

**CALIFORNIA COASTAL COMMISSION**

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**STAFF REPORT: REGULAR CALENDAR****APPLICATION NUMBER:** 4-10-005**APPLICANT:** Third District Parklands LLC**AGENT:** Peter Gonzalez (SC Planners)**PROJECT LOCATION:** Castro Motorway, Santa Monica Mountains, Los Angeles County (APN 4464-022-010)**PROJECT DESCRIPTION:** Placement of a new 33 ft. wide, 10 ft. high metal gate on Castro Motorway with 50 ft. of 6 ft. high chain link fence extending north and south from the gate.**LOCAL APPROVALS RECEIVED:** Los Angeles County Department of Regional Planning Approval-in-Concept, dated September 24, 2009.**SUBSTANTIVE FILE DOCUMENTS:** Malibu/Santa Monica Mountains Land Use Plan (LUP); CDP Application No. 4-03-070 (Panorama Ranch LLC); Cease and Desist Order No. CCC-03-CD-015 and Restoration Order No. CCC-03-RO-009; "Biological Resources Assessment for the Proposed Castro Motorway Gate" by PCR Services Corporation, dated August 11, 2010; Engineering Geologic Report by Gold Coast Geoservices Inc. dated August 16, 2010.**SUMMARY OF STAFF RECOMMENDATION**

Staff recommends **denial** of the proposed project. The standard of review for the project is the Chapter 3 policies of the Coastal Act. In addition, the policies of the certified Malibu–Santa Monica Mountains Land Use Plan (LUP) serve as guidance.

The applicant proposes placement of a new 33 ft. wide, 10 ft. high metal gate along an existing unpaved approximately 20 ft. wide roadway (Castro Motorway), with 50 ft. of 6 ft. high chain link fence extending north and south from the proposed gate (100 ft. of total fencing). The subject property (APN 4464-022-010) where the gate is proposed is a vacant 44.5-acre parcel located along Castro Motorway, on the north side of the Castro Peak ridgeline, east of Latigo Canyon Road, and south of Mulholland Highway in the unincorporated Santa Monica Mountains area of Los Angeles County. The area surrounding the approximately 20 ft. wide roadway consists of chaparral and coast live oak woodland vegetation that is part of a large area of undisturbed native vegetation. The proposed project site is located in a very large undeveloped and scenic area in close proximity to public parklands and trails. A large area of National Park Service

(NPS) land flanks the subject property on two sides (east and south). Santa Monica Mountains Conservancy land is also located on adjacent property to the northeast. Further to the east and coterminous with NPS land is Malibu Creek State Park. The Backbone Trail is located to the south, and the Castro Crest Loop Trail is located to the east and south. The nearest development is communication facilities on Castro Peak, approximately 1,000 feet to the southwest of the subject parcel. The nearest residential development is at least a mile away to the south and southwest.

The proposed project would result in significant disruption of habitat values and is not a use dependent on those sensitive habitat resources, inconsistent with Section 30240 of the Coastal Act and the LUP ESHA protection policies. In addition, the biological productivity and the quality of coastal waters would be reduced through increased erosion and sedimentation as a result of the proposed removal of vegetation on steep slopes, inconsistent with Section 30231 of the Coastal Act. The subject property is situated within a vast area of unfragmented native habitat that provides corridors for wildlife movement. Although this area is bisected by Castro Motorway, it is likely that the road is utilized opportunistically by wildlife as a thoroughfare between habitat areas, particularly in consideration of the steep slopes in this area. The proposed gate complex would reduce the value of the area as a wildlife migration corridor because the expanse of the proposed gate would be an obstruction for the passage of wildlife within an otherwise pristine large block of Mediterranean ecosystem habitats.

The proposed gate would also alter the scenic quality of the area and not be visually subordinate to the surrounding natural landscape. Although the gate is not highly visible from a great distance, it would be visible from the public recreation lands that are directly adjacent both east and south of the project site. In addition, the proposed project does not create a harmonious relationship with the surrounding environment, does not protect scenic views, and does not conform to the natural topography of the area. The proposed project, therefore, has not been sited and designed to protect public views of the pristine mountain 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.

There are feasible alternatives to the proposed development that would avoid or substantially reduce the adverse environmental effects of the project 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 the application.

## I. STAFF RECOMMENDATION

The staff recommends that the Commission adopt the following resolution:

**MOTION:**        *I move that the Commission approve Coastal Development Permit No. 4-10-005 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 DESCRIPTION AND BACKGROUND

The applicant proposes placement of a new 33 ft. wide, 10 ft. high metal gate along an existing unpaved approximately 20 ft. wide roadway (Castro Motorway), with 50 ft. of 6 ft. high chain link fence extending north and south from the proposed gate (100 ft. of total fencing). The proposed gate complex would require 11 footings with 1.3 cu. yds. of excavation required for the footings. The subject property (APN 4464-022-010) where the gate is proposed is a vacant 44.5-acre parcel located along Castro Motorway, on the north side of the Castro Peak ridgeline, east of Latigo Canyon Road, and south of Mulholland Highway in the unincorporated Santa Monica Mountains area of Los Angeles County (Exhibits 1-5). Castro Motorway bisects the southern portion of the subject property that is moderate to steep hillside terrain. The proposed gate and fencing would be located approximately 150 ft. west of the eastern property line, and just west from where Newton Canyon Motorway splits from Castro Motorway on the subject property. Slopes on the downhill side of the road vary from 2:1 to 1.5:1 (H:V).

Slopes on the uphill portion of the road vary from 1.5:1 to 1:1. The area surrounding the approximately 20 ft. wide roadway consists of chaparral and coast live oak woodland vegetation that is part of a large area of undisturbed native vegetation (Exhibits 9-10). A biological resource assessment was conducted by the applicant's biological consultant (PCR Service Corp., August 2010) that indicated the area north (downslope) of the unimproved roadway consists of chaparral vegetation and the area south (upslope) of the road consists of coast live oak woodland vegetation. A blue-line stream bisects the northern, downslope portion of the property from east to west, approximately 950 ft. to the north of Castro Motorway (Exhibit 4).

The proposed project site is located in a very large undeveloped and scenic area in close proximity to public parklands and trails. A large area of National Park Service (NPS) land flanks the subject property on two sides (east and south). Santa Monica Mountains Conservancy land is also located on adjacent property to the northeast. Further to the east and coterminous with NPS land is Malibu Creek State Park. The Backbone Trail is located to the south, and the Castro Crest Loop Trail is located to the east and south (Exhibits 1-2, 8). The nearest development is communication facilities on Castro Peak, approximately 1,000 feet to the southwest of the subject parcel. The nearest residential development is at least a mile away to the south and southwest.

Castro Motorway, located approximately 4.5 miles inland from the Pacific Ocean in the Santa Monica Mountains, is an unimproved road that extends from Latigo Canyon Road east to Corral Canyon Road. Castro Motorway is part of a network of roads that were constructed by Los Angeles County to provide Fire Department access to remote areas for fire-fighting purposes. Castro Motorway appears in the earliest photos staff has viewed of the area (1944), and has been maintained as a fire road ever since. According to the Los Angeles County Fire Department, Castro Motorway is maintained by the Fire Department for dry-weather access. The road is not paved. The County does not hold easements over most of the fire roads in this area, but uses and maintains them by agreements with the property owners.

Although the subject property and adjacent properties are vacant, the applicant has stated that the proposed gate is intended for security purposes. The Los Angeles County Department of Regional Planning Approval-in-Concept for the proposed gate states that the Los Angeles County Fire Department and others with access rights shall be provided with keys to access the gate.

The applicant has stated that the proposed gate would serve to replace an existing post and chain gate on the property that is situated approximately 150 feet east of the proposed gate along Castro Motorway. The applicant asserts that the existing post and chain gate that has existed since prior to the effective date of the Coastal Act. The applicant has provided copies of aerial photographs circa 1958 and 1975 that purport to demonstrate the pre-Coastal Act existence of the post and chain gate. However, no gate can be seen from these photographs. In fact, the subject existing gate was the subject of a prior Commission action on the property – CDP 4-03-070 – in which the previous owner (Panorama Ranch LLC) requested after-the-fact approval of the existing

gate and a second gate situated along Newton Motorway on the property. The Commission denied CDP 4-03-070 for retention of the gates, among other development, finding that they were inconsistent with the Chapter 3 policies of the Coastal Act (Exhibits 6-7). This prior Commission action, as well as others, is described further below.

The applicant, Third District Parklands LLC, acquired the subject parcel in 2006. According to Nevada business filing documents of the LLC, Lucky's Two-Way Radios Inc. is listed as the manager of the LLC and James A. Kay, Jr. is listed as the president of Lucky's Two-Way Radios Inc.

### **Prior Commission Actions on the Subject Property**

The subject property was part of a violation case in 2003 that had involved several other parcels in the vicinity owned by LLC's that were controlled by James A. Kay, Jr. A different LLC had owned the subject property at that time, however, the managing corporation (Lucky's Two-Way Radios Inc.) and its president (James A. Kay, Jr.) of the former LLC are also the managing corporation and president of the subject LLC that currently owns the property. The unpermitted development that had occurred on the subject property was major vegetation removal, disturbance of ESHA, grading and clearing approximately 3,500 ft. of new roads, and installation of two post and chain gates. In December 2003, the Commission issued Cease and Desist Order CCC-03-CD-015 and Restoration Order CCC-03-RO-009. The Restoration Order required that a Restoration, Revegetation, and Monitoring Plan be submitted for the review and approval of the Executive Director, followed by timely implementation of the Restoration, Revegetation, and Monitoring Plan.

In July of 2003, after having received an Executive Director Cease and Desist Order, but before the Commission issued its orders, the prior owner of the property, Panorama Ranch LLC, applied for a coastal development permit to secure after-the-fact approval of the brush clearance, repair and maintenance of approximately 3,500 ft. of existing (but unpermitted) roads, and installation of two access road gates on the subject property (CDP Application No. 4-03-070). The applicant had asserted that the 3,500 ft. of existing roads (consisting of two parallel roads in the northern portion of the property) existed prior to the effective date of the Coastal Act. The gates were located on the Castro Motorway and Newton Canyon Motorway at the eastern property boundary. On February 19, 2004, the Commission denied the permit application, finding that the applicant had not established a vested right to the 3,500 ft. of roads in the northern portion of the property and that all of the proposed development, including the two unpermitted gates, were inconsistent with the hazard, ESHA, water quality, visual resource, and community character/recreation policies of the Coastal Act.

By October 2005, the applicant had finally submitted a complete Restoration, Revegetation, and Monitoring Plan pursuant to the requirements of the Restoration Order. The Executive Director approved the Restoration Plan on October 13, 2005. Restoration work commenced in the spring of 2006. On July 23, 2007, the Superior

Court made a preliminary injunction issued on December 16, 2003 permanent and ordered Mr. Kay to pay the Coastal Commission \$100,000 and to comply with the Cease and Desist and Restoration Orders issued in December 2003. To date, staff has not received all of the required monitoring reports nor the final report pursuant to the Restoration Order and the violation remains open. The current applicant has indicated that at least one of the unpermitted gates is still present on the property, and review of recent aerial photographs indicate that restoration of the graded areas in the northern portion of the parcel has not been completed.

## **B. CONSISTENCY ANALYSIS**

### **1. Environmentally Sensitive Habitat and Water Quality**

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.

Section **30231** of the Coastal Act requires that the biological productivity and the quality of coastal waters and streams be maintained:

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

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.

- 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.

The applicant has submitted a Biological Assessment for the proposed project area, listed in the Substantive File Documents, which address the habitats present on the vacant project site. The report identifies three vegetation/habitat communities: Chaparral, Coast Live Oak Woodland, and Disturbed Vegetation. A map of the habitats on the site was also prepared by the biological consultant. The mapped disturbed area is situated within the approximately 20 ft. wide road corridor. The mapped chaparral area is situated on the north side of the road and the mapped coast live oak woodland is situated on the south side of the road. The applicant's biological consultant states that no regulation-sized oak trees are located in the proposed project area. The applicant's biological consultant estimates that approximately 0.05 acre (2,178 sq. ft.) of native vegetation (approximately 10 ft. on either side of the proposed gate that is beyond the disturbed roadway (~100 ft.)) would be temporarily disturbed by the proposed project. In addition, it has been estimated by the applicant that approximately 100 sq. ft. of native vegetation would be permanently impacted by the proposed gate installation (100 x 1 ft.). Commission staff has confirmed that, with the exception of the disturbed roadway of Castro Motorway, the area north and south of the road is undisturbed and comprised of native chaparral and coast live oak woodland habitat. The large, contiguous area surrounding the site is undisturbed mixed chaparral habitat. A large area of public parkland is situated adjacent to the subject parcel to the south and east.

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

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

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

The project site is located within the Mediterranean Ecosystem of the Santa Monica Mountains. The Coastal Commission has found that the Mediterranean Ecosystem in the Santa Mountains is rare, and 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<sup>1</sup> (hereinafter “Dr. Dixon Memorandum”), which is incorporated as if set forth in full herein.

Unfortunately, the native habitats of the Santa Monica Mountains, such as coastal sage scrub, chaparral, oak woodland and riparian woodlands are easily disturbed by human activities. As discussed in the Dr. Dixon Memorandum, development has many well-documented deleterious effects on natural communities of this sort. These environmental impacts may be both direct and indirect and include, but certainly are not limited to, the effects of increased fire frequency, of fuel modification, including vegetation clearance, of introduction of exotic species, and of night lighting. Increased fire frequency alters plant communities by creating conditions that select for some species over others. The removal of native vegetation results in the direct removal or thinning of habitat area. Thus, large, contiguous, relatively pristine areas of native habitats, such as coastal sage scrub, chaparral, oak woodland, and riparian woodlands are especially valuable because of their special roles in the Santa Monica Mountains ecosystem and are easily disturbed by human activity. Accordingly, these habitat types meet the definition of ESHA. This is consistent with the Commission’s past findings in support of its actions on many permit applications and in adopting the Malibu LCP<sup>2</sup>.

As described above, the project site contains pristine chaparral and coast live oak woodland habitat that is part of a large, contiguous block of pristine native vegetation, bisected only by the old fire road that is Castro Motorway. 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 habitat on the project site meets the definition of ESHA in the Coastal Act.

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<sup>1</sup> The March 25, 2003 Memorandum Regarding the Designation of ESHA in the Santa Monica Mountains, prepared by John Dixon, Ph. D, is available on the California Coastal Commission website at <http://www.coastal.ca.gov/ventura/smm-asha-memo.pdf>

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

The proposed project involves installation of a 33 ft. wide gate across Castro Motorway and fencing that would extend 50 ft. from either side of the proposed gate. The total width of the barrier spans 133 ft. The applicant has stated that the proposed gate would serve to replace an existing post and chain gate on the property that is situated approximately 150 feet east of the proposed gate along Castro Motorway. As discussed previously, the existing gate is unpermitted and after-the-fact retention of it was previously denied by the Commission in 2004 pursuant to CDP 4-03-070. The property is situated within a very large undeveloped area. The nearest development is communication facilities on Castro Peak, approximately 1,000 feet to the southwest of the subject parcel. The nearest residential development is at least a mile away to the south and southwest.

The proposed gate complex encroaches into areas that are considered ESHA. Approximately 0.05 acre (2,178 sq. ft.) of native vegetation that is considered ESHA (approximately 10 ft. on either side of the proposed gate that is beyond the disturbed roadway (~100 ft.)) would be adversely impacted by the proposed project. The applicant's biological consultant characterizes the impact area as not significant and a temporary impact because the vegetation is expected to recover after the gate is installed, although no restoration efforts are proposed as part of the project.

However, native vegetation that is cleared or substantially removed and widely spaced will be lost as habitat and watershed cover. Moreover, as discussed in the Dr. Dixon Memorandum, development has many well-documented deleterious effects on natural communities in addition to, or as a subsequent result of, the direct displacement of the vegetation. 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.

Erosion directly contributes to the degradation of water quality in the surrounding coastal waters and streams through increased sediment input. The removal of vegetation for the gate complex and lack of a drainage system on the road to control the volume and velocity of runoff also results in erosion and sedimentation of stream courses both on and off site. The sedimentation of stream courses results in the degradation of downstream riparian areas. Sedimentation increases turbidity in streams which both reduce the penetration of sunlight needed by aquatic vegetation which provide food and cover for aquatic species; disruptions to the reproductive cycle of aquatic species; and acute and sublethal toxicity in marine organisms leading to adverse changes in reproduction and feeding behavior. These impacts reduce the biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes and reduce optimum populations of marine organisms, inconsistent with Section 30231 of the Coastal Act.

Even if revegetation of the disturbed areas of the project site were proposed, it would be difficult to carry out a full revegetation of the steep slopes of the project area, particularly to provide ongoing maintenance such as weeding, replacement planting, and midcourse corrections that are necessary to ensure successful revegetation.

Section 30240 of the Coastal Act requires that ESHA be protected against significant disruption of habitat values, and restricts development within ESHA to only those uses that are dependent on the resource. The proposed project would result in significant disruption of habitat values and is not a use dependent on those sensitive habitat resources, inconsistent with Section 30240 of the Coastal Act and the LUP ESHA protection policies listed above. In addition, the biological productivity and the quality of coastal waters would be reduced through increased erosion and sedimentation as a result of the proposed removal of vegetation on steep slopes, inconsistent with Section 30231 of the Coastal Act.

In addition, the subject property is situated within a vast area of unfragmented native habitat that provides corridors for wildlife movement. Although this area is bisected by Castro Motorway, it is likely that the road is utilized opportunistically by wildlife as a thoroughfare between habitat areas, particularly in consideration of the steep slopes in this area. The proposed gate complex would reduce the value of the area as a wildlife migration corridor because the expanse of the proposed gate would be a substantial obstruction for the passage of wildlife within an otherwise pristine large block of Mediterranean ecosystem habitats. The gate would a particularly significant obstruction because of the fifty-foot wide fence portions extending up and down very steep slopes within sensitive habitat.

For the reasons stated above, the project must be denied. Alternatives to avoid adverse impacts to ESHA and water quality exist, which are discussed in Section B.4 of this report.

## 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.
- 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.

Section 30251 of the Coastal Act requires scenic and visual qualities to be considered and preserved. The proposed project site is located in a scenic area. The area is undeveloped and comprised of mountain terrain covered by primarily undisturbed native chaparral habitat that is part of a large contiguous area of undisturbed native vegetation. There are large areas of public parklands in this area. National Park Service (NPS) park land flanks the subject property on two sides (east and south). Further to the east and coterminous with NPS land is Malibu Creek State Park. The Backbone Trail is located nearby to the south, and the Castro Crest Loop Trail is located immediately to the east and south of the project site. Those areas within the vicinity of the project site that are not publicly owned land are only sparsely developed. The nearest development is communication facilities on Castro Peak, approximately 1,000 feet to the southwest of and upslope of the subject parcel. The nearest residential development is at least a mile away to the south and southwest. As such, the subject parcel is situated among a vast

and scenic open space and recreational setting that is a significant distance away from rural residential areas of the Santa Monica Mountains.

