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CALIFORNIA COASTAL COMMISSION COUTH CENTRAL COAST AREA COUTH CALIFORNIA ST., SUITE 200 NTURA, CA 93001 (805) 641-0142

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STAFF REPORT: AMENDMENT

APPLICATION NO.: 4-98-194-A1

APPLICANT: Dick and Diane Sittig AGENT: Lynn Heacox

PROJECT LOCATION: 6763 Zumirez Drive, City of Malibu, Los Angeles County

DESCRIPTION OF PROJECT PREVIOUSLY APPROVED: Demolish existing 1,700 sq. ft., single story, single family residence and construct a new 6,033 sq. ft., two story, 26 ft. 9 in. above finished grade single family residence, retain existing 494 sq. ft. detached garage, construct swimming pool, 2,854 sq. ft. pool deck, 5,548 sq. ft. tennis court, install 1,500 gallon septic tank and 3 seepage pits, with 761 cu. yds. of grading (all cut), and remove 5 mature, non-native trees on a 1.49-acre lot.

DESCRIPTION OF AMENDMENT: Construct a 509 sq. ft., single story, 18 ft. high above existing grade, cabana/pool house with no additional grading or vegetation removal, and no change to the approved fuel modification plan.

<u>PROCEDURAL NOTE</u>: The Commission's regulations provide for referral of permit amendment requests to the Commission if:

- 1) The Executive Director determines that the proposed amendment is a material change,
- 2) Objection is made to the Executive Director's determination of immateriality, or
- 3) The proposed amendment affects conditions required for the purpose of protecting a coastal resource or coastal access.

If the applicant or objector so requests, the Commission shall make an independent determination as to whether the proposed amendment is material. 14 Cal. Code of Regulations Section 13166. In this case, the Executive Director has determined that the proposed amendment is a material change to the project and has the potential to affect conditions required for the purpose of protecting a coastal resource.

Executive Summary and Staff Recommendation:

Staff recommends that the Commission <u>approve</u> the proposed amendment with one special condition (new Special Condition 9) to address potential changes to Los

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Angeles County Fire Department fuel modification requirements that may be imposed on the subject site due to the cabana's location, in the future. All other terms and conditions of Coastal Development Permit 4-98-194 remain in full force and effect and are neither changed nor replaced by the approval of the proposed amendment or by the imposition of Special Condition 9.

Special Condition 9 is necessary because the Fire Department's standards for fuel modification have evolved from a requirement to clear or modify vegetation within approximately 100 feet of defensible structures to the present requirement that fuel modification extend up to 200 feet outward from applicable structures.

The Fire Department's Forestry Division approves fuel modification plans on a case-bycase basis, and may, however, change standards and enforcement practices at any time. When the 200-foot radius was selected, there were many parties involved in the discussions that gave rise to the decision who believed that even greater distances should be set for fuel modification. In addition, in the years since the Malibu wildfire, and as recently as the past spring, there have been reports that the insurance industry has urged the Fire Department and homeowners to increase fuel modification standards to 500 feet from residences in the Malibu/Santa Monica Mountains area. These increases have not been implemented by the County to date, yet illustrate the potential for change to the fuel modification guidelines in the future.

Fuel modification is a particular concern in the case of the applicants' parcel because the rear portion of the parcel slopes into, and comprises a portion of, Walnut Canyon. The canyon, which is mapped in the certified Malibu/Santa Monica Mountains Land Use Plan as a Disturbed Sensitive Resource Area (DSR), drains into Walnut Creek, at the boundary of the applicants' parcel. Walnut Creek is a designated blueline stream on the U. S. Geological Survey quadrangle maps and an Environmentally Sensitive Habitat Area (ESHA) as defined by the Coastal Act.

Fuel modification and clearance for fire hazard control is a potential consequence of new development in close proximity to sensitive habitat areas and has significant potential to disrupt habitat values. The Commission approved Coastal Development Permit 4-98-194 subject to special conditions protective of the DSR and downgradient ESHA (landscaping, future development, revised plans). The tennis court was required to be relocated, for example, to avoid construction staging and grading impacts on the downslope DSR, even though the tennis court does not trigger fuel modification requirements.

