part of a large, contiguous area of undisturbed native vegetation. The subject contiguous properties are located on the southern flank of the Santa Monica Mountains, about a mile inland from Pacific Coast Highway, east of Malibu Canyon Road, and west of Las Flores Canyon Road. A large area of public parkland that is part of Malibu Creek State Park is located on the adjacent parcels to the west. The nearest development in the vicinity is the residential enclave of Serra Retreat located approximately a half mile to the southwest. The proposed development would introduce the first homes and improved roads into an otherwise pristine 2,800-acre block of undisturbed habitat (Exhibit 6).

In past actions, the Commission has found the existing developed areas in the Malibu/Santa Monica Mountains area to all be on the “coastal terrace” that is generally seaward of the Rancho Topanga Malibu Sequit line and within the City of Malibu (the two exceptions are Pepperdine University which is on the terrace but outside the City boundary, and the Old Post Office Tract area in Topanga).

The Commission does not consider the subject project sites to be located within, contiguous with, or in close proximity to an existing developed area. This determination is based in part on their location north of the Rancho Topanga Malibu Sequit line and the City of Malibu boundary. Additionally, the proposed development sites are isolated from any other existing development by a distance of over a half mile and separated by very steep terrain and large contiguous areas of ESHA. Further, there is a lack of established roads or other public services as evidenced by the applicants’ proposals to construct a road and water line long distances over extremely steep, geologically unstable, and environmentally sensitive hillsides.

As discussed in great detail in the preceding sections, the proposed density and large size and scale of the proposed developments, coupled with the geologic, topographic, and fire hazard constraints that exist within this undeveloped area, necessitate the construction of significant facilities (including a road and driveways of 6,010 ft. in length, installation of a 7,800 ft. long water line, and several fire truck staging areas) to provide basic amenities such as access, utilities and water, geologic stability, and fire safety for all of the residential developments. The developments increase the demands on road capacity, sewage, water and other services, and associated impacts to geologic stability and hazards, ESHA, scenic character, and contribution to fire hazards. The construction of the required facilities would have significant and unavoidable individual and cumulative impacts to ESHA and visual resources, as outlined in the preceding sections of this report. As such, the proposed projects are not within, contiguous with or in close

proximity to an existing developed area, nor are they located in an area with public services or where they can be developed without significant adverse individual and cumulative impacts on coastal resources.

In conclusion, the Commission finds that the proposed projects will result in significant and unavoidable adverse individual and cumulative impacts to ESHA and visual resources as discussed in detail above. As such, the Commission concludes that the proposed developments will not avoid significant adverse effects, either individually or cumulatively, on coastal resources, which is in direct conflict with Section 30250 of the Coastal Act.

D. DETERMINATION OF COMMISSION ACTION

1. Options for Projects Inconsistent with Chapter 3 Policies

As discussed in the above findings, whether viewing the proposed project as a whole or looking at each component of it (as defined by the separate permit applications) separately, the project, as proposed, is inconsistent with three different Chapter 3 policies (those in sections 30240, 30251, and 30250). When the Commission reviews a proposed project that is inconsistent with the Coastal Act, there are several options available to the Commission. In many cases, the Commission will approve the project but impose reasonable terms and conditions to bring the project into conformance with the Coastal Act. In other cases, the range of possible changes is so significant as to make conditioned approval impractical. In that situation, the Commission will deny the project and provide guidance to the applicant on the type(s) of changes that must be made in order to generate a revised proposal that is consistent with the policies of the Coastal Act. These denials are without prejudice inasmuch as applicants are given direction on what they need to do to propose an alternative project that can meet Coastal Act policies. In rare cases, there are no feasible conditions that could bring the project into conformance with the Coastal Act, and there are no obvious feasible alternatives consistent with the Coastal Act that the Commission might suggest to an applicant. When this happens, the Commission will deny the project without further guidance to the applicant.

In this case, the proposed project is significantly out of conformance with the Coastal Act because the project site is located in the middle of significant ESHA habitat and much of the project would traverse a highly visible, undisturbed area of the Santa Monica Mountains, where the expanse of natural landscape and vegetation defines the appearance and much of the overall character of the area. As a result, the proposed project must be denied in its present form. Moreover, the Commission is unaware of any version of the proposed project that would not have impacts inconsistent with the ESHA and visual policies of the Coastal Act. Thus, the inherent Chapter 3 inconsistencies would normally require a complete denial.

However, because of a unique provision of the Coastal Act, this denial does not preclude the applicants from applying for some other development or use of the site, or a modified version of the current proposal. Due to the range of potential options for

alternative development plans, the Commission cannot simply condition the proposal to make it approvable. However, an analysis of this unique provision will help to elucidate the types of alternatives that may be approvable.

2. Takings

a. Takings Law

i. Coastal Act Takings Provision

When a proposed project's inherent inconsistencies with the policies in Chapter 3 of the Coastal Act would normally require the Commission to deny the project, a question may arise whether such a denial would "take" or "damage" the applicant's private property for public use in violation of the California and/or United States Constitutions. This is because Coastal Act Section 30010 precludes such actions, stating as follows:

> *The Legislature hereby finds and declares that this division is not intended, and shall not be construed as authorizing the commission, port governing body, or local government acting pursuant to this division to exercise their power to grant or deny a permit in a manner which will take or damage private property for public use, without the payment of just compensation therefor. This section is not intended to increase or decrease the rights of any owner of property under the Constitution of the State of California or the United States.*

Consequently, although the Commission is not a court and may not ultimately adjudicate whether its denial of an application would constitute a taking, the Coastal Act imposes on the Commission the duty to assess whether such a denial might constitute a taking so that the Commission may take steps to avoid that outcome. If the Commission concludes that a denial would not constitute a taking, then it may deny the project without violating Section 30010. If the Commission concludes that a denial might constitute a taking, then Section 30010 requires the Commission to approve some level of development, even if the development is otherwise inconsistent with Coastal Act policies. In this latter situation, the Commission must again decide whether to approve some version of the proposed project (to comply with Section 30010) subject to conditions to minimize the Chapter 3 inconsistencies,[12] or if the range of possible approvable projects is so varied as to warrant a denial with guidance provided to the project applicant as to what sort of development would be approvable.

In the remainder of this section II.D.2, the Commission considers (a) whether, for purposes of compliance with Section 30010, its denial of the project would constitute a taking; (b) if so, what scale of development (at a general level) would likely provide sufficient use of the property to avoid such a taking while minimizing inconsistencies with Chapter 3 policies; and (c) whether there is enough variation in the type of development that would satisfy that standard to warrant a denial with guidance rather

[12] For example, in 2010, the Commission approved CDP 4-07-143 (Ketchum & Kaplan), conditionally authorizing residential development on a site even though it would adversely affect the on-site ESHA and was not resource dependent development and thus was inconsistent with Section 30240.

than a conditional approval.

ii. General Takings Principles

The Fifth Amendment of the United States Constitution provides that private property shall not "be taken for public use, without just compensation."[13] Similarly, Article 1, section 19 of the California Constitution provides that "[p]rivate property may be taken or damaged for public use only when just compensation…has first been paid to, or into court for, the owner."

The idea that the Fifth Amendment proscribes more than the direct appropriation of property is usually traced to *Pennsylvania Coal Co. v. Mahon* (1922) 260 U.S. 393. Since *Pennsylvania Coal*, most of the takings cases in land use law have fallen into two categories (*see Yee v. City of Escondido* (1992) 503 U.S. 519, 522-523). First, there are the cases in which government authorizes a physical occupation of property (*see*, *e.g.*, *Loretto v. Teleprompter Manhattan CATV Corp.* (1982) 458 U.S. 419). Second, there are the cases in which government merely regulates the use of property (*Yee, supra,* 503 U.S. at pp. 522-523). A taking is less likely to be found when the interference with property is an application of a regulatory program rather than a physical appropriation (*see*, *e.g.*, *Keystone Bituminous Coal Ass'n. v. DeBenedictis* (1987) 480 U.S. 470, 488-489, fn. 18). However, as Justice Holmes put it in *Mahon*, "if regulation goes too far it will be recognized as a taking." 260 U.S. 393, 415. The Commission's actions here would be evaluated under the standards for a regulatory taking because, if the Commission were to deny these applications, it would not be physically occupying or otherwise taking ownership of the subject property.

The Supreme Court itself has recognized that case law offers little insight into when, and under what circumstances, a given regulation may be seen as going "too far" (Lucas v. South Carolina Coastal Council (1992) 505 U.S. 1003, 1014). In its recent takings cases, however, the Court has identified two circumstances in which a regulatory taking might occur. The first is the "categorical" formulation identified in Lucas, supra. In Lucas, the Court found that regulation that denied all economically viable use of property was a taking regardless of the outcome of a "case specific" inquiry into the public interest involved (Id. at p. 1014). The Lucas court emphasized, however, that this category is extremely narrow, applicable only "in the extraordinary circumstance when no productive or economically beneficial use of land is permitted" or the "relatively rare situations where the government has deprived a landowner of all economically beneficial uses" or rendered it "valueless" (Id. at pp. 1016-1017 [emphasis in original]) (see United States v. Riverside Bayview Homes, Inc. (1985) 474 U.S. 121, 126 [regulatory takings occur only under "extreme circumstances"]).[14]

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[13] The Fifth Amendment was made applicable to the States by the Fourteenth Amendment (see *Chicago, B. & Q. R. Co. v. Chicago* (1897) 166 U.S. 226).

[14] Even where the challenged regulatory act falls into this category, the government may not constitute a taking if the restriction inheres in the title of the property itself; that is, if background principles of state property and nuisance law would have allowed government to achieve the results sought by the regulation (Lucas, supra, 505 U.S. at pp. 1028-1036).

The second circumstance in which a regulatory taking might occur is under the three-part, ad hoc test identified in *Penn Central Transportation Co.* (*Penn Central*) v*. New York* (1978) 438 U.S. 104, 124. This test generally requires an examination into the character of the government action, its economic impact, and its interference with distinct, investment-backed expectations (*Id*. at p. 134; *Ruckelshaus v. Monsanto Co.* (1984) 467 U.S. 986, 1005). In *Palazzolo v. Rhode Island* (2001) 533 U.S. 606, the Court again acknowledged that the *Lucas* categorical test and the three-part *Penn Central* test were the two basic situations in which a regulatory taking might be found to occur (see *id.* [rejecting *Lucas* categorical test where property retained value following regulation but remanding for further consideration under *Penn Central*]). *See also*, *Lingle v. Chevron U.S.A., Inc.* (2005) 544 U.S. 528, 538.

iii. Identification of the Unit of Analysis

As a threshold matter, before a taking claim can be analyzed, it is necessary to define the property interest against which the taking claim will be measured. In most cases, this is not an issue because there is a single, readily identifiable parcel of property on which development is proposed. The issue is complicated in cases where a landowner owns or controls multiple, adjacent or contiguous parcels all of which are related to the proposed development. In these circumstances, courts will analyze whether the lots are sufficiently related so that they can be aggregated as a single parcel for purposes of the takings analysis. In determining whether lots should be aggregated, courts have looked to a number of factors such as unity of ownership, the degree of contiguity, the dates of acquisition and the extent to which the parcel has been treated as a single unit (e.g., *District Intown Properties, Ltd. v. District of Columbia* (D.C.Cir.1999) 198 F.3d 874, 879-880 [nine individual lots treated as single parcel for takings purposes]; *Ciampitti v. United States* (Cl.Ct. 1991) 22 Cl.Ct. 310, 318). In order to determine whether and how these principles apply in this case, a review of the facts is necessary.

b. Facts Relative to the Takings Analysis

The facts relative to this takings analysis require special attention. This section presents the facts to support the Commission's takings analysis. The first two subsections present the facts surrounding the acquisition of the subject property and the history of the five limited liability limited partnerships ("LLLPs") that claim separate ownership of the five parcels. The third subsection discusses the social and business relationships among each of the general partners of the LLLPs. The fourth discusses the nature of the transfer of the property since these applications were first submitted. The final subsection will lay out the applicants' unified development scheme for the subject property.

i. Property Acquisition – Indicia of Sole Ownership by David Evans

Two separate news reports directly state that David Evans (also referred to as "The Edge", his nickname in his band, U2) bought all five parcels in 2006 and has continued to own them all. Jim Vanden Berg, the project manager for the entire development was

quoted in a news report[15] saying "[t]he Edge will be building his home and these other houses." On May 1, 2009, Noaki Schwartz of the Associated Press reported that Mr. Evans and his wife bought all five parcels and they plan to build a house on each parcel.[16] Vanden Berg is also cited as having told reporters that Evans will sell some of the homes and plans to pick his neighbors.[17] Finally, Evans created in a website dedicated to the project, www.leavesinthewind.com, in which he sometimes refers to his partners but much of the time writes in the first person and refers to the project as if it is solely that of himself and/or his family.

Perhaps most significantly, though, Mr. Evans subsequently made direct statements to a sitting Commissioner confirming the suggestions in these news reports. On May 4, 2009, Commissioner Steve Blank met with David Evans and his agent, Jared Ficker of California Strategies, to discuss the pending application. Commissioner Blank subsequently submitted an *ex parte* communication disclosure form to Commission staff, as required by Section 30324. On that form, Commissioner Blank stated that "Mr. Evans shared his vision of why he and his wife bought the property and their vision of why they wanted to develop all five houses as an integrated development." Further, the form indicates that Mr. Evans presented his plan of each of the five homes in the development, pointing out "that by controlling the architecture and design of all five houses he was able to make each of the five houses unobtrusive and designed to blend into the hillside."

ii. The Formation of, and Interrelationship Among, the Relevant Business Entities

In this matter, the Commission simultaneously received five CDP applications – one from each of five business entities, each one seeking authorization to construct a home on one of five separate parcels on Sweetwater Mesa. The five entities currently appear as Vera Properties LLLP, Mulryan Properties LLLP, Lunch Properties LLLP, Morleigh Properties LLLP, and Ronan Properties LLLP (collectively, the "Sweetwater Applications"). Each of the current LLLPs originated as a California limited liability company (LLC), created on November 14, 2005.