The project site would be visible from various public scenic viewing areas, including Latigo Canyon Road, the Backbone Trail and Castro Crest loop trail, parts of the LA County hiking and equestrian trails system located to the south, and National Parks Service and Santa Monica Mountains Conservancy-owned public parklands, which are part of the Santa Monica National Recreation Area located nearby. A portion of Castro Motorway to the east of the project site is part of a loop trail referred to as "Castro Crest". The loop comprises the Backbone Trail, which in this area is located in Solstice Canyon, Castro Motorway, and Newton Canyon Motorway. This loop trail can be reached either along the Backbone from Latigo Canyon Road to the west or from the east at the trail head at the northern end of Corral Canyon Road. Loop trails are very popular with hikers and other users for an obvious reason, namely that it is possible on a loop to traverse different topography, different habitats, and gain different views while still returning to the starting point. These nearby public recreation areas provide pristine scenic vistas in this area.

The proposed project involves installation of a 33 ft. wide, 10 ft. tall gate across Castro Motorway and 6 ft. high chain linked fencing that would extend 50 ft. from either side of the proposed gate. The total width of the barrier spans 133 ft. The proposed gate complex would be visible from several public viewing areas and appear incompatible with the character of surrounding undeveloped natural area. The gate complex would also detract from the rugged, natural atmosphere that is a unique characteristic of the SMMNRA, of which the subject site is a part. A gate/fence, one of the more dramatic forms of boundaries, would render the community character of this area more urban, developed, private, walled off, and closed in nature, as opposed to the rural, open community character it currently maintains and which attracts so many visitors seeking to experience the beauty of the rugged and scenic Santa Monica Mountains. In addition, the size and scale of the gate is large and unnatural. It would alter the scenic quality of the area and not be visually subordinate to the surrounding natural landscape. Although the gate is not highly visible from a great distance, it would be visible from the public lands that are directly adjacent both east and south of the project site. In addition, the proposed project does not create a harmonious relationship with the surrounding environment, does not protect scenic views, and does not conform to the natural topography of the area. The proposed project, therefore, has not been sited and designed to protect public views of the pristine mountain 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. For the reasons stated above, the project must be denied. In addition, there are changes that could be made to the project that would protect public views and be more compatible with the surrounding landscape, consistent with Section 30251. Alternatives are discussed in Section B.4 of this report.

### **3. 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. 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 gate complex would result in significant disruption of habitat values within ESHA and is not a use that is dependent on the resource, 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 gate complex would not serve to protect public views 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.

Although the subject property and adjacent properties are vacant, the applicant has stated that the proposed gate is intended for security purposes. However, it is unclear what the applicant is intending to secure. The subject property is a significant distance away from any major roadways. Castro Motorway is a fire road in a remote area of the Santa Monica Mountains and is not heavily trafficked. In any case, there are alternatives to the proposed project that would serve to lessen or avoid significant environmental impacts to coastal resources. No gate would be an alternative that would avoid all of the adverse impacts outlined in this report. A simple post and chain gate at the proposed location would limit vehicular traffic to authorized vehicles while also serving to avoid disruption of ESHA, avoid the obstruction of wildlife movement, and minimize adverse impacts to public scenic views and community character.

As such, there are feasible alternatives to the proposed development that would avoid or substantially reduce the adverse environmental effects of the project and the impacts that are inconsistent with the policies in Chapter 3 of the Coastal Act.

### **C. UNPERMITTED DEVELOPMENT**

Unpermitted development occurred on the subject parcel upon which the subject project is proposed prior to submission of the subject permit application including, but not limited to, placement of a post and chain gate on Castro Motorway near the eastern property boundary and non-compliance with Restoration Order No. CCC-03-RO-009 for revegetation of unpermitted roads in the northern portion of the subject property. Pursuant to the staff recommendation, the Commission is denying the subject application for the reasons discussed in full in the preceding sections of this report. Therefore, the Commission's enforcement division will evaluate further actions to address ongoing violations on the subject property.

Although development has taken place prior to submission of the subject permit application, consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Review of this permit does not

constitute a waiver of any legal action with regard to the alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

#### **D. LOCAL COASTAL PROGRAM**

Section 30604 of the Coastal Act states:

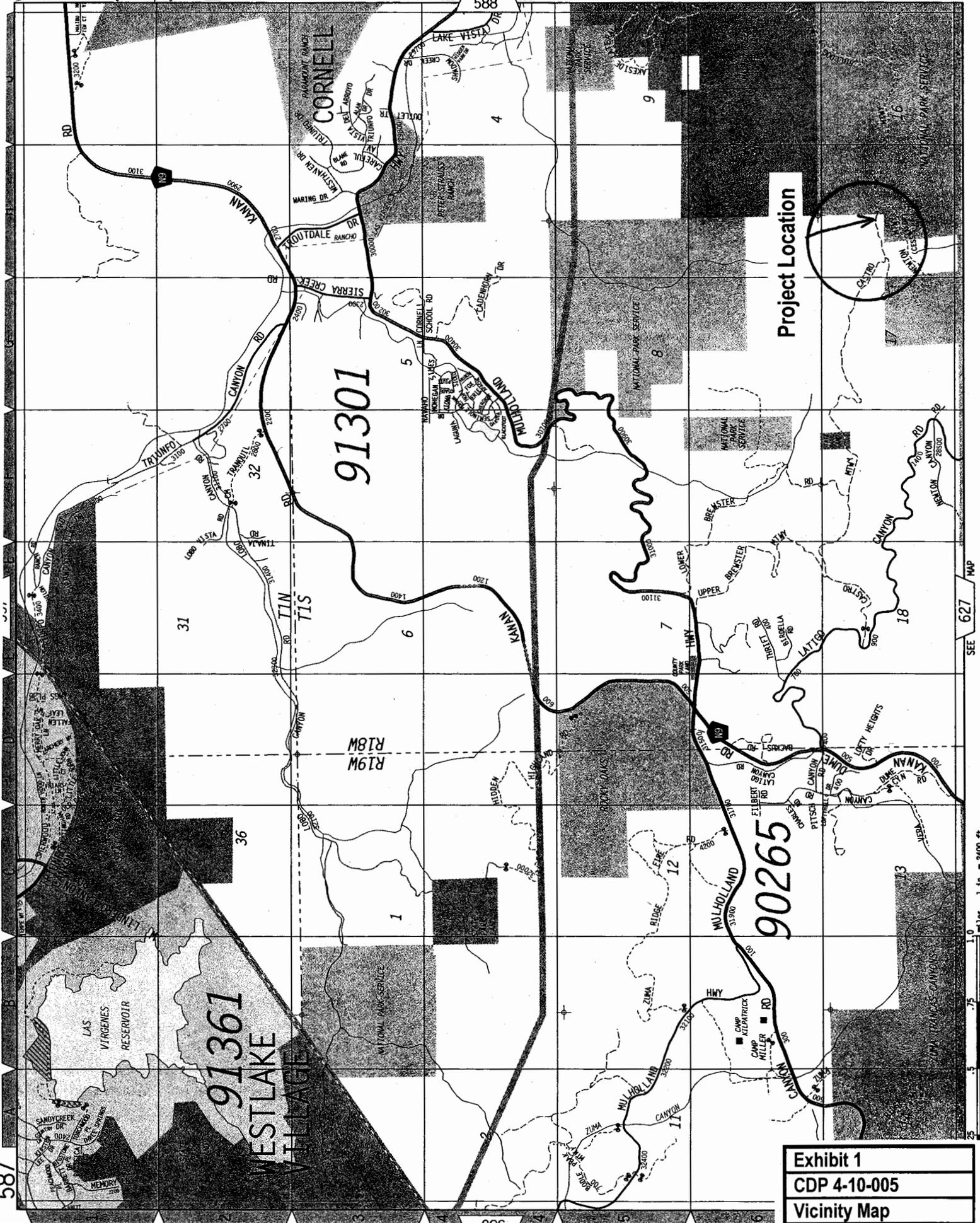
- a) Prior to certification of the local coastal program, a coastal development permit shall be issued if the issuing agency, or the commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the 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).

#### **E. 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.

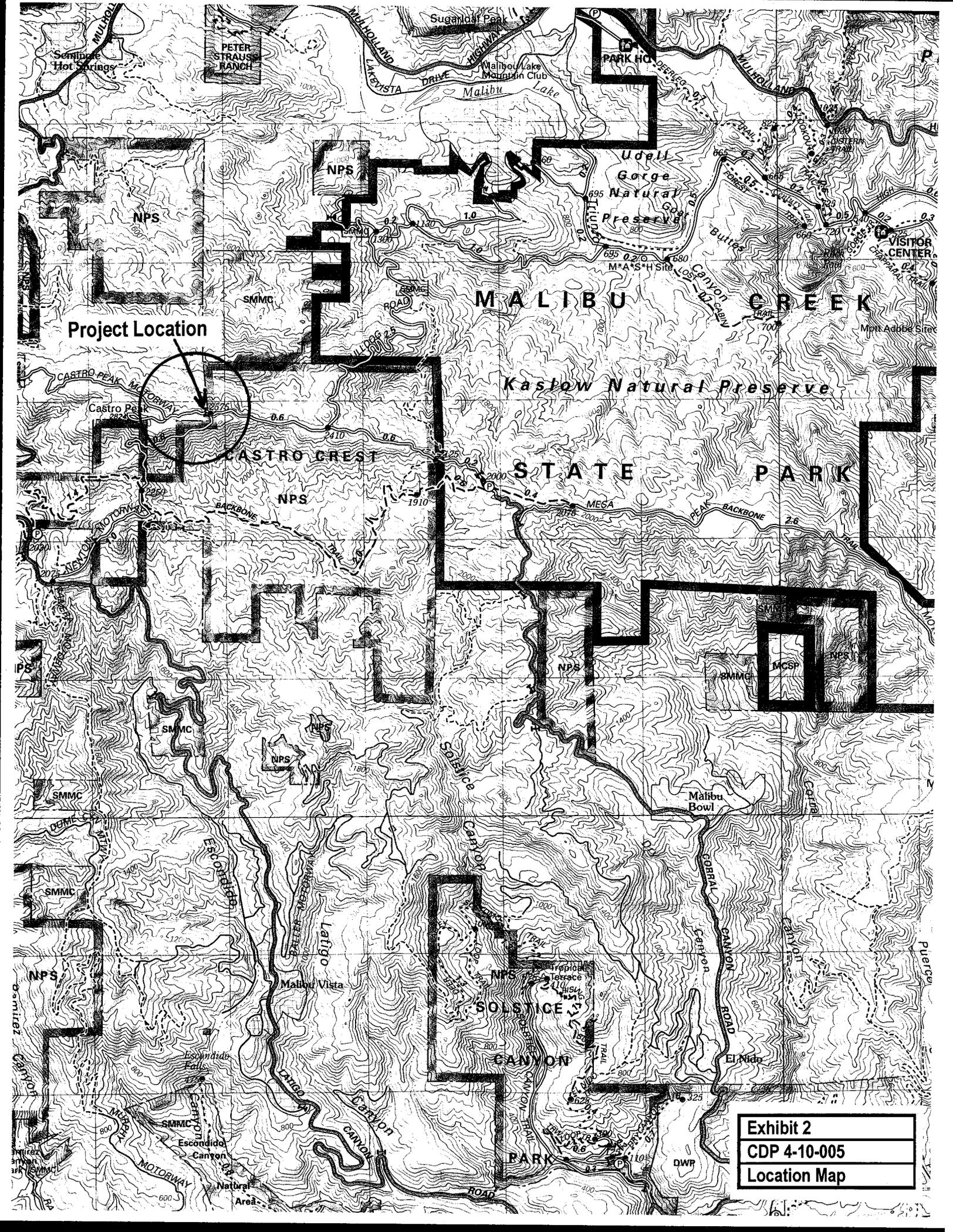
The Commission incorporates its findings on Coastal Act consistency at this point as if set forth in full. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report.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



Project Location

**Exhibit 1**  
**CDP 4-10-005**  
**Vicinity Map**

587



Project Location

Exhibit 2  
CDP 4-10-005  
Location Map



APN: 4464-019-010

3' SIDE YARD SETBACK

*blue line stream*

*unpermitted roads*

THIRD-DISTRICT PARKLANDS, LLC  
APN: 4464-022-010  
PARCEL ACERAGE: 44.3 acres

SEE ENLARGED PLAN

*area of proposed gate*

ROAD/UTILITY EASEMENT

CASTRO MOTORWAY

*Castro Motorway*

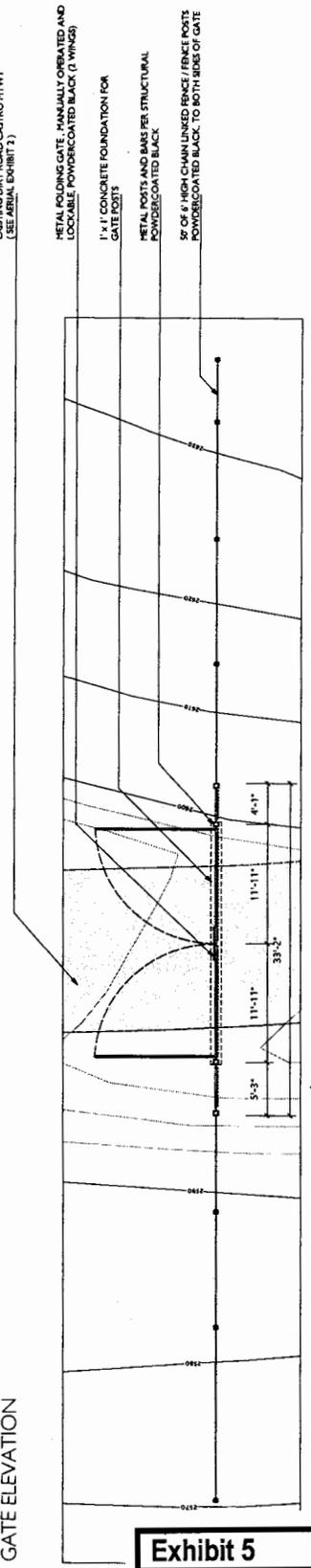
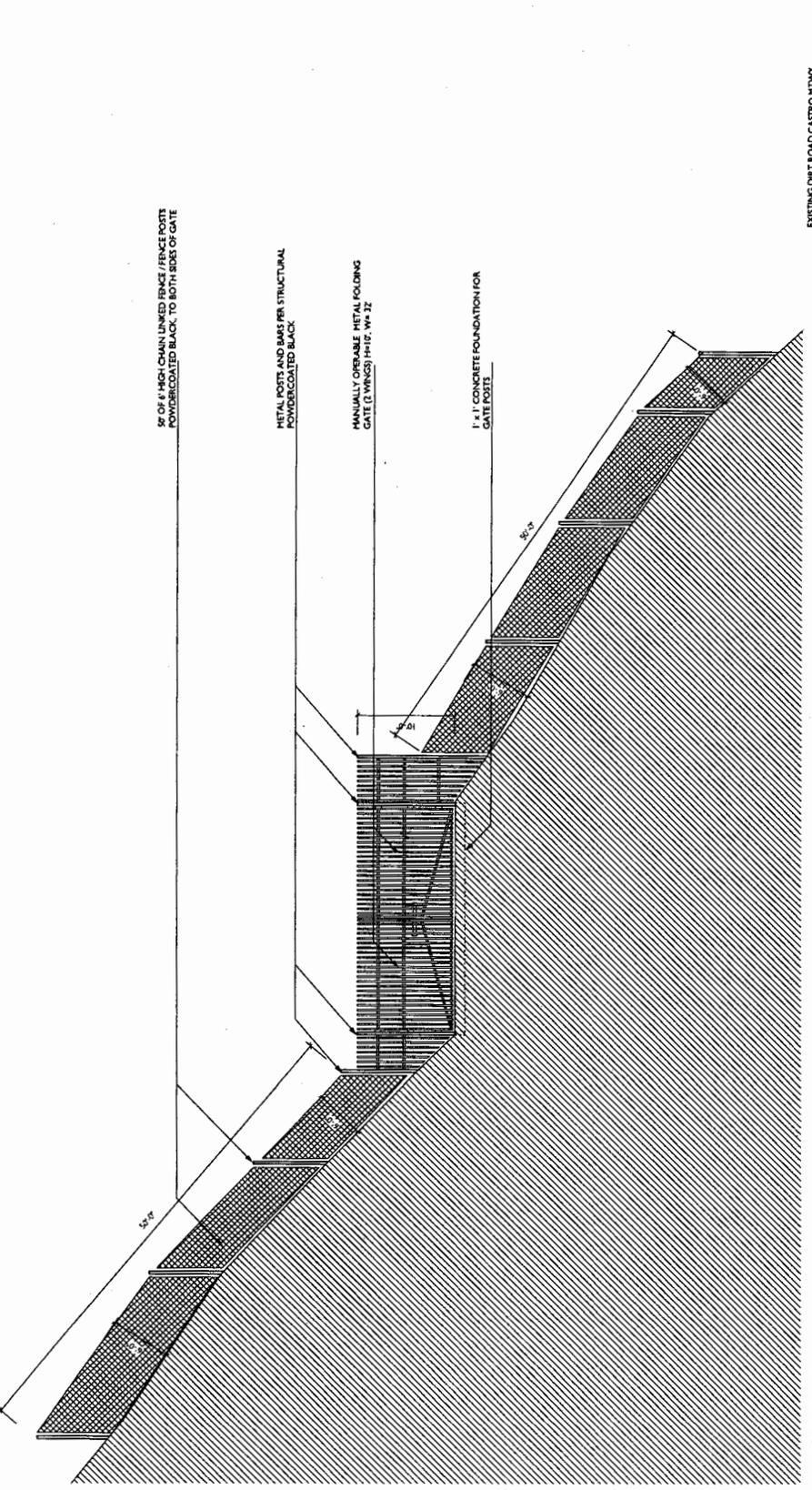
3' SIDE YARD SETBACK

LT. WR, LLC  
APN: 4464-022-045

*area of existing unpermitted gate*

Exhibit 4
CDP 4-10-005
Site Plan

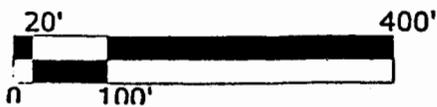
PROJECT: <b>4484-022-010</b>	13RD DISTRICT PARKS & RECREATION 1300 WEST 10TH AVENUE DENVER, CO 80202
OWNER: bau10, LLC 4801 GERRARD AVE #12 DENVER, CO 80231 PHONE: 303.440.1300 FAX: 303.442.5338	DATE:
APPROVED:	DATE:
CONSULTANT:	DATE:
REVISIONS:	DATE:
DATE:	REVISION:
<small>THESE DRAWINGS ARE THE PROPERTY OF THE CONSULTANT AND ARE TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREON. ANY REUSE, REPRODUCTION, OR MODIFICATION OF THESE DRAWINGS WITHOUT THE WRITTEN CONSENT OF THE CONSULTANT IS STRICTLY PROHIBITED. THE CONSULTANT ASSUMES NO LIABILITY FOR ANY DAMAGE, LOSS, OR INJURY RESULTING FROM THE USE OF THESE DRAWINGS.</small>	
SHEET TITLE: <b>CASTRO MOUNTAIN GATE PLAN / ELEVATION</b>	
SHEET NO.: <b>4 OF 4</b>	
SCALE: <b>1"=316'</b>	DATE: _____
DATE: _____	DRAWN BY: _____
DATE: _____	HC: _____



**Exhibit 5**  
**CDP 4-10-005**  
**Gate Plan/Elevation Drawing**

# Gate Locations

APN 4464-022-010



**EXHIBIT 5c**  
**Permit 4-03-070 (APN 4464-022-010)**  
**Gate Locations**

**Exhibit 6**  
**CDP 4-10-005**  
**Previously Proposed and**  
**Denied Gate Locations**  
**(CDP 4-03-070)**

# Th 8c, d, e, f

## CALIFORNIA COASTAL COMMISSION

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

Filed: not filed  
49th Day: n/a  
180th Day: n/a  
Staff: K. Kemmler  
Staff Report: 1/29/04  
Hearing Date: 2/18-20/04  
Comm. Action:



## STAFF REPORT: REGULAR CALENDAR

**APPLICATION NO.:** 4-03-069, 4-03-070, 4-03-071, 4-03-072

**APPLICANT:** Panorama Ranch, LLC, Communications Relay Corp., Deer Valley Ranch, LLC

**PROJECT LOCATION:** Northeast of Latigo Canyon Road, and north of and adjacent to Castro Peak Motorway, unincorporated Malibu (Los Angeles Co.)