In fact, the only defensible structure (as defined by the Fire Department) before the Commission at the time of the original permit approval was the residence itself, which is setback 200 feet from the sensitive habitat area. Fuel modification for the residence,

therefore, does not extend into the DSR. The proposed cabana, however, is also considered a defensible structure by the Fire Department, and is located only approximately 100 feet from the edge of the designated habitat area (though setback significantly from the original location proposed previously by the applicants). (cont.)

To address this issue, and ensure that the cabana does not pose new adverse impacts upon the Walnut Canyon DSR, the applicants have submitted a final, approved Fuel Modification Plan for the site (including the cabana). The plan does <u>not</u> require additional fuel modification of the DSR for the cabana. The Fire Department is presently applying more flexible standards in the Point Dume area than in other more remote areas perceived as at a higher risk of wildfire. Provided these standards remain unchanged in the future, the cabana will not result in significant adverse effects on coastal resources.

If, however, the Fire Department increases the fuel modification radius from the cabana toward the DSR in the future, adverse impacts to the native vegetation on the slopes of the DSR would occur. Because the Commission would have no opportunity to initiate an amendment to the subject permit at that time to address such a change, the applicants would either be in violation of their CDP conditions upon increasing vegetation clearance, or would be forced to defy the Fire Department requirements and therefore subject to forced fuel modification or vegetation clearance of designated areas of their property under the authority of the Fire Department.

The new special condition, which is numbered as Special Condition 9, will be added to the other eight special conditions applicable to CDP 4-98-198 and requires that the applicants relocate the cabana toward Zumirez Drive, or remove it altogether, should the cabana's location give rise to increased fuel modification requirements in the future. The new condition offers the applicants fair notice that the proposed location may be unacceptable in the future, in consideration of the fact that alternative locations presently exist on the site to locate the cabana elsewhere and obviate the need for such restrictions and potential future burdens upon the applicants or successor interests.

STAFF RECOMMENDATION:

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The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions

The Commission hereby approves the amendment to the coastal development permit on the grounds that as modified the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the

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ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse effects on the environment within the meaning of the California Environmental Quality Act.

II. Standard and Special Conditions.

All standard and special conditions previously applied to Coastal Development Permit 4-98-194 continue to apply. In addition, the following additional special condition is hereby imposed as an additional condition upon the proposed project as amended pursuant to CDP 4-98-194-A1.

9. Cabana Restrictions

- (A) In accepting Coastal Development Permit 4-98-194 as amended herein in accordance with Coastal Development Permit Amendment 4-98-194-A1, the applicants agree and acknowledge that the approved location for the 509 sq. ft. cabana as shown on Exhibit 3 is acceptable only so long as the Los Angeles County Fire Department or successor agency does not increase the extent of fuel modification or vegetation removal necessary to comply with Fire Department regulations for fire hazard reduction. Should additional fuel modification requirements be imposed on the subject site that extend the radius of vegetation thinning, reduction, removal, or restrict the acceptable species downslope of the 88.25 elevation top-of-slope boundary of the parcel as shown on Exhibit 3, then the permit approval for the cabana shall expire at such time as such requirements are imposed by the Los Angeles County Fire Department or successor agency and the applicant shall submit an application for a coastal development permit within thirty (30) days of receiving notice of the changed fuel modification requirements, for the relocation of, or demolition and removal of, the subject cabana. If the applicants or successor interests elect to relocate the cabana, such relocation shall be sufficiently further toward Zumirez Drive to eliminate the proposed fuel modification downslope of the 88.25-foot elevation.
- (B) Prior to the issuance of amended Coastal Development Permit 4-98-194-A1, the applicants shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, setting forth these restrictions. The deed restriction shall be accompanied by a map prepared to scale setting forth the legal description of the entire lot, the cabana location, the location of all other approved development on the subject site, the 88.25 top-of-slope elevation line, and the top-of-ESHA elevation line as shown in Exhibit 3 attached hereto. In addition, the applicants shall include as an attachment to the deed restriction a full-sized, to-scale copy of the final approved fuel modification plan, and such plan shall be a

corrected copy that sets forth all applicable structural setbacks and boundary lines accurately.

(C) The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit or a new coastal development permit.

Findings and Declarations.