Each of the subject properties has a separate assessor's parcel number (APNs 4453-005-018 [Vera Properties, LLLP], 4453-005-092[Mulryan Properties, LLLP], 4453-005-037 [Lunch Properties, LLLP], 4453-005-091[Morleigh Properties, LLLP], 4453-005-038[Ronan Properties, LLLP]), and the properties have existed with fixed boundaries for at least 20 years. Although the chains of title for the five parcels are not identical, for more than 50 years, the properties have followed almost identical conveyance patterns. Moreover, the same individual or group of between two and four individuals jointly owned all of the subject property until January 24, 2001, on which date Brian Sweeney, and three limited liability companies that he managed (Catherine Isabel LLC, Jean Ross LLC, Mika Heights LLC), acquired all of the properties. Brian Sweeney and the three

[15] The Times (UK), "U2's Edge rattles Malibu peace," John Harlow, March 28, 2009.
[16] Associated Press, "The Edge's green pitch for Malibu riles residents," Naoki Schwartz, May 1, 2009.
[17] http://www.foxnews.com/entertainment/2009/05/02/edges-mansion-acre-estate-mountains-riles-residents/.

LLCs he managed conveyed all of the properties to the current applicants (in their LLC incarnation) on November 22, 2005, eight days after those LLCs were all originally created. Subsequently, on April 28, 2006, all of the original California LLCs were converted to Delaware LLLPs, but according to the records in the Los Angeles County Recorder's Office for each subject parcel as of January, 2011, title in each parcel is still held by the California LLCs.

There are indicia of partnership activities throughout the LLLP formation, property acquisition and subsequent recordation of the deeds. First, all five LLLPs have the same agent for service of process (and did so as LLCs) —National Registered Agents. Second, each entity listed the same address—6400 Powers Ferry Rd., Suite 400, Atlanta, GA 30339—as the address to which Los Angeles County should send property tax statements. Third, the grant deed for each property acquisition was executed on the same date and then subsequently recorded on the same date, and they all have sequential document recordation numbers. Fourth, the deeds of trust for all of the subject properties were issued on the same day, by the same bank, and they have sequentially numbered mortgage document numbers. Fifth, there is one project manager for the development of all five parcels, James Vanden Berg.

Staff has also obtained evidence that Evans, alone, or with his partners, plans on selling some of the property for a profit. Project manager and Lunch Properties LLLP general partner Vanden Berg has told reporters that Evans will sell some of the homes and plans to pick his neighbors.[18] Further, Gemma O'Doherty, of the Irish Independent, wrote that "three of the houses are being built for speculative purposes to fund the rest of the development. Evans' partner in the project, Dublin financier, Derek Quinlan, will live in the fourth."[19] Thus, the partners appear to have incorporated a profit element in their real estate development venture.

The Commission has referred to the Sweetwater Applications as "interrelated permit applications," and the applicants have not objected. All five LLLPs are applying for CDPs at the same time and have authorized many of the same agents, including, among others,[20] California Strategies and Don Schmitz and Associates, to represent them before the Commission. Although each LLLP now has multiple agents representing it before the Commission, and all but one has a unique agent (one that is not representing any of the other LLLPs), that has only been the case since last June, and all of those distinct agents were designated within the six-month period after senior Commission staff members informed the applicants that, absent sufficient evidence to the contrary, the Commission staff intended to assert that some or all of the subject

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18 http://www.foxnews.com/entertainment/2009/05/02/edges-mansion-acre-estate-mountains-riles-residents/.

19 http://www.independent.ie/entertainment/news-gossip/the-edge-tells-malibu-nimbys-im-going-to-build-my-dream-home--with-or-without-you-1719749.html

20 Although most of the LLLPs authorized different attorneys to represent them in 2010, all of the LLLPs have authorized the following same agents to speak on their behalf at anytime before, during or after the Commission hears this item: (1) The Georgia Club (James Vanden Berg--project manager for the entire development of all five parcels); (2) Schmitz & Associates, Inc.; (3) California Strategies, LLC; (4) Mike Reilly; (5) Fabian Nuñez; (6) Creative Environmental Solutions; (7) Whitson Engineers; (8) LC Engineering Group; (9) Mountain Geology, Inc.; (10) Wallace Cunningham, Inc.; (11) Pamela Burton and Company; and (12) Consulting biologist, Steve Nelson.

parcels were effectively in common ownership for purposes of the takings analysis. For almost three years prior to the first of those agent changes – from the initial application submittals in 2007[21] until April of 2010 – each LLLP was represented by the same agent or the same two agents in its dealings with the Commission (first Schmitz & Associates, and then, as of May, 2009, California Strategies as well). In addition, a single party requested postponement of the Commission's scheduled June, 2009 hearing on the applications, on behalf of all five applicants. Because the Commission did not have that party listed as the registered agent for all five applicants at that time, all of the applicants had to submit a letter authorizing that party to act on their behalf. Subsequently, in response to the Commission's request, each LLLP submitted a letter that purported to authorize the party who had submitted the postponement request as the agent for that LLLP's parcel, but all of which were signed by the same person, purporting to authorize the agent for all five LLLPs, suggesting that one person was in control of all five LLLPs. In addition, news articles refer to David Evans as the principal proponent, and newspapers have claimed that David Evans retains sole discretion to select who will potentially reside in the development. See footnote 18. As one additional example, when Commission staff and the applicants disagreed about what information was necessary for Commission staff to be able to file the applications, in 2008, Commission staff took that dispute to the Commission for resolution as a single staff report, at times referring to it as a single project, and none of the applicants objected. See April 21, 2008 staff report for A-4-07-067-EDD, A-4-07-068-EDD, A-4-07-146-EDD, A-4-07-147-EDD, and A-4-07-148-EDD.

iii. Social and Business Relationships between David Evans and the General Partners of the LLLPs

Original General Partners of the Five LLLPs and Their Successors

Although there are different individuals associated with each of the five LLLPs, and most of the individuals have changed over time, creating a complicated history of management for the LLLPs, a careful analysis reveals that all of these individuals are closely related. To facilitate this analysis, each of the LLLPs, along with its principals, is presented in the following table:

[21] All but one application was submitted in 2007 by Schmitz & Associates (two on July 16 and two on November 30), at which time the submitter indicated that a fifth, related application would be following shortly. The Commission did not receive the application from Ronen Properties, LLC, until June of 2008.

CDP No.	APN	Owner	Principal[22]
4-10-**040**	4453-005-**037**	**Lunch** Properties, LLLP	James Vanden Berg (project manager)
4-10-**041**	4453-005-**018**	**Vera** Properties, LLLP	David Evans ("The Edge")
4-10-**042**	4453-005-**092**	**Mulryan** Properties, LLLP	Derek Quinlan (The Edge's partner) → Tim and Gillian Delaney[23] (7/2010)
4-10-**043**	4453-005-**091**	**Morleigh** Properties, LLLP	Morleigh Steinberg (the Edge's wife) → Chantal O'Sullivan (4/2010) & Lisa Menichino[24]
4-10-**044**	4453-005-**038**	**Ronan** Properties, LLLP	Jacqueline Cremin (Director of Quinlan Companies) → Dean McKillen[25] (4/2010)

As the table above demonstrates, until the middle of 2010, David Evans, General Partner for Vera Properties, LLLP, had a close familial or business relationship with the principals of each LLLP, and even now, he retains a familial, business or social relationship with the successor general partners.[26] Moreover, the changes in ownership and management of the LLLPs in mid-2010 all occurred within a three month period after Commission staff members informed representatives of all five applicants,[27] in a January 20, 2010 meeting, that they intended to recommend treating some combination of the parcels as a single parcel for purposes of their takings analysis because of the interrelated ownerships.

Mulryan Properties, LLLP's general partner was Derek Quinlan until the recent application re-submittal. Quinlan has jointly invested in other real estate development projects with Evans, including investing in the purchase and renovation of an historic hotel in Dublin, the Clarence Hotel.[28] Further, news reports have indicated that Quinlan

[22] The Commission notes that the current Principals for the last three LLLPs are based on "Owner's Certificates" that state that the facts alleged therein are "true and correct as of the date below written," but none of them is dated. Nor are they signed under penalty of perjury.
[23] Tim Delaney is listed as a General Partner and 50% owner of Mulryan Properties, LLLP, and as having authority to act for the company, and Gillian Delaney is listed as a 50% owner, each on an "Owner's Certificate" submitted under cover of an October 18, 2010 letter from Mulryan's agent, Stanley Lamport. Documents submitted to Commission staff show that Tim Delaney took on this role on June 1, 2010.
[24] Chantal O'Sullivan is listed as a General Partner and 50% owner of Morleigh Properties, LLLP, and as having authority to act for the company, and Lisa Menichino is listed as a 50% owner, each on an "Owner's Certificate" submitted under cover of a November 19, 2010 letter from Morleigh's agent Timi Hallem. Neither Ms. Menichino nor her agent have submitted documents indicating when she acquired 50% ownership interest in Morleigh Properties, LLLP.
[25] Dean McKillen is listed as a General Partner and 50% owner of Ronan Properties, LLLP, and as having authority to act for the company, in an "Owner's Certificate" submitted under cover of a November 11, 2010 letter from Ronan's agent, Paul Weinberg. According to other documents from Paul Weinberg, Dean McKillen took on this role on June 1, 2010.
[26] In March 2010, the applicants withdrew their application in its entirety. Subsequently, three out of the five LLLPs submitted documents evidencing that they have new general partners.
[27] Present were, among other people, Don Schmitz, of Schmitz & Associates, and Jared Ficker and Ted Harris, of California Strategies.
[28] http://www.usnews.com/science/articles/2009/05/01/the-edges-green-pitch-for-malibu-riles-residents.html

was a primary investor with Evans in purchasing the subject parcels.[29] In July 2010, Tim Delaney became the general partner for **Mulryan Properties, LLLP.** Tim Delaney was the vice-president for PolyGram Records for continental Europe between May 1997 and July 1999, responsible for "planning and co-ordinating the marketing and promotion of international releases in Continental Europe."[30] PolyGram Records produced albums for Evans' band, U2 during this time,[31] enabling Evans and Delaney to develop both a business and social relationship.

Lunch Properties, LLLP's general partner is James Vanden Berg who is the project manager for the development of all the homes on the subject parcels. Vanden Berg retained his status as general partner even after the re-submittal of the applicants' applications.

Ronan Properties, LLLP's general manager was Jacqueline Cremin up until April 2010, when Paul Weisberg—attorney for **Ronan Properties, LLLP**—informed the Commission staff that Dean McKillen is now the principal of Ronan Properties[32]. Nonetheless, both the former and current general partner of **Ronan Properties, LLLP,** have business ties to David Evans and Derek Quinlan. According to her LinkedIn profile, Jacqueline Cremin is the "Head of Private Office at Derek M. Quinlan…Ireland." Dean McKillen's father, Paddy McKillen, is also an investor in the Clarence Hotel project in Dublin, along with Evans and Quinlan.[33]

Finally, **Morleigh Properties, LLLP's** general partner is Chantal O'Sullivan[34], a close friend to Evans and his wife, Morleigh Steinberg. And, of course, Morleigh Properties, LLLP, still bears the name of David Evans' wife, Morleigh Steinberg, who, until recently, was its principal.

iv. Legal Indicia of New Ownership--Lack of Market Value Reassessment of the Property and Transfer Tax Assessed upon Transfer of over 50 Percent of Partnership Interest

While three of the applicant LLLPs appeared to have undergone transfers of all or part

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[29] http://www.independent.ie/entertainment/news-gossip/the-edge-tells-malibu-nimbys-im-going-to-build-my-dream-home--with-or-without-you-1719749.html. See http://articles.latimes.com/2009/apr/17/local/me-edge-malibu17; http://www.eonline.com/uberblog/b119279_U2_s_The_Edge__Malibu_s_Least_Wanted.html; http://www.timesonline.co.uk/tol/news/world/ireland/article6257424.ece; http://www.allbusiness.com/company-activities-management/company-structures-ownership/13130913-1.html.

[30] http://www.linkedin.com/profile/view?id=4905162&authType=NAME_SEARCH&authToken=mxaF&locale=en_US&srchid=04f4922d-f59d-428f-8191-c89a1adcaec2-0&srchindex=8&srchtotal=9&pvs=ps&pohelp=&goback=.fps_tim+delaney+uk_*1_*1_*1_*1_*1_*1_*51_*1_Y_*1_*1_*1_false_1_R_true_G%2CN%2CI%2CCC%2CPC%2CED%2CL%2CFG%2CTE%2CFA%2CSE%2CP%2CCS%2CF%2CDR_*2_*2_*2_*2_*2_*2_*2_*2_*2_*2_*2_*2_*2_*2_*2_*2_*2_*2_*2_*2_*2_*2.

[31] http://en.wikipedia.org/wiki/PolyGram; http://en.wikipedia.org/wiki/Island_Records; http://en.wikipedia.org/wiki/U2

[32] The applicants have not provided any California or Delaware Secretary of State documents that clearly indicate that Dean McKillen is the general partner of Ronan Properties, LLLP.