**APN NO.:** 4464-019-008, 4464-022-010, 4464-022-001, 4464-019-010

**PROJECT DESCRIPTION:** These applications are for development on four separate, contiguous parcels owned by the applicant(s).

CDP Application #4-03-069 (Panorama Ranch, LLC), 4464-019-008:

The applicant is requesting after-the-fact approval for brush clearance, repair and maintenance of an existing agricultural road including 773 cu. yds. of grading and installation of two 38" high access road gates and proposing new revegetation of approx. 33,000 sq. ft. of graded slopes along an access road.

CDP Application #4-03-070 (Panorama Ranch, LLC) 4464-022-010:

The applicant is requesting after-the-fact approval for brush clearance, repair and maintenance of existing agricultural roads and installation of two access road gates.

CDP Application #4-03-071 (Communications Relay Corp.) 4464-022-001:

The applicant is requesting after-the-fact approval for brush clearance, repair and maintenance for existing agricultural roads, and repair and maintenance of a pre-existing culvert and railroad ties.

CDP Application #4-03-072 (Deer Valley Ranch, LLC) 4464-019-010:

The applicant is requesting after-the-fact approval for brush clearance, repair and maintenance of existing agricultural roads including approx. 2,200 cu. yds. of grading and proposing new revegetation of approx. 63,000 sq. ft. of graded slopes along access roads.

	<u>4464-019-008</u>	<u>4464-022-010</u>	<u>4464-022-001</u>	<u>4464-019-010</u>
Lot area	40 acres	44.5 acres	25 acres	80 acres

**LOCAL APPROVALS RECEIVED:** None.

Exhibit 7
CDP 4-10-005
CDP 4-03-070
Staff Report & Findings

**SUBSTANTIVE FILE DOCUMENTS:** Biological Assessment (re: 4464-019-008, 4464-022-010, 4464-022-001, and 4464-019-010), Steven G. Nelson, June 11, 2003; Biological Evaluation Report (re: 4464-019-008, 4464-022-010, 4464-022-001, and 4464-019-010), Greg Ainsworth, ENSR International, Inc., November 6, 2003; Engineering Geologic Investigation Report (4464-019-008), October 24, 2003, Gold Coast Geoservices, Inc.; Engineering Geologic Investigation Report (4464-022-010), October 24, 2003, Gold Coast Geoservices, Inc.; Engineering Geologic Investigation Report (4464-019-010), October 24, 2003, Gold Coast Geoservices, Inc.; 1986 Los Angeles County Malibu Land Use Plan; City of Malibu LCP Revised Findings: Staff Report and Findings for Restoration Order and Cease and Desist Order CCC-03-RO-009 and CCC-03-CD-015 dated November 25, 2003 (with exhibits); Addendum for Staff Report and Restoration Order CCC-03-RO-009 and Cease and Desist Order CCC-03-CD-015 (with exhibits); Commission Staff Powerpoint Presentation on Restoration Order CCC-03-RO-009 and Cease and Desist Order CCC-03-CD-015 at December 12, 2003 Commission Meeting; Letter to Coastal Commissioners from Gaines & Stacey, dated December 9, 2003 re: Cease and Desist Order #CCC-03-CD-015 and Restoration Order #CCC-03-RO-009 Support for Denial of Proposed Orders (with exhibits); Statement of Defense – Violation File No. V-03-018 (Kay), Tentative Commission hearing Date: August 6-8, 2003, dated July 17, 2003 (with exhibits); Statements of Defense – Violation File No. V-4-03-018, Notice of Intent to Commence Cease and Desist Order Proceedings, dated November 12, 2003 (with exhibits); Aerial Photograph from 1953; Aerial Photograph from 1976; Staff Report CDP 4-96-084.

**STAFF NOTE: DUE TO A COURT ISSUED WRIT, WHICH ORDERS THAT "THE COASTAL COMMISSION HOLD A PUBLIC HEARING AND TAKE ACTION ON THE CURRENTLY-PENDING COASTAL DEVELOPMENT PERMIT APPLICATIONS OF PETITIONERS PANORAMA RANCH, LLC (APN NOS. 4464-022-010 AND 4464-019-008), DEER VALLEY RANCH, LLC (APN NO. 4464-019-010), AND COMMUNICATIONS RELAY CORPORATION (APN NO. 4464-022-001) NO LATER THAN THE REGULARLY-SCHEDULED FEBRUARY 2004 COASTAL COMMISSION MEETING," THE COMMISSION MUST ACT ON THESE PERMIT APPLICATIONS AT THE FEBRUARY 18-20 COMMISSION MEETING.**

### **Summary of Staff Recommendation**

Staff recommends **denial** of the applications, as the proposed development is inconsistent with the geology and hazard, environmentally sensitive habitat area (ESHA), water quality, visual resource, community character and recreation policies of Chapter Three of the Coastal Act. The development as proposed will have significant adverse impacts on water quality and ESHA. The proposed road cut and fill slopes are oversteepened, fill slopes are not compacted contain loose sidecast material and the road design does not include a drainage network to control runoff. The highly erodible slopes in combination with uncontrolled runoff from the roads will result in erosion and potential destabilization of hillsides and landslides in the project area. Therefore, the proposed road design is not consistent with the geologic/hazards policy of the Coastal Act. The removal of sensitive chaparral and oak woodland vegetation from the natural hillsides and removal of vegetation in stream corridors has resulted in the degradation of environmentally sensitive habitats. The removal of vegetation from the undisturbed streams and hillsides will increase erosion and sedimentation of the sensitive stream corridors in the

area will which degrade water quality and will adversely impact the sensitive riparian habitats downstream which is not consistent with the water quality and ESHA policies of the Coastal Act.

The proposed as-built gates on Castro Motorway and Newton Canyon Motorway are not consistent with the community character of the surrounding area and would detract from the rugged, natural atmosphere that is a unique characteristic of the Santa Monica Mountains National Recreational Area, which surrounds the subject properties. Evidence exists of public use of Castro Motorway and Newton Canyon Motorway for hiking and equestrian use, including potential prescriptive rights, which would be affected by the proposed development. The road existed since as early as 1950, was created and has been maintained by a public agency continually since that time. The segment of Newton Motorway, along with Castro Peak Motorway and the Backbone Trail comprise a trail loop, the majority of which crosses public parkland. The proposed as-built gates and no trespassing signs on this portion of Castro Motorway and Newton Canyon Motorway physically block the public's continued use of this fire road for hiking, equestrian, mountain biking, or any other recreational purpose.

## **I. STAFF RECOMMENDATION.**

**The Commission must make a separate motion for each of the four permit applications**

**MOTION:** *I move that the Commission approve Coastal Development Permit No. 4-03-069 for the development proposed by the applicant.*

### **Staff Recommendation of Denial:**

Staff recommends a **NO** vote. Failure of this motion will result in denial of Coastal Development Permit Application 4-03-069 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 a coastal development permit for the proposed development on the grounds 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.

**MOTION:** *I move that the Commission approve Coastal Development Permit No. 4-03-070 for the development proposed by the applicant.*

### **Staff Recommendation of Denial:**

Staff recommends a **NO** vote. Failure of this motion will result in denial of Coastal Development Permit Application 4-03-070 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 a coastal development permit for the proposed development on the grounds 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.

**MOTION:** *I move that the Commission approve Coastal Development Permit No. 4-03-071 for the development proposed by the applicant.*

**Staff Recommendation of Denial:**

Staff recommends a **NO** vote. Failure of this motion will result in denial of Coastal Development Permit Application 4-03-071 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 a coastal development permit for the proposed development on the grounds 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.

**MOTION:** *I move that the Commission approve Coastal Development Permit No. 4-03-072 for the development proposed by the applicant.*

**Staff Recommendation of Denial:**

Staff recommends a **NO** vote. Failure of this motion will result in denial of Coastal Development Permit Application 4-03-072 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 a coastal development permit for the proposed development on the grounds 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 DESCRIPTION AND BACKGROUND

#### PROJECT AND SITE DESCRIPTIONS

The subject applications are for development on four separate, contiguous parcels owned by the applicant(s) located northeast of Latigo Canyon Road and north of and adjacent to Castro Peak Motorway in the unincorporated Malibu area of Los Angeles County (Exhibit 1 & 2). These subject properties consist of 40 acres, 44.5 acres, 25 acres, 80 acres, respectively (Exhibit 2). James A. Kay, Jr., is the representative, owner, and manager of the four subject properties, as a member and officer of the Limited Liability Companies and as President and Managing Officer of Communications Relay Corporation. Both the Biological Assessment prepared by Steven G. Nelson and the Biological Evaluation Report prepared by Greg Ainsworth of ENSR International, Inc. submitted for the applications address all four properties in a single report. Further, Due to the related nature of these four applications, the proposed development on all four parcels will be addressed in one staff report. To clearly address what is proposed on each parcel by each permit application, however, the project descriptions are listed below for each separate application.

#### CDP Application #4-03-069 (Panorama Ranch, LLC), 4464-019-008:

The applicant is requesting after-the-fact approval for brush clearance, repair and maintenance of an existing agricultural road including 773 cu. yds. of grading and installation of two 38" high access road gates and proposing new revegetation of approx. 33,000 sq. ft. of graded slopes along an access road (Exhibits 4a-d).

#### CDP Application #4-03-070 (Panorama Ranch, LLC) 4464-022-010:

The applicant is requesting after-the-fact approval for brush clearance, repair and maintenance of existing agricultural roads and installation of two access road gates (Exhibits 5a-c).

#### CDP Application #4-03-071 (Communications Relay Corp.) 4464-022-001:

The applicant is requesting after-the-fact approval for brush clearance, repair and maintenance for existing agricultural roads, and repair and maintenance of a pre-existing culvert and railroad ties (Exhibit 6).

#### CDP Application #4-03-072 (Deer Valley Ranch, LLC) 4464-019-010:

The applicant is requesting after-the-fact approval for brush clearance, repair and maintenance of existing agricultural roads including approx. 2,200 cu. yds. of grading and proposing new revegetation of approx. 63,000 sq. ft. of graded slopes along access roads (Exhibits 7a-d).

The four subject parcels are described as follows: Los Angeles County APN 4464-022-001, a 25-acre parcel owned by Communications Relay Corp, which includes a portion of legally existing Castro Motorway and a "pre-Coastal" driveway entering the site from Castro Motorway; APN 4464-022-010, a 44.5-acre parcel owned by Panorama Ranch, LLC, located adjacent to and east of APN 4464-022-001, which also includes a portion of legally existing Castro Motorway; APN 4464-019-010, an 80-acre parcel owned by Deer Valley Ranch, LLC, located adjacent to and to the north of APNs 4464-022-001 and 010; and APN 4464-019-008, a 40-acre parcel owned by Panorama Ranch, LLC, located to the west of APN 4464-019-010, which has a 500 foot long legally existing dirt road crossing the northwest corner of the property.

The entire four parcels consist of mixed chaparral plant communities determined to be environmentally sensitive habitat area (ESHA) by the Commission's staff biologist based on a site visit on July 22, 2003 (see Exhibit 9). Three of the subject parcels contain blue-line streams. The property is located in an area of high biological importance due to its rural character, the presence of a well established chaparral community contiguous among several vacant parcels and associated sensitive wildlife species.

The project sites are highly visible from various public scenic viewing areas, including Latigo Canyon Road; the Backbone Trail and Newton Canyon loop trail, parts of the LA County hiking and equestrian trails system, located to the south of the sites; and National Parks Service and Santa Monica Mountains Conservancy owned parklands, which are part of the Santa Monica National Recreation Area located nearby (see Exhibit 1). The area surrounding the subject properties is rural in nature characterized by vast open space consisting of sensitive chaparral habitat which hosts many wildlife species. The nearby public recreation areas provide pristine scenic vistas in this area.

### **VESTED RIGHTS**

Staff would note that in each application, the applicants are proposing the as-built repair and maintenance to "existing agricultural roads." The following analysis explains Staff's determination that the roads and trails on the property that have sustained work do not have status as legally existing roads and trails either by permit action or creation prior to the Coastal Act, thus, the "repair and maintenance" work, which includes grading and major vegetation removal including sensitive chaparral and riparian habitat, that is part of these applications must be reviewed as new development rather than repair and maintenance to existing development.

#### **1. Legal Authority and Standard of Review**

The development proposed in Applications 4-03-069, 4-03-070, 4-03-071 and 4-03-072 is described as brush clearance and repair and maintenance of roads that were legally constructed prior to the Coastal Act and therefore, under the vested rights doctrine, do not require a CDP. (Applications 4-03-069 and 4-03-070 also propose construction of new gates, but do not assert that there is a vested right to construct or repair any gates at the proposed locations). The applicants have not filed a claim of vested rights in accordance with the regulations at 14 Cal. Code of Regulations, section 13200-13208, seeking a determination by the Commission of whether such vested rights exist. Nevertheless, to make a decision on the applications to conduct brush clearance and repair and maintenance of the roads, the Commission must first determine whether vested rights exist for the roads and therefore the roads themselves do not require a CDP.

Section 30608 of the Coastal Act, in relevant part, provides that:

***"No person who has obtained a vested right in a development prior to the effective date of this division or who has obtained a permit from the California Coastal Zone Conservation Commission pursuant to the California Coastal Act of 1972 (commenting with Section 27000) shall be required to secure approval for the development pursuant to this division; provided, however, that no substantial change may be made in any such development without prior approval having been obtained under this division."***

In this location, the effective date of the division, i.e., the Coastal Act, is January 1, 1977. Pursuant to Section 30608, if a person obtained a vested right in a development prior to the effective date of the Coastal Act, no CDP is required for that development. However, no substantial change in the development may be made until obtaining either approval in a CDP, or approval pursuant to another provision of the Coastal Act. Any repair to the development must be conducted in compliance with Coastal Act section 30610(d) and the regulations at Title 14 California Code of Regulations, section 13252.

The Coastal Act defines "development" as:

"the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including but not limited to, subdivision pursuant to the Subdivision Map Act ... change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, ....

As used in this section, "structure" includes but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line." (Coastal Act Section 30106).

If the Commission finds that the claimant has a vested right for a specific development, then the claimant is exempt from coastal development permit requirements for that specific development only.

The Commission must apply certain legal criteria to determine whether a claimant has a vested right for a specific development. These criteria are based on the terms of the Coastal Act and case law interpreting the Coastal Act's vested right provision, as well as common law vested rights claims. The general standards for determining the validity of a claim of vested rights are summarized as follows:

1. The claimed development must have received all applicable governmental approvals needed to complete the development prior to January 1, 1977. Typically this would be a building permit, grading permit, Final Map, Health Department approval for a well or septic system, etc. or evidence that no permit was required for the claimed development. (*Billings v. California Coastal Commission* (1988) 103 Cal.App.3d 729, 735).
2. If work was not completed by January 1, 1977, the claimant must have performed substantial work and incurred substantial liabilities in good faith reliance on the governmental authorization received prior to January 1, 1977. (*Tosh v. California Coastal Commission* (1979) 99 Cal.App. 3d 388, 393; *Avco Community Developers, Inc. v. South Coast Regional Commission* (1976) 17 Cal.3d 785).

The burden of proof is on the claimant to substantiate the claim of vested right. (Title 14, California Code of Regulation, Section 13200). If there are any doubts regarding the meaning or extent of the vested rights exemption, they should be resolved against the person seeking the exemption. (*Urban Renewal Agency v. California Coastal Zone Conservation Commission* (1975) 15 Cal.3d 577, 588).

A narrow, as opposed to expansive, view of vested rights should be adopted to avoid seriously impairing the government's right to control land use policy. (*Charles A. Pratt Construction Co. v. California Coastal Commission* (1982) 128 Cal.App.3d 830, 844, citing, *Avco v. South Coast Regional Commission* (1976) 17 Cal.3d 785, 797). In evaluating a claimed vested right to maintain a nonconforming use (i.e., a use that fails to conform to current government standards), courts "follow a strict policy against extension or expansion of those uses." (*Hansen Bros. Enterprises v. Board of Supervisors* (1996) 12 Cal.4<sup>th</sup> 533, 568; *County of San Diego v. McClurken* (1957) 37 Cal.2d 683, 687).

The following analysis is based on information submitted by the applicants and supplemental Commission staff research or official Commission records.