The Commission hereby finds and declares:

A. Project Description and Background.

The applicant proposes to construct a 509 sq. ft., single story, 18 ft. high above existing grade, cabana/pool house with no additional grading or vegetation removal, and no change to the approved fuel modification plan, on a 1.64-acre parcel located in the Point Dume area of the City of Malibu, at 6763 Zumirez Drive.

As noted in the Executive Summary, the applicants have submitted evidence that the Los Angeles County Fire Department will not increase the fuel modification requirements associated with the approved single family residence on the subject site, as the result of the cabana's proposed location. In addition, the Fire Department has verified that the approved fuel modification plans will be recorded as a binding covenant against the property title and thereby made a part of the public record. The fuel modification plans are kept on file at the local fire department offices. The County is currently developing a database that will track the individual fuel modification plans and thereby ensure that local fire officials do not enforce inconsistent standards that may exceed those of the approved fuel modification plans.

The proposed site slopes at the rear of the parcel into the Walnut Canyon Disturbed Sensitive Resource Area (DSR), and is bounded at the foot of the slope by Walnut Canyon Creek, a designated blueline stream and ESHA. Fuel modification requirements extending into the DSR would cause significant impacts on the habitat provided by the native chaparral vegetation characteristic of the habitat on the subject site.

B. Environmentally Sensitive Habitat Areas.

Section 30240 of the Coastal Act states:

Section 30240.

(a) 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.

(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 those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Section 30231.

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 certified Malibu/Santa Monica Mountains Land Use Plan (LUP) contains policies that provide useful guidance in evaluating the consistency of the proposed development with the policies of the Coastal Act. These policies have been found by the Coastal Commission in certifying the LUP to incorporate the resource protection requirements of Coastal Act Sections 30240 and 30231 for application to specific sensitive resource areas in Malibu and therefore continue to serve as guidance in reviewing proposed development for consistency with Coastal Act policies.

Specifically applicable LUP policies addressing the protection of DSRs and ESHAs and thereby incorporating the resource protection policies that are relevant to the proposed project include:

- P 74 New development shall be located as close as feasible to existing roadways, services, and existing development to minimize the effects on sensitive environmental resources.
- P 81 To control runoff into coastal waters, wetlands and riparian areas, as required by Section 30231 of the Coastal Act, the maximum rate of storm water runoff into

such areas from new development should not exceed the peak level that existed prior to development.

- P 82 Grading shall be minimized for all new development to ensure the potential effects of runoff and erosion on these resources are minimized.
- P 86 A drainage control system, including on-site retention or detention where appropriate, shall be incorporated into the site design of new developments to minimize the effects of runoff and erosion. Runoff control systems shall be designed to prevent any increase in site runoff over pre-existing peak flows. Impacts on downstream sensitive riparian habitats must be mitigated.
- P 87 Require as a condition of new development approval abatement of any grading or drainage condition on the property which gives rise to existing erosion problems. Measures must be consistent with protection of ESHAs.
- P 89 In ESHAs and Significant Watersheds and other areas of high potential erosion hazard, require approval of final site development plans, including drainage and erosion control plans for new development prior to authorization of any grading activities.
- P 91 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.

In addition, the LUP contains Table 1 policies specifically applicable to designated habitat areas or categories. Pertinent Table 1 policies regarding ESHAs applicable to the proposed project include:

Table 1 Policies

ESHAs

- □ Land alteration and vegetation removal, including brushing, shall be prohibited within undisturbed riparian woodlands, oak woodlands and savannahs and any areas designated as ESHAs by this LCP, except that controlled burns and trails or roads ...
- Structures shall be located in proximity to existing roadways, services and other development to minimize the impacts on the habitat...

The project site includes habitat mapped as a Disturbed Sensitive Resource Area (DSR) on the certified LUP maps; therefore, specifically applicable that provide guidance in evaluating the proposed project include:

Table 1 Policies (Disturbed Sensitive Resources):

- In disturbed riparian areas, structures shall be sited to minimize removal or riparian trees.
- Removal of native vegetation and grading shall be minimized.
- Site grading shall be accomplished in accordance with the stream protection and erosion policies.
- Disturbed, sensitive ravines and canyons at Point Dume should be retained in their existing condition or restored.

As discussed above, the applicants propose to add a cabana to the approved plans for the subject site. The cabana was previously deleted by the applicants prior to the project hearing of October 5, 1998. The new location proposed for the cabana sets the structure back from the DSR area further than the location previously proposed for the cabana (see Exhibits 2 and 3).