[33] http://articles.latimes.com/2008/feb/25/business/ft-bono25/2; http://www.nytimes.com/2008/02/25/business/worldbusiness/25iht-hotel.4.10378289.html; http://www.independent.ie/opinion/analysis/the-rise-and-withdrawal-of-bubbles-leading-light-1818159.html; http://www.herald.ie/national-news/clarence-hotel-green-lighted--with-small-changes-1434871.html.

[34] Chantal O'Sullivan is a famous antique/art dealer in Dublin, Ireland. (http://www.osullivanantiques.com/) She is noted to have been at the altar, holding the rings, for Evans and his wife during their wedding ceremony. (http://www.atu2.com/news/edge-wedding-is-a-french-connection.html.)

of their ownership interest to new general partners and investors in the last year, the county records do not show a reassessment of the property held by the LLLP undergoing such a change and transfer tax paid after such a transfer of LLLP ownership. The owners have not taken the legal steps to record or otherwise document change in ownership. There are at least three forms of public documentation that indicates the change of ownership—recordation of a new deed, transfer tax payment and property reassessment. As of January 2011, none of these forms of documentation have taken place. Thus, from the lack of this documentary evidence, there has not been an actual change of ownership of the partnership property.

Based on submitted documents to the commission, in June 2010, Derek Quinlan appeared to own 100 percent of Mulryan Properties, LLLP as its general partner and transferred all of that interest to the new general partners Tim Delaney (50%) and Gillian Delaney (50% owner-no indication of limited partner). Also in June 2010, Morleigh Steinberg owned 100 percent of Morleigh Properties, LLLP and transferred all of that interest to new general partners Chantal O'Sullivan (50%) and Lisa Menichino (50%-no indication of limited partner). Sometime in April 2010, Jacqueline Cremin transferred 50 percent of her ownership interest in Ronan Properties, LLLP to general partner Dean McKillen (no indication of any other partnership interest transfer). Based on the submitted application documents, it is unclear whether Ms. Cremin retained the other 50 percent ownership as a limited partner or transferred that to another party as well.

Pursuant to California Revenue and Taxation Code, section 64(d), if ownership interest representing cumulatively more than 50% of the total interest of a legal entity, like a foreign LLLP, is transferred by any of the original co-owners in one or more transactions, then these transactions constitute a change in ownership of the real property owned by that legal entity, requiring reassessment of the real property. This provision applies to the transfers of the ownership interest in Mulryan Properties, LLLP and Morleigh Properties, LLLP. As noted above, it is unclear if Ms. Cremin transferred over 50% of her ownership interest. Thus, based on our records, at least two of the ownership transfers—Mulryan Properties and Morleigh Properties—required recordation of a new deed to document the change in ownership and should have been reassessed by the County of Los Angeles Recorder's office. As of December 2010, six months after the transfer of ownership interest, Mulryan Properties, LLLP and Morleigh Properties, LLLP have not recorded new deeds with the County of Los Angeles and, thus, have not been reassessed nor charged a transfer tax for the transaction (Ronan Properties, LLLP has not recorded a new deed, either, with the County of L.A. as of December 2010).

v. Unified Development Scheme

The proposed five-house project is a coordinated development scheme. Historically, at least one previous owner of the subject property coordinated prior development schemes on the property as well. In 2004, Brian Sweeney, who managed the five parcels before selling them to the current applicants, applied for coastal development permits in a coordinated manner to develop five homes on the subject property. The commission staff sent the applications back to Sweeney as incomplete, and soon thereafter, Sweeney decided to sell the parcels to the current applicants.

Currently, the present owners are coordinating a unified development scheme on the subject property. David Evans, in a website dedicated to the project, www.leavesinthewind.com, and in a video released to the media, http://www.kcet.org/socal/socal_connected_online/culture/the-edge-speaks.html, represents that he is in a partnership to develop the five homes and that he has presented an orchestrated development plan. The website is evidence, taken alone, that these five homes are part of a unified development scheme. Evans wrote a letter to the public on the "leaves in the wind" website. In this letter, Evans makes the following statements: (1)"I hope you will agree that my partners and I have worked diligently to design homes that meet the highest environmental standards"; (2) "Why did *we* go into so much effort? Because my family and I love Malibu"'; and (3) "I hope the facts and background we've included on this site will reassure anyone who may have concerns about our project." In his website, Evans has a link to the design of the homes, which are all designed by the same architect, Wallace Cunningham. The designs for the homes have the same three architectural elements, including (1) integration into nature, (2) green building principles and (3) a blended road component, which will be shared by all five homes, that "is a key visual element of the landscape."

The project applicants are all seeking LEED Gold certification, as indicated on the website, in the link entitled "Sustainability." In the website, Evans represents that all five of the homes are incorporating the following design elements: (1) rainwater catchment systems; (2) "California-friendly Landscape" using native, drought tolerant plants and integrated pest management practices; (3) "High-efficiency Water Fixtures"; (4) "Onsite Wastewater Treatment"; (5) "Passive Design"; (6) "Natural Daylighting"; (7) "High-efficiency lighting"; (8) "Radiant Floor Heating System"; (9) solar hot water and electricity; (10) electric vehicle charging stations; (11) "Rammed Earth Construction"; (12) "Forest Stewardship Council Certified Wood"; (13) "Formaldehyde Free Materials"; (14) "Low Volatile Organic Compound Paints and Finishes"; (15) "Natural Materials" including natural stone for walkways; and (16) "Construction Waste Recycling".

In the video, Evans makes claims consistent with those found on his website. In it, he says that "the first time [my wife, Morleigh, and I] saw the land, it was after searching for a site for us to build a home and almost as an afterthought this agent just handed me this document which was a proposal for five homes to be built on this land at Sweetwater Mesa….Morleigh and I decided just out of pure curiosity to go and see the land because at that point we figured it's far too big an undertaking for us—we are only interested in one house so why would we go to this trouble [to see the land].... the idea [to develop the Sweetwater parcels] was that we would find some partners to go in with us and hopefully people with the same sort of vision that we had of attempting to do something very unique and very special on the land, and that we'd all go in together and we'd do it as sort of partnership…I managed to get one of my friends interested…. and after a sort of fairly lengthy period of due diligence, we ended up putting in an offer and ended up buying the land….When we finally, myself and Morleigh and our other partners decided to go ahead and purchase the land, we wanted to do something that would be far superior to the designs that we saw in that [real estate sales] brochure." Further, Gemma O'Doherty, of the Irish Independent, wrote that "three of the houses are being built for speculative purposes to fund the rest of the development. Evans'

partner in the project, Dublin financier, Derek Quinlan, will live in the fourth."[35] In sum, based on the this interview, Evans' intended to build only one home for himself and his family when he was looking for property in the Los Angeles area but decided to develop a partnership when the opportunity arose to develop his own home and four additional homes on Sweetwater Mesa.

c. Application of Takings Law to Identify the Unit of Analysis in the Instant Case

Applying the factors listed in section 2.a.iii to the facts of this case, as outlined in section 2.b, the Commission concludes that the relevant property to be analyzed for takings purpose is likely some combination of the five contiguous parcels on Sweetwater Mesa (APNs 4453-005-018, 4453-005-092, 4453-005-037, 4453-005-091, 4453-005-038). A detailed analysis of each factor follows.

i. Unity of Ownership[36]

The facts outlined above provide some evidence that all of the parcels are actually owned by David Evans. If not, there is substantial evidence that at least some combination of them is owned by a single entity that is an implied partnership among some combination of the LLLPs, with David Evans functioning as the managing general partner.

(A) David Evans as Owner

As the Commission found in the context of a matter that came before us last December, "'ownership' for purposes of this factor of the test should not be based solely on the name on the property's title but on what entity has possession or control of the property. In a recent case, the Court of Appeal held that for purposes of merger statutes, local agencies may 'look past the paper title in determining whether properties are under common ownership' (*Kalway v. City of Berkeley*, (2007) 151 Cal.App.4th 827, 833). In that case, a property owner transferred title to one of two contiguous parcels that he had inherited into his wife's name, in order to avoid merger of his parcels (*Id*. at 831). The court upheld the City of Berkeley's conclusion that this transfer had no effect on its merger proceedings (*Id*. at 835-36). In a similar case, a court upheld a local government's authority to prevent applicants from circumventing the Subdivision Map Act through a scheme designed to avoid its effects (*Pratt v. Adams* (1964) 229 Cal.App.2d 602, 606 (holding that Santa Cruz County could deny a building permit to applicants 'where the permit is sought as the culmination of a plan to circumvent the law by one of the planners'))." Findings in support of the Commission's December 17, 2010 action in A-3-SCO-09-001 through -003 (Frank).

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[35] http://www.independent.ie/entertainment/news-gossip/the-edge-tells-malibu-nimbys-im-going-to-build-my-dream-home--with-or-without-you-1719749.html

[36] All articles in the "Unity of Ownership" section of the staff report were accessed online in January 2010.

Here, there is significant evidence indicating that David Evans is the owner of all five parcels, notwithstanding the fact that title is held in five distinct limited liability limited partnerships (LLLPs), or perhaps as LLCs. Ex parte communication and several news reports indicate that David Evans bought all five parcels in 2005 (albeit through the five LLCs that were the predecessors of the current LLLP applicants). On May 4, 2009, Commissioner Steve Blank met with David Evans and his agent, Jared Ficker of California Strategies. Commissioner Blank disclosed to staff that "Mr. Evans shared his vision of why he and his wife bought the property and their vision of why they wanted to develop all five houses as an integrated development." Further, Mr. Evans presented his plan of each of the five homes in the development, pointing out "that by controlling the architecture and design of all five houses he was able to make each of the five houses unobtrusive and designed to blend into the hillside."

News reports also indicate that Mr. Evans may solely own the five parcels. Jim Vanden Berg, the project manager for the entire development was quoted in a news report[37], saying "[t]he Edge will be building his home and these other houses." In another case, he told reporters that Evans will sell some of the homes and plans to pick his neighbors.[38] On May 1, 2009, Noaki Schwartz of the Associated Press reported that Mr. Evans and his wife bought all five parcels and plan to build a house on each parcel.[39] Thus, from his own admissions and from news reports, it is highly plausible that Mr. Evans is, in fact, the owner and controlling the development on each parcel.

(B) Implied Partnership as Owner

Alternatively, there is ample evidence to sustain a finding that each of the five LLLPs is a partner in an implied partnership, and that the singular purpose of the partnership is the development of these parcels, thereby creating a unity of ownership, in the name of the partnership, in at least some of the five parcels.

Evidence of Partnership or Joint Venture

General Partnership Principles Under California Law

Under the California Uniform Partnership Act of 1994 (UPA),[40] the association of two or more persons to carry on as co-owners [of] a business for profit forms a partnership, whether or not the persons intend to form a partnership." (Cal. Corp. Code, § 16202(a).) Similarly, a joint venture consists of two or more people jointly carrying out a single enterprise for profit. (*Weiner v. Fleischman* (1991) 54 Cal.3d 476, 482.) The UPA defines a person as "an individual…partnership, limited partnership, limited liability partnership, limited liability company… joint venture… or any other legal or commercial entity." (Cal. Corp. Code, § 16101(13).) From a legal standpoint, partnership law applies equally to joint ventures and partnerships since both relationships are virtually

[37] The Times (UK), "U2's Edge rattles Malibu peace," John Harlow, March 28, 2009.
[38] http://www.foxnews.com/entertainment/2009/05/02/edges-mansion-acre-estate-mountains-riles-residents/.
[39] Associated Press, "The Edge's green pitch for Malibu riles residents," Naoki Schwartz, May 1, 2009.
[40] Chapter 5 of Title 2 of the California Corporations Code (sections 16100 to 16962).

the same. (*Ibid.*) Considering the Edge's project is seemingly a single enterprise—joint and contemporaneous development of the Sweetwater Mesa parcels for profit— then it should be considered a joint venture. As such, we will apply partnership law to the facts surrounding the development project.

Partnership Formation and Purpose

Parties do not have to follow any particular formula to form a partnership. Parties may form a partnership in land ownership by parol agreement. (*Perelli-Minetti v. Lawson* (1928) 205 Cal. 642, 647.) Additionally, partnerships may be formed from the actions, transactions, conduct and understanding between parties. (*Id.* at p. 648.) Intent to form a partnership may be implied from the acts and conduct of parties. (*Associated Piping & Engineering Co. v. Jones* (1936) 17 Cal.App.2d 107, 110.) Courts have found a joint venture or partnership between parties who invest in property together and sell it for profit or build residential or commercial developments to sell or operate as a business. (See *Arnold v. Loomis* (1915) 170 Cal. 95, 97 [parol agreement to share profits conclusively indicated partnership between two parties, requiring partners to share future profits from selling remaining 8.66 acres from partnership's original 20-acre tract]; *Adams v. Harrison* (1939) 34 Cal.App.2d 288,297-298 [finding a partnership because 50-50 ownership of ranch property included shared costs of operating ranch and agreement to share profits of future sale of land]; *Perelli-Minetti v. Lawson, supra,* 205 Cal. at p. 648 [parties' acts converted tenants-in-common ownership of ranch property to partnership property because the owners farmed and operated it under a joint account].) Thus, it is immaterial that parties do not designate their relationship as a partnership or even that they may not know that they are partners because it can be inferred notwithstanding evidence to the contrary. (*Associated Piping & Engineering Co. v. Jones, supra,* 17 Cal.App.2d at p. 110 [court concluded that the parties' profit sharing supported a finding of a partnership notwithstanding plausible evidence of a creditor-debtor relationship.].)