## 2. Background Regarding Property

APN 4464-019-008 (CDP Application No. 4-03-069) is owned by Panorama Ranch LLC, which acquired this parcel in 2002. Panorama Ranch proposes brush clearance and repair and maintenance of an estimated 1,300 linear feet of roadway that it claims existed on this parcel prior to the Coastal Act in the location where the work is proposed in Application 4-03-069. Panorama Ranch asserts that there is a vested right for the alleged 1,100 foot road on this parcel to exist without complying with the Coastal Act. According to the application, on the east, the road on this parcel connects to a road on APN 4464-019-010 that is the subject of Application 4-03-072. The Application shows the road on APN 4464-019-008 dead ending in the southeast portion of the parcel. During inspections conducted in 2003, Commission staff observed that the proposed work (which was already done) involved removal of surface and subsurface chaparral plant material; removal of soil and rocks; and grading and construction of a boulder and cobble Arizona crossing through a stream channel. Roadcuts were observed that are in some places six feet high. There is a Los Angeles County map from 1970 of fire roads in this area. (See Exhibit 10 – the location of the subject parcels is shown on the third page of the Exhibit). The only fire road shown on APN 4464-019-008 is a pre-Coastal Act road that crosses the northwest corner of this parcel (and which is also visible in aerial photographs that predate the Coastal Act). The CDP Application does not propose any development on that road.

APN 4464-022-010 (CDP Application No. 4-03-070) is also owned by Panorama Ranch LLC, which acquired this parcel in 2002. Panorama Ranch proposes brush clearance and repair and maintenance of an estimated 3,500 linear feet of roads that it claims existed on this parcel prior to the Coastal Act in the location where the work is proposed in Application 4-03-070. Panorama Ranch asserts that there is a vested right for the alleged 3,500 feet of roads on this parcel to exist without complying with the Coastal Act. According to the application, the development proposed on this parcel consists of repair and maintenance of two roads, parallel to each other, crossing the northern part of the parcel from east to west. Both of these roads connect on the west to two roads that are alleged to exist on APN 4464-022-001 that are the subject of Application 4-03-071. On the east, the most northerly road proposed on APN 4464-

022-010 connects to a road proposed on the parcel to the north (APN 4464-019-010) that makes a loop and then dead ends. The road proposed further south on APN 4464-022-010 does not connect to any other road or parcel to the east, rather it dead ends at the border of the property to the east owned by the National Park Service. During inspections conducted in 2003, Commission staff observed that the proposed work (which was already done) involved removal of surface and subsurface chaparral plant material and removal of soil and rock. The Los Angeles County 1970 map of fire roads (Exhibit 10) shows Castro Motorway crossing the southern part of APN 4464-022-010. It shows no other fire roads on this parcel.

APN 4464-022-001 (CDP Application No. 4-03-071) is owned by Communications Relay Corporation. Communications Relay has stated that it acquired this parcel in 2001. Communications Relay proposes brush clearance and repair and maintenance of an estimated 2,400 linear feet of roadway that it claims existed on this parcel prior to the Coastal Act in the location where the work is proposed in Application 4-03-071. Panorama Ranch asserts that there is a vested right for the alleged 2,400 feet of roads on this parcel to exist without complying with the Coastal Act. According to the application, the road on this parcel goes from Castro Motorway north across the parcel, then splits into three separate roads – two that enter the parcel to the east, APN 4464-022-010, and one that enters the parcel to the north, APN 4464-019-010. During inspections in 2003, Commission staff observed that the proposed work (which was already done) involved removal of surface and subsurface chaparral plant material; removal of soil and rocks; placement of railroad ties and a metal culvert at a stream. Roadcuts over three feet high were observed. The Los Angeles County 1970 map of fire roads (Exhibit 10) shows Castro Motorway crossing the southern part of APN 4464-022-001. It shows no other fire roads on this parcel.

APN 4464-019-010 (CDP Application No. 4-03-072) is owned by Deer Valley Ranch LLC. Deer Valley Ranch acquired this parcel in 2002. Deer Valley Ranch proposes brush clearance and repair and maintenance of an estimated 4,500 linear feet of roadway that it claims existed on this parcel prior to the Coastal Act in the location where the work is proposed in Application 4-03-072. Deer Valley Ranch asserts that there is a vested right for the alleged 4,500 feet of roads on this parcel to exist without complying with the Coastal Act. The application shows roads on this parcel connecting to roads on the two parcels to the south (APN 4464-022-001 and 4464-022-010) and the property to the west (APN 4464-019-008). During inspections in 2003, Commission staff observed that the proposed work (which was already done) involved removal of surface and subsurface chaparral plant material and removal of soil and rocks. Roadcuts were observed that in some places are ten feet high. The L.A. County 1970 map of fire roads shows no fire roads on APN 4464-019-010.

### **3. Analysis of Claim of Vested Rights**

- A. Applicants Have Not Provided Evidence That Roads Existed Prior to the Coastal Act in the Locations of the Proposed Development
  - a. Aerial Photographs Do Not Provide Evidence of Roads at the Location of the Proposed Development Prior to the Coastal Act

The applicants propose to do brush clearance and repair and maintenance of agricultural roads and/or fire roads on the subject parcels that they allege existed prior to the Coastal Act. The applicants conducted the work in approximately January to May 2003, prior to applying for a CDP. Therefore, it was not possible for Commission staff to observe the alleged roads before

the work proposed in these applications was conducted, or to confirm whether they were present by direct onsite observation. However, the Commission does have the benefit of aerial photographs of the properties. The Commission staff has examined an aerial photograph of the parcels from 1953 that was provided by the applicants (this photograph will be shown to Commissioners, but is not reproduced as an exhibit due to copyright). Additional aerial photographs from 1977 and 2001 were examined. These are attached as Exhibits 11, 12 and 13. The aerial photographs show vegetation cover and no roads in the locations of the development proposed in Applications 4-03-069, 4-03-070, 4-03-071 and 4-03-072, with the exception of the 970 foot segment of road on APN 4464-022-001 (Application 4-03-071). That segment of road is visible going north onto the parcel from Castro Motorway in the photographs, and it was recognized by the Commission as a road that legally existed prior to the Coastal Act in CDP 4-96-084 (Van Hagan). The location of Castro Motorway and the "Van Hagan" road on APN 4464-022-001 is shown in red on Exhibit 14.

The applicants have asserted that roads were present when the above-referenced aerial photographs were taken, but are not visible through the vegetation canopy. However, in the aerial photographs, Castro Motorway and the 970 foot segment of road referred to above are clearly visible, while in other areas where the applicants allege that roads existed at the time, no road is visible. A road that cuts across the corner of APN 4464-019-008 (that is not part of the applicant's proposed development) and that was constructed prior to the Coastal Act is also visible in the aerial photographs. The roads that applicants maintain existed prior to the Coastal Act are generally located on exposed, open terrain and would be visible in aerial photographs if they existed (as are other known roads). The L.A. County 1970 map of fire roads in this area also does not show any of the roads that the applicants maintain existed on the parcels prior to the Coastal Act. (See Exhibit 10).

Thus, the aerial photographs do not prove that there were roads in the location of the proposed development prior to January 1, 1977.

The applicants also have not presented any evidence showing the specific location of roads that they allege existed on the parcels prior to the Coastal Act. If a vested right is found for a road that existed in a specific location on a parcel prior to the Coastal Act, there is no vested right for construction of a road at a different location on the parcel. The Coastal Act specifies that when a vested right to a development is established "no substantial change may be made in any such development without prior approval having been obtained under this division." (Section 30608). Construction of roads in a different location or along a different route constitutes a "substantial change" in the vested development present at the site. Pursuant to Section 30806, this "substantial change" requires compliance with the permit requirements of the Coastal Act. Thus, even if there was evidence that some dirt roads existed on the subject properties prior to the Coastal Act, there is no evidence that any of such roads were in the same location as any of the development proposed in these applications.

*b. Declarations and Letters Provided to the Commission Do Not Prove the Existence of Vested Rights For Roads at the Location of the Proposed Development*

The applicants' biologist Steve Nelson, has submitted letters (Letters to Donna Shen dated June 11, 2003 and July 14, 2003) in which he states that in the areas where the development proposed in these applications occurred, there are roads that "appear to have been originally graded many years ago." Mr. Nelson did not say that he observed the parcels at any time

before the proposed brush clearance and repair and maintenance of the allegedly existing roads was performed (which occurred from approximately January to May 2003). He apparently did not observe the parcels on or before January 1, 1977. Mr. Nelson has not asserted that he knows the year or even the decade when the original grading of roads occurred. Accordingly, his statements do not provide evidence that roads existed in 1977 (26 years earlier) in the locations where he observed them in 2003.

The applicants also provided several declarations to the Commission, including declarations from Roland Genick, Eva Sweeney, and Brian Sweeney. Genick and Eva Sweeney were employees of a planning consulting firm, who state that they visited parcels APN 4464-019-008, 4464-022-010 and 4464-019-010 in 2001. Since they did not visit the parcels until 2001, these individuals have no knowledge that roads existed on the parcels in January 1977. Nor could they have any knowledge that roads existed on the parcels in January 1977 that were in the same location as any roads they observed in 2001. In addition, Genick and Eva Sweeney claim that in 2001, they observed dirt access roads to APN 4464-019-005 (not the subject of these applications), APN 4464-019-008 and APN 4464-022-010. It is not disputed that there is a pre-Coastal Act dirt road accessing APN 4464-019-008 (the road that crosses the northwest corner of the parcel) and a pre-Coastal Act dirt road accessing APN 4464-022-010 (Castro Motorway). These dirt roads are visible in pre-Coastal Act aerial photos and shown on the Los Angeles County 1970 map of fire roads. These roads are not the subject of the pending applications. Therefore, Genick and Eva Sweeney may be referring to these access roads, rather than any roads in the location of the development proposed in these applications. Furthermore, although both Genick and Eva Sweeney state that they visited APN 4464-019-010 in 2001, they do not say that they observed any dirt roads on that parcel.

Brian Sweeney states he visited APN 4464-022-010, 4464-019-008 and 4464-019-010 about five times when they were owned by Malibu Ocean Ranches, LLC and/or Creekside Ranch, LLC, of which he is an officer. Mr. Sweeney does not give the date of his visits, except that they were before these entities sold the parcels in April 2002. Accordingly, he does not provide any evidence that roads existed on the parcels in January 1977, or that any roads that existed in January 1977 were in the same location as roads that he observed during his visits.

Genick and Eva Sweeney also refer to brochures entitled "Property Assessment and Potential Use" that their firm prepared and that the current property owners have provided to the Commission. The Genick and Eva Sweeney declarations indicate that their firm prepared these brochures some time in 2001 or 2002. Thus, the brochures do not provide any evidence of the condition of the parcels, or what roads existed on the parcels, in January 1977 (about 25 years earlier). In addition, contrary to the applicants' assertion, these documents do not provide evidence that the roads for which vested rights are claimed in Applications 4-03-069, 4-03-070 and 4-03-072 existed on the parcels when the current owners purchased them in 2002. (No brochure was provided for APN 4464-022-001, the parcel addressed in Application 4-03-071).

The Property Assessment and Potential Use brochure for APN 4464-019-008 (CDP Application No. 4-03-069) says there is "an existing dirt road access from Mulholland Highway that provides the property with a direct link, via Kanan Road, to Highway 101 located approximately 4 miles to the North." As noted previously, there is a pre-Coastal Act dirt road that cuts across the northwestern corner of APN 4464-019-008. This road is visible in this location in the 1953, 1977 and 2001 aerial photographs of the parcels. (In Application No. 4-03-069, the current owner does not seek authorization for brush clearance and repair and maintenance of this road). A reasonable interpretation of the brochure is that it is referring to this access road.

Therefore, the brochure does not provide evidence of any road on the property in the location where the development is proposed in Application 4-03-069.

The Property Assessment and Potential Use brochure for APN 4464-022-010 (CDP Application No. 4-03-070) states: "The property has an existing dirt road access that provides the property with a direct link, via Kanan Road, to Highway 101 located approximately 4 miles to the North." Access to this parcel is provided by Castro Motorway, a pre-Coastal Act dirt road that crosses the southern portion of APN 4464-022-010. Castro Motorway is visible in this location in the aerial photographs of the parcels from 1953, 1977 and 2001. A reasonable interpretation of the brochure is that it is referring to Castro Motorway as the existing access road. Therefore, the brochure does not provide any evidence that a road existed on the property in the location where the development is proposed in Application 4-03-070.

The Property Assessment and Potential Use brochure provided for APN 4464-019-010 (CDP Application No. 4-03-072) does not describe an existing access road leading to Kanan Road and Highway 101. Instead it contains two photographs with the vague caption: "Access road towards property." In fact, neither Castro Motorway, nor any other pre-Coastal Act road crosses onto or directly adjacent to this parcel. The brochure does not refer to any road that actually enters onto or crosses APN 4464-019-010. Therefore, the brochure does not provide evidence that a road existed on the property in the location where the development is proposed in Application 4-03-072. To the contrary, the brochure provides evidence of the lack of any roads on or across APN 4464-019-010 when the brochure was prepared.

The applicants provided a declaration from Dale Jaureguy, an employee of James A. Kay, Jr., one of the officers of Deer Valley Ranch, Panorama Ranch and Communications Relay Corporation. Mr. Jaureguy is employed as the field supervisor and he monitored and supervised laborers who did the work that is the subject of Applications No. 4-03-069, 4-03-070, 4-03-071 and 4-03-072. He states:

"Although none of the Properties are developed, some have long-existing trails, fire and agricultural roads."

The work that Mr. Jaureguy supervised was conducted from approximately January to May 2003. Mr. Jaureguy does not state that he observed the properties prior to this date. Mr. Jaureguy therefore does not provide any evidence that roads existed on the parcels in January 1977, or that any such roads that existed in January 1977 were in the same location as roads that he observed in 2003. Furthermore, even if he had made observations in 1977, Mr. Jaureguy's statement is too vague to establish a vested right to any particular development. He says that "some" of the Properties have long-existing trails, fire and agricultural roads. He does not say that long-existing trails, fire and agricultural roads were present on all of the parcels, nor does he specify on which parcels trails, rather than roads, were present. He does not provide any specificity regarding the location of long-existing roads or trails on any of the four parcels. This information is too general to constitute evidence of a vested right to a particular road.

The final declaration provided to the Commission is from John Burroughs. Mr. Burroughs is employed by LT-WR, LLC, an entity of which James A. Kay, Jr. is an officer. Mr. Burroughs states he has served as a caretaker at 1953 Latigo Canyon Road since 1972 and is familiar with, and made periodic visits to, the parcels that are the subject of these applications -- APNs 4464-022-001, 4464-019-008, 4464-019-010 and 4464-022-010 (as well as another parcel, APN 4464-022-014). Mr. Burroughs states in his declaration:

- "6. During my periodic visits, I accessed the subject parcels by hiking and horseback on a network of unimproved roads and trails.
7. The width and appearance of these particular unimproved roads and trails has varied throughout the years due to fire, erosion, and growth of vegetation.
8. Nevertheless, a network of unimproved roads and trails accessing the parcels listed in paragraph 4 has been in continuous existence since at least 1972."

Mr. Burroughs does not state the particular location on the parcels of any trails or roads. He does not state that *roads*, as opposed to trails, existed on all of the parcels. There is no vested right to expand and enlarge a trail to make it a road, without complying with the Coastal Act. Nor does Mr. Burroughs indicate whether the roads he used to access the parcels were the pre-Coastal Act dirt roads that cross APN 4464-022-001, 4464-022-010 (Castro Motorway) and APN 4464-019-008 (the pre-Coastal Act road crossing the northwest corner of the parcel). He does not specify that he observed or used a road prior to the Coastal Act in any of the specific locations of the development proposed in these applications. Therefore, this information is too vague and general to establish a vested right to a particular road.

- c. A Prior Owner of APN 4464-022-001 States That Roads Were Not Present Prior to the Coastal Act at the Location of the Development Proposed in These Applications

Commission staff has contacted Philip J. McKenna who, with his wife Mable, owned APN 4464-022-001 from the 1950s until about 1990. In addition, Commission staff contacted their son, Philip McKenna, who said he knows the property well. They both indicated that, aside from Castro Motorway, the only road on the parcel was the access road that extended onto the parcel from Castro Motorway (which was recognized as a road that existed prior to the Coastal Act in CDP No. 4-96-084 (Van Hagan) and which is visible in aerial photographs prior to the Coastal Act. Philip McKenna (Jr.) recalls that this road was no more than ¼ mile long from Castro Motorway. This is consistent with the 1997 finding of the Commission on CDP 4-96-084 that there was an access road of about 970 linear feet onto the parcel, but that it had been extended further onto the site without a permit in the late 1980s or 1990s. Both McKennas indicate that during their family's ownership of APN 4464-022-001, there were no roads extending from that parcel onto the parcel to the north (APN 4464-019-010) or onto the parcel to the east (APN 4464-022-010). In addition, the McKennas both state that there was no ranch or other agricultural operation either on their parcel (APN 4464-022-001) or the directly adjacent parcels. They also stated that they did not observe any roads on APN 4464-019-010 or 4464-022-010 (other than Castro Motorway). If roads existed on their property (APN 4464-022-001) that crossed over onto and continued on the adjacent parcels (APN 4464-022-010 and APN 4464-019-010) as asserted by the applicants, the McKennas would have observed these roads. The statements of Mr. McKenna, who owned APN 4464-022-001 at the relevant time (January 1977), indicate that the network of roads for which the applicants assert vested rights did not exist at that time.

- B. **There is No Vested Right To Reconstruct Roads that Existed Prior to the Coastal Act After They Have Become Overgrown and Impassable**

The applicants assert that before the work proposed in Applications 4-03-069, 4-03-070, 4-03-071 and 4-03-072 was conducted from approximately January to May 2003, the alleged roads were overgrown with vegetation and impassable. They indicate in a letter to the Commission dated December 9, 2003: "Over time many of these roads and trails became impassable and even difficult to locate." Based on observations by Commission staff during and soon after the work, the proposed development included removal of mature chaparral shrubs that had been growing for a period of many years. If any roads existed prior to the Coastal Act, the prior owners failed to maintain them and abandoned them many years before applicants bought the parcels. Aerial photographs from 1997 (Exhibit 15) and 2001 (Exhibits 12 and 13) demonstrate that the parcels were vegetated with no roads visible in the location of the development proposed in these applications (except for the access road from Castro Motorway onto APN 4464-022-001 that is in part a pre-Coastal Act road and in part was illegally extended in the late 1980s or 1990s). In this situation, any vested rights for the roads that may have once existed have been abandoned and there is no vested right to replace or reconstruct the roads, without full compliance with the Coastal Act's requirements.