The subject parcel takes access off Zumirez Drive and contains a deep, flat rectangular area that slopes at the rear into, and comprises a portion of, Walnut Canyon. The canyon, which is mapped in the LUP as a Disturbed Sensitive Resource Area (DSR), drains into Walnut Creek, which is a designated blue-line stream on the U.S. Geologic Survey quadrangle maps and an Environmentally Sensitive Habitat Area as defined by the Coastal Act. Walnut Creek empties into the Pacific Ocean less than one quarter of a mile south of the applicants' parcel.

The certified LUP maps show the boundary of the disturbed sensitive resource area at approximately the 80—foot elevation line along the upper edge of Walnut Canyon. The parcel is of relatively low relief until approximately the 90—foot elevation line (near the rear of the proposed tennis court), at which point the lot slopes at slightly more than a 3:1 ratio southwesterly toward Walnut Creek.

The Commission has found, in past permit actions, that the canyons of Point Dume are disturbed sensitive resource areas. While such areas may contain modified habitats that no longer offer their original, undisturbed biological significance they are nonetheless sufficiently valuable to warrant protection from further impacts. Modified habitats may, in fact, be more vulnerable to damage from the potentially adverse impacts of development in or adjacent to such areas than more pristine areas.

For example, undisturbed riparian areas ordinarily contain a variety of tree and shrub species with established root systems interspersed with compatible ground covering native species. Such established cover slows rainfall runoff from canyon slopes and staunches silt flows that result from ordinary erosional process, thereby limiting the siltation of downslope creeks. Accordingly, disturbed vegetation adjacent to riparian corridors compromises the buffering effects of natural ecosystems and renders them more vulnerable to disturbance, such as accelerated gullying or siltflow from grading or an increase in impervious surfaces that may result from adjacent development. For this reason, disturbed habitat may be even more vulnerable to additional disturbance than might be the case in more robust, pristine ecosystems.

In addition to the lack of buffering characteristics, the denuded habitat that often characterizes disturbed areas lacks the extent of protective cover that might otherwise shelter birds and small mammals from predation by domestic pets. The roaming cats and dogs of residential dwellers are particularly destructive to ground foraging birds, such as quail, and waterfowl that feed in stream corridors and nest on the banks. The disturbance caused by the mere presence of domestic animals may disrupt the normal activities of sensitive species. The impacts of domestic pets can be reduced by protecting and enhancing the protective cover provided by intact native vegetation in the riparian canyons affected by adjacent residential development.

In addition, fragmented, "fringe" habitat located in transitional or remnant habitat areas often has special biological significance, in part because it represents a last remaining refuge for wildlife species displaced by surrounding development or at times a transitional zone of vegetation (from riparian trees such as willows to upslope chaparral brush, in the case of the subject site within Walnut Canyon) offering locally rare nesting or feeding opportunities. These remaining habitat areas provide particularly valuable cover for avian species relying on the stream corridor for feeding, nesting, and roosting. This phenomenon is nowhere more evident than in the Mediterranean climate that characterizes the Malibu area: the attendant warm, dry summers often coincide with dwindling freshwater supplies. Habitats with relatively extensive canopy cover, such as the willows and oaks found in the bottom of Walnut Canyon, may become crucial to wildlife survival during summer conditions.

As noted previously, the portion of Walnut Creek that traverses the bottom of Walnut Canyon downslope from the proposed project is heavily vegetated with mature willows and some oaks. The slope extending upward toward the proposed project site from the riparian corridor is densely covered with mature coastal sage scrub, though the cover has been thinned and mowed extensively upslope of approximately the 75—foot

elevation line. A site visit by Commission staff in October, 1998, confirmed that new native shrub growth was emerging where unauthorized previous mowing and clearing had been discontinued, demonstrating the potential for substantial regrowth and recovery in the disturbed sensitive resource area. If allowed to recover fully without further modification or clearance, this area appears likely to regrow into a seamless coastal sage scrub habitat extending from the top-of-slope line at the 88.25 elevation line and well into the mature habitat downslope, thereby providing significant habitat enhancement, extension of vegetative cover, and restoration of the sensitive resource area.