While there are no reported cases that factually parallel the underlying Sweetwater matter, "courts have not yet laid down any very certain or satisfactory definition of a joint adventure, nor have they established any very fixed or certain boundaries thereof." (*Martter v. Byers* (1946) 75 Cal.App.2d 375, 383-384.) Further, courts "have been content to determine merely whether the given or conceded facts in the particular case constituted the relationship of joint adventurers.[citation]" (*Id.* at p. 384.) Therefore, it is not fatal that there is no direct, factually identical precedent to guide our analysis in finding a partnership comprised of the Sweetwater LLLPs.

Notably, however, our Supreme Court did consider a case where individuals, not LLLPs, (though both are considered "persons" under UPA for purposes of creating a partnership) brought their individually owned parcels of land into a partnership. In *Chapman v. Hughes* (1894) 104 Cal. 302, 304, the court found that three parties to a syndicate agreement entered into a partnership even though they did not *expressly*

intend to enter into such a relationship.[41] The court reasoned that the parties created a partnership because the agreement "created an association of three persons for the purpose of carrying on together the business of selling the lands, and dividing the profits of that business among them. It contemplated united action in advertising and otherwise in promoting sales, and a joint expense to be incurred thereby, and further expressly provided for the payment to the syndicate of commissions on sales of other lands than those put into the syndicate." (*Ibid.*) Further, the court found that the partnership property consisted of the partners' respective parcels notwithstanding the fact that the partners retained title to each parcel. (*Id.* at pp. 304-305.) In such ownership situations, the court concluded that each partner holds legal title in trust for the partnership use. (*Id.* at p. 305.)

Typically, when parties create a partnership, each partner shares in the profits and losses of the business, contributes money, property or services and is entitled to some management and control of the business. (*Billups v. Tiernan* (1970) 11 Cal.App.3d 372, 379) (some degree of participation in management and control of business); *Mercado v. Hoefler* (1961) 190 Cal.App.2d 12, 16-17) (contribution of money, property or services); *Constans v. Ross,* 106 Cal.App.2d 386 (sharing in profits and losses of business). Partners, however, do not need to share profits and losses equally to be considered a partnership. (*Constans v. Ross, supra,* 106 Cal.App.2d 381, 389.) Further, a partnership may also exist even if there is an unequal apportionment of management duties. (*Id.* at p. 388-389; *Associated Piping & Engineering Co. v. Jones, supra*, at 111.)

Here, the five Sweetwater Mesa LLLPs appear to be operating as a joint venture in developing the five parcels. Again, a joint venture consists of two or more people jointly carrying out a single enterprise for profit. (Weiner v. Fleischman, supra, 54 Cal.3d at p. 482.) First, David Evans has created a website, www.leavesinthewind.com, devoted to educating the public about the Sweetwater Mesa development. In this website, he solely represents the project partners in statements about the project. Specifically, he writes: "Thanks for taking the time to look over the information on this website. I never thought I would have to resort to this form of communication, but because of recent inaccurate media coverage, I felt compelled to set the record straight." Further, he writes: "I hope you will agree that my partners and I have worked diligently to design homes that meet the highest environmental standards." Evans continues, saying: "I hope the facts and background we've included on this site will reassure anyone who may have concerns about our project. I know how quickly rumors can spread and misinformation can multiply. We've tried to address those as fully as possible. The California coast is a true national treasure, and I believe in responsible design that honors such a unique location. I am confident we have done just that." At the end,

[41] The plaintiffs were seeking to enforce the syndicate agreement, to reap profits, even though there was a subsequent agreement affecting the rights of each party. (*Chapman v. Hughes, supra,* 104 Cal. at p. 303-305.) Ultimately, the court held that the subsequent agreement superseded the syndicate agreement, thereby affecting the rights of each partner. (*Id.* at p. 305) This conclusion, however, was independent from its finding that the syndicate agreement constituted a partnership. Therefore, even though the subsequent contract eliminated the terms of the syndicate agreement, this finding did not affect the court's prior conclusion finding that the syndicate agreement constituted a partnership.

Evans electronically signs the bottom with "The Edge." In relation to joint venture attributes, these admissions from Mr. Evans indicate that he and the other four LLLPs are jointly developing the Sweetwater project as a single enterprise.

Relationships Among the Partners

Second, while the project applications give the appearance that there are five separate applicants, each owning its own parcel as an LLLP, there is ample evidence suggesting that the general partners of each LLLP are so interconnected with Evans that the Commission should conclude that each LLLP is a partner in a single project. There is ample evidence that shows that Evans, general partner of Vera Properties, LLLP, and Tim Delaney, general partner of Mulryan Properties, LLLP, were in business together during the 1990s when Tim Delaney was an executive for the record label that produced Evans' band, U2's albums, and generated vast profits for both parties. Moreover, Tim Delaney only assumed the role of general partner of Mulryan Properties, LLLP, or took any ownership in it, in June of last year, soon after Commission staff told the applicants that they intended to aggregate some of the subject parcels for purposes of their analysis because of the interrelated ownerships. Prior to that, the sole principal was Derek Quinlan, the Edge's business partner. Further, Gemma O'Doherty, of the Irish Independent, wrote that "three of the houses are being built for speculative purposes to fund the rest of the development. Evans' partner in the project, Dublin financier, Derek Quinlan, will live in the fourth."[42] While the documents that the applicants recently submitted to Commission staff don't demonstrate any continuing involvement by Quinlan, it is significant to note the original intent of the venture by way of citing these articles. Other news outlets have similarly reported that Evans and Quinlan are partners in the project.[43] Thus, if the news reports are truly accurate, Evans and Delaney (originally, Quinlan) should be considered the primary partners in a joint venture to develop the Sweetwater Mesa parcels because Delaney has acquired Quinlan's interest in the development and is now Evans' primary partner.

As noted above, the general partners of the three remaining LLLPs—Lunch Properties, Morleigh Properties and Ronan Properties—have social or business relationships with Evans, indicating a joint effort to develop their Sweetwater Mesa parcels. In fact, Lunch Property, LLLP's general partner, James Vanden Berg, is the project manager for the development of all the homes on Sweetwater Mesa; and until the disclosure of Commission staff's intent in early 2010, the principal of another (Morleigh Properties, LLLP) was Evans' wife. Vanden Berg has been quoted in news reports, which identify him as Evans' project manager, justifying the green design of the five homes and asserting that the road will not be used for any further development.[44] In another report,

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[42] http://www.independent.ie/entertainment/news-gossip/the-edge-tells-malibu-nimbys-im-going-to-build-my-dream-home--with-or-without-you-1719749.html.

[43] See http://articles.latimes.com/2009/apr/17/local/me-edge-malibu17; http://www.eonline.com/uberblog/b119279_U2_s_The_Edge__Malibu_s_Least_Wanted.html; http://www.timesonline.co.uk/tol/news/world/ireland/article6257424.ece; http://www.allbusiness.com/company-activities-management/company-structures-ownership/13130913-1.html.

[44] http://www.foxnews.com/entertainment/2009/05/02/edges-mansion-acre-estate-mountains-riles-residents/.

the press quoted "Vanden Berg, his project manager," as saying that "[t]he Edge will be building *his home and these other houses* to the highest environmental standards"[45] (emphasis added). Vanden Berg also told reporters that Evans will sell some of the homes and plans to pick his neighbors.[46] The L.A. Times identified Vanden Berg as "a representative for Evans and his *partner* in the venture, Irish real estate investor Derek Quinlan."[47] Further, in that article, Vanden Berg indicates that Evans has taken measures "to ensure that the development will 'create a sense of place that respects the environment [and] architecture that will stand the test of time.'"[48] It is odd that Vanden Berg, a general partner of one of the LLLPs, which claims independent ownership of one of the lots, would make statements indicating that he does not have a say in how Evans will develop or sell these homes. Thus, from this evidence, it is apparent that Vanden Berg solely serves as the spokesperson and administrative assistant (aka project manager) for the development regardless of his status as a general partner of Lunch Properties, LLLP.

The only currently identified general partner of Ronan Properties, LLLP, is Dean McKillen (originally, Jacqueline Cremin[49] [50]) who is the son of one of the most successful real estate developers in Ireland, Paddy McKillen. Paddy McKillen has invested in various real estate ventures with Evans and Quinlan in the past. Finally, Morleigh Properties, LLLP general partner is Chantal O'Sullivan who is Evans' and his wife's very close friend, so much so that she was on the altar with the couple, holding the rings at their wedding ceremony. (Originally, Morleigh Steinberg was the general partner, who is Evans' wife of seven years[51]). Thus, the past and current general partners of these LLLPs, while seeming to be independent applicants, are actually intricately related. Although this provides only circumstantial evidence of their partnership, it is, at a minimum, consistent with the conclusions reached in the prior section, regarding the partnership formation and the conclusion that the individuals involved are all acting in concert to jointly develop their respective parcels. As such, each LLLP should be considered a partner in this joint venture.

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[45] http://www.timesonline.co.uk/tol/news/world/us_and_americas/article5992994.ece.
[46] http://www.foxnews.com/entertainment/2009/05/02/edges-mansion-acre-estate-mountains-riles-residents/.
[47] http://articles.latimes.com/2009/apr/17/local/me-edge-malibu17.
[48] Ibid.
[49]Notably, Olan Cremin is the CEO of Quinlan's development company, Quinlan Private. (http://www.quinlanprivate.com/ ; http://business.timesonline.co.uk/tol/business/industry_sectors/construction_and_property/article6690105.ece.) While it is unclear how, or if, Jacqueline Cremin is related to Olan Cremin, it is worth mentioning because it tends to fortify the connection that Cremin may be merely a straw-woman for the Sweetwater Mesa project.
[50] In a letter dated April 5, 2010, almost two years after staff completed Ronan Properties, LLLP's application which represented to the staff that Jacqueline Cremin is the general partner of that LLLP, Paul Weinberg, Esq. Represented that Dean McKillen is Ronan's general partners. Mr. Weinberg failed to provide any documentation from the Delaware Secretary of State (Ronan Properties, LLLP is a Delaware entity) that Mr. McKillen is now Ronan's general partner. Even if Mr. Weinberg is correct in alleging this fact, it does not change the conclusion that these five LLLPs are joint venture partners. Dean McKillen is even more connected with Quinlan and Evans in real estate joint ventures in Ireland than Ms. Cremin. Patrick "Paddy" McKillen, Dean's father, is mentioned in several UK media outlets as a partner with Evans and Quinlan in a real estate venture in Dublin. In a May 10, 2009 news article, Colin Coyle of the TimesOnline, a UK media outlet, stated that "The Edge and Quinlan are also partners in the redevelopment of the five-star Clarence hotel in Dublin, along with Bono and Paddy McKillen, a property developer."
[51] http://www.atu2.com/band/edge/; http://en.wikipedia.org/wiki/The_Edge#cite_note-edge-bio-6.

Suspect Management Modifications

Third, the lack of recordation of new deeds with the County of Los Angeles Recorder's office for the apparent transfer of 100 percent of the ownership of at least Mulryan Properties and Morleigh Properties (and possibly Ronan Properties) provides further evidence that the joint venture has attempted to bolster the façade of separate ownership and control even though the LLLPs are operating as partners in a joint venture. Both Morleigh Properties and Mulryan Properties submitted Owners' Certificates that appear to certify that each of those LLLPs' is owned in entirety by two individuals. The two Owner's Certificates for Morleigh Properties indicate that Lisa Menchino is "a 50% owner" and Chantal O'Sullivan is "the general partner and 50% owner" of that LLLP. The two Owner's Certificates for Mulryan Properties indicate that Gillian Delaney is "a 50% owner" and Tim Delaney is "the general partner and 50% owner" of that LLLP. Under California Revenue and Taxation Code, section 62(a)(2), a transfer of ownership

> *"that results solely in a change in the method of holding title to the real property and in which proportional ownership interests of the transferors and transferees . . . in each and every piece of real property transferred, remain the same after the transfer"*

does not constitute a "change in ownership." (See Rev. & Tax. Code, § 62(a)(2).) However, under section 64(d),

> *"[w]henever shares or other ownership interests representing cumulatively more than 50 percent of the total interests in the entity are transferred by any of the original coowners in one or more transactions, a change in ownership of that real property owned by the legal entity shall have occurred, and the property that was previously excluded from change in ownership under [section 62(a)(2)] shall be reappraised."*

(See Rev. & Tax. Code, § 64(d).) Section 64(d) applies here because the applicants transferred their real property interests from a California limited partnership to a Delaware limited liability limited partnership with the same percentage ownership, which is why the newly formed LLLPs did not have to re-record new deeds and have their property reassessed. The most recent transfer of ownership, based on the documents submitted by Morleigh Properties and Mulryan Properties, indicates that there has been a cumulative transfer of 100 percent ownership interest in these respective LLLPs. However, if there were a transfer of 100 percent interest, then this would constitute a change in ownership, would require the county to reassess the property value for taxation purposes, and should require re-recordation of new deeds—none of which has occurred as of January 2011, seven months after the apparent transfer of these ownership interests.