The Coastal Act recognizes vested rights "in a development." (Section 30608). Vested rights cannot be established for new development that is constructed after the effective date of the Coastal Act. "Development" under the Coastal Act includes "construction, reconstruction, demolition, or alteration of the size of any structure, ..." (Section 30106). "Structure" includes but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power ...." (Coastal Act Section 30106).

Under the Coastal Act, a road is considered a structure. A vested right for a nonconforming structure, such as the roads at issue, is limited to the particular structure that existed before enactment of the new law or ordinance in question. Thus, even assuming that the applicants could establish a vested right for roads that existed on January 1977, there is no vested right to replace that vested structure with a new structure, without complying with the permit requirements of the Coastal Act. This simply means that when the useful life of the vested structure has ended, a permit under the Coastal Act is required before it can legally be replaced with a new structure. Here, no maintenance was performed to maintain passable roads at the locations at issue. Rather, prior owners allowed the condition of the roads to deteriorate naturally until they were so overgrown that they were impassable and ceased to be useable as roads. Accordingly, any roads that existed prior to the Coastal Act had reached the end of their useful life. To reconstruct those roads many years or even decades later constitutes new development that is not exempt from the Coastal Act.

This conclusion is consistent with the rule that any doubts about availability of the vested rights exemption should be resolved against the person making the claim. (*Urban Renewal Agency v. California Coastal Commission* (1975) 15 Cal.3d 577). It is also consistent with the principles of equitable estoppel upon which the vested rights doctrine is based, i.e., that it is unfair for the government to impose a new restriction when a property owner has expended substantial funds for construction, in detrimental reliance on a prior government approval. (*Raley v. California Tahoe Regional Planning Agency* (1977) 68 Cal.App.3d 965, 977; *J.D. Patterson v. Central Coast Regional Coastal Zone Conservation Commission* (1976) 58 Cal.App.3d 833, 844). However, the law also favors the eventual elimination of "nonconforming" vested structures. When such a structure becomes damaged or destroyed and has reached the end of its useful life, there is no longer any "detrimental reliance" – the owner has received the full benefit of its investment. Thus, it is not unfair to impose current regulatory requirements to a proposed replacement structure. (*O'Mara v. Council of Newark* (1965) 238 Cal.App.2d 836 (where non-

conforming building is in large measure destroyed by an accident, the investment in the improvement has been taken away, and it is not unreasonable to require compliance with current regulatory requirements)).

An ordinance granting a vested right to maintain a nonconforming use is not open ended: "The object of such provision is the gradual elimination of the nonconforming use by obsolescence or destruction by fire or the elements, and it has been frequently upheld by the courts." (*Sabek, Inc. v. County of Sonoma* (1987) 190 Cal.App.3d 163, 166, citing, *Rehfeld v. San Francisco* (1933) 218 Cal.83, 84-85). "It is the general purpose to eventually end all nonconforming uses and to permit no improvements or rebuilding which would extend the normal life of nonconforming structures." (*Sabek, Inc.*, 190 Cal.App.3d at 168). With respect to nonconforming uses, "courts should follow a strict policy against extension or enlargement of those uses." (*Hansen Brothers Enterprises v. Board of Supervisors* (1996) 12 Cal.4<sup>th</sup> 533, 568; *County of San Diego v. McClurken* (1951) 37 Cal.2d 683, 687; *Sabek, Inc.*, 190 Cal.App.3d at 166. Accordingly, in this case, where prior owners have allowed the nonconforming use (the unpermitted roads) to deteriorate from natural processes to the point where they are not usable, they must be considered to have reached the end of their useful life, and there is no vested right to reconstruct them.

The Commission's regulations that apply to repair and maintenance of existing structures also support this conclusion. The development proposed here is not repair and maintenance, but rather, a "replacement structure requiring a coastal development permit." Section 30610(d) of the Coastal Act provides a permit exemption for: "Repair or maintenance activities that do not result in an addition to, or enlargement or expansion of, the object of those repair or maintenance activities; ..." The Commission's regulation implementing this section distinguishes exempt repair and maintenance from replacement with new development, which is not allowed without a permit. Title 14, California Code of Regulations, section 13252(b) states:

***"Unless destroyed by a natural disaster, the replacement of 50 percent or more of a single family residence, seawall, revetment, bluff retaining wall, breakwater, groin or any other structure is not repair and maintenance under Section 30610(d) but instead constitutes a replacement structure requiring a coastal development permit."***

This provision applies to all existing structures, including those authorized by the Commission in a permit as well as those for which a vested right was obtained prior to the Coastal Act. Accordingly, even if the applicants had a vested right for roads that existed in January 1977, replacement of 50 percent or more of those roads is not allowed without a coastal development permit. The development proposed in the pending applications occurred on roads described as overgrown, difficult to locate and impassable until mature shrubs growing in the roads were removed. This development constitutes replacement of 50 percent or more of the roads. Therefore, the development proposed is a replacement structure (i.e., replacement of the roads) and is subject to the coastal development permit requirements of the Coastal Act.

Moreover, there is no vested right to reconstruct a structure after it has been abandoned. In this case, if there were any roads in the location of the development proposed in the applications, they were abandoned by prior owners of the property. They were not maintained and were not in passable condition even before the applicants purchased the parcels. The Los Angeles County Code (Section 22.56.1540) provides that discontinuance of use of a

nonconforming building or structure for a period of time shall terminate the right to use such nonconforming building or structure. In this situation, the policy that favors elimination of nonconforming development applies. At some time, prior owners abandoned any dirt roads that may have existed, and allowed them to deteriorate and become revegetated (see aerial photographs from 1997 and 2001, Exhibits 15, 12 and 13D). In such a case, the vested right to maintain and use the vested structure (i.e., the roads) was abandoned and lost due to the actions of the prior owners. The current owners have not made any substantial investment in reliance on governmental approval or the lack of any requirement for governmental approval for such roads. There is no unfairness in applying the requirements of the Coastal Act to proposed reconstruction of the abandoned roads on the property.

In summary, the Coastal Commission finds that the applicants do not have a vested right for reconstruction of the alleged roads. The Commission finds that reconstruction of the overgrown, impassable roads is new development occurring after the effective date of the Coastal Act. Even if it was for the purpose of replacing a vested structure, the new development is not exempt from the permit requirements of the Coastal Act. In addition, the Commission finds that if any alleged roads existed they were abandoned by prior owners, and there is no vested right to reconstruct them, without compliance with the Coastal Act.

**C. The Applicants Have Not Proven That They Obtained Local Authorization to Construct the Subject Roads**

To establish a vested right, the applicants must show that all necessary government authorization for the alleged roads on APN 4464-019-008, 4464-019-010, 4464-022-001 and 4464-022-010 was obtained before they were built. (*J.D. Patterson v. Central Coast Regional Coastal Zone Conservation Commission* (1976) 58 Cal.App.3d 833, 844, citing, *People v. County of Kern* (1974) 39 Cal.App.3d 830, 838) (unless owner possesses all necessary permits, the mere expenditure of funds or commencement of construction does not vest any rights in the development).

The applicants assert that no governmental authorization was necessary for construction of roads on these parcels prior to the Coastal Act. However, since at least 1962, a Los Angeles County ordinance has required a permit for grading. Section 7003 of the Los Angeles County Building Code (attached as Exhibit G) is the form of this ordinance that was in effect from at least 1968 and continuing through 1977. The applicants have not demonstrated compliance with Section 7003, which states: "A person shall not perform any grading without first obtaining a grading permit to do so from the Building Official. A separate permit shall be obtained for each site." In this case, there is no evidence of grading permits issued prior to January 1, 1977 for any roads in the locations of the development proposed in Applications 4-03-069, 4-03-070, 4-03-071 and 4-03-072. Nor have the applicants provided evidence that the road construction qualified for an exemption from the grading permit requirement.

Since there is no evidence that the roads were constructed in compliance with County Ordinance Section 7003, the Commission finds that the applicants have not shown that any roads that may have existed on the parcels prior to the Coastal Act received all necessary governmental authorization. Therefore, the Commission finds that the requirements to establish vested rights for the alleged roads have not been met.

**Conclusion**

For all the reasons set forth above, the Commission finds that the applicants have not established that vested rights exist on APN 4464-019-008 (CDP Application 4-03-069); APN 4464-022-010 (CDP Application 4-03-070); APN 4464-022-001 (CDP Application No. 4-03-071) and APN 4464-019-010 (CDP Application No. 4-03-072) in the location of the proposed development. Therefore, the Commission must evaluate the development proposed in the applications as requests for approval to construct new roads. The Commission must determine if the request to construct new roads at the proposed locations is consistent with the policies of the Coastal Act.

### **EXISTING DEVELOPMENT**

There is existing unpermitted development on all four subject parcels, which consists of: removal of major vegetation and disturbance of environmentally sensitive habitat, including but not limited to removal of native chaparral and damage to native oak trees; grading and clearing of new roads and pads; unpermitted streambed alteration, including but not limited to grading, filling, and manipulation of channel substrate, installation of metal culverts and creosote-treated railroad ties, and construction of an Arizona crossing in a blue line stream; and construction of unpermitted structures including but not limited to metal gates, and metal and wood gate posts with chain barriers set with concrete bases. The applicants are including brush clearance, repair and maintenance of existing roads, revegetation of some graded slopes along those roads and the installation of access gates in four locations. Therefore, there remains a substantial portion of existing development that is not addressed in the subject applications.

Based on inspections of the site by Commission Staff, and review of aerial photographs and maps, Staff estimates that approximately 10,000 linear feet of six to twenty-foot wide roads and trails have been constructed without permits on the subject properties. Two graded and cleared pads have been constructed on parcel 4464-019-010. A third graded "pad" area, which the applicants' agent Schmitz characterizes as the "beginning of a new road," is located on parcel 4464-022-010. Schmitz has advised Staff that the new road was graded and cleared "by mistake."<sup>1</sup> Two additional level areas have been cleared of vegetation on parcel 4464-022-010 with little or no grading.

Staff estimates that approximately five acres of native vegetation, primarily native chaparral, has been cleared from the four subject properties. Brush clearance that is legally authorized and required by the L.A. County Fire Department extends to areas within 200 feet of legal, habitable structures. There are no such structures near the roads and graded pads that warrant clearance of these areas. In addition, the applicants claim that the roads are pre-existing "fire roads" that predate the Coastal Act. According to the Los Angeles County Fire Department, there are no fire roads located on the subject properties other than Castro Motorway and a dirt road that bisects parcel 4464-019-008 near the northwest section of the parcel. Both of these roads predate the Coastal Act. A map from the Los Angeles County Forester and Fire Warden, dated 1970, indicates that no other roads exist on the subject site.

The applicants have also altered drainages on at least two of the properties, including placement of creosote-treated railroad ties and a metal culvert in a natural drainage on parcel

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<sup>1</sup> During an on-site meeting on November 10, 2003, staff questioned Schmitz regarding a section of hillside, which had been cleared of vegetation for approximately 150 feet in length and 10 to 20 feet in width across a steep slope, and down into a blue line stream. Schmitz stated that the road was cleared "by mistake," and indicated that the respondents believed it was a road, but stopped once they determined no road existed.

4464-022-001, and grading, vegetation removal, and manipulation of channel substrate to construct an Arizona crossing in a blue line stream on parcel 4464-019-008. The applicants have installed wood and metal posts with chains across Castro Motorway and Newton Motorway, blocking an important fire roads and an important hiking and equestrian loop trail (Castro Crest Loop Trail). Two chain gates have also been constructed on a private "precoastal" access road through the northwest corner of Parcel 4462-019-008.

The graded roads and areas where vegetation was removed are clearly visible in photographs of the site. Much of the new roadways are located on steeply sloping portions of the site and are visible from both Latigo Canyon road and National Park lands.

The subject properties consist of four privately owned parcels, totaling approximately 189.5 acres of native chaparral and oak woodland in the Santa Monica Mountains of Los Angeles County adjacent to Federally owned property, which is administered by the National Park Service as part of the Santa Monica Mountains National Recreation Area.

To clearly address what is proposed on each parcel by each permit application (refer to project descriptions listed above) in relation to the development that currently exists on each parcel, the existing unpermitted development is broken down below for each separate parcel:

Parcel 4464-019-008:

Major vegetation removal in ESHA and damage to native oak trees; 2,800 ft. of road construction, including significant cut and fill grading on steep slopes; 500 ft. of cleared trails; and streambed alteration, including grading and construction of an Arizona crossing.

Parcel 4464-022-010:

Major vegetation removal in ESHA, including damage to native oak trees and removal of vegetation from a blueline stream corridor; 3,550 ft. of road construction, including significant cut and fill grading on steep slopes; 1,700 ft. of cleared trails; and metal gateposts with chain barriers blocking access to a major fire road.

Parcel 4464-022-001:

Major vegetation removal in ESHA, including 0.71 acre of vegetation clearing; 1,400 ft. of road construction; 200 ft. of cleared trails; and streambed alteration, including placement of a metal culvert and creosote-treated railroad ties in a stream channel.

Parcel 4464-019-010:

Major vegetation removal in ESHA and damage to native oak trees; 4,500 ft. of road construction, including significant cut and fill grading on steep slopes; 1,300 ft. of cleared trails; and two cleared and graded pad areas.

**RELATED PERMIT ACTION**

There has been prior Commission action on one of the four subject parcels. On December 12, 1996, the Commission approved Coastal Development Permit No. CDP 4-96-084 for

construction of a 250-square-foot modular home, three amateur radio antennae, chain link fencing surrounding the three antennae, a new 4,700-gallon water tank, and an entry gate, and approximately 40 cubic yards of grading, all on existing graded pads on parcel 4464-022-001. The proposed small modular home and radio antennae were intended for periodic personal use for up to four radio contests per year. CDP 4-96-084 also addressed prior violations on the property, and required removal of an unpermitted, pre-existing, two-story geodesic dome structure, an unpermitted residential trailer and various refuse dumped on site, as well as restoration and revegetation of approximately 850 feet of unpermitted extensions to the existing access road from Castro Motorway, which were created between 1989 and 1991. In this action, the Commission recognized approximately 970 linear feet of roadway on parcel 4464-022-001 entering the parcel from Castro Motorway.

In addition, between 1989 and 1991, approximately 1.5 acres of vegetation was cleared without permits on parcel 4464-022-001. This violation was not addressed by CDP 4-96-084; however, the site was substantially revegetated by June of 2001. However, several thousand square feet of the re-established vegetation have since been cleared and new roads have been graded throughout the site.

On August 25, 1997, Coastal Development Permit No. 4-96-084 was issued to Mr. Peter Von Hagen. The unpermitted geodesic dome, trailer, and debris were subsequently removed pursuant to the permit; the residence and antennae were never constructed. However, restoration of the unpermitted roads was implemented in September of 1997. Since that time, the restoration efforts implemented by the previous property owner have been destroyed.

## **BACKGROUND**

On July 17, 2003, the applicants submitted four separate applications as described above. On August 15, 2003, Staff reviewed the application files, and found that were substantially incomplete. On the same date, Staff notified the applicants' representative in writing that the application was incomplete, noting between 19 to 21 additional items per application that were required for staff's review of the applications. The applicants submitted additional materials on September 26, November 12 and 13, 2003. Staff responded in writing on December 12, 2003 regarding the additional information and the remaining items that had not yet been provided and were necessary. Staff learned shortly thereafter of the Court issued writ, which ordered that "the Coastal Commission hold a public hearing and take action on the currently-pending coastal development permit applications of petitioners Panorama Ranch, LLC (APN Nos. 4464-022-010 and 4464-019-008), Deer Valley Ranch, LLC (APN No. 4464-019-010), and Communications Relay Corporation (APN No. 4464-022-001) no later than the regularly-scheduled February 2004 Coastal Commission meeting." Additional materials were received in the Commission office on December 24, 2003 and January 23, 2004, however, a substantial amount of requested information required for Staff's analysis of the proposed and existing development has not been provided. Additionally, the project description for application 4-03-071 was amended on January 16, 2004 to include "repair and maintenance of a pre-existing culvert and railroad ties" via a letter from the applicant's agent, however, no information was provided along with the letter regarding this new aspect of development and Staff did not have adequate opportunity to request information for assistance in its review of this aspect of the project. As such, Staff would note that the application files are not complete.

Following is a list of the information still outstanding as of January 28, 2004 for each application, except where indicated:

1. Filing Fee: a minimal filing fee was submitted for each application, Staff subsequently notified the applicant/agent that the required fee for the application would be dependent on a cost valuation, also a requested item, and doubled for the after-the-fact consideration. A cost valuation of the work was never received and the applicant submitted an additional check doubling the fee originally submitted.
2. Cost valuation for the development.
3. Local approvals: Staff requested that the applicant provide evidence of "Approval-in-Concept" from the Regional Planning Dept. or evidence that no such approval is necessary.
4. An oak tree permit for parcel 4464-019-010 (application 4-03-072).
5. Accurate site plan/survey prepared by a licensed surveyor
6. Project plans/site plan to scale with dimensions shown, illustrating oak tree and/or riparian vegetation canopies, streams and drainages that clearly show the location of proposed elements of the project, including vegetation removal.
7. Grading and drainage plans prepared by a registered engineer with legible cross-sections clearly showing cut and fill slopes, quantification of grading amounts, identification of which portions of the access roads are new (proposed) and existing, illustration of how drainage shall be conveyed with details of any culverts or other drainage structures.
8. Legible reduced copies (8 1/2" x 11") of site, grading and drainage plans.
9. County Environmental Review Board approval or evidence that no approval is required.
10. Contact info for applicant as required as part I #1 on page 1 of the permit application.
11. As the applicant is characterizing the roads as existing, evidence of construction prior to 1977.
12. As the applicant is characterizing the proposed development as repair and maintenance of agricultural roads, evidence of historic agricultural use and when roads were constructed.

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

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

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

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

Section 30253 of the Coastal Act mandates that new development be sited and designed to provide geologic stability and structural integrity, and minimize risks to life and property in areas

of high geologic, flood, and fire hazard. The Commission notes that the development, which is the subject of the four permit applications is not designed to minimize the need for grading and excessive vegetation removal on the slopes of the property, as well as avoid direct development on sloped terrain, and therefore, does not reduce the potential for erosion and geologic instability.

The applicants submitted an Engineering Geologic Investigation Report dated October 24, 2003 prepared by Gold Coast Geoservices, Inc. (Gold Coast) for three of the subject parcels (4464-019-008, 4464-022-010 and 4464-019-010), which evaluate the geologic stability of the subject site in relation to the existing access roads and proposed revegetation. The applicant did not submit a geologic report for application no. 4-03-071 (4464-022-001), thus the access roads, culvert and railroad ties on this property were not addressed by a geologist. It should be noted that the geologic reports prepared by Gold Coast are preliminary reports, whose conclusions and recommendations are based on existing maps and data. Gold Coast did not perform any subsurface testing prior to the preparation of these reports. Staff also notes that the three reports incorrectly state that "the site does not contain any 'blue-line' streams or significant drainages courses, and none occur near this property," while there is in fact one blue-line stream that traverses each of the three properties addressed in the reports.