Upon full natural recovery, the native vegetation clearly appears likely fill in the canyon slopes up to the top-of-slope. As the result, a significant increase in habitat value, erosion control, and other ESHA buffering capacities can be expected to enhance the biological productivity of the downslope riparian corridor ESHA, consistent with the goals of Coastal Act Section 30231 and 30240.

As noted above, the applicants have submitted evidence in the form of a final fuel modification plan approved by the Los Angeles County Fire Department, Forestry Division, on March 11, 1999, that indicates that the addition of the cabana will not increase the extent of fuel modification or any other form of landscape alteration or constraint within the sensitive resource areas on or adjacent to the site. As explained more fully in the executive summary above, however, fire department standards have evolved over the past decade and may continue to change in the future. The fire department is applying relatively liberal standards, and requiring fuel modification generally only as far as 100 feet (instead of 200 feet) outward from defensible structures or structures considered to be potential sources of ignition.

The Commission's previous approval of Coastal Development Permit 4-98-194 noted that a key means of protecting and preserving natural vegetative cover in DSRs and ESHAs is to limit fuel modification necessary to protect proposed development from occurring in the sensitive canyon areas, particularly on slopes that drain to stream corridors. Vegetation modification such as thinning or removal generally required within a 200—foot radius of habitable structures by the Los Angeles County Fire Department may adversely affect native habitat areas. The Commission further noted that the adverse impacts of fuel modification could be limited or avoided by requiring that adjacent proposed development subject to such management requirements be set back sufficiently to prevent extension of the zone of clearance or thinning into the sensitive resource area.

The Commission determined that a range of alternatives existed that would allow the construction of the applicants' proposed cabana on the subject site without situating the structure within the 200 foot fuel modification radius. Rather than select such an

alternative to secure project approval, the applicants elected to delete the cabana from the plans altogether and have since worked with the Los Angeles County Fire Department to secure approval of a conceptual location that would not result in fuel modification down slope of the top-of-slope elevation line or the ESHA elevation line shown on Exhibit 3.

The Commission finds, however, that notwithstanding the approved fuel modification plan, the Fire Department reserves the right to change fuel modification requirements in the future, and has made such changes in the past. For example, the present 200-foot fuel modification guideline was increased from the former 100-foot fuel modification guideline previously applied before the 1993 Malibu wildfire. To ensure that future changes in fuel modification requirements do not result in an extended fuel modification range as measured from the slopewardmost edge or corner of the cabana, the Commission finds it necessary to impose a new special condition, Special Condition 9, upon the subject proposal. All other terms and conditions of the permit remain fully in effect.

Special Condition 9 requires that the applicants either demolish and remove the cabana, or relocate it elsewhere on the site toward Zumirez Drive if the Fire Department revises its fuel modification requirements and requires more extensive clearance or modification of vegetation of any kind downslope of the 88.25-elevation line shown on Exhibit 3. Special Condition 9 is implemented via a deed restriction, thereby also ensuring that successor interests are made aware that the cabana is essentially authorized as a temporary structure subject to potential relocation or removal if the referenced fuel modification changes ever materialize.

For the reasons set forth above, therefore, the Commission finds that Special Condition 9 set forth above is necessary to ensure the continued control of erosion, protection of the buffering capacity of the vegetative cover of the mapped DSR, and to preserve the integrity of the habitat area from the avoidable effects of siting accessory structures in close proximity to the habitat boundaries. Therefore, the Commission finds that only as conditioned by Special Condition 9 is the proposed project consistent with the habitat and coastal resource protection policies of Sections 30231 and 30240 of the Coastal Act.

C. Local Coastal Program

Section 30604(a) of the Coastal Act states that:

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 amendment will be in conformity with the provisions of Chapter 3. The proposed amendment will not create adverse impacts and is found to be consistent with the applicable policies contained in Chapter 3.

Therefore, the Commission finds that approval of the proposed amendment, as conditioned, will not prejudice the City's ability to prepare a Local Coastal Program for Malibu which is also consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

D. California Environmental Quality Act

Section 13096(a) of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit Amendment application to be supported by a finding showing the application 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 effects which the activity would have on the environment.

The proposed amendment would not cause significant, adverse environmental effects. Therefore, the proposed amendment is found consistent with CEQA and with the policies of the Coastal Act.