In the absence of these two LLLPs—Morleigh and Mulryan—re-recording new deeds, there are two plausible arguments: (1) they mistakenly believed that re-recordation of the deeds was not necessary or (2) the Delaware Code provisions pertaining to limited partnerships enabled these two entities to create multiple layers of general partners,

limited partners and partnership interests. (6 Del. Code, §17-218.) Given the applicants sophistication, the latter option appears to be the most plausible. Title 6 of the Delaware Code, section 17-218(a) provides:

> *"A partnership agreement may establish or provide for the establishment of 1 or more designated series of limited partners, general partners, partnership interests or assets. Any such series may have separate rights, powers or duties with respect to specified property or obligations of the limited partnership or profits and losses associated with specified property or obligations, and any such series may have a separate business purpose or investment objective."*

The Commission does not have access to the various LLLPs' partnership agreements because the applicants have declined to provide them.[52] We may, therefore, point to suspicious activities from the facts that we do have in our possession, namely, the fact that the apparent change in ownership of the real property held by Morleigh Properties and Mulryan Properties did not result in recordation of new deeds and subsequent reappraisal. From this fact, staff concludes that the applicants' submitted Owners' Certificates do not represent the actual ownership interest in those entities. Rather, staff concludes that the only way that this transfer of ownership interest could take place without triggering Revenue and Taxation Code, section 64(d) is if the applicants created more than 1 series of general partners and partnership interests. Thus, Chantal O'Sullivan and Tim Delaney are general partners in an additional series of general partners for a purpose described in their respective partnership agreements and Lisa Menichino and Gillian Delaney are owners of an additional series of partnership interests, both series designations being created to give the appearance that these four individuals are the sole owners of each LLLP.

Unified Development Scheme and Project and Property Management

Fourth, the Sweetwater Mesa project and the five LLLPs have engaged in a cohesive development plan, indicative of a joint venture. As noted above, there is a single website dedicated to the project, www.leavesinthewind.com. That project website lists two people in its "Design team" page: architect Wallace E. Cunningham, and landscape architect Pamela Burton. Further, on the website's "Project Design" page, the proposed homes are jointly described as being integrated into nature and consistent with green building principles.[53] Additionally, each of the five LLLPs acquired an easement for utilities, ingress and egress from Ed West Coast Properties, LLLP (James Vanden Berg is the principal of Ed West Coast). As a result, Lunch Properties LLLP filed an application with the Malibu Planning Commission to acquire a permit to construct a road consistent with the easement parameters.[54] In September 2008, the Planning

[52] The issue of the relationship between the applicants has been at the forefront of the issues in contention at least since the Commission's consideration of the dispute over the completeness of the initial applications in May, 2008. See pages 11-12 of April 21, 2008 staff report for A-4-07-067-EDD, A-4-07-068-EDD, A-4-07-146-EDD, A-4-07-147-EDD, and A-4-07-148-EDD.

[53] http://www.leavesinthewind.com/PROJECT/tabid/59/Default.aspx; http://www.leavesinthewind.com/PROJECT/HomePlans/tabid/70/Default.aspx.

[54] http://www.ci.malibu.ca.us/download/index.cfm/fuseaction/download/cid/12713/.

Commission granted the permit to construct the road, providing a condition that the approval of the application is to provide exclusive access to the five Sweetwater Mesa lots.[55] This road will be the only form of ingress and egress for all five homes. Further, James Vanden Berg manages the project and, notably, is responsible for paying the property taxes for all the Sweetwater Mesa parcels. Additionally, as noted above, all five LLLPs are using the exact same entities or people as agents to represent them during the entitlement process. The five LLLPs have also coordinated their permitting efforts with the Commission in the following ways: (1) the first application submittals for all five LLLPs were submitted as related applications and deemed filed on Jan. 8, 2009; (2) all five of the LLLPs' first applications were withdrawn at the same time on Aug. 26, 2009; (3) all five LLLPs filed their second round of applications on the same day, on Aug. 26, 2009; (4) all five LLLPs withdrew the second application on the same day, Apr. 22, 2010; and (5) all five LLLPs filed their third application for the project on the same day, Nov. 17, 2010. Finally, the five LLLP applicants intend to share the use of the utility lines necessary to develop the sites. Taken together, the five LLLPs are clearly acting in concert to coordinate home and landscape design, road construction and utility installation. Thus, the five LLLPs should be considered partners in a joint venture to develop the Sweetwater Mesa parcels.

Fifth, each of the parcels has its own recordation history, but the uniformity among those histories strongly suggests coordinated efforts by a single entity.[56] There are six parcels involved in the development, including the parcel owned by Ed West Coast Properties, LLC (general partner--James Vanden Berg). The following provides the cohesive qualities of the recordation histories: (1) The Governor and Company of The Bank of Ireland is the lender-beneficiary and Fidelity National Title is the trustee for all six Deeds of Trust; (2) the six Deeds of Trust, all recorded on January 23, 2006, for the properties, have the same loan amount of $1,750,000 each; (3) the six Deeds of Trust for the six properties were recorded sequentially as Mortgage Document Numbers 06-0151045, 046, 047, 048, 049 and 050; (4) in all six Grant Deeds, the recording was requested by one person, Derek M. Quinlan, who requested the property tax statements for all six parcels to be sent to Derek M. Quinlan C/O James Vanden Berg, The Georgia Club, 1050 Chancellors Drive, Statham, CA 30666; (5) instrument Number 06-0151044 was a Grant of Easement from Ed West Coast Properties, LLC to Vera, Mulryan, Lunch, Morleigh and Ronan Properties LLC, identifying the 5 subject properties as parcels 1 through 5 with the Ed West Coast Properties, LLC property as parcel 6; (6) in 2005, Grant Deeds with Instrument Numbers 2890957, 58, 60, 61, 62 and 63 transferred title for Parcels 6, 4, 5, 3, 2 and 1 to Ed West Coast Properties, Lunch Properties, Vera Properties, Ronan Properties, Mulryan Properties and Morleigh Properties, LLCs, respectively; (7) each LLC entity has the same address for their principal place of business; and (8) each Deed of Trust was returned to the same law firm in San Francisco, Paul, Hastings, Janofsky & Walker LLP. Taken together, it is overwhelmingly evident that there is a joint and simultaneous effort to manage the

[55] http://www.ci.malibu.ca.us/download/index.cfm/fuseaction/download/cid/13411/; An appeal is currently pending on this permit issuance.

[56] All properties are still held in LLC entity formation, and none of the entities has transferred ownership to the LLLP entities. For the purposes of this recordation paragraph, we use the LLC designation for the properties as they exist on record.

recordation of the subject properties, suggesting that these parcels are, in fact, operating under the control of one entity, a joint venture.

Profit Motive

Finally, the partners are engaging in the venture for a profit. As noted above, the partners intend to sell three of the five homes to, at least, pay for the entire project.[57] Further, even if they did not build homes on the parcels, Evans, apparently in total control of the project, has had intentions to profit from merely owning the project parcels. In an Associated Press news report, Noaki Schwartz reported that "Evans recently listed the lots for $7.5 million each."[58] Even though Evans has not placed a potential price tag on the finished homes, it is evident that he would profit from the finished homes if the lots could potentially sell for over four times what the partners paid for each lot.[59] Even though each LLLP holds title in their respective properties, court found that the partnership property consisted of the partners' respective parcels notwithstanding the fact that the partners retained title to each parcel. (*Chapman v. Hughes, supra,*104 Cal. at pp. 304-305.) In such ownership situations, the court concluded that each partner holds legal title in trust for the partnership use. (*Id.* at p. 305.) Thus, the Sweetwater Mesa project should be considered a joint venture, for profit, between the five LLLPs.

It is worth noting that it is not at all unusual for individuals to organize their business entities under Delaware partnership law and to use the flexibility provided by that law to limit the transparency of those entities. It is possible that the applicants here have done so to advance the impression that each LLLP is a distinct, independent entity. Delaware law provides LLLPs with adequate safeguards for project proponents to place title in a straw-entity while still ensuring that the primary investors have total control over management of the property and relevant project. Under Title 6 Delaware Code, section 17-403, subdivision (c), "a general partner of a limited partnership has the power and authority to delegate to 1 or more other persons the general partner's rights and powers to manage and control the business and affairs of the limited partnership, including to delegate to agents, officers and employees of the general partner or the limited partnership, and to delegate by a management agreement or another agreement with, or otherwise to, other person." This delegation by a general partner, however, "shall not cause the general partner to cease to be a general partner of the limited partnership or cause the person to whom any such rights and powers have been delegated to be a general partner of the limited partnership." (6 Del. Code, § 17-403(c).) While the applicant has not submitted any partnership operating agreements between the subject-applicant LLLPs to prove delegation, it is important to note that California partnership law does not provide a similar option for limited partnership management by general partners. (See Corp. Code, § 15904.02.) Rather, California law requires the general partners to manage the partnership without the ability to

[57] http://www.independent.ie/entertainment/news-gossip/the-edge-tells-malibu-nimbys-im-going-to-build-my-dream-home--with-or-without-you-1719749.html.
[58] http://www.usnews.com/science/articles/2009/05/01/the-edges-green-pitch-for-malibu-riles-residents.html.
[59] Realquest documents for each parcel reveal that each parcel is secured by a $1.75million mortgage.

delegate these duties to another person. (See Corp. Code, §§ 15904.02, 15904.06.) Thus, it is possible that, by converting from a California LLC to a Delaware LLLP, Evans may be seeking to maintain the control of the development while giving the appearance that each parcel is owned by separate and independent LLLPs and their respective general partners. The Commission, however, may not base its section 30010 takings decision solely on this point. Rather, it can view this circumstantial evidence in light of the surrounding evidence provided throughout this report.

Evidence of Partnership/Joint Venture Ownership of the Subject Lots

Land standing in the name of an individual partner can become partnership property without actually formally transferring title to the partnership. In assessing whether that has occurred, a court turns to (1) Corporation Code, section 16204 and/or (2) the conduct and course of dealing between the partners to ascertain their intention to make a partner's separately-titled property a partnership asset. (*Perelli-Minetti v. Lawson, supra*, 205 Cal. at p. 648; *Esswein v. Rogers* (1963) 216 Cal.App.2d 91, 96.) Corporation code, section 16204(c) provides that:

> *"[p]roperty is presumed to be partnership property if purchased with partnership assets, even if not acquired in the name of the partnership or of one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of the partnership."*

Here, the following factors lend support to a finding that partnership assets were used to purchase the parcels for this development: (1) the six Deeds of Trust, all recorded on January 23, 2006, for the properties have the same loan amount of $1,750,000; (2) each Deed of Trust was returned to the same law firm in San Francisco, Paul, Hastings, Janofsky & Walker LLP; (3) the six Deeds of Trust for the six properties were recorded as Instrument Numbers 06-0151045, 046, 047, 048, 049 and 050; (4) instrument Number 06-0151044 was a Grant of Easement from Ed West Coast Properties, LLC to Vera, Mulryan, Lunch, Morleigh and Ronan Properties LLC, identifying the 5 subject properties as parcels 1 through 5 with the Ed West Coast Properties, LLC property as parcel 6; and (5) The Governor and Company of The Bank of Ireland is the lender-beneficiary and Fidelity National Title is the trustee for all six Deeds of Trust. The cohesive details of the deeds of trust are not happenstance. In fact, they indicate that each partner LLLP joined in a concerted effort, as a partnership, to secure loans to purchase their respective parcel for the partnership purpose of jointly developing the properties for profit. Furthermore, as noted in news reports above, Evans and Quinlan bought the subject property together as partners and planned to build the five homes as one cohesive development on Sweetwater Mesa. Thus, considering the partnership between Evans and Quinlan and the sequence of events to secure and transfer title of the property, the loans used to purchase the parcels should be considered a partnership asset, therefore satisfying the requirements in Corporations Code, section 16204(c).

Additionally, even if the assets used to purchase the property cannot be treated as partnership assets, so Section 16204(c) does not create the presumption that the property is partnership property, the contrary presumption can be overcome by the

conduct and course of dealing between partners if it indicates their intention to make a partner's separately-titled property a partnership asset. For instance, a partner's separate real property may become partnership property if he or she devotes that property to partnership purposes, notwithstanding the fact that the partnership, as an entity, does not hold title to the property. (See *Zanetti v. Zanetti* (1947) 77 Cal.App.2d 553, 559.) As a result, the "joint venturer holding the property for the joint venture is a trustee for his coventurer and this is so though he purchased the property with his own funds." (*Epstein v. Stahl, supra,*176 Cal.App.2d at pp. 57-58.) The use of the property for partnership purposes is "the chief criterion in determining whether [the] property is or is not that of the firm." (*Zanetti* at 559*, citing* 40 Am.Jur. § 89, p. 191.) Here, there is substantial evidence of a partnership purpose to develop all five parcels to generate revenue to support the other two. Thus, the three parcels to be sold are inherently being used for the partnership purposes, and at a minimum, those three parcels appear to be partnership property.[60] In these situations, "[a] partnership interest does not entitle a partner to any particular portion of the business assets, but merely gives the partner a right to an accounting." (*Ibid.*)

Our Supreme Court has issued one noteworthy opinion, cited above, that applies the principles governing the conversion of a partner's separately owned parcel into partnership property. In *Chapman v. Hughes*, the California Supreme Court found that three partners contributed their individually owned parcels for partnership purposes—selling the land and dividing the profit—and, thus, became partnership property, notwithstanding their agreement that each should maintain individual title to the parcels. (*Chapman v. Hughes, supra,* 104 Cal. at pp. 304-305.) The court also found that the partners could have even created this partnership structure even if they did "not expressly intend to create such a relationship." (*Id.* at p. 304.) While the court was brief in its opinion, subsequent Supreme Court opinions or legislative authority have not superseded these basic principles governing partnership property.

Here, the course of dealing between the five LLLPs is such that the five LLLP parcels should be considered joint venture property. The partners have engaged in a manner consistent with a finding that each LLLP has devoted its property for partnership/joint venture purposes. In the original partnership structure, Quinlan and Evans were engaged in real estate ventures in Dublin and the facts noted above indicate the same in this case. There is no indication from the submitted materials that the addition of Tim Delaney to the partnership as general partner of Mulryan Properties, LLLP, would alter the finding of a venture in this matter. Furthermore, the venture is evident because the partnership anticipates selling three of the finished homes for a profit to pay for the entire project. Thus, but for the LLLPs conduct in devoting their respective parcels for this purpose, the joint venture would not be able to make a profit. Thus, the joint venturers, the five LLLPs, have each devoted their parcels for the benefit of the joint venture. Therefore, the LLLPs' parcels have effectively become joint venture property, subject to the goals of the venture, namely, to profit from the sale of three homes.