Based on their evaluation of the sites' geology and the existing and proposed development the consultants have found that the project sites are each respectively suitable for the proposed project. The projects' consulting engineering geologist states in each of the Engineering Geologic Investigation Reports dated October 24, 2003 prepared by Gold Coast:

*It is the opinion of the undersigned that the proposed access road will be safe against hazard from landslide, settlement, or slippage, and has no adverse geologic effect on offsite properties. Assumptions critical to our opinion are that the property and adjacent properties will be properly maintained to prevent excessive irrigation, blocked drainage devices, or other adverse conditions. (underline added).*

The project's consulting engineering geologist concludes that the proposed development is feasible and will be free from geologic hazard provided the properties are "properly maintained." It should be noted that the reports address the access roads as "existing" throughout the report except for the Section 111 safety statement, in which the roads are referred to as "proposed." The geologist analyzes the development as existing, which assumes that proper drainage improvements were undertaken along with the construction of these roads, and in fact, the access roads are new development and require appropriate erosion control measures. There is no discussion regarding the adequacy of the existing drainage structures or lack thereof. Without proper runoff and erosion control measures, the grading and vegetation removal involved in the proposed projects will adversely affect the stability of the sloping hillside.

The project's consulting engineering geologist notes that "'Cut' and 'fill' embankments, no more than about 10 feet in maximum slope relief, were made during the road clearing work..." and the access roads through Panorama Ranch, LLC properties (4464-019-008 and 4464-019-010) traverse the head area of the mapped ancient landslide. The geologist goes on to state "the mapped landslide area does not exhibit any indications of adverse geologic conditions or adverse drainage conditions, so that renewed landslide movement is not expected." It is noted that site drainage is by sheetflow runoff. Clearly, a new road that is cut into ancient landslide deposits without conveying runoff in a non-erosive manner could adversely affect the stability of the landslide area.

Although no geologic report was submitted for parcel 4464-022-001, Staff reviewed the geologic map enclosed with the other three reports and notes that mapped landslide deposits exist within the boundaries of this property as well. The Commission notes that there remains some inherent risk in commencing development on sites within or adjacent to active and/or historic landslides, such as at three of the subject sites. The type of activity included in the subject applications, specifically, grading, installation of drainage devices, and significant vegetation removal, without appropriate engineering and environmental analysis do not minimize erosion and geologic hazards. Particularly in areas where hazards exist, such as landslides. The applicant maintains that these are existing roads and they reviewed as such by the consulting geologic engineer, however, these are in fact, as determined by the Commission, new roads in undeveloped areas which cut into steep hillsides and thus, create potential for erosion destabilization of the hillsides, which is particularly a problem in areas adjacent to or within ancient and/or historic landslide areas and could potentially activate these landslides. Further, uncontrolled drainage off of these roads contribute to significant erosion and destabilization of slopes. The runoff and erosion from the hillsides create stream sedimentation and degradation of riparian habitats. Many examples throughout the Santa Monica Mountains where roads have been cut into hillsides have resulted in major landsliding, slippage and settlement, adversely affecting the immediate area and surrounding properties.

The proposed grading of roads and removal of vegetation will leave substantial areas of bare soils exposed on steep slopes. Such areas will contribute significantly to erosion at the site.

Roads are proposed on steep hillsides exceeding 60 percent slopes in some sections, which requires dislodging bedrock and soil material and creating unstable, oversteepened fill slopes that are unengineered, unstable, and prone to erosion. On May 8, 2003, August 15, 2003, and November 10, 2003, Staff observed boulders in excess of 24 inches in diameter lying unsecured along the fill slopes of the roads, which were easily dislodged by hand and rolled down slope. On November 10, 2003 Staff inspected the cut and fill slopes along the roads and pads. Rock, soil, and vegetative material, which has been loosely piled down slope of the roads and pads, is easily dislodged and pushed down slope. Superficial excavation of sidecast fill slopes at several locations along the roads and pads revealed that pieces of the cleared vegetation, including limbs and trunks, have been buried beneath the fill material, providing inadequate support for the sidecast fill material. In some areas, rock and soil is piled up against and supported by live vegetation, including chaparral vegetation and the trunks of oak trees.

The Los Angeles County building code requires that cut and fill slopes be at an angle no greater than 2:1 or 50% and include drainage elements to convey drainage off the cut slopes. On the subject properties there are many portions of the road that have cut and fill slopes that exceed 50 percent; the slopes are not properly compacted and have loose material on the face of the slopes; and the road does not have a drainage system to convey runoff from the road and off the manufactured slopes in a non-erosive manner. Unstable cut and fill slopes that are not properly engineered and a road without an adequate drainage system in this steep hillside terrain with erodible soils will result in significant erosion and destabilization of the proposed roads, the supporting cut and fill, and the surrounding natural slopes and drainages. In addition, as mentioned above on two of the subject properties the road traverses the head of two landslide areas. The lack of an adequate drainage system on the road and road cuts and fills in close proximity to the head of a landslide could result in activation of the landslide area. As proposed, the road design is clearly not consistent with Section 30253 which requires that

new development "assure stability and structural integrity, and neither create nor contribute significantly to erosion, instability, or destruction of the site or surrounding area."

The Commission has repeatedly found through past permit action, in cases where the required grading for the proposed project results in excess excavated material, that the excavated material shall be removed from the site and disposed of at an appropriate disposal site in order to ensure that it does not contribute to unnecessary landform alteration and increased erosion and sedimentation from stockpiled excavated soil. Throughout the length of the subject roads there is side cast material and uncompacted loose soil and rock material that is highly susceptible to erosion. These conditions contribute to erosion and degradation of riparian habitat.

The proposed revegetation would occur on graded slopes and involves only seeding of the slopes. The proposed revegetation alone would not be sufficient to effectively stabilize these unstable cut and fill slopes. Therefore, the proposed revegetation plan would not be adequate to bring the development into conformance with Section 30253 of the Coastal Act.

There are alternative routes for potential roads to access the subject sites that could have minimized the road lengths and avoided steep unstable slopes, drainages, landslide areas and sensitive resource areas. In addition, alternative road designs that include properly engineered slopes and adequate drainage systems would assure stability and structural integrity of the road system. An alternative road system that would access potential building pads on the subject parcels that were clustered in a way to minimize impacts to coastal sensitive resources would have been an environmentally preferred alternative design.

As described above the proposed roads on the subject parcels do not assure stability and do not ensure the proposed development will not create or contribute to erosion, instability or destruction of the surrounding area as required by Section 30253 of the Coastal Act. Thus the Commission finds that the proposed development and proposed revegetation do not serve to minimize potential geologic hazards on the project site and adjacent properties, therefore, the development, which is the subject of the four applications, is not consistent with §30253 of the Coastal Act.

### **C. ENVIRONMENTALLY SENSITIVE HABITAT AND WATER QUALITY**

Section 30230 of the Coastal Act states that:

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

Section 30231 states:

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

**substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.**

Section 30236 states:

**Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.**

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.**

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

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

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

provision of essential habitat for species that require several habitat types during the course of their life histories, the provision of essential habitat for local endemics, the support of rare species, and the reduction of erosion, thereby protecting the water quality of coastal streams. For these and other reasons discussed in Exhibit 8, which is incorporated herein, the Commission finds that large contiguous, relatively pristine stands of coastal sage scrub and chaparral in the Santa Monica Mountains meet the definition of ESHA. This is consistent with the Commission's past findings on the Malibu LCP<sup>2</sup>.

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

The entirety of the sites (with the obvious exception of the disturbed areas described in this staff report) are well vegetated with chaparral vegetation. In addition, parcels APN 4464-019-008, 4464-019-010 and 4464-022-010 contain blue-line streams and sensitive stream habitat. The subject parcels are part of a larger block of pristine habitat. Commission staff visited the subject property on July 22, 2003 and confirmed that the project sites outside of the disturbed area consists of sensitive chaparral vegetation (see Exhibit 9 for further discussion of onsite habitat). Exhibit 13 is an aerial showing the project area with parcel boundaries, which was taken in 2001 so you can see that some of the currently disturbed area was covered with chaparral vegetation not long ago.

Therefore, due to the important ecosystem roles of chaparral in the Santa Monica Mountains (detailed in Exhibit 8), and the fact that the subject sites are relatively undisturbed and part of a large, unfragmented block of habitat, the Commission finds that the chaparral on and surrounding the project site meets the definition of ESHA (Section 30107.5) under the Coastal Act. As discussed above, there are legally existing portions of roads on three of the properties, which have been maintained clear of vegetation, and thus, these legally existing road segments are not considered ESHA.

Section 30240 requires that "environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas." Section 30240 restricts development on the parcel to only those uses that are dependent on the resource.

The LUP policies addressing protection of Significant Watersheds and ESHAs are among the strictest and most comprehensive set forth in the LUP. The Commission, in certifying the LUP, emphasized the importance placed by the Coastal Act on protecting sensitive environmental resources. The LUP includes several policies designed to protect ESHAs and address stream protection and erosion control, from both the individual and cumulative impacts of development. These policies include:

***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 resources dependent use.***

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

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

**P88** In ESHAs and Significant Watersheds and other areas of high potential erosion hazard, require site design to minimize grading activities and reduce vegetation removal based on the following guidelines:

- Structures should be clustered.
- Grading for access roads and driveways should be minimized; the standard new on-site access roads shall be a maximum of 300 feet or one-third the parcel depth, whichever is less. Longer roads may be allowed on approval of the County Engineer and Environmental Review Board and the determination that adverse environmental impacts will not be incurred. Such approval shall constitute a conditional use.
- Designate building and access envelopes on the basis of site inspection to avoid particularly erodible areas.
- Require all sidecast material to be recompacted to engineering standards, reseeded, and mulched and/or burlapped.

**P90** Grading plans in upland areas of the Santa Monica Mountains should minimize cut and fill operations in accordance with the requirements of the County Engineer.

**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, hydrologic, water percolation and runoff) to the maximum extent feasible.

**P96** Degradation of the water quality of groundwater basins, nearby streams, or wetlands shall not result from development of the site. Pollutants, such as chemicals, fuels, lubricants, raw sewage, and other harmful waste shall not be discharged into or alongside coastal streams or wetlands.

Obviously, native vegetation that is cleared or substantially removed will be lost as habitat and watershed cover. Additionally, thinned areas will be greatly reduced in habitat value. Even where there is partial clearance of vegetation, the natural habitat can be significantly impacted, and ultimately lost, particularly if such areas are subjected to supplemental water through irrigation. In coastal sage scrub 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 can 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, wrenit, 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)<sup>3</sup>. 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<sup>4</sup>.

The as-built roads were constructed with an undetermined amount of grading and the removal of approximately five acres of native vegetation. The area is dominated by chaparral habitat, interspersed with individual oak trees, stream channels and mature oak woodlands. Several natural drainages and ravines are located on site including three designated blue line streams. The unpermitted grading and vegetation clearance caused the direct removal and discouragement of the growth of watershed cover, including native chaparral, which is Environmentally Sensitive Habitat Area ("ESHA"), resulting in a reduction in the amount and quality of the habitat and watershed cover in the area.

The 1986 Malibu Land Use Plan environmentally sensitive habitat maps show oak woodland areas on the subject sites and the site drains into a significant watershed area. At least two of the blue line streams identified by the U.S. Geological Survey are impacted by unpermitted development, including a graded road and Arizona crossing through a blue line stream on parcel 4464-019-008, and vegetation clearance through a blue line stream on parcel 4464-022-010. Commission Biologist Dr. John Dixon has viewed the site and confirmed that the area is substantially native chaparral ESHA (Exhibit 9).

<sup>3</sup> 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.

<sup>4</sup> 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.

The existing roads and vegetation clearance on the subject properties are inconsistent with the policies of the Coastal Act, and far exceed the standards of development allowed pursuant to the LUP. Development on the site is not clustered and does not minimize landform alteration or disturbance to natural drainages, native vegetation, or impacts to public parklands. In fact, the roads are proposed through steeply sloping terrain and significant chaparral habitat, stream channels, and oak woodlands. The proposed road pattern was not designed to minimize the disturbance of ESHA. There does not appear to have been an attempt to construct access roads in a manner which would have clustered future development sites on the subject parcels or minimize the length of the roads. In other words, there appears to have been no design plan for the roads to minimize the impacts to the ESHA. It is not known if the proposed roads will provide access to any future structures that might be proposed for the site, where the appropriate location for future structures may be, or if additional access roads will be sought to access proposed structures. The cumulative impacts of the numerous access roads, which result in fragmentation of the sensitive habitat area, would significantly degrade ESHA. The overall length of the proposed road to access the parcels and the amount of vegetation clearance and grading required to construct these roads is excessive.

The excessive grading and vegetation removal on the subject parcels has removed surface vegetation, ground cover, subsurface rootstock, and left substantial areas of bare soil throughout the property, including areas with road cuts of one to ten feet high on oversteepened hillsides exceeding 60 percent slopes. These areas are highly susceptible to erosion and may contribute directly to the degradation of water quality in the surrounding coastal waters and streams through increased sediment input. The lack of a drainage system on the roads to control the volume and velocity of runoff also results in erosion and sedimentation of stream courses both on and off site. The sedimentation of the stream courses results in the degradation of downstream riparian areas. Sedimentation increases turbidity in streams which both reduce the penetration of sunlight needed by aquatic vegetation which provide food and cover for aquatic species; disruptions to the reproductive cycle of aquatic species; and acute and sublethal toxicity in marine organisms leading to adverse changes in reproduction and feeding behavior. These impacts reduce the biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes and reduce optimum populations of marine organisms

The direct disturbance to the stream channel to construct the "Arizona" stream crossing on parcel 4464-019-008 included the removal of native vegetation along the stream corridor and modifications to the stream channel. The removal of the native vegetation in the stream and modification of the stream channel modifies the hydrology of the stream which destabilizes the stream channel making it susceptible to erosion of the banks and channel. In addition, driving vehicles through the stream creates erosion of the channel and introduces pollutants from vehicles into the stream degrading the water quality of the stream. The applicant is also seeking approval for an as-built metal culvert in a stream channel with creosote-treated railroad ties utilized as the head walls for the culvert on parcel 4464-022-001. The creosote soaked railroad ties used to construct the drainage crossing will introduce known toxic chemicals from the creosote into the drainage. These chemicals could adversely impact the water quality of the stream and downstream riparian areas.

In addition section 30236 of the Coastal Act requires that substantial alterations of streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where to other method for protection existing structures is

feasible, (3) developments where the primary function is the improvement of fish and wildlife habitat. Vehicle crossings are not an allowable use to substantially alter streams under the Coastal Act. Through past permit actions the Commission has consistently required that stream crossings be accomplished through bridging to avoid alteration of streams and to minimize and avoid adverse impacts to the stream habitat and water quality. Therefore, the two at-grade stream crossings of parcels 4464-019-008 and 4464-022-001 will result in a substantial alteration of the stream and result in adverse impacts to water quality and stream habitat which are not consistent with sections 30231, 30236 and 30240 of the Coastal Act.

As previously mentioned, on Parcel 4464-022-001 the Commission in its approval of CDP 4-96-084 (Von Hagen) recognized 970 linear feet of road from Castro Motorway and approved a small modular home, 4,700 gallon water tank, entry gate and 40 cu. yds. of grading. This CDP also required the removal of unpermitted development consisting of a two story geodesic dome, unpermitted residential trailer, and various refuse dumped on the site. The permit also required restoration and revegetation of approximately 850 feet of unpermitted road extensions to the access road. The restoration of the unpermitted roads was implemented in September of 1997. However, portions of this restoration area have been destroyed by the recent unpermitted road construction. CDP application 4-03-071 includes road repair and clearance of portion of the permitted road on the parcel as an existing road. However, the improvements to the existing permitted road are combined with the unpermitted road construction in areas previously required to be restored through CDP 4-96-084. The applicant has not clearly defined in the permit application where the existing permitted road ends and the unpermitted road through the restoration area begins. Although the road improvement to the existing permitted road appears to be minor the Commission cannot at this time approve the improvements to the existing road without knowing exactly where the existing road improvements end and new road construction begins. The applicant could submit a CDP application for clearing and repair of the previously existing permitted road with plans that clearly illustrate the extent of the proposed improvements to the existing road. The Commission is likely to approve minor repairs and clearing of the existing road.

Finally, there are environmentally preferred road designs and road patterns which could have afforded access to the parcels for geologic testing or other purposes which could have avoided sensitive environmental resources, streams, and minimized vegetation clearance and grading. Any alternative road design would also have to include locations for potential future residential development to ensure additional roads would not be required and ensure the access road lengths are minimized.

These significant adverse impacts, resulting from construction of the proposed roads and stream crossings, to ESHA and water quality of the area are not consistent with Sections 30230, 30231, 30236 and 30240 of the Coastal Act, or with the guidance policies of the Malibu/Santa Monica Mountains Land Use Plan. As such, the Commission finds that the proposed developments must be denied.

#### **D. VISUAL RESOURCES**

Section 30251 of the Coastal Act requires that visual qualities of coastal areas shall be considered and protected and that, where feasible, degraded areas shall be enhanced and restored. In addition, in past Commission actions, the Commission has required new development to be sited and designed to protect public views from scenic highways, scenic coastal areas, and public parkland. Further, the Commission has also required structures to be

designed and located so as to create an attractive appearance and harmonious relationship with the surrounding environment. As a result, in highly scenic areas and along scenic highways, new development (including buildings, fences, paved areas, signs, and landscaping) has been required to be sited and designed to protect views to and along the ocean and other scenic features, to minimize landform alteration, to be visually compatible with and subordinate to the character of the project setting, and to be sited so as not to significantly intrude into the skyline as seen from public viewing places. Additionally, in past actions, the Commission has also required new development to be sited to conform to the natural topography.

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 subordinated to the character of its setting.***

In addition, the Commission has used the policies of the LUP as guidance regarding the consistency of development projects with the provisions of the Coastal Act. Following are the specific LUP policies that pertain to the protection of visual resources:

***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, solids, 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 scenic highways to and along the shoreline and to scenic coastal areas, including public parklands. Where physically and economically feasible, development on sloped terrain should be set below road grade.***

***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 LCP.***

***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 not to significantly intrude in the skyline as seen from public viewing places***

***P131 Where feasible, prohibit placement of structures that will break the ridgeline view, 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 project sites are surrounded by public parklands and very low-density residential development. Owing to this land use pattern, the rural atmosphere, open spaces, vistas, and large contiguous areas of natural landforms and native vegetation, the area is highly scenic. The project area is visible from a very large area, including parklands and trails. The site is visible, in particular, from Latigo Canyon Road, National Parks Services lands, Santa Monica Mountains Conservancy lands, and Castro Crest Loop Trail.

The subject properties are surrounded by the Santa Monica Mountains National Recreation Area, which is a popular visitor destination point for recreation, and includes several trails. Several hundreds of acres of public parklands and public trails lie adjacent to the subject properties, and represent a substantial public investment in adjacent open space and recreational lands.

The properties are also in a highly scenic area due to the rural atmosphere, open spaces and vistas, large continuous areas of native vegetation and extensive network of publicly owned lands. The proposed development would contribute significantly to the degradation of scenic resources and the community character of the surrounding rural area through the alteration of the natural landform on the site's steep hillsides and ridge tops.

The proposed roads on the subject properties are located in a sparsely developed area of the Santa Monica Mountains, and will be easily visible from public parklands, portions of the Castro Crest loop trail, and from Latigo Canyon Road. The proposed roads, road cuts and clearance of vegetation on the subject properties degrades scenic views as seen from these public view points and areas. As previously mentioned, there are alternative environmentally preferred road designs that would minimize road lengths and avoid steeply slope areas which would in turn reduce the scale and visibility of access roads to the subject parcels. Therefore, the Commission finds, the proposed project will not minimize grading and landform alteration in a highly scenic area, and will adversely affect public views, therefore the proposed and existing development is not consistent with the requirements of Section 30251 of the Coastal Act or the visual resource policies of the Malibu/Santa Monica Mountains Land Use Plan.

## **E. COMMUNITY CHARACTER AND RECREATION**

The Coastal Act has policies that provide protection for community character, requiring that new development be visually compatible with the character of surrounding areas and protect views. Further, the Coastal Act provides for the protection of special communities that are popular visitor destinations for recreational uses. Finally, one of the basic mandates of the Coastal Act is to maximize public access and recreational opportunities within coastal areas and to reserve lands suitable for coastal recreation for that purpose.

Section 30210 of the Coastal Act states:

***In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.***

Section 30212(a) of the Coastal Act states:

**Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects . . .**

Section 30252(3) of the Coastal Act states:

**The location and amount of new development should maintain and enhance public access to the coast by (3) providing non-automobile circulation within the development . . .**

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 subordinated to the character of its setting.**

Section 30253(5) of the Coastal Act states:

**New development shall:**

**(5) Where appropriate, protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses.**

As stated previously, the four subject sites are located northeast of Latigo Canyon Road and north of and adjacent to Castro Peak Motorway in the unincorporated Malibu area of Los Angeles County and adjacent to or in close proximity to National Parks Services lands, Santa Monica Mountains Conservancy lands, and riding and hiking trails, including the "Castro Crest" loop trail and the Backbone Trail. The area surrounding the project site is very rural in character, with wide-open spaces and vistas. A large network of publicly owned lands in the region adds to this area's character. Those areas within the vicinity of the project site that are not publicly owned land are only sparsely developed, further preserving the rural character of the surrounding area.

The sites are also located within an area which was designated as the Santa Monica Mountains National Recreation Area (SMMNRA) in 1978 by the United States Congress. The SMMNRA was established to "manage the recreation area in a manner which will preserve and enhance its scenic, natural, and historical setting and its public health value as an airshed for the Southern California metropolitan area while providing for the recreational and educational need of the visiting public."<sup>5</sup> The Santa Monica Mountains and the SMMNRA form the western backdrop for the metropolitan area of Los Angeles and the heavily urbanized San Fernando and Conejo valleys. Los Angeles County is populated by well over nine million people, most of whom are within an hour's drive of the Santa Monica Mountains.<sup>6</sup> Within the SMMNRA, the Santa Monica Mountains offer rugged open spaces, jagged rock outcroppings, and primitive wilderness areas, in addition to homes, ranches, and communities. The SMMNRA provides the public and local residents with outdoor recreational opportunities and an escape from urban

<sup>5</sup> Public Law 95-625.

<sup>6</sup> Santa Monica Mountains Area Recreational Trails Coordination Project, Final Report, September 1997, page 34.

settings and experiences. It is the unique beauty, wilderness, and rural character of this area that continues to draw so many visitors and residents to it.

For the above reasons, the SMMNRA constitutes a unique and special wilderness and recreational area and, as a result, is a popular visitor destination point for active and passive recreational use. Available data indicate that existing recreational facilities in the region are currently experiencing sustained demand that is often over capacity. According to the State Department of Parks and Recreation, total visitation at state-managed parks and beaches alone was estimated at 2,747,000 from 1986 to 1987. The County of Los Angeles estimated that user activity days for hiking and backpacking will rise from 12,786,471 in 1980 to 16,106,428 in 2000; camping from 8,906,122 to 10,622,744; and horseback riding from 6,561,103 to 7,511,873. As the population in California, and in the Los Angeles metropolitan area in particular, continues to increase, the demand on the parks within the SMMNRA can be expected to grow. The preservation of the unique rural character of the parks and communities within the SMMNRA is, thus, of the utmost importance for continued quality coastal recreational opportunities. In addition to their location within the SMMRA, the project sites are located adjacent to public parklands owned by the National Park Service.

In order to aid in preserving the rural, open character of this area, the parcels on the northside of Castro Peak, including the subject sites, are for the most part designated by the Malibu/Santa Monica Mountains LUP as "Mountain Land (one dwelling unit per 20 acres). Several smaller areas on less steep slopes are designated under the LUP as Rural Land I (one dwelling unit per ten acres). Under the certified LUP, Mountain Land is described as: "Generally very rugged terrain and/or remote land characterized by very low-intensity residential development", while Rural Land is characterized as "[g]enerally low-intensity rural areas characterized by rolling to steep terrain usually outside established rural communities". These density and use policies under the certified LUP have been largely successful in maintaining the unique rural character of this area and presence of open spaces and vistas.

Two of the permit applications (4-03-069 and 4-03-070) include a request for after-the-fact approval for the construction of gates across existing roadways. In the case of application 4-03-069, the applicant is proposing two "chain" type gates on an existing "pre-coastal" road on parcel 4464-019-008. This road traverses the northwest corner of the parcel and appears to provide access to a parcel located to the north (Exhibit 4d). The property deed indicates that there are road easements over this property. It is logical to assume the road easement is for the neighboring property to the north, which is accessed by the existing road. The applicant has not provided any evidence he has the legal ability to construct a gate on the existing access road within the road easement which would effectively block access to a neighboring property. Staff is not aware of any evidence to indicate this road serves as a public trail route for hikers or equestrians. In addition, the gates are not visible from any public viewing area. Provided the applicant could submit evidence to the Commission that he has the legal right to construct gates on the road, it is possible that this development could be found consistent with the Coastal Act. However, given that the applicant has not provided evidence he has the legal ability to construct the proposed gates, the Commission finds that the gates cannot be permitted at this time. The applicant can submit a coastal development permit application in the future for gates on this road with the appropriate evidence he has the legal right to do so pursuant to the road easement.

With regard to Permit Application 4-03-070, the applicant is requesting after-the-fact approval for the construction of two gates, each comprised of two metal posts with a chain spanning the

roadway and several no trespassing signs. These gates and signs are located across Newton Canyon Motorway and Castro Motorway where the two roads intersect on Parcel 4464-022-010. As noted above, the gates/fences were recently placed on the project site without a coastal development permit. As described above, the subject parcels are accessed from Latigo Canyon Road, across Castro Motorway. Castro Motorway is part of a network of unpaved roads constructed by Los Angeles County to provide access for the Fire Department in remote areas for fire-fighting purposes. Castro Motorway appears in the earliest photos staff has viewed of the area (1944). Newton Canyon Motorway, which intersects Castro Motorway on parcel 4464-022-010 is shown as a fire road on the Department of County Forester and Fire Warden, Divisional Map No. 1, Battalion 5, 1950 edition. This road is also visible in an aerial photograph from 1958.

According to the Los Angeles County Fire Department, these fire roads are maintained by the Fire Department for dry-weather access. The fire roads are not paved. The County does not hold easements over most of these roads, but rather uses and maintains them by agreement with the underlying property owners. Should a property owner not agree to the Fire Department's maintenance or use of a fire road, then the Fire Department would not be able to use the road to access an area for fire-fighting.

In addition to their use for fire-fighting purposes, many fire roads are used extensively by the public in the Santa Monica Mountains for recreational purposes. Wide, graded roads are attractive to hikers, equestrians, and more recently, mountain bikers as routes to traverse, and in many cases, to reach public recreation areas. Newton Canyon Motorway and portions of Castro Motorway, are part of a loop trail referred to as "Castro Crest". The loop comprises the Backbone Trail, which in this area is located in Solstice Canyon, Castro Motorway, and Newton Canyon Motorway. This loop trail can be reached either along the Backbone from Latigo Canyon Road to the west or from the east at the trail head at the northern end of Corral Canyon Road. Loop trails are very popular with hikers and other users for an obvious reason, namely that it is possible on a loop to traverse different topography, different habitats, and gain different views while still returning to the starting point. The applicants are proposing two gates on Newton Canyon Motorway and Castro Motorway on parcel 4464-022-010 (CDP Application 4-03-070) which will block access over the Castro Crest loop trail (Exhibits 3 & 5c). Staff found numerous references to this trail, both individually, and as part of the larger trail network that extends to Kanan Dume on the west and into Malibu Creek State Park on the east on websites designed to exchange trail information for mountain bikers, hikers, and trail runners.

Staff has received several letters in relation to another coastal development permit application nearby (CDP app. #4-02-175), regarding public use of Newton Canyon Motorway as a hiking and riding trail. Because the gates proposed in Permit application 4-03-070 would be located on another portion of the same "Castro Crest" loop trail considered in Permit Application 4-02-175, the Commission considers the evidence provided by the public regarding 4-02-175 to be pertinent to the consideration of Permit Application 4-03-070 as well.

One letter, from Alicia Roberts (letter dated August 20, 2003 was addressed to the National Park Service and provided to Los Angeles County as well) states that the recreation use of Newton Canyon Motorway and Castro Peak Motorway has been extensive. The author's family owned a ranch in Solstice Canyon and the author states that she personally rode her horse on both roads since the 1960's. The letter further states that:

Several equestrian groups including the Santa Monica Mounted Police, ETI Corral 23, and Trancas Riders and Ropers all rode on these fire trails in the 60's, 70's, and 80's. During these years, these groups had large memberships. I was a member of Corral 23 and TRR. I rode on Castro and Newton roads with both groups. When the Santa Monica Mounted Police camped at our ranch, I would accompany them on their posse patrols up Solstice to Castro Peak/Newton Canyon Motorway and then over to Latigo or Ramirez Canyon

Additionally, a letter dated October 3, 2003 was received from the Santa Monica Mountains Trail Council. This letter states that:

Three gates have been erected below Castro Peak on the Newton Canyon fire road. The gates are imposing and intimidating and were apparently built to impede the access of hikers and horseback riders along the fire road that the public has used as a trail for over 30 years. The Santa Monica Mountains Trails Council requests that these gates be removed to avoid blocking the trail access and so that the public may continue to easily use the trail.

This Trails Council letter includes a map showing the approximate location of the three referenced gates. The three gates include the two gates on Newton Motorway addressed by the Commission in Permit Application 4-02-175 as well as one of the two gates included in the subject Permit Application 4-03-070.

Further, Klaus Radtke, a Santa Monica Mountains Trail Council Board Member, submitted two letters. His letter dated November 3, 2003 details three gates that had been placed on the loop trail a short time before his letter. The three gates include the two gates on Newton Motorway addressed by the Commission in Permit Application 4-02-175 as well as one of the two gates included in the subject Permit Application 4-03-070. Mr. Radtke also submitted a letter dated December 12, 2003 detailing his use of Newton Canyon Motorway, both as a hiker in 1959, as well as a Fire Department forester in the 60's and 70's. The letter states that:

...I hiked many times to the lookout tower in the summer of 1959, using the Castro Peak Motorway and connecting motorways and trails. Castro Peak Motorway offered stunning views of mountains, rock formations, and the ocean and soon I was hiking all the way to the beach, often using Newton Motorway as a shortcut from Castro Peak Motorway. I regularly met hikers and equestrians during my hiking excursions.

Mr. Radtke also relates the experience of three other Trails Council board members (Karynne Zontelli, Milt McAuley, and Jo Kitz) using Newton and Castro Peak Motorways in the 70's and 80's. Jo Kitz submitted a letter, dated January 2, 2004 detailing her use of the Castro Crest loop trail for organized hikes by members of the Sierra Club. Karynne Zontelli submitted a letter (received January 8, 2004) detailing her use of the trail. This letter states that:

As a member of the community, president of ETI Corral 63, president of the EHRA: I request that the above referenced gates be removed. It is my understanding that these gates were installed without a coastal permit and block and severely inhibit the use of a very popular and much used trail in the SMMRA. I have personally been the sponsor of equestrian events annually since 1972 using this trail. In addition, since 1981 I have co sponsored run and hiking events through this area continuously. My neighbors and friends have accompanied me using this trail weekly since 1971.

Lillian Trevisan has submitted a letter dated January 5, 2004, stating that she is a Sierra Club hike leader and that she has led hikes on this loop trail for many years. The Conejo Group of the Sierra Club has submitted a letter, dated January 3, 2004 that states:

The Newton Motorway in the area of Castro peak is part of a loop route that had until recently been heavily used by hikers, bicyclists, and horsemen traveling in this area. The motorway was developed and has been maintained using public money. Installation of these gates has prevented public use this loop trail route. We realize this segment of trail crosses a parcel of privately held land, but this segment of the Newton Motorway has been in general use as a recreational trail for more than forty years.

Further, the County of Los Angeles Department of Parks and Recreation submitted a letter, dated January 13, 2004 that states the following:

The Los Angeles County Department of Parks and Recreation would like to express our concern with reference to the proposed gates located on the Newton Motorway and the development of a public access road to the property between the gates. The proposed gates would block a section of the Newton Motorway, which is part of a six mile loop connector trail. This loop trail has connections to the popular Backbone Trail system. The proposed gates would fragment one of a limited number of prime recreational loop trail opportunities in the Santa Monica Mountains National Recreation Area, and make it virtually unusable to hundreds of trail users in the Santa Monica Mountains. Newton Motorway has become a popular recreational trail route and deserves to be kept open to the public.

Finally, 19 other letters and 2 e-mail messages (sent to the Commission's Public Education Program) have been submitted from members of the public detailing their personal use of the Castro Crest loop trail.

Evidence exists then of public use of the Newton Canyon Motorway and Castro Motorway for hiking and equestrian use, including potential prescriptive rights, which would be affected by the proposed development. The road existed since as early as 1950, was created and has been maintained by a public agency continually since that time. The segment of Newton Motorway, along with Castro Motorway and the Backbone Trail comprise a trail loop, the majority of which crosses public parkland. Based on the letters submitted describing historic use, the Commission finds that potential exists to establish prescriptive rights for public use of this road.

The applicant is requesting after-the-fact approval for the construction of two gates each comprised of two metal posts with a chain spanning the roadway and several no trespassing signs. These gates and signs are located across Newton Canyon Motorway and Castro Motorway where the two roads intersect on Parcel 4464-022-010 (CDP Application 4-03-070). As noted above, the gates/fences were recently placed on the project site without a coastal development permit. As designed (and as constructed), the gates preclude access on the road for vehicular, equestrian, or pedestrian travel. The applicant has not given any reason that the gates/fences are necessary, except to state a concern regarding liability. As to the concern of liability, California law provides private landowners with immunity from liability for injuries sustained by persons using the property for recreation use. California Civil Code Section 846 states that:

An owner of any estate or any other interest in real property, whether possessory or nonpossessory, owes no duty of care to keep the premises safe for entry or use by others for any recreational purpose or to give any warning of hazardous conditions, uses of

structures, or activities on such premises to persons entering for such purpose, except as provided in this section.

A "recreational purpose" as used in this section, includes such activities as fishing, hunting, camping, water sports, hiking, spelunking, sport parachuting, riding, including animal riding, snowmobiling, and all other types of vehicular riding, rock collecting, sightseeing, picnicking, nature study, nature contacting, recreational gardening, gleaning, hang gliding, winter sports, and viewing or enjoying historical, archaeological, scenic, natural, or scientific sites.

An owner of any estate or any other interest in real property, whether possessory or nonpossessory, who gives permission to another for entry or use for the above purpose upon the premises does not thereby (a) extend any assurance that the premises are safe for such purpose, or (b) constitute the person to whom permission has been granted the legal status of an invitee or licensee to whom a duty of care is owed, or (c) assume responsibility for or incur liability for any injury to person or property caused by any act of such person to whom permission has been granted except as provided in this section.

This section does not limit the liability which otherwise exists (a) for willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity; or (b) for injury suffered in any case where permission to enter for the above purpose was granted for consideration other than the consideration, if any, paid to said landowner by the state, or where consideration has been received by others for the same purpose; or (c) to any persons who are expressly invited rather than merely permitted to come upon the premises by the owner.

Nothing in this section creates a duty of care or ground of liability for injury to person or property.

As such, immunity exists from liability for injury to persons who have used or will use Newton Canyon Motorway or Castro Motorway for recreational purposes.

The relatively recent phenomenon of gated communities has become increasingly present in inner city and suburban areas since the late 1980s, often in response to security concerns. The spread of gated communities helps to create a "fortress mentality."<sup>7</sup> As Edward J. Blakely, Dean and of the School of Urban and Regional Planning at the University of Southern California, and Mary Gail Snyder, Professor in the Department of City and Regional Planning at the University of California at Berkeley, describe the phenomenon of gated communities:

***Millions of Americans have chosen to live in walled and fenced communal residential space that was previously integrated with the larger shared civic space. . . . In this era of dramatic demographic, economic and social change, there is a growing fear about the future in America. Many feel vulnerable, unsure of their place and the stability of their neighborhoods in the face of rapid change. This is reflected in an increasing fear of crime that is unrelated to actual crime trends or locations, and in the growing number of methods used to control the physical environment for physical and economic security. The phenomenon of walled cities and gated communities is a dramatic manifestation of a new fortress mentality growing in America. Gates, fences, and private security guards, like***

<sup>7</sup> Fortress America, Gated Communities in the United States, Edward J. Blakely and Mary Gail Snyder, the Brookings Institution, 1997.