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[60] As an aside, oral agreements to use a partner's property for a joint venture do not violate the statute of frauds "because creation of the joint venture ha[s] the effect of vesting title to the property in the [partnership] entity, making a formal conveyance unnecessary." (*Kaljian v. Menezes* (1995) 36 Cal.App.4th 573, 584.)

(C) Conclusion

In conclusion, whether the lots are, in reality, all controlled by David Evans, or whether there is a true partnership among distinct property owners, Mr. Evans' ownership or the joint venture's ownership of at least some of the parcels must be taken into account for purposes of identifying the relevant unit of analysis for the necessary takings review.[61] Under the Coastal Act, "any person, as defined in Section 21066, wishing to perform or undertake any development in the coastal zone…shall obtain a coastal development permit." (Pub. Res. Code, §30600.) Public Resources Code, section 21066 defines person as "any person…partnership, business…limited liability company…." Finding that the Sweetwater Mesa project's partners have been conducting business as a joint venture, then, the "person", under the Coastal Act, that is performing or undertaking this development may be this partnership. For the reasons indicated above, the commission considers Mr. Evans or the joint venture as the unified owner of at least three of the parcels.

ii. Degree of Contiguity

As indicated above, the unity of ownership issue discussed in the previous dozen pages is only one of several factors that the court consider when identifying the area to be treated as the relevant parcel for a takings analysis. Courts also consider whether parcels are physically adjacent when determining whether to aggregate the parcels in a takings analysis. Geographical contiguity of the parcels weighs in favor of aggregation. (*Ciampitti v. United States*, *supra*, 22 Cl. Ct. at 319; *see also District Intown v. District of Columbia*, *supra*, 198 F.3d at 880; *Forest Properties, Inc. v. U.S.* (1997) 39 Fed. Cl. 56, 73.) In this case, the subject Sweetwater Mesa parcels are all contiguous parcels.

iii. Dates of Acquisition

Courts also consider the dates of acquisition of the relevant parcels. If a single owner acquires parcels on the same day or even within two to five months apart, this weighs in favor of aggregation. (See *Walcek v. U.S.* (2001) 49 Fed.Cl. 248, 260; see also, *Forest Properties, Inc. v. U.S.* (1997) 39 Fed. Cl. 56, 73-74.) In the present case, the owners of the parcels acquired each parcel on the same day, November 22, 2005.

iv. Extent to which the Parcels have been Treated as a Single Unit

Courts are inclined to aggregate parcels when they are treated as one income-producing unit or when they comprise a single, comprehensive development scheme. (*Norman v. U.S.* (Fed. Cl. 2004) 63 Fed.Cl. 231, 257-259.) Courts are also more likely to aggregate when a plaintiff finances and purchases property as a single parcel.

[61] Again, the Commission has not been given access to the agreements or other documents explaining how the various business entities are managed and controlled. The Commission's position is subject to alteration if the applicants do eventually provide such documentation and, contrary to the weight of the evidence currently before the Commission, they establish true, separate ownership of the lots in question and the absence of a partnership or joint venture.

(*Ciampitti*, 22 Cl. Ct. at 319.) Courts also consider whether a plaintiff has treated subdivided lots of a single parcel differently for accounting or management purposes. (*District Intown*, *supra*, 198 F.3d at 880.) In *District Intown*, the plaintiff purchased an apartment building and an adjacent landscaped lawn as a whole in 1961 and treated it as a single, indivisible property for more than 25 years. (*Ibid*.) Despite the eventual subdivision of the lawn parcel into 8 lots, the court found that the plaintiff did not treat the parcels differently for accounting or management purposes. In particular, the plaintiff's failure to distinguish lawn maintenance fees from the overall apartment building maintenance fees warranted the court's decision to treat the lots as a single parcel. (*Ibid.*)

Historically, the parcels have been held together and managed as a unit. Based on the chain of title Commission staff reviewed, for at least the last 50 years, the Mulryan and Ronan parcels have followed identical paths, having the exact same owner or proportionate owners and being conveyed from one to the next at the same time.[62] The Lunch and Morleigh parcels also followed identical paths, and with two minor exceptions, it was the exact same path followed by the Mulryan and Ronan parcels.[63] Finally, the Vera parcel history is incomplete, but the data that is available shows it following the same path as well.

Previous owners of the subject property have also coordinated prior development schemes on the property. In 2004, Brian Sweeney, who managed the five parcels before selling them to Evans, applied for coastal development permits in a coordinated manner to develop five homes on the subject property. The commission staff sent the applications back to Sweeney as incomplete and soon thereafter Sweeney decided to sell the parcels to Evans subsequent to this incomplete application submittal.

Here, the five subject properties have been treated as a single unit because all of the parcels at issue in this development are (1) controlled by a single, comprehensive development scheme, (2) funded with partnership assets, (3) project-managed by one person, James Vanden Berg and (4) owned cohesively as one unit for the past 50 years. First, David Evans has created a website to catalog the current development project,[64] which presents a unified residential development scheme for all of the parcels. In particular, one architectural firm has designed all of the homes, which, while not structurally identical, are aesthetically linked, and one landscape architect has designed a plan for the overall surrounding environment. Also, each of the five LLLPs acquired an easement for utilities, ingress and egress from Ed West Coast Properties, LLLP (James Vanden Berg is the principal of Ed West Coast). As a result, Lunch Properties LLLP filed an application with the Malibu Planning Commission to acquire a permit to

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[62] Both were held by jointly Edward Fischer (as to 50%) and Alfred Linke (as to 50%) in 1959, with Linke conveying his 50% interest in each to Stephen Vernon in 1973, Vernon's interest then going to Colleen Taylor in 1990 when she recorded an earlier quitclaim deed from him, Fischer conveying his 50% interest to James Biava in 1994, and Biava and Taylor both conveying their 50% interests to Brian Sweeney (in his individual capacity in the case of the Ronan parcel and as manager of an LLC in the case of the Mulryan parcel) in 2001.

[63] In the case of the Lunch and Morleigh parcels, Sweeney took title to both through LLCs in 2001, and Sweeney acquired his interest directly from Vernon (and Biava) without Colleen Taylor as an intermediary between Vernon and Sweeney.

[64] *See* http://www.leavesinthewind.com/.

construct a road consistent with the easement parameters.[65] In September 2008, the Planning Commission granted the permit to construct the road, providing a condition that the approval of the application is to provide exclusive access to the five Sweetwater Mesa lots.[66] Further, there is a joint effort to install the required utilities for the entire development. Taken together, the five LLLPs are clearly acting in concert to coordinate home and landscape design, road construction and utility installation. Second, Evans and his partners purchased the parcels at the same time with partnership assets. Third, there is only one project manager, James Vanden Berg, who is overseeing the development for all five homes. Finally, David Evans attested to the existence of a partnership in a relatively scripted monologue posted on KCET's website, a southern California media outlet.[67] These factors, coupled together, indicate that the five parcels have been treated as a single unit.

v. Conclusion Regarding Unit of Analysis

In summary, although the courts will not engage in aggregation lightly, it is also true that, as the Court of Claims has put it, "a taking can appear to emerge if the property is viewed too narrowly. The effort should be to identify the parcel as realistically and fairly as possible, given the entire factual and regulatory environment." (*Ciampitti v. United States*, *supra*, 22 Cl. Ct. at 319.) The four factors discussed above are the primary ones on which courts have focused in making aggregation determinations. For all but one of those factors, the facts in the present case clearly support aggregation. With respect to the fourth (unity of ownership), the applicants argue strenuously that each is an independent entity, so that this one factor does not support aggregation. However, as noted above, this Commission has recently concluded that it can and should look beyond the surface transactions in cases where there is some evidence that ostensibly separate ownership is actually more complicated. See Commission findings no applications A-3-SCO-09-001 through -003 (Frank), December 17, 2010. Here, we have conducted an extensive review of this fourth factor, and there is much to suggest that the ownership is not entirely separate. Although it is for the courts ultimately to determine how to apply takings law, this Commission finds that there is sufficient evidence of some unity of ownership of at least three parcels, and with the other criteria for aggregation being satisfied, it finds that it must treat the relevant area for its takings analysis as something less than the five separate parcels presented by the applicants. With that as its basis, the Commission's takings analysis follows.

d. Application of Takings Law to the Relevant Area in the Instant Case

i. The Denial of the Project Would Not Constitute a Categorical Taking

As discussed above, the first test for a takings analysis is whether there has been a categorical taking of property under the *Lucas* standards. To constitute a categorical taking, the regulation must deny all economically viable use of property; in other words,

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[65] http://www.ci.malibu.ca.us/download/index.cfm/fuseaction/download/cid/12713/.
[66] http://www.ci.malibu.ca.us/download/index.cfm/fuseaction/download/cid/13411/; An appeal is currently pending on this permit issuance.
[67] http://www.kcet.org/shows/socal_connected/content/culture/the-edge-speaks.html.

it must render the property "valueless" (*Lucas, supra,* 505 U.S. at p. 1012). If the property retains any value following the Government's action, the *Lucas* categorical taking formulation is unavailable and the property owner must establish a taking under the three-part Penn Central test (see *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency* (2002) 535 U.S. 302, 330; *Palazollo, supra,* 533 U.S. at pp. 630-632). Because permit decisions rarely render property "valueless," courts seldom find that permit decisions constitute takings under the *Lucas* standard.

In this case, the Commission will allow sufficient development – on each area that is appropriately treated as a separate parcel for takings purposes – to avoid rendering any such parcel valueless. However, as indicated above, in section II.D.2.c, it is unclear how many separate parcels should be treated as existing for takings purposes, in part because of the applicants' unwillingness to provide full disclosure of their LLLP structures. In any event, though, there appear to be fewer than five separate parcels for takings purposes, so it is not necessary to approve a separate house on each of the five parcels to avoid a taking. In addition, as indicated in section II.C., even the first house that would be reached by the new access road is not approvable in its current location, and there is too much variability in alternative locations and designs for the Commission to grant a conditional approval of that house. Thus, the applicant has the opportunity to resubmit an application to build on the relevant parcel(s) pursuant to the guidance provided above. That opportunity makes the property extremely valuable even after the denial of this project, and thus, there is no categorical taking.

Therefore, the Commission's denial of this residential development scheme leaves the applicants with an alternative significant use—the opportunity to develop the relevant parcel(s) on a smaller scale--which has economic value to the applicants. Therefore, under these circumstances, the Commission's denial did not render APNs 4453-005-018, 4453-005-092, 4453-005-037, 4453-005-091, or 4453-005-038 valueless and does not constitute a categorical taking under *Lucas.*

ii. The Denial of the Permit is Not a Taking Under the Ad Hoc *Penn Central* Test

If a regulatory decision does not constitute a taking under *Lucas*, a court may consider whether the permit decision would constitute a taking under the ad hoc inquiry stated in *Penn Central Transp. Co. v. New York City* (1978) 438 U.S. 104, 123-125. This ad hoc inquiry generally requires an examination and balancing of the following factors: (1) the character of the government action (2) its economic impact and (3) its interference with distinct, investment-backed expectations. When applied to the facts of this case, each of these factors demonstrates that the Commission's denial is not a taking.

Distinct Investment-Backed Expectations. The absence of a reasonable investment-backed expectation is usually dispositive of a taking claim under the *Penn Central* standards (*Ruckelshaus v. Monsanto Co.* (1984) 467 U.S. 986, 1005, 1008-1009).

As an initial matter, it is important to recognize that any restrictions on the applicants' ability to develop this area based on the Coastal Act and takings case law discussed

above were in effect already at the time the applicants purchased the subject properties. The Coastal Act had been in effect, and the Commission had been implementing it consistently in the Santa Monica Mountains, for decades prior to the applicants' purchases. In addition, with the exception of the *Kalway* case, every case discussed above had already been decided when the applicants purchased the subject property in late 2005. Thus, at the time of purchase, the applicants could not have had a reasonable expectation that they would be entitled to more than the law, as articulated in those cases, allows. The idea of a distinct, investment-backed expectation necessarily implies that the expectations be a reasonable probability given the state of the law at the time of acquisition. *Guggenheim v. City of Goleta* (2010) WL 5174984 (Dec. 22, 2010).

It is also instructive to assess the likely actual return on the applicants' investment in this case. In order to determine that, it is necessary to assess what the applicants invested when they purchased the parcels. The five parcels, totaling 156 acres were purchased for approximately $9,000,000. The current assessed value for all five parcels is $ 9,263,560, with each parcel assessed at $1,852,712.[68] The evidence suggests that these assessed values fairly reflected the relative values of the property.

While the Commission cannot analyze, with absolute certainty, the potential investment returns from building one or more homes on the subject property, we can use recent sales of homes in the area as a guidepost to show that the applicant can realize a reasonable return from building one or more homes on the site. In an attempt to better understand the going rate for mesa-top, ocean view real estate in Malibu, staff examined the single-family home sales prices within the City of Malibu over the last 2-3 years. See table that follows:

[68] Source: Los Angeles County Assessor's Office.