**exclusionary land use policies, development regulations, and an assortment of other planning tools, are means of control, used to restrict or limit access to residential, commercial, and public spaces. Americans are electing to live behind walls with active security mechanisms to prevent intrusion into their private domains. Americans of all classes are fortifying up, attempting to secure the value of their houses, reduce or escape from the impact of crime, and find neighbors who share their sense of the good life.**<sup>8</sup>

Furthermore, it is estimated that at least three to four million and potentially many more Americans have already sought out this new form of refuge from the problems of urbanization.<sup>9</sup> One study estimates that one million Californians are seeking a gated refuge.<sup>10</sup> In fact, a 1991 poll of the Los Angeles metropolitan area found 16 percent of respondents living in some form of "secured-access" environment.<sup>11</sup>

The area surrounding the subject site, however is rural in nature, as opposed to suburban or urban, and is open rather than closed, walled, and private. The proposed gate will convey to visitors the message: keep out, visitors are not welcome. This impact is inconsistent with the fact that the site is located with the SMMNRA, an area devoted to providing visitors with recreational opportunities and protecting natural habitats. In fact, one paper discussing security design options states that territorial reinforcement, such as a security gate, defines public and private spaces, and "serves as a warning and deters entry by an offender" while at the same time "legitimate users experience a sense of arrival or welcome and know they belong."<sup>12n</sup>

To deal with the increasing trend to gate communities, the City Council of La Habra Heights, located in Los Angeles County, California, adopted an ordinance in 1990 which made it expressly illegal to install a security gate across a private or public road in order to preserve the rural character of the community (Exhibit 42).<sup>13</sup> Like the area of the subject site, La Habra Heights is also located within the near vicinity of the Los Angeles metropolitan area, increasing the inherent value of such open, rural, sparsely developed areas. As City Council members stated, at stake "is more than just an electronic security barrier, but the rural, independent, neighborly ambience that attracted residents to settle here . . ."<sup>14n</sup> As with the area of the subject site, La Habra Heights also lacks city sewer lines, has narrow streets without curbs or gutters, and lacks street lights, in part to preserve the valued rural atmosphere.<sup>15</sup> As a result, to prevent the urbanization of La Habra Heights (a particular threat due to an encroaching Los Angeles metropolis) and to protect the rural, neighborly ambience of the community, the municipality expressly banned all security gates. Likewise, a security gate at the proposed location would also conflict with the character of the surrounding rural atmosphere, characterized by open vistas and spaces.

<sup>8</sup> Id. at 1 and 2.

<sup>9</sup> Id. at 2 and 3.

<sup>10</sup> "Am I My Brother's Gatekeeper? The Fortressing of Private Communities Contributes to the Increasing Fragmentation of American Society," Edward J. Blakely, The Daily News of Los Angeles, March 1, 1998, page V1.

<sup>11</sup> Id.

<sup>12</sup> "Safe Place Design," Diane Zahm, Ph.D.; Sherry Carter, AICP; Al Zelinka, AICP; Contrasts & Transitions, Conference Proceedings, APA, San Diego, 1997.

<sup>13</sup> "La Habra Heights Shuts the Gates; Privacy: Council Majority Calls Action to Bar Gated Communities a Stand Against Elitism; Real Estate Industry Leader Express Dismay," Howard Blume, The Los Angeles Times, September 20, 1990, Page 7, Column 1.

<sup>14</sup> Id.

<sup>15</sup> Id.

The Commission finds that the construction of the proposed gates/fences are not consistent with the community character of the surrounding area and would detract from the rugged, natural atmosphere that is a unique characteristic of the SMMNRA, of which the subject site is a part. A gate/fence, one of the more dramatic forms of residential boundaries, would render the community character of this area more urban, developed, private, walled off, and closed in nature, as opposed to the rural, open community character it currently maintains and which attracts so many visitors seeking to experience the beauty of the rugged and scenic Santa Monica Mountains.

This concern is addressed in the Santa Monica Mountains Area Recreational Trails Coordination Project, Final Report, (SMMART), which was prepared through the cooperative effort of the Santa Monica Mountains Area Recreation Trails Coordination Project, facilitated by the Rivers, Trails and Conservation Assistance program of the National Park Service, and with input from interested local agencies, organizations, individuals. That report states:

***Although over 450 miles of recreational trails exist within the park lands of the Santa Monica Mountains National Recreation Area, needs for trails exist in the areas outside of the established park system. For example, trails provide linkages between parks and from residential areas into parks. Trail linkages enhance the park experience for visitors and help to bring visitors into the parks. Some of these trails are located on privately owned land and their future use may be restricted due to development or fencing of property.***<sup>16</sup>

One article reports on Alamo, a city in the San Francisco Bay Area, where many people living next to wildlands are increasingly impeding access to trails and parks, due to fears that hikers will vandalize, litter, loiter, and become a nuisance<sup>17</sup>. Steve Fiala, a trails specialist for the East Bay Regional Park District, states that as the number of hikers has grown and homeowners become more fearful of strangers, the two groups are eyeing each other with distrust and suspicion.<sup>18</sup>

In past Commission actions, the Commission has found that gates may deter the public from using trails that exist across particular sites. Although the Commission has approved security gates in past actions, the Commission has also denied similar proposals in the past on the basis that a security gate would deter or inhibit public access. In the appeal 4-VNT-98-225 (Breakers Way Property Owners Association), the Commission denied a permit for a security gate, that also provided for a pedestrian gate, at the entrance to the Mussel Shoals Community in Ventura County, due to a determination that public access would be discouraged. In that appeal, the Commission was concerned the security gate would impede public access. Similarly, in appeal A-3-SCO-95-001 (Santa Cruz County Service Area #2), the Commission denied a permit for a gate on a bluff top stairway to restrict access during evening hours to a public beach on the basis that there were less restrictive alternatives that could be implemented to address the neighborhood security concerns. The Commission more recently denied a permit application on the parcel adjacent to parcel 4464-022-010 for two gates located on Newton Canyon Motorway under permit application 4-02-175 (LT-WR, LLC). In its action on this permit application, the Commission found that evidence existed of public use of the Newton Canyon Motorway and Castro Motorway for hiking and equestrian use, including potential

<sup>16</sup> Santa Monica Mountains Area Recreational Trails Coordination Project, Final Report, September 1997, page 25.

<sup>17</sup> "Access Battles, Homeowners Near Park Entrances Wary of Noisy Hikers, Parking Woes," San Francisco Chronicle, Patricia Jacobus, April 16, 1998, page A1.

<sup>18</sup> Id.

prescriptive rights, which would be affected by the installation of gates across Newton Canyon Motorway.

In addition, research indicates that a major deterrent to public use of recreational trails and similar public recreation areas and facilities is a perception by the public that an area is private property. Gates create physical barriers to access and privatize community space, not merely individual space.<sup>19</sup>

As Blakely and Snyder write:

***Gated communities physically restrict access so that normally public spaces are privatized. They differ from apartment buildings with guards or doormen, which exclude public access to the private space of lobbies and hallways. Instead, gated communities exclude people from traditionally public areas like sidewalks and streets.***<sup>20</sup>

Further, in Fortress America, Gated Communities in the United States, Blakely and Snyder state the intent of controlled entrances: "to prevent penetration by nonresidents."<sup>21</sup> Blakely and Snyder also list one potential consequence of gates, which is a critical consideration in an area such as the subject site, located adjacent to Charmlee Park and within the vast tract of the SMMNRA which is checkered with invaluable parkland. They state:

***Gates can make access to shorelines, beaches, and parks so difficult that those public resources become essentially private preserves.***<sup>22</sup>

In addition, one element of the theory supporting street closures, "crime prevention through environmental design" (CPTED) which uses psychological inducements and deterrents, recommends natural access controls (such as the proposed gate) for the physical guidance of people coming and going from a space.<sup>23</sup> Another principle of CPTED includes the use of territorial reinforcement (such as the proposed security gate), so that defensible space or clear physical boundaries are created.

In the case of the current permit application (4-03-070), the proposed as-built gates would clearly delineate a boundary between public and private property and foster a sense of privatization. The gates deter entry by members of the public who wish to access National Park Service parklands through this route that has traditionally been used. As a result, the gates not only decrease the public's perception that they may pass along Newton Canyon Motorway or Castro Motorway as part of a trail loop, but physically block their passage, and this trail will likely experience diminished use.

The Commission finds that the proposed as-built gates on parcel 4464-022-010 (CDP application 4-03-070) are not consistent with the community character of the surrounding area and would detract from the rugged, natural atmosphere that is a unique characteristic of the SMMNRA, of which the subject site is a part. The project would alter the valued rural, open,

<sup>19</sup> "Am I My Brother's Gatekeeper? The Fortressing of Private Communities Contributes to the Increasing Fragmentation of American Society," Edward J. Blakely, The Daily News of Los Angeles, March 1, 1998, page V1.

<sup>20</sup> "Putting Up the Gates," Edward J. Blakely and Mary Gail Snyder, National Housing Institute, May/June 1997.

<sup>21</sup> Fortress America, Gated Communities in the United States, Edward J. Blakely and Mary Gail Snyder, the Brookings Institution, 1997, page 2.

<sup>22</sup> Id. at 154.

<sup>23</sup> Id. at 122.

and scenic community character of this area within Malibu and the Santa Monica Mountains and would not protect the unique characteristics of the SMMNRA. As discussed above, the Commission finds that the SMMNRA is a popular visitor destination point for recreational uses. The proposed project site (4464-022-010) given its location and proximity to large, open areas of public parkland is part of this special community. The proposed fences/gates will not protect this popular visitor destination point.

The proposed as-built gates are unnatural, manmade structures. This development alters the valued scenic qualities that this area possesses and is not visually harmonious with or subordinate to the character of its setting in this area of Malibu, the Santa Monica Mountains, and the SMMNRA. Although the gates are not highly visible from a great distance, they are visible from the public lands that are directly adjacent both east and west of the project site. In addition, the proposed project does not create a harmonious relationship with the surrounding environment, does not protect scenic views, and does not conform to the natural topography of the area.

As described above, letters have been provided that relate past use of Newton Canyon Motorway and Castro Motorway for recreational purposes. Evidence exists of public use of the Newton Canyon Motorway and Castro Motorway for hiking and equestrian use, including potential prescriptive rights, which would be affected by the proposed development. The road existed since as early as 1950, was created and has been maintained by a public agency continually since that time. The segment of Newton Motorway, along with Castro Peak Motorway and the Backbone Trail comprise a trail loop, the majority of which crosses public parkland. Based on this information, the Commission finds that potential exists to establish prescriptive rights for public use of this road. The proposed as-built gates/fences physically block the public's continued use of this fire road for hiking, equestrian, mountain biking, or any other recreational purpose.

In conclusion, based on these facts, the Commission finds that the construction of gates on parcel 4464-022-010 that are proposed as part of Permit Application 4-03-070, for the reasons stated above, would not comply with Sections 30210, 30212(c), 30251, 30252(3), and 30253(5) of the Coastal Act, which mandate that maximum public access and recreational opportunities be provided, that new development be visually compatible with the character of the surrounding area, and that special communities that are popular visitor destination points be protected. As such, the Commission finds that the proposed gates on parcel 4464-022-010 must be denied.

Further, as detailed above, the Commission finds that the construction of the gates proposed as part of Permit Application 4-03-069 is not consistent with the applicable policies of the Coastal Act. In this case, staff is not aware of any evidence to indicate the road on Parcel 4464-019-008 serves as a public trail route for hikers or equestrians. As such, it does not appear that the construction of the two gates on this property would adversely impact public access or recreation. In addition, the gates are not visible from any public viewing area. However, the applicant has not provided any evidence he has the legal ability to construct a gate on the existing access road within the road easement which would effectively block access to a neighboring property. Provided the applicant could submit evidence to the Commission that he has the legal right to construct gates on the road, it is possible that this development could be found consistent with the Coastal Act. However, given that the applicant has not provided evidence he has the legal ability to construct the proposed gates, the Commission finds that the gates cannot be permitted at this time.

## **F. UNPERMITTED DEVELOPMENT**

Unpermitted development occurred on the subject parcels prior to submission of these permit applications including unpermitted removal of major vegetation and disturbance of Environmentally Sensitive Habitat, including but not limited to removal of native chaparral and damage to native oak trees; grading and clearing of new roads and pads; unpermitted streambed alteration, including but not limited to grading, filling, and manipulation of channel substrate, installation of metal culverts and creosote-treated railroad ties, and construction of an Arizona crossing in a blue line stream; and construction of unpermitted structures including but not limited to metal gates, metal and wood gate posts with chain barriers set with concrete bases. The applicants are requesting after-the-fact approval for after-the-fact brush clearance, repair and maintenance of existing agricultural roads, installation of access road gates and new revegetation of graded slopes along an access road. There is a substantial amount of unpermitted development on the subject sites that the applicants have not proposed to include as part of the subject coastal development permit applications. The Commission's enforcement division has engaged in actions to address these matters.

On December 12, 2003, pursuant to its authority under Public Resource Code §30810, the Coastal Commission found that unpermitted development has occurred on the subject sites in violation of the Coastal Act, and thereby ordered and authorized James A. Kay, Jr., his agents, contractors and employees, Deer Valley Ranch, LLC, Panorama Ranch, LLC, Communications Relay Corporation, and any person(s) acting in concert with any of the foregoing to cease and desist from: 1) removal of major vegetation, including but not limited to removal of native chaparral, riparian habitat, and damage to native oak trees; grading and clearing of new roads and pads; streambed alteration, including but not limited to grading, filling, and manipulation of channel substrate, installation of metal culverts and creosote-treated railroad ties, and construction of an Arizona crossing in a blue line stream; and construction of unpermitted structures including but not limited to metal gates, metal and wood gate posts with chain barriers set with concrete bases, and from conducting any other unpermitted development at the site which would require a CDP, and 2) maintaining on said property any of the above referenced unpermitted development.

On December 12, 2003, pursuant to its authority under Public Resource Code §30811, the Coastal Commission found that "the development is 1) unpermitted, 2) inconsistent with the Coastal Act, and 3) causing continuing resource damage, and thereby ordered and authorizes James A. Kay, Jr., his agents, contractors and employees, Deer Valley Ranch, LLC, Panorama Ranch, LLC, Communications Relay Corporation, and any person(s) acting in concert with any of the foregoing to restore the subject properties to the extent provided below to the condition it was in prior to the undertaking of the development activity that is the subject of this order.

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

## **G. LOCAL COASTAL PROGRAM**

Section 30604(a) of the Coastal Act states:

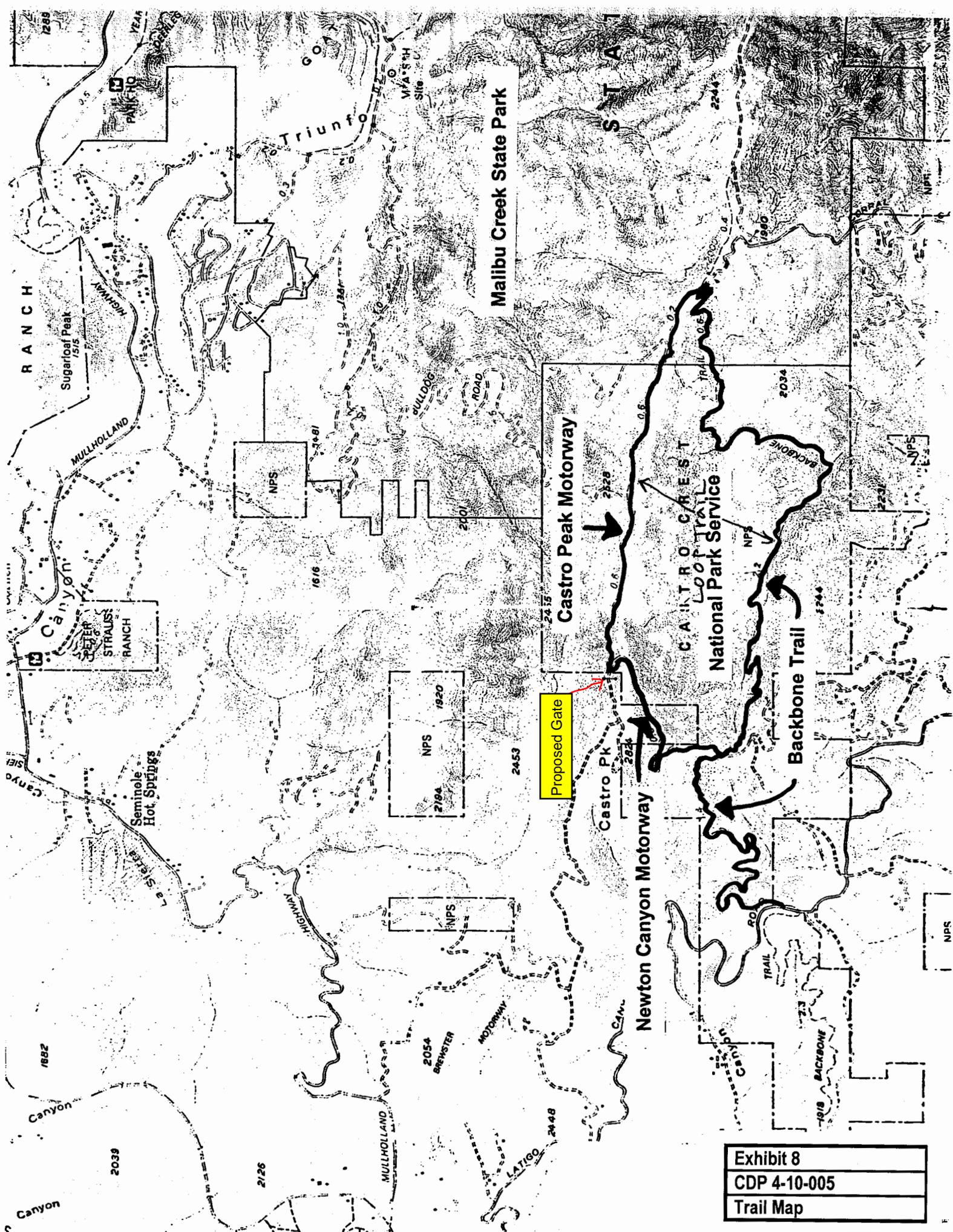
***Prior to certification of the local coastal program, a coastal development permit shall be issued if the issuing agency, or the Commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the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

Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which 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 as proposed by the applicant. Therefore, the Commission finds that approval of the proposed development, as conditioned, will prejudice the County's ability to prepare a Local Coastal Program for the Santa Monica Mountains area which is also consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

#### **H. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

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

The Commission finds that the proposed project will have significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970. Therefore, the proposed project is determined to be inconsistent with CEQA and the policies of the Coastal Act.



Malibu Creek State Park

Castro Peak Motorway

Newton Canyon Motorway

National Park Service

Backbone Trail

Proposed Gate

Exhibit 8
CDP 4-10-005
Trail Map



Site View Looking West



Exhibit 10  
CDP 4-10-005  
Aerial View