SFD sales[1]		**Property Details**			
Sales date	**Sales price**	**Address**	**Home Square Footage and parcel acreage**	**Bedrooms**	**Bathrooms**
10/07/2010	$11,500,000	3510 Sweetwater Mesa Road	2501 sq. ft./ 1.11 acre	4	6
04/03/09	$8,500,085	22355 Carbon Mesa Road	3723sq. ft./ .53 acre	2	3
07/15/08	$11,500,115	22313 Carbon Mesa Road	6578sq. ft./ 5.55 acres	4	4
Average:	**$10,500,067**	**N/A**	**4267.3sq. ft./ 2.39acres**	**3.33**	**4.33**

1. Source: Los Angeles County Assessor's Office Transaction Database

While the Commission acknowledges that there are only three sales in this comparison, these recent sales, coupled with the rising appreciation in the greater Los Angeles Metropolitan area since the bottoming out of the real estate market in 2008, indicates that the applicant will likely recoup a distinct investment-backed expectation from building a home on the subject property. In its December 28, 2010 press release for October 2010 home prices, the Standard and Poor Case-Shiller Index, a universally-respected authority on real estate market data, reported that the Los Angeles Metropolitan area posted a 3.3% increase in home prices compared to October 2009.[69] Further, at the time of the sale of the home at 22355 Carbon Mesa Road, the April 2009 level was at 159.37 whereas the January 2010 level was at 172.98.[70] This upward trend in real estate prices has continued in Malibu, which is a highly desired area in which to live in the greater Los Angeles Metro area, given that the October 2010 Case-Shiller Index report indicates an index of 174.05 for the Los Angeles Metropolitan area. This upward trend is evident, also, in the most recent comparable home sale at 3510 Sweetwater Mesa Road, located in the same vicinity as the subject properties—a home that is 1/5 the size of the largest proposed homes and sits on nearly 1/156 the property size as compared to the subject property. Moreover, compared to the small acreage and relatively small homes in the three comparable sales listed in the table, the

[69] http://www.standardandpoors.com/indices/sp-case-shiller-home-price-indices/en/us/?indexId=spusa-cashpidff--p-us----. ,Link on website entitled "U.S. Home Prices Weaken Further as Six Cities Make New Lows According to the S&P/Case-Shiller Home Price Indices(PDF)" at page 3. Accessed online on January 20, 2010.
[70] http://www2.standardandpoors.com/spf/pdf/index/CSHomePrice_Release_063055.pdf, page 3. Accessed online on April 16, 2010.

applicant will likely recoup its investment since it could potentially build a larger home on its 156-acre property. Therefore, the denial of the applicant's project will not result in a loss of its distinct investment-backed expectation.

Further, nearby, in the Serra Retreat development, the owners of 3314 Serra Road recently listed their home and property for sale, asking $17,500,000 for their 4 bedroom, 3 bathroom 3,811 square-foot home, sitting on two parcels consisting of 6.5 acres. Unlike the subject property, this home does not have ocean views and sits on far less acreage. Thus, the applicants could potentially build a single home of similar size and features and likely recoup a significant return on their investment.

Additionally, the applicants would be able to recoup an investment-backed expectation if they choose to sell the entire 156 acre subject property. For example, on June 3, 2010, the property owner at 3200 Encinal Canyon Road, just up-coast from the subject property in Malibu, sold his 78.16-acre parcel of land (as listed) for $8,878,886.[71] While this property has inferior views relative to the subject property, is farther from the coast than the subject subject property and is only 1/2 the size of the subject property, it has a sales price that is 98% of the purchase price of the subject property. Similar to the subject property, however, 3200 Encinal Canyon road also has a long unpaved access road to the property. The Commission acknowledges that the sales price of this property may not offer an exact comparison to the potential sales price for the subject property; nonetheless, this sale provides an approximate representation of a potential return should the applicant choose to sell its property. Furthermore, given the subject property's closer proximity to the City of Los Angeles and other prominent urban areas, thus providing a shorter commute to employment destinations, it is more likely than not that its location would add substantial value over and above that of the property at 3200 Encinal Canyon Road.

To determine whether an expectation is reasonable, one must assess, from an objective viewpoint, whether a reasonable person would have believed that the property could have been developed for the applicants' proposed use, taking into account all the legal, regulatory, economic, physical and other restraints that existed when the property was acquired. Viewed objectively, a reasonable person would not have had a reasonable expectation that the subject property could be developed with the proposed residential development.

A reasonable person also would have investigated the regulatory restraints that existed at the time of purchasing property within the coastal zone, including the relevant Coastal Act policies applicable to the site (e.g., geologic hazards, visual resources, ESHA, etc.). The findings cite the Coastal Act policies that limit development in this area, especially those that govern ESHA and geological hazards. Real estate agents and sellers familiar with the site likely would have informed a buyer that they did not believe it possible that the Coastal Commission would allow the proposed residential development because it is within significant ESHA resources and requires significant grading to build the road,

[71]http://www.trulia.com/for_sale/Malibu,CA/LOT|LAND_type/price;d_sort/fs:1,s:1_pt/#sold/Malibu,CA/LOT|LAND_type/price;d_sort/.

utility lines and the homes, affecting the geological stability of the subject property.

In summary on this point, the applicants had neither a reasonable, nor an investment-backed, expectation that they could develop the subject property under the current development proposal in their CDP applications.

Economic Impact. The second prong of the *Penn Central* analysis requires an assessment of the economic impact of the regulatory action on the applicant's property. Although a landowner is not required to demonstrate that the regulatory action destroyed all of the property's value, the landowner must demonstrate that the value of the property has been very substantially diminished (see *Tahoe-Sierra Pres. Council, Inc., supra,* [citing *William C. Haas v. City and County of San Francisco* (9th Cir. 1979) 605 F.2d 1117 (diminution of property's value by 95% not a taking)]; *Rith Energy v. United States* (Fed.Cir. 2001) 270 F.3d 1347 [applying *Penn Central*, court finds that diminution of property's value by 91% not a taking]). Generally, courts have determined the diminution of property value by assessing the difference between the fair market value of the subject property caused by the regulatory imposition and the fair market value of the subject property without regulatory constraints. (*Brace v. U.S.* (2006) 72 Fed.Cl. 337, 349.) In other words, the economic impact analysis "is often expressed in the form of a fraction, the numerator of which is the value of the subject property encumbered by regulation and the denominator of which is the value of the same property not so encumbered." (*Walcek v. U.S.* (2001). 49 Fed.Cl. 248, 258.) The property owner, in a takings context, is entitled to have the fair market values for this economic impact fraction be derived from the "highest and best use" of the property. (*Brace, supra,* 72 Fed.Cl. at p. 350.) Understandably, however, the "highest and best use" of property is one where the use is a reasonably probable and legal use of property, is physically possible, appropriately supported, financially feasible and results in attaining the highest value. (*Ibid.*) In assessing the reasonably probable and legal use, the highest and best use is necessarily tempered by the realities of securing administrative approval for design, sewage, environmental, utility and road permits, to name a few, from various state and federal agencies. (*Id.* at p. 351.) In this case, the evidence demonstrates that the Commission's action would have little impact on the potential value of the applicants' property.

In this case, the highest and best use of the subject property, being subject to legal constraints contained in the Coastal Act, may well be the sort of residential development generally proposed by the applicants, but limited to building fewer homes on the site than that proposed by the applicants. In *Brace,* plaintiff owned and farmed on a 134-acre parcel of land upon which he had drained and filled a 30-acre wetland on the southern portion of his property. (*Brace, supra,* 72 Fed.Cl. at p. 340-341, 343.) Thereafter, the United States filed an enforcement action against plaintiff whereby the trial court judicially ordered, by Consent Decree, the plaintiff to restore the filled wetland back to its original wetland state and enjoined further filling or other discharge unless plaintiff complied with the Clean Water Act. (*Id.* at p. 343-344.) Following compliance with the Consent Decree, the plaintiff filed a claim for a regulatory taking, arguing that the impact of the Consent Decree and resulting restoration activities rendered his property valueless. (*Id.* at p. 344.) At trial, the plaintiff argued that compliance with the

Consent Decree eliminated the possibility to develop the property into a 125-lot residential subdivision, thus, entitling plaintiff just compensation for his loss. (*Id.* at p. 345, 350.) The court, however, found that the 125-lot subdivision did not constitute the highest and best use of the plaintiff's property because such a use was not legally permissible given that the plaintiff had not proven that he would receive administrative approval from the various local, state and federal agencies for the required design, sewage, environmental, utility and road permits. (*Id.* at p. 351.)

Similar to the conclusions in *Brace,* here, the applicants have not proven that their proposal is legally permissible because the highest and best use of the subject property is limited by the legal constraints of the Coastal Act. In this case, the highest and best use of the property is the use of the site for fewer single-family homes than that proposed under the current application. The Coastal Act policies related to geology, scenic qualities, and environmentally sensitive habitat constrain the Commission's authority to grant a permit for anything that would cause geological hazards or degrade views of sensitive habitat. As such, and considering the Commission's lack of authority to cause a taking of property in its actions, the property could support the development of fewer homes than that proposed by the applicant.

Under the current proposal, there cannot be an evaluation of the diminution in value of property if the proposal is not legally permissible and, thus, not the highest and best use. Since the Commission is denying the proposed project for five homes, which is not the highest and best use given legal constraints applicable to the property, the Commission's action would cause, essentially, no economic impact on the applicants. Rather, the highest and best use of the land would be the construction of fewer homes, clustered together to ensure the Commission's action is consistent with Coastal Act policies, or possibly one home, a reasonable restraint on what is legally permissible within the coastal zone. This legally permissible highest and best use, however, is not in front of the Commission and has yet to be determined by the Commission. Thus, the Commission's action cannot cause an economic impact because the construction of five 8,000-12,000 square foot homes is not the highest and best use of the subject property and cannot be used to establish a proper denominator under the economic impact prong of the *Penn Central* test. Rather, a scaled down project with fewer homes is likely to provide the legally permissible highest and best use which will supply a proper denominator for a future economic impact analysis.

Notwithstanding the analysis above, it is likely that, even following denial, the value of the property would still exceed what the applicants paid for the bare land in 2005. Further, the potential value of building one home (which may very well constitute the legally permissible highest and best use of the property) on this property, as indicated in the sales figures above, would certainly far exceed the applicant's initial purchase price and building costs given the recent sales and current for-sale homes in the surrounding area coupled with the rising home values in the greater Los Angeles Metropolitan area.

The Commission's action will have little, if any, economic impact. The applicants acquired the subject property for approximately $9,000,000 and, even after the Commission's action, the applicants retain the opportunity to develop part of the property. Given this evidence, it is reasonable to conclude the Commission's action

would not have an impact on the value of the subject property, and it is evident that this finding is consistent with other regulatory actions by other state or federal agencies for which the courts have rejected taking claims.

Ad-Hoc Takings: Character of the Commission's Action. The final prong of the *Penn Central* test requires a consideration of the character or nature of the regulatory action. A regulatory action that is an exercise of the police power designed to protect the public's health, safety and welfare is much less likely to effect a taking (*Keystone Bituminous Coal Ass'n, supra,* 480 U.S. at pp. 488-490; *Penn Central, supra,* 438 U.S. at p. 127), than, for example, a government action that is more like a physical appropriation of property (see *Loretto, supra,* 458 U.S. 419).

In this case, the Commission's denial of the applicants' proposal promotes important policies that protect the public's health, safety and welfare. Detailed earlier in this report, these policies include the preservation of scenic resources and the protection of ESHA. All of these policies are the type of exercises of the police power that have long been thought to promote important governmental interests. At the same time, the Commission's action involves no physical occupation or exactions of property interests and still allows the applicants the opportunity to develop the property. Consequently, application of the third prong of *Penn Central* strongly weighs against a finding that the denial of this project constitutes a taking.[72]

Conclusion: For all of these reasons, the Commission's denial of this project would not constitute a taking under the ad hoc *Penn Central* standards.

e. <u>Before a Landowner May Establish a Taking, Government Must Have Made a Final Determination Concerning the Use to Which the Property May Be Put</u>

In addition to the analysis above, it is worth noting that, before a landowner may seek to establish a taking under either the Lucas or Penn Central formulations, it must demonstrate that the taking claim is "ripe" for review. This means that the takings claimant must show that government has made a "final and authoritative" decision about the use of the property (e.g., *Williamson County Regional Planning Com. v. Hamilton Bank* (1985) 473 U.S. 172; *MacDonald, Sommer & Frates v. County of Yolo* (1986) 477 U.S. 340, 348). Premature adjudication of a takings claim is highly disfavored, and the Supreme Court's cases "uniformly reflect an insistence on knowing the nature and extent of permitted development before adjudicating the constitutionality of the regulations that purport to limit it" (*Id.* at p. 351). Except in the rare instance where reapplication would be futile, the courts generally require that an applicant resubmit at least one application for a modified project before it will find that the taking claim is ripe for review (e.g., *McDonald, supra*).

In this case, although the Commission is denying the proposed residential development, the Commission's denial does not preclude the applicants from applying for some other use on the site. In fact, the Commission's analysis has provided as much guidance as

possible, given the limitations on the evidence presented, regarding what sort of development would likely be approvable. In this circumstance, the Commission has not made a final and authoritative decision about the use of the project site and has certainly not indicated that no development is possible at the site. Therefore, the Commission's denial cannot be a taking because a taking claim is not "ripe."

3. Conclusion – Denial with Guidance

For all of the above reasons, the Commission concludes that its denial of the applicants' proposal would not constitute a taking and therefore is consistent with Coastal Act Section 30010.

Takings law and Coastal Act section 30010 require that the Commission allow some level of development at this site, notwithstanding all of the inconsistencies listed in section II.C., above. However, it is also true that Takings law almost certainly does not require approval of one single family residence on each of the existing legal lots, for the reasons discussed above. A smaller project may be approvable. However, on the current record, the Commission cannot determine the exact size of that development, and it would be inappropriate for this Commission to try to guess at that or to redesign the project to achieve that limit. If presented with a project scope that is arguably within the applicants' rights, the Commission will have to determine whether it must be approved. However, that is not the situation presented. On the current record, the Commission can only say that the scale of development that must be allowed to avoid a taking is unclear, but it is something less than the applicants currently seek. Moreover, even assuming that it were appropriate to view the site as a single lot for takings purposes (to minimize the variability in what type and amount of development must be allowed), there is still considerable variation in exactly where a single house could be located and how it could be designed. Consequently, it is appropriate for this Commission to deny with guidance.

E. ALTERNATIVES

Alternatives must be considered to determine if there is an approvable alternative project that would lessen or avoid significant environmental impacts to coastal resources, in this case primarily ESHA and visual resources. An alternative is a description of another activity or project that responds to the major environmental impacts of the project identified through the Commission's analysis. In this case, as discussed in great detail above, the proposed residences, access road, Fire Department staging areas, municipal water line, lot line adjustment, and excess fill placement would result in significant disruption of habitat values within ESHA and are not uses that are dependent on the resource, which makes them inconsistent with Section 30240 of the Coastal Act and the applicable ESHA protection policies of the LUP, used by the Commission as guidance. In addition, the proposed residences, access road, fill, and lot line adjustment would not serve to protect public views, minimize landform alteration, or be compatible with the character of the surrounding area, inconsistent with Section

30251 of the Coastal Act and the LUP visual resource policies, used by the Commission as guidance.

Obviously, the construction of residential development, including vegetation removal for both the development area and the surrounding area (as fuel modification to protect the new development), grading, water source, construction of a residence, and the use of the development by residents will result in unavoidable loss of ESHA. In addition, given the visual prominence of the subject ridgeline, construction of residential development and its associated fuel modification requirements and access, impacts to visual resources will also be unavoidable. There are no potential development sites on the subject properties that could completely avoid impacts to ESHA or visual resources. However, development can be sited and designed to minimize ESHA impacts by measures that include but are not limited to: reducing the number of residences, limiting the number of accessory structures and uses, limiting the size of structures, 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. Similarly, development can be sited and designed to minimize impacts to public views and landform alteration by similar means. However, in this case, the proposals do not include such elements. There are potential design, siting, clustering, and water supply alternatives to the proposed projects that could significantly reduce the existing proposal's inconsistencies with the ESHA and visual resource policies of the Coastal Act, as described below.

Number of Residences

As indicated in section II.D, above, the current record is insufficient to allow the Commission to assess how many independently economically viable development sites the applicants are likely to be entitled to have within the overall 156 acre area. However, it appears that they are entitled to somewhat less than five. Reducing the number of distinct development sites down to two or three (for example with one on the Vera property, one on the Mulryan property, and one on the Lunch property representing the remaining three) could well transform the entire nature of the project by eliminating the entire northern half of the proposed development, which would dramatically reduce the ecological and visual impacts, as well as avoiding much of the geologic complexity associated with the upper parts of the proposed access road.

Design Alternatives

Each of the proposed residential development areas is large in scale, despite the significant biological, scenic, and fire hazard sensitivities of the area. In past permit actions, the Commission has limited development within or adjacent to ESHA on a parcel zoned for residential development in this area of the Santa Monica Mountains to a maximum 10,000 sq. ft. development area, excluding driveways and fire turnaround areas. Each of the proposed development areas of the subject applications conforms to the maximum development area of 10,000 sq. ft., however, development areas smaller

than the maximum allowed in these cases would achieve a significant reduction in the area that would be cleared and disturbed for house sites and fuel modification, as well as the demand for water for the fire suppression systems. In addition, smaller development areas that are limited to a single story with a basement, perhaps 18 ft. tall, would significantly reduce the visual profile of the residences as seen from public viewing areas. The Commission finds that, in these cases, a residential development area of 5,000 to 8,000 sq. ft. and a residential structure that is limited to 18 ft. in height above finished grade would result in substantial reductions in impacts to ESHA and visual resources.

Regarding the proposed access road, given the topographic and geologic constraints of the area, Commission staff has determined that there are no other design alternatives for an access road to each of the properties that would reduce grading, footprint, length or height of retaining walls in order to achieve reductions in ESHA or visual resource impacts. However, again, if fewer sites were to be developed, the extent of the road could be significantly curtailed.

Siting Alternatives

One of the five proposed residences, Residence 1 (Vera), has not been sited to minimize impacts to ESHA and visual resources to the greatest extent feasible. If the residence were moved off of the face of the ridge crest and closer to the proposed access road to the north, and with a more compact design footprint as discussed above, the area of ESHA that would have to be removed or modified for fire protection purposes could be significantly reduced. A development site closer to the proposed access road would enable greater overlap of disturbed areas associated with the road and residential development on adjacent properties to the north. If the applicant were to notch the residence into the inland side of the ridge crest and closer to the proposed access road, it appears that the natural topography of the ridge crest would obscure the most significant views of the development from the south and southwest, thereby maximizing protection of public views of the natural ridgeline topography (Exhibit 21).

Regarding the proposed access road, given the topographic and geologic constraints of the area, Commission staff has determined that there are no other siting alternatives for an access road to each of the properties that would reduce grading, footprint, length or height of retaining walls in order to achieve reductions in ESHA or visual resource impacts. However, again, if fewer sites were to be developed, the extent of the road could be significantly curtailed. In addition, there appear to be alternatives to the siting of the three proposed Fire Department staging areas associated with the access road (2,800 sq. ft., 6,200 sq. ft., and 20,000 sq. ft. in size). Although the Fire Department has stated that the staging areas are required, it is unclear if the Fire Department specified and justified the exact size that the staging areas were required to be, or if the applicant proposed the sizes and locations of the staging areas and the Fire Department found them to be satisfactory. Commission staff has been unable to confirm whether the staging areas are the minimum size necessary and configuration necessary for their intended use by the Fire Department. It appears that there is opportunity to consolidate

and reduce the sizes of the staging areas while ensuring that they adequately function for their intended use. The upper, 20,000 sq. ft. staging area does not appear to be the minimum size and configuration necessary to function as a pull-out for emergency access vehicles. In addition, it appears that the lower two staging areas could be consolidated into one area and re-sized to be the minimum size necessary.

Clustering Alternatives

Clustering development is another important means of minimizing impacts to coastal resources. Clustering of building sites, such that the required fuel modification radii overlap, reduces the extent of required vegetation clearance and the associated impacts on ESHA. In addition, the pattern and placement of development is critical to the level of habitat fragmentation that would occur. Habitat is significantly less fragmented by a few isolated clusters of development rather than development scattered across a landscape. Clustering of building sites also reduces the overall area of development that may be visible from various public viewing areas. Concentration of development areas near existing roads also reduces grading and landform alteration.

The existing lot configuration among the subject parcels, as well as the proposed lot line adjustment among two of the subject parcels, does not allow for maximum clustering of building sites if a residence is to be built on each lot and thus does not minimize vegetation clearance, landform alteration, and the footprint of development and thus does not minimize the associated impacts on visual resources and ESHA.

A reduction in the number of potential residential building sites in an area is another way to cluster development. As indicated in section II.D.2, the available information suggests that the applicants are not entitled to five separate residential developments. As indicated above, even if the amount of development were only reduced from the proposed five residences down to three (one on each of the existing Vera, Lunch, and Mulryan parcels), if those three residences could all be clustered near the intersection of those three parcels, that would eliminate a large portion of the access road and avoid disruption of a large area of ESHA (Exhibit 21). If that location is not possible for all three lots, and particularly for the Mulryan lot, the applicants could consider the viability of siting one home in the meadow area of that lot. The Commission cannot determine, at this point, whether such an approach is possible, because these alternatives have not been considered, but the failure to consider those alternatives is the critical issue here.

In addition, alternative lot configurations can also serve to cluster and site development closest to existing roads, development, and disturbed areas to the maximum extent feasible. As discussed in the preceding section, in this case, it is not necessary to approve a separate house on each of the five parcels in order to avoid a taking. However, the scale of the development that must be allowed is unclear. In order to present a range of alternatives that can lessen or avoid significant environmental impacts to coastal resources, staff has identified areas within the bounds of the subject properties that could accommodate clustering of residential development, regardless of how that is accomplished. Given that there is considerable variation in exactly where

residence(s) could be located and designed, staff can only provide a general indication of where potential development could be accommodated based upon the available site information.

In consideration of geologic and topographic constraints of the area, it appears that up to three development areas could be situated in the lower portions of the subject sites to maximize clustering of development, particularly the northeast portion of the Vera parcel (identified in the siting alternatives above) and in the area of the historic mesa on the Mulryan and Lunch properties. This area is shown on Exhibit 21. Although the mesa area is underlain by landslide, the area of the proposed Lunch residence and proposed access road along the mesa appear to be feasible locations upon which to build residences. Clustering of development in these areas would result in a much shorter access road; reduced grading; reduced landform alteration; maximum overlap of, and reduction in, required fuel modification areas; and reduced demand for water supply; all of which would reduce habitat destruction and fragmentation, reduce need for enhanced fire protection measures, and reduce impacts to visual resources.

Water Supply Alternatives

An alternative to the proposed water line would involve the installation of a water well and water storage tank associated with each residential development. According to the applicants' "Comparative Analysis of Potable Water Service Options" prepared by Envicom (October 2009), potable water demand for each residence (including sufficient storage capacity and pressure to support the proposed fire suppression systems) would require a storage capacity of approximately one hundred thousand (100,000) gallons for each residence, which, Envicom concludes, would have greater impacts to sensitive habitat areas than the proposed water line due to the difficulty of siting water tanks that large in size in consideration of all of the site's constraints.

The Commission disagrees with the conclusions of the Envicom analysis. Even in the most remote areas of the Santa Monica Mountains, the Commission has never considered any application that included water tanks with such a capacity, nor is the Commission aware of development that included a Fire Department requirement for a water tank even approaching that size for a single family residence. Typically, water tanks are required to be sized based upon square footage of the residence it is to serve – generally 1 gallon capacity for every square foot of the residence. Commission staff confirmed this in a conversation with the Calabasas office of the Los Angeles County Fire Prevention Division on December 7, 2009. For example, if a proposed residence is 10,000 sq. ft. in size, the Fire Department would find it appropriate to have a water tank that has a capacity of 10,000 gallons. The Commission has typically reviewed 10,000 gallon water tanks proposed for residences, even the largest of residences, in the Santa Monica Mountains. In cases where extra water capacity is desired for fire protection, it is common practice to have pumps that can utilize the water in residential swimming pools.

While the Fire Department may prefer and encourage the water line option for maximum fire protection in this case since it is being proposed by the applicants, it would appear to remain possible that the Fire Department could find the alternative, wells and tanks, consistent with the Fire Department's codes and regulations. In many remote locations in the Santa Monica Mountains the Fire Department has allowed water wells and tanks for proposed single family residences, finding that water line alignments that were shorter or required construction in less steep or remote areas than the proposed alignment to be infeasible.

As such, water wells and reasonably-sized water tanks (10,000 gal. capacity) are a feasible alternative to provide adequate water service and fire protection for residential development in this area. The water wells and tanks could be sited near each proposed development area in such a way that impacts to sensitive habitat and visual resources could be avoided, or substantially minimized.

Conclusion

In sum, feasible alternatives exist to accommodate residential development while minimizing impacts to ESHA and visual resources to such a degree as to make future residential development approvable. It seems entirely possible that the Commission could approve between one and three appropriately sized, sited, and designed homes on this site.

To conclude, the proposed developments do not protect ESHA from significant disruption of habitat values, nor protect significant public views of scenic areas, minimize landform alteration, nor ensure compatibility with the character of the surrounding area. There are project alternatives that could reduce adverse impacts. Therefore, approval of the proposed developments is not only inconsistent with Sections 30240, 30251, and 30250 of the Coastal Act, but must be denied.

F. UNPERMITTED DEVELOPMENT

Unpermitted development occurred on the subject parcels (and two off-site parcels) upon which the subject projects are proposed prior to submission of the subject permit applications including, but not limited to, non-compliance with the terms of CDP 4-01-108 regarding re-vegetating the disturbed/graded slopes of the approved 10-ft. wide pilot access road upon completion of final grading; grading and removal of major vegetation on the Vera, Mulryan, Morleigh, and Ronan properties to the north and south of the approximately 3-acre historic mesa area that is referenced in this report; and grading and vegetation removal along a 1,400 ft. long stretch of the proposed water line alignment on two parcels north of the subject properties (APNs 4453-001-029 and 4453-001-030). The Commission is denying the subject applications for the reasons discussed in full in the preceding sections of this report. Therefore, pursuant to the staff recommendation, the Commission's enforcement division will evaluate further actions to address this matter.

Although development has taken place prior to submission of the subject permit applications, consideration of the applications by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Review of these permits does not constitute a waiver of any legal action with regard to the alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject sites without a coastal permit.

G. LOCAL COASTAL PROGRAM

Section 30604 of the Coastal Act states:

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

Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Development Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program that conforms with Chapter 3 policies of the Coastal Act. The preceding sections provide findings that the proposed project will not be in conformity with the provisions of Chapter 3. The proposed development will create adverse impacts and is found to be inconsistent with the applicable policies contained in Chapter 3. Therefore, the Commission finds that approval of the proposed development would prejudice the County of Los Angeles' ability to prepare a Local Coastal Program for this area consistent with the policies of Chapter 3 of the Coastal Act, as required by Section 30604(a).

H. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

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

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